

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

**IN THE MATTER OF CONCILIATION
BETWEEN**

The City of Warren)	
)	
Employer)	SERB Case No. 2016-MED-10-1085
)	
and)	
)	Hearing Date: August 16, 2017
Warren Firefighters IAFF Local No. 204)	
)	
Union)	Date of Report: August 29, 2017

APPEARANCES

For the City of Warren:

David D. Daugherty, Personnel Supervisor
Brian M. Massueri, Director Human Resources
Vince Fask, Auditor
Ken Nussle, Fire Chief

For the IAFF:

Dennis Haines, Esq.
John M. Jerina, Jr., President
Tyler James, Vice President
Ken Horn, Secretary-Treasurer
Jarrod Perry, Executive Board
William Monrean, Negotiating Team
Jeremy Rodgers, Negotiating Team

**Richard P. Gortz, Conciliator
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Introduction

The City of Warren, Ohio, (“Employer”, or “City”) and the International Association of Firefighters, Local 204 (“Union” or “IAFF”) are parties to a Collective Bargaining Agreement (“CBA”) in effect from January 1, 2014, through December 31, 2016.

The City of Warren is the County Seat of Trumbull County, and has a population of approximately 42,000 which has been decreasing in the past few decades. The City’s financial issues are well documented in the Fact Finding report and recommendation by Daniel Zeiser, noted below. This Conciliator agrees with the assessment of the Fact Finder regarding the economic situation facing the City and will not rehash it here, except to note that the City has been under severe financial stress for years, but through sound fiscal management and conservative budgeting, has staved off fiscal watch or fiscal emergency status.

Further to note is the fact that the City has a temporary 5-year .5% income tax, narrowly approved by the voters. The City is under scrutiny by the public and news media to show fiscal restraint so as to sell renewal of that tax in four years. Without the tax being renewed and all other conditions being equal, the City would face severe financial difficulty.

The City has four bargaining units: one AFSCME, two Police Units and one IAFF unit. The IAFF represents approximately 59 members in a combined unit which consists of 3 Assistant Chiefs, 6 Captains, 12 Lieutenants and

38 firefighters. An additional 15 firefighters are being added under a SAFER grant, which will expire in 2019, unless extended.

The Parties entered into negotiations for a follow-on contract, but were unable to reach agreement. On May 4, 2017 Fact Finder Daniel Zeiser held a hearing and issued a report on May 19. The report was accepted by the Union, but rejected by the Warren City Council.

The undersigned was appointed Conciliator on July 7, 2017 under OAC Rule 4117-9-06(D). The parties requested and SERB granted an extension of the hearing until September 1, 2017. A hearing was held in Warren, Ohio, on August 16, 2017, resulting in this Award.

The Parties were ably represented at the hearing, the City by Brian M. Massueri, Director Human Resources and David D. Daugherty, Personnel Supervisor, the Union by Dennis Haines, Esq., of Green Haines Sgambati Co., LPA.

The Parties timely submitted the required Pre-Hearing Statement and waived any substantive or procedural objection to the Conciliation hearing. The Parties further waived administration of oaths to witnesses.

The Issues

The Parties agree that four issues remain to be decided:

1. Article XII, Pay Rates.

City Position: 3-year wage freeze.

Union Position: \$500 lump sum on January 1, 2018, and \$500 lump sum on July 15, 2018, except for new-hires under SAFER.

2. Article XIV, Holidays (Personal Time).

City Position: Current Contract Language.

Union Position: Eliminate prohibition on cashing in personal day and charging vacation when a firefighter has more than 3 incidents of absence, and which absence causes overtime.

3. Article XV, Vacation.

City Position: Eliminate Inspector position as a separate slot for selection of vacation days and establish a sliding scale for vacation selection based upon workforce size.

Union Position: Current Contract Language

4. Article XXIV, Health care Benefits.

City Position: Same benefits as other employees. Premium to be higher than others for Option 1 (\$117/mo., v. \$75 single and \$192/mo. v. \$150 family) in second and third year of contract.

Union Position: Same benefit and same premium as other employees.

The Award of the Conciliator is based upon the criteria set forth in OAC Section 4117-9-06. They are:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employers 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 effects 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 the issues submitted to mutually agreed upon dispute procedures in the public service or in private employment.

The Conciliator also took under advisement the analysis, opinion and recommendation of Fact Finder Zeiser in promulgating an Award.

Finding of Fact and Award

Issue 1: Article XII, Pay Rates

Employer's Position: Pay rates are to be frozen for the term of the agreement. All other bargaining units have agreed to a wage freeze, and Council has frozen non-bargaining employees' pay. The Employer argues that good faith bargaining with the other units will be jeopardized by a bonus paid to this unit.

The City argues that, while the Factfinder recommended a bonus of \$500 in January and July of 2018 for this unit, such bonus would cost the City \$50,000 over the life of the contract. Other unions would then ask for "make-up" in the next round of negotiations.

Secondly, the City argues that the .5% temporary income tax increase could be in jeopardy in 4 years when it is up for renewal if the taxpayers perceive that the tax went for wage increases rather than services for which it was promised.

Union's Position: Adopt the position of the Fact Finder, that all bargaining unit employees, other than new-hires under the SAFER grant, be awarded a bonus of \$500 on January 15, 2018, and \$500 on July 15, 2018. The Union argues that this bargaining unit has been historically behind the others in pension pick-up, and a small differential in pay through a bonus is equitable.

Discussion:

Fact Finder Zeiser argues that a bonus will help to make up for the pension pick-up differential between other units and this unit. He further argues that a lump sum bonus will not compound for overtime and will not go into the base rate for compounding purposes in future.

Union Attorney Haines quoted Conciliator Prof. Dennis Byrne, in substance, that the Conciliator's award should validate the Fact Finder's recommendation unless the Conciliator finds errors in the reasoning of the Fact Finder, similar to the view that an appellate court would take. This Conciliator disagrees.

The Fact Finder and the Conciliator have substantially different roles. The Fact Finder attempts to fashion a recommendation which neither party rejects. Should the Fact Finder's report be rejected by either party, the entire Fact Finding process has been futile, leaving the parties back where they were prior to the hearing.

The Conciliator is under no such constraint. Conciliators may award from the position of the parties which they conclude is equitable based on the facts of the case, fully taking into account the recommendation and analysis of the Fact Finder and the provisions of OAC 4117-9-06.

In this particular case, the City has reached agreement for a 3-year wage freeze with all other bargaining units and imposed a wage freeze on non-bargaining employees. This is not an easy task, and the relationship for future city-wide bargaining of difficult issues rests upon the fragile trust that

all units be treated in like manner. Should this IAFF unit be granted additional compensation through a bonus while the others remain frozen, a city-wide agreement in future will be a most difficult task without demands for interlocking “me-too” clauses. Trust will have been tarnished.

The Firefighters argue that they are a special case due to a lesser pension pick-up than other units. At some time nine years ago, the Firefighters agreed to that differential. The trade-off which may have led to that differential is not in evidence now. Barring evidence to the contrary, the Conciliator must assume that all bargaining units are somewhat equal in pay and compensation going into a round of negotiations. Firefighters work different hours than others, have a unique schedule, have overtime calculated in a unique manner, have special training needs, etc. It is most difficult to compare apples of firefighters to apples of maintenance employees or office workers.

Award

In order to maintain a healthy labor relations environment in the future, and so that the City may maintain faith with the electors of the City who voted reluctantly for a temporary income tax increase, the Conciliator awards the position of the City with regard to wages. This Award puts Firefighters at no disadvantage with respect to other bargaining units of the City. The wage schedule of the Bargaining Unit will remain unchanged for the duration of this agreement.

Issue 2. Article XIV, Holidays (Personal Time)

Employer's Position: Current Contract Language.

The City argues that the trade-off for additional personal time was the limitation on cash-out. That trade-off helped the City to control absenteeism, which resulted in less overtime. Eliminating the limitation on cash-out could be costly to the City

Union's Position: Eliminate prohibition on cashing in personal time and charging vacation when a firefighter has more than 3 incidents of absence, and which absence causes overtime (eliminate Paragraphs 1 and 2 of Section 3, Personal Time).

The Union argues that no other unit has a penalty provision in their CBA's, and that it is unfair to penalize Firefighters who are absent for legitimate reasons.

Discussion:

In negotiations 3 years ago, the Firefighters added a third personal day with the ability to cash out that day if not used. A condition of the additional day was that any firefighter who had 3 or more sick leave incidents in a year could not cash out unused personal time. No other bargaining unit has a cash-out provision for personal time. The Firefighters agreed to the trade-off of additional personal time for the limitation on cash-out. Without compelling evidence of hardship to members, it is difficult to credit their case.

The City claims that the abuse of sick leave has been somewhat controlled by this provision. The Fact Finder recommended leaving this provision unchanged.

Award

There appears to be no compelling reason at this time to eliminate the control of absence provision as a condition of cashing out unused personal time. Accordingly, I award the position of the Employer – Current Contract Language.

Issue 3. Article XV, Vacation

Employer's Position: Eliminate Inspector position as a separate slot for selection of vacation days, and establish a sliding scale for vacation selection based upon workforce size.

Union's Position: Current Contract Language.

Discussion:

The City argues that at some future date, it may have reason to downsize the bargaining unit, at which time the current contract provision for selection of vacation slots would be cause for too many employees taking prime summer vacation slots. This could result in costly overtime to cover those slots. The City readily admits that the issue is not a current problem.

Since the current system for selection of vacation is not a burden on the City, it would be unfair to take away a perceived benefit to the Firefighters in a year when wages are frozen and employee health insurance premiums are rising.

Award

This is not a current difficulty for the City and is perceived as a benefit for the Union. The position of the Union is awarded – Current Contract Language.

4. Article XXIV, Health Care Benefits

Employer's Position: Same benefits as other employees. Premium to be higher than others for Option 1 (\$117/mo., v. \$75 single and \$192/mo. v. \$150 family) in second and third year of agreement.

Union's Position: Same benefit and same premium as other employees.

Discussion:

The City's position of charging this bargaining unit a higher premium than other employees is solely to "recoup" the \$500 bonus sought by the Union on January 15, 2018, and July 15, 2018. The city calculated the additional premium to equal the bonus sought by the Union should the final agreement contain the bonus.

This Conciliator has awarded the position of the City with respect to wages; that is, no bonus is to be paid to bargaining unit employees. Accordingly, the City's position on health care benefits premium differential is now moot.

Award

The Firefighters are to pay the same employee premium for Option 1 health insurance as other employees of the City in the second and third year of the CBA.

Article XXVI – HEALTH CARE BENEFITS

In relevant part:

Exhibit A or Option 1 (offered to members hired prior to January 1, 2011 only):

Employees shall contribute ten percent (10%) of the total monthly premium as determined by the insurance carrier's actuary for medical, hospitalization, prescription and dental coverage. During the first year of this agreement, employee's contribution shall not exceed \$50.00 per month for single coverage and \$100.00 per month for family coverage. During the second year of this agreement, employee's contribution shall not exceed \$75.00 per month for single coverage and \$150.00 for family coverage. During the third year of this agreement, employee's contribution shall not exceed \$75.00 per month for single coverage and \$150.00 for family coverage.

Etc.

Tentative Agreements:

All tentative agreements between the parties are incorporated herein and awarded as agreed.

Awarded this 29th day of August 2017:

A handwritten signature in black ink, appearing to read "Richard P. Gortz". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Richard P. Gortz, Conciliator