

STATE EMPLOYMENT
RELATIONS BOARD

Apr 22 3 18 PM '97

OHIO STATUTORY IMPASSE PROCEEDINGS
STATE EMPLOYMENT RELATIONS BOARD
CONCILIATION FINDINGS AND AWARD

In the Impasse Between:	*	
	*	
CITY OF INDEPENDENCE, OHIO	*	SERB Case No. 96-MED-09-0833
	*	
-and-	*	
	*	Awards Issued:
FRATERNAL ORDER OF POLICE,	*	April 15, 1997
OHIO LABOR COUNCIL, INC.	*	
Lodge 67	*	

REPRESENTING THE EMPLOYER

Joseph F. Lencewicz Attorney for the City

REPRESENTING THE BARGAINING UNIT

Robert M. Phillips Attorney for the Union

BACKGROUND

The Independence, Ohio Police Department employs twenty-three Patrol Officers, three Lieutenants, and four Sergeants. Ranking Officers and Patrol Officers belong to two separate Bargaining Units, both of which are and have been represented by the Fraternal Order of Police (FOP) Lodge 67. The City recognized the FOP Units in 1984. Since then, a succession of Collective Bargaining Agreements have governed wages, hours, and employment terms for covered employees.

The last Agreement expired December 31, 1996. The parties formed bargaining teams and conducted four negotiating sessions through Nov-

ember and December, then declared themselves at impasse on four items. Consistent with Ohio law, the State Employment Relations Board (SERB) directed them to submit to fact-finding on their unresolved issues, and appointing George Van Pelt as Factfinder. Van Pelt held a hearing on December 13, 1996, and issued recommendations December 14. His recommendations favored the City's positions on all impasse items except one -- the Union's proposal for a more generous sick-leave-redemption formula. The FOP turned down the recommendations and, on January 3, 1997, SERB ordered them to submit to binding, final-offer interest arbitration (known in Ohio as "conciliation").

OHIO REVISED CODE §4117.14 prohibits economic strikes by public safety and health employees. It establishes conciliation as the alternative for the privilege granted other public-sector employees to withhold their services in economic disputes. The statute provides for the appointment of conciliators and requires that they resolve disputes "by selecting, on an issue-by-issue basis, from between each of the party's final settlement offers" Subsection (I) grants binding effect to conciliation awards:

(I) The issuance of a final offer settlement award constitutes a binding mandate to the public employer and the exclusive representative to take whatever actions are necessary to implement the award.

The conciliation hearing convened in Independence on Friday, February 28, 1997. The four impasse items from factfinding were presented. During the hearing, with the consent of both Advocates and

the Conciliator, a fifth item was added: The FOP's request for a \$250 increase in the uniform-maintenance allowance. Though the City rejected the proposal, it agreed that the Conciliator could decide it. Both parties recognized that the decision would be final and binding. In effect, the submission of the fifth item created an alternative dispute resolution procedure, which is sanctioned by Ohio law.

The other issues are:

1. **HOLIDAYS**: Article XXII of the prior Agreement designated ten annual paid holidays with the following benefit for Officers required to work on those days: "In the event that a holiday falls on a non-working day or a full-time employee is required to work on a holiday, he shall be entitled to an additional full day's pay or another day off according to the approval of the Chief." The FOP proposes an improvement for employees on duty Thanksgiving and Christmas holidays -- pay at time and one-half for hours worked. The Factfinder recommended **against** the FOP's position.

2. **SICK LEAVE REDEMPTION**: State law provides that, at a minimum, a Police Officer who meets eligibility requirements and retires will be paid one-fourth of his/her unused sick leave to a maximum accumulation of 960 hours (120 days). Independence pays the state minimum. The FOP proposes a contractual change in the formula that would allow a sick leave redemption of up to one-third of 960 hours.

The Factfinder recommended **adopting** the proposal.

3. **LONGEVITY PAY:** In past negotiations, the FOP and the other Independence labor organizations (AFSCME and IAFF) agreed to a two-tier wage/benefits proposal. In this Unit, it reduced longevity-pay expectations for employees hired after July 1, 1984. The Union now finds that 80 percent of its covered Patrol Officers are in the bottom tier, and proposes the following modifications for that tier:

<u>Current Longevity Premium</u>	<u>Proposed Longevity Premium</u>
5-10 Years \$ 550.00	5-10 Years \$ 750.00
11-15 Years 700.00	11-15 Years 1,000.00
16-20 Years 850.00	16-20 Years 1,250.00
21 Years 1,000.00	21 Years 1,500.00

The Factfinder recommended **against** the Union's position.

4. **WAGES:** Both sides propose wage increments to take effect January 1, 1997 and January 1, 1998. The City's position is that the increase should be 3½% + 3½%. The FOP demands 4% + 3½%.

The Factfinder recommended the City's offer.

* * *

OHIO REVISED CODE §4117.14 (G) (7) and SERB Rule 4117-09-05 (I) require conciliators to use the following guidelines to resolve interest disputes:

(a) Past collectively bargained agreements, if any, between the parties;

(b) 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 pri-

vate employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

(c) 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 adjustments on the normal standard of public service;

(d) The lawful authority of the public employer;

(e) The stipulations of the parties;

(f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the 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.

These were examined to the extent they were relevant and/or addressed by the parties' Representatives. Some had little material value to the case while others were more meaningful. Guidelines (a) and (c) had signal importance, especially for the City's presentation. Ability to pay is not an issue. Independence can well afford to fund all of this Unit's demands. But to do so, according to the City, would destroy the thirteen-year history of internal parity among the four bargaining units. A 4 percent wage increment for 1997 would not overburden City finances if it applied only to these 23 Patrol Officers. Nevertheless, the City believes it will foster resentment among employees who have already settled for 3½ percent and greatly complicate future negotiations.

Guideline (b) -- comparable wages -- was stressed by the Advocates, but their presentations gave the Conciliator scant information

that was reliable. The Advocates each used their own sets of comparables to establish that wages and benefits were above or below average. The problem is that when the hearing ended the Conciliator had no convincing reason to apply the City's comparables over the Union's or the Union's over the City's. Even so, he paid careful attention to all the submissions and tried to strike a reasonable balance.

ISSUE-BY-ISSUE FINDINGS AND CONCLUSIONS

Holidays - Article XXII: The FOP proposal is a reduction from the four-holiday (New Year, Independence Day, Thanksgiving, Christmas) wage premium it sought in factfinding. The Factfinder turned it down. He found that although neighboring municipalities pay premium rates to Police Officers who work holidays, they do not also give the substitute day off. In his opinion, the proposed bonus was unduly generous: "To grant the request of the FOP would require the payment of 2-1/2 times the regular pay for the time worked, if the additional day off is taken into consideration."

Though the Union reduced its demand for conciliations, the same reasoning pertains. The Conciliator believes that the Factfinder's recommendation applies as well to the current proposal as to the earlier one. He also finds that the Factfinder's rationale is entitled to deference. The award will deny the FOP position.

Sick Leave - Article XXV: The FOP's proposal is for a small increase in the nominal bonus paid to long-term Police Officers who retire with unused sick leave. The increase is fair, notably modest, and the Conciliator can think of no reason why it should not be granted.

The Factfinder's decisions chiefly favored the City's bargaining positions. This item was the one exception. The Conciliator agrees with the Factfinding recommendation and will award the improvement for sick-leave redemption.

Longevity Pay - Article XXXVI: Philosophically, the Conciliator agrees with the FOP's position. Two-tier systems for wages and benefits are almost certain to engender dissatisfaction among junior employees and erode the bargaining-unit concept. Here, however, the parties agreed to two tiers in the very recent past, and there is no likelihood that the Union made that agreement without obtaining a concomitant advantage. Accordingly, the resulting disparity was something that was bargained for, and the Conciliator can see no reason to set it aside in this contractual term. He agrees with the Factfinder's recommendation and will deny the FOP's demand.

Wages - Article XXXVII & Uniform
Maintenance Allowance - Article XXIV, §4:

In the past, the two FOP Units bargained with the City jointly. Pay in those negotiations for Sergeants and Lieutenants typically was calculated as a differential or percentage above what was received

by the highest paid Patrol Officer. Over years of bargaining, the differential was enlarged. In 1995-1996, it rose to 11 percent; Sergeants were paid 11 percent more than top-rated Patrol Officers and the same percentage separated Sergeants and Lieutenants.

The last Agreement expired December 31, 1996. For the first time since the FOP achieved recognition, the Ranking Officers elected to withdraw from multi-unit bargaining and negotiate separately. Nevertheless, the City continued to deal with wages as differentials. In compliance with a factfinding recommendation, it agreed to increase the separation between Sergeants and Patrol Officers to 11½ percent. It premised the resulting wage on the assumption that the Patrol Officers Unit would accept pay increments of 3½ percent for the first contractual year and 3½ percent for the second. The problem is that if the City's formula is accepted, the actual first year increment for Ranking Officers will be 4 percent.

The Patrol Officers felt that the City's offer to them -- 3½% + 3½% -- constituted disparate treatment, especially since Independence historically has held the line on internal parity. The City's refusal to improve its offer one-half percent for the first year made these negotiations especially rancorous. Addressing the subject in conciliation, members of the bargaining team were not shy to say they felt they were betrayed and the victims of discrimination.

The City was surprised by this reaction. Differentials had typically risen in the past, and unquestionably would have risen this

time -- at least by one-half percent -- if the multi-unit had been preserved. According to the City, the effect was that every Unit, including the Ranking Officers, had taken the same 3½% + 3½% package. Both AFSCME and the IAFF had settled for it. Internal parity continued to be the rule as it had been for thirteen years. The only difference was that Ranking Officers also obtained a differential increase, and one that was smaller than they demanded.

Both bargaining teams seek "parity." The City urgently needs to maintain the same percentage -- 3½% per year -- for all its represented employees in the four bargaining units. The Union's position is that parity will exist only if it obtains the same 4 percent pay increment that the Ranking Officers Unit achieved. The Factfinder did not consider this part of the dispute. He recommended the City's offer on reasoning that it exceeded rises in the cost of living and was large enough.

The Conciliator is sympathetic to the FOP's position. Unfortunately, the City's differential argument fails to recognize that Ranking Officers are no longer a joined bargaining unit and now will have to negotiate for their own raises. So long as they remain separate, it will at least appear unjust for them to piggyback increasing differentials on the Patrol Officers negotiations.

Also, the Conciliator is attuned to the City's perceived need for internal parity and believes it is a valid objective. As a solution to this problem, the City's 3½% + 3½% offer will be granted but

the Union will be awarded \$250 improvement for uniform maintenance allowance. Hopefully, these two awards will preserve internal parity while satisfying the Patrol Officers' objectives.

AWARDS

HOLIDAYS

The current language of Article XXII, Sections 1 and 2 are incorporated herein and awarded without amendment.

SICK LEAVE

ARTICLE XXV, Section 4 shall be amended as follows:

Section 4 Employees shall, at the time of retirement from active full-time service with the City, and with ten or more years of continuous service with the City, be paid in cash for ~~one-fourth (1/4)~~ **one-third (1/3)** of the employee's accrued but unused sick leave, up to a maximum accrual of one hundred twenty (120) days. The dollar value of a sick day shall be based on (a) employee's annual salary at time of retirement, and (b) a work year of fifty-two (52) weeks and five (5) days per week. For this calculation paid vacation days and holidays are considered work days. Payment for sick leave on this basis shall be considered to eliminate all sick leave credit accrued by the employee at that time. Such payment shall be made by the City of Independence only once to any employee during his lifetime. This section shall only apply to the retirement of full-time municipal employees pursuant to state retirement laws and shall not be deemed applicable to any removal, voluntary or involuntary resignation, or any other like termination except a retirement as set forth herein.¹

¹ Overstrikes designate old language hereby amended. Bold designates the amendment awarded.

LONGEVITY COMPENSATION

The current language of Article XXXVII is incorporated herein and awarded without amendment.

COMPENSATION SCHEDULE

The following amendment to Section 1 is awarded:

Section 1. The following compensation schedule shall be effective for the members of the Independence Police Department:

	Jan. 1, <u>1997</u>	Hourly <u>Rate</u>	Jan. 1, <u>1998</u>	Hourly <u>Rate</u>
Ptl. 1st year	\$32,715	\$15.73	\$33,860	\$16.28
Ptl. 2nd year	\$36,677	\$17.64	\$37,961	\$18.26
Ptl. 3rd year	\$40,654	\$19.54	\$42,077	\$20.22
Ptl. 4th year	\$44,719	\$21.50	\$46,284	\$22.25

UNIFORM ALLOWANCE AND MAINTENANCE

The following amendment to Article XXIV, Section 4 is awarded:

Section 4. Each regular full time member shall be entitled to an annual uniform maintenance and cleaning allowance of ~~two hundred and twenty five dollars (\$225.00)~~ **four hundred and seventy-five dollars (\$475.00)** payable in the first pay of December of each year.²

CONCLUDING REMARKS

The parties are urged to examine the foregoing awards carefully since they still retain the power to make bilateral amendments. This

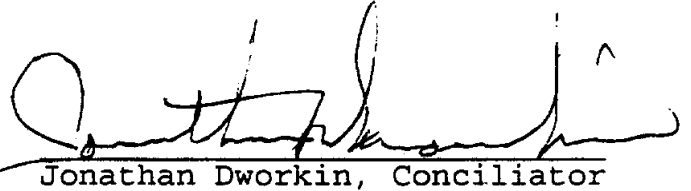
² Overstrikes designate old language. Bold indicates amendment awarded.

power is granted by Ohio Revised Code §4117.14(G)(11) which states in part:

The parties may, at any time, amend or modify a conciliator's award or order by mutual agreement.

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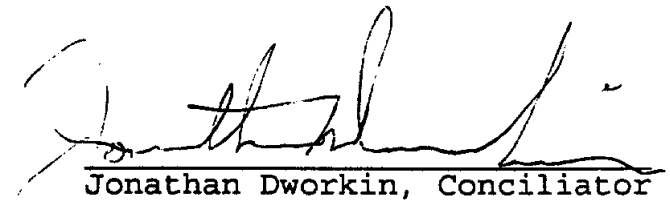
These conciliation awards were issued in Lorain County, Ohio, April 17, 1997, pursuant to OHIO REVISED CODE Chapter 4117.



Jonathan Dworkin, Conciliator

SERVICE

True copies of the foregoing Conciliation Awards were sent by Express Mail to Joseph F. Lencewicz as designated Representative for the City of Independence, Ohio, 45 East Washington Street, Suite 303, Chagrin Falls, Ohio 44022, and to Robert M. Phillips as designated Representative for the Fraternal Order of Police, Lodge 67, 55 Public Square, Tenth Floor, Cleveland, Ohio 44113-1904 this seventeenth day of April, 1997. On the same date, a true copy together with a copy of the Conciliator's Statement for Services and Expenses was sent to SERB by Regular Mail.



Jonathan Dworkin, Conciliator