

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of:

GOSHEN TOWNSHIP, CLERMONT)	
COUNTY, OHIO)	
(GOSHEN TOWNSHIP TRUSTEES))	CASE NO. 11-MED-11-1636
)	
AND)	
)	MAY 29, 2012
INTERNATIONAL ASSOCIATION)	
OF FIRE FIGHTERS, LOCAL 3932)	

CONCILIATION AWARD

MELVIN E. FEINBERG, CONCILIATOR

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APPEARANCES:

FOR THE EMPLOYER:

Brett A. Geary, Esq.
Regional Manager
Clemens Nelson & Associates, Inc.

FOR THE UNION:

Bryan Broyles, Union President
International Association of Fire Fighters, Local 3932
(Goshen Professional Firefighters)

SUBMISSION

This matter concerns the Conciliation proceeding between Goshen Township Trustees and International Association of Fire Fighters, Local 3932.¹ The State Employment Relations Board (SERB) appointed the undersigned Conciliator on April 3, 2012. On April 5, 2012, the Conciliator, pursuant to the request of and agreement by the Parties, scheduled the matter for hearing on May 15, 2012, in Goshen, Ohio. The Conciliation Hearing took place on that date.

The Parties, in accordance with a contractual wage reopener provision, had previously engaged in negotiations on the only issue involved herein, wages. They had participated in a fact-finding hearing on February 22, 2012, over that issue. Thereafter, on March 8, 2012, the Fact Finder issued her report. The Employer did not accept the Fact Finder's recommendations and SERB mandated that the case proceed to conciliation. According to SERB's April 3, 2012 conciliation notification letter to the Parties, the effective date of the State Employment Relations Board's conciliation order was March 28, 2012.

Prior to the Conciliation Hearing, in accordance with SERB rules, the Parties timely filed complete position statements with the Conciliator. The Employer included a copy of the current Contract in effect between the Parties in its exhibits, which accompanied its position statement. The Union did serve a copy of its position statement upon the Employer, but did not serve a copy upon SERB.

¹ Goshen Township Trustees (Goshen Township, Clermont County, Ohio) is also referred to herein as the Employer. International Association of Fire Fighters, Local 3932 (Goshen Professional Firefighters) is also referred to herein as the Union.

Pursuant to the request of the Parties in accordance with SERB requirements, the Conciliator attempted to mediate the wage reopener issue but was unsuccessful.² The matter, thereafter, immediately proceeded to hearing.³

BACKGROUND

The Employer recognizes the Union as the sole and exclusive representative for all employees included in the following bargaining unit involved herein:

“... All full time employees as defined in SERB Certification 99-REP-05-0106, as amended.”

The current Contract’s Article 17 Wages sets forth a Base Entry Rate for Newly Hired Fire Fighters and/or other unit employees, for Non-Probationary Fire Fighters/Medics, for Senior Fire Fighters/Medics, for Lieutenant(s), and for Captain.

There are approximately ten bargaining unit employees in the Employer’s Fire and EMS Department.

² Ultimately, neither the Union nor the Employer formally changed its initial position, and the Conciliator **was required to select one of their proposals** for the Award.

³ The Parties were given the full opportunity to present and examine witnesses, to introduce documentary evidence, and to argue their positions orally. The Employer retained the services of a court reporter, who was present at the hearing and was permitted to record a verbatim transcript of the proceedings. The Parties would not execute a “Conciliation-Waiver of Record” form, which was offered to them by the Conciliator. The Conciliator announced that his notes would be the only official record of the proceeding. The Parties reserved the right to purchase a copy of the court reporter’s transcript of the hearing and indicated that if they did so, they would provide the Conciliator with a copy at no cost. No such copy was received by the Conciliator and none was used in preparing this Award.

At the May 15 hearing the Parties reserved the right to file briefs and were given until May 18 to notify the Conciliator if they intended to do so. The Employer, both at the hearing and later by e-mail, informed the Conciliator that it would only file if the Union elected to do so. The Union never notified the Conciliator of its intentions with regard to the matter. Consequently, the Conciliator on May 19, 2012, notified the Parties by e-mail that since he had not received any notification from either Party by May 18 of its intention to file a post hearing brief, the record was closed, no post hearing briefs would be accepted, and the Award would be issued based on the record as it existed.

CONCILIATION CRITERIA

The Ohio Public Employee Bargaining Statute sets forth the following criteria, which the Conciliator was mandated to consider and did consider in making the Award in this case. The criteria are set forth in ORC§4417.14(G)(7)(a)-(f) and OAC§4117-9-06(H)(1)-(6) and are as follows:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the issues submitted to final offers 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;
- (3) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and that 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 in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offers settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

POSITIONS REGARDING THE OUTSTANDING ISSUE: **ARTICLE 17 WAGES**

Employer's Position:

The Employer has proposed an overall wage increase of 0% for 2012. In its written position statement submitted before the Conciliation Hearing, the Employer noted that under ORC§4117.14(G)(11) the Conciliator is prohibited from awarding any increase in the rate of compensation in the calendar year 2012.

At the Conciliation Hearing the Employer also noted that under the Ohio Administrative Code (OAC)§4117-9-06(E) the Union had to submit its position statement "... to the conciliator, to the other party, and to the board five calendar days prior to the

day of hearing....” The Conciliator is mandated to take evidence only in support of matters raised in the position statement prior to the hearing. The Employer noted that there was nothing in the Union’s position statement submitted in this matter indicating that it had served the Board. Consequently, it urged that the Union’s position on the issue not even be considered and that the Conciliator award the wage proposal of the Employer.

Although the Employer maintained that its first two arguments were sufficient to convince the Conciliator to award the Employer’s wage proposal, it nevertheless introduced documentation and witness testimony it believed sufficient to justify that award. Witness testimony and exhibits reveal that the Employer’s Fire Department budget was “in the red” in 2009, 2010, 2011 and 2012, and will be again in 2013. The Employer was unsuccessful in 2010 in its attempt to pass a Fire Levy. The Employer provided the Fire Department with money from its reserve funds to cover the Department’s shortfalls, thereby risking insolvency. In 2012 the Fire Department is projected to run a deficit of over \$175,000, which will have to be supplemented by general fund reserves. The Union’s proposal on wages at the Conciliation Hearing would grant current employees a wage increase of approximately 20.9% up to 35.3%. On average, the Union’s wage proposal would grant the bargaining unit a wage increase of approximately 28.3%. The adoption of the Union’s wage proposal would lead to “... a budget implosion.”

Union’s Position:

The Union proposes a 0% increase from the current Police Department’s contract wage provision. Although the wage reopener language of the current Contract’s Article

17 primarily deals with bargaining for potential wage changes, the Union’s proposal makes suggested adjustments in other matters. Its proposal would not change sections A, B, or C of Article 17. Section D would make any awarded wage increase retroactive to January 1, 2012. With respect to Section E. Salary Adjustment, the language of paragraph 1, there would not change. However, the Schedule of Wage Rates would run from January 1, 2012 through December 31, 2012 and is proposed to be as follows:

Base Entry Rate	\$44,495.92
Non-Probationary Fire Fighter/Medic (1+ years service)	\$47,445.92
Fire Fighter/Medic (2 years service)	\$50,616.25
Fire Fighter/Medic (3 years service)	\$53,960.52
Senior Fire Fighter/Medic (4+ years service)*	\$55,755.11
Lieutenant	\$58,213.44
Captain	\$62,000.00

*Current employees in Senior Fire Fighter/Medic status will get the raise, but have one year to secure the Fire Safety Inspector certification and Driver/Engineer status on all GTF&E vehicles. In the future, Senior Fire Fighter/Medic employees must have the certification and driver status prior to the fourth year of service to receive the senior rate; otherwise, they shall remain at the Non-Probationary rate until they become certified and eligible to drive.

The Union maintains that there is a massive disparity between the wages paid to the unit employees of the Police Department and the wages paid to the represented employees of the Fire Department. The Employer has not made a reasonable attempt to maintain revenues for the Fire and EMS services. Some funding for the Department “... is almost 40 years old...and is expected to fund current costs...” The Employer is determined to spend over \$750,000 of safety service tax revenue in other places that could go towards Fire and EMS services. Furthermore, the Employer insists on funding nonessential services, such as zoning, and an almost 100% loss. The bargaining unit has experienced staffing cuts through two promotions and retirements.

Moreover, the Union sought to begin negotiations on the wage reopener in mid-2011, but the Employer refused to discuss the matter until a budget was reached. The Employer's 2012 budget discussions did not even begin until January of 2012. The Employer was responsible for delaying reopener contract discussions and is now seeking to use that tactic to prevent the Conciliator from awarding the Union's wage increase proposal. The Conciliator should award the Union's proposed wage increase.

DISCUSSION AND AWARD

Ohio Administrative Code (OAC) Rule 4117-9-06-(E) provides as follows:

“(E) Upon notice of the conciliator's appointment, each party shall submit via electronic mail to the conciliator and the other party a position statement. A failure to submit such a position statement to the conciliator, to the other party, and to the board five calendar days prior to the day of the hearing shall require the conciliator to take evidence only in support of matters raised in the position statement that was submitted prior to hearing.”

The Union acknowledged for the record at the Conciliation Hearing that although it had served the Conciliator and the Employer with a copy of its position statement, it had not served a copy on the Board (SERB). The Union's representative indicated that he was not aware that serving the Board was required. The Employer argued that, under the circumstances, the Union should not be allowed to present evidence in support of its position statement.

The Union offered no witness testimony at the hearing. The Union and the Employer stipulated to certain joint exhibits, which were received into evidence. The Union offered no other documentary evidence.

It should be noted that the April 3, 2012 SERB letter from its General Counsel to the Parties' representatives, notifying them of the appointment of the undersigned Conciliator and of their obligations regarding position statement service requirements

under OAC Rule 4117-9-06(E), fails to mention the need to serve those position statements on the Board. Nevertheless, one would presume, that the Parties are responsible for being familiar with the service requirements of position statements under that rule. The Union's failure to serve a copy of its position statement upon the Board, in compliance with the Rule's requirements, appears to mandate that the undersigned Conciliator not take evidence raised by the Union's position statement, which was submitted prior to hearing. As was previously indicated, the Union orally argued its position, submitted joint exhibits with the Employer, and presented no witness testimony or other documentary evidence in support of its contentions.⁴ Only the Employer presented witness testimony and its own documentary evidence in support of its position. Accordingly, the Conciliator basically complied with OAC Rule 4117-9-06 (E).

Ohio Revised Code (ORC)§4117.14(G)(11) states as follows:

“Increases in rates of compensation and other matters with cost implications awarded by the conciliator may be effective only at the start of the fiscal year next commencing after the date of the final offer settlement award; provided that if a new fiscal year has commenced since the issuance of the board order to submit to a final offer settlement procedure, the awarded increases may be retroactive to the commencement of the new fiscal year. The parties may, at any time, amend or modify a conciliator's award or order by mutual agreement.”

The Employer notes that the effective date of the Board's order of conciliation was March 28, 2012 (as is set forth in the General Counsel's April 3, 2012 letter). Evidence presented at the Conciliation Hearing reveals that the Employer's fiscal year runs from January 1 through December 31 of each calendar year — which this year is

⁴ The joint exhibits placed into evidence by both the Union and the Employer are as follows: Joint Exhibit 1-current Contract; Joint Exhibit 2-SERB “ Notice to Negotiate” form signed by the Union; Joint Exhibit 3-Employer Submission to Conciliator Including Proposal And Rationale; Joint Exhibit 4-Union Submission to the Conciliator; Joint Exhibit 5- Fact Finder's Recommendations; Joint Exhibit 6-current wage scale of Police Officers in the Police Department bargaining unit. With the exception of Joint Exhibit 6, all joint exhibits were mainly preliminary or were already in the record. Joint Exhibit 6 helped clarify and emphasize the differences between the wage positions of both Parties.

2012. Under these circumstances, the Employer is correct in its argument that the language of ORC§4117.14(G)(11) prohibits the Conciliator from awarding an increase in the rate of compensation in the year 2012 as is requested by the Union. Moreover, awarding a wage increase to commence with January 1, 2013, would be inappropriate inasmuch as the current collective bargaining agreement between the Parties expires on December 31, 2012, and contract negotiations for 2013 are already being contemplated.

The Union contends that the Employer's alleged 2011-2012 delay in negotiating the current collective bargaining agreement and its asserted failure to conclude the 2012 budget was unfairly responsible for its predicament under ORC§4117.14(G)(11). This Conciliator does not have the legal authority to deal with the Union's assertions in the conciliation process, and they do not constitute a basis for awarding the Union its wage proposal. Allegations of this nature are more properly raised directly before SERB for consideration and disposition.

Additionally, the Employer's economic reasons for denying the Union's wage increase serve as a sufficient basis for the Conciliator not to select the Union's proposal.⁵ The Employer placed a levy to support fire fighters on the ballot in November 2010 and it was rejected. The Fire Department has a budget short fall of \$172,041.40 and such deficits must be made up from the Employer's general fund. Revenues that the Employer used to rely on have undergone or will undergo significant reductions. State reductions in the local government fund and in the tangible personal property tax, as well as the future elimination of the estate tax, have affected or will significantly and adversely affect the Employer's financial health. It has, for example, suffered an approximately

⁵ This is true even without considering the aforementioned legal impediments to awarding the Union's wage proposal discussed in connection with Ohio Revised Code (ORC)§4117.14(G)(11) and OAC Rule 4117-9-06 (E).

\$340,000 decline in its available Fund Status. While its Starting Fund Balance in January 2012 was \$1,389,047.73, its Ending Fund Balance was projected to be \$1,276,450.15 with an Unencumbered Fund Balance of only \$946,746.32 and a projected current reserve for encumbrances of \$329,703.83. The internal and external wage comparison data reveals that of the four internal measured units (Service Unit, Police, Fire, Non-Union) in 2010 and again in 2011, Fire Department employees got a 5.50% raise — much larger raises than those given to employees of the other three units. No other employees in the Employer’s other three units received any raise in 2011. As the Fact Finder observed in her March 8, 2012 report, and as is established by the evidence in this case, the average wage increase for public employees in 2010 in the Cincinnati area was 1.2% to 1.99% for townships located in Ohio; fire fighters in the State received a 1.74% increase in 2010. The Fact Finder correctly noted that the Employer’s fire fighters in 2010 (and likely in 2011) were on the “high end” of wage increases for public employees.

The Union’s desire to achieve wage increases for bargaining unit Fire Department employees of from approximately 20% to 35% for each position so as to achieve parity with current Police Department bargaining unit wage rates (or an average of approximately 28% for all positions) is simply not justified. The economic realities confronting the Employer do not seem to be improving. Its proposed wage increase is not supported by the record evidence in this case.⁶

⁶ The Union’s characterization of a “0% increase from the existing police Union” is somewhat misleading inasmuch as the increases actually proposed are substantially higher than the wage rates currently paid to bargaining unit Fire Department employees. For example, see the current Contract’s wage rates which follow: Schedule of Wage Rates (2.75%) (7/1/2011-12/31/2011) Base Entry Rate \$36,785.22; Non-Probationary Fire Fighter/Medic (1+ years service) \$37,794.07; Senior Fire Fighter/Medic (4+ years service) \$41,818.64; Lieutenant (\$3,000 over Senior FF rate) \$44,818.64; Captain (\$4,000 over Senior FF rate) \$45,818.64.

After considering all of the evidence on the wage issue in this case in light of the applicable aforementioned mandated criteria, including the comparables, the oral and written arguments of the Parties, the requirements of ORC §4117.14(G)(11) and of Ohio Administrative Code (OAC)§4117-9-06(E), the Fact Finder's Report, and the record as a whole, I conclude that the Employer's wage proposal is preferable to that urged by the Union. Accordingly, the proposal of the Employer regarding the Wage issue is awarded.

AWARD

ADDENDUM TO ARTICLE 17 WAGES

The following wage rates shall be established for calendar year 2012, and shall reflect no increase over final 2011 classification rates:

Schedule of Wage Rates (0%) (1/1/2012-12/31/2012)

Base Entry Rate	\$36,785.22
Non-Probationary Fire Fighter/Medic (1+ years service)	\$37,794.07
Senior Fire Fighter /Medic (4+ years service)*	\$41,818.64
Lieutenant (\$3,000 over Senior FF rate)**	\$44,818.64
Captain (\$4,000 over Senior FF rate)***	\$45,818.64

Effective Date: This Addendum to the Parties' current Contract shall be effective on May 29, 2012, the date of the Conciliator's execution and issuance of this Award.

For the Employer

For the Union

Date Signed: _____

CONCLUSION

In conclusion, this Conciliator hereby submits the above referred to **AWARD** on the outstanding issue presented for his consideration.

May 29, 2012

Date

Melvin E. Feinberg

Melvin E. Feinberg, Conciliator

CERTIFICATE OF SERVICE

I hereby certify that one copy of my Conciliation Award in SERB Case No. 11-MED-11-1636 (International Association of Fire Fighters, Local 3932 and Goshen Township Trustees) is being sent by e-mail to SERB and to each of the following Parties on the date set forth below:

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May 29, 2012
Date

Melvin E. Feinberg
Melvin E. Feinberg, Conciliator