

**IN THE MATTER OF CONCILIATION BETWEEN
FRATERNAL ORDER OF POLICE/OHIO LABOR COUNCIL
AND
THE CITY OF CONNEAUT**

SERB CASE: 2012-MED-08-0754

**BEFORE WILLIAM C. BINNING PH.D.
SERB CONCILIATOR**

FOR THE CITY

**Tom Grabarczyk
6800 W. Central Street, Suite L-2
Toledo, Ohio 43617**

FOR THE UNION

**Lucy DiNardo
FOP/OLC
2721 Manchester Road
Akron, Ohio 44319**

Present at the Hearing

For the City:

Tim Eggleston City Manager
John Williams Finance Director
Chuck Burlingham Police Chief

For the Union:

Stephen J. Gerics FOP/OLC Representative
Christopher Mackensen Patrolman/Detective Conneaut

In accordance with SERB procedures, this Conciliator was appointed on August 12, 2013 to hear the case between the City of Conneaut and the FOP. The Fact-finder's report on the outstanding contract issues was rejected by one of the parties.

The parties, who were well represented by very professional and able representation, agreed to hold a hearing on September 18, 2013 at the City of Conneaut's City Hall. In a timely fashion and in accordance with SERB guidelines, the parties delivered to the Conciliator their parties' positions on the outstanding issues five (5) days before the hearing date.

The Conciliator is instructed by SERB to "resolve the dispute between the parties by selecting on an issue-by-issue- basis, from between each of the party's final settlement offers." The Conciliator is obliged to take into account the following for consideration when making his award:

- (1) Past Collective agreements, if any, between the parties;
- (2) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public 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 adjustment on the normal standards of public service;
- (4) The lawful authority of the public employer;
- (5) The stipulations of the parties; and
- (6) 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, conciliation or other impasse resolution procedures in the public service or in private employment.

ISSUES

THE OUTSTANDING ISSUES ARE:

1. Grievance Procedure
2. Vacation Bidding
3. Duration
4. Wages
5. Shift Differential
6. Rank Differential
7. Sick Leave Cap
8. Hospitalization

Mediation

Prior to the opening of the hearing the parties engaged in good faith mediation and a number of issues were resolved by the parties. The parties tentatively agreed to a settlement on the outstanding issues of arbitration, hospitalization, duration, vacation bidding, and sick leave cap. These will be added the other issues tentatively agreed to by the parties.

The parties also agreed to language to pay K-9 officers a stipend of \$15.00 per week for the care and maintenance of the K-9 unit.

After the tentative agreements were reached by the parties, the unresolved issues that the conciliator is to address are:

1. Wages
2. Shift Differential
3. Rank Differential

Hearing

The hearing was formally opened late in the morning of September 18, 2013.

(It should be noted that one of the parties requested that the parties file briefs instead of making final oral arguments. This conciliator, based on common practice in labor arbitration, determined that if one party requests to file briefs, then that is what will be done. It was agreed that the briefs would be due October 21 and the conciliator would make the exchange of briefs to the parties. The Union then asked for an extension until October 28, which the Conciliator agreed to as a firm deadline.)

There were extensive presentations on the fiscal condition of the City of Conneaut by the advocate for the City of Conneaut. The fiscal condition of the City of Conneaut is the most significant factor in considering the

proposed wage increase, and the proposed increases in the shift differential and the rank differential.

The advocate for the City maintained that the City of Conneaut is facing very difficult times. He argued the City has aging infrastructure requiring resources beyond the city's fiscal capabilities. The City has aging equipment and employment costs that are unsustainable. The City advocate entered into evidence E- 13 which lists capital and equipment needs with a total project cost of almost \$4 million dollars. The City advocate maintained that services and expenditures have been eliminated or reduced and capital projects shelved.

The City advocate maintained that increases in compensation will result in further reduction in personnel. He maintains that over the last ten years, the number of City employees has been reduced from 113.5 to 85. (Employer, Final Position on Issues. September 13, 2013 p. 2) The largest reductions began in 2008 with the onset of the Great Recession (Id.).

The advocate maintains the City of Conneaut is operating at the same general fund level that it had received in 1998 and 1999 (Id. p.3).

There have been recent attempts to increase revenue by offering a road levy, which failed last year. The City is going back to the ballot with a five mill levy this year. If it does pass, the advocate maintains it will be used only for materials, inferring that it will not be used for personnel costs.

According the City's advocate, the City has suffered a significant loss of jobs. The date of these job losses is not documented. GE left and 100 jobs were lost. The Public Dock had 200 positions and is now down to 20 or 30 jobs. CW, a housing and building manufacture,r has gone from 400 positions to 100 (Id.).

Most notably the number of income tax filers has declined from 4600 in 2000 to 4054 in 2011. (Id.) The City's advocate claimed that total wages subject to tax has declined significantly. He also maintained that the average wage of tax filers in Conneaut is \$30, 414.46.

The City, in an effort to reverse the job losses, invested in an industrial park. That effort has yet to bear fruit and the City is on the hook for loan payment of \$24,6554 this year, and it will go to \$59,091 in 2014. (See E-14).

In describing the current and future revenues of Conneaut: The City advocate points out that the City is receiving the same level of taxes it received in 2000. There were declines, as one would expect, in 2008-2010 during the Great Recession. The advocate points out there were “minor” increases in revenue in in 2011 and 2012. (Employer, Position Statement of Final Issues. p. 3).

The advocate for the City also pointed to the loss in Local government funds from the state government of Ohio. He wrote that it dropped from approximately \$710,000 to \$300,000. (Id.) This Conciliator notes that the loss is not going to be restored in the next state budget.

The City advocate points to a bleak picture for property valuations in the City. Only the sale of a state prison facility, which then became subject to property taxes, halted the overall decline.

To no one’s surprise the interest income on receipts once at \$275,355 are now at \$3,716. The years were not given. (Id. p.4)

The advocate points out that inheritance tax which generated revenues in the \$100,000 to \$120,000 range has now been eliminated. (Id. p 4). This was done by the Ohio General Assembly.

The City’s advocate concluded his overall presentation by raising “ability to pay” . He maintained that: “Ability to pay is determined by a number of factors including all revenues and expenditures and obligations an employer has. In the case at hand, if fact-finders recommendations were implemented, the cumulative affect over the three year contract would be 29% of the current carryover for just this single unit. Ability to pay is an issue.”(Id.)

The advocate for the Union presented very similar budget data on the fiscal condition of the City of Conneaut. The data she presented did not contradict the data offered into evidence as (E-11), which presented the General Revenue, Expenses, Surplus (Deficit), and the unencumbered balance expressed in dollars and expressed in percentages over a number of years. The Union pointed to sizable and healthy unencumbered balances in recent years. The City finance director offered a more modest unencumbered balance forecast for the end of 2013. (E-15)

The Union gave great weight to the Fact-finder's recommendation and expected the Conciliator to do the same . The Union Advocate wrote: "Fact-finder Ruben cited in her report that the city's general fund carryover in 2012 was approximately \$871,000 which is approximately a 20% carryover, which was approximately \$100,000 more than the City's 2011 carryover." (Union's Post Hearing Brief. P. 4) The Union also cited the weight Fact-finder Ruben gave to the City of Geneva as the significant comparable. (Id).

The City advocate argues that no value should be given to the Fact-finder's recommendations. After giving due respect to the process of Fact-finding the City Advocate wrote " However, the recommendations of the Fact-finder are of little value in the case at hand. In compliance with the ORC, no evidence was presented to the Fact-finder on behalf of the Employer. The Conciliator has now had the opportunity to receive evidence in support of the Employer's positions." (Employer Post Hearing Brief, October 18, 2013 p.6)

The City Advocate has a penchant to draw attention to the cumulative cost of total police wages. For example, he wrote "The cumulative total over the three years of the agreement is \$253,453. (Id. p.1 and p.4) (E-24).

The evidence presented by the parties gave this Conciliator the impression that the future financial health of the City of Conneaut was static. The City is not growing in population nor in wealth. State and federal aid is shrinking and that aid will not be restored to cities in Ohio.

Furthermore, it is the view of this Conciliator that the economic recovery in Northeast Ohio is tepid, and that cities like Conneaut will continue to face significant fiscal challenges. Growth will not be robust in the near term.

The Union did not make an overall assessment of the economic conditions of the City of Conneaut. The Union rested its case heavily on the carry over balances of the City.

The Union Advocate argues that the Conneaut police officers are burdened by more and more work. The Union Advocate maintains that while the size of the police force is shrinking the volume of calls has increased. Also, the loss of a lieutenant has increased the police officers' administrative duties. Specific data in support of these claims were not provided. The Union did argue that the excessive overtime use was evidence of the increased workload.

The Union based much of its case on its offered comparables, which were challenged by the City.

The Union offered comparables that were within a fifty plus mile radius. The City challenged some of the selections. The City offered a long list of comparables from all over the state that it claimed were similar to Conneaut. This led to numerous calculations over averages of shift differential and wages for numerous municipalities in Ohio based upon which set of comparables were selected. Both advocates made lively, sharp and persuasive arguments in support of their case and challenged the data offered by the other party.

The City gave attention to comparables in its Post-Hearing Brief. In questioned the Unions comprables, the City stated "...one would have to question why Mentor-on-the-Lake, Willoughby Hills, Middlefield and Andover were not included when they all fall within the fifty-six (56) mile radius and within the same population range as those provided by the Union." (City Post-Hearing Brief October 18, 2013 p. 3). The City went on to diminish other comparables offered by the Union because of the manufacturing base of the selected cities and the lack of a manufacturing base in Conneaut. (Id.) The City advocate wrote, "Conneaut is an aging rural community without the benefit of a large manufacturing base." (Id.) Conneaut has experienced all sorts of economic declines from property values to wages (Id.) The City advocate defended the use of statewide comparables and said the Union used Ashtabula and Geneva because they were used by the Union in fact-finding (Id.). The City maintained more weight should be given to internal comparables. They argued "Historically, the City has granted increases to Police and Fire equally, with only a few very minor differences back in the 90's." (Id.) A memo was introduced from the Firefighters Local Union indicating they

will not ask for a wage reopener in 2013. That memo to the City Manager was dated September 17, 2013 the day before the hearing. (E-22).

The Union in its Post- Hearing brief relied almost solely on Geneva, which was used as the justification for the recommended wage increase by the Fact-finder. (See Union Post-Hearing Brief October 28, 2013 p.4.) The Union argued that “The Employer did not raise argument at all during the hearing that her report or findings contained error in any way; therefore the Union would compel the Conciliator to uphold her recommendation and award the Union’s position regarding Salary Provisions.” (Id.pp. 4-5.) As stated above, the City did in fact challenge the Fact-finder’s award: “However, the recommendations of the Fact-finder are of little value in the case at hand. In compliance with ORC, no evidence was presented to the Fact-finder on behalf of the Employer.” (City Post-Hearing Brief, October 18, 2013. p.6).

The City also entered evidence the average wage settlements collected by SERB (E-20). It also offered into evidence the Firefighters recently settled contract which is the same as their proposed offer to the Police.

WAGES

UNION POSITION

ARTICLE 35 SALARY PROVISIONS

35.02 Effective January 1, 2013, there shall be a four (4%) percent wage increase added to the base wage at each of the following steps. Effective January 1, 2014, there shall be a three and a half (3.5%) percent wage increase added to the January 1, 2013 hourly rate of pay, and Effective January 1 2015 thee shall be a three and (3%) percent wage increase added to the January 1, 2014 hourly rate of pay.

The Union is offering as its position the Fact-finder’s recommendation on wages. The Fact-finder based her recommendation on the 2012 carryover balance. The Fact-finder also used the City of Geneva, Ohio almost solely as the comparable.

The Union based its case on the above. It offered some additional comparables, and argued that due to the shortage of patrol officers and rank officers, they are burdened with more calls, more work, and more administrative duties

because of the lack of supervisors. It cited the sizable overtime costs as evidence. The Union advocate indicated that if the City had agreed to hire more officers, they would not be asking for this increase.

As part of their Salary Provisions the Union offers language that states:

A rank differential of ten (10%) percent based upon highest paid patrolman, has been established between Police Officers and Police Sergeants and a rank differential of ten (10%) percent, based upon the highest paid Sergeant has been established between Police Sergeant and Police Lieutenant.

There was actually little discussion on the rank differential. The Union offered comparables which showed that all of its selected comparables had a rank differential of 10%.(Union Binder Tab 7).

CITY POSITION

ARTICLE 35

35: The City's final offer will include a 0% in the first year with a wage re-opener in the second and third year of the agreement. The City will also allow the rank differential to be addressed in the re-opener. (City Final Position on Issues. September 13, 2013 p.6).

The City based its argument for a wage freeze on the fact that it does not see any evidence of significant economic growth or increased revenue for the City of Conneaut. It cited the decline in the number of City employees in recent years. The City Advocate cites the loss of state and federal funding. The City maintains that the carryover balance, which the Union relies on for its case, is a result of reduction in personnel in the City. The City also challenges the comparables offered by the Union and offers its own set of comparables. This conciliator does not recall a direct challenge to Geneva as a comparable, which the Fact-finder relied on, and the Union offered in this hearing as one of its comparables. The City offered a great deal of additional evidence which is cited above from the average wages collected by SERB to the recently settled Fire Fighters contract.

The City did not give a great deal of attention to rank differential. That is not to say they agreed to it. Their extensive case on the fiscal condition of the City would apply to this wage request as well, which they opposed.

DISCUSSION AND RECOMMENDATIONS

This Conciliator shares the City advocate's concern about the City of Conneaut's future ability to meet its financial obligations. The economic recovery in Ohio seems to be stalled. State aid to Ohio municipalities has been significantly cut and there was no relief in the most recent state budget.

The Union argument that additional work placed on the Conneaut Police because of manpower shortages and reduction in the number of supervisors is a viable argument.

On the issue of wages this Conciliator supports the Fact-finder's recommendation.

Recommendation on Wages: THE UNION POSITION

This includes the recommended increase in the rank differential.

It is noted here that both parties agreed to the following language under wages:

35.03 K-9 officers shall receive an additional fifteen dollars (\$15.00) per week for the care and maintenance of the K-9 unit.

SHIFT DIFFERENTIAL

UNION PROPOSAL

ARTICLE 8 SHIFT DIFFERENTIAL

8.01 Any employee regularly scheduled during the second shift shall receive compensation at the rate of ~~thirty (\$.30)~~ **forty (\$.40)** cents per hour in addition to his regular base compensation. Any employee regularly scheduled during the third shift shall receive compensation at the rate of ~~forty (\$.40)~~ **fifty (\$.50)** cents per hour in addition to his regular base compensation. Any employee regularly scheduled for employment for a shift which commences during the second or third shift shall receive compensation at the rate of ~~forty (\$.40) cents per hour in addition to his regular compensation~~ **pay which coincides with the hours of the prospective platoons mentioned above.**

The Union offered the same municipalities as comparables for its proposed increase in shift differential.

The Union also offers the Fact-finder's opinion and award in the Union's favor on shift differential as part of its evidence. (See Union Tab 4)

CITY POSTION

The City is opposed. (See City Conciliation Final Position Statement p.4)

The City argument is the same as it makes against the overall wage

increase. Conneaut's economy is not growing and the budget is

constrained. The City offers its own set of comparables on this issue.

DISCUSSION AND RECOMMENDATION

The parties spent a great deal of time at the hearing calculating the averages of their various comparables on this issue of shift differential. The very generous wage award offered above and the uncertainty of the future fiscal condition of the City of Conneaut trumps any arguments for an increase in Shift Differential at this time.

RECOMMENDATION: THE CITY'S POSITION ON SHIFT DIFFERENTIAL

The above and all of the outstanding issues Tentatively Agreed to by the parties is awarded.

Signed and dated this 11th day of November 2013 in Mahoning County Ohio.

William C. Binning Ph.D.

SERB CONCILIATOR

The Conciliator would like to commend both parties for signing an agreement waiving the making of a transcript or a recording by a Court Reporter related to this conciliation hearing.