

STATUTORY IMPASSE PROCEEDINGS STATE EMPLOYMENT RELATIONS BOARD CONCILIATION FINDINGS AND AWARDS

In The Impasse Between: CITY OF AVON LAKE, OHIO

-and-

SERB Case No. 99-MED-10-0867

99-MED-10-0868

99-MED-10-1046

FRATERNAL ORDER OF POLICE/ OHIO LABOR COUNCIL LODGE 25

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APPEARANCES

FOR THE CITY

R. J. Tscholl Sue Valasco Attorney for the City Finance Director

FOR THE FOP

Hugh Bennett Cindy DeChant Sean Bockelman Randy Bennett Duane Streator Jack Hall Tim Schleicher Staff Representative

Negotiator
Negotiator
Negotiator
Negotiator
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Negotiator
Negotiator

Jonathan Dworkin, Conciliator 101 Park Ave. Amherst, Ohio 44011

PRELIMINARY FACTS

The City of Avon Lake, Ohio (population 18,600) recognizes three Bargaining Units for eligible members of its Police Department -- Patrol Officers, Sergeants/Lieutenants, and Dispatchers. A Patrol Unit consists of twelve Officers; the ranking Unit has five Sergeants, three Lieutenants; four Dispatchers comprise the third Unit. All three are represented by the Fraternal Order of Police/Ohio Labor Council (FOP). They are currently occupied in multi-unit negotiations over wages, hours, and employment terms.

The last three-year Collective Bargaining Agreements between Avon Lake and the FOP commenced January 1, 1997 and expired December 31, 1999. The parties met both before and after the contract-expiration date, earnestly tried to reach settlement, but reached impasse on several issues. Consequently, the State Employment Relations Board (SERB) directed them to submit to factfinding. They presented their proposals and arguments to Factfinder Robert Devlin who issued recommendations on December 15, 1999. One or both parties rejected Factfinder Devlin's report, and the dispute advanced to conciliation before this Conciliator.

"Conciliation" is the term used in Ohio for issue-by-issue, final-offer interest arbitration. The process is governed by the Ohio Public Employee Col-

lective Bargaining Law (OHIO REVISED CODE Chapter 4117), and administered by SERB. It is a procedure reserved for the few categories of public employees legally precluded from striking. OHIO REVISED CODE §4117.14(D)(1) prohibits police and other essential safety and health classifications from striking.

The responsibilities and powers of conciliators are described in REVISED CODE §4117.14. Subsection (G)(7) requires that a conciliator "resolve the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the party's final settlement offers." Subsection (H) allows parties to obtain judicial reviews of conciliation awards, but Subsection (I) provides that such awards are otherwise binding. It states:

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

December 30, 1999, SERB directed the City and the FOP into conciliation; the Conciliator was appointed January 5, 2000. A hearing convened at Avon Lake March 14, 2000 and concluded the same day.

THE FINAL OFFER PROPOSALS

<u>wages</u>: The FOP's initial factfinding demand was for a 4 percent annual, across-the-board raise for Patrol Officers, Sergeants, and Dispatchers.¹ The City originally sought a wage freeze, then countered at 3.75 percent. Factfinder Devlin recommended the City's position, and the FOP approved it. Yet, wages are still at impasse because the City's final offer is to make the wage increment effective the day the parties sign their new Agreement, *without retroactivity*.

All other represented Avon Lake Employees were paid 3.75 percent commencing January 1, 2000; the Police Units demand parity.

RANK DIFFERENTIAL - LIEUTENANTS: Article IX of the 1997-1999 Sergeants and Lieutenants Agreement expressed wage amounts as hourly, biweekly and annual dollars. According to FOP calculations, the effective differential between Sergeants and Lieutenants under the last Agreement was just over 7.1 percent. In factfinding, the Union proposed an increase to 9 percent using internal comparisons (Firefighters) and police wage differentials in comparable communities to support its position. The Employer rejected the proposal, arguing that ranking Officers in Avon Lake were well paid and that a higher raise

¹ Lieutenants wages are the product of a rank-differential provision and are included in a different proposal.

for them, more than what other City workers would receive, was immoderate and unreasonable. Notwithstanding, the Factfinder recommended 9 percent.

The 9 percent recommendation formed the FOP's final conciliation offer, while the City continued to reject the demand flatly, without a counteroffer. With the parties' permission, the Conciliator attempted to mediate this impasse item during the hearing. Though settlement did not come about, the FOP did amend its final offer from 9 to 8 percent. The City did not object, and the Conciliator accepted the amendment.

CLOTHING ALLOWANCE (DISPATCHERS): The Dispatcher Unit, consisting of four employees, seeks an annual uniform-allowance increase from \$500 to \$550. The proposal is designed to accommodate for increased clothing costs. More important, it would bring Police Dispatchers into parity with Fire Dispatchers who now receive the \$550 stipend.

The City rejected the proposal; the Factfinder recommended it.

LONGEVITY: Article XXV of the current and past Agreements provides an extra wage allowance based on years of service; the FOP wants increases. The following table compares the existing longevity amounts (strikeout) and the increments proposed (bold):

Consecutive full years of service	<u>Annual Long</u>	evity Pay
_6 years	\$ -350	\$ 600
7 years	\$ 400	\$ 700
8 years	\$ 450	\$ 800
9 years	\$ 500	\$ 900
10 years	\$ 575	\$1,000
11 years	\$ 650	\$1,100
12 years	\$ 725	\$1,200
13 years	\$ 800	\$1,300
14 years	\$ 875	\$1,400
15 years	\$ 950	\$1,500
16 years	\$ 1,025	\$1,600
17 years	\$ 1,100	\$1,700
18 years	\$ 1,175	\$1,800
19 years	\$ 1,250	\$1,900
20 years	\$ 1,600	\$2,000

To support its request, the FOP introduced an exhibit showing that police in neighboring communities similar to Avon Lake receive better longevity packages. The City rejected both the proposal and the Union's analysis on two grounds: First, it pointed out that all other Avon Lake bargaining units ratified the existing schedule. Disturbing that parity for no legitimate reason peculiar to these employees would be insupportably costly in the future. Second, the City contends that looking just to the longevity schedule creates a false picture. The question that is more appropriate for examination is whether total compensation for unit members is comparable and competitive. The City insists that it is.

Factfinder Devlin agreed with the City. He held: "that the totality of compensation must be considered when reviewing fragmented parts such as longevity. No persuasive evidence was presented in order to justify a revision of the longevity schedule."

RETIREMENT INCENTIVE OPTION: Under state law, public employees can accumulate and receive payment for unused sick leave up to one hundred twenty days. In 1991, Avon Lake City Council enacted an ordinance granting designated employees the option of cashing in thirty days' sick leave and taking it as wages. It was not cost free to employees. Those hired after December 22, 1980 would have to relinquish their remaining unused sick leave. Those hired before the trigger date were red circled and not required to make the sacrifice. Ordinance NO. 135-91 provides:

Payment for Unused Sick Leave Upon Retirement.

- (1) A full-time employee, at time of acceptance for retirement by the Public Employees Retirement System, the Police Pension or the Fire Pension, if he or she has ten or more years of fulltime service as an employee of the City, and if his or her retirement is within ninety days of his or her last day of service with the City, may elect to receive termination pay.
- (2) Each full-time employee who qualifies shall receive twentyfive percent of his or her accumulated sick leave credit up to a maximum of 120 days. Payment shall be based on the

- daily rate of pay at the time of retirement and shall not exceed thirty days of accumulated unused sick leave.
- (3) Payment under this subsection shall eliminate all sick leave credit.
- (4) No employee shall receive more than one such payment.
- (5) If termination is because of death, such remaining accumulated sick leave pay shall be paid to the surviving spouse or dependent children in the order named or to the executor or administrator of the estate.
- (6) An employee whose date of employment is prior to December 22, 1980, will not be governed by paragraph (c)(2) hereof. Such employee will receive all accumulated sick leave up to a maximum of 120 days.

The FOP proposes contract language adopting the ordinance in part, but amending it by granting every employee with twenty-two years' service the right to convert up to one hundred twenty days' sick leave. The City rejects the demand, characterizing it as prohibitively costly. It did, however, offer to make the ordinance a provision of the Agreement.

The Factfinder recommended against the proposal, not because he felt the retirement incentive was unwarranted, but because the Union had not introduced sufficient financial data and analyses to support its position and show that it was within the range of an economically feasible and reasonable benefit.

FACTORS TO BE CONSIDERED

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

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (c) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
 - (d) The lawful authority of the public employer;
 - (e) The stipulations of the parties;
- (f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

The Conciliator examined these guidelines to the extent they were relevant and/ or addressed by the parties' Advocates. Some had little material value while others were more significant. The determinant guidelines were past Agreements [factor (a)] and comparables [factor (b)]. The City's ability to fund FOP economic proposals [factor (c)] was not at issue.

OPINIONS

WAGE RETROACTIVITY: All other Avon Lake bargaining units made timely settlements and received the 3.75 percent wage hike on January 1, 2000. Only the FOP Units negotiated to impasse and drove the City into factfinding and conciliation. The City has no financial basis for denying retroactivity. Its only argument is that it "dealt with all the same way, and the Police recalcitrance to take the same offer everyone else accepted *had to embody some risk*."

The Conciliator cannot find polite, nonjudgmental words to respond to the City's position. It is unimaginable that a public employer would seek to punish a unit for exercising, in good faith, its statutory prerogatives. The FOP was not required to abandon its issues and take whatever Avon Lake negotiators put on the table. There was no mandate for it to follow the lead of the other Unions. It had a legal, morally correct right to strike out on its own, seeking the best wages, hours, and employment conditions for its members.

If the Conciliator were to lend his authority to the City's punitive purpose, he would be telling the FOP and all other Unions that they risk economic peril if they try to pursue their statutory rights. Neither this Conciliator nor (he imagines) any other would abandon his/her neutrality and adopt a position so partisan, so indefensible.

Wages will be retroactive to January 1, 2000.

RANK DIFFERENTIAL - LIEUTENANTS: Given the command responsibilities and status of lieutenants, it is common for Ohio municipalities to grant and preserve a wage differential based on pay of top sergeants. The FOP's evidence establishes that the 7.1 percent wage difference in Avon Lake is significantly lower than the differentials in comparable cities. The Factfinder saw this as a problem in need of a remedy. He recommended an increase to 9 percent.

Although the FOP justifiably came into conciliation with a demand reflecting Factfinder Devlin's recommendation, it subsequently modified its position to 8 percent. The Conciliator finds that the Union's revised proposal is fair, economically sound, and fully warranted. It will be awarded.

<u>CLOTHING ALLOWANCE (DISPATCHERS):</u> FOP witnesses presented cogent testimony of their need for a modest clothing-allowance increase. They

convinced the Factfinder that their request was justified and not economically burdensome to the Avon Lake budget. In contrast, the City's arguments against the increment were unpersuasive. The Conciliator can think of no reason to second-guess the Factfinder's recommendation. The FOP's final-offer proposal will be awarded.

LONGEVITY: While the FOP did establish that comparable municipalities offer their police officers better longevity schedules than Avon Lake, the record authenticates the City's position that overall compensation here is adequate without the requested improvement. More to the point, the evidence provides no foundation for breaking the parity between these Units and those representing other City employees. The others ratified the current longevity package; why shouldn't Police Department employees have to do likewise?

The concept of parity is intrinsic in public-sector bargaining. It is admittedly a philosophically flawed concept. Ideally, each labor organization has a right and obligation to represent its members assertively and independently. When negotiating for wages and employment terms, no union should be bound to accept what others have secured or conceded.

That is the ideal, not the reality. Preserving parity among employees has proven to be crucial for most municipalities. Employees and bargaining units

themselves have fostered the expectation, the demand, that all be treated equally. Dispatcher clothing allowance, which is at issue here, illustrates the point. The best argument in favor of the FOP's position was that Fire Dispatchers were receiving the extra \$50, and it was inequitable not to treat Police Dispatchers the same.

This does not mean that factfinders and interest arbitrators should bind themselves unthinkingly to parity. When seeming equality creates manifest unfairness or real inequities that demand remedies, a neutral should not hesitate to break the mold and award those remedies. To obtain such an award, however, the party seeking a departure from parity must support its demand with compelling evidence of necessity.

The FOP's final offer on longevity is not staggeringly costly. And there is certain appeal to requiring Avon Lake to more adequately reward Police Officers who have given years of dedicated service to the community. Nevertheless, neither that appeal nor the economic reasonableness of the Union's request is so strong as to compel the Conciliator to separate this Unit from the others and destroy the uniform longevity plan. The Employer's final offer will be awarded.

RETIREMENT INCENTIVE OPTION: Factfinder Devlin recommended against the FOP's position. His reasoning was concise and to the point: "such

a fringe benefit is the type that would, if adopted, eventually be extended to all bargaining units. Therefore, a proposal of this nature should be accompanied by a detailed cost analysis which the City could extrapolate to cover the potential application." The Conciliator agrees. Though the proposal finds support in data from comparable municipal police departments, no evidence was furnished on its future impact. In other words, neither the Factfinder nor Conciliator was given the information needed to make a rational decision granting the benefit. The FOP candidly admits that the proposal will be costly, but submitted no calculation on how costly it might be.

The City's counteroffer was to incorporate the language of the ordinance into the Agreements. This was not a cosmetic, trivial concession. During the hearing, the City Finance Director brought a message from Council -- that Ordinance 135-91 was meant to be cost free; it would be repealed if the employees added a substantial cost factor. Ohio Revised Code makes provisions of collective bargaining agreements superior to all but a few designated laws and ordinances. Therefore, by incorporating the ordinance into the Agreement, this Bargaining Unit will insulate the benefit against repeal.

The City's position will be awarded. Ordinance 135-91 will be incorporated into each of the FOP Agreements.

AWARDS

The following awards of language, to be incorporated into the new Agreements, are issued in accordance with Ohio Revised Code Chapter 4117. If there are errors in the language or the parties mutually agree on revisions, they are reminded that Revised Code §4117.14(G)(11) states in part: "the parties may, at any time, amend or modify a conciliator's award or order by mutual agreement."

POLICE OFFICERS AND DETECTIVES AGREEMENT

ARTICLE XI WAGES

<u>SECTION 1.</u> The parties do hereby agree that the following schedule of gross rates of pay for employees covered by this Agreement shall be effective on the dates as specified to wit:

- a. Retroactive to and commencing on January 1, 2000 through December 31, 2000, wages for all employees shall be increased by three and three-quarters percent (3.75%).
- e. Wages for all employees covered by this agreement shall be increased by three and three-quarters percent (3.75%) of the gross base rate of pay effective as of January 1, 2001 through December 31, 2001.

f. Wages for all employees covered by this agreement shall be increased by three and three-quarters percent (3.75%) of the gross base rate of pay effective as of January 1, 2002 through December 31, 2002.

SERGEANTS AND LIEUTENANTS AGREEMENT

ARTICLE XI WAGES AND RANK DIFFERENTIAL

SECTION 1. The parties do hereby agree that the following schedule of gross rates of pay for employees covered by this Agreement shall be effective on the dates as specified to wit:

- a. Retroactive to and commencing on January 1, 2000 through December 31, 2000, wages for Sergeants shall be increased by three and three-quarters percent (3.75%). Lieutenant wages shall be calculated as a differential of 108 percent of Sergeant wages.
- e. Wages for Sergeants covered by this agreement shall be increased by three and three-quarters percent (3.75%) of the gross base rate of pay effective as of January 1, 2001 through December 31, 2001. Lieutenant wages shall be calculated as a differential of 108 percent of Sergeant wages.
- f. Wages for Sergeants covered by this agreement shall be increased by three and three-quarters percent (3.75%) of the gross base rate of pay effective as of January 1, 2002 through December 31, 2002. Lieutenant wages shall be calculated as a differential of 108 percent of Sergeant wages.

DISPATCHERS AND SECRETARY RECORDS CLERK AGREEMENT

ARTICLE XI WAGES

SECTION 1. The parties do hereby agree that the following schedule of gross rates of pay for employees covered by this Agreement shall be effective on the dates as specified to wit:

- a. Retroactive to and commencing on January 1, 2000 through December 31, 2000, wages for all employees shall be increased by three and three-quarters percent (3.75%).
- e. Wages for all employees covered by this agreement shall be increased by three and three-quarters percent (3.75%) of the gross base rate of pay effective as of January 1, 2001 through December 31, 2001.
- f. Wages for all employees covered by this agreement shall be increased by three and three-quarters percent (3.75%) of the gross base rate of pay effective as of January 1, 2002 through December 31, 2002.

DISPATCHERS AND SECRETARY RECORDS CLERK AGREEMENT

ARTICLE XV CLOTHING ALLOWANCE

SECTION 1. Full time employees required to wear uniforms shall receive annual clothing allowances of five hundred fifty dollars (\$550) for the purchase and maintenance of regulation uniforms and clothing. Such allowance shall be paid in one installment on the scheduled pay day immediately preceding April 1 of each year.

ALL AVON LAKE - FOP AGREEMENTS

ARTICLE XXV LONGEVITY

The City's final offer is awarded. Current language and schedules in Article XXV shall carry forward through the new contractual term.

ALL AVON LAKE - FOP AGREEMENTS

NEW ARTICLE ____ RETIREMENT INCENTIVE OPTION

SECTION 1: A full-time employee, at time of acceptance for retirement by the Public Employees Retirement System, the Police Pension or the Fire Pension, if he or she has ten or more years of full-time service as an employee of the City, and if his or her retirement is within ninety days of his or her last day of service with the City, may elect to receive termination pay.

SECTION 2: Each full-time employee who qualifies shall receive twenty-five percent of his or her accumulated sick leave credit up to a maximum of 120 days. Payment shall be based on the daily rate of pay at the time of retirement and shall not exceed thirty days of accumulated unused sick leave.

- (A) Payment under this section shall eliminate all sick leave credit.
- (B) No employee shall receive more than one such payment.
- (C) If termination is because of death, such remaining accumulated sick leave pay shall be paid to the surviving spouse or dependent children in the order named or to the executor or administrator of the estate.

SECTION 3: An employee whose date of employment is prior to December 22, 1980, will not be governed by Section 2, Paragraph (A). Such employee will receive all accumulated sick leave up to a maximum of 120 days.

* * *

These conciliation awards were issued at Lorain County, Ohio May 25, 2000. True copies were sent by priority US Mail the same day to the State Employment Relations Board; Robert Tscholl, Attorney for the City of Avon Lake, 740 United Bank Building, 220 Market Avenue South, Canton, Ohio 44702-2181; Catherine A. Brockman, FOP/Ohio Labor Council, 222 East Town Street, Columbus, Ohio 43215; Hugh C. Bennett, Staff Representative, FOP/Ohio Labor Council, 3076 Hillside Trail, Stow, Ohio 44224-4791.

Jonathan Dworkin, Conciliator