

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF
FINAL OFFER SETTLEMENT AWARD
BETWEEN:

City of Painesville)	
)	Case Nos: 2014-MED-01-0013
and)	2014-MED-01-0014
)	
The Fraternal Order of Police, Ohio Labor Council, Inc.)	Conciliator: Colman R. Lalka

HEARING
Date of Hearing: November 25, 2014
Location of Hearing: Painesville, Ohio

ATTENDANCE AT HEARING
For the City:
Jeremy Iosue, Esq.
Anthony Carson, City Manager
Andrew A. Unetic, Director of Finance

For the Union:
Otto J. Holm, Jr., FOP/OLCI Staff Representative
Gerald Lynch, Lieutenant
Larry Armstrong, Sergeant
William Smith, Patrol Union Representative

BACKGROUND

The City of Painesville recognizes the FOP, Ohio Labor Council, Inc. as the bargaining representative for certain employees of the City's Police Department. Those employees comprise two Bargaining Units, one consisting of twenty-seven Patrolmen, and the other Bargaining Unit consisting of eight employees of the rank of Sergeant or Lieutenant. The Bargaining Units are duly certified by the State Employment Relations Board and have Labor Agreements in

effect that expire on March 31, 2015. The within matter concerns wage reopeners for both Units, effective April 1, 2014. Formal bargaining between the Parties has been ongoing, with Fact-Finding having been conducted and the Fact-Finding Report and Recommendation rejected.

Each Party timely submitted a written report to the Conciliator as mandated by law and SERB Rules and Regulations. The parties requested the Conciliator convene a hearing, and the matter at impasse be determined pursuant to a final offer settlement procedure in keeping with ORC 4117 and related Rules and Regulations adopted by SERB.

The hearing was convened on the date and at the place indicated above. At that time the Parties were provided the opportunity to present evidence and argument in such a manner that would allow the Conciliator to issue a Final Offer Settlement Award regarding the dispute between the Parties. The parties were also offered the opportunity to provide for a verbatim transcript of the proceedings.

CRITERIA

After giving thorough consideration to the evidence and argument of the Parties, the criteria used by the Conciliator in resolving the disputed issue were those set forth in ORC 4117.14(G)(7)(a) through (G)(7)(f) and Rules 4117-9-06(H)(1) through (H)(6) of the State Employment Relations Board, to wit:

- (a) Past collectively bargained agreements, between the parties;
- (b) 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 employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (c) 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;
- (d) The lawful authority of the public employer;
- (e) The stipulations of the parties;
- (f) Such other factors, not confined to those listed above, 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.

MEDIATION

Prior to the commencement of the hearing, mediation was conducted with the Conciliator acting as mediator. The City has agreed to wage increases to its other Bargaining Units, and offered the same wage package to these Units, *vis.*, a 2.5% wage increase in 2015, the same for 2016, and no wage reopener in the final year. The FOP, for this Conciliation, moved from its demand of a 3% wage increase, effective April 1, 2014, presented at Fact-Finding, to the Fact-Finder's recommendation of a 1.5% wage increase. Agreement was not reached, and the Conciliation Hearing of this single issue commenced.

DISCUSSION OF ISSUE AT IMPASSE

The sole issue in the matter is an across-the-board wage increase of 1.5% retroactive to April 1, 2014, through the expiration of the current Labor Agreement. The parties executed an ORC 4117.14(G)(11) waiver regarding all matters of compensation or with cost implications, thereby permitting this Conciliator to render a wage increase retroactive to April 1, 2014, should a wage increase be awarded.

The City's proposal, which was not formally modified during mediation, is a wage freeze through the remainder of the current Labor Agreement, and the Union's proposal has been noted above. Thus, the Conciliator, based on the evidence of record and applying the criteria noted above, must select between the two proposals, without modification, and issue an award accordingly.

Evidence and arguments presented at the Conciliation Hearing, for the most part, paralleled the evidence and arguments discussed and analyzed by Fact-Finder, John T. Meredith, in his report issued August 12, 2014. In his report, the Fact-Finder discussed the City's population, the median income of its residents, and the loss of businesses and the hospital, resulting in lost revenue. Also discussed were the City's General Fund transfers to Utility Accounts, Council's mandate of maintaining a 20% to 25% General Fund unencumbered cash balance, internal comparables including the acceptance of a wage freeze for 2014 by the City's other Bargaining Units, external comparables as presented by each party, including the ranking of the Police Units compared to the Police Departments in the comparable communities, and a comparison of the wage increases from 2009 through 2013 of these Bargaining Units *viz.-a-viz.* all Ohio public sector employees. In lieu of this Conciliator paraphrasing the findings and analyses

contained in the Fact-Finding Report, said Fact-Finding Report, sans the Fact-Finder's recommendation, is incorporated herein by reference as if fully rewritten.

In addition to incorporating the Fact-Finding Report, further discussion is warranted on points stressed by the parties at the Conciliation Hearing. The City points out that under the economic climate since 2008, wage freezes are common, with some public employees receiving freezes for five years. Notwithstanding wage freezes for the last three years, the City contends, wages for these Bargaining Units remained competitive.

Between the Fact-Finding Hearing and Conciliation, the City reached accord with the Firefighters regarding their Successor Agreement. In the Firefighter Contract, the parties agreed to a 2.5% wage increase in 2015, a 2.5% increase in 2016, and no wage reopener in the final year. The same wage package will be offered to the Police Bargaining Units, the City states, and waiting five months for a wage increase to take effect will permit the City to preserve its General Fund and continue needed services to its residents.

The Union emphasizes that the five month waiting period must be added to the previous seven months, and that sum added to the previous two years of freezes. According to the Union, the City has the ability to finance the 1.5% wage increase recommended by the Fact-Finder. In support of its ability to finance argument, the Union emphasizes two points. First, the City tends to underestimate revenues by approximately 1.5%, and overestimate expenditures by 4.5%. This, the Union states, amounts to a 6% slush fund that in itself is sufficient for the City to finance the requested wage increase.

Second, the Union continues, while the Government Finance Officers' Association recommends that 16.7% or two months of expenditures be maintained as an unreserved fund to meet emergencies, the City maintains an unencumbered cash reserve of 20% to 25%. This reserve is mandated by Council, and, the Union believes, this mandate amounts to a self-imposed "hamstring" of City finances. Moreover, cuts in City expenditures have outpaced the decline in revenues, resulting in a 9% increase in the General Fund balance from 2009 through 2013.

The City responds by noting the Union is using Generally Accepted Accounting Principles (GAAP) figures, which records revenues and expenses when earned or incurred. Moreover, the City continues, the Union's GAAP figures include capital assets as well as other figures that skew its results. The City emphasizes that expenses, including wage increases, must

be paid with cash, and points out that the City is using cash figures. The 20% to 25% unencumbered reserve, the City argues, is needed in the event of an emergency.

ANALYSIS

The Conciliator is also mindful of the City's argument that the unencumbered reserve is necessary as the result of shifting expenses between the General Fund and the Utility Funds, and that in the event of an emergency in one of the Utility Departments, it will be necessary to transfer money from the General Fund to cover the contingency. This contention, however, in light of the Union's arguments regarding the City's under- and overestimation of revenues and expenses, the increase in the General Fund balance despite falling revenues, and the 20% to 25% unencumbered reserve, is insufficient to convince the Conciliator that the City is unable to finance the 1.5% wage increase recommended by the Fact-Finder.

AWARD

The Union's last best offer is awarded. That is:

Current wage rate scales in effect since April 2011 will be increased by 1.5% retroactive to April 1, 2014.



Colman R. Lalka, Conciliator

Dated: December 5, 2014
Madison, Lake County, Ohio