

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

86-039 #8

In the Matter of
Fraternal Order of Police, New City Lodge #48,
Employee Organization,
and
City of Fairborn,
Employer.

CASE NUMBER: 86-MED-04-0442

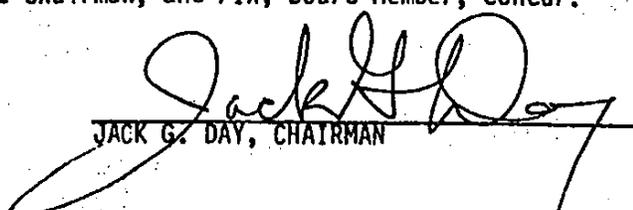
GRANTING A MOTION TO STAY OF THE CONCILIATOR'S AWARD
AND DIRECTING THE CONCILIATOR TO RECONVENE THE HEARING

Before Chairman Day, Vice Chairman Sheehan, and Board Member Fix;
September 11, 1986.

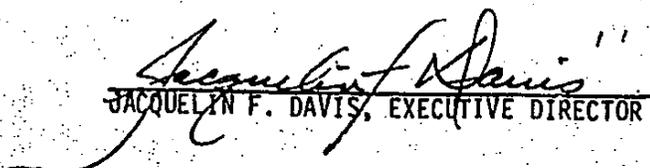
This case is before the Board on a motion filed by the Fraternal Order of Police, New City Lodge #48, asking the Board to stay the Conciliator's award and for an order directing the Conciliator to reconvene the hearing which was first convened in this case on August 11, 1986. For the reasons set forth in the attached opinion, incorporated by reference, the motion is granted. The Conciliator's award will be stayed until the convention of a further hearing to receive single issue final offers from the parties.

It is so directed.

DAY, Chairman; SHEEHAN, Vice Chairman; and FIX, Board Member, concur.


JACK G. DAY, CHAIRMAN

I certify that this document was filed and a copy served upon each party
on this 25th day of September, 1986.


JACQUELYN F. DAVIS, EXECUTIVE DIRECTOR

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OPINION

Day, Chairman:

Fraternal Order of Police, New City Lodge #48 (Union or FOP) has filed a motion asking the State Employment Relations Board (SERB or Board) for a stay of the Conciliator's award and for an order directing the Conciliator to reconvene the hearing which was first convened in this case on August 11, 1986.¹ The Conciliator is Frank A. Keenan. For reasons adduced below the motion is granted.

I

The parties have differing versions of the facts. The FOP contends that the "Conciliator advised the parties that he wanted them to submit multiple final offers on the issue of wages."² The City of Fairborn (City or Fairborn) does not recall any advice or request to the parties from the Conciliator. Rather "he ruled that a final offer could be in the form of

¹There seems to be no contention on any side that impasse procedures were not exhausted to the point of conciliation.

²FOP Memorandum in support of the motion, p. 2.

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alternatives and the FOP did not object."³ Mr. Keenan submitted a response to the motion setting out his recollection which represents still a third and slightly different version of the facts:

"It is my recollection that the City sua sponte proffered as a final offer an offer in the alternative and as per Plan A and Plan B set forth in the Motion. It was my judgment that a 'final offer' could be in the alternative, and at that juncture I believed that fairness dictated that the Employee Organization also be allowed to submit a final offer in the alternative. The point I wish to make is that I do not recall imposing on the parties any direction or mandate to submit final offers in the alternative. In any event the issue as to whether or not the Statute sanctions such final offers in the alternative remains and I await the Board's guidance."

Whatever the factual detail, it is clear, as Concilia¹ Keenan notes, that the issue is whether the statute sanctions final offers in the alternative. It does not.

R.C. 4117.14(G) provides in pertinent part:

"(7) After hearing, the Conciliator shall resolve the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the party's final settlement offers...."

The statute is precise. It ordains issue-by-issue submissions. This represents a deliberate impediment to alternatives. One has to assume, and the Board does, that the General Assembly intended to prevent conciliator compromise by providing as it did in R.C. 4117.14(G)(1).

II

The Conciliator's award will be stayed until the convention of a further hearing to receive single issue final offers from the parties. Upon receipt of the single offers, the Conciliator may proceed to decision.

Sheehan, Vice Chairman, and Fix, Board Member, concur.

³City Memorandum Contra [the] Motion, p. 2.. (The City's submission is accepted. It was necessarily out of rule for reasons apparently beyond Fairborn's control.)