

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Conciliation Between:)	
)	
Fraternal Order of Police, Lodge 57)	10-MED-09-1291 & 1292
)	
-And-)	
)	Conciliator:
City of Richmond Heights, Ohio)	John T. Meredith

**FINDINGS, OPINION AND AWARD
ISSUED JULY 29, 2011**

INTRODUCTION

The parties to this Conciliation proceeding are the Fraternal Order of Police, Lodge 57 and the City of Richmond Heights, OH. The subject Agreement covers full-time employees in the following two bargaining units: A) All sworn Patrol Officers and Detectives. B) All sworn Sergeants through Lieutenants.

In January 2010, the parties signed a Memorandum of Agreement extending their January 1, 2007 – December 31, 2009 Agreement for three years through December 31, 2012. However, the Memorandum provided that it could be reopened to discuss modifications to take effect in 2011 and/or 2012. The parties initiated collective bargaining pursuant to the reopener but were unable to resolve all issues. They selected

John Babel to serve as Fact-Finder. He conducted a fact-finding hearing on March 25, 2011, and issued his Fact-Finding Report on April 13, 2011. This Report was rejected by both parties, and accordingly, by letter dated May 10, 2011, SERB appointed the undersigned, John T. Meredith, to serve as Conciliator.

A hearing was held on July 20, 2011 to take evidence on unresolved issues. Prior to the hearing, the parties timely submitted their Position Statements with Final Offers to the Conciliator. Before the hearing convened, the parties met to discuss the issues and made some modification in their prehearing Final Offer positions. They further agreed that contract changes would be effective on August 1, 2011, unless otherwise specifically stated.

The hearing was convened in accordance with Ohio Collective Bargaining Law and applicable SERB Rules and Regulations. The parties presented their arguments and numerous documentary exhibits. Issues submitted to the Conciliator at the end of the hearing are: Section 15.1 (wages), Section 15.7 (proficiency pay), Sections 16.1 and 16.3 (holidays), Section 16.4 (holiday premium pay), Article 22 (insurance), and Article 34 (duration).

Appearing for the Union at the hearing were: Robert Phillips, Attorney, Sergeant Richard Olexa, Patrol Officer Todd Leisure, and the Union's "financial expert," Mary Schultz, CPA, of Sargent and Associates. Appearing for the City at the hearing were: Marc Bloch, Attorney, Chief Gene Rowe, and Director of Finance Lynda Rossiter.

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, absent change in circumstances or material new evidence. (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). “Other factors” also may include the recognized desirability of uniform City-wide insurance specifications, equitable treatment among the various groups of City employees, and priorities expressed by the parties at the hearing.

BACKGROUND

A. City Profile and Finances

Richmond Heights is a suburb Cleveland, OH. It is located in northeastern Cuyahoga County, and has a population in excess of 10,000. It is primarily a residential

community, but it does have some commercial development. The income tax rate is 2%, with a 100% credit.

The City currently has approximately 122 full-time and part-time employees. The Police Department is staffed by the Chief, 16 full-time officers, 6 dispatchers, 1 part-time officer and 10 auxiliary officers. The Fire Department includes 17 full-time firefighters, and 14 part-time firefighters. The 16 full-time police officers are represented by the FOP and covered by the Agreement at issue here. The FOP Ohio Labor Council represents the dispatchers in a separate unit. The IAFF represents the full-time firefighters. AFSCME represents a small unit of service and support employees, and the remaining employees are nonunion.

Since late 2008, the City has experienced severe financial problems. The City undertook some capital improvement in 2008-2009. The 2007-2009 collective bargaining agreements with the City's union employees provided for increases of 2% in 2007, 3% in 2008, and 4% in 2009. The increased wage cost in 2009, combined with the onset of the recession and retroactive payment of wage increases for 2007 and 2008, resulted in a crisis in 2009. It appeared that the money was not available to meet all obligations without a substantial reduction in services. Accordingly, the City approached its unions in 2009 for concessions. The Service workers made some economic concessions, and the IAFF made cost saving work rule concessions. The police units did not agree to concessions, and therefore the City acted unilaterally to attain necessary savings by implementing a 25% reduction in force in the Police Department.

In 2009, the City also was subject to an independent review of its finances by the Auditor of State. The Report, based on a review of City finances for 2007 and 2008, was issued in September 2010. The Auditor's findings included the following:

The Fire Service Fund, Bond Retirement Fund, Capital Improvements Fund, Building Improvements Fund, Sewer Improvement Fund, Police Pension Fund and Fire Pension Fund have deficit fund balances of \$913,152, \$58,906, \$836,114, \$379,739, \$408,467, \$155,079, and \$307,412 at December 31, 2008, respectively. These deficits are the result of the application of generally accepted accounting principles (GAAP). The General Fund is liable for any deficit in these funds and provides operating transfers when cash is required, not when accruals occur.

The City promptly began the process of addressing these deficiencies, and has succeeded in reducing but not eliminating the deficits. The need to draw on General Fund revenues to pay off deficits in other funds has reduced the funds available for operating expenses, including employee compensation. At the end of 2010, the Capital Improvements Fund still had a deficit of approximately \$800,000.

The City initially projected a need for further employee concessions in order to have enough money for General Fund transfers to eliminate deficit balances in other funds at the end of 2011. This assertion was based on the City's conservative 2011 revenue projections, which were down \$847,000 from 2010 collections. There is some justification for this, due primarily to cutbacks in local funding by the State of Ohio, though the Union's financial expert pointed out that collections for the first half of 2011 have exceeded projections. The Union also noted that this year the City begins receiving an additional \$330,000 per year (1 mil property tax) dedicated to the Police and Fire Service pension funds. This money can be spent only for pensions, but the additional

\$330,000 reduces the need for contributions from General Fund revenues to the pension accounts.

B. Bargaining History, 2010 – Present

In December 2009 and January 2010, the City entered into memorandum agreements with its unions to extend their collective bargaining agreements for three years through December 31, 2010. These memoranda also provided for: 1) A wage freeze in 2010. 2) Increase in the employee Health Savings Account (“HSA”) contribution. 3) A reopener for 2011 and 2012 contract terms.

The FOP officers units held a bargaining meeting pursuant to their reopener in December 2010. It became apparent that the parties would not reach agreement, and they requested Fact Finding. Fact Finder John Babel issued his Report on April 13, 2011. His key recommendations include: 1) Two-year wage freeze through December 31, 2012. 2) Reduction in the number of holidays and elimination of holiday premium pay. 3) Elimination of proficiency pay. 4) No change in insurance, except to modify Section 22.1 to conform to health plan changes already implemented. Mr. Babel's Report was rejected by both parties.

The IAFF also unsuccessfully attempted to negotiate a reopener settlement and then went to Fact Finding. On July 11, 2011, Fact Finder Colman Lalka issued his Report. Like Fact Finder Babel, he recommended a two-year wage freeze and some reduction in premium pay items. He also recommended retaining the current insurance plan, but recommended an increase in employee HSA contributions to be implemented in 2012 only if a similar increase is applied to all City employees. Mr. Lalka's Report was rejected by the City Council.

Negotiations with other employee bargaining units have not been completed. The City is offering, or represents that it will offer, a wage freeze to these groups as well.

RESOLUTION OF DISPUTED ISSUES

1. Article 34: Duration

Positions of the Parties: The City proposes a one-year settlement, covering 2011, with contract terms for 2012 subject to renegotiation. It argues that its precarious financial situation may require additional cutbacks in 2012, and that it should not be burdened with a two-year agreement unless the Union is willing to accommodate all of its financial needs now. It further notes that, if SB-5 goes into effect, it should be in a position to take advantage of potential savings immediately before the end of 2012. The Union proposes a two-year agreement through 2012, as recommended by the Fact Finder.

AWARD: The Union position is awarded. The 2007-2009 Agreement, as modified and extended by the parties' January 14, 2010 Agreement and by this Conciliation Award, shall remain in effect through December 31, 2012. Article 34 shall be modified to state:

This Agreement shall remain in full force and effect until December 31, 2012 and thereafter from year to year, unless notice of an intent to terminate or modify this Agreement is served by one party upon the other as provided in O.R.C. Chapter 4117, *et seq.* If such notice is given, and provided that the Union maintains its status as the exclusive bargaining representative of the members of the bargaining unit, this Agreement shall remain in full force and effect as long as the parties are engaged in negotiations as provided in O.R.C. 4117, *et seq.*

Discussion and Analysis: These negotiations have been conducted pursuant to a three-year contract extension, executed in January 2010, subject to reopening of

negotiations for 2011 and 2012. A two-year settlement will get the parties to the end of their three-year cycle. Three years is the typical length for Ohio public sector contracts, and has been the practice in Richmond Heights. It balances the need for fiscal foreseeability at the time the agreement is reached with the benefits of labor relations stability for a three-year period. The parties have been in continuous negotiations since 2009, and both parties will benefit from having a full year without the time and expense of the negotiations process. Finally, the Fact Finder recommended a two-year deal covering both 2011 and 2012, and deference is due to his Report.

2. Article 15: Wages

Positions of the Parties: The Union proposes a two year wage freeze at current rates. The City proposes a wage freeze “for the duration of the conciliated agreement,” but, consistent with its duration proposal, would lock in that wage freeze for only one year.

AWARD: The Union position is awarded. Section 15.2 shall provide:

The current salary schedule, with no increase in wages for any classification, shall remain in effect until expiration of the Agreement on December 31, 2012. The Schedule is:

Lieutenant	\$82,844
Sergeant	\$73,968
Patrol Officer 1 st Class	\$66,043
Patrol Officer 2d Class	\$60,805
Patrol Officer Probationary	\$50,031

Discussion and Analysis: The parties agree that a wage freeze is the appropriate award. The two-year wage freeze proposed by the Union necessarily follows the two-year duration awarded, see above. This Award attempts to accommodate the City's 2012 concerns by approving concessions in other areas. The freeze also is consistent with

wages offered other employee groups in the City, and was recently recommended by a Fact Finder for the IAFF unit. Finally, the two-year wage freeze also was recommended by the Fact Finder for the FOP units, and this recommendation is entitled to deference.

3. Section 15.7: Proficiency Pay

Positions of the Parties: Section 15.7(a) of the current contract provides a \$1250 annual proficiency payment, payable in March, for participation in the Cooper Fitness Protocol, satisfactory annual firearms certification per R.C. 109.081, and maintaining AFD certification. Section 15.7(b) further provides for an additional \$750 annual allowance, payable in October, for attaining 50th percentile on the Cooper Fitness Protocol. The City's final offer, as modified at the hearing, would retain the “automatic bonus” for 2011 (as that bonus already has been paid), but would eliminate the “automatic bonus” for 2012 and thereafter. It further would reduce the “earned bonus” from \$750 to \$500 for both 2011 and 2012. The Union final offer, as modified at the hearing, would retain current language.

AWARD: The City position, as modified at the hearing, is awarded. The \$1250 automatic annual proficiency payment provided in Section 15.7(a) for participation in the Cooper Fitness Protocol, satisfactory annual firearms certification per R.C. 109.801, and maintaining AFD certification shall be eliminated effective January 1, 2012. The additional annual allowance which may be earned by attaining 50th percentile on the Cooper Fitness Protocol, as provided in Section 15.7(b), shall continue in effect, but shall be reduced from \$750 to \$500 effective August 1, 2011, and shall remain at \$500 in 2012.

Discussion and Analysis: The City's economic circumstances warrant some reduction in the current level of wage expenses so that it can attempt to maintain services and continue to make progress toward compliance with the state requirements. The Fact Finder recommended reduction in proficiency pay as a means to that end, and I agree.

4. Sections 16.1 and 16.3: Holidays

Positions of the Parties: The City proposes to reduce one holiday in Section 16.1 and eliminate a personal day in Section 16.3. The Union final offer, as modified at the hearing, is to retain current contract language.

AWARD: The Union's final offer, as modified at the hearing, is awarded. Retain current eleven holidays, including employee's birthday, as provided in Section 16.1. Retain the additional personal day as now provided in Section 16.3.

Discussion and Analysis: The number of holidays (eleven) and the personal leave provided by the current contract are not out of line with holidays and personal time provided by other police contracts in northeastern Ohio. The Conciliator believes that cost savings in the holiday area can more appropriately be attained by eliminating holiday premium pay provisions, see Section 16.4, below.

5. Section 16.4: Holiday Premium Pay

Positions of the Parties: The City proposes to eliminate section 16.7 and the premium pay it provides for employees who are actually assigned to work on eight of the eleven holidays. The Union final offer, as modified at the hearing, is to keep this provision.

AWARD: The City's final offer is awarded. Effective August 1, 2011, delete 16.4, which has provided additional premium pay for employees assigned to work on

Memorial Day, Fourth of July, Labor Day, Thanksgiving, Christmas Eve, Christmas Day, New Year's Eve, and New Year's Day.

Discussion and Analysis: As noted in the section on proficiency pay, above, the City's economic circumstances warrant some reduction in the current level of wage expenses so that it can attempt to maintain services and continue to make progress toward compliance with the state requirements. The Fact Finder recommended reduction in holiday premium pay as a means to that end, and I agree.

6. Article 22: Insurance

Positions of the Parties: In 2009, the City, with cooperation of its unions, revised its insurance program, with significant resulting savings. In their final offers, as modified at the hearing, both parties agreed that the language of Sections 22.1 and 22.2 should be revised to conform to these changes and should reference the insurance program currently in effect for bargaining unit employees. Regarding other provisions in Article 22, the City proposed that all employees should contribute 15% of the total cost of their applicable health care program; that the employee share of the HSA contribution be increased from \$500 to \$2000 family and \$250 to \$1000 single; and that the employer/employee health care committee be eliminated. The Union Final Offer, as modified at the hearing, rejects the 15% employee contribution proposal, retains the healthcare committee, and offers to increase the employee's share of the HSA contribution in 2012 from \$500 to \$1000 family and from \$250 to \$500 single.

AWARD: The Final Offer of the Union, as modified at the hearing, is awarded. Effective August 1, 2011, the language of Section 22.1-22.2 will be replaced and superseded by the following: "For the duration of this Agreement, the City shall provide

the benefit plans in effect for bargaining unit employees on July 27, 2011, as more fully described in the “Benefit Summary for the Employees of the City of Richmond Heights” for 2011 (provided by the City to the Union and the Conciliator as City Exhibit C at the hearing), except that beginning in January 2012 the City/employee split of the HSA contribution shall be as provided in this Conciliation Award. The last sentence of Section 22.3 (added to 22.3 in the January 2010 Memorandum) shall be revised to state: “Effective January 1, 2012, employees shall be responsible to pay, depending on their family status, either \$1000 of the \$4000 police officers family Health Saving Account or \$500 of the \$2000 police officers single Health Savings Account.” No change in the employer-employee health care committee.

Discussion and Analysis: The City has achieved substantial savings by the revisions in its health care plan. The proposed 15% contribution is not currently paid by any City employee, and was not recommended by the Fact Finder in this case or by the Fact Finding Report recently issued for the Fire Department. On the other hand, increase in the employee HSA contribution to \$500 single and \$1000 family in 2012 was recommended for the IAFF and, subject to negotiations, may be extended to other employee groups. It therefore is consistent with the need to promote uniformity in the insurance program throughout the city and equity among the various groups of City employees. No compelling justification was provided for eliminating the Health Care Committee.

SUMMARY OF AWARDS

The Conciliator Awards and Orders the following terms for resolution of the 2011 – 2012 Re-Opener between the City of Richmond Heights and Fraternal Order of Police, Lodge 57:

1. Section 15.2: The current salary schedule, with no increase in wages for any classification, shall remain in effect until expiration of the Agreement on December 31, 2012. The Schedule is:

Lieutenant	\$82,844
Sergeant	\$73,968
Patrol Officer 1 st Class	\$66,043
Patrol Officer 2d Class	\$60,805
Patrol Officer Probationary	\$50,031

2. Section 15.7: The \$1250 automatic annual proficiency payment provided in Section 15.7(a) for participation in the Cooper Fitness Protocol, satisfactory annual forearms certification per R.C. 109.801, and maintaining AFD certification shall be eliminated effective January 1, 2012. The additional annual allowance which may be earned by attaining 50th percentile on the Cooper Fitness Protocol, as provided in Section 15.7(b), shall continue in effect, but shall be reduced from \$750 to \$500 effective August 1, 2011, and shall remain at \$500 in 2012.
3. Sections 16.1 and 16.3: Retain current eleven holidays, including employee's birthday, as provided in Section 16.1. Retain the additional personal day as now provided in Section 16.3.
4. Section 16.4: Effective August 1, 2011, delete 16.4, which has provided additional premium pay for employees assigned to work on Memorial Day, Fourth of July, Labor Day, Thanksgiving, Christmas Eve, Christmas Day, New Year's Eve, and New Year's Day.
5. Article 22: Effective August 1, 2011, the language of Section 22.1- 22.2 will be replaced and superseded by the following: "For the duration of this Agreement, the City shall provide the benefit plans in effect for bargaining unit employees on July 27, 2011, as more fully described in the "Benefit Summary for the Employees of the City of Richmond Heights" for 2011 (provided by the City to the Union and the Conciliator as City Exhibit C at the hearing), except that beginning in 2012 the City/employee split of the HSA contribution shall be as provided in this Conciliation Award. The last sentence of Section 22.3 (added to 22.3 in the January 2010 Memorandum) shall be revised to state: "Effective January 1, 2012, employees shall be responsible to pay, depending on their family status, either \$1000 of the \$4000

police officers family Health Saving Account or \$500 of the \$2000 police officers single Health Savings Account.” No change in the employer-employee health care committee.

6. Article 34: The 2007-2009 Agreement, as modified and extended by the parties’ January 14, 2010 Agreement and by this Conciliation Award, shall remain in effect through December 31, 2012. Article 34 shall be modified to state:

This Agreement shall remain in full force and effect until December 31, 2012 and thereafter from year to year, unless notice of an intent to terminate or modify this Agreement is served by one party upon the other as provided in O.R.C. Chapter 4117, *et seq.* If such notice is given, and provided that the Union maintains its status as the exclusive bargaining representative of the members of the bargaining unit, this Agreement shall remain in full force and effect as long as the parties are engaged in negotiations as provided in O.R.C. 4117, *et seq.*

ISSUANCE OF AWARD

This Award is issued this 29th day of July, 2011.

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

Shaker Heights, Ohio

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 29th day of July 2011:

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