STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Conciliation Between:	)	
	)	
Fraternal Order of Police, Ohio Labor Council	)	10-MED-07-0868
	)	
-And-	)	
	)	Conciliator:
Hamilton County Sheriff	)	John T. Meredith

FINDINGS, OPINION AND AWARD
ISSUED APRIL 29, 2011

INTRODUCTION

The parties to this Conciliation proceeding are the Fraternal Order of Police, Ohio Labor Council, Inc. (FOP/OLC or Union) and the Hamilton County Sheriff (Sheriff or Employer). The bargaining unit consists of all Corrections Officers, including Corrections Cadets, employed by the Sheriff, a group of approximately 295 employees.

The FOP/OLC and the Sheriff are currently parties to a collective bargaining agreement (the "Agreement") which runs from December 1, 2008 through November 30, 2011. Section 20.3 of the Agreement provides: "For the beginning of the pay period that includes December 1, 2010 the parties agree to a wage re-opener negotiated pursuant to the statutory procedures set forth in Chapter 4117 of the Revised Code." The parties timely commenced negotiations pursuant to this re-opener but were unable to resolve the wage issue. Howard Tolley Jr. was selected by the parties to serve as Fact-Finder, and, after conducting a hearing, he issued his Fact-Finding Report on January 6, 2011. The Report concluded that increased employee compensation was supported by comparability data and equitable concerns, but it expressed concern about the County's ability to pay for a continuing wage increase in 2012 and thereafter. Accordingly, Mr. Tolley recommended "a one-time bonus of $1,200 per member based on the County Administrator's June 2010 assessment of ability to pay, subsequent increases in general fund reserves, and the three year increase in employees' health care premium costs averaging $1,400." This Report was rejected by the Union.

Thereafter, by letter dated February 3, 2011, SERB appointed the undersigned, John T. Meredith, to serve as Conciliator. Each party timely submitted its Prehearing Statement, with Final Offer and Rationale attached. The Employer's Final Offer is to continue the wage freeze through contract expiration on November 30, 2011, subject only to a "me too" clause assuring that the Corrections Officers would receive the same general raise, if any, granted by the Commissioners to non-bargaining unit employees. The Union's Final Offer is for a 2.9% wage increase effective December 1, 2010.

A hearing was held on March 28, 2011 to take evidence on the unresolved wage issue. The hearing was conducted in accordance with Ohio Collective Bargaining Law and applicable SERB Rules and Regulations. Witnesses testified, and the parties and their advocates also presented arguments and numerous documentary exhibits. The parties agreed to accept the written exhibits and Conciliator's notes as the record in event of an appeal, as provided in SERB Rule 4117-9-07(F).

Appearing for the Union at the hearing were: Gwen Callender, General Counsel FOP/OLC; Pat Packer, Local Union President; and Robert Schlanser and David McElroy, Corrections Officers. Appearing for the Sheriff at the hearing were: Brett Geary, Regional Manager, Clemans, Nelson & Associates; John Bruggen, Budget Supervisor; Kim Serra, Senior Human Resources Manager; Edwin Boldt, Sheriff's Counsel; and Rob Wagner, a member of the Budget staff.

The Conciliator has now resolved the issue by selecting the final offer of one of the parties. In making his decision and issuing his Award, the Conciliator has given consideration to the following criteria prescribed by Ohio Collective Bargaining Law and listed in SERB Rule 4117-09-05:

(1) Past collective bargaining agreements, if any, between the parties;
(2) Comparison of the unresolved issues relative to the employees in the bargaining unit 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 interest 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) Any stipulations of the parties;
(6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

"Other factors" noted in the sixth criteria include the common practice among conciliators of giving very significant weight to well-reasoned recommendations of the Fact-Finding Report issued in the case, absent change in circumstances or material new evidence. (See, for example: <u>City of Lakewood and IAFF,</u> SERB Case No. 00-MED-04-0952 (Dennis Byrne); <u>City of Warren and OPBA</u>, SERB Case No. 2006-MED-10-1267 (Harry Graham); <u>City of Medina and OPBA</u>, SERB Case No. 05-MED-08-0785 (Alan

Miles Rubin). "Other factors" also may include parity and equitable treatment among the various groups of the Employer's employees.

BACKGROUND

A. <u>Profile: The County and Its Workforce</u>

Hamilton County is located in the southwest corner of Ohio. It includes the City of Cincinnati and its suburbs, as well as some less densely populated area to the northwest of the City. The County has experienced a steady population decline from its peak at 924,028 in 1970 to 802,374 today, though this decline has been less dramatic than the declines experienced by urban areas in northern Ohio. Economically, the Cincinnati area is home to several Fortune 500 companies. Major employers include the University of Cincinnati, Proctor & Gamble Co, General Electric Co., American Financial Group, Chiquita Brands International, Cincinnati Children's Hospital, Fifth Third Bancorp, Ford Motor Co., Johnson & Johnson/Ethicon, Kroger Co, Macy's Inc. Mercy Health Partners, and TriHealth Inc. Per capita income in 2008 was $43,918, which compares favorably to income in most of Ohio's other major metropolitan areas. (Empl. Exhs., Tabs 5 and 7A)

A three-member Board of Commissioners has overall responsibility for County governance and, in particular, the County Budget. The Commissioners employ a County Administrator to manage operations. However, operation of the Sheriff's Department is the responsibility of a separately elected Sheriff, though the Commissioners determine the amount of the Sheriff's budget.

The county employs approximately 4,800 persons. About 3,600 of these are not represented by a union. The remaining employees – approximately 1,200 – are represented by unions in twelve separate bargaining units. Six of these bargaining units are in the Sheriff's Department. (Empl. Exhs. Tabs 5 and 7L) In addition to the Corrections Officers unit, whose wages are at issue in this case, the Sheriff's bargaining units are:

Corrections Supervisors – 29 employees, unaffiliated local union

Enforcement Officers – 250 employees, FOP/OLC

Enforcement Supervisors – 32 employees, FOP/OLC

Maintenance – 8 employees, FOP/OLC

Support Personnel (new unit) – 136 employees, unaffiliated local union

B. <u>County Finances</u>

The County's General Fund budget for 2011 totals $209.1 million, a $2.7 million (1.3%) decrease from the budget approved for 2010 and a $44 million decline from actual expenditures in 2007. Beginning in 2007, after voter rejection of an attempt to raise the sales tax, the County was forced to begin dramatic cutbacks. The situation was greatly exacerbated by the national economic decline in 2008-2009. There have been numerous layoffs and elimination of entire functions. Within the Sheriff's Department, major reductions were achieved by closing the Queensgate Correctional Facility.

The 2011 General Fund budget (Un. Exh. 8, Empl Exh. 7G) is largely dependent on revenue from the following major sources, and trends in revenue from these sources will substantially determine the County's financial ability to pay for employee services in future years. These sources are discussed in the following paragraphs, which are based primarily on the budget document and the testimony of Budget Supervisor John Bruggen, as well as some responsive information from Union representatives:

1. Sales Tax – projected 2011 revenue of $60.9 million. Sales tax revenue is still well below pre-recession highs, but it appears to have bottomed and is starting to increase as the economy shows initial signs of gradual recovery. The County's total sales tax (including both state and local) is 6.5%, below the Ohio median of 7.0%. (Un. Exh. 15) However, at least one past attempt to raise the rate was rejected by the voters.

2. Property Tax – projected 2011 revenue of $48 million. Because the County is scheduled for a reappraisal in 2012, the first since the housing recession began, it anticipates a 10% drop in property tax revenue beginning in 2012. This estimate is based on recent reappraisal experience of neighboring counties.

3. Service Fees – projected for 2011 at $36.4 million. No new increases in fees charged by various departments for services is assumed until 2014.

4. Local Government Fund ("LGF") from the State of Ohio - $18.3 million projected for 2011. This $18.3 million estimate accurately predicted the 25% LGF reduction in the Governor's pending state budget legislation. Assuming the Governor's budget is passed by the Legislature, the County will lose an additional $5.2 million LGF monies in 2012.

5. Interest Income - $6 million projected for 2011. Decline in interest rates has caused a 70% drop in interest revenue over the past five years. While rates are expected to increase gradually, it will take five years to roll over the entire portfolio of current notes at higher rates.

6. Real Estate Transaction Tax - $8.6 million is projected for 2011, down 44.8% over five years due to decline in real estate transactions. The County has authority to

increase the transaction tax from 2 mils to the 3 mill maximum, which is now assessed by most Ohio counties. County projections do not currently assume such an increase.

Other less significant revenue sources include reimbursement fees the Sheriff charges neighboring townships for services provided. These fees currently are less than the full cost of the services, and the Union urges that the Sheriff should raise the fees to help fund compensation increases. The Employer responds by asserting that the townships could respond by obtaining the services from another source, leaving the Sheriff with less, not more, revenue.

On the expenditure side, the 2011 budget does not include money for any wage increases, except those already imposed by conciliation order. It does include a projected reserve balance of $9.2 million, approximately 9%. This is below the County's "best practices" target of 16%, but still well above the 5% level at which credit agencies in the past have considered ratings downgrades. (Empl. Exhs. 7D, E, S &U)

Within the General Fund Budget, the Sheriffs Department is allocated $55.9 million, a 5.1% decrease from 2010. This is deemed sufficient to continue current employment levels at current wage rates, but does not allow for increases. The Sheriff's budget is down $20 million since 2008, much of which reflects closing of the Queensgate Correctional Facility.

The 2011 Budget recommendation also includes a section with 5-year projections. The Plan generally assumes 3% annual increase in most expenditure categories, including wages, for 2012-2015. It assumes modest increases in sales tax, interest, and real estate transaction revenues, but declines in property tax and LGF revenue. It does not assume increases in fees or tax rates. The net result is that the County would finish the year with unlawful deficits in 2012, 2013, 2014 and 2015.

C. <u>Internal Parity and Comparability: Current County Wages</u>

Due to financial conditions, the County laid off numerous employees in 2008 and 2009. (Empl. Exh. Tab 7C) Further, the Commissioners implemented a wage freeze for all unrepresented employee groups in 2008, and that wage freeze is still in effect. Union employees continued to receive previously negotiated increases per their contracts. However, with one exception, when their contracts expired in 2008 and 2009, the Unions also accepted a wage freeze for the first twelve months of their successor agreements, subject to “me-too” clauses and re-openers for the second and third years of the agreements. (Empl. Exh. Tab 7L) Thus, in Article 20 of their December 1, 2008 – November 30, 2009 Contract, the Corrections Officers agreed to a wage freeze, subject to (1) a “me too” clause guaranteeing they would receive any increases granted to non-union employees and (2) re-openers for 2010 an 2011 wages.

The following year, these union employees, including the Corrections Officers, settled their 2010 re-openers by agreeing to continue the wage freeze and “me too” clause for one year, based on the County Administrator’s promise to recommend a mid-year increase for all County employees if three mid-year budget targets were met. (Un. Exh. 2)

The exception to this pattern was the 29-employee Corrections Supervisors unit, which took its negotiations to conciliation. On June 10, 2010, Conciliator Sarah Cole issued an order imposing a first-year wage freeze, but directing wage increases for the Corrections Supervisors of 2% effective January 2010 and 3% effective December 23, 2010. In her Award, she noted that one of the County Administrator’s three criteria for a wage increase had been met, and that it appeared the other two also would be met at the mid point of the fiscal year (June 30, 2010). (Un. Exh. 14)

In fact, the County Administrator determined that all three of the criteria would be met as anticipated, and on June 23, 2010, he recommended a 3% wage increase for all County employees. The Commissioners, however, did not act on this recommendation. Thus, the wage increase proposal died, and the wage freeze continued for all County employees, except the 29 Corrections Supervisors.

For 2011, wages of unrepresented employees are still frozen. Likewise union employees outside of the Sheriff's Department are continuing to work with a wage freeze, subject to "me too" agreements in event any other employee group receives a wage increase. However, these "me too" agreements exclude increases granted pursuant to conciliation awards. (Empl. Exh. Tab 7L)

Within the Sheriff's Department, the wage status of the several employee groups is varied. The Corrections Supervisors received their 3% raise on December 23, 2010 per the Conciliator's Award, (Un. Exh. 14). The new unit of clerical and technical support personnel took their first contract to fact finding. The fact finder recommended a wage freeze for 2011, a 3% increase in 2012, and a 4% increase in 2013. (Empl. Exh. Tab 7Q) This recommendation was rejected by both parties, and the matter is now in litigation to determine whether the unit is a "strike unit" or a "conciliation unit." The Enforcement unit took its re-opener to fact finding, and Fact Finder Louis Imundo recommended a 2.9% raise. (Un. Exh. Tab 21) The Commissioners rejected this recommendation, and the matter is now in conciliation. The Enforcement Supervisors will automatically benefit from any increase awarded to the Enforcement Unit, as the Supervisors' compensation is based on a rank differential. The eight employee Maintenance Unit is working with a wage freeze, subject to its "me too" agreement. (Empl. Exh. Tab 7L)

Different groups within the Sheriff's Department also have varied obligations to share the burden of insurance costs. Since late 2008, most employees including Corrections Officers have had their net take home pay reduced by increased insurance costs. The Employer increased their employee monthly insurance premium share from 14% to 20% or 30%, depending on which plan the employee elects. On average, throughout the county the annual impact of the additional insurance premium contributions is $550 per employee. In addition, a new spousal surcharge of $910 will affect some of the Sheriff's employees in 2011. These increased employee insurance premium costs, however, do not apply to the Enforcement Officers, as their contract caps their premium contribution at a lower level. (Un. Exhs. 9 & 10)

D. <u>External Comparability Data</u>

The Employer did not submit external comparability data. The Union submitted data comparing the Hamilton County Corrections Officers wages to Corrections Officers wages in neighboring counties. Without and increase, the Hamilton County Corrections Officers, with a top wage of $41,846, significantly trail their counterparts in all of these counties, which pay $46,508 (Warren), $46,408 (Butler) and $42,404 (Clermont). The Union also submitted comparisons to five selected counties which have populations in excess of 150,000 persons, and which maintain jails staffed by a separate Correction Officer job classification. The results are similar, with Hamilton County Corrections Officers trailing the pay of Corrections officers in Lorain ($51,653), Lucas ($45,323), Montgomery ($44,275), and Stark ($42,057). (Un. Exh. 11)

The Fact Finder's Report (Empl. Exh. Tab 5) opts for a modified list of comparables, substituting an objective criteria (population in excess of 320,000) for the Union's subjective one (<u>selected</u> counties with populations over 150,000). The results, however, are not significantly different. Hamilton County Correction Officers trail four of the five large counties: Neighboring Butler is at the top of the list at $46,408, followed by Lucas ($45,323, Montgomery ($44,275), Stark (42,057), Hamilton ($41,846) and Cuyahoga ($38,854).

Neither party submitted information about recent wage increases, if any, given or scheduled in 2011 for Corrections Officers in comparable counties.

RESOLUTION OF UNRESOLVED ISSUE

<u>Positions of the Parties</u>: The Union's Final Offer is to modify Article 20 to provide a 2.9% wage increase effective December 1, 2010. The Employer's Final Offer is to continue the wage freeze, subject to a "me too" clause which would guarantee the Corrections Officers the same general wage increase, if any, put into effect by the County Commissioners for the County's nonunion employees during the December 1, 2010 – November 30, 2011 period.

In support of its position the Union relies heavily on the 2nd statutory conciliation factor, often called "comparability." The Corrections Officers' wage rates compare unfavorably to the wages paid corrections officers in similar Ohio counties. They also have received less favorable treatment than Hamilton County's own corrections supervisors, who received wage increases for performing virtually the same work. It maintains that the County does have the "ability to pay" the proposed 2.9% wage increase in 2011 without risking a deficit or even dangerously reducing its reserve. It also asserts that the Union's good faith reliance on the County Administrator's promise of a 3% raise in 2010 should be considered. Finally, the Union notes that the employee share of insurance premiums have substantially increased during the last two years, and a wage increase is needed just to offset this reduction in net pay.

In response, the Employer relies primarily on the 3rd statutory criteria for conciliation, abbreviated as "ability to pay." The 2011 budget is $2.9 million less than the 2010 budget, and 2011 receipts are estimated to be $34 million less than receipts in 2007. The County realistically projects continued revenue declines in most revenue sources into 2012. More than 1200 County positions, including many in the Sheriff's Department, have been eliminated. The Sheriff's current 2011 budget is sufficient only to cover current staffing levels at current pay rates. A budget based on 3% annual increases in 2012 – 2014 would result in unlawful deficit spending.

<u>Analysis</u>: Of the six conciliation criteria enumerated in ORC 4117.14(G) and SERB Rule 4117-09-05, the second and third are usually key to resolving wage increase disputes. These are "comparison … to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved" and "the interest 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."

External comparability data unequivocally favors the Union position. Hamilton County Corrections Officers are underpaid relative to their counterparts in comparable counties, including Butler, Warren, Lucas, Montgomery and Stark. (See pages 7-8 of this Report.) Internal comparability data is ambiguous, more so than usual. On the one hand the Employer's proposal is supported by comparison to a majority of the County's employees. On the other hand, the Union's proposal is supported by comparison to the particular groups of employees most comparable to the Corrections Officers. Specifically, the Correction Officer Supervisors, with whom the Corrections Officers work side by side under identical conditions, received a 3% wage increase in January 2010 and another 2% wage increase in December 2011. Further, a Fact Finder recommended that the Sheriff's Enforcement Officers receive a 2.9% increase for December 1, 2010 – November 30, 2011. Whether this Award will be upheld in conciliation is not known at this time. However, whether or not it is upheld, for several years the Enforcement Officers have received preferred treatment on insurance premiums, which has increased their net pay relative to Corrections Officers' net pay. While there commonly is a pay rate spread between the enforcement and correction officer classifications, this extra benefit from the break on insurance premiums is not usual.

Therefore, evidence of both internal and external comparability favors the Union position.

Evidence regarding ability to pay and impact on the level of service is less clear. The Employer estimates the annual cost of a 2.9% raise for Corrections Officers (including roll-up) at approximately $407,869. There is enough money in the County's 2011 budget to cover this cost for one year without risking a deficit or dangerously reducing the reserve. In fact, The Commissioners accepted the $1200 bonus recommended by the Fact Finder, which would have cost only about $55,000 less than the Union's proposal herein.

However, I share the Fact Finder’s concern about the County’s continuing ability to bear the cost of this increase in 2012 and beyond. The Fact Finder’s recommendation was a fair compromise, which accommodated the equity and comparability data supporting the Union with the County’s legitimate concerns about its longer term budget projections, the need to maintain a sufficient reserve, and the desire to minimize the adverse impact on the level of service. However, in conciliation, the statute limits the conciliator’s choice to the Final Offers presented by the Union and the Employer. In this case, neither Union nor Employer adopted the Fact Finder’s Recommendation as its Final Offer, and therefore the Fact Finder’s compromise is not an option.

The subject of this conciliation is a one-year wage reopener, not a three-year contract. In the short run, making an award in favor of the Union will have substantially the same effect as implementation of the Fact Finder's Recommendation, which was accepted by the Commissioners. And, since the contract expires November 30, 2011, it would not irrevocably commit the County to continuing expense in 2012 and beyond. The impact will be on negotiating leverage in Fall 2011. With the Fact Finder's Recommendation, the FOP would have had the burden of trying to persuade the Commissioners or a third-part to roll the bonus into the base. With the increase already in the base, however, the Employer will have to establish the need for a wage freeze or cut if, in fact, 2012 budget concerns warrant. If necessary, however, it can be done. In either situation, the wages for the bargaining unit and other employees going forward will depend on an assessment of the three-year County's financial prospects based on information then available.

For these reasons, I have concluded that the Union Final Offer can be awarded without violating the ability to pay mandate of Rule 4111-09-05.

Award: The Conciliator awards the position of the Union. The following language shall be added as an Addendum to the Agreement:

Article 20
Addendum

WAGES AND COMPENSATION

Section 20.3 For the beginning of the pay period that includes December 1, 2010 the bargaining unit employees shall receive a 2.9% wage increase to their annual salary. The annualized wage levels for all bargaining unit employees shall be as follows, and all current employees will be assigned steps as follows:

Grade	Annual
Corrections Officer First (0-36 months)	$29,356.00
Corrections Officer Second (37-60 months)	$33,567.00
Corrections Officer Third (612 months and above)	$43,060.00

ISSUANCE OF AWARD

The Award is issued this 29th day of April, 2011.

/s/John T. Meredith
John T. Meredith, Conciliator

Shaker Heights, OH

CERTIFICATE OF SERVICE

This is to certify that the foregoing Opinion and Award was electronically filed with the State Employment Relations Board and electronically served upon the parties by e-mailing it to their representatives, listed below, this 29th day of April, 2011:

Gwen Callender, General Counsel
222 East Town Street
Columbus, OH 43215
gcallender@fopohio.org

Brett A. Geary, Regional Manager
Clemons, Nelson & Associates
420 W. Loveland Ave, Suite 101
Loveland, OH 45140
bgeary@clemansnelson.com

/s/John T. Meredith
John T. Meredith, Conciliator