

STATE OF OHIO  
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

2009 JUN -2 P 12: 27

In the Matter of:

Fraternal Order of Police  
Ohio Labor Council, Inc.,

Conciliator: Jerry B. Sellman  
Dated: June 1, 2009

Employee Organization

Case No. 08-MED-02-0115  
Dispatchers Unit

And

Marion County Sheriff's Office

Employer

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**REPORT AND AWARD OF CONCILIATOR**

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APPEARANCES

For Union

Mark E. Drum, Staff Representative, FOP

For the Employer:

Jonathan J. Downes – Downes, Hurst & Fishel, LLP  
Frank D. Hatfield - Downes, Hurst & Fishel, LLP

## BACKGROUND

The instant case involves an examination of the unresolved issues between the Marion County Sheriff's Office (Employer) and the Fraternal Order of Police, Ohio Labor Council, Inc. (Union). In this conciliation hearing, the Union represents Bargaining Unit C-2, which is the Dispatchers within the Marion County Sheriff's Office. The Dispatcher's Unit consists of six bargaining unit members.

The Employer and the Union began multi-unit negotiations on June 18, 2008 for a successor contract due to expire June 30, 2008. The Union represented three bargaining units consisting of Deputies (23 full time), Lieutenants (4 full time) and Dispatchers (5 full time and 1 probationary). While tentative agreements were reached through negotiation and mediation on a number of Articles, no agreement was reached on eleven (11) Articles and the State Employment Relations Board appointed Margaret Nancy Johnson as the Fact-finder to issue a recommendation on all outstanding issues.

Prior to the Fact-Finding hearing, the Employer argued in its pre-hearing statement that the parties had reached a tentative agreement on all remaining issues on February 4, 2009 and proposed to have the Fact-finder incorporate the agreement in her Recommendations. The Employer submitted proposed language for a successor agreement that contained the signatures of three of the four bargaining committee persons and that of the Sheriff. The Union bargaining Agent protested, asserting that the proposed agreements had been executed without his participation or knowledge and that no representative of the Dispatchers Unit had been present at the time. Based upon the position of the Union, the Fact-finder did not adopt the February 4, 2009 Tentative Agreement as evidence of a mutual agreement and proceeded with the hearing on all unresolved issues.

A Fact-Finding hearing was held February 6, 2009 at which time five (5) additional issues were resolved through mediation and six (6) were placed before the Fact-Finder for consideration. On February 27, 2009 the Fact-Finder issued her report. Her Recommendations were accepted by the Deputy Sheriffs and Lieutenants and were rejected by the Dispatchers. The Marion County Commissioners voted to accept the Recommendations. After the Dispatchers rejected the Recommendations, their representative and the Sheriff's representative met on April 24, 2009 to mediate the outstanding issues. All issues but one was resolved. The parties could not agree on a wage proposal.

The Conciliator was appointed on March 23, 2009. Pre-hearing statements were submitted five (5) calendar days prior to the Conciliation hearing by the parties. A Conciliation Hearing took place on May 11, 2009.

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;
- (e) The lawful authority of the public employer;
- (f) The stipulations of the parties;
- (g) 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 parties presented one issue to the Conciliator. The following summarizes the positions of the parties and the evidence and arguments offered in support of their positions.

#### Article 23 - Wages

The Union's final wage proposal is for the Dispatchers to receive a one percent (1%) wage increase for calendar year 2009, a two percent (2%) wage increase effective 1-1-10 and a two percent (2%) increase effective 1-1-11. This is a total of a five percent (5%) wage increase during the three (3) year agreement.

The Employer's final wage proposal is for the Dispatchers to maintain the current wage rates for the duration of 2009, the first year of the Agreement, a 2.5% increase in the second year of the Agreement and a 2.5% increase in the third year of the Agreement

#### Union Position

The Union argues that its proposal is consistent with the recommendation of the Fact-Finder, which provided for wage increases totaling five percent (5%) during the three year agreement. The Fact-Finder's recommendation, however, and the Employer's offer, was for a zero percent (0%) increase for the first year (wage freeze), a two and a half percent (2.5%) increase the second year effective 1-1-10, and a two and a half percent (2.5 %) increase during the third year of the agreement, effective 1-1-11.

The Union recognizes that Marion County has declining revenues and does not dispute the fact that the County is experiencing extreme financial difficulties. The Employer presented numerous exhibits to identify the drop in revenues received by Marion County in late 2008 and

early 2009. The County Administrator testified about the bleak economic forecast for the near future and did identify that Marion County needed to exercise fiscal restraint with regard to wage increases.

While the Lieutenants and Deputies agreed to a zero percent increase the first year in light of these financial considerations, several lieutenants, nonetheless, will receive substantial salary increases through appointments and promotions. As a result of these circumstances, denying the Dispatchers a wage increase in the first year is tantamount to disparate treatment.

In light of the poor economic condition of the County necessitating deficit spending in 2009, the Dispatchers were willing to minimal pay increases, but were angered by the events that took place subsequent to the Fact-Finding hearing. While the County Commissioners and the Sheriff insisted at the fact-finding hearing that no more money was available to the Sheriff for funding raises, thus the reason for the wage freeze, the Sheriff promoted two lieutenants from the bargaining committee and to newly created positions of Major, promoted a Deputy to Lieutenant and gave a six percent (6%) wage increase to a Deputy for additional K9 duties. One of the Lieutenants and the two deputies had advocated the wage freeze in the "tentative agreement" prior to fact finding. The additional pay increases for each of the majors alone was more than \$5,366, or \$10,032 for 2009, and over \$32,000 for the life of the new contract.

The total difference in the Union proposal and the Employer's proposal is \$3,764 for all six dispatchers for all three years of the collective bargaining agreement. The Union recognizes that the Employer needs to be fiscally conservative, but there is no justification to create two new major positions at a cost of more than \$32,000 during the next three years and deny the Dispatchers a proposal that will cost less than \$3,800 during the same three years for all six bargaining unit employees.

### Employer Position

In considering the wage issue, the Employer entreats the Conciliator to be mindful of the extremely dire financial circumstances in Marion County and the current and continuing downward trend regarding the County's economic climate. Although the entire State is suffering from an economic downturn, Marion County has been affected more than most counties. These economic circumstances adversely affect the County's funds and limit the Employer's ability to pay for raises and other economic benefits during the term of this agreement.

The Sheriff's Office is solely funded by the County General Fund and subject to budgetary approval by the Board of County Commissioners. The County General Fund has eroded over the last couple of years resulting in deficit spending. The largest portion of the General Fund revenue is the sales tax, which declined 3.5% in 2008 and is experiencing a further decline in 2009. Compared to the first three months of 2008, the County has received \$240,517 less revenue in sales tax receipts which represents a 10.2% decrease; it projects a decrease of 9.2% in sales tax revenue for fiscal year 2009 below sales tax revenue of 2008, which was less than 2007 revenues. Interest income is also down.

Marion County's economic difficulties are compounded by the fact that unemployment has worsened in the County since negotiations began in June 2008. In December 2008, the County unemployment rate was 9.8%. In March 2009, it increased to 11.5%. Between March 2008 and March 2009, Marion County's unemployment rate increased by 94% (5.9% to 11.5%). Marion County went from trailing the State's unemployment rate to exceeding it in this one year period. Also, Marion County's unemployment rate is higher and has grown faster than the region of contiguous Counties which include: Crawford, Delaware, Hardin, Marion, Morrow, Union,

and Wyandot.

As recognized by the Fact-Finder, Marion County Dispatchers are some of the highest paid Dispatchers within the geographic region, as well as, Ohio. Comparable jurisdictions are always a concern for parties during the course of collective bargaining. The Dispatchers are paid greater than nearly all others, regardless of the size and geographic location of the organization.

The Employer argues that the pay disparity advocated by the Union is misplaced. There is no basis for supporting an additional increase in the Dispatcher wages due to the recent promotion of two (2) Lieutenants to Majors. The Sheriff was reelected in November, 2008 and was afforded a limited time period in which he could fill and designate certain positions as fiduciary or unclassified, under Ohio Civil Service Law. R.C. §124.11(A)(9); O.A.C. §123:1-5-01. Two (2) Lieutenants were promoted to the rank of Major.

The Sheriff wanted to achieve the benefit of assigning additional grant writing duties to one Lieutenant, who had written successful grants while on the 3<sup>rd</sup> shift. This Lieutenant could not move to the 1<sup>st</sup> shift to work more closely with the Sheriff, because he did not have the seniority to do so. The Sheriff believed that by moving this employee to the 1<sup>st</sup> shift, he could work more closely with him and increase grant opportunities available to the Sheriff's Office. At the same time the Sheriff wanted to significantly increase the duties and responsibilities to be performed by both. Both were appointed and are in the unclassified service and serve at the pleasure (at-will) of the Sheriff. In light of their new and additional responsibilities, which requires that they serve at the pleasure of the Sheriff, both Majors receive compensation appropriate for the position and status of Major. Neither Major received a "raise" nor will they in 2009. Rather, both are being compensated at the pay rate appropriate for the position of Major and the rate did not, nor will it, increase in 2009. No new Lieutenants were hired to replace the

Lieutenants.

Analysis

The Conciliator must award the Employer's final offer. While the percentage of increase over the three year term of the new Agreement is five percent (5%), current downward economic trends in the County suggest that the 0%, 2.5%, and 2.5% increases are more consistent with the economic times than the Union's proposal of 1%, 2% and 2%. It is also consistent with the wage considerations given to other FOP bargaining units, employees of the County Commissioners and employees of the County Courts, which have the statutory authority to mandate budget increases upon the Commissioners.

The Conciliator's choice of the Employer's final offer is supported by the conclusion reached by the Fact-Finder. In Fact-finding, the Union offered increases of 3%, 4.5% and 4.5%. The Employer offered increases of 0%, 2.5%, and 2.5%. In light of Marion County's declining revenues and deficit spending, the Fact-Finder adopted the approach of the County to stabilize in 2009 with across the board freezes and modest wage increases in 2010 and 2011.

In arriving at a decision, the Conciliator did not brush aside or ignore the arguments of the Union in regard to what it basically characterized as inappropriate negotiation and indirect pay increases resulting in disparate treatment of the Dispatchers. The former issue (inappropriate negotiation) is not subject to consideration by the Conciliator, as was the conclusion of the Fact-Finder, for it is an internal dispute and outside our jurisdiction. The promotion of the Lieutenants to the new rank of Major was considered, but was deemed to be within the lawful authority of the public employer and did not result in disparity within the bargaining units. None of the units received an increase in the first year (it is noted that the rank of Major is unclassified).

While the Conciliator questions the wisdom of promoting the Lieutenants to the position



of Major and increasing budgetary requirements shortly after the presentation of dire financial circumstances at the Fact-Finding hearing, it was within the statutory authority, management right and prerogative of the Sheriff to do so. While this may have caused dissention within the bargaining units, it did not result in any legal disparity. None of the bargaining units, including all other county employee groups, received an increase in 2009.<sup>1</sup> There is no disparity in the treatment of the various employee groups.

It is understandable the Dispatchers see the payment of increased wages for two new Majors as flying in the face of an economic inability to pay, but the rationale behind such an argument does not provide a compelling reason for the reversal of the Fact-Finder's Report. The Recommendation that the Dispatchers receive no wage increase for the first year is in line with the level of increases, or lack thereof, to other employee groups in the County. Further, if the Conciliator were to adopt the argument of the Dispatchers, all employee groups could argue that their wages should be increased, because other employees received increased longevity wages or were promoted to another position with a higher rate of pay. These "endless" arguments would not be in the best interest of the public welfare.

In light of the poor economic condition of the County, the evidence presented at the Conciliation hearing did not result in any compelling reason to alter the recommendation of the Fact-Finder in regard to wages for the Dispatcher Unit. If anything, the condition of the County at the Conciliation hearing was forecast to be worse than that portrayed at the Fact-Finding hearing. The Conciliator cannot second guess the wisdom of the Sheriff in creating new exempt positions during poor economic times, but if the appointment of one of the Lieutenants to Major, who has demonstrated success in grant writing and grant awards, results in more grant money to

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<sup>1</sup> The rank of lieutenant did receive an increase, but that was a mutually agreed to differential increase among the parties.

the Sheriff's Office, which was one of the considerations proffered for the new position, any argument of increased economic burden becomes moot. Whether the increased costs prove to be justified or not, the Conciliator finds no disparity nor any other compelling reason to accept the position of the Union.

Award

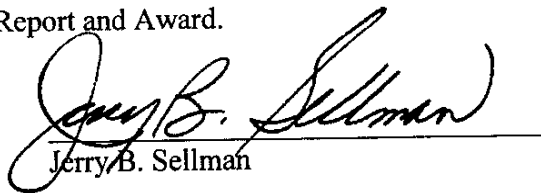
The Conciliator selects the Employer's final offer that the wages shown in Article 23.1 Appendix A, be increased 0% effective January 1, 2009, 2.5% effective January 1 2010 and 2.5% effective January 1, 2011.

Dispatcher 0% 2009 2.5% 2010 & 2011	New Hire	1 Yr.	2 Yr.	3 Yr.	4 Yr.	5 Yr.	6 Yr.
2008	\$ 16.61	\$ 18.07	\$ 18.75	\$ 19.53	\$ 20.12	\$ 20.91	\$ 21.64
2009	\$ 16.61	\$ 18.07	\$ 18.75	\$ 19.53	\$ 20.12	\$ 20.91	\$ 21.64
2010	\$ 17.03	\$ 18.52	\$ 19.22	\$ 20.02	\$ 20.62	\$ 21.43	\$ 22.18
2011	\$ 17.45	\$ 18.98	\$ 19.70	\$ 20.52	\$ 21.14	\$ 21.97	\$ 22.74

Tentative Agreements

At the mutual request of the parties, the Conciliator also awards the tentative agreements reached by them.

This concludes the Conciliator's Report and Award.

  
 Jerry B. Sellman

June 1, 2009  
 Columbus, Ohio

## CERTIFICATE OF SERVICE

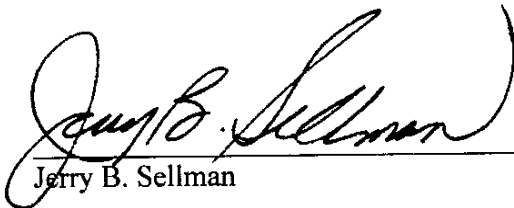
The undersigned certifies that a true copy of the Conciliator's Report and Award was sent by First Class Mail on June 1, 2008 to:

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STATE EMPLOYMENT  
RELATIONS BOARD

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June 1, 2009

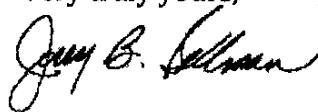
Mr. Edward E. Turner  
Administrator, Bureau of Mediation  
State Employment Relations Board  
65 E. State Street, 12<sup>th</sup> Floor  
Columbus, OH 43215

Re: FOP/OLC, Inc. and Marion County Sheriff  
08-MED-02-0115

Dear Mr. Turner:

Enclosed herewith is the original of the Findings and Recommendations in the above-captioned case, which was issued as of today's date.

Very truly yours,



Jerry B. Sellman

cc: Mark E. Drum, FOP  
Jonathan J. Downes, Marion Cty. Sheriff