

CONCILIATION DECISION

STATE EMPLOYMENT RELATIONS BOARD

STATE OF OHIO

November 20, 2012

In the Matter of:

| | | |
|---|---|-------------------------|
| Cuyahoga Metropolitan Housing Authority |) | |
| |) | |
| and |) | Case No. 12-MED-02-0168 |
| |) | Police Officers |
| Fraternal Order of Police, |) | |
| Ohio Labor Council, Inc. |) | |

APPEARANCES

For CMHA:

Craig Brown, Attorney
William Likes, Commander
Bo Truett, Deputy CFO
Angel J. Morales, Deputy Chief
Dr. Joy Kouns Lewis, HR Director
Ronaye Steele, HR Manager

For the Union:

Charles Wilson, Senior Staff Representative
James L. Clemens, Police Officer
J. M. Holdeman, Police Officer

Conciliator:

Nels E. Nelson

BACKGROUND

The instant case involves the Cuyahoga Metropolitan Housing Authority and the Fraternal Order of Police, Ohio Labor Council, Inc. The authority serves over 50,000 residents in Cuyahoga County where it owns and manages property and administers rent subsidy programs. The union represents the 56 sworn police officers employed by the authority.

The parties are negotiating for a contract to be effective January 1, 2012. The parties met to bargain on a number of occasions and reached tentative agreements on a number of the issues. However, when no overall agreement was reached, they proceeded to fact-finding. The Fact Finder held a hearing on September 18, 2012, and issued his report on October 3, 2012. When the union rejected the Fact Finder's recommendations, the dispute proceeded to conciliation.

The Conciliator was notified of his appointment on October 24, 2012. The conciliation hearing was held on November 14, 2012. The parties executed a written waiver of the requirement that the Conciliator provide for a written record of all statements made at the hearing.

During negotiations, fact finding, and conciliation, the parties reached tentative agreements on the following issues:

- Article 1 - Preamble
- Article 2 - Purpose and Intent
- Article 3 - Recognition
- Article 4 - Gender and Plural
- Article 5 - Dues Deduction/Fair Share
- Article 6 - Management Rights
- Article 7 - Employee Rights/Discipline
- Article 8 - General
- Article 9 - Equipment/Use of Vehicle
- Article 10 - Associate Representation
- Article 12 - Grievance Procedure
- Article 13 - Arbitration Procedure
- Article 14 - Non-Discrimination
- Article 15 - Obligation to Negotiate

Article 16- Conformity to Law
Article 17 - Seniority
Article 18 - Layoff and Recall
Article 19 - Duty Hours
Article 21 - Subcontracting
Article 22 - Holidays
Article 23 - Vacation
Article 24 - Sick Leave
Article 25 - Sick Leave Bonus
Article 26 - Personal Leave
Article 27 - Funeral Leave
Article 28 - Line of Duty Injury Leave
Article 29 - Jury Duty
Article 30 - Maternity and Paternity Leave
Article 31 - Military Leave
Article 33 - Shift Differential
Article 34 - Educational and Other Assistance
Article 35 - Uniform Allowance
Article 36 - Insurance
Article 37 - Miscellaneous
Article 38 - Retention of Benefits
Article 39 - Savings Clause
Article 40 - Longevity
Article 41- Drug/Alcohol Testing
Article 42- No Strike Policy
Article 43 - Conciliation
Article 44 - Duration
Article 45 - Execution
Side Agreement

At the request of the parties, the Conciliator is incorporating the tentative agreements as contained in Authority Exhibit 3 in his award.

The conciliation process is governed by Section 4117.14(G)(7) of the Ohio Revised Code. It requires the Conciliator to select the employer's or the union's final offer without modification. Section 4117.14(G)(7) lists the criteria governing the selection of a final offer to be as follows:

- (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, and 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 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.

ISSUES

The parties submitted two issues to the Conciliator. For each issue, the Conciliator will set forth the current contract provision, describe any changes sought by the parties, and summarize the arguments and evidence presented by the parties in support of their positions. He will then offer a rationale for his award and provide the appropriate contract language.

1) Article 20 - Overtime Pay/Court Time, Section 4 - Court Time - The current contract provides for a minimum of four hours of pay for employees required to appear in court while they are not on duty. The authority proposes reducing the minimum to 2½ hours. The union wishes to retain the current minimum.

Authority Position - The authority argues that its proposal to reduce the court time minimum from four hours to 2½ hours is fair and should be awarded. It points out that police officers spend an average of only one hour and 27 minutes in court while they are paid for a minimum of four hours. The authority adds that the time is usually paid at time and one half because most of the court appearances are not during police officers' scheduled work time.

The authority contends that the reduction in the court time minimum is necessary to offset its wage offer. It indicates that its wage offer exceeds the established wage pattern by \$40,000 to \$50,000 and that the union's wage demand would add \$150,000 to the cost. The authority reports that reducing the minimum to 2½ hours would produce savings of \$45,000 to \$50,000 per year.

The authority maintains that comparisons to other jurisdictions support its offer. It claims that no other jurisdiction in Ohio has a four-hour minimum for court time. The authority characterizes the current minimum as "expensive" and a "windfall" for the union.

Union Position - The union argues that the current four-hour minimum should be retained. It acknowledges that the average police officer spends less than two hours at each court appearance. The union stresses, however, that the current minimum "is not intended for time spent in court, but the inconvenience and disturbance of an officer's life by having to attend court in what would be nonworking hours." (Union Pre-Hearing Statement, page 9) It adds that when officers appear in court, they are required to "interrupt sleep, arrange childcare, adjust family activities, arrange travel and many other activities to accommodate the Court's schedule." (Ibid.)

The union contends that special circumstances justify the greater-than-average court time minimum. It states that since the authority's police officers "cover any property owned by the Housing Authority in Cuyahoga County ... in contrast to city and suburban police officers an authority officer could appear in any municipal court in any city's jurisdiction, in the County Common Pleas Court or Federal Court as well as civil actions in a number of housing courts." (Ibid.) The union asserts that "the burden is enormous and the four (4) hours payment is extremely justified for the imposition that is placed." (Ibid.)

Analysis - While the Conciliator recognizes that the Fact Finder recommended that the current four-hour court time minimum be retained, he must select the authority's final offer to reduce the minimum to 2½ hours. First, comparisons to other jurisdictions do not support the union's demand to retain the four-hour minimum. In fact, the union acknowledged that it could not find another jurisdiction in Ohio with a four-hour minimum.

Second, although the Conciliator recognizes that the authority's police officers are required to travel to courts throughout the County, most cases should not involve an unreasonable length of time. Furthermore, a significant part of the justification for the court time minimum is the inconvenience or hardship for officers who are required to appear in court during times they are not scheduled to work. The inconvenience or hardship of having to appear in court is independent of the necessary travel time.

Most importantly, a Conciliator should consider each issue in the context of the parties' overall settlement, including not only his entire award but also the parties' tentative agreements. In the instant case, the Conciliator is selecting the union's wage offer which provides substantial increases for all police officers and addresses an inequity with respect to the top wage for police officers compared to dispatchers. The selection of the authority's final offer for court time provides some offset to the significant cost of the union's wage offer as well as the costs associated with the parties' tentative agreements.

Award - The Conciliator selects the authority's final offer. Its offer is as follows:

Whenever approved by the immediate supervisor, employees called in to work or appearing in court on behalf of CMHA, for a time period of less than two and one-half hour (2½) hours when the employee is not on duty, shall be compensated not less than two and one-half (2½) hours subject to the election of the method in which compensation is to be received as set forth within Section 1 of the Article. Court time prior to the start of the employee's shift shall be compensated only until the start of the employee's shift. Multiple or consecutive continuous court time shall be considered a single event for the purposes of this Section.

2) Article 32 - Compensation - The current contract has a five-step wage schedule where employees advance one step on their anniversary dates. The schedule starts at \$26,701 (\$12.87 per hour) and increases by 7% to 9.2% each year, reaching a maximum of \$36,162 (\$17.39 per hour) after five years of employment. The union demands that each step of the schedule be increased by 3% in 2012, and by 2% in 2013 and 2014; that employees on the wage schedule be advanced one step on their employment anniversary dates in 2012, 2013, and 2014; that employees who complete the last step of the wage schedule during 2012 receive a 3% wage increase on their anniversary date and employees who complete the schedule in 2013 and 2014 receive 2% increases on their anniversary dates; and that employees who completed the step schedule as of December 31, 2011, get a 3% increase in 2012 and 2% increases in 2013 and 2014. It also seeks the addition of a sixth step to the schedule resulting in a top wage of \$41,600 (\$20.00 per hour) in 2012, \$42,120 (\$20.25 per hour) in 2013, and \$42,640 (\$20.50 per hour) in 2014. The authority's final offer is identical to the union's offer except that it does not include the addition of a sixth step to the wage schedule.

Union Position - The union argues that three changes need to be made in the wage article of the contract. It claims that the current step schedule needs to be increased; that a new step must be added for police officers with more than five years of service; and that the wage of officers not on the wage schedule must be increased by the same percentages as the increases in the wage schedule.

The union contends that the police officers' wage schedule is "broken." It points out that this situation is the result of past agreements where police officers received wage increases but the wage schedule was frozen. The union observes that this "has caused a gapping of the wage

schedules and a severely low entry wage as well as large disparity in the wage rates of officers.”
(Union Pre-Hearing Statement, page 6)

The union maintains that the wage schedule is also “out of line.” It reports that a five-year dispatcher earns \$40,019 (\$19.24 per hour) while a five-year police officer earns only \$36,162 (\$17.38 per hour). The union reports that it could not find a similar situation in any police agency in Ohio. It claims that “it makes no logical sense that jobs are so disparately treated and so out of line... [and that] the only remedy is to adjust/add the new step to fix the problem.” (Ibid.)

The union rejects the authority’s contention that the wage schedule does not affect the department. It indicates that in the past ten years, more than 86 police officers have left the 60-man department. The union states that at least 13 of them have left for other departments with better pay and benefits. It claims that “losing this much experience has to have a very detrimental effect on services.” (Ibid.)

The union dismisses any argument that the authority has an inability to pay. It asserts that in 13 negotiating sessions, the authority “did not stress or demonstrate an ability to pay argument [but] ... simply held that a general wage increase of 3%, 2% and 2% was the only pattern it was offering, and again freezing the steps.” (Union Pre-Hearing Statement, page 7) The union adds that it makes no sense for the authority to claim budget problems after hiring eight new police officers in the past two months. It insists that “it is not an inability to pay issue, but an unwillingness to pay issue.” (Ibid.)

The union complains that while police officers are poorly paid, the authority’s top officials are paid above “the median scales in the area.” It points out that the Chief of the CMHA

Police Department is paid \$106,208 per year and Commanders earn \$85,009, Lieutenants \$73,021, and Sergeants \$66,125.

The union contends that the Fact Finder's report supports its position. It indicates that he recognized the "pay anomaly." It acknowledges that he did not fix the problem but claims that as a result, 46 police officers voted to reject the his report and only one voted to accept it.

The union maintains that even if its offer is selected, CMHA police officers will still earn less than other police officers. It points out that in 27 suburban cities in Cuyahoga County, entry level wages range from \$32,881 to \$70,229 and top rates range from \$54,100 to \$73,758. The union notes that if its wage offer is selected, the starting rate in 2012 will be \$27,502 (\$13.22 per hour) and the top rate will be \$41,600 (\$20.00 per hour). It emphasizes that since the authority owns property all over Cuyahoga County, its police officers work in many of these cities.

Authority Position - The authority argues that the statutory criteria support its wage offer. It acknowledges that its financial condition is stable but indicates that it "will have to make dramatic changes in its operations to maintain viable sustainability." (Authority Pre-Hearing Statement, page 10) The authority reports that as of December 31, 2011, it had an operating loss of \$2.5 million on top of a loss of \$9.3 million in 2010.

The authority contends that it has limited options. It points out that the bulk of its funding comes from the Low Income Public Housing Program and the Housing Choice Voucher Program. The authority states that changes in both programs have adversely affected its finances.

The authority maintains that the police department's funding has been limited. It reports that 94% of the department's operating revenue comes from the LIPH Program. The authority observes that under the Property Based Accounting and Management Program, expenses

associated with police officers as well as their supervisors are allocated to one of its Asset Management Properties.

The authority argues that parity supports its wage offer. It points out that in April of 2012 the AFSCME clerical and maintenance units accepted first-year wage increases of 3%, followed by 2% increases in the second and third years of their contracts. The authority notes that “despite repeated efforts by the various units to obtain additional economic increases in the way of longevity pay, wage equity adjustments, and step schedules, none of the new contracts contain such improvements.” (Authority Pre-Hearing Statement, page 18).¹ It claims that a “departure from the pattern would be an affront to all the other unions and CMHA employees who have accepted the pattern.” (Authority Pre-Hearing Statement, pages 18-19)

The authority acknowledges that the Fact Finder recommended the union’s demand for “a pattern busting settlement.” It indicates that it accepted the Fact Finder’s recommendation to apply the general wage settlement to the five-step wage schedule. The authority complains that the union now “seeks... a dramatic increase in compensation at the final step of the wage schedule, roughly \$2.00 per hour.” (Authority Pre-Hearing Statement, page 19). It claims that the cost of increasing the current wage schedule plus adding a step would be \$165,000 more than the pattern settlement over the life of the collective bargaining agreement.

The authority rejects the union’s contention that its demand is justified because the wage schedule has not been adjusted for 12 years. It points out that it accepted the Fact Finder’s recommendation to adjust the schedule by applying the pattern wage increases to the schedule. The authority claims that this addresses the union’s alleged “inequity.”

The authority dismisses the union’s argument that its position is justified because in the past, the top step of the dispatchers wage schedule was adjusted. It indicates that the dispatchers’

¹ The authority has contracts with six different unions covering eight separate bargaining units.

schedule is the product of negotiations, covering at least 12 years where the agreements represented the trade-offs made in good faith bargaining. The authority complains that the union “seeks to isolate one product of those previous bargains and eradicate it without concern or care for those prior bargaining trade-offs.” (Authority Pre-Hearing Statement, page 20)

The authority maintains that the union has presented no evidence to support its “pattern busting proposal.” It states that the more senior police officers are “comparatively well-paid.” The authority adds that despite the police officers challenging work, the turnover rate is “modest and not out of the ordinary.” It charges that “the FOP seeks to adjust the top rate simply because it wants more money.” (Ibid.)

The authority argues that its proposed wage increases are comparable to the wage increases granted by other public employers. It reports that recent wage increases in the Cleveland labor market are as follows:

| <u>Location</u> | <u>Year</u> | <u>Increase</u> |
|---|-------------|-------------------------|
| City of Cleveland (SEIU, IBAT, IBT, IUOE) | 2007 | 2.0 |
| | 2008 | 2.0 |
| | 2009 | 2.0 |
| | 2010 | 0.0 |
| | 2011 | 0.0 |
| | 2012 | 3.0 |
| Cleveland State University | 2007 | 2.86 |
| | 2008 | 2.86 |
| | 2011 | Step plus one month pay |
| Cuyahoga Community College (SEIU) | 2008 | 3.0 |
| | 2009 | 3.0 |
| | 2010 | 3.0 |
| Greater Cleveland RTA (ATU) | 2007 | 2.0 |
| | 2008 | 2.0 |
| | 2009 | 2.5 |
| NE Ohio Regional Sewer Dist. (AFSCME) | 2007 | 3.0 |
| | 2008 | 3.0 |

| | | |
|-------------------------------------|------|-----|
| NE Ohio Regional Sewer Dist. (IUOE) | 2009 | 2.0 |
| | 2010 | 2.0 |
| | 2011 | 2.0 |

(Authority Pre-Hearing Statement, page 21)

It observes that the State Employment Relations Board’s most recent Annual Settlement Report reveals that in 2011 the average wage increase for police officers in Ohio was .96% and the average increase for all public employees in the Greater Cleveland area was .68%. The authority adds that in 2012 the average wage increase for public employees in the United States is 1.1%.

The authority contends that its proposal is in the best interest of the public. It indicates that it has operated at a loss for the past two years and that “excessive wage increases would further strain [its] financial outlook.” (Authority Pre-Hearing Statement, page 22) The authority states that “unless [it] can further reduce expenses, it will be forced to choose between wages and properly serving the public’s needs.” (Ibid.)

The authority maintains that its offer is fair. It asserts that its “precarious” financial position would justify a wage freeze. It stresses, however, that it refuses to balance its budget on the backs of its employees ... [and] instead ... will endeavor to tighten its belt elsewhere.” (Authority Pre-Hearing Statement, pages 22-23)

The authority charges that the union’s wage proposal is “irresponsible and must not be awarded.” (Authority Pre-Hearing Statement, page 25). It points out that in the first four years of employment there are step increases of 7.5% to 9% and the steps are being increased by 3% in 2012 and 2% in 2013 and 2014. The authority notes that in addition, the union has proposed an 11% increase in the top rate. The authority claims that this means that “a current step three employee will move to the top of the schedule in 2014 and will realize a whopping 35% increase over the term of the contract.” (Authority Pre-Hearing Statement, page 23)

Analysis - The issue before the Conciliator is quite limited. The union proposes that each step of the wage schedule be increased by 3% in 2012 and 2% in 2013 and 2014; that employees on the wage schedule be advanced one step each year; that a sixth step be added to the wage schedule paying \$41,600 (\$20.00 per hour) in 2012, \$42,120 (\$20.25 per hour) in 2013, and \$42,640 (\$20.50 per hour) in 2014; that employees who complete the last step of the wage schedule during the term of the contract, receive the general increase for that year on their anniversary dates; and that employees who completed the step schedule as of December 31, 2011, get the same general increases effective on the Saturday of the first pay period immediately following January 1 of the contract year. The authority's final offer is identical to the union's offer except that it does not include the addition of a sixth step to the wage schedule.

The statutory criteria governing the conciliation process require the Conciliator to select the union's final offer adding a sixth step to the wage schedule. First, while the authority's operating losses in 2010 and 2011 suggest that it needs to continue to carefully monitor its budget, it has the ability to pay the union's demand without adversely impacting the level of service. In fact, the authority did not argue that it could not pay the union's demand.

Second, comparisons of the wages of the authority's police officers to other police officers in the county strongly support the union's offer. The union's data indicates that in 27 suburban police departments in Cuyahoga County entry level wages range from \$32,881 to \$70,229 and top rates range from \$54,100 to \$73,758 compared to \$27,502 and \$41,600 for CMHA police officers. (Union Exhibit 3)

While the duties of suburban police officers may be somewhat different from CMHA police officers, the data submitted by the authority reveals that they are also paid significantly less than police officers employed by other public agencies in the county. The average top wage

for police officers employed by MetroHealth, Cuyahoga Community College, the Regional Transit Authority, Cleveland Metroparks, and Cleveland State University is \$45,154 compared to the union's proposed top step of \$41,600. (Authority Exhibits, Tab 9)

Third, the adoption of the union's final offer is necessary to address inequities within the bargaining unit. For the last 12 years the parties have agreed to freeze the wage schedule so that employees on the schedule received only step increases leaving the maximum wage unchanged. At the same time, police officers who had more than five years of service received percentage wage increases. The result is that police officers with limited service earn significantly less than their more senior colleagues. Adding a sixth step to the wage schedule will reduce the existing disparities.

Fourth, a new wage step also addresses an anomaly in the top wage of police officers compared to the dispatchers. The maximum wage on the dispatcher wage schedule is \$40,019 compared to \$36,162 on the police officers wage schedule. The union reported that no other police department in Ohio has a higher maximum wage for dispatchers than for police officers. The union's final offer corrects this anomaly.

Fifth, the union's final offer is consistent with public interest and welfare. The current wage schedule for police officers results in significant differences in the earnings of employees doing the same work, which, if allowed to persist, may create morale problems and lead to less effective policing. Furthermore, while the authority questions the union's claim that low wages have led to significant turnover, common sense suggests that wages significantly below those paid by other departments will result in the departure of well-qualified police officers. The loss of experienced officers cannot be deemed to be in the public interest.

The Conciliator recognizes that the Fact Finder rejected the union’s demand to add a sixth step to the salary schedule. The Fact Finder recognized the impact that freezing the wage schedule had on police officers’ earnings and the unusual circumstance of the top rate for the dispatchers exceeding that of the police officers. (Fact-Finding Report, page 46) He also noted that the wages of the authority’s police officers were low in comparison to other police officers and indicated that the result would be a reduction in the quality of the officers attracted to CMHA. (Ibid.) However, the Fact Finder rejected the union’s demand for a new salary step because he was reluctant to break the pattern the authority had set in bargaining with its other unions. (Fact-Finding Report, page 47)

The Conciliator understands the importance of pattern bargaining in Ohio public sector bargaining. He acknowledges that he has not infrequently relied on the concept in fact-finding and conciliation. However, in the instant case, the union has made a convincing argument for the addition of a sixth step to the wage schedule, even if it means a departure from the pattern the authority set in bargaining with its other unions.

Award - The Conciliator selects the union’s final offer. Its offer is as follows:

Effective January 1, 2012, police officers shall be compensated as follows:

Police officers on the wage step schedule

Police officers with less than six (6) years’ experience shall be compensated at a rate in accordance with the following step schedule:

| Years of Service | 2012/Hr. | 2012/Yr. | 2013/Hr. | 2013/Yr. | 2014/Hr. | 2014/Yr. |
|------------------|----------|----------|----------|----------|----------|----------|
| 0 – 1 | 13.22 | 27502.39 | 13.49 | 28052.44 | 13.76 | 28613.49 |
| 1 – 2 | 14.23 | 29598.78 | 14.51 | 30190.76 | 14.81 | 30794.57 |
| 2 – 3 | 15.29 | 31805.50 | 15.59 | 32441.61 | 15.91 | 33090.45 |
| 3 – 4 | 16.35 | 34012.23 | 16.68 | 34692.47 | 17.01 | 35386.32 |
| 4 – 5 | 17.90 | 37247.28 | 18.26 | 37992.23 | 18.63 | 38752.07 |
| 5+ | 20.00 | 41600.00 | 20.25 | 42120.00 | 20.50 | 42640.00 |

During years 2012, 2013, and 2014, police officers on the wage step schedule shall receive their step increase on their anniversary date of hire as a Sworn Police Officer as outlined above.

No police officer with 5 or more years of service shall make less than \$20.00 per hour in year 2012, \$20.25 per hour in year 2013, and \$20.50 per hour in year 2014.

Police officers completing the wage step schedule during the term of this Agreement

During year 2012, upon completion of the last step in the above step schedule, a police officer will receive a three percent (3%) wage increase on his/her current hourly rate on the employee's anniversary date of hire as a Sworn Police Officer.

During year 2013, upon completion of the last step in the above step schedule, a police officer will receive a two percent (2%) wage increase on his/her current hourly rate on the police officer's anniversary date of hire as a Sworn Police Officer.

During year 2014, upon completion of the last step in the above step schedule, the employee will receive a two percent (2%) wage increase on his/her current hourly rate on the police officer's anniversary date of hire as a Sworn Police Officer.

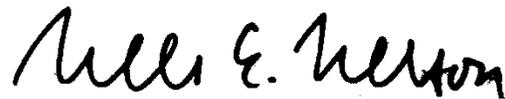
Police officers who have completed the wage step schedule

A police officer not on the above step schedule as of December 31, 2011, will receive a three percent (3%) wage increase in his/her current hourly rate in 2012.

A police officer not on the above step schedule as of December 31, 2012, will receive a two percent (2%) wage increase in his/her current hourly rate in 2013.

A police officer not on the above step schedule as of December 31, 2011, will receive a two percent (2%) wage increase in his/her current hourly rate in 2014.

All wage adjustments for police officers who have completed the step schedule will become effective on the Saturday of the first complete pay period immediately following January 1 of each contract year.



Nels E. Nelson
Conciliator

November 20, 2012
Russell Township
Geauga County, Ohio