

STATE EMPLOYMENT RELATIONS BOARD

CONCILIATOR'S AWARD

IN THE MATTER OF:

CITY OF YOUNGSTOWN

AND

YOUNGSTOWN PATROLMEN'S ASSOCIATION
OHIO PATROLMEN'S BENEVOLENT ASSOCIATION

Case Number 2012-MED-09-0832

Before Conciliator: Thomas J. Nowel
April 1, 2014

PRESENTED TO:

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INTRODUCTION

Thomas J. Nowel was appointed to serve as Conciliator in the case as captioned on the cover page by the State Employment Relations Board on January 31, 2014 in accordance with Ohio Revised Code Section 4117.14 (D) (1). Hearing was conducted on March 13, 2014 at Youngstown City Hall.

The collective bargaining agreement between the parties expired on November 30, 2012. The parties engaged in negotiations for a successor Agreement and settled a number of issues. They also utilized the mediation services of the Federal Mediation and Conciliation Service. A number of issues remained at impasse, and the parties proceeded to fact finding on June 11, 2013, and the Report and Recommendation was issued on January 3, 2014. Both parties rejected the Report and Recommendation of the Fact Finder. Following the rejection of the Report and Recommendation, the parties modified a number of their pending issues and then proceeded to conciliation. They submitted pre-hearing position statements in a timely manner, and the evidentiary hearing was scheduled on March 13, 2014. The parties had entered into a waiver of provisions of Ohio revised Code Section 4117.14 (G) (11) on June 11, 2013. Prior to the commencement of the evidentiary hearing, the parties, in good faith, engaged in mediation of outstanding issues with the Conciliator and, while a number of options for settlement were considered, resolution was not achieved. The evidentiary hearing was therefore convened at noon.

The bargaining unit, as represented by the Ohio Patrolmen's Benevolent Association, includes approximately 107 full time Patrol Officers of the City of Youngstown Police Department.

OUTSTANDING ISSUES:

1. Article 11, Discipline
2. Article 26, New Accumulated/Compensatory Time, Section 4 (A), Court A/T
3. Article 26, New Accumulated/Compensatory Time, Section 4 (E), Training A/T
4. Article 26, New Accumulated/Compensatory Time, New Section, Donation
5. Article 27, Salary and Wages
6. Article 28, Insurance Benefits, Section 5, Employee Contributions
7. Article 42, Section 9, Sick Leave Incentive Payment
8. Side Letter No. 5, Wage Schedule Administration
9. Appendix A, Wage Schedule

Those participating at hearing for the Employer included the following:

Sandy Conley, Clemans, Nelson & Associates
Martin Hume, City Law Director
Rebecca M. Gerson, First Assistant Law Director
Anthony Farris, Deputy Law Director
Kyle Miasek, Deputy Finance Director
Lieutenant Brian Butler, Staff Inspector
Melisa Fisco, Assistant Employer Advocate

Those participating at hearing for the Union included the following:

Daniel J. Leffler, OPBA Attorney
Mary Schultz, Financial Expert
Michael Anderson, YPA President
George Wallace, YPA Representative
Seann Casfalo, YPA Representative
Randy Miller, YPA Representative
Douglas Pesa, YPA Representative

BACKGROUND

In analyzing the positions of the parties regarding each issue at impasse and then selecting one or the other final offer, the Conciliator is guided by the principles which are outlined in ORC Section 4117.14 (G) (7) (A-F).

1. The past collectively bargained agreement between the parties.
2. Comparison of the issues submitted to fact finding 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 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. Other factors, not confined to those listed above, which are normally or traditionally taken into consideration in determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact finding, or other impasse resolution procedures in the public service or in private employment.

In addition to the above guidelines, the Report and Recommendation of the Fact Finder in this matter is given consideration in the development of an Award regarding the outstanding issues at Conciliation.

During the course of the hearing, the parties had full opportunity to advocate for their positions, submit exhibits, present testimony and discussion from those participating and engage in rebuttal of the submissions and arguments of the other

party. The Conciliator will transmit, by way of electronic mail, the Award in this matter no later than April 7, 2014 or at an earlier date if possible.

DISCUSSION

At the onset of the evidentiary hearing, both parties spoke to the financial condition of the City of Youngstown.

The Union states that the Fact Finder in his Report and Recommendation indicated that the financial condition of the City has improved and shows hope in the future. The White House, in its “Strong Cities, Strong Communities” initiative, targeted a number of financially challenged cities including Youngstown. The “Youngstown Plan” was prepared and developed by the Public Financial Management, Inc. (PFM Report). The Union states that this analysis found that the City is inefficient and poorly managed. There are no audit controls. The PFM Report found that the Fire Department is over staffed and the Police Department is understaffed. It does not criticize the Police Department but instead speaks to the problem of significant crime in the City. The Union argues that the downward spiral in the number of police officers must be reversed. In many instances, the Union states, non-safety force employees at the City are paid more than Patrol Officers. The number of Patrol Officers compared to population is out of balance, and the number of supervisory employees to Patrol Officers is likewise not in balance. The Union’s financial advisor, Mary Schultz, is a CPA who specializes in the analysis of public sector finances. Her expertise is the financial impact of public budgets on safety forces in Ohio. She has analyzed over 60 public sector budgets since 2006. At

hearing, Ms. Schultz testified in behalf of the Union's position. She criticized the City in failing to provide her with certain reports and the fact that audits were not timely. She stated that the City overcame its negative balance in 2009, and there is sufficient carryover based on standards established by the Government Finance Officers Association (GFOA). The income tax rate is 2.75%. A significant portion of income tax revenue is dedicated to the police levy special revenue fund. The Union argues that the citizens of Youngstown have consistently supported police levies and funding. Ms. Schultz and the Union state that the City has entered into a three year lease with V & M Star, a steel pipe maker with two new mills in the Youngstown area. This manufacturer has agreed to pay the City \$8,400,000 over three years and then \$100,000 for each year thereafter. The Union states that the City collected tax revenue of \$44,450,000 in 2013 which was an increase over 2012 revenues. Ms. Schultz stated that the City overestimated income tax revenue for 2013, but total receipts exceeded previous years. The Union states that there has been a steady increase in income tax revenues dedicated to the police fund over the past several years. On the other hand, expenditures in the Police Department have been reduced. The City regularly transfers monies from the General Fund to supplement the Police Fund, but the amount transferred in 2013 was \$1,003,000 less than the amount transferred in 2012. The Union argues that no other department realized such a large reduction in General Fund support. The Union states that a 1% wage increase has a total departmental cost of \$99,397.00. This figure does not include civilian employees of the Police Department but all other members of the department are included. It also includes roll-up costs such as pension, Medicare

and Workers Compensation (Union Exb. 2). Ms. Schultz stated that the PFM Report suggested that there are a number of options which could generate significant savings to the City, and these resources could be used for Patrol Officers' wages and benefits. The Report also recommended the utilization of the Block Grant to fund the Police Department. The PFM Report did not rule out wage increases for Police Department employees. Ms. Schultz stated at hearing that funding exists for the Union's wage proposal although "it's tight."

The Employer presented an overview of its financial condition at hearing utilizing the testimony and discussion of Deputy Finance Director, Kyle Miasek. Mr. Miasek has been in his position with the Employer for nine years. He stated the 2013 year-end balance of the General Fund was only \$158,572.64 (Tab 4-L), and the balance in the Police Fund was \$30,260.42. He stated that the PFM suggestion, to use block grant funds in the Police Department, was not possible. These funds cannot be diverted, as they are dedicated to various community programs. In addition, certain grants, which are dedicated to the Fire Department, require specific staffing levels. Youngstown has one of the highest arson rates in the state. He stated further that the City of Youngstown is in a "structured deficit." Revenue streams are insufficient to ensure a truly balanced budget. "It is a shell game." Due to budget shortfalls, the City found it necessary to request V & M Star to make its 2013 lease payment in December 2012 in order to ensure a balanced year end budget as required by state law. He emphasized that funds from V & M Star cannot be used for recurring costs, as they are one time payments. The City again, in

December 2013, was forced to take an advance from RITA (regional tax agency) of its 2014 tax receipts to close a year end budget gap (Tab 4-M). Mr. Maisek stated that, in reality, the City has been engaged in deficit spending. He argued that income tax receipts are again in decline. Additionally, the City shares income tax revenues, generated by the construction of the V & M Star plant, with the City of Girard based on agreement of the two public jurisdictions. Anthony Farris, Deputy Law Director, stated that the City has a structural deficit every year, as expenditures are greater than revenues. "Every year the City must find a way to balance the budget. It's a one shot deal." The City must pursue an advance, sell an asset and find a one time income source. He stated that the Employer offered an early retirement incentive, but personnel costs were not reduced to the level anticipated. The Employer states that it is not able to afford the economic proposals submitted by the Union.

A discussion of each issue at impasse and Award of the Conciliator is as follows.

1. Article 11, Discipline

Section 6 of this provision states that records of discipline cease to have force and effect and are not considered in future discipline after twenty-four months. This includes letters of instruction and cautioning, written reprimands and suspensions and fines. The Employer proposes to include additional language which states, "provided that there has been no other intervening discipline." The Union rejects the proposal and wishes to maintain status quo.

EMPLOYER POSITION: The Employer states that its proposal is reasonable and is a clarification regarding the way in which this provision was intended. Internal comparables support the Employer's position. Of the nine collective bargaining agreements with the City of Youngstown, this is the sole Agreement which lacks this language in the discipline provision. The Employer seeks consistency and argues that the pattern of bargaining is an important consideration. A number of fact finding reports are cited regarding the significance of pattern bargaining. In addition, the Employer illustrates collective bargaining agreements in regional city jurisdictions which contain language similar to that being proposed here. The Employer requests that the Conciliator select its proposal.

UNION POSITION: The Union proposes to maintain current language in the discipline provision of the Agreement. The Union argues that the City's proposal would potentially allow discipline to remain in effect for the duration of a Patrol Officer's entire career. The Union states that it is important to note that reprimands are not appealable to arbitration. The Union argues further that the culture at the City is one in which it is not unusual for an employee to receive a reprimand days prior to the two year expiration of a standing discipline. The Union requests the Conciliator to reject the proposal to amend this section of the Agreement.

AWARD: Both parties make persuasive arguments to support their positions. Internal and external comparables support the proposal of the Employer. The Union's argument that reprimands cannot be arbitrated is persuasive. The

Employer did not cite a discipline case or history of disciplinary issues in which it could not take appropriate action based on existing language, and current contract language is long standing. The fact finder noted that the Employer offered no evidence that intervening disciplinary actions had been a problem, and no new data or arguments were presented at the conciliation hearing. The Employer's proposal is therefore rejected and current contract language is maintained.

**2. Article 26, New Accumulated/Compensatory Time
Section 4 (A), Court A/T**

The Employer proposes to modify Section 4 (A) to limit the four hour minimum payments for each session of court in a day to no more than two (2) four (4) hour payments or A/T credits. The Union rejects the proposal and proposes to maintain status quo.

EMPLOYER POSITION: The Employer states that the current provision allows an employee to be paid or credited with A/T for two four hour minimums if appearing for a court appearance at 11:00 am and is not released until a few minutes past noon. The Employer argues that this was not the intent of this provision when it was negotiated. Its proposal would allow for two four hour payments or credits when an employee appears at a court hearing during the day and then is called back to appear for another separate hearing. The Employer states that the collective bargaining agreement for command officers allows for the four hour payments based on specific hours of the day and is therefore less generous. External

comparable jurisdictions allow for no more than two payments for court time in one day. Only Youngstown Patrol Officers have the potential for twelve hours of pay or A/T in one day. The Employer states that officers are not abusing the system, but the current language allows for an excessive benefit.

UNION POSITION: The Union states that this provision of the Agreement provides a benefit for time spent at court on an employee's non work time. An officer may have worked a night shift but nevertheless is required to attend court during the day. The current language allows for a second payment after the noon hour, but the judge may have taken a lunch break which forces the Patrol Officer to sit in court during his non duty time or during a time when he/she would be sleeping. It is a burden on the employee for which this section of the Agreement provides for fair compensation. The Union argues that the court controls the schedule, and the current system assists in its efficiency. The Union requests the Conciliator to reject the proposal and maintain status quo.

AWARD: The Union, of course, wishes to preserve the current system which allows for the possibility of a third four hour payment and payment of an additional four hours if an officer is held over past noon. The Employer is most interested in containing costs. Although there was limited information regarding court time payments in 2012, it is difficult to determine actual savings to the Employer based on the modifications proposed. This information was not presented, and it may not have been possible to develop an estimate. The fact finder accepted the arguments

presented by the Union, and no new information was presented at conciliation to justify a change in outcome. The Union's proposal to reject the modifications to this section of the Agreement is therefore awarded. Status quo is maintained.

**3. Article 26, New Accumulated/Compensatory Time
Section 4 (E), Training A/T**

The Employer proposes to modify the compensation earned by a Patrol Officer who trains a probationary employee of the Department. The Agreement currently provides for two hours of accumulated time (A/T) per shift in addition to the regular hourly rate of pay. The Employer's proposal is a \$3.00 per hour supplement. The Union rejects the proposal and wishes to maintain status quo.

EMPLOYER POSITION: The Employer states that the current method of payment for training is excessive and argues that Patrol Officers earn a higher rate of pay than Sergeants, when conducting training, based on the current system of compensation. The proposal remedies the inequity while still compensating employees with a fair and high rate of pay. The Employer asks the Conciliator to take note that it adopted the recommendation of the Fact Finder. The Employer states that external comparable training rates support the proposition that Youngstown Patrol Officers are compensated excessively for training new officers. The Employer requests the Conciliator to grant its proposal.

UNION POSITION: The Union lodged an objection to the comparable jurisdictions presented by the Employer. The Union states that most of the bargaining units used as comparables are significantly smaller than Youngstown. The Union argues that the comparison of compensation to wage rates of Sergeants is invalid due to the fact that Sergeants do not train new officers. The field officers training project has placed increased responsibility on Patrol Officers who provide training. The Union argues that the \$3.00 per hour figure is a specific cost to the Employer while A/T does not necessarily involve cash payment. The Union states that the current benefit of two hours A/T has been in effect for many years, and over time training has become more comprehensive. Officers who provide training are required to take a week long course. The Union requests the Conciliator to grant its proposal to maintain the current benefit.

AWARD: The Union argued that the Employer generally does not replace officers who take A/T. While the Employer argued that there is a cost, the Union makes a persuasive argument. No statistics or data were introduced to suggest a specific cost to cover time off due to A/T. As history of bargaining is an important factor, the Union's argument regarding the long duration of the training benefit is meritorious. It is important to note the increased complexity and comprehensiveness of the training program which has occurred over time. The Union also argued that there currently are few probationary officers who require on the job training, and there was no data available to analyze the cost of the training program on a monthly or annual basis. Recognizing that the Employer adopted the recommendation of the

Fact Finder, the \$3.00 per hour figure seems to have been an arbitrary number suggested as a compromise to be considered by the parties. But the Union's arguments regarding this issue are persuasive. The Union's proposal to maintain current contract language in this section of the Agreement is hereby awarded.

**4. Article 26, New Accumulated/Compensatory Time
New Section, Donation**

The Union proposes a new provision of this Article to allow for the donation of A/T time from one Patrol Officer to another who has exhausted all sick leave. The Employer rejects the proposal.

UNION POSITION: The Union states that this provision will aid those Patrol Officers who have exhausted sick leave but are unable to return to employment due to continuing medical conditions. The Union cites an instance of an officer who suffered from cancer and who had exhausted sick leave. When employees attempted to donate A/T time, the Employer responded that such donation was prohibited based on current contract language. The Union argues that a city ordinance reduced the amount of sick leave employees may donate to those who have exhausted their leave bank. The Union requests the Conciliator to award its proposal.

EMPLOYER POSITION: The Employer states that current city ordinances allow for donation of sick leave. The Union's proposal is therefore redundant and

unnecessary. The Employer questions the legality of the proposal based on provisions of the Fair Labor Standards Act (FSLA). The Employer argues that employees earn significant leave time and asks the Conciliator to reject the Union's proposal.

AWARD: Evidence indicates that employees currently have the ability to donate accumulated sick leave to officers who have exhausted sick leave benefits and who are unable to return to their positions in the Police Department. The Union's proposal regarding A/T donation appears unnecessary in light of this benefit. The Employer's proposal to reject the A/T donation demand and maintain status quo is awarded.

5. Article 27, Salary and Wages

The Employer offers the following wage proposal. 0% wage increase for 2013; 1% wage increase effective April 19, 2014; 1.5% wage increase effective January 1, 2015.

The Union offers the following wage proposal. 0% wage increase for 2013; 1.25% effective April 1, 2014; 1.75% effective January 1, 2015; \$750.00 signing bonus for each member of the bargaining unit.

EMPLOYER POSITION: The Employer states that its earlier proposal prior to and at fact finding was a three year wage freeze due to the financial condition of the City.

The Employer offers its proposal at conciliation with the understanding that it is

unable to afford other proposals of the Union and in particular the proposal to collapse the wage step system. The Employer states that, of the nine city bargaining units, none received an increase in wages in 2013. A number of bargaining units, with collective bargaining agreements which run through 2014, will receive no increase in wages in 2014. The Employer argues that Patrol Officers have done well in terms of wage increases since 2006 compared to other city jurisdictions in northeast Ohio (Tab 4-K). The Employer admits that the entry level rate of pay for bargaining unit employees is low on a comparable basis, but this was intentionally negotiated by the parties during the last negotiations. Higher rates on the pay scale compare favorably to regional cities. Wages have generally outpaced the cost of living during the last decade (Tab 4-E). The Employer asks the Union and Conciliator to take note of a recent fact finding recommendation for Teamsters Local 377 which represents a bargaining unit of service workers in the Streets Department of the City of Youngstown. This recommendation included wage freezes in years 2013 and 2014 and wage reopener for 2015 (Tab 4-I). The Employer states that this Report and Recommendation was issued after the Fact Finder in the instant matter considered relevant exhibits, data and testimony. The Employer urges the Conciliator to consider the financial condition of the City and award its wage proposal.

UNION POSITION: The Union states that its wage proposal at conciliation represents a considerable savings over that which was submitted at fact finding and argues that it is more in line with the recommendation of the Fact Finder (Union

Exb. 6). The Union offers a list of comparable city jurisdictions which it states are far more relevant than those utilized by the Employer based on similar population numbers (Union Exb. 7). The Youngstown entry level pay step is the lowest compared to other jurisdictions and second lowest for the top step. Youngstown wages are well below the average for both entry and top steps. And in a comparison to northeast Ohio cities, Youngstown wages rank in the bottom third for the top pay step (Union Exb. 9). The Union argues that Patrol Officers in Youngstown are faced with higher crime rates than most jurisdictions in the region and state of Ohio. The Union states that there is one Patrol Officer for every 600 residents. This is the lowest in the region. The Union argues that Patrol Officers are faced with “more work for less pay.” At the same time, the Union states, Youngstown maintains a high ratio of command officers to Patrol Officers. The Union states that many service workers at the City enjoy higher hourly rates of pay compared to Patrol Officers (Union Exb. 12 and 13). The Union states that the twelve step wage program keeps wages unusually low for many employees in the bargaining unit. The Union financial advisor, Ms. Schultz, has indicated that the Union’s proposal is affordable. The Union requests that the Conciliator grant its proposal for wage increases and the one time lump sum bonus payment.

AWARD: Both parties make credible arguments to support their positions at conciliation. The financial condition of the Employer is distressed. At the same time, wages of Patrol Officers are low compared with many jurisdictions in the region. This is especially true of the lower steps on the wage schedule, but the

reduction in entry level and early steps in the wage schedule was bargained by the parties during the last negotiations. It is, nevertheless, an area of friction between the parties. The issue of the structured deficit and borrowing from future revenue to balance city budgets is a serious concern for the Employer even in light of increased income tax revenues. The Union's financial advisor, Mary Schultz, stated at hearing that the Union's wage proposal was affordable by the Employer, but she couched her comment by saying that "it would be tight." The Fact Finder recognized the limitations imposed by the financial condition of the City, but he also understood the need for an increase in wages when he recommended three one percent wage increases during the term of the new Agreement. The proposals of both parties at conciliation closely mirror the recommendation of the Fact Finder. The Union is asking for 3% over the last two years of the Agreement, and the Employer has proposed 2.5% for this period. In light of the lack of pay increases during the past several years and lower ranking among comparable peers, the Conciliator finds the proposal of the Union to be reasonable. Nevertheless, the Conciliator finds the Employer's proposal to be more consistent with the data and evidence presented at hearing due to the portion of the Union's proposal for an additional lump sum payment of \$750.00 per employee. It appears that this portion of the Union's wage proposal was submitted at conciliation but had not been on the table during negotiations or at fact finding. A signing bonus or lump sum payment of \$750.00 for each member of the bargaining unit has the potential to strain the Police Department budget as the Employer would be required to pay the total amount upon issuance of the award at conciliation. The immediate impact on the

department budget would be in excess of \$80,000.00. This is problematic. The Conciliator therefore finds it necessary to grant the wage proposal offered by the Employer. Article 27 will read as follows based on the proposal of the Employer.

Article 27, Salary and Wages

Section 1. The salary and wage rates for bargaining unit members shall remain unchanged from December 1, 2012 through April 18, 2014. The actual steps and wage rates are set forth in Appendix A.

Section 2. Effective April 19, 2014 (the first pay in May 2014 – paid on May 9, 2014), the salary and wage rates will be increased by one percent (1%) and are set forth in Appendix A.

Section 3. Effective January 1, 2015, the salary and wage rates will be increased by one and one-half percent (1.5%) and are set forth in Appendix A.

6. Article 28, Insurance Benefits
Section 5, Employee Contribution

The Employer proposes to modify Section 5 to increase employee premium caps from \$80.00 per month for single coverage and \$150.00 for family coverage to \$100 per month for single coverage and \$200.00 per month for family coverage effective May 1, 2014. The Employer proposes further to move to a straight ten percent (10%) employee contribution without caps effective May 1, 2015.

The Union modifies its earlier position to maintain status quo and proposes caps of \$100.00 for single coverage and \$200.00 for family coverage effective January 1, 2014. The Union rejects the Employer's proposal to move to a straight ten percent co-pay in 2015.

The parties agreed to a health insurance review committee (HIRC).

EMPLOYER POSITION: The Employer states that all other employees at the City have moved to the \$100/\$200 employee contribution level. The Employer states further that its goal is to move all employees to a straight 10% contribution without caps in the next round of collective bargaining negotiations. One bargaining unit has agreed to the uncapped contribution rate. The Employer argues that the uncapped rate is important for the viability of the health insurance review committee as employees and their Unions must have a stake in controlling health care costs. The ten percent employee contribution rate is less than the state-wide average. The Employer states that it is unlikely that employee contributions for health care will exceed the \$100/\$200 caps during the term of the new Agreement. The Employer requests that the Conciliator award its proposal.

UNION POSITION: The Union states that it is willing to increase the employee share of premium caps to \$100/\$200 but is not willing to move to a straight 10% co-pay. Assuming a 15% increase in premium in 2015, the employee share of family premium would be \$204.00 (Union Exb. 14). The Union argues further that its willingness to increase the employee caps of the premium places it above the state-wide average according to the State Employment Relations Board 2013 "Report on the Cost of Health Insurance in Ohio's Public Sector." (Union Exb. 15) The Union argues that maintaining a cap on health insurance premium costs will not have a negative impact on the work of the health insurance review committee. The Union requests the Conciliator to grant its proposal.

AWARD: The Conciliator's experience with health insurance review committees has been nothing but positive, and they have aided in controlling costs and designing plans which are affordable and effective. It is commendable that the parties have agreed to proceed with this initiative. The Fact Finder in this matter recommended the \$100/\$200 caps, and the Union adopted the recommendation as its proposal at conciliation. The Fact Finder noted that his recommendation was based on the pattern of bargaining at the City. Although the Employer has, as its goal in bargaining, to move all employees to a straight 10% employee share without caps, only one bargaining unit has adopted the proposal. All other employees of the City are at the \$100/\$200 cap level. The fact that the employee share of the health insurance premium will probably not exceed the \$100/\$200 cap works to the benefit of both parties. If the Conciliator grants the Union's proposal, which met a portion of the Employer's initial proposal, the parties have the ability to revisit the issue during the next negotiations, and the new health insurance review committee may have success controlling costs. The proposal of the Union is awarded. Section 5 will be adopted as follows.

Article 28, Insurance Benefits

Section 5. Employee Contributions

Effective January 1, 2014, employees shall contribute ten percent (10%) of the total premium for medical, hospitalization, prescription, vision, and dental coverage; however, employee contributions shall not exceed one hundred dollars (\$100.00) per month for single and two hundred dollars (\$200.00) per month for families. Any percentage exceeding the one hundred dollars (\$100.00) or two hundred dollars (\$200.00) contribution, as applicable, shall be paid entirely by the City.

7. Article 42, Sick Leave

Section 9, Sick Leave Incentive Payment

The Employer submitted a proposal to limit this benefit based on disciplinary suspensions. The Union submitted a proposal to increase the incentive. At hearing, the parties agreed to withdraw their respective proposals and requested the Conciliator to award current contract language as follows.

Article 42, Sick Leave

Section 9. Sick Leave Incentive Payment

For the first year of the Agreement only, bargaining unit members agree to waive sick leave bonus payments that would otherwise be payable (i.e., payments for the 4th quarter of 2009 and the 1st, 2nd, and 3rd quarters of 2010). Thereafter, for each quarter in which an employee does not use his sick leave and maintains a minimum of one hundred twenty (120) hours, he shall be entitled to a bonus as follows:

First Quarter	(January – March)	\$159.00
Second Quarter	(April – June)	\$159.00
Third Quarter	(July – September)	\$159.00
Fourth Quarter	(October – December)	\$159.00

The minimum hour requirement for the bonus shall not apply to employees in their first and second year. The cash bonus for non-use of sick leave is not pro-ratable under any circumstances. The payment for non-use of sick leave will be made at the end of November or early December of the calendar year in which earned. Payment is based on the previously completed four (4) quarters (i.e., fourth quarter of the prior year and the first three (3) quarters of current year).

8. Side Letter No. 5, Wage Schedule Administration

The Employer proposed to delete Side Letter No. 5 as no longer necessary in the administration of the collective bargaining agreement. After further discussion

at hearing, the Union agreed to delete Side Letter No. 5. Side Letter No. 5 is hereby deleted by award of the Conciliator.

9. Appendix A Wage Schedule

The Union proposes to modify the current wage step schedule from twelve steps to nine, effective January 1, 2015, by eliminating three intermediate steps but retaining the entry level step. The Employer proposes to retain the current twelve step wage schedule as illustrated in Appendix A.

UNION POSITION: The Union states that, prior to the previous collective bargaining agreement between the parties, the wage schedule included five steps. During the 2009 - 2010 negotiations, the parties negotiated the current wage schedule based on the limited financial condition of the Employer and the need to replace retiring Patrol Officers due on an early retirement buy-out. Although not a two tier wage system, the wage schedule resembled one in that the new entry level wage was \$30,000.00 with additional lower pay steps. The Union agreed to the new schedule in an attempt to assist the Employer in hiring new employees during the recession at a rate of pay which was affordable for the Department, but now, the Union argues, the extended wage schedule is not necessary and has become an issue of controversy between the parties. The Union states further that it was led to believe that the lower wage steps were only a temporary measure. And the City hired no new officers until 2011. There were 121 Patrol Officers in 2008 and currently only

107. The Union President stated, at hearing, that nearly one-third of bargaining unit members have indicated their intention to resign due to the low wages in the early steps of the schedule. The Union argues that a family of four is barely above poverty level in the early steps of the schedule. The Union states that many non-safety force employees at the City earn more than Patrol Officers, and the wage schedule for Fire Department employees includes ten steps. The Union illustrated that the wage schedules in most police departments in northeast Ohio include significantly less steps with an average of 4.94 (Union Exb. 16). The Union argues that the Fact Finder, when he supported the Employer's position, did not understand the proposal as he mistakenly believed that it would eliminate most of the early steps and create an entry level rate of \$38,000.00. The Union's proposal is to eliminate intermediate steps and retain the entry level rates. Finally, the Union argues that this issue has created a difficult relationship between the parties and asks the Conciliator to award its proposal.

EMPLOYER POSITION: The Employer argues that the current wage schedule was negotiated in good faith by the parties. It was not imposed unilaterally. There are limited funds available for the hiring of new Patrol Officers, and the Union's proposal to compress the wage schedule is unaffordable as illustrated in Employer exhibits, Tab 9-A, 9-B and 9-C. Although the Union states that the wage schedule was a temporary measure, the Employer states that it was incorporated in the Agreement. It is negotiable, but the proposed schedule modifications are not affordable. The Union proposal would cost the Employer an additional \$127,000.00

in 2015. The Employer states that this cost would inhibit its ability to hire new employees. The Union's proposal is unrealistic, and it was rejected by the Fact Finder. The Employer requests the Conciliator to reject the proposal and maintain the current twelve step wage schedule.

AWARD: Both parties have presented arguments for their positions which make sense and are meritorious. It was evident at hearing that this is an especially emotional issue for the Union. Many of its members are newer employees who are paid at the lower steps of the wage schedule which was negotiated by the parties and which became effective in 2010. There is a significant gap between employees in the first several steps of the wage schedule and those in the top pay grades. The lower pay steps do not, as the Union argues, compare well to pay schedules in regional police departments. It was quite evident at hearing that this is an issue which impacts the relationship between the parties and has an effect on morale in the Youngstown Police Department. Nevertheless, the Employer's concerns regarding its ability to finance the proposal are well founded. And while the Union states that many newer employees may leave the department, there is no hard evidence that this has or may occur. The Employer stated that it has had little problem attracting and retaining new employees. The Union stated that the twelve step schedule was bargained as a temporary measure, but evidence indicates that it was negotiated as a permanent modification to the Agreement in 2009 - 2010 unlike a second wage tier which would be eliminated after a period of time during the term of or at the end of the Agreement. All of this being said, this is an issue which

has exasperated the relationship and has become a matter of morale. It is important that the parties continue to discuss this matter leading up to the next round of negotiations which are scheduled in less than eighteen months. The Employer indicated, during mediation prior to the conciliation hearing, that it was open to a limited modification of the wage schedule. It is incumbent upon the parties that they deal with this issue and explore options. An interest based approach may be beneficial. The Employer is correct that the wage schedule is the result of collective bargaining, and it has been in effect only since the last negotiations. The cost to implement the Union's proposal is significant. The Conciliator believes that a complex matter of this nature is best resolved by the parties through the collective bargaining process as opposed to imposition by a neutral. The Fact Finder's statement, that the City is in need of additional Patrol Officers based on a high crime rate, is accurate, and he stated that the Union's proposal to modify the wage schedule is unaffordable based on the current fiscal condition of the Employer. The Conciliator cannot disagree with this assessment. The Union's proposal to modify the current wage schedule is not awarded. The current twelve step wage schedule, along with the wage increases granted in this award, is hereby maintained in the new collective bargaining agreement.

SUMMARY OF AWARD

1. Article 11, Discipline: Union
2. Article 26, New Accumulated/Compensatory Time, Section 4 (A), Court A/T:
Union
3. Article 26, New Accumulated/Compensatory Time, Section 4 (E), Training A/T:
Union
4. Article 26, New Accumulated/Compensatory Time, New Section, Donation:
Employer
5. Article 27, Salary and Wages: Employer
6. Article 28, Insurance Benefits, Section E, Employee Contribution: Union
7. Article 42, Sick Leave, Section 9, Sick Leave Incentive Payment: Current contract language by agreement of the parties.
8. Side Letter No. 5: Delete Side Letter No. 5. (Employer proposal with general agreement of the Union based on maintaining current wage schedule.)
9. Appendix A, Wage Schedule: Employer

In addition to the decisions contained in this Award, all tentative agreements reached by the parties, withdrawn issues and all unopened articles of the Agreement are hereby incorporated in this Award by reference.

CONCLUSION

The Conciliator has reviewed the pre-hearing statements of the parties and all facts and exhibits presented during the evidentiary hearing. In addition, the

Conciliator has considered the positions and arguments presented by the parties regarding each issue at impasse; the Report and Recommendation of the Fact Finder; and the criteria enumerated in Ohio Revised Code section 4117.14 (G) (F) (a-f).

Respectfully submitted and issued at Cleveland, Ohio this 1st Day of April 2014.

A handwritten signature in black ink that reads "Thomas J. Nowel". The signature is written in a cursive style and is positioned above a horizontal line.

Thomas J. Nowel
Conciliator

CERTIFICATE OF SERVICE

I hereby certify that, on this 1st Day of April 2014, a copy of the foregoing Award of the Conciliator was served by electronic mail upon Daniel J. Leffler, Esq., representing the Ohio Patrolmen's Benevolent Association; Sandy Conley (Clemans, Nelson & Associates), representing the City of Youngstown; and Donald M. Collins, General Counsel, State Employment Relations Board.

A handwritten signature in cursive script that reads "Thomas J. Nowel". The signature is written in black ink on a light-colored background.

Thomas J. Nowel
Conciliator

