

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

CONCILIATION AWARD

July 20, 2016

CORRECT CASE #'S

In the Matter of:

2015-MED-09-0765

City of Pickerington

) 2015-MED-09-0766

)

and

) 2015-MED-10-0765 (Patrolmen)

) 2015-MED-10-0766 (Sergeants)

Fraternal Order of Police,
Capital City Lodge No. 9

)

)

APPEARANCES

For the City:

John Krock, Chief Spokesman, Clemons Nelson
Chris Schornack, Director of Finance
Greg Annis, Police Department Command Staff
Gretchen Nihiser, Human Resources Director
Stephanie Spencer, Deputy Finance Director

For the Union:

Russell Carnahan, FOP, General Counsel
Wade Steen, CPA, Witness
Timothy Planck, Officer
Jim Gilbert, Past President, FOP Lodge 9

Conciliator:

Nels E. Nelson

BACKGROUND

The instant case involves the City of Pickerington and the Fraternal Order of Police, Capital City Lodge No. 9. The city has a population of 19,085, consists of 9.58 square miles, and has a median household income of \$81,480. It is located primarily in Fairfield County but has 86 residents in Franklin County. The union represents two units. One unit consists of 19 patrolmen. The other unit includes five sergeants.

In November 2015 the parties began negotiations for a successor agreement to the one due to expire on December 31, 2015. When the parties were unable to reach agreement, the dispute was submitted to factfinding. The fact-finding hearing was held on April 4, 2016.

Factfinder Howard Tolley issued his report and recommendations on April 27, 2016. He made recommendations for substantial number of issues. When the city rejected his recommendations, the dispute was submitted to conciliation.

The Conciliator was notified of his selection on May 24, 2016. The conciliation hearing was held on July 11, 2016. When it became clear that no mediated settlement was possible, this decision was prepared.

The Conciliator's selection between the parties' final offers is based upon the criteria set forth in Section 4117.14(G)(7) of the Ohio Revised Code. They are:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit 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 interest and welfare of the public, and 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 in this section, 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.

ISSUES

The parties submitted three issues to the Conciliator. For each issue the Conciliator summarizes the arguments and evidence presented by the parties and offers his analysis of the issue. He then provides a brief rationale explaining his final-offer selection and sets forth the contract language submitted by the prevailing party.

ABILITY TO PAY

One of the key criteria in conciliation is the ability to pay. In the instant case, Chris Schornack, the city's Director of Finance, and Wade Steen, a consultant employed by the union, gave extensive and detailed presentations regarding the city's ability to pay. The Conciliator has considered their presentations and the numerous documents they presented.

While the Conciliator would ordinarily offer a lengthy summary of the parties' presentations, he will not do so here. First, Tolley, the Factfinder in the instant case, heard essentially the same presentations and, after a short discussion of the city's finances, recommended 3% wage increases in 2016, 2017, and 2018 -- the union's demand at conciliation. Second, at the conciliation hearing, the city acknowledged that it had the ability to pay the union's demands and claimed only that it had a "limited ability to pay." For these two reasons, the Conciliator will offer only a few brief observations on the city's finances.

Among many things, the presentations of the city and the union reveal that income tax revenue grew from \$5.1 million in 2012 to \$5.9 million in 2015 (City Exhibit 19, page 4); mid-year income tax collections are up 9.83% (Union Exhibit 17, page 22); General Fund revenue grew from \$7.7 million in 2013 to \$8.9 million in 2015 (City Exhibit 19, page 4); General Fund expenditures grew from \$8.3 million in 2012 to \$8.6 million in 2015 (City Exhibit 19, page 5); General Fund balances declined between 2011 and 2012 but grew from \$3.5 million in 2012 to \$3.7 million in 2015 (Ibid.); and General Fund balances rose from 35.04% in 2012 to 48.24% in 2015 (Ibid.); and the General Fund balance is projected to be 37.84% in 2016. (Ibid.)

Not only are the city's current finances strong, prospects for the city are excellent. There are new businesses and new employers locating in the city; it is an attractive city; it has a 1% income tax with a 50% credit; and has top-rated schools.

1) Article 17 - Compensation/Hours of Work, Section 17.1 - Wage Rates -

The current contract has a five-step wage schedule for patrolmen with a starting salary of \$48,942.40 and a maximum salary of \$71,468.80. Sergeants have a single salary of \$82,243.20. The union seeks 3% wage increases effective December 21, 2015; December 19, 2016; and December 18, 2017. The city proposes increases of 2.5%, 2%, and 2% effective on the same dates.

Union Position - The union argues that the city's wage proposal "fails to reflect the market for full-time professional law enforcement officers." (Union Pre-Hearing Statement, page 5) It states that the "job market" consists of "Columbus and its suburbs." (Ibid.) The union claims that "factfinders and conciliators have long relied upon and recognized that [its] comparables are the most relevant and applicable for purposes of wage analysis." (Ibid.)

The union contends that its comparables support its demand. It points out that the 2015 top salaries for patrolmen in comparable cities are:

<u>Jurisdiction</u>	<u>Top Salary</u>
Dublin	\$85,973.19
Whitehall	\$85,425.60
Grove City	\$84,947.20
Westerville	\$84,198.40
Gahanna	\$83,274.52
Hilliard	\$82,986.45
Upper Arlington	\$82,944.80
Reynoldsburg	\$82,296.04
Bexley	\$82,116.00
FCSO	\$81,265.60
Worthington	\$81,144.42
OSU	\$80,761.67
Columbus	\$79,782.98
New Albany	\$78,159.03
Grandview	\$77,875.00
Groveport	\$72,908.45
Airport	\$72,553.73
Pickerington	\$71,468.80
Blendon Township	\$67,808.00
Perry Township	\$67,777.05
Madison Township	\$64,860.99
Clinton Township	\$57,416.00

(Union Exhibit 10, page 1)

The union notes that the city's wage ranked 18th out of 22 local agencies and that only four small townships had lower salaries. It adds that the three lowest paid cities -- Groveport, Grandview, and New Albany -- got wage increases of 3%, 3%, and 2.5% in 2016. (Ibid.)

The union maintains that the average top wage in the city is well below comparable departments. It observes that in 2015 the average wage for the comparable municipal departments was \$81,036 compared to \$71,468 in the city.

The union argues that even with its wage proposal, the situation will not change. It states that the city's rank among the 15 comparable municipal departments will not change during the

term of the agreement. The union indicates, however, “without [its] proposed increases, the income of Pickerington police officers will fall even farther behind that of their peers.” (Ibid.)

The union contends that the environment in which the city’s police officers operate supports its wage demand. It points out that the city’s police officers work “shoulder to shoulder” with police officers from Columbus, the Franklin County Sheriff, and Reynoldsburg. The union notes that the workload has increased as population and businesses have grown as demonstrated by runs and calls for assistance. The union adds that “the difficulties long associated with the recruitment and training of qualified law enforcement officers have only increased.” (Union Pre-Hearing Statement, page 7)

The union concludes that its final offer should be selected. It states that it “recognizes that it is not realistic to immediately elevate the compensation of [the city’s] officers to a level that would be truly comparable to that of their peers; however, it is critically important that the wage rates for these officers not be permitted to decline further in comparison to the market.” (Ibid.)

City Position - The city argues that Pickerington is not comparable to the other cities and entities with contracts with FOP Lodge 9. It points out that while it has a 1% income tax, none of the 15 cities in Franklin County have a 1% income tax and only two cities have a rate of 1.5%. (City Exhibit 18B, page 2) The city notes that as a result, “it receives less revenue for [its] general fund than any other City within Franklin County, even though there are six (6) other Cities with smaller populations.” (City Pre-Hearing Statement, page 1)

The city maintains that it is “more comparable to cities surrounding Franklin County with similar populations and similar income tax revenue, and with Fairfield County and the City of Lancaster.” (Ibid.) It states that it “almost lost a contract with the City of Pickerington School Board to provide a school resource officer daily at Pickerington’s Central High School because

the cost to provide that Officer was \$7.55 per hour higher than the Fairfield County Sheriff’s Office to provide the same officer at Pickerington High School North.” (Ibid.)

The city contends that it should not be compared to Franklin County. It observes that while Pickerington had a 2014 population of 18,938, only 86 of its citizens lived in Franklin County. The city reports that its police work in conjunction with the Fairfield County Sheriff’s Office and they are part of the Fairfield, Hocking, and Athens Counties Major Crimes Investigation Unit.

The city maintains that the following are the appropriate wage comparables for its patrolmen:

<u>Jurisdiction</u>	<u>Minimum</u>	<u>Maximum</u>
Worthington	\$26.05	\$39.01
Groveport	24.16	34.03
Lancaster	18.05	30.09
Zanesville	17.55	27.06
Newark	19.26	26.59
London	18.62	26.52
Circleville	17.82	23.72
Pataskala	17.54	22.29
Average	19.88	28.66
Fairfield Sheriff	17.50	24.67
Pickerington (City Exhibit 11)	23.53	34.36

The city argues that comparisons to the Fairfield County Sheriff and the City of Lancaster support its wage offer. It points out that on December 31, 2015, the top step salary for the Sheriff is \$51,313.60 and \$62,587.20 for Lancaster. (City Exhibit 19, page 65) The city notes that its salary of \$71,468.80 exceeds the Fairfield County Sheriff by 39.28% and Lancaster by 14.19%. It adds that its salary for sergeants exceeds the Sheriff by 37.34% and Lancaster by 15.29%. (Ibid.)

The city contends that internal comparisons support its offer. It observes that wage increases of other city employees between 2010 and 2016 are as follows:

	<u>Non-BU</u>	<u>AFSCME Dispatchers</u>	<u>AFSCME Service Wrkrs</u>	<u>FOP Pat & Sgts</u>
2010	0.0%	0.0%	0.0%	0.0%
2011	1.0	1.0	1.0	2.5
2012	1.5	1.5	1.5	2.5
2013	2.0	2.0	2.0	2.0
2014	2.0	2.0	2.0	2.0
2015	2.0	2.0	2.0	2.0
2016	2.0	2.0	1.5	2.5 (Proposed)

(City Exhibit 19, page 53)

The city reports that between 2010 and 2016 wages for these groups have increased 10% to 10.5% while the wages of patrolmen and sergeants, including its proposed 2.5% increase in 2016, have increased 13.5%. (City Exhibit 10)

The city also relies on data from State Employment Relations Board. It observes that SERB's 2006-2015 Annual Wage Settlement Report shows that in 2013-2015, wages in the Columbus region rose 1.64%, 1.88%, and 2.15%; 1.61%, 1.92%, and 2.06% for cities; and 1.66%, 2.03%, and 2.22% for police units. (City Exhibit 8) The city also provided SERB's Fact Findings/Conciliation Report Statistics. It shows that in the first quarter of 2015 eight Conciliators awarded 2.11% wage increases; in the second quarter five awarded 2.25% wage increases; and in the third quarter one awarded a 1.33% wage increase. (City Exhibit 9)

The city concludes that the Conciliator should award its final offer.

Analysis - The Conciliator selects the union's final offer for wages. First, the city has the ability to pay the union's demand. This alone does not mean that the union's final offer should be selected. The discussion below, however, suggests that additional factors require the selection of the union's offer.

Second, external comparisons strongly support the union's demand. The city has clearly become a part of the Columbus market. The city's attempt to portray Fairfield County as relevant market for its police officers must be rejected.

Third, the data shows that the city's police officers compare poorly with other police officers in and near Franklin County. The union's data shows that the average top salary for patrolmen in the 18 municipal police departments is \$81,036 compared to \$71,486 in Pickerington. The city is a community that can afford to pay its police officers more like other Columbus area police officers.

Fourth, while the union's 3% wage increases may exceed the average increases for the state, the Columbus region, and police units, they are more reasonable than the city's offer of increases of 2.5%, 2%, and 2% given that they currently earn significantly less than police officers in comparable departments. Furthermore, even with the union's 3% wage increases, the city is very likely to remain at the bottom of the Columbus area salaries for municipal Police Departments while the city's offer would result in its police officers falling further behind market wages.

Fifth, the Conciliator understands that his final offer selection leaves the patrolmen and sergeants with a greater wage increase than the two AFSCME units and non-bargaining unit city employees. In part, this is a function of the fact that the city reached agreement with its non-conciliation units prior to the FOP. Furthermore, SERB data shows that non-conciliation units typically settle for smaller increases than the safety forces.

Sixth, the Conciliator recognizes that the union's final offer exceeds the wage increases shown in SERB's 2006-2015 Annual Wage Settlement Report. It is important to remember, however, that the figures shown are average wage increases. This means that some of the

increases exceed the number shown and in some are less than the number shown. In the instant case, the union made a convincing case that more than average increases were appropriate in order to narrow the gap between its salaries and the salaries of comparable police departments.

Finally, Factfinder Tolley concluded that 3% wage increases in 2016, 2017, and 2018 were justified. He stated:

The Fact Finder concludes that the FOP made a compelling case that Pickerington should pay a higher increase as a market adjustment in order to bring the city FOP closer to the median in the market area. Since the city has the ability to pay, the Fact Finder gave weight to the statutory provision for considering “those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;” in the thriving Columbus market area, to comparable jurisdictions which already offer wages considerably higher than Pickerington -- Reynoldsburg and New Albany -- granted wage increases in 2015 of 4.75% and 5.75%. For 2016, 2017 and 2018 top-ranked Upper Arlington will pay increases of 2.75%. (City of Pickerington and Fraternal Order of Police, Capital City Lodge No. 9; Case Nos. 2015-MED-09-0765 and 0766; April 27, 2016, page 4)

While the Conciliator might have been able to come up with a more mutually satisfactory outcome under conventional arbitration, the Ohio statute limits the Conciliator to selecting the employer’s or the union’s final offer without modification. In the instant case, the statutory criteria establish that the union’s final offer is more reasonable and must be selected.

Award - The Conciliator awards the union’s final offer. It is as follows:

Members shall be paid in accordance with the following rates.

Effective December 21, 2015:

Officer					
STEP	1	2	3	4	5
Hourly	\$24.24	\$27.85	\$29.88	\$32.64	\$35.39
Bi-Weekly	\$1,939.20	\$2,228.00	\$2,390.40	\$2,611.20	\$2,831.20
Annually	\$50,419.20	\$57,928.00	\$62,150.40	\$67,891.20	\$73,611.20

Sergeant					
Hourly	\$40.73				

Bi-Weekly	\$3,258.40			
Annually	\$84,718.40			

Effective December 19, 2016:

Officer					
STEP	1	2	3	4	5
Hourly	\$24.97	\$28.69	\$30.78	\$33.62	\$36.45
Bi-Weekly	\$1,997.60	\$2,295.20	\$2,462.40	\$2,689.60	\$2,916.00
Annually	\$51,937.60	\$59,675.20	\$64,022.40	\$69,929.60	\$75,816.00
Sergeant					
Hourly	\$41.95				
Bi-Weekly	\$3,356.00				
Annually	\$87,256.00				

Effective December 18, 2017:

Officer					
STEP	1	2	3	4	5
Hourly	\$25.72	\$29.55	\$31.70	\$34.63	\$37.54
Bi-Weekly	\$2,057.60	\$2,364.00	\$2,536.00	\$2,770.40	\$3,003.20
Annually	\$53,497.60	\$61,464.00	\$65,936.00	\$72,030.40	\$78,083.20
Sergeant					
Hourly	\$43.21				
Bi-Weekly	\$3,456.80				
Annually	\$89,876.80				

2) Article 18 - Insurance, Section 18.1 - Insurance Coverage and Member

Premium - The current contract requires the city to “provide comprehensive hospitalization, surgical, medical, physicians’ services coverage, prescription drug coverage, vision care plan, and dental coverage in the same manner it provides insurance to non-bargaining, non-administrative City employees.” It requires members to pay 13% of the premium paid by the city. The city demands that beginning in 2017 members “pay the same premium contribution the non-union, non-administrative employees pay, but not more than 14% in 2017, and not more

than 15% in 2018.” (City Pre-Hearing Statement, page 8) The union seeks to retain the 13% premium contribution for the term of the agreement.

City Position - The city argues that its demand should be adopted. It states that because all eligible employees are offered the same health insurance, it would not be fair to guarantee the Fraternal Order of Police no insurance premium increase over the life of the contract when it could be their usage that was the reason for the increase in premiums. The city indicates that its proposal “would guarantee these bargaining units could only have their premium contributions increased by no more than 1% per year for the last two (2) years of the agreement.” (Ibid.)

The city contends that employee premium contributions in comparable cities support its position. It points out that the premium contributions are as follows:

<u>City</u>	<u>Premium Contribution</u>
Circleville	20.0%
Lancaster	15.0%
London	15.0%
Pickerington	13.0%
Groveport	12.5%
Newark	12.0%
Pataskala	10.0%
Zanesville	10.0%
Worthington	Same as non-bargaining ¹

(City Exhibit 16, page 1)

The city maintains that its proposal is supported by the fact that wage increases have exceeded increases in employee premium contributions. It observes that between 2004 and 2016, wages increased 36% while insurance premium contributions increased by 10% and that in the last five years, wages increased by 11%, including the city’s 2.5% wage offer for 2016, while insurance premium contributions increased by 1%. (City Exhibit 16, page 2) The city adds that

¹ The current contribution is 12%.

“the Union’s proposal would increase the employee’s wage by 17.5% from 2012 through 2018, while increasing the employees’ insurance contribution by only 1%.” (Ibid.)

Union Position - The union argues that the city’s demand should be rejected. It indicates that the city “has not previously offered any compelling arguments or evidence in support of its proposal [and that it] has projected no significant increase in the cost of health insurance for 2016.” (Union Pre-Hearing Statement, pages 7-8) The union emphasizes that Carol Bader, in AFSCME Ohio Council 8, Local 1822 and City of Pickerington; Case No. 2015-MED-09-0922; February 24, 2016, and Tolley, in the instant dispute, rejected the city’s proposal to change premium contributions for the AFSCME Service Workers Unit and the FOP units.

The union contends that fairness dictates that the city’s demand be rejected. It asserts that it accepted Tolley’s recommendations despite the lack of its proposed 3.5% market adjustment in 2016 only because the health insurance premium would remain 13% for the term of the agreement.

Analysis - The Conciliator awards the union’s demand. First, the data on employee premium contributions provided by the city do not support an increase in employee health insurance contributions. The average employee premium contribution for the city’s comparable jurisdictions, as computed by the Conciliator, is 13.3%. (City Exhibit 16, page 1) It is, however, highly influenced by the 20% employee contribution in Circleville, which is five percentage points higher than any of the remaining seven cities. Furthermore, the inclusion of Circleville is questionable because it is located in Licking County and, according to MapQuest, is 25 miles from Pickering. Excluding Circleville, the average employee premium contribution in the city’s comparable jurisdictions is 12.4%.

Second, most public employers offer health insurance on the same basis to all of their employees. In the instant case, the city agreed in negotiations with the AFSCME-represented dispatchers that employee premium contributions would remain at 13% through 2018.

Third, two neutrals recommended no change in employee health insurance premium contributions. Bader recommended the 13% premium contribution by the Dispatchers Unit be extended to the Service Workers Unit. In factfinding, Tolley made the same recommendation for the patrolmen and sergeants.

Award - The Conciliator awards the union's final offer. It is as follows:

The Employer will provide comprehensive hospitalization, surgical, medical, physicians' services coverage, prescription drug coverage, vision care plan, and dental coverage in the same manner it provides insurance to non-bargaining, non-administrative City employees. Members shall pay the following monthly contribution for such coverage during the listed payroll year:

- Effective in payroll year 2016, 13% of the premium paid by the Employer.
- Effective in payroll year 2017, 13% of the premium paid by the Employer.
- Effective in payroll year 2018, 13% of the premium paid by the Employer.

If the City chooses to offer incentives to members not to be covered through the City's health care plan because they have coverage elsewhere, then the members shall be awarded the same opportunity for such incentives. Further, representatives from the bargaining units will have input and participate in the City's Insurance Review Committee. Bargaining unit employees will pay the same contribution toward the monthly premiums as non-bargaining, non-administrative City employees pay, except not greater than outlined above. The City also agrees to fund the Health Savings Account (HSA) at not less than 75% of the deductible, or the funding as non-union employees, whichever is greater.

3) Article 18 - Insurance, Section 18.1 - Insurance Coverage and Member

Premium, Health Savings Account Contribution - The current contract requires the city to fund employees' HSAs "at not less than 75% of the deductible, or the funding as non-union employees, whichever is greater." The city demands that the 75% guarantee be eliminated and

that it be required “to fund that Health Savings Account (HSA) at the same deductible or the funding as non-union employees.” The union opposes the city’s demand.

City Position - The city argues that its final offer should be awarded. It states that it “is proposing that the HSA funding be the same as nonunion employees.” (City Exhibit 15, page 1)

Union Position - The union argues that the city’s demand should be rejected. It points out that the city’s proposal was rejected by Factfinder Thomas Nowel in City of Pickerington and Fraternal Order of Police, Capital City Lodge No.9; Case Nos. 2012-MED-10-1305 and 2012-MED-10-1306; August 29, 2013, and by Bader in the dispute with the AFSCME Service Workers Unit. The union also notes that the city’s budget for health insurance is “flat” and that a 50% carryover indicates that the city’s budget is not tight. It claims that “the City’s proposal to effectively eliminate its obligation to bargain changes in health insurance is simply a repackaged proposal has been made and rejected ... in previous contract negotiations.” (Union Pre-Hearing Statement, page 8)

Analysis - The Conciliator rejects the city’s demand. First, making the only restriction on the city’s HSA contribution the contribution it makes for non-union employees effectively eliminates the union’s opportunity to negotiate the matter.

Second, the HSA contribution is another area where employers ordinarily wish to treat employees the same. In the instant case, the city has already agreed to fund 75% of the health insurance deductible for the AFSCME Dispatchers Unit and the AFSCME Service Workers Unit at no less than 75%.

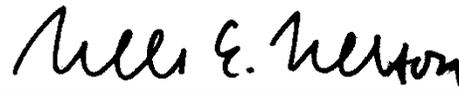
Third, as with the city’s proposal to increase the employee share of health insurance premiums, the proposal to remove the guarantee of the 75% city contribution was rejected by Bader and Tolley.

Award - The Conciliator awards the union's final offer. It is as follows:

The Employer will provide comprehensive hospitalization, surgical, medical, physicians' services coverage, prescription drug coverage, vision care plan, and dental coverage in the same manner it provides insurance to non-bargaining, non-administrative City employees. Members shall pay the following monthly contribution for such coverage during the listed payroll year:

- Effective in payroll year 2016, 13% of the premium paid by the Employer.
- Effective in payroll year 2017, 13% of the premium paid by the Employer.
- Effective in payroll year 2018, 13% of the premium paid by the Employer.

If the City chooses to offer incentives to members not to be covered through the City's health care plan because they have coverage elsewhere, then the members shall be awarded the same opportunity for such incentives. Further, representatives from the bargaining units will have input and participate in the City's Insurance Review Committee. Bargaining unit employees will pay the same contribution toward the monthly premiums as non-bargaining, non-administrative City employees pay, except not greater than outlined above. The City also agrees to fund the Health Savings Account (HSA) at not less than 75% of the deductible, or the funding as non-union employees, whichever is greater.



Nels Nelson
Conciliator

July 20, 2016
Russell Township
Geauga County, Ohio