

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

**In The Matter of Conciliation
Between**

**Berea Fire Fighters, IAFF Local 1836
And**

City of Berea

Re: Case No(s). 2012-MED-09-0974

CONCILIATOR: John Babel Jr.
May 22, 2013

Appearance

For Union

Thomas M. Hanculak
Joseph W. Diemert Jr. & Associates, Co., LPA
1360 SOM Center Road
Cleveland, OH 44124

For the City of Berea

Marc J. Bloch
Walter & Haverfield,LLP
1301 East 9th Street
Cleveland, Ohio 44114

The following were present:

For the union:

Bob Magee	President, IAFF Local 1836
Terry Ledwell	Negotiator 1836
Brett Stanislaw	Vice President, 1836
Jim Astorino	President, Northern Ohio Fire Fighter
Don Rots	Staff Rep, Northern Ohio fire Fighter

For the city:

Mark Kaufhold	Berea Fire Chief
Dana Kavander	Director of Finance
Kenneth Adams	Director of Public Safety
Cyril Kleem	Mayor

Witnesses

The city and the Union, each had four witnesses that were sworn to tell the truth. Both parties had the opportunity to question the witnesses.

Both parties provided many exhibits that were discussed and questioned by both parties.

Hearing: The initial hearing was scheduled for Tuesday April 23rd, but both parties agreed to postpone the hearing to Thursday, May 2nd at 10:00 a.m. in the Berea room at Berea City Hall. After the hearing the conciliation indicated that the report would be submitted as soon as possible but due to a conflicting schedule it may be three to four weeks after the hearing. Both parties indicated they understood.

The issues before the conciliator are Article 23 Holiday Leave and Drop Program and Article 24 Personal Leave. In that the dispute is the same language change in both Articles, both parties agreed to see it as one issue.

Background

The parties, in negotiating a new contract could not agree on four Articles 21, 22, 23, and 24 with 23 and 24 to be treated as one. The fact-finder rules in favor of the union on all issues. The union accepted and the City rejected the fact-finder report. In further negotiations article 21 and 22 were resolved. Hence the City and Union came before the conciliator with one issue, Article 23 Holiday Leave and Drop Program and Article 24 Personal Leave that will be combined as one

The Union position which was upheld by the fact-finder, February 2013, is still their position.

The City has made a change from its proposed to the fact-finder which was "Further agreed between the employee and the City is the employee shall receive with regular compensation an additional four (4), twenty-four (24) hour tours of duty, to be scheduled on days chosen by the employee with prior notification to the chief." The City proposed that the words "notification to" be changed to "approval of." that language is found at Article 23. In Article 24, "Personal Leave" the same change was proposed. That is, at Article 24, Section 24.02 the present language which permits firefighters to schedule personal leave "with prior notification to the Chief" would be changed to "with prior approval of the Chief".

The change proposed to the conciliator in Article 23 is:

"Further agreed between the employee and the City is the employee shall receive, with regular compensation, an additional four (4), twenty-four (24) hour tours of duty, to be scheduled on days chosen by the employee, with prior approval of the Chief, which shall not be unreasonably denied unless such approval will result in overtime. Nevertheless, in the event that the approval will cause overtime the chief may still approve such time off. The four (4) above holidays shall be taken in increments of not less than one fourth (1/4) of a twenty-four (24) hour tour of duty.

And the same wording for Article 24

Personal Leave shall be scheduled on days chosen by the employee with prior approval of the Chief, which shall not be unreasonably denied unless such approval will result in overtime. Nevertheless, in the event that the approval will cause overtime, the chief may still approve such time off.

CONCILIATION CRITERIA

The Ohio Public Employee Bargaining Statute sets forth the following criteria, which the Conciliator was mandated to consider and did consider in making the Award in this case. The criteria are set forth in ORC 4117.14G)(7)(a)-(f) and OAC 4117-9-06(H)(1)-(6) and are as follows:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the issues submitted to final offers settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and that the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) The stipulations of the parties;
- (6) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offers settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

Positions on Article 23 and 24

City position:

The City presented financial data dictating that the City is facing challenging times regarding the General Fund Revenue. In 2002 general fund was \$11,518,827 reaching a high in 2008 of \$14,690,554 with a continuing decline from 2008 to an estimate in 2013 of \$11,598,745. A comparison of various forms of revenue from 2008 to an estimate for 2013 indicated that property taxes and income taxes were flat, inheritance tax was eliminated due to state law, and there was serious decline in local government revenue. The City in meeting this challenge and continue to provide adequate city services has made expenditure reductions such as staff reductions in all areas and reviewing all internal contracts regarding expenditures. One area that led to the proposed change in Article 23 and 24 was overtime expenditures. The total overtime for Fire Department for 2012 was \$203,400.00, \$95,000 from the language in Article 23 and 24 that only requires notification and not approval to take holiday and personal leave.

The City challenged the argument that because a clause was in a contract for many years it should not be changed, times change and so do negotiated contracts. In fact the only way a negotiated contract can be changed is through collective bargaining.

In regard to the fact-finders report, the City felt that the fact finder did not consider all factors and that the city's proposal to the conciliator is different than that was before the fact finder. The City Director of Public Safety, who had many years as a firefighter and held leadership positions, stated that he has never seen a negotiated clause such as Article 23 and 24 that did not require approval for holiday and personal leave. The City shared an informal survey of 6 local fire departments regarding holiday/personal days, none required prior notification and all required approval. A City exhibit indicated that in Patrol, Sergeants and Lts, Dispatch and service contracts with Berea City all required approval to receive Holiday and Personal leave.

Union position:

The Union challenged some of the City's financial data in that 2013 is a projection and many times is a very conservative figure. It also showed that 2008 and estimated 2013 was very close.

The Union, in referring to the fact-finder report that ruled in favor of the Union in all four requests was sound and should not be overturned by the conciliator. In 2004 there were negotiation conflicts which led to a fact-finder report to change holiday's total of 7 scheduled by management and 3 taken at the discretion of the member. This was changed to 6 scheduled holidays and 4 discretionary which were accepted by the fact-finder which is the present language therefore should not be changed.

The Union stated Conciliator cases that when a party rejects a fact-finder recommendation that recommendation is entitled to respect and given great weight. The Union showed that this discretionary language component has existed for 28 years and there is no evidence that it should now be changed.

CONCILIATORS RULING AND ANALYSIS

The case presented to this Conciliator revolved around control of overtime cost, weight given to fact-finder report, time this clause has been in the contract, and the lack of this clause in Berea contracts with other Unions and other area firefighter's contracts.

This Conciliator, after reviewing all the evidence, rules in favor of the City. The City demonstrated that there is a substantial overtime cost due to this clause and for a City with challenging financial concerns and the need to provide City services needs some control on expenditures therefore the proposed changes are appropriate. The comparison to other contracts, both with the City of Berea and from surrounding fire fighters contracts found that in all cases approval was required. The fact-finder report was carefully reviewed, given appropriate weight but the City's change in its proposal to the conciliator which provided some flexibility was different than one ruled by the fact-finder.

I adopt the City's position and reject the Union proposal.

John Babel Jr.
Conciliator