

BEFORE

STATE EMPLOYMENT
RELATIONS BOARD

STATE EMPLOYMENT RELATIONS BOARD Nov 18 10 08 AM '96

STATE OF OHIO

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

Employee Organization)

and)

CITY OF AVON LAKE)

Employer)

CASE NO. 96-MED-01-0040

FINAL OFFER SETTLEMENT AWARD

DATE ISSUED: November 15, 1996

ROBERT J. ASMAN, CONCILIATOR

APPEARANCES

FOR THE EMPLOYEE ORGANIZATION:

Mr. Hugh C. Bennett
Staff Representative
Fraternal Order of Police/Ohio
Labor Council Inc.
3076 Hillside Trail
Stow, Ohio 44224
(330) 673-9605

FOR THE EMPLOYER:

Robert J. Tscholl, Esq.
Attorney at Law
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220 Market Avenue South
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I was appointed conciliator in this matter, in accordance with Ohio Revised Code Section 4117.14(D)(1), to resolve the dispute between the parties by selecting, on an issue by issue basis, from either of the parties final settlement offers.

A hearing was held in Avon Lake, Ohio, at the Old Fire Station, on October 16, 1996, at which time the parties presented their evidence, both oral and documentary, and argued their positions as to each of the unresolved issues.

In the fact-finding phase of this matter, at impasse, were the following twelve contractual provisions in issue.

- A. DURATION OF CONTRACT
- B. MANAGEMENT RIGHTS
- C. UNION RIGHTS
- D. WORK WEEK - SCHEDULED HOURS
- E. WAGES
- F. HOLIDAY PAY
- G. CLOTHING ALLOWANCE
- H. UNION BILL OF RIGHTS
- I. HEALTH AND SAFETY COMMITTEE
- J. HOSPITAL INSURANCE
- K. COMPENSATORY TIME
- L. TOTAL AGREEMENT

MEDIATION

As a result of the action of the parties in removing from further consideration the issues remaining after fact-finding, it was agreed that the nature of the issues remaining precluded the

probability of any meaningful result from mediation. That effort was, therefore, not explored.

In selecting, from between each of the party's final settlement offers, I have also taken into consideration the following:

1. Past Collective Bargaining Agreements between the parties; (Please see my comments under, E. Wages.)
2. Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employers 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 adjustment on the normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the parties; and
6. Such other factors, not confined to those listed here, 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.

DISCUSSION AND AWARDS

A. DURATION OF THE CONTRACT:

FINDINGS AND AWARD

It appears that the parties have adopted the recommendation of the factfinder as follows:

The duration of this contract shall be two and one-half (2 1/2) years, commencing July 1, 1996, and terminating December 31, 1998.

B. MANAGEMENT RIGHTS:

FINDINGS AND AWARD

The parties have adopted the recommendation of the factfinder, as follows:

1. The City's proposal to amend Article III, Section m is rejected. Said section to read: "To set standards of service and determine the procedures and standards of selection for employment."

2. The part-time employee hired by the City, although not part of the bargaining unit, shall be permitted to work, subject, however, to the following provision which is to be part of the contract:

3. "No full time bargaining unit employee shall have his/her hours reduced below 40 per week, or be laid off until after the City has eliminated all hours of work for part-time non-bargaining unit employees."

C. UNION RIGHTS:

FINDINGS AND AWARD

The language proposed by the Union was rejected by the Employer, and in his recommendation, the factfinder modified the proposed terms. I accept and adopt the recommendation of the factfinder, as follows:

Effective January 1, 1997, Article VI, Section 6 shall read as follows:

"The Union shall be allowed up to eight (8) hours paid leave per year, for the attendance of Union officials at Fraternal Order of Police functions, subject to the approval of the Chief of Police and existing policy on request for time-off."

E. WAGES:

FINDINGS AND AWARD

The final offer settlement proposed by the Employer is as follows:

The City proposes a one-time nonrecurring lump sum payment in the amount of One Thousand Dollars (\$1,000.00) payable at the execution of the Contract to each bargaining unit member in an active pay status at the time the Contract is executed.

Effective January 1, 1998, the City proposes a one-time nonrecurring Fifteen Hundred Dollar (\$1,500.00) lump sum payment to each bargaining unit member in an active pay status as of this date, or who has actually worked one thousand, eight hundred (1,800) hours or more in the preceding 12 calendar months.

The Union's proposal was modified by the factfinder, and the final offer settlement of the Union was modified to accept the factfinder's recommendation.

At the conciliation hearing the data that had been provided in great detail to the conciliator was discussed and implemented in the arguments presented by the parties. The City requested an opportunity to submit a post-hearing statement, which I granted. The Union asked for an opportunity to reply, which I granted. Additional argument was provided, emphasizing their interpretations of the SERB material and the merits of utilizing statewide figures versus Northeast Ohio numbers. I believe that it is impossible to be absolutely accurate in applying regional data because of the variables that are unique to Avon Lake. For example, complications occur when you try to accommodate to length of service of some of the key employees. As a consequence, despite the additional

arguments, I find it to be unrealistic to differ with any of the conclusions reached by the factfinder. My inclination is to adopt these well reasoned findings and recommendations.

The City complains that the factfinder misstated the Employer's position in suggesting that the City had previously offered 4% increases in 1997 and 1998, but instead the City offered:

". . .since the City is proposing a one-year contract, and all other contracts will expire at the end of the year, the City will negotiate a wage increase for the dispatchers along with all other City employees in the fall and winter of 1996 to be effective at the beginning of 1997."

I can assure the City that I was not prejudiced, even if it had been an erroneous impression on the part of the factfinder. At the time, he might have listened to any number of proposals and counterproposals as to which he could weigh the merits without adverse influence. Arbitrators and mediators are used to the strategies of seasoned negotiators. This is one reason why I declined to grant the City's request to amend its wage offer late in the proceedings. Wage proposals change often as negotiations fluctuate. And I tend not to intrude if it appears that the parties' positions vary from time to time.

The Union disputes the contentions in the Employer's statement in just about every respect, but it is interesting to note that it disavows any intention of using length of service as a primary criterion in determining rates of pay. Instead, the Union purports to accentuate knowledge, skills and abilities.

I do not believe it would add anything significant to my award to outline in detail the arguments and counterarguments of the parties. The factfinder and I have considered each of them with care. One observation, however, is, to what extent must a factfinder or conciliator consider past bargaining agreements when the agreement in issue is a first? I think the Union's contention that it cannot be considered is reasonable, unless there is a specific connection with past agreements that would make them relevant. Otherwise, the process would call out to comparing the terms and conditions of all the bargaining units of public employees in the vicinity and invite endless confusion to the task of the factfinder or conciliator.

Accordingly, I accept and adopt the finding of the factfinder, for I think that his wage increase rationale is justified, and I accept his recommendation, as follows:

The Union request for a wage adjustment for 1996 is rejected.

I recommend a wage increase of 4.5% effective January 1, 1997. I further recommend an additional wage increase of four percent (4%) effective January 1, 1998, and an additional wage increase of two percent (2%) effective July 1, 1998.

F. HOLIDAY PAY

DISCUSSION AND AWARD

The Union proposed additions to the Employer's proposal for holiday pay. The factfinder accepted the City's proposal as fair and reasonable under the circumstances. I adopt the findings and recommendation of the factfinder as follows:

I recommend that Article XIV (15) proposed by the City be made part of this contract (Fact-Finder Exhibit "A"). (Conciliator Exhibit "A").

G. CLOTHING ALLOWANCE:

DISCUSSION AND AWARD

The Union proposed a uniform allowance and the City offered contract language, both of which were modified by the factfinder. The Union accepted the factfinder's recommendation, and I find that it is reasonable and adopt his recommendation, as follows:

The provision for clothing allowance to read as follows:

"Full time employees required to wear uniforms shall receive annual clothing allowances for the purchase and maintenance of regulation uniforms and clothing as follows:

Effective January 1, 1997 \$425.00

Effective January 1, 1998 \$500.00

Such allowance shall be paid in one installment on the scheduled pay day immediately preceding April 1st."

H. BILL OF RIGHTS:

DISCUSSION AND AWARD

The Union proposed language found in other Avon Lake agreements and it was opposed by the City. The factfinder agreed with the Union's proposal and I concur with his rationale, and adopt his recommendation, as follows:

I recommend that the "Bill of Rights" provisions proposed by the Union be included in this contract. Said provisions are attached to this report as Fact-Finder Exhibit "B". (Conciliator's Exhibit "B").

I. HEALTH AND SAFETY

DISCUSSION AND AWARD

Language proposed by the Union and modified by the factfinder was accepted by the City, and I find that his recommendation has merit, and it is adopted as follows:

One (1) member of this unit may participate in the Health and Safety committee presently set forth in the Police Officer's contract. (See Fact-Finder Exhibit "C"). (Conciliator's Exhibit "C").

J. HOSPITAL INSURANCE

DISCUSSION AND AWARD

Both parties accept the recommendation of the factfinder, and I concur in his recommendation and adopt it, as follows:

I recommend the following proposal as submitted by the City:

"The City will provide health insurance to the bargaining unit members under the same terms and conditions that health insurance is provided to bargaining unit members in the Police Officers and Sergeants and Lieutenants Collective Bargaining Unit contracts."

Pending institution of the new plan, the present insurance program shall remain in effect.

K. COMPENSATORY TIME:

DISCUSSION AND AWARD

The City maintains its position to eliminate compensatory time and the factfinder supports the Union's position. The factfinder's rationale is reasonable and generally accepted, and it is adopted, as follows:

I recommend that the Compensatory Time-Off proposal submitted by the Union be included in

this contract. (Fact-Finder Exhibit "D").
(Conciliator's Exhibit "D").

L. TOTAL AGREEMENT:

DISCUSSION AND AWARD

The parties accept the factfinder's recommendation and concur in the language he proposes, which I adopt, as follows:


"The Total Agreement" clause shall read as follows:

"This Agreement represents the entire agreement between the city and the Union and unless specifically set forth in the express written provisions of this Agreement, all written provisions of this Agreement, all rules, regulations and practices previously and presently in effect may be modified or discontinued by the City upon notification to the Union. All benefits previously and presently in effect may be modified or discontinued by mutual agreement between the City and the Union."

This concludes the Conciliator's final offer settlement award.

DATED:

11/15/96



Robert Asman, Conciliator

SERVICE

True copies of the foregoing were sent this 15th day of
November, 1996, by mail to each of the following:

MR. HUGH C. BENNETT
Staff Representative
Fraternal Order of Police/Ohio Labor Council Inc.
3076 Hillside Trail
Stow, Ohio 44224

ROBERT J. TSCHOLL, ESQ.
Attorney at Law
740 United Bank Building
220 Market Avenue South
Canton, Ohio 44702



Robert Asman, Conciliator

ARTICLE XIV

HOLIDAYS

SECTION 1. All shift employees covered by this Agreement shall be granted an eight (8) hour period of time off for each of the following holidays:

New Years Day	Labor Day
Easter Sunday	Thanksgiving Day
Memorial Day	Day After Thanksgiving
Independence Day	Christmas Day

And, three (3) personal holidays to be granted annually, after each employee's first anniversary.

If the employee works on a holiday, the employee shall receive time and one-half the regular rate of pay for all hours worked on the holiday.

SECTION 2. Any other employees covered by this Agreement who work a 40 hour business week shall be given the above holidays off with pay. In the event a holiday, excluding Easter Sunday, falls on a Sunday, the next day, Monday, shall be the holiday. In the event a holiday falls on a Saturday, the preceding day, Friday, shall be the holiday. Should the employee be required to work one of the above holidays, he shall be compensated as specified above.

SECTION 3. In Section 1 and Section 2 of this Article XIV, time off shall be taken during the twelve month period following such holiday at such time as may be approved by the Police Chief. In no event shall such time off be granted prior to any of the above mentioned holidays. Personal holidays shall be used between January 1 and December 31 of each calendar year and may not be accumulated.

SECTION 4. Upon retirement or termination of employment with the City an employee shall be compensated for any unused holiday time and personal holiday time. Compensation shall be based on an hourly rate computed by dividing the employee's bi-weekly wage by 80 hours times the number of unused holiday or personal holiday hours accumulated.

SECTION 5. In the case of a deceased employee, holiday pay shall be paid to the next of kin or the executor or administrator of the estate.

Article 23 - Bill of Rights

BILL OF RIGHTS

The City and the Union agree that the City will adhere to the proposals and provisions of the Bill of Rights as granted to individual bargaining unit members set forth below:

- 1) The bargaining unit member shall have the right to be represented by a Union officer or the Union's legal counsel, upon his request, at all times during any questioning when it relates to the officer's continued fitness for law enforcement services, or when the investigation could result in criminal charges.
- 2) The bargaining unit member shall have the right to be completely informed of his rights prior to the commencement of any questioning if he could be placed under arrest as the result of the investigation.
- 3) The bargaining unit member shall have the right to be informed at least 24 hours in advance of the nature of the investigation and the name(s) of the Complainant(s) before any questioning commences.
- 4) The bargaining unit member shall have the right to be informed at the initial contact if he is to be questioned as a witness only.
- 5) The bargaining unit member shall have the right for all formal questioning to be recorded and no one has the right to make unrecorded statements or ask unrecorded questions. The bargaining unit member has the right to make a separate recording of any questioning at the time of questioning.
- 6) The bargaining unit member shall have the right that at any one time all questions must be directed through only one questioner.
- 7) The questioning shall take place at a location designated by the Chief of Police and at a reasonable hour for all persons concerned.
- 8) The bargaining unit member shall have the right to be advised of any and all punitive action that could result from the investigation or questioning.
- 9) The bargaining unit member shall have the right to be represented by a Union Officer of his choice during any questioning that could result in punitive action.
- 10) No polygraph test shall be administered without the bargaining unit member's prior consent. Any polygraph agreed to must be given by a licensed operator.

Article 26 - Health and Safety

HEALTH AND SAFETY

SECTION 1. It is agreed that safety must be a concern and a responsibility of both parties. All unsafe equipment and conditions must be reported to the Chief of Police or his designated representative.

SECTION 2. The Union shall designate a safety committee, consisting of up to three (3) members of the bargaining unit, to discuss matters of safety, health and sanitation. Should a situation arise that requires corrective action, the committee's findings, along with a recommendation shall be forwarded to the Police Chief. His corrective action or reply to the safety committee shall be made within ten (10) calendar days.

SECTION 3. Should a dispute exist as to the Chief's corrective action or response, the committee may submit their recommendation to the Safety Director. His reply shall be made within ten (10) calendar days to the safety committee and such reply shall be final.

SECTION 4. If a dispute is not settled after the Safety Director's reply or proposed corrective action, the Union's safety committee and the Police Chief may meet with the Safety Committee of Council to discuss the concerns of both parties. The Safety Committee of Council shall reply, in writing, within ten (10) calendar days to the Union's Safety Committee.

Article 33 - Compensatory Time Off

COMPENSATORY TIME OFF

SECTION 1. Members of the bargaining unit, covered by this Agreement may maintain a bank of thirty-six hours of compensatory time off, for twenty-four actual hours worked in lieu of immediate overtime pay in cash, at a rate of one and one-half hours for each hour of overtime worked. When an employee accumulates the maximum thirty-six hours compensatory time, the employee may not accumulate additional compensatory time until said time is actually used. Upon expending compensatory time, an employee may rebuild his bank to a maximum of thirty-six hours

SECTION 2. Compensatory time off shall not be carried or credited beyond the calendar year in which it was earned. Such compensatory time off shall be used during the calendar year in which it was earned within a reasonable period of time after request for use by covered personnel, provided that such use would not unduly disrupt the operations of the Police Department as determined by the Chief of Police.

If any such compensatory time off is not used during the calendar year in which it was earned, covered personnel shall be paid for the same in cash, at the regular rate of compensation for each such employee at the time of payment, or before thirty-one days after the end of such calendar year.

SECTION 3. "Compensatory time," "compensatory time off" and "comp time" mean, for purposes of this section, hours when covered personnel are not working and which are paid for in cash at each of such employee's regular rate of pay, as calculated in this Section, unless used during the calendar year in which such hours were earned as permitted herein.

SECTION 4. The Chief of Police shall maintain a continuing written record of compensatory time off which has been permitted and earned and shall have such record available for inspection and information by and for the Director of Finance.