

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

2011 SEP 13 A 11: 58

IN THE MATTER OF:

The Fraternal Order of Police
Ohio Labor Council, Inc.

Employee Organization

and

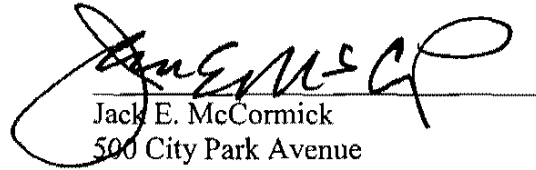
The Highland County Sheriff

Employer

:
:
: Case No.: 09-MED-10-1216
: 09-MED-10-1217
: 09-MED-10-1218
: 09-MED-10-1219

: **BEFORE CONCILIATOR**
: **JACK E. MCCORMICK**
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CONCILIATOR'S AWARD



Jack E. McCormick
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jack.mccormick@att.net
Conciliator State Employment Relations Board

Pursuant to an appointment letter from the State Employment Relations Board (SERB) dated July 13, 2011 a conciliation hearing was held at the offices of the Highland County Commissioners, Hillsboro, Ohio at 10:00 a.m., August 26, 2011. Present at the hearing were the following:

Employer	Employees
Robert W. Croos, Consultant	Mark Scranton, Staff Representative FOP
Ronald Ward, Sheriff, Highland County	Jeff Vickers, Deputy, Highland County Sheriff's Office
Shane Wilkin, Highland County Commissioner	Steven Alexander, Highland County Sheriff's Office
William Fawly, Highland County Auditor	Keith Brown, Sergeant, Highland County Sheriff's Office Computer

The parties waived a record hearing and thereafter were fully informed by the Conciliator of the guidelines and administrative rules concerning conciliation as contained in section 4117. of the Ohio Revised Code.

This hearing came about as a result of the Employer's rejection of the fact-finding of David W. Stanton, dated May 10, 2011.

The bargaining unit includes forty-four persons including sergeants, road patrol deputies, detectives, dispatchers, and corrections officers.

The parties have stipulated that the only issue to be decided at this conciliation is the proposal by the Union to grant the bargaining unit members a thirty-three cent (\$.33) increase in wages for the current contract period January 1, 2011 through December 31, 2011. This proposal is recommended by Fact Finder Stanton in his report and was rejected by the Highland County Commissioners in a three to zero vote. It is the position of the Employer that it has an inability to pay for any such raises and proposes a zero percent increase for the current contract.

As to the merits of the proposed wage increase the Employer on numerous occasions (including at the fact-finding) did not dispute that these particular employees deserve a raise in their wages. However, in spite of that fact the Employer stated they have an inability to fund any such raises and further assert that it would necessarily result in layoffs. In view of this admission this Conciliator will not engage in any extended discussion of the merits of the proposed pay increase. However, it is noted that Highland County Sheriff's Sergeants are paid \$18.93 per hour while the average of the comparable counties submitted by the Union was \$19.82, leaving them \$.89 an hour below the average. Generally, deputies in Highland County receive \$17.10 per hour while the average of the comparables submitted by the Union is \$17.72, leaving them \$.62 per hour below average. The Employer did not dispute these comparables, and did not submit any evidentiary materials that would indicate that these comparables are not valid. Accordingly, in light of the Employer's continued admission that these employees deserve a wage increase and inasmuch as it is supported by the factual materials submitted by the Union, there will be no further discussion as to the merits of a pay increase for these employees.

This leaves for the Conciliator the sole issue of whether or not the Employer has the ability to pay the proposed wage increases. The Employer asks the Conciliator to consider the fact that no employees funded from the General Revenue Fund of Highland County have received any raises in the same period. However, concedes in its presentation that this was strictly voluntary by the agency heads and that this employee group is the only union represented in Highland County.

It is noted once again, that as they did at the fact-finding, not only the Sheriff, but the President of the County Commissioners (Shane Wilkin) testified that if money was available they would not hesitate to afford these employees a “much needed increase in wages”.

It is the Employer’s position that due to the ongoing economic slump suffered by this and all other Ohio counties and the State of Ohio’s recent cut in Local Government Funds makes it virtually impossible to fund any increase, for these, or any other employees. This position necessitates a thorough analysis of this County’s fiscal situation.

The unemployment rate for Highland County has improved from the high point of 19.1% in January of 2010 to a current 13.1%. As a result of this and other intrinsic matters the Highland County budget has fallen from a high of 10.3 million in 2010 to 8.3 million in 2011. As a direct and proximate result of this, Highland County has not only frozen wage increases for all employees, but in fact has reduced staff, particularly in the Sheriff’s Department which has seen its staffing level decrease from fifty-seven two years ago to the current forty-four. This reduction has resulted in an inadequate number of corrections officers per the State of Ohio standards.

In addition to the above, like all state and local governments the distribution from the State of Ohio to Highland County’s General Fund for fiscal year 2011-2012 is expected to fall to \$191,668. So, while sales taxes in the County have remained relatively stable and unemployment has improved slightly, the County contends that it does not have sufficient ability to pay the proposed increases. It must be noted at this time that the parties stipulate that the proposed pay increases would cost the County in

this calendar year no less than \$38,000, and no more than \$44,000, including benefits or “roll-ups”. The County asserts that even this small amount would necessarily result in layoffs at the Sheriff’s Department.

In its presentation the Union counters by pointing to documents from the State of Ohio’s Auditor’s Office showing that as of July 31, 2011 the General Fund had a balance of \$1,151,814. That compares to a balance of \$602,209 in the same period in 2010 and \$270,380 in 2009. The County’s General Fund carryover from year to year has declined from \$721,772 in 2007 to an estimated \$300,000 to \$350,000 in calendar 2011. If these uncontested figures are correct the Union’s proposed wage increases would amount to less than fifteen percent of the projected General Fund carryover. It is noted that according to the Auditor of the State of Ohio, Highland County’s General Fund balance in calendar year 2010 increased from \$522,753 to \$685,702.

At this point in time it is necessary for the Conciliator to address two particular issues that were argued by the Employer. First, the Employer noted that the Highland County Sheriff’s Office has already spent seventy-one percent (71%) of its 2011 budget and virtually all of its budgeted fuel costs for the year. The County goes on at great length to analyze the shortfall that is likely to result in the appropriation for the Highland County Sheriff’s Office. This argument is misplaced. The statutory requirements that a neutral, such as this Conciliator, must find the ability of the Employer to fund applies not to the Highland County Sheriff’s Office budget, but rather the General Fund budget of Highland County itself. It is noted that the Sheriff’s Office, with some minor exceptions that are not relative to this discussion, is funded by the General Revenue Fund. The County argues that if there are not sufficient funds in the Highland County Sheriff’s

Office appropriation to fund these wage increases and it will necessarily have to seek layoffs of Sheriff's employees because there are no other funds "available". Again, it must be pointed out that this is erroneous. The "Employer" in this case is not the Highland County Sheriff, it is Highland County itself. Therefore, the argument that any such proposed wage increase will cause a deficit in what has been appropriated by Highland County to the Highland County Sheriff, is irrelevant. One must look solely at the availability of funds from the actual Employer, i.e. Highland County. If there are sufficient funds in the General Revenue Fund of the County to fund a wage increase then it is totally irrelevant whether or not those funds currently appropriated to the Sheriff's Office are sufficient to fund such an increase. All the Highland County Commissioners need to do is to appropriate additional funds to the Sheriff's Office, (if actually necessary), to fulfill the mandate of a conciliator's award. Any award by this Conciliator for a wage increase must, by law, be funded by the Employer, (see 4117.14(I) of the Revised Code). Should the Highland County Commissioners decide not to appropriate funds to the Sheriff's Office to cover this mandated increase then that is perfectly within their legal authority to do so. They are also perfectly within their rights to order layoffs in order to institute this increase. The current law does not give a conciliator the authority to mandate particular departmental appropriations within a governing unit, but does give a conciliator the authority to order the wage increase. The decision how that wage increase will be funded is strictly a political decision lying within the authority of the legislative body, i.e. the Highland County Commissioners. However, there is historical precedent for the Highland County Commissioners appropriating additional funds to the Sheriff's Office. By their own testimony they have in the past made

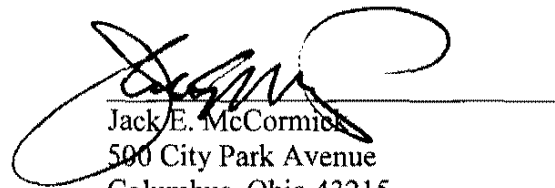
additions to the Sheriff's appropriations from the General Revenue Fund during past calendar years. Accordingly, there is nothing under law that would prevent the Highland County Commissioners from appropriating an additional Forty-Four Thousand dollars (\$44,000) to the Sheriff's Office to fund any proposed wage increase. By their own past actions they are estopped from arguing that they do not have the authority to do so. It is not a question of whether they can make such a supplemental appropriation, it's only a question of whether they wish to do so. Should the Highland County Commissioners wish to diminish the staffing at the Sheriff's Office rather than appropriating the additional funds necessary, that decision lies strictly with them.

The second argument which seemed to be advanced several times by the Employer is quite puzzling. When questioned by the Employer's representative the County Auditor stated on several occasions that if the Commissioners attempted to increase any department's budget, including the Sheriff's department budget, that he would tell them "you cannot do that". He seemed to express a position that a county auditor can somehow override the appropriating authority of county commissioners. This Conciliator knows of no legal authority for a county auditor to do any such thing. The sole legislative body in Ohio counties and the sole appropriation authority in Ohio counties lie with the county commissioners in each county. The County Auditor was most emphatic about this, yet he could cite no legal authority for him to do so. Certainly he can provide reports, advice, certifications, etc. as well as perform his other duties as set forth in the Ohio Revised Code. However, he may not prevent a legislative body from appropriating necessary funds. Only county commissioners can appropriate funds, reduce appropriations, and set the county budget. A county auditor has no veto power

whatsoever over these legal functions. The Conciliator can find nothing in Chapter 305 of the Ohio Revised Code that makes county commissioners' authority to tax, appropriate, etc. subject to approval by a county auditor, or any other elected county official, except in certain circumstances the Court of Common Pleas.

AWARD

The Conciliator, having taken into consideration all the statutory factors as well as the arguments and evidentiary materials submitted by the parties, hereby adopts, in its entirety, the recommendations of SERB Fact Finder David W. Stanton dated May 10, 2011. All employees of the bargaining unit in the Highland County Ohio Sheriff's Office shall be granted a wage increase of thirty-three cents (\$.33) per hour effective January 1, 2010. Pursuant to Ohio Revised Code section 4117.14(I) this award constitutes a binding mandate to the public employer and its exclusive representative to take whatever actions are necessary to implement this award.



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Conciliator State Employment Relations Board

September 12, 2011

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Award of the Conciliator in the matter of Highland County Sheriff and the Fraternal Order of Police, Ohio Labor Council, Inc. was mailed this 12th day of September, 2011 to the following:

Robert W. Cross, President
Cross Management Consulting Services, Inc.
631 7th Street
Portsmouth, OH 45662

Mark Scranton
Fraternal Order of Police, OLC, Inc.
222 East Town Street
Columbus, OH 43215

And

J. Russell Keith
General Counsel
State Employment Relations Board
65 E. State St., 12th Floor
Columbus, OH 43215-4213



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September 12, 2011

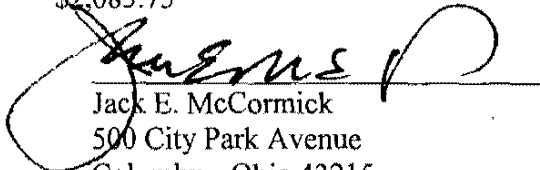
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and : **BEFORE CONCILIATOR**
 : **JACK E. MCCORMICK**
 :
The Highland County Sheriff :
 :
Employer :

CONCILIATOR'S FEE STATEMENT

Scheduling and review prehearing materials – 1.0 hr.	\$ 118.75
August 26, 2011 – Travel and Conduct Hearing – 1 day	\$ 950.00
Mileage – 130 miles @ \$.50 -	\$ 65.00
Review materials and prepare award – 1 day	\$ <u>950.00</u>
	Total \$2,083.75

Employer - \$1,041.88
Union - \$1,041.87
\$2,083.75



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Conciliator State Employment Relations Board
TIN 31-1410950 (W-9 attached)

**Request for Taxpayer
Identification Number and Certification**

Give Form to the requester. Do not send to the IRS.

Name (as shown on your income tax return)
JACK E. McConnick, Attorney

Business name/disregarded entity name, if different from above

Check appropriate box for federal tax classification (required): Individual/sole proprietor C Corporation S Corporation Partnership Trust/estate

Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ Exempt payee

Other (see instructions) ▶

Address (number, street, and apt. or suite no.)
500 City Park Avenue

City, state, and ZIP code
Columbus OH 43215

Requester's name and address (optional)

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I Instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

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Employer identification number

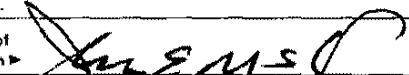
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Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here Signature of U.S. person ▶  Date ▶ **9/12/11**

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

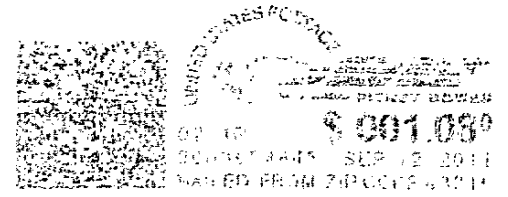
Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.



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First Class Mail

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