

STATE EMPLOYMENT  
RELATIONS BOARD

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STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

CONCILIATION PROCEEDINGS

CASE NO. 95-MED-11-1034

ROBERT C. DEVLIN

CONCILIATOR

|                          |   |               |
|--------------------------|---|---------------|
| IN THE MATTER OF:        | : |               |
| DOVER FIREFIGHTERS, IAFF | : |               |
| LOCAL 324                | : |               |
| and                      | : | June 18, 1996 |
| CITY OF DOVER            | : |               |

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REPORT AND FINDINGS OF THE CONCILIATOR

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APPEARANCES

ON BEHALF OF THE UNION:

RUSSELL R. VOLKERT, Spokesman  
PAUL WESTLAKE, President, Local 324  
RICHARD R. ELLIOT, Secretary, Local 324  
WILLIAM W. HARRINGTON, Member, Negotiating Team  
JOHN O'NEIL, Vice President, 6th District OAPFF  
JOE CARBENIA, OAPFF Trustee

ON BEHALF OF THE CITY:

ROBERT J. TSCHOLZ, Attorney  
THOMAS G. WATSON, Law Director  
TWEED VORHEES, Safety Director  
W. FRED NIXON, Chief of Fire & EMS  
ZOE ANN KELLEY, City Auditor

## PRELIMINARY COMMENTS

The STATE EMPLOYMENT RELATIONS BOARD appointed the Conciliator who was duly notified by G. Thomas Worley, Bureau of Mediation, by letter on May 21, 1996.

The conciliation proceedings were held on June 18, 1996 in the Dover City Council Chambers beginning at 10:00 a.m. and ending at 2:30 P.M.

Eleven (11) issues were originally set for conciliation. However, the parties were able to reach agreements on seven (7) of these issues. These seven issues were:

1. Effective date
2. Emergency calls
3. Sick leave
4. Shift differential
5. Hazardous duty
6. Personnel files
7. Medical surveillance

Both parties agreed that this report did not need to spell out the terms of these items. The Conciliator is in full agreement.

Both parties also agreed that the collective bargaining will be effective from February 16, 1996 at 7:00 a.m. to February 16, 1999 at 6:59 a.m. Retroactivity, if any, shall only apply to "new" money.

Along with the testimony and exhibits, consideration was given to the criteria provided by statute and administrative rule.

The Conciliator would be remiss if he did not compliment the parties involved in the preparation and presentation of their respective positions.

## ISSUES AND FINDINGS

### ISSUE: SICK LEAVE CONVERSION - Article XIX

POSITION OF THE UNION: It is the position of the Union that this provision (Article XIX) should remain the same as the current collective bargaining agreement. The fact-finder was also not persuaded that any change was in order.

POSITION OF THE CITY: It is the position of the City that all city employees should be on the same basis. It is urged by the City that this could be accomplished by crediting the firefighters with 6.44 hours of sick leave for every completed block of 112 hours in an active pay status. The City does concede that this would require an adjustment to Article XVIII, Section 18.01.

OPINION OF THE CONCILIATOR: It is the opinion of the Conciliator that it is beyond the scope of his authority to make a finding on an issue which is not properly before him. Article XVIII, Section 18.01 not only is not before the Conciliator it was not before the Fact-Finder. There is no question that Article XVIII, Section 18.01 and Article XIX, Section 19.01 impact upon each other. However, at this point in time this problem is probably best left for a future negotiation.

Moreover, the case for consistency throughout the City may be overstated. We cannot legislate sameness into situations posing inherently different circumstances. We can seek, and conceivably achieve, parity among groups working standard hours and, likewise, among groups working the 2912 hour year. But it may neither be fair nor reasonable that departments working standard hours must always be the same on every issue as departments working the longer year.

DECISION OF THE CONCILIATOR: It is the decision of the Conciliator that the position of the Union is more reasonable and that Article XIX shall read as follows:

Article XIX

Conversion Of Accumulated Sick Leave Credit Upon

Retirement Or Death Of An Employee

CURRENT CONTRACT LANGUAGE

ISSUE: WAGES - Article XX

POSITION OF THE UNION: It is the position of the Union that it agrees with the wording in the report of the fact-finder. Aside from some intramural sparring with the police department for bragging rights, it appears that the main objective of the Union is to enhance retirement benefits by increasing the base wage. In turn, the Union is willing to forego the ten per cent (10%) "pick up" previously enjoyed as well as increasing the income tax base for its members.

POSITION OF THE CITY: It is the position of the City that its offer of 2.7% wage increase each year of the collective bargaining agreement is more than fair.

It is further the position of the City that comparables support its position and that the Dover Police department is not necessarily the proper unit to be used in making comparisons.

It is also the position of the City that the proposed 10% wage increase swap for the 10% pension "pick up" is not an equal deal. It suggests that a 7.5% wage increase would be more in order.

OPINION OF THE CONCILIATOR: The objective of the Union to enhance retirement benefits is very interesting. Without determining the accuracy of the claim of the City, it is apparent that if the City increases wages in lieu of the "pick up" it will cost the City more than the "pick up".

It is the opinion of the Conciliator that the offer of the City is sound

by standards provided by statute and administrative rule.

No compelling evidence was presented to justify the other adjustments sought by the Union.

DECISION OF THE CONCILIATOR: It is the decision of the Conciliator that the position of the City is more reasonable and that Article XX shall read as follows:

**ARTICLE XX**

Wages

20.01 CURRENT CONTRACT LANGUAGE

| 20.02 -First Year         | <u>First 6 Months</u> | <u>Second 6 Months</u> | <u>Rate</u> |
|---------------------------|-----------------------|------------------------|-------------|
| Captain                   | -                     | -                      | 10.17       |
| Firefighter/EMTA/Mechanic | -                     | -                      | 9.98        |
| Firefighter/EMTA          | 8.60                  | 9.07                   | 9.55        |
| 20.03 -Second Year        | <u>First 6 Months</u> | <u>Second 6 Months</u> | <u>Rate</u> |
| Captain                   | -                     | -                      | 10.44       |
| Firefighter/EMTA/Mechanic | -                     | -                      | 10.29       |
| Firefighter/EMTA          | 8.83                  | 9.32                   | 9.81        |
| 20.04 -Third Year         | <u>First 6 Months</u> | <u>Second 6 Months</u> | <u>Rate</u> |
| Captain                   | -                     | -                      | 10.72       |
| Firefighter/EMTA/Mechanic | -                     | -                      | 10.53       |
| Firefighter/EMTA          | 9.06                  | 9.57                   | 10.07       |

20.05 - DELETE

20.06 - With respect to the rates established in paragraphs 20.02, 20.03 and 20.04, a new firefighter starting with the City of Dover after the effective date of this contract will receive pay as follows:

**FIRST SIX MONTHS**

10% less than regular rate

20.07 - CURRENT CONTRACT LANGUAGE

20.08 - CURRENT CONTRACT LANGUAGE

20.09 - DELETE

**SECOND SIX MONTHS**

5% less than regular rate

**ISSUE: LONGEVITY PAY - Article XXI**

**POSITION OF THE UNION:** It is the position of the Union that it wishes that the longevity be changed to read the same as the Dover Police Department. The Union denies that is necessarily seeking parity with the police department but rather that it wants this increase independently.

**POSITION OF THE CITY:** It is the position of the City that this proposal represents an additional cost to the City which cannot be justified. The City also maintains that, if this item is a parity question, the police had traded in negotiations in order to obtain the enhanced longevity schedule.

**OPINION OF THE CONCILIATOR:** It is the opinion of the Conciliator that if this question is not a parity issue with the police, then it represents a cost to the City for which no compelling argument was presented. Moreover, the Union has disclaimed that parity is involved.

The Conciliator is not persuaded that the statutory and administrative rules permit him to grant increased benefits simply based upon desire.

**DECISION OF THE CONCILIATOR:** It is the decision of the Conciliator that the position of the City is more reasonable and that Article XXI shall read as follows:

**ARTICLE XXI**

**Longevity Pay**

**CURRENT CONTRACT LANGUAGE**

**ISSUE: TRAINING AND CERTIFICATION - Article XXIII**

**POSITION OF THE UNION:** It is the position of the Union that all training or schooling, whether required for certification or mandated by the City, shall be compensated for at overtime rates if such training is on the employee's off-duty time. It is the position of the Union that this time is tantamount to overtime duty.

**POSITION OF THE CITY:** It is the position of the City that it is willing to comply with the Fair Labor Standards Act and nothing more.

**OPINION OF THE CONCILIATOR:** It is the opinion of the Conciliator that such training and/or schooling does represent an invasion of the free time of the employee. It is further the opinion of the Conciliator that the rules of the FLSA in any event would be operative in, at least, some of the situations.

**DECISION OF THE CONCILIATOR:** It is the decision of the Conciliator that the position of the Union is more reasonable and that Article XXIII shall read as follows:

**ARTICLE XXIII**

**Training And Certification**

23.01 Employees shall be required to maintain certification as required for their position.

23.02 Reasonable effort will be made to hold certification and recertification training on premises and while the employee is on duty. If said training cannot be held on premises while the employee is on duty, then any employee required to attend said training will be compensated at his overtime rate of pay for those hours spent training. City shall pay all costs of tuition, meals, lodging, mileage, etc.

23.03 For those programs that are not required for certification or recertification by mandated statutory requirements and the employee is required by the Chief of the

department to attend those programs off premises, the employee shall be compensated for that time spent in those classes or programs at his overtime rate of pay. This shall not include programs voluntarily attended by the employee.



ROBERT C. DEVLIN  
Conciliator

Dated: June 26, 1996



CERTIFICATE OF SERVICE

The foregoing Report and Findings of the Conciliator was sent on June 26, 1996 by regular U. S. Mail to the following:

G. Thomas Worley, Administrator  
STATE EMPLOYMENT RELATIONS BOARD  
65 East State Street  
Columbus, Ohio 43215

Robert J. Tscholl, Esq.  
740 United Bank Building  
220 Market Avenue South  
Canton, Ohio 44702

Mr. Richard Elliott  
116 East Third Street  
Dover, Ohio 44622

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ROBERT C. DEVLIN  
Conciliator