

STATE EMPLOYMENT
RELATIONS BOARD

2003 MAR 21 A 10: 27

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

CONCILIATION

SERB CASE NUMBER: 02-MED-07-0642

FRATERNAL ORDER OF POLICE,
OHIO LABOR COUNCIL, INC.

and

THE DARKE COUNTY SHERIFF

MICHAEL MARMO
CONCILIATOR

MARCH 17, 2003

HEARING

The Conciliation Hearing took place on March 4, 2003 in the conference room of the Darke County General Health District offices, 300 Garst Avenue in Greenville, Ohio, and lasted from 10:00 a.m. to 1:30 p.m. Representing the FOP were its principal representative, Thomas J. Fehr; Robert L. Bryson, a Corrections Officer; Kim Knick, a Dispatcher; and Tony Royer, a Road Deputy. Representing the Sheriff were Chief Deputy, William Grice; Jeffrey N. Marshall, Projects Manager for the County Commissioners; County Commissioners, Michael Rhoades, Terry Haworth, and Robert L. Downing; and the Sheriff's principal representative, Timothy Werdmann, a Labor Consultant, with Clemans, Nelson and Associates.

ISSUES REMAINING AT IMPASSE

Prior to the Hearing, five issues remained in dispute:

1. The wages of Patrol Officers
2. The wages of Corrections Officers
3. The wages of Corrections Corporals
4. The wages of Dispatchers
5. The wages of Detectives

MEDIATION

Mediation was attempted, and resulted in settling the following two issues; the wages of Corporals and the wages of Detectives.

STIPULATION

At the beginning of the Hearing, the parties stipulated that the five issues stated above remained in dispute, and the Conciliator should consider them separately when making his decision. As a result of mediation, the Conciliator therefore needs to decide three separate issues; the wages of Patrol Officers, the wages of Corrections Officers, and the wages of Dispatchers.

FINAL POSITIONS OF THE PARTIES

The final position of the FOP was that Patrol Officers receive yearly wage increases of 6%, 4%, and 4% for the three year life of the Agreement. For Corrections Officers, the FOP proposed yearly increases of 4.5%, 3%, and 3%. Wages increases of 4% for each year of the three year Agreement were proposed for Dispatchers.

The Sheriff proposed yearly wage increases of 2% for each year of a three year Agreement, for all three of the job classifications.

SUPPORTING ARGUMENTS OF THE PARTIES

The FOP made three arguments in support of its positions on all three of the issues in dispute:

1. Their final position is identical to the recommendation of the fact-finder;
2. Their final position is less costly to the County than their proposal that was already agreed to in a tentative agreement reached with the County;
3. The County has the ability to pay.

The County argued that its wages are competitive compared with similarly sized counties with similar revenues. It said that because it had recently encountered financial difficulties, it was required to exercise fiscal restraint when granting wage increases.

ANALYSIS OF ALL OF THE ISSUES IN DISPUTE

Each of the parties provided excellent evidence and testimony regarding the wages of bargaining unit members relative to appropriate comparables, and the ability of the County to finance a settlement. However, the Conciliator does not believe that this information is particularly relevant in this case.

Two factors are relevant to decide this case. First, after an exhaustive examination of the appropriate comparables and of the ability of the County to finance an Agreement, Fact-finder William Slonaker made recommendations to the parties. Absent an egregious error on the part of the fact-finder, his recommendations must be given great deference. Mr. Slonaker's recommendations are well-reasoned, and it is inappropriate for a Conciliator to take a de novo look at the issues at hand.

Second, and most important, the final offer of the FOP represents a lower cost to the County than a proposal on these issues the County tentatively agreed to in negotiations with the FOP. Several days after their negotiator reached an agreement with the FOP, the County Commissioners decided that this Agreement was too expensive.

The Conciliator cannot support the County's approach to bargaining. Because employee organizations represent relatively large groups of workers it is sometimes difficult for them to accurately gauge the wishes of their members. This occasionally results in their members rejecting a tentative agreement reached by their negotiators. Such a problem is not present when dealing with a group of three County Commissioners. The concept of good faith bargaining assumes that when a representative of the County Commissioners acts on their behalf in negotiations, the Commissioners will not disavow that position several days later.

The Conciliator does not see how he can possibly refuse to endorse a proposal that is less costly to the County than a proposal their negotiator agreed to at the bargaining table. If the County believes this proposal is too expensive, they should have made their negotiator aware of this fact before he reached a tentative agreement with the FOP.

The County spent considerable time at the Hearing discussing the financial difficulties they are currently experiencing. They also provided detailed support for the fact that the budgetary difficulties being experienced in Darke County are present throughout the State of Ohio. The Fact-finder does not disagree with this analysis. However, this information was available to the County at the time their negotiator reached a tentative agreement with the FOP. Absent the discovery of some new and unexpected information, the concept of good faith bargaining requires the parties to move toward a more conciliatory position as negotiations move forward. This practice was not followed in this set of negotiations.

DECISION

For the reasons cited, the final position of the FOP should be adopted for each of the three issues in dispute. For the groups in dispute, Article 22 should read:

Section 22.1. Effective the beginning of the first pay period following October 21, 2002, the base hourly rate of pay for bargaining unit employees shall be:

Class	Step 0	Step 1	Step 2	Step 3	Step 4
Dispatchers	\$9.83	\$10.69	\$11.52	\$12.37	\$13.25
Corrections Officer	\$11.22	\$12.06	\$12.92	\$13.76	\$14.63
Patrol Officer	\$12.89	\$13.88	\$14.86	\$15.83	\$16.83

Section 22.2. Effective the beginning of the first full pay period following the first anniversary date of this Agreement, the base hourly rate fo pay for bargaining unit employees shall be:

Class	Step 0	Step 1	Step 2	Step 3	Step 4
Dispatchers	\$10.22	\$11.12	\$11.98	\$12.86	\$13.78
Corrections Officer	\$11.56	\$12.42	\$13.31	\$14.17	\$15.07
Patrol Officer	\$13.41	\$14.44	\$15.45	\$16.46	\$17.50

Section 22.3. Effective the beginning of the first full pay period following the second anniversary date of this Agreement, the base hourly rate of pay for bargaining unit employees shall be:

Class	Step 0	Step 1	Step 2	Step 3	Step 4
Dispatchers	\$10.63	\$11.56	\$12.46	\$13.37	\$14.33
Corrections Officer	\$11.91	\$12.79	\$13.71	\$14.60	\$15.52
Patrol Officer	\$13.95	\$15.02	\$16.07	\$17.12	\$18.20

In addition, all Articles tentatively agreed to or left unopened by the parties shall be included in the successor Agreement.

This concludes the Conciliator's decision.

Michael Marmo
Conciliator

Cincinnati, Ohio
March 17, 2003

PROOF OF SERVICE

This is to certify proof of service on March 17, 2003 by US Mail, overnight delivery, to Thomas J. Fehr, Fraternal Order of Police, OLC, Inc., 5752 Cheviot Road, Suite D, Cincinnati, Ohio 45247; and to Timothy Werdmann, Clemans, Nelson & Associates, 411 W. Loveland Avenue, Suite 101, Loveland, Ohio 45140; and by regular US Mail to Dale Zimmer, SERB, 65 E. State Street, 12th floor, Columbus, Ohio 43215-4213.

Michael Marmo
Conciliator