

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Conciliation Between:)	
)	
Ohio Patrolman's Benevolent Association)	09-MED-10-1213
)	
-And-)	
)	Conciliator:
City of Girard, Ohio)	John T. Meredith

**FINDINGS, OPINION AND AWARD
ISSUED JANUARY 7, 2011**

INTRODUCTION

The parties to this Conciliation proceeding are the Ohio Patrolman's Benevolent Association and the City of Girard, OH. The bargaining unit consists of all regular full-time police officers, a group of approximately eleven (11) employees. The subject Agreement will be a successor to the January 1, 2007 – December 31, 2009 Agreement between the parties.

The parties initiated collective bargaining for the successor Agreement but were unable to resolve all issues. Jennie K. Bullard was selected by the parties to serve as Fact-Finder. After conducting an all-day fact-finding hearing on August 26, 2010, Ms. Bullard issued her Fact-Finding Report on September 21, 2010. This Report was rejected by both parties, and accordingly, by letter dated October 19, 2010, SERB appointed the undersigned, John T. Meredith, to serve as Conciliator. By agreement of the parties, a

mediation session with the Conciliator was scheduled for 10:00 a.m. on November 9, 2010. The insurance issue was resolved during mediation, but five issues remained unresolved.

A hearing was held on December 9, 2010 to take evidence on these unresolved issues. Prior to the hearing, the parties timely submitted their Position Statements to the Conciliator. The Position Statements contained the party's final offer on each issue, and fully complied with SERB Rules. The hearing was conducted in accordance with Ohio Collective Bargaining Law and applicable SERB Rules and Regulations. Witnesses were sworn, and the parties and their advocates also presented unsworn arguments. The City provided a court reporter for the hearing, but the Union did not agree to share the cost or accept the transcript as the official record of the hearing. Therefore, in accordance with OAC 4117-9-06(F), the Conciliator's notes, along with all admitted exhibits, constitute the official record in event of an appeal.

Appearing for the Union at the hearing were: Kevin Powers, Attorney, and Patrol Officers Scott Siegel, Scott Strain, and Ron Schnarrs, local representatives. Appearing for the City at the hearing were: Michael Esposito, Attorney, Jerry Lambert, Director of Public Service, Jeffrey Palmer, Chief of Police, and Nita Hendryx, a representative of the Auditor of State.

The Conciliator has now resolved each issue by selecting the final offer of one of the parties. In making his decisions and issuing his Award, the Conciliator has given consideration to the following criteria prescribed by Ohio Collective Bargaining Law and listed in SERB Rule 4117-09-05:

- (1) Past collective bargaining agreements, if any, between the parties;

- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved.
- (3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service.
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

“Other factors” noted in the sixth criteria include the common practice among conciliators of giving very significant weight to well-reasoned recommendations of the Fact-Finding Report issued in the case. (See, for example: City of Lakewood and IAFF, SERB Case No. 00-MED-04-0952 (Dennis Byrne); City of Warren and OPBA, SERB Case No. 2006-MED-10-1267 (Harry Graham); City of Medina and OPBA, SERB Case No. 05-MED-08-0785 (Alan Miles Rubin).

BACKGROUND: CITY PROFILE AND FINANCES

A. City Profile and Finances:

The City of Girard is located in southern Trumbull County on the Mahoning County border in Northeastern Ohio. It is a classic Rust Belt locale, and like many other Rust Belt cities, it has experienced severe declines in jobs, population and revenue. Current population is estimated to be slightly above 10,000, more than a 25% decline from its peak in the 1960’s and 1970’s. Income of Girard residents is modest – the 2000 Census shows 29.4% of residents on fixed income and 52.6% of households with incomes below \$35,000.

In late 2001, the Auditor of State declared a “fiscal emergency” in Girard pursuant to Section 118.03 of the Revised Code. The basis for this determination was that the City had failed to make payments on two outstanding loans and that it had impermissible deficit balances in several funds, including the General Fund, on December 31, 2000. Further auditing revealed a total deficit balance of approximately \$2.2 million.

After nine years, the City remains in “fiscal emergency” status, operating with oversight from the Auditor of State. The City must operate under spending plans, the goal of which is to balance the budget on an annual basis and reduce the deficit balance. According to Nita Hendryx, the Auditor’s representative who testified at the hearing, the City must stay solvent for five years in order to get out of fiscal emergency, and it has not been able to do so.

Initially, the City made some progress. It implemented significant personnel reductions, and employees, including the union-represented police employees, accepted wage freezes in 2004, 2005 and 2006. The City General Fund also benefited from some one-time sources of income, such as transfers from other funds in 2002-2004, prepayment of debt by the Municipal Court, and up front payment of gas royalties (2005). In 2005 and 2006, there was revenue from traffic cameras, which now may have to be refunded. In time, there also was an improvement in recurring revenues. The principal source of recurring General Fund revenues is the city income tax. Income tax revenues declined from about \$3.5 million in 1998 to less than \$3 million in 2003, but then increased in 2004 – 2007 so that in 2006 and 2007 they exceeded 1998 levels. In 2007, on an annual basis, the City was able to finish with a year-end balance of \$281,000.

With its finances improving, for the years 2007 – 2009 the City signed a three-year contract with the OPBA which provided annual raises of 2.0%. The raises were the quid pro quo for the Union's acceptance of a revised insurance plan, which went into effect in mid 2008. At least in part, the savings from the new insurance plan funded the cost of the wage increases. The plan also covered other employee groups, except AFSCME employees, who continued a wage freeze and retained their prior medical plan.

Unfortunately, the recession intervened. Income tax revenues declined 13% (approximately \$750,000) from 2007 to 2009, and there was a 9% decrease in all General Fund revenue during this period. A long-time employer's permanent closing of its facility significantly contributed to this decline. At the same time, General Fund expenditures increased 6%, and Police Department expenditures increased 10%. (The Police Department is funded entirely by General Fund revenues. Its expenditures represent about 31% of General Fund expenditures.) As a result, at the hearing the City projected an annual General Fund deficit of \$625,000 for the end of 2010.

Prospectively there is hope. V and M Star Steel has purchased property on the border of Youngstown and Girard. It is commencing work on a production facility which may be completed and in operation in 2013. As a result, the City is projecting possible revenue of \$1 million in 2011 and \$1.2 million in 2012 from V and M land acquisition and construction activities. These payments would be nonrecurring, but they do help short term. Without them, the City would project that annual General Fund expenditures would continue to exceed revenues by about half a million dollars, even without an increase on the expenditure side of the ledger. By the beginning of 2013, the City anticipates that the V and M construction will be completed and operations will begin.

However, it is feared that operations may generate annual tax revenue of only about \$250,000. (This is a rough estimate.) This is all taken into account in Ms. Hendryx' 2011-2014 projections for the General Fund, which conclude: 2011 – (\$230,700) deficit; 2012 – \$348,560 surplus; 2013 – (\$85,035) deficit; 2014 – (\$579,368) deficit.

B. Comparability Data:

The City would compare Girard wages to the wages of employees in the cities of Campbell, East Liverpool, Struthers and Salem. With the possible exception of East Liverpool, which is larger than and somewhat distant from Girard, these do appear to be proximate in location and “comparable” in size and demographics. The City’s comparisons show that the maximum salary for Girard patrol officers exceeds salaries paid in its comparable cities. Wage increases in Girard trailed increases in these cities (except Campbell) from 2004 – 2009, but Girard compares favorably if only 2007-2009 is considered.

The Union suggests comparison to neighboring cities, including Youngstown, Warren, Canfield, Niles, Hubbard, Cortland, Struther and Campbell. Girard salary ranks in the middle of this group. Again, except for Campbell, its wage increases trail the other cities in most years. The City disputes the validity of some of these comparisons, as they include several much larger cities (Youngstown, Warren, Niles) and cities with different economic conditions (Canfield, Niles and Cortland).

In each year since 2004, Girard wage increases have trailed the average wage increases for police officers in the State of Ohio. This disparity is less, though still evident, if Girard police wage increases are compared to all public employee wage

increases in the Warren/Youngstown Region. (Reference SERB Annual Wage Settlement Reports.)

RESOLUTION OF DISPUTED ISSUES

1. Article 25, Sections 1 and 2, and Appendix A, Wage Schedule

Positions of the Parties: For its final offer, the City has adopted the Fact-Finder's recommendation. Specifically, the City proposes a wage freeze for the duration of the Agreement, subject to a re-opener in March 2012 for wages and other matters with cost implications. In support of this proposal, the City argues: 1) Under financial conditions fully discussed in the Background Section, pages 4-6, supra, the City should not be ordered to allocate funds to a wage increase or bonus. 2) The City does have hopes for additional revenue from economic development, and the extent of recurring revenue from this development should be known in 2012, when the project should complete construction and transition to an operating phase. A 2012 re-opener, therefore, will give the parties an opportunity to reconsider compensation as soon as they have reliable information about increased revenues. 3) Although pay increases in Girard have lagged some other cities for several years, the salaries of Girard officers still compare favorably to comparable area cities, see Background Section, page 6 supra. 4) Deference is due to the Fact-Finder's recommendation.

The Union has modified its proposal for conciliation, substituting bonuses for increases in wage rates. Its final offer is: 1) Wage rate freeze. 2) \$1000 bonus payment to each officer in June 2011. 3) \$1000 bonus payment to each officer in June 2012. In support of its position, the Union argues.: 1) Internal parity – City Council approved a

Fact-Finder's report recommending a 2%/2%/2% wage package in a 3-year contract with AFSCME. 2) Bonuses are one-time costs and can be paid with nonrecurring revenue, such as the acquisition and construction revenues expected from the V and M project. 3) Girard wage increases have trailed average wage increases for Ohio police and for police in neighboring cities, and Girard's salaries trail compensation in about half of neighboring cities, (specifically Youngstown, Warren, Canfield and Niles).

Discussion and Analysis: It is tempting to consider a bonus payable from projected nonrecurring revenues in 2011 and 2012. However, the Conciliator recognizes that the City is still in fiscal emergency and apparently will remain there for some time. Even with the infusion of one-time money from land acquisition and construction for the V and F project, it will continue to experience financial problems. Without the one-time money, and with no significant increase in expenditures, the City would have an annual operating deficit of approximately half a million dollars in 2011 and 2012. The one-time money will result in a projected \$348,560 operating surplus in 2012. However, with completion of the V and M construction, the City projects that it will be back in a deficit situation in 2013 and subsequent years unless it develops a source of increased recurring revenue. Under these circumstances, a Conciliator should not order increased compensation in any form, including bonus payments. The earliest that the City expects to have solid information on potential revenue from V and M's ongoing operations and/or any economic recovery is 2012. If the revenue picture improves, the Spring 2012 re-opener will give the parties an opportunity to take advantage the improvement. Although a 2012 re-opener may not give the Union a meaningful opportunity to pursue conciliation, most contracts are resolved short of the conciliation stage and, if revenue is

available, there is no reason to assume that re-opener negotiations would be unproductive or that City Council would reject a Fact-Finding Report providing compensation to the Union employees.

Finally, the Conciliator has considered the AFSCME Fact-Finding Report. The recommended 2% increases for AFSCME are not inconsistent with the wage freeze/re-opener proposed herein by the City. Rather the AFSCME raises are a quid pro quo for insurance concessions. The Report simply extends to AFSME the same deal to which the OPBA agreed in its prior contract. This clearly was the intent of the AFSCME recommendation. (See Report, Un. Exh. 2, at pages 17-18.) Internal parity considerations thus support both the recommendations in the AFSCME Report and the City's proposal.

Award: The Conciliator awards the Employer's final offer. As proposed by the Employer and recommended by the Fact-Finder, Section 1 of Article 25 shall be revised to state: "**Section 1. Rates of Pay:** During the course of the parties' agreement bargaining unit members shall remain unchanged. Effective April 1, 2012, the union may file to re-open negotiations. The re-opener will be limited to wages and other matters with cost implications to the Employer." Current contract language shall be retained for other sections of Article 25. The Wage Appendix shall state:

APPENDIX A
WAGE SCHEDULE

For Bargaining Unit Members Hired Prior to June 1, 2007
Effective January 1, 2010

<u>Classification – Police Officer</u>	<u>Hourly Rate</u>	<u>Annual Compensation</u>
Entry Rate	\$16.3768	\$34,068.88
After 1 year of full-time service	\$17.4686	\$36,340.13
After 2 years of full-time service	\$19.6522	\$40,882.65
After 3 years of full-time service	\$21.8357	\$45,425.17

For Bargaining Unit Members Hired After June 1, 2007
Effective January 1, 2010

<u>Classification – Police Officer</u>	<u>Hourly Rate</u>	<u>Annual Compensation</u>
Entry Rate	\$16.3768	\$34,068.88
After 1 year of full-time service	\$17.4686	\$36,340.13
After 2 years of full-time service	\$18.5604	\$38,611.39
After 3 years of full-time service	\$19.6522	\$40,882.65
After 4 years of full-time service	\$20.7439	\$43,153.91
After 5 years fo full-time service	\$21.8357	\$45,425.17

2. Article 26, Shift Differential

Positions of the Parties: The Employer proposes eliminating the current shift differential. It argues that, in theory, shift differentials are for the purpose of compensating employees assigned to undesirable shifts, and should not be necessary when employees can choose their shift through a bidding process. The Union proposes maintaining the shift differential. It notes that bidding provides a meaningful choice only for the most senior employees, and that other employees are simply stuck with the less desirable assignments notwithstanding the opportunity to bid. The Union further notes that the City’s AFSCME-represented employees have a shift differential.

Discussion and Analysis: Shift differentials are common in both public and private sector bargaining agreements, and are provided for some of the Employer’s other employees. The Conciliator agrees that shift biding does not offer a meaningful choice for less senior employees. Also, the Conciliator notes that the Fact-Finder recommended retaining the current shift differential.

Award: The Conciliator awards current contract language, as proposed by the Union and recommended by the Fact-Finder.

3. Article 30, Holidays

Positions of the Parties: Under the 2007-2009 Agreement, employees who work as regularly scheduled on a holiday receive holiday pay for the day worked “plus eight (8) hours pay or eight (8) hours off at a later time of his/her choosing.” (Article 30, Section 3).

The City proposes to delete the option to choose additional time off and simply pay “8 hours holiday pay” to employees who work on a holiday. The City argues that 1) Due to generous vacation and personal leave policies, employees already have sufficient time off. 2) Most other area cities provide holiday pay rather than additional time off for employees who work holidays. 3) Eliminating the time off option would facilitate scheduling and improve efficiency. 4) Employees would also benefit because holiday pay would put more money in their pocket during a period when they are enduring a wage freeze.

The Union objects, and would add a sentence emphasizing employee choice. It states that it wants to “maintain the status quo” which lets employees who are scheduled to work on a holiday choose 8 hours holiday pay or 8 hours off at a later date. It calls this a “win-win” situation – an employee who needs cash more than time may opt for holiday pay, while those who need time, perhaps for family obligations, can opt for 8 hours time off at a later date.

Discussion and Analysis: The conciliator is sympathetic with the need to facilitate scheduling and improve efficiency. He also agrees that senior employees seem to have an abundance of vacation. However, this is less true of employees with fewer than ten years of service, and it does not appear that continuing the present practice,

which permits 8 hours off at a later date or 8 hours pay at the employee's option, will increase the City's costs. There is no compelling reason to direct employees to concede this issue in a contract when they are receiving no guaranteed wage increase.

Award: The Conciliator awards the Union's final offer. The following sentence shall be added at the end of current Article 30, Section 1: "Employees shall have the option of being paid in cash for holidays as they occur or taking paid holiday off." No other change in current language of Article 30, Sections 1-4 of the Agreement.

4. Article 36, Personal Leave

Positions of the Parties: The Employer proposes reducing the number of available personal days from four to three. It states that bargaining unit members already have very generous vacation allowances, and that police in comparable area cities have two or three personal days, not four. The Union objects to changing the current four-day allowance, and notes that employees in the City's AFSCME unit have four personal days.

Discussion and Analysis: The Employer's comparability data supports reducing the personal leave allowance to three days. Also, the Conciliator agrees that Girard employees with fifteen or more years service have generous vacation benefits which should obviate the need for personal leave time. Vacation benefits for shorter-service employees are more standard, but maintenance of the holiday time-off option (Issue 3, supra) should provide sufficient time to meet their needs.

Award: The Conciliator awards the Employer's final offer. As proposed by the Employer, Article 36 of the Agreement shall state:

"Section 1. During 2010 personal day benefits shall remain unchanged. Effective January 1, 2011, all employees shall, in addition to all other leave benefits, be granted three (3) personal leave days each year.

Section 2. Personal days shall only be taken with the advance approval of the Chief of Police or his designee.”

5. Article 46, Duration of Agreement

Positions of the Parties: The positions of the parties on this issue vary somewhat from the positions they argued to the Fact-Finder. The City proposes language which would make the new collective bargaining agreement effective “upon issuance of the conciliation award” through “December 31, 2012.” It further proposes to delete the last sentence of the current Article 46, which states: “If such notice is given, this Agreement shall remain in effect until the parties reach agreement on a new contract.”

The Union also proposes an expiration date of December 31, 2012. However, it would make the new agreement effective retroactive to “January 1, 2010,” and it would retain the last sentence of the current Article 46. This sentence is needed, the Union says, to prevent the employer from arguing that an employee cannot arbitrate a grievance arising after the contract expires but before a new agreement is finalized. It notes that this argument is being made by a neighboring city (Youngstown) in a pending case. The employer’s brief in that case, prepared by Clemans-Nelson, was admitted as Union Exhibit 8 and cites numerous federal and state cases for the proposition that arbitration does not survive expiration of a collective bargaining agreement except in narrow circumstances.

Further the Union proposes addition of the following sentence: “Negotiations for a successor agreement shall be conducted according to RC 4117.14 as said statute reads on 12/31/10.” The purpose of this new language, the Union states, is “to preserve its

right to pursue conciliation in future negotiations,” which is a concern because of the “governor-elect’s stated opposition to the process and his desire to do away with it.”

The City vehemently opposes the Union proposal to lock in current statutory conciliation procedures for the following reasons: (1) The proposal attempts to create a “mutually agreed upon dispute resolution procedure” under RC 4117.14(C) This is a permissive subject of bargaining, not a mandatory subject, and cannot be decided as an “impasse” issue by a conciliator. (See Hancock County MRDD Board and Blanchard Valley Teachers and Instructional Staff Assistants Association, OFT/AFT, 95-MED-04-0432, Donald Sugarman, Fact-Finder.) (2) The issue was not raised at the Fact-Finding stage and thus cannot be reviewed at conciliation. (See Fairborn Professional Fire Fighters’ Association, IAFF Local 1235 v. City of Fairborn (2000), 90 Ohio St. 3d 170.) (3) The proposal would be impossible to implement. If the statute is amended to eliminate conciliation, then SERB will no longer have the power to appoint a conciliator and perform related duties required by the current law.

Discussion and Analysis: All issues encompassed by the duration clause are properly before the Conciliator. The language of Article 46 – Duration was an impasse issue submitted to and considered by the Fact-Finder, and both parties submitted Article 46 proposals to conciliation. The final offers submitted by the Employer and the Union both varied somewhat from their respective proposals at fact-finding, but both are fairly within the scope of the duration clause.

However, the Conciliator does not believe that he could award the Union’s final offer as submitted. When a successor to the new Agreement is negotiated in late 2012, impasse will be governed by the collective bargaining law then in effect. Any deviation

from this would be a MADD, and thus the Union's final offer must be construed as proposing a MADD. This is a permissive subject of bargaining, and it would not be appropriate to order a deviation from statutory impasse procedures absent actual mutual agreement of the parties. Moreover, implementation of the Union's proposal would require actions by SERB, such as appointing a conciliator pursuant to the current statute. If the bargaining law is amended as feared by the Union, SERB quite likely would lack authority to take these steps.

The Conciliator is sympathetic with the Union's desire to keep the Agreement, including its arbitration provision, in effect if negotiations for a successor agreement continue beyond the stated expiration date. However, in final offer conciliation, this part of the Union proposal cannot be separated from the whole. Moreover, assuming the duty to arbitrate would not in most circumstances survive expiration of the Agreement, a discharged employee still would not be left without a remedy, as "status quo ante" would protect the individual's substantive rights and he or she would have the right to pursue his or her wrongful discharge claim in another appropriate forum.

Award: The Conciliator awards the Employer's final offer. As proposed by the Employer, Article 46 of the Agreement shall state:

Section 1: This Agreement represents the complete Agreement on all matters subject to bargaining between the Employer and the OPBA and except as otherwise noted herein shall become effective upon issuance of the conciliation award, and shall remain in full force and effect until December 31, 2012. If either party desires to make any changes in the Agreement for a period after expiration, notice of such a desire shall be given as prescribed by law."

ISSUANCE OF AWARD

The Award is issued this 7th day of January, 2011.

/s/John T. Meredith
John T. Meredith, Conciliator

Shaker Heights, OH

CERTIFICATE OF SERVICE

This is to certify that the foregoing Opinion and Award was electronically filed with the State Employment Relations Board and electronically served upon the parties by e-mailing it to their representatives, listed below, this 7th day of January, 2011:

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A hard copy of the Opinion and Award was also mailed to the above-named party representatives on this date.

/s/John T. Meredith
John T. Meredith, Conciliator