

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Conciliation Matter of

CITY OF READING)	
)	CASES NOS.
)	2017-MED-09-1087,
AND)	2017-MED-09-1088,
)	2017-MED-09-1089
FRATERNAL ORDER OF POLICE,)	
OHIO LABOR COUNCIL, INC.)	

CONCILIATION AWARD

MELVIN E. FEINBERG, CONCILIATOR

APPEARANCES:

FOR THE EMPLOYER:

Patrick G. Ross, Safety Service Director
The City of Reading

FOR THE UNION:

Barry Gray, Senior Staff Representative
Fraternal Order of Police, Ohio Labor Council, Inc.

SUBMISSION

This matter concerns the Conciliation proceeding between the City of Reading, Ohio, and the Fraternal Order of Police, Ohio Labor Council, Inc. (Union).¹ The State Employment Relations Board (SERB) appointed the undersigned Conciliator on December 21, 2017. The Parties engaged in two (2) negotiation sessions over the wage reopener, the only issue involved herein, mandated in the Contract's ARTICLE 12 WAGES.² On November 30, 2017, the Fact Finder issued a report, which was accepted by the Union, but was rejected by the City of Reading.

Pursuant to the mutual agreement of the Parties regarding the scheduling of this case, and subsequent to the granting of a postponement for good cause by the Conciliator, the Conciliation Hearing was held in this matter on February 7, 2018, in the City of Reading's City Hall. Prior to the conciliation hearing, as required by SERB rules, the Parties filed position statements covering the three bargaining units in this case. The Union filed a position statement that fully complied with the rules concerning the filing of position statements in conciliation cases. The Employer timely filed its position statement with the Conciliator via email and served a copy on the Union.

¹ The City of Reading is also referred to herein as Reading, the City, or the Employer. The Fraternal Order of Police, Ohio Labor Council, Inc., is also referred to herein as the Union. The Parties on October 27, 2017, executed an "Extension Agreement" which, among other things, waived the provisions of 4117.14(G)(11) in regard to all matters of compensation "or with cost implications which may be awarded by the conciliator in accordance with Chapter 4117 O.R.C. and agree that the conciliator may award wage increases or other matters with cost implications to be retroactive to January 1, 2018."

² The Parties executed and submitted a "Conciliation – Waiver of Record" form which was received into evidence as part of the record on February 7, 2018, by which they agreed to "...waive the composition of a verbatim written record of the Conciliation...and to accept the Conciliator's notes and the documentary evidence received as a full and complete record consistent, and in full compliance, with O.R.C. Section 4117.14(G)(6)."

The Union filed a written motion at the hearing asserting that the Employer's position statement did not meet SERB requirements in certain respects as set forth in O.A.C. Rule 4117-9-06(E). Accordingly, it requested that the Conciliator reject any evidence offered by the Employer at the Conciliation Hearing. The Employer's introductory transmittal memorandum accompanying the Employer's position statement contained the name of the party, the identity of its chief representative, and the telephone number of that principal representative. SERB's initial December 21, 2017, letter of appointment contained the name and address of the City of Reading and the name of its chief representative.

The Employer, as the Union asserted, did not submit a copy of the current collective bargaining agreement between the Parties with its position statement. It is true, as the Union asserted, that the Employer's position statement did include a description of the bargaining units involved, but did not contain the number of bargaining unit employees involved. The description of bargaining unit employees and their titles are set forth in detail in the Fact Finder's Report. It is also true that the Employer did not in its position statement provide its offer "in contract language" form or indicate the effective date of its offer. However, the Fact Finder's Report, which is part of the record, contained the information regarding the Employer's wage offer. In any case, the Employer was permitted to fully participate in and to present evidence at the Conciliation Hearing as its position statement, together with the Fact Finder's Report and the Union's submission of the current collective bargaining agreement, contained sufficient information to proceed with the hearing.

The Conciliator offered to mediate the outstanding wage issue between the Parties, but they expressed a desire to immediately proceed to hearing. The conciliation proceeding was conducted in accordance with rules and regulations of SERB. At the conclusion of the hearing, the Conciliator suggested a formula to settle the case and the Parties agreed to take one week to seriously consider the settlement suggestion. At the end of that week, the Union rejected the settlement proposal and requested that the Conciliation Award issue.

BACKGROUND

The Employer recognizes the Union as the sole and exclusive representative for all employees covering three bargaining units certified by the State Employment Relations Board, including the following: Unit A - Permanent full-time Dispatchers & Clerks; Unit B - Permanent full-time Patrolmen; Unit C - Permanent full-time Lieutenants.

Excluded from the bargaining units are the Police Chief and all positions and classifications not specifically included in the units.

The Fact Finder correctly noted in her portion of her Report entitled "Description of Employer":

The Employer is the City of Reading, Ohio. The City of Reading is located in Hamilton County and is a suburb of Cincinnati, Ohio, in southwestern Ohio. The City of Reading is a blue-collar community. According to the census data, the population as of 2014 for the City of Reading was 10,354.... Both the estimated per capita income of \$24,535 and [the] median income of \$43,353 are up from the 2010 census but fall[s] below the state levels. According to the state of Ohio's unemployment rates for September 2017 (not seasonally adjusted) Hamilton County's (and Reading's) unemployment rates are ... below the State's unemployment levels. There are no known employers in the area that have left ...[thereby causing]...a negative financial economic impact on the City of Reading.

As the Union noted in its position statement, there are currently 22 employees in the three bargaining units, which are as follows: Three (3) in the Dispatcher & Clerk unit; Fourteen (14) in the Patrolman unit; Five (5) in the Lieutenants unit.³

CONCILIATION CRITERIA

The Ohio Public Employee Bargaining Statute sets forth the following criteria which the Conciliator is mandated to consider and has considered in making the Award in these cases. The criteria are set forth in ORC 4117.14 (G) (7) (a)-(f) and OAC 4117-9-06 (H) (1)-(6) and are as follows:

(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 as 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;

³ The Fact Finder found there were 22 employees in the three bargaining units, but found a slightly different numerical composition in the Patrolmen's and Lieutenants' units. Ultimately, the numerical differences are of little importance to this case as the Parties are aware of what the true numbers are.

(6) 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 Conciliator, in arriving at his Award, was also guided by the Parties' oral and written presentations on the issue, by the testimonial and documentary evidence presented during the proceedings, and by the record as a whole.⁴

THE OUTSTANDING ISSUE, POSITIONS OF THE PARTIES, and ANALYSIS

1. THE ISSUE: ARTICLE 12 WAGES (pursuant to the Contract's reopener)

2. POSITIONS OF THE PARTIES

A. Employer's Position:

The Employer, in its position statement, contended that it has "virtually zero money in its reserves" and relies "primarily upon our 2% earnings tax to fund our police, fire, public works departments." It submits that its new three-year contract with the I.A.F.F., Local 3717 for its firefighters provided that their wages for 2018 and 2019 would be "directly tied to the earnings tax revenue the City received for the prior year." The Employer noted that, "Based upon the City's tax revenue, the Fire Department union members will be receiving a ZERO percent increase in their wages for 2018." It

⁴ See Appendix for certain information tables which were relied upon by the Parties and/or which may have aided the Conciliator in reaching his conclusions. The Parties introduced other tables containing even more detailed financial information into the record and they too were considered by the Conciliator, even if they do not appear in the Appendix, as they were too voluminous to reproduce.

asserted that it has the same type of tentative agreement regarding wages with the Service Department Union for the bargaining unit employees that union represents. However, the Employer did not in its position statement or at the Conciliation Hearing present its actual proposed wage formula in contract language proposal form for the employees in the Union's bargaining units involved herein. Nevertheless, its formula wage proposal appears in the Fact Finder's Report and also in the Union's position statement. The Employer did present evidence of the formula as agreed to by the Reading Career Firefighters Association (IAFF) in its recent contract.⁵

The Employer believes that the Union should be awarded wages according to the same wage formulas to which the I.A.F.F., Local 3717 and AFCSME agreed in their newly negotiated respective three-year contracts. According to the Employer, as earlier noted, that formula would provide a ZERO percent increase to the 22 members of the bargaining units involved herein, as, it maintains, it has not received any revenue increases which would permit any increase. Moreover, the Employer asserts that, in view of its revenue situation – it had a 6% total income tax revenue decrease in 2017 – that 0% is what it can afford. It also notes that its year-to-date payroll withholding income tax receipts have decreased 6.7%. The Employer argues that, in view of those decreases, it does not forecast that its budget will be able to absorb the 2.5% across-the-board increase recommended by the Fact Finder. The Fact Finder observed that the Employer's "Earnings Tax collection as of October, 2017 is down \$147,990 from the

⁵ Apparently, the Employer's "Formula" wage offer to all members of the bargaining units herein regarding their wages for 2018 and 2019, respectively, would be as follows: 1. A 2% wage increase if the City's earnings tax receipts are greater or equal to 1.5% of the prior year; 2. A 3% wage increase if the City's earning tax receipts are greater or equal to 5% of the prior year; 3. A 0% wage increase if the City's earnings tax receipts are less than 1.5% of the prior year.

2016 collection, and even if the FOP (Union) was given a 1% wage increase, it would cost an estimated \$23,000, which would increase the current deficit to \$171,275.83.

The Employer presented comparability examples for eight cities of comparable population but varying median household incomes to illustrate that “Patrol Salaries” for the City of Reading are comparable to such salaries in its sample. It maintains when the median household income of Reading residents is considered, wages paid to Reading patrol officers are currently comparable to wages paid to patrol officers in cities in the Employer’s comparability sample.⁶ In conclusion, the Employer wishes to maintain its current wages for all employees employed in the three collective bargaining units involved herein.

B. Union’s Position:

The Union, as was noted above, accepted the Fact Finder’s Report and the conclusions contained therein. Accordingly, it proposes, as its last and final offer, the granting of a 2.5% across-the-board wage increase, retroactive to the first full pay period in 2018, at all wage levels as they appear in the Parties’ current collective bargaining agreement for all employees in the three bargaining units – *i.e.*, Clerk/Dispatchers (A-I), Patrol Officers (A-H), and Lieutenants (A).

The Union presented evidence that the Employer, which argues against any wage increases for the bargaining unit employees in the three units involved herein, granted a 6.25% wage increase to the Safety Service Director on December 27, 2016. It noted

⁶ The Appendix contains the Employer’s comparability tables contrasting patrol officers wage information for comparable cities, including Reading, and the median household income information for those cities and/or villages for 2017. However, the City of Deer Park has a population of 5674, and the Villages of Evendale and Lockland have populations of 2767 and 3449, respectively. They were not included in the Union’s comparability samples because, no doubt, their populations were deemed too small to be comparable.

that the Employer on December 8, 2015, also granted 1.5% wage increases to its Auditor in 2016, 2017, 2018 and 2019 respectively. The Union's evidence reveals that the Employer also granted 3% wage increases on December 1, 2015, to the City Clerk, Chief of Public Works, and Assistant Fire Chief, respectively. The Union argued that none of the aforementioned raises granted to those employees were made contingent upon any revenue increases.

The Union argues that the income tax receipt summary dated January 15, 2018, reveals that the 2017 income tax receipts were down because of a \$250,000 collection anomaly occurring only in July 2016. It also notes, and presented evidence in support of its contention, that 2018 budgeted revenue for the Employer has actually significantly increased.

The Union submitted wage comparability evidence comparing 2017 wages for patrol officers employed in eight other cities located in Hamilton County, Ohio, with similar population numbers.⁷ Seven of those cities had collective bargaining agreements covering their patrol officers which provided for longevity benefits, and one of the seven, Wyoming, Ohio, also provided a pension pick-up benefit. Only one city of the eight, Harrison, Ohio, failed to provide its patrol officers with either longevity or pension pick-up benefits. The Union observed that for 2017 its comparability evidence on wages of patrol officers in the eight sample cities reveals that the average wage paid to those patrol officers by all eight cities was \$72,584.55. During the same time period, the Employer's compensation of its patrol officers averaged \$70,102.90, *i.e.*, 3.5% less than the sample average. The Union's statistical evidence comparing patrol officers wage

⁷ See Appendix for the Union's comparability table regarding wages for patrol officers in the 8 cities similar to Reading, Ohio, in population.

increases granted statewide for the years 2011 through 2016 total 10.43%, versus total wage increases granted to the Employer's patrol officers of 3.5% during that same time period. Consequently, the Union argues that the Employer's patrol officers' granted wage increase percentages, during those aforementioned years, have fallen 6.93% below the average percentage wage increases granted to patrol officers statewide.⁸ Moreover, SERB's Annual Wage Settlement Report indicated that police officers employed in the Cincinnati, Ohio, region in 2016 received average wage increases of 2.36%, but the Employer granted its patrol officers only a 1.5% wage increase that year.

3. ANALYSIS

Reading is a small city with a limited tax source that has learned to carefully adjust its expenditures so as to live within its means. It has, as have all cities in Ohio, had to adjust to losses of revenue caused by the State's legislative policies. I am mindful of the fact that it depends primarily upon its 2% wage and earnings tax to fund its police, fire, and public works departments. However, it has a relatively stable rate of employment, *i.e.*, low unemployment. Moreover, it has maintained a consistent number of employers and has not recently been threatened by any great exodus from those employers.

I have carefully considered the Employer's wage proposal and the negative factors cited by it against the Union's wage proposal and the evidence in support thereof. I have also considered the positive and negative aspects of the Union's wage proposal and the documentary evidence in support thereof. I have examined the Parties' wage

⁸ See Appendix for the table relied on by the Union for comparing the average percentages of granted police wage increases statewide to Reading's wage increase percentages for patrol officers.

proposals in light of the mandatory conciliation criteria set forth above.⁹ That criteria mandates the Conciliator to place significant weight on the wages paid by comparably sized cities in the Hamilton County area. It places less specific emphasis on considering the median household income of residents in the comparable cities sample being offered by the Parties. I note that in this case, the Employer is not pleading poverty or a complete inability to pay any mandated wage increase which may be granted in this case. The Employer's financial analysis evidence reveals that its total income taxes collected YTD (2017-2018) has slightly decreased. Nevertheless, the economy of the state of Ohio seems to be improving, and the economic outlook for Hamilton County and the greater Cincinnati area appears to be relatively better than many other areas of Ohio. Moreover, the Employer is capable of making budgetary adjustments if necessary and is no danger of insolvency.

In examining the Employer's "formula" wage proposal, I am mindful of the fact that the Employer's firefighters and service employees have accepted the Employer's formula wage proposals for their respective units. However, the issue involved herein only involves a wage reopener matter in the Union's contract, which expires on December 31, 2018, while the firefighters and service employees' contracts cover wage agreements for three years. Under the circumstances, it would be inappropriate to apply a "pattern bargaining" solution to these cases. Furthermore, I am in agreement with the Fact Finder who stated, "...it is worth noting that the City's proposal to increase wages based upon increases in the General Fund... is fraught with problems. Since the General Fund can be increased or decreased based upon a re-apportionment by the

⁹ As was previously noted, those criteria are set forth in ORC 4117.14(G)(7)(a)-(f) and OAC 2117-9-06(H)(1)-(6).

City (e.g. City Earning Tax Collection can be apportioned between a Capital Improvements Fund and the General Fund), City management has the ability to control revenues in the General Fund. This is not to suggest, in any way, that the City intended to manipulate wages based upon this formula, but that the opportunity to do so makes such a formula fraught with problems.”

The Union’s proposal that all employees in the three bargaining units involved herein receive an across-the-board pay raise of 2.5% does not appear unreasonable in view of the Union’s comparables in evidence in this case.¹⁰ As was noted, those comparables indicate that similar Hamilton County, Ohio, cities with populations approximating those of Reading, Ohio, have an average pay difference for their patrol officers of 3.54% greater than patrol officers in Reading. The comparable municipalities relied on herein may not be all of the comparable municipalities that could have been listed, but they are in the greater Cincinnati area and Hamilton County, and for the most part, reflect the economic realities of that area.

After considering all the evidence on the wage reopener issue in these cases, in light of the applicable mandated criteria, including the comparables, the oral arguments of the Parties, the record as a whole, and the Fact Finder’s Report, I conclude that the Union’s wage proposal with its effective date, which mirrors that of the Fact Finder, is reasonable, affordable, equitable and, in the last analysis, preferable to the proposal urged by the Employer.

¹⁰ I reach this conclusion even after considering the Employer’s argument and evidence concerning “Median Household Income” of its comparable cities.

AWARD

I hereby award, in the three cases involved herein, an across-the-board 2.5% wage increase retroactive to January 1, 2018, to all bargaining unit employees occupying the positions of Clerk/Dispatcher, Patrol Officer, and Lieutenant. The current Contract Language ARTICLE 12 WAGES is mandated to read as follows:

ARTICLE 12 WAGES

Effective the beginning of the first full pay period of 2018, wage and salary rates for bargaining unit personnel shall be as set forth below:

CLERK/DISPATCHER

	A	B	C	D	E	F	G	H	I
2018 Annual Rate	\$46,203.89	\$48,052.70	\$49,975.15	\$51,973.54	\$54,052.58	\$56,214.30	\$56,848.90	\$57,609.66	\$58,117.15

PATROL OFFICER

	A	B	C	D	E	F	G	H
2018 Annual Rate	\$55,921.84	\$57,599.54	\$59,327.73	\$61,107.57	\$63,884.64	\$66,435.36	\$69,091.04	\$71,855.47

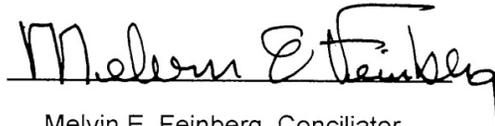
LIEUTENANT shall be 15% greater than Patrol Officer Step H Rate.

	A
2018 Annual Rate	\$82,633.79

CONCLUSION

In conclusion, this Conciliator hereby submits the above referred to AWARD on ARTICLE 12 – WAGES presented for his consideration.¹¹

March 5, 2018
Date


Melvin E. Feinberg, Conciliator

¹¹ The Conciliator also incorporates by reference into the Contract any other tentative agreements reached by the Parties if such agreements exist.

APPENDIX

**SOME TABLES PRESENTED BY THE PARTIES
RELIED UPON BY THE CONCILIATOR***

UNION'S TABLES:

**WAGE COMPARISON, CITIES IN HAMILTON COUNTY, OHIO,
WITH POPULATION OF +/- 2,500 OF READING**

CITY	POPULATION	2017 WAGE	L / P*
Springdale	11,182	\$79,019.20	L
Blue Ash	12,159	\$77,875.20	L
Maderia	8,976	\$77,417.60	L
Montgomery	10,625	\$75,982.40	L
Wyoming	8,411	\$70,332.29	L & P
Reading	10,324	\$70,102.90	L
Harrison	10,666	\$67,579.20	
North College Hill	9,332	\$62,367.61	P
AVERAGE	10,209	\$72,584.55	\$2,481.65 or 3.54% greater than Reading

*L = Longevity

*P = Pension Pick-Up

POLICE WAGE COMPARISON VERSUS STATE AVERAGES

YEAR	STATE	READING
2011	0.96%	0
2012	1.20%	0
2013	1.66%	0
2014	2.03%	0
2015	2.22%	2%
2016	2.36%	1.50%
TOTAL	10.43%	3.50%

READING POLICE HAVE FALLEN BEHIND THE AVERAGE 6.93%

*All tables and charts appearing in Fact Finder's Report were considered by Conciliator in his analysis in arriving at his Award.

**STATE EMPLOYMENT RELATIONS BOARD ANNUAL WAGE SETTLEMENT REPORT
(Partial)***

Wage Settlement Breakdown (2016)

Comparison Group	2016
Statewide	2.18
Region – Cincinnati	2.41
Jurisdiction	
City	2.22
County	2.23
Unit Type – Police	2.36

* Based on Percent Wage Increases negotiated in Collective Bargaining Agreements (CBA).

EMPLOYER’S TABLES:

CITY OF READING PATROL SALARY COMPARISONS 2017

JURISDICTION	PATROL SALARY	POPULATION	MEDIAN HOUSEHOLD INCOME
City of Reading	\$70,102.00	10317	\$41,672.00
City of Blue Ash	\$77,875.00	12228	\$70,321.00
City of Deer Park	\$68,223.00	5674	\$46,094.00
City of Maderia	\$77,417.00	9049	\$83,073.00
City of Mount Healthy	\$59,404.80	6030	\$33,321.00
City of North College Hill	\$62,367.00	9322	\$39,676.00
Village of Evendale	\$78,332.00	2767	\$110,357.00
Village of Lockland	\$48,651.20	3449	\$33,797.00

**CITY OF READING INCOME TAX RECEIPT SUMMARY WITH PRIOR YEARS
COMPARISON (YTD PROGRESS JANUARY 2018)**

TOTAL INCOME TAXES COLLECTED

	2015	2016	2017	2018	% Change 17 to 18
YTD Progress	\$608,800	\$645,734	\$671,908	\$633,108	-5.8%

**CITY OF READING 2017 YEAR END INCOME TAX RECEIPT SUMMARY WITH PRIOR
YEARS COMPARISON**

TOTAL INCOME TAXES COLLECTED

	2014	2015	2016	2017	% Change 16 to 17
YTD Progress	\$6,763,064	\$6,934,008	\$7,311,314	\$7,267,832	-0.6%