

**STATE EMPLOYMENT RELATIONS BOARD
CONCILIATION**

STATE EMPLOYMENT
RELATIONS BOARD

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BETWEEN:

VAN WERT COUNTY SHERIFF

AND

Serb Case No. 04 MED 09-0904

**FRATERNAL ORDER OF POLICE
OHIO LABOR COUNCIL, INC.**

APPEARANCES:

For the City:

Marc A. Fishel, Esq.
Downes, Hurst & Fishel

For the Union:

Jackie Wegman, FOP Representative
Marc Drum, FOP Staff

OPINION AND AWARD OF THE CONCILIATOR

Janet C. Goulet. Ph.D.

Conciliator

Present at the hearing

For the Union:

Jackie Wegman
Mark Drum
Jeremy Carlson

For the Employer:

Marc Fisher, Esq.
Stan Owens, Sheriff
Clair Dudgeon
Nancy Dixon
Sara Lape
Jane Harris

INTRODUCTION

The conciliation hearings took place at the Van Wert County Sheriff's office in Van Wert, Ohio. The parties had been issued a Fact Finding report dated February 23, 2005 by fact finder Daniel L. Merritt, Esq. The Fraternal Order of Police (FOP), the Union, accepted the report while the Employer, the Van Wert County Sheriff, rejected that report and called for conciliation. The Union represents eleven full-time corrections officers, including one sergeant and two corrections supervisors as well as ten part time corrections officers. The Collective Bargaining Agreement (CBA) that expired on December 31, 2004 was the first agreement between the FOP and the Van Wert County Sheriff's Office. The prior CBA was between the Teamsters and the Sheriff's office. Currently, another bargaining unit, the road deputies and other employees are represented by the Teamsters.

STATUTORY REQUIREMENTS FOR PRE-HEARING STATEMENTS

The Employer raised a threshold issue by stating that the Union's pre-hearing statement did not meet the statutory requirements of O.R.C. Chapter 4117, and therefore it should be

disqualified. The Employer quoted 4117.14(G)3 "Not later than five calendar days before the hearing, each of the parties shall submit to the conciliator, to the opposing party, and to the board, a written report summarizing the unresolved issues, the party's final offer as to the issues, and the rational for that position." According to the Employer, if the Union failed to meet these statutory provisions, only the Employer's position on the outstanding issues should be considered.

The Employer stated that the Union's supplemented statement was deficient with respect to the rational for its positions on the outstanding issues. The Union was in possession of the Employers complete statement with its rational within the requisite time frame while the Employer was at a disadvantage because it did not have the Union's rational.

The Union responded that its statement met the requirements of ORC 4117 and though its initial pre-hearing statement was brief and did not contain the language it proposed, supplemental material was submitted to the Employer and the Conciliator in a timely manner which met the statutory requirement. The Union's position is to accept the Fact-Finding Report and the rational as presented in that report. While the Fact-Finder did not deal with the parity issue the Union gave a rational for its position in it's initial statement.

Decision: The statute requires the pre-hearing statement to be a written summary of: 1) the parties unresolved issues; 2) the parties final offer as the unresolved issues; and 3) the rational

for that position as to the issues. The Union's initial submission gave a listing of the unresolved issues and a weak version of its rationale which for the first three issues simply states that it will abide by the Fact-Finder's decision. For the fourth issue of parity it states that it wants parity because " ... of past economic inequities between the two units." The supplemental information sent to the Employer's representative, (after he requested it) and this conciliator contains the final offer language. I can understand the Employer representative's ire at submitting a thorough pre-hearing statement which details the Employer's thinking on each issue while he received a sentence or less from the Union for the rationale of each of the outstanding issues. However, the Union supplemented pre-hearing statement meets the statutory requirements - just barely.

BACKGROUND

The County's Auditor presented a dour picture of the finances of the County over the past three years. She stated that expenses have outstripped revenues for several reasons. In January of 2005 the appropriations that were passed led to a \$200,000 deficit and departments were asked to give back budgeted funds. There were no pay raises for County employees unless it were required by statute. Equipment appropriations for the Sheriff were reduced to the bare minimum. Depository investment income will probably be reduced because of the now lower interest rates. In addition, health insurance premiums are increasing and the county home requires a substantial subsidy and needs a new roof.

The County's spending may be criticized in that it funds a nursing home (the County Home) which most counties have long since turned over to private ownership. Be that as it may, these are policies of the County Commission, with historical precedence, that are not subject to change by this conciliation. However, the Commission must be aware that expenditures such as these hurt the employees of the County because now it claims that there are no funds available for wage increases.

OPINION AND AWARD ON THE ISSUES AT IMPASSE

The parties submitted their written reports summarizing the unresolved issues, the party's final offer as to the issues, and the rationale for that position in a timely manner. (See discussion above.) This Conciliator has carefully considered all the material submitted as well as the Fact-Finding Report, testimony, evidence and argument advanced during the hearings whether or not the specific information is cited herein. The record of the hearings was closed on June 3, 2005 and this award is consistent with the Conciliation Guidelines found in O.R.C. 4117.14 (G) 7 (a through f):

4117.14 (G) (7) After hearing, the conciliator shall resolve the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the parties final settlement offers, taking into consideration the following:

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 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.

The issues before this conciliator follow. All other CBA provisions not covered in the Conciliation Award are considered to be settled and the implementation of this Award will complete the CBA.

ISSUES

1. Article 24 - Holidays
2. Article 38- Wages
3. New Article - Shift Bidding
4. New Article - Parity

Issue 1: Article 24 - Holidays

The Union's position is that recommended by the Fact-Finder which is that both part time and full time employees should receive time and a half for working a holiday. This change means that part time employees who actually work the holiday receive time and a half. The Employer concurs with this new benefit for part time employees but wants to include a change in this article that would

limit the number of rescheduled days off available for full-time employees. Currently, full-time employees may reschedule 10 days off in lieu of holiday pay. The Employer wants to reduce this number to five because the Sheriff needs staff on duty to cover shifts. It is noteworthy that no other employees of the Van Wert County Sheriff's Department have the ability to take holidays as rescheduled time off.

Decision: The Fact-Finder's recommendation is awarded for Holidays: "Part time bargaining unit members who actually work on a scheduled holiday shall be paid time and one half for all hours worked. No other changes suggested by the Employer or the Union are recommended for adoption."

Issue 2: Article 38 - Wages

The Employer proposes a wage freeze for 2005 which is consistent with what other County employees are experiencing - both represented and not represented staff. It offers a wage reopener for 2006 and 2007 when it hopes that the budget will improve. The Employer presented a thorough analysis of its financial situation which shows a public employer in a difficult situation with little to no carry over to cover eventualities. The County has a population with low per capita income and a high dependency rating and has been classified as situationally distressed by the Ohio Department of Development. The FOP requests that the Fact-Finder's recommendation of three percent for each of the three years of the CBA be awarded. It points out that the members of the bargaining unit are underpaid and that other "catch-up" wage increases have

been awarded. Furthermore, it argues that a wage increase for this bargaining unit is a small amount compared to the entire county's budget.

Decision: On its face, the Fact-Finder's recommendation seems fair and equitable, however, he incorrectly states that the economic picture has improved and is expected to continue to grow in a positive direction. A new shopping center is expected to contribute to revenues in the future, but, currently the budget situation has not improved. The Sheriff's office has implemented austerity measures such as having cars sit for a short time in high visibility areas to save gas. Two employees are off on disability and their salaries were saved and returned to the General Fund. Based on the fact that the Teamster's represented employees have accepted a wage freeze for 2005, I am recommending that this bargaining unit do the same. The Employer's position is awarded. See attached Article 38 Wages, and Wages Article 38 Appendix A.

Issue 3: New Article - Shift Bidding

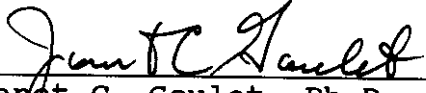
The Union proposes this new article because of problems with scheduling for this bargaining unit. It points out that the deputies and the cooks have schedules posted 90 days in advance. In addition, the Fact-Finder recommended a shift bidding article which the FOP requests that the Conciliator award. The Employer states that this is a management right and the Sheriff should be the one making the scheduling decision.

Decision: The Shift Bidding article recommended by the Fact-Finder is awarded. See Attached.

Issue 4: New Article - Parity

The Union proposes to add this "me too" article which would give this bargaining unit any other benefit or compensation granted to the deputies. It hopes to eliminate the inequities that exist in the current situation. The Employer counters with the argument that this article is much too broad and could eliminate the need for collective bargaining.

Decision: The Fact-Finder did not address this article in his report but both parties agreed that it was properly before this conciliator. The language in the article submitted by the FOP is very broad and open ended. It is not awarded.



Janet C. Goulet, Ph.D. Date: July 18, 2005
Social Security Number: 386-38-8557

NEW ARTICLE: SHIFT BIDDING

Section 1. Non-probationary, full-time employees in the classification of Correction Officer shall have the opportunity to select a regular shift preference every 120 days on the basis of departmental seniority starting May 1st and every four months thereafter. Permanent days off shall be part of the shift selection, unless an employee agrees otherwise to change of days off.

Section 2. Non-probationary, full-time employees in the classification of Supervisor of Correction's shall bid by classification seniority, defined as date of promotion, shall have the opportunity to select a regular shift preference every 120 days starting May 1st and every four months thereafter.

Section 3. Non-probationary, full-time employees in the classification of Supervisor of Correction's shall work a 5 days on/2 days off permanent schedule with weekends off. Supervisors agree to rotate "on-call" status to cover the

Section 4. Once shift preference has been selected by May 1st, the schedule for the following 120 days by June 1st.

Section 5. The selection of shift schedules does not preclude the Employer from changing schedules should demonstrated and verifiable mitigating circumstances arise and operational requirements change. One (1) week notice shall be given prior to a change of shifts.

ARTICLE 38

WAGES

Section 38.1 ~~Effective January 1, 2002,~~ All employees governed by this Agreement shall receive wages at the rate set forth in Appendix A ~~and shall continue as specified during the remaining term of this Agreement.~~

Section 38.2 ~~Upon execution of this Agreement, all bargaining unit employees shall receive a one thousand (\$1,000.00) dollar one time payment, which shall not be included in the base salary.~~

Section 38.2 On or about October 1, 2005, either party may reopen this Agreement for the purpose of negotiating a wage increase, if any, for 2006 and 2007. The re-opener shall be commenced by either party filing a notice of intent to negotiate with the State Employment Relations Board. Such negotiations shall be in accordance with the provisions of Chapter 4117 of the Ohio Revised Code.

Section 38.3 Bargaining unit employees shall normally be paid every two (2) weeks.

FOR THE UNION:

WAGES ARTICLE 38

APPENDIX A

CORRECTIONS OFFICERS

CLASSIFICATION	EFFECTIVE DATES		
	1/1/02	1/1/03	1/01/04
ENTRY LEVEL	\$10.00	\$10.33	1/1/05 \$10.67
CORRECTIONS OFFICERS After 8 months of service	\$11.00	\$11.33	\$11.67
SUPERVISOR	\$12.00	\$12.36	\$12.73

All above figures are hourly rates of pay.