

STATE OF OHIO
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF CONCILIATION	:	SERB Case Number: 09-MED-10-1112
	:	
BETWEEN	:	
	:	
CUYAHOGA COUNTY, OHIO,	:	
CUYAHOGA COUNTY SHERIFF'S	:	
OFFICE,	:	Date of Conciliation Hearing:
	:	September 22, 2011
EMPLOYER	:	
	:	
AND THE	:	
	:	
OHIO PATROLMEN'S BENEVOLENT	:	
ASSOCIATION,	:	
	:	
UNION	:	Howard D. Silver
	:	Conciliator

OPINION AND ORDER OF THE CONCILIATOR

APPEARANCES

For: Cuyahoga County, Ohio, Cuyahoga County Sheriff's Office, Employer

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For: Ohio Patrolmen's Benevolent Association, Union

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This matter came on for conciliation hearing on September 22, 2011 at 10:00 a.m. in the Cuyahoga County Justice Center at 1215 West Third Street, Cleveland, Ohio 44113. The conciliation hearing produced a written record of all statements at the hearing. At the hearing both parties were afforded a full and fair opportunity to present evidence and arguments in support of their final settlement offers on an issue-by-issue basis. The conciliation hearing record was closed at 6:15 p.m. on September 22, 2011 at the conclusion of the hearing.

This matter proceeds under the authority of Ohio Revised Code section 4117.14 and in accordance with Ohio Administrative Code section 4117-9-06. Both parties have met their respective obligations in carrying out pre-hearing procedures. Each party has submitted to the conciliator, on an issue-by-issue basis, a final settlement offer for each unresolved Article. This matter is properly before the Conciliator for review and resolution.

FINDINGS OF FACT

1. The parties to this conciliation proceeding, Cuyahoga County, Ohio, Cuyahoga County Sheriff's Office, the Employer, and the Ohio Patrolmen's Benevolent Association, the Union, have been parties to a collective bargaining agreement for a bargaining unit comprised of Cuyahoga County Sheriff's Office Corrections Officers since 1987.
2. The most recent collective bargaining agreement between the parties expired on December 31, 2009; both parties have operated under the most recent expired Agreement through an extension agreed by both parties.

3. At the time of the conciliation hearing, the bargaining unit was comprised of between 520 and 530 Corrections Officers working in the Cuyahoga County Correction Center.
4. The Cuyahoga County Correction Center is a county jail that houses between 1800 and 2200 prisoners each day, the vast majority of whom are felons; the Cuyahoga County Correction Center is a full service, direct contact jail.
5. The parties' predecessor collective bargaining agreement that had expired on December 31, 2009 resulted from a conciliation order.
6. Prior to the conciliation hearing on September 22, 2011, the parties reached tentative agreement on ten Articles: Article 1, Preamble; Article 18, Holidays and Holiday Pay; Article 23, Personal Liability Insurance; Article 24, Hours of Work; Article 25, Breaks; Article 27, Training; Article 31, Shift and Days Off Selection; Article 36, Emergency Equipment; Article 37, Access To Refreshment; and Article 39, Employee Discipline.
7. At the conciliation hearing, tentative agreements were reached on additional Articles – Article 29, Post Assignment (current language); Article 34, Health and Safety (current language); Article 49, Sick Leave (language recommended by the Fact Finder); Article 51, Vacation Leave (language recommended by the Fact Finder); Article 63, Retirement (current language); Article 67, Expiration and Renewal (in effect from January 1, 2010 to 11:59 p.m. on December 31, 2012; otherwise current language); a new Article addressing part-time employees was withdrawn.
8. The Articles that have not been resolved through bargaining between the parties are – Article 14, Wages; Article 17, Longevity; Article 19, Uniform Allowance and Appearance; Article 20, Group Insurance; Article 21,

9. Articles within the parties' predecessor collective bargaining agreement not mentioned among Articles tentatively agreed or Articles to be resolved through conciliation are understood by the Conciliator to have been agreed by the parties to be included in their successor collective bargaining agreement unchanged.
10. The parties participated in six bargaining sessions, with the last bargaining session followed by a fact-finding hearing on March 10, 2011, followed by the issuance of the Fact Finder's report on June 22, 2011.
11. The Union accepted the Fact Finder's report; the Employer rejected the Fact Finder's report.

DISCUSSION AND SELECTION AMONG FINAL SETTLEMENT OFFERS

Article 14, Wages

The Union's final settlement offer on wages for the three years of the parties' successor Agreement, from January 1, 2010 to December 31, 2012, proposes a two percent (2%) wage increase effective January 1, 2010; a two percent (2%) wage increase effective January 1, 2011; and a wage re-opener in 2012.

The Employer's final settlement offer proposes no wage increase for 2010; no wage increase for 2011; and a wage re-opener in 2012.

The issue of wages in the parties' successor Agreement is to include a consideration of Ohio Revised Code section 4117.14(G)(7)(c) that reads:

The interests 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[.]

Another consideration that must be applied to wages is Ohio Revised Code section 4117.14(G)(7)(b) that reads:

Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved[.]

The wages of the bargaining unit increased by 2.5% in 2007; did not increase in 2008 except through step increases; and in 2009, as a result of a wage re-opener and the order of a Fact Finder, those bargaining unit members with at least five years of service received a wage increase through a step added to the wage schedule. The bargaining unit has suffered no furlough days in 2009, 2010, or 2011.

Both parties submitted testimony on the state of the economy of Cuyahoga County, Ohio. The Union's witnesses directed the Conciliator's attention to a five hundred million dollar development, a medical mart and convention center projected to produce major increases in revenue for Cuyahoga County. The Union's witnesses pointed to the casino to be located in the Terminal Tower in downtown Cleveland, Ohio, and noted that sales tax receipts in 2011 have increased in comparison to sales tax receipts in the prior fiscal year for the same quarters.

The witnesses on behalf of the Employer pointed to the substantial cuts in revenue from the state of Ohio, reductions in funding for county and local political subdivisions that were imposed to balance the state of Ohio's biennial budget. The Employer's

witnesses pointed to the loss of 133,000 jobs in the county since 2000 and a 28.8 percent drop in real dollars (adjusted for inflation) when general fund operating revenues of 434.9 million dollars available to Cuyahoga County in 2001 are compared to the general fund operating revenues available to Cuyahoga County in 2011, 309.5 million dollars. See Employer's Exhibit 1, page 7. The County Administrator noted in his testimony at the conciliation hearing that the Cleveland metropolitan area, the most populous political subdivision in Cuyahoga County, is the third poorest major city in the nation.

The Employer's witnesses identified thirty-two million dollars in losses from property taxes, reduced state funding, and sources sensitive to economic trends, namely real estate charges and investment earnings. While 2011 is projected to conclude with a 6.4 million dollar unencumbered carryover, fiscal year 2012, due to a drop in revenues and an increase in expenses, is projected to end with a deficit of 5.8 million dollars. 2013 projections include a 2.2 million dollar unencumbered ending balance in the general operating budget but the 2013 projection is based upon an assumed reduction in revenue of five million dollars in 2013 compared to 2012 and a reduction in expenditures from 2012 to 2013 of 12.7 million dollars, a reduction of 4.1%.

The economy of Cuyahoga County, Ohio, at present, is flat. No cost of living increase has been approved for organized or non-organized employees. All budgets projected by the Employer for 2012 incorporated a five-day furlough or equivalent savings for each employee. The Employer projects increased costs for health care coverage for bargaining unit members in 2012 to be in the five to eight percent range.

The people of Cuyahoga County, Ohio passed a Health and Human Services levy intended to fund public safety and other services within Cuyahoga County. The

Cuyahoga County administration has been advised by the Office of Budget and Management to expect a 6.5% reduction in levy revenue. This has required the Employer to reduce the budgets of Cuyahoga County general fund agencies from 1.5% to 7.5% to account for this reduction in revenue.

The Union describes the economic trends expected to affect Cuyahoga County, Ohio during the parties' successor Agreement as positive and encouraging. The Union argues that there is reason to believe the economy of the county is improving and is about to reap the rewards of investing in public services, including an investment in the operation of the Cuyahoga County jail. The Union stresses that the HHS levy was presented to the voters of Cuyahoga County as a tax intended to fund public safety services. It is contended that some part of the proceeds of this levy should be used to increase wages within the bargaining unit because, the Union contends, the bargaining unit's wages have lagged substantially behind other public employees doing comparable work.

The Conciliator is not persuaded that the Cuyahoga County, Ohio economy in 2010, 2011, or 2012 indicates increasing revenues for the county or decreasing expenses for the county. A preponderance of the evidence presented to the hearing record describes an economy that has suffered the loss of its manufacturing base beginning in 2001, and in 2008 experienced a severe national recession. Cuyahoga County must now accommodate the loss of millions of dollars redirected from Cuyahoga County to the state of Ohio's biennial budget. The Conciliator does not adjudge the wisdom of such cuts to counties and local political subdivisions by the state of Ohio. The Conciliator does recognize, however, the substantial reduction in revenue for Cuyahoga County

caused by the reduction in funding from the state of Ohio, a substantial contraction in the wherewithal available to the government of Cuyahoga County, Ohio to meet its obligations, operational and otherwise.

The Union makes a very persuasive case about the lower ranking of Cuyahoga County Corrections Officers when compared to public employees doing comparable work in comparable political subdivisions and detention facilities. The Union also presents a very persuasive case on the importance of the work performed by the bargaining unit members, the risks inherent in such work, and the dedication and cooperation of the bargaining unit members in carrying out this work.

The Conciliator is persuaded, however, that the issue of the ability of the Employer to finance increased wages as proposed in the Union's final settlement offer must take precedence over the relative ranking of bargaining unit members compared to other public employees. The Union's evidence establishes that bargaining unit members are below the median of public employees doing comparable work in comparable settings; the Employer has presented a preponderance of evidence indicating that the operating budget of Cuyahoga County, Ohio, augmented by the HHS levy passed by Cuyahoga County, Ohio voters, does not provide sufficient monies to fund the wage increases proposed by the Union's final settlement offer. In the absence of sufficient funds for the wage proposals put forward by the Union, the Conciliator selects the final wage settlement offer from the Employer, grounded solely in the Employer's inability to finance wage increases in 2010 and 2011.

Article 17 – Longevity

The language of Article 17, Longevity, in the parties' most recent collective bargaining agreement provides that after five years of continuous service a longevity payment of \$300 per year is to be paid, and for each year beyond five years an additional \$50 is paid per year. The Union has proposed that the five-year longevity payment be increased from \$300 to \$375 effective January 1, 2012, and each year of service after five years of service produce a \$75 longevity payment rather than the current \$50 payment.

The Fact Finder recommended the Union's position on longevity, stating at page 6 of her fact-finding report:

The Fact-Finder believes internal consistency on longevity is more reasonable in this case where a definite pattern is emerging than external comparables which have more variability as a set than the internals do. She therefore recommends the Union's proposal.

The Conciliator in this case understands the Fact Finder's emphasis on internal consistency for longevity payments, and when funds are available for an increase in such payments, increases in longevity may be justified and fiscally possible. Sufficient available funds for a longevity payment increase are not found by the Conciliator. The absence of available funds for an increase in longevity payments calls into question the public employer's ability to finance the longevity increases proposed by the Union.

The Conciliator acknowledges the difficulties encountered every day in carrying out the duties of the bargaining unit members. The workplace in which the bargaining unit members are employed presents particular hazards, requiring particular skills. The Conciliator does not make his selection on this or any other issue based on any lack of respect for the job carried out by the bargaining unit members. The Conciliator in this

instance, for the three years of the parties' successor Agreement, is more impressed by the very stringent financial conditions that must be accommodated, financial conditions that include falling revenue caused by cuts in state funding and a flat economy, with expenses continuing to rise, including substantial increases in the cost of health care coverage for bargaining unit members for which the Employer pays 95%.

The Conciliator is not persuaded that the Employer has the financial wherewithal to finance the increases in longevity payments proposed by the Union. The Conciliator therefore selects the Employer's position on longevity and maintains current language.

Article 19 – Uniform Allowance

The parties' most recent collective bargaining agreement, in Article 19, Uniform Allowance and Appearance, within section 4, provides for \$200 per year for each bargaining unit employee as a uniform maintenance allowance. The Union proposes increasing this \$200 uniform maintenance allowance to \$250, effective January 1, 2012. The Employer supports the retention of current language. The Fact Finder recommended a \$250 annual benefit based on the fact that corporals had negotiated a \$250 uniform maintenance allowance.

The Conciliator finds the increase for uniform maintenance proposed by the Union to be a modest increase in the cost of maintaining two uniforms for a year, an increase consistent with another public safety bargaining unit employed by Cuyahoga County. The Conciliator selects the Union's settlement offer on Article 19, Uniform Allowance, that increases from \$200 to \$250 per year the uniform maintenance allowance mentioned in Article 19, section 4.

Article 20 – Group Insurance and Article 22 – Life Insurance

Both parties' final settlement offers propose the incorporation of what appears in the parties' most recent collective bargaining agreement as Article 22, Life Insurance, into Article 20 of the parties' successor Agreement. Article 22 obligates the Employer to provide life insurance to all bargaining unit members and also states that if there is a change in the life insurance program of Cuyahoga County employees, "...such change shall be equal or better for the Employees herein during the term of this Agreement." The Union's final settlement offer proposes the incorporation of this language, unchanged, into Article 20, Group Insurance, in the parties' successor Agreement.

The Employer proposes the incorporation of Article 22 into Article 20 in the successor Agreement but the Employer's final settlement offer proposes the deletion of the language ". . . then such change shall be equal or better for the Employees herein during the term of this Agreement." The Employer argues that the retention of this language complicates securing the life insurance required by this Article to be provided to the bargaining unit members.

The language in Article 22 as to "equal or better" is a protection negotiated by the bargaining unit that the Employer would delete. The Union opposes the loss of this protection.

The Conciliator selects the Union's last settlement offer as to Article 20 and Article 22. The Conciliator is not persuaded that there is sufficient reason to remove the language proposed deleted by the Employer.

Article 21 – Employee’s No Sick Time

The Employer’s last settlement offer that addresses Article 21 proposes the deletion of this Article in its entirety. The Union’s last settlement offer on this Article proposes the retention of this language as presented in the parties’ most recent collective bargaining agreement.

The Conciliator understands from the Fact Finder’s report that this is a rarely used benefit, having been used once in the past nine years. The Fact Finder also found that this language appears within the Cuyahoga County Deputy Sheriff’s collective bargaining agreement and the Fact Finder saw no reason to eliminate this benefit.

The Conciliator shares the view of the Fact Finder and selects the Union’s final settlement offer as to Article 21.

Article 26 – Overtime

The final settlement offers of the parties on Article 26, Overtime, have a common element, the elimination of “sick time” in Article 26, section 1 as time to be credited for the determination of overtime thresholds. The Union’s final settlement offer also includes an increase, from 180 days to 365 days, of the time during which accumulated compensatory time may remain available for use.

The Conciliator selects the Union’s final settlement offer as to Article 26, removing the term “sick time” from the language of section 1 and changing 180 days to 365 days in the language of the second paragraph of section 2.

Ruling on Motion to Supplement the Hearing Record *Instante*

On October 12, 2011, after the close of the hearing record on September 22, 2011, the Employer filed a motion to supplement the hearing record *instante* for the purpose of having admitted to the hearing record evidence of a tentative agreement between another bargaining unit and the Employer. The Union opposes the Employer's motion to supplement the hearing record.

The Conciliator denies the motion to supplement the hearing record. The evidence offered relates to a bargaining unit with a bargaining history separate and apart from the bargaining unit addressed by this conciliation proceeding. The Conciliator finds that the motion addresses evidence that is not sufficiently connected to the conciliation proceeding herein to warrant a reopening of the hearing record. To reopen a previously closed hearing record requires a compelling reason to do so, a reason not found by the Conciliator in the Employer's motion.

The Conciliator declines to reopen the hearing record for the submission of additional evidence.

In making the conciliation order presented herein, the Conciliator has considered the criteria expressed in Ohio Revised Code sections 4117.14(G)(7)(a)-(f).

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CONCILIATION ORDER

The final settlement offers of the Employer and the Union addressing the Articles that remained unresolved between the parties are determined as follows:

Article 14, Wages – Employer’s final settlement offer

Article 17, Longevity – Employer’s final settlement offer

Article 19, Uniform Allowance – Union’s final settlement offer

Article 20, Group Insurance and Article 22, Life Insurance – Union’s final settlement offer

Article 21, Employee’s No Sick Time – Union’s final settlement offer

Article 26, Overtime – Union’s final settlement offer

All Articles tentatively agreed by the parties shall be included in the parties’ successor Agreement.

Howard D. Silver

Howard D. Silver
Conciliator

October 21, 2011
Columbus, Ohio

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Opinion and Order of the Conciliator in the Matter of Cuyahoga County, Ohio, Cuyahoga County Sheriff's Office, and the Ohio Patrolmen's Benevolent Association, SERB case number 09-MED-10-1112, was filed electronically with the State Employment Relations Board, 65 East State St., 12th Floor, Columbus, Ohio 43215, email: www.serb.state.oh.us, and served electronically upon the following, this 21st day of October, 2011:

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Howard D. Silver

Howard D. Silver
Conciliator

October 21, 2011
Columbus, Ohio