

STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

STATE OF OHIO

2003 DEC -8 A 9 06

In the Matter of Conciliation)

SERB Case No. 02-MED-12-1249

Between)

CONCILIATION REPORT AND AWARD

Clermont County Sheriff,
Public Employer)

Hearing Date: November 13, 2003
at Batavia, Ohio

And)

The Fraternal of Police,
Ohio Labor Council, Inc.,
Corrections Officers Unit,
Employee Organization)

APPEARANCES:

Mitchell B. Goldberg, appointed Conciliator

For the FOP:

Thomas J. Fehr, Staff Representative
James Murphy, Representative
Timothy G. Roe, Representative

For the Employer:

Paul R. Berninger, Esq., Attorney
Sukie Scheetz, Controller
James Malloni, Chief Administrative Officer
Chris Willis, Chief Deputy

I. INTRODUCTION AND BACKGROUND

The undersigned, Mitchell B. Goldberg, was appointed by SERB as the Conciliator in this matter on July 9, 2003. The Bargaining Unit consists of approximately 85 employees classified as corrections officers. The Bargaining Unit was certified by SERB on May 2, 1991. The FOP and the Clermont Sheriff's office engaged in negotiations for a new collective bargaining agreement which was to succeed the collective bargaining agreement that expired on the last day of February, 2003. The parties entered into negotiating sessions on February 5, 2003, February 28, 2003, March 7, 2003, March 14, 2003 and April 8, 2003. The issues which could not be resolved through negotiations proceeded to fact finding. The appointed Fact Finder, Tobie Braverman, issued her Fact Finding Report on five unresolved issues on June 13, 2003. The issues addressed in the Fact Finding Report were Article 3-Fair Share Fees, Article 14-Wages, Article 15-Insurance, Article 18-Sick Leave, and Article 37-Duration.

Those same issues remained unresolved between the parties and the matter proceeded to a conciliation hearing on November 13, 2003 in Batavia, Ohio. The Employer revised its position on the duration of the contract at the hearing. Accordingly, the parties reached an agreement with respect to the duration of the contract as follows: The contract shall be effective from March 1, 2003 until midnight of the last day of February, 2006. Any and all wages and benefits awarded in this conciliation report shall be retroactive to the beginning of this contract, March 1, 2003.

The unresolved issues are Article 3-Fair Share Fees, Article 14-Wages, Article 15-Insurance, and Article 18-Sick Leave. The remaining articles of the contract which were

unopened or eventually agreed upon between the parties shall remain in effect and shall become the current language of the contract, and shall become incorporated into and made a part of the final agreement. The following report and award is made in accordance with Ohio Revised Code Section 4117.14 (G)(7)(a-f). In selecting one or the other party's final offer on the remaining unresolved issues consideration has been given to the following factors: (a) past agreements between the parties; (b) the terms and conditions of employment of public and private employees doing comparable work; (c) the interests and welfare of the public, including the ability of the public employer to finance the settlement proposed; (d) the lawful authority of the public employer; (e) the stipulations of the parties; and (f) such other factors, not confined to those listed in the legislation, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement.

II. UNRESOLVED ISSUES

A.-Article 3 -Fair Share Fee

The FOP proposes a standard Fair Share Fee to be included in Article 3, FOP Security. Non members in the FOP shall pay a fair share fee through payroll deduction. Bargaining Unit employees are not required to be members of the FOP, but shall be required to pay a fair share fee which shall not exceed the dues paid by FOP members in the same bargaining unit. The implementation of the fee and the right of a bargaining unit member to challenge the amount of the fee shall be in accordance with the procedures set forth in the Ohio statutes as interpreted by applicable case law.

The FOP argues that a fair share fee is long overdue in this bargaining unit. The Bargaining Unit was certified in 1991 and the FOP has represented the Unit for many years.

Notwithstanding the FOP's representation, 31 out of the 88 bargaining unit members have chosen not to join the FOP. Because they are not members and a fair share agreement is not in place, they are receiving the FOP's services for collective bargaining and grievance processing free of charge. The absence of a fair share fee has caused other members to consider resigning from the FOP in order to avoid paying dues for FOP services. The result has caused the remaining members to shoulder a disproportionate burden of paying for FOP services.

The time has come for imposing this requirement upon the Employer. Fair share fees have become the norm and not the exception. They are present in all of the six comparable counties in the vicinity of Clermont County. Fair share arrangements have been agreed to in Highland County, Hamilton County, Brown County, Warren County, and Butler County.

The Employer argues that none of the collective bargaining agreements within Clermont County contains a fair share fee provision. It believes in the freedom of choice among its employees to support or not to support the FOP. Clermont County is operated by a conservative government which has opposed the imposition of a fair share provision upon employees who do not wish to be associated with the FOP or to contribute monies to an organization which has objectionable principles. The Employer believes that the imposition of such a contract provision infringes upon the constitutional rights of employees.

The Fact-Finder recommended no change in the current language and rejected the fair share fee proposal of the FOP. Her decision was based upon the long standing record of collective bargaining agreements between the Employer and the other bargaining units which do not contain fair share fee provisions. The institution of such a provision in this case would constitute a significant departure from the bargaining unit history between the parties.

The FOP has submitted persuasive fact finding decisions from David W. Stanton and Frank A. Keenan recommending first time fair share provisions when the circumstances warranted such recommendations. Fact Finder Stanton concluded, based upon his experience, that based upon data supplied by SERB, approximately 85% of police contracts have fair share fee provisions. The United States Supreme Court has philosophically sanctioned fair share fee agreements and found that they do not violate constitutional rights when they are implemented in accordance with court established guidelines which insure that employees pay only for union services directly related to collective bargaining. They are not required to pay for services which support directly or indirectly the Union's political or philosophical objectives. Likewise, the State of Ohio has permitted fair share agreements to be placed in contracts because the fair share fee process insures inherent fairness among all bargaining unit members by requiring nonmembers to pay a fair fee for the provision of union services relative to collective bargaining. Without a fair share fee provision, nonmembers become free riders who receive benefits from the provision of union services without any obligation to pay for such services. Fact Finder Stanton further found that free riding nonmembers adversely affect the morale in the bargaining units and that poor morale and the lack of camaraderie among bargaining unit members are not in the public's best interest and welfare as set forth in the statutory criteria.

Fact Finder Keenan recognized that neutrals in southern Ohio previously recognized and gave weight to philosophical objections of employers to fair share fee arrangements, but those decisions have become weakened based upon the current statistics that 85% of the safety forces now contain Fair Share Fee provisions in their contracts. The FOP's evidence that the counties surrounding Clermont now contain fair share fee provisions demonstrates that they have now become the norm even in the southern part of the state.

AWARD

Based upon the evidence supplied by the FOP at this hearing which was not presented to the Fact Finder, it is found that a fair share fee provision is warranted. It is not reasonable or justifiable that over a third of the bargaining unit members receive union services for free when the Union has been the exclusive representative for many years. There was no evidence of strong Union opposition on the part of nonmembers, or that the FOP is in jeopardy of remaining as the exclusive bargaining unit representative. Instead, the only evidence is that 35% of the bargaining unit members have opted for a free ride by obtaining the benefit of union services without any obligation for payment. The time has come for these bargaining unit members to pay their fair share. The fair share fee provision will not cost the Employer any money other than the small added cost of administration. The FOP provision proposal is accepted and the following language shall be applied to Article 3.

Section 3.3 As a condition of employment, sixty (60) days following the beginning of employment, or upon the effective date of the labor Agreement, whichever is later, employees in the bargaining unit who are not members of the FOP, including employees who resign from membership in the FOP after the effective date of this Labor Agreement, shall pay to the FOP, through payroll deduction, a fair share fee. The fair share fee is automatic and does not require the written authorization of the employee. This provision shall not require any employee to become or remain a member of the FOP, nor shall the fair share fee exceed the dues paid by members of the FOP in the same bargaining unit. The FOP is responsible for annually certifying to the Employer the amount of the fair share fee, along with a breakdown of its use, prior to the implementation of this Section. If an employee challenges through the Courts or the State Employment Relations Board the deduction of the fair share fee, his/her deductions shall continue, but the funds shall be placed in an interest bearing escrow account until a resolution of his/her challenge is reached. The party in whose favor the resolution is determined shall receive the escrowed funds, including the interest, if any.

Section 3.10 shall be revised as follows:

Except as otherwise provided herein, each eligible employee's written authorization for dues deduction shall be honored by the Employer for the

duration of this Agreement or until such employee submits a written revocation of the dues deduction authorization to the Employer of designee.

B.- Article 14-Wages

The FOP proposes wage increases for each year of the three year contract as follows: year one- 3.8%, year two -3.75%, and year three-3.75%. The Employer proposes 3% increases for each year of the three year contract. Both parties have agreed that the payment shall be effective and retroactive to March 1, 2003.

The FOP's financial evidence is summarized as follows: The sales tax rates for Clermont County of 7% is comparable to the surrounding counties of Warren, Hamilton, and Highland. Brown is at 7.25% and Butler is at 6.5%. Clermont's tax revenues increased by approximately \$554,000.00 in 2002 over 2001 collections. Collections for 2003 increased by approximately \$475,000.00 over 2002. The County's Financial Activity Statement, shows that the revenue and resources increased over expenditures and services by \$3,800,000.00 from year 2000 to year 2001. The County's net worth, or the difference between financial benefits and detriments was \$354,632,274.00 on December 31, 2001. The revenue and resources over expenditures and services declined in 2002 by approximately \$1,600,000.00, but was still \$3,126,898.00. The net worth on December 31, 2002 was \$375,303,620.00, an increase of \$20,000,000.00 over the 2001 statement.

The Country has considerable investments of between 90 to 127 million dollars in funds. Sixty million are in investments and the remainder is in money market, savings accounts and cash. There is no question that the County is in "sound fiscal shape" as stated by the Investment Advisory Committee. The total investments and cash had a market value of \$104,604,758.10 on November 29, 2002. The figure increased to \$126,237,495.37 by February 28, 2003. On May

30, 2003 the market value was \$103,848,026.87, and on August 31, 2003, the market value was \$114,764,648.74.

On December 31, 2002 the County had 14.6 million dollars of unrestricted net assets which may be used for ongoing obligations. The County's total assets increased by 23.6 million or 6.72% from 2001. The governmental funds balance increased by 1.7 million dollars to 64.2 million dollars from the prior year. Of this amount, 57.2 million is available for spending as an unreserved fund balance. The unreserved fund balance for the general fund was 27.3 million dollars or 61% of the total general fund expenditures and other financing uses. The County's debt decreased by 6.2 million dollars, a decrease of 6.2% in debt related to governmental activities and a 3.4% decrease in debt related to business activities. The general fund increased by 3.4 million dollars in 2002 with revenues exceeding expenditures by 8.3 million dollars. The result of this analysis shows that the County "continues to flourish in residential and commercial growth," and otherwise is exceedingly prosperous. The County's long standing conservative approach to maximizing its local revenues and minimizing its expenditures has permitted it to maintain a large unreserved fund balance. It has created a budget stabilization fund to protect itself from unforeseen economic circumstances in the future. Nevertheless, it may meet emergencies in the future by transferring monies between funds. Only certain specific funds are restricted under the Ohio statutes.

Insofar as comparable wages are concerned, the SERB figures show that police contracts have increased 3.95% in 2000, 3.90% in 2001, and 3.86% in 2002 across the state. The contract for the deputies and supervisors in Clermont County increased by 16.1% over 3 years beginning March 1, 2001. Blue Ash increased by 12.25% over 3 years beginning January 1, 2001. Green Township police increased by 14% over 3 years beginning January 1, 2002. Miami Township

increased by 16% the same period. West Carrollton police and Lebanon police increased by 12%. Springdale police increased by 13% over the same period. Milford police increased by 15.5% for a three year contract beginning in June of 2002. Preble County sheriff increased by 9% for three years beginning in September 2002. Drake County corrections increased by 10.5% for three years beginning October 2002. Fairborn police increased by 10% for three years beginning June, 2003. The average of the above increases was 12.76% for three years or 4.25% per year. SERB statistics for Brown, Butler, Clermont, Hamilton, Highland, and Warren counties show average yearly increases of 4.57%.

The Employer believes that its proposal of 3% each year for the three year contract is fair and reasonable considering certain underlying facts and circumstances. It does not dispute that the County has the ability to pay the FOP's proposed increases. Nevertheless, the Employer's proposal is consistent with increases received by all of the other employees in the county. The large increases received by employees in Highland County and Brown County are explained by the fact that the wages paid in these counties were historically low and the counties have had to raise their wages to be competitive. This has been the case in Clermont County as well. The bargaining unit has received a 41% increase in their wages over the past years; 31% in increases have been received since March of 1997. The County has now brought the employees up to competitive wage levels so that now only normal and reasonable pay increases are required.

Because of the County's growth in population and services, it has committed to large capital expenditures which include a common pleas court, a new administration building, a juvenile detention center, a jail expansion, a municipal court, and renovations to the old common pleas court house. The company has issued 20 million dollars in bonds to fund these projects.

The jail project has been delayed because of present inadequate resources. The County wants to preserve its excellent bond rating by maintaining its budget and its reserves.

The County employs good accounting practices by maintaining a reserve for unforeseen expenditures. Presently, the County's reserve is only for a three months operating duration. Its proposal of 3% per year takes into account a projected decrease in the revenue stream due to the poor economy. Nevertheless, a 3% increase exceeds the cost of living and is more than fair. The cost of living is only at 2% which includes expenditures for health insurance. The Employer's proposal is in line with Fact Finder Braverman's recommendation of a 3% wage increase for the first two years of the contract.

AWARD

After considering all of the financial evidence presented by both of the parties, I find that the Employer's proposal is more reasonable. An across the board increase of 3% for each of the three years beginning on March 1, 2003 is awarded.

C.-Article 15-Health Insurance

The FOP proposes to limit the exposure of its members to rising health insurance costs by providing that the County pay the same employee contribution to health insurance as all other county employees "to a maximum of 21% of the cost." In addition, the Union proposes that bargaining unit members receive life insurance in the amount of \$25,000.00 for each member.

The Employer prefers to maintain the same uniform health insurance plan for all county employees. Presently, elected officials, appointees, management personal, and non represented employees are treated in the same manner as the represented employees.

The Employer currently contributes \$291.81 bi-weekly toward the cost of a family plan and \$151.45 bi-weekly toward the cost of a single plan. In 2004, the contribution will increase to \$311.95 bi-weekly for a family plan, and \$171.59 bi-weekly for a single plan. Employees presently elect from available coverages. If the cost of the elected coverage exceeds the County contribution, the employee pays the balance. For 2003, the lowest cost coverage is through an HMO-EPO. The single plan is \$141.78 and the family plan is \$367.98. A PPO is available for \$135.82/\$350.71. For 2004, the HMO-EPO is \$169.71/\$455.17; the PPO-1 is \$155.72/\$417.04; and , the PPO-2 is \$138.54/\$369.80. The Employer prefers to maintain its uniform coverage for all employees so that no change would be made in the language of Article 15.

Fact Finder Braverman acknowledged that the Employer has increased the amount of its available cafeteria plan benefit to employees with family coverage by approximately 10% per year. However, the cost for some of the health insurance options have increased by as much as 55% over the last two years. She recognized that the employee burden has become greater for those requiring family coverage. Employees are placed in a position where they can only select health insurance from among the cafeteria options because the health insurance portion consumes 100% of cafeteria plan costs.

Single employees fair much better. Their premiums are less expensive and the percentage increases provided by the employer have been more than double the percentage increases provided for employees with family coverage. Fact Finder Braverman found that employees with family coverage are paying from 17% to 21% of the premium. This is significantly higher than the percentage paid by comparable counties; the highest among those comparable counties pay at the rate of 15%. The Employer has argued for uniformity among all

of its employees, but Fact Finder Braverman found that a lack of uniformity already exists. The AFSCME unit has a separate plan.

The FOP adjusted its proposal to conform with the recommendation of Fact Finder Braverman. This position appears to be the more reasonable position considering the runaway insurance cost increases that are taking place. Without a cap, the rise in insurance costs will completely strip away any wage increases, and may even in result in a net wage reduction for certain employees. The top annual wages for bargaining unit members for the first year of the contract with the above 3% wage increase will be approximately \$32,900.00. A large increase in health insurance costs without any cap is much more difficult to absorb for employees who earn in the \$30,000.00 per year range than for higher paid employees. Accordingly, the cap recommended by Fact Finder Braverman and adopted as the FOP proposal is a more reasonable approach than exposing these employees to unlimited insurance cost increases. This consideration outweighs the desire for uniformity among all employees which is proposed by the Employer.

AWARD.

The FOP's proposal shall be awarded as follows:

Section 15.1 Bargaining unit members shall accept and receive the county health insurance program and shall make the required Employee contribution on the same basis as all other county Employees to a maximum of 21% of the cost. In the event that the County's contribution, as set forth in Section 15.2 is increased to the benefit of all other county Employees covered by the general county health insurance plan, than such increase shall be made by the County to the benefit of all bargaining unit members.

The FOP proposes that life insurance for bargaining unit members be increased to \$25,000.00 and that the employer should pay for the entire premium. Presently, employees receive \$10,000.00 of life insurance, but the life insurance package is not addressed in the

current contract. The FOP takes the position that its proposal must be granted because the Employer did not address this issue in its prehearing statement.

The Employer believes that it addressed the issue when it proposed that no change be made in the Article 15 language.

Fact Finder Braverman recommended that the Employer provide bargaining unit members with life insurance in an amount equal to \$25,000.00.

I find that the Employer did not waive this issue and that its intent was to propose current language which contains no reference to any life insurance. This leaves the Employees with policies of \$10,000.00, but there is no reference to the benefit in the collective bargaining agreement.

AWARD.

The Fact Finder's recommendation for increasing the policy to \$25,000.00 and providing for language in the agreement is a more reasonable proposal than the Employer's proposal for no change. The cost of increasing a term life insurance policy from \$10,000.00 to \$25,000.00 is minimal and can easily be absorbed by the Employer. Accordingly, the following shall be added to Agreement:

Section 15.2 The Employer shall provide bargaining unit members with life insurance in an amount equal to \$25,000.

D-Article 18-Sick Leave

The Employer proposes to amend Section 18.1 (B) which currently permits an employee to be absent on sick leave for three consecutive days before a physician's statement is required. It is attempting to deal with perceived excessive absences of bargaining unit members. Its proposal is to amend the contract to require a member to submit a physician's statement if an absence continues for more than two consecutive days.

The FOP disagrees with the Employer on the need for a change. Fact Finder Braverman, however, found that it was likely that Employees were using sick leave time for reasons other than for illness. She therefore recommended the Employer's proposal that a physician's certificate be required when an employee has been absent for more than two consecutive days.

AWARD.

I find that the Fact Finders recommendation on this issue has merit and that the Employer's proposal be implemented as follows:

Article 18, Section 18.1 (B) shall be amended to read as follows; A physician's certificate may be required when an employee has been absent more than two (2) consecutive days. The physician's certificate will be filed with the sick leave form.

The FOP also has a proposal under Article 18. It is concerned about employees being disciplined for using their accumulated sick time. The FOP believes that discipline should not be issued for employees who use the benefits available to them under the Collective Bargaining Agreement. It proposes that all written warnings be removed from employee files. Moreover, the FOP contends that the Employer has waived any opposition to its proposal, because the Employer failed to address the FOP's proposal in its prehearing statement.

The Employer believes that it addressed the FOP's proposal when it proposed only its change to the current language without any change in the remaining sections of Article 18.

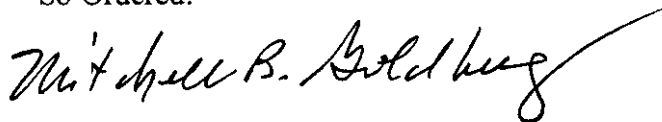
Fact Finder Braverman endorsed the FOP's position when she noted that employees are entitled to utilize all of the accumulated sick leave which they earn pursuant to the terms of the Agreement. Nevertheless, she recognized that the purpose of sick leave time is to permit time off for illness or injury, and not for personal time. Her recommendation omits any reference to the FOP's proposal.

The employees presently have remedies available to them under the grievance procedure if they receive warnings which are not justified. The existing language permits the Employer to challenge employees who take time off for sick leave when there is no illness or injury. This issue is handled on a case by case basis under the present language. There is no compelling reason for a change.

AWARD.

I find that the Employer did not waive its opposition to the FOP's proposal. It rejected the proposal when it proposed its change without a change to any other provision in Article 18. I find that the Employer's position should be adopted and that the FOP's proposal be rejected with no change in the current language.

So Ordered:



Mitchell B. Goldberg, Appointed Conciliator

Date of Award: *December 4, 2003*

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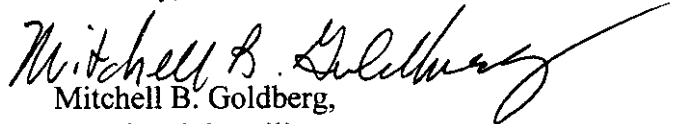
Mr. Dale A. Zimmer
Bureau of Mediation
SERB
65 East State Street, 12th Floor
Columbus, Ohio 43215-4213

Re: 02-MED-12-1249 FOP/OLC and Clermont Cty. Sheriff

Dear Mr. Zimmer:

Enclosed is my Conciliation Report and Award in the above matter.

Sincerely,


Mitchell B. Goldberg,
Appointed Conciliator

cc: Thomas J. Fehr (w/bill)
Paul R. Berninger, Esq. (w/bill)



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