

2008 DEC -5 P 12:19

Conciliation Report and Award
in the matter of Conciliation between

The Clermont County Sheriff
and
Fraternal Order of Police Lodge No. 112

SERB Case No.: 08-MED-02-0125

Marcus Hart Sandver, PhD

Conciliator

Hearing Date: November 7, 2008
Decision Issued: December 4, 2008

Representing the Sheriff:

Mr. Paul Berninger, Attorney
Wood Lamping, LLP
600 Vine Street
Suite 2500
Cincinnati, Ohio 45202-2491

Representing the FOP:

Mr. Stephen Lazarus, Attorney
Hardin, Lazarus, Lewis & Marks, LLC
915 Cincinnati Club Building
30 Garfield Place
Cincinnati, Ohio 45202-4322

I. Background.

This case arises out of a dispute between the Clermont County Sheriff (the Employer) and the Fraternal Order of Police Lodge No. 112 (the Union). The parties are negotiating a successor to the past collective bargaining agreement which expired February 28, 2008. The unit is comprised of approximately 78 Corrections Officers employed by the Clermont County Sheriff. The parties met for the purposes of negotiating a new labor agreement on April 1, 21, 22, May 6 and 16. Tentative agreement was reached on a number of issues but not all issues were resolved. The dispute went to Factfinding on August 1, 2008 and a recommendation was issued on August 25, 2008 by Factfinder William Heekin. The report was rejected. In late September of 2008, Marcus Hart Sandver was chosen by the parties to Conciliate the matter. The hearing date was chosen by mutual agreement as November 7, 2008.

II. The Hearing

The hearing was convened at 9:00AM in the conference room of the Administrative Offices of the Clermont County Sheriff. In attendance at the hearing were:

For the Clermont County Sheriff:

- | | | |
|----|--------------------|---|
| 1. | Mr. Paul Berninger | Attorney and Chief Spokesperson |
| 2. | Mr. Chris Willis | Clermont County Sheriff |
| 3. | Mr. Jim Malloni | Chief Administrative Officer |
| 4. | Ms. Sukie Scheetz | Director – Office of Management &
Budget |

For the FOP Lodge No. 112:

1. Mr. Steve Lazarus Attorney and Chief Spokesperson
2. Mr. John Kuntz Union President
3. Mr. Mike Bolte Associate to Mr. Lazarus
4. Mr. David Cox Union Representative
5. Mr. Kevin Lindsey Union Representative

The parties were asked to submit exhibits into the record. Each party submitted multi-tabbed loose leaf notebooks as evidence. The notebooks were marked as Union Exhibit # 1 and Employer Exhibit # 1 respectively. The parties were informed by the Conciliator that the hearing would be conducted and the award would be developed in accordance with the rules for Conciliation as found in O.R.C. 4117.01 et. al. and associated administrative rules as developed by the State Employment Relations Board (SERB). In advance of the hearing, the parties had mutually agreed to waive the recording of a transcript. At this point in the hearing, the parties were asked to make opening statements.

In his opening statement, Mr. Lazarus pointed out to the Conciliator that there were few unresolved issues to be addressed in this hearing; the major issues are wages and insurance. Mr. Lazarus stated that in the Factfinding report on the wage issue, the Factfinder recommended a 3 percent wage increase retroactive to March 1, 2008, a 3 percent wage increase effective February 22, 2009 plus a new top step, and a 3 percent increase effective February 21, 2010 plus a new top step. On the insurance issue, the Factfinder recommended that current contract language be maintained. Mr. Lazarus asked the Conciliator to note that the Factfinder recommended the FOP position on Field

Training Officer (FTO) pay and sick leave. Mr. Lazarus concluded his opening statement by pointing out to the Conciliator that the FOP accepted the Factfinder's report and that the employer rejected it.

In his opening statement, Mr. Berninger urged the Conciliator to recognize that the dispute between the parties, at its core, is about finances. Mr. Berninger pointed out to the Conciliator that Cincinnati news sources had reported in the press today that there would be substantial layoffs of County employees in neighboring Butler and Hamilton Counties. The Commissioners of Clermont County don't want to be forced into a position where layoffs become inevitable.

Mr. Berninger stated that new wage data would be introduced into evidence at the Conciliation hearing that was not available to the Factfinder. The new data shows that when you exclude from the comparables Counties where corrections officers are sworn deputies, the earnings of Clermont County Officers look comparably better than they do before this change to the data set is performed.

III. The Issues.

A. Issue One – Article 14 Wages.

1. FOP Position.

The FOP position on this issue is for a 3.5 percent increase effective January 1, 2009, a 3 percent increase effective February 22, 2009 plus a new top step at 3 percent above current salary, and a 3 percent increase effective February 21, 2010 plus a new top step at 3 percent above current salary.

In support of its position, the FOP representative asked the Conciliator to direct his attention to Union Exhibit # 1, Tabs 2, 3, 4 and 5. Tab 2 shows comparable wage data for top step Corrections Officers for 2007-2008 for Butler, Clermont, Greene, Montgomery and Warren Counties. The data show that the average total compensation (including salary, uniform allowance, pension pick-up and longevity) for Butler, Greene, Montgomery and Warren Counties is \$44,510.45. In Clermont County, the top step Corrections Officer receives \$39,852.80 in total compensation or 11.69 percent less than the average of the other four counties.

The data behind Tab 3 are for Brown, Butler, Clark, Clinton, Greene, Hamilton, Lake, Licking, Mahoning, Medina, and Warren Counties. These data show that for 2007, the average hourly wage for a top step Corrections Officer was \$19.50 in 2007 and \$19.96 in 2008. In Clermont County, the average hourly for a top step Corrections Officer was \$19.16 in 2007. There was no wage increase for Corrections Officers in Clermont County in 2008. A 4 percent increase in 2008 would raise Clermont County Corrections Officers to \$19.92, about the same as the average wage in the eleven county comparison groups which is \$19.96.

Tab 5 shows wage comparisons for Greene, Lake and Medina Counties; all counties where the Corrections Officers are non-deputized, as in Clermont County. The FOP calculations show that Clermont County

Corrections Officers receive 9.56 percent less in salary (excluding uniform allowance) than the average officer in the 3 comparison counties.

2. Employer Position.

The Employer position on this issue is to offer a 3 percent increase in the salary of the Corrections Officers retroactive to March 1, 2008. Effective the first full pay period nearest to March 1, 2009, the Corrections Officers would receive the same wage increase as the non-union county employees. Effective the first full pay period nearest to March 1, 2010, the Correction Officers shall again be given the same wage raise as the non-union county employees. Alternatively, the officers could request to reopen negotiations regarding wages in lieu of the raise given to non-union employees of the county in 2010. To reopen negotiations, the FOP must notify the Sheriff of its intent to reopen prior to January 1, 2010.

In support of its position, Mr. Berninger directed the Conciliator's attention to Tab 2 of Employer Exhibit # 1. The data in Tab 2 are for 55 counties in Ohio; 46 of which have single county jails. The data for the 46 counties show that in Clermont County the Corrections Officers are paid 12.1 percent more than the average for the 46 comparison counties. If the size of the facility is taken into consideration, Clermont County is 3.3 percent above the comparison county average wage.

Mr. Berninger asked the Conciliator to consider the financial situation of the County. The Sheriff's budget is financed from the General Fund, which is dependent upon sales tax receipts. Sales taxes were down

\$750,000 in October 2008 compared to a year ago. The County is looking at a 2% reduction in total operating revenues for 2008. In the past years, the County had enjoyed a growth of 6-7 percent per year. In 2008, there will be a negative 2 percent growth rate. The County has made a \$600,000 reduction in non-personnel costs in 2008 and likely will need to make more. The County Commissioners have a policy goal of maintaining a 25 percent budget reserve and the projected reserve is about 30 percent for 2009.

3. Discussion.

Both parties agree that there is no inability to pay issue in Clermont County. In the previous CBA, the officers received a 3.1 percent increase in 2006 and a 3 percent increase in 2007. There has been no wage raise for the officers since March 1, 2007. The deputies are to receive a 3.5 percent increase for 2008 and 2009.

The comparability data are in conflict, as is often the case in Factfinding and Conciliation. The FOP data shows that the Corrections Officers are underpaid by 11.69 percent when compared to officers in Butler, Greene, Montgomery and Warren Counties. The employer data for 46 counties with single county correctional facilities employing non-sworn officers shows that the officers in Clermont County are paid 12.1 above the average wage for this comparison group. The Factfinder concluded that wages for Correction Officers in Clermont County “at best

come in at an average/below average level”.¹ The Factfinder recommended a 3 percent increase in 2008 (retroactive to March 1, 2008), a 3 percent increase in the second year of the agreement plus a new top step, and a 3 percent increase in the third year of the agreement plus a new top step.

The FOP has modified its final offer on wages since Factfinding considerably; close to the Factfinder’s recommendations, which it voted to accept. The Employer has not changed its position much since Factfinding other than providing for a “me too” provision regarding wage raises in 2009 and 2010 which would tie the Corrections Officers wages to wage raises given to the non-union County employees in those years.

In my experience it would be quite unusual, extraordinary actually, for a labor organization such as the FOP to voluntarily agree to tie its members wage rates to those of a non-union work group who work in an entirely different work environment than the Correction Officers. I can not award something in Conciliation that I feel is so foreign to what I might expect from a labor agreement that is negotiated freely between the parties. I understand the County must be cautious about its finances; everyone is cutting back in the face of the current financial situation. In its final offer, the County is asking the Corrections Officers to sacrifice the security of a negotiated increase for the insecurity facing the non-union

¹ William Heekin Report of the Factfinder in the matter of Impasse between Clermont County Sheriff and FOP Local 112. August 1, 2008, p.4.

work group in the next few years. I do not think this sacrifice is justified by the County's evidence.

4. Award.

The FOP position is awarded on this issue.

B. Issue Two – Article 15 Health Insurance.

1. FOP Position.

The FOP position on this issue is to cap the required employee contribution to the County health insurance program at 21 percent of the cost of the premium. In support of its position, the FOP cites Article 15.1 of the current Deputies CBA with the Clermont County Sheriff which caps the employee contribution at 21 percent. The Union also provides data from Clark, Greene, Lake, Licking, Mahoning, and Medina Counties which shows that only the Correction Officers in Licking County pay more for health insurance than those in Clermont County.

2. Employer Position.

The Employer position on this issue is current contract language. Under the collective bargaining agreement negotiated in 2006 there is a provision in Article 15.2 that effective February 28, 2008 the Corrections Officers shall pay the same premium share as all other county employees, with no mention of a cap. Article 15.1 of the 2006 agreement caps the employee contribution at 21 percent.

3. Discussion.

The Factfinder in his report recommended the Sheriff's position. The FOP modified their position in Factfinding which called for a 15 percent cap not to exceed \$175 per month. The comparability data provided by the Union for the 6 counties (one in Southwest Ohio, two in Central Ohio, and three in Northeast Ohio) show that the officers in Clermont County do pay higher premium share than those in all but one (Licking) County in this comparison group. Health insurance plans are notoriously difficult to compare. In addition, in every negotiation these days there is a trade off between wages and insurance. The logic behind the Sheriff's position is internal comparability and cost sharing. The FOP justification for its position is comparability with the Clermont County Deputies and comparability with Corrections Officers in other counties. In this instance, I find the Sheriff's argument persuasive. In addition, it is hard to ignore the fact that the Union agreed to lift the cap in Article 15.2 of the 2006-2008 agreement.

4. Award.

The Sheriff's position be awarded.

C. Issue Three – Article 18 Sick Leave.

1. Employer Position.

The Employer position on this issue is that sick leave accumulation should be reduced from 4.6 hours per pay period to 3.1 hours per pay period and that the maximum amount of sick leave that can be

accumulated be reduced from 120 hours to 80 hours. In support of its position the County representative stated that in the County's view 10 days of sick leave per years is the norm in the private sector.

2. FOP Position.

The FOP position on this issue is that 4.6 hours of sick leave per pay period is the standard in the public safety sector of the public sector. In support of its position, the FOP cites data from Butler, Greene, Montgomery and Warren counties all of which provide for 4.6 hours of sick leave per pay period and 120 hours total accumulation.

3. Discussion.

The data from the 4 geographically proximate counties is clearly in support of the FOP position. The Factfinder in his report recommended the FOP position which is no change in current contract language.

4. Award.

The FOP position is awarded.

D. Issue Four – New Contract Language. Field Officer Training Pay.

1. FOP Position.

The FOP position on this issue is that effective January 1, 2009 any officer assigned as a Field Training Officer (FTO) shall receive a 1 percent increase in base pay for all hours in which they are responsible for a trainee and for all hours spent training other members of the bargaining unit. In support of this position, the FOP cites data from Butler County,

Greene County, Montgomery County, and Warren County. All have FTO pay; Butler County provides one hour compensatory time per shift, Greene County provides 5 percent per hour, Montgomery County provides 35 cents per hour and Warren County provides \$1.00 per hour.

2. Employer Position.

The Employer position on this issue is that FTO pay will involve an increase in labor costs to the County and the County is facing a decrease in revenues for 2009. Therefore, the County declines to agree with the FTO proposal put forward by the FOP.

3. Discussion.

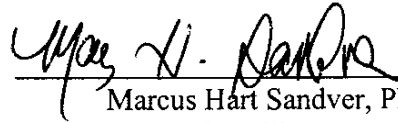
The FOP proposal would provide for a modest wage raise for those designated as an FTO. A 1 percent per hour increase for someone making \$20.00 per hour is only 20 cents. The Sheriff designates who is responsible to serve as an FTO so the costs would be controlled by the Sheriff. In his Factfinding report, the Factfinder recommended the FOP position on this issue.

4. Award.

The FOP position is awarded.

IV. Certification.

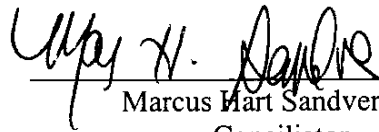
This Conciliation Report and Award was prepared by Marcus Hart Sandver based upon evidence and testimony presented at a Conciliation Hearing conducted in Batavia, Ohio on November 7, 2008.



Marcus Hart Sandver, Ph.D.
Conciliator
Columbus, Ohio
December 4, 2008

V. Certification of Service.

This Conciliation Report and Award was mailed by First Class Mail to Paul Berninger and Steven Lazarus, both of Cincinnati, Ohio on December 4, 2008.



Marcus Hart Sandver, Ph.D.
Conciliator
Columbus, Ohio
December 4, 2008

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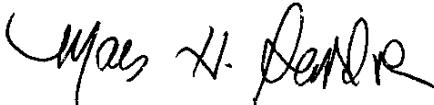
December 5, 2008

Mr. Edward Taylor
Chief, Bureau of Mediation
S.E.R.B.
65 E. State Street
Columbus, Ohio 43215

Dear Mr. Taylor:

Enclosed you will find my Conciliation Report and Award involving the Clermont County Sheriff and FOP Lodge 112 (SERB Case No. 08-MED-02-0125). I have also enclosed an invoice for my services.

Very sincerely yours,



Marcus Hart Sandver, PhD
Conciliator

Enclosure