STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of the Conciliation Between:

Hamilton County Deputy Sheriff's Supervision Ass'n,

Employee Organization

and

Hamilton County Sheriff,

Employer

Case No. 2009-*MED*-10-1176

APPEARANCES:

For the Union:

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Jessup Gage, Esq., Union Representative
John S. Murray
Ted Sampson
Steve Toelke
John M. Magee

For the Hamilton County Sheriff

Brett Geary, Employer Representative
Sarah Kemp
Christian Sigman
Rob Wagner

Before Sarah Rudolph Cole, Conciliator

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Introduction

The Hamilton County Deputy Sheriff's Supervisors Association ("Union") represents the bargaining unit at issue in this case. The 29-member bargaining unit consists of the Hamilton County Corrections Supervisors, including Sergeants, Lieutenants and Captains. These supervisors are responsible for supervising corrections officers in Hamilton County's various corrections facilities. The unit is located in Hamilton County.

The only dispute between the Union and the County at the Conciliation hearing was wage rates. The parties presented two different proposals. The Union proposed a 2% wage increase, retroactive to January 1, 2010, for the Corrections Supervisors unit, followed by a 3% wage increase that would become effective on December 23, 2010. The County proposed that for 2010 the unit members would receive the largest general percentage increase that the Hamilton County Board of Commissioners approved for any non-bargaining unit employees during 2010 (a "me-too" provision) followed by a wage reopener for 2011. (The County's proposal is essentially a 0% wage increase for 2010, because the Board of Commissioners has yet to approve any increase for non-bargaining employees.) For 2010-11, the Hamilton County Corrections Officers (the employees that the Union members oversee) agreed to a contract provision identical to the one that the County proposed for the Union.

Critieria

During a conciliation, the Conciliator is not free to fashion contract language of her own choosing. Rather, as to each disputed issue, the Conciliator must select between the proposals put forth by the parties. Here, the parties have agreed that there is only a single disputed issue---wage rates for the two-year term of the contract.[1] Thus, the Conciliator's sole job in this case is to select between the two competing proposals on that issue. Ohio Revised Code § 4117.14(G)(7) specifies the criteria the Conciliator is to consider when making a decision:

> (a) past collectively bargained agreements, if any, between the parties;
>
> (b) 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;
>
> (c) 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;
>
> (d) the lawful authority of the public employer;
>
> (e) the stipulations of the parties;
>
> (f) such other facts, 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 proceedings in the public service or private employment.

[1] It is possible that the parties could have presented the wage dispute as two separate issues: the wage rate for 2010 and the wage rate for 2011. In the Conciliation notice, though, the parties identified the wage dispute as a single issue. Accordingly, the Conciliator will adopt the parties' approach and treat the wages for the two years as a single issue.

Findings of Fact

The three criteria most relevant to the dispute here are the employer's ability to pay, internal comparables and external comparables. The parties presented considerable evidence as to each of these three issues at the hearing, but appeared to focus most heavily on the question of ability to pay.

Ability to pay: The parties' primary disagreement is over whether the County is able to pay for any wage increase for this unit in 2010 and 2011. The parties each presented substantial information regarding the County's current financial picture, both to the Fact-finder in this case, Jack McCormick, as well as to the Conciliator. As the Fact-finder stated, the question whether the County has an ability to pay for any wage increase "requires a thorough examination."

The County has not been immune to the impact of the national economic downturn and has made significant efforts to curb spending and act in a fiscally responsible manner. Testimony from Christian Sigman, the assistant county administrator, indicated that the general fund budget in Hamilton County declined from $271 million in 2008 to $239 million in 2009 to $210 million dollars in 2010, a two-year drop of approximately 22%. In both 2008 and 2009, the County implemented mid-year budget cuts (twice in 2009). In addition, the County has laid off approximately 700 employees during this two year period. The Sheriff's office, the largest unit in Hamilton County, saw its budget cut by 25%.

Despite budget cuts and layoffs, the County may still face economic difficulties because County revenues continue to be volatile. Sales tax receipts continue to decline and interest earnings are flat. For 2010, the County predicts that sales tax collections will decline 3.4% from the 2009 collections. The County also predicts that interest earnings will be 32.4% less than they were in 2009.

While real estate market activity picked up during the first few months of 2010, increasing real estate transaction fees, Mr. Sigman believes that the increased revenue is a temporary fluctuation because the federal government offered a tax break to homebuyers to increase property purchases. The opportunity to receive that tax break has since expired.

Mr. Sigman also expressed concern that the state budget deficit may reduce the amount of money that the state directs to the local government fund, another fund that provides revenue to Hamilton County. A reduction in the availability of these state funds would have a relatively large impact on the county.

He also testified that the property tax rate is limited to 2.26 mills and additional revenue may only be realized through new development, statutory reappraisals or an increase in the millage approved by voters. None of these provide the prospect for immediately-available resources. Mr. Sigman did concede, however, that general fund property tax revenue is predicted to increase by $1.1 million in 2010.

Although the picture of County finances Mr. Sigman painted its not a rosy one, the County's current economic outlook is certainly better than it was in 2009 or 2008. Even Mr. Sigman expressed cautious optimism, testifying that the County was "out of the woods," and that the economic forecast is better now than it was last year or two years ago. For example, the local government fund, projected to provide $17.9 million to the County in 2010, actually provided the County $18 million dollars.

In addition, projected reserves increased more than the County predicted. The County cautioned against using the reserve fund as a basis for supporting implementation of recurrent costs such as salary. Yet, an increased reserve fund does suggest a modest economic recovery. In 2009, the County predicted that the reserves would be 11.9 million. The actual reserves in 2009 were $16.5 million. In 2010, the County projected that the reserve fund would contain $11.965 million. As of February 2010, however, the fund contained $17.6 million.

Reflecting the significance of the improvement in the reserve fund situation, the County documents show that this increase (the reserve fund is now at 6% of the budget) is one of the three triggers that must be satisfied before the County will potentially implement a mid-year 3% wage increase for non-bargaining unit employees. The remaining two triggers are (1) whether total general fund revenue through May 30, 2010 is projected to be higher than the 2010 approved budget and (2) whether the total 2010 general fund expenditures, as of May 30, 2010, stay within the approved 2010 funding level. If these triggers are met, the County Administrator, who proposed the conditional salary increase, recommends implementing the increase and making it retroactive to January 2010. Of course, even if all three triggers are satisfied, the County Commissioners would still have to vote to adopt the wage increases. If the Commissioners do so, however, other bargaining unit members, who have "me-too" provisions in their contracts, will also receive a 3% wage increase for 2010, effective on July 1, 2010. While Mr. Sigman did not express confidence that the threshold for the other two triggers will be met, he also did not rule out that possibility.

Moreover, as it had done at Fact-finding, the Union presented considerable evidence that, if the County rearranged its priorities, it could pay for the proposed salary increase. Among other things, the Union noted that the County recently paid $40,000 to a consultant to help the County decide how to spend money coming from a settlement with insurance company AIG. In addition, the Union cited the sheriff's $3 million dollar law enforcement trust fund, not part of the general fund, and the sheriff's office continued donation of dedicated personnel and vehicles to local townships, as reasons why the County can afford the pay increase the Union proposes. As Mr. Sigman testified, though, none of these funds are part of the general fund. As a result, while they may provide funds in the future, they cannot be utilized at the present time to cover the proposed increases. In addition, these funds are all "one-time" money. One-time money does not provide ongoing support for pay increases, which become a permanently recurring part of a county's budget. In any event, a Conciliator is not in a position to force the County to rearrange its spending priorities. Ordering of spending priorities falls squarely within the County's management rights.

In determining ability to pay, the Conciliator must look not only to the County's revenues, but also to the amount that the proposed wage increase would cost. According to the parties, each one percent wage increase for this unit will cost the County $18,845. Over the two year period at issue, the wage increase will cost the County somewhat less $100,000. The Fact-finder in this case, Jack McCormick, expressed great concern about the economic consequences of implementing a wage increase for this unit because that increase would trigger the "me-too" provisions in the County's agreement with the Corrections officers and others. Thus, at Fact-finding, a decision to increase the wages of the Corrections supervisors would have had a much greater financial impact on the County's budget than the approximately $100,000 the supervisors would receive. Despite this fact, Fact-finder McCormick ordered a zero percent increase for 2010, unless the non-bargaining employees received a raise, but a four percent increase for the year 2011.

At conciliation, in contrast to Fact-finding, the Conciliator need only consider the financial impact of the salary increase on the Corrections supervisors unit, approximately $100,000. This is so because the parties agreed at the Conciliation hearing that the "me-too" provisions in the corrections officers' contract would not be triggered if the decision to increase the salaries of the Supervisors occurred at Conciliation. While the County will surely face an argument from the units who agreed to a "me-too" provision that they are entitled to a wage increase comparable to any this unit receives, nothing in the various Agreements mandates that the County accede to these arguments. Thus, the financial impact of a raise would not be as significant if implemented here as it would be if a similar raise had been implemented at Fact-finding.

Internal and external comparables: In addition to ability to pay, a Conciliator must also consider internal and external comparables. With regard to the former, every other unit, including the enforcement officers and supervisors, the corrections officers, the clerks, the maintenance and repair workers, the communications officers and the facilities employees, have agreed to the "me-too" provision that the County proposed for the Union here, which will result in a zero percent wage increase for 2010 unless the non-bargaining unit employees are given a raise, followed by a reopener for 2011. While this is important evidence regarding internal comparables, the Union pointed out that not all units are treated identically at the present time. Both the enforcement officers and supervisors' labor agreements, for example, provide that their health care contributions cannot increase by more than the percent of their across-the-board wage increase. Those bargaining units received that provision through a conciliation three contract cycles ago, and the County has yet to obtain removal of this language, despite going to Fact-finding with these units during each of the last two negotiation cycles. That contractual provision offers those bargaining units considerable insurance costs savings compared to the bargaining unit here. According to the Union pre-hearing statement, in 2009, enforcement officers (who are covered by that contractual language) paid $1,760.28 less in annual premiums than all other Sheriff's office employees. In 2010, enforcement officers will save an additional $1,641.12 per person. According to the Union, then, internal comparables do not preclude a wage increase for the unit at issue in this Conciliation.[2]

The parties also presented evidence about external comparables. External comparables clearly favor the Union's side of the argument. In 2008, Hamilton County's Corrections Lieutenants, whose base pay is $58,000, earned less than any other major county in the state with the sole exception of Mahoning County (where Corrections Lieutenants earn $48,308). Franklin County's pay scale, for example, is much higher than Hamilton County's. Franklin County pays its Lieutenants $92,331 per year. Lucas County also pays considerably more. Lucas County pays its Lieutenants $29.42 to $30.88 per hour (compared to Hamilton County's $27.88 per hour).

[2] The Conciliator recognizes that adopting the Union's wage proposal here could result in other bargaining units relying on that language to support internal comparable arguments in their future negotiations with the County. As noted, though, there are other differences in the contractual language among the differing bargaining units, and thus a wage increase here would not necessarily provide any basis for an argument that the increase should be extended to other units on internal comparable grounds.

The Hamilton County Sergeants, who currently earn $50,000, are also near the bottom of the wage scale. Franklin County's Sergeants earn $82,340. (The lowest paid sergeants come, again, from Mahoning County, where they earn only $48,308.) Lucas County also pays considerably more, providing its Sergeants $26.76 to $28.09 per hour (compared to Hamilton County's $24.04 per hour). Cuyahoga County, Montgomery County and Warren County also pay their Sergeants more per hour (County Ex. X).

Although Mahoning county officers earn less than their counterparts in Hamilton County, there is no question that Hamilton County's Lieutenants and Sergeants are at the bottom of the wage scale for large counties. Their position at the bottom of this scale supports their argument that they are entitled to a wage increase.

Conclusion

External comparables support a reasonable increase and internal comparable evidence, while less supportive, does not exclude the possibility of the wage increase. The true unknown factor is, of course, the economy. While Hamilton County has not recovered from the economic downturn, evidence presented at the Conciliation hearing painted a somewhat rosier picture for 2010 and 2011 than the County experienced in 2009. Reserves are higher than projected, meeting one of the triggers for an across-the-board raise for non-bargaining unit (and, by extension through the me-too clauses, other bargaining unit members as well). In addition, the County projects moderate budget increases over the next several years. While cuts to the local government fund, or continued decreases in property and sales tax revenues may have a negative impact on the County's budget, at the present time, the modest raise the Union proposed for

Section 19.5

Effective beginning of the pay period that is paid on the first regular pay day in January, 2010, the annualized pay levels for all bargaining unit employees shall be as follows (2%):

Corrections Sergeant	**$50,997.96**
Corrections Lieutenant	**$59,158.98**
Corrections Captain	**$68,624.58**

Section 19.6

Effective December 23, 2010, the annualized pay levels for all bargaining unit employees shall be as follows (3%):

Corrections Sergeant	**$52,527.90**
Corrections Lieutenant	**$60,933.75**
Corrections Captain	**$70,683.32**

S. R. Cole

Sarah Rudolph Cole
Conciliator
State Employment Relations Board
June 10, 2010

CERTIFICATE OF SERVICE

The foregoing was served upon the following parties by ordinary mail, postage prepaid, this 10th day of June 2010:

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