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STATE EMPLOYMENT RELATIONS BOARD

CONCILIATOR'S AWARD

IN THE MATTER OF:

OHIO PATROLMEN'S BENEVOLENT ASSOCIATION

AND

LAKE COUNTY NARCOTICS AGENCY

Case Number: 10-MED-02-0114

Before Conciliator: Thomas J. Nowel

PRESENTED TO:

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Thomas J. Nowel was appointed to serve as Conciliator in the above referenced case by the State Employment Relations Board on September 2, 2011 in accordance with Ohio Revised Code Section 4117.14 (D) (1).

Hearing was conducted on October 12, 2011 at the Lake County Narcotics Agency in Painesville, Ohio. Prior to the Conciliation hearing, the parties engaged in negotiations and arrived at impasse on wages. This impasse was submitted to Fact Finding, and the Report and Recommendation of the Fact Finder failed to resolve the wage issue. The impasse was then moved to Conciliation. The parties timely filed the required per-hearing statements.

The Union represents six Special Agents and two Pharmacy Investigators at the Lake County Narcotics Agency. The parties are at impasse on a single issue, wages (Article 21, Wages and Addendum A).

Those participating for the Union at hearing include the following:

Kevin Powers, Attorney for the Union

Daniel Kosanovich, Representative

Brian Dombek, Representative

Those participating for the Agency at hearing include the following:

Tom Grabarczyk, Consultant

John A. Germ, Agency Director

BACKGROUND

In analyzing the positions of the parties regarding each issue at impasse and then selecting one of the final offers, the Conciliator is guided by the principles that are outlined in ORC Section 4117.14 (G) (7) (a-f).

1. The past collectively bargained agreement between the parties.
2. Comparison of the issues submitted to fact finding 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.

3. 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.
4. The lawful authority of the public employer.
5. The stipulations of the parties.
6. Other factors, not confined to those listed above, 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 procedures in the public service or in private employment.

In addition, the Fact Finder's Report and Recommendation in this case must be given consideration in respect to the issue pending Conciliation.

During the course of the hearing, the parties had full opportunity to advocate for their position, submit exhibits, present testimony and discussion and engage in rebuttal of the submissions and arguments of the other party.

The Lake County Narcotics Agency is the only stand-alone jurisdiction of its kind in Ohio. The Agency is funded by its own levy, along with other sources of income, and is supervised by a board comprised of various city and Lake County officials. Members of the Agency staff are county employees.

POSITION OF THE AGENCY:

The Agency's final offer pursuant to Conciliation is as follows. 4% increase based on the top step of the Special Agent pay schedule, on a cents per hour basis added to each step of the wage schedule for Special Agents and Pharmacy Investigators effective with the first pay ending in April, 2012. \$1.10 reflects 4% of the top step of the Special Agent wage schedule.

The Agency states that this proposed wage increase represents a 4.9% increase of the entry level step for Agents; 4.1% increase for the top step of the Pharmacy Investigators wage schedule; and 5% for the entry level step for Pharmacy Investigators.

The Agency states that it is funded through a county-wide levy, and it also receives grants and monies from forfeitures. Bargaining unit members are sworn peace officers through the Lake County Sheriff Department.

Funding of the Agency is not comparable to that of cities in Ohio which enjoy income tax collections which tend to increase with a growing economy. The levy, which supports the

Agency, is similar to that of a township levy in that it does not produce additional funding over time. The Agency levy supports wages, employee benefits and pensions. Levy income also funds building maintenance, utilities, fuel and other expenses. Forfeiture funds may not be utilized for regular expenditures but are restricted funds to be used for the purchase of supplies in the furtherance of drug enforcement.

The Agency is near the end of its levy cycle, and, as expenses increase, it will be necessary to spend reserves. Any increase in wages compounds future increases, overtime pay and other roll-up costs. Bargaining unit members work second shift, based on the nature of the position, and therefore the Agency spends a significant amount of overtime for court appearances.

The Board of the Agency realizes that cash reserves will dwindle, and this is the time to look for ways to “tighten up spending.” While the Agency may have the cash to pay for the wage proposal of the Union, it cannot sustain these increases into the future. The proposal of the Agency in Conciliation is greater than that submitted in Fact Finding. The Agency Board is unanimous in supporting this proposal.

In terms of collective bargaining, employees of the Agency are compared to those of Sheriff Department employees. This has been supported in past fact finding reports including the Report and Recommendation in this case. Police and Fire Department wage increases have outpaced the rate of inflation in Ohio and the increase in median household income in the state (Agency Exb. 2). The wages of Agency employees have increased 20.9% more than the median household income in Lake County from 2000 to 2009 and have increased 9.61% more than the cost of living during this same period (Agency Exb. 3). The Agency argues that negotiated pay increases have been very generous over the past decade, and its proposal at Conciliation exceeds settlements in comparable jurisdictions in Ohio (Agency Exb. 4).

Most public sector jurisdictions in Lake County have been faced with budgetary shortfalls over the past three or four years. Wage freezes and small percentage increases have become the norm (Agency Exb. 5). The recent fact finder report for the Sheriff Department recommends a wage freeze in 2011 and 2012 and a re-opener in 2013. It also recommends a freeze in longevity, deletion of three personal days, six furlough days in 2012 and 2013, and a reduction of sick leave by five days. The Agency states that this is the significant comparable to its employees and cites a 2005 Conciliation Award by Arbitrator Alan Miles Ruben in which he supports the same comparison between the Sheriff and the Agency (Agency Exb. 6). Agency wages compare favorably to those of the Lake County Sheriff Department.

The Agency states that the economic climate in Lake County is critical to its wage proposal. Investment income, revenue, property taxes, sales tax, and other revenue streams are significantly reduced in 2010 and 2011 (Agency Exb. 8). The Lake County Sheriff Department has experienced a significant number of layoffs, and employees who have resigned have not been replaced. There has been a net loss of 70 positions (Agency Exb. 9). The Board of County Commissioners continues to reduce the budget of the Sheriff Department. Eight county bargaining units have agreed to furlough days, freezing of longevity and wage freezes. A recent fact finding report for non-deputized dispatchers at the Sheriff Department followed the same general theme (Agency Exb. 11).

The Agency has indicated that it possesses the cash to pay for the proposal of the Union in these proceedings. Nevertheless, to do so would cause financial concerns in the near future. The Agency levy generates the same revenues from one year to the next. So it is only logical that increased expenditures will result in budgetary deficits in the future. The Agency illustrates this fact in two models. The first model (Agency Exb. 16) illustrates reduced carryover from 2010 to 2017 with a carryover balance of only \$555,767 in 2015 and a negative balance of - \$163,846 in 2016 and - \$708,646 in 2017. The second model (Agency Exb. 17) illustrates a similar scenario although not as drastic with a negative carry-over in 2017. The first model was based on the Agency proposal in these negotiations and then 3% increases thereafter, and the second model assumes 2% increases. The Agency's own internal projections suggest a negative carryover at the end of 2016 (Agency Exb. 18).

The Agency states that its wage proposal is prudent in light of future budgetary projections. The impact of the economy is also critical in this case. Regional comparables, especially those from the Lake County Sheriff Department, should be utilized as a guide by the Conciliator. The Union proposal reflects an attitude of entitlement. The Agency urges the Conciliator to accept its proposal.

UNION POSITION:

The Union's final offer pursuant to Conciliation is as follows. Each member of the bargaining unit will receive a \$900.00 signing bonus with the first payroll in January, 2012. Effective January 1, 2012 the wage schedules for Special Agent and Pharmacy Investigator will be increased by 6% across the board.

The Union states that this proposal is \$1700.00 less than the recommendation of the Fact Finder for a Special Agent at the top of the wage schedule. The parties did not sign a (G) (11) waiver. Therefore the Union's proposal is limited to 2012. The Fact Finder recommended

a wage freeze for 2010 but with a \$900.00 one-time bonus. He then recommended a 3% increase for 2011 and another 3% increase for 2012. The Union argues that this recommendation was based on the facts presented at hearing and a fair resolution to the dispute between the parties over wages. The Union's proposal at Conciliation attempts to capture a portion of the recommendation with the knowledge that, by moving the increase to 2012, employees lose the compounding effect of two 3% increases. Furthermore, bargaining unit employees have not had a wage increase since 2009.

The Union states that the Agency has a stable revenue base which does not fluctuate with the economy as compared to other political subdivisions. The Agency levy is a funding source which is comparable to the manner in which townships derive revenue. Normally a levy supports the operation of the entity and amasses a substantial carry-over at the end of each budget year. Over time, operating costs increase, and it is understood that the carry-over will diminish. The political entity will then either reduce services or seek additional tax revenue from voters. This is the typical life of a levy and the jurisdiction it supports. This describes the primary funding source for the Lake County Narcotics Agency. This cycle supports the Union's wage proposal before the Agency and Conciliator.

The Union argues that Agency exhibits relating to the Lake County Sheriff Department are irrelevant in this proceeding because the Agency is well funded, and the source of its revenue is stable. This is not the case regarding the Sheriff Department which has experienced budget deficits, layoffs and service reductions. The Union states that the Conciliator should not be persuaded by these arguments of the Agency. Furthermore, the Union argues, the Fact Finder was provided with the same Agency exhibits and arguments and basically dismissed them in writing his recommendation. At Conciliation, the Union demands represent a lesser settlement than that recommended by the Fact Finder, and the Agency readily admits that it possesses the funding to meet the proposal of the Union.

The Union submits that bargaining unit employees of the Agency are on the low end of comparables for Lake County. In a comparison with most cities in Lake County, Madison Township and Lake County Deputy Sheriffs, Agency employees are paid 91.06% of the average for base pay at the top of the pay schedule. When benefits such as uniform allowance, shift differential, longevity and other benefits are added to the base pay, Agency employees earn 87.90% of the average compensation (Union Exb. A). The Union states that even with the financial concerns at the Sheriff Department, deputies are compensated more than Agency employees, and both groups of employees are certified as police officers by the Lake County Sheriff. Agency employees are in contact with the most dangerous elements of the community and deal exclusively with felony cases.

The proposal of the Union is an opportunity for Agency employees to attain parity with Sheriff Department law enforcement employees. The Union states that this is a critical factor which must be considered by the Conciliator.

The Agency states that the budget concerns of other political subdivisions in the region should impact these wage negotiations, but the Union argues that the comparables utilized by the Agency are not relevant based on the Employer's ability to fund the proposal of the Union with no adverse impact on the budget. The Union states that the difference between the proposals is \$15,000.00. This amount will not have a significant impact on the Agency budget.

The Union argues that Agency Exhibits 16 through 18 are only projections and that the assumptions, upon which they are created, are speculative. These financial projections have no basis in reality. Nevertheless, a permanent levy will not provide adequate revenue forever. At some point, the political subdivision must go to voters for an increase. This is the nature of levies. The Agency budget continues to generate revenue that supports the wage proposal of the Union.

The Union states that the Conciliator must give consideration to the Report of the Fact Finder as the recommendations were accurate and fair. The Agency and Lake County Sheriff have the attitude that, because other county employees are suffering, Agency employees should also suffer. The Conciliator should reject this theory. The Sheriff does not control the Narcotics Agency.

The Union states that the Agency has budgeted a wage increase of 4% for salaried employees and 2.2% for bargaining unit employees in 2011 based on financial data obtained from Lake County (Union Exb. B). Although these increases have not been adopted at this point, there is clear indication that the Agency possesses the means to fund the proposal of the Union for 2012. The Conciliator is urged to accept the wage proposal of the Union.

DISCUSSION AND AWARD

There is not a large gap between the proposals of the parties. The Union proposes 6% across the board effective January 1, 2012, and the Agency proposes a 4% increase of the high step of the Agents' wage schedule applied on a cents per hour basis to all steps of the wage schedule effective with the first pay period ending in April, 2012. In addition the Union's proposal of a \$900 per employee signing bonus is equivalent to an increase of approximately 1.6% although there are no roll-up costs. The Agency's proposal ranges between 4% and 5% based on the various steps of the wage schedule. The Union's proposal closely mirrors the

recommendation of the Fact Finder in this case although it is slightly lower due to the lack of roll-up costs over the term of the three year Agreement. Fact Finder King recommended a freeze in base wages in 2010 although he also recommended a \$900 signing bonus for the same period. He then recommended a 3% increase in wages for the second year, at time of ratification of the Agreement, and 3% for the third year.

The Union stated that the difference between the two proposals is only \$15,000.00. The Agency did not rebut this assertion. The long range financial projections of the Agency (Agency Exb. 18) indicate that cash carry-over from 2010 to 2011 is \$2,692,069. The projected carry-over from 2011 into 2012 is \$2,531,216, and the estimated carry-over from 2012 into 2013 is \$2,181,247, and these projections are based on 5% expenditure increases each year. The Agency admitted and stated numerous times that it has the ability to fund the proposal of the Union for 2012. The Agency estimates that its carry-over will be in the negative range going into 2017 based on annual expenditure increases of 5% (Agency Exb. 18). These projections are based on assumptions which may not come to reality, and the parties will have been at the bargaining table to renew the three year collective bargaining agreement two more times prior to 2017. If the carry-over is diminished over time, as the Agency suggests, the parties will have sufficient opportunity to address those possibilities through collective bargaining. It is difficult to consider the long range assumptions when determining the 2012 wage increase, and, as the Union indicates, the difference between the proposals will have little effect on these long range financial projections.

It is also noted that Agency carry-over history, as contained in its report, Agency Exhibit 15, indicates that the carry-over from 2010 going into 2011 is at the highest level ever since the beginning of the Agency in 1981. The carry-over has increased over the past twelve consecutive years since 1998.

Clearly the parties are bargaining in a difficult climate, diminished revenues for many public sector jurisdictions, layoffs and recession. Nevertheless, public sector jurisdictions in Lake County have negotiated wage increases with their safety forces. Wickliffe bargained 3% increases in 2011 and 2012; Painesville bargained 2% in 2010 and 2% in 2011; Mentor bargained 3% in 2010 and 2% in 2012 although furloughs have occurred; Eastlake bargained 3% in 2010; Willoughby bargained 0% for 2010 and then 2% in 2011 and 2% in 2012; Willowick bargained 0% in 2010 and then 1.5% in 2011 and 2% in 2012; Mentor On The Lake bargained 2% for 2010 and 2% for 2011; and the County Sheriff, whose department has faced layoffs and furloughs, bargained 3% for 2010. A Fact Finder recommended wage freezes for the Sheriff Department in 2011 and 2012 with a re-opener in 2013. Most, if not all, of these jurisdictions

are suffering through reduced tax revenue while the Lake County Narcotics Agency continues to be well funded.

The new three year Agreement between the parties will result in a two year wage freeze, 2010 and 2011 with a catch-up wage increase in 2012. The Union's proposal in 2012 is 6% plus the signing bonus. Spread across three years, the Union's proposal, including the signing bonus, results in an average increase of 2.5% annually with reduced roll-up costs. These numbers compare favorably with the trends in Lake County. The statute provides that comparables are critical to the decision of the Conciliator as is 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" (ORC 4117.14 (G) (7) (c)). The Agency admits that the proposal of the Union is affordable, and it is clear that the difference between the two proposals will have little effect on the Employer's budget and financial forecasts.

The Union argues that its wage proposal, if adopted, will result in parity with the Deputy Sheriffs in Lake County. This is a legitimate concern. Fact Finders and Conciliators have stated, in the past, that the significant comparable to employees of the Agency are Lake County Deputy Sheriffs. Although it has been argued that Agency employees only focus on drug control and enforcement, they are certified peace officers with the same police powers which are bestowed on Deputy Sheriffs. The Conciliator takes note of the parity argument put forward by the Union. Furthermore, the Conciliator is directed by the statute to consider "the interests and welfare of the public..." The voters of Lake County decided to create the only free standing county-wide narcotics agency in Ohio with sufficient funding to carry out its mission and provide appropriate wages and benefits for its employees.

There is a common thread to be found in Conciliation awards. The Report and Recommendation of the Fact Finder carries significant weight and influence in the Conciliation process. Many Conciliators defer to the recommendations of the Fact Finder unless there is a compelling reason or new evidence to suggest otherwise. Arbitrator Alan Miles Ruben, in his 2005 Conciliation Award between these parties, gave significant consideration to the Report and Recommendation of the Fact Finder. The Union's proposal, in this case, mirrors the recommendation of the Fact Finder who heard the same set of facts, reviewed the same exhibits and analyzed the budgetary issues which were presented by both parties. The Union's proposal is slightly less than the Fact Finder's recommendation as it does not include roll-up costs. This Conciliator cannot find good reason to reject the Fact Finder's recommendation in this matter.

For all the reasons elicited in this review and analysis, the Conciliator awards the proposal of the Union as follows.

ARTICLE 21, WAGES

Section 1. Special Agents and Pharmacy Investigators shall be compensated based on the schedules set out in Addendum "A" of this Agreement.

Section 2. Original appointment shall normally be at the lowest step of the wage scale. The effective date of appointment and Agency seniority shall be set effective with the first (1st) date an employee is required to report to duty.

Upon completion of each year of service with the Agency, the employee shall advance to the next step until reaching the maximum step.

If the Employer determines a new employee's skills, training or experience exceeds the entry level rate, the Employer may place the employee at a higher rate within the wage schedules not higher than step three (3).

Section 3. An employee assigned to act in a team chief capacity as determined by the Employer, shall be compensated at their respective step rate, with an additional five percent (5%) of such base rate.

Section 4. Each member of the unit shall receive a \$900 signing bonus with the first payroll in January, 2012.

ADDENDUM PURSUANT TO ARTICLE 21, WAGES

SPECIAL AGENT WAGE SCHEDULE

EFFECTIVE JANUARY 1, 2012

- 1. 23.99**
- 2. 25.28**
- 3. 26.57**
- 4. 27.87**
- 5. 29.28**

PHARMACY INVESTIGATOR WAGE SCHEDULE

EFFECTIVE JANUARY 1, 2012

- 1. 23.46**
- 2. 24.75**
- 3. 26.05**
- 4. 27.34**

5. 28.75

“These figures represent a 6% across-the-board increase above the 2009 wage rates. For a Special Agent at the top rate, this offer is over \$1700 less than what the Fact Finder recommended since it does not seek to recoup the cash value of a 3% increase effective in 2011.”

CONCLUSION

After review of the pre-hearing statements of the parties, all facts presented at hearing and review of all exhibits, the Conciliator has developed the award as contained in this report. In addition, the Conciliator has given consideration to the positions taken by each party regarding the issue at impasse and to the criteria enumerated in Ohio Revised Code Section 4117.14 (G) (7) (a – f).

In addition to the Award contained in this report, all unopened articles and all tentative agreements reached by the parties, are hereby included in this Award by reference.

Respectfully submitted and issued at Cleveland, Ohio this 27th day of October, 2011.



Thomas J. Nowel
Conciliator

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of October, 2011, a copy of the foregoing Award of the Conciliator was served upon Kevin Powers, representing the OPBA, Tom Grabarczyk, representing the Lake County Narcotics Agency, and Donald M. Collins, General Counsel, State Employment Relations Board, by way of electronic mail.

A handwritten signature in cursive script that reads "Thomas J. Nowel". The signature is written in black ink on a light-colored background.

Thomas J. Nowel
Conciliator