

I. BACKGROUND

The Conciliator was appointed by the State Employment Relations Board (SERB) on January 5, 2016, pursuant to Ohio Revised Code Section (ORC) 4117.14(D)(1). The parties are the Rocky River Fire Fighters, Local #659, International Association of Fire Fighters Northern Ohio Fire Fighters (Union or Fire Fighters) and the City of Rocky River (Employer or City). The Employer is a second ring suburb of Cleveland located on the west side of Cuyahoga County. It has a population of approximately 20,000. The Union represents all employees of the Fire Division except the Chief. The bargaining unit at issue here consists of twenty-eight (28) full time employees.

The Employer and the Union are parties to a collective bargaining agreement effective 2014-2016. The agreement includes a reopener for “salaries and hourly rates” for the year beginning January 1, 2016. This conciliation deals with the reopener for 2016.

The fact finding was held by telephone on December 15, 2015. The Fact Finder was William J. Miller Jr. The Fact Finder’s Recommendations and Findings were issued on December 16, 2015. He recommended the unit be granted a two percent (2%) wage increase effective January 1, 2016 and a one percent (1%) equity increase effective July 1, 2016. Additionally, the Fact Finder recommended that the differential between lieutenants and firefighters after two (2) years be increased to 13.5%. Both parties rejected the fact finding report.

II. THE HEARING

The conciliation hearing was held on Thursday, March 3, 2016 at the City’s Municipal Center, 21012 Hilliard Boulevard, Rocky River, Ohio. Each party provided a

pre-hearing statement. In its pre-hearing statement, the City accepted the wage increases proposed by the Fact Finder, but rejected the 13.5% wage differential. At the hearing, the Union accepted the Fact Finder's report in its entirety, including the 13.5% differential. Thus, the only remaining issue for the Conciliator is the wage differential.

The parties jointly introduced the Agreement between The City of Rocky River and Rocky River Fire Fighters, Local #659, International Association of Fire Fighters, Northern Ohio Fire Fighters, 2014-2016. They also introduced the following exhibits:

City Exhibits

- A. Agreement between The City of Rocky River and Rocky River Fire Fighters, Local #659, International Association of Fire Fighters, Northern Ohio Fire Fighters, 2014-2016.
- B. Fact Finding Report of William J. Miller Jr.
- C. City of Rocky River, Year-to-Date Fund Report.
- D. City of Rocky River - Headcount by Department.
- E. Moody's Investor Service Rating Downgrade, July 28, 2011.
- F. Moody's Investor Service Rating Update, April 3, 2014.
- G. Social Security Administration Cost of Living Adjustment, 2/29/2016.
- H. Consumer Price Index, Cleveland-Akron-Lorain - September 2015.
- I. SERB Annual Wage Settlement Report, 2005-2016.
- J. SERB Fact Finding/Conciliation Report Statistics, 2013-2015.
- K. Comparables, Per Capita Income and Median Household, 2013.
- L. City of Rocky River Wage Increase History, 2003-2015.
- M. City of Rocky River, Medical, Prescription and Dental Costs, 2014.
- N. Fact Finding Report of Donald N. Jaffe.

Union Exhibits

- 1. Summary of WESTLIFE Articles.
- 2. Chart of Income Tax, Property Tax, and EMS Billing.
- 3. City of Rocky River General Fund Balances.
- 4. Council Minutes on Permits and Investment.
- 5. Moodys Investor Service, July 28, 2011.
- 6. Council Notation on Receipt of Income Tax Levy.
- 7. Rocky River Fire Department Runs vs. Manpower Totals.
- 8. Rocky River Police Department-Rocky River Fire Department Wage Comparison.
- 9. Officer Differential Comparison.
- 10. Rocky River Police Department WESTLIFE Article.
- 11. SERB Five Year Wage Settlement Report.

12. Donald Jaffe Fact Finding Report 2013.
13. William Miller Jr. Fact Finding Report 2015.

The Ohio public employee bargaining statute provides that SERB shall establish criteria the Conciliator is to consider in making an award. The criteria are set forth in Ohio Administrative Code Section (OAC) 4117-9-06(H) and are:

- (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; and
- (6) Such other factors, not confined to those listed in this rule, 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.

III. ISSUE AND RECOMMENDATION

Issue: Article 15(A), Salaries, Hourly Rates and Overtime

Position of the Union: The Fact Finder recommended that the differential on the pay scale between lieutenants and fire fighters after two (2) years be increased from 12.% to 13.5%. The Fact Finder's recommendation should be followed.

Position of the City: The reopener clause in the Agreement provides that negotiations for salaries and hourly rates shall be reopened on or before November 1, 2015 to determine wages for the year beginning January 1, 2016. The clause does not specify that differentials are to be negotiated for 2016. Therefore, the Fact Finder erred in recommending the differential be increased to 13.5% and the recommendation should not be followed.

Findings: This conciliation is straightforward. During the negotiations for the current contract, which is effective for the years 2014-2016, the Fact Finder was Donald Jaffe. His report covered seven (7) different issues, including Salaries, Hourly Rates and Overtime in Article 15(A). Fact Finder Jaffe recommended no increase for 2014, a 1% increase for 2015, and a reopened for 2016. The current language of 15(A) regarding the reopener was taken directly from his report as follows:

...negotiations for salaries and hourly rates shall be re-opened on or before November 1, 2015 to determine wages effective for the year commencing January 1, 2016.

Rank differentials were not one (1) of the seven (7) issues before Fact Finder Jaffe.

The parties reopened wages for 2016 and proceeded to fact finding. The Union sought an equity increase of 1% and a 2% wage increase, both effective January 1,

2016, a 1% increase effective July 1, 2016, and an increase in the officer differential for lieutenants to 13.5%. The City countered with a 2% increase for 2016 and the lieutenant's rank differential to remain at 12% above the second year fireman's salary. As noted above, Fact Finder Miller recommended the 2% January 1 increase, the 1% July 1 increase, and the increase in the differential to 13.5%. The City contends that the Conciliator should reject the recommended increase in the lieutenant's rank differential. The City reacted to the recession that began in 2008 with tough financial decisions. Those decisions have enabled it to recover and increase its budget. However, lack of inflation, the consumer price index for northeast Ohio, and wage settlements in the public sector support its position. The Firefighters enjoy parity in the City and an excellent overall financial and health care package compared to its peers in the Westshore communities. The City's police employees are currently in fact finding and the pending recommendation of the fact finder is for 2.5% increases for each year of the 2016-2018 contract.

Furthermore, rank differentials were not before Fact Finder Jaffe, so his recommendation that salaries and hourly rates be reopened could not include the differentials. Therefore, Fact Finder Miller's recommendation to increase the lieutenant's rank differential went against the clear language of Fact Finder Jaffe's report. The City relies on the long-held arbitral standard that language that is clear and unambiguous must be followed. That Fact Finder Miller did not follow the clear language means he erred, and a fact finder's error should not be followed in a conciliation.

The Firefighters submit that the current inequity between Police Sergeants and Fire Lieutenants has existed for at least five (5) years and should be addressed. Fire Lieutenants are out in the field supervising calls, while Police Sergeants spend most of their time inside doing dispatch duties. Fact Finder Miller agreed with them and recommended the increase. In conciliation, so long as the fact finder was not clearly erroneous, his or her recommendations should be followed. The Firefighters argue that Article 15(A) specifically includes the salary scales for the various levels, from Captain to a starting Firefighter and Fire Prevention Officer. These salaries include the differentials between the various levels. For example, effective January 1, 2015, a Captain is paid 12% more than a Lieutenant, who is paid 12% more than a Firefighter after two (2) years. Fact Finder Jaffe's language that there be a reopener for salaries and hourly rates must include the differentials, since the differentials are part and parcel of the salaries.

The negotiating history between the parties shows that parity has been important to both sides. The City takes pride in treating the police officers and firefighters as equally as it can when it comes to pay. The City's 2003-2015 wage increase history shows that, while increases varied somewhat, both units have received the same increases more often than not. The 2010-2014 average for both units is 1.08%. In the Conciliator's experience, this is quite remarkable, as the differences between police and fire units can make receiving the same increase tricky, what with the differences in shifts, time off, and various allowances typically negotiated with such units.

Since this is conciliation, the parties did not get into the same detail they did with Fact Finder Miller as to the lieutenant's rank differential. Suffice it to say that the fact

finder concluded the increase in the rank differential was warranted, based at least in part on the parties' history of parity. He specifically addressed the City's argument that rank differential was not an issue for the wage reopener. The City's position that the language of 15(A) does not include rank differential as a subject of the reopener is reasonable, but the Conciliator disagrees. The word "salaries" can be interpreted to include the rank differential. After all, the salaries listed in Article 15(A) are based on percentage differences between the various ranks. Asking for an increase in the lieutenant's rank differential is the same as asking for an increase in the salary for lieutenants. Fact Finder Jaffe specifically recommended that "negotiations for salaries and hourly rates shall be reopened" for 2016. The Conciliator concludes that Fact Finder Jaffe's recommendation can be read to include the lieutenant's rank differential in the reopener for 2016. Thus, Fact Finder Miller did not err when he recommended an increase in the lieutenant's rank differential from 12% to 13.5%.

Recommendation: The salary level for Lieutenant effective January 1, 2016 shall be increased from 12% to 13.5% of the Firefighter (after 2 years) salary.

Dated: March 7, 2016



Daniel G. Zeiser
Conciliator