

STATE OF OHIO  
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF CONCILIATION	:	SERB Case Numbers: 2014-MED-12-1647
	:	2014-MED-12-1648
BETWEEN THE	:	2014-MED-12-1649
	:	
<b>CITY OF PORT CLINTON, OHIO,</b>	:	
	:	
Employer	:	
	:	Date of Conciliation Hearing:
AND THE	:	October 27, 2015
	:	
	:	
<b>FRATERNAL ORDER OF POLICE,</b>	:	
<b>OHIO LABOR COUNCIL, INC.,</b>	:	
<b>LODGE 79,</b>	:	Howard D. Silver, Esquire
Union	:	Conciliator

OPINION AND ORDER OF THE CONCILIATOR

APPEARANCES

For: City of Port Clinton, Ohio, Employer

John J. Krock, Vice President  
 Clemans, Nelson and Associates, Inc.  
 485 Metro Place South, Suite 200  
 Dublin, Ohio 43017  
[jkrock@clemansnelson.com](mailto:jkrock@clemansnelson.com)

For: Fraternal Order of Police, Ohio Labor Council, Inc., Lodge 79, Union

Jackie Wegman  
 Staff Representative  
 Fraternal Order of Police, Ohio Labor Council, Inc.  
 3500 Stillwater Boulevard  
 Maumee, Ohio 43537  
[jackiewegmanfop@gmail.com](mailto:jackiewegmanfop@gmail.com)

## PROCEDURAL BACKGROUND

This matter came on for a conciliation hearing on October 27, 2015 at 10:00 a.m. in the City Council Chambers at City Hall of the city of Port Clinton, Ohio at 1868 East Perry Street, Port Clinton, Ohio 43452. At the hearing both parties were afforded a full and fair opportunity to present evidence and arguments in support of their final offers on an issue-by-issue basis. The conciliation hearing record was closed at 11:55 a.m. on October 27, 2015 at the conclusion of the conciliation hearing.

This matter proceeds under the authority of Ohio Revised Code section 4117.14 and in accordance with Ohio Administrative Code section 4117-9-06. Both parties have met their obligations in carrying out pre-hearing procedures. Each party has submitted to the conciliator on an issue-by-issue basis a final offer for each unresolved Article. This matter is properly before the conciliator for review and resolution.

## FINDINGS OF FACT

1. The parties to this conciliation proceeding, the city of Port Clinton, Ohio, the Employer, and the Fraternal Order of Police, Ohio Labor Council, Inc., Lodge 79, the Union, were parties to three collective bargaining agreements covering three bargaining units, with each Agreement expiring on March 31, 2015.
2. At the time of the conciliation hearing, the three bargaining units were comprised of four (4) full-time sworn police officers of the rank of Sergeant; eight (8) full-time sworn police officers of the rank of Patrolman; and five (5) full-time dispatchers, secretaries, and clerk typists.

3. The parties engaged in bargaining successor collective bargaining agreements for the three bargaining units on January 26, 2015; March 9, 2015; and May 4, 2015.
4. The parties reached a number of tentative agreements as to changes to be included in their successor collective bargaining agreements but were unable to reach an agreement as to Wages, Article 22, and Insurance, Article 16.
5. The parties moved to fact finding on the two remaining unresolved Articles, with a fact finding hearing occurring on July 14, 2015 and the fact finder's report and recommendations issued on July 22, 2015.
6. The fact finder recommended annual wage increases of 1.5% effective April 1, 2015; April 1, 2016; and April 1, 2017.
7. The fact finder recommended retaining current language in the parties' Article on Insurance, Article 16, leaving the Employer to pay the initial deductibles arising from the employees' health care benefits, the only bargaining units to have deductibles paid by the Employer before employees pay their deductibles.
8. The parties remained at impasse following fact finding as to Article 22, Wages, and Article 16, Insurance.
9. This matter came on for a conciliation hearing on October 27, 2015 that concluded the same day.
10. The parties agreed that the conciliator's opinion and order would be issued on November 30, 2015.

## UNOPENED ARTICLES

The following Articles were not opened to bargaining by either party. The conciliator includes these Articles, unchanged, in the parties' successor Agreements under the conciliator's opinion and order.

Article 1 – Conflict of Contract and Ordinances

Article 2 – Lodge Recognition

Article 4 – Management Rights

Article 5 – Lodge Business

Article 6 – Grievance Procedure

Article 7 – Class Specifications

Article 9 – Discipline and Self-Incrimination

Article 11 – Vacation

Article 12 – Sick Leave

Article 13 – Bereavement Leave

Article 14 – Military Leave

Article 15 – Special Leave

Article 17 – Bulletin Boards

Article 18 – Longevity

Article 19 – Vacancies and Promotions

Article 21 – No Strike or Lockout

Article 23 – Special Work Conditions

Article 24 – Injury Leave

Article 25 – Labor/Management Meetings

#### TENTATIVE AGREEMENTS

The following Articles are the subjects of tentative agreements between the parties as to how these Articles are to be included in the parties' successor Agreements. The conciliator orders the inclusion of the parties' tentatively agreed Articles in the parties' successor Agreement.

Article 3 – Nondiscrimination

Article 8 – Hours of Work and Overtime

Article 10 – Holidays

Article 20 – Uniform Allowance

Article 22 – Section 22.4 – Shift Differential

Article 26 – Duration and Renewal

#### UNRESOLVED ARTICLES

The following Articles were unresolved between the parties at the conclusion of the conciliation hearing and are subject to the conciliator's order in this proceeding.

Article 16 – Insurance

Article 22 - Wages

DISCUSSION AND SELECTION AMONG THE PARTIES' FINAL OFFERS

Article 22, Wages

The Union's final offer on wages for the three years of the parties' successor Agreements, from April 1, 2015 through March 31, 2018, proposes a 1.5% annual wage increase effective April 1, 2015; April 1, 2016; and April 1, 2017, the wage increases recommended by the fact finder.

The Employer's final offer on wages proposes no wage increase for 2015; an annual wage increase of 1.5% effective April 1, 2016, and an annual wage increase of 1.5% effective April 1, 2017.

A consideration of the wages to be included in the parties' successor Agreements, as ordered by Ohio Revised Code section 4117.14(G)(7)(c), must include:

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 [.]

Another consideration to be applied to wages is found in Ohio Revised Code section 4117.14(G)(7)(b) that reads:

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[.]

In support of its final offer on wages the Employer points to the poor economic condition of the city of Port Clinton, Ohio, the public employer. The Employer notes that during bargaining the Union was informed that if the final offer from the Employer on

Insurance, Article 16, were to be agreed, the Employer would take the savings from that modification of Article 16 and apply it to wage increases for the three bargaining units. Because all of the issues for the successor Agreements were not resolved by June 1, 2015, the date of the health insurance coverage renewal, there are no savings to distribute through wages during the first year of the successor Agreements. The Employer notes that all other city employees received no wage increase in 2015; the most recent wage increase these employees received had been effective September 1, 2013.

The Employer notes that members of a city bargaining unit represented by the Teamsters, and all other city employees except the three bargaining units addressed by this proceeding, have been paying \$1,500 as a deductible since June 1, 2014 while members of the bargaining units represented by the Fraternal Order of Police, Ohio Labor Council, Inc., Lodge 79 have been paying \$1,100 as a deductible since 2014 and will continue to do so at least until June, 2016. The Employer notes that the members of the bargaining units represented by the FOP/OLC, Inc. received a 2% wage increase effective April 1, 2014.

The Union's final offer on wages mirrors the recommendation of the fact finder on wages – 1.5% effective April 1, 2015; 1.5% effective April 1, 2016; 1.5% effective April 1, 2017. The Union points out that the cost of the Union's final wage offer, including rollups, and comparisons to comparable cities paying for comparable work were done by the fact finder, and the fact finder reached the conclusion that the public employer could afford the wage increases recommended by the fact finder.

The fact finder found the city of Port Clinton, Ohio had available funds for wage increases for the city's police department and found sufficient facts to support wage

increases of 1.5% effective April 1 of each year of the successor Agreements – 2015, 2016, and 2017. The fact finder calculated that the cost of the wage increases the fact finder was recommending would be \$18,147 in 2015; \$18,419 in 2016; and \$18,696 in 2017, and the fact finder assumed an overtime expenditure of \$90,000 and \$5,050 in rollup costs, for a total cost of the wage increases over the three years of \$60,312.

The conciliator finds nothing illogical, inaccurate, or unreliable in the data examined by the fact finder or in the comparisons made by the fact finder among comparable cities paying for comparable work. The conciliator finds the public employer does have the wherewithal to fund the final wage offer from the Union and finds no sufficiently persuasive basis upon which to order a modification of the wage recommendation of the fact finder in the manner suggested by the Employer.

The conciliator selects the Union's final offer on wages, Article 22.

#### Article 16 – Insurance

The Employer points out that it offers healthcare coverage through a Health Reimbursement Account (HRA) health insurance plan with a \$2,000 deductible amount for single coverage and a \$4,000 deductible amount for family coverage. After the deductible is paid the insurance pays 100% of costs through the end of the year. The current health plan provides that an employee will be responsible for \$550 of the \$2,000 deductible under a single plan and \$1,100 of the \$4,000 deductible under a family plan. The most recent collective bargaining agreements between the parties covering the three bargaining units call for the Employer to pay its portion of the deductible amount first, prior to the employee paying the employee's share of the deductible. The effect of this system is that a member of one of the three bargaining units addressed by this

conciliation proceeding with family coverage would have first dollar coverage for the first \$2,900 of claims submitted (\$1,450 for single coverage) and then the employee would pay the next \$1,100 worth of claims (\$550 for single coverage), and then regain first dollar coverage for the remainder of the year.

The Employer points out that in its final offer on Insurance, Article 16, the Employer does not propose to increase a bargaining unit member's monthly premium contribution of 13%. The only change proposed by the Employer is that an employee pay the employee's deductible amount before the Employer pays the Employer's share of the employee's deductible amount. The Employer notes that such a change would leave the three bargaining units at issue herein in the position all other employees of the city, organized and non-organized, are in in relation to healthcare coverage.

Because the fact finder amended his initial fact finding report, the Employer has claimed that the fact finder did not fully understand the Employer's proposal on Insurance, Article 16. The Employer points out that after an initial mistaken belief by the fact finder that under the Employer's proposal employees would be required to pay \$2,900 of the deductible amount for a family plan, and after reading the Employer's rationale statement again, the fact finder amended his report but made no change to his original findings.

The Union describes the Employer's final offer on Insurance, Article 16, as an attempt by the Employer to strip bargaining unit members of their right to collectively bargain their healthcare coverage. The Union's final offer on Insurance, Article 16, proposes an increase in the amount of the network deductible for which an employee is responsible annually for each of the years of the successor Agreements, recognizing that

healthcare is an economic benefit and the costs of this benefit are to be shared by labor and management. The Union claims its final offer on Insurance, Article 16, proposes deductible amounts that are more in line with employees' ability to pay based on wages, and more in line with the Ohio State Employment Relations Board's report on the cost of health insurance.

The Union notes that the fact finder recommended the Union's proposal on Insurance, Article 16. The Union argues that when a party rejects a fact finder's report, the burden of proof is on the party seeking to overturn the fact finder's recommendation, requiring that party to prove that there is a sufficient basis to do so. The Union points out that the fact finder heard all of the testimony and awarded the Union's position on healthcare coverage. The Union claims there was no error in fact or logic in the fact finder's report and the original and amended reports of the fact finder clearly demonstrate the fact finder understood the theory behind the Employer's proposal on Insurance. The fact finder did not agree with the Employer's position on Insurance, finding that the healthcare language was "fairly bargained for," but the fact finder nonetheless understood the Employer's proposal on healthcare coverage at fact finding.

As stated at page four of the fact finder's report: "However, in the instant case this employer is attempting to abolish a key provision in the current CBA which was fairly bargained for in past negotiations." The fact finder found:

There are insufficient facts to support the City of Port Clinton's proposed healthcare plan in that it was fairly bargained for. There are sufficient facts to support the proposal of the Union in Article 16, A, B and C.

The conciliator favors larger healthcare coverage pools wherein all participants are treated the same. This circumstance spreads benefits and costs more efficiently and provides better coverage uniformly to all participants. The conciliator finds special niches of coverage inherently more expensive and more administratively burdensome. The conciliator believes that there is safety in numbers, and the only real protection is the guarantee that everyone will be treated the same.

While the conciliator understands the reasons underlying the Employer's final offer on healthcare coverage, the conciliator also understands that the particular advantage enjoyed by the members of the three bargaining units addressed by this proceeding through the Employer's payment of the deductible amount prior to an employee paying for the employee's deductible amount was not imposed on the parties but bargained and agreed by the parties. The proposal by the Employer would dissolve this advantage formerly agreed but would leave the members of the three bargaining units at issue herein no worse off than all other city employees receiving healthcare coverage through the city.

This conciliator is not willing to order the change proposed by the Employer in its final offer on Article 16, Insurance, because to do so would dissolve the agreement of the parties on the payment of the deductible amount, an intrusion by the conciliator that under these facts is not found warranted. The past agreements between the parties are more important than and take precedence over the conciliator's philosophy on what is more efficient in the provision of healthcare coverage. In the absence of an agreement to modify what had been agreed, the conciliator declines to choose the Employer's final

offer on Insurance, Article 16. The conciliator selects the Union's final offer on Insurance, Article 16.

#### CONCILIATION ORDER

The conciliator's selections between the final offers of the Employer and the Union as to the Articles that remained unresolved between the parties at the conclusion of the conciliation hearing are as follows:

Article 22, Wages – Union's final offer

Article 16, Insurance – Union's final offer

All unopened and tentatively agreed Articles shall be included in the parties' successor Agreements.

As stated in Ohio Revised Code section 4417.14(G)(11): "The parties may, at any time, amend or modify a conciliator's award or order by mutual agreement."

Howard D. Silver

Howard D. Silver, Esquire  
Conciliator  
500 City Park Avenue  
Columbus, Ohio 43215  
[howard-silver@att.net](mailto:howard-silver@att.net)

Columbus, Ohio  
November 30, 2015

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Opinion and Order of the Conciliator in the Matter of the City of Port Clinton, Ohio, the Employer, and the Fraternal Order of Police, Ohio Labor Council, Inc., Lodge 79, the Union, SERB case numbers 2014-MED-12-1647, 2014-MED-12-1648, and 2014-MED-12-1649, was filed electronically with the State Employment Relations Board, 65 East State St., 12<sup>th</sup> Floor, Columbus, Ohio 43215, at [MED@serb.state.oh.us](mailto:MED@serb.state.oh.us) and served electronically upon the following, this 30<sup>th</sup> day of November, 2015:

John J. Krock  
Vice President  
Clemans, Nelson and Associates, Inc.  
485 Metro Place South, Suite 200  
Dublin, Ohio 43017  
[jkrock@clemansnelson.com](mailto:jkrock@clemansnelson.com)

and

Jackie Wegman  
Staff Representative  
Fraternal Order of Police, Ohio Labor Council, Inc.  
3500 Stillwater Boulevard  
Maumee, Ohio 43537  
[jackiewegmanfop@gmail.com](mailto:jackiewegmanfop@gmail.com)

*Howard D. Silver*

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Conciliator

Columbus, Ohio  
November 30, 2015