

Susan Grody Ruben, Esq.
Labor Arbitrator
30799 Pinetree Road, # 226
Cleveland, OH 44124

**PURSUANT TO O.R.C. 4117.14(D)
UNDER THE AUSPICES OF THE
STATE EMPLOYMENT RELATIONS BOARD**

IN THE MATTER BETWEEN)	
)	
CITY OF MAPLE HEIGHTS)	
)	CONCILIATOR'S AWARD
and)	
)	SERB CASE NO.
)	10-MED-09-1184/1185/1186
FRATERNAL ORDER OF POLICE)	
LODGE 67)	

This Conciliation arises pursuant to Ohio Revised Code Section 4117.14(D). The Parties, City of Maple Heights (“the City”) and Fraternal Order of Police, Lodge 67 (“the Union”), selected Susan Grody Ruben to serve as sole, impartial Conciliator, whose Findings of Fact, Opinion, and Award is issued below.

Hearing was held October 7, 2011 in Maple Heights, Ohio.

APPEARANCES:

for the City:

**Kenneth A. Schuman, Esq., Reddy, Grau & Meek,
5306 Transportation Boulevard, Garfield Heights,
Ohio 44125.**

for the Union:

**Robert M. Phillips, Esq., Faulkner, Hoffman &
Phillips, LLC, 20445 Emerald Parkway Drive, Suite
210, Cleveland, Ohio 44135.**

FINDINGS OF FACT, OPINION, AND AWARD

Background

The Parties went to Factfinding, and a Factfinder's Report was issued by Alan Miles Ruben¹ on August 12, 2011. The Factfinder issued a Supplemental Report on August 19, 2011.

In Conciliation, the Parties presented one issue with regard to their collective bargaining agreements: Duration.

Statutory Criteria

The Conciliator has analyzed the record evidence in the context of the statutory criteria found in Ohio Revised Code Section 4117.14(G)(7):

- a) **Past collectively bargained agreements ... between the parties;**
- b) **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;**
- c) **The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the**

¹ Factfinder Alan Miles Ruben and Conciliator Susan Grody Ruben are not related.

effect of the adjustments on the normal standard of public service;

- d) The lawful authority of the public employer;
- e) The stipulations of the parties; and
- f) Such other factors, not confined to those listed ... 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 private employment.

Bargaining Unit

There are three bargaining units: Patrol, Sergeants and Lieutenants, and Captains.

Findings of Fact and Parties' Positions

Duration Article

City's Proposal

The City proposes the duration of the contracts be two years. The City has entered into two-year contract extensions with all unions except the Teamster's Union, which represents City drivers. The Factfinder originally issued a decision reciting there had been a tentative agreement between the Parties that the police contracts be for two years. After initial acquiescence to that by the Union, the Union asserted to the Factfinder there had been a tentative agreement between the Parties for three-year contracts with reopeners for wages and health care for the third year – 2013. There had been no such agreement. The Factfinder then issued a

Supplemental Report recommending three-year contracts with reopeners for wages and health care for the third year.

The City is in dire financial straits. General Fund and Local Government Fund revenue decreases, as well as generous health benefits in the contracts, require two-year contracts to enable the City to respond to difficult and changing times.

Union's Proposal

The Union proposes the duration of the contracts be three years, with wage and health reopeners for the third year – 2013. This is what was tentatively agreed to by the Parties. It is what the Factfinder recommended in his Supplemental Report. These Parties have always had three-year contracts.

In response to the City's difficult financial condition, the Union agreed to 0% wage increases for 2011 and 2012. Wages and health benefits can be readdressed for the third year of the contracts. All the Union is asking is to secure some current benefits going forward.

Conciliator's Opinion

The Factfinder's August 19, 2011 Supplemental Report provides in pertinent part:

On August 12, 2011 the undersigned issued his Report and Recommendations....The Report noted on page four that among the tentative agreements that had been reached between the parties was: "...Duration (Agreement term to be two years from January 1, 2011 until midnight December 31, 2012)."

On August 16, 2011 Counsel for the Union notified the Fact-Finder and opposing Counsel that this statement of a tentative agreement on the terms of the next Contract was in error, and that he believed that the tentative agreement was for a term of three (3) years, subject to a reopener in the third (3rd) year, to renegotiate the wage and health care Articles.

Counsel for the City did not recall any such tentative agreement.

The Fact-Finder reviewed his case file and discovered that the parties had not “signed-off” on any tentative agreement for the term of the successor Contract as they had done on the other issues which had been tentatively settled.

The listing of “Duration” among the issues that had been resolved was therefor in error, and the term of the successor Contract remains in dispute.

...

The present Contract expired on December 31, 2010 and the negotiations and dispute resolution proceeding have already lasted for eight months, with the conciliation process still on the horizon.

A two year Contract term would bring the parties back to the table within a year with all provisions potentially open for renegotiation.

The Fact-Finder prefers stability whenever possible and therefore recommends a three year term. However, given the uncertain and volatile economic outlook, prudence dictates that the two major costs/benefit concerns of the parties – wages and health care – be subject to potential adjustment during 2012 and not be locked-in for 2013.

...

At this point of the protracted negotiations and proceedings, the issue for the Conciliator is not whether the Parties reached tentative agreement on the duration of the police contracts. That issue is hotly contested by the Parties, and need not be resolved in isolation in the

context of the Conciliation. Rather, the Conciliator, pursuant to Ohio Revised Code Section 4117.14(G)(7), bases her Award on all the statutory criteria established by the Legislature to resolve the issue of the duration of the contracts.

In particular, Ohio Revised Code Section 4117.14(G)(7)(a) – the Parties historically have had three-year contracts; and Ohio Revised Code Section 4117.14(G)(7)(c) – the stability provided by a three-year contract combined with the flexibility provided by the third-year wage and health reopener, convince the Conciliator the Union’s proposal is appropriate.

Additionally, the recommendations of the Factfinder are given “great weight.”² Here, the final finding of the Factfinder with regard to the duration of the contracts is found in his August 19, 2011 Supplemental Report, where he recommended three-year contracts with wage and health reopeners for the third year.

Conciliator’s Award

Based on the above, the Conciliator holds the Duration Article of the Parties’ three police collective bargaining agreements shall provide:

This Agreement shall become effective as of 12:01 a.m., January 1, 2011 and shall continue in full force and effect, along with any amendments made and accepted hereto, until midnight, December 31, 2013, except that the terms of the Articles on “Wages” and “Insurance” to be in effect for calendar year 2013 shall be subject to being reopened for negotiation. Not less than ninety (90) calendar days prior to December 31, 2012, either Party wishing to reopen either or

² “The recommendations of the Factfinder are given great weight in Conciliation.” OPBA and City of Warren, SERB Case No. 2006-MED-10-1267 (Graham, 2008), at pp. 4-5.

both of these Articles for renegotiation of their terms shall give written notice of such demand.

DATED: October 18, 2011

/s/ Susan Grody Ruben
Susan Grody Ruben, Esq.
Conciliator

SUSAN GRODY RUBEN, ESQ.

LABOR ARBITRATOR

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October 18, 2011

TO: Kenneth A. Schuman, Esq.
Robert M. Phillips, Esq.

RE: Conciliation for City of Maple Heights and FOP Lodge 67

INVOICE

1/2 Day of Hearing	...	\$ 475.00
1/2 Day of Study and Writing	...	\$ 475.00
TOTAL	...	<u>\$ 950.00</u>
1/2 to be paid by the City	...	\$ 475.00
1/2 to be paid by the Union	...	\$ 475.00

Thank you.