

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

**CITY OF NILES
EMPLOYER**

and

**OHIO PATROLMEN'S BENEVOLENT ASSOCIATION
EMPLOYEE ORGANIZATION**

CASE NO. 11-MED-10-1555

CONCILIATOR'S AWARD

CONCILIATOR:

Philip H. Sheridan, Jr.
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FOR THE UNION:

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FOR THE CITY:

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CONCILIATION AWARD

STATEMENT OF CASE: The parties, the City of Niles, represented by Matthew J. Blair, Esq., and the bargaining unit, including all full-time employees in the classifications of lieutenant, and captain (nine total members), represented by Michael J. Hostler, Esq., counsel for the Ohio Patrolmen's Benevolent Association, have entered into negotiations for a contract between the parties to take effect January 1, 2012, and to expire December 31, 2014.

The parties have engaged in previous contract negotiations that have resulted in agreements. The parties attached a copy of the expired collective bargaining agreement.

The parties met and bargained in good faith, and were able to agree on all but six issues of the contract. The parties submitted the issues to fact-finding on April 12 and 16, 2012, which led to a fact-finding and recommendation October 12, 2012, which was rejected by the City. I was chosen to serve as conciliator and issue a binding conciliation award pursuant to R.C. 4117.14(G). The parties provided me with their positions more than five days before the hearing as required. At the conciliation meeting on January 9, 2013, the parties outlined their position on the remaining issues: Article XVI, Section 1, Vacations; Article XVI, Section 7, Payment for Unused Vacation; Article XX, Section 1, Clothing Allowance; Article XXIV, Section 1, Wages; Article XXIV, Section 3, OPOTA Re-Certification; and Article XXV, Section 3, Hospitalization Insurance Premium.

Pursuant to R.C. § 4117.14 and Admin.R. 4117-9-05, Philip H. Sheridan, Jr., 915 South High Street, Columbus, Ohio, was chosen as conciliator.

The meeting was convened at 10:00 a.m. at the Niles Administration Building. The matter was submitted upon statements and arguments presented to the conciliator.

According to the provisions of R.C. Chapter 4117, the parties provided me with the fact-finding award, a copy of the expired current contract, the issues which have been resolved, the unresolved issues, and each party's final offer on the unresolved issues.

In issuing this conciliation report, I have given consideration to the provisions of R.C. Chapter 4117, and in particular, the criteria contained within R.C. § 4117.14(G) (7) (a)-(f).

Article XVI, Section 1, Vacations.

The issue for determination is whether the City's proposed take back of one week of earned vacation from bargaining unit members with more than three years of service should be adopted.

THE CITY'S POSITION:

The City's last best offer is a proposed reduction in the calculation of earned vacation. The number of weeks earned by bargaining unit members with more than three years of service was increased by one week in the expired contract. The City claims this and several other concessions are needed because of the general decline in revenues and the rise in expenditures over recent years.

THE OPBA POSITION:

The bargaining unit's last best offer is the contract language contained in the expired contract, which adopts the fact finder's recommendation. The increased vacation was a part of a bargained for contract, which included a wage freeze.

AWARD

I have independently examined all of the information provided to me concerning this issue. The City claims it would save \$10,000 through this concession. The bargaining unit disputes the alleged savings to the City that would result from this reduction. The fact finder's recommendation on this issue is not arbitrary, erroneous or unreasonable, so I see no need to substitute my judgment for it. I award the last best offer of the bargaining unit, and adopt by reference the language in the expired contract.

Article XVI, Section 7, Payment for Unused Vacation.

The issue for determination is whether the City's proposed reduction in the number of weeks a bargaining unit member may "sell back" to the City from three weeks to two weeks. The number of weeks was increased in the expired contract from two to three weeks.

THE CITY'S POSITION:

The City's last best offer on a reduction in the payment for unused vacation is supported by its financial data, which demonstrate that the City continues to spend more than it receives, and that it is rapidly reducing its carry-over balance. The City claims that its overall economic analysis shows a crisis that must be dealt with. Finances were substantially different when the last contract was negotiated.

THE OPBA POSITION:

The bargaining unit's last best offer is the contract language contained in the expired contract, which adopts the fact finder's recommendation.

AWARD

I have independently examined all of the information provided to me concerning this issue. The fact finder's recommendation is not arbitrary, erroneous or unreasonable, so I see no need to substitute my judgment for it. As the fact finder aptly stated: "...it should be underscored that the various „concessions“ which the City seeks were negotiated into the 2009 Agreement between the parties. To recommend any one or more of these concessions, in my judgment would be extremely unwise. Beside the highly demoralizing impact on Union members with respect to contractual benefits which were negotiated into the most recent Agreement between the parties, I find no basis to establish that a fiscal crisis in the City exists, at the present time or near future, which requires such drastic action." I award the last best offer of the bargaining unit, and adopt by reference the language in the expired contract.

Article XX, Section 1, Clothing Allowance.

The issue for determination is whether the City's proposed reduction in the annual clothing allowance from \$1,050.00 to \$750.00 should be adopted.

THE CITY'S POSITION:

The City's last best offer is the proposed reduction, which takes back the increase negotiated in the expired contract.

THE OPBA POSITION:

The bargaining unit's last best offer is the fact finder's recommendation, which denied the City's proposed reduction.

AWARD

I have independently examined all of the information provided to me concerning this issue. The fact finder's general statement concerning concessions applies here as well. The fact finder's recommendation is not arbitrary, erroneous or unreasonable, so I see no need to substitute my judgment for it. I award the last best offer of the bargaining unit, and adopt by reference the language in the expired contract.

Article XXIV, Section 1, Wages

The issue for determination is whether the City's last best offer of a wage freeze for the term of the contract should be adopted, or whether the bargaining unit's last best offer of a wage reopener for 2013 and 2014 should be adopted.

THE CITY'S POSITION:

The City's last best offer is a continued wage freeze for the entire term of the contract. The City points to reduced population, the poor state of the local economy, and significant reductions in revenue for its position. Declining revenue from income tax and property tax, the repeal of the

estate tax, industrial closings, and soaring increases in health care costs are all factors submitted in support of its position. More specifically, the City relies on the substantial reduction in its annual carry-over balance to demonstrate its failure to hold General Fund expenses at or below General Fund revenues in the years 2008, 2009, 2010, 2011 and 2012 (based on preliminary, unaudited 2012 figures).

THE OPBA POSITION:

The bargaining unit's last best offer proposes wage reopeners for the years 2013 and 2014, which is the fact finder's recommendation. The bargaining unit last received a pay increase in 2008, and its position in initial bargaining was no changes in the contract with a wage reopener in 2013 and 2014. The bargaining unit has returned to its original position after proposing at fact finding an increase of 1% in the wage differential between patrol officers and lieutenants, and an increase of 1% in the wage differential between lieutenants and captains for 2012, in addition to its request for wage reopeners. The bargaining unit demonstrated its contribution to decreasing the expenses by pointing out the reduced personnel costs in 2012 as a result of a promotion and retirement.

AWARD

I have independently examined all of the information provided to me concerning this issue. Although the fact finder apparently lost his way in analyzing the evidence provided to him concerning the revenues and expenditures of the City, his recommendation of a wage reopener in 2013 and 2014 was based on his admitted inability to predict the City's future financial condition, and he also gave due deference to the City's evidence of decreased revenues and increased costs. The rapidly decreasing "rainy day fund" or carry-over balance is still at or above the recommended ratio to City expenditures. The cost of negotiation, fact finding and conciliation is fairly minimal even if the parties are unable to bargain to agreement. The fact finder's recommendation is not

arbitrary, erroneous or unreasonable, so I see no need to substitute my judgment for it. I award the last best offer of the bargaining unit, and adopt by reference its proposed language for Article XXIV, Section 1, which is on page 5 of the bargaining unit's Conciliation Statement.

Article XXIV, Section 3, OPOTA Re-Certification.

The issue for determination is whether to adopt the City's last best offer to remove the \$500.00 annual recertification payment, which was first implemented in the expired agreement.

THE CITY'S POSITION:

The City's last best offer to remove the \$500.00 OPOTA recertification payment is supported by the same argument made in support of the other concessions. The City believes its finances are in a crisis and that obtaining concessions from its bargaining units will help it to provide its services in a fiscally responsible manner.

THE OPBA POSITION:

The bargaining unit's last best offer is the contract language contained in the expired contract, which adopts the fact finder's recommendation of no change.

AWARD

I have independently examined all of the information provided to me concerning this issue. The fact finder's general statement concerning concessions applies here as well. The fact finder's recommendation is not arbitrary, erroneous or unreasonable, so I see no need to substitute my judgment for it. I award the last best offer of the bargaining unit, and adopt by reference the language in the expired contract.

Article XXV, Section 3, Hospitalization Insurance Premium.

THE CITY'S POSITION:

The City's last best offer is that the bargaining unit members pay for any increases in monthly hospitalization premiums after June 30, 2012. The immediate basis for the request is that

the City's insurance costs have risen even more than predicted, and the bargaining unit members currently enjoy the benefit without contributing to the monthly premium. The general evidence of expenditures exceeding revenues applies as well.

THE OPBA'S POSITION:

The bargaining unit's last best offer is no change in the insurance portion of the expired contract, which was the fact finder's recommendation. The bargaining unit argued that the City has not done enough to reduce health insurance costs, and has failed to listen to, let alone adopt, any of the recommendations of the joint insurance committee.

AWARD

I have independently examined all of the information provided to me concerning this issue. The fact finder's general statement concerning concessions applies here as well. The fact finder's recommendation is not arbitrary, erroneous or unreasonable, so I see no need to substitute my judgment for it. I award the last best offer of the bargaining unit, and adopt by reference the language in the expired contract.

CONCLUSION

The parties provided substantial information in a courteous and professional manner for my consideration. In addition to the awards above, I hereby include all unopened articles in the expired contract in the successor agreement. The effective beginning date of the agreement is January 1, 2012. The parties shall take the actions necessary to implement the agreement.

Respectfully submitted,

March 20, 2013

PHILIP H. SHERIDAN, JR.

CERTIFICATE OF SERVICE

I hereby certify that I forwarded a copy of this Conciliation Award to the parties' representatives by email to the addresses they presented, blairlatell@blairlatell.com; attyhostler@yahoo.com; and to the State Employment Relations Board, by email to MED@serb.state.oh.us. this 20th day of March, 2012.

PHILIP H. SHERIDAN, JR.