

**STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD**

**CITY OF WYOMING  
EMPLOYER**

**and**

**FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL, INC.  
(FULL TIME SERGEANTS)  
EMPLOYEE ORGANIZATION**

CASE NO. 09-MED-09-0942

**CONCILIATOR'S AWARD**

**CONCILIATOR:**

Philip H. Sheridan, Jr.  
Attorney at Law  
915 South High Street  
Columbus, Ohio 43206  
(614) 445-0733

**FOR THE UNION:**

Barry L. Gray  
Staff Representative, Fraternal Order of Police  
Ohio Labor Council, Inc.  
5752 Cheviot Road, Suite D  
Cincinnati, Ohio 45247-7100

**FOR THE CITY:**

Daniel G. Rosenthal  
Denlinger, Rosenthal & Greenberg, LPA  
425 Walnut Street, Suite 2300  
Cincinnati, Ohio 45202

STATE EMPLOYMENT  
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## CONCILIATION AWARD

**STATEMENT OF CASE:** The parties, the City of Wyoming, represented by Daniel G. Rosenthal, Esq., and the bargaining unit, including all full-time employees in the classifications of sergeant, represented by Barry L. Gray, Staff Representative for the Fraternal Order of Police, Ohio Labor Council, Inc. (FOP-OLC), have entered into negotiations for a contract between the parties to take effect January 1, 2010, and to expire December 31, 2012.

The parties have engaged in previous contract negotiations that have resulted in agreements. The parties attached a copy of the expired collective bargaining agreement.

The parties met and bargained in good faith, and were able to agree on all but five issues of the contract. The parties submitted the issues to fact-finding on April 20, 2010, which led to a fact-finding and recommendation May 12, 2010, which was rejected. I was chosen to serve as conciliator and issue a binding conciliation award pursuant to R.C. 4117.14(G). The parties provided me with their positions more than five days before the hearing as required.

At the conciliation meeting on July 16, 2010, and in its final offer statement, the city argued that I could not consider the bargaining unit's proposals on wages, "Kelly Time" and insurance because they differed from the bargaining unit's proposals at fact finding. The wage proposal was only given to the city two days before it got the final offer statement and the insurance and Kelly Time proposals were made for the first time in the final offer statement. I deferred making a decision on the issue until I had the chance to research the issue and read the case cited. The parties then outlined their position on the remaining issues: Article 15, Salaries and Certain Benefits, Section 15.1, Article 22-Health Insurance, Article 30, Duration of Agreement (Retroactivity), and "Kelly Time" according to the city or Article 16, Overtime, according to the bargaining unit.

Pursuant to R.C. § 4117.14 and Admin.R. 4117-9-05, Philip H. Sheridan, Jr., 915 South High Street, Columbus, Ohio, was chosen as conciliator.

The meeting was convened at 10:00 a.m. at the Wyoming Administration Building. The matter was submitted upon statements and arguments presented to the conciliator.

According to the provisions of R.C. Chapter 4117, the parties provided me with the fact-finding award, a copy of the expired current contract, the issues which have been resolved, the unresolved issues, and each party's final offer on the unresolved issues.

In issuing this conciliation report, I have given consideration to the provisions of R.C. Chapter 4117, and in particular, the criteria contained within R.C. § 4117.14(G) (7) (a)-(f).

**Procedural issue.**

**THE CITY'S POSITION:**

The city argues that I cannot consider the bargaining unit's proposals unless the specific proposal made in the final offer settlement has been previously received by the city, considered and rejected. In other words, the city claims that the specific proposals in question have not been bargained to impasse.

**THE FOP-OLC POSITION:**

The bargaining unit argues that the parties had reached impasse on the issues in question and the bargaining unit complied with the statutory requirements for serving its positions on the remaining issues prior to the hearing.

**PROCEDURAL DECISION**

I will consider the proposals of the bargaining unit in making my award. The city's reliance on *Fairborn Professional Fire Fighters' Association FOP-OLC v. City of Fairborn (2000)*, 90

Ohio St. 3d 170 does not persuade me to adopt its position. The language quoted is not a part of the syllabus, and doesn't appear to directly apply to the issue determined in that case.

It appears to me that the parties were at impasse on each of the articles in question, and that the statutory five-day period to serve the parties' positions on one another is sufficient protection from "arbitration by ambush." I see the five-day service requirement as sufficient time to react to differing positions as to the issues that were taken to fact finding. I can take into consideration the bargaining unit's changed positions on the three issues in question.

**Article 15 – Salaries and Certain Benefits, Section 15.1.**

The issue for determination is wages.

**THE CITY'S POSITION:**

The city's last best offer is that wages be increased by 2% in 2010, 2.5% in 2011, and 3.0% in 2012. The last best offer is the same as the fact finder's recommendation. The city points to the national economy, local problems, private sector wages, lower wage increases to public safety units in surrounding municipalities and counties, reduced city revenues, lower increases for non-union and management employees of the city, increases already approved or recommended for other city bargaining units, and the perceived public reaction to increases in excess of what the fact finder recommended.

**THE FOP-OLC POSITION:**

The bargaining unit's last best offer is that wages be increased by 2.5% in 2010, 3.0% in 2011, and 3.5% in 2012. The bargaining unit points out that the difference in the parties' positions amounts to about \$400 more than the city's position per bargaining unit member per year of the contract. If the police officers receive the 2%, 2.5% and 3% raises recommended by the fact finder but rejected by the police officers, then the sergeants' goal of a 15% differential between police

officer pay and sergeant pay would be accomplished in the third year of the contract. The bargaining unit highlights the city's ability to pay and its significant cash carryover balance and asserts that the bargaining unit's proposal is reasonable under the circumstances.

### **AWARD**

I have independently examined all of the information provided to me concerning this issue. I award the last best offer of the city, and adopt by reference the city's proposed language for Article 15 – Salaries and Certain Benefits, Section 15.1. The fact finder's analysis and conclusions seem reasonable to me, and although either the city's or the bargaining unit's proposals appear reasonable, I believe that deference to the fact finding has several beneficial elements. The bargaining unit has not overcome the fact finder's analysis and persuaded me to depart from it.

### **ARTICLE 30 – Duration of Agreement (Retroactivity).**

The issue for determination is whether the increase for the first year of the contract should be applied retroactively to the beginning of the contract period.

#### **THE CITY'S POSITION:**

The City's last best offer on retroactivity is that "retroactivity should be limited to one month." The city's argument is that the bargaining unit has caused delays since February and should not benefit from that delay.

#### **THE FOP-OLC POSITION:**

The bargaining unit's last best offer is that the increase for the first year of the contract should be retroactive to January 1, 2010. The bargaining unit's position is that of the fact finder. Various reasons can account for delays in negotiations and the fact finding and conciliation, and the bargaining unit argues that the fact finder considered the city's arguments and did not find them persuasive.

## AWARD

I have independently examined all of the information provided to me concerning this issue. The fact finder's award is not arbitrary, erroneous or unreasonable, so I see no need to substitute my judgment for it. I award the last best offer of the bargaining unit, and adopt by reference its proposed language for Article 30 – Duration of Agreement (Retroactivity).

### ARTICLE 22 – Health Insurance

The issue for determination is the amount the bargaining unit members will contribute to the cost of health insurance, and the amount of co-pay for prescription drugs. The bargaining unit has also proposed an increase in the dental/optical benefit.

#### **THE CITY'S POSITION:**

The city's last best offer is employee contributions of 9% in 2010, 10.5% in 2011, and 12% in 2012. The prescription drug co-pay is an increase to \$5/\$20/\$40 for generic/brand name/non-formulary prescriptions. The city's last best offer is that of the fact finder. The city argues for internal consistency. The last best offer is the same as that adopted by the AFSCME bargaining unit in 2009, the same as the police clerks agreed to, the same as all non-union city employees pay, and the amount recommended by the fact finder in the patrol officers' fact finding (pending conciliation). The city also echoes the fact finder's conclusion that public sector employees pay much less than that paid by employees in the private sector, and health insurance costs have routinely increased during the term of the expired contract and for years before that.

#### **THE FOP-OLC POSITION:**

The bargaining unit's last best offer is an increase to 9% in 2010, 10% in 2011, and 11% in 2012. The bargaining unit's last best offer on the prescription co-pay is the same as the city's. The bargaining unit also proposes an increase in the amount of the dental/optical benefit from \$400 to

\$500. The bargaining unit acknowledges the need to contribute to the increased health care costs, but advocates for a slower increase in light of the higher increases in wages enjoyed during the last contract compared to the health insurance contribution increases. The bargaining unit wage increases should not decrease while the health insurance contribution increases.

### **AWARD**

I have independently examined all of the information provided to me concerning this issue. The fact finder's award is not arbitrary, erroneous or unreasonable, so I see no need to substitute my judgment for it. The bargaining unit comparison of wage increases and increases in health insurance contributions as percentages appears to me to compare "apples to oranges." I award the last best offer of the city, and adopt by reference its proposed language for Article 22 – Health Insurance.

### **"Kelly Time"**

The issue for determination is whether to continue the city's practice of granting an additional 4 hours of paid time off every two weeks to the bargaining unit employees after the city exercised its management right and changed their schedules from 8 hour days to 12 hour days.

### **THE CITY'S POSITION:**

The City's last best offer is to eliminate "Kelly Time." The city argues that the bargaining unit is "comfortably settled into the 12-hour schedule, it is working well, and the transitional Kelly time should be eliminated." The city asserts that "Kelly Time" is not contractual because the city unilaterally granted it to "ease the employees into the 12-hour schedule."

### **THE FOP-OLC POSITION:**

The bargaining unit's last best offer proposes the addition of language in Article 16, Overtime that would add Section 16.6 - "Kelly Time" to the contract to apply for as long as the 12-

hour work schedule is in effect. The bargaining unit relies on the city's memorandum of understanding and asserts that its position is the same as the recommendation of the fact finder, who proposed that use of "Kelly Time" remain unchanged.

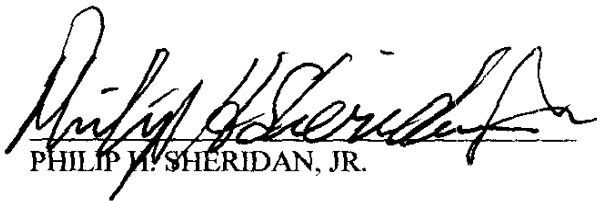
### **AWARD**

I have independently examined all of the information provided to me concerning this issue. The fact finder's award is not arbitrary, erroneous or unreasonable, so I see no need to substitute my judgment for it. Although neither party's last best offer is exactly what the fact finder recommended, the bargaining unit's last best offer most closely follows the fact finder's recommendation that the use of "Kelly Time" remain unchanged. I award the last best offer of the bargaining unit, and adopt by reference its proposed language for Article 16 – Overtime, Section 16.6 – Kelly Time.

### **CONCLUSION**

The parties provided substantial information in a courteous and professional manner for my consideration. In addition to the awards above, I hereby include all unopened articles in the successor agreement, and any tentative agreements reached by the parties. The effective beginning date of the agreement is January 1, 2010. The parties shall take the actions necessary to implement the agreement.

Respectfully submitted,

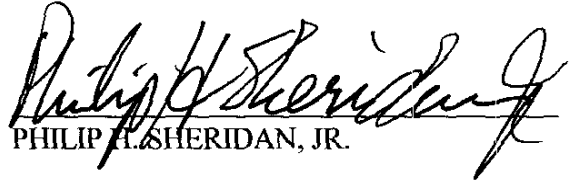
  
PHILIP M. SHERIDAN, JR.

September 1, 2010



CERTIFICATE OF SERVICE

I hereby certify that I mailed a copy of this Conciliation Award to the parties' representatives at the addresses listed on the cover page to this award, by ordinary U.S. mail, postage prepaid, by email to the addresses they presented, and to the State Employment Relations Board, 65 E. State St., 12<sup>th</sup> Floor, Columbus, Ohio 43215, by ordinary U.S. mail, postage prepaid, this 1st day of September, 2010.

  
PHILIP H. SHERIDAN, JR.

**PHILIP H. SHERIDAN, JR.**  
ATTORNEY AT LAW  
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September 1, 2010

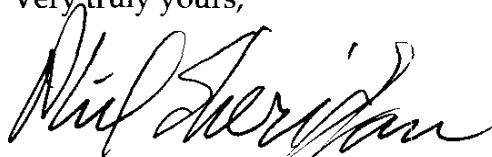
J. Russell Keith  
General Counsel & Assistant Executive Director  
State Employment Relations Bd.  
65 East State St. 12<sup>th</sup> Floor  
Columbus, Ohio 43215-4213

**RE: Case No. 09-MED-07-0942, City of Wyoming and  
Fraternal Order of Police, Ohio Labor Council, Inc.**

Dear Mr. Keith:

Enclosed please find the Conciliation Award for this matter. Thank you for your consideration.

Very truly yours,



Philip H. Sheridan, Jr.

PHS/ps  
Enclosure  
cc: file