

STATE OF OHIO

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STATE EMPLOYMENT RELATIONS BOARD

CONCILIATION AWARD

June 23, 2005

In the Matter of:

Lorain County Sheriff

and

Lorain County Deputy Association

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Case No. 04-MED-05-0627
Deputy Unit

APPEARANCES

For the City:

Robin L. Bell, Attorney for Employer
Howard Hefelfinger, Labor Consultant

For the Union:

Robert M. Phillips, Attorney for Union
Bryan Barnes, President

Conciliator:

Nels E. Nelson

BACKGROUND

The instant case involves the Lorain County Sheriff and the deputy sheriffs who are represented by the Lorain County Deputy Association. When the parties were unable to reach agreement on a successor to the contract expiring October 31, 2004, Jonathan I. Klein was appointed as the Factfinder on November 23, 2004. A hearing was held on February 4, 2005, and Factfinder Klein issued his report and recommendations on March 19, 2005. The sheriff accepted the Factfinder's recommendations but the union rejected them.

The Conciliator was appointed on April 12, 2005. The parties submitted their pre-hearing statements on June 1, 2005. On June 6, 2005, the union provided a modified position statement that reflected a reduction in two of its economic demands as well as the settlement of two issues.

The conciliation hearing was held on June 7, 2005. At the commencement of the hearing, the sheriff objected to the union's submission of revised final offers. After addressing that issue, the parties presented testimony and evidence in support of their positions. When an attempt to mediate the dispute failed, this decision was prepared.

The Conciliator is required to select the offer of one party or the other without modification. The selection between the final offers is based upon the criteria set forth in Section 4117.14(G)(7) of the Ohio Revised Code. They are:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

- (c) The interest and welfare of the public, and 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;
- (d) The lawful authority of the public employer;
- (e) The stipulations of the parties;
- (f) Such other 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, fact-finding, or other impasse resolution procedures in the public service or in private employment.

ISSUES

The Conciliator is faced with two tasks. First, he must respond to the sheriff's objection to the union's submission of a revised final offer. Second, the Conciliator must select a final offer for each of the issues submitted to him.

Procedural Issue - The Conciliator feels compelled to comment on the sheriff's objection to the modified final offers submitted by the union even though neither was selected. As indicated above, the revised final offers were provided on June 6, 2005, which was the day before the hearing. While it appears that the union discussed its revisions with the sheriff, the union did not claim that the sheriff agreed to its submission of the modified offers.

The Conciliator believes that he had the authority under the Ohio Administrative Code to accept the union's revised final offers. Section 4117-09-06(E) of the OAC states:

If, after submission of the parties' reports, mediation efforts result in a change in a final offer, a party may, with the permission of the conciliator, submit a revised final offer to the conciliator.

While this barred the Conciliator from accepting the union's modified final offers prior to the hearing, it gave him the authority to accept them after his brief attempt at mediation.

Merits - The parties submitted final offers for three issues. For each issue, the Conciliator will set forth the current contract provision, summarize the positions of the parties, and discuss the rationale for his selection of a final offer.

1) Article 32 – Uniforms, Section 32.2 – The current contract provides for an annual uniform allowance of \$700 per year to be paid no later than May 1 of each year. The union proposes that the uniform allowance be increased to \$750 in the first year of the contract and to \$800 in the third year. The sheriff offers to increase the allowance to \$750 in the first year of the contract but offers no further increase.

Union's Position – The union argues that internal equity supports its position. It points out that the promoted deputies unit currently receives a uniform allowance of \$750 per year. The union notes that it is simply asking to get the same amount in 2005 as the supervisors. It indicates that it is asking for an additional \$50 increase in the third year of the contract because the promoted unit is sure to seek an increase in its allowance next year when it negotiates a new agreement.

The union contends that the road deputies can make a stronger case for a boost in the uniform allowance than their supervisors. It claims that the road deputies' uniforms are subject to more wear and tear than their supervisors' uniforms. The union insists that the road deputies need more money than the supervisors to maintain a professional appearance.

The union states that its demand is also justified by the new procedure followed by the county for the uniform allowance. It reports that the county now withholds 25%

of the uniform allowance for taxes. The union observes that this results in less money for the deputies.

Sheriff's Position – The sheriff argues that its offer for the uniform allowance ought to be selected. It stresses that its offer to increase the allowance to \$750 in the first year of the contract brings the deputies up to the level of the supervisory unit. The sheriff believes that no further increase is justified at this time.

The sheriff acknowledges that the uniform allowance in Lorain County is less than in the comparable districts.¹ It points out, however, that wages and longevity in Lorain County are more than in the comparable counties. The sheriff insists that this more than compensates for the somewhat lower uniform allowance.

The sheriff indicates that its offer is what Factfinder Klein recommended. It asserts that his recommendation was well-reasoned and based on the fact that supervisors received a \$750 per year uniform allowance. The sheriff states that the Factfinder's recommendation ought to be adopted by the Conciliator.

Analysis – The Conciliator must select the union's final offer. There is no reason for the road deputies to receive a lower uniform allowance in 2005 than the \$750 per year allowance received by their supervisors. Furthermore, the Conciliator anticipates that when the supervisors bargain a new contract next year, they will be able to make a case for a modest increase in their uniform allowance. Without the additional \$50 per year increase in the third year of the contract proposed by the union, the road deputies are likely to fall behind their supervisors.

¹ For the purposes of this conciliation, the parties accepted Factfinder Klein's suggestion that the Lake, Mahoning, Stark, Summit, and Trumbull sheriffs' departments ought to be considered to be comparable departments.

The Conciliator believes that his selection of the union's final offer for the uniform allowance is consistent with his selection of the sheriff's final offer for wages. The sheriff's wage offer calls for only modest increases in compensation over the term of the agreement. While the relatively small wage increases are offset by the reduction in employee health increase premium contributions, the modest salary increases should not be allowed to make it difficult for deputies to maintain the professional appearance that the sheriff and the public expects.

Award – The Conciliator selects the union's final offer for the uniform allowance. It is as follows:

Section 32.2. Non-probationary employees shall be provided with an annual uniform allowance account as follows:

A. The annual allowance for the classifications listed below shall be as follows:

<u>Classification</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
Evidence Officer	\$750	\$750	\$800
Patrol Officer	\$750	\$750	\$800

Payment for such uniform allowance shall be made to each employee not later than May 1st of each year.

2) Article 36 – Wages, Sections 36.1, 36.2 & 36.3 - The current contract establishes a maximum rate of \$20.59 per hour for evidence officers and \$23.39 per hour for patrol officers. The union's modified final offer seeks to increase these amounts by 2% effective the first full pay period of the 2005, 2006, and 2007 fiscal years. The sheriff offers increases of 1.25% effective in 2005 and 1.5% in 2006 and 2007.

Union's Position – The union argues that comparisons to increases received by other departments support its demand. It indicates that SERB Benchmark

data shows that deputies in Stark County received a 3% wage increase in 2005 and claims that the yet-to-be-negotiated increases will exceed those offered by the sheriff. The union worries that unless its offer is selected, its rank among the comparable counties will fall.

The union contends that the county is in good financial condition. It reports that the county's debt is comparatively modest. The union stresses that the county received a AA bond rating from Fitch for the General Obligation Bonds it issued in 2004 and a Aa3 for the same bonds from Moody's.

The union maintains that the sheriff can pay its wage demand. It point out that its demand represents only increases of .75% and .50% over the Factfinder's recommendation. The union claims that this involves only \$50,000 in added expense, not counting roll-up or pension contributions. It insists that even when roll-up and pensions are included the cost pales in comparison to the county's \$21 million carryover.

The union acknowledges that the last collective bargaining agreement provided substantial wage increases. It stresses, however, that those increases only bought employees up to a comparable level. The union complains that the wage increases proposed by the sheriff will not be sufficient for the department to maintain its rank with respect to wages.

The union also recognizes that the sheriff has agreed to decrease employee contribution for health insurance premiums. It states, however, that the increases in health insurance premiums for the county have been relatively modest. The union further claims that the county is simply trying to make premium contributions the same for all county employees.

The union maintains that the sheriff's decision to limit grand jury appearances for deputies supports its wage demand. It reports that deputies who appear before the grand jury receive time and one-half for a minimum of three hours. The union complains that the new procedure where one deputy is responsible for presenting cases to the grand jury will eliminate a source of income for deputies.

The union challenges the sheriff's position that no additional wage increase is possible. It rejects the notion that once the budget is adopted by the Board of Commissioners that it must accept the budgeted amount. The union complains that it is not getting "a fair share of the pie." It adds that Jim Cordes, the County Administrator, acknowledged that other internal bargaining units received 2% or 3% wage increases in 2005 and that the County has a "strong, stable position and a bright outlook."²

Sheriff's Position – The sheriff argues that its wage offer is more equitable in light of the agreed-upon reduction in employee health insurance premium contributions. It points out that employees currently pay \$86 per month for family coverage and that the contract requires employees to pay 50% of any increase in premiums up to \$25 per month each year. The sheriff claims that this would result in employee contributions of \$111 per month in 2005, \$136 per month in 2006, and \$171 per month in 2007. It states that with the agreed-upon \$35 per month cap on employee contributions, employees with family coverage will save \$912 in 2005, \$1212 in 2006, and \$1512 in 2007.

The sheriff contends that the lower health insurance payment coupled with its wage offer results in a substantial increase in what Factfinder Klein termed "realized

² While Jim Cordes did not testify at the conciliation hearing, the parties stipulated as to his testimony at the factfinding hearing as reported by Factfinder Klein.

compensation.” It observes that he stated that the combination of his recommended wage increases of 1.25% in 2005 and 1.5% in 2006 and 2007 and health insurance savings would result in “realized compensation” worth 3.15% in 2005, 4.0% in 2006, and 4.5% in 2007. The sheriff notes that using the same methodology, the increase in “realized compensation” for employees with single coverage would be 2.5% in 2005, 3.3% in 2006, and 3.9% in 2007.

The sheriff maintains that its offer to the deputies exceeds that accepted by the other Lorain County general fund agencies. It indicates that a majority of them have negotiated wage increases of 1%, 1.5%, and 1.5%. The sheriff notes that the same economic package has been granted to non-bargaining unit employees by the Board of Commissioners.

The sheriff asserts that county office holders have traditionally engaged in bargaining with their respective bargaining units based on the funds agreed upon by the Commissioners. It states that in the previous round of bargaining the Commissioners negotiated increases of 5% plus \$1, 5%, and 5% with its general employees’ bargaining unit in order to correct pay inequities for that group. The sheriff stresses that the Commissioners agreed to fund the same increase for the patrol deputies even though they were not underpaid compared to other jurisdictions. It insists that since this bargaining unit has “reaped the benefits of the County’s generosity ... [it] should now be asked to tighten its belt with the rest of the County.” (Department Hearing Brief, Tab 4)

The sheriff observes that the union enjoys wages and longevity that exceed those of most of the comparable jurisdictions. It points out that in 2004 the average wage for the five comparable departments was \$20.09 per hour compared to \$23.39 per hour in

Lorain County, which is exceeded only by Lake County. The department notes that including both wages and longevity at 30 years, in 2004 the average annual compensation for the five comparable departments was \$43,200.44 compared to \$51,471.20, which places Lorain County first among the comparable departments.

The department reports that its wage offer will maintain its rank among the comparable departments. It observes that assuming 3% wage increases in the other departments, its hourly wage will rank second among the comparable departments in 2007 and will exceed the projected average wage by \$2.45 per hour. The department indicates that when longevity at 30 years is included along with wages, it will rank second among the comparable departments and will be \$6,471.37 above the average.

The department maintains that the \$21 million carryover referred to by the union is not available to fund wage demands. It points out that Cordes testified that only \$300,000 to \$500,000 of the carryover is unappropriated cash and that \$3.3 million is set aside in a rainy day fund. The department notes that Cordes also reported that the county will receive less funding from the state next year and that it will repeal a 1% sales tax.

Analysis – The Conciliator must choose the sheriff's final offer for wages. First, the agreed-upon change in employee health insurance contributions will provide substantial savings for employees. Without any change in the contract, employees with family coverage would have to pay \$111 per month for health insurance for 2005. Under the agreed-upon change in health insurance contributions, employees with family coverage will pay only \$35 per month.

Similar savings will occur in 2006 and 2007. In both years, employees very likely would have been required to pay an additional \$25 per month as a result of their

obligation to pay 50% of any premium increases up to a maximum of \$25 per month. This would be in addition to the \$111 they would be required to pay in 2005.

Second, despite the small wage increases offered by the sheriff, the department will remain near the top of wages among the agreed-upon comparable departments. As the sheriff pointed out, the department will rank second among the comparable departments in wages and in wages and longevity combined. In both comparisons, the department will continue to exceed the average for the comparable departments by a significant amount.

Third, the selection of the sheriff's final offer is supported by internal comparisons. The evidence indicates that the deputies have generally received the same increases as other county employees, including the prior round of bargaining when the deputies received the substantial wage increases that had been granted to other employees the prior year. This pattern should not be broken because other bargaining units have accepted lower wage increases in this round than the deputies would have preferred.

Fourth, the fact that the sheriff adopted Factfinder Klein's recommendation for wages is entitled to significant weight. He carefully summarized and reviewed the evidence presented by the parties at the factfinding hearing. Factfinder Klein concluded that increases of 1.25% in 2005 followed by increases of 1.5% in 2006 and 2007 were appropriate given the \$35 per month cap on employee health insurance contributions.

Award – The Conciliator selects the sheriff's final offer for wages. It is as follows:

Section 36.1 Effective the first, full pay period in County Fiscal Year 2005, the hourly base rates of pay for bargaining unit employees shall be increased one and one-quarter percent (1.25%) as follows:

Classification	Probationary Rate	1 st Year Rate	2 nd Year Rate	Maximum Rate
Evidence Officer	\$17.53	\$18.63	\$19.73	\$20.85
Patrol Officer	\$20.03	\$21.25	\$22.48	\$23.68

Section 36.2 Effective the first, full pay period in County Fiscal Year 2006, the hourly base rates of pay for bargaining unit employees shall be increased one and one-half percent (1.5%) as follows:

Classification	Probationary Rate	1 st Year Rate	2 nd Year Rate	Maximum Rate
Evidence Officer	\$17.79	\$18.91	\$20.03	\$21.16
Patrol Officer	\$20.33	\$21.57	\$22.81	\$24.04

Section 36.3 Effective the first, full pay period in County Fiscal Year 2007, the hourly base rates of pay for bargaining unit employees shall be increased one and one-half percent (1.5%) as follows:

Classification	Probationary Rate	1 st Year Rate	2 nd Year Rate	Maximum Rate
Evidence Officer	\$18.06	\$19.19	\$20.33	\$21.48
Patrol Officer	\$20.63	\$21.89	\$23.16	\$24.40

2) Article 39 – Physical Abilities Testing, Section 39.3 - The current contract has a provision for annual physical abilities testing. While the contract makes the testing a requirement for all employees, a Letter of Understanding indicates that the test is voluntary for existing employees. Under Section 39.3, employees who pass the test are paid an incentive bonus of \$750. The union proposes increasing the bonus to \$850. The sheriff opposes the union’s demand.

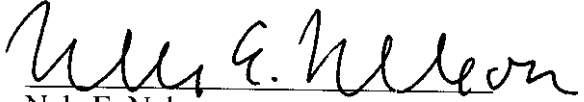
Union’s Position - The union argues that its demand ought to be selected. It states that since the sheriff has proposed minimal wage increases, its demand

for an increase in the bonus for passing the physical abilities test ought to be granted if the sheriff's wage proposal is selected.

Sheriff's Position - The sheriff argues that the union's demand ought to be rejected. It contends that the union provided no comparable data to support its demand or other justification for an increase in the bonus. The sheriff indicates that if the increase is granted, it will have to come out of the sheriff's existing budget.

Analysis - The Conciliator must deny the union's demand for an increase in the physical testing bonus. Lorain County is one of the few jurisdictions that grant a bonus for physical testing. Since its deputies are already paid significantly more than all but one of the comparable departments, there is no justification to increase the bonus at this time.

Award - The Conciliator selects the sheriff's final offer of the current contract language.


Nels E. Nelson
Conciliator

June 23, 2005
Russell Township
Geauga County, Ohio