

**STATE EMPLOYMENT RELATIONS BOARD**

2009 JUL 13 A 9:43

---

IN THE MATTER OF CONCILIATION BETWEEN:  
FRATERNAL ORDER OF POLICE/OHIO LABOR COUNCIL, INC.

- AND -

LORAIN COUNTY SHERIFF

SERB CASE NO.: <sup>08</sup>~~06~~-MED-09-0864 (COMMUNICATION OFFICERS, ET AL)

---

CONCILIATOR'S FINDING  
CONCILIATOR: DAVID M. PINCUS  
JULY 10, 2009

**Appearances**

**For The Employer**

Jonathan Noe  
James Dorowski  
Robin Bell  
Phil Stammitti

Associate Representative  
Captain  
Regional Manager  
Sheriff

**For The Union**

Susan Neely  
Grant Koba-Nelson  
Lucy Dinardo

Union Associate  
Union Associate  
Staff Representative

## **BACKGROUND OF CONCILIATION**

The bargaining unit involved in the present impasse consists of approximately eleven (11) employees. They are nested in a number of job classifications: Communications Officer, Vehicle Maintenance Coordinator, and Vehicle Maintenance Worker. The parties have engaged in accordance with procedures specified in Ohio Revised Code, Section 4117.14 (C)(3). The parties selected this Conciliator to issue findings as to all unresolved issues at impasse.

In accordance with statutory requirements, the parties submitted two (2) issues for consideration: Wages and Duration. All other issues were resolved prior to the date of the conciliation hearing, which was held on May 29, 2009 at the Sheriff's Office facility, 9896 Murray Ridge Road, Elyria, Ohio. Per the mutual agreement of the parties, all tentative agreements prior to the conciliation hearing are hereby formally incorporated into this award.

These disputed matters were reviewed by this Conciliator by employing criteria specified in Ohio Revised Code, Section 4117.14 (C)(4)(e), Section 4117.14(G)(7) and Section 4117.14(G)(7)(a)-(f). These guidelines include in pertinent part:

1. Past collectively bargained agreement, 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 uses related to other public and private employees doing comparable work, giving consideration to factor peculiar to the area and classification involved;
3. The interest 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 these parties;
6. Such other factor, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the 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.

Each of the above-mentioned factors were considered and given appropriate weight when deemed relevant by the Conciliator.

Circumstances surrounding this negotiation cycle are not in dispute. The Lorain County Sheriff's General Fund was cut by 20% or \$1.2 million for 2009 per the advice of the Lorain County Commissioners. These budget cuts were a consequence of an anticipated \$6.0 million deficit for Lorain County in 2009.

These fiscally-generated cuts resulted in certain personnel consequences. The Lorain County Sheriff laid-off twelve (12) full-time Deputies and two (2) Records Clerks. In an attempt to retain as many employees as possible, the Sheriff advised eight (8) Intermittent Deputies that their services would no longer be required. He, moreover, modified and/or altered his support car policy and associated practices.

It should be noted that no one from the bargaining unit has been laid off. Yet, the Commissions are only providing for quarterly budget allocations that anticipate future cuts in the budget.

## **UNRESOLVED ISSUES**

This section of the report will articulate the parties' last best offers dealing with the two (2) remaining issues at impasse: Article 35 – Wages and Article 40 – Duration. . Each disputed position will be followed by the Conciliator's Opinion and Award.

### **ARTICLE 35 – WAGES**

#### **The Employer's Position**

The parties stipulated to the following regarding 2009 wages which are not in dispute. The parties agreed to a 4% increase in pay for 2009 with the Union agreeing to a 10% premium share for insurance. Also, both parties viewed retroactivity as a critical component to the 2009 wage settlement.

Within this framework, the Employer proposes a wage freeze for years 2010 and 2011. Further wage increases are not warranted. The Employer cannot justify further increases based on the present economic outlook and climate; and the number of employees already laid off.

The comparables do not support a wage increase. Other comparable County Communications Officers have not enjoyed similar increases in benefits.

### **The Union's Position**

The Union seeks to have the bargaining unit wage increased in the 2010 fiscal year by two and one-half percent (2.5%). Parity is the primary justification offered by the Union. All other bargaining units have recently negotiated a wage outcome of two and one-half percent (2.5%) for fiscal year 2010.

### **THE CONCILIATOR'S OPINION AND AWARD**

#### **ARTICLE 35 – WAGES, SECTION 35.2**

Pattern bargaining and related parity concerns cause this Conciliator to select the Union's proposal as proper for incorporation into the Agreement. The employer failed to provide any sufficient rebuttal to offset this finding. The proposed wage increase represents an identical wage increase received by other bargaining units. Nothing in the record supports the requested wage freeze; especially considering the size of this bargaining unit and the impact of this finding on the overall budget.

By limiting the wage increase to one year; it allows an opportunity to revisit the dispute in the near future. The parties will have a better chance to assess the economic climate, and jointly determine the proper course of action given the turbulent economic landscape.

For all the above-stated reasons, the Conciliator orders that the following language shall be incorporated in the successor Agreement:

**Article 25 – Wages**

...

**Section 35.2. Effective the first full pay period in the 2010 fiscal year, the hourly base rates of pay for the bargaining unit employees shall be two and one-half percent (2.5%).**

...

**ARTICLE 40 – DURATION**

**The Employer's Position**

Obviously the Employer's wage and duration proposal are linked. It wishes to freeze wages for the 2010 and 2011 fiscal years. As such, it desires an agreement effective as of the date of signing, and to remain in full force and effect until December 31, 2011.

**The Union's Position**

Again, the Union's proposal is similarly linked to its wage demand. It desires the effective date of the Agreement to be January 1, 2009 and to remain in effect until December 31, 2010.

By limiting the length of the Agreement, the bargaining unit's negotiation cycle would be synchronized with its larger counterpart bargaining units. Otherwise, it becomes quite difficult for a bargaining unit of this size to negotiate a fair outcome.

**THE CONCILIATOR'S OPINION AND AWARD**

**ARTICLE 40 – DURATION OF AGREEMENT**

The Conciliator orders that the following language shall be incorporated in the successor Agreement:

...


**Section 40.1**

**A. This Agreement shall be effective January 1, 2009 and shall remain in full force and effect until December 31, 2010.**

...

Many of the arguments discussed in the Wage Section apply here and do not have to be revisited. Future parity can be more readily achieved if the bargaining unit's negotiations cycle mirrors those enjoyed by the other bargaining units.

7/10/09  
\_\_\_\_\_  
July 10, 2009

  
\_\_\_\_\_  
Dr. David M. Pincus  
Conciliator

Dr. David M. Pincus  
Conciliator  
15054 Hemlock Point Road  
Chagrin Falls, Ohio 44022

July 10, 2009

Lucy Dinardo  
Staff Representative  
FOP/OLC, Inc.  
2721 Manchester Road  
Akron, Ohio 44319-1020

- And -

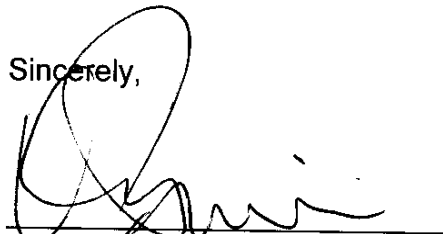
Robin L. Bell, Esq.  
Regional Manager  
Clemens, Nelson & Associates  
2351 South Arlington Road, Suite A  
Akron, Ohio 44319-4949

Re: Fraternal Order of Police/Ohio Labor Council, Inc.  
- And -  
Lorain County sheriff  
SERB Case No.: 06-MED-09-0864

Dear Lucy and Robin:

Enclosed please find my Conciliation Award dealing with the above-captioned matter. I have also enclosed a Conciliator's Invoice for services rendered.

Sincerely,



---

Dr. David M. Pincus  
Conciliator

Cc: Edward E. Turner