

State of Ohio
STATE EMPLOYMENT RELATIONS BOARD
Final Offer Settlement Procedures

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| In the matter of the conciliation between: |) | Case No. 2012-MED-11-1334 |
| |) | (Full-time Patrol Officers) |
| Village of Grafton |) | |
| Public Employer |) | GREGORY P. SZUTER, CONCILIATOR |
| |) | |
| and |) | ARBITRATION |
| |) | REPORT AND AWARD |
| Ohio Patrolmen's Benevolent Association |) | [Interest Arbitration] |
| Labor Organization |) | |
| |) | |

for the Labor Organization:
Kevin Powers
10147 Royalton Road Suite J
PO Box 338003
North Royalton, OH 44133
<kpowersopba@sbcglobal.net>
T.440.237.7900

for the Public Employer:
Robin Bell
Clemans, Nelson & Associates
485 Metro Place South Suite 200
Dublin, OH 43017
T. 614.923.7700
<Rbell@clemansnelson.com>
T.330-785-7700 Akron

Also in attendance :
Patrolman Scott Kilgore
Thomas J. Smith, Law Director
Linda S. Bales, Clerk-Treasurer

Hearing :Grafton, Ohio, December 11, 2013
Award Issued : December 16, 2013

INTRODUCTION

The Village of Grafton (herein also "Employer" or "Village") and Ohio Patrolman's Benevolent Association, (herein "Union" or "OPBA") are parties to this final offer settlement procedure ("conciliation") under Ohio R. C. 4117 which is a form of interest arbitration relating to establishing the terms for a collective bargaining agreement. This conciliation relates to an initial collective bargaining agreement ("CBA" or "Agreement") between the Union and the Employer, the bargaining unit not having previously had a certified bargaining agent.

UNIT FOR BARGAINING

The Village is organized under the laws of Ohio as a village form of government. Neare or within its limits there are several prisons. Two are maximum security facilities operated one each by the State and the County. There is another medium security facility of the state and a currently closed prison farm. These are by far its largest employers.

The Village has a "permanent" population of about 2,600. The 2000 federal census showed 2,302. However, the Census changed its methodology in 2010 and counted for the first time prisoners residing in a community as part of the resident population. The 2010 census lists the Village with 6,636 residents of which the prison population is about 5,931.

The change in census affected the standing of the Village under the Ohio public bargaining law, R.C. Ch. 4117. The law exempts villages of populations under 5,000 from the definition of "public employer." R.C. 4117.01(B). The change in the census methodology now places the Village under the definition of "public employer" with the statutory obligations to recognize and bargain with a certified bargaining agent of its employees.

There are several units for collective bargaining among the employees of the Village that are represented by the Union. The unit represented here is the unit of full time patrol officers. There is one member of the bargaining unit. The Union also represents other bargaining units not participating in this negotiation, the unit of sergeants, having one member, and the unit of part time patrol officers, having six. This is the first of the OPBA units reaching this position in the negotiation process. In addition to the police department there are about 20 other employees of the Village of all occupations, exclusive of the volunteer fire service.

The parties met in negotiation for the terms of the CBA in accord with the law. Matters still at impasse between the Village and the two units were submitted to advisory fact finding. Prior to the hearing the parties entered tentative agreements (TA) resolving several of the issues that were at impasse. The Fact Finder's Report and Recommendation ("FFR") was issued on September 25, 2013. The Fact Finder's Report and Recommendation was rejected by the Village. Consequently the issues of at impasse moved to conciliation.

The undersigned was appointed conciliator in this dispute by the State Employment Relations Board (SERB) by letter of October 21, 2013, pursuant to R.C. 4117.14(D)(1).

ISSUES

The Fact Finder's Report and Recommendation of September 25, 2013 addressed the following issues.

- | | |
|---------------------------------|-----------------------------------|
| 1. Layoffs/recall | 7. Sick Leave |
| 2. Wages | 8. Injury Leave |
| 3. Duty hours | 9. Uniform Allowance |
| 4. Overtime/Call Out/ Court Pay | 10. Duration |
| 5. Holidays | 11. Field Training /Officer's Pay |
| 6. Vacations | 12. Hours of Work and Scheduling |

The Fact Finder noted in the report that five of the issues were resolved in mediation with tentative agreements.¹ That left seven issues on which a recommendation was made. In brief summary the FFR recommended the Village position on Layoffs/Recall and Overtime/Call Out/ Court Pay and Holidays. As for and Vacation and Field Training /Officer's Pay it appears the FFR adopted most if not all the language of the Village but the report is not clear the he did not make additions or deletions. The FFR recommended the Union position on Wages. The FFR recommended the Duration be January 1, 2013 to December 31, 2015 which does not appear to be the position of either party at that hearing.

In the position statements for conciliation, the parties both receded from any position on Field Training /Officer's Pay but presented their positions in contract language form on all the other issues that were recommended in the FFR. Maintaining the numbering used in the FFR the issues at impasse at the conciliation were:

1. Layoffs/recall
2. Wages
4. Overtime/Call Out/ Court Pay
5. Holidays
6. Vacations
10. Duration

¹ The finding of a TA on sick leave was an error in the FFR but the parties have since that hearing resolved the issue with a later TA.

HEARING

The evidentiary hearing commenced on December 11, 2013, at Grafton, Ohio pursuant to the parties' stipulation for commencement of conciliation hearing. Pre-hearing statements of the issues were submitted by timely on December 6, 2013 in conformity with R.C. 4117.14(G)(3) and O.A.C 4117-9-06(E). On the record at hearing the parties entered into stipulations to waive the stenographic transcript of the hearing as the record. The parties' stipulations are at Appendix A.

MEDIATION

The Ohio law encourages fact finders and conciliators to mediate disputes when practical. R.C. 4117.14 (G)(1). While both parties had opportunity to confer before the conciliation hearing day but the statements of position revealed that both parties had changed their wage proposal since the Fact Finder's Report. Since neither party supported the FFR on that issue and to assure both parties had the opportunity to consider each other's proposals as set out in the position statements, the conciliator encouraged the parties to engage in mediation before the record was opened. After a good faith attempt to mediate the new positions, the impasse was resolved as to that issue and all other open issues as set out in the agreed award below.

CRITERIA

The conciliator shall resolve the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the parties' final settlement offers. R.C. 4117.14(G)(7). Absent a waiver by the parties, increases in rates of compensation and other matters with cost implications awarded by the conciliator are restricted as to retroactivity. See O.R.C. Section 4117.14(G)(11).

In compliance with Ohio Revised Code § 4117.14G(7), the Conciliator considered the following in making the opinion and order contained in this report:

- (1) Past collective bargaining 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 and private s 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 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; 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.

The general standards of interest arbitration are part of what the sixth criteria refers to. Those are located in ELKOURI & ELKOURI HOW ARBITRATION WORKS (Sixth Edition, Ruben, Editor. BNA, 2003) at pp. 1358-1364. As quoted therein, note:

". . . [interest arbitration] calls for a determination, upon considerations of policy, fairness, and expediency, of what the contract rights ought to be. In submitting this case to arbitration, the parties have merely extended their negotiations – they have left it to this board to determine what they should, by negotiation, have agreed upon. We take it that the fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men, have voluntarily agreed to?" *Twin Village Rapid Transit Co.* 7 LA 845 at 848 (McCoy *et al.* 1947)

What reasonable parties would voluntarily agree to is a matter of prudence. The advisory fact finding, which is the first of the two-step dispute resolution process for safety forces under Ohio's public bargaining law, answers the question of what would reasonable parties agree to. The Fact

Finder's Report on an issue is given deference in the final offer arbitration (conciliation).²

While the FFR has rebuttable deference in the final offer procedure in Ohio, the major factors in this Report and Order are the stipulations of the parties. The parties entered stipulations on the timing of the hearing and report and award, the record. They have also entered stipulations that each consented to the amendment of the issues presented in their Position Statements before mediation based upon O.A.C. 4117-9-06 Final Settlement Procedure - Conciliation, Sec. (E)(4):

If, after submission of the parties' reports, mediation efforts result in a change in a final offer, a party or parties may, by mutual agreement, submit a revised final offer to the conciliator.

OPINION AND ORDER

ISSUE: No. 1. Layoffs/Recall

CONTRACT : Article __: Layoffs / Recalls

Fact Finder RECOMMENDATION: Adopted the Village language that did not provide for the layoff of part time officers before full time officers.

POSITIONS: The Employer's Final Offer : FFR

POSITIONS: The Union's Final Offer: Language modeled on state civil service layoff provisions that include layoff of part time employees before full time employees.

OPINION AND ORDER:

As a village form of government, the Village is not subject to the state civil service laws. The part time officers are members of another bargaining unit represented by the same Union. Their rights

² Only when there is a showing of error or when substantial changes have occurred since the fact finding hearing resulting in new evidence shall a conciliator alter the Fact Finder's recommendation. *City of Warren and OPBA*, (Graham) Case 2006-MED-10-1267. Following *Warren*, are *IAFF Local 2860 and City of Eastlake*, (Meredith) Case No. 2007-MED-09-1004, *City of Lakewood and IAFF*, Case No. 2000-MED-04-0952; and *City of Medina and OPBA*, Case No. 2005-MED-08-0785. A conciliator need not defer to the Fact Finder's recommendation where the Fact Finder never discussed his rationale or the competing considerations or where it is unclear the Fact Finder was presented with the same information. In *City of Sheffield Lake and OPBA*, (Nelson) Case Nos. 2007-MED-10-1075, 2007-MED-10-1076, 2007-MED-10-1077.

and interests are not present here. After mediation the Village modified its final offer with consent of the Union. The new offer inserted the term "reasonably" in the pre-requisites for the Village to commence a layoff allowing any such action to be challenged for lack of reasonableness.

ISSUE 1 Order: As to Issue 1, Layoffs / Recall (Article ___), the Village's modified final offer after mediation is ordered into effect. **Appendix B.**

ISSUE: No. 2. Wages

CONTRACT : Article __: Wages

Fact Finder RECOMMENDATION: overall total 11.1%

2013 \$1.00/ hour (retroactive 1/1)
2014 3% (1/1)
2015 3% (1/1)

POSITIONS: The Employer's Final Offer :

2014 \$500 lump sum (1/1)
2014 2% (1/1)
2015 1.5% (1/1)
2016 re-opener in November

POSITIONS: The Union's Final Offer:

2014 1.00/ hour (1/1)
2015 3% (1/1)

OPINION AND ORDER:

Both parties agreed the FFR could not recommend a retroactive effective date since this is an initial agreement and no separate retroactivity agreement has been agreed to. Consequently neither proposed the FFR. After mediation the Village modified its final offer with consent of the Union.

The new offer folded the \$500 into the wage rate and revised the re-opener to become, in summary:

2014 3% (1/1)
2015 1.5% (1/1)
2016 re-opener in October

ISSUE 2 Order: As to Issue 2, Wages (Article___), the Village's modified final offer after mediation is ordered into effect. Certain arithmetic corrections were also made to be consistent with the proposal. See attached **Appendix C**.

ISSUE: No. 4. Overtime / Call Out/ Court Pay

CONTRACT : Article __: Overtime / Call Out/ Court Pay

Fact Finder RECOMMENDATION: Adopted the Village language representing the status quo.

POSITIONS: The Employer's Final Offer : FFR

POSITIONS: The Union's Final Offer: Language that included daily overtime after eight hours in a day and over forty in a seven day work week. In addition it would calculate the overtime premium on hours worked and hours of vacation and personal and bereavement leave. Other terms are similar to the status quo.

OPINION AND ORDER:

The Village currently calculates overtime over a two week pay period consistent with the FLSA alternative overtime schedule but only on actual hours worked. After mediation neither party modified its final offer. The Union's more expensive method of calculating overtime is not appropriate to an initial contract and is an issue that is better negotiated over a relationship than imposed by a neutral.

ISSUE 2 Order: As to Issue 4. Overtime / Call Out/ Court Pay (Article___), the Village's final proposal is ordered into effect. See attached **Appendix D**.

ISSUE: No. 5. Holidays

CONTRACT : Article __: Holidays

Fact Finder RECOMMENDATION: Adopted the Village language representing the status quo of seven listed holidays.

POSITIONS: The Employer's Final Offer : FFR

POSITIONS: The Union's Final Offer: 10 listed holidays.

OPINION AND ORDER:

The Village currently offers seven listed holidays and provides three additional personal days. The Union notes that seven holidays is well below the prevalent number in collectively bargained agreements. After mediation neither party modified its final offer. Since with personal days there is provision for 10 days paid time off and this is an initial contract, design changes for paid time off can and should be addressed over the bargaining relationship. The Union also did not meet the burden of impeaching the FFR.

ISSUE 5 Order: As to Issue 5. Holidays (Article___), the Village's final proposal is ordered into effect. See attached **Appendix E**.

ISSUE: No. 6 Vacations

CONTRACT : Article __: Vacations

Fact Finder RECOMMENDATION: Adopted the Village language representing the status quo.

POSITIONS: The Employer's Final Offer : FFR

POSITIONS: The Union's Final Offer: Accelerates the current schedule to begin with two weeks after one year and ending at five after 18 years.

OPINION AND ORDER:

The Village vacation ordinance for all employees begins at one week after one year and provides one additional week after each of the 2nd, 10th and 20th anniversary dates of the employee. While this is a conservative schedule comparatively in the public sector, design changes for paid time off can and should be addressed over the bargaining relationship. The Union also did not meet the burden of impeaching the FFR.

ISSUE 5 Order: As to Issue 6. Vacations (Article___), the Village's final proposal is ordered into effect. See attached **Appendix F**.

ISSUE: No. 10. Duration

CONTRACT : Article __: Duration

Fact Finder RECOMMENDATION: Effective date January 1, 2013 to December 31, 2015

POSITIONS: The Employer's Final Offer : Effective date January 1, 2014 to December 31, 2016

POSITIONS: The Union's Final Offer: Effective date January 1, 2014 to December 31, 2015
OPINION AND ORDER:

Both parties agreed the FFR could not recommend a retroactive effective date since this is an initial agreement and no separate retroactivity agreement has been agreed to. After mediation the Village modified its final wage offer with consent of the Union which was ordered. The final offer of the Village as to duration is related and will be ordered.

ISSUE 10 Order: As to Issue 10. Duration (Article___), the Village's final proposal is ordered into effect. See attached **Appendix G**.

ISSUE: Tentative Agreements

CONTRACT : Article [several]:

Fact Finder RECOMMENDATION: The following were tentatively agreed:

- 3. Duty hours
- 7. Sick Leave
- 8. Injury Leave
- 9. Uniform Allowance
- 12. Hours of Work and Scheduling

POSITIONS: The Employer's Final Offer : Issues 3, 8, 9, and 12 were tentatively agreed at fact finding and Issue 7 at a later date.

POSITIONS: The Union's Final Offer: Same

OPINION AND ORDER:

Both parties agreed the these are tentatively agreed as of the conciliation along with a number of others in negotiation their initial agreement. Note that neither party had a final offer on Issue 11. Field Training /Officer's Pay which was a recommendation in the FFR. Therefore, that issue is not at impasse at the conciliation.

ISSUE Tentative Agreements: All tentative agreements are ordered into effect.

Made and entered at Cuyhoga County, Ohio
December 16, 2013



Gregory P. Szuter, Conciliator

PROOF OF SERVICE:

The foregoing has been sent by electronic mail via the internet on December 16, 2013, to Ohio Patrolmen's Benevolent Association and Village of Grafton both to their representatives per addresses shown on the cover and filed with the State Employment Relations Board in the same manner.