

STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

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RELATIONS BOARD

Feb 24 9 55 AM '99

In the Matter of Conciliation Proceedings Between:

CITY OF SHAKER HEIGHTS, OHIO)	Case No. 98 MED 02-0 ¹ / ₃₀
)	
and)	CONCILIATION AWARD
)	
FRATERNAL ORDER OF POLICE,)	Margaret Nancy Johnson
OHIO LABOR COUNCIL)	Conciliator

Appearances

For the City:	For the Fop:
Mary Gavin-Wagner, Director	Pat Daugherty,
Human Resources	Staff Representative
William J. Schuchart,	Karen Hagen, Dispatcher
Chief Administrative Officer	Union Representative

Background

In accordance with Ohio Revised Code Section 4117.14(D)(1), the Bureau of Mediation of the State Employment Relations Board appointed Margaret Nancy Johnson as conciliator to resolve the bargaining impasse between the parties. These proceedings convened on February 2, 1999 at 9:30 a.m. and again on February 18, 1999 in Council Chambers at the City Hall of Shaker Heights, Ohio. Prior to the initial hearing, each party had timely submitted position statements which established final offers on holidays, the single issue in dispute. Following an endeavor by the conciliator to mediate, both parties subsequently modified and expanded their final offers to incorporate positions on wages as well as the initial holiday pay issue. A chronology of events leading up to conciliation is set forth to assist in understanding the evolution of the final offer positions of the parties as well as the award now issued by the conciliator.

The City of Shaker Heights, hereinafter "City," and the Fraternal Order of Police, hereinafter "Union" or "FOP," are parties to a collective bargaining agreement which expired on March 31, 1998 (Joint Exhibit 3). On March 25, 1998 the parties negotiated an Extension and Retroactivity Agreement which includes wage retroactivity to April 1, 1998 (Joint Exhibit 1). Between March 20, 1998 and July 16, 1998, City and Union negotiation representatives met on six occasions for the purpose of collectively bargaining the terms of a successor agreement. During that process, a tentative agreement covering issues in dispute had been reached and submitted for ratification to the bargaining unit, consisting of eight (8) full-time dispatchers within the Police Department.

Upon the rejection of the tentative agreement by the bargaining unit, the matter was submitted to mediation in October, 1998. Although holiday pay was not an issue included

within the tentative agreement or extensively discussed during collective bargaining, the Union proposed premium holiday pay in addition to the eight hours of compensatory time already provided for employees scheduled to work on a holiday. Furthermore, the Union presented a newly drafted proposal on Union Rights. Unable to reach agreement on three issues, the parties submitted the dispute to an appointed fact-finder. At the fact-finding hearing the Union withdrew its Union Rights proposal. Accordingly, the fact-finder rendered recommendations on only two issues, wages and holiday pay (Joint Exhibit 2). Assenting to the Union proposal on holidays and the City proposal on wages, the fact-finder recommended a 3% wage increase for each year of the three year contract, and premium pay for the negotiated holidays. While the Union accepted the recommendations of the fact-finder, the city rejected the same, precipitating the need for conciliation proceedings.

At the February 2, 1999 hearing, consent having been reached on a wage increase of 3%, 3%, and 3%, the conciliator heard arguments only on the issue of holiday pay as recommended by the fact-finder. After a review of the evidence submitted, the conciliator reconvened the parties and elicited the modified final offers addressed hereafter. The award which follows discusses the offers received on February 18, 1999.

Issue

The issues presented to the conciliator for resolution include holiday pay and wages.

Criteria

In submitting this award, the conciliator has chosen between the final offers presented by the parties on the issues of holiday pay and wages, giving consideration to those factors outlined in Ohio Revised Code Section 4117.14 (G)(7).

Position of the Parties

I The City

A. Holiday Pay

The City submits that the fact-finder erred in recommending the Union proposal on holiday pay. In finding that "most cities" provide premium pay for dispatchers who are required to work on designated holidays, the fact-finder improperly analyzed data submitted for review by the Union. Moreover, the fact-finder relied upon inaccurate and incomplete data for cities alleged to be comparables (City Exhibits 5 and 6). Finally, in making his recommendations, the fact-finder failed to consider the overall benefits provided by the City and focused, instead, on holiday pay.

In submitting its position that current language on holidays be retained, the City contends that there is no "justification for adding a new benefit to an already-rich benefits package." Awarding holiday pay in this instance skews and distorts the overall benefits package negotiated and presently provided by the City for its dispatchers. Documentation submitted to the

conciliator demonstrates that Shaker Heights is presently compensating its dispatchers at significantly higher rates of pay than most of the comparable cities cited by the Union, including those providing premium holiday pay (City Exhibit 10). Contrary to assertions made by the fact-finder, data submitted by the City establishes that 40% of surveyed comparables pay holidays worked at straight pay with an added day off; 33% pay some holidays worked at premium pay with an added day off; and only 26.7% pay all holidays worked at premium rates in addition to eight hours of compensatory time (City Exhibit 7). Moreover, the maximum salary paid to dispatchers by Shaker Heights exceeds the average paid by comparable cities including those providing some form of premium pay for holidays worked (City Exhibits 8 and 9).

The tentative agreement reached by the parties herein had provided significant enhancements to the existing terms and conditions of employment. In negotiating these terms the City had, in good faith, bargained within a framework consistent with sound financial management, with agreements with other service units, including the police and firefighters employed by the City, and with the contracts of comparable cities. If permitted to succeed, the unorthodox bargaining tactics employed by the Union in this instance will have a deleterious impact on future negotiations in the City. The parties must be expected to come to the bargaining table with the intent to negotiate rather than to manipulate.

B. Wages

Although the City believes that the 3% wage adjustment argued at fact-finding and recommended by the fact-finder is appropriate, the City has modified its initial final offer to 3%, 3½%, and 3½%. The City argues that the additional one-half per cents in the final two years of the contract, provide the dispatchers with a monetary benefit equivalent to the holiday pay sought by the union. Moreover, a wage increase rather than holiday pay has the advantage of being more equitably distributed, as well as of impacting upon overtime, pension contribution, and wage structure for subsequent contract negotiations.

II The Union

A. Holiday Pay

The position and final offer of the Union in these proceedings is premium pay for four holidays: Christmas, Thanksgiving, July 4th, and New Year's Day. In submitting its proposal on Holiday Pay, the Union cites contractual provisions from twelve comparable cities. The same comparables were submitted to the fact-finder who did, indeed, recommend premium pay for the ten negotiated holidays. In rendering his recommendations the fact-finder pointed out that dispatchers have no control over the scheduling of work on holidays. As essential safety force employees, dispatchers must be on active duty on those days when most employees are typically paid for a day spent with family. Holiday pay is an appropriate and

common way to compensate safety forces for their non-traditional work schedules. The evidence submitted indicates that cities have established differing methods of paying dispatchers for working on holidays. These include both double time and time and one-half for all holidays worked as well as time and one-half for some of the holidays worked. As its final position on this matter, the Union has submitted time and one-half for dispatchers required to work on four of the negotiated holidays and eight hours of compensatory time.

At no point in these proceedings has the City ever argued inability to pay. Indeed, the City clearly has the means of compensating its employees for working on certain specified holidays. Ability to pay is a statutory criterion which the conciliator must take into consideration.

In addition, the FOP contends that the statutory criterion of comparables favors the position taken by the Union. Some cities, such as Euclid and Bedford, not only pay dispatchers time and one-half for holidays worked, but also provide more holidays. While the City has negotiated ten holidays, Union contracts with Bedford include three personal days as well as thirteen holidays paid at time and one-half. Euclid provides seventeen (17) holidays, ten (10) of which are paid at time and one-half.

The Union submits that its final offer of four (4) holidays paid at time and one-half finds support not only in ability to pay but in the evidence submitted on comparable cities.

B. Wages

In its final offer on wages, the Union seeks 3.5% for each year of the contract. As in fact-finding, the Union herein argues that the duties and responsibilities of dispatchers are similar to those of police officers and that the wage structure of dispatchers should more closely align with those of the police. Dispatching is a highly stressful emergency occupation requiring around the clock operations. Employees so assigned must be adequately compensated for the unique services rendered on behalf of the residents and businesses within the city.

Discussion

These conciliation proceedings have had an unusual evolution. At the outset, the City sought to retain the three per cent wage increase recommended by the fact-finder and to reject his recommendation on holiday pay in favor of current contract language thereon. In contrast, the Union initially endeavored to retain the recommendations of the fact-finder on both holiday pay and wages.

Relying upon and citing "most cities", the December 15, 1998 Report of the fact-finder recommended that dispatchers assigned to work on holidays be paid at time and one-half while retaining their entitlement to eight hours of compensatory time. In addition, a wage increase of three (3%) per cent each year of a three year contract was recommended. Upon timely rejection by the City of the holiday pay proposed by the fact-finder, the bargaining impasse proceeded to conciliation. The sole

question before the conciliator at the February 2, 1999 session was whether or not the fact-finder had erred in recommending holiday pay be included in the successor agreement between the parties. Both the Union and the City were provided ample opportunity to present evidence and to argue respective positions on that single issue then in contention.

As established by practice in Ohio, conciliators reviewing the propriety of recommendations rendered by a fact-finder tend to defer to the judgment of that hearing officer. Recognizing that in matters of this nature reasonable minds may reach different conclusions, a conciliator will generally sustain recommendations which are supported by sound analysis of evidence properly presented. The rationale for this approach is to promote closure and to preclude undue delay of the bargaining process. Nonetheless, conciliation is not a rubber-stamping of the fact-finding recommendations. While there is a presumption in favor of the recommendations of the fact-finder, a rejecting party may rebut the presumption by demonstrating flaws in data considered by the fact-finder, errors in his/her analysis thereof, or by submitting new evidence.

In the case at hand, the City endeavored to challenge the data which led to the conclusion by the fact-finder that holiday pay is "current in most cities." Using the comparables cited by the Union, the City pointed out flaws in FOP submissions. In addition, the City analyzed apparent oversights by the fact-finder in his analysis of the data. Finally, in further support of its argument, the City submitted additional comparables disproving the contention that "Shaker Heights is one of the few departments left in Ohio that does not pay a premium for working a holiday...."

Analyzing the evidence submitted to her on February 2, 1999, the conciliator found that in making his recommendations, the fact-finder had both relied upon flawed data and erroneously analyzed the same. Specifically, the conciliator noted that neither Independence nor Euclid provided both premium pay and compensatory time. Moreover, the conciliator observed that the City of Solon provided a choice of double time or compensatory time. Thus, of the twelve (12) comparables submitted to the fact-finder by the Union, only four (4) actually provided both premium pay and compensatory time for all holidays worked. Six (6) provided either premium pay with no compensatory time, or straight pay with eight hours compensatory time, as in the current contract with the City. Two (2) of the cities provided holiday pay for four (4) holidays worked. Recognizing flaws in the data and errors in the analysis thereof, the conciliator suggested further mediation in an effort to resolve the bargaining dilemma.

Meeting with the conciliator again on February 18, 1999, the parties then modified their final offers. At this time, the City offered 3%, 3.5%, 3.5% increases in wages in the three year contract, while insisting that the existing holiday pay provisions of the contract not be changed. The Union submitted a final offer of 3.5% for each year of the contract and premium

pay for four holidays worked. Thus, the conciliator must now choose between the final offers of each party on the issues of wages and holiday pay.

A. HOLIDAY PAY

On the matter of holiday pay, the conciliator concludes that the City has presented sufficient evidence to sustain its position. In awarding the position of the City on this issue, the Conciliator notes that internal comparables favor the City. No other safety force employed by the City enjoys premium pay for holidays worked.

Additionally, the evidence indicates that the practice of the City in providing compensatory time for holidays worked is consistent with area comparables. Using the twelve (12) comparables submitted by the Union, the practice of the city is consistent with that of six (6) neighboring communities. Of thirty (30) cities analyzed by the City, only eight (8) provide both premium pay and compensatory time. The City of Shaker Heights is one of twelve (12) cities which either pays holidays worked at straight pay with an added day off, or at premium pay with no added day. Thus, the evidence indicates that the holiday pay practice of the City is, indeed, consistent with that of neighboring communities.

Finally, in general, when either new contractual language is to be incorporated into an existing agreement or current language removed therefrom, such changes ought to be the result of negotiation. Modifying contract language differs significantly from either the establishment of new obligations or the elimination of existing commitments. In the absence of a demonstrable need, this conciliator has generally neither compelled new commitments nor abrogated those previously bargained by the parties. In the case at hand, there is no overriding justification for requiring the City to pay premium pay for holidays worked in addition to the eight hours of compensatory time presently in place. Accordingly, the conciliator awards the position of the City on the issue of holiday pay.

B. WAGES

Although the fact-finder had recommended a 3% wage increase for each year of the contract, each party herein submitted final offers with higher wage adjustments. Without citing any rationale for the increase, the Union proposed 3.5% for each year of the three year contract. Endeavoring to compensate employees with the equivalent of holiday pay, the City offered 3%, 3.5%, and 3.5%. The additional per centages proposed for the final two years of the contract approximate what might have been earned with holiday pay. Yet, the proposed wage adjustment has several advantages over holiday pay, including a more equitable distribution, impact on overtime, pension, and future wage adjustments.

As pointed out by the City, it is under no obligation to go beyond the recommendations of the fact-finder in the matter of wages. Yet, the proposal of the City is an endeavor to monetarily compensate the bargaining unit within the framework

of existing benefits without creating new obligations for the city in the way of premium pay. The conciliator is of the opinion that the proposal of the city is a fair and proper resolution to this bargaining impasse. Accordingly, she awards the position of the City on the issue of wages.

Award

Wages: The conciliator awards the position of the City and orders wage adjustments of 3%, 3½%, and 3½%, consistent with the retroactivity agreement of the parties.

Holidays: The conciliator awards the position of the City and orders no changes in holiday pay provisions of the contract.

Margaret Nancy Johnson
Conciliator

Dated this day of February, 1999, and made effective
in Shaker Heights, Ohio.