

**STATE EMPLOYMENT RELATIONS BOARD**

**CONCILIATOR'S AWARD**

IN THE MATTER OF:

CITY OF MIDDLEBURG HEIGHTS

AND

OHIO PATROLMEN'S BENEVOLENT ASSOCIATION

Case Number 2014-MED-10-1465

Before Conciliator: Thomas J. Nowel  
October 8, 2015

PRESENTED TO:

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## INTRODUCTION

Thomas J. Nowel was appointed to serve as Conciliator in the case as captioned on the cover page by the State Employment Relations Board on July 16, 2015 in accordance with Ohio Revised Code Section 4117.14 (D) (1). Hearing was held on September 15, 2015 at Middleburg Heights City Hall.

The collective bargaining agreement between the parties expired on December 31, 2014. The parties submitted two issues, which were at impasse, to fact finding on April 24, 2015. The Report and Recommendation of the Fact Finder failed to resolve the negotiations. Hearing at Conciliation was then scheduled. The evidentiary hearing was convened at 10:00 am on September 15, 2015.

The bargaining unit is comprised of approximately twenty-nine sworn officers including five sergeants and four lieutenants. The City and OPBA have maintained a collective bargaining relationship for over twenty-five years. Employees in the Fire Department and Service Department are unionized. The City of Middleburg Heights is located thirteen miles southwest of Cleveland with a population of approximately 16,000 residents.

### OUTSTANDING ISSUES:

Article 19, Premium and Other Pays, Section 19.01 (Education premium)  
Article 19, Premium and Other Pays, Section 19.06 (On-call benefit)

Those Participating at Hearing for the Employer:

William F. Schmitz, Attorney  
Jason Stewart, Finance Director  
Robert Downey, Executive Assistant

Those Participating at Hearing for the Union:

S. Randall Weltman, Attorney

Andrea Rocco, Attorney

Nick McCoy, Patrolman

Steve Stervagi, Patrolman

Andrew Belzer, Patrolman

Brent Lavinder, Detective

## BACKGROUND

In analyzing the positions of the parties regarding each issue at impasse and then selecting one or the other final offer of the parties, the Conciliator is guided by the principles which are outlined in ORC Section 4117.14 (G) (7) (a-f) as follows.

1. The past collectively bargained agreement between the parties.
2. Comparison of the issues submitted to fact finding 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 interest 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.
4. The lawful authority of the public employer.
5. The stipulations of the parties.
6. Other factors, not confined to those listed above, which are normally or traditionally taken into consideration in determination of the 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.

In addition to the statutory guidelines, the Report and Recommendation of the Fact Finder in this matter is given consideration in the development of an Award regarding the two outstanding issues at Conciliation.

During the course of the hearing, the parties had full opportunity to advocate for their respective positions, submit exhibits, present testimony and discussion, and engage in rebuttal of the submissions and arguments of the other party.

The Union states that the environment, in which police officers serve, has changed significantly over the past five or more years. The public and media continually scrutinize the actions of police officers. Performance is open to review and is frequently critiqued. Nearly everything is captured on cell phone video and other media. Public jurisdictions are the subject of legal action, and police officers are much more open to discipline and discharge than in the past. In acknowledging the changes in the "industry," the City of Middleburg Heights mandates bachelor's degrees for all members of the bargaining unit. The Union acknowledges that this has worked well for the Employer and the community it serves. The Union reminds the Employer and Conciliator of the investment in time and cost involved with the attainment of a four (or more) year degree. Degrees must in the Criminal Justice area. A significant portion of the bargaining unit is now comprised of "college educated professionals." The problem, the Union states, is a lack of monetary reward for the higher level of professional development. The service employees bargaining unit and unionized employees in the Fire Department agreed to new two year collective bargaining agreements just prior to the instant negotiations with the

OPBA. Both bargaining agents accepted two 2% pay increases over the life of two year agreements. In addition, the unions agreed to modifications to the health insurance provisions of their Agreements as proposed by the Employer. These modifications include higher costs for medical services. This left the OPBA bargaining unit with little choice other than to accept this pattern of bargaining. The Union states that its members have mandated that the pay package recognize the higher level of education and professionalism. The Union therefore proposes an increase in education premium as found in Section 19.01 of the Agreement. This provision contains the following annual premium.

Training Certificate in Law Enforcement	\$350.00
Associate Degree in Law Enforcement	\$600.00
Bachelor's Degree in approved field	\$850.00
Graduate Degree in approved field	\$1100.00

The Union proposes an increase of \$150.00 for Training Certificate level; \$200.00 increase for an Associate Degree; and \$300.00 increases for the Bachelor's and Graduate Degree levels. The Union states that a majority of bargaining unit members now possesses a Bachelor's Degree, and its proposal is affordable. The Union argues that Middleburg Heights is an affluent community, and the Employer's finances are one of the most stable in the region. The Union states that, in its list of comparable jurisdictions in the region (Union Exb 1), its bargaining unit is second lowest paid both in pure wages and after monetary benefits are considered. The Union states that, in addition, the cost of accessing certain health care benefits has increased as has the employee contribution to the state pension program. Pay for the bargaining unit is not keeping pace with increased costs.

The Union states that the collective bargaining agreement covering Fire Department employees in Middleburg Heights provides the same education benefit as that found in the OPBA contract. But, the Union states, only one employee receives the Bachelor's Degree stipend as this level of education is not required. Service Department employees only receive stipends for certain certificates such as CDL. The Union argues that an inequity exists as non-bargaining unit employees receive a 3% premium for possession of a Bachelor's Degree. This exceeds the benefit provided for Police Department employees. The Union states that the Employer's argument of pattern bargaining is therefore not valid.

The Union states that its proposals are very affordable by a jurisdiction which is one of the more financially stable in the region. The City has gained a AA bond rating and its tax base provides substantial revenue. The Union suggests that the Fact Finder in this matter did not fully understand its position regarding the education premium increase. The Union argues that its proposal to increase the education premium is completely justified and affordable.

The Union proposes an increase in compensatory time granted to those designated employees who are "on-call" as found in Section 19.06 of the Agreement. Detectives and the Accident Investigator are assigned to on-call duty for one month intervals. One detective is on-call at any given time, and the assignment rotates so that each employee is so assigned four times each year. The one month assignment includes on-call status between 4:00 pm and 8:00 am during week days and on weekend days. In the event a detective is called out, overtime compensation is paid, but spending time on the telephone during on-call status is not compensated. The

Agreement provides for four hours of compensatory time for the one month on-call assignment. The Union proposes to expand the benefit to eight hours for the one month on-call assignment.

The Union states that the on-call detective must not leave the region as a one hour response is required. The on-call employee is unable to consume an alcoholic beverage at any time during the one month assignment, and the ability to socialize with family and friends is significantly compromised. The proposal to increase the benefit is reasonable, and the Union states that the Fact Finder recommended the additional compensatory time.

The Employer states that its financial picture is not as robust as the Union has suggested. Expenditures exceeded revenue by \$900,000.00 in 2014. This translates to a decrease in the carry-over of unencumbered funds. The year end cash balance in 2015 is projected at \$5.7 million, 17.6% of expenditures, and \$4.1 million (13.3% of expenditures) at the end of 2016. Year end cash balance as a percentage of expenditures is projected at 9.6% by 2018. The Employer agrees with the Union that its bond rating at AA is a positive, but the rating may be reduced in the near future if cash balances continue to decline. The loss of local government funds requires the City to engage in careful budgeting. Previous windfall estate tax revenues were helpful in the development of a stable budget, and a side street repaving project was completed in the recent past. The estate tax no longer exists as it was repealed by the state. Capital improvements were delayed in the recent past.

The Employer states that it must budget conservatively in order to be responsive to voters who recently passed an income tax increase.

The Employer disagrees with the comparable jurisdictions utilized by the Union. In a comparison of Police Department wages from local and regional jurisdictions, the Employer states that the bargaining unit ranks second from the top (Emp Exb H). In addition, the Employer emphasizes that it pays 100% of the health insurance premium for bargaining unit employees. The cost of family coverage is approximately \$22,000 annually. In addition, the Employer states, employees may cash in holiday pay, and a generous shift differential is provided. The Employer states that the Union compares its pay package to non-bargaining unit employees, but total compensation is greater than administrative personnel. The sell back of holidays is not available to other City employees. The Employer states that Police and Fire Department employees are comparable, and the Fact Finder supported this contention. Pay and economic benefits are essentially the same between the two bargaining units. The Employer states that the comparability must be noted by the Conciliator as this pattern of bargaining is a critical factor in this matter.

The Employer states that the cost of pension contribution for employees was minimal, and that, nevertheless, it provides for an employee benefit upon retirement. The Employer argues that bargaining unit employees are well compensated and emphasizes that employees do not share in the cost of health insurance. Very few employers finance the entire cost of health insurance. The Employer stresses the pattern of bargaining which exists between Fire and Police

and urges the Conciliator to reject the proposal and maintain the current contract benefit regarding education premium.

The Employer also rejects the Union's proposal regarding additional compensatory hours for on-call assignment. The Employer states that a detective currently receives a stipend of \$75.00 per month and generally earns the most overtime in the bargaining unit. The Employer states that no other area police department provides an on-call stipend. The current benefit is generous and adequate. The Employer emphasizes that no other City employee whether unionized or administrative, received a financial benefit beyond the 2% wage increase. The Employer asks the Conciliator to maintain the current four hour benefit.

#### ANALYSIS AND AWARD

##### **1. Article 19, Premium and Other Pays, Section 19.01**

Both parties present compelling arguments regarding the Union's proposal to increase the education premium. Both parties have worked together to ensure that the City of Middleburg Heights enjoys one of the most professional police forces in the area. The level of education is a model, and it is remarkable that twenty-one of twenty-nine members of the bargaining unit possess a Bachelor's Degree at this time. The Employer argues that the bargaining unit is well compensated and receives a number of additional monetary benefits which would preclude an increase in the education benefit. The Union emphasizes the importance of the education premium and desire of its members for an increase during the term of the

new agreement. Both arguments are relevant. There can be no argument that the level of education of the City's police officers has greatly benefited the jurisdiction and its citizens. The Union's contention that the stipend should be increased has merit. The Employer argues that a pattern of bargaining has been established in that all City employees received a 2% wage increase with no other increase in any monetary benefit. The Union argues that a pattern of bargaining does not exist, but, in reality, this is not the case. The Fact Finder in this matter found that members of the bargaining unit have more in common with Firefighters than other employees at the City. "The Fact Finder agrees with the City that the Patrolmen share a community interest with the Firefighters rather than administrative employees. Thus, pattern of bargaining is an important factor" (FF Report, page 8). The Employer cites recommendations by Fact Finders Harry Graham, Marvin Feldman and John Drotning which recognize the principle of pattern bargaining in certain cases of impasse with a bargaining unit in the same jurisdiction. And this neutral, while not in lock step if circumstances dictate, often recognizes the well established principle. In some cases this may not support a Union position, but in others it may work in its benefit. At hearing, it was stated that circumstances have not changed since the hearing at Fact Finding. There is therefore no compelling evidence that would persuade this neutral to deviate from the findings of the Fact Finder. The Employer's assertion of dwindling unencumbered carry-over is noted although it is likely that the proposal would be affordable. The importance of the education premium should be of mutual interest to both parties, and, as the Employer

suggested, this may again be a subject during future negotiations. The next Agreement will be open for negotiations one year from this time.

Evidence indicates that a pattern of bargaining exists between Fire Department employees and the OPBA bargaining unit, as determined by the Fact Finder, and there is no compelling reason to modify that recommendation. The Employer's position, to maintain current contract language, is hereby awarded.

## **2. Article 19, Premium and Other Pays, Section 19.06**

The Union makes a compelling argument regarding the importance of increasing the amount of compensatory time from four to eight hours for each month of on-call assignment for employees who are so assigned. The Employer argues that detectives, who are assigned to on-call duty, already earn an additional \$75.00 per month and receive a greater amount of overtime than other members of the bargaining unit. The Union's argument, that this is a taxing assignment, is compelling in that the assignment precludes long distance travel, limits socializing with family and friends, and occurs three or four months each year. A one month on-call assignment which involves all non-work time during the week has a quality of life impact. Although the Employer argues that detectives receive a significant amount of overtime, evidence also indicates that the taking of phone calls and providing instruction is not compensated while in an on-call status. These calls may come at any time including the middle of night or on a Sunday morning. There is no evidence that other City employees are assigned in this manner. In addition, the

Fact Finder found merit in the Union's proposal and included it in the recommendation. The Union's proposal is hereby awarded as follows.

Article 19, Premium and Other Pays

Section 19.06 An employee assigned to the Detective Bureau and Accident Investigation shall be compensated eight (8) hours of compensatory time for each month of on-call assignment.

### CONCLUSION

The Conciliator has reviewed the pre-hearing statements of the parties and all facts presented at hearing including exhibits presented during the evidentiary hearing. In addition, the Conciliator has considered the positions and arguments presented by the parties regarding the two issues at impasse; the Report and Recommendation of the Fact Finder; and the criteria enumerated in Ohio Revised Code Section 4117.14 (G) (7) (a-f).

In addition to the decisions contained in this Award, all tentative agreements reached by the parties during negotiations and all unopened articles of the Agreement are hereby incorporated in this Award by reference.

The Award includes the following:

1. Article 19, Premium and Other Pays, Section 19.01 (Education Premium)

Employer

2. Article 19, Premium and Other Pays, Section 19.06 (On-Call Compensatory Time)

Union

Respectfully submitted and issued at Cleveland, Ohio this 8<sup>th</sup> Day of October 2015.



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Thomas J. Nowel  
Conciliator

CERTIFICATE OF SERVICE

I hereby certify that, on this 8<sup>th</sup> Day of October 2015, a copy of the foregoing Award of the Conciliator was served by electronic mail upon S. Randall Weltman, representing the Ohio Patrolmen's Benevolent Association; William F. Schmitz, Gary C. Johnson & Associates, representing the City of Middleburg Heights; and Donald M. Collins, General Counsel, State Employment Relations Board.



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Thomas J. Nowel  
Conciliator