

STATE EMPLOYMENT RELATIONS BOARD

May 12, 2008

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RELATIONS BOARD

TEAMSTERS UNION LOCAL 637)
)
 Union)
)
 and)
)
LICKING COUNTY, OHIO, SHERIFF)
)
 Employer)

CONCILIATION REPORT

Case Nos.:
07 MED-09-0969
07 MED-09-0970
07 MED-09-0971

2008 MAY 15 P 1:29

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APPEARANCES

For the UNION:

Susan D. Jansen, Esq.
John Sheriff, Secretary/Treasurer
Teamsters 637
Aarin Stemen, Communications
Marilyn Ingeoglu, Medical
Don Keene, Deputy
Rob Bame, Sergeant
Alan Thomas, Deputy
Aimee M. Slone, Records Clerk
Linda Eveland, Deputy
Gregory E. Ritterbeck, Deputy
Kim Bratek, Teamsters Welfare Fund

For the EMPLOYER:

Benjamin S. Albrecht, Esq.
Randy Thorp, Sheriff
Sue Wadley, HR Director
Chad Dennis, Chief Deputy

INTRODUCTION

The State Employment Relation Board (SERB) appointed this conciliator in this matter on February 21, 2008. The parties agreed to hold this conciliation hearing at the Licking County, Ohio Sheriff's office on April 10, 2008. This conciliation involves three units:

1. Nurses;
2. Deputies; and
3. Sergeants.

Both parties timely submitted position statements, along with contract language for each party's last and best offer.

On April 10, 2008, the parties and this conciliator promptly met on the scheduled time at the agreed location. This conciliator offered both parties mediation, and both parties, respectfully but immediately, declined mediation.

The conciliation hearing was opened with the following unresolved issues:

1. Articles 21 & 22--Wages
2. Articles 25 & 26—Medical Benefits
3. Article 29—Uniforms and Allowances
4. Article 36—Personal Days
5. Article 39—Education Courses or Training
6. New Article—Bargaining Unit Work
7. New Article—Restricted Duty
8. New Article—Special Duties

Each party provided written materials and oral testimony. Both parties were given the opportunity to cross-examine adverse witnesses. Both parties presented exhibits and arguments on all contested issues. The representatives of both parties were knowledgeable and extremely well prepared on all issues.

All offered exhibits were accepted. The parties agreed that the mailing date for the conciliation report would be May 12, 2008.

The parties started with Issue No. 2 (health benefits), followed by Issue No. 1 (Wages). The parties then presented the issues numerically, as set forth above. This conciliation report follows the same order.

All of the below factors were reviewed and considered:

1. Past collectively bargained agreements, if any between the parties;
2. 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 employers doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. 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;
4. The lawful authority of the public employer;
5. The stipulations of the parties; and
6. Such other factors, not confined to those listed in this rule, 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.
7. The Fact-Finding report in this case.

ISSUE NO. 2—HEALTH BENEFITS
Articles 25 & 26

FACTS

The Union states, and the Employer agrees, that health insurance is an extremely important issue for both sides. The Union desires to maintain the County's plans, but also desires that its employees be given the opportunity to enroll in a plan named the "Michigan Conference of Teamsters Welfare Fund," which we will refer to as the "Michigan Plan".

The "Michigan Plan" would not be an exclusive plan. Employees would have an option to enroll into the "Michigan Plan". In other words, the county plans and the "Michigan Plan" would all be available to the employees.

The "Michigan Plan" guarantees the premium until the year 2012. The premium rate will not go up, but it could go down. However, neither the county plans nor the "Michigan Plan" could guarantee the exact same benefits over the course of the contract.

The county has a self-funded standard plan and an enhanced plan. The expert witness for the "Michigan Plan" made a comprehensive comparison between the "Michigan Plan", the standard plan, and the enhanced plan of the county, as did the expert witness for the Employer.

An expert witness for the employer testified regarding the "Michigan Plan," and opined that the "Michigan Plan" is midway in coverage between the standard plan and the enhanced plan of the county when comparing benefits versus costs. The expert witness who testified for the county opined that the enhanced and standard county plans provide better coverage than the "Michigan Plan".

The Union also presented comparables between their counties and other Ohio counties, all with populations between 120 and 170 thousand people. The county also provided geographic comparables.

All three plans appear to provide benefits at costs that would be satisfactory to the members, the employees and to the taxpayers.

The premium costs for the county plans have recently declined. The Union states that those costs have declined because competition is keeping the rates down. The management opines that the building up of reserves actually has caused the premiums to drop. The undersigned believes that there is a decline in the premiums because of the combination of the

above. The undersigned also finds that there has been a decrease in health benefit costs because both management and labor have worked diligently to lower those costs.

The cost savings of the "Michigan Plan," according to exhibits introduced and uncontradicted, are well into the six (6) figures. This type of cost savings cannot be overlooked.

The employer claims that only the county commissioners, and not the sheriff, have the right to purchase and enter into a contract for health benefits for the county employees. ORC § 305.171. Management argues that since the sheriff does not have authority to purchase the insurance, the conciliation process cannot now be used to "force" the county commissioners to provide benefits pursuant to a plan not purchased by the county commissioners.

The employer also argues that the purchasing of insurance is subject to the competitive bidding process as set forth in the Ohio Revised Code. Therefore, the "Michigan Plan" cannot be selected, since there has not been competitive bidding. The Union responds that the "Michigan Plan" is exempt from competitive bidding because the "Michigan Plan" is a "trust."

DISCUSSION

At the outset, this conciliator did not have the guidance from the fact-finder on this issue. Right before the fact-finding hearing, it was discovered that incorrect information was provided to the Union, and although the fact-finder was seriously considering the "Michigan Plan", the fact-finder could not make a recommendation for the "Michigan Plan" because of the mistaken information provided to and from the parties and presented to the fact-finder.

The fact-finder stated in his discussion: "It is hard to draw conclusions based upon facts, however, due to the unfortunate turn of events that led the former county benefits person to apparently provide incorrect data to the Union.

“While the current county human resource director was unaware of the showing of the inadequate information, the testimony at the hearing leads this fact-finder to conclude that the proposed cost-savings cannot be taken as accurate.”

This conciliator interprets those paragraphs that the fact-finder was impressed with the apparent cost savings, but could not rely on those proposal savings because of the faulty data provided.

At the conciliation hearing, there were no allegations that any of the data provided by any of the parties have been mistaken or faulty. In fact, the evidence shows that the “Michigan Plan” would provide a cost-savings, not only for the employees, but also for the taxpayers.

Health benefits and health insurance coverage has been in most, if not all, of the collective bargaining agreements between the parties. Health benefits and health insurance coverage is a subject that is in most, if not all, of the comparable CBA’s presented by both parties. *See* Ohio Revised Code § 4117.14. The topic of health benefits rivals wages in the most important and discussed issue in collective bargaining contracts.

The “interests and welfare of the public” is part of a factor that is often overlooked in fact-finding and conciliation. In the end, it is the taxpayers for whom all of the parties are employed. The taxpayers shoulder the burden of financing health benefits for all of its employees. If there exists a plan to reduce the tax burden by lowering costs, that plan must be seriously considered.

The employer challenges the authority of the conciliation process to choose a final offer of a party regarding health insurance. The employer argues that because only the County Commissioner, and not the sheriff, had the authority to enter into a health insurance contract, a

conciliation report cannot be used to make health insurance part of the contract. *See* Ohio Revised Code § 305.171.

The argument advanced by the employer was the subject of a case decided by the Seventh District Court of Appeals of Ohio. *See Jefferson County Sheriff, et al., v. Ohio Patrolman's Benevolent Association*, 2006 Ohio 1055; 2006 OH App. LEXIS 961; 179 L.R.R.M. 2294 (7th District Court of Appeals, 2006).

In that decision, the Court of Appeals upheld the conciliator's authority to award one of the last and final offers between a public employer (Sheriff) and a union regarding health benefits. In that case, the employer sheriff stated that the arbitrator went beyond his authority because the sheriff was ordered to provide health insurance benefits to the union members at substantially the same level that existed before the CBA expired. Again, in that case, the appellant cited ORC § 305.17, stating the Board of County Commissioner had that sole authority to provide health benefits. The Court held that the conciliator had the authority to select the last and best offer of the union that would require the sheriff to provide benefits substantially the same as the benefits in the prior Collective Bargaining Agreement (CBA).

The undersigned further finds that there is an exception to the competitive bidding process, and that exception is that the "Michigan Plan" is run by trust.

Finally, this conciliator finds that competent and professional personnel have run the current county plan very well. This conciliator further finds that the "Michigan Plan" will be run, and is managed by competent and professional personnel. All three plans provide satisfactory health benefit packages. The "Michigan Plan" provides significant savings that would benefit the taxpayers. That fact stands uncontradicted. Use of the three plans gives the employees a choice among plans. Use of the three plans would save taxpayers money.

This case is very similar to the *Jefferson County Sheriff's* case. In *Jefferson*, the contract clause was that the employer provide a certain level of benefits for the union members. In this case, the Union requests language in the Collective Bargaining Agreement (CBA) requiring the employer to permit an employee to enroll into another plan. It then requires the employer to pay the plan premium for the employee's participation in the plan. The amount to be paid for the premium is less than the premium now being paid.

If the bargaining unit and its members desire to purchase health care services elsewhere, they should be able to do so. One cannot predict the future, however, competition between providers should result in better services and lower prices.

DECISION

The language proposed by the Union in the Union's position statement is the language to be placed in the Collective Bargaining Agreement.

ISSUE NO. 1—WAGES **Article 21 & 22** **Wages-Deputy, Sergeant & Nurses**

The parties have introduced into evidence relevant and compelling comparables. This conciliator has also reviewed the proposed costs that were presented by the parties regarding the increases proposed. In the fact-finder's report, the fact-finder was concerned about the healthcare costs in Licking County. The fact-finder stated that the employees pay a significant higher contribution for family coverage than do many comparable jurisdictions. Because of the higher health care costs, the fact-finder used this factor to choose a pay increase comparable to the employer's proposal.

One factor in this case is the proposed decrease in costs for health insurance coverage for the bargaining unit members. There is a proposed and expected decrease in the health insurance

costs for the members. The Union argues that because of the lower health care costs, they should be awarded pay increases proposed by the Union. Although the parties want to see a cost savings, there is no guarantee that there will be, in the future, a cost savings for health benefits. Only after realizing a cost savings in health benefits should a fact-finder or a conciliator decide that there should be increases based upon those proposed costs savings.

A “benchmark” for the fact-finder in this case was to look in the SERB report for guidance. The statewide report for average settlement was 3.01%. In the Columbus region, settlements averaged 3.13%. County settlements averaged 3.03%. Police contracts averaged 3.23% statewide. This conciliator sees no reasons to disagree with the proposal of the fact-finder.

DECISION

The language proposed by the employer in the employer’s position statement is the language to be placed in the Collective Bargaining Agreement.

ISSUE NO. 3—UNIFORMS & ALLOWANCES **Article 29-30**

For the uniforms, the parties have both presented comparables and the costs for both of their proposals. While the amount currently provided is not overly generous, the fact-finder believed that the uniform allowance was satisfactory to meet the needs of the unit members. This conciliator cannot find any evidence to disagree with the recommendations of the fact-finder.

DECISION

The language proposed by the employer in the employer’s position statement is the language to be placed in the Collective Bargaining Agreement.

ISSUE NO. 4—PERSONAL DAYS

Article 36

Because of manpower shortages, bargaining unit employees are often not able to take their personal days. This problem is serious for those who work inside the jail.

Although the sheriff agrees that this is an existing problem and discussions have been conducted between the parties, this is still a major issue for those who must spend as much as sixteen (16) hours a shift before they are relieved. Direct testimony on this issue was important evidence. Unit members must be able to rely upon receiving personal days when the days are timely requested. Working inside of the jail is dangerous. At conciliation, the union withdrew the increase in number of days for personal days. However, the rest of the proposed language of the Union is satisfactory. Reviewing the fact-finder's report, the fact-finder recognized that there was a serious issue.

DECISION

The Union's last proposal language is the language to be placed in the Collective Bargaining Agreement.

ISSUE NO. 5—EDUCATION

Ohio law mandates continuing education for law enforcement officers in order for them to maintain their jobs. The Union desires to be compensated for these courses. There is also a specific complaint that the third shift is treated unfairly. "In house" courses are usually at times when those on the first and second shifts are already on duty. Those on the third shift are almost never working at these times. Those on the first and second shifts are able to obtain training

during duty hours. Third shift employees must use free time to attend these educational meetings.

The fact-finder has sided with management on this issue. Although this conciliator is sensitive to the issue faced by those of the third shift, in reviewing the last and best offers by both, the undersigned has heard no other evidence that would cause this conciliator to change the fact-finder's recommendation.

DECISION

The language proposed by the employer in the employer's position statement is the language to be placed in the Collective Bargaining Agreement.

ISSUE NO. 6—BARGAINING UNIT WORK **NEW ARTICLE**

The Union desires to create a corrections officer position in the jail. The Union proposes that work which is normally and routinely performed by bargaining unit employees should continue to be performed by employees in the bargaining unit, and should the employer decide to create the classification of corrections officer, no bargaining unit employee employed at that time would be displaced, unless it is a voluntary displacement. The Union states that the new article would protect bargaining unit work and ease its concern that the sheriff might decide to use corrections officers in the jail, rather than sworn deputies.

According to the employer, this would infringe upon management rights and would interfere with the current practices whereby a superior ranking officer often performs duties of lower ranking officers.

The fact-finder stated that these types of management right items should be gained through negotiations, and not be imposed by neutrals. While this conciliator does not necessarily agree with that philosophy, there is no compelling reason to dispute the recommendations of the

fact-finder. Conciliator also agrees with the fact-finder that the Union may be trying to protect themselves from future events that may or may not happen.

DECISION

The employer's proposed language shall be the language in the Collective Bargaining Agreement.

ISSUE NO. 7—RESTRICTED DUTY
NEWLY PROPOSED ARTICLE

The Union proposes to add language which would permit a bargaining unit member who is absent from duty due to illness or injury to return to work on a restricted basis. Management states that there is no "light" or "restrictive" duty. While, both parties want to address this issue further. The sheriff desired to work it out on a case-by-case basis. After a break and a caucus of the parties and their representatives, both parties agree with the employer's proposal on this issue. The Conciliator has reviewed all of the other evidence and position statements of the parties and finds it to be fair.

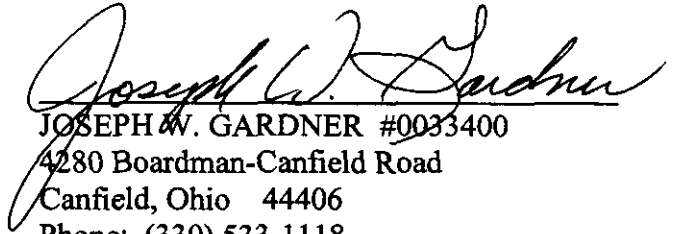
DECISION

The employer's proposal shall be the language in the Collective Bargaining Agreement.

ISSUE NO. 8

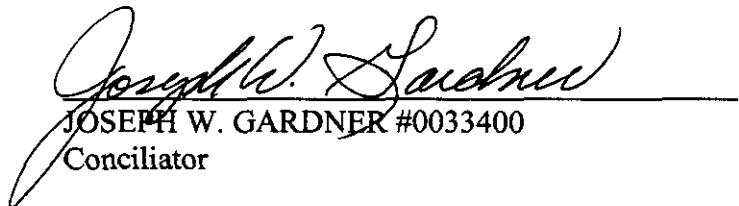
During conciliation, the parties reached an agreement on this issue, and both parties agreed that the issue shall be "off of the table." Therefore, the conciliator will choose neither party's language since the parties have already agreed to the language to be placed into the Collective Bargaining Agreement on this issue.

Respectfully submitted,


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Conciliator

CERTIFICATION

I hereby certify that on May 12, 2008, a copy of the foregoing Conciliation Report was sent via facsimile and regular U.S. mail to the following: Counsel for Union No. 637, **SUSAN D. JANSEN**, 111 West First Street, Suite 1100, Dayton, Ohio 45402-1156; Counsel for Licking County Sheriff, **BENJAMIN S. ALBRECHT**, 400 South Fifth Avenue, Suite 200, Columbus, Ohio 43215; and to **EDWARD E. TURNER**, Administrator, Bureau of Mediation, 65 East State St., 12th Floor, Columbus, Ohio 43215-4213.


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Conciliator