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STATE EMPLOYMENT  
RELATIONS BOARD

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**CONCILIATION AWARD**

**STATE OF OHIO**

**STATE EMPLOYMENT RELATIONS BOARD**

**March 29, 2000**

In the Matter of:

City of Warren	)	
	)	
and	)	Case No. 99-MED-10-1021
	)	
International Association of Fire Fighters,	)	
Local 204	)	

**APPEARANCES**

**For the Employer**

Gary C. Cicero, Director of Human Resources

**For the Union**

Dennis Haines, Esq.

**Conciliator**

Charles Z. Adamson

## BACKGROUND

The instant dispute involves the City of Warren and International Association of Fire Fighters, Local 204. When no agreement regarding a collective bargaining agreement expiring December 31, 1999, was reached, a Factfinder was appointed. A factfinding hearing was held on December 13, 1998. The Factfinder's report was issued on December 15, 1999.

When the Factfinder's report was not accepted by both parties, the Conciliator was appointed by the State Employment Relations Board effective January 4, 2000. A hearing was held on March 10, 2000.

The Conciliator is required to select the final offer of one party or the other without modification on an issue-by-issue -basis. The selection between the final offers is based on the criteria set forth in Section 4117.14(G)(7) of the Ohio Revised Code. They are:

- (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 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 interest and welfare of the public, and 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 issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures ion the public service or in private employment.

## **ISSUES**

The following were the issues presented to the Conciliator:

- I. Pay Rates-Length of Contract
- II. Drug Testing Policy
- III. Clothing and Uniform Maintenance Allowance.
- IV. Severance Pay
- V. Holidays

## I PAY RATES - LENGTH OF CONTRACT

### City Position

The City proposed to continue the current pay rates in a contract with a one year duration. It pointed out that in November, 1999 the City had a \$4,000,000.00 shortfall in its budget. This necessitated laying of 63 employees, including 17 firefighters. In addition, it noted that the City's income tax increase was recently rejected by the voters.

The City stated that currently three units of City employees have agreed to a one year contract with no increases and two units of employees have agreed to three year contracts with no increases for 2000 and wage reopeners in 2001 and 2002.

### Union Position

The Union proposed a 0% increase in wages for 2000 and 4% increases in 2001 and 2002 encompassed in a three year contract as recommended by the Fact Finder. The Union indicated that although the City knew well in advance that it was going to face a budgetary shortfall, it gave a cost of living increase to ten management employees. (The City stated that most of these raises have been returned to the City by the management employees). In addition, the Union noted that the City's tax collections for the months of January and February, 2000 have surpassed the tax collections for the same period in 1999 by in excess of \$140,000.

The Union believed that since it had already made a wage concession in the current year it was entitled to increases in the next two years. It argued that there was no reason why it should have to bear the cost and the aggravation of negotiating a contract in another year when a number of the other bargaining units with City contracts have wage reopener clauses in their contracts.

The Union noted that according to SERB data safety forces throughout the State of Ohio will receive an average of 3.52% wage increases in the current year. Additional SERB data provided by the Union reflected that firefighters in a number of cities with a population similar to the City's population will be receiving higher top level wages than the City firefighters would receive even if the 4% wage increase was granted in the second and third year of the contract. Further, the Union argued that many of the cities in this comparison grouping would renegotiate contracts for higher wages either in 2000 or in 2001 or 2002.

### Analysis

Under the circumstances of this case the Union's position of 0% increase in 2000, 4% in 2001 and 4% in 2002 is a reasonable one. The Union should not have to have wages frozen in for one year and then have to enter into new negotiations in the following two years.

### Award

The Conciliator awards the Union's final offer in respect to pay rates for a three year contract as follows:

2000 - 0%

2001 - 4%

2002 - 4%

## II DRUG TESTING POLICY

### City Position

The City proposed a drug testing policy that would allow random drug testing and also proposed that hair could be used in drug testing. It noted that in the summer of 1998 a vial of

cocaine was found in the Fire Department and maintained that firefighters as part of the safety forces should be held to a higher standard than the general population.

#### Union Position

The Union maintained that the drug policy recommended by the Fact Finder which did not have a random testing policy and which did not use hair in testing was a reasonable one and should be adopted. It asserted that a policy based on reasonable suspicion rather than random testing was the correct policy under the circumstances. The Union noted, in response to the 1998 vial of cocaine issue, that every firefighter was tested and no positive results were found in these tests. Also it argued that no firefighter would ever want to work with a fellow employee who was disabled by drugs.

#### Analysis

The Union's proposed drug policy adopted by the Fact Finder based on reasonable suspicion with no hair testing and no random testing meets the needs of the City under the circumstances. City has not substantiated a case for a policy containing random testing and the testing of hair.

#### Award

The Conciliator awards the Union's final offer in respect to the issue of drug policy.

### III. CLOTHING AND UNIFORM MAINTENANCE ALLOWANCES

#### City Position

The City wanted to maintain the current contract provisions in contract article XIII in respect to payment of the clothing allowance and the uniform maintenance allowance. Currently, the uniform allowance is paid as part of the last pay check in June while the uniform

maintenance allowance is paid as part of the last pay check issued in November. The Union proposed that each of these allowances be paid by separate check with last pay in June and November. The City argued that adopting the Union proposal would place an extra burden on the one payroll clerk who would have the responsibility of issuing 75 separate checks. However, the City admitted that the practice of issuing separate checks for uniforms and uniform maintenance existed until a few years ago.

#### Union Position

The Union stated that the Fact Finder recommended separate checks for both of these clothing allowances indicating that this provision would not result in any additional cost to the City.

#### Analysis

The Fact Finder's support of the Union's position in this matter is reasonable, particularly when finding in favor of the Union's proposal would not result in any extra costs for the City. The City has not demonstrated that issuing the extra checks twice a year would place an undue burden on the payroll clerk.

#### Award

The Conciliator awards the Union's final offer as to separate checks for the uniform allowance and the uniform maintenance allowance.

#### IV. SEVERANCE PAY

##### City Position

The City proposed to continue the language in contract Article XIII, Section 2 which provided that any employee hired after January 1, 1988 with twenty years service would receive

cash payment for accumulated unused sick leave as part of severance pay for up to 780 accumulated hours. The Union wanted to change the 780 hour provision to 960 hours which applied to the remainder of the employees. The City maintained that the current benefit, which is applicable to those employees hired after January 1, 1988, was sufficient. It pointed out that this same provision was currently applicable to 362 other employees of the City.

#### Union Position

The Union argued that applying a different standard for severance pay based on date of hire established an inequitable two-tier system. It urged that its proposal which was recommended by the Fact Finder should be adopted, noting that a City unit of police officers received the 960 hours allowance without any distinction based on date of hire.

#### Analysis

The Union's position as to one standard for severance pay without distinction based on date of hire is a reasonable one. The City has not offered any persuasive reason why the 960 hour standard should not be applied to all members of the unit involved herein.

#### Award

The Conciliator awards the Union's position in respect to severance pay calculation as to accumulated unused sick leave hours with over twenty years service.

### V. HOLIDAYS

#### City Position

The City opposed the Union's proposal that the unit involved herein should receive the day after Thanksgiving as a holiday in addition to the ten holidays that are currently received in



the existing contract. It noted that the firefighters work fewer days a month than employees in other units and as a result already receive more time off than other employees.

Union Position

The Union argued that the firefighters worked 2,704 hours a year while City employees in other units only worked 2080 hours per year so that the firefighters were entitled to the additional holiday. It noted that the Fact Finder recommended that the Union receive the additional holiday in his Findings and Recommendations.

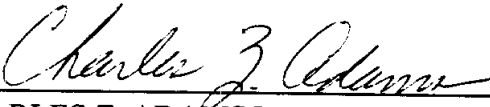
Analysis

Eleven holidays a year rather than ten holidays a year is not an excessive number of holidays for public sector employees. The City's arguments against the granting of an additional holiday are not persuasive.

Award

The Conciliator awards the day after Thanksgiving as a holiday to the unit involved herein.

March 29, 2000

  
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CHARLES Z. ADAMSON  
Conciliator