

Appearances

For Union:

S. Randall Weltman, Esq.
Attorney
Lt. Rick Cooper
Negotiating Committee
Sgt. John Dalheim
Negotiating Committee

For Employer:

Tom Grabarczyk
Consultant
Conrad Straube
Chief of Police

I. INTRODUCTION

This matter came on for hearing on June 27, 1996, before Jonathan I. Klein, whose selection by the parties as conciliator pursuant to Ohio Rev. Code Section 4117.14(D)(1) was confirmed by the State Employment Relations Board ("SERB") by letter dated May 13, 1996. The conciliation hearing was conducted between the City of Willoughby (hereinafter "City" or "Employer"), and the Ohio Patrolmen's Benevolent Association (hereinafter "Union" or "OPBA"), at the Willoughby Police Department, 36700 Euclid Avenue, Willoughby, Ohio 44094.

The conciliation hearing represents the final step in the statutory framework to resolve several contractual issues between the parties which affect the approximately 11 full-time employees within the bargaining unit -- seven (7) lieutenants and four (4) sergeants. The employees within the bargaining unit were previously represented by the Fraternal Order of Police, Lodge No. 116, Willoughby Division ("FOP"), and both those officers in the rank of sergeant and above, and the police officers below the rank of sergeant, were covered

remaining unresolved issues involve rank differential, compensatory time and the firearms proficiency allowance.

III. CONCILIATION CRITERIA

In the determination of the facts and the selection, on an issue-by-issue basis, between each of the party's final settlement offers, the conciliator considered the applicable criteria from those enumerated in Ohio Rev. Code Section 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-06(H)(1)-(6). This criteria consists of the following:

- (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 with those issues 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;
- (6) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of 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.

IV. CONTENTIONS OF THE PARTIES

A. Article 19 - Salary Schedule (Rank Differential)¹

The Union notes that the present dispute centers on the terms and conditions of only the second collective bargaining agreement between the parties. Upon securing representation of the bargaining unit of patrolmen, and the unit comprised of sergeants and lieutenants within the City's police department, the parties engaged in separate bargaining. The patrolmen, after the Wiener Report issued, reached an agreement which reduced their share of the health insurance premium, increased the uniform allowance and placed the difference between the Wiener Report's recommended wage increase, and the pattern wage increases of three, three and one-half, and three and one-half percent for the firefighters and service personnel, into an additional cash payment of \$900 within the firearms proficiency allowance. The result, according to the Union, was parity on base rate increases throughout the City, coupled with a cash payment to the patrolmen unit. A similar, although slightly different approach, has been proposed by the Union for the sergeants and lieutenants firearms proficiency allowance as more fully discussed below.

In effect, the Union submits the Wiener Report as support for a break with parity based on internal bargaining units only, and urges a similar review of comparable jurisdictions to compel a different result on rank differential. It offers the Jaffe Report for its approach and recommendation on rank differential, rather than the report's recommendation on firearms proficiency which it requests the conciliator to modify.

1. For a consistent frame of reference, the Award refers to article numbers assigned to each unresolved issue by the City.

In reference to rank differential, the Union proposes to increase the current rate from ten percent to eleven percent over the term of the agreement in two steps. The Union asserts that the average rank differential between patrolmen and sergeants in Cuyahoga County for 1995 was 11.73 percent. (Union Exhibit 4) When the average rank differential for Lake County² and Euclid, Ohio is assessed, the patrolman/sergeant differential is 10.50 percent, and the average sergeant/lieutenant differential is 11.63 percent. (Union Exhibit 6) Moreover, based upon the Jaffe Report's recommendation on rank differential of 10.4 percent, a costing out comparison over the three year contract term, including 25.5 percent roll-up, indicates the Union's proposal costs only \$525 more than the fact-finder's recommendation, and the City's proposal falls \$8,227 less than the recommendation. (Union Exhibits 1, 2 and 3.) More than a 10 percent rank differential is justified because of the City's close proximity to Cuyahoga County, the commercial mix of the City, and the population density. Union Exhibit 5, consisting of the seventeen cities in Cuyahoga County with the highest base top wages for patrolmen, proves the City is incorrect when it maintains that when patrolmen are paid at higher rates there is no reason for a differential of the size sought by the Union in this case. An example of highly paid patrolmen where the rank differential is as high as 12.01 percent is the City of Shaker Heights.

The Union further reasons that if only cities within a population range of between 19,000 and 25,000 from Cuyahoga are examined,³ the average rank differential

2. Waite Hill and Kirtland are not included in the list of Lake County comparables.

3. The City has a population of approximately 22,000, and is situated on the western

(continued...)

between the top patrolman wage and top sergeant wage is 12.87 percent. (Union Exhibit 4.) In addition, the City's sergeants and lieutenants perform more functions than many of the jurisdictions offered as comparables, including everything from writing tickets and making arrests, to supervising dispatchers, drafting department policies and providing suggestions for the department budget. (Testimony of Sgt. John Dalheim; Testimony of Lt. Rick Cooper; Union Exhibits 8, 9, 10, and 11.) Whether the comparables are based on population or the top paid patrolmen in Cuyahoga County, the comparable average rank differential is far in excess of the current contract language. Since the Union's proposal is the most reasonable and more closely tracks the Jaffe Report's recommendation on this issue, it should be selected by the conciliator.

The City urges that the present contract language providing a minimum ten percent pay differential between ranks should be continued in the successor agreement. It reasons that the parties have reached agreement consistent with other bargaining units in the City for across-the-board wage increases of three percent retroactive to April 1, 1995, a three and one-half percent increase effective retroactive to March 31, 1996, and three and one-half percent increase effective March 30, 1997.⁴ The City notes that command officers in the firefighter unit also enjoy a ten percent rank differential.

While the current conciliation proceeding will result in only the second agreement under the statutory framework of Ohio Rev. Code 4117, et. seq., the parties have

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edge of Lake County adjacent to the eastern edge of Cuyahoga County.

4. The parties stipulated that wages are retroactive to April 1, 1995.

addressed the terms and conditions of employment by means of codified ordinances for many years, and percentage increases were provided regardless of rank as a custom and tradition in the City. The City opposes the "me too" nature of a rank differential because of the separate negotiations between the bargaining unit for the patrolmen and the present unit of sergeants and lieutenants. While the patrolmen's unit may seek an increase in the base wage, other issues may take on greater importance with the sergeants and lieutenants.

The City concurs with the Union's assertion that the City and patrolmen utilized the Wiener Report's recommendation of a wage increase of four percent effective April 1, 1995, an additional four percent increase effective March 31, 1996, and a wage increase of four percent effective March 30, 1997, coupled with several other recommendations on health insurance, compensatory time and uniform allowance, to reach an agreement. The City and patrolmen agreed to convert the two percent difference between the Wiener Report's recommendation, and the 3-3½-3½ pattern percentage increases for the service and firefighter bargaining units into an increase from \$200 to \$1100 in the firearms proficiency allowance.

The City reasons that when comparable staffing in Lake County is examined, it is not uncommon for officers in other departments to be assigned duties which are beyond the standard duties for such positions. (City Exhibit 1.) Mentor's lieutenants are more like division directors in the Lake County Sheriff's Department; in Willowick there are only two lieutenants one of which is a non-bargaining unit employee. The City noted the rank

differential in Willowick is 10 percent between police officers and sergeants, and between sergeants and lieutenants.⁵

The correct top rate for patrolmen in the City is 21.69, an annual compensation of \$45,115. (City Exhibit 1, at 1.)⁶ In fact, when SERB statistics pertaining to police officers in cities between 20,000 and 30,000 in population are examined, none of the 1995 reported base rates even approach the high rate enjoyed by the bargaining unit here. The next highest reporting city is South Euclid at \$42,170. (City Exhibit 1, at 7.) No patrolman from any of the seventeen highest paid patrolmen units in the Cuyahoga County jurisdictions referenced by the Union equal or surpass the base wage rate of the City's patrol officers. Moreover, the City's proposal for the sergeants and lieutenants far exceeds not only all similar Lake County cities, but cities in the population range of 20,000 to 30,000 reporting to SERB. Despite the higher average percentage rank differential between sergeants and lieutenants of 10.41 percent in the those Cuyahoga jurisdictions with the highest paid patrolmen (Union Exhibit 5), that spread is often intended to correct problems in the pay structure based on lower patrolmen salaries. In sum, the City reasons that its proposal to maintain current language is fair and the more reasonable position.

The Union counters that while the base wages for the patrolmen in the City are high, the total compensation package is not. As noted in the Wiener Report, there is no

5. The Union agreed that the 10 percent rank differential for Willowick was more accurate than the rank differential it had listed for Willowick on Union 6.

6. Article 19, "Salary Schedule", in the new patrolmen contract incorrectly lists \$21.66 for the patrolman at Step C effective April 1, 1995. (Union Exhibit 14 at 10.)

longevity, bonus, or pension pickup by the City, and the money must be placed into the base rate which has historically been the case. Here, the bargaining unit members seek greater rank differential and proficiency pay, and instead the City has offered less on both counts. Further, the City's costing out of its proposal on rank differential (City Exhibit 1 at 4.) is misleading. While the City may have more full-time lieutenants than other cities in Lake County, the command structure is within the employer's discretion, and the City has the means to abolish positions if need be. The City responds that its base wage comparison is fair and matches numbers presented by the Union for other jurisdictions.

B. Article 34. Firearm Proficiency Allowance.

The Union emphasizes that this issue is related to the breaking of internal wage parity by the patrolmen bargaining unit, and the agreement to shift the 2 percent difference from the Wiener Report's recommendation on wages into a cash payment. The result was to boost the allowance for patrolmen an additional \$900 from the current level of \$200 for 1995 and 1996, or a total allowance of \$1,100. The Union simply seeks by its proposal to apply the current 10 percent rank differential to the \$900 increase so that the sergeants will receive a total additional allowance of \$990, and the lieutenants will receive \$1,080. Further, such payments are not subject to any roll-up costs. Contract language to prorate the allowance is inappropriate as it is connected to the employee's completion of specific skill requirements, rather than continuous usage during the calendar year as with uniform maintenance.

The City proposes the same increase as recommended in the Jaffe Report, and asserts that it erred with the patrolmen unit by not insisting on a proration provision upon an employee's termination. It also opposes the application of rank differential to the allowance payment, and urges that such an allowance represents a statutory requirement and condition of employment which is identical for sergeants, lieutenants and patrolmen.

C. Article 23 - Overtime (Compensatory Time).

The Union proposes to increase the overtime bank from 40 to 80 hours over the term of the agreement in accordance with the recommendation of the fact-finder. In addition, the Union proposes an optional cash out provision permitting a bargaining unit employee to cash out up to forty hours of compensatory time the first week of June and December of each year. The cash out would apply only to compensatory hours accrued on or after January 1, 1997. The Union reasons that such a provision is mutually beneficial -- the employees are able to pull cash out of the account and save money on their pension contribution, and the City obtains relief from its pension contribution by the process of cashing out compensatory time in a pay period other than one in which the time is earned as it is not considered salary. (Union Exhibits 15 and 16.)

According to Sgt. Dalheim, based on the quantity of overtime for the department, the Union's proposal represents a potential savings of \$40,000 to the City. The Union recognizes that the fact-finder rejected the cash out provision, but he did so without full consideration of the cost savings to the City, and out of concern for the impact such a provision might have on members of the patrol unit.

The City, while agreeable to the recommended increase in the compensatory bank time, opposes any such cash out provision on the grounds that it would engender an additional administrative burden in accounting for the various hours and payments. Without the cash out provision, overtime must be managed on a budget of approximately \$100,000 for this particular bargaining unit. The employees are already afforded twenty-six opportunities by way of the twenty-six pay periods during the calendar year to cash out their overtime. It simply is not prepared to budget as much as \$31,000 to fund any such provision.

V. FINDINGS OF FACT AND OPINION

Article 19 - Salary Schedule (Rank Differential)

In evaluating the proposals of both parties on the issue of rank differential, the conciliator has examined the data supplied by both parties, including the Jaffe Report's recommendation on this issue. The Jaffe Report held that in light of other dispositions in the report, a 10.4 percent pay differential be established between the rank of patrolman and sergeant, and a 10.4 percent between the rank of sergeant and lieutenant for each year of the agreement. The fact-finder noted the Union sought a raise in the differential to 11 percent, and referenced the range of rank differentials in Cuyahoga County and Lake County.

Several observations are appropriate at this juncture. First, by what appears to be an inadvertent error, the rate of pay for the highest class of patrolman effective retroactively to April 1, 1995, was listed in the Patrolmen Agreement as \$21.66. Based

upon the three percent wage increase in the base rate of pay, this figure should read \$21.69, a figure the City acknowledges to be the correct number.

Second, the focus of the conciliator's review of rank differential is not driven by average rank differential percentages per se. Rather, the critical component is the effect the proposed rank differentials have on the bargaining unit's top wage rates for sergeants and lieutenants relative to comparable jurisdictions.⁷ The differential percentage is, by its very nature, keyed to the top wage rate for the City's patrolmen, and it is the effect of the differential on the relative positioning of the bargaining unit to comparable bargaining units, coupled with any other relevant and material statutory criteria, which should govern the magnitude of the rank differential. A comparison of rank differential percentages alone fails to tell the whole story.

The top annual wage for patrolmen in the City based upon the correct rate of pay is \$45,115. Utilizing the Lake County jurisdictions cited by the Union: Mentor, Willowick, Wickliffe, Eastlake, Painesville, Willoughby Hills and the adjacent City of Euclid in Cuyahoga County, the top patrolman in the City for 1995 is compensated \$5,215 more than the average of the top wage patrolman in the other jurisdictions. (Union Exhibit 6) When compared to the top base rates for patrolmen in Cuyahoga County, the City's top paid patrolmen receive \$4,898.53 more than the referenced bargaining units in Cuyahoga County. (Union Exhibit 5.) When based on all SERB reporting cities in the population range of

7. The City's ability to pay is not a statutory criteria at issue in this proceeding.

20,000 to 30,000, the City's patrolmen are paid \$2,945 more than the next highest municipality, South Euclid. (City Exhibit 1, at 7.)

The base rate for the comparable patrolmen bargaining unit is critical to the impact of any rank differential percentage. For 1995, the base wage rate of patrolmen in the City far exceeds all other cited jurisdictions in Lake and Cuyahoga County. When the across-the-board percentage increases for 1995 are incorporated to arrive at the top wage rate for sergeants in the bargaining unit, the sergeants will receive \$49,650 retroactive to April 1, 1995 at the rate of \$23.87 per hour; effective March 31, 1996, the compensation for the top sergeants will be \$51,397 based upon an hourly rate of \$24.71; and, effective March 30, 1997, the sergeants will be receiving \$53,186 annually. For 1995, the sergeant's rate of pay secured by the current rank differential as proposed by the City will be \$4,802 more than the average base top wage for sergeants in the Cuyahoga jurisdictions which have the top wage rates for patrolmen. Compared with the other Lake County and Euclid jurisdictions, the sergeants in the bargaining unit will receive \$5,574 more than the average sergeant. The City's proposed rate of \$26.26 per hour for lieutenants retroactive to April 1, 1995, or \$54,621 in wages on an annual basis, is \$5,870 above the average top wage for lieutenants for those same jurisdictions.

Indeed, when compared with the total compensation survey for fifteen-year sergeants in Lake County jurisdictions, including the City of Euclid, and after taking into consideration the order of this Award relative to firearms proficiency payments, the total compensation for a sergeant employed by the City is \$51,590 or the second highest next to

Euclid; for a fifteen-year lieutenant similar comparison reveals the total compensation is \$56,700, again second only to Euclid. (Union Exhibits 12 and 13.)

The conciliator, upon review of the entire record, including the Jaffe Report, concludes that the City's last best offer on rank differential is the most appropriate. While the members of the bargaining unit perform a considerable array of duties, the current rank differential and top patrolman wage continue to insure their wages stay above virtually every comparable bargaining unit referenced to the conciliator. For each of these reasons, the City's final settlement offer on rank differential is selected to be included in the collective bargaining agreement.

Article 34.2. Firearms Proficiency Allowance

As stated above, the patrolmen achieved an increase in the firearms proficiency allowance in an amount representing the difference between the wage increases recommended by the Wiener Report and the pattern increase of three percent, three and one-half percent, and three and one-half percent over the contract's three year term. The Jaffe Report noted the background to the increase in the allowance for patrolmen, and the Union's proposal at fact-finding to increase the sergeants' allowance from the \$200 paid to all police in the City regardless of rank, to \$1,245 annually, and increase the allowance for lieutenants to \$1,280 annually. Simply stated, the Union's proposal at conciliation is a proficiency allowance in the total maximum amount of \$1,190 upon qualification for sergeants, and \$1,280 for lieutenants.

The conciliator concurs with the Jaffe Report's findings that firearms qualification is a necessity for police officers who carry a firearm regardless of rank, and that such annual firearm requalification is a condition to continued employment as a police officer permitted to carry a firearm. Further, the conciliator stands in agreement with the Jaffe Report's notation that the statute makes no differentiation as to the rank of the police officer and the requisite firearms requalification. Thus, the City's proposal with respect to the amount of the allowance appears internally consistent and neutral on its face.

However, the parties acknowledged that the increase in the allowance was the direct result of an effort to channel to the patrolmen's bargaining unit the two percent difference between the Wiener Report's recommended wage increase, and the pattern percentage increases for other bargaining units in the City over the three year term of the contract. The conciliator is in general agreement with the fact-finder's view that two different proficiency allowances, one for a bargaining unit of sergeants and lieutenants, and one for patrolmen, is not a logical extension of compensation based on identical efforts at firearms requalification. Nevertheless, the conciliator finds that absent application of the rank differential to the proficiency allowance increase, an increase which both parties agree represents the equivalent of a two percent wage increase to the patrolmen over the term of the contract, the effective rate of the rank differential would be eroded. To hold otherwise would be to ignore the true nature of the proficiency allowance increase and detrimentally impact the members of the bargaining unit of sergeants and lieutenants.

The conciliator concludes that the Union's final settlement offer on firearms proficiency allowance is warranted, and it is hereby selected to be included the collective bargaining agreement.

Article 23 - Overtime

The primary opposition by the City to the Union's proposed contract language granting employees the ability to cash out up to forty hours of compensatory time centers on its claim of an increased administrative burden, and alleged difficulty in budgeting for the cash out. In principle, the City does not dispute the potential savings in employer (and employee) contributions to the Police and Firemen's Disability and Pension Fund relative to payments for overtime that are made later than the payroll period in which the overtime is worked. (Union Exhibits 15 and 16.)

The conciliator does not perceive the same administrative nightmare envisioned by the City. First, the maximum amount which may be required to cover requests to cash out the forty hours compensatory time is readily ascertainable within a reasonable degree of certainty by multiplying the number of bargaining unit employees by forty hours at the corresponding top wage rate for their positions, and multiplying that sum by two to assess the maximum exposure for the calendar year. Second, the proposed language contains only two points during the calendar year when accrued compensatory time may be cashed out thereby further reducing any claimed administrative burden. Third, there was testimony that a similar compensatory time cash out program in Eastlake which permits an employee to cash out an unlimited quantity of banked compensatory time has been successful.

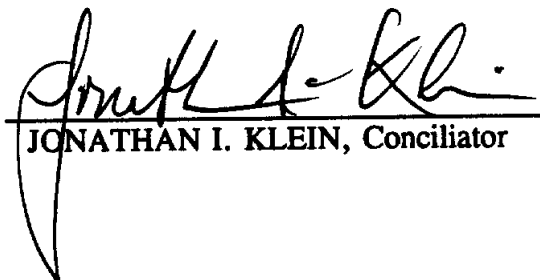
The conciliator is of the opinion that the Union's proposal may prove to be of mutual financial benefit to the City and members of the bargaining unit, particularly in those instances where the employee has reached or is approaching the maximum accrual level for compensatory time at which point the hours worked are to be paid as overtime with the attached pension fund contribution liabilities. The proposal also offers ample opportunity to set aside the necessary funds prior to the first pay period in June 1997 when the initial cash out takes place. In sum, while there is minimal experiential evidence from which to evaluate such a proposal, the proposal's simplicity combined with the potential mutual benefits, recommend its selection.

The conciliator concludes that the Union's's final settlement offer on compensatory time cash out is reasonable, and its proposal is selected to be included in the overtime provisions of the collective bargaining agreement.

VI. ORDER

In accordance with the foregoing Findings of Fact and Opinion, the parties are hereby ordered and directed:

1. that the collective bargaining agreement contain the City's proposal set forth in Exhibit "A", attached, and;
2. the second section of the article entitled, "Firearms Proficiency Allowance," shall be modified so as to contain the allowance schedule set forth in the Union's final settlement offer attached hereto as Exhibit "B", and;
3. the article of collective bargaining agreement entitled, "Overtime", shall contain the compensatory time bank and cash out language in the Union's final settlement offer attached hereto as Exhibit "C".


JONATHAN I. KLEIN, Conciliator

Dated: July 27, 1996

ARTICLE (19.) SALARY SCHEDULE

(19.1) The following rates of pay shall become effective upon execution of this Agreement and retro-actively April 1, 1995 for all employees employed upon execution of this Agreement.

<u>TITLE/CLASS</u>	<u>B</u>	<u>C</u>
Sergeant	\$23.35	\$23.87
Lieutenant	\$25.38	\$26.26

(19.2) The following rates of pay shall become effective March 31, 1996:

<u>TITLE/CLASS</u>	<u>B</u>	<u>C</u>
Sergeant	\$24.17	\$24.71
Lieutenant	\$26.27	\$27.18

(19.3) The following rates of pay shall become effective March 30, 1997:

<u>TITLE/CLASS</u>	<u>B</u>	<u>C</u>
Sergeant	\$25.02	\$25.57
Lieutenant	\$27.19	\$28.13

(19.4) A minimum ten percent (10%) pay differential shall be maintained between the ranks.

Exhibit "A"

Qualified in 1995	Sgt. -	\$990 in addition to that received in 1995
	Lt. -	\$1,080 in addition to that received in 1995
Qualified in 1996	Sgt. -	\$990 in addition to that received in 1996 or \$1,190 upon qualification in 1996
	Lt. -	\$1,080 in addition to that received in 1996 or \$1,280 upon qualification in 1996
	Sgt. -	\$1,190 upon qualification annually thereafter
	Lt. -	\$1,280.00 upon qualification annually thereafter

No employees employed after the execution of this Agreement shall be entitled to a firearm proficiency allowance.

Firearm proficiency allowances shall be paid in a separate lump sum check, within thirty (30) days of submission of qualifications lists.

Exhibit "B"


Section 22.5.

Employees shall be able to accrue compensatory time to a maximum of sixty (60) hours effective April 1, 1996 and eighty (80) hours effective April 1, 1997. Beginning January 1, 1997, employees shall have the option of "cashing out" up to forty (40) hours of compensatory time during the first pay period in June and December of each year. Only compensatory hours accrued on or after January 1, 1997 may be cashed out.

Exhibit "C"

CERTIFICATE OF SERVICE

Originals of the foregoing Final Offer Settlement Award were served upon Tom Grabarczyk, Consultant, Labor Relations Management, Inc., 5650 West Central Avenue, Suite C-4, Toledo, Ohio 43615, and upon S. Randall Weltman, Esq., Climaco, Climaco, Seminatore, Lefkowitz & Garofoli, Co., L.P.A., Ninth Floor, The Halle Building, 1228 Euclid Avenue, Cleveland, Ohio 44115-1891, and upon G. Thomas Worley, Administrator, Bureau of Mediation, Ohio State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213, each by United States mail, sufficient postage prepaid, this 27th day of July, 1996.


JONATHAN I. KLEIN, CONCILIATOR

Dated: July 27, 1996