

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of the Conciliation Between:

Union Township Trustees : Case No. 2010-MED-10-1484,1485,1486
Clermont County, Ohio :
and : Opinion and Award
Union Township Police Association : Margaret Nancy Johnson
Conciliator

Statement of the Case

This matter came on for hearing on June 7, 2011, before Margaret Nancy Johnson, the Conciliator mutually selected by the parties pursuant to a Conciliation Order issued by the State Employment Relations Board, hereinafter "SERB" on May 2, 2011 and appointed by SERB on May 6, 2011. Union Township Trustees, hereinafter "Township," were represented by Lawrence E. Barbieri, partner with the law firm of Schroeder, Maundrell, Barbieri & Powers. The Patrol Officers unit within the Union Township Police Association, hereinafter "Association," was represented by R. Jessup Gage, Attorney with the firm of Hardin, Lazarus & Lewis.

The Association consists of three units: Unit A, Unit B, and Unit C. Approximately 43 Patrol Officers in Unit A perform non-supervisory law enforcement services for the Township located in Clermont County in southwestern Ohio. Unit B consists of Sergeants, and Unit C includes Dispatchers. The Township served by the three units in the Association is a suburb of Cincinnati and has a population of around 42,332. Terms and conditions of employment for the three units have been set forth in a collective bargaining agreement effective from January 1, 2008 with an expiration date of December 31, 2010.

In October, 2010, the parties began negotiations for a successor contract but reached impasse. A fact-finder was appointed by SERB and a hearing was scheduled for March 22, 2011. Prior to the fact-finding hearing, Units B and C entered into a three year contract with the Township accepting the proposal of the Township as to wages and insurance. Recommendations for contract language for the remaining Patrol Officers unit were issued by the Fact-finder on April 6, 2011. Within the statutory limitation, the Township rejected the Report and Recommendations giving rise to the SERB Conciliation Order referenced above.

On May 9, 2011, the Township filed with SERB a motion to stay conciliation and on May 10, 2011 the Association filed a memorandum in opposition to the Township motion. The Motion was denied by SERB and the parties were served with the Directive Denying the Motion to Stay Conciliation on June 1, 2011. Thereafter, the Township filed a motion for a temporary restraining order and a preliminary injunction or writ of mandamus under Rule 65(A) and (B) of the Ohio Rules of Civil Procedure with the Court of Common Pleas of Clermont County. In a Decision served on the parties on June 3, 2011, the Court denied the motion for a temporary restraining order in all respects. The Conciliation hearing proceeded as scheduled on June 7, 2011.

At the conciliation proceedings, both parties had the opportunity to introduce into the record opening statements, sworn testimony, documentary evidence, and argument on the issues in dispute. This Conciliation Award is issued in compliance with the statutory requirements for public sector impasse proceedings in the State of Ohio and in accordance with well-established criteria.

Criteria

In compliance with statutory requirements, the Conciliator has taken in consideration the following criteria when considering the issues presented herein for final offer conciliation:

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 sector 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. The stipulations of the parties;
6. Such other factors, not confined to those listed above, 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.

Statement of the Issues

The parties have stipulated (See Appendix A) the issues remaining at impasse are as follows:

1. Article 13: Hours of Work and Overtime: Section 13.1;
2. Article 13: Hours of Work and Overtime: Section 13.6;
3. Article 16: Insurances: Section 16.1;
4. Article 24: Wages: Section 24.1;
5. Article 24: Wages: Section 24.2;
6. Article 24: Wages: Section 24.3.

Additionally, the Association proposed modifications to Article 34, Duration, to which the Township stated it had no objections (See Appendix B). Accordingly, without discussion, the Conciliator will incorporate into the award which follows Association language on Article 34: Duration.

Positions of the Parties

1. Article 13: Section 1

Township Proposal

As its proposal for Article 13, Section 1, the Township seeks to have the work period for all three units changed to an eight and one-half hour day. To sustain this position, the Township elicited the testimony of the Police Chief who estimated the proposed contract modification would save the Township approximately \$80,000. Additionally, the Chief testified that the change would provide greater scheduling flexibility for the Department and eliminate overtime costs. Evidence submitted by the Township establishes that overtime is costly (See Township Exhibit I).

The Township asserts that its economic condition “absolutely necessitates that the Township look at every available means to cut costs” (Township Position Statement, p. 9). Moreover, to fulfill its commitment to provide the best possible police protection to the citizens, the Township must have flexibility with respect to scheduling.

Association Position

The Association seeks current contract language on the work week. At the hearing, the Association pointed out that the Township proposal would unilaterally impose a change upon Units B and C which have already reached Agreement with the Township and have entered into a new Collective Bargaining Agreement. Additionally, the Association points out that while Article 13 language was in contention prior to fact-finding, those issues were withdrawn and Article 13 was, in fact, never addressed by the fact-finder. Finally, the Association submitted testimony pertaining to the hardship that the work period modification would impose upon unit members who, by necessity, schedule their personal lives around the established work week.

2. Article 13: Section 13.6

Township Proposal

The Township proposes adding language to subparagraph B of Section 13.6 which would preclude members on extended leave from bid eligibility and restrict bidding the same shift more than two consecutive times. Applying Article 13, Section 1 arguments, Township seeks cost-saving flexibility.

Association Position

Applying Article 13, Section 1 contentions, the Association reiterates its opposition to any changes unilaterally affecting Units B and C or established work practices.

3. Article 16: Section 16.1

Township Proposal

The Township proposes a modification to Article 16, Section 16.1 which the Township asserts is required to be consistent with Am Sub. S.B. No. 5 in that pursuant to the bill, “no employer can be required to pay more than 85% of the cost of providing health care benefits” (Township Position Statement, p. 7). Asserting that the conciliator is required to issue an award consistent with Am. S.B. No. 5, the Township maintains that the Conciliator must adopt the position of the Township on Health Insurance. The proposal of the Union cannot be sustained as it is at variance with the new legislation.

To comply with the new legislation, the Township proposes modifying Article 16, Section 1, by deleting current language providing that insurance shall be “on the same basis as provided to non-bargaining unit employees (i.e. any and all employees not in this bargaining unit),” and adding language that “effective January 1, 2011, and for the duration of this Agreement, overall Employee contribution of the bargaining unit employees to the health care benefits shall be 15% of the total program costs or the minimum required by state law, whichever is greater.”

Association Proposal

At conciliation, the Association offers the same proposal it presented at fact-finding and which was subsequently awarded by the fact-finder. The proposal of the Association on insurance is current contract language, by which members of the bargaining unit are offered the same insurance provided to non-bargaining unit employees. Additionally, adapting a proposal of the Township, the Association offers language that “effective January 1, 2012, patrol officers shall not be required to contribute more than ten per cent (10%) of the monthly premiums for health and hospitalization insurance including supplemental benefits if more than ten percent of the monthly premium is required by non-bargaining unit employees.”

Contract language on insurance proposed by the Township treats the members of the bargaining unit differently from all other employees. There is no justification for disparate insurance benefits for employees of the Township.

Additionally, the Association argues that the Township proposal improperly requires the Conciliator

to make an award having retroactivity. Although the parties agreed to waive statutory restrictions on retroactivity for wages, they did not do so for insurance prerequisites. Thus, the conciliator must award the position of the Association.

4. Article 24; Section 24.1

Township Proposal

The offer of the Township as to contract year 2011 is a wage freeze. Asserting the conciliator is bound by the terms of the new legislation, the Township argues that performance ought to be the only basis for progression through a salary schedule. Since by statute, any monetary award of the conciliator is prospective, it cannot take effect until after S.B. No. 5 goes into effect on July 1, 2011. As a result, the award of the conciliator will be moot and unenforceable.

Even considering the criteria under the amended Act, however, the Township offer is the appropriate wage resolution. Township wage proposals for year one, year two, and year three are based on the extraordinarily limited ability of the Township to pay any wage increase as well as upon a review of both internal and external comparables.

Proposals for a wage freeze in years one and two of the contract arise from what the Township perceives to be the dire economic conditions it is confronting. Inability to pay a wage increase for the next two years is supported by the financial data submitted by the Township and explained by its Administrator, Ken Geis. Projections by the Township do not include the loss of revenue from the recently passed State budget which will have a further negative impact upon Township finances. From 2010 through 2020 projected expenditures will have so exceeded revenues that police and fire salaries will have to be subsidized by the General Fund, resulting in a negative carry over in the General Fund by 2020 (See Township Exhibit G).

The Township cannot function with expenditures exceeding revenues. Rising fuel costs, health care costs, and other operational expenditures continue to increase while revenue is stagnant. Indeed, projected revenues cited by the Township are “optimistic” and the “best case scenario.” In order to maintain solvency without reducing police personnel, the Township must keep salaries at the present levels.

In 2009 the Township received a warning from Moody's Investor Services that its police and fire funding jeopardized its bond rating. So as to maintain its bond rating, the Township has not paid Police and Fire salaries from the General Fund but from separate funds, the revenue of which is based upon property valuations. As property values have been in decline, Township projections for revenue are flat. Arguing that “decreases need to be made to the expenses in the Police Fund in order for the Police Department to survive,” (Township Statement, p. 9), The Township argues its wage proposal is appropriate.

Moreover, the Township proposal is justified by reviewing the criterion of comparability. Benchmark data from SERB demonstrates that the compensation paid to police officers by the Township exceeds the average of comparable townships on both the entry and top levels (See Township Exhibit H). In addition to external comparability, internal comparability justifies the Township position. It is appropriate that the patrol officers share the burden of these difficult financial times. Other units within the Association have accepted the wage proposal of the Township as have the Service Department employees represented by AFSCME. Non- bargaining unit employees within the Township have not had a wage increase within the past three years. Wages paid to the Patrol Officers substantially exceed the median wage of the residents of the community. Thus, the Township asserts its offer is reasonable and appropriate.

Association Position

Contending that its proposal is entirely justified, for contract year 2011 the Association seeks a

1% increase for the Patrol Officers. Based upon reasonable economic considerations, comparability, bargaining history, and the recommendations of the fact-finder, the Conciliator ought to award the position of the Association on wages for contract year 2011.

Annual median income and the median cost of housing in the community served by the Association exceed the state median. As described by the employer, the “Township is a thriving community” (See Association Exhibit H-8). In November, 2009, the citizens of the Township passed a new safety levy which provides an additional \$3,000,000 to the Police and Fire Departments (See Association Exhibit H-12). These additional funds sufficiently address the single issue raised in the bond rating by Moody's Investors Services. Even with this suggestion, the Township still received an Aa bond rating—the second highest out of nine possible ratings.

The Township clearly has the ability to finance the 1% sought by the Association for contract year 2011. Having made a substantial investment in a commercial property, the Township will generate 6% in interest over the next 8 years, totaling \$10.7 million. Additionally, the commercial property will create up to 400 new jobs and additional revenue for the Township.

Although 2008 and 2009 were difficult years economically, General Fund revenues in 2010 were 5.46% greater than they were in 2007. While such resources could be used to finance police wages, historically the Police Fund has financed police operations. As with the General Fund, the Police Fund incurred losses during 2008 and 2009 but regained those losses in 2010. Additional funds for the Police Department are generated by the Safety Services Fund which declined in 2008 but recovered losses in 2009 and increased significantly as a consequence of the levy. The Township has more than adequate resources in the Police and in the Safety Services Fund to finance the operations of the Police Department and clearly has the ability to pay the wage proposal of the Association.

In the prior contract years, from 2005 through 2010, the parties negotiated 4% increases for the unit. In addition to the ability of the township to pay the wages, these increases also arose from the fact that the police serving the Township are paid less than comparable officers in surrounding communities. In these negotiations, too, the Association seeks to redress wage disparity.

The Association has modified its position from that presented at fact-finding and contends that its proposal at conciliation is appropriate and in accordance with established criteria.

5. Article 24: Section 24.2

Township Position

For reasons discussed for contract year one, the Township proposes a 0% increase for wage year 2012.

Association Position

For reasons discussed for contract year one, the Association proposes a 1% increase for wage year 2012.

6. Article 24: Wages: Section 24.3

Township Position

The Township offers a wage re-opener for the final year of the contract.

Association Position

As the Association has the ability to pay a reasonable increase, the Association is opposed to any re-opener and proposes a 1% increase in wages for the final wage year of the contract.

7. Article 34: Duration

The parties agree to a three year contract remaining in full force and effect until October 13, 2013,

except for Article 24 Wages, which shall remain in full force and effect until April 3, 2014.

Discussion

Jurisdiction of the Conciliator

Prior to the convening of this hearing, the Township had filed a motion with SERB to stay the conciliation “because the relevant provisions of [Am. S.B. No.5] will reverse or render moot any decision of the conciliator” (Township Position Statement, p. 4). Additionally, the Township sought a temporary restraining order from the Clermont County Court of Common Pleas to prevent the conciliation from occurring. The Township was unsuccessful in both of these endeavors to stay the conciliation process and now requests the Conciliator to make a decision on the same issue upon which it had not previously prevailed.

In the course of the conciliation proceedings, the Township requested a ruling from the conciliator as to the impact of Amended Substitute Senate Bill No. 5, hereinafter “Am.S.B. No. 5,” on her authority to issue an Award having financial implications for the Township subsequent to the effective date of the Bill. As part of its argument, the Township contends that in its Decision in Case No. 2011CVH931, the Court of Common Pleas of Clermont County requires such a ruling from the conciliator. Having read the Judgment Entry, the conciliator cannot concur with the Township on its interpretation of the ruling.

While the Court stated “if the Township takes issue with the order of the conciliator, the Township can submit the issue to this Court for review,” the Court was not directing an award regarding the effect of Am. S. B. No. 5 on the authority of the conciliator. Rather, the Court was referencing O.R.C. 4117.14(H) whereby “all final offer settlement awards and orders of the conciliator made pursuant to Chapter 4117 of the Revised Code are subject to review by the court of common pleas having jurisdiction over the public employer...” (*State of Ohio ex. Rel. Board of Trustees, Union Township, Clermont County, Ohio v. the State Employment Relations Board, et al.*, Clermont County Court of Common Pleas, Case No. 2011 CVH931 (2011), at pages 4-5). Should the Township take exception to an award issued by the Conciliator on the basis that the award does not comply with current statutory mandates, then the Township has the option of judicial review.

A conciliation award must exclusively address terms and conditions of employment upon which the parties are at impasse pursuant to defined criteria. Any conciliation order which does not comply with statutory requirements as set forth in Chapter 4117 of the Ohio Revised Code may be subject to appeal. This conciliator, however, has no jurisdiction to render any judgment or ruling as to the impact of Am. S.B. No. 5 on the current conciliation proceeding or on any award issued prior to the effective date of S.B. No. 5.

The sole function of the conciliator in this case is to issue a decision on the contract issues upon which the parties remain at impasse based upon evidence submitted by the parties, current statutory requirements, and the well-established criteria for resolving final offer settlement disputes. Lacking any authority to stay the process which she has been appointed by SERB to conduct, the conciliator must proceed to issue an award in the matter at hand. This is the service she has been chosen by the parties and directed by SERB to perform.

Overview of the Financial Arguments

Financial status of the Township and ability to pay permeates the issues raised by the parties in the matter under consideration. Prior to discussing the specific proposals made by the parties and criteria applicable thereto, the conciliator summarizes the general arguments and the documentation upon which the parties rely to sustain their respective economic positions. While the Township argues its evidence establishes fiscal stagnation and decline, the Association contends data indicates financial stability and future growth. Analyzing the evidence elicited by the parties, the conciliator must

determine issue by issue the disputed terms and conditions of employment for this bargaining unit.

Through its Administrator, the Township presented data upon which it relies in arguing its economic position in this proceeding. To justify its monetary proposals, the Township cites declining revenues and increasing expenditures which substantially diminish carry over funds well into the future. The Township argues its limited ability to raise revenues and the projected decline in local government funds and tax receipts.

As evidence of its economic condition, the Township proffered into evidence projected calculations of revenues and expenses from 2012 through 2020 for each of the Funds maintained by the Township (Township Exhibit G). Historically, the General Fund has not been used to finance the salaries of police or fire personnel, as these have been paid by the Police and Fire Funds, respectively. Administrator Ken Geis testified that to use General Funds to subsidize safety service salaries would jeopardize the Township bond rating and send the Township down a "slippery slope." The referenced chart shows that using the General Fund to subsidize the Police Fund starting in 2013 and the Fire Fund starting in 2014 would result in a negative carryover in the General Fund of \$2,940,040 by the year 2020.

From 2012 through 2020, the Township anticipates receipts to the Police Fund to be \$4,500,000 for each year. The basis for this flat projection is the declining tax valuations issued by the County Auditor for the Township (See Township Exhibit J). Whereas in 2009, the tax valuation for the Township was \$1,027,454,350, in 2010 it had declined to \$1,016,292,540. In addition to the loss of local government funds, previously cited, the Township notes that \$929,910 in General Personal Tax in 2009 is eliminated in the 2010 tax valuations. Another source of income which the Township may lose is Estate Tax proceeds. Because of these substantial declines and losses, the Township maintains its economic offers are justified.

To sustain its proposals for modest economic gains, the Association argues that the evidence upon which the Township relies are projections without statistical support. Citing an assessment by Ken Geis, the "Township, overall, is in a fortunate position in that [it is] not nearly as economically distressed as other communities in the Greater Cincinnati area" (See Association Exhibit H-9). While the Township may be emerging from a financial decline, evidence elicited by the Association demonstrates future growth and economic stability.

As the consequence of having entered into a lease agreement with a major commercial enterprise, the Association asserts the Township can anticipate significant income and future job growth. In November, 2009, the Township passed a new Safety Services levy providing an additional \$3,000,000 to the Police and Fire Departments over the 2009 level. In the same year prior to the levy and to the commercial agreement entered into by the Township, Moody's Investor Services issued a positive bond rating reflecting the economic stability in the community. Thus, the Association contends the Township can afford its offer on economic adjustments.

Analysis of Financial Evidence

In the past several years, collective bargaining in Ohio has occurred in the context of an extraordinary national recession commencing in September, 2008. A review of the financial data submitted by the Association to support its wage increase offers confirms that the Township was not exempt from the repercussions of the crises from which the country is now painfully and slowly emerging (See Association Exhibits H-2 and H-3).

Figures taken from the Trustees Annual Budget Worksheets for 2008-2009 indicate that 2008 and 2009 were, indeed, difficult years. In 2008, revenue to the Safety Service Fund declined 11.13% and revenue to the Police fund declined by 1.05%, while revenue to the General Fund experienced only a .56% increase. In 2009, General Fund revenue declined 2.54% and the Police Fund revenue declined .07% while the Safety Services Fund experienced a slight increase of .36%. Between 2008 and 2009

any increase to any one of these three funds was off-set by a larger loss.

The trend, however, changes in 2010, with all three funds experiencing some gains. The General Fund revenues increased 7.61% and Police Fund Revenues increased 2.74%. With the passage of the additional levy in November, 2009, the Safety Services Fund revenue increased 79.05%. Thus, the financial status of the Township appears to be stabilizing.

Nonetheless, significant uncertainty continues to loom. Projected reductions in state funding and other sources of shared revenue warrant the "cautious approach" recommended by the fact-finder (see Fact-finder Report, p. 8). "Cautious," however, does not mean concessionary, and there is no evidence that the Township lacks the ability to finance some adjustment to the wages of Patrol Officers during the course of the next three year contract, especially in consideration of the potential employee participation in health insurance costs.

The conciliator has carefully perused the documents submitted by the Township to sustain its position on wages for this unit. Township Exhibit G consists of revenue and expenditure projections from 2012 through 2020 for each one of the Funds maintained by the Township. While the Administrator testified that the projections are based on relevant data, the conciliator finds that the presumption of flat revenue in most accounts, but especially in the Police Fund, is at variance with actual historical trends. Even in the "recessionary years," revenue to the Police Fund exceeded that \$4,500,000 which the Township projects for the next eight (8) years, starting in 2012.

The presumption of the flat revenue stream in almost all funds projected by the Township over an eight year span is not consistent with actual data. Typically income will fluctuate and a variation from year to year is normal. Like most public employers, between 2007 and 2009, the Township experienced income declines. In 2010, however, the Township experienced considerable income growth.

Relying upon declining tax valuations for 2010 and 2011, (Township Exhibit J), the Township argues that its projections are justified. Certainly, the documents from the Clermont County Auditor indicate a decline from one year to the next at least in real estate totals. The elimination of the General Personal Property tax valuation, however, was more than off-set by the increase in the Personal Public Utility tax value. In reviewing the documentation, the conciliator notes that updated revenue estimates based upon the 2009 and 2010 taxes rates, respectively, were attached to the letters received by the Township, but these documents were not submitted into evidence.

Moreover, the evidence elicited at the hearing establishes that a major commercial enterprise is in the development stage for Union Township. This business will most certainly have an impact upon the real estate valuations, and especially on the commercial valuation which had a substantial impact on the decline from 2009 to 2010.

Trends indicate that revenue to the Safety Services Fund from which the Police received approximately 44% in 2010 and to the Police Fund are sufficient to enable some adjustments in the course of this three year contract without negatively affecting the General Fund. Indeed, this is the position that Moody's Investor's Services suggested and which the Township heeded in passing the 2009 levy.

Considering the financial data, the conciliator is of the opinion that current or the most recent economic information is more persuasive for this three year contract than a projection of revenues and expenditures including year 2020. While consideration of the future and cautious expenditure is prudent, to deny any cost of living adjustment to this bargaining unit based upon year 2020 projected outcomes is not consistent with statutory expectations. The ability of the employer to finance a proposal ought to be based upon current realities rather than projected scenarios.

In addition to ability to finance the issue, the parties have also argued comparability and the conciliator has carefully reviewed evidence on this criterion. In regard to comparability, the conciliator agrees with the Township on most of its arguments and concurs with the findings of the Fact-finder that

“on the balance the Township has the better of the arguments” (p. 8). While the evidence indicates that currently Police Officers in Union Township compare favorably with their counterparts in neighboring communities having similar characteristic, lacking in the evidence is any indication of the percentage rate increases these comparable parties are presently negotiating.

Although the conciliator observes that internal comparability with the remaining two law enforcement units is a factor, she is less compelled by a comparison with the service employees and takes exception to the Township's comparison of the Patrol Officers wages with the median wage of residents in Union Township. The statute calls for a comparison with other employees performing “similar duties.”

Over the course of many years, the parties to these proceedings have negotiated a wage rate for unit employees reflective of the service performed for the community. A comparison of this rate with the median income of residents is inapt for several reasons. First, the job of a Patrol Officer is inherently dangerous. When the men and women in the Association report to duty, they and their families understand the risk they are undertaking. Second, as police officers work non-traditional hours, while the residents of the community are enjoying July 4th picnics, Memorial Day outings, and Labor Day celebrations, Police Officers are reporting to duty. Officers miss their sons' baseball games and their daughters' soccer matches. They work when others are observing religious holidays. Finally, these officers along with fire personnel are our first responders in time of crisis. Without the services of these professionals, the fabric of our communities would unravel. For the work performed, a wage rate comparable to that paid in neighboring communities has in the past been negotiated by these parties. That rate is justified by the service performed.

Evidence further establishes that unlike the service employees represented by AFSCME, safety personnel are funded by levies the most recent of which generated considerable monies for the Safety Service Fund in 2009. In his recommendations, the fact-finder noted “the ability of the administration to successfully secure funding for the police and fire funds through levies” (p. 7). While the Township cites its limited ability to raise revenue, documentation confirms the safety services fund is adequate to enable a modest wage increase for the patrol unit.

Having analyzed the general economic arguments of the parties, the conciliator proceeds to address specific issues in contention as stipulated by the parties.

Article 13: Hours of Work, Section 13.1

As its final offer on Article 13, Section 13.1, the Township proposes the following language:

Section 13.1 The standard work period for Unit A, Unit B and Unit C employees will be eight and one-half hours.

Current contract language provides for a ten hour work day for Units A and B, and an eight and one-half hour work period for Unit C employees. The Association position is current contract language.

The offer of the Township significantly modifies the standard work week for this unit and, indeed, for another unit with which the Township has already entered into Agreement. While Unit C employees (Dispatchers) currently work an eight and one-half hour day, the Township proposes that the Patrol Officers (Unit A) and the Sergeants (Unit B) also work an eight and one-half hour day. As proposed by the Township, the change to Section 13.1 would require a modification to the Sergeant Unit with which the Township has an Agreement. Concurring with the Association, the conciliator has no authority to issue an award which unilaterally modifies a term of employment for another unit.

Nonetheless, even as it pertains to Unit A, the proposal of the Township cannot be sustained. In support of its offer, the Township has submitted the testimony of the Police Chief to the effect that the proposal will provide greater flexibility and substantial cost savings. Although the Township has

submitted an offer with economic implications, other than the assertion by the Police Chief, there has been no costing out of the proposal. Indeed, on cross-examination the Chief testified that the cost savings were estimates only, and although the Chief testified that the estimate was based upon reduced overtime, this cost analysis is inadequate to justify the change sought by the Township. There is no data which the conciliator can cite attributing a savings to the Township by reason of modifying the work period for the Patrol Officers. Although the Township has submitted Police Overtime earnings (Township Exhibit I), the document does not breakdown the savings that could be generated by changing the work period for this unit. In the absence of evidence on the financial impact of this provision, the conciliator cannot conclude that the Township is unable to continue to fund a contract provision previously negotiated and included within the contract.

In addition to the lack of relevant financial evidence, the conciliator also cites another well-established criterion. As the Township is proposing this modification to Article 13, Section 1, it has the burden of justifying its offer. Unless the need for a change is established through persuasive evidence, current contract language ought to be maintained. Language which the parties have previously bargained and terms and conditions under which employees have worked in the past are typically deemed acceptable. In the absence of some proof that a contract provision requires adjustment, conciliators will generally sustain the current contract language citing the criterion of past collectively bargained agreements.

Further, the conciliator observes that while the Township argues its offer provides greater scheduling flexibility, it failed to demonstrate scheduling dilemmas created by current contract language. Without evidence that the present ten hour day for Patrol Officers impedes operations, the conciliator has no cause for awarding a modification of existing language.

Finally, the conciliator notes that while the parties entertained Article 13 proposals and the fact-finder recommended status quo on Association proposals for Sections 13.3, 13.8 and 13.10, the particular language now offered by the Township has not been bargained to impasse. Indeed, the Section 13.1 final offer presented by the Township to the conciliator was never addressed by the fact-finder. Rather, at fact-finding, in response to Association proposals, the Township took the position that status quo “is absolutely critical to provide optimum protection to the public” (See Fact-finding Recommendations, p. 12). The contract settlement procedures set forth in the Ohio Revised Code contemplate that the final offers submitted to conciliation be those upon which the parties have negotiated to impasse.

In the absence of financial data, evidence that the current contract language requires change or curtails operations, as well as a failure to bargain to impasse on the issue and the Townships prior proposal of status quo, the conciliator must award the position of the Association on Article 13.1 and sustain current contract language.

Article 13: Hours of Work, Section 13.6

For its final offer on this contract section, the Township offers a modification that renders members on extended leave ineligible for shift bidding and restricts members from bidding “the same shift more than two (2) consecutive times.” For the same reasons enunciated for Section 13.1 above, the conciliator must award current contract language, the position of the Association on this Section of Article 13. The proposed language has not been bargained to impasse. Moreover, while the Township proffered some testimony as to its reasons for seeking modification of Section 13.1, no evidence was elicited to justify the proposed changes to Section 13.6. In the absence of any evidence supportive of the offer, the conciliator cannot award the position of the Township on Article 13, Section 13.6.

Thus, the conciliator awards the position of the Association on Article 13, Section 13.6.

Article 16: Insurances

Current contract language on Insurance provides coverage to this unit that is consistent with non-bargaining unit employees. While in the past the Township has provided this benefit without any employee contribution, under the contract language the Township could have assessed bargaining unit employee participation so long as the assessment was consistent with all Township employees. Both parties now seek a modification to the contract language on insurance.

The Association proposal includes current contract language with the following provision:

“effective January 1, 2012, patrol officers shall not be required to contribute more than ten percent (10%) of the monthly premiums for health and hospitalization insurance, including supplemental benefits, if more than ten percent (10%) of the monthly premium is required by non-bargaining unit employees.”

In support of its proposal, the Association points out that in this case, an employee contribution to insurance costs is equivalent to a wage deduction.

The final offer of the Township on this issue reads as follows:

Section 16.1 The Employer shall make available to bargaining unit employees who desire it health and hospitalization insurance (i.e. major medical and dental), including supplemental benefits (e.g., prescription drug). Effective January 1, 2011, and for the duration of this Agreement, overall Employee contribution of the bargaining unit employees to the health care benefits shall be 15% of the total program costs or the minimum required by state law, whichever is greater.

Not only does the Township proposal impose a 15% contribution on Patrol Officers effective January 1, 2011, but it also exempts this Unit from the current requirement of consistency in health care benefits for all employees. The Township contends that its proposal arises from constraints perceived to be imposed by S.B. No. 5.

When considering the motion of the township for a restraining order, the Court of Common Pleas, Clermont County, addressed the impact of S.B. No. 5 on this proceeding in the previously cited Judgment Entry (Association Exhibit D-4). In denying the motion filed by the Township for a temporary restraining order staying these proceedings, the Court responded to the Township assertion that the relevant portions of Am. S.B. No. 5 will reverse or render moot the conciliator's decision” (*State of Ohio, ex. Rel. Board of Trustees, Union Township, Clermont County, Ohio v. SERB, et al.* at pp. 3-4).

Noting that Am. S.B. No. 5 “leaves in place all agreements entered into prior to its effective date,” the court states “the Township confuses the date that the contract would be effective with the date that employees would reap any benefits from the contract.” Since the Agreement becomes effective upon the issuance of the award, the contention that the contract language now under analysis must conform to provisions of S.B. No. 5 is without merit.

Contract language prior to the effective date of Am. S.B No. 5, must, however, conform to the requirements of the current Collective Bargaining Act as set forth in O.R. C. Chapter 4117. This legislation prohibits the conciliator from issuing an award having retroactive monetary consequences unless the parties mutually waive this restriction. While the parties agreed on January 5, 2011 to waive the provisions of ORC 4117.14(G)(11), the waiver pertains only “to any proposed wage modification” (see Association Exhibit C). Thus, the waiver is inapplicable to the insurance provision. Insofar as the Township proposal requires the conciliator to issue an award having monetary consequences effective January 1, 2011, the final offer contravenes current statutory restrictions and is, accordingly, improper.

Nor does the proposal comport with principles associated with final offer conciliation. Without any justification for such a modification, the proposal eliminates the previously bargained requirement that insurance provided to this unit be “on the same basis as provided to non-bargaining unit employees.” As discussed above, the party proposing a change to contract language has the burden of justifying such a change. The Township offered no explanation as to why this unit should be excluded from the previously negotiated requirement that the insurance plan for the Unit be on the same basis as provided to all other employees.

In addition to changing a major component of the insurance provisions previously negotiated without any rationale for doing so, the final offer also contravenes factors which are normally and traditionally taken into account in impasse procedures. First, since differences in employee benefits such as insurance undermine employee morale, internal comparability in matters such as insurance is preferred. While a bargaining unit may secure through negotiation or through impasse procedures particular language pertaining to employee *participation*, a proposal which specifically differentiates the insurance *plan* for a unit from that provided to other employees ought not to be sustained. Insofar as the Township proposal eliminates the requirement that the insurance made available to this unit be the same as insurance coverage provided to non-unit employees, the offer cannot be sustained.

Second, it is generally recognized that when appropriate, a conciliator will afford due deference to the recommendations of the fact-finder. The fact-finder in this instance opined that the “Trustees have not provided a compelling enough argument to warrant imposing a mandatory minimum contribution of 15% toward the cost of the total health care package” (Fact-finding Report and Recommendations, p.11). Similarly, this conciliator is not persuaded that the evidence elicited sustains the position of the Township on Insurance.

Finally, the conciliator notes, as did the fact-finder, that the proposal of the Township is the equivalent of a wage deduction for this unit. While the data previously discussed in the analysis of financial evidence justifies a cautionary approach to financial matters, there is no financial evidence that would justify imposing on this unit a more burdensome insurance contribution than that imposed on any other employee.

Accordingly, the offer of the Association on Article 16, Section 16.1 is awarded.

Article 24 Wages, Section 24.1 (2011)

Relying upon the retroactivity waiver entered into by the parties, the Association seeks a 1% increase in wages for the bargaining unit effective April 17, 2011. The Township proposal is a wage freeze (0%). At fact-finding the neutral recommended for the first contract year a \$500 lump sum payment not rolled into the base wage. In a foot-note to the recommendation included in his well-reasoned report, the fact-finder indicated that the lump sum payment would provide “an earnings enhancement to offset the potential increase in health care costs absorbed by the employees” (Fact-finding Report, p. 8). Since, however, the conciliator is constrained by statutory limitations and the potential employee health care costs recommended by the fact-finder may not be implemented until January 1, 2012, the traditional deference to the recommendations of the fact-finder for the 2011-2012 year is less apt and the issue must be resolved on the basis of other criteria.

For the first year of the contract, the conciliator cannot justify treating this unit differently from other units. Every other Township employee, including two of the law enforcement units, has either agreed to or been given a wage freeze. Financial data establishes the Township is emerging from the effects of 2008 and 2009 and the recovery ought to be sustained by the “cautious” approach recommended by the fact-finder.

Accordingly, the conciliator sustains the position of the Township and awards a wage freeze for the first contract year.

Article 24: Wages, Section 24.2 (2012)

As indicated in the preceding discussion, in year two the Officers may be assessed a health insurance contribution, the cost of which is the equivalent of a 1% salary deduction. To offset this possible cost and to maintain current income, the conciliator awards an amount which the Township has the ability to pay. The financial evidence reviewed above indicates the Township can finance this modest increase. By 2012, the Patrol Officers ought to begin to benefit from the levy passed in 2009 to fund safety services. While other units will not experience a wage increase, it is important to note that these units have negotiated a re-opener for the final year of the current contracts. These bargaining units may, in fact, negotiate wage enhancements that Patrol Officers will not realize.

Effective April 5, 2012, the conciliator awards a 1% increase for patrol officers

Article 24: Wages, Section 24.3 (2013)

The Association proposes a 1% increase in wages effective April 4, 2013 while the Township seeks a wage reopener. The Township points out that the other police units have agreed to a wage reopener and this unit ought to receive the same. While wage re-openers are useful in uncertain economic times, in this particular case the conciliator believes a wage re-opener will not be effective or useful.

The matter now pending has been and continues to be the subject of litigation. Both the Township and the Association have expended resources and effort in preventing conciliation and in bringing this matter to hearing, respectively. To suggest that in less than two years time, the parties should begin the process again is a disservice to the community served by the Association and not in the interest and welfare of the public.

The strident bargaining history of this particular unit for this three year contract suggests that finality is warranted. Labor stability is a component of a thriving community and labor peace is, in fact, a matter of national public policy. Thus, in addition to considering the public welfare, the conciliator has noted that the quality and characteristics of the most recent negotiations require a resolution in determining wages for the term of this labor agreement. The proposal of the Association compared with that of the Township satisfies the criterion of bargaining history.

Finally, for the reasons previously addressed, the conciliator is of the opinion that the Township has the ability to finance a 1% wage increase. By reason of the 2009 levy, there are sufficient funds to enable the Township to make this wage adjustment through the contract term without jeopardizing the solvency of the General Operating Fund. Accordingly, the position of the Association is awarded for year three of the contract.

Article 34: Duration

Insofar as the parties have agreed to the Association proposal on Duration, the conciliator awards that language without discussion (see Appendix C).

Award

The Conciliator awards as follows:

- Issue 1: Article 13, Hours of Work and Overtime, Section 13.1: The position of the Association;
- Issue 2: Article 13, Hours of Work and Overtime, Section 13.6: The position of the Association;
- Issue 3: Article 16, Insurances, Section 16.1: The position of the Association;
- Issue 4: Article 24, Wages, Section 24.1: The position of the Township;
- Issue 5: Article 24, Wages, Section 24.2: The position of the Association;
- Issue 6: Article 24, Wages, Section 24.3: The position of the Association;

As stipulated by the parties, Article 34, Duration, shall be the proposal of the Association.

Margaret Nancy Johnson
Conciliator

Dated and made effective in Union Township, Clermont County, Ohio, this 21st day of June, 2011.

Service

A copy of the foregoing award has been served this 21st day of June, 2011, via e-mail on: lbarbiere@smbplaw.com; jessupgage@hllmlaw.com; and Russell.Keith@serb.state.oh.us; and by express mail upon R. Jessup Gage, Esq., Hardin, Lazarus & Lewis, 915 Cincinnati Club Building, 30 Garfield Place, Cincinnati, Ohio 45202; and Lawrence E. Barbieri, Esq., Schroeder, Maundrell, Barbieri & Powers, 5300 Socialville-Foster Road, Suite 200, Mason, Ohio 45040.