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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the matter of Conciliation between:)	Case No(s).
)	2015-MED-09-0801 and
FRATERNAL ORDER OF POLICE,)	2015-MED-09-0802
LODGE 116,)	
Labor Organization,)	Hearing: October 19, 2016
and)	at Willowick, Ohio
)	
CITY OF WILLOWICK, OHIO)	
Public Employer.)	Date of Award:
)	November 12, 2016

CONCILIATION AWARD

Before Mitchell B. Goldberg, State Appointed Conciliator

Appearances: Robert M. Phillips, Faulkner, Hoffman & Phillips, LLC, for the Union; and Tom Grabarczyk, Labor Relations Management, Inc., for the Employer.

I. Introduction and Background.

The State Employment Relations Board (“SERB”) appointed the undersigned as the conciliator of this public employment labor dispute on September 12, 2016 in accordance with Ohio Revised Code Section 4117.14(D)(1). The parties agreed to schedule a hearing to resolve the dispute at the City's offices on October 19, 2016. They filed timely position statements before the hearing with the conciliator and served each other in compliance with Ohio Administrative Code Rule 4117-9-06(E). The conciliator considered the written Fact Finding Reports of Colman R. Lalka for the Police Division issued for Case No. 0801 on August 10, 2016, and Fact Finder Marc A. Winters, for Case No. 0802 issued on September 29, 2016 for the Dispatchers.

The parties offered oral evidence and submitted documentary exhibits at the hearing. The decisions herein represent the following final and binding awards on each of the submitted disputed issues, by selecting from each of the party's final settlement offers on an issue-by-issue basis. The awards considered the factors outlined in Ohio Revised Code Section 4117.14(G)(7). They are

summarized as follows: (1) past collectively bargained agreements; (2) comparisons with other public and private employees performing comparable work, while considering factors peculiar to the area and job classifications; (3) the public interest and welfare, the ability of the public employer to finance and administer the proposed issues, and the effects of the adjustments on the normal standards of public service; (4) the public employer's lawful authority; (5) the parties' stipulations; and (6) other factors normally or traditionally considered in determining the submitted issues to mutually agreed upon dispute settlement procedures in the public service or in private employment.

The parties' CBAs that apply to the police and the dispatchers expired on December 31, 2015. They engaged in negotiation sessions and reached tentative agreements on a number of issues until they reached impasse on the following disputed issues. They participated in mediation with the Fact Finders but were unable to resolve the 4 issues submitted for recommendations. Fact Finder Lalka addressed 4 issues; (1) wages; (2) wage differential; (3) health care premiums; and (4) overtime pay. Fact Finder Winters addressed (1) wages; (2) EMD Certification; (3) health care premiums; (4) overtime pay; and (5) uniform allowance. By the time of this hearing the parties reached tentative agreements on all but the following 3 unresolved issues. This award incorporates all of the tentative agreements reached between the parties, including those reached before and after the fact finding process for purposes of this final and binding award. The parties specifically agreed to a Retroactivity Agreement that provides that all issues with cost implications may be retroactive to January 1, 2016. They waived the statutory impediment to retroactivity as set forth in Ohio Revised Code 4117.14(G)(11).

The parties and the Conciliator engaged in some mediation discussions during the hearing in an attempt to resolve one or more of the following unresolved issues, but those attempts were unsuccessful and the parties reverted to their initial positions for purposes of their submission here. The unresolved issues are: (1) wages; (2) an increase in the differential pay between the ranks; and (3) an increase in overtime pay for all employees who work on specified holidays beyond their regular scheduled work

week.

II. Economic Evidence.

Willowick has a population of over 14,000. It is a suburban community with less industry than its neighboring communities. Excluding school districts, the City has the highest effective tax rate of any residential jurisdiction in Lake County. The City's general budget revenue declined from 8.2 million in 2011 to 7.6 million in 2012, to 7.2 million in 2013, and to 7 million in 2014. It spiked to over 8 million in 2015. This was due to a large influx of one-time receipts, and other receipts that are not considered to be recurring. These totaled \$967,829. There were, however, one time paid expenses of about \$500,000 in 2015. The City showed declining ending fund balances from 2011 (1.46 million) to \$891,483 in 2014. It rose to 1.1 million in 2015 due to the above one-time receipts and non-recurring expenses, but it is fair to conclude that the City, like many cities throughout the state, has suffered from decreases in state local government funding, the removal of the inheritance tax, and other state revenue reductions. These facts continue to be shown in the 2016 revenue and expenses numbers through 9/30/16.

The biggest concern for the City is its need to have sufficient funding for long overdue capital improvements and funding for capital maintenance. Certain funding for capital improvements and maintenance are available through what are referred to as outside funding levies, funds that are stable regardless of increases or decreases in property values. Other levies are called Charter levies. These funds increase or decrease based upon general fund revenue. The City contends that its declining general fund revenues have severely impacted its ability to meet the needs of its citizens within the community for capital improvements and maintenance, such as the need to provide pavement for large parking areas. Therefore, while it has the ability to finance the costs of the Union's proposals, it believes that wage increases should be somewhat lower so that it can find more money within its budget to meet these needed capital and maintenance expenses.

The Union believes that its economic proposals are reasonable based upon wages and benefits paid to other police in Lake County and in comparable areas. Moreover, it believes that wages now paid to dispatchers is well below the pay rates paid for similar work in comparable areas. Nevertheless, it is willing to accept the decisions of the Fact Finders on these remaining issues, which recommendations consider the City's economic circumstances as well as the need to pay the police and dispatchers fair wages and benefits.

III. Unresolved Issues.

(1) Article 11 – Wages

The City proposes to pay across-the-board pay increases to the bargaining unit members of 1% in year-one (2016); 1% in year-two (2017); and 1% in year-three (2018). The Union proposes 2% in year-one, 2% in year two and 1% in year-three. The City computes the total cost of its proposal that maintains the current differential between ranks as being \$124,612.17. The parties look at the SERB Benchmark Report that shows the top annual pay level for police officers for Willowick officers is comparable to other jurisdictions in Lake County. Some jurisdictions are lower such as in Eastlake (\$63,276), Kirtland (\$60,609), Mentor-On-The-Lake (\$60,548), Painesville (\$62,851), and Willoughby Hills (\$68,369). However, neighboring Wickliffe is at \$75,524, Willoughby City is at \$82,825 and Mentor City is at \$76,811. Willowick is at \$74,152. The average among the other mentioned jurisdictions is much lower than Willowick's (\$68,851), but Willowick (\$74,152) is lower than Wickliffe that has less population, and nearby Mentor with a much larger population. The City contends, however, that Wickcliffe and Mentor have healthier budgets with more industry and commerce.

SERB reports on wage increases for jurisdictions in Cuyahoga County and Lake County show 2016 wage increases of 2% for most jurisdictions, some higher for more financially healthier communities, and some lower for those in more dire circumstances. For example in Lake County,

Eastlake is paying no wage increases. Mentor City is paying 2% in 2016, Mentor-On-The-Lake is paying 2.5% in 2016 and 2% in 2017, Painesville is paying 2% in 2016 and 2017, Willoughby Hills is paying 2% in 2016 and Willoughby City is paying 2% in 2016.

The City contends that its proposal is justified considering its budgetary needs, and will keep its officers among the top 30 in police pay among all the cities in Ohio. The Union contends that its proposal, the same as recommended by the Fact Finders on substantially the same evidence, is also reasonable by reducing the 6% norm over the 3-year contract term to 5%. Fact Finder Lalka concluded from the substantially same evidence that the City has a legitimate concern regarding its general fund in 2017. But, he was not convinced that the City's future finances "are so dire" as to require bargaining unit members to lose ground in their standard of living. Fact Finder Winter found that the Dispatchers "lag somewhat behind their external comparables," but nevertheless recommended the same 2%, 2% and 1% as Fact Finder Lalka recommended for the police CBA. Both Fact Finders believe that their recommendations fall within the norm of wage raises paid to police and dispatchers performing the same work in comparable communities, and the the City should get some assistance to guard against possible further declines in its revenue over the contract term. This is reflected in their recommendations of 5% over the 3-years, instead of 6% that reflects annual raises of 2% for those performing comparable work in comparable cities in Ohio.

Both Fact Finders must ultimately believe that our general economy will continue to recover from the 2008 great recession, wages will continue to improve, and the overall general improvement in the economy will provide increased revenue over the 3-year contract term for the City to meet these obligations, and its other needs. While I am somewhat less optimistic about the future, I cannot find that the Fact Finder recommendations as to wage increases were unreasonable. More importantly, I cannot alter their recommendations if I saw fit to do so. I must select among the parties' positions the one that is most reasonable as between the two. Accordingly, I find that the Union's offer is the more

reasonable one. It discounts the norm over the 3 years by 1%, which might not be considered a large discount, but the City's proposal of discounting the norm by 3% over the period seems to much of a discount, particularly if the economy continues to grow. The Union's proposal will more likely maintain, but not necessarily improve the FOP's pay status among the comparable police wages paid in the area.

AWARD: The Union's proposal is awarded. The bargaining unit members (both units) shall receive across-the-board wage increases of 2%, retroactive to January 1, 2016. Effective January 1, 2017, the members shall receive an across-the-board wage increase of 2%. Effective January 1, 2018, the members shall receive an across-the-board wage increase of 1%.

(2) Article 11 – Rank Wage Differentials

Section 11.02 provides for a 10% wage differential between patrolman and sergeants, and a 10% differential between sergeants and lieutenants. The FOP proposes to to the Fact Finder that the differentials be increased to 10.5% in 2017, and to 11% in 2018. The City proposed to maintain the current language. Fact Finder Lalka recommended that the differential remain unchanged for 2016, that it be increased to 10.5% in 2017, and that is should be raised to 10.5% in 2018.

The City presented evidence that the Fact Finder erred in his report. He believed that the City did not object to increases in the pay differentials. The statements to the Fact Finder were made confidentially during the time he was attempting to mediate the pay issues. The City contends that the Fact Finder misunderstood what the City said it was agreeing to. The City Finance Director met with one of the FOP's representatives for purposes of determining what the cost of the FOP's proposal would be. When the Fact Finder caucused with the City during mediation, he misunderstood what the City stated. It stated and meant that it agreed to what the costs of the FOP's' proposal would be as determined in the meeting between the Finance Director and the FOP; but it was not agreeing that it thought the proposal was fair and acceptable. The FOP, in this matter, believes that the Fact Finder's

proposal that is less than the FOP proposed in fact finding is fair in terms of external comparables, regardless of any possible misunderstanding of the Fact Finder as to what he believed the City was agreeing to.

The City computes the cost difference between the above 2%, 2%, and 1% wage proposal with no rank adjustments, and the same wage proposal with adjustments of 10.5% in year two and 10.5% in year three is \$7,991.26, or approximately \$8,000.00. This relatively minor cost is due to the fact that the rank increases only involve a small number of employees.

The evidence of rank differentials among jurisdictions in Lake County shows nearby Wickliffe at 10%, and Eastlake at 10%. Willoughby and Willoughby Hills are at 11%, and Euclid is at 12%. The average is 10.66%. There is no evidence of future contractual increases, so I assume these are present percentages.

I find that the City engaged in good faith bargaining, and that it is reasonable, having been involved in fact finding and simultaneous mediation, that the Fact Finder misunderstood what precisely the City would agree to, and that the City's intent was to not increase the differentials, but only agreed to what the costs were. Regardless of this unknown circumstance, Fact Finder Laska did not state the underlying basis for his decision to increase the percentage in the rank differential. I find that the present differential is within the comparable group of jurisdictions in the county, and that there is no compelling need to increase the percentage without the parties agreeing to do so on their own.

Award: I recommend the City's proposal of the status quo, with no language change.

1. Article 6 -Overtime

The Union proposes to change the language of Section 16.01 to provide that any member of the unit that voluntarily traded shifts, would also receive double-time when they work beyond their regularly scheduled work week. The City proposes no change in the language. The Fact Finder recommended the FOP's proposal, but provided no specific explanation for the recommendation, other

than his general opinion of the City's financial circumstances that implies the City can easily absorb the increased percentage that he recommended.

The FOP contends that the language as written was not within its intent when the CBA was negotiated. It now contains the unintended wrinkle that only the member who is on-call and ordered in receives the double-time rate. It intended for any member who is required to work on the specified holidays should receive the double-time rate. Its proposal will not cost the City much money, and is justified. The City disagrees that the stated language is anything other than what the parties agreed to across the table. Regardless of the FOP's mistake, it never agreed to pay all the members the double-time rate if they worked on the specified holidays. There is a cost to the FOP proposal that it did not want to absorb presently and into the future.

The Fact Finder recommended the FOP's proposal for double-time payment for all members, but he did not explain his decision or supply his rationale. Based upon the evidence presented in this conciliation matter, I find that the present benefit is reasonable as written, and the cost savings, even if presently small, would accumulate in the future, and the present money saved by maintaining the present percentages could be directed toward the City's immediate capital and maintenance needs. Any change should be a negotiated change as part of some future agreed upon compensation package.

Award: The City's position is awarded. The status quo should remain with no change in the contract language.

Date of Award: November 12, 2016

/s/ _____
Mitchell B. Goldberg, Conciliator

CERTIFICATE OF SERVICE

The above award was served upon the following persons by electronic mail on the 12th day of November, 2016:

SERB Email: med@serb.oh.us

Robert M. Phillips: phillips@fhplaw.com

Tom Grabarczyk: tomlrn@buckeye-express.com

/s/ _____
Mitchell B. Goldberg

