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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of: :
Case Numbers: 99-MED-10-936
CONCILIATION BETWEEN : 99-MED-10-937
CITY OF DELPHOS

and : Jack E. McCormick
Conciliator
TEAMSTERS LOCAL 908 :

DECISION OF CONCILIATOR

APPEARANCES

For: The City of Delphos

G. Roland Williams
Delphos City Safety Service Director

Jerry A. Neumeier
Mayor, City of Delphos

Ron Williams
Safety Service Director, City of Delphos

Clayton P. Osting
Law Director, City of Delphos

Tom Jettinghoff
City of Delphos Auditor

David E. Wagner
Chief of Police, City of Delphos

For: Teamsters Local 908

Steve R. Waitman
Teamsters Local 908

Sergeant David R. Clark
Delphos Police Department

Patrolman Tom Klingler
Delphos Police Department

Karen Weichart
Dispatcher, Delphos Police Department

This matter came on for conciliation hearing on February 21, 2000, at 10:30 a.m., at the offices of the City of Delphos, Ohio. Both parties were afforded a full and fair opportunity to present their evidence and arguments in support of their positions. The Fact-Finder's report was reviewed and considered by the Conciliator. The conciliation hearing concluded at 3:15 p.m., and the record in this matter was closed at that time.

Delphos is a city of approximately 7300 people located in the northwest portion of the state of Ohio.

The parties stipulated to a multi-unit bargaining for the City's public safety personnel, agreeing that the collective bargaining agreement will pertain to all units. The unit includes two sergeants; a detective, which is a new designation; eight patrolmen; and three dispatchers. Originally there were two units, the first of which was composed of patrolmen and dispatchers, the second original bargaining unit consisted of sergeants. The part-time dispatcher, the police chief, and the administrative sergeant are excluded from the bargaining unit. The Delphos Police Department consists of eight patrolmen, three dispatchers, one part-time dispatcher, two sergeants, an administrative sergeant, and a police chief. Prior to beginning the conciliation the Conciliator attempted mediation between the parties on any or all of the issues. While this attempt resulted in failure, the parties did agree to continue to discuss two issues looking toward possible resolution (which will be discussed later in this report), and did agree to several stipulations.

STIPULATIONS

The parties have agreed that as it relates to the new detective classification that that classification shall be paid at a rate of \$.25 less than a sergeant's rate of pay. Secondly, the parties have agreed that Section 33.1 of the contract that was in effect from 12/16/97 till 12/13/99 shall read as follows:

Section 33.1:

The provisions of this Agreement unless otherwise provided for herein, shall become effective 1/1/2000, and shall remain in full force and effect through 11:59 p.m., on 12/31/2002.

The parties have further agreed that section 33.2 of the previous contract shall read as follows:

Section 33.2:

The parties shall negotiate an Agreement no later than one hundred and twenty (120) calendar days prior to the expiration date of this Agreement.

The parties further agreed that the City's proposal for a physical fitness program, set forth in their issue number 5, Article 34, is withdrawn.

Thereafter, there was a discussion amongst and between the parties as to whether or not the Conciliator can lawfully recommend a wage increase retroactive to 1/1/2000. Both parties agreed with the Conciliator that O.R.C. 4117.14(G)(11) and the rulings of the State Employment Relations Board do not permit the Conciliator to

order retroactivity as it relates to any wage issues to be determined.

At that point in time the Conciliator explained the procedures set forth by the State Employment Relations Board concerning conciliation and they were further advised that in a conciliation the Conciliator may not suggest a compromise solution as might be done in a mediation or fact-finding. Both parties indicated they understood, and that they wished to proceed to conciliation rather than mediation.

ISSUES

There remained seven issues unresolved between the parties and subject to the conciliation. Taking them in their chronological order, the first issue was the City's proposed changes in the current language at Section 23.1 of the previous contract. The City's proposal would add to the language a requirement that single employees of the bargaining unit would be required to pay a ten dollar (\$10.00) per month co-payment into the hospitalization insurance fund and that an employee with family coverage would be required to pay twenty dollars (\$20.00) a month into this fund.

The City stated that the rationale for this new co-payment was that the current reserve for catastrophe or extraordinary expenditures was only \$160,000.00 a year. The City stated that sooner or later this minimal reserve would be subject to serious depletion, especially as employees became older and the risk of

more serious diseases increased. The City did state that there was no current crisis and that the fund currently had an excess of \$100,000.00 in reserve, but this was a problem that would eventually have to be addressed.

The Union opposes such a co-payment and points out that no one else in the city has such a health care co-pay. They assert that the fund is stable and that should there be some catastrophe or extraordinary event, that they would be more than willing to meet with the City to take care of that, if and when that event occurs.

The Conciliator will not spend a great deal of time in discussing this issue as it is very straightforward. The City of Delphos appears to be financially healthy and both the City and this particular fund appear to be stable. The City's evidence in support of this proposition is purely speculative and therefore must be largely disregarded by the Conciliator. Accordingly, the Conciliator selects the Union's proposal on this particular article and that there be no change in the language of Article 23 of the recently expired contract.

The next article to be addressed is that contained in Section 30 of the previous contract related to uniform allowance of the bargaining unit. The Union requests that the current allowance of \$400.00 for sworn officers and \$350.00 for dispatchers is not adequate, "due to rising costs of uniforms, coats, and accessories [and] "it is reasonable to expect an increase in uniform allowance." The City states that there is no evidence of any such need and throughout the last contract period they have no

recollection of any officers or dispatchers requesting to be reimbursed for extraordinary expenses that they otherwise would have paid out of pocket.

As the party making the proposition, the Union has the burden of proof in this matter and the Conciliator finds that they failed to carry that burden. The Union could provide no specific instances of officers or dispatchers who, were forced to pay sums from their own pocket as a direct result of the uniform allowance limitations as currently set forth.

Accordingly, the Conciliator selects the City's position on Article 30 and that the language of the contract remain unchanged.

Articles 32 and 27 - Wages and Shift Differential

Not unexpectantly the biggest stumbling block to these parties arriving at an agreement was the issue of wages. Both parties submitted a plethora of documents and oral testimony in support of their respective positions. There was a great deal of discussion as it relates to the area of comparables. Also the parties have presented to the Conciliator reams of documents in support of their respective comparables. Suffice to say while acting as both a fact-finder and a mediator, the Conciliator has always found comparables most difficult. The problem with comparables is one cannot always be certain they are indeed comparing apples to apples, or they are comparing apples to oranges. That is not to say that comparables are not helpful. Indeed, the collective bargaining law, as well as SERB regulations, mandate that such comparables be duly considered.

In the matter sub judice using comparables is even more difficult. In a conciliation the Conciliator may not fashion his own compromise, instead he must choose from either the employee or employer's wage proposal. Having reviewed every single documents that both parties submitted to the Conciliator, he cannot state that either party's position on wages is supported. If the Conciliator were permitted to fashion his own compromise, and if the restrictions of section 4117(G) were not in place, a compromise solution that might be more palatable to both parties could be fashioned.

Unfortunately, that is not the case here and therefore a most difficult decision must be made. The Union argues that their officers are dedicated both to their profession, as well as to the city of Delphos, and therefore have a right to be paid a fair and just wage. They are most concerned about the fact that a secretary working for the city of Delphos is making more money than city dispatchers and that several persons working in the Water Department are making more than dispatchers and patrolmen, and in some cases, sergeants. They also point out that police departments in nearby communities are at a higher wage scale than their bargaining unit members. In addition, the Union submits the SERB benchmark report which indicates that both the police officers and dispatchers of the city of Delphos are paid below the state average.

The City asserts that the secretary, which is mentioned by the Union, is an administrative assistant with a two year degree

operating as a paralegal and as backup for the deputy auditor, and she is a fiduciary employee to the Mayor. The city argues that comparables should be more specific to the job classification under review. They also argue that the Fact-Finder's comparables are not regionally oriented as required by the SERB regulations. Also the City insists that the Conciliator take into consideration the comparables of the respective municipalities as it relates to their tax base, their income tax revenue, their budget, and other extrinsic financial matters.

Furthermore, the City insists that it was forced into making its current proposal by the fact-finding report in this matter. The City submits that were it not for the restrictions it finds itself under as a result of the fact-finding report, as well as O.R.C. 4117, it might have been able to fashion a different proposal and possible compromise with the Union.

The City insists that its present wage structure has caused no problem in recruiting for open positions and that it has not, to its knowledge, experienced any resignations by bargaining unit members for higher paying jobs in the region, and therefore the pay scale is competitive. In addition, the City asserts that this is a "mature" contract and that for these reasons the pay proposal should not be considered as "catch-up" in that the historical bargaining process has already taken into account the precontract discrepancies. Further, that the Union proposal will erode the City's capital improvement budget.

In rebuttal, the Union states it does not agree that this is a "mature" contract and that this is only the third year of the first contract between these entities. The Union emphasizes that while turnover has been low that these employees have remained in Delphos out of sheer self dedication to their profession and the city, but that will not likely continue without substantial pay increases.

It should be noted, included in the discussions was a dispute regarding step increases and each party's respective proposals in the past regarding step increases. However, since that issue is not before this Conciliator, it will not be discussed in detail herein.

The parties have stipulated that the approximate cost of the Union's proposal is between \$290,000 and \$342,000 over the course of the next contract. The City on the other hand expects its costs to be approximately \$113,000, excluding its cost for the shift differential proposal which it couples with its wage proposal. It is noted that the City's entire police budget for FY2000 is \$850,000.

It is indeed unfortunate that the parties have come to this impasse. As stated previously the Conciliator has no option to fashion a compromise between the two proposals, and if give such an option would have selected something probably midpoint between the two proposals. That being said, the Conciliator must, when considering all comparables, as well as the historical wage increases of this bargaining unit (police officers 4.5% in 1998 and 1999, dispatchers 5% in 1998 and 1999) must chose the City's

proposal for wages and the shift differential. Accordingly, the City's proposal at Section 27.1 through 27.4 relating to shift differential shall be adopted. Furthermore the City's proposed language at section 32.1 and the pay schedule therein, i.e.:

	<u>2000</u> effective 1/1/2000	<u>2001</u> effective 1/1/2001	<u>2002</u> effective 1/1/2002
Dispatchers:	0	7.75%	7%
Patrolmen:	0	7.75%	7%
Sergeants:	0	7.75%	7%

This results in a cumulative raise of 15.29% over the three year contract, not including the increase in shift deferential. Since the Conciliator has adopted the City's wage proposal in this matter, ipso facto the employing authority is deemed to have sufficient budgetary resources to fund this finding.

The next issue for discussion is the City's proposed new language at Article 35 which would require an employee to take a physical examination based on reasonable cause, and then sets forth the mechanics for such examination.

At the urging of the Conciliator, the parties are going to enter into post conciliation hearing negotiations to determine if acceptable language might be developed between the parties and thereafter be made part of the contract. The Conciliator encouraged the parties to contact the National Institute for Justice or the National Association of Chiefs of Police to assist them in drafting such mutually acceptable language. The Conciliator sincerely hopes

the parties are successful in finding such language and agreeing to such language either prior to, or following, the issuance of this report.

However, as much as it is an issue still pending before this Conciliator it must be decided, at least for the purposes of making this report complete.

Accordingly, absent an agreement to the parties to the contrary, the Conciliator finds that the language proposed by the City should be adopted.


The next issue was the City's new language in Article 36 which would require drug/alcohol testing.

Here again the parties agreed that philosophically they were in complete agreement as to the need for drug/alcohol testing. However, the Union points to the fact that the language in the City's proposal mandates procedures which are clumsy and outdated. The parties therefore agreed to enter into post-hearing negotiations in an attempt to draft language that might be acceptable to the employees.

However, for purposes of making this complete report, and in absence of the parties' arriving at agreed language, the Conciliator chooses the City's proposed language at section 36.1.

In addition to the conciliation language presented in this decision, the Conciliator adopts by reference as if full rewritten herein, all other articles agreed by the parties.

In making the conciliation decisions presented in this report, the Conciliator has considered the criteria required by Ohio Revised Code 41.17 and section 41.17-9-06(H) of the Ohio Administrative Code.



Jack E. McCormick
Conciliator
Federal ID #31-1410950

March 3, 2000
Columbus, Ohio

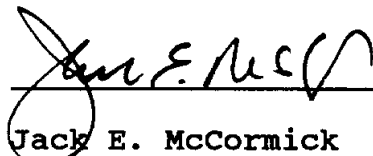
CERTIFICATE OF FILING

I hereby certify that the foregoing decision of the Conciliator was filed with the State Employment Relations Board and mailed this 3rd day of March, 2000, to the following:

G. Roland Williams
Delphos City Safety Service Director
608 North Canal Street
Delphos, Ohio 45833

and

Steve R. Waitman
President, Teamsters Local 908
800 Saint John's Avenue
Lima, Ohio 45804



Jack E. McCormick
Conciliator
Federal ID #31-1410950

March 3, 2000
Columbus, Ohio