STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the matter of conciliation between:	)	Case No. 08-MED-09-0832
	)	
FRATERNAL ORDER OF POLICE,	)	Hearing: July 22, 2010
OHIO LABOR COUNCIL, INC.	)	
	)	
and	)	Date of Award:
	)	August 12, 2010
CLERMONT COUNTY, OHIO	)	
COMMISSIONERS	)	

CONCILIATOR'S FINAL OFFER SETTLEMENT AWARD

Appearances;

Mitchell B. Goldberg, Appointed Conciliator

For the Union:

Barry Gray,	Staff Representative
Jason Noonan,	Union Representative
Anita G. Brill,	Union Associate
David Specht,	Negotiation Team Member

For the County:

Paul Berninger,	Attorney
John Kiskaden,	Communications Director
Sukie Scheetz,	Director, Office of Management and Budget
Stephen Rabolt,	Director, OTCS
Robert Sander,	Director, Human Resources

I. Introduction and Background.

The Ohio State Employment Relations Board ("SERB") appointed the undersigned as Conciliator on November 18, 2009. The appointment was for the purpose of resolving the within labor dispute between the parties. This was in accordance with Ohio Revised

Code Section 4117.14 (D)(1). A hearing was held on July 22, 2010 at the County's offices pursuant to Section 4117.14 (G). The following decision resolves the unresolved issues on an issue-by-issue basis, from between each of the party's final settlement offers taking into consideration the factors outlined in Section 4117.14 (G)(7). This final offer settlement award constitutes a binding mandate to the County and the FOP-OLC to take whatever actions are necessary to implement the award.

Each party submitted timely pre-hearing statements in accordance with SERB rules. Testimonial evidence was presented and documentary exhibits were submitted at the hearing. Each party gave final closing arguments in support of their respective positions.

II. Factual Background.

The bargaining unit consists of Emergency Resource Technicians ("ERTs"). They are employed in the County's Department of Public Safety Services, under the direction of the County Administrator, the Chief Executive Officer of the Board of County Commissioners. ERTs operate radios, telecommunications and computers. They process telephone calls and radio calls, including 911 calls for the dispatching of resources in an effective and timely manner to law enforcement, fire, medical and other emergency first responders. The unit presently consists of 14 employees; there are two vacant positions. The unit consists of another classification called "Call Takers" that is not filled. Persons previously in that classification were promoted to ERTs. The County has no present intention to fill any Call Taker position.

The collective bargaining agreement ("CBA") expired on December 31, 2008. Unresolved issues went to Fact Finding and Daniel Kosanovich issued his Fact Finding Report and Recommendations on October 22, 2009. The County rejected his recommendations and the matter proceeded to conciliation.

Unresolved Issues.

The unresolved issues relate to Wages-Schedule of Rates, and the duration of a successor CBA. The Union's position before the Fact Finder proposed a three-year CBA beginning January 1, 2009 and expiring on December 31, 2012. It proposed across-the-board wage increases of 3% each year. The County called for a wage reduction of 3.84% based upon its analysis and projection of its financial condition. The Fact Finder recommended a two-year contract retroactive to January 1, 2009 and expiring December 31, 2010 with a 2% across-the-board increase for 2009 and 2010. He also recommended a step scale for Call Takers as proposed by the Union.

III. Economic Evidence.

The County, like every other governmental entity in the state, has not been able to avoid the economic problems emanating from the countrywide recession. In June 2010 the County's unemployment rate was 10.2%, joining nearly every other county in the state with double-digit unemployment percentages. The 10.2 % number is an historical high for Clermont County.

Unemployment and loss of income directly affects sales tax revenues, due to the decline in purchases for goods and services. Sales tax revenue in 2007 was over $21 million. It was approximately $21.5 million in 2008, and declined to $19.2 million in 2009. The revised estimate for 2010 is $18.9 million and the 2011 estimate for sales tax revenue is the same. Its Equity in Pooled Cash and Cash Equivalents (cash balance) in the General category went from $22.9 million as of December 31, 2007, to $20.5 million at year-end 2008 to $13.8 million at year-end 2009. Revenues are also negatively impacted by the County's high real estate foreclosure rate of 0.22%. This compares to the high state rate of 0.21% and the high national rate of 0.24%.

The General Fund revenue supports most of the employee wages, including those of this unit. Operating revenues are expected to drop by $6.8 million. The drop in operating revenues caused a draw to be taken against the reserved fund balance in the amount of $5.2 million over the last 4 years. Non-operating draws were another $4.3 million over 4 years against the fund balance. This caused the operating reserve balance to dip below the historical and desired level of 25%.

The County's projections for the next few years, as presented by Sukie Scheetz, Director of the Office of Management and Budget is as follows: Operating revenues are expected to drop $6.8 million from 2008-2011; operating expenses must be reduced by $6.0 million to maintain a balanced budget; the operating draw on Fund Balance will be $5.2 million over 4 years, taking the balance just below the 25% level; and the non-operating draw on the Fund Balance is projected to be $4.3 million over the 4 years.

The Commissioners nevertheless believe that the County is on solid financial ground. The 2010 general fund budget of $47.2 million reflects the reduction from $51.7 million in 2009. This budget does not provide for any pay increases for non-bargaining unit employees and no furloughs. The County has been able to avoid furloughs based upon receipt of $338, 000 in revenue, which was enough to cover the $205,000 needed to cancel the furloughs. The Sheriff's Office was expected to lay off 5 corrections officers at the jail, and the County is considering laying off some deputies depending upon the result on ongoing negotiations with the officers unit for a new CBA after the expiration of the existing CBA on December 31, 2010.

Director Scheetz reported to the press in May 2010 that sales tax and conveyance fees were running better than originally anticipated, as was the collection of property taxes and local government funds from the state. Investment income, fines and forfeitures from the courts were running behind, but not enough to offset the increases. Nevertheless, County Administrator Spinney instructed all departments to make additional budget cuts of 2.6% for 2011.

Other relevant present economic facts are that: (1) median household income is well above the Ohio median, (2) median house and condo values are higher than the state median, and (3) the number of residents living in poverty is well below the state median.

Other facts are indicative of the County's ability to thrive when the economic recovery materializes. It has maintained a favorable bond rating that makes it attractive for investors. The County's net assets have grown to over $493 million by 2008. The County notes that asset growth is unrelated to operating funds and expenses, but asset growth does indicate that returns in the form of a larger population, increased sales tax revenues and general fund growth will ultimately materialize for the long-term benefit of county employees. Some examples of this development and growth include the leasing of the vacant Ford plant in Batavia, a new manufacturing facility in the alternative energy industry, the moving in of a corporate headquarters, and residential and commercial real estate development opportunities that exist, and that are well-positioned when the housing market begins to rebound and the recession subsides.

IV. Positions.

The Union

The Union's position essentially is that the payment of a wage increase of 3% annually over the life of a two-year contract beginning January 1, 2010 is justified and easily affordable for the County, notwithstanding the existing economic climate. The unit employees have not had a wage increase since January 1, 2008. The Union began negotiating a reduction in pay steps from 11 steps to 10 in 2006. Steps were reduced from 10 to 9 in 2007. The employees agreed to freeze the starting wage in 2007 and accepted lower increases in order to gain the step reductions. Now, the unit employees have not had a wage increase at all since January 1, 2009.

While the starting wage and maximum wages for unit employees appear to be comparable with those doing similar work in nearby and comparable counties, there is a real disparity within the steps. For example, the Step 5 wage scale has only increased a total of $0.44 in four and one half years. Yet, during these negotiations and before the Fact Finder, the County insisted upon a 3.84% wage reduction. Step 5 unit employees presently earn $16.07 per hour or $33,425.60 per year. This is compared to Clinton county dispatchers who earn $33, 862.40, Delaware county dispatchers who earn $41,683.20 after 4 steps, Fulton County at $35,706.36, Pickaway County at $34,070.40, and nearby Union Township at $48, 692.80.

The County does not, and cannot claim an inability to pay the proposed increases. As Fact Finder Kasanovich stated in his report, a 1% wage increase for this unit would cost only $7,800 per year, making the cost of the Union's proposal of 3% only $23,400 for one year. The County has a cash balance in all of its funds of $126,882,911 to pay for this modest proposal. The proposal of 3% for 2010 and 3% for 2011 equals 6% and mirrors the Fact Finder's recommendation of 2% each year from 2009 for three years; a total of 6% over the life of the CBA.

The County

The County proposes a two-year agreement beginning January 1, 2009 and expiring December 31, 2010 with payment of the current wage rates under Article 22. Bargaining would then take place for a new CBA with possible wage increases depending upon economic circumstances, the county's budget and wages paid to non-represented employees, and wages paid to the other bargaining unit employees. The acceptance of this proposal would result in this unit receiving a wage freeze at 2008 rates for two years, similar to the freeze upon the wages of the non-represented employees during this period.

The County will probably negotiate for a continued freeze in 2011 unless its view of economic circumstances has changed. It intends to impose a freeze upon the Sheriff's unit deputies for 2011, or otherwise impose a layoff of some deputies. Negotiations for this unit are in progress.

The County's negotiating strategy is based upon its opinion and philosophy that the employees in this unit, as well as the rest of the public employees in its unionized workforce are overpaid compared to its non-represented employees. The support for this opinion is contained in articles that discuss the public employment environment in Georgia, Oregon, California and New Jersey. The authors themes are the same: unionized state employees have been able to avoid the results of the nationwide recession by negotiating pay increases while private sector employees have suffered layoffs and pay reductions. Powerful unions have managed to negotiate these lucrative contracts involving wage increases and expensive pension benefits in past years through political influence involving heavy contributions to politicians while other non-represented employees have seen their wages and benefits erode. Taxpayers have begun to object to these contracts that in many cases provide for wages and benefits that are better than workers now receive in the private sector due to the effects of the recession. This backlash has now produced layoffs, furloughs and wage freezes never before seen in the public service sector. We are seeing massive layoffs and freezes involving teachers, and safety force employees for the first time since before World War II.

The state of Ohio has recently imposed a statewide wage freeze for its employees. Public employee layoffs, furloughs and wage freezes have become commonplace in Ohio. These actions can hardly be left at the doorsteps of unions. High unemployment due to the nationwide recession has substantially reduced tax collections necessary to maintain government services. Tax collections in Ohio have continuously declined due to the loss of manufacturing jobs, and the loss of populations due to the unavailability of employment. The public sector union contracts have been sustained due to the length of the contract terms, but eventually they have succumbed to the recession.

The County argues that the state public employment laws that provide for conciliation and binding arbitration have produced higher wages and benefits than otherwise would be the case if such wages and benefits were not imposed upon employers by outside neutrals.

V. Discussion and Findings.

While I could be accused of being biased in this area due to my occupation, I have seen no evidence that conciliation awards produce higher wages and benefits than would otherwise be the case if safety forces were permitted to negotiate contracts under a system where strikes were permitted. The Union's position is justified based upon the comparables. These bargaining unit employees have been working without a raise since

January 2009. They previously accepted lower raises in order to reduce the number of pay steps. There is a definite pay inequity when steps 4 and 5 are compared with dispatchers with the same experience in other comparable counties and governmental units. I believe that the Fact Finder's recommendation of a pay increase is reasonable in some form, although I disagree with his decision that an across the board increase is the correct action. Instead, I would have preferred targeted increases at steps 4 and 5 to address the above mentioned inequities relative to pay for similar work in nearby vicinities. Moreover, I disagree with the references to the County's asset growth and the stock market.[1] Likewise, the Union's proposal for a 3%-3% two-year contract beginning in 2009 that mirrors the Fact Finder recommendations is less justified than the above targeted increases. However, I am not permitted to award any position other than the Union's across the board increase proposal, or the County's 5-month freeze with negotiations to begin again after it resolves the deputies' contract.

The problem from my perspective, however, is to reconcile the Union's request for a modest wage increase with the realities of the County's internal wage structure for all of its employees. All of the employees have been subjected to a wage freeze, except those who were the beneficiaries of an existing CBA during the freeze period. If the freeze continues and the County is able to negotiate a freeze for 2011 with the Sheriff's unit, and the Union's position is accepted here for these 14 ERIs, they will be the only employees in the workforce who receive pay increases.

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[1] I believe that the present rise in the stock market indices reflects increased profits and earnings that have been produced by workforce reductions and cost cutting. We still seem to be years away from sustained economic growth, growth in the real estate markets, increased consumer demand and meaningful jobs creation.

Accordingly, I am faced with the proverbial Hobson's choice, the inability to accept any alternative other than one of the parties' stated positions. While I would prefer to impose my own decision that differs somewhat from either of the proposed positions, I am prevented from doing so under Section 4117.14.

I believe that the County's position is the better alternative at this point in time with only five months remaining in 2010. Hopefully, by that time the County will have negotiated a settlement with the Sheriff's unit involving a large part of its workforce, and the impact upon the County's budget will be determined for 2011 and beyond. The economic conditions relative to tax revenues may or may not improve, but this unit would be in a position to negotiate for a catch-up for lost pay increases and for some step adjustments that would cure some inequities with pay for similar years of service in other counties. While negotiations may again reach an impasse, and the unit employees will continue to work without any increases until an agreement is finalized through another fact-finding and conciliation, the conciliator will be in a better position to fairly treat these 14 employees internally with the wages paid to the Sheriff's department and the other represented and non-represented employees. Even if across the board increases are found to be unwarranted, the new Fact Finder and Conciliator may determine that step adjustments and are otherwise affordable and justified, a determination that I cannot award.

The County exercises its conservative approach to all of its employees. While its insistence in maintaining a 25% reserve cushion in these hard times instead of using some of it to compensate its employees who are working at 2008 pay levels is questionable by the Fact Finder and others, this is a management call by the County. These 14 unit members are in the same boat with the other employees. They should benefit from pay increases if increases are awarded to other units or non-represented employees, but they also should be subject to freezes if freezes are called for as a uniform County budgetary policy. If revenues become available to pay increases to the Sheriff's employees and other County employees, this bargaining unit should likewise receive increases and/or adjustments that recognize disparities between Clermont County ERIs and others doing comparable work.

VI. Award.

A two-year agreement shall be imposed that covers the period of January 1, 2009 and expires December 31, 2010. There shall be no wage increases during this period. The unit employees shall be paid the wages set forth in the contract that expired on December 31, 2008.

Date of Award: August 12, 2010

Mitchell B. Goldberg

Mitchell B. Goldberg, Appointed Conciliator

CERTIFICATE OF SERVICE

The foregoing award was sent by U.S. mail, first class to the following persons on August 12, 2010:

1. J. Russell Keith, General Counsel & Assistant Executive Director, SERB, 65 E. State St., 12th Fl., Columbus, Ohio 43215-4213

2. Barry L.Gray, Staff Representative, FOP-OLC. 5752 Cheviot Rd., Suite D, Cincinnati, Ohio 45247-7009

3. Paul R. Berninger, Wood & Lamping LLP, 600 Vine St., Suite 2500, Cincinnati, Ohio 45202

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