

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

**IN THE MATTER OF CONCILIATION
PROCEEDINGS BETWEEN:
Ohio Patrolmen's Benevolent
Association,
Employee Organization,
and
The City of Waterville, Ohio,
Employer.**

CONCILIATION AWARD

**Case Number:
11-MED-10-1598/1599
(Police Officers and Sergeants)**

DATE OF HEARING: November 2, 2012

PLACE OF HEARING: Waterville, Ohio

CONCILIATOR: Charles W. Kohler

DATE OF AWARD: December 31, 2012

APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:

Michelle Sullivan, Attorney at Law

FOR THE EMPLOYER:

B. Gary McBride, Attorney at Law

PROCEDURAL BACKGROUND

In April 2011, the City of Waterville, Ohio ("City" or "Employer") became certified as a "City" under Ohio law, based on the 2010 U.S. Census, which determined that the population of Waterville was at least 5000. Under the Ohio Collective Bargaining Law, employees of a City may obtain Union representation and engage in collective bargaining.

Waterville Police Officers formed two bargaining units. Both the Patrol Officers bargaining unit and the Sergeants bargaining unit selected the Ohio Patrolmen's Benevolent Association ("Union" or "OPBA") as its representative. On October 11, 2011, SERB certified the OPBA as the exclusive representative for both bargaining units.

The Patrol Officers bargaining unit currently has six members. The Sergeants bargaining unit currently has two members. The Sergeants bargaining unit also has one vacancy due to the recent retirement of a Sergeant.

On or about January 19, 2012, the City and the Union began multi-unit negotiations. As of the time of a fact-finding hearing on July 25, 2012, the parties had reached tentative agreements on most issues. Six unresolved issues were presented to the Fact Finder. These issues were Fair Share, Performance Evaluations, Shift Premiums, Longevity, Step System for Pay Increases, and Annual Wage Rates.

On August 3, 2012, the Fact Finder issued his Report and Recommendations. The seven-member City Council of the City of Waterville rejected the report. Both of the OPBA bargaining units accepted the report.

Since the Fact-Finding Report was rejected by one of the parties, the recommendations therein were not put into effect. The parties did not engage in any additional bargaining following the City's rejection of the Fact-Finding Report. On August 30, 2012, the undersigned was selected as the Conciliator for both bargaining units.

Both parties timely submitted pre-hearing statements to the Conciliator. The statements set forth their final offers on the unresolved issues. The Conciliator is required to select one of the final offers for inclusion in the collective bargaining agreement. The Conciliator has no authority to make any modifications in the final offers. Furthermore, the parties have not mutually agreed to waive the provisions of R.C. 4117.14(G)(11). Therefore, no wage increases or other provisions with cost implications can be effective prior to January 1, 2013.

Prior to the conciliation hearing, the Conciliator advised the parties that they had the right to have a court reporter present. Both parties waived their right to a court reporter. They agreed that the handwritten notes of the Conciliator would be the official record of the hearing.

Section 4117.14 of the Ohio Revised Code provides that the Conciliator must resolve the dispute by selecting, on an issue-by-issue basis, from the 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 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 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;

- (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.

RESOLVED ISSUES

Shift Premium

Prior to the conciliation hearing, the Union withdrew its Shift Premium proposal. Previously, the Union had proposed a \$.50 per hour shift premium for hours worked during the period from 4 PM to 8 AM. The City's final offer in conciliation was that no shift premium provision be included in the contract. Based on the Union's withdrawal of its proposal, and the City's position, **the contract will not include a provision for a shift premium.**

Creation of Step System

Currently, the City does not have a step system in place for police officers. However, both parties have included a step system for wages in their final offers. Therefore, **the Creation of a Step System is no longer an issue.**

UNRESOLVED ISSUES

At the conciliation hearing of November 2, 2012, the parties agreed that following issues were unresolved: Fair Share Fee, Performance Evaluations, Longevity, Wage Rates, and Duration.

Fair Share Fee

The Ohio Revised Code allows parties to include a provision in a collective bargaining agreement that requires all bargaining unit members who are not members of the Union to pay a "fair share fee." If a fair share fee provision is included in a collective bargaining agreement, the fee is automatically deducted from the paychecks of non-members of the Union.

Position of the Union

The Union points out that the Fact Finder recommended the inclusion of a fair share fee. The Union notes that it is required to represent all bargaining unit employees, even those who are not members of the Union. The Union argues that a fair share provision would prevent employees who are not members of the Union from obtaining the benefits of representation at no cost. Further, the Union argues that this is a provision that does not cost the Employer anything.

The OPBA also points out that 10 of the 14 similarly-sized cities in northwestern Ohio have a fair share provision in the collective bargaining agreement. In addition, all of the Toledo suburban cities have fair share fee provisions.

Position of the Employer

The City opposes the inclusion of the fair share fee requirement. It argues that all bargaining unit employees are members of the Union, and will be required to authorize Union dues to be deducted from their paychecks. Therefore, it asserts that there is no need for a fair share provision at this time. The City also points out that Bryan, which has a comparable population and a comparable number of police officers, does not have a fair share provision.

Discussion

The Fact Finder recommended the inclusion of a fair share provision. There is no evidence that anyone in the bargaining unit opposes such a provision. The Fact Finder observed that, in a small bargaining unit, working relationships could be damaged if some employees are able to obtain the benefits of Union representation at no cost.

The Conciliator notes that an overwhelming majority of cities in northwestern Ohio have a fair share fee provision in their collective bargaining agreements with police officers. Of the 21 comparable cities in the region, 17 have a contract with a fair share provision. Thus, over eighty percent of the cities require nonmembers of the union to pay a fair share fee.

The Conciliator observes that the Ohio Revised Code includes provisions that allow fair share payers to object to the amount of the fee if the employee feels that he or she is being required to pay a fee that exceeds that allowed by law. Further, there is also a provision that accommodates those who establish that they have a conscientious objection to the payment.

The Fact Finder recommended the fair share fee provision. None of the bargaining unit employees are opposed. A fair share fee does not impose any cost on the employer. The overwhelming majority of collective bargaining agreements in northwestern Ohio have such a provision. **Therefore, the Conciliator will adopt the Union's proposal for the inclusion of a fair share fee provision.**

Performance Evaluations

Historically, Waterville has used performance evaluations to determine pay rates for members of the Police Department. However, the final offers of both the City and the Union include a step system for wage increases. Although performance evaluations will continue to be important, there will no longer be a direct correlation between scores on performance evaluations and wage increases.

Position of the Union

The Union offers the inclusion of the contractual provision on performance evaluations recommended by the Fact Finder. The recommended provision includes a mechanism that allows an employee to raise an objection with the City Administrator. Further, it allows an employee to place a letter in his or her personnel file noting any objections to a performance evaluation. The Union's offer also includes a requirement that the City meet with the Labor-Management Committee to determine appropriate evaluation criteria.

Position of the Employer

The City's offer includes the language recommended by the Fact Finder together with one additional sentence. The Employer does not object to the requirement that it meet

with the Labor-Management Committee to discuss performance evaluation criteria. However, the City's offer includes additional language relative to the adoption of the final performance evaluation criteria. The additional language offered by the City specifies that labor-management discussions will not be binding on the City. Further, it specifies that the City's final determination of appropriate criteria will not be subject to the grievance procedure.

Discussion

The additional language included in the City's offer does not detract from the purpose of the contractual provision on performance evaluations. It merely clarifies the role of the labor-management committee. The Employer is rightfully concerned that the provision recommended by the Fact Finder could create some uncertainty as to whether the City has the right to make a final determination of evaluation criteria. It appears that the Union is seeking an opportunity to have input into the process. The additional language offered by the Employer will not prevent the Union from having input into performance evaluation criteria. The Union states that it is not contesting the right of the Employer to make the final decision on evaluation criteria.

The City has presented a well-reasoned argument for the inclusion of the additional language. **Therefore, the Conciliator will adopt the City's final offer on Performance Evaluations.**

Longevity

Both parties have presented similar final offers with regard to longevity pay. Essentially, both parties contend that, after an officer has completed five years of continuous

service, he or she is entitled to a payment of \$50.00 for each year of service. The Union's offer provides that:

Effective January 1, 2013, after employees have completed five (5) years of service, they shall receive an annual longevity payment in the amount of \$50.00 per year of completed service, which shall be paid the first pay period in December.

The City's offer provides that:

After employees have completed five (5) years of continuous service with the City, they shall receive an annual longevity payment in the amount of \$50.00 for each year, or part thereof, of service.

Eligibility and years of service shall be determined on the first day of January of each year. Payment will be made by separate check on the first payday of June of each year.

There is really no need for a lengthy discussion concerning longevity. Although the Union's offer specifies the beginning date for computing longevity pay, it is unclear as to the date upon which longevity is calculated in subsequent years. The City's offer clarifies that longevity determinations are made on January first of every year. **Therefore, the Conciliator accepts the final offer of the City with regard to longevity.**

Pay Day

In its position statement to the Conciliator, the City offered a provision specifying the method by which bargaining unit members will be paid. The Union presented no offer regarding this issue. **Therefore, the offer of the City will be included in the final collective bargaining agreement.**

Wages

Position of the Union

With regard to wage rates, the Union essentially asserts that wages should be increased because wages in Waterville are lower than in most comparable cities. The Union points out that, even though Waterville officers have lower pay rates, Waterville's financial position is in the top quartile financially among comparable cities. Further the Union notes that bargaining unit members did not have a wage increase in 2009, 2010 or 2011.

The Union points out that the current pay rates are misleading because no sergeant or patrol officer is at the top the range. Thus, the Union maintains that actual wages of Waterville police officers are in the lower half compared with wage rates in comparable cities.

For purposes of comparison, the Union presented statistical information of two groups of municipalities. One group includes 14 cities in northwestern Ohio with populations between 5000 and 9000. With the exception of Northwood and Rossford, the cities are too remote from a major metropolitan area to be considered suburban. The other group of cities consists of six cities that are suburbs of Toledo.

Two of the suburban cities, Northwood and Rossford, are similar in population to Waterville, and are therefore included in both groups. The other Toledo suburban cities have populations ranging from 14,000 to 19,000.

The final offer of the Union includes the system of step increases recommended by the Fact Finder. Its offer provides that the wages for both patrol officers and sergeants will

increase on January 1, 2013, to the wage rates that the Fact Finder recommended for 2012. The individual percentage increase under the Union's final offer varies depending upon the current wage rate and years of service of the officer.

The final offer of the Union specifies that all wage rates will increase by 3 percent effective with the first pay period in January 2013, and an additional 3 percent effective with the first pay period in January 2014.

Position of the Employer

The City argues that the pay increases offered by the Union would far exceed the level of recent pay increases that have been common in comparable jurisdictions. It argues that the facts do not warrant increases in compensation that far exceed wage increases in other jurisdictions and that are greater than the rate of inflation.

The City notes that statewide wage increases for police departments were 2.43 percent in 2009, 1.39 percent in 2010, and 0.96 percent in 2011. Further, the City notes that overall wage increases for all groups of represented public employees in northwestern Ohio were 1.16 percent in 2010, and 0.74 percent in 2011.

The offer of the City encompasses the step system recommended by the Fact Finder. The steps are identical to the steps in the offer of the Union. Patrol officers have wage increases after 3, 6, 9, 12, 15, and 18 years of service. Sergeants have an initial starting rate that they receive at the time of promotion to Sergeant. They have an additional increase after three years and a final increase after six years.

The offer of the City includes a wage increase for both bargaining units effective the first pay period in January 2013, an additional wage increase of 1.75 percent effective the

first pay period of April 2013, and an additional wage increase of 1.25 percent effective the first pay period in April 2014.

Discussion

Both parties have submitted a final offer that establishes a step system for wage rates. Both final offers include a starting rate for police officers with increases after 3, 6, 9, 12, 15 and 18 years of service. They both include a starting, three-year and six-year step for sergeants.

The City's decision to include a step system in its final offer was a major shift from its position at fact-finding. This change brings the City's position in line with the Fact Finder's recommendation of a step system. The Fact Finder found that "there was no evidence either that determinations of merit reflected pay differentials among patrol officers or that the possibility of gaining more pay because of merit influenced officers to do a better job." In recommending that a system of step increases be instituted, the Fact Finder stated that "Such a system would eliminate the possibility of subjective discrimination and the existing distrust that officers now hold of the 'merit' system." At the conciliation hearing, the members of the bargaining unit confirmed the distrust in the existing system. The step system will make it much easier for bargaining unit members to manage their personal budgets. They will be able to better estimate future income.

A Conciliator must give appropriate weight to the report and recommendations of the Fact Finder. In determining the amount of weight, a Conciliator considers whether the Fact Finder has presented a logical and well-reasoned explanation for the recommendations. The Conciliator also considers whether the data cited by the Fact Finder was accurate, relevant, and properly analyzed.

In this case, Conciliator believes that the fact-finding report of Judge Griffin contained a sound explanation supporting his recommendation on wages. The Union has adopted the recommendation as its position for conciliation. The Fact Finder cited the fact that the wages of bargaining unit members have increased by only 2.5 percent from 2008 through 2011, while inflation during this time has been 9.7 percent. The Fact Finder also notes that, even with the wage increases he recommended, the wages of bargaining unit members will still be below the average of 2011 wages for police officers in comparable jurisdictions.

The City's argument is based primarily on the amount of the 2010 and 2011 wage increases for public employees represented by Unions. The City points out that statewide wage increases for police departments were 1.39 percent in 2010 and 0.96 percent in 2011. The City correctly notes that the recommended wage increases of 3 percent in 2012 and 2013 would exceed the average wage increases for all groups of represented employees in Ohio.

However, the City ignores the fact that the wages of bargaining unit members have been relatively stagnant for several years. From 2009 through 2011 police officers in Ohio received an average total wage increase of 4.78 percent. During these years, bargaining unit members received no wage increases. Further, they did not receive a wage increase in 2012. Thus, wage increases in excess of statewide averages are appropriate.

Even with the recommended wage increases, bargaining unit members will have wage rates that are lower than wage rates in non-suburban northwestern Ohio cities. For example the top rate for a police officer in Waterville will be \$45,742 in 2013. The

median 2011 top rate for police officers in the non-suburban communities is \$46,931. In 2014, the top pay rate for a Waterville police officer will be \$47,114. This is just slightly above the 2011 median wage in the comparable cities.

The top pay rate for a sergeant will be \$55,617 in 2013, which is in the mid-range of 2011 wages in the non-suburban communities. In 2014, a top rate Waterville sergeant will have a wage of \$57,285, which is lower than the 2011 top wage in four of 13 comparable non-suburban cities. The top wage of Waterville sergeants will remain significantly below the median 2011 top rate of \$68,224 in the Toledo suburbs.

Compared to many fact-finding reports, the report of Judge Griffin includes a very extensive analysis of the finances of the City. The Fact Finder found that “the additional cost of these increases will not substantially impair the unexpended general fund balance even if revenues do not increase or if they diminish moderately in 2013 and 2014.” He further found that, even if the wages of other Waterville employees increase, the cost to the City would not impair its financial condition. The City has not presented evidence to show that the conclusions of the Fact Finder were flawed.

The Fact Finder pointed out that “the City’s finances have been well-managed in the last four years.” At the end of 2008, the City had an unencumbered general fund balance of \$135,000, which represented 4 percent of its annual expenditures. In 2011, the City’s general fund unencumbered balance increased to \$858,383, or 29 percent of annual expenditures.

The Fact Finder does note, however, that contributions from the State of Ohio have been reduced. He correctly notes that revenues are also expected to decrease due to the elimination of state estate and inheritance taxes. Further, he observed that a

reduction in overall real estate values will negatively affect revenue from property taxes. However even considering these factors, he found that the City could fund the recommended wage increases and remain fiscally strong. The City has not presented evidence that would refute this conclusion.

The wage rates set forth in the final offer of the Union will be included in the collective bargaining agreement.

Duration

Position of the Employer

The Employer notes that the City has historically implemented wage increases in April. It therefore offers a collective bargaining agreement that would be effective on April 1, 2012, except for matters with cost implications. The City offers an agreement that would remain in effect through March 31, 2015.

Position of the Union

The Union offers an agreement that is effective on the date of execution and remains in effect until December 31, 2014. It points out that collective bargaining agreements in most Ohio jurisdictions run with the calendar year. Further, budgets in Waterville are based on the calendar year.

Discussion

It is the experience of the Conciliator that most collective bargaining agreements in the state of Ohio are on a calendar year, with an expiration date of December 31. Waterville's fiscal year also ends on December 31. With the adoption of the Union's final

offer on wage rates, pay increases will become effective with the first pay period in January 2013 and 2014. A calendar year collective bargaining agreement would be consistent with the dates of implementation of the pay increases. The City has not established that implementing pay raises in January instead of April would be an undue burden.

The Conciliator will adopt the final offer of the Union for Duration.

CONCLUSION

The Conciliator hereby submits his decision with respect to the outstanding issues and orders that the Award be incorporated into the collective bargaining agreement of the parties.

\s\Charles W. Kohler

Charles W. Kohler, Conciliator

CERTIFICATE OF SERVICE

I do hereby certify that on December 31, 2012, a copy of the foregoing Conciliation Award was served upon Michelle Sullivan, Attorney at Law, by electronic mail at msullivan@afwlaw.com; and B. Gary McBride, Attorney at Law, by electronic mail at gmcmbride@snlaw.com; and the Bureau of Mediation, State Employment Relations Board, by electronic mail at mary.laurent@serb.state.oh.us.

\s\Charles W. Kohler

Charles W. Kohler, Conciliator