

Received after business hours. Processed next business day.

IN THE MATTER OF CONCILIATION

BETWEEN

THE OHIO PATROLMEN'S BENEVOLENT ASSOCIATION

AND

THE CITY OF WICKLIFFE, OHIO

SERB CASE # 2015-MED-09-0894 (POLICE DISPATCHERS)

Robert G. Stein, Conciliator

LEAD ADVOCATE(S) FOR THE UNION:

Advocate for the EMPLOYER:

**Jack L. Petronelli, Esq.
ALLAIN LEGL, LTD.
28906 Lorain Road, Suite 101
North Olmsted, Ohio 44070
jpetronelli@ealegal.net**

Advocate for the UNION:

**Max Rieker, Esq.
OHIO PATROLMEN'S BENEVOLENT ASSOCIATION
10147 Royalton Road, Suite J
P.O. Box 338003
North Royalton, OH 44133
mriecker@opba.com**

INDEX OF DETERMINATIONS

ISSUE 1	ARTICLE 14 VACATIONS	Page 9
ISSUE 2	ARTICLE 22 RATES OF PAY	Page 12
ISSUE 3	ARTICLE 22 RATES OF PAY (Inmate Search Pay)	Page 14
ISSUE 4	ARTICLE 23 RATES OF PAY (Emergency Medical Certification Pay)	Page 14
ISSUE 5	ARTICLE 24 RATES OF PAY (Terminal Agency Coordinator Pay)	Page 14
ISSUE 6	ARTICLE 35 ARBITRATION PROCEDURE	Page 14

INTRODUCTION

The parties to this matter of conciliation are the Ohio Patrolmen's Benevolent Association (hereinafter "Union, or bargaining unit"), who represent approximately eight (8) Police Dispatchers and the City of Wickliffe, Ohio (hereinafter "Employer" "City,") a city located in east-northeast part of Ohio. This is the inaugural collective bargaining contract for these parties. The fact finder submitted his report to the parties on August 9, 2016 and it was subsequently rejected by the Union, leading to the instant conciliation. A total of six (6) issues were eventually brought to conciliation, with the remainder being resolved prior to the conciliation hearing.

Open Issue(s):

This Conciliation Award addresses the following open issues:

Issue #	Article	Title
1	14	Vacations
2	22	Rates of Pay
3	22	Rates of Pay (Inmate Search Pay)
4	22	Rates of Pay (Emergency Medical Dispatch Certification Pay)
5	22	Rates of Pay (Terminal Agency Coordinator Pay)
6	35	Arbitration

General/State/Local Economic Overview/Discussion

The economy has been improving on the national, state, and local levels for several years now and there is growing evidence to believe this may be sustained in the near future. According to a number of increasing economic indicators (e.g. unemployment rate, new job growth, company profits, actions of the Federal Reserve, etc.) the economy in the United States and in Ohio is getting incrementally healthier. The Ohio October 2016 unemployment rate was 4.9%, in contrast to an October 2013 unemployment rate of 7.5%. Yet, widespread instability related to ongoing turmoil in the Middle East, and a genuine concern over a major act(s) of terrorism could cause instability at any time. Additionally, generalizations of both economic hardship and prosperity can be misleading since the financial health of municipalities or other political entities can vary greatly depending upon the economic fortune of each entity. Likewise, the economic fortunes of workers varies greatly and not people have been successful in recovering from the Great Recession of 2008.

We appear to be living in times of prolonged uneasiness and uncertainty on several fronts. The current general election, which will unlikely be a continuation of policies of the last eight years, strongly underscores the inequality and subsequent unrest among differing segments of the U.S. population, and the profound change in leadership that will take place in early 2017 now leaves many more unanswered questions than we have answers at this point in time. Based upon these hopes and worries, one can only conclude that it is folly to predict long term future economic prosperity without factoring in what directions the United States economy will now take, and how it will eventually affect the City of Wickliffe and its employees.

Only very recently have wages moved from eight (8) years or more of stagnation. For the first time since the Great Recession of 2008 incomes rose for middle class workers, but said wages are still on average \$1,000.00 below the 2008 average. Fortunately the rate of inflation has remained low for the last several years helping employees to retain

purchasing power, and giving relief to Ohio public employers who have had to manage with less economic assistance from the state. The majority of Americans acknowledge signs of sustained economic improvement as evidenced by more help wanted signs appearing in front of businesses. But in larger part newly created employment opportunities, while growing steadily, now come with lower wages, less benefits and less job security. In fact, the current popular trend regarding employment is “contingent work”, which now makes up over 40% of the jobs being created in the United States. As recently reported on by the U.S Department of Labor on their Website:

V. Contingent Workers

1. General Observations

As employers seek new ways to make the employment relationship more flexible, they have increasingly relied on a variety of arrangements popularly known as "contingent work." The use of independent contractors and part-time, temporary, seasonal, and leased workers has expanded tremendously in recent years. The Commission views this change both as a healthy development and a cause for concern.

On the positive side, contingent employment relationships are in many respects a sensible response to today's competitive global marketplace. The benefits are clear that various forms of contingent work can offer to both some management and some workers. Contingent arrangements allow some firms to maximize workforce flexibility in the face of seasonal and cyclical forces and the demands of modern methods such as just-in-time production. This same flexibility helps some workers, more of whom must balance the demands of family and work as the numbers of d On the negative side, as the Fact Finding Report noted, contingent arrangements may be introduced simply to reduce the amount of compensation paid by the firm for the same amount and value of work, which raises some serious social questions. This is particularly true because contingent workers are drawn disproportionately from the most vulnerable sectors of the workforce. They often receive less pay and benefits than traditional full-time or "permanent" workers, and they are less likely to benefit from the protections of labor and employment laws. A large percent- age of workers who hold part-time or temporary positions do so involuntarily. The expansion of contingent work has contributed to the increasing gap between high and low wage workers and to the increasing sense of insecurity among workers noted in the Fact Finding Report, (pp. 93-94).

Citizens coming into the workforce or attempting to remain in it are only being offered contingent work. In fact much of the middle class wage gain of several percent announced by the U. S. Labor Department on 9/14/16 was largely due to income made by employees on overtime and or secondary employment and not a result of a wage increases related to their main employment. The sobering reality is that conditions post 2008 will never be the same as they were prior to the “Great Recession” and its aftermath. And, that reality has caused a sea change in the manner local governments operate and finance the services they provide to the public. In Ohio, structural unemployment, the substantial loss of the manufacturing base, and drastic cuts Local Government Funds and the elimination of the Estate Tax continue to challenge all local governments to seriously examine more

efficient methods to deliver vital services to the public based upon less certain revenue. Likewise, public employees have been seriously challenged to maintain their own personal and family household budgets.

In Wickliffe and the surrounding area, economic property varies and is strongly influenced by the vagaries of corporate decision making. For example the sale of Lubrizol previously had a profound effect on this small city and now the potential relocation of ABB portends a loss of hundreds of jobs and the revenue they generated. Ohio and elsewhere infrastructure repair and replacement needs are great and the City has had to budget considerable funds to address these issues, while at the same time employee unions have worked hard to maintain reasonable wages and benefits. It is noted that the City has been managed well and its debt load, unlike others of its size is manageable. However, it is also clear an historical perspective that the City's carryover balance is shrinking and it faces across-the-board staffing and equipment challenges as recognized by the fact-finder in his report. (See p. 4-5) Yet, it must also be said that every employee's family budget faces a variety of challenges some foreseen and others unforeseen and their concerns are just as real as those of the City. (See Union Ex. 15, S. Aker statement)

ISSUES

The Parties conducted several negotiation sessions and were very productive considering this is their foundation collective bargaining agreement. A fact-finding report, by Fact-finder Thomas Nowell was issued on August 9, 2016 and was not successful in resolving negotiations. The Union's and the Employer's detailed positions and rationale on the unresolved issues can be found in their respective Pre-hearing Statements and in the evidence in the record. Issues that have been TA'd by the parties are recommended in this report along with any and all issues agreed upon prior to fact-finding, including carried forward current language not changed during negotiations.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the determinations contained in this report are based upon the

criteria set forth in Section 4117-9-05(K) of the Ohio Administrative Code. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements, if any between the parties;
2. Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private sector 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 effects of the adjustments on the normal standard of public service;
4. The lawful authority of the employer;
5. Any stipulations of the parties;
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in the private employment.

The determinations made herein are based upon a careful review of evidence and testimony presented by the parties, the application of the statutory criteria, and with appropriate deference being given to well-reasoned determinations of the fact finder that remains support by the facts.

In summary the position of each party on the remaining six (6) issues is contained below. Where possible (depending on the format submitted to the Conciliator) the City's and the Union's positions are reproduced verbatim as taken from their Pre-Hearing Statements. Issues 3, 4, 5 all involve additional pay under Article 22 and will be considered

together for purposes of discussion, but will be determined individually as required by Statute.

Union's and City's Position on Open Issues:

Issue 1 ARTICLE 14 VACATIONS

Employer's Position

The Employer argues that the current vacation benefit already allows an additional week of vacation after twenty (20) years of service. More time off requires more overtime to cover for absent employees. The Employer proposes what the fact-finder recommended, which it argues should be given great deference.

Union's Position

Currently, Wickliffe Dispatchers top out their vacation accrual at 200 hours (i.e., five weeks) at 15 years of service. The Union proposes the addition of a sixth week of vacation at the 25-year mark. Wickliffe Dispatch is currently the only dispatch unit in Lake County that does not have a sixth week of vacation time. Correcting this deficiency is entirely justified given the facts.

Discussion

While there are several nearby cities that provide a sixth week of vacation comparable data of this nature can be persuasive, these are not always applicable to applicable comparisons. It is noted that the fact-finder in this matter did not recommend an additional 6th week of vacation and recently the Conciliator in the bargaining involving the same Police Officer's unit also concurred with the Fact-finder in that case to not extend the vacation schedule that currently mirrors that of the Dispatchers. In the words of the Conciliator Bernardini:

“Fact Finder Byrne could have easily modified the Union’s proposal, just as the Union has now voluntarily done, to more closely align the increased vacation benefit with that of other jurisdictions; however he chose not to, because in the end his analysis revealed that the current benefit is not substandard. I agree with the fact finding recommendation. Baring a history of departures from internal parity, or a clear distinction warranting variation across bargaining units within a jurisdiction, when it comes to vacation leave internal benefit levels are the more persuasive benchmark for comparability.”

Three neutrals, in spite of comparisons in nearby cities, carefully considered of all the facts and the unique characteristics of the benefit structure, the current staffing in place in the City of Wickliffe, and at this time recommended current language be maintained. In addition to these opinions and the fact that the current vacation schedule is reasonable, other considerations, particularly related to declines in staffing in an atmosphere of uncertain future revenue projections run contrary to the idea of giving employees more time away from the job.

Determination

The position of the Employer is awarded.

Issue 2 ARTICLE 22 RATES OF PAY

Union’s Position

The Union proposes increases to all covered employees’ rates of pay as follows:

- * Effective and retroactive to January 1, 2016 – 1.5% increase. Additionally, the \$400 one-time payment recommended by the Fact finder shall be rolled into base pay as a \$400 base pay adjustment rather than “bonus” money.
- * Effective January 1, 2017 – 1.5% increase.
- * Effective January 1, 2018 – Wage Re-Opener

The City has caused a great injustice to the members of the bargaining unit. Historically, the City issued wage increases to non-union employees at the same pace as their unionized colleagues. Until the current contract cycle, S.E.R.B.’s statutory impasse resolution procedure had rarely been invoked in Wickliffe and all city employees achieved the same raises as either the patrol unit, the fire unit, or both.

In 2015, a radical and unreasonable city council broke with this homeostatic and egalitarian pattern. As opposed to city councils of many decades past, the current council refused to grant pay raises to the dispatchers while their unionized colleagues all achieved 2% pay raises. This shocking unfairness led to two clear results. First, the group of slighted dispatchers understandably unionized. Second, they and the OPBA now demand a modestly enhanced wage increase in the first year of the new CBA in an effort to make up for the callousness and unfairness of the past. While the dispatch group wishes to be made whole and deserves to be made whole, the modest \$400 base wage increase in the first year of the contract does not even begin to place the dispatch group in the financial position that it should be in, but for the 2015 unilateral wage freeze.

The Employer will undoubtedly portray a “sky is falling” picture of its financial situation and allege that it is fiscally falling off into an abyss of inadequate revenue. However, the evidence and testimony at Conciliation will bear out a different story. The truth is that the City’s unencumbered general fund balance is not too far off of what it was in recent years past and that the City is doing much better in 2016 than it had previously predicted. The modest pay raises sought by the Union are simply an effort to try to keep pace with the going rate in the industry and are entirely affordable by the City. The City’s affirmative defense of “inability to pay” must be rejected.

The Union’s Proposal is as follows:

22.01 All employees shall receive a \$400 wage adjustment, effective on and retroactive to January 1, 2016. Thereafter, each employee shall receive a 1.5% base wage increase effective on and retroactive to January 1, 2016. Each employee shall receive a 1.5% base wage increase effective on January 1, 2017. There shall be a wage re-opener for 2018. Employees shall be paid in accordance with the following schedules:

	<u>2016</u>	<u>2017</u>	<u>2018</u>
Newly hired dispatchers	19.47	19.76	Subject to re-opener
After one (1) year	20.82	21.13	Subject to re-opener
After two (2) years	22.27	22.61	Subject to re-opener
After three (3) years	23.79	24.15	Subject to re-opener

All increases shall be effective and retroactive back to January 1 of the respective year listed.

Employer's Position

The Employer is proposing the Fact-finder's recommendation of 1% in 2016 and 2017, a wage re-opener for 2018, and a one-time payment of four hundred dollars (\$400) for the bargaining unit for not receiving a wage increase in 2015. The City acknowledges that with the sale of Lubrizol by Berkshire-Hathaway it received a temporary increase in revenue, but it argues that City of Wickliffe, following the great recession of 2008-2009, provided wage increases to its employees while many other municipalities in Ohio did not receive wage increases. The City needs to reduce its expenditure and it is time for employees to share in that effort.

Discussion

The positions of the parties while similar in terms of general across-the-board wage increases differ in one significant aspect, that of the \$400 payment either being a lump sum or having an ongoing part of the wages structure. Where this neutral disagrees with Fact-finder Nowell is in the need to give greater consideration to the historic wage patterns fostered by the City.

In the past the City, like many cities in Ohio and elsewhere, carefully and thoughtfully paid attention to the importance of maintaining compensatory equity as part of an established pay philosophy presumably aimed at the commonly accepted approach of maintaining a healthy atmosphere of labor peace. In the United States the fair and equitable treatment of employees where possible is a common tenet of the labor-management compact and a foundational principle of a cohesive labor force. If that compact is violated, absent understandable rationale or reasoning for such a departure, labor problems will ensue.

The Union makes a compelling argument that inexplicably the historically consistent approach of the City to adhere to wage equity in terms of annual increases was not followed in 2015 regarding the Dispatchers, who received no wage increase, while other bargaining unit employees were provided an ongoing 2% wage adjustment. Moreover, by rolling the \$400 payment into the base, rather than making it a one-time payment, the bargaining unit in the future will be in a competitive position with other municipalities.

Determination

The position of the Union is awarded.

Issue 3 ARTICLE 22 RATES OF PAY (Inmate Search Pay)

Issue 4 ARTICLE 22 RATES OF PAY (Emergency Medical Dispatch Certification Pay)

Issue 5 ARTICLE 22 RATES OF PAY (Terminal Agency Coordinator Pay)

Employer's Position

ISSUES 3, 4, 5. Article 22 – Rates of Pay (Inmate Search Pay). Rates of Pay (Emergency Medical Dispatch Certification Pay). Rates of Pay (Terminal Agency Coordinator Pay). The Employer argues that adding additional pay is not affordable for the additional duties related to Issues 3 and 5. However, in terms of Issue 4, the Employer supports the Fact-finder's recommendation to add the additional pay of \$300.00 for work Emergency Medical Dispatcher Certification Pay.

Union's Position

Issue 3 Article 22 – Rates of Pay (Inmate Search Pay). Dispatchers are frequently called upon to search inmates – particularly female inmates. It is common in the dispatch industry to provide such employees “matron pay” for the unusual and undesirable task of having to search arrestees. In a minor effort to offset some of this employment burden on its membership, OPBA seeks an annual stipend of \$500 in consideration of the extra duties.

Issue 4 Article 22 – Rates of Pay (Emergency Medical Dispatch Certification Pay). Members of the bargaining unit have a certification that is above and beyond that of many

other groups of dispatchers. They are certified to provide Emergency Medical Dispatch duties (EMD). This enhanced qualification is deserving of enhanced compensation. Toward that end, the OPBA seeks an annual bonus of \$300, to be paid in a separate check, for all dispatchers who are EMD certified. This “new money” was recommended by the Fact finder. The Union proposes that this bonus money be effective and retroactive back to February 1, 2016 and be applied each February thereafter.

Issue 5 Article 22 - Rates of Pay (Terminal Agency Coordinator Pay). Certain members of the bargaining unit are designated by the Employer to perform extra duties. These “Terminal Agency Coordinators” or TAC’s have administrative functions above and beyond that of a regular dispatcher. For these enhanced duties and responsibilities, they should be compensated. The OPBA seeks an additional \$.35 per hour for all employees who are designated as a TAC or as an Assistant TAC.

Discussion

This is the first collective bargaining agreement for the Dispatch unit, and as such the foundation needs to be established for future rounds of bargaining. The relative value and justification of added wages and benefits as determined by the experience and necessary skills acquired and applied by bargaining unit members need to time be evaluated in the unique context of a collective bargaining environment and the operations performed by those in it . Fact-finder Nowell found support for the \$300 additional pay for Emergency Medical Dispatch Certification and the Conciliator strongly concurs with this recommendation, this skill clearly stands apart in terms of importance and efficacy in providing vital life-saving services to the public. And while the skills regarding Inmate Search (Issue 3) and Terminal Agency Coordinator skills (Issue 5) are important the City’s current fiscal condition and future uncertainty regarding revenue requires a cautious approach to adding additional wage supplements at this time.

Issue 3 ARTICLE 22 RATES OF PAY (Inmate Search Pay)

Determination

The position of the Employer is awarded.

Issue 4 ARTICLE 22 RATES OF PAY (Emergency Medical Dispatch Certification Pay)

Determination

The position of the Union is awarded.

Issue 5 ARTICLE 22 RATES OF PAY (Terminal Agency Coordinator Pay)

Determination

The position of the Employer is awarded.

Issue 6 ARTICLE 35 ARBITRATION PROCEDURE

Employer's Position

The Employer is proposing to language existing in the Police Officers contract that is contained in Section 35.9 which limits arbitration to disciplinary matters which exceed three day suspensions. It argues that a pattern of adopting this language exists with the Police Officers and the Service Department.

Union's Position

The Employer seeks to maintain language from the patrol contract which is antiquated and ripe for abuse. Section 35.09 of the patrol contract states, "Arbitration for disciplinary matters shall be restricted to discipline which exceeds three (3) day suspensions."

The OPBA's position is that barring even the ability to arbitrate a matter which is less than a four-day suspension is unconscionable. This Union, for better or for worse, has arbitrated hundreds of disciplinary cases over the years that seek to overturn or reduce suspensions of less than four days. It is a basic responsibility that we have to our membership. Such language, if allowed to stand, would be unique to an OPBA contract.

Discussion

Given a lack of data, the Fact-finder in his report stated he was not in a position to recommend a limitation on what could go forward to arbitration. The Conciliator concurs with the Fact-finder on this matter, the parties have no collective bargaining history and in particular no history with managing a grievance procedure process. And, to place a limitation on an untested and untried process is presuming there will be problems without evidence. Additionally, in order to agree upon a limitation as did the Police Officers and the Service Department it is likely the bargaining units experience the benefits and shortcomings of the process and were a much better position to judge the impact of the limitation being proposed by the Employer.

Determination

The position of the Union is awarded.

TENTATIVE AGREEMENT

Any tentative agreements reached by the parties as well as any current language that is not changed or not addressed above shall be considered to be recommended in the successor Collective Bargaining Agreement.

The Conciliator respectfully submits the above determinations to the parties this ____ day of December 2016 in Portage County, Ohio.

Robert G. Stein, Conciliator

TENTATIVE AGREEMENT

Any tentative agreements reached by the parties as well as any current language that is not changed or not addressed above shall be considered to be recommended in the successor Collective Bargaining Agreement.

The Conciliator respectfully submits the above determinations to the parties this 14th day of December 2016 in Portage County, Ohio.


Robert G. Stein, Conciliator