

STATE EMPLOYMENT
RELATIONS BOARD

Jul 25 10 31 AM '97

CONCILIATION AWARD

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

July 23, 1997

In the Matter of :

City of Mayfield Heights)

and)

Fraternal Order of Police,)
Ohio Labor Council, Patrol Officers)

Case No. 96-MED-10-0916
Patrol Officers

APPEARANCES

For the Employer:

William F. Schmitz, Labor Counsel

For the Union:

Rick Grochowski, Staff Representative
Michael Lanzola, Negotiating Committee
Chris Sonnhalter, Negotiating Committee

Conciliator:

Nels E. Nelson

BACKGROUND

The instant dispute involves the City of Mayfield Heights and the Ohio Labor Council, Fraternal Order of Police. The OLC represents the city's 20 patrolmen. The parties are negotiating a collective bargaining agreement to succeed the one which expired on December 31, 1996.

The OLC also represents the dispatchers, jailers, and supervisors. During negotiations the city presented the same offer to all four bargaining units. The dispatchers, jailers, and supervisors accepted the package but the patrolmen rejected it.

Following the patrolmen's rejection of the city's offer, a Factfinder was appointed. A factfinding hearing was held on April 11, 1997 at which time eleven issues were presented to the Factfinder. His report was issued April 28, 1997 but was rejected by both parties.

The Conciliator was notified of his appointment on May 20, 1997. A hearing was held on June 25, 1997. The parties submitted 12 issues but two issues were resolved prior to the start of the hearing. Testimony and evidence was presented on the remaining ten issues and the hearing was closed.

The Conciliator is required to select one party's offer or the other without modification. The selection between the final offers is based upon the criteria set forth in Section 4117.14(G)(7) of the Ohio Revised Code. They are:

- (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 with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (c) The interest and welfare of the public, and 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 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.

ISSUES

Ten issues were presented to the Conciliator. For each issue the Conciliator will describe the offers of the parties, summarize the evidence presented, and discuss the rationale for his selection of a final offer.

1) Article 17 - Hours of Work, Section 17.2 - The current contract provides for a 6-2 work schedule beginning on Wednesday at 0000 hours and ending 28 days later on Tuesday at 2400 hours. The employer wishes to add language stating that the chief has the authority to schedule a fourth shift within the parameters contained in the contract. Under its proposal the fourth shift would be filled by seniority from bargaining unit members who sign up for the shift. If an insufficient number sign up, the chief could order officers to work the shift in reverse order of seniority. The union seeks to retain the current contract language.

City Position - The city argues that it needs flexibility in scheduling. It points out that shifts change at 8:00 A.M., 4:00 P.M., and 12 midnight and that for a brief period at each shift change there are no officers on the street. The city further notes that certain times of the day are busier than others. It maintains that its proposal will allow it to eliminate the gaps between shifts and to cover the busier periods with more personnel.

The city states that although it feels that it has the right to schedule hours within the 28-day work period, it wants to work something out in negotiations. It stresses that

the language that it has proposed was agreed to by the union's negotiating committee but rejected by the membership.

Union Position - The union contends that the city's proposal is unnecessary. It maintains that current police patrol coverage is more than adequate and that the city is looking to a possible future need for a fourth shift. The union suggests that if an additional shift becomes necessary, the city should request negotiations at that time. It also states that it is not aware of any police department in the immediate area that has a fourth shift.

Analysis - The Conciliator must select the city's final offer. While the city may not need to schedule a fourth shift at the present time, it should have the authority to do so if the need arises. The legitimacy of the city's concern for gaps in police coverage was recognized by the Factfinder but his recommendation to allow the chief to begin the work cycle one hour earlier would not solve the problem.

The Conciliator believes that the city's proposal recognizes the interests of union members. They are given the right to sign up for a fourth shift based on seniority and if an insufficient number express an interest in the shift, it will be staffed based on reverse seniority. The proposal will not impact the hours or earnings of members of the bargaining unit.

Award - The Conciliator awards the following:

Section 17.2. A 6-2 work schedule will commence on Wednesday at 0000 and will terminate 28 days later on Tuesday at 2400 hours. The Chief of Police will have the discretion to schedule employees to assign a fourth shift which will begin and end within the above parameters. The work hours of the fourth shift will be at the discretion of the Chief who will post a sign-up sheet prior to commencement of the fourth shift. Bargaining unit members will be assigned to the fourth shift from the sign-up sheet on the basis of seniority. The Chief of Police may order members to work the fourth shift in reverse seniority order.

2) Article 19 - Wages, Section 19.1 -The current contract provides for

wages as follows:

Patrolman Class A	\$43,659
Patrolman Class B	\$37,760
Patrolman Class C	\$32,230

The union demands that wages be increased by 3.5% January 1, 1997; January 1, 1998; and January 1, 1999. The city offers wage increases of 2%, 2.5%, and 3%.

Union Position - The union argues that its wage offer ought to be selected. It points out that the parties negotiated 3% wage increases but it was rejected by the union membership as part of a package that was unacceptable. The union notes that its proposal was recommended by the Factfinder.

The union contends that its demand is consistent with other wage settlements. It reports that the SERB Quarterly for the first quarter of 1997 reveals that in 1996 the average wage settlement in the Cleveland region was 3.39% and 3.37% in cities statewide. The union observes that the report was titled "Settlements Hold Steady at 3-4% Increase Level."

The union maintains that its position is supported by other factors. It claims that 3.5% wage increases are consistent with increases in the Consumer Price Index as was recognized by the Factfinder. The union asserts that its wage demand is justified by the high work load in the city. It reveals that in the last three years 730 cases were filed by the city in Lyndhurst Municipal Court compared to 138 by Mayfield Village, 267 by Highland Heights, and 389 by Lyndhurst.

The union states that the city's ability to pay is not an issue. It points out that an article in the Sun Messenger indicates that a developer plans to build three office buildings in the city which will create at least 1,000 jobs. The union notes that the same article indicates that the Allen Bradley Company, currently the city's largest employer with 1200 workers, generates \$600,000 in income tax revenue.

City Position - The city argues that Ohio public employees have received substantial wage increases. It observes that the Ohio Public Expenditure Council reported in February 1996 that between 1984 and 1994 the average earnings of public employees rose 53.7% compared to 37.2% for private sector employees. The employer notes that SERB data indicate that the average negotiated wage settlements in Ohio were 3.16% in 1994, 3.26% in 1995, and 3.29% in 1996.

The city contends that the 1996 base wage of its police officers is very high relative to other cities. It points out that the average wage for 32 cities in Cuyahoga County was \$40,824 and \$37,677 for 24 similar sized cities statewide. The city reports that its base wage of \$43,659 places it second among both groups. It stresses that if its wage offer is selected, it will rank third among the 12 cities in Cuyahoga County reporting 1997 wages and second among similar sized cities statewide.

The city maintains its compensation compares very favorably with nearby cities. It indicates that the 1997 base salaries are:

Highland Heights	\$43,139
Lyndhurst	42,430
Mayfield Village	42,771
South Euclid (10 Years)	44,430
Richmond Heights	43,506
Beachwood	46,212
Eastlake	42,244
Mayfield Heights	
City Offer	44,532
Union Offer	45,187

The city observes that wages plus cash benefits for a 10-year officer are:

Highland Heights	\$47,337
Lyndhurst	44,630
Mayfield Village	47,478
South Euclid (10 Years)	46,900
Richmond Heights	-
Beachwood	49,212

Eastlake (Master Police Off)	45,944
(w/B.A.)	47,444
Mayfield Heights	
City Offer	48,042
Union Offer	48,697

The city emphasizes that the union forced it to reduce its wage offer. It points out that the union is asking for a number of bonuses and allowances. The city claims that if all of the union's demands are granted, the value of the economic package would be far out of proportion with market wages.

Analysis - The Conciliator must choose the union's proposal. While the city's police officers are highly compensated as reflected in the data supplied by the city, granting the city's offer would result in a significant erosion of the city's position relative to other departments over the life of the contract. There is nothing in the record to suggest that such a change is appropriate.

Award - The Conciliator awards the following:

Wages shall be increased 3.5% effective January 1, 1997; January 1, 1998; and January 1, 1999.

3) Article 21 - Longevity, Section 21.1 - The current contract provides for longevity payments of \$540 after five years, \$660 after ten years, \$900 after 15 years, and \$1080 after 20 years. The union seeks to establish longevity of 1.25% of the base salary after five years, 1.50% after ten years, 2.00% after 15 years, and 2.50% after 20 years. The city proposes to keep the current schedule with the addition of a new step of \$1200 after 25 years of service.

Union Position - The union argues that its proposal should be adopted. It points out that the percentages it has proposed are equal to the current dollar amounts of longevity. The union notes that converting longevity to percentages eliminates the need to negotiate further increases in longevity.

The union contends that its proposal is supported by comparisons to nearby cities. It reports that Lyndhurst, Pepper Pike, and Bedford have longevity specified on a percentage basis. The union acknowledges that Shaker Heights, Beachwood, Highland Heights, and Eastlake have dollar figures for longevity but claims that they have better longevity programs than the city.

The union rejects the claim that corporal pay is a form of longevity. It observes that corporal pay falls under a different article of the contract than longevity. The union emphasizes that under certain conditions corporal pay is revocable by the city.

City Position - The city argues that corporal pay is "glorified longevity." It indicates that in the 1991 negotiations the union proposed an increase in longevity but that after much negotiation corporal pay was adopted instead. The city states that corporal pay is not a promotion but an award for years of service, adequate performance, and no disciplinary action.

The city contends that when the corporal pay of \$1000 is included with longevity, senior patrolmen in the city receive more than patrolmen in any other city. It reports the following:

<u>Jurisdiction</u>	<u>5 Yrs</u>	<u>10 Yrs</u>	<u>15 Yrs</u>	<u>20 Yrs</u>
Highland Heights	776	1088	1452	1744
Lyndhurst	2%	3%	4%	5%
Mayfield Village	630	819	1008	1197
South Euclid	555	875	1245	1625
Richmond Heights	2%	3%	4%	5%
Beachwood	850 after 7 years 50 additional 20 years			
Eastlake	100 per year after 5 to 2000			
Mayfield Hts (w/corp pay)	540	1660	1900	2080

Analysis - The Conciliator must select the city's offer. He believes that in reality corporal pay depends very heavily on length of service so that it should be considered in making comparisons to longevity in other jurisdictions. Furthermore, in previous

negotiations the union opted to accept corporal pay rather than an increase in longevity. When corporal pay is added to longevity, the city's police officers receive the highest payment among comparable jurisdictions.

Award - The Conciliator awards the following addition to Section 21.1:

After the completion of twenty-five (25) years of service, \$100.00/month (\$1,200.00 yearly).

4) Article 23 - Sick Leave, Sections 23.2 and 23.4 - The current contract specifies that at retirement police officers with a minimum of ten years of service are entitled to pay for a maximum of 240 hours of accumulated sick leave and officers with 25 years of service are entitled to pay for a maximum of 400 hours of accumulated sick leave. It also states that at the end of each year police officers are to be paid for a maximum of 40 hours of unused sick leave. The city proposes that the retirement pay-out after 10 years of service be one-half of the first 1000 hours of accumulated sick leave and one-third of any additional time. At the same time it seeks to reduce the maximum pay each year for unused sick leave to 16 hours. The union wishes to retain the current contract language.

City Position - The city argues that its offer ought to be selected. It indicates that the union initially demanded a larger pay-out at retirement and that its final offer was agreed to by the union as part of the tentative agreement. The city reports that its sick leave proposal was accepted by the other units and recommended by the Factfinder.

Union Position - The union contends that its position ought to be adopted. It observes that members of the bargaining unit have an average service time of approximately four years and the most senior officer has less than ten years of service so that no retirements are expected in the next 15 years. The union asserts that the annual bonus of up to 40 hours of pay for unused sick leave discourages the use of sick leave and benefits both parties. The union stresses that it should not be forced into accepting an offer because it is attractive to other bargaining units.

Analysis - The Conciliator must adopt the city's final offer. The record indicates that the city's offer is the result of a request by the union to improve the pay-out at retirement. The cost of doing this was a reduction in the annual payment for unused sick leave. This arrangement was part of the tentative agreement and was accepted by the other units and recommended by the Factfinder.

Award -The Conciliator awards the following:

Section 23.2. Upon retirement, death, resignation or disability, each full-time bargaining unit member shall be entitled to receive payment of one-half (1/2) of first 1,000 hours and one-third (1/3) of all accumulated unused sick leave over 1,000 hours, provided that the member has been employed on a full-time basis for a minimum of ten (10) years. Payment will be made at the current rate.

Section 23.4. Sick Leave Conversion. Each regular, full-time employee shall receive, at the end of each calendar year, at the regular hourly rate of pay, a total payment not to exceed sixteen (16) hours, provided that no sick leave has been used during that calendar year. Every hour of sick time taken during the year will be deducted from the 16 hour figure and no payment will be made if the member takes more than 16 hours sick leave. In addition, the amount of the unused sick leave, not exceeding sixteen (16) hours for which the foregoing payment is made shall not be reduced from the employee's unused, accumulated sick leave as set forth in Section 23.1.

5) Article 25 - Holidays, Sections 25.3, 25.4(new), and 25.5(new) -

The current contract provides for seven holidays and five personal days. Patrol officers are entitled to time off with pay for each holiday but holidays must be taken within the work period in which they occur. The union proposes deleting the requirement that a holiday must be taken during the pay period in which it occurs. It also demands that patrol officers who are assigned to work on a holiday be paid time and one-half. The city seeks to prorate holidays for new hires on the basis of one holiday for every 10 weeks of employment. It also agrees to pay time and one-half to police officers who work on Christmas or Thanksgiving.

Union Position - The union argues that it is only fair that patrol officers receive premium time for working holidays. It asserts that a majority of patrol officers would like to spend holidays with their families but cannot because of their seven-day, 24-hour schedule. The union points out that in Mayfield Village police officers who are required to work on a holiday receive time and one-half. It notes that police officers in Euclid, Highland Heights, Bedford, and Beachwood receive time and one-half for working a major holiday as well as a day off later.

City Position - The city contends that the bargaining unit is at the top in the number of holidays it receives. It indicates police officers in comparable jurisdictions receive holiday pay as follows:

Highland Heights	10
Lyndhurst	-
Mayfield Village	11
South Euclid (10 Years)	11
Richmond Heights	11
Beachwood	10
Eastlake	12

The city acknowledges that police officers receive one less holiday than other city employees but points out that police officers enjoy a paid lunch that other employees do not get.

The city maintains that prorating holidays for first year employees makes sense and clarifies the intent of the contract. It points out that the existing language could be interpreted as requiring it to pay five personal days to an employee hired on December 1 even though the personal days must be taken by the end of the year.

The city maintains that its holiday proposal should be adopted for the sake of uniformity. It reports that the police supervisors, police dispatchers, jailers, and the AFSCME units accepted its proposal. The city emphasizes that its holiday language was part of its tentative agreement with the police officers.

Analysis - The Conciliator must select the city's final offer. The data furnished by the city indicate that it provides holiday benefits generally comparable to nearby jurisdictions. The city's offer to grant premium pay for working on Thanksgiving and Christmas provides the union with some of its desires with respect to holidays. The Conciliator notes that the Factfinder recommended the proration of holidays for new employees but failed to comment on the union's demand for time and one-half for working on a holiday.

Award - The Conciliator awards the following:

Section 25.4. Newly hired union members will be paid for the holidays listed in Section 25.1 as they occur and may take personal days on a pro-rata basis at one for every 10 weeks of employment.

6) Article 27 - Clothing Allowance, Section 27.1 - The current agreement establishes a clothing allowance of \$600 per year. The union seeks to increase the allowance to \$700 in 1997, \$750 in 1998, and \$800 in 1999. The city proposes a clothing allowance of \$700 for each year of the contract.

Union Position - The union argues that the clothing allowance should be increased. It states that the cost of uniforms has increased substantially each year and has risen faster than the rate of inflation. The union notes that the uniform allowance in Pepper Pike is \$1000 consisting of \$400 in cash and a \$600 purchase order at a uniform shop, \$1300 in Euclid, and \$1000 in Beachwood.

City Position - The city maintains that its offer ought to be selected. It indicates that the tentative agreement provided for an allowance of \$700 per year for each year of the contract and that the other bargaining units agreed to it. The city notes that the Factfinder recommended the same amount for the police officers.

Analysis - The conciliator believes that the data supplied by the city indicates that its offer ought to be selected. The clothing allowances in nearby jurisdictions are:

<u>Jurisdiction</u>	<u>1997</u>	<u>1998</u>
Highland Heights	725	725
Lyndhurst	600	600
Mayfield Village	575	600
South Euclid	675	675
Mayfield Hts. (Proposed)	675	675
Richmond Heights	-	-
Beachwood	1000	1000
Eastlake	675	-

Given the high base wage in the city, there is no justification for selecting the union's offer which would give it the second highest allowance among the city's comparable jurisdictions.

Award - The Conciliator awards the following:

Section 27.1. Each employee of the bargaining unit shall be entitled to seven hundred dollars (\$700) in clothing allowance, payable in cash, one-half paid in June and the balance paid in December of each year, of this Agreement.

7) New Article - Bargaining Unit Work - The current contract has no provision dealing with bargaining unit work. The union proposes defining bargaining unit work as "any type of work normally performed by bargaining unit members" and restricting the performance of bargaining unit work to bargaining unit members. The city offers language that would give bargaining unit members the opportunity to fill vacancies created by vacations or holidays before they are assigned to part-time employees.

Union Position - The union contends that its proposal is needed to protect bargaining unit work. It complains that vacant positions or shifts are being filled by part-time officers so that bargaining unit members do not have the opportunity to bid on the work. The union feels that the problem will be more significant when shift shortages are created by the formation of a bike unit. It notes that fire fighters do not have to contend with part-time or special employees.

City Position - The city argues that its offer should be selected. It points out that it needs to use auxiliaries to cover holidays and leaves. It notes that the tentative agreement included the language that it has proposed.

Analysis - The Conciliator must choose the city's offer. The department has a practice of using a number of part-time special officers. The language sought by the union would prohibit this practice and would disrupt operations. The union appears to have understood this situation when it negotiated a tentative agreement without the language it is now seeking. Furthermore, the city's proposal addresses at least some of the union's concerns.

Award - The Conciliator awards the following:

The employer will devise a program whereby vacancies created by the vacation or holidays of bargaining unit members will be made available to other bargaining unit members before being assigned to part-time employees. The program will give unit members the choice of working these days with the assignment being made in seniority order with the senior employee making the first choice and so on. The union agrees that if this Article proves to cause a recurring problem on either side, it will be resolved through Article 11.

8) New Article - Educational Benefit - The current contract includes no educational bonus. The union seeks reimbursement for college courses including required course materials subject to a maximum equal to the fee per class at Cleveland State University. It also demands a bonus of 1% percent of the base wage for those with an associates degree and 2% for those with a bachelors degree. The city proposes to reimburse police officers for courses that are relevant to police work and approved by the chief. It seeks to limit the reimbursement to \$300 per quarter or semester.

Union Position - The union argues that its demand for an educational benefit is justified. It claims that it is asking for what police officers in neighboring police departments already enjoy. The union asserts that the city benefits by having more qualified officers patrolling the streets and responding to calls for service.

City Position - The city questions the union's proposal. It points out that given its high base wage there is not justification for extra compensation for having an associates or bachelors degree. The city further maintains that tuition reimbursement should be for courses related to police work and approved by the chief.

Analysis - The Conciliator believes that the city's final offer must be selected. It is a revised proposal based on discussions with the union and the Conciliator. The revised offer should serve the interests of the parties and the public.

Award - The Conciliator awards the following:

EDUCATIONAL BENEFIT

Employees shall be eligible for the reimbursement of tuition costs resulting from the employee taking courses from an accredited institution of higher learning providing that:

1. The courses are based on obtaining a degree approved by the Chief and directly related to bona fide police work;
2. The taking of the course(s) has been approved in advance by the Chief with the approval of the Mayor;
3. The employee obtains a grade of "C" or better;
4. The grade received and receipt for the tuition are submitted to the Finance Director; and
5. The amount of tuition to be paid by the City shall be limited to the amount of the then current per-credit hour cost charged by Cleveland State University with a per-quarter or semester maximum of \$300.00.

9) New Article - Field Training Officer -The current contract does not provide for compensating bargaining unit members who are assigned as field training officers. The union demands one hour additional pay per shift. The city offers \$15 per day.

Union Position - The union argues that field training officers should be compensated. It indicates that the program requires several hours per week of extra duties. The union states that field training officers receive one hour at time and one-half in Shaker Heights and Beachwood, \$25 per month in Lyndhurst, and \$300 per year in South Euclid.

City Position - The city maintains that its position ought to be adopted. It points out that the majority of comparable cities do not have extra compensation for field training officers. The city notes that its offer of \$15 per day was part of the tentative agreement and was recommended by the Factfinder.

Analysis - The Conciliator must select the city's final offer. Police officers in neighboring cities generally do not enjoy the benefit the union is seeking. Nevertheless, the city has offered \$15 per day which was part of the tentative agreement and recommended by the Factfinder. The Conciliator does not believe that the extra \$6 per hour in the union's demand is justified given the already high salaries and the Conciliator's award of the union's wage offer.

Award - The Conciliator awards the following:

All members assigned as a FTO shall be given \$15 additional pay per shift as compensation for performing the duties of a FTO.

10) New Article - Firearm Proficiency Allowance - The current contract does not provide for a firearm proficiency bonus. The union proposes a \$300 per year bonus for satisfactory completion of and compliance with the state's firearm requalification program. The city opposes the creation of a firearm proficiency bonus.

Union Position - The union asserts that these bonuses are becoming common. It reports that area departments offer bonuses as follows:

Euclid	\$3640
Highland Heights	225

Lyndhurst	250
Mayfield Village	1069
Bedford	350
South Euclid	200

The union observes that fire fighters are paramedics as part of their job but get an additional \$1500 for the certification.

City Position - The city contends that there is no justification for the union's demand. It points out that the firearm proficiency test must be passed in order to be certified as a police officer. The city notes that firearm proficiency bonuses are the way some cities with lower base wages equalize wages. It stresses that it is unnecessary for it to pay extra compensation since its base wage is high.

Analysis - The Conciliator feels that there is insufficient support for the union's demand. The union indicated that six area departments offered firearm proficiency bonuses. The bonuses and wages in 1997 for the departments are as follows:

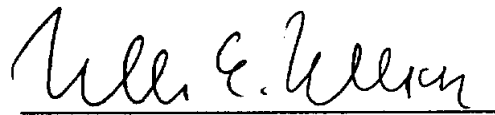
<u>Jurisdiction</u>	<u>Bonus</u>	<u>Base</u>	<u>Total</u>
Euclid	\$3600	-	-
Lyndhurst	250	\$42,430	\$42,680
Highland Heights	225	43,139	43,365
Mayfield Village	1069	42,771	43,840
Bedford	350	37,485	37,835
South Euclid	200	44,430	44,630

The Conciliator's wage award results in a base wage of \$45,187 indicating that the bonus is not justified based on a comparison to other departments.

The Conciliator must also reject the union's argument that its demand is justified because fire fighters, who are paramedics, receive \$1500 of extra compensation. While it is true that the fire fighters receive \$1500 for being paramedics, their base wage is exactly \$1500 less than police officers. The fire fighters' bonus makes the wages of fire fighters and police officers equal.

Award - The Conciliator rejects the union's demand for a firearm proficiency bonus.

11) Tentative Agreements - At the request of the parties the Conciliator awards the tentative agreements reached by them and articles for which there were no proposals.



Nels E. Nelson
Conciliator

July 23, 1997
Russell Township
Geauga County, Ohio