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ALAN M. WOLK
IMPARTIAL ARBITRATOR

STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER BETWEEN:

OHIO PATROLMAN'S)	
BENEVOLENT ASSOCIATION)	
)	
Union)	NO. 96-MED-09-0796
)	
and)	CONCILIATION
)	OPINION AND AWARD
THE CITY OF ORRVILLE, OHIO)	
)	
Employer)	
)	

APPEARANCES:

FOR THE UNION:

Nicholas Codrea, Jr.

FOR THE EMPLOYER:

Lisa A. Kainec, Esq. Millisor & Nobil, Attorneys at Law

The undersigned was selected by the parties through the State Employment Relations Board of Ohio [SERB] to serve as impartial neutral Conciliator to hear and decide issues presented pursuant to Ohio law.

By agreement of the parties, a hearing was held 5/14/97 at the City Building, 207 N. Main Street, ORRVILLE, (Wayne County) Ohio. at which time the parties were afforded a full opportunity to present opening statements; to submit, object to, and cross-examine evidence; as well as to offer exhibits and documents, and to argue the respective merits of their respective positions orally and/or by briefs. A court reporter was present. Briefs were submitted on or before 6/16/97 and exchanged by the Conciliator.

The award herein is to decide the issue(s) presented by the parties, based on the essence of the Collective Bargaining Agreement. All evidence such as stipulations, exhibits, affidavits, testimony, and all arguments, citations and briefs (if any) have been duly received and given such weight as deemed appropriate by the Conciliator.

The Award may be published by SERB.

SUBMISSION

The Employer is the City of Orrville, Ohio in Wayne County, approximately 5.1 square miles, with approximately 7700 residents, 2600 living units, an annual gross municipal budget of approximately \$8 million.

The Ohio Patroman's Benevolent Association is the Union which consists of 6 Police Dispatchers, 9 Police Patrolmen and 3 Police Sergeants, or approximately 18 employees.

OPBA became exclusive representative in 1987. This is their fourth Collective Bargaining Agreement which is on a one year extension from 1/1/96 through 12/31/96.

The parties met with Federal Mediator Thorley on 12/11/96, having previously met or conferred on 10/23/96, 10/30/96 and 11/26/96. Following a hearing, Fact-Finder Dana F. Castle issued her Recommendations on February 28, 1997.

ISSUES

The sole issue between the parties Conciliator to consider is Article 10 - Pay Rates for 1997, 1998, and 1999.

The Conciliation process is regulated by Ohio Administrative Code Section 4117-9-06. Pre-Hearing Statements were submitted by the parties in accordance with OAC 4117-9-06(E) and the Conciliator is to hear the rationale of each party and decide a final offer settlement award for the resolution of the issues presented. The current wage scale and the parties' wage proposals are attached.

FACTS

Background

In applying the required guidelines under O.R.C. 4117.14(G)(7) and SERB Rule 4117-09-05(I) [See JX-1 transcript and exhibits], following a hearing on 1/24/97, the Fact-Finder issued a Fact-Finding Report on 2/28/97 [JX-1, TAB 1] which included the following recommendations:

"1. With the exception noted in point two below, the minimum/maximum wage classifications proposed by the City as follows should be implemented.

Dispatcher I	\$9.40 - \$11.75
Dispatcher II	\$10.61 - \$13.26

Police Officer	\$14.00 - \$17.50
Police Sergeant	\$15.27 - \$19.09

2. Employees who have a present wage rate in excess of the recommended maximum are to be excepted from the change and their present salary rate continued.

3. Merit increases should continue to be paid in accordance with the policies employed in 1996 for those employees who have not yet reached the recommended maximum rate.

4. Any pay increase resulting from increases in the minimum wage rate or merit increase awards are to be retroactive to January 1, 1997.”

Personnel Director Forrer testified that the Fact-Finder had agreed with the City on wages accepting the City's final offer on pay scales with a 3.5% decrease at the top, except for police officers, and that there would be status quo except those not at maximum will receive merit increases, and there will be wage reopeners for 1998 and 1999. Orrville City Council approved her Report and Recommendations, but the Union rejected the Fact-Finder's recommendations.

The Fact-Finder concluded that the City's financial situation was not favorable, that the PAS was comprehensive and reliable and the present wage scale competitive with other municipalities. Furthermore, the City was reasonable with regard to compression of wage scales with no across the board wage increase for 1997, allowing merit progression and wage reopeners in 1998 and 1999.

Thereafter, the City improved its offer before conciliation [CX-C] attached.

The City believes its position is reasonable and that its improved offer should be adopted by the Conciliator.

The Union's objections to the Fact-Finder's Report are three:

(1) The Public Administration Services (PAS) Study was "not based on proper research," and should not have been accepted by the Fact Finder as reliable and relevant evidence;

(2) The Fact-Finder considered only comparables from Norton and Magadore in Summit County, which were provided by the Union as supplemental information, not primary comparables, two from Wayne County and two from Stark County;

(3) The City's final offer is for 1997 and 1998 thus the Conciliator is being asked to rule on a separate issue, considering that the Fact Finder's Report and Recommendation was only for 1997.

While acknowledging the City's financial problems, the Union is willing to accept a wage freeze in 1997 but believes it to be fair and reasonable to have a general wage increase of 3% as of 1/1/98 with no changes in the steps.

City Financial Condition and Budget

The city is heavily industrialized. Income Tax is 1% and there is no police levy; council's policy is to budget expenses according to anticipated receipts, although there has been some discussion about raising income tax, motor vehicle license fees, charges for false alarms and EMS runs.

Since 1995 the revenue has been decreasing and is projected to decrease in 1998. Income tax receipts decreased in 1996 by \$245,916, and in 1997 is expected to decrease \$359,010. In addition, the local Volvo plant shut down, therefore, 1997 and 1998 revenue is down, and the City did not budget enough for this plant closing.

The police budget is 55% wages and with benefits 78%. The balance of the police budget is for pensions, fuel, vehicles and equipment, prisoner housing, utilities. The 78% percent comes solely from the General Fund. The source is mostly income tax of which 70% goes to the general fund. Income Tax is allocated 70% to the General Fund and 30% to Capital Improvements to save interest and remain debt-free. (Prior to April 1995 the allocation under city ordinance was 65%/35%).

Agreed and Disputed Issues

The parties agree:

(1) A six step progression wage increase until at maximum, from HIRE to Step 6 and TOP Rate.

(2) Progression from HIRE to TOP RATE via the steps is to be based on a satisfactory performance evaluation, but there is a *dispute* as to whether this progression will continue to take place on the anniversary of hire as desired by the City, or at the beginning of calendar year as proposed by the Union.

(3) Both parties wage scale offers for 1997 are the same (i.e. freeze) as follows:

(a) Dispatcher 1 = \$9.75 to \$12.19 in 6 equal steps
Minimum and maximum = Current Agreement

(b) Dispatcher 2 = \$11.00 to \$13.75 in 6 equal steps
Minimum and maximum = Current Agreement

(c) Police Officer = \$14.440 to \$18.00 in 6 equal steps
This represents a \$.48 increase

(d) Sergeant = \$19.94

This represents a \$.15 increase and preserves the rank differential.

The net effect is \$.48 per hour increase for police officers and \$.15 per hour increase for sergeants, with nothing for dispatchers for 1998

(4) In addition, there is to be a (one time) lump sum payment to those at top rate for 1997. The *dispute* here is that Management proposes 1 1/2% and the Union seeks 2%.

(5) Special provisions will apply to Officer Kocuba and Birkbeck, both recent hires.

(6) For 1998, the City now offers a wage increase of 2 1/2% and the Union seeks 3%.

(6) Both parties propose a wage reopener for 1999.

CONTENTIONS - UNION

History

The parties have had an excellent relationship over the years of collective bargaining since 1987. This is first time the parties are in a dispute that went to Fact-Finding and to Conciliation.

Finance

The Union acknowledges the City is in financial hardship in 1997, but even if there is an inability to pay, the City could seek a levy or increase the city income tax and/or seek grants or adjust the 70/30 split.

Furthermore, the Union raises the question of how the City can be unable to pay, while being extravagant and no plans to correct the financial system whereby the City \$2.4 million on renovating City Hall, \$1.1 million on the municipal pool; and 350,000 for the Blackstone Building apparently with no publicly stated reason. The Union also questions the cost of the buyout of the former Police Chief for \$58,000 plus benefits. [Note: the release of the former Chief was requested and achieved by the police to improve morale, and the City's rationale was that settlement was substantially less expensive].

Union willing to abide by a wage freeze in 1997 but seek a 3% increase across the board in 1998. The average in Ohio for 1997 is 3.5%. The actual cost to the City is \$24,000 vs \$8 million budget.

CONTENTIONS - MANAGEMENT

For 1995 there was a general wage increase of 3 1/2% and for 1996 the increase was 4%.

The City has made an offer that improves upon the Fact-Finder's Report and the wages in place compare favorably with other comparable municipalities. The City argues that a review of UX-D wages over 25 years reveals that the City's wages never fall below 88% of the average.

The City takes the position that it cannot go to the voters until there is a showing of sound fiscal management. This means that wage increases across the board are not warranted, although merit increases are appropriate. Furthermore, the City wants to compress top and bottom rates by reducing top rates by 3.5% (except police officers) and create a 25% spread between top and bottom wage scales.

In addition, the City points out that savings in health insurance premiums was already factored in when the budget was prepared. The majority of savings is in the Utility Department (75%) and will not significantly benefit the general fund (25%).

As to alleged misspending takes the position that "if you don't spend money on equipment, patrol cars and radios from the capital improvement fund, the Police Department is adversely affected. The argument that senior officers retire leaving more funds available, does not account for increases to lower ranking officers.

Note that the United City Workers accepted a similar package for 1997 and accepted a wage freeze for 1997 with 2 1/2 % 1998 and 1999 with 2% bonus at top.

The City is in dire financial condition. In an effort to settle, the City has substantially improved the economic package (see page 3 of position of City), which will cost City \$32,127 for 1997 and 1998.

DISCUSSION AND ANALYSIS

The parties granted the Conciliator the power, within the framework of O.R.C. 4117, to award economic changes effective from or retroactive to 1/1/97.

As the only issues in dispute according to the Union are:

- (1) The amount of lump sum payment for 1997: Union 2% vs City 1 1/2%
- (2) General wage increase for 1998: Union 3% vs City 2 1/2%.
- (3) The timing of the 1998 general wage increase: Union seeks effective date 1/1/98, while the City seeks continuance of the anniversary of hire date

Neither party is unreasonable. The cost involved out of an \$8 million budget is either \$24,000 as portrayed by the Union, or \$32,127 [CX-3] for 1997 and 1998. The City asserts the Union demand will cost \$36,693 [CX-4].

I am not persuaded either way as to the anniversary date approach saves the City money. It only stretches the initial effective date of increases, but these are still annual obligations. This issue may return to the table in the future.

If the administration and/or members of Council remain locked in to the 70%-30% allocation method and do not find the means to raise the City's revenue, the wage scale will However commendable securing funds for capital needs may be, if the capital improvement funds are always there, the policy ties the hands of citizens who are entitled to have their employees fairly compensated at competitive rates. become less competitive. The City's inflexibility regarding this allocation is not controlling. Now that there is a pool and new city hall, increased wages should be a primary goal

The 2 1/2% for 1998 is at least one (1%) percent lower than reflected on the Union's exhibits, particularly Union Exhibit C. Being never more than 88% of average is hardly competitive. Nor am I persuaded that merit increases should be the only basis for wage increases. In the best of times there is some inflation which increases City revenues. Concurrently, inflation reduces buying power unless wages rise with inflation. At some point, another Fact-Finder will have little choice but to review inflation and buying power since 1/1/97, and to find wage increases warranted, regardless of the City's dire financial circumstances, particularly if created by a contrived policy.

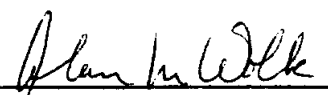
I have considered the history of collective bargaining between the parties, compared the positions of the parties, reviewed comparables, the interests and the welfare of the public and the lawful authority of the City, the evidence, stipulations, and other relevant factors. Were it not for the evidence establishing significant revenue losses for 1995-1997, a 3% general wages increase for the years 1997, 1998 and 1999 would be warranted. It is my belief that the City can afford a lump sum of 2% rather than 1 1/2%.

While I might agree that there may be some weakness in parts of the rationale of the Fact-Finder below, I find that the City's improved offer addresses most of those weaknesses and for the current situation, achieves a workable result. Conciliators are required to choose one final offer over the other.

AWARD

As Conciliator, I adopt the City position in its improved offer as set forth on page 3 of its pre-hearing statement including, but not limited to a 2 1/2 % wage increase in 1998 as of the anniversary of hire date, and a wage reopener for 1/1/99.

Made effective in
Wayne County, Ohio
this 27th day of July 1997


ALAN M. WOLK, Conciliator
File # 270-97