

STATE EMPLOYMENT
RELATIONS BOARD

~~2010 DEC - 5 P 2:40~~

State of Ohio
STATE EMPLOYMENT RELATIONS BOARD
Final Offer Settlement Procedures

In the matter of the conciliation between)
City of Youngstown) SERB Case No: 09 MED¹⁰-1254
Public Employer) (Dispatch Unit)
)
) GREGORY P. SZUTER, CONCILIATOR
and)
)
) **REPORT AND AWARD**
Ohio Patrolmen's Benevolent Assn.) [Interest Arbitration]
Labor Organization)

For the Public Employer
Sandy Conley, Account Manager
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Also in attendance:
Kyle Miasek, Deputy Finance Director

For the Labor Organization
Daniel J. Leffler, Esq.
OHIO PATROLMEN 'S BENEVOLENT
ASSOCIATION
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Also in attendance:
Miriam "Millie" Maldonado, 911 Operator, Union
Director

Hearing : November 11, 2010
Award Issued : December 3, 2010

INTRODUCTION

The City of Youngstown (herein "Employer" or "City") and Ohio Patrolmen's Benevolent Association, (herein "Union") are parties to this final offer settlement procedure ("Conciliation") under Ohio R. C. 4117 which is a form of interest arbitration relating to establishing a replacement to their Collective Bargaining Agreement effective January 1, 2007, and expiring December 31, 2009. (herein "CBA" or "Agreement") The unit consists of full time dispatchers referred to by job titles of Public Emergency Dispatch Technician and E-911 Telecommunicator. There are 13 employees in the unit.

The parties met in negotiation for a replacement agreement. Matters still at impasse were submitted to statutory fact-finding. The fact-finder's report was issued on September 13, 2010. The undersigned was appointed conciliator in this dispute by the State Employment Relations Board (SERB) by letter of October 6, 2010, pursuant to R.C. 4117.14(D)(1). The parties have not executed a waiver of R.C. 4117.14(G)(11). Therefore all issues of compensation and other matters with cost implications awarded by the Conciliator are effective at the start of the fiscal year next commencing after the date of the settlement award, which is January 1, 2011.

The parties agreed in writing to extend the date that the Conciliation hearing would be conducted until November 11, 2010. The hearing was held that date in Youngstown, Ohio.

HEARING

Pre-hearing statements of the issues were submitted by November 6, 2010, with final proposals and exhibits in conformity with R.C. 4117.14(G)(3) and O.A.C 4117-9-06(E). The Conciliation evidentiary hearing commenced on November 11, 2010, at City Hall in Youngstown, Ohio. Both parties attended and elaborated upon their positions regarding the issues remaining at impasse through their witnesses and representatives. The Labor Organization was represented by Daniel J. Leffler, Esq. The Employer was represented by Sandy Conley, Account Manager,

Clemans Nelson & Assoc, and Iris T. Guglucello, Esq., Law Director. Evidence was presented by the Deputy Finance Director Kyle Miasek, on behalf of the City and by Millie Maldonado, 911 Operator and Union Director on behalf of the Union. In addition, documents were marked and received in evidence. Four Joint Exhibits were received in evidence (JX) ¹. The City presented several exhibits in a binder form that were received into evidence. (CX).² The Union also presented

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- ¹
- JX A Agreement between the City of Youngstown and the Ohio Patrolmen's Benefit Association (Dispatch Unit), effective January 1, 2007 through December 31, 2009.
 - JX B State Employment Relations Board, Fact Finding Report: Findings and Recommendations 09 MED 10-1254 Daniel G. Zeiser Fact Finder (September 13, 2010).
 - JX C Tentative Agreements reached November 9, 2010 (Articles 12; 26, sec. 1-7; 34; 39; and 49.
 - JX D Tentative Agreements reached November 11, 2010 (Article 30, sections 1 through 9 but excluding section 5).

² The City's exhibits were included in a notebook consisting of indexed subparts identified by tabs: "Employer Submission" (pre-hearing position statement with JX B attached), Union Submission (pre-hearing position statement); "CBA" (JX A,) "Demographics" (no contents) and "Opening Statement" (for the City). Thereafter are numbered tabs 1 through 10 to correspond to open issues as they stood pre-hearing which included the final offers from the position statements of each party. Because of tentative agreements on a number of issues since the position statements were filed, the exhibits admitted into evidence are limited to the issues that remained open for decision herein. Exhibits and tabs relating to resolved issues were not admitted. The City supplemented the booklet with additional exhibits not included under any binder tab as its first two exhibits usurping the numbers from those issues/tabs for the purpose. Issue 1 was resolved and CX 1 was used in the supplement. Although Issue 2 (Tab 2) remained open, it had no exhibits so CX 2 was used in the supplement. The exhibits admitted are:

- CX 1 Affidavit of Kyle L. Miasek (State ex rel Elizabeth A. Kolby et al v. Youngstown City Council et al. Supreme Court of Ohio Number 2009-0899) dated July 23, 2010.
- CX 2 Executive Summary of the negotiated Changes for the City of Youngstown and the Youngstown Police Association (YPA)/ Ohio Patrolmen's Benefit Association [excerpt].
- CX 3A Tab 3: Wage Survey Prepared for City of Youngstown: Internal Comparisons
- CX 4A Tab 4: Wage excerpts from Agreement between the City of Youngstown and the Youngstown Police Association and Ohio Patrolmen's Benefit Association (Patrol Officer), effective December 1, 2009 through November 30, 2012.
- CX 4B Tab 4: Wage excerpts from Agreement between the City of Youngstown and the International Brotherhood of Teamsters Local 377, effective January 1, 2010 through December 31, 2012.
- CX 4C Tab 4: Wage excerpts from Agreement between the City of Youngstown and the Youngstown Police Ranking Officers (YPRO), effective December 1, 2009 through November 30, 2012.
- CX 4D Tab 4: Memorandum of Understanding between the City of Youngstown and AFSCME Ohio Council 8, Local 2312 dated March 2, 2010
- CX 4E Tab 4: Wage/Benefit Survey Prepared for City of Youngstown (external comparisons)
- CX 4F Tab 4: Tentative Agreement Memorandum of Understanding between the City of Youngstown and IAFF 312 (dated November 16, 2009)
- CX 5A Tab 5: Survey of Health Care Costs: The City of Youngstown and OPBA
- CX 5B Tab 5: Health care excerpts from Agreement between the City of Youngstown and the Youngstown Police Association and Ohio Patrolmen's Benefit Association (Patrol Officer), effective December 1, 2009 through November 30, 2012.

two exhibits that were received into evidence. (UX)³ The parties entered a stipulation that they would each waive having a stenographic transcript made of the hearing.⁴

ISSUES

All Articles of the Agreement expiring December 31, 2009 (JX A), were agreed to remain unchanged with the exception of the following and those resolved by Tentative Agreements. The Fact Finder Report of October 6, 2010 made recommendations on ten issues. By the time of the conciliation those same ten issues remained un-agreed. The following were the open issues.

Article 12 Discipline, Sec. 8 Disciplinary Records
Article 27 Hours of Work/Overtime, Sec. 7 Sunday Call in
Article 27 Hours of Work/Overtime, Sec. 11 City Hall Closure
Article 29 Wage Rates
Article 30 Insurance Benefits
Article 33 Longevity Pay, Sec.1 Amount/Payment
Article 34 Fitness Fee, Sec. 1.
Article 39 Holidays, Sec. 2 Pay Rate
Article 41 Sick Leave, Sec. 10 Bonus for Non-use of Sick Leave
Article 49 Duration

CX 5C Tab 5: Health care excerpts from Agreement between the City of Youngstown and the International Brotherhood of Teamsters Local 377, effective January 1, 2010 through December 31, 2012.
CX 5D Tab 5: Health care excerpts from Agreement between the City of Youngstown and the Youngstown Police Ranking Officers (YPRO), effective December 1, 2009 through November 30, 2012.
CX 5E Tab 5: State Employment Relations Board 2008-09 17th Annual Report on the Cost of Health Insurance in Ohio's Public Sector
CX 6A Tab 6: Wage/Benefit Survey Prepared for City of Youngstown: Internal Comparisons-Longevity
CX 6B Tab 6: Wage/Benefit Survey Prepared for City of Youngstown: External Comparisons-Longevity
CX 9A Tab 9: Sick leave incentive excerpt from Agreement between the City of Youngstown and the Youngstown Police Association and Ohio Patrolmen's Benefit Association (Patrol Officer), effective December 1, 2009 through November 30, 2012.

³ UX 1 Agreement between the City of Youngstown and the Ohio Patrolmen's Benefit Association (Patrol Officer), effective December 1, 2009 through November 30, 2012.

UX 2 OPBA and the City of Youngstown Longevity Pay (spreadsheet- dispatch unit).

⁴ Stipulation (SERB 09MED10-1254). The parties, the City of Youngstown and Ohio Patrolmen's Benefit Association, stipulate that the matter in conciliation noted above heard on November 11, 2010 shall proceed without a stenographic transcript of the hearing and that the record consist of the testimony, documents admitted into evidence, and arguments of the parties and notes of the conciliator which shall merge into the decision.

The Tentative Agreements on certain terms and the Current Contract Language of all other terms of the expiring agreement including letters of understanding shall continue and become terms of the replacement agreement. The Tentative Agreements reached before the statutory dispute resolutions proceedings were on the following:

- Article 27 Hours of Work/ Overtime Sec. 12
- Article 31 Pension Pickup
- Article 32 Shift Differential
- Article 35 Uniform Allowance
- Article 42 Injury Leave
- New Article Notification of Employment Information Status
- MOU Departmental Awards

After the filing of the position statements with the Conciliator but before the hearing, the parties reached additional Tentative Agreements relating to the un-agreed issues. (JX C) They are:

- Article 12 Discipline, Sec. 8 Disciplinary Records
- Article 34 Fitness Fee, Sec. 1.
- Article 39 Holidays, Sec. 2 Pay Rate
- Article 49 Duration (to 12-31-2012)

MEDIATION

The Ohio law encourages conciliators to mediate disputes when practical. R.C. 4117.14 (G)(1). The Conciliator actively encouraged the parties to seek settlement of any existing variance in their positions at the conciliation hearing. In addition to the Tentative Agreements reached before the Conciliation hearing, the parties reached another tentative agreement at hearing concerning all open issues of healthcare save one. Article 30, sections 1 through 9 but excluding section 5 were agreed thereby mutually modifying their final offers to reflect these changes pursuant to O.A.C. 4117-9-06(E)(4). (JX D)

CRITERIA

The conciliator shall resolve the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the party's final settlement offers. R.C. 4117.14(G)(7). Absent a waiver by the parties, which here is not present, increases in rates of compensation and other matters with cost implications awarded by the conciliator are restricted as to retroactivity. See O.R.C. Section 4117.14(G)(11).

In compliance with Ohio Revised Code § 4117.14G(7), the Conciliator considered the following in making the findings and award contained in this report:

- (1) Past collective bargaining agreements, if any, between the parties;
- (2) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employers doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interests 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) The stipulations of the parties; and
- (6) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of issues submitted to final offer settlement through voluntary collective bargaining, mediation, conciliation or other impasse resolution procedures in the public service or in private employment.

In as much as this proceeding is a final offer interest arbitration, the general standards of interest arbitration are part of what the sixth criteria refers to. Those are located in E LKOURI & ELKOURI HOW ARBITRATION WORKS (Sixth Edition, Ruben, Editor. BNA, 2003) at pp. 1358-1364.

As quoted therein, note:

". . . [interest arbitration] calls for a determination, upon considerations of policy, fairness, and expediency, of what the contract rights ought to be. In submitting this case to arbitration, the parties have merely extended their negotiations – they have left it to this board to determine what they should, by negotiation, have agreed upon. We take it that the fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men, have voluntarily agreed to?" *Twin City Rapid Transit Co.* 7 LA 845 at 848 (McCoy *et al.* 1947)

The advisory Fact-Finding, which is the first of the two-step dispute resolution process for safety forces under Ohio's public bargaining law, provides the answer to the inquiry of what would reasonable parties agree to. The Fact Finder's Report on an issue is given deference in the final offer arbitration (conciliation) phase of the law.⁵ In addition, the stipulations of the parties as recorded by the Fact Finder are part of the fifth criterion. Thus, except as may be stated otherwise below, the criterion are chiefly operative here, the fifth and sixth.

In any public sector statutory proceeding the interest of the public is a criterion. ELKOURI at p. 1361. In Ohio it is contained in the third element. The part of the public interest criterion advanced by the City, but not exclusively, is its ability to finance and administer the issues proposed. On this criterion the City offered testimony by the Deputy Finance Director, Kyle Miasek.

External comparisons, the second criterion was addressed through certain exhibits.

The Union offered testimony of Union Director, Mille Maldonado on internal comparisons among the other bargaining units having agreements with the City. This was also addressed through certain exhibits. This is relevant to a number criterion, chiefly the first and third.

FINDING OF FACTS

Facts relating to specific issues are found as stated below where needed. Here is a summary of general contentions that were repeated throughout the issue presentations.

The Deputy Finance Director performed an analysis of the City finances for the period 2008, 2009 and an estimate for 2010. The analysis is attached to an affidavit submitted to the Ohio Supreme Court in a lawsuit pending in 2010 over the financing of a municipal court facility. (CX

⁵ Only when there is a showing of error or when substantial changes have occurred since the fact-finding hearing resulting in new evidence shall a conciliator alter the fact-finder's recommendation. *City of Warren and OPBA*, (Graham) Case 2006-MED-10-1267. Following *Warren*, a Conciliator found, "the common practice among conciliators of giving very significant weight to well-reasoned recommendations of the Fact-Finding Report." *IAFF Local 2860 and City of Eastlake*, Case No. 2007-MED-09-1004. See also *City of Lakewood and IAFF*, Case No. 2000-MED-04-0952; and *City of Medina and OPBA*, Case No. 2005-MED-08-0785.

1) The Deputy Finance Director also testified about the City financials and concluded that there was no dispute that the City has diminished ability to pay for any increases proposed.

In 2008 and 2009 the revenue and expenditures of the City supported by income tax produced deficits of (300K) and (1.3M) respectively.⁶ Nonetheless the City's Budgets for each of those years was found in compliance by the County because they closed balanced or slightly better due to non-recurring cash infusions. These were chiefly from the sale of property. However, in 2009 the City also transferred \$2M from its Worker Compensation Reserve Account.

Since 2003, the City has been in a retrospective premium program with the Bureau of Worker Compensation which requires it pay its claims direct but it also must maintain a reserve. In the tenth year of a claim, the claim must be paid off either by direct settlement or payment to the State for the cost of the claim. The first year of that reckoning for the City is 2013. Thus the transfer from the Worker Compensation Reserve is more in the nature of a loan than a grant. The Reserve must be restored within two years.

The projection by the Deputy Finance Director for 2010 is based on the balanced budget that was passed in the spring. To close the anticipated gap between income tax revenues and expenditures, the budget depended on the sale of property and a projected increase in income tax. However, the sale has not happened by November. There has not been any month over month increase in the income tax revenues compared to last year. At present, another transfer from Worker Compensation Reserve is possible but it has not been approved by Council. If it is not approved, other administrative actions would be necessary. The submission of another income tax levy is not likely to assist. The City already has the highest income tax rate in the State (2.75%). Whether a levy would produce sufficient revenue is still an open issue since the present high rate is producing

⁶ The evidence given by both parties on city finances was more precise in the figures used but will be abbreviated for this report.

no increase. A levy by a large nearby community earmarked for police services was defeated in November 2010. Without these solutions, other administrative actions could be layoffs or similar actions. Without the cash infusion or an administrative solution, the City's budget would close for 2010 in deficit (\$2.2M).

The Deputy Finance Director testified about collective bargaining during these years.⁷ The YPA and YPRO negotiated changes in the "ancillary benefits" such as longevity and fitness. In their agreements those benefits were stated as different amounts for each year. The City wished to roll back the amount by paying the average of the three sums. YPRO agreed. However, YPA negotiated for the rate stated for the third year, the highest amount, to be continued for all years in the new agreement. That was agreed by the City because YPA agreed to two additional new hire steps in the wage scale and waived the sick leave bonus for the first year. The Deputy Finance Director stated the savings from the new wage rates would materialize in the future only when the City hires again and will be spread over 12 years of the wage scale. Also the sick leave usage increased in cost over the estimated savings during the period when the benefit was waived. He said in retrospect the waiver was not a savings. He also admitted that the increased cost of the YPA ancillary benefits by using the third year instead of the average was not evaluated before the City agreed. Its analysis depended on wage and healthcare costs. The latter were particularly of concern due to the new Federal healthcare program. One aspect of that program, the coverage of dependents up to 26 years of age, is already mandated but has not yet shown up in the premium calculations by the carriers. Those dependents in many cases have dependents of their own. Their costs will be presented in premiums at renewal.

⁷ The abbreviations for the City's other units used by the parties and herein are as follows. Ohio Patrolmen's Benefit Association Units; Youngstown Police Association - Patrol Officers ("YPA"); Youngstown Police Ranking Officers ("YPRO"). AFSCME Ohio Council 8, Local 2312 ("AFSCME"); Firefighters IAFF 312 (IAFF) and International Brotherhood of Teamsters Local 377 ("IBT").

The Law Director related the litigation history of the City impacting its costs. There is a pending lawsuit in the Supreme Court by the municipal judges against the City over the building of a new court facility at costs believed to be \$6M to \$8M. As the result of other litigation, every civil service examination must have its results validated by hired outside experts. The City is anticipating one entry level test and two promotional tests in the next year. In 2011 due to the DROP program there will be an increase in retirements at a cost to the City and if they are to be replaced, the test will also have to be independently validated. An estimate of \$70,000 was given as a minimum charge for the cost of those retirements.

The Union Director, also a 15 year employee, testified that there are 13 dispatchers. They approached negotiations understanding the financial concerns of the City and agreed to a wage freeze immediately. However, other units settled on various terms that the City withheld from this unit. Being a small unit those issues present much less cost than others. However, they do not have leverage of large units and need to avail themselves of the dispute resolution mechanism. The Union rejected the Fact Finder Report in large part because it did not give proper weight to pattern established by those the internal comparisons.

The recommendations in the Fact Finding Report are chiefly premised on the stipulations of the parties at the hearing on certain issues or on the financial status of the City as the Fact Finder found it. As to the latter, the report which is based on a August 19, 2010, hearing is similar to the evidence presented at the conciliation. In the time passage, generally more detail has developed along the same trajectory as he had observed. The Fact Finder did add certain information not presented in conciliation such as layoff in AFSCME unit in 2009 and the overall un-replaced attrition of the work force particularly the police.

OPINION AND ORDER

*Note: Unless identified as "new", changes are shown as **bold face** for addition and ~~cancellation~~ for omission. Issue numbers are used for the purpose of cross reference to the exhibits and are not sequential. Abbreviations used herein are: Fact Finder Report and Recommendations (FFR); Current Contract Language (CCL).*

ISSUE: No. 2

CONTRACT : **Article 27 Section 7 Sunday Call In**

FACT FINDER RECOMMENDATION: The last sentence is changed to read (showing modifications not recited in the FFR) :

. . . All employees called in to work additional hours on a weekday or Saturday ~~or non-holiday~~ shall be paid the regular hourly rate of pay for a minimum of four (4) hours. All employees called in to work additional hours on a Sunday ~~or holiday~~ shall be paid **double one and three quarters** the regular hourly rate of pay for a minimum of four (4) hours.

POSITIONS: The Employer: FFR.

POSITIONS: The Union: CCL

OPINION AND ORDER:

The Agreement provides that employees be paid double (2x) the regular rate for a Sunday or holiday call-in or their regular rate for call-in any other day, in both cases for a minimum of 4 hours. The Fact Finder stated the Union was proposing changes but the recitation is the same as the CCL. He did recite the change sought by the City, the elimination of the provision for double time. The recommendation was based on agreement of the parties at hearing to the above language reducing the double time to 1 3/4 time for Sunday time only.

The elimination of the reference to holidays was removed and inserted in Article 39 Holidays, Sec. 2 Pay Rate. There it provides that time worked on holidays be paid at 1 3/4 times to reflect the change to Art. 27 Sec. 7, Sunday call-in. No minimum time is specified, presumably because employees prefer to work as few hours as needed on holidays. The FFR noted this was also an agreed change.

Now the Union is seeking to return to CCL (2x) for both Sunday and holiday call in. In principal part, that appears motivated by the change of position by the City with respect to Article 27, Sec. 11, which it now proposes to eliminate. For that reason although both final offers presented Art. 27 Sec. 7 and Sec. 11 as separate issues, they were heard together at Conciliation. While they must be decided separately under R.C. 4117.14(G)(7) the decision herein is deferred until the discussion of Sec. 11. (To be continued below.)

ISSUE: No. 3

CONTRACT : Article 27 Hours of Work/Overtime, Sec. 11 City Hall Closure

FACT FINDER RECOMMENDATION: CCL :

Section 11. City Hall Closure. Bargaining unit members that are required to work on a day where City Hall closes shall receive six (6) hours of accumulated time.

POSITIONS: The Employer: Eliminate Section 11 effective January 1, 2011.

POSITIONS: The Union: FFR

OPINION AND ORDER:

This issue was not heard in Fact Finding. It was listed initially as a separate issue in the Report but there was no separate discussion. The Fact Finder issued a recommendation as a result under the heading "Article 27, Hours of Work and Overtime" stating, "See Attached A for recommended language of Article 27." In that attachment the entire Article 27 was recited including Sec. 11 which was unchanged from the Agreement. In effect the FFR was adopting CCL for all of Article 27 with the exception of Sec. 2 and a typographical change in Sec. 10. The only basis for the Article 27 recommendation stated was the agreement of the parties at hearing on Article 7 changes. Hence, it must be taken that the agreement of the parties propelled the FFR recommendation of CCL for Sec. 11.

Now the City makes the elimination of Sec. 11 as its final offer proposal. The rationale are the fiscal constraints continuing to be felt by the City. Sec. 11 applies when the City Hall is closed for calamity day or similar contingency. In such cases, the safety forces are not relieved of duty but are needed to serve while other employees are excused. As compensation for the lack of time off (typically paid) granted other employees, the police and dispatchers receive six paid hours at some other time. The City argues that this occurs more regularly than call-ins for other reasons (Sec. 7) and represents a real annual cost rather than a contingent one. It argues that the employees working

are doing their regular job and receiving regular pay and the City should not be required to pay a premium for this service.

The Union argues that the employees must serve under emergency conditions and deserve a premium. They deserve to be compensated as much or more than employees not working. The YPRO did not agree to eliminate this. YPA did agree to do so in exchange for other considerations. Here the City seeks to eliminate Sec. 11 without buying it out. The Union already agreed to reduce 2x to 1 3/4 x for call ins which was the pattern for the YPA and YPRO. It is seeking to maintain the same pattern among the police services.

The City's rejoinder is that fiscal constraints must begin somewhere. Not all bargaining occurs on the same schedule and changes must occur one at a time. The Dispatch unit should be the same as the YPRO agreement.

Agreements of the parties at Fact Finding must stand for something. Variance from the FFR is certainly legitimate in final offers if there is some basis for the change since. The parties' agreement in August does not seem impacted by any change of circumstance since. Certainly the financial condition of the City had a dim outlook then, and does also now with no appreciable change other than continuing to meet its own downward projections.

The same is true of the Union's agreement to the FFR in Sec. 7. There is no reasonable basis to return to the CCL of Sec. 7 based in interim facts or error of the Fact Finder. Indeed, the TA on Article 39 would only serve to confuse matters more since it covers some of the same material as the Sec. 7 CCL.

ISSUE 2 Order: As to Article 27, Sec. 7, the City's final offer is awarded.

ISSUE 3 Order: As to Article 27, Sec. 11, the Union's final offer is awarded.

ISSUE: No. 4

CONTRACT : Article 29 Wage Rates

FACT FINDER RECOMMENDATION: The Fact Finder stated:

"The Fact Finder recommends adding the wage rates of \$13.50 for entry level and \$14.00 after one (1) year. Additionally, wage rates are to remain at current levels through calendar year 2011, but employees shall progress on the wage scale in effect in the 2007-9 agreement. Finally, effective June 1, 2011, the Union may request to reopen negotiations for wages and other costs, except insurance contribution rates, for calendar year 2012, and the parties agree to a waiver of ORC 4117.14(G)(11). See Exhibit A for recommended language."

POSITIONS: The Employer: FFR.

POSITIONS: The Union: The Union proposes one new hire step (\$14.00). Wage freeze for year one. Re-opener on terms of economic impact (excluding healthcare) by April, 2011.

OPINION AND ORDER:

The FFR is based in part on the agreement of the parties and on the financial evidence. The need to cut expenses especially future ones was found by the FFR. Premised on that, two additional new hires steps were added to the wage scale. A freeze was agreed by the Union as the evidence established, with members progressing on the existing wage scale. There is a re-opener recommended in June, 2011 with a waiver of retroactivity under R.C. 4117.14(G)(11). The waiver could have only been by agreement. The City adopts the FFR.

The Union final offer varies from the FFR by having only one new hire step and by changing the date of the re-opener from June to April 2011. It argues YPA will reopen in March and this unit wishes to participate rather than be delayed and potentially subject to the changes agreed by the others. It adds that if things still are as bad as they are projected, YPA will not have any increase and neither will other Units but at least they should be able to participate together.

The City states that this unit is the only conciliation unit that used the statutory dispute proceeding so that this Unit's bargaining is artificially extended beyond the time in which the others

settled. The result is that there would only be a six month hiatus before the reopening resumes bargaining. The settlements with the other police units were a 15 month wage freeze (YPA) until re-opening in March, and 18 month wage freeze (YPRO) before re-opening in June. AFSCME is similar to YPRO but that unit had fact finding. IBT has a 3 year freeze through 2012 with a me-too reopener in the event there are wage changes in reopening with other units.

The City's rationale is well taken. YPRO re-opens in June. There should be no harm in the additional time for this Unit. The FFR found this reasonable. The evidence adduced at this hearing particularly from the City recommends the FFR more so now.

The Union seeks to change the FFR by having only one new hire step rather than the two recommended in the FFR. The YPA agreement to two new steps was part of a package that the City is withholding from this Unit (longevity and sick leave bonus).

The Fact Finder specifically noted that this is a small unit making any needed savings for the Employer are difficult to obtain except in the costs of future hires. He noted the IAFF agreed to two new hire steps. The City presented that agreement and comparable new hire rates for dispatch units of seven other similar communities.⁸ This unit currently has a four step scale beginning \$14.6807. The FFR would make it six steps beginning \$13.50. The average of the seven was \$13.26. Only one had a six step scale. Two had five; two had four; and two had less than four. The City's rates are \$1.42 higher than average on the minimum but only \$0.28 higher on the maximum. Hence, there is sufficient room for the FFR's change. The FFR would bring the scale closer to the average on the minimum but still being above average. That exercise is necessary in light of the financial outlook of the City.

ISSUE 4 Order: As to Article 29, Wages, the City's final offer is awarded.

⁸ These are taken as comparable as there was no dispute nor other evidence presented.

ISSUE: No. 5

CONTRACT : Article 30 Insurance Benefits, Sec. 5

FACT FINDER RECOMMENDATION: CCL modified:

Section 5. Employee Contributions. ~~Effective June 1, 2007, employees shall contribute ten percent (10%) of the total premium for medical, hospitalization, prescription, vision, and dental coverage; however, employee contributions shall not exceed thirty-five dollars (\$35.00) per month for single and seventy-five dollars (\$75.00) per month for families. Any percentage exceeding the thirty-five dollars (\$35.00) or seventy-five dollars (\$75.00) contribution, as applicable, shall be paid entirely by the City.~~

~~Effective January 1, 2008, employees shall contribute ten percent (10%) of the total premium for medical, hospitalization, prescription, vision, and dental coverage; however, employee contributions shall not exceed sixty-five dollars (\$65.00) per month for single and one hundred fifteen dollars (\$115.00) per month for families. Any percentage exceeding the sixty-five dollars (\$65.00) or one hundred fifteen dollars (\$115.00) contribution, as applicable, shall be paid entirely by the City.~~

~~Effective January 1, 2009 2010, employees shall contribute ten percent (10%) of the total premium for medical, hospitalization, prescription, vision, and dental coverage; however, employee contributions shall not exceed eighty dollars (\$80.00) per month for single and one hundred fifty dollars (\$150.00) per month for families. Any percentage exceeding the eighty dollars (\$80.00) or one hundred fifty dollars (\$150.00) contribution, as applicable, shall be paid entirely by the City.~~

Effective January 1, 2012, employees shall contribute ten percent (10%) of the total premium for medical, hospitalization, prescription, vision, and dental coverage; however, employee contributions shall not exceed one hundred dollars (\$100.00) per month for single and two hundred dollars (\$200.00) per month for families.

POSITIONS: The Employer: FFR

POSITIONS: The Union: Maintain \$80.00/\$100.00 for term of agreement.

OPINION AND ORDER:

Although the parties' final offers proposed changes relating to additional portions of this Article, the parties' agreement at the hearing resolved all but Section 5 thus mutually agreeing to modify their final offer to this one matter.

The FFR modified the existing premium contribution of this section by updating it and by increasing the dollar cap premium contribution as of January 1, 2012, based on the parties' agreement at hearing. The Union opposes the change in the premium amount in its final offer. The City adopts the FFR.

The Union argues the FFR failed to consider the historic pattern of bargaining in the safety units. YPA and YPRO agreed to a dollar cap of \$80/\$150 (single/ family) for all three years through 2012. This Unit has always had its agreement patterned on those units. The IAFF agreed to that amount for three years through August, 2011.

The City stated that the change to \$100/\$200 began with the IBT settlement after the 2010 fact finding. The YPA and YPRO settled in negotiations before that. AFSCME is at \$80/\$150 but their negotiations begin in December 2010. The City will be seeking that contribution increase in all units. IAFF negotiations begin next year.

The City also presented evidence and calculations on the current premium charged.⁹ The premium share for years 2009 and 2010, (ie. 10%) was below the dollar cap (ie. \$80/\$150). This year's (2010) increases were \$10.16/\$25.44 over 2009. If that were repeated in 2011, the dollar cap would not be exceeded for the single coverage. However, the increase to the family premium would exceed dollar cap with the result that the employee would not pay more than \$150. Both would exceed the dollar cap by 2012. Thus the City has urged the increase of the dollar cap to \$100/\$200 which may possibly not be the amount actually paid by the employees in 2012.

The Conciliator notes that the annual increases have been running about 22% for either type of coverage. That can be taken as a minimum increase because the costs of the mandated changes to healthcare from the federal legislation are not yet known. Consequently, a 10% sharing in a

⁹ Premium figures are rounded in this discussion. Agreement figures are as cited.

higher premium in 2011 and 2012 should be factored. At 122% of the 2010 premium, the 2011 premium would be a minimum of \$8,235/\$20,757 with 10% being \$82.35/\$207.57 but having the employee pay only \$80/\$100. At 122% of 2011, the 2012 premium would be a minimum of \$10,046/\$25,323 with 10% being \$100.46/\$253.23. This exercise has demonstrated a "minimum" 44% increase over two years. By 2012 the Union is proposing that the employees share on the same basis as was originally agreed in 2009, \$80/\$100. The two-year 44% increase would be a good deal more over the period since 2009, possibly double.¹⁰ The case can be made that, to maintain proportion, the dollar cap should double. That would make the City's (and FFR) proposal of \$100/\$200 quite reasonable. Increasing the City's share of premium without an employee participation, given the known financial burdens, is bad enough. Delay in increasing the employee share until after 2012, since this is excluded from the reopener, could serve to cost the employees a great deal more when the actual premium experience occurs. That is, after having had the 2009 dollar cap for so long a period, by 2013 the expected premium increases would command a far greater sacrifice on the employees' budgets without any interim adjustments having been made.

There is no reasonable basis to return to the premium share amounts of current Sec. 5 based in interim facts or error of the Fact Finder. To the contrary, the FFR rationale is if anything reinforced.

ISSUE 5 Order: As to Article 30 Insurance Benefits, Sec. 5, the City's final offer is awarded.

¹⁰ Compare 2009 the premiums in evidence and the projected 2012 figures herein to wit: \$13,962 vs. \$25,323 and \$5,531 vs. \$10,046.

ISSUE: No. 6

CONTRACT : Article 33 Longevity Pay, Sec.1 Amount/Payment

FACT FINDER RECOMMENDATION: CCL.

POSITIONS: The Employer: FFR.

POSITIONS: The Union: Increase longevity yearly increment from \$58.94 (CCL) to \$65.00.

OPINION AND ORDER:

The Union made the same proposal at fact finding and the FFR recommended CCL based on the City's case of financial hardship and the bargaining with the other police units resulting in no increase in this benefit.

At this hearing the Union brought out that there was a change in the YPA contract but not in the YPRO. Both had longevity yearly increments that differed each of the three years of the contract. YPRO agreed to the average, (ie \$63.00, the second year of the three) for the new agreement. YPA agreed to continuing the third year amount (ie. \$65.00) into the new agreement. That represented an increase for most of that unit. The Union is urging the same pattern be adopted particularly as this is a small unit and the cost of maintaining the pattern is nominal.

The City explained that it proposed using the average to both YPA and YPRO but the former discovered that 2/3 of its members would be paid less as a result. It requested the third year rate. The City agreed to continue that amount from the old agreement deciding that is not an increase because it is an agreement to what was already in place. It is requesting the same here, to continue the CCL amount. It adds that agreement to the Union proposal may not cost much in this unit but affects the City's me-too agreements with other units. The Union counters that any increase even for part of the Unit is an increase notwithstanding the agreement had not changed.

The evidence shows that this Union receives the lowest longevity increment except for the IAFF among the City's eight units. The YPA receives 10% more and the YPRO receives 7% more

in this benefit. The evidence makes a strong case for some adjustment based on a pattern. However, the Conciliator is constrained by the two final offers. There is no basis to establish the identical increment received by the YPA. Notwithstanding whether YPA received an increase, and the Conciliator finds they did not, their issue is not the same. They had some members lose pay by a change to the average and so sought to retain CCL that would permit many to advance from \$63 to \$65. That would not obtain here since all members would receive a sizeable increase of \$6.00 in this rate.

There is no reasonable basis to change the yearly longevity increment of current Article 33 Sec. 1 based in interim facts or error of the Fact Finder. To the contrary, the FFR rationale is if anything reinforced.

ISSUE 6 Order: As to Article 33 Longevity Pay, Sec.1 Amount/Payment, the City's final offer is awarded.

ISSUE: No. 9

CONTRACT : Article 41 Sick Leave, Sec. 10 Bonus for Non-use of Sick Leave

FACT FINDER RECOMMENDATION: CCL

POSITIONS: The Employer: Continue bonus at \$154.12 but add waiver for all quarters in 2011.

POSITIONS: The Union: Increase quarterly bonus from \$154.12 (CCL) to \$159.00.

OPINION AND ORDER:

The Fact Finder was terse on this predicating the recommendation of CCL based on the financial evidence. The existing quarterly bonus was maintained at \$154.12. No change was made to the expiring Agreement.

Now both parties in their final offer propose alternatives to the FFR. The Union seeks to increase the amount with no other change while the City permits the amount to remain the same but suspends all the quarterly payments which it terms a "waiver" presumably to indicate that it would not be made up.

The City argues that the YPA agreed to a waiver over four quarters beginning the last quarter of 2009. The YPA did not increase the amount of the bonus. The City is seeking a four quarter waiver from this Unit.

The Union stated it initially included a waiver of the unused sick leave bonus if ancillary benefits (ie. longevity fitness etc.) were increased. The City refused to buy out this benefit with the ancillary benefits increases.

The Deputy Finance Director testified that the waiver of the unused sick leave was followed with an unexpected increase in the use of sick leave which he terms, "an abuse." Something like adverse selection occurred. If the sick time could not be banked, the employees selected to use the time rather than lose it. Thus, a waiver may not be such a good idea in terms of real cost.

Neither is an over \$5.00 increase in the quarterly bonus justified. It is a nominal amount

being from a small Unit. However, the price of a thing is not the justification to purchase it without a demonstrated need. Here there is none. The YPA accepted a freeze in the amount of the bonus and a waiver of four quarters as well. The FFR recommended CCL. Giving weight to the portion of the FFR that recommended staying at the same quarterly bonus, the same conclusion must be reached here as to the amount. Because the statute allows the choice only between the final offers, the one closest to the FFR will be awarded because of the agreed freeze pattern in the YPA. If it results in added cost from the adverse selection phenomenon, the City has the comfort that it is the City's proposal.

ISSUE 9 Order: As to Article 41 Sick Leave, Sec. 10 Bonus for Non-use of Sick Leave, the City's final offer is awarded.

Made and entered at Cleveland, Ohio
December 3, 2010


Gregory P. Szuta, Conciliator

PROOF OF SERVICE:

The foregoing has been sent by U.S. Mail (ordinary) on December 3, 2010, to OPBA c/o Daniel J. Leffler, Esq. and City of Youngstown c/o Sandy Conley per addresses shown on the cover and to SERB with advance copy via email on the same date to all three.

GREGORY P. SZUTER, ESQ

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Specialist in Labor
and Employment Law



December 3, 2010

via email / **HARD COPY**

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STATE EMPLOYMENT
RELATIONS BOARD
2010 DEC - 6 P 2:40

RE: Conciliation between:
City of Youngstown and Ohio Patrolmen Benevolent Association (Dispatch Tech FT/PT)
SERB Case No: 09 MED 10-1254

Dear Representatives:

Please find enclosed the Conciliator's Report and Award in the above matter that has been sent this date via email attachment to the above addresses as requested. A hard copy is being mailed concurrently to you and SERB. Also by hard copy only, counsel will be receiving the invoice for services in connection with matter along with a Form W-9. Thank you for allowing me to assist the bargaining parties in this manner.

Very truly yours,


Gregory P. Szuter

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Arbitrator Mediator

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Administrative Assistant
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