

EMPLOYMENT
RELATIONS BOARD

**IN THE MATTER OF CONCILIATION
BETWEEN**

2009 MAY -6 A 11: 46

VAN WERT COUNTY SHERIFF'S OFFICE)	SERB CASE NO. 07-MED-09-0949
)	
)	
)	<u>OPINION AND AWARD</u>
AND)	
)	
)	
FRATERNAL ORDER OF POLICE OHIO LABOR COUNCIL, INC.)	CORRECTIONS OFFICERS

JAMES M. MANCINI, CONCILIATOR

APPEARANCES:

FOR THE FOP

**Mark E. Drum
Staff Representative**

FOR THE COUNTY

**Marc A. Fishel
Attorney at Law**

SUBMISSION

This matter concerns conciliation proceedings between the Van Wert County Sheriff's Office (hereinafter referred to as the Employer or Sheriff) and the Fraternal Order of Police, Ohio Labor Council, Inc. (hereinafter referred to as the Union or FOP). The State Employment Relations Board (SERB) duly appointed the undersigned as conciliator in this matter. The conciliation hearing was held on March 17, 2009 in Van Wert, Ohio.

The conciliation proceeding was conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of SERB. During the conciliation proceeding, this conciliator attempted mediation of the issues at impasse. The issues remaining for this conciliator's consideration are more fully set forth in this report.

The bargaining unit consists of all full-time and part-time corrections officers within the Van Wert County Sheriff's Office. There are currently five full-time corrections officers and ten part-time corrections officers.

This conciliator in resolving this dispute between the parties by selection between each of the final settlement offers has taken into consideration the criteria set forth in Ohio Revised Code Section 4117.14(G)(6)(7). Therefore, this conciliator hereby submits his Opinion and Award with respect to the outstanding issues presented.

1. WAGES

The Union proposes wage increases of 4% effective January 1, 2008, 4% effective on January 1, 2009, and a 3% increase effective on January 1, 2010. The Employer proposes a wage increase of 3% effective January 1, 2008, a wage freeze in 2009, and a 3% increase effective January 1, 2010. The fact-finder recommended a 5% increase effective January 1, 2008, a 4% increase for January 1, 2009, and a 3% increase effective January 1, 2010.

The FOP contends that its wage proposal is justified for several reasons. First, the FOP notes that its proposal is actually less than what the fact-finder recommended. The FOP submits wage comparables in support of its proposal. Such evidence shows that the Van Wert County corrections officers are paid the lowest wages in the eight county region. The FOP points out that the top pay for a Van Wert corrections officer is thirty percent less than the top average pay for corrections officers in the area. Moreover, the top pay for a Van Wert County corrections officer is six percent less than the average starting pay for corrections officers in the other counties. The FOP also cites a statewide wage comparison with twenty-two other sheriff departments in counties of comparable size. The Van Wert County corrections officers' top pay is more than twenty percent below the average top pay for corrections officers in these other counties.

The FOP also cites internal comparisons with the wage rates paid by the Sheriff's Office to the deputies. The County's deputies are ranked sixth out of the eight

sheriff departments used in the comparison. Their average top pay is less than four percent below the average top pay for deputies in the area. The evidence shows that the Van Wert County deputy gets paid nearly fifty percent more than a corrections officer. The FOP notes that none of the other sheriff departments in the area have such a disparity.

The FOP also maintains that the deputies received pay increases for 2009 which ranged from a minimum of 5% to a maximum of 13.1% for each bargaining unit member in their respective pay scale. The one full-time and two part-time cooks at the Sheriff's Office which are represented by the Teamsters also received a 3% raise for 2009. The FOP further notes that the corrections supervisors and sergeant will also receive a 3% wage increase this year. That particular bargaining unit had received increases of 9% for 2007, 3% in 2008, and 3% along with a pension pick-up for the current year.

The FOP disputes the Employer's claim that it does not have the ability to pay the wage increases which it has proposed here. As indicated, pay increases have been granted to other employees in the Sheriff's Department for 2009. Contrary to the Employer's claim, there has not been a wage freeze in the Sheriff's office for 2009. Moreover, there is no evidence that the County's finances experienced any significant decline between September 2007 which was the date of the new supervisor agreement, and 2009 which would justify the Employer offering a substantially lower wage increase to this bargaining unit than was provided to others in the Sheriff's Department. At the fact-finding hearing, the Employer claimed that it had the inability to pay. However as

indicated in February 2009, the Employer provided substantial wage increases over the next three years for many of the deputies in that unit. The Union submits that the Sheriff merely wants to treat the corrections officers' bargaining unit in a disparate manner compared with the other units within the Sheriff's Office.

The Employer contends that its wage proposal is more reasonable for several reasons. First, it is consistent with wage increases received by other bargaining unit employees within the Sheriff's Office. The Teamsters' bargaining agreements for the road deputies and dispatchers includes a wage freeze for 2009 and increases of 3% in 2010 and 2011. As such, there is no legitimate basis to award the wage increases sought by the Union for the corrections bargaining unit which would be twice as large as that received by others in the Sheriff's Office. The Employer notes that the Teamsters' bargaining units also switched health insurance plans which meant that wage increases could be offered to those employees for 2010 and 2011.

The County maintains that it cannot afford the Union's wage proposal. It was shown that the General Fund has experienced a significant downturn in recent years. The County's financial difficulties are primarily due to revenue not keeping pace with expenditures as a result of both statewide and local economic problems. County Auditor, Nancy Dixon, stated that for 2009, the carry-over balance in the General Fund had dwindled to \$148,000. Ms. Dixon noted that the County is already experiencing a shortfall in sales tax revenue for 2009. At the current pace, the County will have a shortfall of approximately \$272,000 for 2009. Ms. Dixon also indicated that the amount

of state revenue which the County receives will be reduced for the current year. As a result, Ms. Dixon stated that the County will struggle to make the required payments from the General Fund for various expenditures for the current year as well as in 2010.

The Employer further notes that since the fact-finding hearing, the unemployment situation has become much worse in Van Wert County. In January 2009, it increased to 13.7%. Because the unemployment rate is so high and continuing to grow, it appears that sales tax revenue will continue to decline. Moreover, there have been recent layoffs by General Motors and others in the area which will contribute to a decline in revenue.

The County submits that it simply has no funds set aside for wage increases in 2009 for the corrections officers' bargaining unit. As indicated, there was very little money left over from 2008 and every dollar of anticipated revenue in 2009 has been budgeted for other matters. It is clear that the County simply does not have the money to pay for the kind of increases sought by the Union.

Finally, the Employer disputes the Union's reliance upon outside wage comparables in support of its position. Rather in light of the current economic conditions in Van Wert County, the wages paid in other jurisdictions should be given less weight than internal comparisons relating to recent wage increases for other County employees. It was shown that for Van Wert County, the economic conditions are among the worst in the region. Therefore when all of the statutory factors are considered, the Employer believes that its wage proposal should be awarded.

ANALYSIS – After a careful review of the evidence and arguments presented by the parties, this conciliator awards the Union’s final wage proposal. That is, there is to be a 4% increase effective January 1, 2008, 4% increase effective January 1, 2009, and a 3% increase effective on January 1, 2010.

In selecting the Union’s final wage offer over that presented by the Employer this conciliator has taken into consideration the evidence which shows that the pay for the Van Wert County corrections officers is the lowest in the region. In seven other neighboring counties, corrections officers have higher starting as well as top hourly rates. The top pay for a Van Wert corrections officer is thirty percent less than the average top pay in these other sheriff departments. In fact, the top pay for a corrections officer in Van Wert County which is \$12.38 per hour is actually less than the average starting pay for corrections officers in these other jurisdictions.

It was also shown that the wages for corrections officers in Van Wert County fall well below the average paid in counties in the state which have a population of 50,000 or less. In a comparison of twenty-two similarly sized counties, the Van Wert County corrections officers’ top pay of \$12.38 per hour was more than twenty percent lower than the average top pay of \$15.05 for corrections officers in these other counties. The corrections officers’ pay in Van Wert County rank twentieth out of the twenty-two counties used in the comparison.

Therefore, wage comparables clearly support the Union’s proposed wage increases for the bargaining unit. The Employer basically does not dispute the external

wage comparisons presented by the Union herein. However, the Employer contends that it does not have the ability to finance the Union's wage proposal. The County presented evidence indicating that it does face financial difficulties due to the downturn in the economy. As stated by the County Auditor, the General Fund carry-over balance in 2009 was only approximately \$148,000.

However like the fact-finder in this matter, this conciliator finds that there is no merit for the County's proposal that there be a wage freeze in 2009 due to its current economic difficulties. First, the record before this conciliator shows that although conditions may have worsened somewhat for the County in 2009, it is apparent that the Employer has been experiencing shortfalls in revenue and increases in expenditures over the past several years. It was shown that even when it was evident that there would be budgetary problems, the County in 2007 provided the new supervisors unit with pay increases of 9%, 3%, and 3%, as well as a 2.5% pension pick-up. Moreover in February 2009, the Employer agreed to a contract covering the deputies bargaining unit which provided pay increases for all of those who were not at the top step of their wage scale. For 2009, the pay increases in the wage scale for the deputies ranged from 6.2% to 13.1%. In effect, there was no across the board wage freeze in 2009 for the deputies' unit. Evidence, showing that other bargaining unit employees in the Sheriff's Office have not been required to forego a wage increase for 2009, supports the conclusion that there should be no such wage freeze for the corrections officers unit.

Moreover, it is important to note that the corrections officers unit received a wage freeze in 2005 pursuant to a conciliator's award. At the time, the County argued as it has done in the instant case that it was facing serious financial difficulties. Although the corrections officers unit had to accept a wage freeze in 2005, it was shown that other bargaining units in the Sheriff's Office still received pay increases. Considering that the corrections officers unit absorbed a wage freeze three years ago, whereas the other units did not, it would be totally unreasonable to now expect that unit to once again accept a wage freeze for 2009 even though other employees in the Sheriff's Office are being granted wage increases. Again, the Employer recently agreed to a contract that will provide wage increases over the next three years for many of the deputies in that unit. Only two years ago, the Sheriff also provided the new supervisors unit with increases in each year of their contract. Most significantly, it should be reiterated that the corrections officers bargaining unit is among the worst paid in the State of Ohio. Considering such evidence, this conciliator must agree with the fact-finder's conclusion that there should be no wage freeze for the corrections officers bargaining unit during the term of the Agreement.

This conciliator has also taken into consideration several other factors in awarding the Union's position on wages. First, the FOP's final wage offer is more in line with that recommended by the fact-finder herein. It should be noted that the FOP's final offer of an 11% increase over three years is actually less than the 12% recommended by the fact-finder. The Union's final wage offer would also be in line with the average wage

increase granted to corrections officers statewide as indicated in SERB's Annual Wage Settlement Report. The average wage increase granted to corrections officers units for 2008 was approximately 3%. In addition, this conciliator would have to agree with the fact-finder's analysis wherein he in effect found that the County has the ability to fund the recommended wage increases. Like the fact-finder, this conciliator has determined that the Union's final wage offer is to be awarded because it grants the unit a "fair and reasonable" wage increase.

AWARD

With respect to wages, this conciliator awards the Union's final wage offer as more fully set forth below.

WAGES

Section 38.1 All employees governed by this Agreement shall receive wages at the rate set forth in Appendix A. The wage increases represent a Four Percent (4%) pay increase for all bargaining unit members effective 1/1-08, a Four Percent (4%) pay increase for all bargaining unit members effective 1/1-09, and a Three Percent (3%) pay increase for all bargaining unit members effective 1/1-10.

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.

Section 38.4 Whenever a bargaining unit employee is specifically assigned by the Employer to temporarily work in a higher classification for a period of five (5) consecutive calendar days or more, they shall be compensated at the lowest rate established for such higher classification for all hours assigned to such classification. All actions under this Article require the prior approval of the Employer. The parties recognize that an absence of a supervisor of five (5) or more days shall result in an OIC appointment.

APPENDIX A

CORRECTIONS OFFICERS

<u>Classification</u>	<u>Effective Dates</u>			
	<u>1/1/05</u>	<u>1/1/08</u>	<u>1/1/09</u>	<u>1/1/10</u>
Entry Level	\$10.67	\$11.77	\$12.24	\$12.61
CORRECTIONS OFFICERS After 8 months of service	\$11.67	\$12.88	\$13.39	\$13.79
SUPERVISOR —————	\$12.73			
SERGEANT —————	\$14.20			

All above figures are hourly rates of pay.

2. PENSION PICK-UP

The FOP proposes that the Employer pay 1.25% of the employee's contribution to the Public Employment Retirement System (PERS) commencing on January 1, 2009 and an additional 1.25% commencing on January 1, 2010. The Employer opposes any pension pick-up provision.

The Union contends that internal comparisons support its request for a pension pick-up. The FOP points out that the same benefit which it seeks here has been provided to the Van Wert County deputies bargaining unit. Likewise, the Employer previously agreed to provide the pension pick-up benefit to the three corrections supervisors. The FOP submits that there is no justification to provide a pension pick-up benefit to these other Sheriff Department employees and not to the corrections officers.

The Employer argues that there is no basis for the Union's request for pension pick-up for the corrections officers. The pension pick-ups sought by the Union would be equivalent to a 1.25% wage increase for 2009 and 2010. When combined with the other wage increases to be awarded herein, it would result in significant increases for the corrections officers which would be greater than that received by others in the department.

ANALYSIS -- This conciliator has determined that the Union's final offer with respect to pension pick-up is to be awarded. The fact-finder in this matter recommended the new Pension Pick-Up Provision as proposed by the FOP. Like the fact-finder, this conciliator finds that the evidence presented supports the pension pick-up proposal.

It was shown that the Employer has provided a pension pick-up to other employees in the Sheriff's Office. Previously, the Employer agreed to provide this particular benefit to the deputy's bargaining unit. Likewise in September 2007, the Employer agreed to provide a pension pick-up for the three corrections supervisors in their new collective bargaining agreement. There would be no justification to provide such a pension pick-up benefit to others in the Sheriff's Department and not the corrections officers. As such, this conciliator finds that it would be appropriate to provide that the County pay 1.25% of the employee's PERS contribution in 2009 and an additional 1.25% in 2010.

A W A R D

This conciliator hereby awards the FOP's proposal with respect to Pension Pick-Up.

PENSION PICK-UP

Effective January 1, 2009, the Employer shall pay One and One Quarter Percent (1.25%) of the employee's contribution to the Ohio Public Employees Retirement System (OPERS).

Effective January 1, 2010, the Employer shall pay an additional One and One Quarter Percent (1.25%) of the employee's contribution to OPERS, thus paying a total of Two and One-Half Percent (2.5%) of the employee's total pension contribution.

3. HOLIDAYS

The Union proposes to add the employee's birthday as a holiday. This would constitute the eleventh holiday under the new Agreement. The Employer proposes adding the employee's birthday but also changing holidays from rescheduled time off to premium pay. Under the Employer's proposal, full-time bargaining unit employees would receive eight hours of holiday pay for the days designated in the Agreement. Full-time employees who work the holiday would be paid at the overtime rate for the hours they actually work on a holiday. In addition, these employees would receive eight hours of holiday pay regardless of whether they work the holiday.

The Employer contends that a change in the current system is needed because it creates scheduling problems and unnecessary costs. Under the current language, all employees receive eighty hours of holiday leave per year as well as two weeks of vacation leave. Those with eight years of service receive additional vacation leave. This system means that an employee who attains one year of service is guaranteed a month of leave before any sick leave is taken. The Employer notes that it is not proposing a reduction in holiday pay but rather merely is attempting to pay as it goes. The Employer further points out that no other Sheriff Office employees receive holidays as scheduled time off.

The Union maintains that its proposal to add the employee's birthday as a holiday is consistent with that provided to other employees in the Sheriff's Office. The current number of ten holidays with no personal time or birthday holiday is the least

amount of holiday time provided for sheriff departments in Ohio. The FOP strongly opposes the Employer's proposal to change the holiday provision to one where they would be given premium pay rather than time off. The FOP notes that every County employee is provided at least ten holidays off per year. The current provision which allows bargaining unit members to receive holiday time in lieu of pay is found in most other sheriff department contracts in the eight county region. The Union submits that the current provision is reasonable. It provides that members are permitted to bank their holiday time and schedule it on a staggered basis "as operational requirements permit." This is needed because the corrections officers work a 24/7 schedule.

ANALYSIS – This conciliator finds that the Union's final offer with respect to holidays is to be awarded. That is, the employee's birthday shall be added as a holiday under the applicable provision. The contractual language proposed by the Union for the additional birthday holiday is to be incorporated into the parties' Agreement. It should be noted that the fact-finder recommended that the employee's birthday be added as a holiday. The Employer in its final offer did not dispute this portion of the Union's proposal to add the employee's birthday as a holiday.

This conciliator has also determined that the remaining sections of the Holiday Provision should be retained without any change as proposed by the Employer. There was no basis established for changing the current provision. Article 24 appears to be reasonable in that it provides that members are permitted to bank their holiday time and

“schedule it on a staggered basis as operational requirements permit.” The practice followed for corrections officers has been in effect for approximately ten years. During that time, the provision has remained the same with attempts by the Employer to change the practice being rejected in prior fact-finding and conciliation proceedings. Moreover, the provision is almost identical to that which the Sheriff’s Office agreed to in the current contract with the cook’s bargaining unit. The practice followed for the corrections officers in Van Wert County is the same benefit which is provided in most of the other sheriff offices in the eight county region. As noted by the fact-finder, “compensatory time off appears to be the norm rather than the exception” and is permitted in many other counties. The evidence simply fails to clearly establish in this case that the current provision has created any significant scheduling problems in the Sheriff’s Office.

AWARD

With respect to Holidays, this conciliator awards the Union’s final offer as more fully set forth below.

HOLIDAYS

Section 24.1 Full time bargaining unit members shall be entitled to receive the following holidays each year at the regular rate of pay.

New years Day	Martin Luther King Day
President’s Day	Memorial Day
Independence Day	Labor Day
Columbus Day	Veteran’s Day
Thanksgiving Day	Christmas
Employee’s Birthday (Part-time shall also receive off with pay)	

The Birthday Holiday shall be taken off by the employee as it falls on the calendar. In the event the birthday falls on the employee's day off, then the employee shall take the first scheduled day off back to work following the birthday. Birthdays shall be at the regular rate of pay for all employees and shall not be accumulated.

Section 24.2 – Current language, no change.

Section 24.3 – Current language, no change.

Section 24.4 – Current language, no change.

4. HEALTH INSURANCE

The Union proposes a provision whereby bargaining unit members would not have to pay more for their premiums than any other employee in the Sheriff's Office.

The Employer proposes to maintain current language.

The FOP contends that its proposal is reasonable and would not limit the County's ability to modify its healthcare plan. It is only appropriate to provide that corrections officers not be required to pay a premium that exceeds that paid by others in the agency. The FOP submitted comparable evidence indicating that most corrections officers agreements provide an employee cap for monthly premiums or specifically identify the employee contribution.

The Employer argues that the provision proposed by the FOP would mean that corrections officers would not have to contribute anything towards healthcare costs. The Employer points out that it recently reached an agreement with the Teamsters whereby the employees represented by them would be covered by the Teamster's healthcare plan. As a result, the County achieved significant cost savings for health insurance coverage. The changes meant that bargaining unit members represented by the Teamsters are no longer covered by the County health insurance plan and do not contribute towards the health insurance premiums. If the Union's proposal were adopted herein, it would mean that the corrections officers would likewise not have to contribute anything towards health insurance.

ANALYSIS – This conciliator finds that the Employer’s final offer with respect to health insurance is to be awarded. The new language proposed by the FOP could be interpreted as meaning that corrections officers would no longer be required to pay a monthly premium towards health insurance costs. As previously discussed, employees in the Teamsters bargaining unit are no longer covered by the County’s health insurance plan and do not contribute towards health insurance premiums. The FOP’s proposal as written would seem to indicate that corrections officers would likewise no longer be required to contribute towards the County’s health insurance plan even though they would continue to be covered by that plan. Therefore, this conciliator finds that it would be unreasonable to include the contractual language proposed by the FOP in the corrections officers’ Agreement. Rather, it appears that the current provision should be retained without any change.

A W A R D

With respect to Health Insurance, this conciliator awards the Employer’s final offer as more fully set forth below.

HEALTH INSURANCE – Current language, no change.

5. MID-TERM BARGAINING

The Union proposes to add a new provision that sets forth a dispute resolution procedure to resolve mid-term changes in wages, hours and conditions of employment which the Employer wishes to implement during the term of the Collective Bargaining Agreement. The Employer opposes the FOP's proposal.

The Union contends that without a mid-term resolution procedure to address certain issues the parties could easily end up in litigation to resolve disputes. The FOP notes that SERB recommended that parties adopt such a procedure to deal with mid-term disputes. The State's recommendation for the need to maintain good faith, ongoing bargaining justifies such a provision.

The Employer maintains that there is no evidence that there is any need for a mid-term bargaining provision. During the past six years, there have only been a few grievances filed. Moreover, the lengthy proposal made by the Union most likely would make the relationship between the parties more contentious. The Employer also claims that this conciliator has no authority to rule on this issue because it is a permissive subject of bargaining.

ANALYSIS – This conciliator has determined that it would be appropriate to award the Employer's final offer that there be no mid-term bargaining provision. There simply was insufficient basis established by the FOP for such a mid-term bargaining provision for the corrections officers bargaining unit. As noted by the fact-finder who rejected the mid-term bargaining proposal submitted by the Union, any dispute which

may arise can be handled through the grievance procedure set forth in the parties' Agreement. As noted by the Employer, in the six years of the collective bargaining relationship between the parties, there have only been a few grievances that have been filed and only one which went to arbitration. Therefore, this conciliator finds that there was no justification established for a mid-term bargaining provision.

AWARD

This conciliator has determined that there should be no new Mid-Term Bargaining Provision as proposed by the Union.

MID-TERM BARGAINING – No new provision.

CONCLUSION

In conclusion, this conciliator hereby submits the above referred to Awards on each of the outstanding issues presented for his consideration.

MAY 1, 2009



JAMES M. MANCINI, CONCILIATOR

JAMES M. MANCINI
ATTORNEY AT LAW - ARBITRATOR
JEFFERSON CENTRE - SUITE 306
5001 MAYFIELD ROAD
LYNDHURST, OHIO 44124
216 382-9150 Fax 216 382-9152 ManciniJM@aol.com

STATE EMPLOYMENT
RELATIONS BOARD

2009 MAY -6 A 11:46

May 1, 2009

Edward E. Turner
Administrator, Bureau of Mediation
State Employment Relations Board
65 East State Street, 12th Floor
Columbus, Ohio 43215-4213

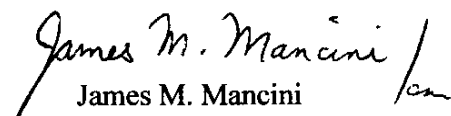
RE: SERB Case No. 07-MED-09-0949
Van Wert County Sheriff
-and-
FOP/Ohio Labor Council, Inc.
(Issue - Corrections Officers)

Dear Mr. Turner:

Enclosed herewith is a copy of my conciliator's Opinion and Award in the above referred to matter.

Thank you.

Very truly yours,


James M. Mancini

JMM:em
Enclosures