

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF :
CONCILIATION BETWEEN: : CASE NOS. 2017 -MED-02—0150
and 2017 MED- 02-0151
:
OHIO PATROLMEN'S BENVOLENT :
ASSOCIATION, :
:
Date of Hearing: September 6, 2017
Date of Award: October 6 , 2017
Union, :
and :
:
CITY OF MONROE :
:
Employer. :

CONCILIATION AWARD

JOHN F. LENEHAN, CONCILIATOR

P.O. Box 1766

Dayton, Ohio 45475-1766

Phone: (937) 673-2302

Email: Len289@aol.com

Representatives:

Union:

Joseph M. Hegedus, Esquire
Ohio Patrolmen's Benevolent Association
92 North Woods Blvd., Suite B-2
Columbus, Ohio 43235
Email: jmhege@opba.com
Phone: (614) 888-7901
Facsimile: (614) 888-7906

Employer:

Donald L. Crain, Esquire
Alexander L. Ewing, Esquire
FROST BROWN TODD LLC
Attorneys for City of Monroe, Ohio
9277 Centre Pointe Drive, Suite 300
West Chester, Ohio 45069
Phone: (513) 870-8200
Facsimile: (513) 870-0999
Email: dcrain@fbtlaw.com, aewing@fbtlaw.com

SERB:

Email: Mary.Laurent@serb.state.oh.us, med@serb.state.oh.us

CONCILIATION AWARD

I BACKGROUND

On August 15, 2017, The State Employment Relations Board (SERB) appointed John F. Lenehan as the Conciliator in the matter of the Ohio Patrolmen's Benevolent Association and the City of Monroe (Case Nos. 2017 –MED – 02-150 and 2017 – MED – 02- 0151). A Conciliation Hearing was held at 9:00 A.M. on September 6, 2017, in the City Manager's Conference Room, at the City Administration Building , 235 S. Main St., Monroe, Ohio 45050-0330. The Ohio Patrolmen's Benevolent Association ("OPBA", "Union" or "Association") was represented by Joseph M. Hegedus, Esquire. The City of Monroe ("City", "Monroe or "Employer") was represented by Donald Crain, Esquire and Alexander L. Ewing, Esquire of Frost Brown Todd LLC, Attorneys. In attendance on behalf of the OPBA were: Eddie Myers, Patrol Union President, and Brad Pelfrey, Sergeant Union President. William J. Brock, City Manager, Kacey Waggaman, Assistant City Manager, Tina Williams, Finance Director, and Robert Buchanan, Chief of Police were present on behalf of the City.

The parties agreed to forgo a formal hearing, as they did at the fact finding hearing, and rely on the documents submitted into the record. Both parties submitted binders containing their position statements and evidence on each issue of their final best offers. This evidence was accepted without objection and considered in accordance with Ohio Revised Code Section 4117.14, Ohio Administrative Code Section 4117-9-06. This award is being issued on October 6, 2017, within thirty (30) days as required by the foregoing provisions of the Ohio Revised Code and the Ohio Administrative Code.

A. Description of the Bargaining Units and Employer

The Union is the certified exclusive representative for two bargaining units. One unit consists of three (3) Sergeants; and, the other unit consists of about twenty-three (23)

Police Officers. The employees in the bargaining units perform general duty law enforcement services for the City of Monroe.

The Employer is a municipal corporation operating under a City Charter per the home rule provisions of the Ohio Constitution, Article XVIII, Section 7. The City is located off Interstate 75 in the northeast corner of Butler County, with part of it in the western section of Warren County. It became a city in 1995 when its population surpassed 5,000. At that time, it adopted a Council/Manager form of government, with Council members and the Mayor elected on a non-partisan basis. By 2000, the population had grown to 7, 133 and was estimated to be 12,442 in 2010. According to the Employer, its estimated population for 2016 is over 13, 400. The result of this growth has increased the City's assessed valuation and its income tax revenue. It has also greatly increased its public safety needs. Prior to 1995, the Employer operated with a Police Chief and part-time officers and/or volunteers. In December, 1995, the first full-time police officers were hired.

B. History of Bargaining

During the summer of 2001, members of the Monroe Police Department decide that they needed union representation and signed with the Fraternal Order of Police, Ohio Labor Council. Bargaining for the first contracts began in February of 2002. The OPBA has represented the bargaining units for the last two contract terms.

The parties met and engaged in negotiations on April 13 and 17, and May 10, 2017. As a result of those negotiations, they reached agreement on most issues. All tentative agreements are incorporated as being part of this Conciliation Award and the successor CBA. They will not be more specifically addressed in this report.

A fact finding hearing was held on July 14, 2017, before Fact Finder Felicia Bernardini.

C. Summary of the Fact Finder's Recommendations

Fact Finder Bernardini in her report made the following recommendations as to the Articles that were in dispute.

ISSUE 1: WAGES

Pay rates in Appendix B will increase as follows:

- 3% June 1, 2017
- 3% June 1, 2018
- 3% June 1, 2019

The Sergeant rank differential will increase by 1% effective June 1, 2017.

No new longevity benefit.

ISSUE 2: HOLIDAYS

Veteran's Day shall be added to the list of holidays for employees on the 4 and 2 schedule.

Current contract language for holiday compensation.

ISSUE 3: INSURANCE AND MOU

INSURANCE

Current contract language with an updated effective date of June 1, 2017.

MOU

1. For the period effective June 1, 2017 and ending December 31, 2018, the City agrees to fund 60% of the deductibles for bargaining unit members in their HSAs in

accordance with current practice, provided the City offers an HAS health insurance plan.

2. For the period effective January 1, 2019 and ending December 31, 2019, the City agrees to fund bargaining unit member HSAs at the lesser of 60% of the deductible or \$1500 for single plan enrollees and \$3000 for family plan enrollees, provided the City offers an HSA health insurance plan.
3. Effective January 1, 2020, the funding of bargaining unit member HSAs shall be at the discretion of the City.

D. Unresolved Issues

The following are the remaining unresolved issues for determination by the Conciliator.

1. Article 14 and Appendix B (Both Units)
 - a. Wages Increases
 - b. Sergeant Wage Differential
 - c. Longevity (Both Units)
2. Article 18 (Patrol) / Article 17 (Sergeants) – Holidays
3. Article 23 (patrol) / Article 22 (Sergeants) and MOU (Both Units)- Insurance

II CRITERIA

Under Ohio Revised Code, Sections 4117.14 (E) and (G) (7), and the Ohio Administrative Code, Section 4117-09-06 (H), the Conciliator is required to give consideration to the following criteria in choosing between the Parties' proposals, on an issue by issue basis. The aforementioned provisions of the Revised Code in pertinent part read as follows:

(G)(7)) The conciliator shall take the following into consideration in resolving the dispute between the parties:

- (a) Past collectively bargained agreements, if any, between the parties;

- (b) 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;
- (c) 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;
- (d) The lawful authority of the public employer;
- (e) The stipulation 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 final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

The remaining unresolved issues in this matter will be determined by giving consideration to all of the foregoing criteria, and thereafter, according to the provisions of the Ohio Revised and Administrative Codes, choosing between each of the Parties' final settlement or last best offer on the each issue.

III ISSUES

ISSUE 1: ARTICLE 14 AND APPENDIX B (Both Units)

Fact Finder's Recommendation

Pay rates in Appendix B will increase as follows:

- 3% June 1, 2017
- 3% June 1, 2018
- 3% June 1, 2019

The Sergeant rank differential will increase by 1% effective June 1, 2017 to 14%.

No new longevity benefit.

Union's Position

At fact finding the Union proposed the wage increases for the Patrol Unit over the term of a three year agreement of 5% effective June 1, 2017, 4% effective June 1, 2018 and 3% effective June 1, 2019. In addition it proposed a 2% increase in the Sergeant rank differential raising it from 13% to 15%. It also proposed a new longevity benefit for both units that would begin after five (5) years of service at the rate of 1% of base pay and increase at five (5) year intervals and 0.5% increments up to a maximum benefit at twenty-five (25) years of service, earning 3% of base.

As its last best offer for conciliation, the Union proposes wage increases of 4% effective the first full pay period after January 1, 2018; 4% effective the first full pay period after June 1, 2018; and 4% effective the first full pay period after June 1, 2019. It also maintained the 2% increase in the Sergeant rank differential from 13% to 15% and the proposal for a new longevity benefit for both units.

In support of its position, the Union submitted evidence that the base wages for the Monroe Police Department bargaining units are below average and are deserving of a market adjustment to bring them in line with wages paid throughout the state and comparable cities in the area. In addition, it submitted evidence that the City could afford to pay the increases it is proposing.

In addition, the Union maintains that the evidence supports its proposal to increase the Sergeant's rank differential to 15%. Such, according to the Union, is in line with both the average differential paid to sergeants throughout the state and in the area.

As to its proposed new longevity benefit, the Union maintains that SERB data on longevity benefits for Police Units in the Cincinnati and Dayton regions show that a full 62% of all Police unit contracts have a longevity benefit. Longevity is a well established norm. It is

reasonable and could help mitigate the gap between the Monroe wage scale and those of comparable area municipalities.

Employer's Position

Consistent with the Fact-Finder's recommendation, the City is proposing as its last best offer annual wage increases of 3% each year of a three year contract term. Also, it is proposing to increase the differential for Sergeants from 13% to 14%. This according to the City is a substantial wage increase offered in an attempt to reach a compromise. At the bargaining table and Fact-Finding, the Union, the Employer claims, communicated that the wage increased proposed by the Employer was acceptable. The Fact Finder agreed. Therefore, the Conciliator should recommend the City's proposal on wages.

In support of its position, the City submitted evidence that its proposal on annual wages was above the State of Ohio average settlements, the CPI increases and internal comparables. The City stated that it is willing to accept a deviation from its historical commitment to parity among its bargaining units for the purpose of this conciliation. However, there are no "extraordinary circumstances" in this case justifying a greater wage increase. Considering, the internal comparables and the statewide settlement averages, the City's proposal is generous.

The Employer also concurs with the Fact-Finder regarding the Union's proposal to add the new benefit of longevity into the contracts. It rejects this proposal for the following reasons. First, no other group in the City receives longevity. Second, it is no longer favored by fact-Finders and is not justified by economics or principle. Third, longevity payments are a substantial cost to the City. Fourth, Police Officers already receive generous wages and benefits. Fifth, retention of officers with longevity is no longer necessary because of the Ohio Police and Fire Pension Fund DROP program.

Discussion and Award

Based upon the evidence submitted and the Factfinder's Report and Recommendation, the Conciliator concurs with the recommendation and rationale set forth by the Factfinder. The Factfinder's report is based upon a careful analysis of the evidence, specifically, past and current wage increases, the cost of benefits, and internal and external comparables and factors. The Factfinder at page 9 of her report in relevant part states:

“. . . I am inclined to support the Employer's position on the wage increase. At three years of 3% raises the Employer's offer is higher than internal comparables; it is higher than the national inflation rate which has averaged 2.5% over the past five years, and significantly higher than the regional CPI data which is below 1% in recent years. The Employer's offer is also above average when compared to SERB's wage settlement data. Additionally, I agree that 5% and 4% raises do not generally sit well with the public when they are being asked to ante up more in taxes to pay for capital improvements and promote the sustainability of public services. Public finance is rife with examples of tax levies that have failed due to a public perception of excessive employee pay and benefits, whether the perception is merited or not.

As for the Sergeant rank differential, at its current 13% it is not so far off the norm that it needs significant adjustment. However, the Employer has offered to raise the differential by 1 % and that offer is accepted and incorporated into the final economic package.

The longevity benefit proposed by the Union is a common enough benefit as evidenced by Union's Exhibit 20. However, the exhibit also illustrates that a longevity benefit can take on a wide range of structures and values. The provided document identifies longevity benefits as small as a single annual lump sum payment of \$75 and as large as 11% of the base wage, as well as every conceivable variation between those two extremes. It seems clear that this is not the type of benefit that should be awarded by a fact finder, but rather negotiated by the parties in order to fully vet the pros and cons of the benefit, the value of the benefit, and the costs of the benefit, none of which are available in the particular fact finding scenario.”

While the evidence submitted by the Union establishes that the wages for the City's Police Department bargaining units are below average and deserving of a market adjustment, the Conciliator believes that an adjustment more than that recommended by the Fact Finder would not be in the public interest. The recommendations of the Fact Finder balance the needs of bargaining units' employees for a fair wage increase and the Employer to pay for

capital improvements, increased public services and maintain morale and a degree of parity with other bargaining units.

Therefore, the Conciliator finds that the Employer's last best offer as set forth in Conciliation Exhibit No.3 of the Employer's exhibits, should be, and hereby is adopted and incorporated into the successor CBA.

ISSUE 2: ARTICLE 18 (Patrol) ARTICLE 17 (Sergeants) – HOLIDAYS
Fact Finder's Recommendation

Veteran's Day shall be added to the list of holidays for employees on the 4 and 2 schedule.

Current contract language for holiday compensation.

Union's Position

At the Fact finding, the Union proposed to add Veterans Day to the list of paid holidays for unit members working four days on two days off schedule (4 and 2), and to add language that would provide for regular holiday work compensated at 1.5 times the straight time rate, and all overtime holiday work compensated at 2.5 times the straight time rate. According to the Union, including Veterans' Day as a holiday for the 4 and 2 work schedule is a matter of internal parity. All other employees in the municipality receive the day as a holiday and there is no particular reason to carve out this group of bargaining unit employees and treat them differently than their coworkers. As for holiday premium pay, the Union's proposal is consistent with the holiday premium benefit found in the Police Unit contracts in comparable municipalities.

As its last best offer for Conciliation, the Union requested that Veterans Day be added, but did not include a proposal for premium pay in its Position Statement for Conciliation.

Employer's Position

At the Fact Finding, the Employer opposed both of the Union's proposals pertaining to Holidays. The City now accepts the Fact Finders proposal to add Veterans Day on a 4 on, 2 off schedule as its best and final offer. However, it rejects any additional premium pay. Such, according to the Employer is simply not justified. Under the Union's Fact Finding proposal if an employee earns overtime on a holiday, he or she will be paid 3.5 times the regular rate.

Discussion and Award

Based upon the evidence submitted and the Position Statements of the parties, the Conciliator concurs with the Fact Finder. There is no logical reason to carve out the small group of employees on the 4 and 2 schedule and exclude them from the Veterans' Day holiday. The Employer's calculation of the cost of providing this benefit is approximately \$7032, which is minimal in comparison to the equity achieved by providing the benefit.

However, the Union's Fact Finding proposal to increase holiday pay to premium pay for all holidays rather than limiting it to Thanksgiving , Christmas and new Year's Day , as is current practice, would be an overreach not supported by internal or external comparables. For this reason current contract language on this issue should remain in place.

Therefore, the Conciliator finds that the Employer's last best offer as set forth in Conciliation Exhibit No.4 of the Employer's exhibits should be adopted and incorporated into the successor CBA. This exhibit also includes the tentative agreement reached by the parties on July 14, 2017.

ISSUE 3: ARTICLE 23 (Patrol)/ ARTICLE 22 (Sergeants) and MOU-INSURANCE

Fact Finder's Recommendation

INSURANCE

Current contract language with an updated effective date of June1, 2017

MOU

1. For the period effective June 1, 2017 and ending December 31, 2018, the City agrees to fund 60% of the deductibles for bargaining unit members in their HSAs in accordance with current practice, provided the City offers an HAS health insurance plan.
2. For the period effective January 1, 2019 and ending December 31, 2019, the City agrees to fund bargaining unit member HSAs at the lesser of 60% of the deductible or \$1500 for single plan enrollees and \$3000 for family plan enrollees, provided the City offers an HSA health insurance plan.
3. Effective January 1, 2020, the funding of bargaining unit member HSAs shall be at the discretion of the City.

Union's Position

The Union proposes to maintain current contract language, with updated effective dates, in all existing provisions of the Insurance Article. In addition, the Union proposes a new section that provides for Employer funding of HSAs for all bargaining unit plan participants at 60% of deductibles for each year of the three year contract. The Union seeks to continue the Employer's current practice.

Bargaining unit members contribute 17% to their monthly healthcare premium which is higher than the average percentage paid by public employees in the area. According to SERB's recent published healthcare data the average percent of premium paid by employees in the Cincinnati Region is 13.5% for single coverage and 14.8% for family coverage. The average percentages for the Dayton Region are 14.1% and 15% respectively. The higher premium for the City of Monroe employees is offset by the Employer's practice of annually prefunding 60% of the HSA.

Healthcare inflation is expected to be in double digits. Therefore even with the percentages currently in place, health care costs will be going up for employees. Given that base wage rates for the bargaining units are below average, and current healthcare contributions are above average any further increases in contributions would be an unacceptable financial burden to the employees in the bargaining units.

Employer's Position

The City proposes the Fact Finder's proposal to maintain the health insurance collective bargaining language as is, along with a revision of the insurance MOU as follows:

1. For the period effective June 1, 2017 and ending December 31, 2018, the City agrees to fund 60% of the deductibles of the bargaining unit members in their HSAs in accordance with current practice, provided the City offers an HAS health insurance plan.
2. For the period effective January 1, 2019 and ending December 31, 2019, the City agrees to fund bargaining unit members HSAs at the lesser of 60% of the deductible or \$1,500 for single plan enrollees and \$3,000 for family plan enrollees, provided the City offers an HAS health insurance plan.
3. Effective January 1, 2020, the funding of the bargaining unit member HSAs shall be at the discretion of the City.

According to the Employer, health insurance is the most important issue for purposes of this Conciliation hearing. It is the only issue that kept the parties from reaching an agreement at Fact-Finding. The City strongly disagrees with the Union' proposal to include language from the parties' separate MOU on health insurance in the collective bargaining agreements. The City does not desire to re-execute the MOU or include similar language in the CBA. However, the City is willing to compromise its position to reach agreement with the Union. Under the compromise recommended by the Fact Finder, the City maintains the current funding of deductibles through December 31, 2019, and then the MOU ceases to impact the City's health savings funding.

The city's concern is flexibility. While the City does not intend to reduce the HSA benefit, the 60% amount may become unsustainable depending on the availability of plans. The Employer claims that the Union's proposal is inconsistent with the purpose of an HSA. The purpose of HSAs is to encourage employees to be wise health care consumers and to save for future expenses. The mandating a 60% deductible payment removes the incentive to save and to be cost-conscious regarding health care decisions.

The City maintains that there never was any desire on its part to mandate the language of the MOU in perpetuity. The Union's proposed inclusion of the MOU into the permanent contract places an undue burden on the City and prevents it from making efficient and effective

decisions regarding employee coverage. The Fact Finders recommended language presents a compromise that adequately protects the bargaining unit members during this contract term.

Discussion and Award

Based upon the evidence, and the Position Statements of the parties, and the Fact Finder's Recommendation, the Conciliator concurs with the Fact Finder's rationale and recommendation. The Fact finder at pages 10 and 11 of her report states:

"Both parties have proposed continuing all existing provision of the Insurance Article as they are with an updated effective date for the new contract. The Union has proposed adding a new section that would codify the Employer's practice of prefunding employee HSAs at 60% of the healthcare deductible. Currently the benefit is \$1,500 for the single plan and \$3,000 for the family plan. The parties have legitimate concerns about the rising costs of healthcare and the potential effect of those costs on an individual household budget and the City's budget. In an effort to find an overall settlement package I recommend that the Employer continue the current HSA funding level of 60% of the plan deductible through the end of the calendar/benefit year 2018. For one additional year, calendar/benefit year 2019, I recommend funding the HSAs at the lesser of 60% of the plan deductible or \$1,500 for single plan and \$3,000 for the family plan. This 'transition' year would cap Employer costs at the 2017 benefit level. In the final year, calendar/benefit year 2020 the funding of HSAs would be at the discretion of the Employer. The advantage to changing the terms of the HAS benefit one year at a time is that it gives bargaining unit members two years to plan for a possible cost increase in funding their individual HSAs. It also provides for the opportunity to return to the bargaining table in the same time frame as the final change in the benefit structure. For the Employer, adopting the recommended year by year change stabilizes costs in 2019 at today's level (which is affordable given the City's healthy financial condition) and then achieves the goal of reverting to a discretionary benefit by the end of the CBA. It is worth emphasizing that although this recommendation leads to an outcome that gives discretion to the Employer, the Employer has indicated its intention to continue to provide some level of benefit to the extent that budgetary constraints reasonably allow. A final recommendation on this provision is to make it an MOU rather than add a section to the CBA. The thought process behind this recommendation is simply that the benefit is not currently part of the CBA; It only requires the Employer to maintain the benefit for the next two years, and mandatory continuation of the benefit expires prior to the expiration of the CBA."

The employer in its Pre-Hearing Statement has made a compelling argument for the Conciliator deferring to the Fact Finder's Report. The prevailing view subscribed to by most conciliators is that the Recommendation of the Fact-Finder should be afforded considerable weight. As SERB Conciliator Dennis Byrne found:

“A conciliator is not bound to follow the fact finder’s recommendations, but only a foolish or naïve conciliator will change the fact finder’s recommendations without an overriding reason. In general, the party that disagrees with the fact finder must prove that the neutral made some mistake in fact or logic. If the moving party cannot adequately prove that the fact finder made a mistake, then there is no reason for a conciliator to make a different recommendation than the fact finder. . . Whether or not a conciliator agrees with the recommendation is somewhat beside the point. The conciliator must be deferential to the fact finder unless it can be proved that the fact finder made a serious error in his/her report. This means that the bar has been set very high for the party that wishes to have the fact finder’s recommendations modified. “

In the absence of any evidence that the Fact finder made a mistake in fact or logic or a serious error in her report, the Conciliator concurs with the Fact Finder’s Recommendation. Therefore, the Conciliator finds that the Employer’s last best offer as set forth in Conciliation Exhibit No 5 of the Employer’s exhibits, should be, and hereby is adopted and incorporated into the successor CBA.

CERTIFICATION

The Conciliation Report and Award are based on the position statements, and the evidence and testimony allowed to be presented under the provisions of the Ohio Revised and Administrative Codes to me for the hearing conducted on September 6, 2017. Recommendations contained herein are developed in conformity to the criteria for fact finding and conciliation found in the Ohio Revised Code 4717(7) and in the associated administrative rules developed by SERB. In addition, all tentative agreements (TAs) previously reached by the parties, along with all sections of the current Agreement not negotiated and/or changed, are incorporated by reference into the Conciliation Award and should be included in the resulting successor collective bargaining agreement.

Respectfully submitted,

/s/ John F. Lenehan
John F. Lenehan
Conciliator

October 6,, 2017

PROOF OF SERVICE

This Conciliation Report was electronically transmitted this 6th^t day of October 2017, to the persons named below.

Representatives:

Union:

Joseph M. Hegedus, Esquire
Ohio Patrolmen's Benevolent Association
92 North Woods Blvd., Suite B-2
Columbus, Ohio 43235
Email: jmhege@opba.com
Phone: (614) 888-7901
Facsimile: (614) 888-7906

Employer:

Donald L. Crain, Esquire
Alexander L. Ewing, Esquire
FROST BROWN TODD LLC
Attorneys for City of Monroe, Ohio
9277 Centre Pointe Drive, Suite 300
West Chester, Ohio 45069
Phone: (513) 870-8200
Facsimile: (513) 870-0999
Email: dcrain@fbtlaw.com, aewing@fbtlaw.com

SERB:

Donald M. Collins, SERB General Counsel
Assistant Executive Director and Administrator over Bureau of Mediation
65 East State Street, 12th Floor
Columbus, Ohio 43215-4213
Email: Mary.Laurent@serb.state.oh.us, med@serb.state.oh.us

/s/ John F. Lenehan
John F. Lenehan

