

STATE EMPLOYMENT  
RELATIONS BOARD

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STATE EMPLOYMENT RELATIONS BOARD  
STATE OF OHIO

In the Matter of Conciliation Proceedings Between:

CITY OF PARMA, OHIO	)	CASE NO. 96 MED 01-0063
	)	
and	)	LAST OFFER AWARD
	)	
THE INTERNATIONAL ASSOCIATION	)	Margaret Nancy Johnson
OF FIRE FIGHTERS, LOCAL 639	)	Conciliator

Introduction

The Employer in this proceeding, hereinafter "Employer" or "City," is the City of Parma, located in Cuyahoga County, approximately eight miles south of the downtown center of the City of Cleveland, Ohio. For the purpose of providing fire protection and emergency medical services for the residences and businesses in the community, the City maintains and administers a Fire Department. All full time employees of the Fire Department occupying a position of Fire Fighter, Fire Lieutenant, Fire Inspector and Fire Captain are members of a bargaining unit represented by the International Association of Fire Fighters, hereinafter "Union" or IAFF."

The City and the Union are parties to a Collective Bargaining Agreement which expired on March 31, 1996. Unable to reach an agreement on a successor contract, the parties engaged in fact-finding on July 12, 1996. Recommendations of the fact finder which were issued on July 29, 1996 were timely rejected by the Union.

In accordance with Ohio Revised Code Section 4117.14(D)(1), the State Employment Relations Board appointed Margaret Nancy Johnson conciliator to resolve the bargaining impasse between the parties herein by selecting on an issue by issue basis from between each of the party's final settlement offers. Pursuant to this directive, conciliation proceedings convened at 1:00 p.m. on October 10, 1996, in a conference room at the City Hall, Parma, Ohio. Michael J. Angelo, Attorney with the law firm of Johnson, Balazs and Angelo, argued the position of the City. Also in attendance on behalf of the City were Robert M. Dybzinski, Safety Director, as well as supervisory personnel of the Fire Department. Thomas Hanculak, Attorney with Joseph W. Diemert & Associates, presented the position of the Fire Fighters. He was assisted by David Byrnes, President, Northern Ohio Fire Fighters. In addition, members of the Local Negotiating Committee were present.

### Issues

The unresolved issues presented to the Conciliator for resolution pertain to wages for 1996 and 1997.

### Criteria

Pursuant to Ohio Administrative Code 4117-9-06(J) the Conciliator has given full consideration to the following criteria in rendering her award:

- (1) past collectively bargained agreements between the parties;
- (2) comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) the interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of service;
- (4) the lawful authority of the public employer;
- (5) stipulations of the parties;
- (6) such other factors, not confined to those listed above which are normally or traditionally taken into consideration in the determination of issues submitted to the mutually agreed-upon dispute settlement procedures in the public service or in the private employment.

In addition to the above criteria, the Conciliator has carefully reviewed the report of the Fact Finder and the recommendations set forth therein, giving such report the consideration to which it is entitled, as discussed hereinafter. Finally, the Conciliator adhered to the provisions of Ohio Administrative Code Rule 4117-9-06.

### Position of the Parties

#### I International Association of Fire Fighters Local 639

To the extent that the report and recommendations of the Fact Finder fail to give any increase in the compensation paid to Fire Fighters in the first three steps of the Salary Schedule, the Union has rejected the recommendation. While the Fact-finder correctly adjusts pay rates for fire fighters above step three in accordance with the negotiated agreement of the parties, fire fighters employed by the City in the first three salary steps remain substantially below the rates of pay for fire

fighters in comparable neighboring communities. Moreover, these employees receive less compensation than their counterparts in other safety services administered by the City. The Union has, therefore, taken the position that some adjustment is needed in the first three steps of the salary scale. To effect greater parity within the City and comparability with similarly situated employees, the Union proposes a \$350.00 increase for steps one, two and three. In addition, the Union adapts the recommendation that First Class, Lieutenant, and Captain receive a wage adjustment of \$1520.00. Per Agreement between the parties, the Fire Inspector shall receive \$500.00 in addition to the \$1520.00 adjustment. Also, pursuant to contractual language agreed upon by the parties, all wage adjustments shall be retroactive to January 1, 1996.

Effective January 1, 1997, the Union proposes that all classifications receive a 4.2% wage rate increase. The Union argues that the ability of the City to finance the increases sought by the Union is not disputed by management. Accordingly, the wage adjustments presented by the Union satisfy all the statutory criteria of O.R.C. 4117.

## II The City

The position taken by the City in this proceeding is that the report and recommendations of the Fact Finder ought to be implemented. Relying upon alleged agreement reached with the Union prior to fact finding, the prior hearing officer issued a report which divided the monies asserted to be available for salary increases in the fire department among those members of the bargaining unit with four or more years of service to the City. Thus, while the wages of first, second and third year fire fighters remain the same, an increase of \$1520.00 is recommended for First Class, Lieutenant, Captain and Fire Inspector, which classification shall also receive an additional \$500.00 pursuant to previous agreement of the parties. The City maintains that the increase proposed by the Fact Finder conforms to agreements made with the Union as to the disbursement of monies allotted to the bargaining unit within the Fire Department and that this recommendation should be implemented.

In addition, the Fact Finder recommends a two year contract with a wage reopener for the second year and, if agreed upon, a third year of the Agreement. While the City would have preferred a three year commitment, it will accept the recommendations of the Fact finder on the issue of duration of the Agreement. Therefore, the City argues acceptance of the recommendation that there be a wage reopener for the second, and, if agreed upon for the third year of the Agreement, which reopener shall be accordance with the negotiations procedure of the Agreement and shall address the issues of wages and the extension of the Agreement.

Based upon an internal equity factor, the recommendations of the Fact Finder are appropriate. Other bargaining units within the safety departments have agreed upon dollar increases

only for unit members with more than three years experience. There is no reason for the fire department to be compensated differently from the other safety forces. Nor is there any justification for the fire department to selectively retain those aspects of the Fact Finder's Recommendations on wages it deems acceptable while rejecting others.

Additionally, the City submits evidence that the increases proposed by fire fighters including factors such as longevity, overtime, training, holiday pay, far exceed both internal and external comparables. Currently all salary steps compare well with neighboring communities. Increases are already structured into the wages for first, second and third year fire fighters. Should the offer of the Union be implemented, the base wages for Parma fire fighters will exceed the average of comparables.

Moreover, the evidence establishes that the total cost to the City of the Union offer is exorbitant and exceeds what has been reasonably budgeted for salary increase in the department. The proposal of the Union is unaffordable and would require the City to enact budgetary constraints.

Accordingly, the City maintains that the recommendations of the Fact Finder should be implemented. Having reviewed the evidence submitted and drawn reasonable conclusions therefrom, the Fact Finder issued a report which should be awarded by the Conciliator in this proceeding. Absent an abuse of discretion or clear error on the part of the Fact Finder, his recommendations are to be given considerable weight and deference. In order to protect the statutory process, then, the City argues that the recommendations of the Fact finder ought to be ordered by the conciliator herein.

### Discussion

#### I Wages-1996

An initial issue to be addressed by the Conciliator herein is to what extent, if any, the report of the Fact Finder is determinative of the matters raised in this proceeding. In arguing its case before the Conciliator, the City has argued for implementing the wage recommendations issued by the prior hearing officer. In support of this position, the City has cited authority for the contention that the report of the Fact Finder is entitled to great weight and deference.

The instant hearing officer does not dispute the consideration to be proffered to the Report of the Fact Finder. When, as in this instance, the recommendations are cogent and articulately expressed, then indeed, their import should be significant. It does not follow, however, that the recommendations of the Fact Finder should be dispositive of the matters remaining in dispute. Nor does the issuance of an erudite report render meaningless the statutory provisions on conciliation and the administrative guidelines established for the subsequent dispute resolution mechanism as set forth in the Ohio Administrative Code.

When rendering an award, the Conciliator is required by statutory language to consider applicable criteria. In addition the statute imposes on the parties the responsibility of supporting respective positions taken relative to the statutory standards. The position now argued by the City unduly restricts this appeal process and imbues Fact Finding with a finality not contemplated by the Collective Bargaining Act.

Furthermore, the contention that the report of the Fact Finder should, absent error or abuse of discretion, be determinative of outstanding issues disregards the nature of the statutory impasse procedures. Positions taken by parties during contract dispute resolution rarely remain invariable. On the contrary, through mediation at the different steps of the process, the parties may modify, reduce or delete specific demands. Thus, the positions of the parties prior and subsequent to fact finding may fluctuate and ought at conciliation to be reviewed de novo rather than analyzed solely in the context of the fact finding report.

Finally, the recommendations of the fact finder are based upon his subjective perceptions of prior negotiations between the parties. In the case at hand, the recommendation of the Fact finder to maintain first, second, and third year fire fighters at their current rates of pay was based upon his understanding of prior agreements of the parties. "Fire Fighters had agreed upon an overall budget of \$115,000 to be applied to salary increases for the bargaining unit" and "the City and the Fire Fighters [had] already agreed to a \$1520.00 increase for Fire Fighters with more than three years seniority" (P. 7). The Fact Finder then concluded that "these increases were agreed upon with the Union before fact-finding" (p. 8). At least a portion of the Fact Finders report, then, is based upon the erroneous conclusion that "the parties have already agreed to these different starting salaries" (p. 12).

The evidence submitted to this hearing officer, however, establishes that the Union herein had not unconditionally agreed to be restricted to the \$115,000 allotted by the City for salary increases in the Fire Department. Nor had the Union agreed to forego wage increases either for first year fire fighters, or, indeed, for second and third year fire fighters.

Accordingly, the Conciliator does not feel constrained to confirm the recommendation that first, second and third year fire fighters not receive any wage adjustment for 1996. Absent any contention of inability to pay, but rather an erroneous reliance upon an alleged agreement to divvy \$115,000 among those fire fighters with greater than three years of service, the Conciliator disagrees with the prior recommendations.

Even though the Fact finder acknowledges a 9.3% difference in the starting rates of pay for Fire Fighters and Police Officers, he, nonetheless, sustains the position that "it would be unreasonable for the City to break [the] pattern and provide any more increase for fire fighters with less than four years seniority." Without evaluating the merits of pattern bargaining, this Conciliator is persuaded that given the ability

to pay and the apparent disparity between Fire Fighters and Police Officers in the first, second and third steps of employment, an adjustment is warranted. Accordingly, the Conciliator awards the position of the Union and orders effective January 1, 1996, an increase of \$350.00 for Fire Fighters in Steps One, Two and Three, and an increase of \$1520.00 for First Class, Lieutenant, Captain and Fire Inspector, which latter classification shall additionally receive \$500.00.

## II Wages 1997

As to the matter of wages for 1997, the report of the Fact Finder includes very little analysis but expresses the opinion that "both parties appear to agree that a wage reopener is necessary" and that the "dispute rests with the length of the agreement" (p.15). While the City accepts the statement of the Fact Finder, the Union, denying agreement on a reopener, refuses to stipulate to a wage reopener and seeks a two year contract with a 4.2% increase for all steps and ranks effective January 1, 1997.

Again, absent compelling evidence that the Union had previously committed to the same, this hearing officer will not implement the recommendation of the Fact Finder pertaining to a reopener. Rather, the Conciliator relies upon the statutory criteria and directives in ordering a 4.2% increase for all members of the bargaining unit effective January 1, 1997.

Utilizing the City's own financial data, the Conciliator finds that the offer of the Union is reasonable and financially feasible. In June, 1996, the administration issued a financial report which states:

Financially the City of Parma ended 1995 with the highest cash carry over balance in the General Fund since the early 1980's, \$1.3 million. As the 8th largest City in Ohio, our budget is ranked 26th, the second lowest out of the 24 largest communities in Ohio.

In addition, the Financial Report indicates that revenues in 1995 increased 15.5% from 1994 levels. It is interesting to note that of this per centage increase, 4.05% was attributed to municipal income taxes which are "generally based on normal wage increases."

Clearly, the City is to be commended for its astute fiscal management, but the economic strength of the City may not be achieved at the expense of safety service employees. It is reasonable to expect that fire fighters participate in "normal wage increases" comparable to those experienced by the work force in Parma served by the Fire Department.

The Annual Financial Report goes on to describe the growth factor in the economy of the City. The city reports two national chains opened new retail operations in Parma, the construction of a new terminal for Conway Central Transportation, and an

enterprise zone agreement with Cleveland Twist Drill, all of which evidence not only the positive economic condition and outlook of the City but also a growing demand for fire protection and rescue services.

A review of the financial information submitted to this Conciliator establishes an ability to pay the increases sought by the Union. In addition, the average of the per centage changes ordered herein by the Conciliator for 1996 and 1997 wages fall within what the City has described as a "normal wage increase." Finally, from the data submitted, the wage proposals of the Union are comparable with the wage increases recently negotiated in fire departments in neighboring communities. Accordingly, absent any evidence that the City cannot pay the increases sought by the Union and absent any proof that the Union agreed to a reopener, the Conciliator orders the position offered by the Union. Consistent with both statutory criteria and with Ohio Administrative Code rules governing the conciliation process, a 4.2% across the board increase in wages of Fire Fighters in the bargaining unit is ordered effective January 1, 1997.

### III Duration

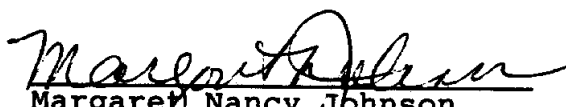
As there is no evidence disputing the duration of this contract, the position of the Union advocating a two year Agreement having an expiration date of March 31, 1998 is hereby awarded.

### Award

The following is hereby ordered:

1. Effective January 1, 1996, wages for steps one through three shall increase \$350.00, First Class, Lieutenant, Captain and Fire Inspector shall increase \$1520.00, and Fire Inspector shall receive an additional \$500.00 increase.
2. Effective January 1, 1997 wages shall increase 4.2% at each step and rank.
3. The contract shall expire March 31, 1998.

Respectfully submitted,

  
Margaret Nancy Johnson  
Conciliator

Dated: October 24, 1996

Service

A copy of the foregoing order and award has been served by regular mail this 24th day of October on G. Thomas Worley, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213; Thomas M. Hanculak, Esq., Joseph W. Diemert, Jr. & Associates, 1360 SOM Center Road, Cleveland, Ohio 44124; and Michael J. Angelo, Esq., Johnson, Balazs, & Angelo, 3600 Terminal Tower, Cleveland, Ohio 44113.

  
Margaret Nancy Johnson