

COPY

**IN THE MATTER
OF
INTEREST ARBITRATION
CONCILIATION
OPINION & AWARD**

THE)	
HAMILTON COUNTY DEPT. OF)	CASE NO. SERB 08-MED-09-0827
SHERIFF'S SUPERVISORS)	FACT FINDER: JOHN S. WEISHEIT
ASSOCIATION)	ISSUE: CONCILIATION
V)	DATE OF HEARING: MAY 28, 2009
THE)	DATE OF AWARD: AUGUST 3, 2009
HAMILTON COUNTY)	HEARING LOCATION: CINCINNATI, OH
SHERIFF)	

REPRESENTATION

<u>Employer Representatives</u>	<u>Union Representatives</u>
Brett A. Geary, Esq., Regional Dir. CLEMANS, NELSON, & ASSOC., INC. 420 W. Loveland Ave. Suite 101 Loveland, OH 45140	Stephan S. Lazarus, Esq. HARDIN LAZARUS LEWIS & MARKS INC. 30 Garfield Place, Suite 915 Cincinnati, Ohio 4322

BACKGROUND

This matter, in this case, was brought before Conciliator John S. Weisheit, in keeping with terms of the collective bargaining agreement between the Hamilton County Sheriff, hereinafter referred to as the “Employer” and/or the “Sheriff”, and the Hamilton County Deputy Sheriff’s Supervisors Association, hereinafter, referred to as the “Union” and/or the “Association”, under terms of ORC §4117, the rules, policies and related procedures of the Ohio State Employment Relations Board.

The bargaining unit consists of about thirty-five (35) Correction Officers, with the job titles of Corrections Sergeants, Corrections Lieutenants, and Corrections Captains employed by the Sheriff.

Prior to the convening of this matter to Conciliation, the unresolved issues were subject to review and the recommendation by Fact Finder Margaret Nancy Johnson.

The parties mutually agreed that the Hearing should proceed without a stenographic record or recording of same. It was understood that the Conciliator’s Opinion and Award would reflect his record of the proceedings.

The Employer was represented at Hearing by Brett A Geary Esq. while the Union was represented by Stephen S. Lazarus, Esq. Prior to convening the Hearing, each party timely submitted to the Conciliator a report including information stating the Agreement terms at tentative agreement, terms at impasse, with the last offer, position statements of outstanding unresolved issues and other information, facts and evidence considered relevant.

ISSUES RESOLVED PRIOR TO CONCILIATION

All issues considered for the successor Agreement have been resolved in the course of the collective bargaining process prior to Conciliation.

The following Articles were resolved in tentative agreement in the course of collective bargaining:.

ARTICLE 2 - Association Security
ARTICLE 6 -Non-Discrimination
ARTICLE 7 - Grievance procedure
ARTICLE 8 - Discipline
ARTICLE 10 - Probationary Period
ARTICLE 11 - Seniority
ARTICLE 13 - Layoff & Recall
ARTICLE 17 - Drug & Alcohol Testing
**ARTICLE 18 - Hours of Work &
Overtime**

ARTICLE 20 - Court Time/Call-in Time
ARTICLE 23 - Vacation
ARTICLE 24 - Sick Leave
ARTICLE 27 - Uniforms and Equipment
ARTICLE 28 - Expenses
ARTICLE 29 - Training
ARTICLE 30 - Leave of Absence
**ARTICLE 33- Waiver in Case of
Emergency**

The following Articles were agreed to be brought forward without change and entered into the Contract as set forth in the expiring agreement:

Preamble

ARTICLE 1 - Association Recognition	ARTICLE 16 - Health & Safety
ARTICLE 3 - Association Representation	ARTICLE 22 - Holidays
ARTICLE 4 - Management Rights	ARTICLE 25 - Occupational Injury Lv.
ARTICLE 5 - Labor/Management Mtgs	ARTICLE 26 - Donated Time
ARTICLE 9 - Personnel Files	ARTICLE 31 - No Strike Provision
ARTICLE 12 - Vacancies & Promotions	ARTICLE 32 - Severability
ARTICLE 14 - Bulletin Boards	ARTICLE 34 - Residency
ARTICLE 15 - Work Rules & Gen. Orders	ARTICLE 35 - Physical Fitness
	ARTICLE 36 - Performance Evaluation

UNRESOLVED ISSUES AT IMPASSE

The following Articles remain unresolved and are subject to final and binding Conciliation by the Conciliator. His determination will be on the basis of the "last best offer, issue by issue."

Article 19 - Wages

Article 21 - Insurance

Article 37 - Duration

FINAL POSITION and PARTY SUMMARY ON UNRESOLVED ISSUES

<u>UNION POSITION</u>	<u>ISSUE</u>	<u>EMPLOYER POSITION</u>
Union Position:	ARTICLE	<u>Employer Position:</u>
	19	
Section 19.1 The Association proposed, as of January 1, 2009, through December 23, December 23, 2009, the annualized pay levels for all bargaining unit employees shall be as follows(2.5%):	WAGES	<u>Section 19.1</u> Effective the first pay of 2009, the annualized pay levels for all bargaining unit employees shall be as follows:
Corrections Sergeant \$51,248		Corrections Sergeant \$49,998
Corrections Lieutenant \$59,449		Corrections Lieutenant \$57,309
Corrections Captain \$68,961		Corrections Captain \$65,320
Said retroactive payments shall be made on or before sixty (60) from execution of this contract.		Section 19.2 The listing of annual salaries is not a guarantee of annual earnings, but is shown only as the basis for calculating bi-weekly, hourly, and overtime rates of pay. The bi-weekly rate of pay is determined by dividing the annual salary by twenty-six (26) irrespective of the number of pay periods in a year. The hourly rate for all purposes except the computation of overtime is determined the bi-weekly salary by eighty (80).
Section 19.2 The Union or the Employer must notify SERB in the appropriate manner for a re-opener on the contract for wages only. The re-opener in 2009 shall determine wage increases effective December 24, 2009, and December 23, 2010. Any language agreed upon or awarded in the re-opener shall be included as an Appendix to this Agreement.		Section 19.3 Wages for the contract years 2010 and 2011 shall be determined as follows:
Section 19.3 Delete		If the parties do not agree to the wage rates for such period, the Union or the Employer must notify SERB in the appropriate manner for a re-opener on the contract for wages only. Such re-opener shall be subject to the normal statutory impasse procedures (including fact finding and conciliation) described in ORC Chapter 4117. Any language agreed upon in the re-opener shall be included as an Appendix to this Agreement.
Section 19.4 Current contract language.		
Section 19.5 Current Contract language.		

Summary:

The Association opposes the Employer's comparative reference to non-bargaining unit employees. It contends that the Employer's position of freezing wages in 2009, and limiting a re-opener on wages in 2010 and 2011, would maintain a continued inevitable conditions for the Association.

The Association contends comparable unionized units demonstrate the lack of parity and give cause to make a significant wage increase. It argues, considering the small number of employees in the bargaining unit and the Employer's \$ 1,000,000 + funds it projects available, there are sufficient funds to cover costs of the issues proposed by the by the Association. It cites the Moody's Investor Service of May, 2008, supports the Sheriff's argument regarding his ability to pay.

The Association contends that the Employer has other sources of income that could be used to fund fiscal year 2009 costs set forth in the Union's proposals. It contends the local economy is not stagnant. The Association holds property development over the past year suggests otherwise including new developments in and around Cincinnati citing a number of recent developments throughout the County.

The Union argues the bargaining unit deserves a significant wage increase as a result of the conditions under which they have been required to work over the past several years.

ARTICLE
19
WAGES

cont'd

Section 19.4 Beginning on the first day of the pay period within which an employee completes the required number of years as provided in Section 11.2 of this Agreement, he/she will receive an automatic adjustment in his/her rate of pay equal to and in accordance with the following:

Ten (10) Yrs of Service- One percent (1%)
Fifteen (15) Yrs of Service - One pct.(1.5%)
Twenty(20) Yrs of Service - Two pct.(2.0%)

Summary:

The Employer proposed 0% wage increase in the first year, and the second year third it offers re-openers. It cites the facts related to the current adverse economic crisis and uncertainties of future economic projections.

It contends that the County has incurred a \$30 Million loss in recent revenues, In addition, to significant reductions from the State of Ohio and other funding sources. Such continued reductions in are being projected making it difficult to meet a basic safety service program and maintain minimum staffing levels.

Position:

Sections 21.1. - 21.4. Current contract language.

Section 21. 5. The co-payment paid by bargaining unit employees for any specific insurance plan provided for in Section 21.1. shall not increase from year to year by more than the percentage increase received by the Employee's classification Group.

Summary:

The Association position has been reduced from that put forth at Fact Finding. The Union position at Conciliation is limited to include Patrol Contract language becoming effective with this Agreement.

**ARTICLE
21
INSURANCE**

Employer Position:

Section 21. 1. Maintain current contract language.

Section 21.2. Maintain current contract language.

Section 21.3. Maintain current contract language.

Section 21.4. Maintain current contract language.

Summary:

The Employer argues it seeks to attain equity and parity in this benefit with other employees. It notes only two bargaining units have attained the issues sought by the Union in this instant case. The Employer contends the denial of the three issues sought by the Union is necessary in attaining this ultimate objective.

UNION Position:

Section 37.1. The provisions of this Agreement shall be effective upon execution by the parties, except as otherwise specifically provided, and shall remain in full force and effect through December 31, 2011.

Section 37.2. - 37.3. - Retain current language.

Summary:

The Employer proposes the same duration language as that in the expiring agreement. It holds that the Union proposal is without merit or any convincing rationale. The Employer notes in the Union's prior attempts to change this language, third party neutrals have rejected the Union proposed provision.

ARTICLE

37

DURATION

EMPLOYER Position:

Section 37.1. The provisions of this Agreement shall be effective upon execution by the parties, except as otherwise specifically provided, and shall remain in full force and effect through December 21, 2011.

Section 37.2. - 37.3. - Retain current language.

Summary:

The Employer notes its proposal is consistent with its wage positions. It also notes the Union has been unsuccessful in attaining this change in the last several rounds of bargaining before neutrals.

It contends the current format has been applied for several years and lacks cause to be changed.

CONCILIATOR'S FINDINGS

GENERAL Fact Finder Johnson's report is found thorough and comprehensive. The facts, determinations, and recommendations are concurred with by this Conciliator with one significant exception. While the number of issues remaining unresolved are limited to part or all of three (3) Articles the parties have made changes to some terms set forth in their respective final positions. The time difference between when the Fact Finder attained her information and rendered a report and the date of Conciliation and an opportunity to review new funding projection and render his Findings and arrive at a final Order is determined significant. The Union's argument in contentions and assumptions due not reflect adequate to outweigh the Employer's projections and facts.

The Employer's information reflects a serious change in the anticipated decline in operation revenues from its major income sources. The financial findings and subsequent projections are found of a significant degree to alter the wage recommendation offered by the Fact Finder.

The positions and rationale offered remained virtually consistent from the time they declared impasse until reaching Conciliation. While the parties have modified certain issues, they are not considered a significant factor in reaching the final resolution in this case.

**ECONOMIC
ISSUES**

The remaining unresolved issues are primarily influenced by the current and projected income and a stable funding program. The Employer's contention that the current and projected financial condition clearly demonstrates its inability to pay. No reasonable or creditable time-line regarding funding and staffing levels countered the Employer's action in view of its retained management rights to determine program and staffing levels as determined by the Employer in the best interest of the residents of the community. The Union has not refuted the Employer's evidence or projections that it faces a significant loss in revenues for the time period in which the Agreement will be in effect. The three (3) Articles remaining unresolved reflect financial issues. The Union's argument is not persuasive nor prevails in its argument to justify the inclusion of its final positions on the three issues remaining at impasse.

The facts offered by the Employer stating they have already laid off some thirty percent (30%) of its employees supports

its contention that a significant lack of funding does exist. It is also recognized that due to the projected decline of operating revenues, a financial crisis exists and the Employer retains its management right to determine in what way(s) it will deal with addressing staffing and program services, and when it will reinstate such staffing and service programs.

DETERMINATION OF ISSUES AT IMPASSE

The following last positions are to be included in the Agreement as put forth by the Employer: at Conciliation:

EMPLOYER LAST POSITION :

ARTICLE 19 - WAGES

Section 19.1 Effective the first pay of 2009, the annualized pay levels for all bargaining unit employees shall be as follows:

Corrections Sergeant	\$49,998
Corrections Lieutenant	\$57,309
Corrections Captain	\$65,320

Section 19.2 The listing of annual salaries is not a guarantee of annual earnings, but is shown only as the basis for calculating bi-weekly, hourly, and overtime rates of pay. The bi-weekly rate of pay is determined by dividing the annual salary by twenty-six (26) irrespective of the number of pay periods in a year. The hourly rate for all purposes except the computation of overtime is determined the bi-weekly salary by eighty (80).

Section 19.3 Wages for the contract years 2010 and 2011 shall be determined as follows:

If the parties do not agree to the wage rates for such period, the Union or the Employer must notify SERB in the appropriate manner for a re-opener on the contract for wages only. Such re-opener shall be subject to the normal statutory impasse procedures (including fact finding and conciliation) described in ORC Chapter 4117. Any language agreed upon in the re-opener shall be included as an Appendix to this Agreement.

Section 19.4 Beginning on the first day of the pay period within which an employee completes the required number of years as provided in Section 11.2 of this Agreement, he/she will receive an automatic adjustment in his/her rate of pay equal to and in accordance with the following:

Ten (10) Yrs of Service-	One percent (1%)
Fifteen (15) Yrs of Service -	One pct.(1.5%)
Twenty(20) Yrs of Service -	Two pct.(2.0%)

Employer Position:

ARTICLE 21 INSURANCE

Section 21.1. Maintain current contract language.

Section 21.2. Maintain current contract language.

Section 21.3. Maintain current contract language.

Section 21.4. Maintain current contract language

Employer Position:

ARTICLE 37 - DURATION

Section 37.1. The provisions of this Agreement shall be effective upon execution by the parties, except as otherwise specifically provided, and shall remain in full force and effect through December 21, 2011.

Section 37.2. - 37.3. - Retain current language.

TOTALITY OF AGREEMENT

- This will affirm the foregoing report, consisting of **13 pages**, includes the findings, determinations, and directives of the unresolved issues put before the Fact Finder in this matter.
- The Agreement is to include all terms tentatively agreed to by the parties prior to Conciliation and all terms of the expiring agreement not a subject of bargaining or lacking action of the parties to remove from inclusion in the Agreement.

To the best of my knowledge, said Report and the included determinations comply with applicable provisions of the Contract between the parties, applicable Sections of ORC 4117 and related SERB Rules and Regulations.

I therefore affix my signature at the City of **Galion**, in the County of **Crawford**, in the State of **Ohio**, this date of **August 3, 2009**,

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John S. Weisheit, Fact Finder