

STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

JAN 8 9 35 AM '97

In the Matter of Conciliation Proceedings Between:

CITY OF EUCLID, OHIO)	Case No. 95 MED 10-0880
)	
and)	CONCILIATION AWARD
)	
FRATERNAL ORDER OF POLICE)	Margaret Nancy Johnson
OHIO LABOR COUNCIL)	Conciliator

Appearances

For the City:	For the Union:
Craig Brown, Esq.	Otto Holm, Staff Representative
Joe Melnick	Robert Roach
Ralph Doles, Capt.	Elizabeth Fanara
Warden Janet Clinton	S. Znidarsic

In accordance with Ohio Revised Code Section 4117.14(D)(1), the State Employment Relations Board appointed Margaret Nancy Johnson as conciliator to resolve the bargaining impasse between the parties. These proceedings convened on December 11, 1996, in a conference room at the Euclid Shore Cultural Center, Euclid, Ohio. Both parties timely submitted position statements to the Conciliator for her review prior to the hearing. After attempts at mediation had failed to result in agreement, testimony was taken on the issues remaining in dispute.

The City of Euclid, hereinafter "City," and the Fraternal Order of Police, hereinafter "FOP" or "Union," are parties to a Collective Bargaining Agreement which expired on December 31, 1995. The bargaining unit is comprised of approximately forty corrections officers. The history of negotiations between the parties leading up to conciliation is pertinent to this proceeding.

Prior to fact-finding on September 19, 1996, the parties engaged in extensive collective bargaining which resulted in agreement on a new three year contract with modifications to fourteen provisions: probationary period, vacancies, O.L.C. representation, work rules, communicable diseases, Labor Management and Safety Committee, union representation, temporary transfers, paid and unpaid leaves of absence, roll call briefing, shift premium, health care, wages and group life insurance.

Having failed to agree on seven remaining issues, the parties engaged in fact-finding on September 19, 1996. Those issues remaining in dispute at the time of fact-finding were: residency, compensatory time, earned and unused benefits, PERS/vacation rollover, layoff and health benefits, proficiency allowance, and longevity. Recommendations of the Fact-finder issued on October 1, 1996, were based upon extensive mediation and a thorough understanding of the respective positions of the parties. Residency had been withdrawn from the table by

the Union, and the fact-finder accordingly submitted his recommendations on the remaining six items.

While the City accepted the report of the fact-finder, the FOP rejected the same causing the State Employment Relations Board to order conciliation proceedings. Prior thereto, the parties engaged in further negotiations which resulted in resolution of compensatory time, unused holiday and furlough hours, and PERS/vacation rollover in accordance with the recommendations of the fact-finder. The FOP, however, has reintroduced residency as a matter of contention. Thus, four unresolved issues remain for consideration by this conciliator.

Issues

The issues presented to the conciliator for resolution include: longevity, lay-offs, residency, proficiency.

Criteria

In submitting the award which follows, the conciliator gave consideration to the factors outlined in O.R.C. Section 4117.14(G)(7).

Position of the Parties

I Longevity

The fact-finder recommended adding contract language pursuant to which employees hired after December 31, 1995 would no longer be eligible to receive longevity pay including pay based on prior governmental service. While the City accepts this recommendation, the FOP rejects the same arguing that the City is seeking concessions without providing consideration to other Union demands, including parity with Police Officers within the City. Moreover, the Union argues the longevity as structured by the fact-finder's recommendations would create a two-tier system, destructive of coherence within the unit.

II Lay-offs

Again, the City accepts the recommendation of the fact-finder to provide that if a laid off bargaining unit member is called in for work, all benefits will be paid for the month(s) in which such employee works. Rejecting the recommendation of the fact-finder, the Union seeks City paid premiums for the laid off employee for a period of six months, and a fifty per cent City contribution to premiums for the next eighteen months of lay-off. The Union argues that as safety employees, corrections officers are entitled to the same coverage now provided Police Officers. On the contrary, the City argues that corrections officers are not safety employees pursuant to state statute, they are not commissioned as peace officers, nor do their job duties entitle them to designation as such. Rather, corrections officers are entitled to parity with other non-safety employees within the city.

III Residency

While the Union seeks to delete the residency requirement from the contract, the City argues for maintaining current contract language. Again, the dispute is one of parity with other safety units within the city. The Union maintains that the Police Officers do not have the same residency requirements which are imposed on the corrections officers. Additionally,

comparable communities do not have residency requirements. The City counters with the argument that all other non-safety employees have a residency requirement and that the corrections officers ought not to obtain what other city employees do not have.

IV Proficiency

The fact-finder recommended the following proficiency benefits for employees who met the basic minimum training of twenty-four hours per year: \$1.00 per hour effective January 1, 1996; \$1.25 per hour effective January 1, 1997; \$1.35 per hour effective January 1, 1998. The City opposes this recommendation and submits proficiency benefits of \$.95, \$1.00 and \$1.05 for each of the three years of this contract. Arguing that the Union has rejected components of a package of which the proficiency benefits were a part, the City reinstates its offer on proficiency benefits. The Union argues, however, that the parties had reached tentative agreement on the proficiency benefits. Based upon services performed on behalf of the City and the training requirements associated therewith, the Union maintains that the proficiency benefits it seeks are appropriate.

Discussion

In this as in other conciliation proceedings, the hearing officer must consider the impact of the Report of the Fact-finder and the weight to be attributed to his recommendations. While conciliators generally recognize the persuasive value of the Report of the Fact-finder, the influence of the recommendations of the prior hearing officer will vary depending upon the bargaining history of the parties and the unique circumstances of each case. Thus, when the facts so warrant, this conciliator may deviate from the recommendations previously issued.

In the case now pending, however, the conciliator is of the opinion that considerable weight ought to be ascribed to the recommendations submitted on October 1, 1996. The report then issued was the culmination of almost a full year of negotiations during which the parties had agreed upon modifications to fourteen issues, reducing to seven the issues to be resolved through fact-finding. Then, at fact-finding the parties engaged in further mediation during the course of which the Union withdrew its proposal on residency and the parties compromised on other issues. At the time of the issuance of the fact-finding report, the hearing officer was immersed in an understanding of the conflicting positions and how the same could best be resolved.

Confident of the understanding of the fact-finder, the parties stipulated that his report should include contract language only and not a recitation of the factors relied upon in arriving at the recommended language. Thus, while the conciliator is without the benefit of the analysis of the prior hearing officer, she has recommendations "based upon evidence obtained through hours of mediation and a hearing...." The conciliator is persuaded that the recommendations issued on October 1, 1996 were based upon a complete knowledge of the factors pertinent to resolution of this dispute, including

bargaining history, comparables, the authority of the employer, and the interests of the public. Most significantly, however, the fact-finder was completely versed in the respective positions of the parties, the compromises, and the give and take which had occurred in the course of their negotiations. Accordingly, the report of the fact-finder ought to be imbued with authoritative weight and consideration in this conciliation award. Having so determined the Conciliator addresses those three issues upon which the fact-finder submitted recommendations and the residency proposal of the Union.

I Longevity

This hearing officer agrees with the recommendation of the factfinder on longevity. In an economy in which public employers are seeking means of maintaining service to constituencies without increasing the costs of doing so, benefits previously provided to employees are now carefully scrutinized. In seeking responsible responses to economic needs of the employer and the employee, parties to collective bargaining agreements have negotiated changes in traditional contract terms. As with health care, longevity has been targeted as a cost which warrants modification. Accordingly, the City herein has successfully negotiated changes in longevity for every other non safety unit with which it collectively bargains. In doing so no current employee will experience a loss. Only new hires after January 1, 1996 are affected by the changes negotiated with other units, recommended by the fact-finder, and endorsed by this conciliator.

II Layoffs

Based upon benefits provided to Police Officers, the Union herein seeks City contributions to the health insurance of laid-off employees. Rejecting the attempt by the Union to secure parity with Police Officers in these negotiations, the fact finder recommended language providing insurance coverage for those months in which a bargaining unit member is called back to work. The conciliator concurs with this recommendation and awards the language offered by the City.

III Proficiency

The proficiency benefit recommended by the Fact-finder and now sought by the Union is a realistic and reasonable means of compensating employees who satisfy certain training requirements. The bonus is an affordable incentive to enhance qualifications, and this Conciliator is of the opinion that the proficiency benefits sought by the Union and recommended by the Fact-finder should be awarded in this case.

IV Residency

As previously indicated, residency was not addressed by the Fact-finder as the Union proposal on the same had been withdrawn. In the proceeding before the Conciliator, however, the issue appeared to be a major stumbling block to a mediated agreement. Part of the problem in reaching a consensus was the perception by the Union that other bargaining units had successfully modified the residency requirements in their contracts. The City maintains, however, that the bargaining

agreements with all non safety units in the City conform to and are in compliance with the 1988 City ordinance in which City Council adopted an across the board residency requirement for city employees. While the language in other contracts referencing the "date of this agreement" rather than the 1988 ordinance date may create an ambiguity, the City asserts it is incorrect to argue that the agreements modify the residency ordinance. Moreover, the City contends that the exception negotiated for the Police was inconsistent with the intent of the parties. At all times the City has endorsed the desire of residents to impose a residency requirement on City employees.

Given the history of the residency requirement and the analysis of other collective bargaining agreements, this conciliator believes any changes to the disputed contract language should be negotiated and not unilaterally imposed by conciliation order. Absent a recommendation by the fact-finder to the contrary, a persuasive argument mandating change, or evidence that other employees are not similarly restricted, this conciliator cannot order the deletion of the residency requirement as sought by the Union.

Award

I Longevity The Conciliator orders the position of the City.


II Lay-off The Conciliator orders the position of the City.

III Proficiency The Conciliator orders the position of the Union.

IV Residency The Conciliator orders the position of the City.


In addition, the Conciliator orders all those provisions previously negotiated by the parties into effect.

Respectfully submitted,


Margaret Nancy Johnson

Service

Copies of the foregoing award were served by federal express this 7th day of January on Otto Holm, Jr. Staff Representative, FOP/OLC, Inc. 14819 Triskett Road, West Park, Ohio 44111; Craig Brown, Esq. Duvin, Cahn & Hutton, Erieview Tower, 1301 East Ninth Street, Cleveland, Ohio; and G. Thomas Worley, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213.


Margaret Nancy Johnson