

STATE EMPLOYMENT RELATIONS BOARD

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RELATIONS BOARD

CONCILIATOR'S REPORT

2004 MAR -5 A 10: 36

IN THE MATTER OF:

[Interest Arbitration]

Ohio Patrolmen's Benevolent Association
And
The Hardin County Sheriff

Case Numbers:
03-MED-03-0317
03-MED-03-0316

Before Conciliator
N. Eugene Brundige

PRESENTED TO:

Dale A. Zimmer, Administrator
Bureau of Mediation
State Employment Relations Board
65 East State Street, 12th. Floor
Columbus, Ohio 43215-4213

And

Matthew B. Baker, Attorney and Advocate
For the Ohio Patrolmen's Benevolent Association
555 Metro Park Place North, Suite 100
Dublin, Ohio 43017

And

Rufus B. Hurst, Attorney and Advocate
Downes, Hurst & Fishel
For Hardin County Sheriff
400 South Fifth Street – Suite 200
Columbus, Ohio 43215

N. Eugene Brundige was duly appointed by the State Employment Relations Board to serve as Conciliator in this matter, in compliance with Ohio Revised Code Section 4117.14(D)(1) by letter dated November 19, 2003.

A hearing was held January 14, 2004 in the Hardin County Courthouse in Kenton, Ohio. The parties timely filed the required pre-hearing statements.

In their pre-hearing filings the parties identified the following issues, as being unresolved:

- 1. Article 19 – Sick Leave conversion upon retirement: Sections 19.11 and 19.14**
- 2. 2004 Wage increase.**

The parties submitted to the Conciliator, all other Articles that had been previously negotiated, as well as the other undisputed sections of Article 19. The Conciliator agreed to incorporate them, and the other Articles that have been tentatively agreed to, into this report.

The parties further agreed that the two separate units should be treated as one in this report, and that the two sections of the Sick Leave Article should be treated as one issue.

The Union was represented by Matthew B. Baker. Appearing with him were Sergeant Ronald E. Lee and Deputy Dwight Underwood.

The County was represented by Rufus Hurst. Appearing with him was Michael T. Brown, Hardin County Auditor, Gerald Potter, County

Commissioner, Robert Hubbard, Lt. David V. Dyer and Chief Deputy Ken Hilty.

BACKGROUND:

The bargaining unit consists of all full time deputy sheriffs and all full-time sergeants. There are approximately fifteen or sixteen members of the two bargaining units.

This is an initial contract between the parties and they are to be commended for narrowing the issues going to conciliation to only two.

SICK LEAVE CONVERSION AT RETIREMENT:

Employer's position

The Employer proposes to allow employees with at least ten (10) years of service who have accumulated one thousand (1,000) hours or less of sick leave, as of the date of this collective bargaining agreement, to convert up to two hundred fifty (250) hours of sick leave at the rate of pay at retirement, to a maximum of six hundred (600) hours.

The employer argues that this amount is greater than the amount provided by O.R.C. 124.39.

The employer's proposal protects the interests of the five employees eligible for retirement but limits future benefits by placing a limit on the future economic impact.

The second part of the Sick Leave issue is covered in 19.14 where employees with more than five hundred (500) hours of accumulated sick

leave would be authorized to annually cash in up to two hundred fifty (250) hours.

The employer notes that the current county policy does not provide for annual cash out.

Finally, the employer notes that the Fact Finder in his report, removed the ten year threshold for the sick leave buyout, a result neither the Union nor the Employer sought.

Union Position:

The Union desires to maintain the current county policy and past practice and incorporate the same into the Collective Bargaining Agreement. They note that the County proposal would be a disadvantage for employees in the future and argue that the Sheriff, under the previous and current administrations, has provided annual cash out of sick leave.

To prove this point, the actual payout records of several employees were provided. The Union provided several cases on point that illustrate that past practice should be considered even in cases of an initial contract.

Particularly relevant was an older case (6 LA98, 101) written by Arbitrator Clark Kerr in which he notes: "The arbitrator considers past practice a primary factor. It is standard form to incorporate past conditions into collective bargaining contracts, whether these contracts are developed by negotiation or by arbitration. The fact of unionization creates no basis for the withdrawal of conditions previously in effect."

This case differs in that the past practice was not initiated by the County legislative authority, but by a county office holder operating in opposition to the existing County policy.

In addition the County is proposing an arrangement in which they would include a reference in the new contract that does allow for annual buy out.

Finally, the fact one party does create a past practice does not compel them to forever keep that practice if a change can be obtained through the negotiations process.

Discussion and award.

The County, as a prudent employer, is attempting to guard against large unpredictable unfunded liabilities, by re-writing their future sick leave buy-out provisions. They have protected those persons who are currently eligible to retire, and have added an annual provision that allows employees to cash out a share of their unused sick leave.

I am persuaded that the employer's position on sick leave should be awarded.

The Contract language shall read:

Section 19.11 Sick Leave Conversion Upon Retirement. ANY EMPLOYEE WHO, AS OF THE DATE OF THE EXECUTION OF THIS AGREEMENT, HAS ACCUMULATED 1000 HOURS OR LESS OF SICK LEAVE MAY, upon retirement under the Public Employees Retirement System, ~~employees may convert one-fourth of their accumulated sick leave to a maximum amount of conversion of two hundred FIFTY (250) forty (240) hours at the employee's rate of pay at the time of retirement.~~ ANY EMPLOYEE, WHO, AS OF THE DATE OF EXECUTION OF THIS AGREEMENT, WOULD BE ENTITLED TO SICK LEAVE CONVERSION IN EXCESS OF 250 HOURS UNDER THE EXISTING METHODOLOGY

OF ALLOWING ½ OF ALL HOURS ACCUMULATED, SHALL BE ENTITLED TO THOSE HOURS UPON RETIREMENT. NO ADDITIONAL HOURS ABOVE THOSE CURRENTLY ACCURED SHALL BE CONSIDERED FOR PURPOSES OF CONVERSION. Additionally, to be eligible for sick leave conversion at retirement the employee must have worked for the Sheriff's Office at least ten (10) years immediately prior to retirement. The ten (10) years of service must be immediately prior to retirement with no break in service. Upon conversion of sick leave all hours of accumulated sick leave will be deemed waived. No employee may have more than one conversion from the County.

Section 19.14 shall read:

Section 19.14 Annual Conversion. Employees who have accumulated unused sick leave credit in excess of **FIVE HUNDRED (500)** ~~six hundred (600)~~ hours shall annually have the option of receiving a cash benefit conversion at one hundred percent (100%) for part of the balance of their unused sick leave. Employees shall be permitted to receive a cash payment for up to two hundred **FIFTY (250)** ~~forty (240)~~ hours of accrued, but unused sick leave provided that the cashing out of sick leave does not reduce the sick leave benefit bank below **FIVE HUNDRED (500)** ~~six hundred (600)~~ hours. The cash benefit conversion shall equal one (1) hour of base rate pay for every two (2) hours of accrued, but unused sick leave converted. Any employee who wishes to exercise the sick leave conversion option must notify the Sheriff or his designee in writing no later than the tenth of November each year.

WAGES:

Background

The parties have previously reached agreement that there will be no wage increase in 2003. Likewise, they have agreed that there will be a wage re-opener for 2005. Thus, the only area of disagreement is the wage rate for calendar year 2004. (The parties have also agreed on Section 2: Longevity Pay.)

Union Position:

At Fact Finding the Union sought an increase of 7%. The Fact Finder recommended 3.5%. The Union is willing to accept his

recommendation and has adopted it as their final offer for the purposes of Conciliation.

To guide the conciliator in the area of comparable jurisdictions, the Union provided information from the contiguous counties including Allen, Auglaize, Hancock, Marion and Union. These counties show an average starting salary for Sergeants of \$40,776.36. Hardin County has a starting salary of \$31,886.40. The top salary for sergeants is much closer to the average of \$44,453.68 (Hardin County is \$43,059.20)

Using the same counties, (plus Wyandot) Deputy Sheriff's are \$6,988.87 less than the average. (Average = \$29,868.87; Hardin County = \$22,880.00). The top is even more dramatic with a differential of \$11,037.83 (Average = \$37,537.03; Hardin County = \$26,499.20).

When one examines the increases awarded in these same comparable counties the average is 3.3% [not including Union Country which had a 10% increase]. For Sergeants the average is 3.75%.

Employer's Position

The employer proposes an across the board increase of 30 cents per hour for all employees in 2004.

The County did a very effective job of demonstrating the extremely difficult financial situation the county faces. The total appropriation for 2003 was \$6,128,378 and is reduced to \$5,815,793 for 2004. The immediate economic projections do not give reason to expect an upturn in the near future.

The County would be hard put to fund the thirty cent, across the board increase, but would find the funds to do so.

It was noted that other County employees are not receiving any wage increases.

Discussion and Award

This is a difficult matter. There is no doubt that Hardin County, like so many other political subdivisions, is suffering from very limited funding sources.

It is also apparent that the employees in these two bargaining units have not been compensated adequately.

The external comparables strongly favor the union. The internal comparables strongly favor the employer.

If this were Fact Finding, this neutral would have the ability to “tinker” with the pay structure and find some middle ground. It is not. This is conciliation and I must pick the position of one of the parties.

The structure proposed by management is problematic to me. Across the board pay increases do nothing to maintain the relative positions of the persons within the units, and also do not meaningfully address any inequities within the existing pay structure.

While I am not convinced that either position is the “right answer” I believe, in light of the fact the employees received no increase in 2003, and giving due deference to the opinion of the fact finder, I award the Union’s position regarding wages.

Specifically the contract shall read:

Section .01 Wages Effective January 1, 2004, all employees shall receive a three and one-half percent (3.5%) wage increase.

After giving due consideration to the positions and arguments of the parties and to the criteria enumerated in ORC 4117.14(G)(7) the Conciliator awards the above stated positions. Specifically those criteria are:

- 4117.14(G)(7)(a) Past collectively bargained agreements, if any, between the Parties;
- 4117.14(G)(7)(b) Comparison of the issues submitted to the 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;
- 4117.14(G)(7)(c) 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;
- 4117.14(G)(7)(d) The lawful authority of the public employer;
- 4117.14(G)(7)(e) The stipulations of the Parties;
- 4117.14(G)(7)(f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the 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.

In addition, all agreements previously reached by and between the parties and tentative agreed to, are hereby incorporated by reference into this Conciliation Report, and shall be included in the resulting Collective Bargaining Agreement.

Respectfully submitted and issued at London, Ohio this fourth day of

March, 2004.


N. Eugene Brundige, Conciliator

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Conciliator's Report was sent by regular U.S. mail to:

Dale A. Zimmer, Administrator
Bureau of Mediation
State Employment Relations Board
65 East State Street, 12th. Floor
Columbus, Ohio 43215-4213

And

Matthew B. Baker, Attorney and Advocate
For the Ohio Patrolmen's Benevolent Association
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And

Rufus B. Hurst, Attorney and Advocate
Downes, Hurst & Fishel
For Hardin County Sheriff
400 South Fifth Street – Suite 200
Columbus, Ohio 43215

this 4th Day of March, 2004.


N. Eugene Brundige,
Conciliator