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STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

In the Matter of the Conciliation Between:

The City of Elyria : Case No. 2010 MED-02-0143
Elyria, Ohio

and : AWARD

Fraternal Order of Police, Ohio Labor Council, Inc. : Margaret Nancy Johnson
Dispatchers Conciliator

Statement of the Case

This matter came on for hearing on November 30, 2011, in a conference room at City Hall, Elyria, Ohio, before Margaret Nancy Johnson, appointed by the State Employment Relations Board, hereinafter "SERB," to serve as Conciliator. The case for the City of Elyria, hereinafter "City," was presented by Robin Bell, advocate with Clemans, Nelson and Associates. Also in attendance for the City were Police Chief Duane Whitely and Acting Safety Service Supervisor, Kevin Brubaker. Lucy DiNardo, Staff Representative, argued the position for the Fraternal Order of Police, Ohio Labor Council, Inc., hereinafter "FOP" or "Union." Dispatchers Patricia Leshner and Tina Thompson were also in attendance. Prior to convening, the parties had submitted timely position statements for review by the Conciliator. At the hearing, the parties had the opportunity to make opening statements and to introduce into the record sworn testimony as well as documentary evidence demonstrative of their respective positions.

Elyria, located within Lorain County, is situated in the northeastern portion of Ohio. Pursuant to the most recent census, the City has a population of approximately 54,000 residents. The bargaining unit in this proceeding consists of nine (9) Dispatchers who work within the law enforcement division of Safety Services. Terms and conditions of employment for this unit are set forth in a Collective Bargaining Agreement with an expiration date of July 6, 2010.

Unable to reach Agreement on the terms and conditions of a successor contract, the parties engaged in fact-finding on December 16, 2010. Issuance of the recommendations of the Fact-finder was held in abeyance until the report and recommendations of the fact-finder appointed to hear the contract impasse between the City and the Fire-fighters ("IAFF") had been issued. Traditionally, the IAFF is the first of five units to conclude contract negotiations with the City. Subsequently, the Recommendations of the Fact-finder in the IAFF proceeding were appealed to Conciliation. Both the Recommendations and Conciliation Award issued in the prior proceeding have been submitted by the City in this pending matter.

The recommendations of the fact-finder appointed to hear the Dispatchers case adhered to the recommendations issued for the IAFF, but fit the wage increases into a two year contract as had previously been tentatively agreed to by the Dispatchers and the City. Recommendations of the fact-finder for the Dispatchers having been rejected, the matter proceeded to conciliation as referred to above. During subsequent discussions, the parties agreed that Article 32, Duration, would remain an open issue for conciliation.

While neither party offered evidence regarding principal employers within the municipality, both the

City and the Union cited economic conditions in the City, more fully discussed hereinafter, as justification for respective positions. Additionally, the Union noted increased responsibilities and duties for unit employees within the Dispatch Center.

Issues

The parties remain at impasse on two (2) issues: Wages and Duration.

Criteria

In making the award on the remaining two issues, the Conciliator has taken into consideration the statutory criteria as set forth in Ohio Revised Code 4117.14(G)(7):

1. Past collectively bargained 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 employees 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;
6. Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in the private employment.

Positions of the Parties

Wages

Position of the City

The City proposes a freeze for the first year of the contract, running from July 1, 2010 through June 30, 2011. Insofar as the Conciliator is statutorily prohibited from awarding retroactive increases, the City proposes a 1% increase effective with the first pay period in January 2012 and a 1.5% increase effective in the first pay period of July, 2012. Its monetary offer is based upon the financial declines experienced by the City over the past three years which justify a wage freeze for fiscal year 2010. Additionally, the wage increase offered to this unit is comparable to that received by City employees represented by the IAFF, the Patrol Supervisors Union, Local 277, and Ohio Council 8, AFSCME (See Employer Exhibits 2, 3, and 4). Moreover, the proposal of the City is appropriate in relation to comparable bargaining units in the region (See Employer Exhibits 5, 6 and 7). Indeed, as shown in the referenced City Exhibits, wages paid by the City to its Dispatchers are above those paid by comparable jurisdictions. The certification pay received by Dispatchers is one of the highest in comparable jurisdictions and the increase sought by the Union is not justified.

In 2009 revenue to the General Fund maintained by the City had declined to 2004 levels and ended the year at 12% below its 2007 figure. Although the unencumbered balance in 2010 ended above the 2009 figure, the 2010 General Fund year-end balance of \$626,470 is substantially below the 2008 figure of \$2,041,431 (Employer Exhibit 9). The City is experiencing losses of about \$2,000,000 in income tax revenues, investment income and interest income. Further revenue losses are anticipated as the City will experience additional cuts in local government funds as well as the elimination of estate

tax revenues in 2013.

Responding to the economic crisis with vigilance, the City has drawn on its reserves and made drastic cuts in order to keep a balanced budget. Personnel cuts totaling 161 positions have been made in the Police, Fire, Parks and Recreation, and Building Departments, as well as other general fund services. Budgets have been reduced to the most essential expenditures. Within the Police Department, the City has closed its jail resulting in the loss of two bargaining units.

The City points out that it has been diligent in endeavoring to increase revenues. In 2010 a levy put on the ballot by the City to generate more money for the Police Department failed. According to the Chronicle Telegram, "City officials have practically begged for a boost" (Employer Exhibit 8).

Considering the severe economic condition of the City including its revenue losses, as well as the data on internal and external comparables, the wage proposal of the City is the more appropriate and ought to be awarded by the Conciliator.

Position of the Union

Effective the first pay period of January 2012, the Union proposes a 5% wage increase for the first year of the contract, a 3.5% increase for the second year and a 4% increase for the third year. In addition the Union proposes increasing the LEADS, NCIC, CAD and 911 stipend from \$1,000 to \$1,500. In his Report and Recommendations, the fact-finder found merit "to the FOP's argument that the Dispatchers' Unit is deserving of a greater wage increase" (FOP Exhibit 4, p. 3). Although the City has placed considerable emphasis on the longevity received by this Union, all employees in the city receive the same longevity and the Dispatchers ought not to be singled out because of this benefit.

In presenting these last offer proposals, the Union argues that the current wage rate paid to the Dispatchers unit is low compared to the wages paid in comparable cities. Citing nine cities and using the top rate of pay, the Union maintains the wage rate for Elyria Dispatchers is \$4.15 below the average (See Union Exhibit B) and even when longevity is factored in, the rate remains \$2.70 below the average. Other jurisdictions pay Dispatchers a uniform allowance which is not paid to this unit. While the wage increase proposed by the Union will reduce the difference, Elyria Dispatchers will remain below comparables. Contending that the wage rates in surrounding jurisdictions cited by the City are inapt, the Union urges the conciliator to consider Union comparisons.

As part of its presentation, the Union contends that while fiscal conditions in 2009 and 2010 were difficult, the current economic climate is changing and the city is rebounding. Although the city's bond rating had been downgraded in late 2009, in April of 2010, Moody's Investors Service recalibrated the rating to an A1, a modification that will save the City thousands of dollars in debt service costs. In addition the city has undertaken cost savings measures including the closing of the City jail and the transference of management of the facility to the county. Through cost savings initiatives the City decreased expenditures in 2009 by 14.5% and by an additional 10.22% in 2010. As a result the General Fund has increased by \$2,056,052.

While the cost saving measures implemented by the City have generated additional capital, personnel and operational changes have also increased the work load for Dispatchers, located in the center of the City and the first responders in an emergency. Indeed, this unit has more priority calls than adjacent communities. At the Conciliation hearing Dispatcher Leshner described the increased work load and duties assumed by a reduced bargaining unit. With the loss of the bargaining units at the jail, Dispatchers have become responsible for monitoring garage controls at the facility. In addition, records requests and "service" calls including background checks and copies of reports or court documents are handled by Dispatchers.

The calls received by Dispatchers are increasing and the nature of the calls is changing including more drug related and violent occurrences. As a consequence of the increased work load, Dispatchers experience a high level of stress. This bargaining unit performs an extraordinary amount of additional

work without an increase in compensation. This inequity ought to be remedied in terms of the labor contract now under consideration.

Duration

Position of the Union

The Union proposes a three year contract commencing on January 1, 2012. As the City engages in pattern bargaining, this unit ought to follow the Police Supervisor's unit.

Position of the City

The City proposes a three year contract commencing July 7, 2010 and ending July 6, 2013. This duration is consistent with established contract negotiation practices within the City and ought to be maintained.

Discussion

Issues now in contention include the terms to be implemented for provisions within Article 14, Wages, and Article 32, Duration, of the Collective Bargaining Agreement between the parties. As part of its wage proposal of 5%, 3.5% and 4% for each year of the contract, the Union also seeks to increase its current qualification stipend from \$1,000 to \$1,500 annually. Additionally, the Union proposes modification of the starting time of the new three year contract from July 1, 2010 to January 1, 2012. Arguing to retain the current mid year starting time of July 1, 2010, the City proposes a 1% increase effective with the first pay period of calendar year 2012 and a 1.5% increase commencing the first pay period of July, 2012 for the final year of the Agreement. While the two remaining issues are inter-related, the conciliator addresses, first, the propriety of the significantly differing final wage offers as presented by the Union and the City.

Wages

The justification for the wage increase sought by the Union is two-fold: comparability with other jurisdictions and an increased work load. Citing revenue losses, the City urges increases similar to those which have been received by other units within the municipality. The City also asserts that the wages paid to this unit are, in fact, quite comparable to those paid to other Dispatchers and that the qualification stipend exceeds that paid to most other Dispatchers.

Comparability

While frequently cited, the statutory criterion of comparability, especially as it pertains to wages, is challenging to analyze. Wage packages consist of varied components, such as qualification stipends, longevity, uniform allowances, as well as other benefits or perquisites. Simply looking at an hourly rate does not give an accurate or full description of the wages paid to a bargaining unit.

Moreover, when comparing wages across jurisdictions, even those within a common geographic area, consideration must be given to the unique characteristics of the communities. Cities of the same size and population may be distinguishable in terms of median income, property values, or tax collection rates. Thus, while comparability is an important analytic tool, it must be used with circumspection and the recognition that precise uniformity is neither achievable nor advisable. It is important to recognize that among similar communities there will always be a range within which a particular entity will be placed and that wages consist of differing components.

In this instance the parties have each submitted data on comparable jurisdictions to sustain their respective wage proposals. Reviewing this evidence, the conciliator has noted that although cities throughout Ohio have been listed, both parties have cited Lakewood and Parma as communities

comparable to Elyria. Accordingly, rather than attempting to discern which comparability chart is more applicable, the conciliator has focused on comparing Elyria with the two cities upon which the parties concur.

Taking just the base hourly rate of Dispatchers in these three cities, Elyria ranks third. When longevity and the LEADS stipend are factored in, however, then Elyria falls between Lakewood and Parma, and when the increases proposed by the City for contract year 2012 are calculated, Elyria bypasses Parma and comes very close to the total wage package paid by Lakewood.

Having carefully reviewed the data and evidence submitted by the parties regarding similar agencies, the Conciliator cannot find such a disparate wage structure for Elyria Dispatchers as would warrant the pay increases proposed by the Union. In reaching this conclusion and resolving that a “catch-up” percentage for Dispatchers is not warranted in this instance, the conciliator has also taken into consideration the most recent data on percentage increases that have been negotiated in the public sector within Ohio. State-wide wage increases, or lack thereof, were thoroughly analyzed by Fact-finder Ruben in his Report and Recommendations to resolve the Fire-fighters impasse. As tracked by SERB, in 2009 and 2010, the highest average increase among jurisdictions and agencies was 2.82% (See City Exhibit 5). Although the Conciliator notes that during this period, employees within Elyria sustained a wage freeze, this was not unique to Elyria. As in many jurisdictions, the wage freeze was the necessary consequence of the extraordinary economic contraction being experienced by the City. Indeed, the modest wage increases negotiated or imposed across the state are attributable to the severe economic losses experienced by public entities and to the very fragile recovery now being experienced.

Ability to Finance/Internal Comparability

Turning to the statutory criterion of the ability of the employer to finance a wage increase, the conciliator finds the offer of the City more compatible with economic realities. In recommending increases for the City of Elyria, neutrals have recognized the financial hardship experienced by the City. Note, for example, Fact-finder Ruben's reference to “Elyria's relatively small General Fund carryover, and its uncertain revenue prospects” (p. 75); and Fact-finder Mancini's observation that “considerable weight must be given to the current financial difficulties facing the City of Elyria” (p. 3).

Losses in revenue have resulted in a precipitous decline in year end General Fund balances, dropping from \$5,379,873 in 2007 to \$626,470 in 2010. These losses include monies from local government funding, income tax, and investment income. The elimination of estate taxes in 2013 will generate additional losses. As a necessary consequence of the revenue loss, the City has had to take drastic measures, eliminating 161 positions, some of which the City has been able to restore through a SAFER grant. Additionally, the City has closed its jail operations and is in the process of transferring administration of the jail to the county.

Not only has the City reduced expenditures, but the City has also endeavored to increase revenues. By placing a Police levy on the 2010 November ballot, the City had hoped voters would endorse improved funding for enhanced security. In spite of its efforts to “make the case” for the increase in income tax and its impact upon public safety, the voters rejected the levy, principally upon concerns of economic uncertainty (See City Exhibit 8).

As a direct corollary to the financial hardship of the City, other units have received the same wage increase the City offers to the Dispatchers. Internal parity, especially significant in challenging economic times, sustains the position of the City in these proceedings. In such circumstances, there would have to be an extraordinary justification for differing wage increases among employees.

Workload

As a justification for its proposed wage increase, the Union argues that the bargaining unit has an increased work load, resulting in greater stress and safety concerns. In listening to the testimony of

Dispatcher Leshner, it is indisputable that duties for Dispatchers have increased. Mindful that additional duties generate greater stress and potential for error, the Conciliator has carefully considered this testimony, even though workload is principally a manning and not a monetary matter.

In the instance of the Dispatchers, the Conciliator finds that the increased work load is not a systemic problem, as in the situation confronting Fact-finder Miles Ruben and Conciliator Susan Grody Ruben in their decisions regarding manning in the Fire-fighters contract (City Exhibit 2). Rather, it arises from temporary circumstances under which the Dispatchers currently operate. First, the Dispatchers are budgeted for adequate coverage, but one bargaining unit member is on a long-term sick leave generating additional duties for remaining staff. Second, some of the increased responsibilities arise from monitoring the facility entrance screens, a function that will be transferred to County employees when the County assumes operation of the jail. Third, the Conciliator notes that although the Union presented anecdotal testimony on safety, in this case probative evidence of negative consequences of the workload was not presented. In conclusion, temporary conditions ought not to be the basis for permanent wage decisions and the Conciliator, therefore, finds that the workload argument does not justify the wage proposal of the Union.

LEADS Stipend

The preceding conclusion concerning long term effects persuades the Conciliator, too, that the LEADS stipend increase proposed by the Union ought not to be awarded in these negotiations. While the Conciliator has considered the increase as a means to award this unit some compensation for the time during which their wages have been frozen, such an award would create a permanent wage increase which, though not part of the base rate, would still generate an additional 1.44% for this bargaining unit-- an increase not experienced by any other internal unit all of which have incurred "freezes" during these challenging economic times and which is not consistent with state-wide wage increases.

The Conciliator is also constrained by statutory requirements. First, she has is obligated to choose "issue by issue" as presented by the parties and second, she is precluded from making a retroactive award. The City points out that the Union has presented its wage proposal, including the LEADS stipend, as a single issue. Without the consent of both parties, this Conciliator ought not to modify the two issues presented at conciliation and create a third separate LEADS issue.

Moreover, the statutory restriction on retroactive pay is not just a legislative mandate-- it is also a negotiation mechanism which both parties recognize and by which the neutral must abide. An effort by the Conciliator to circumvent the limitation by awarding an additional "bonus pay" received twice a year would have a long-lasting effect for remedying the "shortfall" to this unit occasioned by the parties negotiation timetable and the economic conditions of the City. After careful consideration, the Conciliator has determined such an approach is in the interests neither of the parties nor of the process.

Finally, the Conciliator finds that the stipend proposal of the Union is not consistent with comparable communities. Most do not provide such a bonus for Dispatchers. Of the two cities the Conciliator has cited, only Lakewood provides a qualification stipend. While the bonus paid by Lakewood exceeds that paid to this unit, the longevity pay received by Lakewood Dispatchers is considerably less than that paid to Elyria Dispatchers, thereby neutralizing the comparative effect of the qualification stipend (See City Exhibit 6).

Duration

Over the course of many years the City has established a pattern for contract negotiations with its bargaining units. In the absence of some demonstrable need to modify this established process, the Conciliator lacks justification for interfering and making a change that will have an impact not just on this unit but on other units as well. Because of the well established bargaining practice, the Conciliator

awards maintaining the status quo on contract duration for this unit. Moreover, the Conciliator is of the opinion that a unilateral change in a concept such as duration is inadvisable and such a contract modification, in the absence of a compelling need, ought to be negotiated by the parties rather than imposed by a Conciliator. Finally, the Conciliator notes that while the parties have been operating under the expired Agreement, the change proposed by the Union has the potential for generating unintended consequences in that it creates a period of some eighteen (18) months under which parties will have been without an agreement.

Award

Based on the preceding discussion the Conciliator awards the City position on Wages and Duration:

ARTICLE 14: Wages

July 1, 2010 through June 30, 2011 - 0%

July 1, 2011 through December 31, 2011- 0%

Effective with the first pay period in January 2012 – 1%

Effective with the first pay period in July 2012 – 1.5%

ARTICLE 32: Duration

The duration of the Agreement shall be July 1, 2010 through June 30, 2013.

All tentative agreements reached by the parties prior to Conciliation are incorporated herein as if fully re-written.

Respectfully submitted,

/s/ Margaret Nancy Johnson

This Conciliation Award has been served electronically the 9th day of December, 2011, upon the City at rbell@clemansnelson.com; upon the Union at lnardofop@wowway.com; and upon the State Employment Relations Board at Mary.Laurent@serb.state.oh.us.

/s/ Margaret Nancy Johnson