

IN THE MATTER OF CONCILIATION
BETWEEN
THE OHIO PATROLMEN'S BENEVOLENT ASSOCIATION
AND
THE CITY OF FAIRLAWN, OHIO
SERB CASE # 2016-MED-09-1016 (DISPATCHERS)

Robert G. Stein, Conciliator

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INTRODUCTION

The parties to this matter of conciliation are the Ohio Patrolmen's Benevolent Association (hereinafter "Union, or bargaining unit"), who represent approximately full-time Communications Operators (Dispatchers) and the City of

Fairlawn (hereinafter "Employer" "City,"). The current agreement expired on November 30, 2015, however, the parties signed a 4117.14(G) (11) waiver. The fact finder submitted his report to the parties and it was subsequently rejected, leading to the instant conciliation. A total of one (1) issue was eventually brought to conciliation.

Open Issue(s):

This Conciliation Award addresses the following open issues:

Issue #	Article	Title
1	28	WAGES

General/State/Local Economic Overview/Discussion

The economy has been on firm footing and even robust on the national level and has been stable on a state level. According to a number of increasing economic indicators (e.g. near full employment, new job growth, company profits, a strong stock market, etc.) the economy in the United States and in Ohio continues to get healthier. But as has been the case for many more years instability in places like the Middle East and here at home regarding severe hurricanes in Texas, Florida, and Caribbean an uncertain global economy, and genuine concern over a major act(s) of terrorism could cause instability at any time. On the local level the City of Fairlawn appears to be in very sound financial condition with ability to pay not being an issue. Yet, in spite of the good economic news on various fronts, we appear to be living in times of prolonged uneasiness and uncertainty on several fronts.

“While the labor market has recovered significantly and employment has returned to pre-crisis levels, there is still widespread debate regarding the health of the U.S. economy. In addition, even though the worst effects of the recession are now fading, the economy still faces a variety of significant challenges going forward. Deteriorating infrastructure, wage stagnation, rising income inequality, elevated pension and medical costs, as well as large current account and government budget deficits, are all issues facing the US economy.” (FocusEconomics, August 29, 2017)

Based upon these worries and others, one can only conclude that it is folly to predict long term future economic prosperity without factoring in potentially volatile global unrest. And, if the political climate at the moment is any indicator, unrest persists among the majority of the electorate regarding their own security and economic welfare.

ISSUES

The Parties reached impasse and participated in a Fact-finding hearing on May 22, 2017. A fact-finding report, by Fact Finder Dennis Byrne (“Byrne”) was issued on June 12, 2017 and was not successful in resolving negotiations because it was rejected by the City. However, following the failure of ratification of Byrne’s report, the parties were able to narrow resolve all but one of the remaining issues, Wages. The Union’s and the Employer’s detailed positions and rationale on the unresolved issue 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 fact finder's report, and the application of the statutory criteria.

General Description of the Issue:

The issue in this matter is straightforward and deals with the amount of the wage increase each year for the next three (3) years of the Agreement. The City seeks to have the pattern settlement, agreed to by other City bargaining units, accepted by the Conciliator. In the prior contract the parties also went to fact-finding and Fact Finder Gardner, like also found determined that there was evidence to support a wage increase for bargaining unit members that exceeded the wage pattern established with all other bargaining units in the City. The Union's position is in current dispute is in support of the recommendation of Fact Finder, Dennis Byrne, who recommended a three (3) wage settlement that was again above the patterned settlement. The parties have signed a G-11 waiver in this matter. (Union Ex.E)

General Position of the Parties:

CITY: The City's is proposing the patterned settlement reached with its other five bargaining units in the City in 2017, 2018, and 2019 of 2.25%, 2.5%, and 2.5% respectively. The City of Fairlawn rejected Fact Finder Byrne's ("Byrne") fact-finding report because it believe he erred in his recommendation that Dispatchers should be awarded pay increases of 3.25% each year of the Agreement, which is above the wage pattern in 2017, 2018, and 2019 of 2.25%, 2.5%, and 2.5% respectively. As a matter of recent bargaining history, the Union cited the previous report of Fact-finder, Joseph Gardner ("Gardner"), in which he recommended wage increases for the bargaining unit for 2014 and 2015 of 3.25%, or an additional 1.5% each year above the pattern of 2% for this same period. In the third year of the contract (2016) the parties settled for a 2% increase, consistent with the increases for all other bargaining units for that year. The City, while questioning the basis for Gardner's recommendation, accepted the report but asserts that further increases above the wage pattern for a prospective Agreement (2016-2019) recommended by Bryne are not supported by the data. And in terms of wage increases the City asserts it does engage patterned bargaining and "Awarding different wage to

Dispatchers than provided to other units such as Police, Fire, or Laborers would "...be a disincentive for any bargaining unit to be the first to negotiate and agree to a new contract in a timely fashion." The City seeks to continue the "pattern" for reasons of consistency.

The City argues that comparable data should be based upon external like dispatching positions and not internal laborer positions. Arguing that the Union's position that Laborers (members of the Teamsters Union) are paid more than Dispatchers is a red herring, the City points out that there are significant reasons laborers are paid more because they are a skilled unit and are required to perform many different types of work in a variety of conditions.

UNION: The Union avers that this is a matter of relative value. The Union's underlying claim in this matter is that the bargaining unit is ...behind the Fairlawn bargaining units of Patrol Officers, Firefighters, and Laborers in terms of relative standing in the Akron/Canton region among City employees. (Union Pre-hearing Statement, p. 5) Moreover, the Union also avers that there is no supportable reason why there is a significant disparity between the top pay of Laborer or a Custodian in the Teamster's bargaining unit versus the top pay of a Dispatcher in the OPBA unit. The Union argues the position of Dispatcher demands expertise and talent that is no less than that demanded of positions in the bargaining unit representing Laborers and therefore there should not exist such a relative imbalance in their rates of pay.

The Union also points out that conciliators seldom change the recommendations contained in fact finding report absent an overriding reason and that the party disagreeing with the fact finder's recommendation has the burden to prove that made an error in logic or fact. If this is not done, the fact finder's recommendations should be given deference as a practical matter in bring closure to the negotiations process.

In summary the position of each party on the issue of wages is as follows: 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.

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

Issue 1 WAGES Article 28

Employer's Position

The City is proposing the following:

Change Section 28.1 of the collective bargaining agreement by providing a **2.25% increase as of the first pay period beginning on or after January 1, 2017**, a **2.5% increase as of the first pay period beginning on or after January 1, 2018** and a **2.5% increase as of the first pay period on or after January 1, 2019**.

Union's Position

The Union is proposing the following:

Section 28.1. Wages. Beginning on January 1, ~~2014~~ **2017**, and effective through December 31, ~~2016~~ **2019**, the salary schedule for bargaining unit members shall be increased ~~3.5% effective January 1, 2014 and 2015 and 2.0%, effective January 1, 2016~~ **3.25% effective January 1, 2017, 3.25% effective January 1, 2018, and 3.25% effective January 1, 2019** as follows:

Years of Service	2017	2018	2019
Less than two years of experience	\$46,533.06	\$48,045.38	\$49,606.85
More than 2 and less than 4 years' experience	\$48,627.05	\$50,207.43	\$51,839.17
More than 4 and less than 8 years' experience	\$50,815.29	\$52,466.79	\$54,171.96
More than eight years of experience	\$53,101.94	\$54,827.75	\$56,609.65

Discussion

Fact Finder Gardner in his report that led to the prior contract (2014-2016) concluded the following:

“Pattern Bargaining” has benefits. It keeps different internal units to the same increases (or sometimes decreases); however, there are circumstances that make one unit different from others, then “pattern bargaining” has some shortcomings. The collective bargaining laws recognize that all bargaining units are not the same....the collective bargaining laws recognized that different units have similar but different requirements.

Reviewing all the evidence, including “comps,” these bargaining unit members deserve an increase in wages.

Fact Finder Gardner largely based his recommendation on wage increases based upon external equity comparisons in years 2014 and 2015, above the wage pattern that was negotiated for all other City employees. However, it is also noted that in year three (2016) the parties settled for the same wage pattern of 2% provided to all other City employees.

In the instant matter, Fact Finder Byrne states in pertinent part:

“The Union and the City both agree that the City can afford to meet the Union’s demands. Therefore an examination and discussion of the City’s finances that usually is needed when discussing wage demand is not necessary in this case. The question is whether the union membership needs an equity adjustment to their wages in order to make their wage rate competitive with a) other dispatchers in the area (external parity), and b) other city employees (internal parity).

In referencing the findings of Fact Finder Gardner, Byrne stated that Gardner, recommended that the dispatchers receive a greater base rate increase than the City offered. He reasoned that the evidence proved that the Fairlawn dispatchers were underpaid when compared to other comparably situated dispatchers. He seemed to agree with the Union’s contention that a dispatcher’s top wage rate should not be less than the top wage rate of a laborer....Fact finder Gardnerfound that ORC 4117 requires that each Union be afforded the opportunity to prove that a pattern agreement should not be applied to its membership.

In the immediate matter the same issue has once again arisen in fact-finding and now is before the Conciliator. In the words of Bryne, *“In some ways, the current fact-finding is a continuation of a dispute that has existed for years. That is, do the Fairlawn dispatchers deserve an above average raise when compared to other City workers and other dispatchers in the area, or are they reasonably compensated when compared to other City workers and other dispatchers in the area?”*

In addressing this question on the basis of external equity among dispatchers identified by the Union, Byrne found that the average inequity difference between Fairlawn Dispatchers and other dispatchers in the northeast Ohio area is approximately \$1,500.00 (Union Ex. 4) Viewing Union Ex. 4 the Conciliator finds it is closer to \$1,600.00. Bryne points that if the average uniform allowance provided to other dispatchers is included (in Fairlawn uniforms are provided at no cost to employees) the difference between Fairlawn Dispatchers and the average of others is less than \$1,000.00. When factoring in the insurance benefit that

includes a very low premium for employees the issue of external parity, while still existing, is for all practical purposes erased.

Byrne concluded, *the data submitted by both parties prove that the Fairlawn Dispatchers are not the best paid in the area. However, it is also true that their total compensation when compared to other similarly situated employees' is not substandard. Therefore, according to the external comparability standard, the Union did not prove that its membership needed an equity adjustment.*

Fact Finder Byrne addressed the Union's second argument that that there is an issue with internal comparability. *Does the fact that the top wage rate in the Laborer's bargaining unit is significantly higher than the top wage rate in the Dispatcher's unit represent an internal wage inequity issue that justifies the Union's request for a wage increase above the pattern?* Gardner in his analysis addressed this issue to a lesser extent.

In relationship to the issue of internal equity between wages paid to Dispatchers and employees in the Laborers bargaining unit represented by the Teamsters, Fact Finder Byrne concludes:

In this instance the pattern bargaining position is undermined by the unexplained inequity of base wage rates between various City bargaining units...Internal comparability is a recognized and important factor in setting wage scales, and the City's current wage scale implies that the dispatch staff are the least skilled and/or least valuable employees of Fairlawn. This is obviously not true and the City reinforced that fact when it stated that it valued the skill and dedication of the communications staff. Byrne goes on to say that the reason for such a wide disparity of wages (some 16% according to the Fact-Finder) between that of a Dispatcher and a Laborer was not made clear in fact-finding. Fact-finder Byrne observed, "...there was no evidence put into the record in support of that contention." Byrne concluded that City pays Laborers a significantly higher wage than it pays to Dispatchers and that while Dispatchers are paid a similar amount to dispatchers in other Northeastern Ohio cities, they are not paid nearly as well as any other group of employees within Fairlawn.

Byrne's concluded that external parity in total compensation exists for the bargaining unit, while basing his recommendation for a 3.25% each year of the Agreement on internal inequity. The Conciliator agrees with the wage increase recommendation by Byrne, but based upon external inequity, not internal inequity. In terms of external inequity what needs to be accounted for is what the projected external inequity will likely be in three years assuming average wage increases for comparable jurisdictions and the compounding effect of those percentage wage increases. If you take the average salary of the cities listed

in Union Exhibit 4 (\$54,251.45) and assume this average salary to increase by 2.3% each year (*Bureau of Labor Statistics (BLS) data reported on July 28, 2017 that as of June 2017 the 12 month average wage increase to that point was 2.3%, and in June of 2016 it was 2.0%*) by the end of three years the 10 year average dispatcher salary in comparable nearby cities will be paid an annual salary of \$58,081.56 (assuming no other increases in other forms of compensation). (Union Exhibit 4) Applying Fact Finder Byrne's recommendation of a 3.25% increase every year for the next three years (or a total of 2.5% above the wage increase pattern offered by the City) the 10 year average Dispatcher in Fairlawn will be paid an annual salary of \$57,985.53. The inequity difference under this reasonable scenario is reduced to \$96.03, which represents virtual parity with the average 10 year dispatcher salary of comparable jurisdictions proffered by the Union. If the average three year wage increase of comparable cities is less, than the Fairlawn Dispatcher 10 year salary level could exceed the average. The facts indicate that on the basis of external equity alone the wage adjustment recommended by Byrne is justified. Therefore, the Conciliator agrees with the recommendations of Fact finder Byrne to provide wage increases to the bargaining unit of 3.25% each year of the Agreement, or 2.5% above the pattern. Barring any unforeseen wage abnormalities, that recommendation coupled with the previous efforts of Fact finder Gardner, on a reasonable projected basis, should eliminate any serious external inequity issues in wages between the bargaining unit and comparable jurisdictions in northeast Ohio by the end of the contract period.

Given the above there is no need to consider internal inequity concerns, which in the opinion of the Conciliator represent a much more difficult basis to claim a disparity. The City, through the testimony of City officials and in responding to pointed questioning provided a clearer picture as to why the two bargaining units are very difficult to compare. While it is understood that not all Laborers in the Laborers' bargaining unit perform highly skilled work some workers possess said skills. Higher wages are paid to a certified mechanic(s), who provides a vital cost and time saving service to the City. When fire trucks and police vehicles can be diagnosed and repaired "in house" and do not have to be performed by typically more costly and time consuming contract services the value of the work of members of the Laborers bargaining unit is underscored. The same can be said of construction cost savings and efficacy. Higher wages paid to employee(s) who possess

skills equivalent or close to journeymen electricians, carpenters, dry wall finishers, cement finishers, painters, and plumbers, again save the City time and money on the construction, installation, repair, and in preventive maintenance and accentuate the value of this work. Employees with these skills are distinctive and are not easily comparable to Dispatchers. And, the arguments made by the City that Laborer bargaining unit employees are subject to extreme weather and working conditions and the real dangers of working on increasingly busy roads is also not lost on this neutral. (NIOSH, Highway Worker Safety Zone, June 19, 2017)

While Dispatchers provide a vital and highly valued service to the community the skills and demands placed upon these bargaining unit employees differs greatly from the various types of work of in the Laborers' bargaining unit and are far more akin to the work of the City's safety forces. While there is often approximate parity in compensation of police officers and firefighters under the common umbrella of safety, comparing the job of Dispatcher with the variety of jobs in the Laborers' bargaining unit is more of an "apples and oranges" comparison that does not easily lend itself to a ready conclusion that the wages of the bargaining units should match the wages of employees who perform very dissimilar work. This is not to say that a great disparity in wages does not affect the perceptions, feelings of self-worth, and moral of employees, it can and sometimes does. However, assessing relative worker value based upon skills and abilities of people who do very different types of work is very difficult and is one of the reasons public employers often advocate for wage pattern adherence when external inequity issues do not require attention.

As stated above, the Conciliator, who is strictly confined by law to find for the Union's position or the City's position, finds for the Union based upon the evidence and testimony.

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 September 2017 in Portage County, Ohio.

Robert G. Stein, Conciliator