

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

Conciliation Award

In the Matter of Fact Finding)	
International Association of Fire Fighters.)	11-MED-11-1675
Local 3331)	
And)	
City of Perrysburg, Ohio)	Conciliator:
	John T. Meredith

**FINDINGS, OPINION AND AWARD
ISSUED NOVEMBER 2, 2012**

INTRODUCTION

The parties to this Conciliation proceeding are the International Association of Fire Fighters Local 3331 and the City of Perrysburg, Ohio. The bargaining unit consists of “all full time non-probationary firefighters and assistant fire chiefs, but excluding the Fire Chief, Deputy Fire Chief, and all other employees in the City of Perrysburg.” There are approximately twenty-three (23) employees in the unit.

The IAFF and the City currently are parties to a collective bargaining agreement (the “Agreement”) which ran from November 5, 2009 thorough February 28, 2012. The parties commenced bargaining for a successor agreement and negotiated and resolved all issues except wages and duration. SERB appointed Prof. Hyman Cohen to serve as Fact Finder. Prof. Cohen issued his Report and Recommendations on July 25, 2012. Specifically, he recommended a three-year contract with increases of 2.75% in 2012, 2.50% in 2013, and 2.50% in 2014. The Union accepted, but City Council unanimously rejected this recommendation.

SERB then issued a conciliation order, effective August 23, 2012, designating the undersigned John T. Meredith as conciliator. Each party timely submitted its Position Statement, with Final Offer and Rationale attached. The City's final offer is for a three-year contract, with three consecutive 1.75% wage increases effective, respectively, for the first payrolls of March 2012, March 2013 and March 2014. The Union's final offer asks for a wage freeze in the first year of the contract; a 5.25% increase for the second year of the contract beginning in March 2013; and a 2.50% increase for the third year, commencing in March 2014.

A hearing was held on October 2, 2012 to take evidence on the issue submitted. The hearing was conducted in accordance with the Ohio Collective Bargaining Laws and applicable SERB Rules and Regulations. Witnesses testified under oath, and the parties and their advocates also presented arguments and numerous documentary exhibits. The parties agreed to accept the written exhibits and Conciliator's notes as the record in event of an appeal, as provided in SERB Rule 4117-9-07(F).

Appearing on behalf of the Union were: Michelle Sullivan, Attorney; Pete Scarsborough and Nate Burtscher, IAFF Local 3331 representatives; and Jonathan Winters, Law Clerk. Appearing for the City were: David Smigelski, Attorney; Kelly Chalfant, Human Resources Manager; Jeff Klein, Fire Chief; and Bridgette Kabat, City Administrator.

The Conciliator has now resolved the issue submitted by selecting the final offer of one of the parties. In making his decision and issuing his Award, the Conciliator has given consideration to the following criteria prescribed by the Ohio Collective Bargaining Law, R.C. 4117.14(G)(7), and listed in SERB Rule 4117-09-05:

- (1) Past collective bargaining agreements, if any, between the parties.

- (2) Comparison of the unresolved issues 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.
- (3) 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.
- (4) The lawful authority of the public employer.
- (5) Any stipulations of the parties.
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

“Other factors” noted in the sixth criteria include the common practice among conciliators of giving very significant weight to well-reasoned recommendations of the Fact-Finding Report issued in the case, absent change in circumstances or material new evidence. (See, for example: City of Lakewood and IAFF, SERB Case No. 00-MED-04-0952 (Dennis Byrne); City of Warren and OPBA, SERB Case No. 05-MED-10-1267 (Harry Graham); City of Medina and OPBA, SERB Case No. 05-MED-08-0785 (Alan Miles Rubin). “Other factors” also may include desirability of equitable treatment among the various groups of the public employer's employees, especially those with similar job functions.

FINDINGS OF FACT

A. Financial and Demographic Profile

The City of Perrysburg is an affluent community located just south of Toledo, OH. It is growing steadily both by annexation of territory and internal development. Its 2010 population was 20,623. As noted in the Fact-Finding Report, the City's “median

household income of \$72,051 and per capita income of \$36,978” were “substantially above the national average of \$47,358 and \$25,113.” the Fact Finder further noted that the “City's own promotional literature” lists “median family income of \$92,205, median household income of \$74,432, and median home value of \$201,700.” In addition to residential property, Perrysburg is home to the headquarters of OI Holdings (formerly Owens Illinois) and several smaller enterprises.

Perrysburg is a financially healthy city. Even after transfer of funds for capital development, it ended 2011 with an unencumbered General Fund balance of approximately \$3.9 million, or about 21% of total General Fund expenditures. The Finance Director expects a similar year-end balance in December 2012. The City's credit ratings are excellent – Aa3 from Moody's Investment Service and AA from Standard and Poor's.

Perrysburg appears to have survived the recent recession with little damage. Layoffs at a local solar industry facility and relocation of Rexam (a local plastics company) are being offset by addition of a new OI research facility. The City does anticipate an average annual \$400,000 reduction in income as a result of abolition of the estate tax, and estimates it will lose \$200,000 in Ohio Local Government Funds due to state cutbacks. These reductions, however, do not imperil the City's financial position, and may be offset by additional tax revenues from continuing growth in population and incomes. In this respect, Perrysburg is better off than many other Ohio cities.

B. City Workforce, Compensation

The City has twenty-four non-union administrative employees who are paid on a merit pay system. A majority of these employees received at least 3% total increase in wages for 2012.

Service workers are represented by AFSCME. They negotiated a three-year collective bargaining agreement for 2012-2014. It provides for 2% lump-sum bonuses in 2012 and 2013, with a reopener for 2014. It does not provide for any increase in wage rates.

Police are represented in three units by the OPBA. All three agreed to 1.75% increases for 2012 and 2013, and a reopener for 2014. In addition, the City has abolished a requirement that officers report early for roll call and reduced the sergeants roll call reporting obligation from 30 to 15 minutes. This change results from installation of mobile data terminals which have made roll call largely unnecessary. However, although they will be working less time per day, the City agreed to award patrol officers a \$2200 lump-sum bonus in both 2012 and 2013 for agreeing to give up “roll call pay.” Similarly, it awarded sergeants a \$2500 bonus in 2012 and 2013 in exchange for agreeing to a 15-minute reduction in roll call pay. In both cases, the bonuses were calculated to approximate the average roll call pay which would have been received under the prior roll call system.

Historically, police and firefighters have had similar compensation increases in past bargaining agreements. However, their compensation packages have not been identical, in part because each group has some unique compensation features, and in part because they have submitted wage issues to different fact finders and conciliators. For the period 2006-2011, firefighters have received a cumulative 16.5% wage increase and police have received a cumulative 17.0% increase. The City's proposed 1.75% increases would equal the annual 1.75% increase to which the police agreed in 2012 and 2013, and the City proposal thus would maintain the 0.5% spread between firefighter and police cumulative wage rate increases for the period 2006-2013. Under the IAFF proposal,

firefighters would fall further behind the police in 2012, but their cumulative wage rate increases would pull 1.25% ahead for the period 2006-2013.

C. Comparables

The City submitted comparability data for firefighters in several neighboring cities.

<u>City</u>	<u>Hours</u>	<u>Start Rate</u>		<u>Top Rate</u>	
Perrysburg	2600	\$17.79/hr.	\$46,254/yr.	\$23.90/hr.	\$62,340/yr.
Perrysburg T.	2496	\$19.76/hr.	\$49,321/yr.	\$24.21/hr.	\$60,428/yr.
Maumee*	2184	\$21.66/hr.	\$47,300/yr.	\$27.55/hr.	\$60,178/yr.
Bowling Gr.	2704	\$15.51/hr.	\$41,939/yr.	\$21.71/hr.	\$58,704/yr.
Sylvania Twp.	2600	\$17.21/hr.	\$44,746/yr.	\$22.29/hr.	\$57,954/yr.
Springfield T.	2184	\$16.71/hr.	\$36,495/yr.	\$17.70/hr.	\$38,657/yr.

*Maumee has paramedics only. They have no fire suppression duties.

Listed pay rates are for 2012. In Perrysburg's case, they include the City's 1.75% wage proposal.

The Union critiqued the City's data. It noted that Perrysburg is the most affluent community in the group. In fact, its median per capita and household income are very significantly greater than incomes in all but Sylvania Twp., which trails Perrysburg by only \$1364. The Union also noted that Perrysburg firefighters work more hours than firefighters in some neighboring cities. Thus, while Perrysburg's top annual salary is the highest in the group, its top hourly rate ranks third, behind Perrysburg Twp. and Maumee. The Union further emphasized that it takes ten years for a Perrysburg firefighter to reach the top step. This compares to seven years in Bowling Green, four years in Perrysburg Twp., four years in Sylvania Twp., and eight years in Maumee. As a result, average Perrysburg firefighter compensation is not the highest in the group. Finally, the Union added three area cities to the list: Findlay (\$44,162 start, \$55,449 top), Oregon (\$51,133

start, \$65,274 top), and Toledo (\$44,158 start, \$59,637 top). Toledo, of course, is a much larger city and not really comparable to Perrysburg. Also, Oregon's high pay is due in no small part to an oil refinery in its jurisdiction.

The City submitted SERB's Annual Wage Settlement Report as evidence of recent percentage increases for public employees. The Report shows that, in calendar year 2011, the average wage increase for Ohio public employees was 0.73%, the average wage increase for Toledo Region public employees was 0.74%, and the average wage increase for Ohio firefighters was 1.23%. Neither the City nor the Union submitted any data regarding percentage increases negotiated to date for firefighters in Northwest Ohio in 2012 or 2013.

THE CONCILIATION PROCESS AND THE PARTIES' FINAL OFFERS

A. Statutory Background

A “final offer,” once submitted, cannot be modified except by mutual agreement of the parties. SERB Rule 4117-9-06(E)(4) A conciliator is obligated to select, on an issue by issue basis, one of the two final offers submitted to him. He has no authority to fashion a compromise or deviate from the final offers even if he would prefer a compromise solution. R.C. 4117.14 (G)(7) Moreover, absent a waiver, the Conciliator also lacks authority to order a retroactive wage increase per R.C. 4117.14(G)(11), which states:

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. (Emphasis supplied.)

In this case, the conciliator was appointed in August 2012. The “next fiscal year” will begin on January 1, 2013. Therefore, absent a waiver of R.C. 4117(G)(11) requirements, the conciliator may not order an increase effective prior to January 2013 in this case.

B. Final Offers and Rationales

1. Duration

Duration of the Agreement was an issue at the fact-finding stage, and both parties submitted final offers for the Duration Clause. Their offers were identical: Both proposed a three-year contract and current language with appropriate date modifications. Therefore, it was agreed that the Conciliator will include the Duration Clause proposed by both parties as his Award on this issue.

2. Wages

As stated in its Position Statement, the City's final wage offer is “that all grades receive a one and three-quarter percent (1.75%) increase to the hourly rates for 2012, 2013, and 2014,” and further that the “2012 increase would apply retroactively to the first full pay period commencing in March of 2012.” It asserted that this proposal “is eminently reasonable in light of the uncertain state of the economy, the existing wage rates in neighboring communities of comparable size and constitution, as well as the bargaining history between the parties.” It notes that the increases in the prior three-year contract between the parties (0%/6.25%/1.75%) exceeded the state average and place the unit “at the top of the scale for total compensation increases negotiated over the usual three-year period.” It further states that its final offer is “not inconsistent with the negotiated contracts with the four other bargaining units in the City.”

The Union's final offer is for “an increase of 0% effective March 1, 2012; 5.25% effective March 1, 2013 and 2.5% increase effective March 1, 2014.” The Union states it

wanted to come as close as possible to the fact finder's recommendation (which it accepted), but cannot propose the 2.75% increase for 2012 because the City has refused to sign a Section 4117.14(G)(11) waiver. Therefore, it has given up the recommended 2.75% increase for 2012 but added it to the recommended 2.50% increase for 2013 so that the wage rate in the second and third years will be the same as recommended by the fact finder. In support of this final offer, the Union's Position Statement notes that the City can easily afford to pay the proposed increase, that different wage packages for other bargaining units are distinguishable, and that a conciliator generally should defer to the recommendation of the fact finder in the same case.

At the hearing, the Union renewed its request for a Section 4117.14(G)(11) waiver and presented a letter (Conciliator Exh. 8) asking permission to modify its proposal to 2.75%, 2.50% and 2.50%, as recommended by the Fact-Finder. The City refused to agree to the Union's request. It stated it would waive its right to object to retroactivity only to the extent of its own 1.75% offer. The Union declined to agree to this conditional waiver, thus preserving its right to claim that an award in favor of the City would exceed the Conciliator's authority under R.C. 4117.14(G)(11).

ANALYSIS AND RESOLUTION OF WAGE ISSUE

As is often the case in conciliation, the City's wage offer is a bit low and the Union's demand is a bit high. However, the statute does not permit a compromise solution – one of the two final offers must be selected by applying R.C. Section 4117.14(G)(7) criteria.

In wage disputes, the analysis generally begins with the third criterion, 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.” This factor can be dealt with

quickly here: Quite simply, based on evidence summarized in the “Financial and Demographic Profile” section, supra pp. 3-4, Perrysburg can afford both its own final offer and the Union's final offer. The City does not seriously dispute this conclusion.

The next important criterion in wage cases is “comparability” - comparison of the proposed wages with the wages paid “other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification.” The impact of comparability in this case is less clear. Under both City and Union final offers, Perrysburg will continue to lag most comparable area fire departments in starting salary, but will exceed annual salaries paid to other firefighters at the top ten-year point on the wage scale in 2012. (See Comparability section, supra p.5.) Data projecting Perrysburg's relative position in 2013 and 2014 was not presented at the hearing and may not be available, but there is no reason to believe that the relative rankings will materially change in the near future.

Another aspect of comparability is comparison of the percentage wage increase offered to the percentage increases awarded to fire fighters in comparable jurisdictions. Evidence presented on this issue was somewhat sparse. Neither party introduced data on percentage increases negotiated to date in 2012 for the 2012-2014 period. Rather, they relied on SERB's most recent Annual Wage Increase Report, which includes average wage increase data for prior years, most recently 2011. (See Comparability section, supra pp. 6-7.) This report is informative and instructive, but not decisive. First, there is a time lag factor – when the economy is declining, the prior year's wage increase averages tend to exceed the percentage increases being offered. This was the case during the recent recession from 2008 – 2010. Conversely, when, as may currently be occurring, the economy is starting to recover, the prior year's averages tend to fall short of percentage

increases being negotiated in the current year. Thus, it is not surprising that both the City's and the Union's final offers exceed the average percentage increases reported in 2011. Second, of course, averages do not reflect the range of wage settlements, nor do they reveal the appropriate place for a particular city within that range. Therefore, comparability data does not clearly support or refute either the City's or the Union's position.

It also is appropriate to compare the final offers to the wages paid and percentage increases awarded to other employees in the City's workforce. This can be viewed as an element of the first statutory criterion (bargaining history), or simply as one of those "other factors ... which are normally or traditionally taken into consideration" in public sector negotiations and dispute resolution. (Criterion Six) Data was presented by both parties regarding non-union administrative employees and other union groups. (See City Workforce, Compensation section, supra pp. 4-5.) I do not attach significance to increases given non-union administrative employees, as they work on a merit pay system and the increases may vary due to a variety of individual considerations. Wages offered to other union groups, however, are relevant. AFSCME accepted lump sum bonuses equal to two percent, a settlement somewhat more generous than the City's final offer to the fire fighters. The police, whose work is closer to fire fighter work, received 1.75% in both 2012 and 2013, and, in addition, will receive lump sum bonuses for both years of \$2200 (patrol officers) and \$2500 (sergeants) in exchange for losing roll call pay. While not an increase in annual compensation, the bonuses have the effect of increasing the actual hourly rate for two years because abolition of roll call reduces hours worked by fifteen minutes per day. Thus, the police settlement does have more value than the City's 1.75%/1.75%/1.75% final offer to the firefighters. It also is more valuable than the

Union's final offer in 2012, but substantially less valuable than the Union's offer for 2013. Consideration of internal equity, therefore does not clearly support either offer.

This leaves one final consideration under the sixth criterion: Over the years, conciliators have consistently followed the practice of giving substantial weight to a well-reasoned fact-finding report in the same case, absent material change in circumstances or significant new evidence. (A few representative cases are cited at page 3, supra.) In this case, there has been no material change in circumstances since Prof. Cohen issued his Fact-Finding Report and Recommendations in July 2012, nor did the parties present significant new evidence at the conciliation hearing. Though his wage recommendation is generous, it is not inconsistent with the statutory criteria and not outside the range of permissible recommendations. His Report and Recommendations, therefore, are entitled to the weight normally given to well-reasoned fact-finding decisions.

The Union's final offer is substantially the same as Prof. Cohen's recommendation. It results in the same wage rates in the second and third year of the contract. The first year of the offer only differs from the recommendation because the City refused to agree to a Section 4117.14(G)(11) waiver. As the Union has done everything possible to conform to the Fact Finder's Recommendation, its final offer is entitled to the benefit of the weight given to fact finders in conciliation proceedings.

For these reasons, the Conciliator will award the position of the Union on wages.

AWARD

Wages:

The position of the Union is awarded. There will be no wage increase during the contract year beginning March 1, 2012. There will be a 5.25% increase effective March 1, 2013, and a 2.5% increase effective March 1, 2014. Wage schedule and contract language is attached hereto and incorporated herein as Appendix A. By agreement of the parties, reference to "Fire Inspector" is deleted in Section A-2.

Duration

The parties agreed to a three-year contract at the hearing, and their agreed language for Section 13.1 is awarded. Revised Section 13.1 will state:

This Agreement shall be effective from March 1, 2012 except as otherwise specifically provided herein, and shall continue in effect through February 28, 2015 and shall continue in full force and effect from year to year unless written notice of desire to cancel, terminate or modify the contract in whole or in part is served by either party on the other at least sixty (60) days prior to the expiration date. When a notice to cancel, terminate or modify this Agreement is timely served, both parties are free to make whatever proposed amendments, additions or deletions the so choose.

This Award is issued this 2nd day of November, 2012.

Shaker Heights, Ohio

s/John T. Meredith
John T. Meredith, Conciliator

**APPENDIX A
City of Perrysburg
Firefighter Unit**

Section A-1: Hourly Wage Matrix FIREFIGHTER UNIT

Years		1	1	1	1	2	2	2	
STEP		A	B	C	D	E	F	G	H
	Grade								
March 2012 0%	14	\$21.84	\$22.95	\$24.10	\$25.31	\$26.59	\$27.94	\$28.64	\$29.35
	14*	\$17.48	\$18.37	\$19.28	\$20.23	\$21.25	\$22.36	\$22.92	\$23.49
	15	\$22.70	\$23.82	\$24.96	\$26.17	\$27.46	\$28.80	\$29.50	\$30.22
	15*	\$18.36	\$19.23	\$20.14	\$21.09	\$22.12	\$23.22	\$23.78	\$24.36
	16	\$23.49	\$24.68	\$25.89	\$27.20	\$28.58	\$30.03	\$30.79	\$31.56
	16*	\$18.78	\$19.73	\$20.72	\$21.76	\$22.85	\$24.01	\$24.61	\$25.24
March 2013 5.25%	14	\$22.98	\$24.16	\$25.36	\$26.64	\$27.99	\$29.40	\$30.14	\$30.89
	14*	\$18.40	\$19.33	\$20.29	\$21.29	\$22.37	\$23.53	\$24.12	\$24.73
	15	\$23.89	\$25.07	\$26.27	\$27.55	\$28.90	\$30.31	\$31.05	\$31.80
	15*	\$19.31	\$20.24	\$21.20	\$22.20	\$23.28	\$24.44	\$25.03	\$25.64
	16	\$24.73	\$25.98	\$27.25	\$28.63	\$30.08	\$31.61	\$32.41	\$33.21
	16*	\$19.76	\$20.77	\$21.81	\$22.90	\$24.05	\$25.27	\$25.90	\$26.57
March 2014 2.50%	14	\$23.67	\$24.88	\$26.12	\$27.44	\$28.83	\$30.28	\$31.05	\$31.82
	14*	\$18.95	\$19.91	\$20.90	\$21.93	\$23.04	\$24.24	\$24.85	\$25.47
	15	\$24.61	\$25.82	\$27.06	\$28.37	\$29.77	\$31.22	\$31.98	\$32.76
	15*	\$19.89	\$20.85	\$21.83	\$22.87	\$23.98	\$25.17	\$25.78	\$26.40
	16	\$25.47	\$26.76	\$28.07	\$29.49	\$30.99	\$32.56	\$33.38	\$34.21
	16*	\$20.36	\$21.39	\$22.47	\$23.59	\$24.78	\$26.03	\$26.67	\$27.37

Wage increases shall become effective with the first full pay period of the month indicated.

SECTION A-2: CLASSIFICATIONS AND GRADES (FIRE)

<u>CLASSIFICATION</u>	<u>GRADE</u>
ASSISTANT FIRE CHIEF	16*
LIEUTENANT	15*
FIREFIGHTER/PARAMEDIC	14*

SECTION A-3: SALARY INCREASES:

- a. For the first year of the Agreement there will be no increase in the salary matrix.
- b. For the second year of the Agreement there will be a 5.25% increase in the salary matrix.
- c. For the third year of the Agreement, there will be a 2.50% increase in the salary matrix.

SECTION A-4: OVERTIME RATES

Fire Division employees working 24/48 schedules will be paid overtime based upon the Grade 14, Grad 15, or Grade 16 rate, as applicable.

CERTIFICATE OF SERVICE

This is to certify that the foregoing Report was electronically filed with the State Employment Relations Board and electronically served upon the parties by e-mailing it to their representatives, listed below, this 2nd day of November, 2012:

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Representative of the Employer

s/John T. Meredith
John T. Meredith, Fact Finder