

I. STATEMENT OF THE CASE

This matter came on for hearing before Jonathan I. Klein, appointed as conciliator pursuant to Ohio Admin. Code Section 4117-9-06 and Ohio Revised Code Section 4117.14(D)(1). The hearing was conducted between the Tuscarawas County Sheriff (“Employer”), and the Fraternal Order of Police, Ohio Labor Council, Inc. (“Union”), at the Tuscarawas County Justice Center located at 2295 Reiser Avenue, SE, New Philadelphia, Ohio 44663. The proceedings were recorded by the conciliator.

The bargaining units represented by the Union consist of: a) Bargaining Unit 1 - approximately 22 employees in the classification of deputy; b) Bargaining Unit 2 - approximately 9 employees in the classification of sergeant for road patrol and corrections; and c) approximately 28 employees in the classification of corrections officers.

The unresolved issues at impasse are wages and health insurance. In selecting the last best offers, the conciliator reviewed the record of the hearing, arguments and evidence presented by both parties, together with their respective position statements.

II. LAST BEST OFFER CRITERIA

In the determination of the issue, the conciliator has considered the applicable criteria listed in 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-06(H)(1)-(6). These conciliation criteria are enumerated, as follows:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) 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;
- (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 the parties;
- (6) 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 private employment.

III. FINDINGS OF FACT AND SELECTION OF LAST BEST OFFER

Article 28: Hospitalization

Fact-finding Report

On March 27, 2009, the fact-finder issued his report in which he noted the Employer's proposal to remove the sixty dollar maximum employee contribution toward their health insurance premium, and the Union's desire to retain current language with respect to a specific dollar amount employees must contribute. The Union also proposed to maintain the current payment of \$60.00 in 2009, but increase the cap to \$70.00 in 2010, and \$80.00 in 2011.

The fact-finder recommended that the contract language remain the same with an increase in the cap consistent with the Union's proposal. However, noting the absence of a labor/management committee dedicated to healthcare, the fact-finder recommended the following addition to the language of Article 28:

The Employer and Union shall form a management /labor healthcare committee with three representatives from the Employer and three representatives, one from each Union. The purpose of the committee shall be to obtain the best health coverage for the best price. The committee shall also have duties, decided by the committee, including but not limited to identifying any local causes of premium increases and how to lower those premiums, "shopping" for competitive healthcare providers, and education the employees as to what each person can do to help control healthcare costs. The committee will promulgate rules for meeting times, procedures and subcommittees.

Position of The Employer

The Employer emphasizes that in other collective bargaining agreements between it and other bargaining units within the county there are no caps on health insurance. (Employer Exh. Tab 4). This includes the agreement between the Tuscarawas County Engineer and AFSCME, Ohio Council 8, Local 2308, The Tuscarawas County Metropolitan Sewer District and AFSCME, Ohio Council 8, Local 2308, and non-bargaining unit employees within the county.

More importantly, the fact-finder's recommendation of a healthcare committee is contrary to Ohio Rev. Code §305.71, as it represents a potentially improper delegation of those duties belonging to the board of county commissioners. *See, Licking Cty. Sheriff's Office v. Teamsters Lo. 284*, 08-CV-01461 (Licking Cty., OH) (November 17, 2008). Moreover, a chart of comparable jurisdictions demonstrates that the current \$60 employee contribution is less than a majority of other contiguous sheriff departments.

Position of The Union

The Union reasons that its members should be entitled to the current contract language consistent with the fact-finder's recommendation on health insurance. The current employee contribution costs are \$59.73, and have not reached the agreement's existing cap and no rate change was made for 2009. Employees only started to pay for health insurance commencing in 2002. Over the term of the last collective bargaining agreement, employee monthly costs have increased by \$22.28, and the Union's proposal seeks to maintain a similar increase over the term

of the successor agreement. In any event, the Employer has the ability to modify coverage in an effort to control costs, and it has done so in the past. (Union Ex. 5).

Larry Cannon, a sergeant and member of Bargaining Unit 2, testified concerning the significant increase in medical expenses to members of the bargaining units, including for prescription drugs. In addition, health insurance coverage has decreased to 95% coverage on certain services from 100%, and laboratory costs are now subject to a separate deductible. Finally, one of the major orthopaedic practices in the county is no longer in network for the bargaining units' members covered by the Employer's health plan.

The Union argues it is simply unfair and inappropriate to remove the cap on health insurance premiums. As things stand at present, the Employer's insurance premiums fall below the average monthly medical premium within the Akron/Canton region as evidenced by the SERB 2007 Report on the Cost of Health Insurance in Ohio's Public Sector. (Union Ex. 5.D). The Union also argues that it is a stretch to think the intent of the fact-finder's recommendation for a health insurance committee would amount to an improper delegation of authority. In any event, Section 1 of Article 28 affords the Employer the right to select the plan. In this sense the health committee is purely educational in nature.

Last Best Offer

As noted in prior decisions, this conciliator places particular emphasis on internal bargaining unit parity when addressing issues of health insurance. Virtually without exception,

the bargaining units in Tuscarawas County have contract language similar to that proposed by the Employer without a cap. Rising health care costs are a problem for all employers and employees, public or private, since the United States is the only major industrialized nation that does not have a national health care plan. It is a critical problem slowly eroding away the wages of employees and the financial reserves of employers, and it appears such erosion will continue unabated into the foreseeable future as long as serious health care reform is delayed.

However, the conciliator must apply the statutory criteria to the evidence presented – broad issues of public policy must be resolved in other forums. What can be said is this conciliator and fact-finders who have preceded him recognize the need for uniformity of health insurance coverage as a reasonable objective to achieve cost savings and reduce the administrative burden caused by varying health care arrangements among employee groups.

However, the selection of the last best offer in this case turns specifically on the Union’s proposal to include the fact-finders’ recommendation of a “management/labor healthcare committee.” Here, the Union representative acknowledged at the conciliation hearing that a rejection of its entire proposal could result from a finding that the committee recommendation is improper.

The Union’s position that the Employer retains the right in Article 28, Section 1 to make available the health insurance plan for all full-time bargaining unit employees based on the plan or plans it selects for non-bargaining unit county employees is correct. It is a clearly expressed management right. The conciliator has seen similar language in other collective bargaining

agreements, but in all cases the committee's purpose was to explore various health care issues, to educate both management and bargaining unit members on matters of coverage and policies, and ultimately submit a recommendation to the employer. The difficulty here is that the proposed committee language grants the healthcare committee members *the ability "to obtain the best health coverage for the price."* (Union Ex. 2). Thus, the Union's proposal presents a potential for conflict within Article 28 between the management right in Section 1 and the committee's power expressed in Section 3.

It is the considered opinion of the conciliator that rather than requiring rejection of the Union's proposal, the concern expressed by the Employer of potential litigation can be addressed by means of this conciliation award. The conciliator reads the contested language to mean that the insurance committee may make recommendations, but *cannot* contract for and secure health insurance on its own, and thereby bind the Employer and the county. First, to hold otherwise would permit the language on the health insurance committee to override Section 1. This is clearly an incorrect reading of the fact-finder's report.

Second, as argued by the Employer, even if the conciliator were to see no violation of management's rights contained in other language of the collective bargaining agreement, the disputed language cannot be construed or interpreted to mean that the Employer agreed (which it has not) or otherwise permitted a delegation of its authority under Ohio Rev. Code §305.171(A) to the health insurance committee. While the Union proposal contains no mechanism to resolve any impasse that may develop between the three representatives from the Employer and the three

representatives from the Union,¹ this finding by the conciliator that the health insurance committee is only intended to be advisory, obviates any need to reject what the conciliator deems a reasonable Union proposal.

For each of the foregoing reasons, the conciliator selects the Union's proposal on health insurance as the last best offer.

Article 29: Wages

Fact-finding Report

The fact-finder, categorizing the wage demands of the Union to be reasonable, recommended an increase of \$1.25 per hour in the 2009 wage scale for all bargaining units. In addition, the fact-finder recommended wage reopeners on November 15, 2009, and again on November 15, 2010. He viewed the increase as a necessary adjustment to place the wage rate for employees in close parity to adjacent and comparable counties, and the reopeners as a means for quick financial adjustments depending on developments in the next two years.

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1. The Employer also emphasizes that the proposal refers to three representatives, "one from each Union," as erroneous. Whether or not the fact-finder intended to use "bargaining unit" in lieu of "union" is not a controlling factor in this award. The conciliator is not empowered to alter the language of either party's proposed contract language.

Position of The Employer

The Employer points out that it is funded mainly through the county's general fund, and that current expenses have exceeded estimated revenues. General fund agencies in the county have had to maintain flat budgets, and steps were taken to close the county's nursing home to reduce expenditures. As a result of the latter action, approximately thirty-five employees were laid off. In addition, duties of the tax map office were transferred from the county engineer to the auditor, and the change in operations will save the general fund approximately \$130,000 per year. It is the Employer's final proposal to have a wage freeze for one year, followed by a single reopener for years two and three. It is critical of the fact-finder's recommendation as placing too great a strain on the parties' time and finances to engage in multiple negotiations over the remaining two years of a three year agreement.

James Matthew Judy, the Tuscarawas County auditor for approximately eleven years, testified as to the reduction in sales tax collections from \$9.4 million in 2008 to a projected \$8.9 million in 2009. (Employer Ex. 3). According to Judy there has been a decline in income from deposits as well. He agreed upon cross-examination, however, that with the closing of the county home expenditures will be cut by \$863,951, and with the monies from the change in the map office operations an additional \$142,071 in savings would be realized, or a total reduction in other expenditures of \$1,006,022. Based on the 2009 appropriations and revenue, the general fund ending balance for 2009 is projected to be \$9,265,831 with the Employer's proposal. If the

fact-finder's report is implemented, the projected ending balance for 2009 is \$9,090,831 – the cost of the Union's wage increase for 2009 is approximately \$175,000.

The Employer disputes any mention by the fact-finder of "county assets" to generate income, for the net assets of the county cannot be readily converted into cash. It argues that the closing of the county home affected residents and employees lost jobs. It is not seeking concessions, only to maintain the status quo. It rejects use of SERB benchmarks on a state-wide basis, as the employment market is the county, not the entire State of Ohio and counties with large cities. Further, the Union's reference to cities is misplaced as they enjoy different funding levels and staffing requirements, and they simply are not comparable to counties.

Position of The Union

The Union states that following the report of the fact-finder it proposed to split the \$1.25 per hour increase over the first two years of the agreement followed by a wage reopener in year three. However, the Employer rejected its proposal. Its final offer is the \$1.25 wage adjustment in 2009 retroactive to January 1, 2009, followed by a wage re-opener in each of the last two years of the agreement.

The Union agrees that its proposal represents \$175,000, including cost roll-ups, but two full-time employees have recently left the Employer and if left vacant, those positions would make up approximately one-half the cost of the raise. It references Guernsey County with less than half the population of Tuscarawas County, and Coshocton with less population as

comparable bargaining units making more money. The idea behind the Union's proposal is to bring the members of the bargaining unit into parity with Guernsey.

Matt Stein, a deputy in Bargaining Unit 1, described a decrease in income generated from special duty assignments, including paving details or work at the court house. Instead, much of this work has been performed by reserve deputies and overtime varies. Sheriff Walter Wilson countered Stein's testimony on overtime with evidence that a traffic enforcement overtime list offered only to road deputies remained unfilled. Sergeant Larry Cannon described the three percent per year wage increases received in each of the last six years, with the exception for correction officers in 2006 who received a \$.25 an hour adjustment. Despite this fact, his net pay increased only \$27.50 per week due to increases in PERS, health insurance premium increases (not including changes in coverage) and income tax. Moreover, Cannon stated that the jail has become busier than ever before with as many as 137 inmates present on a single night.

In response, the Employer acknowledged that 4 to 5 years ago things were better, and it does not deny that the corrections officers work harder today with an increased prison population. However, the burden has been eased somewhat by the hiring of 9 new corrections officers during the term of the last agreement.

Last Best Offer

The thrust of the fact-finder's report on the issue of wages appears to be that the adjustment of \$1.25 per hour across-the-board "will bring the wage rate of the employees close to

parity with adjacent and comparable counties.” (Fact-finding Report at 6). However, the conciliator is troubled by the fact-finder’s conclusion without probative evidence as to how the actual dollar number was calculated.²

There is debate among conciliators as to the weight to be accorded a fact-finder’s report and recommendations. It has long been this conciliator’s position that rather than simply defer to a fact-finding report in the absence of clear error as some conciliators have suggested, each fact-finding report should be accorded evidentiary weight based upon the positions of the parties at both hearings, the evidence presented, and the rationale, if any, for the fact-finder’s recommendation.

In this case, the conciliator notes that in 2008, the SERB Annual Wage Settlement Report indicates that for Region 1 - Akron/Canton, including Tuscarawas County, the average wage settlement was 2.87 percent.³ This is consistent with the evidence at hearing that over the past six years the bargaining units have averaged 3 percent increases each year. However, as the fact-finder noted, the nation is in a recession, and the Employer has less money than it did in past

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2. The conciliator gives far less weight to the Union and fact-finder’s singular emphasis on parity with Guernsey County. A far better gauge is the average compensation of the six contiguous county sheriff departments.
 3. The conciliator agrees with the Employer that appropriate bargaining units for comparison purposes are other sheriff departments, rather than cities within the jurisdiction. SERB’s clearinghouse Region 1 - Akron/Canton is more expansive than either party’s comparables including the additional counties of Ashland, Medina, Portage, Summit and Wayne. No evidence from these additional counties was presented.

years although there is recent evidence that the economy may be slowly moving out of recession. The conciliator recognizes that the projection of anticipated revenue is tenuous at best in these uncertain times.

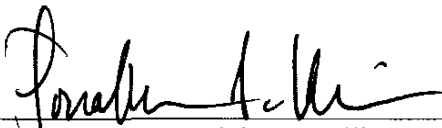
More importantly, the conciliator finds that the \$1.25 per hour increase for 2009 has a vastly different impact on the employees depending on their respective bargaining unit. The effective percentage increase from the Union's proposal would lead to the divergent results of a 6.97% increase for deputies, but an 8.50% increase for process servers. Sergeants would receive a 6.4% increase, but corrections officers would receive 7.6%. Differences in wage increases can be implemented if there is evidence to justify those differences – no probative evidence of this nature was produced. The uncontested average increase across all bargaining units would be 7.38% – an virtually unheard of one year increase in the current collective bargaining environment.

The conciliator is troubled by his choices here, but he is not empowered to alter the language of either party's proposed contract language. While there is some evidence that the employees do not enjoy pension pick-up perhaps because "they have not asked for it" according to the Employer, there is evidence that their health insurance on an hourly basis ranks 6th lowest in cost out of 7 comparables. (Employer Ex. 3). The evidence also establishes that the bargaining units rank approximately in the middle or slightly above in wage comparisons with the adjacent counties of Carroll, Coshocton, Guernsey, Holmes, Harrison, and Stark. (Union Ex. 6.G.). Moreover, virtually all of the collective bargaining contracts for the contiguous counties' sheriff

offices expired or will do so, and there is no evidence of wage increases, if any, for 2009 and beyond. The evidence is simply not present to permit a more thorough wage comparison.

The conciliator must reject an unsubstantiated wage proposal from the Union that on average represents *more than double* any yearly wage increase it has received in the past six years. Further, back-to-back wage reopeners appears excessive and unnecessary.


For each of the foregoing reasons, the conciliator selects the Employer's proposal on wages as the last best offer.


Jonathan I. Klein, Conciliator

Dated: August 14, 2009

CERTIFICATE OF SERVICE

Originals of this Last Best Offer Award were served upon Wes Elson, Staff Representative, Fraternal Order of Police, Ohio Labor Council, Inc., 2289 Adamsville Road, Zanesville, Ohio 43701; Michael L. Seyer, Account Manager, Clemans, Nelson & Associates, Inc., 2351 South Arlington Road, Suite A, Akron, Ohio 44319-1907; and upon J. Russell Keith, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, each by email in PDF format, and by priority mail, sufficient postage prepaid, this 14th day of August 2009.


Jonathan I. Klein, Conciliator