

State of Ohio
STATE EMPLOYMENT RELATIONS BOARD
Final Offer Settlement Procedures

2011 AUG 22 P 12: 48

In the matter of the conciliation between)
)
Corrections Commission of)
Northwest Ohio)
Public Employer)
)
and)
)
CCNO Corrections Supervisors)
Association, Local 53/ International)
Union of Police Associations)
Labor Organization)

SERB Case No.: 10-MED-07-0861
(First line Supervisor Unit)

GREGORY P. SZUTER, CONCILIATOR

REPORT AND AWARD
[Interest Arbitration]

For the Public Employer
Timothy McCarthy, Esq.
SHUMAKER, LOOP, KENDRICK, LLP
North Courthouse Square
1000 Jackson
Toledo, OH 43604
E. tmccarthy@slk-law.com
T. 419-241-9000

For the Labor Organization
John M. Roca, Esq.
GALLON, TAKACS, BOISSONEAULT &
SCHAFFER CO., LPA
3516 Granite Circle
Toledo, OH 43617
E. jroca@gallonlaw.com
T. 419.843.2001

Also in attendance (*Sworn and testifying):
*Jim Dennis, Executive Director
*Tonya Justus, Fiscal Manager
*Salina Hill, HR Manager
Dennis Sullivan, Director of Security

Also in attendance (*Sworn and testifying):
*Ron Kuckuck, Local President
John Dippman, Stewart

Hearing : July 14, 2011
Award Issued : August 19, 2011

INTRODUCTION

The Corrections Commission of Northwest Ohio (herein also "Employer" or "CCNO") and Supervisors' Association, Local 53, (herein "Union") are parties to this final offer settlement procedure ("Conciliation") under Ohio R. C. 4117 which is a form of interest arbitration relating to establishing new terms for a collective bargaining agreement. This Conciliation relates to a wage re-opener provision of the collective bargaining agreement ("CBA" or "Agreement") between the Union and the Employer and effective July 1, 2009 through June 30, 2012. The unit for collective bargaining consists of all corrections supervisors with the exception of shift commanders, corrections officers and all other office, clerical and management, supervisory, professional, administrative employees. There are 20 employees in the unit.

The parties met in negotiation for the terms of the wage re-opener in accord with the Agreement. Matters still at impasse were submitted to statutory fact finding hearing on, March 21, 2011. The Fact Finder's Report and Recommendations ("FFR") was issued on April 25, 2011.

The undersigned was appointed conciliator in this dispute by the State Employment Relations Board (SERB) by letter of May 19, 2011, pursuant to R.C. 4117.14(D)(1).¹

HEARING

Pre-hearing statements of the issues were submitted by July 7, 2011, with final proposals and exhibits in conformity with R.C. 4117.14(G)(3) and O.A.C 4117-9-06(E). The Conciliation evidentiary hearing commenced on July 14, 2011, at the Archbold, Ohio. Both parties attended and elaborated upon their positions regarding the issue remaining at impasse through their witnesses and representatives. The Labor Organization was represented by John M. Roca, Esq. The Employer was represented by Timothy McCarthy, Esq. Evidence was presented by Jim Dennis, Executive

¹ Citation herein to O.R.C. 4117.14 is made to the version before amendments of 129th General Assembly, File No.10, SB 5 Sec. 1, which are subject to referendum

Director; Tonya Justus, Fiscal Manager, and Salina Hill, HR Manager, on behalf of the Employer, and by Ron Kuckuck, Local President for the Union. In addition, documents were marked and received in evidence. No Joint Exhibits were received in evidence (JX)² although exhibits offered by each included some of the same documents as offered by the other. The Employer presented twenty four exhibits that were received into evidence. (EX).³ The Union also presented twenty two exhibits of which twenty one were received into evidence. (UX)⁴ The parties entered a stipulation

² See duplicate exhibits of parties offered separately in notes 3 and 4 as (*).

³

- EX 1 Collective Bargaining Agreement between the Union and the Employer and effective July 1, 2009 through June 30, 2012
- EX 2* Regional Correctional Facilities Wage Survey (2011)
- EX 3* State Employment Relations Board Clearinghouse, Benchmark Report, March 16, 2011
- EX 4* Corrections Commission of Northwest Ohio Annual Report FY 2010
- EX 5 Corrections Commission of Northwest Ohio Annual Report FY 2009
- EX 6 Corrections Commission of Northwest Ohio Annual Report FY 2008
- EX 7 Corrections Commission of Northwest Ohio Annual Report FY 2007
- EX 8 Corrections Commission of Northwest Ohio, Eliminated Staffing Positions (March 17, 2011)
- EX 9* Corrections Commission of Northwest Ohio December 2010 Budget
- EX 10* Corrections Commission of Northwest Ohio Proportionate Cost Shares 2010 and 2010 Budget
- EX 11 Ohio Unemployment Rates by County, January 2011
- EX 12 Ohio Unemployment Rates by County, May 2011
- EX 13 City of Toledo Annual Information Statement, 2010
- EX 14 ToledoBlade.com, "City Increases Deficit Estimate," March 18, 2011
- EX 15 In the Matter of the Factfinding between City of Toledo and IBT Local 20, Fact Finder Report and Recommendation (8/16/10, P. Gerhart, Fact Finder) SERB Case 09 MED 08-0817
- EX 16 Comprehensive Annual Financial Report, Lucas County, FY end December 31, 2009
- EX 17 Comprehensive Annual Financial Report, Lucas County, FY end December 31, 2010
- EX 18 Lucas County, Popular Annual Financial Report, December 31, 2009
- EX 19 2010 and 2011 Contract Modification Agreement between the Lucas County Sheriff and United Automobile Workers LU 3056
- EX 20 Annual Financial Report, Fulton, County, FY 2010
- EX 21 Bryan {Ohio newspaper} "County lays off five garage employees" March 9, 2011
- EX 22 Annual Financial Report, Williams, County, FY 2009
- EX 23 Letter to CCNO Executive Director frm Defiance County Administrator, March 22, 2011
- EX 24 Henry County summary of budget passed December 2010

⁴

- UX 1 Conciliation brief of Union {not evidence}
- UX 2* Collective Bargaining Agreement between the Union and the Employer and effective July 1, 2009 through June 30, 2012
- UX 3 Collective Bargaining Agreement between the Union and the Employer and effective July 1, 2006 through June 30, 2009
- UX 4 In the Matter of the Factfinding between CCNO and Local 23, Fact Finder Report and Recommendation (4/25/11, S. Grody-Ruben, Fact Finder) SERB Case 10 MED 07-0861
- UX 5 Corrections Commission of Northwest Ohio Third Amended and Restated Organizational and Operational Agreement, February 25, 2004

that they would each waive having a stenographic transcript made of the hearing.⁵

ISSUES

The Fact Finder's Report and Recommendations of April 25, 2011, made recommendations on the one re-opener issue, wages. By the time of the conciliation the same issue remained un-agreed by the parties. The following were the open issues.

1. Article 23: Wages⁶

MEDIATION

The Ohio law encourages fact finders and conciliators to mediate disputes when practical.

R.C. 4117.14 (G)(1). The Parties agreed inasmuch as there is only one issue, a re-opener on wages

-
- UX 6* Corrections Commission of Northwest Ohio Annual Report FY 2010
 - UX 7* Corrections Commission of Northwest Ohio December 2010 Budget
 - UX 8* Corrections Commission of Northwest Ohio Proportionate Cost Shares 2010 and 2010 Budget
 - UX 9* Corrections Commission of Northwest Ohio Proportionate Cost Shares 2011 and 2011 Budget
 - UX 10 Corrections Commission of Northwest Ohio March 2, 2011 Press Release.
 - UX 11 In the Matter of the Factfinding between Fulton County Sheriff and OPBA-Sergeants, Fact Finder Report and Recommendation (7/12/10, S. Grody-Ruben, Fact Finder) SERB Case 09 MED 10-1115
 - UX 12 In the Matter of the Factfinding between Fulton County Sheriff and OPBA-Deputies, Fact Finder Report and Recommendation (11/17/10, D. Burkholder, Fact Finder) SERB Case 10 MED 05-0740
 - UX 13 In the Matter of the Conciliation between Fulton County Sheriff and OPBA-Deputies, Conciliator's Award (4/4/11, M. Paolucci, Conc.) SERB 10 MED 05-0740
 - UX 14 Collective Bargaining Agreement between the Henry County Sheriff and Local 61, Int's Assn. of Police Assns. and effective July 1, 2010 through June 30, 2013
 - UX 15 Collective Bargaining Agreement between the Defiance County Sheriff and Defiance County Deputy Assn and effective March 1, 2008 through March 1, 2011
 - UX 16 Collective Bargaining Agreement between the Williams County Sheriff and FOP Ohio Labor Council and effective through December 31, 2010
 - UX 17* State Employment Relations Board Clearinghouse, Benchmark Report, March 16, 2011
 - UX 18 State Employment Relations Board Clearinghouse, Wage Increase Report, March 16, 2011
 - UX 19 ToledoBlade.com, "Mayor Ends Forced Police Concessions," July 13, 2011
 - UX 20 ToledoBlade.com, "Toledo's Income Tax Collections Up \$2.3M," July 13, 2011.
 - UX 21 Cleveland.com, "New Ohio Criminal Sentencing bill to save millions by letting inmates out early, sending low-level felons to prison alternatives," June 27, 2011
 - UX 22 "Important facts:" (a collection of miscellaneous excerpts from materials made by Mr. Kuckuck)

⁵ See Appendix A and B.

⁶ See Appendix C

that been bargained without result since July, 2010, that mediation could be dispensed with.

CRITERIA

The conciliator shall resolve the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the parties' final settlement offers. R.C. 4117.14(G)(7). Absent a waiver by the parties increases in rates of compensation and other matters with cost implications awarded by the conciliator are restricted as to retroactivity. See O.R.C. Section 4117.14(G)(11).

In compliance with Ohio Revised Code § 4117.14G(7), the Conciliator considered the following in making the opinion and order contained in this report:

- (1) Past collective bargaining agreements, if any, between the parties;
- (2) 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 s 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 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; and
- (6) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of issues submitted to final offer settlement through voluntary collective bargaining, mediation, conciliation or other impasse resolution procedures in the public service or in private employment.

In as much as this proceeding is a final offer interest arbitration, the general standards of interest arbitration are part of what the sixth criteria refers to. Those are located in E LKOURI & ELKOURI HOW ARBITRATION WORKS (Sixth Edition, Ruben, Editor. BNA, 2003) at pp. 1358-1364.

As quoted therein, note:

". . . [interest arbitration] calls for a determination, upon considerations of policy, fairness, and expediency, of what the contract rights ought to be. In submitting this case to arbitration, the parties have merely extended their negotiations – they have left it to this board to determine what they should, by negotiation, have agreed upon.

We take it that the fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men, have voluntarily agreed to?" *Twin City Rapid Transit Co.* 7 LA 845 at 848 (McCoy *et al.* 1947)

The advisory fact finding, which is the first of the two-step dispute resolution process for safety forces under Ohio's public bargaining law, provides the answer to the inquiry of what would reasonable parties agree to. The Fact Finder's Report on an issue is given deference in the final offer arbitration (conciliation) phase of the law.⁷

In any public sector statutory proceeding the interest of the public is a criterion. ELKOURI at p. 1361. In Ohio it is contained in the third element. The part of the public interest criterion advanced by the Employer, but not exclusively, is the ability to finance and administer the issue proposed. On this criterion the Employer offered testimony by the Executive Director and the Fiscal Manager. The Union offered the testimony of Local President on the subject.

External comparison, which is the second criterion, was primarily through exhibits on nearby bargaining units having agreements with the local Sheriff's Offices. Testimony of the Local President and the HR Manager addressed bargaining history and internal comparisons and through exhibits. This is relevant to a number criterion, chiefly the first and third.

⁷ Only when there is a showing of error or when substantial changes have occurred since the fact finding hearing resulting in new evidence shall a conciliator alter the Fact Finder's recommendation. *City of Warren and OPBA*, (Graham) Case 2006-MED-10-1267. Following *Warren*, a Conciliator found, "the common practice among conciliators of giving very significant weight to well-reasoned recommendations of the Fact finding Report." *IAFF Local 2860 and City of Eastlake*, (Meredith) Case No. 2007-MED-09-1004. See also *City of Lakewood and IAFF*, Case No. 2000-MED-04-0952; and *City of Medina and OPBA*, Case No. 2005-MED-08-0785. A conciliator need not defer to the Fact Finder's recommendation where the Fact Finder never discussed his rationale or the competing considerations or where it is unclear the Fact Finder was presented with the same information. In *City of Sheffield Lake and OPBA*, (Nelson) Case Nos. 2007-MED-10-1075, 2007-MED-10-1076, 2007-MED-10-1077.

FINDING OF FACTS

The factual contentions that were repeated throughout the evidence on the wage issue by the parties are summarized here. The first two criteria are taken out of order of the statute for context.

THE LAWFUL AUTHORITY OF THE PUBLIC EMPLOYER

County jails are created by County Boards of Commissioners and administered by the Sheriff's Office. O.R.C. §§ 307.01, 341.01 and 341.05. Ohio law permits the joint establishment of a multi-county correctional center by adjacent counties and the municipal corporations contained within them. O.R.C. § 307.93 On September 29, 1987, the counties of northwest Ohio (Defiance, Fulton, Henry, Lucas, and Williams) and the City of Toledo agreed to create the Corrections Commission of Northwest Ohio (CCNO). Their Third Amended and Restated Organizational and Operational Agreement dated February 25, 2004, (UX 5) agreed among other things to an apportionment among the members of the cost of constructing occupying maintaining and repairing and managing the center. Three officials of each of member jurisdiction sits on the commission.

CCNO has no authority to levy taxes. It cannot appropriate revenues. It derives its funding from member jurisdictions. Each member jurisdiction is required to appropriate funds necessary based upon a percentage of CCNO costs. Costs are allocated to the members based on the percentage agreed. The percentage of contribution is reflected by the number of beds projected to be used by each jurisdiction. For example Williams County agreed to use 56 beds out of a total bed count of 642. which is 8.65%. (UX 5 p. 5) However the agreement permits charges for over an underutilization so that other member jurisdictions can increase or decrease usage. (UX 5 p. 20) The result is the allocable share for Williams County of 8.15% for 52 beds out of 638 for 2009 and 2010. (UX 8, 9; EX 10)

The mission of CCNO is to house pre-sentence felons and sentenced misdemeanants. Sentenced felons are housed in the Ohio penitentiary system. With the changes brought about by

the 2011 budget of the State of Ohio it is expected this mission will be impacted. The State plans to reduce subsidizing inmate housing in favor of diversion programs in order to keep on criminals out of jail. The state budget plans to have non-violent or low-level felons sent to prison alternatives. This could increase demand for services such as at CCNO. According to the Executive Director if that is going to increase the number of people at the center, "we will just have to deal with that."

THE STIPULATIONS OF THE PARTIES

The parties agreed on the interpretation of the issue being only a change in the amount of increase, if any, with all other terms, in particular the effective date of January 1, 2010, and the wage table, having been agreed to in the collective-bargaining agreement.⁸ Therefore, no retroactivity agreement under O.R.C. 4117.14(G)(11) was necessary.

PAST COLLECTIVE BARGAINING AGREEMENTS OF THE PARTIES

The supervisor bargaining unit represented by Local 53 of the International Union of Police Associations, which has from 18 to 20 members, has had a series of agreements with CCNO. The corrections officers ("CO") unit is represented by Local 64 of International Union of Police Associations. The wages of the supervisors in the agreement at Article 23 are stated in dollars per hour that varies by years of service. However, the stated wage represents a differential over the CO unit ranging from \$3.25 seven cents to \$3.75, or 22%⁹.

The 2006 – 2009 agreement included wage increases beginning January 1, 2007, and for three years as follows: 3 ½% - 3% - 3%. This was typical of past increases.¹⁰ Supervisors also contributed 5% of the premium cost for healthcare insurance (HCI). The 2009 – 2012 agreement

⁸ See Appendix D

⁹ For analysis of the data herein the following assumptions are made. Annual hours available for work are 2080, monthly 170 (rounded). The median supervisory differential is \$3.50 and the median wage for the supervisor unit is \$19.00/hr or \$43,000 annually. The median CO wage is assumed at \$15.50. Hence the differential: $3.50 / (19 - 3.50)$ or $3.5 / 15.5 = 22\%$.

¹⁰ The CO unit increases for that period were 3-3-3.

concluded with a wage increase on January 1, 2010, of \$0.19-\$0.21 (approximately 1%) with an increase of the contribution to the HCI premium by 2 ½ %, (i.e. 7 ½ % total). This increased cost "virtually wiped out" the wage increase. The parties agreed to a wage reopener effective January 1, 2011, and January 1, 2012. The Fact Finder recommended a 2% increase for January 1, 2011.

In the 2006 – 2009 agreement the unit was provided a 90% – 10% HCI plan having a \$100/\$200 deductible to maximums of \$1000/\$2000. The employees paid 5% of the monthly premium cost on a pretax basis. It also had a prescription drug program with co-pays. This plan covered the supervisor unit and the non-bargaining employees, about 1/3 of the staff.

The CO unit of 120 members had a higher cost HCI program, first dollar with no deductibles, for which they paid 10% of the premium. In 2009 all of the employees became participants in the same group. It was lower cost than either of the other two prior programs.

In the 2009–2012 agreement the unit was provided with an 80%–20% plan with a \$200/\$400 deductible having maximums of \$1500/\$3000. The employees pay 7.5% of monthly premium on a pretax basis but is subject to increases. It has a prescription drug program with co-pays and vision program free of cost. While employees pay a higher percentage of the premium than before, it is a lower premium cost. The supervisors under the old program paid \$43 per month per individual (max. two per family). For the new program is was \$60 per month, an increase of \$17.00 or \$0.10 hourly. The median increase of \$0.20 left a 0.5% increase in wages for a single person.¹¹ Family coverage would be twice the cost and effective 0.0% increase.

After the supervisor unit agreed in the 2009 – 2012 CBA to the wage reopener for the following two years, the CO unit agreed likewise to reopening wages. As of the date of hearing the CO unit reopener for 2011 had not yet gone to fact finding on the issue.

¹¹ $[\$0/20 - (\$17/170\text{hr})] / 19.00$ or $(\$0.20 - 0.10) / \$19.00 = 0.5\%$ No allowance is made for any other changes in the economic package in view of this being the only one raised on the record.

OTHER PUBLIC EMPLOYEES DOING COMPARABLE WORK, CONSIDERING FACTORS PECULIAR TO THE AREA AND CLASSIFICATION INVOLVED

The supervisors and correction officers of CCNO are not sworn and certified peace officers. They do not carry firearms, they do not have arrest authority, they do not have the power to use deadly force. Peace officers generally work alone, such is on patrol, with limited backup and limited supervision. They must complete police training academy of 582 hours. The basic corrections academy consists of 142 hours of training. At CCNO the unit of 18 a first-line supervisors supervises about 100 correction officers all in the same facility. There is also senior command personnel present who are not members of the supervisor unit. All staff members are responsible for the supervision and custody of the inmates at the facility.

The wage scale of four supervisory units from regional correction facilities are in the record. CCNO is the highest starting rate and second highest top rate among the four. (EX 2) The other three facilities serve primarily rural areas do not have a major urban area like the City of Toledo as a member jurisdiction.¹² The Multi-County Corrections Center (Marion) had a wage freeze in 2010 and a wage reopener scheduled for 2011. The other two are not reported.

Among all corrections-supervisor the units reporting to the State Employment Relations Board Clearinghouse for 2011, which includes regional corrections centers, sheriffs offices and municipal departments of all sizes around the state, the average entry-level supervisor wage was \$42,186.93 with the top rate wage of \$44,925.17. The rates at CCNO are slightly below average with \$40,570, entry, and \$44,144.10, top. EX 3

Four of the sheriffs' offices among the six member jurisdictions have been relieved of responsibility for corrections. Lucas County still maintains a jail which is shared by Toledo. Wage freezes prevailed among the member jurisdictions for the past two to three years with occasional

¹² The others are in Marion, Athens, and Mechnicsburg.

exceptions. Toledo has been in concessionary bargaining posture. Williams County has given increases consistently. Lucas and Defiance Counties have had serial freezes. Others are mixed.

THE ABILITY OF THE PUBLIC EMPLOYER TO FINANCE AND ADMINISTER THE WAGE ISSUE

Member jurisdictions are billed their allocated share of the costs in January. Property tax receipts are received by the counties in February in the County members pay from that revenue. The City of Toledo is slower pay by history. The Executive Director testified in his annual budgeting exercise he has been required to choose between a wage freeze and wage cut or layoffs. He has attempted to protect staffing leaving cuts to attrition in the interest of protecting inmates.

CCNO's budget has stagnated since 2008 when the economic down turn began in earnest. The operational budgets of 2010 and 2007 are virtually identical, \$15 million. Capital purchases declined with a peak at \$390,570.89 in 2008 to \$15,959.09 in 2010. This was a result of deferring long-term costs whenever possible. During that period 17.5 positions were eliminated including a senior management position.

CCNO has developed new revenue streams by requiring inmates to reimburse some expenses. Because the cost of incarceration continues to increase this was an effort to offset the increase. The Executive Director stated that even a 10 to 15% collection "would make a dent."

An example is the pay-for-stay program that began 2009. Inmates are charged a \$100 booking fee when they arrive and the full \$67 per diem fee while incarcerated. This is recouped first out of their commissary account when they leave and then through a payment program arranged through a contractor organization after they leave. CCNO uses the same contractor that Lucas County jail uses. The 2010 annual report states CCNO collected \$174,617 at release and the contractor recouped \$130,294.02 afterwards.

In addition there is an inmate telephone system reimbursement program which produced \$331,983.62, an increase of about \$50,000 over the prior year. This is credited to the member

jurisdictions on their quarterly invoices. The Executive Director stated that the CCNO is contractually obligated to give the credit. There's a medical co-pay charge to inmates instituted to discourage frivolous requests for treatment. That produced \$17,304, a decline from the prior year. There is also charge for alcohol testing that is required by the courts.

The general fund operating account for December, 2010, showed \$3.28 million unencumbered cash balance. The Fiscal Manager explained that most of that is maintained in the insurance account for maintenance of the HCI program. In addition there was \$437,518.52 non-encumbered balance of the total expenditures. Contrary to the Union's assertion that was not refunded to member jurisdictions by CCNO. It is the carryover used to fund the beginning of the following fiscal year. This is 2.8% of the entire budget and represents less than the cost of two payroll periods.

The January, 2010, unencumbered cash balance was negative \$1.56 million. The Union infers that because the fund balance is \$3.2 million in December and deficit of \$1.5 million in January that there was an expenditure for the amount of the difference. Although CCNO bills the members quarterly, the expenses are encumbered annually. All expenses must be encumbered at the beginning of the year according to the state auditor. Payroll is not an expense that is annually encumbered but is paid out of current assets. The Employer argued that the Fact Finder misunderstood that the funds at the beginning of the year must be earmarked for the budgeted expenses for the rest of the year. The Union responded that this was explained at fact finding.

CCNO is one of 170 ACA accredited jails out of the 3,400 jails in the United States. The accreditation, received in 2011, is based on reaching 100% compliance of 60 mandatory standards covering areas of sanitation, security, staff operations, medical care, and offender programs.

The Union raised several details which while factual are not relevant to the determination of the ability to finance issue based on certain misunderstandings. Those are addressed *infra*.

The budget of CCNO is dependent on a financial health of the member jurisdictions. Both parties presented competing considerations concerning this subject.

In fiscal year ended 2009 the *City of Toledo* had a \$9.1 million deficit due to unforeseen reductions of revenue. Income tax revenues were on a steady decline from \$169.7 million in 2007 to \$138.1 million in 2010. However that figure was a stronger-than-expected. The carryover deficit improved to \$6 million-\$8 million for 2011. The City's bargaining units, police, fire and five AFSCME units, all originally agreed to concessions in 2010 which were recently restored due to the improvement in revenues that was not anticipated.

Lucas County had an \$8.5 million budget gap in 2009 due to sales tax revenue short fall of \$7.0 million. In 2010 sales tax revenues were off. Real estate values were down and property tax revenue decreased. The Lucas County Jail also used by Toledo is a higher cost facility than CCNO. It charges \$145.27 per diem, CCNO charges \$67.31. It is older and operates under a Federal Court order and has higher internal costs. Also CCNO trains Lucas County jailers. It receives a fee which it refunds back to Lucas County. In a modification agreement for their CBA, for 2010 the Sheriff's Office employees agreed to a wage freeze with two options for furlough days, a net reduction. For 2011 they agreed that the wage reopener for 2011 would be 0.0% with no reopener.

Lucas County and the *City of Toledo* both pay more in wages than CCNO and both also pay 100% of the retirement contribution which is additional income to their employees.

Defiance County will be losing \$450,000 in local government funding from the State of Ohio which could increase to \$1 million in a few years. Personal property tax is being phased out by 2016. The County employees agreed to a wage freeze in 2010 and 2011 with paid holidays reduced by two.

Although *Fulton County's* general revenue was flat until 2008 it had dropped since. To offset this, a temporary sales tax increase of ½% was imposed which will expire in 2012. Full-time

staffing was reduced. The Fulton County employees agreed to a wage freeze with furlough days, a net reduction in wages. Some commissioners of the member jurisdictions, in particular Fulton County, have voted to put themselves on the insurance programs of their respective counties.

Henry County had operating surpluses over \$1 million in the past. By 2009 the surplus was under \$100,000. It is now projecting a \$500,000 deficit for 2010. The State of Ohio is reducing local government funding as it is with other counties. The Sheriff's Office employees agreed to a 3% increase. This is the first year of a three-year agreement having 3% each year for 2010 – 2013.

The *Williams County* sales tax revenue and property tax collections have decreased. Between the Sheriff's Office and Engineer there were 13 layoffs. The Union claims the layoffs in the Sheriff's Office which was not an economic matter but as a result of dissension in the office. The Sheriff's Office employees agreed to a 3% increase in 2010 which is the last year under their three-year agreement that had added increases of 3% each year.

OTHER FACTORS, NOT LISTED, NORMALLY TRADITIONALLY CONSIDERED

Under the heading of "other factors" the Employer submits unemployment rates of the member jurisdictions. In January, 2011, three of the five counties were 12%, with Defiance the lowest at 10%. By May, 2011, the rates improved slightly with all but one below 10%, Williams the highest at 10.9%. By either measure these were the highest unemployment rates since the Ohio public bargaining act was effective in 1984.

The Fact Finder's recommendation was 2% wage increase in all job categories for January 1, 2011, under the reopener. The cost of each 1% increase facility wide is \$82,000 per year ongoing. The Union had proposed 3.5% and CCNO proposed 0%.

OPINION AND ORDER

ISSUE: No. 1

CONTRACT : Article 23: Wages

Fact Finder RECOMMENDATION:

.... the Fact Finder recommends a 2% increase effective January 1, 2011.

POSITIONS: The Employer's Final Offer : 0.0%.

POSITIONS: The Union's Final Offer: 2.0% (FFR)

OPINION AND ORDER:

At fact finding the Union urged 3.5% and the Employer, 0.0%. The Fact Finder recommended 2.0%. The Fact Finder based the report and recommendation on five items:

1. CCNO's economic status,
2. the economic status of the six contributing jurisdictions,
3. wages in comparable entities,
4. the cost of living index,
5. the rest of the Agreement.

The FFR appears to rely on the first year effective zero increase and adjusted the Union's demand based on the Employer and member jurisdictions economics.

The Union receded and adopted the FFR citing the local labor market wage increases and the ability to pay based on member jurisdictions and the Employer's revenue streams. The Employer continues to urge 0.0% based on the depressed local economies in terms of both the budget constraints on the CCNO and on the member jurisdictions' budgets and the labor market.

Some determinations herein could have been made in deference to FFR. However, the analysis of the FFR is brief to the point of being cryptic. The above subjects are only named without any rationale discussed or competing considerations. In addition, the Employer argued here that the Fact Finder misunderstood some of the evidence. It is also unclear the Fact Finder was presented with the same information as in conciliation. Suffice it to say that, notwithstanding whether any

issue could have been awarded on deference alone, these have also been made independently.

Therefore "other factor" criteria (i.e. the FFR) favors 2.00% increase. It deserves deference or at least significant weight and is not rebutted by the unemployment rates which are conflicting in that there is a slight improvement.

The lawful authority of the employer and the stipulations of the parties are not determinative but contextual in this case. Of the criteria remaining, the two propelling changes in labor rates are the past agreements and the local labor market for similar services. The criteria opposing change is the ability to finance and administer the changes.

After a history of 3% increases, this unit received 1.00% increase in the first year of the agreement. After offsets for premium cost it was a net 0.0%. The second and third years of the agreement were agreed to be dependent on the later economic developments.

A good deal of effort is spent on searching out some source of funds that exceeds the \$160,000 cost of the 2% increase for one fiscal year. That is fruitless. The ability to pay for one year is not determinative of the increase. The inability to finance and administer the issue is determinative of a reduction of the increase request. If it were otherwise, then at other times or with other employers when there are ready assets, any amount of increase could be substantiated. The statute is not designed to pay anything asked merely because there are funds. The statute is designed to pay the market rate for like services in the same labor market. That is measured by what is paid for services in the past, what is paid internally to other employees by the employer, and what is paid for similar employment locally. It is not measured by the cash reserve. The ability to "finance and administer" criteria is more of an affirmative defense to be sustained by the employer. It is not something the Union must sustain, but must rebut, which is a lower threshold.

In fairness, it is not supposed that is the Union's argument. It is not as if the funds expended to lower cost, improve quality and productivity are to be sacrificed in favor of paying more for

services that are not enhanced by quality, productivity. Rather the fact that there is a variety of resources available for a variety of other expense, serves to deflate the Employer's credibility that it cannot finance or administer more than 0.0%.

The Employer makes a realistic case that other regional jails are the proper comparators. While the Union's point is well taken that they are rural and do not encompass a large metropolitan area of the state, CCNO pays better than the others generally. However, there are too few of them for significant analysis and more importantly they give no insight to factors peculiar to the local area. Looking to the Sheriff's office of the member jurisdictions is legitimate because in the absence of CCNO, those officers would be jailers in their respective counties. However, some caution need be engaged in any such comparison because Sheriff deputies are sworn peace officers.

The wages for the Sheriff's Office non-supervisory employees of each of the member jurisdictions of CCNO are shown in the nearby chart.

| Member Jurisdiction | Budget Share | 2010 | Weighted Wage Incr. | 2011 | Weighted Wage Incr. | Allocation of 2% Incr. |
|---------------------|--------------|----------|---------------------|---------|---------------------|------------------------|
| Defiance | 9.4% | 0 | 0 | 0 | 0 | 0.188% |
| Fulton | 8.15% | \$1,110 | 0.2%* | 1.625%* | 0.132 | 0.163% |
| Henry | 5.64% | 0 | 0 | 3.0% | 0.17% | 0.113% |
| Lucas | 31.03% | 0 | 0 | 0 | 0 | 0.627% |
| Williams | 8.15% | 3.0% | 0.25% | 3.0% | 0.25% | 0.163% |
| City of Toledo | 37.62% | negative | 0 | 0*** | 0 | 0.752% |
| CCNO | 100% | 1.0% | 0.45% | 2.0%** | 0.72% | 2.00% |

* In 2011 the conciliator decision ordered Fulton County pay Sheriff deputies a 2% increase for three quarters of the year and it 0.5% increase for one quarter. The effective increase is 1.625% (2% x 75%) + (0.5% x 25%) The award recited a \$1,100 annual lump sum amount that the Union estimates as 2.5%. That becomes \$89.65 weighted wage increase per the table which is equated to 0.2% when taken over the median CCNO supervisor rate of \$43,000. (Note the same effect using 2.5%) A Fact Finder also increased the differential between rank and sergeants in 2010 as the plus factor.

** Fact Finder recommendation

*** The City negotiated concessions in March 2010 and restored them in May 2011 making the economic package changes net zero overall. See text below.

In addition the allocation percentage of the cost for each member jurisdiction is shown. That

percentage is multiplied by any increases in wages agreed upon in order to arrive at a "weighted wage increase." Those are then totaled to compare to the CCNO increases. Finally the charge back on the allocable share of a 2% increase to shown.

The table does not demonstrate what increase there should be but tests how an increase of 0% and 2% might fall into the context of the six contributing member jurisdictions. What is called here the "weighted wage increase" serves to reflect the changes in the local market rates for labor which indirectly reflects the budgetary considerations of the constituent jurisdictions.

In 2010, four out of the six jurisdictions had wage freezes or worse at the time when CCNO was able to provide a 1% increase. In 2011 two of the jurisdictions had wage freezes and the rest, increases. Using the increases of the counties weighted by their contribution percentage shows the total for 2010 to be 1/2% and the total for 2011 would be about 3/4%. While that is not double, as would be the change from 1% to 2% would be for CCNO, it does give a context that there is some room for improvement. The change in Toledo, although being a reversal of concessions, is definitely a positive percentage increase over the levels paid in 2010 although not quantified in the evidence. Each 1% change from the depressed concessionary level back to former levels adds 0.376% to the total "weighted wage increase." Such an increase in the "weighted wage increase" underscores improvement by this measure in the current environment to near twice or possibly even more than the prior year.

This test serves only to demonstrate that the Fact Finder was in the correct territory in recommending an increase in the proportion she did in relation to the six member jurisdictions. This has been demonstrated both as to the local market price for similar services and as reflected by the local economies' confidence in financing the changes.

The Employer's defensive criteria, the ability to finance and administer the change, was argued on the basis of CCNO's stagnant budget, its cost-cutting efforts, and its inability to pass back

costs back to member jurisdictions based on their economies. The last of these was the strongest point and is really the basis for the other two. It was effectively rebutted by the wage changes of four of the jurisdictions (including Toledo) in 2011.

The Employer's argument was not rebutted by certain Union contentions on the record which must be distinguished as not supporting the conclusion in this matter. They are as follows.

{1} The ACA accreditation cost CCNO an expense of funds in training in some building improvements. While true, wages do not have a claim on reduced quality of services. The choice of improving quality or paying for labor services is a false one.

{2} Staff reductions caused added work for existing employees and saves the employer the funds once expended for those positions. Added work does not free funds. The reverse is true. The loss of funds requires increased productivity. Like quality, productivity is long term, not immediate, benefit to labor, bolstering its claim for value when the customer base can be required to pay for it.

{3} There were 27 pay periods in 2010 and 26 in 2011. Each pay period costs \$240,000. Therefore, in 2011 CCNO's payroll will be reduced by that amount freeing funds for the increase. This is a one time event. Wage increases are an ongoing expense. Also there are no savings by virtue of one less pay period. Wages are payment for a liability caused by services rendered. Without services, there are no wages to "save." A liability is a loss not a gain. One cannot "save" a liability any more than skipping dinner today will result in two dinners tomorrow. Having one less pay period does not add to the revenue which is supplied by customers.

{4} The supervisor unit does not receive overtime until 82 ½ hours of work. Although this was not fully developed such as by explanation through regulations, it appears that as first line supervisors, the unit employees are exempt. If they are such, they have no legal claim for overtime at all. Any overtime would be a premium for their services. If they are covered by an overtime regulation, the odd number suggests it must be a mandated figure.

{4} *The inmate payment programs are revenues that can sustain the increase.* Inmate payments are a source of revenue that incompletely offsets another expense and reduces the charge to the member jurisdictions. It is not a revenue improvement but an expense cut.

The statute requires that the conciliation opinion and order choose as among the final offers of each of the party and not to craft a different solution. In the statutory process certain amount of deference is owed the Fact Finder Report and Recommendation. Within those constraints the conciliator is convinced on this record that the Union's final offer adopting the Fact Finder's recommendation is the more reasonable.

ISSUE 1 Order: As to Article 23, the Union's final offer of a 2.00% wage increase effective January 1, 2011 is ordered.

Made and entered at Cleveland, Ohio
August 19, 2011


Gregory P. Szuter, Conciliator

PROOF OF SERVICE:

The foregoing has been sent by U.S. Mail (ordinary) on August 19, 2011, to Supervisors' Association, Local 53 c/o John M. Roca, Esq. and Corrections Commission of Northwest Ohio c/o Timothy McCarthy, Esq. per addresses shown on the cover with advance copy via email on the same date to both.

APPENDIX A

STATE EMPLOYMENT RELATIONS BOARD

| | | |
|---|---|--|
| Corrections Commission of Northwest Ohio, |) | SERB Case No. |
| |) | |
| Employer, |) | 10-MED-07-0861 Conciliator |
| |) | |
| and |) | Gregory P. Szuter |
| |) | |
| CCNO Corrections Supervisors Association, Local 53/International Union of Police Associations, AFL-CIO, |) | AGREEMENT TO EXTEND CONCILIATION TIMELINES AND WAIVE RECORD |
| |) | <u>REQUIREMENTS</u> |
| Employee Organization. |) | |
| |) | |

* * *

1. The parties to this matter, the Corrections Commission of Northwest Ohio [hereinafter the "Employer"] and the CCNO Corrections Officers Association, Local 64/International Union of Police Associations, AFL-CIO [hereinafter "Employee Organization"], hereby agree to waive the statutory timelines and proceed to an evidential hearing before the Conciliator on or before July 14, 2011.

2. Further, the Employer and the Employee Organization agree to waive any requirement for a stenographic or other written record of the hearing.

CCNO CORRECTIONS SUPERVISORS ASSOCIATION, LOCAL 53/INTERNATIONAL UNION OF POLICE ASSOCIATIONS, AFL-CIO

CORRECTIONS COMMISSION OF NORTHWEST OHIO

By /s/John M. Roca
John M. Roca
Attorney
Gallon, Takacs, Boissoneault & Shumaker, Loop & Kendrick, LLP
Schaffer Co., L.P.A.
3516 Granite Circle
P. O. Box 352018
Toledo, Ohio 43635-2018
(419) 843-2001

By /s/Timothy C. McCarthy
Timothy C. McCarthy
Attorney

North Courthouse Square
1000 Jackson
Toledo, Ohio 43604-5573
(419) 241-9000

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Agreement to Extend Conciliation Timelines and Waive Record Requirements was served via electronic mail upon Gregory P. Szuter at gpszuter@gmail.com and upon John M. Roca, Esquire, at jroca@gallonlaw.com at 3:00 p.m. on July 7, 2011.

/s/Timothy C. McCarthy

Timothy C. McCarthy

Attorney for Employer, Corrections
Commission of Northwest Ohio

APPENDIX B

STATE EMPLOYMENT RELATIONS BOARD

| | | |
|---|---|--|
| Corrections Commission of Northwest Ohio, |) | SERB Case No. |
| |) | |
| Employer, |) | 10-MED-07-0861 Conciliator |
| |) | |
| and |) | Gregory P. Szuter |
| |) | |
| CCNO Corrections Supervisors Association, Local 53/International Union of Police Associations, AFL-CIO, |) | <u>AGREEMENT TO EXTEND CONCILIATION TIMELINES</u> |
| |) | |
| Employee Organization. |) | |
| |) | |

* * *

1. The parties to this matter, the Corrections Commission of Northwest Ohio [hereinafter the "Employer"] and the CCNO Corrections Officers Association, Local 64/International Union of Police Associations, AFL-CIO [hereinafter "Employee Organization"], hereby agree to waive the statutory timelines and agree to issuance of written findings of fact and opinion by the Conciliator on or before August 19, 2011.

**CCNO CORRECTIONS SUPERVISORS
ASSOCIATION, LOCAL 53/INTERNATIONAL
UNION OF POLICE
ASSOCIATIONS, AFL-CIO**

**CORRECTIONS COMMISSION
OF NORTHWEST OHIO**

By /s/John M. Roca
John M. Roca
Attorney
Gallon, Takacs, Boissoneault &
Schaffer Co., L.P.A.
3516 Granite Circle
P. O. Box 352018
Toledo, Ohio 43635-2018
(419) 843-2001

By /s/Timothy C. McCarthy
Timothy C. McCarthy
Attorney
Shumaker, Loop & Kendrick, LLP
North Courthouse Square
1000 Jackson
Toledo, Ohio 43604-5573
(419) 241-9000

APPENDIX C

Article 23 Wages

Section 23.1

Wage Rates. Rates of pay and their effective dates during the term of this Agreement shall be as follows:

| | 01/01/10 Pay Rate (1% Increase) |
|----------|---------------------------------------|
| 1 Year | \$19.18 |
| 5 Years | \$19.57 |
| 10 Years | \$19.96 |
| 15 Years | \$20.35 |
| 20 Years | \$20.79 |

APPENDIX D

Article 33 Duration

Section 33.1

This Agreement shall be effective July 1, 2009 and shall remain in full force and effect until June 30, 2012. Any wage increases agreed to in the course of negotiations to arrive at a successor to this Agreement shall be effective no earlier than January 1, 2013. Economic issues and the work schedule shall be effective January 1, 2010 unless otherwise agreed upon.

Section 33.2

If either party desires to modify or amend this Agreement, it shall give written notice of such intent no earlier than one hundred twenty (120) calendar days prior to the expiration date, nor later than ninety (90) calendar days prior to the expiration date of this Agreement. Such notice shall be by certified mail with return receipt requested. The parties shall commence negotiations in accordance with Chapter 4117 of the Ohio Revised Code.

This Agreement may be reopened effective June 30, 2010 and June 30, 2011 for consideration of the subject of wages only, and any wage increases agreed to shall be effective on the following January 1. Any negotiations pursuant to this reopener shall be conducted in accordance with the procedures established by the Ohio Public Employees' Collective Bargaining Act, and both parties shall enjoy the rights and protections afforded under that law.

GREGORY P. SZUTER, ESQ

ARBITRATOR MEDIATOR

OHIO Office:
8934 Brecksville Rd. #432
Cleveland, Ohio 44141

Midwest Area Office:
954 Brook Forest Ave. #107
Joliet, IL 60404

(440)526-1505
Toll Free:(877) 301-0332
E-mail: gpszuter@gmail.com

OSBA BOARD CERTIFIED
Specialist in Labor
and Employment Law



August 19, 2011

via email / HARD COPY

John M. Roca
Gallon, Takacs, Boissoneault & Schaffer Co., LPA
3516 Granite Circle
Toledo, OH 43617
E. jroca@gallonlaw.com
T. 419.843.2001

Timothy McCarthy
Shumaker, Loop, Kendrick, LLP
North Courthouse Square
1000 Jackson
Toledo, OH 43604
E. tmccarthy@slk-law.com
T.419-241-9000

STATE EMPLOYMENT
RELATIONS BOARD
2011 AUG 22 P 12:48

RE: Case No(s). 10-MED-07-0861
CCNO Supervisors' Association, Local 53 and Corrections Commission of Northwest Ohio

Dear Counsel:

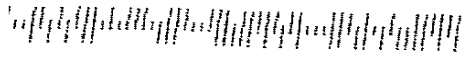
Please find enclosed the Conciliator's Report and Award in the above matter that has been sent this date via email attachment to the above addresses as requested and to SERB. A hard copy is being mailed concurrently to you and SERB. Also by hard copy only, counsel will be receiving the invoice for services in connection with matter along with a Form W-9. Thank you for allowing me to assist the bargaining parties in this manner.

Very truly yours,

A handwritten signature in cursive script that reads "Gregory P. Szuter". The signature is written in black ink and is positioned above a horizontal line.

Gregory P. Szuter

cc. Admr. Bureau of Mediation (SERB)
GPSMMI



Gregory P. Szuter, Esq.
Arbitrator Mediator

8934 Brecksville Rd. #432
Cleveland, Ohio 44141-2318

Mary E. Laurent
Administrative Assistant
SERB Bureau of Mediation
65 East State Street, 12th Floor
Columbus, OH 43215-4213