

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

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RELATIONS BOARD

AUG 19 10 02 AM '96

CITY OF SPRINGDALE,

Employer,

and

95-MED-09-0712

FRATERNAL ORDER OF POLICE,  
OHIO LABOR COUNCIL, INC.,

Labor Organization.

**CONCILIATOR'S AWARD**

**CONCILIATOR:**

Philip H. Sheridan, Jr.  
Attorney at Law  
580 South High Street, Suite 200  
Columbus, Ohio 43215  
(614) 221-2001

**FOR THE UNION:**

Deborah Dutton  
Staff Representative  
Fraternal Order of Police, OLC, Inc.  
9643 Waterford Place  
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**FOR THE CITY:**

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Wood & Lamping  
2500 Cincinnati Commerce Center  
600 Vine Street  
Cincinnati, Ohio 45202

**AUGUST 16, 1996**

## CONCILIATION AWARD

**STATEMENT OF CASE:** The parties, the City of Springdale, represented by C.J. Schmidt, III, Esq., and Paul R. Berninger, Esq., both of Wood and Lamping, Attorneys at Law, and the bargaining unit, Fraternal Order of Police, Ohio Labor Council, Inc., including all full time patrol officers, represented by Deborah Dutton, staff representative, have entered into negotiations for a successor contract to the contract which expired December 31, 1995.

The parties have engaged in previous contract negotiations leading to agreed contracts. The parties attached a copy of the existing collective bargaining agreement.

The parties met and bargained in good faith, and were able to agree to all but one issue. The parties have a tentative agreement on all but the one issue, but have not yet signed off on any of the contract issues. The parties submitted the one remaining issue to fact-finding on March 7, 1996, which led to a fact-finding and recommendation which was rejected by the City. I was chosen to serve as conciliator and issue a binding conciliation award pursuant to R.C. 4117.14(G). At the conciliation hearing on July 11, 1996, the parties outlined their position on the remaining issue:

### Unresolved Issue Article 8 Grievance Procedure and Article 9 Discipline

Pursuant to R.C. § 4117.14 and Admin.R. 4117-9-05, Philip H. Sheridan, Jr., 580 South High Street, Columbus, Ohio, was chosen by the parties as conciliator.

The parties agreed to a conciliation hearing on July 11, 1996, and the meeting was convened at 10:00 a.m. at the City Administration Building. In addition to their representatives, Doyle H. Webster, Derrick Parham and James Freland appeared on behalf of the City. In addition to their representative,

Randall Pierce appeared on behalf of the bargaining unit. The matter was submitted upon statements and arguments presented to the conciliator.

According to the provisions of R.C. Chapter 4117, the parties provided me with a copy of the current contract, the issues which have been resolved, the unresolved issue, and each party's Final Offers on the unresolved issue.

In issuing this conciliation report, I have given consideration to the provisions of R.C. Chapter 4117, and in particular, the criteria contained within R.C. § 4117.14(G)(7)(a)-(f).

#### **Article 8 - Grievance Procedure and Article 9 - Discipline.**

The issue for determination is whether all disciplinary actions should be appealable through the grievance and binding arbitration procedures. The current state of affairs is that the City of Springdale has a Civil Service Commission which hears any appeals from disciplinary actions.

### **POSITION OF THE PARTIES**

#### **THE CITY'S POSITION:**

Mayor Doyle H. Webster stated the City's position. He has been in office for over 24 years and has seen no problems with the Civil Service Commission procedure. The City of Springdale is a Home Rule city and the Civil Service Commission procedure was adopted by the local community voters. The members of the Commission are citizens appointed by the City Council and they effectively apply the local community standards. The Mayor thinks it is especially important that police practices be the subject of these local standards and speaking on behalf of the City, he does not wish to learn a new system or process where the one in place has been successful over the years and even the bargaining unit cannot point to any problems which have occurred.

## **THE FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL POSITION:**

The bargaining unit accepted the decision of the Fact Finder which recommended adoption of binding arbitration. The Union would add to its proposed Section 8.1 the following: "except that reprimands may not be submitted for arbitration." The City had no objection to the bargaining unit's change in position at the hearing. The bargaining unit admits there have been no problems with the current practices of the City and the Civil Service Commission. However, the bargaining unit is worried about a change in administration. The bargaining unit also points to comparables which demonstrate that 90% of the police contracts in Ohio do contain a binding arbitration provision for serious discipline. The bargaining unit likes the privacy of arbitration because it fears the improper suasion and a public hue and cry against some officer in the future. It is also important to distinguish between the current method by which the Civil Service Commission members are chosen and the alternate striking which occurs in choosing an arbitrator. Currently, the bargaining unit claims it has no input in the choosing of the Civil Service Commission members whereas it could have some effect on choosing the arbitrator. The bargaining unit also opposes the Civil Service process because of its length and cost, since many appeals from decisions of Civil Service Commissions go not only to the Court of Common Pleas but also to the Court of Appeals. In contrast, arbitration is final. The bargaining unit also asserts that arbitrators appointed pursuant to Chapter 4117 have the requisite knowledge to interpret contract items and to apply the general labor law of the State of Ohio to disputes between the parties.

## AWARD

Chapter 4117 requires me to consider the past collective bargaining agreements between the parties. As is pointed out by the City, the previous agreements between the parties have contained the Civil Service Commission provisions and there has been no agreement for arbitration with any other unit of the City.

However, other public safety employees doing comparable work do have binding arbitration in 90% or more of their contracts. This is true in the Cincinnati area where the City is located and also throughout the State of Ohio. The City argues that the interests and welfare of the public are best served by a local Civil Service Commission.

The City could finance and administer the change which is being proposed because I find that binding arbitration would cost less than a contested civil service appeal from the Commission to the courts. The City does have the lawful authority to enter into a disciplinary process which includes binding arbitration. There were no stipulations by the parties, but I find it significant that neither side could point to a disciplinary action taken by the City which resulted in some misuse or miscarriage of Civil Service Commission process.

The Fact Finder's written report and recommendation recommends the incorporation of arbitration with the step grievance procedure as was found in the Union Proposal. She points out that in the private sector, arbitration is the "quid quo pro" of the "no strike" clause. She favors arbitration even though there are no current problems between the parties. Her report in part provides: "the incorporation of the grievance procedure which culminates in compulsory arbitration allows employees

the basic right to have decisions which can be career-altering appealed in a private, non-political, neutral environment. Furthermore, an arbitrator is more likely to have specific experience and knowledge which the Civil Service Commission may not have. When combining these arguments with the potential of lengthy and costly process of a Civil Service Commission process, arbitration is the better choice." (Report and Recommendation of the Fact Finder, Page 3.) The Fact Finder was most persuaded by the neutrality and privacy of arbitration hearing procedure. It appears the Fact Finder is convinced of the bargaining unit's argument that the Civil Service Commission is more likely to accept the City's position on matters than it is to accept the bargaining unit's position, especially where political or newsworthy events are involved.

Clearly, this issue is one which affects terms and conditions of employment and is thus subject to Chapter 4117 and the conciliation process which is currently being concluded. The Ohio Supreme Court has considered whether a conciliator's award is an unconstitutional delegation of legislative power and violates a city's right to Home Rule and has decided each issue in the negative. See, e.g., City of Rocky River v. State Employment Relations Bd. (1989 Ohio) 43 Ohio State 3d 1.

To my way of thinking, the City's strongest argument is that there is no current case or controversy concerning this issue. In fact, neither side could point to an historical problem. In such circumstances, I prefer to leave the parties as I find them, and rely on their maturing relationship with one another to allow them to settle their differences.

Here, it is clear to me the parties will not change their positions. They have been able to resolve disciplinary cases under the existing system. I support binding arbitration as a theory and a

practice and believe it is superior to the Civil Service Commission procedure. However, I choose the last offer of the City on this issue and decline to impose binding arbitration based on these facts.

Respectfully submitted,

  
PHILIP H. SHERIDAN, JR.

AUGUST 16, 1996