

IN THE MATTER
OF
CONCILIATION

STATE EMPLOYMENT
RELATIONS BOARD
COPY
2002 JUN -4 A 11:11

FINDINGS & AWARD

<p>BETWEEN The Fraternal Order of Police Capital City Lodge No. 9</p> <p>and the Franklin County, Ohio, Sheriff</p>	<p>CASE NO(s). : 01-MED-04-0348 01-MED-04-0349</p> <p>CONCILIATOR: JOHN S. WEISHEIT</p> <p>DATE OF HEARING: May 8, 2002</p> <p>DATE OF REPORT: June 2, 2002</p>
--	---

REPRESENTATION
by

<p><u>Employer Representatives</u> Robert D. Weisman, Esq. Mike Short, Esq.</p> <p><u>SCHOTTENSTEIN, ZOX & DUNN, L. P. A.</u> Patrick F. Garrity, Dir. Management Serv. Mark J. Barrett, Chief Deputy Gilbert H. Jones, Chief Deputy Steve Martin, Chief Deputy Deborah May, Dir., OMB Franklin Co.</p>	<p><u>Union Representatives</u> Russell Carnahan, Esq.</p> <p><u>HUNTER, CARNAHAN & SHOUP</u> Dennis Palmentera, Chair of Barg Comm. Zachary Scott, Barg. Team Member J. P. Burns, Barg. Team Member Steve Hatheway, Barg. Team Member Stephanie Klumpp, Barg. Team Member Anthony Graves, Barg. Team Member</p>
---	--

AUTHORITY

This matter was brought before Arbitrator John S. Weisheit, in keeping with applicable provisions of ORC 4117 and related rules and regulations of the Ohio State Employment Relations Board. The parties have complied in a timely manner with all procedural filings. The matter before the Conciliator is for consideration and directive based on merit and fact according to the provisions of ORC 4117, in particular those that apply to safety forces and mutual directives of the parties.

BACKGROUND

The Franklin County Sheriff Office, hereinafter called the "FCSO" and/or the "Employer", recognizes the Fraternal Order of Police, Capital City Lodge #9, hereinafter referred to as the "Union" and/or the "FOP", for the purpose of collective bargaining with certain City employees in the Police Department. For purpose of collective bargaining, there are two (2) bargaining units that engage in multi-unit bargaining resulting in a single collective bargaining agreement. The Deputy Unit consists of about five hundred forty (540) full-time sworn uniformed deputies below the rank of corporal employed by the FCSO. The Supervisor Unit consists of approximately eighty (80) full-time sworn uniformed deputies of the rank of corporal, sergeant, lieutenant, and captain.

The parties have a long established collective bargaining relationship pre-dating the inauguration of the Ohio Public Sector Collective Bargaining Law, (ORC 4117). The parties began the current bargaining process in June, 2001, and engaged in good faith bargaining at about twenty (20) negotiation sessions for a successor collective bargaining agreement for the one that expired October 27, 2001. Impasse was reached on select provisions of Article 14-Wages, Article 15-Shift Differential, Article 24-Insurance, Article 25-Definitions, and Article 26-Duration. The parties utilized statutory dispute resolution procedures to resolve their differences on the issues in dispute. This included the use of Fact Finding services in January, 2002, as provided in ORC 4117. Pursuant to statutory provisions, the Fact Finder's recommendations are incorporated into a binding agreement for the parties unless rejected by a 3/5 majority of either party to the Agreement. The Employer did not act on the Fact Finder's Report and therefore was determined by the State Employment Relations Board as "deemed accepted". The Union did conduct an election rejecting acceptance of the Report. The parties engaged in further negotiations in a mediation process prior to implementation of last best offer Conciliation, the final and binding step of resolution provided under ORC 4117 for certain public employee bargaining units, particularly safety forces. In the mediation process following Fact Finding, a number of issues were resolved.

This Conciliator was selected by the parties and Conducted a Conciliation hearing on May 8, 2002, at the Franklin County, Ohio Administration Building, Columbus, Ohio. The parties were both represented by counsel with expertise in matters of public sector collective bargaining . At that time the parties presented to this Conciliator documents and testimony they considered relevant. This presentation included comparables, financial data, past bargaining and current bargaining history, trends, and other information to assist this Conciliator draft a final and binding Agreement, inclusive of matters tentatively agreed to between the parties as well as a resolution of those issues still remaining at impasse by use of “last best offer” as called for pursuant to ORC 4117.

The parties were extended the opportunity to present such information each considered relevant. After each party acknowledged they had no additional information to present and indicated in the affirmative that they had fair and ample opportunity to present such information considered relevant, the Hearing was closed.

The determination in this Conciliation Award incorporates issue by issue, granting the Conciliator the discretion to frame the award in a manner considered most appropriate. Compliance with ORC 4117.14(C)(4)(e), and related rules and regulations of the State Employment Relations Board were taken into consideration in making this Award including:

1. Past collectively bargained agreements between the parties;
2. Comparison of the unresolved issues 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;
3. The interest 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;
4. The lawful authority of the public Employer;
5. Any stipulations of the parties;

6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in public service or in private employment.

ISSUES OF TENTATIVE AGREEMENT

The following issues were resolved in tentative agreement prior to Conciliation:

Article 1	Agreement	Article 13	Classifications
Article 2	Recognition		
Article 3	Lodge Security	Article 15	Shift Differential
Article 4	Nondiscrimination	Article 16	Uniforms
Article 5	Grievances	Article 17	Professional Development
Article 6	Internal Investigation	Article 18	Workweek/OT
Article 7	Corrective Action	Article 19	Holidays
Article 8	Seniority/Layoff	Article 20	Injury Leave
Article 9	Assignment/Transfers	Article 21	Vacation Leave
Article 10	Promotions	Article 22	Sick Leave
Article 11	Labor Relations Meetings	Article 23	FMLA
Article 12	Management Rights	Article 24	Insurance
		Article 25	Definitions
		Article 26	Duration

ISSUES AT IMPASSE AT CONCILIATION

The following issues remain at impasse following mediation after Fact Finding:

Article 14	Pay
Memo of Understanding	Correction Staffing Study

SUMMARY OF RESPECTIVE IMPASSE ISSUES AT CONCILIATION

The following sets forth the summary position of the City and Union on each issue at impasse, after mediation.

Employer's Last Position	Issue	Union's Last Position
1 st yr. 2%	Article 14	1 st yr. 4%
2 nd yr. 3.5%	Pay Plan	2 nd yr. 4%
3 rd yr. 4.0%	Sec. 14.1	3 rd yr. 4%
Support inclusion of the Memo	Memo of Understanding Staffing	Reject inclusion of the Memo

TOPIC**DISCUSSION & DETERMINATION****General**

The following findings are based on a review of issues and respective positions of the parties as presented in oral and written form at the Conciliation Hearing. Consideration is given to applicable statutory provisions, generally accepted practices in the field of interest arbitration/conciliation, and direction of the party as previously stated.

Factfinder's Report

Where the Factfinder has demonstrated a reasonable and rational assessment of comparables, it is generally accepted that such should be given consideration in sustaining Factfinder recommendation in Conciliation . Only if evidence is introduced at Conciliation which indicates that a Factfinder's determinations were in error or reflect a noted major flaw, will such an initial decision be overturned. Such general rule is applied in this Award.

Comparables

Comparables introduced by the parties reflect pay rate comparisons based on different basis and reflect different employee groups. This is not an uncommon occurrence in the course of the collective bargaining process. It is also noted comparable data offers different data, effective dates, a comprehensive source data base, and additional increase/modification economic benefits attained during the year of wage rate increases noted.

“Pattern bargaining ” settlements with other Employer bargaining units are introduced. Difference in bargaining unit duties, training, responsibilities, are given due consideration in addition to issues noted in the foregoing section.

CONCILIATOR'S FINDINGS & DETERMINATION

“Change in the Playing Field”

There is a noted subtle but significant change in bargaining posture of the parties since Factfinding. Under the Ohio Collective Bargaining Law, Fact Finding is essentially a non-binding process while Conciliation is final and binding. There were more issues at impasse at the time of Fact Finding and a greater degree of disparity in contrast to the unresolved issues presented in this Conciliation. The parties effectively used the Factfinder's Report to resolve a number of outstanding issues between the time of Fact Finding and Conciliation.

Conciliation, under ORC 4117, is inherently different from Fact Finding. The Conciliator has final and binding authority to establish the Contract between the parties using a last best offer on unresolved issues. Thus, by reference, matters of tentative agreement between the parties must be incorporated into the Agreement in this process. The playing field introduced to the Conciliator is significantly different than the situation at Fact Finding. In addition to those procedural and authoritative differences, set forth under the Ohio Collective Bargaining Law, the scenario has been altered by additional issue resolutions of the parties.

CONCILIATOR'S FINDINGS & DETERMINATION

The Unresolved Issues:

The Issues	At Fact Finding	At Conciliation
Art. 14 Wages	X	X
Art. 15 Shift Diff.	X	
Art. 24 Insurance	X	
Art. 25 Definition	X	
Art. 26 Duration	X	
Memo of Understanding ¹		X

Time Factors Changed

At Fact Finding, the initial date for the Agreement was controlled by the expiration date of the expiring agreement. Duration of the Agreement was unresolved at Fact Finding.

The Employer's Financial Situation at the time of Fact Finding was noted as having significant influence on any multi-year wage settlement reflecting annual rate adjustments. The Factfinder, based on his findings of fact, recommended a three-year agreement inclusive annual rate increases for each year and also recommended the Agreement to be effective October 28, 2001. The parties, while agreeing to the general concept, as proposed by the Factfinder, went further when they tentatively agreed that whichever wage proposal was selected by the Conciliator, it would be effective from January 1, 2002, and the Agreement would be effective as of the date the Conciliator issued the Award.

1

Was not presented at the time of Fact Finding. The issue had been reached tentative agreement.

CONCILIATOR'S FINDINGS & DETERMINATION

These time line stipulations modify benefit and cost implications for a number of terms in the Contract, not just the wage issue in dispute. This agreement between the parties creates a 6-7 month difference in the effective date of Contract benefits resulting from the Conciliator's Award than the time lines considered and applicable by the Factfinder's Report. It also reduces any wage increase, in the first year, by 2-months for either proposed initial year wage increase. This is given due consideration in the Conciliator's Award.

While the foregoing matters have general influence related to the contract terms unresolved, the following sections will focus issue by issue at impasse.

Memorandum of Understanding Corrections Staffing Study

The Union's strongest argument to reverse its tentative agreement was to emphasize its attainment of what it considered a fair and proper wage increase. On the stand alone merit of the issue, no compelling fact or reason was noted to cause Determination that the matter should not be included in the Agreement.

Management had cause to consider change in staffing operations in the corrections division. The issues were openly and candidly addressed with the Union. The parties reached tentative Agreement prior to Fact Finding.

CONCILIATOR'S FINDINGS & DETERMINATION

Memorandum
of
Understanding
Corrections
Staffing Study
cont'd

When the Union rejected the Factfinder's Report, it rejected the total of its parts. Leadership credibility is a major component in the representation process. It must be recognized as speaking in unity with membership when engaging in its role as the voice of the membership when it engages in dialogue with the Employer. The strongest position the Union offered in its position to reject the inclusion of the Memorandum of Understanding (MOU) in the Agreement, at Conciliation, was to attain a more agreeable wage settlement. Such argument is found of limited persuasion.

Determination

It is determined that the Memorandum of Understanding is to be memorialized by the duly authorized party representatives to affix their respective signatures and date of signing. Further, the MOU is to be included as an Addendum to the Agreement as proposed by the Employer.

Article 14.1
Wage Schedule

Review of bargaining, prior to Conciliation, indicates several economic benefit issues were addressed in the course of negotiations. The wage rate is but one of these issues. The difference in the parties' bargaining position has drawn less distant as other related economic issues were resolved.

A major issue addressed by the Employer was the initial year increase cost related to the first year wage settlement. Such argument is valid and significant since the matter was subsequently resolved when the parties agreed to the relevant time factors of the Agreement. This is a significant change in factors in effect at Conciliation than that in effect at Fact Finding. As noted previously, the Conciliator is without authority to further modify a final wage settlement.

CONCILIATOR'S FINDINGS & DETERMINATION

Article 14.1

Wage Schedule

A second difference is raised considering the validity in use of comparative data when considering an appropriate wage rate. The Employer argues that many deputy sheriffs perform services of correction officer. Data introduced included wage rates of other employer units correction officer pay rates to the pay rates of a deputy sheriff employed by the FCSO. It contends, and the Factfinder apparently concurred, such should be given major consideration in determining a comparable pay rate increase in this instant situation.

In the bargaining history of these parties, no details were presented regarding how or when the current staffing pattern was adopted. What is unrefuted is the fact that first criteria required for employment in the bargaining unit requires an employee to be trained and licensed as a sworn law enforcement officer. Initial employment is that of a Deputy Sheriff. Said employees are then assigned to duty classification within the FCSO jurisdiction, namely one of the following positions: road patrol, detective, court, or correction.

Deputy sheriffs in this Employer's employ are thus cross trained and perform duties accordingly. No evidence was introduced to indicate a change in this employment classification structure was proposed in this round of negotiations or any previous contract negotiations.

Other law enforcement agencies may differ in structure and department operations. While it may differ in this matter to other sheriff departments in Ohio, it is not the only sheriff department that varies from general rule. The requirement of using sworn law enforcement officers for broader law enforcement operations provides greater flexibility .

CONCILIATOR'S FINDINGS & DETERMINATION

Article 1.4
Wage Schedule
cont'd

While additional costs may be related to such a staffing structure, the program does offer noted benefits. Understanding addressed previously, indicates the practice is established and subject to revision within established procedures. This staffing pattern may not reflect the most common manner of staffing prison or correction facilities but, it is not an isolated case, nor can it be without reason.

At a point and time the decision was made to employ sworn officers for the majority of law enforcement functions in the FCSO. It is not difficult to recognize that such a venture carries an inherent higher cost factor to remain competitive with other sworn law enforcement agencies. This had to have been a conscious decision by management. To change the foundation requires open and direct discussion. Such is demonstrated in the Memorandum of Understanding regarding the Correction Staffing issue addressed previously in this Award.

Giving the facts due consideration, the appropriateness of a fair and proper wage rate is determined more closely related to those employed as a Deputy Sheriff.

The financial climate of the Employer does reflect a case for pessimism regarding economic growth. However, such information presented was limited to current trend projections. It is recognized that public sector income and expense projections are estimates. However, no convincing data reflected actual declining economic trends for more than the past year.

CONCILIATOR'S FINDINGS & DETERMINATION

**Article 14.1
Wage Schedule** Both parties propose an increase in wages. The Employer accepted the Factfinder's Report, calling for a higher rate of pay than previously proposed by the Employer. All implementation dates have since been moved from October 26, 2001, to the date of signing by the Conciliator and January 1, 2002, for the initial wage increase. This reflects a cost saving factor. The 2nd year wage increase reflects a 1/2% difference between the parties while in the 3rd year wage increase presented by the parties is the same.

Determination **It is determined that the Agreement should include in Article 14.1 the FOP's last wage proposal.**

TOTALITY OF AGREEMENT

This will affirm this Award, consisting of **14 pages**, inclusive of this page, contains the findings, determination, and Award of the Conciliator.

All terms tentatively agreed to by the parties prior to Conciliation shall be included in this Agreement.

The following Determinations by the Conciliator shall be included in Agreement .

1) Memorandum of Understanding

It is determined that the Memorandum of Understanding is to be memorialized by the duly authorized party representatives to affix their respective signatures and date of signing and further, the MOU is to be included as an Addendum to the Agreement as proposed by the Employer.


2) Article 14, Section 14.1 Wage Rate

It is determined that the Agreement should include in Article 14.1 the FOP's last wage proposal.

The Agreement shall be in effect in keeping with the duration tentatively agreed to between the parties.

To the best of my knowledge, this Report complies with applicable provisions of ORC 4117 and related Rules and Regulations adopted by the State Employment Relations Board and expressed authority of the parties.

I hereby affix my signature at Galion, in the County of Crawford, in the State of Ohio,
this day of **June 2, 2002**



John S. Weisheit, Conciliator