

STATE EMPLOYMENT RELATIONS BOARD

CONCILIATOR'S AWARD

IN THE MATTER OF:

CITY OF MASSILLON

AND

FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL, INC.

Case Nos. 2015-MED-03-0203, 0204

Before Conciliator: Thomas J. Nowel, NAA
October 7, 2016

Presented To:

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INTRODUCTION

Thomas J. Nowel was appointed to serve as Conciliator in the cases as captioned on the cover page by the State Employment Relations Board on August 5, 2016 in accordance with Ohio Revised Code Section 4117.14 (D) (1). Hearing was held on September 26, 2016 at the Massillon Police Department.

The Union represents two bargaining units. The Blue Unit is comprised of 30 Patrol Officers and there are six Sergeants and four Lieutenants in the Gold Unit. By city ordinance, 44 Officers comprise the Massillon Police Department. The Chief and Captain are excluded from the bargaining units. The collective bargaining agreement expired on June 30, 2015. The parties met on a number of occasions from October 2015 to April 2016 and concluded 32 tentative agreements. The parties submitted six issues at fact finding on June 16, 2016. The Report and Recommendation failed to resolve the negotiations. Hearing at Conciliation was convened at 10:00 am on September 26, 2016.

OUTSTANDING ISSUES:

1. Article 15, Minimum Manpower
2. Article 17, Vacancies
3. Article 22, Wages and Compensation
4. Article 46, Duration

Those Participating at Hearing for the Employer:

Leslie Iams Kuntz, Attorney for the Employer
Joel Smith, Safety Service Director
Mike McKee, Finance Director
Keith Moser, Police Chief

Those Participating at Hearing for the Union:
Charles L. Wilson, FOP Staff Representative
Jason Gohlike, Union Committee
Jason Smith, Union Committee
Jason Greenfeld, Union Committee

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 Ohio Revised Code Section 4117.14 (G) (7) (a-f) as follows.

1. Past collectively bargained 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 employees 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 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. Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the 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 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.

ANALYSIS AND AWARD

On October 8, 2013, the Ohio State Auditor placed the City of Massillon in the state of Fiscal Emergency. As a result, the City was placed under the oversight of a Financial Planning and Supervision Commission which has the responsibility to review revenue and expenditures. The Commission makes recommendations for cost reduction plans and approves a financial recovery plan. The City of Massillon encompasses 18.70 square miles. Portions of the City are rural in nature. Population is approximately 32,274 residents.

Most of the City's expenditures are funded by the General Fund. Revenue is derived from the 1.5% municipal income tax which has been in place since 1976. In addition, a .3% income tax funds the Parks and Recreation Department, and a .2% income tax, which was approved this year, funds the Streets Department. The Police Department is funded by the City's General Fund. The City has attempted generally to increase the income tax a number of times over the past three years, but voters have rejected the ballot issues. The only exception is the .2% tax dedicated to the Streets Department. In an attempt to increase revenue, City Council reduced the tax

credit for residents who work outside Massillon from 100% to 75%. The tax credit is expected to increase to 90% which will result in a reduction in revenue.

City Council rolled back the split between General Fund and Capital Improvement funds from 90% to 10% in 2001, to 95% to 5% in 2008, to 99% to 1% in 2015. The split was increased to 2% for capital improvements in 2016.

Testimony at hearing outlined the dire condition of City infrastructure, buildings and vehicles including police vehicles and equipment. Loss or reduction of state funding, inheritance tax and loss of property tax revenue has exasperated the City's financial condition.

The City was unable to pay many of its bills and carried over \$2.6 million of unpaid invoices in 2012. The City has steadily worked to reduce expenditures with employee layoffs and furloughs and general belt tightening. Currently all bills are paid, and the current cash balance is \$456,548 following a carry-over of \$2,232,527 on January 1, 2016. The City was forced to pay cash for equipment after failing to procure a loan therefore reducing the cash balance from its higher number earlier in the year.

The City emphasizes the need to address the dire need of infrastructure improvement and vehicle repair or replacement. Nevertheless, the City of Massillon believes that the State Auditor may release it from Fiscal Emergency in January 2017.

The Union does not dispute the financial condition of the City. It is concerned that the State Auditor may not release the City from Fiscal Emergency in January.

The Union states that bargaining unit members are on a 30 step pay schedule, and

most Officers never reach the top step. Therefore, any comparison to other Police Department jurisdictions is generally invalid when comparing entry level and top step pay rates. Bargaining unit members have slipped 18.8% compared to their peers in the region and across the state. While understanding the fiscal issues faced by the City, the Union believes that it is necessary to increase wages during the term of the new Agreement.

1. Article 15, Minimum Manpower

The Employer proposes to delete this provision of the collective bargaining agreement.

The Union proposes to maintain the provision when staffing is maintained at or reduced below 46 sworn law enforcement officers in the Department.

EMPLOYER POSITION: The Employer believes that this issue is a permissive subject of bargaining. The Employer states that it has been subjected to extraordinary overtime costs at a time in which it is in fiscal emergency. Overtime costs escalated from \$92,765 in 2011 to \$638,851 in 2015. With an increase of full time Officers in 2016, overtime costs are currently \$262,069.89 (Emp. Exb. 13). In addition, the Employer states that the call volume during a 24 hour period does not match with the mandated shift schedule (Emp. Exb. 20). The Employer argues that most of its overtime costs in the Police Department are the result of the Minimum Manpower provision of the Agreement. Maintaining the manpower outlined in the Agreement is made more difficult based on vacation, compensatory time and personal leave

usage. The Employer states the minimum manpower provisions have been eliminated in many jurisdictions and cites SERB Case No. 2013-MED-01-0013, IAFF and City of Mansfield (Emp. Exb. 21). In this matter, the City of Mansfield was in fiscal emergency, and the Fact Finder recommended the elimination of the minimum staffing provision. The Employer urges the Conciliator to adopt its proposal.

UNION POSITION: The Union states that the manpower provision has been a part of the collective bargaining agreement for over 30 years. The Union disputes the Employer's position regarding shift call volume. It is imperative that a sufficient number of Officers be assigned to the night shift as these are the most difficult to investigate and manage. To reduce the night shift places Officers' safety in jeopardy. The Union states that the increased cost of overtime was caused by the excessive layoff of Police Officers which reduced the Department to approximately 33 law enforcement officers. City Council has since authorized a Department of 44 law enforcement officers. The Union states that its original position on this matter was current contract language. The Employer presented the Union with a "take it or leave it" position. The Union has modified its proposal to now reflect the 46 employee benchmark. The Union argues that its modified proposal be adopted by the Conciliator.

AWARD: The Conciliator agrees with Fact Finder Grody Ruben that, once an issue is incorporated by the parties in the collective bargaining agreement, the matter is no longer a permissive subject of bargaining. When asked, the parties were unable to

cite a SERB decision regarding this argument in any event. What is critical here is the state of the City's finances. When this provision was bargained by the parties, the state of Massillon's fiscal condition was undoubtedly a completely different world. Testimony at hearing indicates that there were 55 Police Officers in the Department as recent as 2006. The Employer is now subject to the oversight of the Fiscal Emergency Commission. Evidence is clear that overtime costs significantly impact the Department's budget, and relief is now critical. The Employer's argument, that many Police Department jurisdictions have moved away from Minimum Manpower provisions in collective bargaining agreements, is accurate. The Mansfield IAFF case is a recent example. Fact Finder Grody Ruben gave serious consideration to this matter and recommended the removal of the provision from the Agreement. The Union countered with its 46 employee benchmark, but City Council has only authorized 44 employees, and it must report its action to the Commission. The common interest of the parties is the ending of Fiscal Emergency status.

The Employer's proposal to remove Article 15, Minimum Manpower, from the collective bargaining agreement is awarded.

2. Article 17, Vacancies

The Employer proposes a number of modifications to this provision. It proposes to add Field Training Officer and "Any task force assignment" to the list of positions which are exempt from the bidding process and are filled at the discretion of the Chief of Police. The Employer proposes to increase the number of days job

openings are posted from seven to ten and increase from 168 hours to 240 hours when application bids are closed. The Employer proposes to change the word bidding to application throughout the article and add posted qualifications of the position. The Employer proposes that, following a successful bid, an employee will be limited to four years in the position after which bidding will again occur. The proposal includes a new one year probation period. Additional new language includes annual performance evaluation reviews.

The Union proposes current contract language with the addition of the development of a performance evaluation process by way of a special labor management committee.

EMPLOYER POSITION: The Employer states that its comprehensive proposal will increase the pool of applicants for a position and allow for the selection of the most qualified employee to fill a position. The four year term eliminates the possibility of stagnation. The Employer states that, at the end of the four year term, an employee may apply for other positions or the same position. The Employer argues for the inclusion of qualified as opposed to the current standard of seniority only. The Employer states that there currently is no probation period and argues that a one year trial period will ensure that the successful applicant is truly qualified. And performance evaluations are critical to quality. The Employer states that there currently is no evaluation process in the Police Department. The Employer states that its proposal to add Field Training Officer and task force assignment to bidding exempt positions merely memorializes what has become a practice.

UNION POSITION: The Union agrees that a performance evaluation process is a common interest of the parties. Its proposal at Conciliation includes the formation of a special labor management committee in the development of the process. The Union argues that the performance evaluation process must be established prior to the adoption of any of the Employer's proposals to modify Article 17. The Union argues for current contract language with the inclusion of its proposal to add Section 17.8 which establishes a labor management committee to develop evaluations.

AWARD: Evidence indicates that Article 17 has been a comprehensive component of the collective bargaining agreement for a number of years. The statute suggests that collective bargaining history is a relevant element in any fact finding and conciliation decision. When comprehensive modifications are proposed by a party, evidence regarding problems, conflict and grievances usually substantiate the need for change. There was no evidence at hearing or in position statements that the current provision has produced successful bidders who ultimately are not qualified and that the efficiency of the Department has therefore been reduced. While Fact Finder Grody Ruben recommended the Employer's proposals, contingent on the development of an evaluation format, there was no evidence at conciliation which would persuade the Conciliator to award a comprehensive change in the bidding process. Additionally, in light of the inability of the Employer to respond, in a comprehensive manner, to an economic package during these negotiations, this is

not the time for a re-write of a critical non-economic provision of the Agreement.

The Union's proposal to maintain status quo regarding Article 17 with the addition of Section 17.8 regarding the evaluation process is awarded. Section 17.8 will read as proposed and as follows.

Section 17.8 On January 1, 2017 a Labor Management Committee will be established. The Committee will develop an employee evaluation process that when completed will be included in the criteria used to fill vacancies as outlined in this Article. The Committee shall have the evaluation process implemented by July of 2017, and the Committee shall meet as often as needed to complete the establishment of the evaluations to fulfill this requirement.

The Conciliator suggests that the parties utilize an interest based approach to the work of the labor management committee. Mediators at the Federal Mediation and Conciliation Service are skilled in this approach and may be helpful to the parties.

3. Article 22, Wages and Compensation

The Union has proposed a 3% wage increase effective January 1, 2016; 3% wage increase effective upon release from fiscal oversight; and 3% wage increase effective the first full pay in the final month of the Agreement.

The Employer has proposed a 2% wage increase effective six months following the release from Fiscal Emergency by the State Auditor.

UNION POSITION: The Union emphasizes lost comparability with regional and state-wide peers based on continual wage freezes which date to 2012 (Union Exb. 5 and 6). Additionally, bargaining unit wages were frozen in 2009 and 2010. The

Union argues that the Employer must recognize the loss of parity and accept the wage increases proposed by the Union in spite of fiscal emergency status. The Union argues that, if the Minimum Manpower provision comes out of the Agreement, these savings will easily fund its proposal. As stated earlier, most members of the bargaining unit rarely attain the top step of the thirty step pay schedule. Any comparison with other jurisdictions based on top pay provides a false comparable. The Union admits that it is important in the future to collapse the wage schedule. The Union states that it is interested, as is the Employer, in collapsing the wage schedule, and its proposal for a 3% increase at the end of the Agreement term may assist in the transition. The Union argues that the Employer's proposal of a 2% wage increase following release from fiscal emergency is risky and uncertain. While the Employer states that it expects the state of fiscal emergency to be lifted by January 2017, this is only speculation. There is no certainty that the State Auditor will lift this status in January or any time in the future. The Union argues equity with its peers across the state and relief from many years of wage freezes and urges the Conciliator to grant its proposed wage increases.

EMPLOYER POSITION: The Employer states that its proposal at Conciliation is the recommendation of the Fact Finder. During negotiations and coming into the hearing at Fact Finding, the Employer had proposed a three year wage freeze. It is now prepared to grant a 2% wage increase six months following release from fiscal emergency. The Employer states that it will need the six month period to make the appropriate adjustment to the City budget. The Employer argues that the granting

of the Union's wage proposal would keep the City in fiscal emergency, and it is not clear what action the oversight Commission would take if the proposals were granted. The Employer recognizes SERB wage data and regional comparables, but the negotiations over wages must be based on what is affordable. The Employer states that bargaining unit employees earn near or above the average of regional Stark County Police Departments (Emp. Exb. 19). The Employer argues that, when it possessed the capacity to grant substantial wage increases over the past twenty or more years, it did so. The Employer argues that a wage increase, granted in the last month of the term of the Agreement, would create a difficult environment for the negotiations of the successor Agreement. The Employer states that budget numbers speak for themselves, and the five or six year fiscal history of the City of Massillon precludes the granting of the Union's wage proposals.

AWARD: The Union's concern cannot be questioned. How difficult it must be to go without a general wage increase for four years with 2016 being year five.

Additionally, bargaining unit employees have not been granted an across the board wage increase in six of the last seven years from 2009 through 2015. The Employer argues that annual step increases have not been frozen. This provides minor relief as some jurisdictions, which have faced dire fiscal shortfalls, also froze steps and longevity. The Employer's argument, that the granting of the Union's proposal may have the effect of extending fiscal emergency, is compelling. It is in the mutual interest of the parties that fiscal emergency status be lifted. This impacts issues of wages, benefits and the size of the Police Department and bargaining unit not to

mention the impact on the community. These are all factors contemplated by the statute under which fact finding and conciliation are conducted.

The Employer presented its Exhibit 21, the IAFF Fact Finding Report and Recommendation at the City of Mansfield. Fact Finder Tolley recommended the deletion of the Minimum Manning provision of the Agreement and then included two lump sum payments with monies saved from the staffing modification. Fiscal emergency status had not been lifted. The Conciliator believes that the Tolley recommendation was a compromise which made good sense. In this matter, the Conciliator does not possess the flexibility to submit an Award which is a compromised position independent of the final offers.

Fact Finder Grody Ruben recommended what is now the Employer's proposal at conciliation, the continued wage freeze with the exception of a 2% wage increase six months following the City's release from fiscal oversight. There was no evidence at the conciliation hearing to suggest a change in the fiscal status of the City since fact finding. Current cash reserve of \$456,548 does not leave much room. Nevertheless, the Employer has made great progress in eliminating debt. The parties stated that Arbitrator Nels Nelson recommended continuation of the wage freeze at fact finding for the recent wage re-opener. Unfortunately, the Union's wage proposals, while justified, cannot be granted based on current financial resources. The Employer's proposal for Article 22, Wages and Compensation, is awarded. Section 22.1 will read as follows.

22.1 All salaries provided for in this Agreement shall be paid in bi-weekly installments in accordance with the attached salary schedule. The salary schedule is to become effective with the pay period closest to January 1st of each year. The

parties agree that for the term of this Agreement, that the wage scales shall remain at rates set out in the July 1, 2012 to June 30, 2015 Agreement. Effective six (6) months after the City is released from fiscal oversight, the salary steps shall be increased by 2%.

4. Article 46, Duration

The Union proposes a three year Agreement effective January 1, 2016 to December 31, 2018.

The Employer proposes to maintain status quo in that the Agreement commences and ends mid year, July 1, 2015 to June 30, 2018.

UNION POSITION: The Union states that a longer term of the new Agreement will allow the parties to finalize the development of the performance evaluation process, and it plans to engage the Employer in an effort to collapse the 30 step pay schedule. The Union is aware that it will not be the first bargaining unit to negotiate a successor agreement as it has in the past and is willing to forego what has been considered a bargaining advantage.

EMPLOYER POSITION: The Employer argues that there is no reason to change the mid-year term of the Agreement which has been the pattern in the past. The Employer states that moving the term of the Agreement will complicate the scheduling of bargaining sessions and will conflict with year-end holidays.

AWARD: An extended term of the new Agreement will allow the parties to complete work, before the next negotiations, on the performance evaluation process including at least one year of experience utilizing the system. It also allows the parties to engage in the daunting task of collapsing the wage schedule without impacting the next set of negotiations. The Conciliator anticipates the seriousness of the parties in the completion of these difficult tasks. In addition, the parties will have additional time to prepare for negotiations following the lifting of fiscal emergency. Although recognizing the pattern of mid year contract terms, difficult times require different strategies. The Union's proposal is therefore awarded and Section 46.1 will read as follows.

Article 46, Duration

Section 46.1 This Agreement constitutes the entire agreement between the City of Massillon and the Union and shall be in effect as of January 1, 2016 and remain in full force and effect until December 31, 2018, or until a new Agreement is signed by the parties herein.

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 each issue at impasse, the Report and Recommendation of the Fact Finder and the criteria enumerated in Ohio Revised Code Section 4117.14 (G) (F) (a-f).

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

A summary of the decisions, as found in this Award, is as follows.

1. Article 15, Minimum Manpower

Employer

2. Article 17, Vacancies

Union

3. Article 22, Wages and Compensation

Employer

4. Article 46, Duration

Union

Respectfully submitted and issued at Cleveland, Ohio this 7th Day of October 2016



Thomas J. Nowel, NAA
Conciliator

CERTIFICATE OF SERVICE

I hereby certify that, on this 7th Day of October 2016, a copy of the foregoing Award of the Conciliator was served by electronic mail upon Leslie Iams Kuntz, Esq., Krugliak Wilkins Griffiths & Dougherty Co., LPA, representing the City of Massillon; Charles L. Wilson, representing the Fraternal Order of Police, Ohio Labor Council, Inc.; and Donald M. Collins, General Counsel, State Employment Relations Board.

A handwritten signature in cursive script that reads "Thomas J. Nowel". The signature is written in black ink on a light-colored background.

Thomas J. Nowel, NAA
Conciliator