

HAND DELIVERED

STATE EMPLOYMENT
RELATIONS BOARD
2004 JUN -8 P 3:46

Conciliation Report and Award
in the matter of Conciliation between
the Montgomery County Sheriff's Office

and

the Fraternal Order of Police/Ohio Labor Council Inc.
FOP Lodge #104

SERB Case No: 03-MED-10-1257

MARCUS HART SANDVER, Ph.D.
CONCILIATOR

Representing the County:
Mr. Jonathan J. Downes
Attorney at Law
Downes Hurst & Fishel
400 S. Fifth St. Suite 200
Columbus, Ohio 43215-5492

Representing the Union:
Mr. Ross Rader
Staff Representative
FOP/OLC Inc.
222 E. Town St.
Columbus, Ohio 43215

Hearing Date: May 26, 2004
Decision Issued: June 8, 2004

I. Background

This dispute arises out of a negotiation between the Montgomery County Sheriff (the employer) and the Fraternal Order of Police/Ohio Labor Council Inc. Lodge 104 (the union). These negotiations involved a successor agreement to a collective bargaining agreement that had expired on December 31, 2003. The parties had met several times in an attempt to negotiate a new agreement. These include meetings on November 18, 2003, November 25, 2003, December 11, 2003, December 15, 2003, December 23, 2003, January 12, 2004*, January 20, 2004*, January 28, 2004*, and March 31, 2004 (*These negotiations were assisted by SERB mediator, Ed Taylor). The case was submitted to factfinding on February 5, 2004 before Ann C. Wendt, Ph.D. The Factfinding report was not accepted by both parties. The dispute was submitted to conciliation and by mutual agreement of the parties Marcus Hart Sandver was chosen as the conciliator. The conciliator mediated the dispute, unsuccessfully, on May 19. The hearing date for conciliation was chosen by mutual agreement of the parties as May 26, 2004.

II. The Hearing

There was 2 hours of prehearing mediation. The hearing convened officially at 11:00 a.m. in the 11th floor conference room of the Montgomery County Administrative Building. The parties were notified that the hearing would be conducted in conformity with the rules for conciliation as found in O.R.C. 4117 and associated administrative rules as promulgated by S.E.R.B. The parties were notified by the conciliator that it was his intention that articles previously agreed to by the parties in negotiations (tentative agreements) should be incorporated into this conciliation award.

In attendance at the hearing for Montgomery County were:

1. Mr. Jonathan Downes Counsel
2. Mr. Steve Rigler Major
3. Mr. Phil Plummer Major
4. Mr. Jeff Busch Major
5. Mr. Gary Drummer Major
6. Ms. Brenda Gisewite Confidential Secretary
7. Mr. Denton Witney

In attendance at the hearing for the FOP/OLC Inc. were:

1. Mr. Shawn Baab President FOP Local #104/Deputy
2. Mr. David Concannon Deputy
3. Mr. Thomas Combs Deputy
4. Mr. Matthew Poulton Deputy
5. Mr. Chuck Comer Deputy
6. Mr. Rick Bergman Lodge 104 Sgt. of Arms
7. Mr. Ross Rader FOP/OLC Representative

The parties were asked to submit exhibits into the record. Both produced extensive multi-tabbed notebooks that included copies of the prehearing briefs (timely received) and extensive comparability wage and benefit data. The exhibits were marked Union #1 and City #1 respectively. The parties were allowed the opportunity to make opening statements. Both parties waived the opportunity to make opening statements. The parties requested to the conciliator that they be allowed to proceed directly to a discussion of the issues. The conciliator agreed. The parties asked if they could present both issues at the same time. The conciliator agreed. The

FOP representative asked if he could modify his final offer presented in his pre-hearing brief at the hearing. The conciliator asked the county representative if he objected to this request. The county representative responded that he had no objection to a modification of the union's position. The county representative then requested if he could proceed with his presentation of the two unresolved issues first. The conciliator asked the union representation if he objected to the county making the first presentation on the issue and the union representative responded that he did not.

III. The Issues

1. Wages. Article 26 Section 1.

A. County Position

The county's position on this issue is to offer a \$1700 lump sum payment upon the signing of the agreement to every member of the bargaining unit. The contract shall take effect January 1, 2004 but there shall be no step increases for 2004. In year 2 of the contract (2005) there shall be a 2% raise to the wage scale and in the 3rd year of the contract (2006) there shall be a 2% increase to the scale of the contract.

2. Article 30 Section 2. Insurance

A. County Position

Effective January 1, 2004 employees shall pay 10% of the cost of their health insurance premium with a cap of \$80. Effective July 1, 2006, the cap shall be increased to \$100.

1. Wages Article 26 Section 1

B. Union Position

The union proposal on this issue would be to propose a 1 ½ percent increase to the scale

retroactive to 1/1/04 to those employed by the county as of the date of the conciliation award. In the second year of the agreement, wages would raise by 2 percent to the scale effective 1/1/05. In the 3rd year of the contract, wages would increase 2 ½ percent to the scale effective 1/1/06.

1. Insurance Article 30 Section 1

B. Union Position

In this proposal the union would agree with the county to increase the premium to an \$80 cap on July 1, 2004 and increase the cap on health insurance to \$100 on July 1, 2006.

IV. Discussion

This is a case that I have spent more time on, and have had more involvement in, than most. Perhaps it is because of the issues involved, perhaps it is because both parties have such good arguments on each side of the case and have presented them so well. In addition, of course, we have the factfinding decision of Dr. Ann Wendt to consider.

The Wendt report certainly discloses some eye opening and discouraging economic data about the current economic plight of Montgomery County. Long regarded as one of the most successful and prosperous counties in Ohio, data compiled recently by the Montgomery County Administrator's Office reveals quite a different picture. At the factfinding hearing the county administrator testified that she had been with the county for 22 years and that she has "never known a time when the county budget has been this difficult to balance." She further went on to testify that "we are facing the most difficult times we have ever faced" (Wendt factfinding report p.2). Sales tax revenues for the county are flat and/or declining. Montgomery county is seeing businesses flee to surrounding Greene, Warren and Miami counties at a significant rate; especially to Greene County. The retail base that had been established in Montgomery County is

receding (e.g., Salem Mall) and is not being replaced. A National City Bank economic report quoted in the Wendt report estimated that Montgomery County had declined from 64 percent of the retail sales in the area to 61 percent. The report further estimated that between 1997 and 2002 Montgomery County had lost 10,400 manufacturing and other high paying jobs (Wendt p.3).

Not only have retail sales and manufacturing jobs been declining in Montgomery County but the county's investment portfolio had been suffering as well. The county had documented a loss of \$12,000,000 in investment income between 1999 and 2001. Admittedly, the technology bubble that "burst" in 2000 cost a lot of investors billions of dollars; but here is a concrete example of how a small county, with a tight budget anyway, gets really pounded by a catastrophic loss in the market. To make matters worse, risk adverse investors who moved into the bond market after 9-11, drove fixed income security investments often used by municipalities and counties to record low rates of interest.

The local government fund is a substantial source of monies to Montgomery County but the security of this fund in the future is open to serious doubt. The politics of the local government fund are very problematic and could mean the reduction of \$5-8 million in revenue to Montgomery County almost overnight should the legislature decide to eliminate these funds. Prudent county administrators must take these factors into consideration to protect the safety and welfare of the residents. What this means is that some budgets will get reduced, some capital improvements get postponed, some vehicles don't get replaced, and some vacancies don't get filled.

Under Ohio state law the county sheriff is required to provide and staff a county jail, to

provide court security and to serve court notices to the citizens of the county. But almost all County Sheriffs in Ohio provide a much wider range of services to the citizens than this including road patrol, SWAT teams, drug enforcement, detective investigation and DARE Programs. County Sheriffs, City Police, and the State Patrol all form a web of law enforcement that protect and defend the citizens of this state in an efficient and effective way. I travel a lot by car from Ohio to Kentucky, Tennessee and Alabama (where my mother lives), and I am proud when I come back to Ohio and the people on the road obey the speed limit. In many southern states it is an "open secret" that law enforcement is so underfunded and so undervalued by the citizens that the freeways are almost like racetracks. I have often driven the length of the state of Alabama and not seen one law enforcement officer. I've been passed by trucks when I was driving 75.

The point here is that people in Ohio recognize the value of law enforcement to their cities and counties and state. They also realize that law enforcement officers have to be paid a living wage if they are going to be able to provide the type of skilled work, long hours, and hazardous working conditions that goes with being in the field of law enforcement. Being a police officer is unlike almost every other job. It requires diplomacy, physical strength, judgment under extremely stressful situations, compassion for those in grief, decisiveness, courage and stamina. To find and retain personnel with these types of attributes means that the employer (read "the county") may sometimes have to treat law enforcement employees differently from other employees and may have to draw down a little more from other municipal financial "pools" in times of fiscal crisis to fund law enforcement than it might for other county employees.

The factfinder was facing a far different set of positions at the conclusion of her hearing

than I was at the conclusion of mine. Of course, it is no accident and no secret that I had spent a full day with the parties a week before the conciliation and 2 hours with them before the hearing.

The choice between the two positions on the wage issue for me hinges on the fact that the 1 ½ percent would be retroactive to 1/1/04, would include “steps” and would count as a Police and Fire Pension Year of credit. These are all pluses for the deputies and their families. The movement “down” to 1 ½, 2 & 2 ½ from 2 ½, 2 ½, 2 ½ at factfinding is a significant movement for the FOP/OLC. It definitely illustrates one of the theoretical and practical advantages of final offer interest arbitration, namely that during the process the parties will be motivated to move to the middle to a more reasonable position rather than steadfastly sticking to an untenable position that the arbitrator would not choose.

The movement on the issue on health insurance is a realization that both parties are going to have to shoulder more and more of the increasingly expensive medical care available in the United States. Every day we read about some new advance in the science of medicine in the newspapers. People have the ability to survive diseases they never could before. People routinely live to 90 and 100 years old. It is expensive to provide this type of care; someone has to pay for it. We are the ones who pay the bills. There is no end in sight.

V. Award

Wages. The union position on wages is awarded.

Year 1. 1/1/2004. 1 ½ percent increase to scale.

Year 2. 1/1/2005. 2 percent increase to scale.

Year 3. 1/1/2006. 2 ½ percent increase to scale.

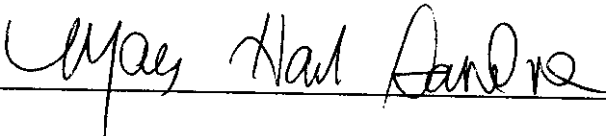
Insurance. The employer position is awarded.

July 1, 2004. Premium split 90% employer 10% employee. \$80 cap to employee.

July 1, 2006. Premium split 90% employer. 10% employee. \$100 cap to employee.

VI. Certification

This Conciliation Decision and Award is based upon evidence and testimony presented before me at a conciliation hearing I conducted on May 26, 2004 in Dayton, Ohio.



MARCUS HART SANDVER, Ph.D.

CONCILIATOR

COLUMBUS, OHIO

JUNE 8, 2004

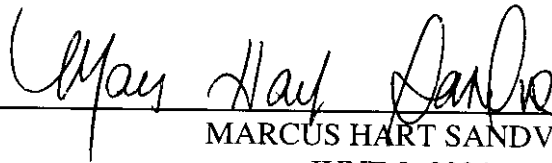
CERTIFICATE OF SERVICE

I hereby certify that the foregoing Decision and Award of Conciliation in the matter of Montgomery County and the FOP/OLC Lodge 104 was filed with the State Employment Relations Board by mail on June 8 and was hand delivered on June 8 to

Jonathan Downes
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400 S. 5th St. Suite 200
Columbus, Ohio 43215

and

Mr. Ross Rader
Staff Representative
FOP/OLC Inc.
222 E. Town St.
Columbus, Ohio



MARCUS HART SANDVER

JUNE 8, 2004

COLUMBUS, OHIO