IN THE MATTER

OF

CONCILIATION

BETWEEN

CITY OF VANDALIA, OHIO

AND

OHIO PATROLMENS BENEVOLENT ASSOCIATION

Date of Hearing:	March 29, 2012
Location:	City of Vandalia; Administration Offices
Case No.:	11-MED-07-0986
Date of Award:	April 11, 2012
Finding:	The City's Amended Position on the single issue presented is adopted.

Union Representative:

Joseph M. Hegedus
OPBA
92 Northwoods Blvd., Suite B-2
Columbus, Ohio 43235
jmhege@sbcglobal.net

City Representative:

Daniel G. Rosenthal
Denlinger, Rosenthal & Greenberg Co., LPA
425 Walnut Street, Suite 2300
Cincinnati, Ohio 45202
Rosenthal@drgfirm.com

CONCILIATION AWARD

Michael Paolucci
Conciliator

Administration

By letter dated February 22, 2012, from Donald M. Collins, the General Counsel with the State Employment Relations Board (SERB), the undersigned was informed of his designation to serve as Conciliator in a procedure as mandated by R.C. 4117.01, et al., more specifically R.C. 4117.14(D)(1). On March 29, 2012, after mediation was attempted but was unsuccessful, a hearing went forward in which the Parties presented testimony and documentary evidence in support of positions taken. The record was closed upon the submission of final arguments and the matter is now ready for a Conciliation Award.

Resolved Issues

Prior to the hearing, the Parties were able to reach agreement on numerous issues. These agreed to issues are incorporated herein as being part of this Conciliation Award, and are made a part hereof by reference. They are not more specifically addressed.

Unresolved Issues presented

The following issue was presented for conciliation:

1. Article XVI – Overtime.

* * *

Under R.C. 4117.14(E) & (G)(7), a Conciliator is required to give consideration to certain factors in choosing between the Parties'proposals, on an issue-by-issue basis. That statute reads as follows:

> (e) The board shall prescribe guidelines for the fact-finding panel to follow in making findings. In making its recommendations, the fact-finding panel shall take into consideration the factors listed in divisions (G)(7)(a) to (f) of this section.

* * *

(G)(7) After hearing, the conciliator shall resolve the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the party's final settlement offers, taking into consideration the following:

(a) Past collectively bargained agreements, if any, between the parties;
(b) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
(c) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
(d) The lawful authority of the public employer;
(e) The stipulations of the parties;
(f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

* * *

The remaining unresolved issue will be determined by giving consideration to all of the necessary statutory elements, and thereafter choosing between each of the Parties'last best offer on the issue.

Factual Background

The Employer is the City of Vandalia, Ohio; its six (6) Sergeants are represented by the Union. The City is a suburban area north of Dayton, Ohio. In addition to the Sergeants, the Union also represents the Patrol Officers in a different bargaining unit, and the bargaining for both units has been mostly a parallel negotiating history.

This case involves one (1) issue –the overtime provision. Some history is required to completely understand the dispute. The Sergeants had historically worked a 6/3 work schedule, i.e. six (6) days on, three (3) days off. Overtime was paid for any time worked in excess of the "normal" workday or workweek.

In late 2009 the City determined that it had to address its financial downturn. Like many other cities in Ohio it had gone through a period of financial distress. The City cited its decline in revenue from year to year –an approximate $1.5 million reduction as evidence of its problem. The line item that is relevant here is the overtime costs. In 2009 the overtime costs for the entire patrol section (Patrol Officers *and* Sergeants) rose by about $40,000.00. In 2010 and 2011, although revenues rose from 2009, they were still down $660,000 from the 2008 level. The City approached all bargaining units seeking help in reducing costs.

This bargaining unit and the Patrol Officers bargaining unit agreed to a change in the method of calculating overtime to help address the financial strain. The City informed this bargaining unit that it was prepared to switch from a 6/3 work schedule to a 5/2. The City predicted that the change would provide 5% more coverage and would thus reduce its overtime burden. The Union objected and claimed that the schedule had been in place for a very long time –perhaps as long as thirty (30) years. The City believed it had the right to change the schedule, but because the Union objected, the City offered an alternative. It agreed to keep the 6/3 schedule if the Union would agree to change the overtime calculation to a Fair Labor Standards Act variation. Instead of overtime being calculated based on hours worked in excess of the "normal" schedule, it would be based on a twenty eight (28) day schedule, with 171 hours used as the base. Thus, an employee would only be paid overtime if they worked more than 171 hours within a twenty eight (28) day period.

In addition, for purposes of calculating overtime, when an employee uses any type of personal time-off during a period it is not counted toward the 171 hour calculation. Unless an employee actually works on the clock more than 171 hours, no overtime is due. The Parties have referred to this as the "FLSA Standard."

The Parties executed an amendment to the Agreement on December 15, 2009, that used the twenty eight (28)day/one hundred seventy one (171) hour overtime rate, and the Parties have worked under this arrangement since. In addition, the Patrol Officers have worked under the same standard. In addition to this change, the Chief changed the schedule such that overtime was reduced in other ways as well as the 171 overtime method.

When the Agreement expired the Parties entered the statutory required process for resolving impasses. By Factfinding Report dated February 2, 2012, the Parties received a series of Recommendations on issues then in dispute. Of these issues, only one (1) remained at the time of Conciliation. However, at the Conciliation Hearing, mediation was entered. As noted, mediation was not successful. Following mediation efforts, both Parties modified their respective Last Best Offer positions, and such is reflected below.

Contentions of the Parties And Award of the Conciliator

The following issue was presented at the hearing:

The City took the following position as its last best offer:

1. All tentative Agreements as recommended by the Factfinder remain, and are proposed as reflected in an e-mail from the City to the Union where merit pay, , conversion of sixteen (16) hours of vacation leave to personal days, Vacation Timing Requests, and Call-out provision were

recommended by the Factfinder (e-mail attached hereto);

2. The City increased its position on wage increases to a 2 ½%, 3%, and 3% general wage increase in each year of a three (3) year agreement and it increased the annual shift differential from $600 to $1,000. (These are higher than recommended by the Factfinder).

3. The City would maintain the overtime calculation based on the FLSA standard, and would use the same language as contained in the Patrol Officers'Agreement.

The Union took the following position as its last best offer:

1. The Union proposed adopting all Factfinder proposed issues.

Award

The resolution of the case comes down to a central argument -the Union wants deference to be given to the Factfinders'Report, and the City argues that deference is not deserved. The Union contends that the report was well reasoned; was within the exercise of reasonable discretion of the Factfinder; and that as a cogent analysis should be given great weight. It cites authority for the proposition that absent abuse of authority, the Factfinding Report should be found controlling. It also cites the absence of any external comparable where the FLSA standard has been used as evidence of its unusual character. The Union position is essentially that the agreement was a temporary one -it agreed to the FLSA only for the duration of the prior Agreement, and that it was the intent of both Parties that the standard would not be ongoing. It argued that it was expressly intended to expire with the expiration of the Agreement. The Union cites the Factfinder who rejected the *quid pro quo* argument of the City, as described below.

The City's position was that the impact of the Factfinder's Report would be that the City would have to administer two (2) overtime systems (the Patrol Officer's have the FLSA standard); that the costs of overtime could increase by as much as 40%; and that the Factfinding Report has inaccurate facts and a flawed analysis. It contends that the most powerful comparable is the internal one with the Patrol Officers who have agreed to the FLSA language. It argues that the history of negotiations shows that the Sergeants essentially followed the Patrol Officers; that they were an integral part of negotiations; and that they agreed that a *quid pro quo* was given in exchange for the FLSA standard, i.e. they were able to keep the 6/3 schedule. It contends that the Sergeants now want to keep the 6/3 schedule, but are not willing to agree to the FLSA standard that was provided in exchange.

The issue in this case is both straightforward, and difficult. The Union's argument is basically correct, absent a showing that the Factfinder was fundamentally incorrect on an issue, there is a preference for relying on the findings contained in a Factfinding Report for a conciliation award. The closer one's position is to the Factfinder, the more likely it should be that that position be adopted. This general preference provides stability to the process and has evolved as the Parties in collective bargaining have matured. It provides a standard that places authority and burdens on the Parties to reach agreement early rather than lengthen the process by unreasonable posturing.

The difficulty in this case is that the City's position would actually provide a greater benefit than the Factfinder's recommendation. The higher base wage offered, along with the ancillary benefits, would mean that this bargaining unit would benefit both immediately with a higher base wage, and over the long run with the impact of compounding the percentage increase through their careers. Although overtime benefit has an economic impact, it must be concluded that the higher

base wage and its long-term impact is of a greater value than that recommended by the Factfinder. Thus, the cited authority does not carry as much weight as the specific facts presented here. The City has stepped up its offer to exceed that of the recommendations, and therefore it must be found that it has more merit. Consequently, the City's last best offer must be adopted, and is hereby ordered.

Remaining Unaddressed Issues

All other issues not specifically addressed are ordered to be the Tentative Agreement.

Recommendations

The Award is as more specifically set forth above.

April 11, 2012
Cincinnati, Ohio

Michael Paolucci