

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
DECEMBER 28, 2018

OHIO PATROLMEN'S
BENEVOLENT ASSOCIATION

CASE # 2018-MED-01-0025
CASE # 2018-MED-01-0026
CASE # 2018-MED-01-0027

and

CITY OF CLEVELAND HEIGHTS

REPORT & AWARD
OF
CONCILIATOR

APPEARANCES

For the Union

Daniel Leffler, OPBA Attorney
Brian Holb, OPBA Attorney
Brett Bill, CHPD Detective
Naftale Wolf, CHPD PO
Matthew Gerstenfeld, CHPD BPO

For the City

Sandy Conley, Clemans, Nelson & Assoc., Employer Advocate
Tanisha Briley, City Manager
Melisa Fisco, Senior Consultant
Annette Mecklenburg, Police Chief
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Introduction

The prior Collective Bargaining Agreements (“CBA”) between the City of Cleveland Heights, (the “City” or the “Employer”) and the Ohio Patrolmen’s Benevolent Association (the “OPBA” or the “Union”) covered three bargaining units; the Basic Patrol Officers (“BPO’s), the Classified Police Officers (“PO’s”) and the sergeants and lieutenants (“Rank Officers”). One CBA covers the BPOs and the POs, A second CBA covers the Rank Officers. Both prior CBAs expired March 31, 2018.

Negotiations failed. The matter was submitted to Fact Finding. The Findings and Recommendations of Fact Finder Dennis M. Byrne were issued October 8, 2018. The City accepted the Fact Finder's Recommendations but they were rejected by the Union. Subsequent negotiations have resolved all but two issues.

The undersigned was duly appointed Conciliator. The hearing was set by agreement of the parties, for December 19, 2018.

Both sides presented such evidence as they desired. No transcript was taken. All documents were received without objection from the other party. This includes the position statements, Union binder including Exhibits 1-10, City binder including Exhibits 1, 2 A - J and 3, the verbal statements made at the hearing and the Fact Finder's Findings and Recommendations. The Conciliator thanks both parties for their professionalism and courtesy.

In determining this Award, the Conciliator, as he must, followed the requirements set forth in Ohio Revised Code Section 4117.14(G)(7) which provides:

After hearing, the Conciliator shall resolve the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the parties final settlement offer, taking into consideration the following:

- 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, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards 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 final offer settlement through voluntary collective bargaining, mediation, fact finding or other impasse resolution procedures in the public service or in private employment.

Facts

The parties' most recent agreements covered the period April 1, 2015 through March 31, 2018. It was stipulated that the successor agreement would be for the period April 1, 2018 through March 31, 2021. It was further stipulated that, as found by the Fact finder, there is no issue as to the City's ability to pay. The City does, however, raise an issue as to the City's ability to sustain its financial ability to continue increased compensation beyond that proposed in the City's final offer

beyond the term of a new CBA.

The three police bargaining units total about 115 members. The language in the two CBAs affecting the issues in this matter are the same, except for the amounts of compensation.

Rules of Construction

The City accepted the Fact Finder's report. The Fact Finder's Recommendations on the two issues that have reached conciliation were rejected by the Union. The burden of proof is on the party which seeks to overturn the Fact Finder's Recommendations. As stated by Conciliator Brundige in *City of North Middletown and FOP, Lodge 36, SERB # 03-MED-08-0816*:

Due deference must be given to the Fact Finder's Report and recommendations. . . In order for the stature to meet its intended purpose, the conciliator should begin with consideration of the Fact Finder's Report and deviate only if the conciliator finds a sufficient reason to find and recommend differently.

Conciliators have ruled in favor of upholding the Fact Finder's recommendations in even stronger terms such as requiring a finding that the Fact Finder committed egregious error or that the Fact Finder erred or that the award was so unusual as to be bizarre. See cases cited in City Ex 3.

With that as background, we turn to the issues that were presented at the conciliation hearing which are:

1. Equitability Clause Article 28
2. Wage Scale Appendix B

Article 28 **Equitability Clause**

Background:

As set forth in the prior CBA, the Equitability Clause reads:

If any other Classified Civil Service bargaining unit in the City of Cleveland Heights

which is negotiating under the jurisdiction of the State of Ohio Collective Bargaining Act (Chapter 4117) is given by the City or awarded in binding arbitration, a base pay percentage or other applicable fringe benefit (including but not limited to health/hospitalization, insurance pension, etc.) during the term of this contract which exceeds that included in this agreement, then the members of this bargaining unit shall receive such additional benefit coincident with its being given to such other classified Civil Service bargaining unit. **In-as-much as there are not all like benefits and pay items within the bargaining units, when applying the foregoing, the value of the package as a whole will be considered, not individual components of the package.** (Emphasis added).

An identical clause is in the current (April 1, 2018 - March 31, 2021) between the City and the International Association of Firefighters (IAFF). The firefighters are the only other Classified Civil Service unit in the City.

This clause has been in the police CBA, probably since the inception of the Collective Bargaining Act in 1984. There is no question that it was also in the 2012 - 2015 CBA and in the 2009 - 2012 CBA. No grievance has ever been filed regarding this clause. These negotiations are the first time the applicability or interpretation of this clause has been raised in negotiations. While the person representing both the Union and the City has changed over the years, the OPBA has represented the police since the inception of collective bargaining. However, both the City and the Union representatives in these negotiations are representing their parties for the first time.

Union Position

The Union asserts that this clause has not been properly applied. It points to the fact that the firefighters total compensation is significantly greater than that of the police due to the fact that the firefighters base pay is higher and the firefighters receive a 5% bonus for having a paramedic certificate. The Union points to the last sentence of the Equitability clause which says the “value of the package as a whole will be considered”. It further points out that granting the same percentage

raise to different base wages not only does not result in equal dollar amounts but that, overtime, the gap widens.

The Union is willing to delete the Equitability clause but only after it is removed from the IAFF contract.

City Position

The City argues that it is being put in a position where it can be “whipsawed” should the police be awarded a greater percentage increase in wages than that previously agreed to with the fire fighters. While the Equitability clause has worked in the past, it is not working now and should be eliminated from the CBA.

Discussion

In the opinion of this conciliator, there is nothing inherently wrong with having a “me-too” clause in a CBA if the parties bargained for it. In this regard, I differ from the Fact Finder. However, I agree with the rest of his reasoning and his decision that the Equitability clause should be deleted.

This clause has been in this CBA for over 20 years, perhaps since the inception of the Collective Bargaining Act in 1984, without objection from either party. However, now there are differing interpretations of the meaning of this clause that have led to the present impasse.

Although this clause has been in the CBA for many years, the Union previously had not raised the claim that the police and fire should receive the same total economic benefits in terms of dollars. There was testimony that, under the prior police chief, the chief dictated the terms of the CBA and Union members were fearful of retaliation should they object. However, that chief was

not involved in the 2012 or 2015 negotiations and probably not in the 2009 negotiation. It appears that the difference in total compensation between police and fire fighters in Cleveland Heights has a long history as does the fact that percentage raises won by either have been applied to the then existing wages. The OPBA and the IAFF have alternated in taking the lead in negotiations.

As pointed out by the Fact Finder, besides differences in base pay, much of the difference in compensation between the police and the fire fighters is in the different educational bonuses where a police officer would have to earn a Phd to equal the bonus received by a firefighter for obtaining an associates degree in fire science and the 5% bonus for a paramedic certificate (which a fire fighter is now required to have before being hired in Cleveland Heights) while the police receive a 2.5% bonus for fire arms qualification.

There is always tension created by the differences in compensation between police and fire. Police and fire are two different jobs that require different skills, training and education. As noted by the Fact Finder, there is a difference in the market place between what an employer has to pay for those differing skills, training and education. It is a sad fact of life that society values some positions over others. Ask any public schoolteacher if they are being adequately compensated.

Award

The Fact Finder's Recommendation is adopted. Article 28, the Equitability Clause shall be deleted.

Appendix B
Wage Increase

Background:

There was no waiver allowing for retroactivity for any pay raise granted. Therefore, whatever adjustment in pay is granted cannot take effect until, 2019.

Union's Position

The Union's final offer is for 4% increases in base wages for the years commencing April 1, 2019 and April 1, 2020. While the fire fighters received 2% increases for each of the three years of their contract, the police cannot receive any increase for 2018 as there was no waiver of retroactivity. Further, some increase is justified by the fact that the police are, at best, paid a wage on the low side when compared to other comparable police departments.

City Position

The City's final offer is a lump sum 2% increase in wages payable in February 2019 and 2% increases for each of the years commencing April 1, 2019 and April 1, 2020. This would be, essentially, the same as the 2% a year negotiated with the fire fighters.

Discussion

Both the Union and the City offered testimony and exhibits demonstrating the conditions and comparables of surrounding municipalities and the financial condition of the City. Fact Finder Byrne summarized the evidence stating, at page 16 of his Recommendations:

In summation, the data presented by the parties does not show that Cleveland Heights is among the highest paid police departments in the Cuyahoga County area. At the same time, the data does not show that the Cleveland Heights Department is among the lowest paid. It is somewhere in the middle.

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The Fact Finder in the police negotiations is not the Fact finder in the IAFF negotiations, He does not know anything about the fire department. He does not

know if the fire comparables show the IAFF members are well or poorly paid. He does not have any information at all except the fire contract,

Your Conciliator has independently reviewed the documentary evidence on the wage issue. This encompassed City Exhibits under Tab 2, D, E, F, G, H, I and J and Union Exhibits 8 and 10. Bearing in mind that a Conciliator cannot fashion his own solution but is required to choose between the parties' final offers, I find there is no new or additional evidence that compels a result different from that reached by Fact Finder Byrne on this issue.

Award

The City shall pay the police 2% of 2018 wages, in a lump sum in February 2019. It shall further pay wage increases of 2% commencing April 1, 2019 and a further 2% commencing April 1, 2020.

In accord with the agreement of the parties, the two CBAs shall both be for the period commencing April 1, 2018 and terminating March 31, 2021.

Robert M. Lustig
Conciliator
Cleveland, Ohio
December 28, 2018

A copy of this Conciliation Award was emailed to the parties representatives and to SERB this date.