

CONCILIATION DECISION

MUTUALLY AGREED UPON DISPUTE RESOLUTION PROCEDURE

STATE EMPLOYMENT RELATIONS BOARD

January 4, 2013

In the Matter of:

Cuyahoga Metropolitan Housing Authority	)	
	)	Case No. 12-MED-10-1246
and	)	Dispatchers
	)	
Ohio Patrolmen's Benevolent Association	)	

APPEARANCES

For the Authority:

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

For the Union:

Jeff Perry, Business Agent  
Deeda Robinson, Communications Officer  
Demetrius Isom, Communications Officer

Conciliator:

Nels E. Nelson

## BACKGROUND

The instant case involves the Cuyahoga Metropolitan Housing Authority and the Ohio Patrolmen's Benevolent Association. The Authority serves over 52,000 residents in Cuyahoga County where it owns and manages property and administers rent subsidy programs. The Union represents the nine dispatchers employed by the Authority.

The parties are negotiating for a contract to be effective January 1, 2013. The parties met to bargain three times and resolved a number of issues. However, when no overall agreement was reached, they adopted a Mutually Agreed Upon Dispute Resolution Procedure. It calls for the appointment of a Conciliator who is able to fashion a binding award without regard to the parties' final positions.

The Conciliator was notified of his selection on November 29, 2012. A hearing was held on December 12, 2012. When mediation failed to produce a settlement, this decision was prepared.

The Conciliator's award is based on the criteria set forth in Section 4117.14(G)(7) of the Ohio Revised Code. They are 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.

## ISSUE

The sole issue for the Conciliator is wages. He will set forth the current contract provision regarding wages and the parties' proposals for the issue and summarize the arguments and evidence they presented in support of their positions. The Conciliator will then offer a rationale for his award and provide the appropriate contract language.

Article 31 - Compensation - The current contract contains the following wage provision:

	<u>2010</u>	<u>2011</u>	<u>2012</u>
Hiring Rate	\$11.57	\$11.57	\$11.57
After 1 year	\$13.71	\$13.71	\$13.71
After 2 years	\$14.35	\$14.35	\$14.35
After 3 years	\$15.31	\$15.31	\$15.31
After 4 years	\$15.96	\$15.96	\$15.96
After 5 years	\$18.14	\$18.68	\$19.24

Hourly rates shall become effective on the employee's anniversary date of hire as a Dispatcher for those employees with 60 months (hiring rate through after 4 years) or less of service.

Dispatchers who are on the step schedule (hiring rate through after 4 years) will hold their hourly rate of pay until their anniversary date of hire as a Dispatcher in the next contract year.

All wage adjustment for those employees with 61 months (after 5 years) or more of service as a Dispatcher will become effective on the Saturday of the first complete pay period immediately following January 1 of each year.

The Union demands the following:

	<u>2013</u>	<u>2014</u>	<u>2015</u>
Hiring Rate	\$12.00	\$12.24	\$12.49
After 1 year	\$13.50	\$13.77	\$14.05
After 2 years	\$14.25	\$14.54	\$14.84
After 3 years	\$15.00	\$15.30	\$15.61
After 4 years	\$16.50	\$16.83	\$17.17
After 5 years	\$20.00	\$20.60	\$21.21

Hourly rates shall become effective on the employee's anniversary date of hire as a Dispatcher for those employees with 60 months (hiring rate through after 4 years) or less of service.

Dispatchers who are on the step schedule (hiring rate through after 4 years) will hold their hourly rate of pay until their anniversary date of hire as a Dispatcher in the next contract year.

All wage adjustments for those employees with 61 months (after 5 years) or more of service as a Dispatcher will become effective on the Saturday of the first complete pay period immediately following January 1 of each contract year.

The Authority proposes the following:

	<u>2013</u>	<u>2014</u>	<u>2015</u>
Hiring Rate	\$11.57	\$11.57	\$11.57
After 1 year	\$13.71	\$13.71	\$13.71
After 2 years	\$14.35	\$14.35	\$14.35
After 3 years	\$15.31	\$15.31	\$15.31
After 4 years	\$15.96	\$15.96	\$15.96
After 5 years	\$19.24	\$19.24	\$19.24

Hourly rates shall become effective on the employee's anniversary date of hire as a Dispatcher for those employees with 60 months (hiring rate through after 4 years) or less of service.

Dispatchers who are on the step schedule (hiring rate through after 4 years) will hold their hourly rate of pay until their anniversary date of hire as a Dispatcher in the next contract year.

Dispatchers Completing the Wage Step Schedule During the Term of this Agreement

During year 2013, upon completion of one (1) year at the last step in the above step schedule, the employee will receive a three percent (3.0%) wage increase on his/her current hourly rate on the employee's anniversary date of hire as a Dispatcher.

During year 2014, upon completion of one (1) year at the last step in the above step schedule, the employee will receive a two percent (2.0%) wage increase on his/her current hourly rate on the employee's anniversary date of hire as a Dispatcher.

During year 2015, upon completion of one (1) year at the last step in the above step schedule, the employee will receive a two percent (2.0%) wage increase on his/her current hourly rate on the employee's anniversary date of hire as a Dispatcher.

Dispatchers Who Have Completed the Wage Step Schedule

An employee at the top of the above step schedule for at least one (1) year as of December 31, 2012, will receive a three percent (3.0%) wage increase on his/her current hourly rate in 2013.

An employee at the top of the above step schedule for at least one (1) year as of December 31, 2013, will receive a two percent (2.0%) wage increase on his/her current hourly rate in 2014.

An employee at the top of the above step schedule for at least one (1) year as of December 31, 2014, will receive a two percent (2.0%) wage increase on his/her current hourly rate in 2015.

All wage adjustments for those employees with 61 months (after 5 years) or more of service as a Dispatcher will become effective on the Saturday of the first complete pay period immediately following January 1 of each contract year.

Union Position - The Union argues that its wage demand should be awarded. It acknowledges that the vast majority of the Authority's employees have agreed to a 3% wage increase in the first contract year followed by 2% increases in second and third years. It stresses, however, that because the Authority's dispatchers are paid much less than dispatchers in the rest of the county, it cannot accept the wage pattern.

The Union contends that external wage comparisons support its position. It points out that in 2011 the Authority's wage for a ten-year dispatcher was lower than for dispatchers in 21 Cuyahoga County cities and that the wage was only 81% of the average for the 21 cities. (Union Exhibit 1) The Union notes that the total compensation of the dispatchers was lower than in any of the 21 cities and was only 79% of the average.

The Union maintains that the gap in wages and compensation persists. It indicates that for the 17 cities that have agreed upon wages for 2012, the average wage for a ten-year employee was \$48,756 compared to the \$40,019 paid by the Authority. (Union Exhibit 2) The Union observes that in 2012, the Authority's dispatchers received \$41,915 or 80% of the average compensation of \$52,209.

The Union rejects the Authority's attempt to freeze the wage schedule. It points out that prior to the 2010-2012 agreement, wage increases were applied "across-the-board," i.e., each step of the wage schedule was increased by the same percentage. The Union notes that during the 2010-2012 contract, the wage schedule was frozen except the top step, which was increased by 3% each year. It claims that as a result, "the dispatchers barely agree to the present contract ... [and] there is no way they would agree to any wage package that didn't increase the present wage scale dramatically." (Union Pre-Hearing Statement, page 7)

The Union dismisses the Authority's argument that internal parity requires the acceptance of its proposal to freeze the wage schedule. It observes that some Authority bargaining units have no wage schedules and that others "have fallen for the same trap as the police in the past." (Union Pre-Hearing Statement, page 7) The Union adds that "when the police agreed to this type of system, it resulted in extra wages which have never been offered to this unit." (Union Pre-Hearing Statement page 8)

The Union argues that the ability to pay is not an issue. It states that the Authority never claimed an inability to pay its wage demands. The Union claims that for that reason it has not addressed the ability to pay issue.

The Union concludes that its wage demand should be awarded.

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 5) 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 indicates 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 the dispatchers as well as other police department personnel 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, only one (1) of the new contracts contain such improvements." (Authority Pre-Hearing Statement, page 13).

The Authority rejects the Union's claim that it broke the wage pattern in its settlement with the FOP covering the sworn police officers. It states that it did not break the pattern; rather, the Conciliator issued a binding decision regarding wages. The Authority stresses that the Conciliator's award corrected an inequity where the top rate for police officers was lower than for dispatchers.

The Authority discounts the Union's argument that in the future, dispatchers will not have the opportunity to make as much as dispatchers already at the top rate. It acknowledges that "technically, this is true, but it is also true of every other CMHA employee who is on a new hire step schedule." (Authority Pre-Hearing Statement, pages 15-16) The Authority observes that once

employees subject to those schedules reach the top rate, they move off the schedule and receive only the negotiated general wage increases.” (Authority Pre-Hearing Statement, page 16)

The Authority contends that the increase in the top rate sought by the Union is excessive. It reports that the Union would have the top step increase by 4% in 2013 and 3% in 2014 and 2015 compared to the pattern settlement of 3% in 2013 and 2% in 2014 and 2015.<sup>1</sup> The Authority claims that the “extraordinary and unprecedented departure from the pattern will send shock waves through the CMHA employee community and upset the delicate, good faith balance [it] has struck with its unions and the employees they represent.” (Authority Pre-Hearing Statement, page 16)

The Authority argues that its wage proposal is generous compared to similarly situated employees. 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 (FOP, IBT, OPBA)	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

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<sup>1</sup> The Union reduced its demand to 3% in 2013 and 2% in 2014 and 2015 prior to conciliation.

(Authority Pre-Hearing Statement, page 21)

The Authority 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%. (Authority Exhibit 8) It adds that in 2012 the average wage increase for public employees in the United States is 1.1%. (Authority Exhibit 9)

The Authority concludes that its offer is fair and equitable. It claims that "given its precarious financial condition, it would be fair for [it] to insist upon a wage freeze." (Authority Pre-Hearing Statement, page 18) It states, however, that since it understands the importance of attracting and retaining good employees, it "refuses to balance its budget on the backs of its employees ... [and] instead, ... will endeavor to tighten its belt elsewhere." (Id.)

Analysis - The Authority and Union offered significantly different proposals. The Authority seeks to freeze the six-step salary schedule for the duration of the contract and to increase the wages of those who have completed the schedule, or who will complete the schedule during the term of the contract, by 3% in 2013 and 2% in 2014 and 2015. The Union proposes adjusting the six steps of the salary schedule by varying amounts in 2013 and then increasing the first five steps by 2% and the top step by 3% in 2014 and 2015.

The Conciliator cannot accept the Authority's demand. The current wage schedule establishes low wages for the dispatchers through the first five years of employment. It is only in the sixth year, when the wage increases by \$3.28 per hour or 21%, that the dispatchers' wages are improved. The Conciliator finds no justification for the Authority's demand to freeze the schedule for the three-year term of the agreement.

The Conciliator must also reject the Union's demand. First, he cannot accept the Union's revision of the wage steps. While the rationale for the current wage steps is unclear, the Union's proposal does not provide for a more rational system. The current contract has step increases of \$2.14 per hour, \$.64 per hour, \$.96 per hour, \$.65 per hour, and \$3.28 per hour. The Union's proposal has increments of \$1.50 per hour, \$.75 per hour, \$.75 per hour, \$1.50 per hour, and \$3.50 per hour. While the Conciliator may be tempted to award a different wage schedule, he believes that any change in the schedule should be left to bargaining between the parties.

Second, the Union's proposal to increase the top step of the wage schedule by \$1.86 per hour in 2013 and then by 3% in 2014 and 2015 restores the previously existing inequity relating to the wages of dispatchers and the police officers. Prior to the Conciliator's November 20, 2012, decision in the dispute involving the Authority and its police officers, the top step of the dispatchers' wage schedule exceeded the top step of the police officers' wage schedule. The Union's proposal would create a top step of the dispatchers schedule at \$20.60 per hour in 2014 compared to a \$20.50 per hour top step for the police officers.

Third, the Union's proposal would break the wage pattern established by the Authority and its other unions. While the dispatchers are paid less than other dispatchers in the County, the Union's wages are the product of many years of bargaining and cannot be eliminated in a single round of bargaining. The award, however, will result in significant wage increases for the dispatchers.

Finally, although the Authority did not claim an inability to pay, it did demonstrate limits on its ability to pay. The Union's proposal entails significantly greater costs than the pattern settlement. Given the financial prospects for the Authority, a degree of restraint is appropriate.

Based on the above points, the Conciliator's award will increase the first five steps of the wage schedule by 3% in 2013 and 2% in 2014 and 2015 but freeze the last step of the schedule for the term of the agreement. Dispatchers who have completed the wage schedule or do so during the term of the contract will receive the same wage increases as the increase in the wage schedule.

Award - The Conciliator awards the following:

	<u>2013</u>	<u>2014</u>	<u>2015</u>
Hiring Rate	\$11.92	\$12.16	\$12.40
After 1 year	\$14.12	\$14.40	\$14.69
After 2 years	\$14.78	\$15.08	\$15.38
After 3 years	\$15.77	\$16.08	\$16.41
After 4 years	\$16.44	\$16.77	\$17.10
After 5 years	\$19.24	\$19.24	\$19.24

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During year 2015, upon completion of one (1) year at the last step in the above step schedule, the employee will receive a two percent (2.0%) wage increase on his/her current hourly rate on the employee's anniversary date of hire as a Dispatcher.

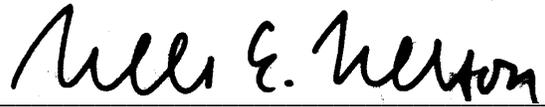
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All wage adjustments for those employees with 61 months (after 5 years) or more of service as a Dispatcher will become effective on the Saturday of the first complete pay period immediately following January 1 of each contract year.



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Conciliator

January 4, 2013  
Russell Township  
Geauga County, Ohio