

BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

STATE-EMPLOYMENT
RELATIONS BOARD

APR 9 9 52 AM '96

In the Matter of Conciliation Between:

City of Sidney, Ohio

and

S.E.R.B. Case 95-MED-08-0699

International Association of Firefighters,
Local 912, AFL-CIO-CLC, OAPFF

APPEARANCES:

For the City: Michael Smith, Esq,
City Law Director
Sidney, Ohio

For the Union: Jerry Pitts, Esq.
Lima, Ohio

REPORT AND AWARD OF THE CONCILIATOR

Frank A. Keenan
Conciliator

BACKGROUND:

This case came on for hearing on February 5, 1996. A considerable quantum of evidence was introduced, and arguments were made, in support of the parties' respective positions on the issues in dispute. What follows is a summary of the salient: evidence; contentions; and arguments of the parties; as well as the Conciliator's Award and the Rationale for same. In arriving at the Award, the Conciliator has taken into account and relied upon the statutory criteria, as set forth below, whenever such factors were put forward by the parties, or where deemed to be present, to wit: the factors of past collectively bargained agreements; comparisons of the unresolved issue relative to the employees in the bargaining unit with that issue related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved; the interest and welfare of the public; the ability of the public employer to finance and administer the issues proposed; the effect of the adjustments on the normal standards of public service; the lawful authority of the public employer; the stipulations of the parties; and such other factors, not confined to those noted above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute settlement procedures in the public service or in private employment; and the Fact Finder's Report and Recommendations. References herein to the current Contract more precisely are references to the most-recently-expired Contract, too cumbersome a phrase.

ISSUE #1: ARTICLE XIII - MISCELLANEOUS, 10. SALARY INCREMENTS.

Evidence and Positions of the Parties:

The Union, as its final offer, seeks the following provision at Article XIII, paragraph 10., to wit:

" ARTICLE XIII
MISCELLANEOUS

10. Salary Increments. Every employee who is appointed to a regular full-time position shall receive an automatic one set salary increase six months from the date of their original appointment to their current position. Subsequently, every employee occupying a regular position shall, providing they have not yet attained the top step of their salary range, receive a one step salary increase each year on the date established on the following table.

When the date of an employee's six month increase occurs on or between	The employee's date for subsequent one step increase shall be:
January 1 and March 31	January 1
April 1 and June 30	April 1
July 1 and September 30	July 1
October 1 and December 31	October 1

As I understand it, this represents the status quo. The City's final offer is as follows:

ARTICLE XIII
MISCELLANEOUS

10. Salary Increments. Every employee who is appointed to a regular full-time position shall receive an automatic one set salary increase six months from the date of their original appointment to their current position.

Subsequently, every employee occupying a regular position shall, providing they have not attained the top step of their salary range and their performance during the prior year was not rated as "below satisfactory" on their annual performance appraisal, receive a one step salary increase each year on the date established on the following table.

When the date of an employee's six month increase occurs on or between

The employee's date for subsequent one step increase shall be:

January 1 and March 31
April 1 and June 30
July 1 and September 30
October 1 and December 31

January 1
April 1
July 1
October 1

"

Thus the City's offer makes step increases contingent upon the employee receiving a performance evaluation which was not rated as "below satisfactory."

In support of its final offer the City asserts that it ensures "that below satisfactory job performance is not rewarded by receiving an automatic 4.1 - 4.7% salary increase through moving to the next step in this pay range." The City points out that it "has instituted such a program with its non-unionized employees, and will be attempting through collective bargaining to make this a City-wide policy."

The Fire Chief explained that the Council is seeking this provision in response to public criticism to the effect that poor performance ought not to be rewarded by automatic step increases in pay. The Chief explained that the evaluation system requires a rationale and plan for employee improvement. It also allows for employee comment. The Chief points out that no bargaining unit employee has received a "below satisfactory" rating within the last five years, and in any event, the grievance procedure may be utilized if unfairness in evaluation is perceived.

In support of its final offer the Union points to the Fact Finder's Report, which recommended against the City's concept. The Fact Finder's Report states as follows:

Article XXVII, Discipline and Personnel Files in the current contract provides that the Employer has the right to discipline and discharge employees for just cause, which includes but is not limited to those reasons set forth in the Civil Service Laws of the State of Ohio. The Fact-Finder believes that this provision along with the Probationary Period provide sufficient opportunity for the Employer to remove an unsatisfactory employee. Further, the potential for grievances and desultory personality clashes is inherent in any such rating system when the system could conceivably be used improperly; human nature is such that when a system could conceivably be used as a threat, it is likely to be so used, at least eventually. . . . There has been no strong indication of the need for such a system except for the local legislative body's desire to do so. It was clear that the Union generally had no problem with evaluations in general, although some concern about the potential methods of implementation were expressed. The Union did have a problem with use of the evaluation to potentially deny step increases."

The Union furnished evaluations of a Lieutenant and of a Firefighter and asserts they demonstrate inconsistency problems in that, for example, three different assistant chiefs had a hand in evaluating the Lieutenant, and the Firefighter, although rated a low "1" for motivation, was given no plan for improvement by Management. The Union also points out that neither evaluation procedures nor substantive evaluation standards are spelled out in the collective bargaining agreement.

Rationale:

Three factors mandated by the Statute to be taken into account clearly favor the Union's final offer, namely, the Fact Finder's Report, past collectively bargained contracts, and "other factors . . . which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute settlement procedures in the public service or in private employment." This latter factor encompasses the principle that

innovative matters will not be awarded absent some meaningful quid pro quo for their establishment. Here the concept of tying step increases to greater than below satisfactory evaluation ratings introduces a new concept to the parties' historic compensation scheme. But no meaningful quid pro quo for such an innovative provision has been identified or offered by the City for its establishment. This circumstance weighs heavily in the determination reached on this issue. Additionally, the apparently principle rationale put forth by the City for the establishment of this concept is that step increases ought to be withheld from employees who are underperforming. The difficulty is that in light of the record evidence that no bargaining unit member has over the last five years been rated "below satisfactory," the problem this innovative approach seeks to address appears to not exist. Then too there is the rationale put forth by the Fact Finder for not awarding the City's proposal before him, which is the same as its final offer here. Accordingly, the Union's final offer and not the City's final offer, will be awarded.

Award:

The Union's final offer is awarded.

ISSUE #2: ARTICLE XIV - WAGES

Evidence and Positions of the Parties:

The City's final offer is a 3.25% annual increase effective January 1, 1996 and again each January 1 for each year of the contract.

The Union's final offer is a 4.7% annual increase effective January 1, 1996 and again each January 1 for each year of the Contract.

In support of its final offer the Union asserts that what it seeks "is comparable to the increase the Fire Chief received." The Union also points out that since 1991 bargaining unit employees have experienced increases annually, and that in 1994 the Fire Chief and his Deputies have received even higher annual increases. It also points to the Director of Parks and Recreation's increase of 4.75% and the City Clerk's increase of 5.5%.

The Union also points to the steadily increasing number of calls for service since 1989, and the fact that pay increases have not kept pace with the rise in service calls. Likewise, rank and file wages have not kept pace since 1991 with managerial salary increases.

The Union also points to Conciliator Weisheit's recent award of 5% per year for Police Officers, and the fact that the merit pay program for senior administrative directors provides for a maximum increase of 5%. Given the City's healthy financial picture as reported in the press, the City can afford to pay the Union's final offer, asserts the Union.

The Union also points to the Hay Committee's Evaluation and Final Recommendations, asserting that while that Committee recommended that police officers and firefighters be in the same pay grade, in point of fact firefighters are in a lower pay grade.

The Union asserts that firefighters in the nearby communities of Troy, Huber Heights, Xenia, Fairborn and Piqua all fare better than do the Sidney firefighters.

Comparing itself to other municipalities, the Union claims the bargaining unit is "far behind." Thus the Union compares Sidney to: Middleburg Heights; Mount Vernon; North Ridgeville; Norwalk; Portsmouth; Ravenna; Reading; Rocky River; St. Bernard; Salem; Sheffield Lake; Solon; Steubenville; Twinsburg; University Heights; Van Wert; Warrensville Heights; Westlake; Whitehall; Willoughby Hills; and Xenia. Under those comparables and under the terms of the current contract, in 6 steps and on a 54 hour per week schedule the top rated Sidney Fire Lieutenant earns \$37,158 or \$13.23 per hour, whereas the average top rated Lieutenant for the comparables is at \$36,798 in 1.9 steps for a 51.7 hour week or \$13.69 per hour.

Comparing Sidney to Sheffield Lake, Solon; Steubenville; Stow; Tiffin; Toronto City; Twinsburg; University Heights; Urbana; Van Wert; Warrensville Heights; Westlake; Whitehall; Willoughby Hills; Xenia; and Zanesville, in eight (8) steps and in a 54 hour week a top rated Sidney firefighter earns \$33,603 or \$11.97 per hour, whereas the average top rated firefighter for the comparables is at \$35,759 in 4.4 steps for a 51.9 hour week or \$13.24 per hour.

The City points out that recently staff has been increased in response to increased service calls, a factor which itself is somewhat diminished by the fact that whereas minimum manning was at six, it is now at seven.

The City asserts that the CPI has been at 2.6 to 2.8 over the past several months and that its offer "not only keeps pace with inflation, it allows the employees to gain ground on inflation."

The City also points to the Fact Finder's recommendation of a 3% across-the-board increase, and the City reiterated here the same concerns it had before the Fact Finder, namely, concern about an upcoming income tax renewal and concerns about internal comparables. In that regard, administrative pay raises for 1996 by ordinance were 3.25%.

The City also quotes the parties' 1994 Conciliator as follows:

"The Conciliator finds that the wage proposal recommended by the City . . . maintains City of Sidney firefighters within a reasonable range of minimum and maximum salaries for firefighters among cities of comparable population. The 3.5% salary increase recommended by the City of Sidney is far closer to the average wage increases (3%) received by firefighter bargaining units among cities in Ohio of sizes comparable to the City of Sidney whose contracts began in 1993. The Conciliator finds that the City of Sidney's 3.5% salary proposal maintains the bargaining unit's starting and top pay levels in a range that compares favorably to statewide averages for wages for this type of work."

The City points to the geographically near and comparably populated municipalities of Fairborn, Piqua, and Troy, urges that they are truly "comparable," and points out that Fairborn's fire safety bargaining unit will receive a 4% increase in 1996 and 1997; Piqua's (who have no longevity pay) will receive a 3% increase in 1996 and 1997; and Troy's will receive a 3% increase in 1996 and a 4% increase in 1997. At 3.25%, the City asserts it is comparable what with the average increase being 3.66%. Moreover, argues the City, "no city in our region, which have a fire department under a

contract, will have annual increases in excess of 4%, as urged by the Union.

With respect to higher managerial salary increases, the City points out that these are "merit" based, a concept not applicable here. As for the City Clerk's high percentage increase, the City points out that additional duties were added and same account for much of her increase.

Rationale:

It seems clear that 3.25% is in the mainstream of mid-nineties pay increases as pointed out by the parties' 1994 Conciliator. Additionally, such would maintain the bargaining unit in their relative position vis-a-vis the only true comparables shown: Troy, Piqua, and Fairborn. The Union-urged comparables compare greatly varying population and jurisdictions not geographically near. They also maintain internal comparability with non-managerial employees. And as the City emphasizes, few jurisdictions are breaking 4%, yet such is what the Union seeks. In my judgment, the more weighty statutory factors, especially comparables, favor the City's final offer over that of the Union's final offer. Accordingly the City's final offer will be awarded.

Award:

The City's final offer of 3.25% for each year of the three year Contract is awarded.

ISSUE 3: ARTICLE XVI - LONGEVITY PAY

Evidence and Positions of the Parties:

The Union's final offer is to maintain the current Contract's provisions with respect to Longevity Pay. The City would modify the current Contract, as set forth below, which modifications would result in new hires not receiving Longevity Pay and in incumbent employees losing it if the employee is rated below satisfactory. The City's final offer is as follows:

ARTICLE XVI

LONGEVITY PAY

1. As a means of rewarding employees for loyal service and to serve as an incentive for retaining good employees, a longevity pay plan is established. Annual longevity payments shall be made during the first half of the month of December of each year, as set forth below, to all permanent employees who shall have completed at least five years of continuous service, and who shall be in the employ of the City as of November 30 of the year in which the longevity payment is made. Annual longevity payments shall be based on the basic salary of the employee as of June 30 of the year in which the longevity payment is made and the rate of payment shall be as follows:
 - 1) 2% of basic salary after 5 years of service.
 - 2) 2-1/2% of basic salary after 10 years of service.
 - 3) 3% of basic salary after 15 years of service.
 - 4) 4% of basic annual salary after 20 years of service.
 - 5) 5% of basic annual salary after 25 years of service.

All regular employees hired by the City after January 1, 1996, shall not be eligible for the longevity bonus provided in the paragraph hereof.

All regular employees on the City payroll prior to January 1, 1996, shall not receive a longevity bonus in the event such employee's supervisor determines that the employee's performance during the prior year is rated as "below satisfactory," based on an annual performance appraisal.

In support of its final offer the City points out that in the 1993 municipal election one City Council member was elected on a platform pledging to eliminate longevity pay. The City has by a unanimously passed ordinance already provided that its non-union

employees hired after May 1, 1994, not be eligible for longevity pay, and the City's negotiators have been directed to seek elimination of longevity pay for new hires in all of the City's collective bargaining agreements. This is the first such effort since this is the first contract up for renewal. The City asserts that longevity pay was initiated in the 1960s because at that time public sector wages were substantially lower than the private sector and such compensation devices as longevity pay were necessary in order to retain trained employees and avoid turnover. But turnover is no longer a problem, and there are over fifty (50) eligible candidates waiting to get on at the Fire Department.

In support of its final offer, the Union relies on the Fact Finder's Report wherein the City-sought changes to Article XVI were not recommended. Thus in his Report the Fact Finder stated his "strong concern about morale and productivity factors among newer or junior and senior employees when such drastic action [i.e. a two tier system as urged by the City] is taken. . . . The impact of a decision on the working relationships between skilled firefighting employees must be considered, and, in this instance, is the major factor."

The City's retort to the Fact Finder's "morale" rationale is that the employment process would disclose to potential new hires in advance of their hire that they would not be eligible for longevity pay. The Union seeks to bolster the Fact Finder's rationale by emphasizing that all firefighters work closely together in a dangerous job and that two tiers, one being paid

longevity pay, the other not, can only lead to morale problems. The City in turn retorts that firefighters working side-by-side earn different rates of pay all the time.

In further support of its final offer the Union points out that what it seeks is set forth in the City's collective bargaining agreements with the Police Patrolmen; the Police Supervisors; and the Public Works employees.

Rationale:

As the Fact Finder in effect points out, the statutory factor to be taken into account of the interests and welfare of the public encompasses the maintenance of employee morale. It is clearly in the public's interest and enhances the public's welfare, when the public employees entrusted with the public's safety are motivated and possessed of good morale. Two tier systems have generally been regarded as corrosive of good morale. While new employees may not perceive the lack of longevity pay as sufficient to turn down a concededly good job, once on the job and working side by side with veterans, but doing the same work, and being exposed to the same grave dangers, it seems to me quite probable that resentments would arise from the fact that notwithstanding their common tasks and exposures to dangers, some are nonetheless being denied a component of compensation provided to others. And past collectively bargained contracts, which historically have made no distinctions with respect to new hires when it comes to longevity pay, clearly favor the maintenance of the status quo.

As for the innovation of tying the receipt of Longevity Pay to one's performance evaluation, all that was said with respect to Issue #1 hereinabove, applies with equal force here. For these reasons then, the Union's final offer and not the City's will be awarded.

Award:

The Union's final offer is awarded.

ISSUE #4: ARTICLE XIX - VACATION

Evidence and Positions of the Parties:

The Union's final offer would change Article XIX to allow for 15 duty days of vacation (or 5 weeks per year for the Fire Prevention Officer) after 20 years of service instead of the current contract's provision of after 25 years of service. The City's final offer is to maintain the current contract's vacation schedule.

In defense of its offer the Union asserts that the fifteen duty days (or 5 weeks) vacation benefit after 25 years is illusory in that the majority of firefighters either retire or go on disability by their 25th year of service, and accordingly never reap this benefit. The Union introduced a graph showing that the eighteen (18) most recent retirees from the Department retired at an average of 23.8 years of service. In further support of their offer the Union presented data from the Ohio State Fire and Police Pension Board reflecting that the average pensioner, when including disability retirees, retired after having served just under 22.5 years of service. The Union also points to the parties' Fact

Finding Report and Recommendations in 1993 in S.E.R.B. Case No. 93-MED-19-0817 wherein the Union sought this same amendment. The Fact Finder noted the Union's contention, essentially the same as that made here, and the City's acknowledgment that a "small number of employees would benefit" and recommended the Union sought amendment stating:

". . . While the factfinder was not given specific information on where bargaining unit members fall on the seniority chart, it appears from testimony that the economic impact will be slight."

The City points out that both parties rejected this 1993 Fact Finding Report and that the Conciliator who followed did so too. The City also points out that when one culls out disability retirements, and looks only to "normal" retirements, the State Pension Board data reveals that the normal years of service at retirement is over 28 years and under 30 years of employment.

The City also asserts that the current Contract's vacation schedule tracks that provided by Statute to both State employees (O.R.C. 124.13) and County employees (O.R.C. 325.19). The City also points out that, by City Ordinance, the same type vacation schedule is accorded to non-Union City employees, and, by collective bargaining agreement, accorded to all other City employees in other bargaining units such as the Police Patrolmen and the Police Supervisors bargaining units. The City also points to Fact Finder Burkholder's rejection of the Union urged amendment. In that regard, Fact Finder Burkholder stated as follows:

"The Employer emphasized that all other Sidney bargaining groups are required to have 25 years of service in order to be eligible for five weeks of vacation. Evidence was introduced

that the same standard is applied by the State of Ohio for both State and County employees. No convincing evidence for a change in the current arrangement was offered."

Going to the purported adequacy of the current Contract's vacation entitlement, the City points out that vacation balances are traditionally high and that in certain circumstance some additional 54 hours of sick leave can be converted to vacation leave.

The City also points out that given the City's current mandatory retirement age of 62, employees coming to work for the City between the ages of 18 and 22 will be eligible (and some presently are eligible) for the 25 year vacation benefit of the current Contract.

On cross-examination by Union Counsel Pitts, Fire Chief Crosley conceded that a firefighter's work was often "extremely stressful," and that he was unaware of the average retirement age of other City Department employees.

Rationale:

Even allowing for the greater stress of the firefighter's job, at least vis-a-vis other non-safety force City employees, I don't believe the case is made for the improvement the Union seeks in this benefit. Significantly, the Union presents no external comparable data to support its final offer. And while some bargaining unit employees may not come to realize the maximum vacation entitlement as presently provided for, some will, and indeed some do. Hence the benefit is not illusory as the Union contends. And while the Union presented no external comparables,

the City did. Thus, as the City points out, its current benefit tracks that accorded to unrepresented/unorganized State and County employees. Similarly, it tracks the vacation benefit schedule applicable with other city employees, both organized and unorganized. Then too, the past collectively bargained factor and the Fact Finding Report factor favor maintenance of the status quo. In these circumstances, the City's final offer will be awarded.

Award:

The City's final offer is awarded.

ISSUE #5: ARTICLE XX - HOLIDAYS, SECTION 1.

Evidence and Positions of the Parties:

The City would maintain the current Contract's language with respect to providing for ten (10) paid holidays, or substitute Martin Luther King Day for Christmas Eve or Good Friday. The Union would add an eleventh holiday, namely, Martin Luther King Day, as its final offer.

In support of its final offer the Union points out that even prior to any collective bargaining agreement with the I.A.F.F., the City already gave the ten holidays continually contractually provided for. Since then both the Federal Government (commencing in 1986) and the State Government (O.R.C. 124.19) recognize Martin Luther King Day as a holiday. The Union has costed out its proposal and asserts that implementing their final offer would cost the City but \$3,850.00, an inconsequential amount given the fact that the Department's overall budget is well over \$1 million.

In support of its final offer, the City points out that by statute (O.R.C. 325.19) County employees receive but ten (10) holidays; likewise (O.R.C. 124.19) State employees. The Union points out that as a Charter City, state legislation is not binding on the City. By virtue of City ordinance, all unrepresented City employees receive but ten (10) holidays. Under their respective collective bargaining agreements, those City employees represented in separate bargaining units (police patrolmen, police supervisors, and public works employees) all receive but ten (10) holidays.

The City asserts that the municipalities of Fairborn, Piqua, and Troy are proper external comparables and that Fairborn and Troy both provide for but ten (10) holidays, while Piqua provides for but nine (9) holidays.

The City also points to the Fact Finder's failure to recommend the Union's same proposal before him because he found "no persuasive evidence that an eleventh holiday should be granted."

Contesting the Union's mathematics, the City asserts that it costs out the cost of an additional holiday at \$7500.00.

The City also points out that in the parties' last Conciliation in 1994 the changes as requested by the Union, namely, a substitution of Veteran's Day for a floating holiday, and hence a lighter holiday work schedule, was effectuated.

The City takes the position that to add the extra Martin Luther King Day holiday would increase the potential costs to the City in the event firefighters needed to be called in on that

holiday, since the called-in firefighters would receive 2-1/2 times their regular pay.

Rationale:

Since the city is willing to substitute Martin Luther King Day for one of the other existing holidays, it is clear that neither the propriety nor the desirability of Martin Luther King Day is at issue. What is truly at issue is the number of paid holidays. Unwilling to trade Martin Luther King Day for another already granted holiday, and emphasizing the rather lengthy period of time that the City has recognized but ten (10) holidays, it's clear that the real issue for the Union here is the addition of an additional holiday.

Comparable data clearly favors the City's offer of holding the line at ten (10) paid holidays. Ten paid holidays is where the City is with respect to its other bargaining units and with the unorganized work force as well. Additionally, external comparables, the municipalities of Piqua, Fairborn, and Troy are at ten or fewer paid holidays. Additionally, one of the "other factors" referred to in the Statute concerns the desirability of stability; such is clearly in the public's interest. Here in just the last round of negotiations the City made adjustments (improvement) in the paid holiday benefit along the lines requested by the Union. In the interest of stability, these recent changes mitigate against still further changes so soon. Then too there are the cost factors, both potential and real, alluded to by the Fact Finder and the Fact Finder's recommendation against the same

proposal of the Union as is embodied in its "final offer" here. And obviously enough, the Statute's past collectively bargained agreements factor also favors the City's final offer. In sum, the statutory factors favor the City's final offer and hence the City's final offer will be awarded.

Award:

The City's final offer is awarded.

This concludes the Conciliator's Report and Award.

April 5, 1996



Frank A. Keenan
Conciliator