

**Received Electronically @ SERB May 25, 2012 10:15am
STATE EMPLOYMENT RELATIONS BOARD**

CONCILIATOR'S AWARD

IN THE MATTER OF:

CITY OF OLMSTED FALLS

AND

OHIO PATROLMEN'S BENEVOLENT ASSOCIATION

Case Number: 10-MED-10-1535 (Sergeants)

Before Conciliator: Thomas J. Nowel

PRESENTED TO:

Edward Chyun
Littler Mendelson, P.C.
1100 Superior Ave., 20th Floor
Cleveland, Ohio 44114
echyun@littler.com

Daniel J. Leffler
Ohio Patrolmen's Benevolent Association
10147 Royalton Road, Suite J
North Royalton, Ohio 44133
Dj_leffler66@yahoo.com

Donald M. Collins, General Counsel
State Employment Relations Board
65 East State Street, 12th Floor
Columbus, Ohio 43215
med@serb.oh.us

Thomas J. Nowel was appointed to serve as Conciliator in the case as captioned on the cover page by the State Employment Relations Board on February 13, 2012 in accordance with Ohio Revised Code Section 4117.14 (D) (1). Hearing was conducted on May 10, 2012 and was held at Olmsted Falls City Hall.

The previous collective bargaining agreement expired on December 31, 2010, and the parties engaged in negotiations during 2011 for a successor agreement. The OPBA represents five bargaining units at the City of Olmsted Falls including full time patrol, part time patrol, full time dispatchers, part time dispatchers and Sergeants. The Sergeants' bargaining unit is the subject of this conciliation case. There are three employees in this bargaining unit. Historically, three OPBA bargaining units have come to the bargaining table together to negotiate successor agreements with the City, full time dispatchers, full time patrol and Sergeants. This pattern was repeated in 2011 although evidence indicates that the Sergeants' bargaining unit representative was not present at all negotiating sessions. Historically, the content of the three collective bargaining agreements representing these full time units is essentially the same or similar. The recent negotiations resulted in successor agreements for the dispatcher unit and patrol unit. The Sergeants' unit proceeded to fact finding. Fact Finding hearing was held on October 19, 2011, but the resulting Report and Recommendation failed to resolve negotiations between the Sergeants' bargaining unit and the City. The impasse was moved to the conciliation process.

The City of Olmsted Falls is a residential community in Cuyahoga County with approximately 9,000 citizens. The City employs thirty-eight full time employees and sixty part time employees. The City's revenue is derived mainly from income tax and property tax.

Those participating at hearing for the City include the following:

Edward Chyun, Attorney
Jeffrey Moyle, Attorney
Robert Blomquist, Mayor
Kimberly Sperling, Finance Director

Those participating at hearing for the Union include the following:

Daniel Leffler, Attorney
Sergeant Kim Flood

BACKGROUND

In analyzing the positions of the parties regarding each issue at impasse and then selecting one of the final offers, the Conciliator is guided by the principles which are outlined in ORC Section 4117.14 (G) (7) (a-f).

1. The past collectively bargained agreement between the parties.
2. Comparison of the issues submitted to fact finding 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. Other factors, not confined to those listed above, which are normally or traditionally taken into consideration in 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.

In addition to the above principles, the Report and Recommendation of the Fact Finder in this case is given consideration in respect to the issues submitted at Conciliation.

During the course of the hearing, the parties had full opportunity to advocate for their positions; present testimony; submit exhibits; cross examine witnesses; and engage in rebuttal of the submissions and arguments of the other party. Prior to the commencement of the hearing, the Conciliator suggested that the parties attempt to mediate the dispute. They did so in good faith, but issues at impasse went unresolved and the hearing then commenced.

Issues at impasse include the following:
Article 19, Overtime and Call-In
Article 24, Other Benefits (Health Insurance)
Article 24, Other Benefits (Uniform Allowance)
Article 25, Benefit Time
Article 28, Duration

POSITION OF THE CITY

The City states that its position in Conciliation is based on budgetary constraints and fairness to other city employees. Historically the full time patrol bargaining unit, full time dispatcher unit and Sergeants' unit bargained together and

resolved negotiations with the same basic package. Negotiations for the most recent renewal agreements commenced in the same manner. The three units came to the bargaining table together with the understanding that all groups would walk away from the table with the same settlement. The representative of the Sergeants' unit stated that the overall settlement would be acceptable to her constituency as long as the 12% pay differential for Sergeants was maintained, but, when the patrol and dispatch units reached settlement with the City, the Sergeants' unit rejected the negotiated package and proceeded to fact finding on a number of economic issues. The Mayor, who was the City's chief negotiator, testified that the representative of the Sergeants' bargaining unit failed to attend most of the bargaining sessions, but she had assured the City's bargaining team that the overall settlement package would be acceptable. The City argues that it cannot offer a more generous contract to three Sergeants when all other units at the bargaining table settled. The City also argues that it cannot meet the economic demands of the Sergeants' bargaining unit due to budgetary constraints.

City Finance Director Sperling testified that the City's General Fund budget for 2012 faces a \$275,000.00 deficit (City Exb. 5). The City operated at a deficit of \$373,638.58 in 2010. General Fund revenue includes the city income tax, property tax and monies from fees and permits. Sperling testified that it will be necessary to utilize reserve carry-over funds to cover the deficit, and there is only \$750,000 in this fund. The City states that, at the current level of spending, the reserve fund may be depleted in a few years. Expenditures have exceeded revenue for the past three years. Expenditures for the Police Department have consistently increased over the

past five years (City Exb. 6). Two police levies generate funds to support the department and assist in financing police pensions, but funds generated by the levies represent a small fraction of the revenues required to fund the Department. The General Fund will subsidize the police budget with \$1,183,999.00 in 2012.

As with other political subdivisions in Ohio, the City of Olmsted Falls is suffering a significant loss of state funding. City Exhibit 4 illustrates the loss of local government funds between 2011 and 2012. Funding from the estate tax will be eliminated in 2013. The City states that property taxes, which support the General Fund, are being reduced by 8%.

The City states that there will be a five percent increase in its cost for employee health care in 2012. Its proposal at Conciliation is moderate but results in needed savings (City Exb. 13). The City argues that only one of three bargaining unit members would see an actual increase in premium share. So it is unclear why this bargaining unit rejected the City proposal. The three full time OPBA bargaining units have accepted the City's proposal as have the Unions representing the Fire and Service Departments, and all non-bargaining unit employees participate in the City's modified premium cost sharing plan. The City participates in the Cuyahoga County group health care plan which has been successful in moderating premium increases, and, as a result Olmsted Falls employees have experienced an improvement in benefits especially in the area of deductibles.

The City states further that its proposal regarding overtime computation is reasonable and is a reflection of what the collective bargaining agreement actually provides in any event. The City's proposal falls in line with the Fair Labor Standards

Act (FLSA), and the other OPBA full time units have agreed to the City's proposal. The City states that the Sergeants' bargaining unit wishes to be treated in a manner that is not consistent with other units of the City. All other participants in the combined OPBA negotiations accepted the City's proposal.

The City's proposal regarding Benefit Overtime is fair and reasonable. This proposal, when extended to all employees in the Police Department, results in a savings of \$13,727.88. As with other City proposals, the other OPBA full time bargaining units have accepted this modification.

The City's proposal on the manner in which it provides the uniform allowance has also been accepted by the other OPBA bargaining units, but the Sergeants' wish to be treated in a manner which is not logical. Instead of agreeing to an increased lump sum payment, the Union wishes to maintain status quo in that Sergeants submit individual bills for each item purchased up to a cap of \$900.00 annually. The City argues that the Union's proposal is based on the premise that employees do not wish to have its uniform allowance taxed. But the City states that the IRS has recently declared that the current system will result in the taxing of this benefit in any event (City Exb. 18) which makes the Union's resistance nonsensical.

The City counters the Union argument that administrative employees received significant increases in pay during this period of reduced economic stability. The pay increases have been "catch-up increases" including lump sum payments which were granted when administrators did not receive the same increases which had been granted to unionized city employees.

Finally the City has proposed a “loser pay” provision for future fact finding and conciliation procedures between the parties. The City argues that this proposal, if adopted by the Conciliator, would force the parties to approach negotiations more seriously and would aid in achieving settlement prior to the various dispute resolution mechanisms.

The City requests that the Conciliator adopt its positions at Conciliation especially in light of all other full time bargaining units having accepted the same proposals which are at impasse here.

POSITION OF THE UNION

The Union states that the City granted administrative employees significant pay increases including lump sum payments over the last few years. The Finance Director and Assistant Finance Director each received 7.8% or more increases including \$3000.00 in lump sum payments. The wages of the Chief of Police increased 14% from 2008 to 2012. While the City expects bargaining unit employees to take less, it rewards some non-bargaining unit employees with greater pay increases during a time of fiscal constraint. The Union argues that the Conciliator must take note of this lack of consistency and the unfairness it creates. The Union states that projected General Fund deficits would be reduced if the City had not been so generous with certain members of its administrative staff. At the same time, Sergeants received wage increases of 3% in 2009, 2% and a lump sum payment in 2010, a lump sum payment in 2011 and a 1.5% increase for 2012 (Un. Exb. 5).

The Union argues that the financial picture is not as bleak as portrayed by the City. Income tax revenues increased in 2011, and the budget finished the year in the black with a surplus of \$191,908.35 (City Exb. 5). The Union states further that an increase in police levy funds will result in a smaller deficit in 2012 than that projected by the City (Un. Exb. 6). The Union also challenges the accuracy of the Finance Director's approach to the budget based on media reports that indicate that Olmsted Falls records are "unauditable" as determined by the State of Ohio (Un. Exb. 7). The Union suggests that the Conciliator should take note of this when considering the credibility of the financial picture as illustrated by the City.

The Union states that the assets of the City exceed liabilities by \$25,630,002 (Un. Exb. 8, pg. 6). While this includes all assets such as buildings and property, the City cannot argue an inability to pay in its negotiations with the Union. The concessions on the table cannot be justified when the entire financial picture is considered.

The Union argues that it came into negotiations seeking a status quo contract renewal with the exception of a proposal concerning benefit overtime. While the City suggests that the Sergeants' bargaining unit agreed to accept whatever the patrol and dispatcher units bargained, this is not true. Sergeant Flood stated to the Mayor that her unit would not agree to the same package as accepted by the other groups. Sergeant Flood did not discuss the progress of negotiations with representatives of the patrol and dispatcher units.

The Union states that the City's proposal on overtime is not in keeping with past practice. Active pay status and work time have always included sick leave,

vacation, personal leave and compensatory time. When the City unilaterally changed the practice, the Union was successful in challenging the action through the grievance procedure. Various paid leaves continue to count as active pay status for overtime purposes for Fire Department employees. The Fire Department collective bargaining agreement mirrors the Sergeants' proposal at Conciliation in this area.

The Union proposes that the current premium sharing for health insurance be maintained at its current level. There is no reason to increase employee costs in this area. The City is clearly able to afford the status quo. Although wages are not an issue in this case, it is important to note, when considering the employee cost of health care, that the pay for Sergeants in Olmsted Falls ranks near the bottom of the list of comparable city jurisdictions in Cuyahoga County and surrounding areas (Un. Exb. 12).

The Union states that the City's proposal to reduce Benefit Overtime to 40 hours is unreasonable. This benefit was reduced from 80 hours to 64 hours a number of years ago. The Sergeants should have the right to work overtime shifts in lieu of part time employees, and the City's estimate of savings in this area has been over-estimated because one bargaining unit member does not utilize this benefit.

The Sergeants' bargaining unit prefers the current system regarding uniforms. The system has worked well, and administrative employees are able to administer the program effectively and efficiently. The Union states that there is no cost savings based on the City's proposal.

Finally, the Union opposes the City's proposal regarding loser pay in fact finding and conciliation. This proposal was introduced late in negotiations and just

prior to fact finding. The Ohio Revised Code defines the procedure in that the parties share equally in this cost. It would be burdensome for a fact finder or conciliator to determine who won or lost when multiple issues are submitted for determination.

The Union requests that the Conciliator accept its proposals as final settlement for the Sergeants' collective bargaining agreement.

DISCUSSION AND AWARD

The Conciliator must select the final offer of one of the parties, and in doing so is guided by ORC Section 4117.14 (G) (7) (a-f). Therefore the history of bargaining is a critical factor. Evidence clearly shows that the three full time OPBA bargaining units have bargained together for past collectively bargained agreements and accepted the same settlement terms, and they came to the table together again during the most recent negotiations. The City legitimately assumed that the terms and conditions achieved at the bargaining table for the new Agreements would be extended to all three bargaining units. The assertion that the Sergeants' unit did not communicate with the other two full time police department bargaining units regarding settlement issues seems difficult to understand as all are members of the OPBA with legal staff from the Union representing all three at the bargaining table.

In addition, internal comparables are critical to the decision of the Conciliator as they are in fact finding. Neutrals are hard pressed to recommend or award terms and conditions for one small unit which run contrary to those of all or most other units of the Employer. The statute does not anticipate this. The

settlement achieved by the full time patrol unit and full time dispatch unit establishes a benchmark in fact finding and conciliation unless there is some extraordinary reason to consider alternative approaches, and the Union was not convincing that there was a compelling reason to deviate from the other settlements. In addition, the collective bargaining agreements representing Fire Department and Service Department employees mirror the settlements achieved by full time patrol and dispatch units and the proposals of the City in the Sergeants negotiations. It is difficult to develop an award at conciliation that differs from the established City-wide pattern in this case unless there is a defined inequity in the collective bargaining agreement. The fact that the OPBA represents the other police department bargaining units is critical to this decision. Additionally, non-represented employees at the City are generally provided with the same benefits that have been proposed for the Sergeants. One comment is appropriate regarding the wage increases for certain administrators which became an area of contention between the parties at hearing. Even the appearance of substantial wage increases and lump sum payments for certain administrative employees challenges the credibility of a management bargaining team which is seeking cost savings at the bargaining table during a time budgetary constraint. It was inconclusive from testimony and documents at hearing whether the wage increases of certain administrators were “catch-up” or excessive, but the negative symbolism was apparent.

Another factor for consideration by the Conciliator is the Report and Recommendation of the Fact Finder which becomes a guide for the Conciliator

unless new information becomes evident following the Fact Finding hearing. In this case, the Recommendation of the Fact Finder is important and cannot be dismissed.

Finally, the City provided sufficient evidence that its finances are not stable, that a deficit is still a probability by the end of 2012 and the reserve carry-over fund is not sufficient as a long term safety net at this time. This is a time for fiscal constraint, but it must be noted that, during this time of belt tightening, the parties have still agreed upon small wage increases during the term of this new Agreement. Wages are not an issue in this conciliation process.

During these proceedings, the Sergeants' Union was referred to as "rogue," "selfish" and "greedy." These comments are not conducive to a productive collective bargaining process and the continuing relationship between the parties. The nature of collective bargaining is at times confrontational and difficult, but respect is critical to success now and in the future. As employees, the Sergeants' service to the City is stressful, dangerous at times and dedicated. It is recommended that the parties engage in a dialogue that involves mutuality as soon as possible.

The award regarding each issue at impasse is as follows:

Article 19, Overtime and Call-In

City: The City proposes to define hours of work for purposes of overtime calculation as hours actually worked. The City also proposes to define that there is no pyramiding and duplicating of overtime.

Union: The Union proposes to define hours worked for overtime calculation to include vacation, personal time, compensatory time, holidays and earned time.

Award: The proposal of the City is adopted. The current Agreement does not include non-work time. This proposal is consistent with the other OPBA Agreements. The Article shall read as follows.

Article 19 – Overtime and Call-In

Section 1. Employees shall be compensated at the rate of one and one-half (1-1/2) times their regular base salary rate of pay for all hours of work over eight (8) in any twenty-four (24) hour period or over forty (40) in any one work week. During the period of this Agreement each employee shall work a tour of duty which shall be assigned by the Chief of Police or his Representative. These assignments shall be posted in advance for a thirty (30) day period and given to each employee.

Section 2. Employees called to duty at times other than immediately before or after a shift shall be paid a minimum of two and one half (2 ½) hours' pay, or the actual time worked, whichever is greater, at time and one-half

Section 3. Except as expressly provided herein, pyramiding and duplicating of overtime and all other forms of premium payments are prohibited. Hours for which overtime or premium payments are made shall not be used to compute overtime or premium pay for any other hours. All hours actually worked at the regular base salary rate of pay in one work week are counted toward the forty (40) hours in one week. Hours paid, but not actually worked, will not be counted towards the forty (40) hours in one work week. If an employee is eligible for pay under both Section 1 and Section 2 of this Article, that employee shall receive pay under the section which provides greater compensation.

Article 24 – Other Benefits, Section 1. Health Insurance

City: The City's final offer reflects a modest increase in the employee share of the health care premium raising the cap from \$95 to \$120.00 for the Metro Plan and from \$95 to \$150.00 for the Medical Mutual Plan. Employee share remains at 10% in 2012 and increases to 12% in 2013.

Union: The Union opposes the increase in employee premium cost and proposes current contract language from the previous collective bargaining agreement.

Award: The proposal of the City is adopted. It is consistent with the other OPBA Agreements. The Article shall read as follows.

Article 24 – Other Benefits

Section 1. Health Insurance. The City will provide each employee and their family with coverage under a group health insurance policy, underwritten by an insurance carrier as determined by Council. Said insurance shall include hospital, surgical, prescription, optical and dental coverage.

Each bargaining unit will appoint one (1) representative by January 15 of each year and the City will appoint two (2) Council Members to serve on an Advisory Committee which will be chaired by the Mayor. The objectives of the Advisory Committee shall be to review the City's health care program and make recommendations for health care specifications prior to the time the City advertises for bids, and after bids are received, to review the bids and make a recommendation as to the plan that should be selected by Council at least sixty (60) days prior to the expiration of the existing health care contract(s) and before Council makes its final decision. The goals of the Advisory Committee's recommendation to Council shall

be two-fold, both being given equal consideration. The first goal is to minimize the expense to the City of the plan to be adopted, and the second is to maintain the level of benefits to the employees when comparing the plan that is to be adopted with the existing plan.

Effective January 1, 2012, each employee enrolled in the Base Plan Option (currently MetroHealth) shall contribute ten percent (10%) per month of the actual cost of their monthly premium charged to the City by its insuring agency, with a maximum contribution of \$120 per month. Each employee enrolled in Premium Plan Option (currently Medical Mutual) shall contribute ten percent (10%) per month of the actual cost of their monthly premium charged to the City by its insuring agency, with a maximum contribution of \$150 per month. The City will provide the actual cost to each employee in a private manner.

Effective January 1, 2013, each employee enrolled in the Base Plan Option (currently MetroHealth) shall contribute twelve percent (12%) per month of the actual cost of their monthly premium charged to the City by its insuring agency, with a maximum contribution of \$120 per month. Each employee enrolled in the Premium Plan Option (currently Medical Mutual) shall contribute twelve percent (12%) per month of the actual cost of their monthly premium charged to the City by its insuring agency, with a maximum contribution of \$150 per month. The City will provide the actual cost to each employee in a private manner.

For calendar year 2012 and 2013, the city shall provide at least one (1) Base Plan Option.

Article 24 – Other Benefits, Section 4. Uniform Allowance

City: The City's final proposal is to eliminate the approval and administration of reimbursement for use of \$900 uniform allowance and increase the payment to a \$1026.00 annual lump sum payment.

Union: The Union proposes to maintain the \$900 status quo process of reimbursement.

Award: The proposal of the City is adopted. It is consistent with the other OPBA Agreements. The Article shall read as follows.

Article 24 – Other Benefits

Section 4. Uniform Allowance

A. Employees shall receive a uniform allowance in the amount of \$1026 to be used by the employees to comply with the uniform code. However, no Sergeant will receive more than one (1) uniform allowance from the City of Olmsted Falls in any one (1) year. The City will provide one (1) duty weapon and one (1) off-duty weapon for each full-time and part-time employee during their tenure with the City. The off-duty weapon will be either a revolver or semi-automatic pistol of .38 caliber or greater as selected by the employee.

B. The City will furnish at its expense the first issue of any required uniform, leather gear, and safety equipment, including bicycle gear. A police style leather jacket is not a required uniform. The City will also furnish the first issue of any required uniform change to full time and part time employees at no cost to the employees.

C. The City will upon hiring provide to each full-time employee a fitted, high quality bulletproof vest of the brand and type requested by the officer and not to be less

than a Level 2A threat and not to exceed average costs. The City shall replace the vest every five (5) years, or in accordance with the manufacturer's specifications, whichever is longer.

D. The City will repair or replace at its expense eyeglasses or contact lenses that are damaged in the course of duty. This clause will not cover items damaged due to the officer's negligence.

Article 25 – Benefit Time

City: The City's final offer is to reduce benefit time from sixty-four (64) to forty (40) hours per year.

Union: The Union proposes to maintain current contract language.

Award: The proposal of the City is adopted. It is consistent with the other OPBA Agreements. The Article shall read as follows.

Article 25 – Benefit Time

Benefit time is the overtime caused by employees' use of vacation, personal or earned time off. The City agrees to offer all benefit overtime worked by bargaining unit employees (Sergeants), to other bargaining unit employees (Sergeants) at the rate of one and one-half (1 ½) the employee's regular hourly rate of pay. No bargaining unit employee (Sergeant) will work more than forty (40) hours of benefit time per year. Additionally, bargaining unit employees will not work more than forty-eight (48) hours per week with one double-back shift per week permitted provided that the employee is off eight (8) hours between shifts.

Article 28 – Duration

City: The City’s final proposal is to modify the Duration article to require loser pay for future fact finding and conciliation costs.

Union: The Union opposes the City’s proposal and proposes to maintain current language except to modify dates to reflect a three year Agreement.

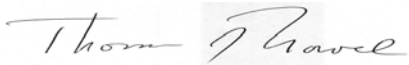
Award: The Union’s proposal is adopted. Current language is maintained in Article 28 except to change dates to reflect the new three year collective bargaining agreement. ORC Section 4117.14 (G) (12) states the following. “The parties shall bear equally the cost of the final offer settlement procedure.” It requires mutual agreement of the parties to deviate from the dispute settlement procedures which are outlined in the statute. The Conciliator is unable to consider the City’s final offer proposal.

CONCLUSION

After review of the pre-hearing statements of the parties, all facts presented at hearing, all exhibits and testimony presented at hearing, and the Report and Recommendation of the Fact Finder, the Conciliator has developed the Award as contained in this report. In addition, the Conciliator has given consideration to the positions taken by each party regarding the issues at impasse and to the criteria enumerated in Ohio Revised Code Section 4117.14 (G) (7) (a-f).

In addition to the Award contained in this report, all unopened articles and all tentative agreements reached by the parties, are hereby included in this Award by reference.

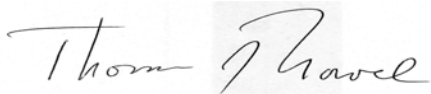
Respectfully submitted and issued at Cleveland, Ohio this 25th Day of May, 2012.

A handwritten signature in cursive script that reads "Thomas J. Nowel". The signature is written in black ink on a light-colored background.

Thomas J. Nowel
Conciliator

CERTIFICATE OF SERVICE

I hereby certify that on this 25th Day of May, 2012, a copy of the foregoing Award of the Conciliator was served upon Edward Chyun, representing the City of Olmsted Falls; Daniel J. Leffler, representing the Ohio Patrolmen's Benevolent Association; and Donald M. Collins, General Counsel, State Employment Relations Board, by way of electronic mail.

A handwritten signature in cursive script that reads "Thomas J. Nowel". The signature is written in black ink on a light-colored background.

Thomas J. Nowel
Conciliator