

STATE EMPLOYMENT
RELATIONS BOARD
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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In The Matter Of The Conciliation Between:

THE CITY OF EUCLID)
)
 -AND-)
) CASE NO. 98-MED-09-0825
)
 FRATERNAL ORDER OF)
 POLICE, LODGE NO. 18)

APPEARANCES

For The City

Craig M. Brown, Esq., Counsel
Patrick J. Murphy, Esq., Director of Law
Captain David Maine Executive Officer

For The Union

Robert M. Phillips, Esq., Counsel
Patrick Golden President
Jim Savage Vice President
Sergeant Kevin Blakeley Treasurer
Ken Kuciwski Secretary
Dave Brooks Committee Member
Joe Bensi Detective
David Schervish Police Officer

BEFORE ALAN MILES RUBEN, CONCILIATOR

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BACKGROUND

The Employer, the City of Euclid, Cuyahoga County, Ohio, provides police, fire and municipal services for some 55,000 residents.

The 102 members of the City's Police Department in the ranks of Patrol Officer through Captain are exclusively represented for Collective Bargaining purposes by the Fraternal Order of Police/Ohio Labor Council, Inc., Lodge 18. For more than twenty-five years the City and the Union have been parties to Collective Bargaining Agreements, the last of which, the 1996 Contract, expired on December 31, 1998.

The parties resolved through negotiations most of the issues relevant to the entry into a successor Collective Bargaining Agreement. Thus, the City and the F.O.P. agreed to adopt and incorporate into their successor Agreement proposals modifying the following provisions:

- Management Rights (Article II);
- Lodge Business (Article IV);
- Grievance Procedure (Article V);
- Sick Leave (Article XI);
- Military Leave (Article XIII);
- Family Medical Leave (New Article);
- Hours Of Work And Overtime (Article XXI);
- Health Benefits (Article XXII);
- Residency (Article XXIII);
- Educational Costs (Article XXVI) and
- Duration (Article XXX).

The parties agreed that all of the other provisions of the 1996 Contract were to be carried forward and incorporated into the three year successor Agreement, mutatis mutandis, and

further agreed that the terms were to be retroactively effective to January 1, 1999.

All other proposals of the parties not referred to above or discussed below have been withdrawn by the proponents.

The parties failed to agree upon four issues - Wages, Uniform Allowance, Retirement Incentive, and Medical Insurance Coverage. Impasse was declared and the parties proceeded to Fact-Finding before Margaret Nancy Johnson on April 21, 1999.

All of the Fact-Finder's recommendations as set forth in a Report issued on May 17, 1999 were accepted by the City. The Union, while accepting the Fact-Finder's recommendation with respect to the Medical Insurance issue, rejected her recommendations with respect to the other three unresolved issues. In consequence the State Employment Relations Board issued a Conciliation Order, and appointed the Conciliator on June 8, 1999 to resolve, after hearing, "the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the parties final settlement offers."

The parties timely submitted the pre-hearing statements required by O.R.C. Section 4117 (G)(3) and O.A.C. Section 4117-9-06 (E) setting forth, inter alia, their respective final offers and supporting position statements on the issues remaining in dispute.

At the direction of the parties the Conciliation hearing was held on August 27, 1999 at the City of Euclid's Cultural Center.

At the Conciliation hearing the advocates for the parties offered opening statements and made evidentiary presentations with respect to each of the unresolved issues. They introduced data on the compensation and other benefits provided Police Officers in other communities within Cuyahoga County and the adjacent Counties of Lorain and Lake, a comparison of wage increases given to the Euclid Police and Firefighters since 1984, and relevant provisions of Contracts entered into with the Unions representing the City's other Bargaining Units.

The Conciliator attempted mediation of the unresolved issues, but was unsuccessful. However, as a result of his efforts both parties opted to amend their final proposals, and the Union sought to make any wage increase applicable to the Firearm Proficiency Allowance. Copies of the parties' final offers were received by the Conciliator on September 10, 1999, on which date he declared the Conciliation hearing closed.

The parties graciously extended the time within which the Conciliator might issue his Report and Award.

The Conciliator will consider below the final proposals and positions of the parties, and the recommendations of the Fact-Finder on each of the four issues before him, and make his Award seriatim. In keeping with his statutory obligation, the Conciliator has carefully considered the factors enumerated in O.R.C. Section 4117.14 (G)(7).

UNRESOLVED ISSUES

1. WAGES

The 1996 Contract

The 1996 Contract provided for annual 3% wage increases during its three year term. As of December 31, 1998 the entry level salary for a Euclid Patrol Officer was \$33,025.18, increasing in four steps to a top level of \$39,948.00.¹

THE UNION'S FINAL OFFER

The Union seeks 3.5% annual increases over the three year term of the 1999 Contract.

The Union contends first that the concept of "parity" - the giving of controlling effect to internal comparables - is obsolete. Relying upon the Hoover, Dowling and Buley, Jr. article "The Erosion of Police and Fire-fighter Wage Parity," published in the Monthly Labor Review for April of 1996, the Union asserts that although in 1950 forty of the forty-five reporting Cities had adopted the principle of "wage parity," by 1990 only twenty-one of fifty-eight reporting Cities continued to have Police Officer compensation determined on the basis of wage parity with the Firefighters. Of the thirty-seven Cities that did not subscribe to "parity," the disparities in wage increases favored the Police in thirty-three. This turn-about was occasioned, on the one hand, by the introduction of technology which reduced the incidence of fires and lessened the risk of injury to Firefighters, and, on

1. The promoted Officers receive percentage differentials above the Patrol Officer's top base wage rate.

the other hand, the observed increase in violent crime with the attendant greater risk of harm to safety forces. During the five year period between 1992 and 1997, three times as many Police Officers than Firefighters were killed in the line of duty. Public concern sparked an increased demand for Police services and a greater willingness to pay for them. Associated with these trends was recognition of the need for raising the professional standards of the Police Forces. The consequence was that increasingly law enforcement became viewed as a career requiring a college degree and compensation commensurate with the educational achievement.

Further, the Union claims, parity should not be followed this time because the Firefighters accepted the 9% wage offer in order to obtain a relaxation in the City's strict residency requirements. The benefit of this bargain did not accrue to the Police because they had already gained such an exemption from in the negotiations for the 1987 Contract. Thus, they were not in a similar position to "trade off" higher wage increases for the residency benefit.

The Union asserts that its wage demand is entirely reasonable since the overwhelming majority of the 1999 wage increases for reporting Police Departments in Cuyahoga County and the adjacent Lake and Lorain Counties amounted to 3.5% or more.

The Union portrays the "sub-standard" increase offered by the City, as manifestly unfair because the current base wage rate of Euclid Police Officers is only \$39,948.00, ranking

thirty-second among thirty-five Departments in Cuyahoga County, and almost four thousand dollars below the average base wage rate.

Finally, the Union argues that the City's offer does not represent "real parity" in view of the fact that the City granted additional monetary benefits to other Unions in the form of equity adjustments, clothing or maintenance allowances and shift premiums to "soften the blow of below market wage increases."

THE CITY'S FINAL OFFER

The City proposes an annual 3% wage increase during the three year term of the successor Contract. It points out that its 9% package offer has been accepted by the Unions representing seven other Bargaining Units - the Firefighters, Dispatchers, Correction Officers, Motor Maintenance Employees, Service Employees and Waste Water Employees (subject to ratification). It represents that the remaining Contracts to be negotiated with the Housing Inspectors, Park/Recreation/Animal Control Employees and the Shore Center Custodians will likely be concluded following the "established pattern." By "established pattern" the City refers to the concept of "parity" which it insists has been followed uniformly since 1984 reflecting the fact that the wage increases negotiated by the "lead" Union, typically the Firefighters, have been offered to, and accepted by, all other Units. A break in the pattern did occur in 1993, a time when the City had significant financial problems. The Police and

other employees agreed to a wage freeze in that year while the Firefighters insisted upon, and did receive, a 4% increase. Parity was restored in the following year when the Firefighter's wages were frozen, and the Police and other employees received a 4% wage increase.

The City insists that the pattern should be followed in this round of Contract negotiations as well. It points to the 1996 Fact-Finding Report of Harry Graham where, so it claims, the F.O.P. acknowledged the principle. In the 1996 Contract negotiations the Union had sought four additional paid holidays on the ground that the "relevant standard" should be the number of holidays given to the Euclid Firefighters, and not the number enjoyed by Officers in other Police Departments "due to the fact that the City and its various unions have historically bargained on the basis of parity." According to the Fact-Finding Report, the F.O.P. contended that since the Firefighters received a greater amount of time-off, the "disparity" had to be rectified. Fact-Finder Graham agreed, observing that "were this a dispute to be decided strictly on the basis of external comparability the position of the Union would not prevail. [I]n this dispute due to the history of bargaining and the stress upon internal comparability or parity, that principle must serve to guide the outcome of this proceeding."

Moreover, in the 1996 negotiations the Union had also demanded a "me too" clause guaranteeing that any benefits given to the Firefighters would be bestowed upon the members

of the Police Bargaining Unit as well. On this issue the Fact-Finder stated: "The record in this proceeding indicates that all parties, the unions and the City, are wedded to the concept of internal parity. As that is the case, no reason exists not to include a 'me too' in the agreement covering the Police Department."

Although not presenting an "inability to pay" argument, the City points out that the current total compensation package including base wages and benefits available to Euclid Police Officers compares favorably with those of other Departments and that every additional dollar spent on the Police Department reduces the amount available to spend on other important City services needed by its residents.

With respect to the comparability of Euclid salaries to the salaries offered Officers in other jurisdictions, the City maintains that the total compensation of Euclid Police Officers, not their base wage rate, is the appropriate standard of comparison. When in addition to Wages, Uniform Allowances, Firearm Proficiency Allowances and Longevity Pay are considered, a Euclid Patrol Officer after five years of service earns \$46,286.18. At this level of annual total compensation Euclid Officers rank fourteenth out of twenty-seven suburban Cuyahoga County Police Departments. They are not compensated unfairly, so the City concludes.

THE FACT-FINDER'S RECOMMENDATION

Fact-Finder Margaret Nancy Johnson concluded that the differences in the jobs of Police Officers and Fire personnel did not justify a greater wage increase than that accepted by the Firefighters. Concluding that "contract negotiations between parties with mature bargaining relationships have become more a matter of determining proper wage increases than a mechanism for job evaluations," the Fact-Finder framed the question to be answered as "not whether police should be paid more than fire personnel, but, rather, whether police are entitled to a rate increase greater than that given to any other unit within the city."

The Fact-Finder answered that question by holding that the 3% wage increase should be recommended because the "concept of parity" was a guiding principle on economic issues.

The Fact-Finder found no bargaining history evidence to sustain the conclusion of a quid-pro-quo between the acceptance of the City's wage offer by the Firefighters and other Unions and the City's agreement to soften the residency requirement. Indeed, she found no evidence to support the hypothesis that the F.O.P. had accepted a lower wage increase in 1987 than other Units when it bargained for an amelioration of the residency requirement for Police Officers.

While recognizing that the base wage of the City of Euclid's Patrol Officers, is significantly lower than that available in other jurisdictions, the Fact-Finder found that

other economic benefits - the Firearm Proficiency Premium, Uniform Allowance, Longevity Pay, Life Insurance, Holidays, Personal Days and Compensatory Time-off - were superior, and lifted the total compensation paid Euclid Patrol Officers to the County average.

Consequently the Fact-Finder recommended the City's offer of a 3% wage increase in each year of the three year Contract.

CONCILIATOR'S ANALYSIS AND AWARD

The Conciliator agrees with the Fact-Finder that the uniform and long-established bargaining history in this jurisdiction trumps other considerations and militates in favor of awarding the Police Unit the 9% base wage increase at the annual rate of 3% over the three year term of the 1999 Contract that the Firefighters and other Bargaining Units have so far accepted.

The Conciliator is appreciative of the presentation by the Union that, based on national data, the respective "risk - reward" elements of the jobs of Firefighters and Police have undergone a reversal over the past several decades. The available statistics show an increase in Police mortality and a decline of death and injuries to Firefighters, an increase in the incidence of crime and a decrease in the incidence of fires, and a trend towards requiring a college education as a Police Officer qualification. However, the Union has failed to tie these national trends to Euclid's situation.

The base annual salary of Euclid Patrol Officers, \$39,148.00, ranks thirty-second among the thirty-five² Cuyahoga County Police Departments. It is some \$8,500.00 less than that enjoyed by Highland Heights's Officers and approximately \$3,700.00 below the average for the group.

But, as the City points out, the base wage rate, measured at the five year top Patrol Officer salary level, does not tell the whole story about the total compensation paid to Euclid's Police personnel. Taking into account Firearm Proficiency and Uniform Allowances and Longevity pay, the total compensation in 1998 for a Euclid Patrol Officer with five years service amounted to \$46,286.18, placing Euclid thirteenth among twenty-six other municipal Police Departments in Cuyahoga County.³ This amount was some \$5,000.00 more than the lowest compensation level, that paid by Parma Heights, but approximately \$2,000.00 less than the highest compensation level, that paid by Brecksville. The average total compensation of Patrol Officers in the thirteen communities paying less than Euclid was \$44,943, or \$1,343 below that offered by Euclid, while the average total compensation of Patrol Officers in the thirteen communities paying more than Euclid was \$47,343, or only \$1,057 above that available in Euclid.

2. The survey data excludes Brecksville and Lyndhurst.

3. The survey data excludes Bedford, Bedford Heights, Middleburg Heights, Broadview Heights, Solon, Olmsted Falls, Cleveland, Seven Hills and East Cleveland.

The Conciliator does not find that the comparative data reveals the kind of disparity which would prompt him to declare that the total compensation of Euclid Patrol Officers, is so unfair as to warrant granting the additional 1/2% increase sought by the Union. Moreover, the additional "equity adjustments" which will be added to the Euclid Officer's total compensation package as discussed below, will assure that the position of the Euclid Patrol Officers relative to their counterparts over the next three years will not be significantly eroded.

Accordingly, the Conciliator awards the City's final offer for a 3% increase in base wage rates in each year of the three year term of the 1999 Contract.

2. FIREARM PROFICIENCY ALLOWANCE

The 1996 Contract

The 1996 Contract provides Patrol Officers with an annual Firearm Proficiency Allowance in the amount of \$3,650.00

THE UNION'S FINAL OFFER

The Union's final proposal, as amended following the efforts at mediation made by the Conciliator, is for "an annual equity allowance based upon a percentage of the Officer's proficiency premium, that percentage being at least equal to the percentage granted for any base wage increases in each of the Contract years, 1999, 2000 and 2001. No compounding."

In a nutshell, the Union proposes that the current annual Firearm Proficiency Allowance be increased by 3% or \$109.50 to a total of \$3,759.50.

THE CITY'S FINAL OFFER

The City opposes any increase in the Proficiency Allowance and, instead, proposes to maintain the existing benefit unchanged.

THE FACT FINDER'S RECOMMENDATION

Since the Union's proposal to apply the annual base wage rate percentage increase to the Firearm Proficiency Allowance was not made until the Conciliation hearing, the Fact-Finder did not consider this proposal.

THE CONCILIATOR'S ANALYSIS AND AWARD

The City has maintained that the total compensation, not base wage rates, is the appropriate standard to be used in comparing the economic benefits available to Euclid Police Officers with those available to Officers in other Departments. However, only four of the comparable communities offer a firearm proficiency allowance - Berea (\$2,939.65), Brookpark (\$1,419.21), Highland Heights (\$250.00) and University Heights (\$1,000.00).⁴ Euclid's Proficiency Allowance of \$3,640.00 represents a significantly larger component of its Police Officers' total income than does the Allowance provided in any of the other communities. Moreover,

4. South Euclid provided a \$200.00 Firearm Proficiency Allowance but the amount was rolled into base salary beginning with 1999.

according to the City's data, the Proficiency Allowances payable by Berea and Brookpark will automatically increase with wage rate increases. The Berea supplement represents a 7% professional wage supplement, and that of Brookpark is calculated as 3.2% of base pay. The consequence is that the wage rate increases for most comparable communities will result in total compensation adjustments of 3.5% or more. However, since Euclid's annual wage increase will not apply to the Firearm Proficiency Component, its Police Officers will actually receive less than a 3% increase in total compensation.

To avoid this shrinkage, the Conciliator believes that the Union's position is meritorious and so awards its final offer.

3. UNIFORM ALLOWANCE

The 1996 Contract

The recently expired 1996 Contract provides for a \$500.00 uniform allowance to Patrol Officers payable on February 1st of each year of the Contract and additional semi-annual payments of \$400.00 making a total annual uniform allowance of \$1,300.00.

However, members of the Unit assigned to the Detective Bureau, ("plain clothes" Officers), receive \$775.00 each year.

THE UNION'S FINAL OFFER

The Union proposes to increase the annual allowance for uniformed Officers by \$100.00 and for those assigned to the

Detective Bureau ("plain clothes" Officers) by \$25.00 per month.

In support of its proposal the Union points out that all of the uniform items worn by Patrol Officers, including bullet proof vests which cost between \$600.00 - \$800.00 apiece and have a useful life of between three and five years, are charged against their allowances.

THE CITY'S FINAL OFFER

In consequence of the Conciliator's mediation efforts, the City amended its final proposal to offer to increase the semi-annual \$400.00 payments to \$425.00 and the \$775.00 Detective allowance to \$825.00. The City points out that the uniform allowance provided its Officers is the second highest in the County and that there is no basis for assuming any inflation in uniform replacement costs over the next three years. It therefore insists that there is no justification to increase the allowance.

THE FACT-FINDER'S RECOMMENDATIONS

Taking into account that the fact that the "basic salary of ... [Police Officers] remains low," the Fact-Finder concluded that external comparability considerations require "some adjustment in uniform allowance." Accordingly the Fact-Finder recommended that the annual February 1st pay of \$500.00 be increased to \$525.00, the semi-annual \$400.00 payments made in June and December of each year be increased from \$400.00 to \$425.00, and the \$775.00 annual allowance paid to Detectives be increase to \$850.00 per year.

CONCILIATOR'S ANALYSIS AND AWARD

The Conciliator acknowledges that the extent to which uniform and other supply replacement costs absorbed by members of the Bargaining Unit will increase over the three years of the successor Contract is uncertain. Nevertheless, as he has already observed, the economic position of the City's Police Force in relation to other comparable Departments depends upon total levels of compensation, not just base salary, and along with the Firearm Proficiency Allowance, the Uniform Allowance represents a substantial portion of Euclid Police Officers' aggregate pay.

Accepting the reasoning of the Fact-Finder the Conciliator finds that the proposal of the Union better serves the goal of maintenance of Euclid Police Officer's positional status quo vis a vis the Officers of other Departments and guards against any significant erosion of income should equipment costs increase or uniform changes be adopted which would require additional outlays by Bargaining Unit members.

Accordingly, the Conciliator awards the Union's final offer to increase the annual \$500.00 uniform allowance, payable in February, to \$550.00 and the semi-annual \$400.00 uniform allowance payable in June and December, to \$425.00. He also awards the Union's final offer to increase the \$775.00 annual uniform allowance paid to Officers assigned to the Detective Bureau by \$25.00 per month to an annual total of \$1,075.00.

4. RETIREMENT INCENTIVE

The 1996 Contract

The recently expired Contract did not contain any retirement incentive.

THE UNION'S FINAL OFFER

The Union offers to increase the wages of Officers by 3% during their final three years of service provided they notify the City of their intention to retire. It proposes the adoption of the following Contract provision:

"RETIREMENT INCENTIVE PROGRAM

"This program will be offered to each member after he/she is vested (15 years) in the retirement program and in their last three years of employment. The member must have signed a Letter of Intent to retire per ARTICLE X, SECTION 4 (F). The member will be eligible for the program for the three (3) consecutive years prior to retirement, maximum. If the member decides to remain after the third year, he/she is no longer eligible for the program and his/her salary will revert back to the regular rate of pay as set forth in ARTICLE VI, APPENDIX "A." When the INCENTIVE PROGRAM is initiated, the participating member will receive a three percent (3%) increase of the respective year's First Class Police Officer's rate of pay. This is to be paid out biweekly as part of his/her normal pay. This is not a change in rank nor a change of job classification."

The Union states that the modest retirement incentive premium represents compensation for long years of service. Based upon current membership in the Bargaining Unit, an estimated eleven Officers would be affected during the life of

the 1999 Agreement and their incentive pay would amount to \$1,200.00 each.

THE CITY'S FINAL OFFER

The City opposes any addition of a retirement incentive program to the 1999 Contract, and instead offers to maintain the status quo.

The City reminds the Conciliator that the Department already has a superior longevity payment schedule which adequately compensates long service employees.

THE FACT-FINDER'S RECOMMENDATIONS

The Fact-Finder did not recommend the retirement incentive proposed by the Union since it was a "new form of compensation" rather than an "enhancement of existing benefits." She concluded that any such commitment should be left up to future negotiations.

THE CONCILIATOR'S ANALYSIS AND AWARD

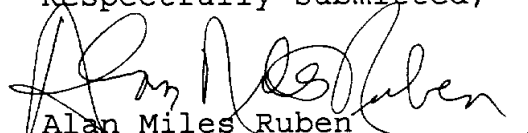
The Union first proposed a retirement incentive program during the Fact-Finding proceedings thereby bypassing the negotiation process. The Conciliator agrees with the Fact-Finder that it is inappropriate to order the adoption of a program that has not been tested and analyzed as to its potential consequences, nor "fine-tuned" after consideration of modifications and alternatives through the bargaining process. Moreover, the proposed retirement incentive program requires the making of forecasts into the indefinite future for which the Conciliator has no evidentiary basis. The Union has not demonstrated any inadequacy in the present longevity

system to warrant imposing an as yet unknown financial commitment upon the City which, although applicable only to eleven members of the Unit during the term of the 1999 Contract, will continue in potentially permanent operative effect ultimately embracing all members of the Police Force.

Accordingly, the Conciliator Awards the City's final offer and rejects the Union's final offer of a retirement incentive program.

AWARD signed, dated and issued at Cleveland, Ohio this 6th day of October, 1999.

Respectfully submitted,


Alan Miles Ruben
Conciliator

AMR:ljb