

STATE EMPLOYMENT
RELATIONS BOARD

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STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

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IN THE MATTER OF: *

FRATERNAL ORDER OF POLICE *

OHIO LABOR COUNCIL *

AND *

CITY OF WILLARD *

* * * * *

CASE NOS. 99-MED-09-0807
0808
0809

REPORT AND AWARD OF THE CONCILIATOR

I. BERNARD TROMBETTA
CONCILIATOR
30505 BAINBRIDGE ROAD
SOLON, OHIO 44139
[440] 349-2110

CONCILIATOR'S REPORT AND AWARD

I. PLACE AND DATE OF HEARING

This hearing was held on the 25th day of April, 2000 in Willard, Ohio at the Willard City Hall.

II. HEARING BACKGROUND

This matter is between the Fraternal Order of Police, Ohio Labor Council, Inc., hereinafter referred to herein as the "Union" and the City of Willard, hereinafter referred to herein as the "City".

This is a multi party bargaining unit within the police department and consists of the patrolmen (10 members), sergeants (3 members) and dispatchers (4 members). The parties agreed to a multi-unit bargaining unit for purposes of negotiating a new agreement.

Willard is located in Huron County in northwestern Ohio. It is an industrialized municipality amid a rural setting. At one time it was an important railhead for the Baltimore & Ohio Railroad and is currently serviced by CSX.

The current contract, the third between the parties, expired on December 14, 1999 and the parties have continued to operate under the expired contract through a series of extensions.

The parties bargained on 5 occasions, and though a number of issues were resolved were unable to reach a full agreement. Five issues went to fact finding. The Fact Finder's report was issued on February 15, 2000.

There was no evidence that any single unit accepted the Fact Finder's recommendations and it is therefore assumed that the rejection of the recommendations was done as a single unit.

The matter was submitted to conciliation on the same issues which were the subject of the Fact Finder's report. The City adopted the Fact Finder's report in its position statement. The Union's position statement modified, somewhat, its demands taken during of fact finding.

The unresolved issues are as follows:

1. Wages (Art. XVIII):
2. Medical Insurance (Art. XVII);
3. Overtime Calculations (Art. XIV);
4. Holiday Pay Overtime Calculation (Art. XV);
5. Residency Requirement (Not Contained in Present Agreement).

II. APPEARANCES

On Behalf Of The Union:

John Looman, Operations Coordinator
Fraternal Order of Police, Ohio Labor Council, Inc.
222 East Town Street
Columbus, OH 43215

Donald E. Peeler, Sgt., Willard Police Dept.
Charlton Summers, Sgt., Willard Police Dept.
Joseph R. Rohrbach, Police Officer, Willard Police Dept.
Susan M. Johnson, Dispatcher

On Behalf Of The City:

James K. Koshmider, City Manager
631 Myrtle Avenue
Willard, OH 44890

Ann Fritz, Director of Finance
David Harwood, Director of Law
Thomas D. King, Chief of Police

III. CRITERIA

The criteria used by the Conciliator in determining this matter are found in R.C. 4117.14[G][7][a] through [f] and OAC 4117.14(G)(7)(a) through (f) and include the following: past collectively bargained agreements between the parties, comparison of issues between the affected employees with those issues related to other public and private employees doing comparable work, the interest and welfare of the public, the ability of the County to finance and administer the issues proposed and the effect of the adjustments on the normal standard of public service.

The Conciliator must chose between the final offers of the parties and has no other discretion in deciding between the positions of the parties.

The criteria used in conciliation are included in the criteria used in fact finding. [R.C. 4117.14[C][4][e]]. Most conciliators employ a standard requiring a finding of clear error on the part of the Fact Finder before a recommendation will be overturned. This standard, though not statutory, appears to have been adopted by most conciliators since first advanced by Professor Drotning.

It appears that the Fact Finder heard evidence on all of the submitted issues. He, however, had greater discretion than does this Conciliator who is limited to choosing between the final offers of the parties.

The standard employed in this conciliation, while not as exacting as the "Clear Error Standard", will be more than simple difference of opinion with the conclusions or recommendations of the Fact Finder.

III. ISSUES FOR CONCILIATION

ISSUE NO. 1 WAGES

(ART. XVIII)

POSITION OF THE PARTIES

The Union is seeking a 3.75% increase for sergeants and officers and 4% increase for dispatchers in the first year

and 3.75% across the board in the second year; and 4% across the board in the third year of the contract.

In support of its position the Union offered that the .25% difference in the first and second years and .50% difference in the third years amounted to \$75 and \$150 per person per year increase over the Fact Finder's recommendation. The Union also offered that the statewide average increase among police department personnel amounted to 4.25% in contrast to the City's 3.5% final position.

The Union also sought to establish parity between the Clerks and the dispatchers and that a 4% increase would do so.

The City which adopted the Fact Finder's recommendations as its final position, maintained that in the previous contract Willard averaged 1.7% over a 3 year period above the statewide average increase and that historical CPI increases were offset by the wage increases.

ANALYSIS

Though the issue of retroactivity between the date of the contract expiration and the start of the year was not addressed, the Conciliator observes that he does not have the authority to award any wage increases prior to the start of the fiscal year. [R.C. 4117.14 [G][11]].

Any increase must commence no earlier than January 1, 2000 [See; SERB v. City of Barberton, 1990 SERB 4-46 (C.P. Summit Co., 1990); SERB v. City of Columbus, 1984-86 SERB 429 (C.P., Franklin Co. 1985)]. The parties, however, may, by their mutual agreement, agree to amend the Conciliator's report. [R.C. 4117.14[G][11].

The wage increase given the dispatchers (4%) in the first year of the contract by the Fact Finder is in compliance with the final positions of both parties.

In the first year, the .25% difference between the Union's demand and the City's offer amounts to \$75 per year per member (\$975 in the first year and \$1,275 in the second year) and \$150 per year per member (\$2,550) in the third year.

The ability or inability of the City to pay the requested increase was not at issue. The cost of the adoption of the Union's position would not create a hardship on the City. Those, however, are not the only issues which must be examined. Instead, the Conciliator, as did the Fact Finder before him, must also look to comparisons in the area and the history of bargaining between the parties.

First, the reduction of .25%, from 4% to 3.75%, by the Union is not, in and of itself, a compelling reason to adopt the Union's final position. The Fact Finder considered a 4% demand against a 3% offer and determined that a 3.5%

for sergeants and officers and 4% increase for dispatchers in the first year and 3.5% across the board increase in the second and third years was fair and equitable.

Second, the issue of parity between the Clerks and the Dispatchers draws a false parallel between the job categories. The job descriptions, duties and responsibilities are totally unrelated. The City claimed that some of the "Clerks" are degreed and involve fiscal responsibilities and accountability.

Third, the Conciliator, as did the Fact Finder, finds that the 3.5% wage increase offer to the sergeants and officers in each of the 3 years and to the dispatchers in the second and third years following a 4% increase in the first year is fair when compared to salaries and increases accorded police personnel and dispatchers in neighboring communities. (Bucyrus 3%, 0% and 0%; Clyde 3% and 3%; Perkins 3% and 3% and Shelby 3.5%, 3.5% and 3.5%).

Though the issue of pension pick-up was not made during the hearing, the Fact Finder made note of the 10% pension pick-up provided the sergeants and officers. This amounts to a 10% wage increase since as the wages increase so does the pension pick-up. The pick-up when added to the present wage scale and the 3.5% increase recommended by the Fact Finder places the 3 units near the top of the wage scale in the 4 comparable communities.

The Fact Finder noted that the dispatchers did not receive the benefit of the pension pick-up and recommended a 4% increase in the first year and 3.5% in the second and third years. Wage comparisons between Willard and its neighbors does not disclose any disparity. On the contrary, it appears that Willard's dispatchers rank among the better paid dispatchers under the City's proposal.

AWARD

The Conciliator adopts the final position of the City and makes the following award regarding wage increases:

Commencing January 1, 2000:

Sergeants	3.5%
Officers	3.5%
Dispatchers	4%

Commencing January 1, 2001:

Sergeants	3.5%
Officers	3.5%
Dispatchers	3.5%

Commencing January 1, 2002:

Sergeants	3.5%
Officers	3.5%
Dispatchers	3.5%

ISSUE NO. 2

MEDICAL INSURANCE

ART. XVII

POSITION OF THE PARTIES

The Union is offering to increase its contribution toward medical coverage from \$15 for family and \$5 for single to \$22.50 and \$10 respectively.

The City countered with \$25 for family and \$10 for single coverage.

The parties agreed with the Fact Finder's recommendation giving the City the authority to change insurance carriers or to self insure, provided that the benefits under any change be comparable to existing benefits.

ANALYSIS

The proposed increase is \$260 per year for family coverage and \$130 per year for single coverage. However, only the contribution rate for family coverage is at issue since the parties have agreed upon the increase for single coverage. The real difference is \$65 per year when considering that the Union has offered to raise the contribution for family coverage to \$22.50 per pay period. The relatively small difference between the final position of the parties does not sway the Conciliator to reverse the

Fact Finder's recommendation who previously considered a greater range between the parties positions (\$30 and \$10 versus \$20 and \$10).

After a number of years in which the costs of medical insurance coverage were relatively level, costs are again spiraling upward. Family coverage for 1999-2000 is \$9,800 per year and increase of \$2,472.24. The parties accepted the sharing of medical insurance costs in their previous contract. The employee's share, however, even with the increase is still only 7% of the total premium in contrast to the statewide average of 12.2%.

Despite the narrowing of the differences between the parties, the Conciliator is not prone to adopt the Union's position and overturn the Fact Finder's recommendation. The Fact Finder considered the same evidence as was submitted to the Conciliator. There was no evidence of error, clear or otherwise, by the Fact Finder and a simple difference of opinion is not sufficient grounds to modify the recommendation of the Fact Finder.

AWARD

The Conciliator finds in favor of the City. Commencing upon the execution of this agreement, the employee's rate of contribution toward health insurance coverage shall be \$25 per pay for family coverage and \$10 per pay for single coverage. In addition, the City shall be able to change

insurance carriers or to self-insure, provided that the benefits are comparable to existing benefits.

ISSUE NO. 3

OVERTIME COMPUTATION

ART. XIV

POSITION OF THE PARTIES

The Union proposed the addition of "Personal Time" to Section (e) for purposes of calculating overtime pay.

The City proposed no change.

ANALYSIS

The Fact Finder appears to have treated this issue in conjunction with Issue No. 4 herein. The issue appears to have arisen as a counterproposal to the attempt by the Union to change the calculation of holiday pay in the determination of overtime pay.

Presently, "personal time" and "jury duty pay" are not treated as hours worked for the calculation of overtime (Art. XVI, Sec.(d)). According to the City, those exclusions have appeared in the previous 3 collective bargaining agreements. The Conciliator fails to appreciate the distinction between sick leave and vacation on the one hand and personal time and jury duty pay on the other. Both the included and excluded forms of pay are non-worked pay and other than the agreement of the parties, there seems no reason to include some types and exclude others. The

overwhelming circumstance in this instance is the history of bargaining between these parties. According to the City, its attempts to trade-off Issue No. 3 against Issue No. 4 were not accepted, but, in any event, the Conciliator must consider them as separate issues upon the position statements of the parties.

AWARD

The Conciliator finds in favor of the City and recommends that no changes be made to either Sections (d) or (e) of Article XVI.

ISSUE NO. 4

OVERTIME CALCULATION

ART. XV

POSITION OF THE PARTIES

The Union proposed that Section 7 (Art. XV, Sec. 7) be modified to the extent that any employee required to work on a covered Holiday, who would otherwise be eligible for overtime, would be paid straight time plus two times his regular base hourly rate of pay, or triple time.

The City proposed that the current contract language which pays 2 1/2 times the straight time, whether the Holiday is worked or not, be maintained.

ANALYSIS

Currently, a member, not required to work a covered holiday, is paid at the rate of 2 1/2 times his straight

rate (Art. XV, Sec. 2). As if to clarify the matter, Section 7 states that any employee who works on a holiday and who would otherwise be eligible for overtime, shall be paid straight time for the holiday plus one and one-half times his regular rate or 2 1/2 times his straight rate. Thus, whether one works or not, the member is paid 2 1/2 times his straight rate if otherwise eligible for overtime and he would be eligible for overtime if a normal work week is worked.

During contract negotiations, the City apparently offered to pay triple time to those who worked and include "personal time" into the overtime calculations in return for a reduction to double time for those who did not work on the holiday. The parties, however, did not reach an agreement and the Fact Finder opined that though the Union's proposal for triple time appeared to be excessive, the City's counterproposal to reduce non-worked holidays from 2 1/2 to 2 times the straight rate would amount to a reduction in a current benefit provided under the current and now expired contract. The Fact Finder, apparently, sought something more from the parties, perhaps a cost analysis, before he would substitute one benefit for another.

The Union introduced the provisions of the labor agreements from neighboring communities which it claimed were not available to the Fact Finder. While those

communities (Bucyrus and Shelby) appear to provide for triple time for holidays that are worked, they do not pay 2 1/2 times for holidays that are not worked. The added benefits appear to have been a means of increasing a member's pay without reflecting it in the wage scale. In determining the issue, however, the entire economic package paid to the unit members must be viewed and compared against the practices, wages and benefits of both statewide departments and neighboring communities.

In any event, the Conciliator was not provided the authority to choose between the various proposals contained in the briefs. The Conciliator must choose between the current language as proposed by the City and recommended by the Fact Finder and increasing holiday pay to triple time for those who work the holiday as suggested by the Union, but at the same time keep the rate at 2 1/2 times for those who do not work the holiday.

The adoption of the Union position would amount to the payment of 5 extra days pay per year, if an employee worked all "holidays" which does not seem likely. It seems to be a fundamental premises that those who work should be paid more than those who do not work. Adoption of the Union's position would perpetuate the fundamental unfairness of paying those who work the same rate as those who do not work. The parties bargained on this benefit in the past and adopted into their

would expand the permissible areas from the 4 abutting communities to 15.

The residency requirement is not contained in the collective bargaining agreement. It is an ordinance passed by the city council approximately 20 years ago. The residency requirement applies to all city employees, except the city manager who must live within the city limits.

The Union argued that the residency limitation unfairly restricts its members in their choice of affordable housing and forcing a member to reside in the area in which the members frequently confront citizens needlessly exposes a member and their families to danger and harassment.

Other than a single related incident arising 4 years ago which did not result in a criminal prosecution or injury to a member or his family, the Union did not support its allegations. Also, it is hard to understand how a dispatcher would be so affected. No evidence of the cost of housing within either the City or the 4 contiguous townships or the 15 communities under the expanded area was introduced. There was also no evidence introduced as to the inferiority of the local school district as was argued during the hearing.

The City, on the other hand, argued that the residency policy was beneficial to the community and enhanced the image of the police department. Also, the City cited a historical perspective between Willard and the neighboring

townships such a back-up fire and EMT service. The Conciliator realizes that requiring city employees to reside in the immediate area also has an economic benefit on local businesses.

Residency requirements can create a hardship by restricting a person's freedom of choice in selecting a home or an area in which to live. No facts regarding the price range of housing within the permitted area in contrast to the price range in the expanded area was forthcoming. Not only was there no evidence of the inferiority of the school system, there was general disagreement as to the results of proficiency tests and overall ranking. In addition there was evidence that the area is served by a parochial school.

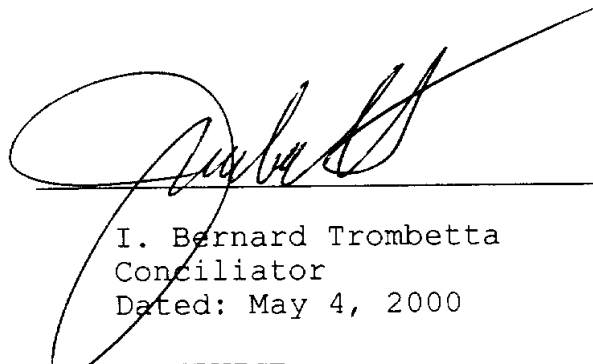
Lastly, there was no evidence that a members or his family is exposed to any greater danger by living within the restricted area in contrast to the expanded area. Members expressed a fear that their homes could be targeted as belonging to a police officer since a member often drives his city vehicle home for lunch. The overly simple resolution to that problem would be to drive one's personal vehicle while on lunch or to eat at a public facility.

The Conciliator finds that limitation on the member's choice of housing is outweighed by the benefits of the continual presence of uniformed personnel within their work area.

AWARD

The Conciliator finds in favor of the City and orders that no modification of the City's current residency requirements be included in the new collective bargaining agreement.

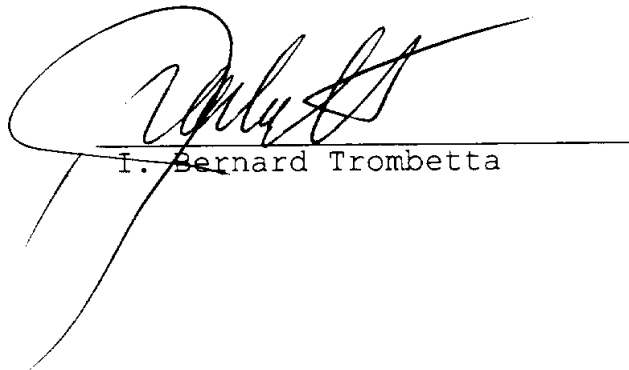
Respectfully Submitted



I. Bernard Trombetta
Conciliator
Dated: May 4, 2000

V. PROOF OF SERVICE

The undersigned hereby certifies that this award was served upon James Koshmider, City Manager, 631 Myrtle Avenue, Willard, OH 44890 and John Looman, Operations Coordinator, 222 E. Town Street, Columbus, OH 43215 on this 4th day of May, 2000 by U.S. Mail, Overnight Delivery Service and upon George M. Albu, Administrator, Bureau Of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213 on this 3rd day of May, 2000 by ordinary U.S. Mail.



I. Bernard Trombetta