

**CONCILIATION AWARD
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
SEPTEMBER 5, 2018**

In the Matter of:

)	Case No.:
City of Athens, Ohio)	2017-MED-10-1302
and)	
Fraternal Order of Police, Ohio Labor Council, Inc. Communications Officers)	Carol J. Bader, Esq. Conciliator

APPEARANCES:

For the Employer:

Andrew Esposito, Esq.
Shareholder/Account Manager
Clemans, Nelson & Associates
485 Metro Place, Suite 200
Dublin, Ohio 43017

For the Union:

Andrea Johan, Esq.
Senior Staff Representative
FOP, Ohio Labor Council, Inc.
222 East Town Street
Columbus, Ohio 43215

Team Members:

Andy Stone, Service-Safety Director
Rebecca Marsh, Human Resources Director

Team Members:

Sheena Deak, FOP Labor Rep
Amber Guthrie, FOP Labor Rep

Background:

The undersigned was duly appointed as Conciliator on July 2, 2018 under Ohio Revised Code 4117.14 (D) (1) by the Fraternal Order of Police (hereinafter FOP or "union") and the City of Athens (hereinafter "city" or "employer"). The current contract consists of three bargaining units, Police Lieutenants, Police Patrol and Civilian Communications Officers. The parties negotiated to have the Communications unit create a stand-alone contract. There are currently four full time civilian dispatchers covered by the agreement, with a part time employee scheduled to be hired in the near future (Stone, Deak). They provide dispatch services for the City of Athens Police Department, monitor police officers when they are on calls, handle walk-in traffic for parking tickets and other issues, run LEADS inquiries and reports for the local court system, and serve as back-up Fire dispatch, if the County 9-1-1 system goes down.

The parties met to negotiate on November 6 and 7, December 15 and 20, January 22 and February 12, 2018 (SERB Mediation). On April 29, a multi-unit Fact-Finding was held before Harold Silver, who issued his report May 31st. The Factfinder's recommendations were accepted by the City, Lieutenants and Patrol units. However, the dispatch unit rejected his recommendations and report. As "dispatchers employed by a police, fire or sheriff's department", they have no right to strike and "shall submit to a final settlement offer procedure."(4117. 14 (D) 1) Therefore, they are subject to the conciliation process under the Ohio Collective Bargaining law for public employees.

The hearing was held on August 22, 2018 in a conference room at the City of Athens building, in Athens Ohio. Each party submitted a timely position statement to the conciliator. The Unresolved Issues prior to the hearing were:

1. Article 16 Hours of Work and Overtime
2. Article 18 Shift differential
3. Article 21 Vacation
4. Article 24 Uniforms
5. Article 25 Insurance
6. Article 33 Duration
7. Article 17 Wages

Even though the Communications officers had rejected Mr. Silver's report, by the date of the hearing, Ms. Johan indicated in her position statement that they were agreeable to most of his recommendations. She indicated that the Union's current position as:

"Overall... the dispatchers are satisfied with the fact finder's recommendation. However, due to the large increase in the amount and variety of the work load along with the increase in the number of sworn employees in the department, the dispatch unit proposes an increase in wages higher than that recommended by the fact finder. "(Union Position statement, p.4)

The City had already approved the fact finder's report and with agreement of the union to the majority of the recommendations, this basically left Article 17, "Wages" as the only issue to be considered by the conciliator. The other unresolved issues are listed and discussed, by necessity, as part of the award to ensure their inclusion in the labor agreement.

The parties agreed that the conciliator's notes would suffice for the official record. The conciliator provided both parties a full opportunity to present evidence, testimony and arguments regarding their positions on the "Wages" issue. The hearing officer recognizes the hard work and effort it takes to prepare for a conciliation hearing, and she appreciates the well organized and in

depth cases the advocates presented.

After the presentations but before the hearing was concluded, the parties requested an opportunity to privately discuss a possible resolution the "Wages" issue. They each adjusted their "final" positions and, through their efforts, reached agreement.

The intent of this award is to memorialize the new labor agreement between the City of Athens and the FOP. To that end the conciliator **awards** the following¹:

- 1.) All tentative agreements are to be included in the contract by reference. These are listed in Attachment #1. This list also includes Articles that were unopened.
- 2.) All references to Lieutenants and Patrol Officers will be removed from the previous agreement.
- 3.) Article 26, which is no longer in use, shall be marked as in "reserve". Article 31 is changed to "Duration", Articles 32 and Article 33 are to be eliminated.
- 4.) The unresolved issues shall be incorporated into the contract as follows.

Unresolved Issues: As discussed previously, all of the unresolved issues are to reflect the Factfinder's recommendations, except where adjusted to create a contract exclusive to the communications officers.

1.) Article 16: Hours of Work and Overtime

The Union and Employer accepted the Factfinder's report as of August 22, for Article 16. Therefore, the contract language shall read:

Section 16.1 Intent

This article is intended to define the hours of a work day, hours of work week and to define the basis for calculation of overtime.

Section 16.2 Work Day Work Week

A work day shall consist of eight (8) consecutive work hours during a scheduled work shift. Except to accommodate change of shifts or days off, a work week shall consist of five (5) days followed by two (2) consecutive days off. ~~The work week for the officer assigned to narcotics investigation shall be forty (40) hours in a week.~~ Any hours in excess of forty (40) hours shall be paid at the overtime rate.

~~Unless they are exempted by the chief of Police, Police Officers, on a limited basis, may be assigned to a Wednesday through Sunday shift where each of the five (5) eight (8) hour work~~

¹ All new language is in bold and references to sworn personnel is indicated by strike through.

~~shifts would start at 7 p.m., except Sunday when the shift would start at 3 p.m.~~
The words "hours worked" as used in this Agreement shall include all hours during which the member is on paid status.

Section 16.3 Overtime

Current Language

Section 16.4 Pay Checks

Current Language

Section 16.5 Call in Pay

"Call in" occurs when an employee's supervisor specifically requests the employee to return to work after completion of his regular schedule but before he/she is scheduled for return to work. Other than specified herein, when an employee is called in at a time disconnected from his/her normal hours, the employee shall be paid at one and one-half times (1 1/2) times the employee's regular rate for the time worked but no less than three (3) hours for such call in. ~~including time for parades and intoxilizer.~~ An employee may voluntarily waive their right to three (3) hours minimum time by electing not to work three (3) hours.

Section 16.6 Court Time

Current Language

Section 16.7 Overtime Opportunities

A. Method

1. Patrol Officers

~~The Administration shall rotate schedule overtime opportunities among qualified full time Patrol Officers who normally perform the work that is being assigned when the requirement of the assignment, as reasonably determined by the Chief or his designee dictates the need for a full time Patrol Officer. The Administration shall post and maintain an overtime roster. This roster shall include a list of employees eligible for such overtime and an updated total hours worked and hours refused by each employee. Employees who show up for scheduled overtime shall receive one and one half (1 1/2) times their regular rate of pay for actual hours worked. Overtime opportunities created hereunder shall be equalized whenever practicable. The city agrees not to assign a Patrol Officer to Communication Officers duty when Communications Officers are available if said assignment would result in the Patrol Officer receiving overtime. Other than emergency staffing situations, Police Officers will not normally be mandated to cover eight (8) hour shifts of Communications Officer's positions.~~

2. Lieutenants

~~The Administration shall rotate scheduled overtime opportunities among qualified Lieutenants who normally perform the work that is being assigned, when the requirement of an assignment, as reasonably determined by the Chief or his designee dictates the need for a Lieutenant. The~~

~~Administration shall post and maintain an overtime roster. This roster shall include a list of employees eligible for such overtime and an updated total hours worked and hours refused by each employee. Employees who show up for scheduled overtime shall receive one and one half (1 1/2) times their regular rate of pay for actual hours worked. Overtime opportunities created hereunder shall be equalized whenever practicable. Lieutenants shall have the first right of refusal to any overtime caused when there is an absence of another Lieutenant from a shift. Lieutenants shall not be credited for overtime offered and refused if such overtime falls between any double back shift.~~

A. Method

The Administration shall rotate scheduled overtime opportunities among qualified full-time communications officers who normally perform the work that is being assigned, when the requirement of an assignment, as reasonably determined by the Chief or his designee dictates the need for a full-time communications officer. The Administration shall post and maintain an overtime roster. This roster shall include a list of employees eligible for such overtime and an updated total hours worked and hours refused by each employee. Employees who show up for scheduled overtime shall receive one and one half (1 1/2) times their regular rate of pay for actual hours worked. Overtime opportunities created hereunder shall be equalized whenever practicable. The City agrees not to assign a Patrol Officer or any other personnel to Communications Officers duty when full-time Communications Officers are available if said assignment would result in the Patrol Officer receiving overtime.

B. Refusal/ No Response

Current Language

C. Scouts

~~The Explorer Scouts will only be used where a sworn police officer with arrest powers is not needed provided the Explorer Scouts will not be used to avoid payment of overtime as determined by the Chief of Police.~~

~~D.~~ C. Mandatory Overtime

When an overtime opportunity for a communication officer, cannot be filled through the normal equalization of overtime process, the opportunity may be filled by mandatory overtime. A communication officer will be mandated for a communication officer. Qualified full-time police officers will be offered the opportunity to work before a communication officer is mandated.

~~E.~~ D. State of Emergency

If a state of emergency is declared by the Governor of the State of Ohio, and subsequently declared by the Mayor of the City of Athens employees on duty during the declared emergency will receive two (2) times their hourly rate for all hours worked during the declared emergency.

Section 16.8

Employees, at their option, may convert up to sixty-eight (68) hours of overtime to compensatory time per calendar year. Time will accumulate at the rate of one and one-half (1 1/2) hours for each overtime hours worked. Upon separation from service for any reason, members shall be paid at their current rate of pay for all accumulated hours of time. When a member dies while in paid status in the City Service, any unused compensatory time to his credit shall be paid in a lump sum to the surviving spouse or estate of the deceased.

Minimums of compensatory time may be used in three (3) hour segments. Requests for the use of compensatory time must be submitted forty-eight (48) hours in advance and be approved by the Chief or his designee. The Chief or his designee may waive the advance notice. ~~Lieutenants; may approve increments of less than three (3) hours if it does not create an overtime situation.~~ Employees shall, at the time they work in an overtime capacity, declare whether they desire overtime or compensatory time. From the beginning of the first pay period of a year to the end of the last pay period of that year, an employee shall have the right to accumulate and maintain up to a maximum of one hundred and four (104) hours compensatory time. **Annual** compensatory payout will be based on the balance as of the first pay period in February to be paid the second pay of February. The compensatory time shall be paid at the rate of pay as the employee received for the final pay period of the year in which the compensatory time was earned. Bargaining unit employee may request additional **compensatory time payouts outside of the second pay of February. Any requests for compensatory time payout must be in writing to the Chief or his designee and shall be paid in the next full pay period after the Chief's, or designee's approval. Requests for compensatory time payouts outside of the "Annual Compensatory" payout shall be no less than 20 hours per request. Compensatory time payouts shall be paid on the next regular pay on a separate check or deposit.**

Section 16.9 Pyramiding

There shall be no pyramiding of premium pay for the same hours worked.

Section 16.10 Trading Time

The practice of trading time between the Athens **Communications Officers** shall be done in compliance with the Fair Labor Standards Act. All hours worked or traded off due to trading time shall be documented on trade time request forms provided for purpose and must be the result of voluntary agreements between the parties. All time traded must be paid back within one year by the benefiting employee.

Section 16.11 Field Training Officer

When a communication officer is assigned the duties of Field Training Officer, the officer shall receive one- half hour of overtime.

When a communications officer is assigned the duties of Field Training Officer, the officer shall receive one-half hour of overtime for each cumulative eight (8) hour training period. This time may not be converted to compensatory time.

~~Section 16.12 Canine Officer~~

~~The parties agree that as of September 1, 2014 the City's canine program was suspended. If/when the City re-institutes a new canine program the parties will meet and discuss the terms and conditions of that new program.~~

2.) Article 18: Shift Differentials

Factfinder Silver recommended that the shift differential remain at 75 cents per hour. The Union position is to also adopt the fact finder's recommendation. The conciliator awards current language, as stated below, with the removal any reference to lieutenants and police officers. The following is the new language of the communications officers' labor agreement.

Section 18.1 Shift Differential

A shift differential of seventy-five (75) cents per hour will be paid for all hours worked by an employee other than those between 0700 and 1500(7 a.m. and 3 p.m.), Monday through Friday. Day shift employees who are held over beyond 3:00 p.m. shall be eligible for shift differential for hours actually worked beyond 3:00 p.m. Employees working overtime shall qualify for shift differential for hours actually worked other than those hours between 0700 and 1500 (7 a.m. and 3 p.m.) Monday through Friday.

~~Police officers assigned to task forces may elect to receive shift differential at the above rate of seventy five (75) cents per hour for all hours actually worked between 5:00 p.m. and 7:00 a.m. Monday through Friday and weekends and seventy five (75) cents per hour for all hours actually worked outside the county between 7:00 a.m. and 5 p.m., Monday through Friday.~~

Section 18.2 Method of Payment

Shift differential pay shall be paid for all hours actually worked or when an employee is in paid status by virtues of using vacation or sick leave. If shift differential pay is applicable under the terms of this Article, to a work day, and authorized overtime occurs in conjunction with the regular work day, the shift differential shall be paid for each hours of overtime work. However, the shift differential pay shall not be added to the base hourly rate prior to computing the overtime rate. Shift differential pay is not applicable to court appearance time, but is applicable to hours worked when called back to duty if he member otherwise qualifies for the shift differential pay. Shift differential pay will be paid on a bi-weekly basis and will not be cumulative under any circumstance.

3.) Article 21: Vacation

Again, the Union accepted the fact-finder's recommendation. Therefore, the conciliator awards the following language.

Section 21.1. Vacation Schedule - Current language.

Section 21.2. Vacation Eligibility - Current language.

Section 21.3. Vacation Usage

Each employee entitled to vacation will schedule are least one (1) week of vacation on consecutive days. The balance may be taken in units of not less than one half day (1/2) day. An employee shall have the right to take vacations according to his classification seniority, subject to scheduling requirements of Management in accordance with the selection procedure of Sections 3 and 4 of this Article. **The Chief or his designee may authorize the use of vacation leave in less than one (1/2) day increments, but not less than one (1) hour increments. The authorization of vacation in increments of less than a one half (1/2) day are at the sole discretion of the Chief or his designee and not subject to arbitration.**

Section 21.4. Vacation Selection - Current language.

Section 21.5- Current language

Section 21.6 - Vacation Accumulation

Employees shall be able to accumulate vacation up to three (3) years. Employees who held vacation hours in excess of this three (3) year limitation as of the last pay period in December, 2017 shall be given five (5) years to use said vacation overage. This shall be done by using at least one-fifth (1/5) of the overage each calendar year, as approved by their immediate supervisor.

4.) Article 24. Uniforms:

The Union proposed accepting the fact-finder's recommended of current language for the Uniform allowance. The only change is the removal of any reference to sworn personnel. The following language recognizes that adjustment.

Section 24.1 Initial Issue - Current language

Section 24.2 Allowance-

(Removal of reference to sworn personnel)

B.A. Civilian Personnel

After completion of one (1) year of service, each employee covered under **Schedule A** shall receive the following amounts per year for uniform purchases and maintenance.

Year	Amount of Allowance
2018	\$1100.00
2019	\$1100.00
2020	\$1100.00

C.B. Account Basis- Current language

D.C. Uniform Changes- Current language

E.D. Use of money on Account-Current language

F.E. Items not listed in Schedules- Current language

G.F. Damaged Uniforms- Current language

H.G. Replacement of Personal Items- Current language

Section 24.3 Uniform Schedule- Current language

Schedule B A Communications Officers

(current language)

Section 24.4 Probationary Employees- Current language

5.) Section 25. Insurance

At fact-finding, several changes were proposed by the employer. There was an increase in premiums for the employees and the Union requested that the changes be implemented on July 1, 2018. The fact finder recommended the premium percentage increases and the Union's suggested date on implementation. The conciliator awards the recommendation of Factfinder Silver on the following:

Section 25.1 (A), (B) and (C) - Current language

Section 25.1(D) (1) - Current language

Section 25. 1(D) (2)

Effective July 1, 2018, employees will pay a monthly contribution equal to **thirty-five percent (35%)** of the fixed costs of the health benefits plan. Every January 1st hereafter, the fixed costs will be adjusted in order that employees continue to contribute thirty-five percent of fixed costs **not to exceed the following monthly premiums:**

Single: \$75 per month

Employee and one dependent: \$90 per month

Family: \$110 per month

Section 25. (1) D. (3) -Current language

Section 25. (1) D. (4) -Current language

Section 25.2. Eligibility - Current language

Section 25.3. Liability Insurance- Current language

Section 25.4 Dental and Vision Insurance- Current language

Section 25.5 Employee Assistance program- Current language

Section 25.6 Affordable Care Act.

The parties understand that the Affordable Care Act (ACA) was enacted by the federal government on March 23, 2010. The parties further understand that many of ACA mandates may be implemented over the period of this Agreement. The parties agree that the Employer is required to comply with this Act. The Employer will notify the Union of any changes contemplated to maintain legal compliance. **Once notified, the Union can request a labor-management meeting to discuss the impact and/or effect on its membership.**

7.) Article 33. Duration

The parties agreed to a three year contract using the following language:

Article ~~33~~31. Duration

Except as otherwise specified herein, this Agreement shall be effective **from the first day of the pay period containing January 1, 2018** and shall remain in full force and effect until **the last day of the last full pay period in 2020**. The parties shall continue in full and effect all terms and conditions of the Agreement herein until a new agreement is either agreed upon between the parties or imposed by operation of law.

If either party desires to modify or amend this Agreement, it shall give notice of such intent no earlier than ninety (90) calendar days prior to the expiration date, nor later than sixty (60) calendar days prior to the expiration date of this Agreement. Such notice shall be Pursuant to the rules of the State Employment Relations Board O.A.C. 4117-9-02.

The parties shall sign this Agreement within thirty (30) days after ratification by both parties or after a settlement is imposed on the parties by operation of law. The Union will be responsible to provide the members with copies of this Agreement.

8.) ARTICLE 17. WAGES

Wage increases and retroactivity were the only issues in dispute by the time of the conciliation hearing. As stated in the introduction, the Union had indicated that they accepted the Factfinder's recommendations for all other open sections of the contract. The following are the positions of the parties at the hearing but before they reached a settlement.

Union Position:

The Union asked for 2.5% increase for all three years of the contract, starting January, 2018. Testimony was provided by Sheena Deak, a 13 year communications officer, who stated that the job had changed dramatically over the last few years. There are only four (4) communications officers for a twenty four hour operation, allowing for one officer per shift, plus a fourth to work as fill in for the other three. Ms. Deak stated that the City had hired more police officers so the staffing levels for each shift had increased. The on duty communications officer

had more police to dispatch and monitor. Crime had gone up, particularly for new retail that had come into the City. There were additional LEADS assignments and reports because of the demands of a new judge at the local court. Walk-ins for parking tickets and other issues could now be as many as 25 per shift. In her opinion, the volume of calls had also gone up. It is because of the increase in volume of walk- ins, dispatch calls and added duties that the communications officers felt that they deserved a higher percentage increase in wages. It is the basis on which they rejected the 2%, 2%, and 2% accepted by the other units.

City Position:

The City took the position that the communications officers were adequately paid. They argued that there had not been an increase in the volume of calls and presented City L-1, Athens Police Department Call Volume to support their argument. This exhibit showed that there had not been a great variance in the number of calls over the last decade. Furthermore, they argued that arrests had actually gone down over the last three years. (City L-2) Finally, they maintained that staffing levels were comparable to other communities that had large universities in their cities.

The employer also indicated that they were in the process of hiring a 20 hour a week part time Communication Officer to ease the work load.

Since the Communications officers had rejected the Fact-finder's report, the City offered 2%, 2% and 2% to begin after the conciliator's award was issued. In addition, they would pay the Communication officers, a lump sum equal to \$766.10 the first full pay, following the Conciliation report.

Agreement: Before the close of the hearing, the parties indicated a desire to privately discuss the "Wages' issue. The conciliator allowed time for them to attempt to reach a compromise. After their discussions, each party revised their final offer and the agreement was approved by the respective clients. The Employer agreed to pay the raise retroactively to January 1, 2018 and the Union agreed to accept a 2%, 2% and 2% raise over the life of the contract. These adjustments are allowed under ORC 4117, as the parties may always reach agreement any time during the process. Based on the above, the conciliator awards the following:

Section 17.1 Wage Scales

Employees covered by this Agreement will be paid according to the following wage scale:

Communications Officers:

Effective Date of Increase	Start	1	2	3	4
1st day of 1st full-pay period 2018, (2%)	\$21.61	\$22.64	\$23.83	\$25.61	\$27.40
1st day of 1st full pay period 2019 (2%)	\$22.05	\$23.10	\$24.30	\$26.12	
1st day of 1st full pay Period 2020 (2%)	\$22.49	\$23.56	\$24.79	\$26.65	

Employees in the communication officer classifications will move through the steps based upon the anniversary of their date of hire.

New hires in the communication officer classification with prior police experience at a law enforcement agency of comparable size will be slotted into the steps according to the "experience levels" as described below.

For the purposes of slotting, experience at a village will not be considered. Experience with a University or College Police Department will be considered on a case by case basis. To receive credit for prior service there cannot be a break in service other than giving job notice or vacation time. The prior service credit is at the discretion of the City. Prior Service Credit will be as follows:

Years of Service	Starting Step
2 years continuous full time	Step 1 year
4 years continuous full time Experience	Step 2 years
6 years continuous full time Experience	Step 3 years
8 years continuous full time experience	Step 4 years

Section 17.2 Pension Funds

Current Language

AWARD

This award including the tentative agreements (Attachment #1), unopened Articles, and unresolved issues (language above), presented to the conciliator August 22, 2018 is made effective at the City of Toledo, Lucas County, Ohio on this 5th day of September, 2018.

Carol J. Bader

Carol J. Bader, Esq.
Conciliator

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Conciliator's Award was served on Andrea Johan, FOP, at ajohan@fopohio.org, Drew Esposito at aespositio@clemensnelson.com and SERB in care of Mary Laurent at mary.laurent@serb.state.oh.us on this 5th day of September, 2018.

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