

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

2011 APR 18 P 12: 08

FRATERNAL ORDER OF POLICE,) CASE NO. 2010-MED-07-0875
OHIO LABOR COUNCIL, INC.)
)
Employee Organization)
) CONCILIATION AWARD
and)
)
HAMILTON COUNTY SHERIFF)
)
Employer)

APPEARANCES:

EMPLOYEE ORGANIZATION

Paul L. Cox	Spokesperson
Tara Crawford	Paralegal
Rick Paquette	Witness
Donald E. Maher	F.O.P. Staff
David Stanley	F.O.P. Representative
Ken Lawless	F.O.P. Representative
Tim Maddy	F.O.P. Representative
Steve Sabers	F.O.P. Representative
Anthony Bonno	F.O.P. Representative

EMPLOYER

Brett Geary	Presenter
Kim Serra	Human Resources Representative
John Bruggen	Witness
Edwin Boldt	Sheriff Representative

April 14, 2011

BACKGROUND

The Fraternal Order of Police, Ohio Labor Council, Inc. (hereinafter, the FOP) and the Hamilton County Sheriff (hereinafter, the Sheriff) are parties to two (2) collective bargaining agreements, effective through December 31, 2011; the Enforcement Officers Unit and the Supervisors Unit. This Conciliation concerns the Enforcement Officers Unit which covers all regular employees of the Sheriff's Department in the classifications of Court Service Officer 1 and 2, Patrol Clerk, Patrol Officer, Patrol Corporal, Court Service Corporal, Range Officer and Evidence Technician. Affected by this Conciliation are the wages for employees covered by the Supervisors Unit which covers Lieutenants and Sergeants in the Court Service Division, the Patrol Division and the Organized Crime Division whose salaries are based on the top annual salary step for Patrol Officers in the Enforcement Officers Unit.

The collective bargaining agreement for the Enforcement Officers Unit contains a wage scale under which employees in the classifications of Patrol Clerk, Court Service Officer and Patrol Officer receive annual step and/or length of service increases. The collective bargaining agreement for the Enforcement Officers also contains a provision under which employees receive longevity increases after ten (10), fifteen (15) and twenty (20) years of service.

Under the collective bargaining agreement, there were no adjustments to the wage scale for calendar years 2009 and 2010 and a wage re-opener for calendar year 2011:

ARTICLE 20 **WAGES AND COMPENSATION**

Section 20.2. There shall be no increases in wages for calendar years 2009 and 2010. If the parties do not agree to the wage rates for 2011, the Union or the Employer must notify SERB in the appropriate manner for a re-opener on the contract for wages only. Any language agreed upon in the re-opener shall be included in the appendix to this agreement.

The parties re-opened the collective bargaining agreement for the purpose of wages for the calendar year 2011. Impasse was reached and the matter of wages was submitted to Fact-Finding. The matter proceeded to Fact-Finding before Louis V. Immundo, Jr. on December 21, 2010 and a Recommendation was issued on January 20, 2011. The fact-Finder recommended a two point nine percent (2.9%) increase stating:

The Fact-Finder recommends a 2.9 percent increase for all bargaining unit employees effective starting with the first pay period in 2011. In the Fact-Finder's Opinion, this modest increase will, for 2011, stop the erosion of their purchasing power and enable them to maintain their current standard of living.

The recommendation of the Fact-Finder was rejected by the Sheriff and the matter proceeded to Conciliation on April 6, 2011. A Conciliation Hearing was conducted in the offices of the Sheriff. The parties stipulated that they waived the requirement of a court reporter for the hearing. The parties confirmed that annual, step and longevity increases continued to be granted under the collective bargaining agreement. Testimony and evidence was presented and considered with respect to the remaining proposals of the parties, taking into account the following considerations set forth under Ohio Administrative Code Section 4117-9-06(H):

- (1) Past collectively bargained 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 employers 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; and

(6) Such other factors, not confined to those listed in this rule, which are normally or traditionally taken into consideration in the determination of 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.

DISCUSSION

POSITIONS OF THE PARTIES

POSITION OF THE F.O.P.

The F.O.P. proposes that a two point nine percent (2.9%) across-the-board increase be awarded. The F.O.P. points out that the bargaining unit has not received an increase since 2008 while the cost of goods and services continues to rise. The F.O. P. argues that the Fact-Finder, Louis V. Imundo recognized this in his award.

The F.O.P. argues that the 2.9 percent (2.9%) increase being sought will bring the wages of the Hamilton County deputies more in line with their counterparts since Hamilton County deputies are paid less than Warren County deputies, Clermont County deputies and Butler County deputies at top level wages and less than both Warren and Butler County deputies at entry level wages. The F.O.P. points out that Hamilton County deputies were the only employees among this group to receive no pay raise for 2009. The F.O.P. cites the fact that Franklin County and Montgomery County Deputies make more than Hamilton County deputies at the top level wages and that Franklin Co. deputies received a 4% wage increase in 2009, Montgomery County deputies received 3.5% and Summit County deputies received 3%. In comparing Hamilton County to the City of Cincinnati, Colerain Township and Green Township, the F.O.P. points out that Hamilton deputies make less than all of them at the top level wages and that at the entry level, only the City of Cincinnati employees make less than Hamilton County deputies. The F.O.P. further points out that Hamilton County deputies were the only employees among those groups to go without receiving a pay raise in 2009. In addition, the F.O.P. points out that

in 2010, deputies in both Colerain Township and Green Township received wage increases. and that Fact-finder Imundo found that patrol officers in Hamilton County were not adequately paid compared to *patrol officers in some of the contiguous and regional counties.*

The F.O.P. asserts that comparables with the office of the Sheriff also support a wage increase for Hamilton County deputies, stating that correction supervisors were awarded a 2% wage increase in 2010 and will receive a 3% wage increase in 2011 and that the clerical unit was awarded a 3% increase effective December 23, 2011 and a 4% increase effective December 22, 2012.

The F.O.P. asserts that the Sheriff is not claiming an inability to fund an increase for this bargaining unit and points out that Hamilton County is spending money on other non-employee projects. The F.O.P. cites the fact that the County Administrator, Patrick Thompson recommended a 3% salary adjustment effective July 1, 2010 for all Hamilton County employees.

The F.O.P., *at hearing, asserted that there were townships which did not compensate Hamilton County for services, stating that additional revenues could be obtained by requiring those townships to pay for services.* The F.O.P. asserts that Hamilton County has chosen not to pursue reimbursement.

The F.O.P., *at hearing, argued that projected reductions in funding to local governments are speculative, but also points out that the same changes would result in a two percent (2%) reduction in pay for bargaining unit employees due to a shifting in the costs of PERS contributions from the employer to the employees.*

The F.O.P. argues that the Sheriff can afford to grant the wage increase requested. The F.O.P. argues that the cost of the proposed wage increase is four hundred twenty thousand dollars (\$ 420,000.00) *arguing that Hamilton County has failed to utilize other alternatives to*

meet its budget shortfall, raising sales taxes to the level of other counties (See F.O.P. Exhibit 27) and/or collecting fees from townships who do not reimburse it for the costs of patrolling.

POSITION OF THE SHERIFF

The Sheriff argues that the two point nine percent (2.9%) wage increase proposed by the F.O.P. and recommended by Fact-Finder Immundo increase is unwarranted under the economic conditions at this time. The Sheriff points out that only one bargaining unit has received a rate increase in 2010, and that increase was forced through conciliation. The Sheriff argues that the members of the Enforcement Officers Unit should be in no better of a position than the overwhelming number of Hamilton County employees who will likely receive no increase for 2011.

The Sheriff contends that the Hamilton County 2011 budget will not support any wage increase and points out that the County Administrator's Recommended Budget adopted by the Board of Commissioners presented a General Fund Budget that included no pay increases for both bargaining and non-bargaining employees. The Sheriff points out that it has laid off over one hundred fifty (150) employees since 2008, with approximately twenty (20) coming from this bargaining unit.

The Sheriff cites various items contained in the 2011 County Administrator's recommended General Fund Budget in support of its position:

The 2011 County Administrator's recommended general fund budget totals \$209.1 million and represents a decrease of \$2.7 million (1.3%) from the 2010 approved budget.

The Sheriff's Office will have an adjustment of \$1.5 million to its budget; this will allow the Office to maintain current staffing levels in the Justice Center and patrol operations during 2011.

The County has eliminated over 1,200 positions over the past several years; since the fall of 2008, there have been 725 layoffs across all funds. With additional general fund budget reductions in 2011 and anticipated reductions in state funding, additional layoffs are likely.

For 2011, Departments are required to reduce spending while absorbing inflationary increases.

Appreciable revenue growth in 2011 and in future years is unlikely.

Sales tax revenue is expected to be flat in 2011.

Interest earnings are projected to decrease \$2.9 million (32.6%) from the 2010 budget.

Recording fees, conveyance fees and transfer taxes are projected to generate \$800,000 less (8.5%) than 2010 budget.

I.GF is estimated to be 12.6% less than the amount certified by the state for 2011.

General fund property tax revenue is estimated to decrease \$1.5 million from the 2010 budget.

The 2011 estimate for revenue represents a \$34.6 million decrease from 2007 actual receipts.

There are a number of potential risks to the 2011 budget, including the occurrence of a “double-dip” recession, mid-year state budget reductions, salary adjustments as a result of conciliation, county facility infrastructure failures, and legal action on Commission approved budgets.

The Sheriff also cites in support of its position several portions of its own budget for 2011:

The 2011 County Administrator’s recommended budget for the Sheriff’s office is \$55.9 million, a decrease of \$3.0 million (5.1%) from the 2010 budget.

The Sheriff’s Office has reduced staff by 264 positions since 2007.

The 2011 recommended budget for the Sheriff’s Office represents nearly a \$20 million reduction in its annual budget since 2008.

The Sheriff further points out that there will be a multi-million dollar deficit in the stadium funding if no permanent resolution to that problem is found and that the reductions proposed in the Governor's budget amount to millions of dollars of reductions to funding for Hamilton County. The Local Government Fund is budgeted to be reduced by twenty-five percent (25%) for state fiscal year 2012 and fifty percent (50%) for state fiscal year 2013 and the Governor has also proposed a reduction in property tax reimbursements to local governments and cuts to funding for Jobs and Family Services.

The Sheriff points out that the County has experienced a five point one percent (5.1%) drop in census numbers. The Sheriff states that the drop in population will negatively affect revenues in future years. A reduction in population translates to a reduction in the tax base, negatively affecting County revenue.

The Sheriff points out that while the County Administrator recommended a three percent (3%) pay raise in 2010, the raise never materialized. The Sheriff does not deny the fact that it initially accepted the recommendation of another Fact Finder (in the Corrections Officer Fact Finding), which amounted to a lump sum payment of one thousand two hundred dollars (\$1200.00) per employee, but asserts that such action was taken before the state budget was proposed by the Governor.

The Sheriff argues that the employees covered by this Conciliation Award are better off than all other County employees in that they have a cap on health insurance premium increases and should not gain more of an advantage over others by receiving a conciliation-mandated increase. The Sheriff concludes that any increase to this unit simply is not feasible.

DISCUSSION

This case revolves about the actions of the Governor taken on the "Ides of March" in announcing his proposed budget and the cuts which may be inflicted by members of the

legislature upon local governments, including Hamilton County. This case also revolves about the nature of the Conciliation process. At this point, the budget proposals for the coming fiscal year have not been adopted and are thus, "speculative". Given the present makeup of the legislature, the proposed devastating cuts in funding to local governments are highly likely. In a Fact-Finding procedure, where the neutral is granted the power to craft a recommended collective bargaining agreement, a contract provision might be recommended which would take into account the various possibilities, providing for increases should the proposed cuts not be imposed and providing for a wage freeze should the proposed cuts be adopted. A Conciliator, however, does not have the luxury of crafting any remedy and is limited to choosing either the proposal of the union or the proposal of the employer on an issue by issue basis, taking his best guess as to the probable actions by the legislature.

In this case, the proposed cuts to local government funding must be considered a political certainty, perhaps not to the full extent proposed, but to an extent which dramatically affects the ability of local governments to grant wage increases to their employees. Likewise, the shifting of the cost of PERS from the employer to the employees must be considered a political certainty, saving the Sheriff two percent (2%) of wages while costing the employees the same amount. With the background of these assumed facts, the Conciliator must choose between the proposal of the Sheriff and the proposal of the F.O.P.

The proposal of the F.O.P. is based the Fact-Finding Report of Louis V. Immundo, Jr. That report was based on a number of factors, the granting of a lump sum payment to the Supervisors bargaining unit and the theory that the purchasing power of bargaining unit employees should not be eroded by inflation:

The Fact-Finder recommends a 2.9 percent increase for all bargaining unit employees effective with the first pay period in 2011. In the Fact-Finder's opinion, this modest increase will, for 2011, stop the erosion of their purchasing power and enable them to maintain their current standard of living.

That report, however, was issued prior to the proposed budget for the coming fiscal year, having been issued in January of 2001 based on evidence received in December of 2010. That report, therefore, is based on facts which are now “ancient history”.

Even without considering the new funding plan for local governments which changes the economic landscape completely, the Fact-Finder’s Report, in relying on the erosion of purchasing power caused by a “wage freeze” at a time when there is some inflation, further does not take into account that wage increases continue in effect during the “wage freeze” as annual, step and longevity increases continue to be paid, some employees in their first through fourth years of employment actually gaining in purchasing power, receiving up to a 14.1% increase over the course of three (3) years, while inflation over the same period of time is under five percent (5%). (CPI-U, Midwest Urban January 2009, 200.815 compared to January 2011, 210.388 = 4.75% inflation) While the bargaining unit overall loses purchasing power, some, the lowest paid and most in need still gain.

There are some factors which do mitigate toward accepting the position of the F.O.P. This bargaining unit has not received a wage increase since 2008 while the Supervisor’s Unit did receive an increase through Conciliation in 2010. (F.O.P. Exhibit 10) That wage increase, however, was awarded based on the economic situation in June of 2010 before the announcement of the proposed budget.

It was recommended that the Benevolent Employees receive wage increases. That recommendation, likewise, was based on 2010 facts (F.O.P. Exhibit 11) and there were no recommended wage increases for 2011, the only contract year covered by this Conciliation.

Wage comparables would tend to mitigate toward a recommended increase in salaries as proposed by the F.O.P., since Hamilton County officers are underpaid at the top rate compared to the officers in the police departments of Cincinnati, Colerain Township and Green Township. (See F.O.P. Exhibit 12) Hamilton County Sheriffs, however, at the entry levels, are

higher paid than officers of the Cincinnati Police Department and the economic situation of Colerain and Green Townships have not been demonstrated to be comparable to that of Hamilton County.

The SERB Benchmark Reports (F.O.P. Exhibit 13) for those jurisdictions also make a case for the granting of wage increases. The wage comparables and Benchmark Report, however, are based in historic data and based on a far more favorable funding from the State of Ohio.

Apart from the changes in State funding, wage Comparables for Franklin, Montgomery and Summit Counties (F.O.P. Exhibit 14) and SERB Benchmark Report for those counties (F.O.P. Exhibit 15) do not make a particularly strong case for wage increases. Hamilton County Sheriffs are more highly compensated than Summit County Sheriffs and the economic situation of Franklin and Montgomery Counties have not been demonstrated to be comparable to that of Hamilton County. Similarly, wage comparisons to Butler, Clermont and Warren Counties as shown in F.O.P. Exhibits 15, and 16 do not support an award of a wage increase.

The F.O.P. also cites recommended budgets for Hamilton County from the Hamilton County Administrator (F.O.P. Exhibits 19-22) as justification for a wage increase. These proposals, like any data prior to March 15, 2011 represents ancient history since based on a vastly different funding level from the State of Ohio.

The F.O.P. also cites increases in medical costs which have been passed on to the employees. (F.O.P. Exhibit 23) The passing on of medical costs to employees, however, is common to all Hamilton County employees, most of whom will also receive no wage increases for 2011.

The F.O.P. citation to the rehiring of retired employees shown in F.O.P. Exhibit 24 does not provide a rationale for the granting of a wage increase. It appears that while the re-hired employees receive a "raise" by being able to receive retirement benefits and salaries, the cost to

the Sheriff is minimal and, in fact, in some cases provides a savings. Newspaper articles which refer to other expenditures of the County (F.O.P. Exhibit 25) do not provide sufficient rationale for an award of a wage increase.

While there may be avenues to be explored for increasing revenues in the future, such as negotiating for townships not now reimbursing the Sheriff for patrols to provide some compensation or by seeking to raise sales taxes to the levels of most Ohio counties, those steps can not be certain to create additional revenues in 2011, the only year covered by this award.

The Sheriff points to many factors showing the inability and/or invisibility of providing a wage increase in 2011, a declining population (Sheriff Exhibit A), the record of staff reductions (Sheriff Exhibit C), the advisability of maintaining an adequate reserve balance (Sheriff Exhibit D-G), the fact that other counties are not receiving increases for 2011 (Sheriff Exhibit L) and Most importantly, the overview of the proposed State Budget. (Sheriff Exhibit V) which projects a twenty-five percent (25%) reduction in State funding for the fiscal year beginning July 1, 2011.

The final factor to be considered is the probable effect of the proposed raise. Staff reductions have occurred in Hamilton County and may be required in the future. An increase of two point nine percent (2.9%) in wages for all officers could be offset by a two point nine percent (2.9%) reduction in the number of officers or approximately seven (7) officers. In difficult economic times, the rates of crime, substance abuse and domestic violence increase which would cause a need for an increase, rather than decrease in the number of available law enforcement personnel. Under Ohio Administrative Code Section 4117-9-06(H)(3) a Conciliator must consider the interests and welfare of the public in making his award. The interests and welfare of the public would not be served by a probable reduction in available law enforcement personnel.

CONCLUSION

The proposal of the Sheriff must be chosen by the Conciliator. While the proposal does not provide for a definite increase, it does leave open the possibility of an increase through the “me too” provision. While there are some possibilities that increased funds may be available, there are many probabilities to near certainties that funding will be dramatically decreased.

Respectfully submitted,



/s/ GREGORY J. LAVELLE
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North Olmsted, Ohio 44070
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lavellearb@aim.com

Conciliator

CERTIFICATE OF SERVICE

A true copy hereof was sent to the Sheriff by electronic mail c/o Brett A. Geary at bgeary@clemansnelson.com to the F.O.P. c/o Tara Crawford at tcrawford@fopohio.org and c/o Paul L. Cox, Esq. at pcox@fopohio.org and to the State Employment Relations Board by regular mail this 14th day of April, 2011.



GREGORY J. LAVELLE

Gregory J. Lavelle

ATTORNEY AT LAW AND ARBITRATOR

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STATE EMPLOYMENT
RELATIONS BOARD

2011 APR 18 P 12: 08

December 2, 2010

State Employment Relations Board
65 East State Street, Suite 1200
Columbus, Ohio 43215-4213

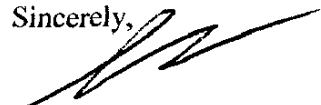
Re: Fraternal Order of Police, Ohio Labor Council, Inc. and
Hamilton County Sheriff
2010-MED-07-0875

Dear Sirs,

Enclosed please find copies of the Award of the Conciliator in the above matter. If you have any questions, please feel free to call.

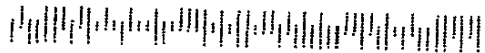
Thank you for allowing me the opportunity to serve you.

Sincerely,

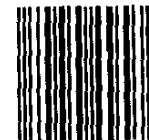


GREGORY J. LAVELLE

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