

STATE EMPLOYMENT
RELATIONS BOARD
2004 MAY -5 P 1:53

IN THE MATTER OF CONCILIATION

BETWEEN

F. O. P. /O. L. C., Inc.

AND

MONROE COUNTY SHERIFF

BEFORE: Robert G. Stein

Conciliation

Hearing held March 31, 2004

SERB Case #s: 02-MED-08-0682, 0683, 0684

PRINCIPAL ADVOCATE (S) FOR THE UNION:

Andrea H. Johan, Staff Representative
FATERNAL ORDER OF POLICE/ O. L. C., Inc.
222 East Town Street
Columbus OH 43215

And

PRINCIPAL ADVOCATE FOR THE UNIVERSITY:

Michael Seyer, Senior Consultant
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2351 S. Arlington Road, Ste. A
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INTRODUCTION

This conciliation Award involves three certified bargaining units comprised of Deputies, Jailers/Dispatchers, and Sergeants. The total number of employees in all three bargaining units is approximately twenty-two. The Employer is the Monroe County Sheriff ("Employer"). Monroe County is located in southeast Ohio and is a rural county. The Union is the Fraternal Order of Police ("Union").

Fact-finder James Rimmel conducted the fact-finding session that preceded this phase of the impasse procedure. Prior to holding formal hearings, ORC 4117.14 (C)(3)(f) the State Employment Relations Board encourages Fact-finders and Conciliators to mediate disputes when and where practical. The only issues brought to fact-finding in this case were duration, Civil Service Laws, wages, and health insurance. Fact-finder Rimmel, acting as a mediator, assisted the parties in resolving two of the four issues, duration (in part) and Civil Service Laws.

The issues of health insurance and wages went to hearing, and the Fact-finder issued his report approximately fifteen (15) months ago on January 27, 2003. The Fact-finder's recommendations were initially rejected by the Union and accepted by the Employer. The Union

subsequently reconsidered the Fact-finder's report and voted for the acceptance of his recommendation approximately eight weeks later. The Employer no longer desired to settle based upon the Fact-finder's recommendations, and the parties were once again at impasse. It is unclear why the parties delayed the conciliation of this matter for approximately fourteen months. This is an inordinate amount of time and such a delay requires an updating of the facts that are to be considered under the statutory guidelines.

The Employer and the Union differ as to what is really at impasse. The Union takes the position that health care and wages are the two issues that were before the Fact-finder for his recommendations, and should be the only two unresolved issues placed before the Conciliator. The Employer argues that it has a right to submit to the Conciliator any of the issues that were previously tentatively agreed upon in negotiations or during the mediation stage of the fact-finding process, in addition to those that were addressed by the Fact-finder. The Employer submitted five (5) issues to the Conciliator: hours of work/overtime, uniforms, health insurance, wages, and duration. The Employer cited the ground rules in support of its position, which state:

"Tentative agreements are not finally resolved, nor shall they be binding on either party, until such time as the total agreement is reached and ratified..."(Ex 1).

I do not agree that this language was intended to allow either party to expand upon issues at impasse during fact-finding or conciliation. I am very familiar with the language and it is generally intended to mean that whatever is tentatively agreed upon does not go into effect until the parties reach agreement on all issues.

Prior to fact-finding both parties voluntarily agreed upon issues that should and should not be referred to the Fact-finder for his recommendation. It is also common for parties to agree to ground rules that make tentative agreements contingent upon the settlement of all the issues. When the parties only forwarded wages and health insurance to fact-finding, they made the decision that the other tentative agreements were not dependent upon the recommendations of the fact-finder on the two matters of wages and health insurance. Of course, the parties can mutually agree to bring more or different issues to conciliation than were forwarded to the Fact-finder, but that did not occur in the instant matter.

The impasse process contained in O.R.C. 4117.14 is designed to bring about resolution to negotiations; it is a narrowing process. Conciliation is a last resort and is designed to effectuate resolution of unresolved issues between the parties and is not designed to expand the scope of disagreement. Section (f) of O.R.C. 4117.14 (G)(7) specifically identifies "settlement through voluntary collective bargaining" in its standards. Furthermore, in its guidelines, SERB requires that parties submit

to fact-finding all “**unresolved issues**” (See O.A.C. Rule 4117-9-05(F)). Ohio courts in Portage County and elsewhere have disallowed the expansion of issues at conciliation.

The Union formally objected to the introduction of previously resolved issues at conciliation and the Conciliator stated he would rule on this objection in the Conciliation Award. Based upon the agreement of the parties, the Conciliator temporarily set aside this objection in favor of attempting to mediate this dispute as encouraged by SERB. After a few hours of attempting to get the parties to compromise on their positions, mediation failed. The Conciliator then reverted back to the conciliation hearing, and the advocates presented their evidence. The Union renewed its objection to the inclusion of issues outside the scope of impasse at fact-finding.

Based upon the above rationale, and the statutory language in the Ohio Revised Code, Section 4117.14 (G) (7) that refers to stipulations of the parties, the position of the Union is sustained. The issues of hours of work/overtime, and uniforms, brought forward by the Employer and previously tentatively agreed upon, are to be considered under the Tentative Settlement section of this award.

The one exception to this ruling is the issue of duration of the Collective Bargaining Agreement. The tentative agreement contained in the evidence presented states the Agreement shall be from November 1,

2002 to October 31st; however, it does not include an ending year (See tentative agreements submitted by the Union). Therefore, it cannot be considered a resolved issue, and because it is traditionally closely associated with wages, I find it is a proper subject for conciliation.

The Conciliator actively encouraged the parties to seek a settlement, and the Employer, in a good faith attempt to settle during mediation, changed its proposed duration ending date from January 31, 2005 to March 31, 2005. This proposed change was closer to the October 31st ending date, which was the Union's position. Unfortunately, this last minute change did not bring about a settlement. The Employer then kept this modification of its original proposed duration ending date, initialed the change, and attempted to submit it into the formal conciliation hearing. The Union renewed its objection to the issue as already settled, and did not agree with the modification of the Employer's position. The Conciliator reserved his ruling on this matter until the issuance of his Award.

It is the understanding of this Conciliator, after consultation with SERB, that unless both parties agree to a modification of a party's position after it has been submitted to conciliation, it cannot be modified unilaterally once submitted for a formal ruling. One would reason that typographical errors may be permissible; however, the Employer's change

in duration was substantive. The Employer's original position on duration, ending January 31, 2005, must be considered its official position.

Therefore, this Conciliator is charged with selecting the last best offer of each party on the unresolved issues of wages, duration, and health insurance. The Union's Position Statement shall be referred to as UPS and the Employer's Position Statement shall be referred to as EPS. The Conciliator will render his Award on an issue by issue/ last best offer basis in accordance with O.R.C. 4117.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (G) (7) establishes the criteria to be considered for conciliators. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements, if any, between the parties;
2. Comparison of issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employers 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. The stipulations of the parties;

6. Such 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, conciliation, or other impasse resolution procedures in the public service or in private employment.

These criteria provide the basis upon which the following Award is made:

ISSUE 1 Article 28 Health Insurance

Union's position

SEE UPS

Employer's position

SEE EPS

Discussion

According to the Employer, the healthcare benefits year runs from January to December. The Employer is seeking a cap on its contribution toward the healthcare premium. The Employer currently pays, depending upon the plan, either 90% or 85% of the premium costs, and the employees pick up the difference. Fact-finder Rimmel ruled that the current language should be maintained, especially in light of his recommendations regarding wages. The Employer points out its costs are rising, straining an already critical budgetary situation.

The share of the costs are based upon percentages (90%-10% or 85%-15%), depending on coverage, and it is a given that as health care

costs rise, the amount an employee will pay increases, as does the amount the Employer pays. The Employer pays the lion share of the increase, yet this sharing arrangement represents what the parties have historically agreed to in past negotiations. The imposition of caps to protect the Employer will in effect change the percentage that the Employer pays from 90% or 85% to something less, and will increase the percentage paid by employees.

Other than cost shifting, I find no justification for the Employer's proposed departure from the manner in which the premium has been shared between the parties in the past. This Conciliator was not provided any evidence that capping the Employer's share of the premium would result in lower premiums or more responsible use of health care. If the Employer desires to pay less of the premium and shift a greater portion of the costs to bargaining unit employees, in the parlance of negotiations, it must be willing to "buy" this concession. The financial condition of the Employer does not indicate that this is remotely possible. I concur with the Fact-finder's position on this issue and therefore with the position of the Union.

Award

The Union's position is awarded.

ISSUES 2, 3 Article 31 WAGES AND DURATION

Union's position

See UPS

Employer's position

See EPS.

Discussion

In the words of Fact-finder Rimmel, "*Evidence of record clearly manifests a serious ability to pay issue for Monroe County*" (See p.2, *Fact-finding Report*). No doubt the County's budgetary situation is a bitter pill for both management and labor to swallow. Yet, it does little good to ignore the reality of a budget crisis, and it does little good for the parties to cast blame on one another.

The Union rejected the Fact-finder's report and some six to eight weeks later voted again to ratify it. The Employer accepted Fact-finder Rimmel's report with its wage recommendation of 0, 1%, and 1.5%, yet, rejected these same terms six to eight weeks later. A 1% increase in wages costs the Sheriff an additional \$5,238 in wages for a one-year period. As a percentage of the Sheriff's total budget, this is not a large sum of money. Unfortunately, the findings of Fact-finder Rimmel were based upon facts that occurred over fourteen (14) months ago. While

there normally may be a gap of several weeks or even a few months between fact-finding and conciliation (generally maintaining the integrity of a fact-finder's findings), a period of fourteen months is another matter.

In his report Fact-finder Rimmel stated:

"It is hoped, however, this wage recommendation will enable the Sheriff to avoid layoffs or, at least, keep such to only a few employees. As for what will be actually necessary to balance the County's budget, only time will tell" (p.3, Fact-finding Report).

Unfortunately, the reality of the situation came to fruition in the year and two months following the Fact-finder's statement. There have been layoffs of six full-time bargaining unit members, representing a significant portion of the bargaining unit. The Concealed Carry Weapon Law passed and recently went into effect; it added an additional cost of \$8, 200 to the Sheriff's budget. The Sheriff Department's budget for 2004 is \$910, 643 (See EPS, # 6), yet its actual expenses for 2003 were \$1, 075, 988.

The economy of Monroe County has also worsened over the past fourteen months. The County's unemployment rate is 14.6%, more than twice the rate for all of Ohio, and its largest private sector employer, Ormet, is in Chapter 11. According to Financial Supervisor Knuchel, from the County Auditor's office, the County lost between \$100,000 and \$200,000 in tax collections due to Ormet's bankruptcy. The State of Ohio has cut its funding to counties, and the County's interest income has declined from a high of almost \$300,000 in 2001 to \$68,000 in 2003, and a predicted \$49,000 in 2004.

The Sheriff's Department, as of the date of the hearing (approximately 7 pay periods), is already over budget by some 2.6% (Ex G). However, what is not known is whether the first three months of the year are traditionally higher or whether there were additional costs associated for other reasons. Nevertheless, it represents a projected shortfall that will have to be addressed during the year.

The County had to borrow money from Citizen's National Bank some five times in 2003 totaling over \$215, 000 in loans and currently has an outstanding balance as of March 24, 2004 of \$131,139. 01. The notes for these loans mature in July of 2004 and have been rolled over once (January of 2004). It is noted that while most of the departments in Monroe County have kept their budgets in-check for 2004, the budgets of the Probate and Juvenile Courts have not followed suit. And, some County offices, not under the control of the County Commissioners, provided their employees with a raise. Wage freezes are difficult enough to accept, but when the other county employees are not equally affected, it causes serious morale problems. As a percentage of the County's budget, the Sheriff's percentage has declined from approximately 31% of the County's total budget in 2001 to 26% in 2004.

Although the raises recommended by the Fact-finder were reasonable based upon the facts and more optimistic financial predictions of fourteen months ago, the current reality is that the County,

and specifically the Sheriff's budget, has been racked by a combination of lost revenue and increased costs. Moreover, the state and local economy over the past fourteen months has worsened considerably. Even after substantial reductions in personnel (including bargaining unit members and captain positions), the Employer's budget may be in for more cost cutting, given the testimony of Financial Supervisor Jeanette Knuchel and County Commissioner, Mark Forni.

The current facts and predictions for the immediate future do not support an increase in salary costs at this time. However, this situation cannot persist. The bargaining units provide an essential service to the citizens of Monroe County, and two consecutive years of no wage increase is devastating to the morale of an organization. The cost of turnover (hiring, training, etc.) often associated with such a situation is considerable. Hopefully, the Employer and the Union can find a way to provide increases in pay in the near future. The cost of living from February 2003 to February 2004 went up 1.7%. Based upon recent statements by the Federal Reserve, it is reasonable to predict the rate of inflation will not be less, but indeed may be more in the next twelve months.

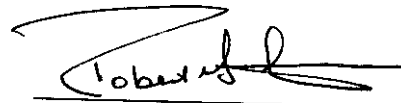
Award

The Employer's position is awarded on wages and duration. The current salary schedule shall be maintained and the contract shall terminate on January 31, 2005.

TENTATIVE AGREEMENTS

During negotiations and fact-finding, the parties reached tentative agreement on several issues. These tentative agreements are awarded as part of this report.

The Fact-finder respectfully submits the above award to the parties this 4th day of May 2004 in Portage County, Ohio.



Robert G. Stein, Fact-finder