

April 4, 2011

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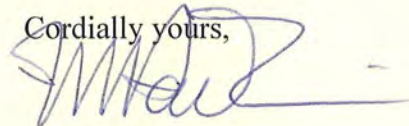
RE: Fulton County Sheriff -and- OPBA
SERB Case No.: 2010-MED-05-0740
Issue: Conciliation

To each,

Enclosed please find the Conciliator's Award and Bill for the above-captioned matter. The submission of the enclosed should bring my services to an end and, unless notified to the contrary, I will close my file.

In the meantime, I thank both Parties for giving me the opportunity to serve you in this matter and, if the occasion should so arise, I look forward to working with you in the future.

Cordially yours,



Michael Paolucci

cc: SERB

Amended Conc Report (Image problems) Received Electronically @ SERB

April 4, 2011 10:10am

IN THE MATTER

OF

CONCILIATION

BETWEEN

FULTON COUNTY SHERIFF

AND

THE OHIO PATROLMEN'S BENEVOLENT ASSOCIATION

Hearings: March 8, 2011
SERB Case No.: 10-MED-05-0740
Date of Report: April 4, 2011
Issue: Conciliation

Union Representative:

Michelle T. Sullivan
Allotta, Farley & Widman Co., LPA
2222 Centennial Road
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Sheriff Representative:

Jonathan J. Downes
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400 South Fifth Street, Suite 200
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AWARD

Michael Paolucci
Conciliator

Administration

By e-mail notice dated December 9, 2010, from J. Russell Keith, the General Counsel and Assistant Executive Director of the State Employment Relations Board, the undersigned was informed of his designation to serve as Conciliator for the Parties. On March 8, 2011, a hearing took place and was followed by an effort at mediation, as agreed to by the Parties. Following mediation, the Parties submitted the issues to the undersigned and the record was closed. As a result of the mediation and hearing, the issues are now ready for a Conciliation report.

Factual Background

The Sheriff is located in Fulton County, Ohio and is surrounded by a mostly rural environment. Its population and financial health has consistently fallen somewhere between the State of Ohio and the rest of the United States. It has increased in population, income per family, and home values, among other economic measurements, at a level better than the rest of Ohio, but less than the rest of the country. The Sheriff's approximately twenty two (22) patrol officers are represented by the Union.

Section 4117.14 of the Ohio Revised Code sets forth the factors that a Conciliator must consider when making rulings. That section, in pertinent part, reads as follows:

(G) The following guidelines apply to final offer settlement proceedings under division (D)(1) of this section:

- (1) The parties shall submit to final offer settlement those issues that are subject to collective bargaining as provided by section 4117.08 of the Revised Code and upon which the parties have not reached agreement and other matters mutually agreed to by the public employer and the exclusive representative; except that the conciliator may attempt mediation at any time.

- (2) The conciliator shall hold a hearing within thirty days of the board's order to submit to a final offer settlement procedure, or as soon thereafter as is practicable.
- (3) The conciliator shall conduct the hearing pursuant to rules developed by the board. The conciliator shall establish the hearing time and place, but it shall be, where feasible, within the jurisdiction of the state. Not later than five calendar days before the hearing, each of the parties shall submit to the conciliator, to the opposing party, and to the board, a written report summarizing the unresolved issues, the party's final offer as to the issues, and the rationale for that position.
- (4) Upon the request by the conciliator, the board shall issue subpoenas for the hearing.
- (5) The conciliator may administer oaths.
- (6) The conciliator shall hear testimony from the parties and provide for a written record to be made of all statements at the hearing. The board shall submit for inclusion in the record and for consideration by the conciliator the written report and recommendation of the fact-finders.
- (7) After hearing, the conciliator shall resolve the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the party's final settlement offers, taking into consideration the following:
 - (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 factors, 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 procedures in the public service or in private employment.

The issues will be addressed giving consideration to all of the required factors.

The Parties originally prepared three (3) main issues for Conciliation. Those issues were:

1. Hours of Work – Article 19.
2. Health Insurance – Article 35.
3. Wages – Article 36.

Through mediation, the Parties were able to enter into tentative agreements on Issues 1, and 2. The tentative agreement on Article 35 – Health Insurance provision is attached. The Parties agreed to keep the *status quo* on Article 19- Hours of Work.

This agreement is incorporated here, by reference, and is made part of this award. In addition, all other tentative agreements that were submitted by the Parties in advance of the Conciliation hearing, but which are not discussed specifically herein, are also made part of this award. Similarly, all Articles not submitted with the Tentative Agreements and not submitted to Conciliation are hereby awarded to continue as unchanged in the new Agreement.

ARTICLE 36 Wages

Union Last Best Offer

The Union's position is that the bargaining unit should receive a 3% wage increase as of January 1, 2010, to be paid retroactively, and a wage increase as of January 1, 2011, also to be paid retroactively. The offer is based on a two (2) year Agreement and matches that recommended by the Factfinder.

Sheriff Last Best Offer

The Sheriff changed its last best offer following the mediation that occurred after the hearing.

The Sheriff's position is that the bargaining unit should receive a flat \$1,100.00 payment to be considered as the wage increase from January 1, 2010 through to March 31, 2011. As of the first full payroll following April 1, 2011, the Sheriff offers a 2% wage increase, with a .5% wage increase to be paid with the first full payroll after October 1, 2011. The offer is also based on a two (2) year Agreement.

Union Rationale

The Union argued that the Parties have entered an agreement that removes any limitation placed on the Conciliator under 4117.14(G)(11), and therefore made its offer based on the Factfinder's Report and Recommendations. It contends that the County is on solid financial footing and can afford the increase. It points out that the County increased its sales tax receipts; it generated an extra \$1.4MM in revenue from its .5% sales tax increase in 2009; and that its unencumbered balance in fiscal year 2010 was 39% of expenditures. Since the bond rating agencies only recommend a 10% balance for governmental subdivisions, it argues that the County has plenty of resources to pay for a fair wage increase.

The Union argues that its proposal is based, in part, on the fact that the bargaining unit has already agreed to increase its share of the health insurance premium from 10 to 12%; and that the 3% is necessary to maintain the bargaining unit's standard of living. It cites the external comparables, and claims that the 3% allows it to remain competitive with surrounding law enforcement agencies.

Sheriff Rationale

The Sheriff focused on the entire economic package, and cites the increased health insurance costs that it is facing as justification for a more conservative wage increase. It cites statistics that

show that there is a dramatic decline in the economies of the nation, state and local areas. Since the County's revenues are based on the local housing market, employment and other similar economic factors, it argues that its fortunes will likely follow the downward trend for each area of the economy.

The County argued that its General Fund revenue was flat from 2006-2008; and that it has dropped significantly since 2008. It cites several economic factors as evidence of the poor condition of the area, including a County unemployment rate in the double digits; its own action to reduce full-time positions from 104 to 94; the use of furlough days including a 3.8% reduction in salary for all General Fund employees; a wage freeze on all county employees; pay cuts for all other County employees not covered by the County Commissioners; and a 4% wage cut for many employees, including those in leadership positions.

The County showed that although it instituted a .5% sales tax, it is only intended to plug the gap during the critical years of financial instability and that it is set to expire by its own terms. Since the purpose of the sales tax is a temporary fix, then it argues that it would be inconsistent to rely on those revenues to justify an increase in wages for this bargaining unit. It contends that the carryover amount it has is comparable for other similarly situated rural counties.

The County complains that the Union's comparables, and specifically the reliance on the Government Finance Officers Association guidelines, is misplaced since they are out of date, are national, are based on standards that existed prior to two (2) recessions in the intervening period, and do not consider the County's carry over historical percentage – which it contends is a stronger rationale than a national standard. It argues that the carryover balance is justified, is necessary, and is especially important when there is a major decline in other revenue sources.

The County cites the sacrifice that the remaining County employees have taken – including a 3.8% pay reduction (furlough). While other departments have gone through reductions in their staff, the Sheriff’s Office has not had any, and it argues that this justifies little change to their wages. It asserts that these officers are paid above average in the community, and that other neutrals in negotiations around the state have recommended/awarded 0% wage increases. It provided specific citations to the claimed comparables. It argues that the lump sum offer is intended to offset the *status quo* of the employees and is in lump sum form to avoid the deductions that would otherwise be required by PERS-LE. It points out that the Sergeant’s bargaining unit received no wage increase, and only received a change in their step from 4% to 9%. It claims that the rank differential will be used for the Sergeants, thereby giving this proposal more impact. It contends that the history compared to the external comparables places this bargaining unit in the median range, and this proposal maintains that standing.

The County focused on the fact that the Parties will be negotiating again in 2012, and that the delay here was due to the change in affiliations of the Union. Notwithstanding this problem created by the Union’s actions, it argues that it agreed to retroactivity for some benefits.

Award

After a full review of both Parties’ positions, and in an attempt to balance the poor economic conditions with the strong comparables, it is ordered that the County’s position be adopted. By the nature of the process, the choice that must be made is between “last best offers.” A comparison of those offers shows that the Union’s offer is fairly characterized as a wage increase that is given in a “normal” economic environment. Recognizing that there is rarely an economic condition that is

“normal,” it is still fair to consider that the current economic environment is almost universally bad. The County’s condition is no exception, and the Union’s offer does not give adequate consideration to this fact. Its offer is not unreasonable based solely on the County’s current fiscal condition; but fails to give appropriate weight to the entire economic and fiscal condition as reasonably predicted by the record provided by the County.

Indeed, to award the Union’s proposal would amount to punishment of the County for its good financial management in a time of serious economic stress. This is the sole factor in the Union’s favor – that the County managed its financial condition ably in a tough economic time. The County’s proposal is preferable in that it reasonably recognizes that a small raise is justified, but that continued economic caution is required to allow it to continue its good financial management. Since the Union’s offer lacks that balance, the County’s offer must be found as superior, and is therefore awarded.

April 4, 2011
Cincinnati, Ohio



Michael Paolucci

ARTICLE 35 INSURANCE

Section 35.1. Fulton County will provide at County expense a life insurance program and an accidental and dismemberment program. The benefit limit is fifteen thousand dollars (\$15,000.00) for each program.

Section 35.2. Throughout the life of this Agreement the Employer shall provide health insurance coverage equal to or superior to that as provided to other county employees. The costs of health insurance premiums shall be distributed as follows: County to pay ninety percent (90%) and employee to pay ten percent (10%) *until March 31, 2011. Beginning April 1, 2011, the County shall pay eighty-eight percent (88%) and the employee shall pay twelve percent (12%) of the premium cost. The employees' twelve percent (12%) portion of the health insurance premium cost will be deducted in the eighteen (18) consecutive payrolls that remain for 2011 after April 1, 2011.*

Section 35.3. *The parties agree to discuss health insurance benefits in Labor Management Meetings for the purpose of discussing the health insurance benefits under the County plan and possible modifications to the subsequent plan year of 2012 and to answer union representatives' questions about the County's health insurance program and providing information to assist union representatives in educating bargaining unit members as to specific components of the County's health insurance and wellness programs.*

Section 35.4. *The County will continue to provide Health Savings Accounts ("HSAs") for bargaining unit members. During the term of this Agreement, the County will continue to contribute a minimum of \$720.00 per year for a single plan and \$1,920.00 per year for a family plan or an amount that is equal to the highest HSA contributions received by non-union County employees on an annual basis.*

CONCILIATOR'S BILL

CONCILIATOR:

Michael Paolucci
2114 Hunters Point Lane
Cincinnati, Ohio 45244
(513)651-1219

PARTIES: Fulton County Sheriff -and- OPBA
SERB Case No.: 2010-MED-05-0740
Issue: Conciliation

REPRESENTATIVES:

Michelle T. Sullivan
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Jonathan J. Downes
Downes, Fishel, Haas & Kim, LLP
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jdownes@downesfishel.com

HEARING AND STUDY DAYS:

Hearing Day(s):	<u>1.5</u>	@	<u>\$ 950.00</u>	\$ <u>1,425.00</u>
	March 8, 2011			
Study Day(s):	<u>1.5</u>	@	<u>\$ 950.00</u>	\$ <u>1,425.00</u>
	Includes before and after hearing			
			Subtotal:	\$ <u>2,850.00</u>

EXPENSES:

Food:		\$ <u>10.00</u>	
Mileage: (400 miles @ .51/mile)		\$ <u>204.00</u>	
		Subtotal:	\$ <u>214.00</u>

TOTALS

TOTAL: \$ 3,064.00

PAYABLE BY SHERIFF:

\$ 1,532.00

PAYABLE BY UNION:

\$ 1,532.00

Date: April 4, 2011



Michael Paolucci
Paolucci & Associates
Tax I.D. No.: 26.2247815

REMIT TO: Paolucci & Associates
2114 Hunters Point Lane
Cincinnati, Ohio 45244