

State Employment Relations Board
Conciliation Report
March 28, 2014

In the Matter of:)
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)
Shawnee Township)
)
)
and) SERB Case No. 13-MED-07-0795
) (Patrol Officers)
)
)
The Fraternal Order of Police/)
Ohio Labor Council)
)

Appearances

For the FOP/OLC:

Andrea Johan: FOP/OLC Staff Representative
Christopher Miracle, Shawnee Township Patrolman

For Shawnee Township:

Benjamin Albrecht, Attorney for the Township
David Belton, Shawnee Township Trustee
Michael Keith, Shawnee Township Police Chief

Conciliator: Dennis M. Byrne

Introduction:

This Conciliation involves the patrol unit of the Shawnee Township Police Department represented by Fraternal Order of Police/Ohio Labor Council (Union) and the Shawnee Township Police Department (Employer/Trustees). The parties engaged in numerous bargaining sessions, a SERB mediation effort, and a Mediation/Fact Finding hearing, but they were unable to reach a final agreement. There are only two issues remaining on the table: 1) the duration of the agreement, and 2) the amount of any wage increase for 2014. The parties have agreed to wage reopeners for 2015, and 2016.

Fact Finder Howard Tolley conducted a hearing on December 13, 2013 and issued his report on December 27, 2013. The Union rejected Tolley's report and a conciliation hearing was scheduled for March 14, 2013. The conciliation hearing commenced at 10:00 A.M. in the Shawnee Township Building and ended at approximately 1:00 P.M.

CRITERIA

The Ohio Revised Code enumerates the criteria to be considered by a Conciliator when making recommendations. The criteria are found in ORC 4117-9-06-H (1) to ORC 4117-9-06-H (6). The criteria are:

1. Past collectively bargained agreements, if any, between the parties
2. Comparisons with other employees public and private doing the same or similar work
3. The interests and welfare of the public and the ability of the public employer to finance the settlement
4. The lawful authority of the public employer
5. The stipulations of the parties

6. Such other factors not itemized above, which are normally or traditionally used in disputes of this nature.

This is a somewhat unusual situation. In their prehearing statements and in discussions before the hearing both parties stated that a one percent (1.0%) general wage increase (GWI) amounted to approximately five hundred dollars (\$500.00). According to the Township's representative the GWI would be subject to a rollup of approximately twenty percent (20.0%). Therefore, the Union's one percent (1.0%) demand translates into six hundred dollars (\$600.00). The Township is offering seven hundred and fifty dollars (\$750.00). Therefore, the Union is demanding less than the Township is offering. This dispute has proved to be so intractable that the parties have used the entire gamut of dispute resolution procedures found in ORC 4117; i.e., Mediation, Fact Finding, and Conciliation.

The Township's main argument for its position is internal comparability. Every other bargaining unit in the Township and all of the non-organized employees agreed to a one-time seven hundred and fifty dollar (\$750.00) payment. The Township is adamant that a pattern has been established, and the patrolmen should receive the same payment as all other Township employees.

The Union's position is based on a desire to have the base rate increase in order to increase the patrolmen's pension payments. Because any bonus payment is not pensionable under current law, the Union wants any payment to be included in the base rate which will lead to higher pension payments for the officers when they retire. The Union's position is that a somewhat smaller wage increase today is a necessary trade-off for higher pension payments tomorrow.

The parties fully understand the implications of their respective bargaining positions; but because of the unusual nature of the situation, the Conciliator asked the parties to discuss the issue off the record. During those discussions it became apparent that both parties wished to find an amicable settlement. After consulting with their principles, the parties agreed to execute a MAD that would be final and binding on both parties for the duration of the agreement.¹ In order to understand the Conciliator's recommendations, the evidence put into the record must be discussed.

The Union presented evidence that the Township could afford to fund its demand. During 2012 the Village of Fort Shawnee was incorporated into Shawnee Township. At that time, the Township was facing financial problems and the Trustees were unsure about the impact of the expansion on the Township's finances. Consequently the Trustees demanded that all township employees accept minimal raises. The patrol officers understood the Township's continuing financial problems and the fiscal uncertainty generated by the incorporation of Shawnee Village into the Township. As a result the patrolmen agreed to a minimal one percent (1.0%) GWI for both 2012 and 2013.

However, the Union stated that the parties now knew that the fiscal impact of the incorporation of Fort Shawnee had a positive impact on the Township's finances. The Union testified that the Township sold off some Village assets for five hundred thousand dollars (\$500,000.00). The Union recognizes that these were one-time monies, but it also stated that the Township's property tax revenues increased by

¹ See Appendix A

almost one million dollars (\$1,000,000.00). This is a significant addition to the Township's revenue stream. The Union also submitted Fact Finder Tolley's report that found that the Township could afford to fund the Union's wage demand even though he recommended the Township's position of a lump sum payment in his award.

On the other hand, the Township's testimony buttressed its position. First, the Township pointed out that Fact Finder Tolley accepted its position on the wage issue. He found that internal comparability was a deciding factor in the dispute and recommended that the patrol officers should receive the same lump-sum payment as all other employees. The Township then argued that the Conciliator should show deference to the Fact Finder's report, and recommend the same seven hundred and fifty dollar (\$750.00) lump-sum payment for inclusion into the contract.

In addition, the Employer testified that it had just weathered a financial storm and that it believed that the pyramiding of the rollup costs over the coming years was not prudent given its still somewhat precarious financial condition. The Employer argued that the compounding effect of rollup payments leads to successively higher personnel costs as the years pass. The Township's representatives stated that Neutrals making recommendations about changes in the base wage rate must consider the long-term consequences of compounding when making their recommendations. The Township contends that compounding can create huge financial problems for public employers over time.

The Township also presented evidence that the patrolmen were near the top of any comparables list. That is, the evidence shows that they compare favorably

with other workers performing the same or similar work. The Conciliator notes that the Fact Finder examined the data and reached a similar conclusion. The Conciliator also examined the data and agrees with this finding. That is, the data presented by both parties shows that the patrolmen are not underpaid when compared to other similarly situated employees. With that information as a background, the Conciliator will discuss the parties' (expanded) positions and his findings and recommendations.

Issue: Article 11 – Compensation

Union Position: The Union demands a one percent (1.0%) increase in the base rate for 2014.

Township Position: The City rejects the Union's demand and counters with an offer of a seven hundred and fifty dollar (\$750.00) bonus payment.

Discussion: The difference in the parties' positions is that the Union wants a change in the base rate which means that there will be a rollup associated with the increase. The Township does not want to pay the rollup percentage. Consequently, the Township has offered a one-time bonus payment. After the parties' decided to execute a MAD, the parties amended their positions.

Union Position (AMENDED) The Union demands a one percent (1.0%) GWI in year 1; a one and one-quarter percent (1.25%) GWI in year 2; and a three percent (3.0%) GWI in year 3 of the proposed contract.

Township Position: AMENDED The Township has offered a seven hundred and fifty dollar payment (\$750.00) in year 1; a one percent (1.0%) GWI in year 2; and a two and one-quarter percent (2.25%) GWI in year 3 of the proposed contract.

Discussion: First, the total offered by the Township comes to four and three-quarters percent (4.75%) over the life of the contract assuming that the seven hundred and fifty dollar (\$750.00) offer in year one is equal to one and one-half (1.5%). The Union's demand is for five and one-quarter percent (5.25%) over the life of the agreement. The difference between the parties' positions is actually somewhat less than one-half percent (.5%) because the Township is offering more than the Union is demanding in the first year of the agreement. Therefore, the parties' positions are not markedly different.

The first year offer is what caused the most problems for the parties. The Township's offer is approximately twenty-five percent (25%) greater than the Union's demand assuming that the rollup is twenty percent (20%). Even if the rollup is somewhat higher than twenty percent (20%), the Township is "paying" for its refusal to move off its bargaining position.

The Conciliator is aware that one of the main reasons that individuals work for a public employer is for the benefits that are provided. Missing a one percent (1.0%) GWI will have some impact on a patrolman's retirement income. However, in this instance the Conciliator agrees with the Fact Finder's recommendation that the patrolmen should receive the same bonus payment as all other Township

employees. This conclusion is based on the internal comparability factors analyzed by both the Fact Finder and the Conciliator.²

The situation in the second contract year is different. The Township's offer is for a one percent (1.0%) increase in the base rate compared to a one and one-quarter percent (1.25%) demand by the Union. In this instance, the difference between the two positions is small, but the Union's position does help the patrolmen recapture some of the "lost" base rate increase from year one of the proposed contract. In addition, the comparables data submitted by the parties show that base rate increases of two percent (2.0%) are being negotiated in some of the surrounding jurisdictions for 2014. While this is somewhat higher than the amount in question in Shawnee Township, the data shows that the Shawnee Township patrol officers are near the top of any comparables list. Therefore, the Union's demand is reasonable when all of the evidence is considered. Finally, it also must be noted that the parties' positions recognize that the Township is still recovering from its financial difficulties, and the Union's demand is not exorbitant by any measure. Therefore, the Conciliator is recommending the Union's position for year 2 of the proposed agreement.

The difference in the parties' positions is more pronounced in the third year. The Union is demanding three-quarters of a percent (.75%) more than the Employer

² The parties both submitted information on comparable jurisdictions. The Union's presentation is under tabs 5, 6, and 7 of its exhibit book. The Township's presentation is under tabs 4, 5, 6, and 7 of its exhibit book, and includes information on the Township's financial condition. That information proves that the Shawnee patrolmen are paid at or near the top of any comparables list.

is offering, i.e., the Township is offering two and one-quarter percent (2.25%) and the Union is demanding three percent (3.0%).

It is clear that the national and state economies are growing. However, the housing sector remains sluggish leading to stagnant housing prices and property values. This has an impact on the Township's finances because property taxes are the main revenue source for a Township. Furthermore, the Township's financial analysis shows that while the Township's fiscal health is improving, there are still problems on both revenue and expenditure sides of Township budget.³ The Township's data show that the budgetary carryover has fallen since 2010.

Finally, the comparables data also show that Shawnee Township pays its patrolmen a competitive salary, and the patrolmen are among the highest paid officers compared to other similarly situated employees. Given, the uncertainty over housing prices, and in light of the budgetary and comparables data, the Conciliator believes that the Township's position is reasonable.

The Conciliator understands that housing prices and property values may rise significantly over the next few years, and that the Township's financial condition may strengthen concomitantly. However, if that set of circumstances does eventuate, then the next round of negotiations is the place to address those issues. At the current time, given the uncertainty about the Township's financial condition and based on the information from other comparable jurisdictions, the Conciliator believes that the Township's position is reasonable.

³ This finding is similar to the findings found in Fact Finder Tulley's report.

Conciliator's Recommended Language: Article 11 – Compensation

Section 11.1 The patrolmen shall receive a one-time seven hundred and fifty dollar bonus (\$750.00) within thirty (30) days of the Conciliator's Award. Each patrolman's base wage rate will increase by one and one-quarter percent (1.25%) on January 1, 2015 and by two and one-quarter percent (2.25%) on January 1, 2016.

Issue: Article 38 – Duration

Union Position: The Union wants to maintain current practice whereby the contract year runs from October 1st to September 30th. That is, the contract would expire on September 30, 2016 at 11:59 P.M.

Township Position: The Township's Prehearing Statement did not reflect a position on this issue.

Discussion: There seems to be no dispute between the parties on this issue. Currently, the contract expires on September 30th at 11:59 P.M. That is, the contract year runs from October 1st through September 30th. Wage increases are effective on January 1st of any year. This is acceptable to both parties, and the Fact Finder's recommendation mirrors the parties' current practice.

Conciliator's Recommended Language: Current Language

Signed the 28th day of June 2013 at Munroe Falls, Ohio

/s/Dennis Byrne
Conciliator

Signed the 28th day of March 2014 at Munroe Falls, Ohio

Conciliator

Appendix A

The Parties agree that the Conciliator shall issue an award as a MAD that is final and binding. However, the Conciliator is not required to choose from between the Parties' last, best offers. Rather, the conciliator may choose either Party's last, best offer or craft his award from the Parties' last, best offers.