

2009 NOV -4 A 10:43

CONCILIATION REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
November 2, 2009

In the Matter of:)	
)	
The Cuyahoga County)	
Commissioners)	
)	
and)	08-MED-12-1418
)	911 Operators
)	
Ohio Patrolmen's Benevolent)	
Association)	
)	

APPEARANCES

For the OPBA:

Daniel Leffler, Attorney for OPBA
Anderson Pope, CECOMS/OPBA Representative

For the Cuyahoga County Commissioners:

Egdilio Morales Esq., Manager, Office of Human Relations
Hugh Shannon, Esq., Assistant Director, Department of Justice Affairs
Rodney Harris, Labor Relations Specialist
Maggie Keenan, Office of Management and Budget
Murray Withrow, CECOMS Director
Sandy Turk, Officer of Management and Budget
Alan Zmija, Labor Relations Specialist

Conciliator: Dennis M. Byrne

Background:

The parties to this Conciliation are the 911 Cuyahoga County Emergency Services (CECOMS) operators represented by the Ohio Patrolmen's Benevolent Association (OPBA) and the Board of Cuyahoga County Commissioners (BOCC/Commissioners). Prior to the conciliation, the parties held a number of negotiating sessions and participated in a fact-finding hearing over a single issue: a 2009 wage re-opener. The Union rejected the Fact Finder's report. Consequently, the parties scheduled a conciliation hearing over the amount of any 2009 base wage increase.

The Conciliation Hearing was held on October 6, 2009, in the County Office Building located at 1255 Euclid Avenue in downtown Cleveland. The hearing was convened at approximately 10:00 AM and adjourned at 1:30 PM.

The Ohio Public Employee Bargaining Statute sets forth the criteria a conciliator is to consider in making recommendations. The criteria, which are set forth in Rule 4117.14(G)(7), are:

- (1) Past collectively bargained agreements, if any, between the parties.
- (2) Comparison of the unresolved 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, and 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) Any stipulations of the parties.

- (6) Such other factors, not confined to those listed above, 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.

Introduction:

The current impasse is the result of language found in Article 37 (4) of the parties' labor agreement. That language states that:

Wage rates for 2009 shall be determined through wage re-opener negotiations to be initiated no later than February 15, 2009.

The parties engaged in negotiations over a 2009 wage increase, but were unable to reach an agreement. Subsequently, they participated in a fact-finding hearing conducted pursuant to ORC 4117. Martin Fitts, the Fact Finder, recommended that the CECOMS bargaining unit personnel receive no general wage increase for 2009, but that the operators advance on the step scale contained in the contract. That is, there would be some increase in take home pay for any union member who was not at the top of the wage scale, but there would be no base rate increase for the entire bargaining unit in 2009. The Union rejected the fact-finding report because it believes that the total dollar amount of its demand is so small that the County can afford to fund the increase. The County, on the other hand, strongly maintains that its financial condition is so precarious that it cannot afford any increase for 2009.

There are two questions to be answered in this respect. The first is, "Can the County afford to pay the Union's demand?" The second is, "Should the County accede to the Union's demand?" Much of the testimony during the

hearing related to the first question. However, regardless of the financial presentation that the County's advocates placed into the record, the answer is unequivocally yes.

The County argues that its financial condition is so precarious that it cannot afford to pay any wage increases in 2009 and most probably 2010. In support its position, the County had members of its Office of Management and Budget testify about the decreasing revenue stream(s) available to the County and the attempts to control costs undertaken by the Commissioners. Unfortunately, most of this testimony was beside the point because of the small dollar amount of the Union's demand. The Union is demanding a wage increase of approximately ten thousand (\$10,000.00) dollars. Adding the roll-up of approximately thirty (30%) percent brings the total amount demanded by the Union to approximately thirteen thousand (\$13,000.00) dollars. Based on the County's financial presentation, the general fund could finance the Union's wage demand because the sum demanded is so small. Either saving or spending thirteen thousand (\$13,000.00) dollars will have only a minimal impact on the County's finances.

Therefore, the second question; "Should the County be required to pay a general wage increase to the 911 operators?" is the central question at impasse. This question is more difficult to answer. The County's financial presentation did prove that the County was facing a severe revenue shortfall. The County's presentation showed that the County's four main revenue sources (sales taxes, property taxes, real estate transfer taxes, and investment income) are all

producing less revenue than projected. Furthermore, on a month-to-month basis the County's revenues continue to decline, leading to an increasing shortfall over time.

In light of the revenue shortfall, the County has undertaken a series of actions to cut expenditures. The County's representatives testified that all non-organized employees throughout the County had received no general wage increases for three (3) years. Moreover, any organized employees who bargained a three-year contract before the economic meltdown, mandating base wage increases for 2009 and 2010, were approached by the County to accept wage freezes for those years. In one instance AFSCME Local 1726 refused to accept a wage freeze, and one hundred and twenty (120) workers were laid off.

In addition, the County has asked all of its employees to accept up to ten (10) unpaid furlough days in 2010 as a way to cut expenses and reduce the need for potential layoffs. Moreover, the County has instituted a hiring freeze and cut funding for travel, office supplies, etc., in an attempt to trim costs. In light of the 1) County's financial presentation and 2) the steps that it has taken to control expenditures, the Conciliator finds that the County is facing severe fiscal problems and is taking painful steps to try to ameliorate the impact that its falling revenues have on the public.

The Union did not present any evidence contesting the County's presentation. Again, the Union's contention is that the amount of money needed to meet its demands is so small that it will have no appreciable effect on the County's overall financial health.

The County's representatives also testified that the Commissioners had commissioned a study of the CECOMS operation in 2007. This study found that the CECOMS staff was not adequately compensated for their efforts and recommended wage increases for the CECOMS operators. The County implemented the report in its entirety. The County contends that its actions in implementing the report raised the CECOMS operators wages to a competitive rate and that its actions vitiated the need for any wage increase in 2009.

The Union disagreed with this analysis. The Union argued 1) that the 2007 wage study proved that the CECOMS operators were underpaid in the years prior to 2007, i.e., the wage increase was a catch-up increase, and 2) that ongoing increases were necessary to keep the operators' wages competitive with other comparable dispatch units. The Union presented comparables data that it claimed proved that the CECOMS staff was underpaid compared to other operators.

The Conciliator has studied the Union's comparables data, and it does show that the CECOMS operators are not the best-paid dispatchers in the labor market. However, without any data on the financial conditions present in the other jurisdictions, it is hard to evaluate the relevance of the information.

The County's representatives also argued that any raise for any bargaining unit no matter how small was unwarranted because of internal parity considerations. Furthermore, the County argued that granting wage increases to any employees would have a catastrophic effect on the morale of all other County employees whose wages are frozen. The County argues that these two

factors mean that the CECOMS staff should share the burden placed on all other County employees. The Union disagreed with this analysis. The Union again argues that its membership needs a base wage increase to stay competitive with other comparable jurisdictions.

Internal comparability is a recognized element in wage negotiations; and neutrals often use comparability, both internal and external, in formulating recommendations. In this instance internal comparability is the County's main reason for denying the Union's wage demand. ORC 4117 mandates collective bargaining between an employer and its employees. Real collective bargaining necessitates that each bargaining unit be allowed to present evidence that its particular situation demands unique contract clauses. The CECOMS staff did not form a coalition and agree to accept what every other bargaining unit accepted. Rather, the CECOMS operators presented a demand for themselves. ORC 4117 requires that the County negotiate over that demand.

In this instance the Conciliator believes that the evidence put into the record by the County meets that burden. The 2007 wage study was implemented, and that should have moved the CECOMS operators to a competitive place in the labor market. Moreover, the County is faced with a severe financial problems; and all County employees are sharing the pain with respect of wage freezes, furlough days, cuts in supplies and travel, etc. While it is true that a 2009 wage freeze probably will erode the position of the CECOMS operators vis-à-vis comparable dispatch units, the same argument applies to all other County employees. Therefore, with respect to a wage freeze, the Union

did not present a convincing case why the CECOMS staff should be treated differently than other county employees at this point in time.

Finally, neutrals often see the conciliation as an appellate procedure. That is, a fact finder hears evidence and makes recommendations based on that evidence. Under the "conciliation is an appellate procedure" viewpoint, a conciliator should give deference to the fact finder's recommendations unless the parties show that the fact finder made an error or new evidence has arisen that the fact finder did not consider.

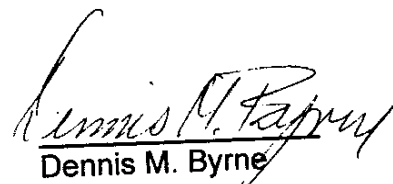
In this instance, the Conciliator believes that he heard essentially the same presentation that the Fact Finder heard. This conclusion is based on the Fact Finder's discussion in his report. The Conciliator believes that the Fact Finder made a reasonable recommendation; and therefore, given the fact that the County's final offer position mirrors the Fact Finder's report, the Conciliator can see no reason to change the Fact Finder's recommendations.

AWARD:

The Fact Finder's recommendations shall be implemented.

NOTE: Both parties suggested language changes to delete outdated verbiage in Article 37; these changes are also recommended.

Signed this 2nd day of November 2009, at Munroe Falls, Ohio


Dennis M. Byrne
Conciliator



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November 1, 2009

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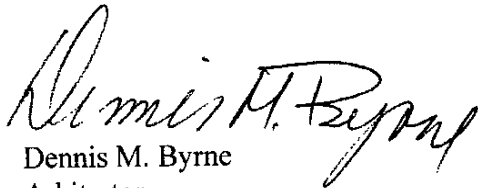
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Re: SERB Case Nos. 08-MED-12-1418

Dear Mr. Keith:

I am enclosing the report in the Cuyahoga County Commissioners v. the OPBA/911 operators. I believe that the report is self-explanatory, and award follows the Fact Finder's recommendations. However, if you have any questions and/or comments, please contact me.

Sincerely,


Dennis M. Byrne
Arbitrator