STATE EMPLOYMENT RELATIONS BOARD

STATE OF OHIO

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2002 DEC 16 A 10: 34

In the matter of	*	Case Nos. 02-MED-02-0128
	*	02-MED-02-0129
Conciliation between:	*	02-MED-02-0130
	*	
Marion County Sheriff's Office	*	Conciliator:
	*	
and	*	Martin R. Fitts
	*	
Fraternal Order of Police/Ohio Labor	*	
Council, Inc.	*	December 13, 2002
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APPEARANCES

For the Marion County Sheriff's Office (the Employer):

Jim Slagle, Marion County Prosecutor Michele Pearson, Marion County Auditor John H. Butterworth, Marion County Sheriff

For FOP/OLC (the Union):

Larry Deck, Staff Representative Rich Hare, Deputy Sheriff Matt Dendinger, Deputy Sheriff

PRELIMINARY COMMENTS

The FOP/OLC and Marion County Sheriff engaged in multi-unit bargaining. The first bargaining unit consists of Dispatchers, and includes approximately 8 employees. The second bargaining unit consists of Sergeants, and includes approximately 4 employees. The third bargaining unit consists of Deputy Sheriffs, Court Security Officers and Process Servers, and includes approximately 20 employees. The conciliation hearing was held on December 4, 2002 at the Marion County courthouse. Both parties submitted written position statements prior to the hearing. Both parties attended the hearing and elaborated upon their respective positions through the testimony of witnesses and the admission into the record of a number of exhibits. There were 6 issues at impasse: 1) Wages and Other Compensation; 2) Pay Range and Differential for Sergeants; 3) Health and Liability Insurance; 4) Holidays and Personal Leave; 5) Sick Leave/Injury Leave; and 6) Court Leave. The parties stipulated that they had submitted identical positions regarding the issue Sick Leave/Injury Leave. Thus five issues were submitted for conciliation, although at the request of the parties the conciliation award includes the Sick Leave/Injury Leave language upon which the parties have agreed.

In rendering this conciliation award, the Conciliator has given full consideration to all testimony and exhibits presented by the parties. In compliance with Ohio Revised Code, Section 4117.14 (G) (7) and Ohio Administrative Code Rule 4117-9-06 (H), the Conciliator considered the following criteria in making the findings and recommendations contained in this Report:

- 1. Past collectively bargained agreements, if any, between the parties;
- 2. 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;

3. 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;

4. The lawful authority of the public employer;

5. Any stipulations of the parties; and

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

final offer settlement through voluntary collective bargaining mediation, fact-

finding or other impasse resolution procedures in the public service or in private

employment.

Further, the Conciliator has attempted to strike a fair and balanced award that addresses

the concerns of both parties, as well as the interests of the taxpayers in Marion County.

ISSUES AND AWARDS

Issue One: Wages

Positions of the Parties:

The Union proposed contract language calling for a 3.0% wage increase effective on

January 1, 2003; a 3.25% increase effective on January 1, 2004 and a 3.25% increase

effective on January 1, 2005.

The Employer proposed a 3% across the board wage increase for all positions for each

year of the contract.

Discussion:

The Employer presented compelling evidence that the revenue outlook for Marion County is extremely uncertain. It stated that the county budgets were cut 6% in 2002, and that other than the Sheriff's Office employees covered by the collective bargaining agreement, the county employees took no increases in 2002. It also presented evidence that the Marion County Sheriff's Office has traditionally been one of the best-paid sheriff offices in the state, especially compared to surrounding counties and those counties of comparable size.

The Union did not dispute the economic forecast presented by the Employer, and did not dispute the fact that the Marion County Sheriff has traditionally paid well. It cited its desire to remain one of the better-paid offices, and it also cited as comparables the City of Marion police department. It noted that the City of Marion picks up 8.5% of the pension contribution cost for its police officers, which translates into real dollars in the pockets of those officers, yet does not show up as wages. The Marion County Sheriff's employees do not receive such a benefit.

There is no question that the revenue projections are bleak for the near future. And there is no question that all of the county departments have been affected by budget reductions, as has the Sheriff. The Employer's proposal of 3% wage increases effective on January 1 of 2003, 2004 and 2005 is more than adequate to maintain the Marion County Sheriff's Office ranking as one of the higher paying offices in the state. It will also enable it to continue to be competitive with the Marion City Police Department, albeit without the sweetener of the pension pick-up.

Award:

Mindful that Issue One in this award is tied closely to Issue Two, the Conciliator awards the Employer's proposal for a 3% wage increase effective January 1 in 2003, 2004 and 2005.

Issue Two: Pay Range and Differential for Sergeants

Positions of the Parties:

The Union proposed contract language creating a fifth pay range for Sergeants. This pay range would begin at a rate with an additional one percent over the Sergeants' fourth pay range, effective January 1, 2003, with an additional one percent over the Sergeants' fourth pay range added effective January 1, 2004.

The Employer proposed modifying the existing contract by eliminating the first two steps of the Sergeants' wage scale, so that years two, three and four would become new hire, year one and year two. It proposed adding a third year step that would be one-half a percent higher than the year two step. In its Exhibit F, it presented its proposal, incorporating its overall wage proposal for all classifications with its proposal for sergeant's pay.

Discussion:

The Union and the Employer are both attempting to correct an inequity that occurs in the current agreement when a senior deputy is promoted to sergeant. In the current agreement they are actually paid at a rate at their new position that is less than they were paid at the lower classification. The Employer's proposal adequately addresses the previous problem of differential for new sergeants. Given the totality of this award, the Employer's proposal also makes the most sense.

Award:

The Conciliator awards the Employer's proposal as stated in Exhibit F of its submission

at the hearing. This incorporates the 3% increases awarded in Issue One above as well.

Thus Exhibit F is to become Attachment A in the new agreement.

Issue Three: Health and Liability Insurance

Positions of the Parties:

The Union proposed the retention of the current contract language, which calls for the

employees in the bargaining unit to contribute 10% of the cost of their health care

premiums.

The Employer proposed amending the agreement to read that the employees in this

bargaining unit would contribute to the health care premium at the same rate as the other

general fund county employees. It also proposed a one-time, \$300.00 payment in January

2003 in addition to any wage increases.

Discussion:

The Employer presented considerable evidence that its health care premiums have

experienced a significant rise. It has only a one-year contract with a provider, so the cost

after that is unknown. At present the employees in the bargaining unit contribute 10%

toward the health care premium. In prior years this was consistent with what other

county general revenue fund employees contributed. However, those other general

revenue fund employees will contribute 15% of their health care premiums in 2003. The

Employer's desire is to maintain the parity between the two employee groups in 2003 as

it had previously.

While there is a health care committee on which all county general fund employees are represented, the Sheriff's Office employees are the only general revenue fund employees with a collective bargaining agreement. The Union makes a valid argument when it points out that the health care committee only makes recommendations, and the county commissioners are not bound by those recommendations. The Employer's proposal does not fix the employees contribution at the 15%. Rather, it leaves it open-ended. In previous negotiations the parties obviously reached an agreement for a 10% contribution. Undoubtedly the parties originally arrived at the 10% figure as part of the normal give and take of the negotiating process. While a move to a 15% contribution may place the Sheriff's Office in line with other county employees, it ignores the fact that the provisions of collective bargaining agreements are a result of a totality of issues. There is no argument that the costs of health care are rising dramatically for the county at the same time it is seeing some very bleak revenue projections. However compelling the argument may be that the Sheriff's Office employees should contribute at the same rate as other county general revenue fund employees, the fact is that these employees are treated differently in many ways because they have a collective bargaining agreement. While on its face the Employer's proposal may have the appearance of fairness, the reality is that it is open-ended, containing no language that fixes the contribution at 15%. With no fixed contribution percentage or dollar amount, the Employer's proposal would effectively take away a significant benefit won by the Union in previous bargaining.

There are several issues working against the Employer here. First, the county has no other bargaining units, so it is impossible to fairly compare the total compensation package of these employees with the other county employees. Secondly, the county commissioners currently hold the authority to determine the health care coverage and copays, and would continue to do so under either of the proposals before the Conciliator. Given the Employer's existing right to dictate many of the issues related to the terms of the health insurance, it retains considerable overall ability to attempt cost control in health care. Thirdly, the Employer's proposal does not fix the percentage to be contributed by employees in this bargaining unit; it gives sole control of that to the county commissioners.

The Conciliator cannot see the fairness in changing the current percentage of contribution that the Union has bargained for when, in fact, the change could not be affected in the negotiating process. Determining what price that the Employer should pay to have the right to unilaterally set the percentage that the employees in this bargaining unit pay of their health care premiums is best left to the parties in the negotiating process.

Award:

The Conciliator awards the Union proposal that the current contract language be retained.

Issue Four: Holidays and Personal Leave

Positions of the Parties:

The Union proposed additional contract language that would call for employees who actually work on Thanksgiving or Christmas to be paid at one and one-half times their regular rate of pay for all hours worked on those days.

The Employer proposed the retention of the current contract language, which provides for employees who actually work on Christmas or Thanksgiving to be paid straight time for actual time worked.

Discussion:

The Employer notes that employees are already paid for ten holidays; thus if an employee actually works on Thanksgiving or Christmas they are, in essence, already getting paid at double their regular rate: the eight hours of holiday pay plus wages for the time they worked. It argued that employees are made aware when they are hired that this is a

seven-day a week, 365-day a year job, and that some holidays must be worked. It also

restated its contention that the Marion County Sheriff's Office is already compensated at

one of the highest rates around the state.

No compelling reason was given for a change in the way Thanksgiving and Christmas are

paid in this Sheriff's Office. While working these two holidays is difficult for the

employees, the Sheriff rightly testified that it is part of the job that is made clear to

employees when they are hired. It is also duly noted that the current language is not out

of line with other sheriff and police collective bargaining agreements.

Award:

The Conciliator awards the Employer's position for retaining the current language.

Issue Five:

Sick Leave/Injury Leave

Positions of the Parties:

The Union and the Employer proposed identical language. It is included as part of this

award.

Award:

The Conciliator awards the language as identically provided by both parties in their final

positions submitted to the Conciliator prior to the hearing. The language is as follows:

<u> Section 28.3 – Conversion of Sick Leave at Retirement or Death</u>

Upon retirement, all employees will be eligible for payment in whichever

of the following amounts is greater:

- A. Up to twenty-three hundred and forty (2340) hours of accumulated unused sick leave at twenty-five percent (25%) of the first 960 hours of accumulated unused sick leave, thirty-three percent (33%) of the next 540 hours of accumulated unused sick leave (hours 961-1500), fifty percent (50%) of the next six hundred (600) hours of accumulated unused sick leave (hours 1501-2100), and one hundred percent (100%) of the next two hundred forty (240) hours of accumulated unused sick leave (hours 2101-2340), all at the employees' last, latest rate of pay; or
- B. Up to nine hundred sixty (960) hours of the lesser of the employees' accumulated unused sick leave balance at the time of retirement or the employees' accumulated unused sick leave balance as of June 30, 2002, at one hundred percent (100%) of the employees' last, latest rate of pay.

If an employee dies while on active status, the surviving spouse or others as listed in R.C. 2113.04, will be eligible to receive sick leave conversation for which descendent would otherwise have accumulated at the time of death. Such payments shall be based on the rate of pay of the employee at that time and subject to the limits of this section.

Issue Six: Court Leave

Positions of the Parties:

The Union proposed retention of the current contract language calling for off-duty employees who are required to appear in court to receive time and a half pay for a minimum of three hours.

The Employer proposed a language change that would require the off-duty employees to make a decision when excused from the court: either report to the Sheriff's Office and remain on-duty for the balance of the three hours minimum and be paid at the time and a

half rate for the entire three hours; or choose to go off-duty and be paid the time and a half rate for only the actual time spent in court.

Discussion:

The Sheriff testified that there is meaningful work that could be performed by the employees if they were required to report for duty following release from a court appearance. There is no question that the court appearances are a disruption in the employees' personal lives. That is why they are paid at time and one half for such appearances, and guaranteed a minimum of three hours. Asking the employees to actually report for duty upon their release from court in order to obtain this full benefit is not unreasonable given the budget constraints under which the Sheriff is working. It is also a fair return to the taxpayers. As the employees have the option of choosing not to report for duty, they retain control over their off-duty time. The Conciliator was not originally convinced that this could be administered easily. However, the Sheriff was convincing in his statements that this can be affected and that the employees could perform real, meaningful work in these short hours.

There is no question that this represents a reduction in an existing economic benefit to the employees. However, in the totality of this award, particularly in light of the retention of the health care premium percentage contribution at 10%, the Conciliator believes that a fair balance has been struck.

Award:

The Conciliator awards the Employer's proposal to change the language of Section 31.4 to the following:

<u>Section 31.4 Compensation</u> For each appearance, while off duty, employees shall be paid one and one-half $(1 \frac{1}{2})$ times the regular hourly rate for the actual hours worked, but no less than three (3) hours for each such appearance. If the court appearance is completed in less than three (3) hours, the

employee shall either report to the Sheriff's Office for further assignment or may choose to go off duty. However, if the employee chooses to go off duty, the employee shall only be compensated for the hours worked, without a three (3) hour minimum. At the employee's discretion time earned under this section may be taken as compensatory time.

TOTALITY OF THE AWARD

The above represents in total the award of the undersigned Conciliator.

Martin R. Fitts

Conciliator

December 13, 2002