

**STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of:

Fraternal Order of Police/Ohio Labor Council, Inc.

Conciliator: Jerry B. Sellman

Dated: September 7, 2011

Employee Organization

Case No. 10-MED-19-1079

And

Lorain County, Ohio Sheriff

Employer

REPORT AND AWARD OF CONCILIATOR

APPEARANCES

For Union

Michael W. Piotrowski, Esq. – General Counsel, FOP/OLC, Inc., representing the FOP
Lucy DiNardo – Staff Representative, FOP/OLC, Inc. representing the FOP

For the Employer:

Robin L. Bell – Regional Manager, Clemans, Nelson and Associates, Inc., representing the
Lorain County Sheriff

BACKGROUND

The instant case involves an examination of the unresolved issues between the Lorain County, Ohio Sheriff (hereinafter the “Employer,” or “Sheriff”) and the Fraternal Order of Police/Ohio Labor Council, Inc. (hereinafter the “Union” or “FOP”). The Bargaining Unit subject to the conciliation consists of approximately eleven (11) members comprised of Communications Officers, a Vehicle Maintenance Worker and a Vehicle Maintenance Supervisor.

The Lorain County Sheriff is located in Lorain County, Ohio, which is located due west of Cuyahoga County, Ohio.

The parties met and proposed issues for a successor agreement. Unable to resolve several issues at the bargaining table, a Fact-finding hearing was held on March 21, 2011, where mediation of the remaining issues was attempted, resulting in the parties coming closer together on issues. They were not, however, able to reach total agreement. On April 6, 2011, the parties went to hearing and presented to the Fact-Finder four (4) unresolved issues. On May 12, 2011 the Fact-Finder issued his report. The Fact-Finder’s Recommendations were not accepted by either party and unresolved issues were advanced to conciliation.

The Conciliator was appointed on June 14, 2011. The Parties mutually agreed to a postponement of an initial hearing date. Pre-hearing statements were submitted five (5) calendar days prior to the Conciliation hearing by the parties. A Conciliation hearing took place on August 29, 2011. The parties waived any requirement for a transcript of the hearings.

The Conciliator is required to select the offer of one party or the other without modification. The selection between the final offers is based upon the criteria set forth in Section 4117.14(G)(7) of the Ohio Revised Code. They are:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (c) The interest and welfare of the public, and 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;
- (e) The lawful authority of the public employer;
- (f) The stipulations of the parties;
- (g) 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, fact-finding, or other impasse resolution procedures in the public service or in private employment.

Issues

Five issues were presented to the Fact-finder for resolution. Notwithstanding the action taken by both parties in rejecting the Fact-finder's Report and Recommendation, the parties were able to resolve three of the five issues prior to participating in the conciliation process. The parties mutually agreed to language contained in Article 34, Meal and Rest Periods; language contained in Article 40, Duration; and a Side Agreement regarding Insurance provisions. The parties were unable to agree on two issues: Article 35, Wages, and a new proposed Article by the Union, Regionalization.

The following summarizes the positions of the parties, the evidence and arguments offered in support of their positions, the Conciliator's analysis and the Conciliator's Award on the issues presented.

Article 35 - Wages

The Employer is proposing a wage freeze for the duration of the Agreement, unless the Board of Commissioners approves an increase for any bargaining unit within their appointing authority. If the Lorain County Board of Commissioners approves an hourly rate increase or Lump Sum payment to a bargaining unit for which the Board of Commissioners is the appointing authority, the Employer agrees, upon the request of the Union, to meet and discuss such matter. After such meeting, the Union may, if it believes such is appropriate, request that the Employer reopen negotiations on the wage issue only.

The Union proposes that wages shall be frozen at their 2010 levels unless during the life of the Agreement another bargaining unit(s) or another group of non-union employees,¹ under the jurisdiction of the Board of County Commissioners, receives a wage increase during the life of the Agreement. If this occurs the Union shall receive the same increase in wages retroactive to the earliest date the other unit(s) or group(s) received wage increases. If the increase is in the form of a lump sum, the bargaining unit shall receive said amount within thirty (30) days of the Union providing written notification to the Employer of its desire to invoke this provision. The Employer shall notify the Union of any lump sum payments and/or wage increases given to any and all other bargaining units within the Sheriff's Department and any units within the jurisdiction of the County Commissioners.

The Union Position

The Union's contentions in support of its wage offer are substantially the same as those presented to the Fact-Finder. The Union strongly feels that if it agrees to sacrifice wage increases it should not be treated in a disparate manner if the Board of County Commissioners

¹ This provision is not applicable to wage adjustments provided to an individual employee as determined by the Employer.

provides a lump sum or across-the-board wage increase to any other bargaining units or groups of non-bargaining unit employees that are under its jurisdiction.

The Employer Position

The Employer is opposed to any automatic “me too” clause for wages for several reasons. The Sheriff is a duly-elected officeholder and operates within the budget he is given by the Commissioners. The Sheriff cannot be sure that money would be available to satisfy an automatic “me too” on wages if the Board of Commissioners granted its employees a wage increase, let alone if there was an increase in wages in other county bargaining units.. This is the last contract to be negotiated out of twenty-seven (27) agreements and the language proposed by the Employer is contained in all of the other agreements.

Some of the other collective bargaining contracts in the County, such as those with the County Board of Developmental Disabilities and Children’s Services, are funded from their own levies and not the County General Fund. Their revenues might increase when the budget given to the Sheriff out of the General Fund will not. If these agencies have increased revenues and can pay higher employee wages that that have been frozen over a period of time, the County Commissioners have no control over that decision.

In addition, the duration of the various other twenty-seven (27) agreements within the County are different, with most of the Commissioner’s and other office holder’s agreements expiring at the end of 2012. Each of these bargaining units had agreed to a three year wage freeze, with the same language proposed by the Employer for a reopener. If a wage increase were granted to any of these bargaining units at the end of their contract, this bargaining unit would receive an increase, under the Union’s proposal, even though others within the County would not be entitled to such an increase. To provide this small unit with a “me too” agreement would not

only run counter to the pattern in the County, but could also provide this unit with a pay increase in the same cycle of agreements that other bargaining units would not receive.

Analysis

The Conciliator must award the Employer's final proposal. While the Fact-Finder recommended increases for the Union in the event another bargaining unit under the jurisdiction of the Board of County Commissioners received a wage increase during the life of the Agreement, he apparently was not presented with arguments regarding the variations contained in other collective bargaining agreements in the County, as well as the fact that twenty-seven (27) other bargaining units had agreed to similar language proposed by the Employer. The Conciliator agrees with the Fact-finder that it is destructive to the employer-employee relationship to ask for wage freezes and other economic sacrifices from one group and then turn around and grant increases to the other groups. A wage re-opener is more appropriate than an automatic comparable wage increase in order to take into consideration all of the circumstances surrounding any increase.

Both parties agreed with the economic plight of the County and recognized the cut-backs in the Sheriff's Office Budget. As a result, it was unnecessary to present any economic evidence to the Conciliator. The only disagreement was how to address any disparate treatment of wages if other bargaining units in the County received an increase during the period of wage freezes accepted by this bargaining unit. While the logic of increasing any wages of employees in the County would be highly suspect in light of the County's current forecasted revenues and expenses, there may be warranted exceptions; however those exceptions should be subject to review. The Employer proposes such a review. Because the Conciliator must accept one of the party's positions, he has chosen that of the Employer, but the proposed language is not without

concern. The proposed language enables the Union to “request” that the Employer reopen the negotiation on the wage issue, if another bargaining unit for which the Board of Commissioners is the appointing authority. It does not require a reopener. Because the County economic forecast may improve, or another unit that is not funded out of the County General Fund and not under the appointing of the County Commissioners may receive a modest increase, or another bargaining unit may deserve a modest increase, or if wages have been frozen for multiple contract periods, there may be a justification for an increase in wages in another bargaining unit in the County without a comparable increase for this bargaining unit. Notwithstanding the decision of the Conciliator here, if under any of these circumstances the Union’s “request” is not granted, one would conclude that that refusal would be in bad faith under the spirit in which the Employer presented its position.

Award

The Conciliator selects the Employer’s final offer as follows:

Section 35.1 Effective for the duration of the Agreement the hourly base rates shall be as follows:

<u>Classification</u>	<u>Probationary Rate</u>	<u>1st Year Rate</u>	<u>2nd Year Rate</u>	<u>Maximum Rate</u>
Communications				
Officer	\$17.61	\$19.09	\$20.57	\$22.04
Vehicle Main Coordinator	\$20.97	\$22.08	\$23.17	\$24.25
Vehicle Main Worker	\$18.30	\$18.81	\$19.41	\$19.92

Section 35.2 If the Lorain County Board of Commissioners approves an hourly rate increase

or Lump Sum payment to a bargaining unit for which the Board of Commissioners is the appointing authority, the Employer agrees, upon the request of the Union, to meet and discuss such matter. After such meeting, the Union may, if it believes such is appropriate, request that the Employer reopen negotiations on the wage issue only.

New Article – Regionalization

The Union proposes a new contract provision regarding any “regionalization” of the bargaining unit’s job functions. Specifically it proposes the following:

If at any time the Employer or the Lorain County Commissioners choose to regionalize or transfer operations of the bargaining unit to another facility in the County for the purposes of performing the same or similar job functions currently being performed by the bargaining unit within the Sheriff Department’s Communication Center, the Employer agrees to meet and negotiate with the Union to resolve all issues related to the impact of said change and to the continuation of employment, wages, and benefits for all bargaining unit members. Until such negotiations are concluded, all bargaining unit members shall be offered employment with the new entity and subject to negotiations and the legality of same that may involve another bargaining representative, employees shall retain their current wage and benefit levels for the life of the Collective Bargaining Agreement.

The Employer considers the Union’s proposal an attempt to insert a successor clause into the labor agreement. The Employer argues that this topic is a permissive subject of bargaining, because it does not affect the employees' terms and conditions of employment with this Employer (the Sheriff), and is not subject to the conciliation process. The County, which is a different employer than the Sheriff, has the inherent managerial right under Ohio Revised Code §4117.08 (C) to consider and create a regional 911/communications operation without bargaining with the Union on the issue.

The Union Position

The Union became aware that discussions were taking place between the County Board of Commissioners and the Sheriff to have the County Commissioner’s 911 Center take on the responsibility for dispatching services for the Lorain County Sheriff operations during the March

21, 2011 mediation session involving this proceeding. The County Board of Commissioners operates a County 911 Center; the Sheriff operates his own dispatch Communications Center. The 911 Center employees are represented by the United Steelworkers Union; the Sheriff's Dispatch employees are represented by the FOP. In July, the Union demanded that the Sheriff open negotiations on this "merger" issue, but the Sheriff responded that it was a permissive subject of bargaining and it chose not to put it on the table. On August 24, 2011, the Sheriff entered into a Memorandum of Understanding regarding Dispatch Operations with the County Commissioners. The Memorandum sets forth the intent of the parties to merge all dispatch services into the 911 Center so that both dispatch centers could operate in a more economically efficient manner. Because law enforcement dispatch services require different skills than 911 dispatchers and require governmental agency approvals (such as LEADS, OHLEG, CCH), the Sheriff agreed to assume the responsibility to create a Standard Operation Procedure and collaborate with the County in the conduct of the day to day operations of the facility with all safety personnel.

The Union challenges the ability of the County to operate this facility in a more economically efficient manner since it will need to procure and/upgrade equipment to conduct law enforcement dispatching operations, it will need to train employees four to six months on law enforcement dispatching after law enforcement agency approvals are given and the same level of supervisory staff will be necessary to operate the center, particularly in regard to dispatching services for the Sheriff.

Fundamentally, the Union sees the action taken by the County as an attempt to layoff the employees of the FOP and require them to be rehired at eight dollars (\$8) per hour less than they are currently paid. They will lose their seniority and the benefits attached to their seniority level.

The Employer Position

The Employer considers the Union's new proposed Regionalization Article to be nothing more than a successor clause that attempts to bind another public employer to the terms of this labor agreement. The Employer believes that this topic is permissive, because it does not affect the employees' terms and conditions of employment with this Employer. More specifically, Ohio Revised Code section 4117.08 (C) reserves to the Employer the following rights:

(1) Determine matters of inherent managerial policy which include, but are not limited to, areas of discretion or policy such as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, and organizational structure;

(3) Maintain and improve the efficiency and effectiveness of governmental operations;

(4) Determine the overall methods, process, means, or personnel by which governmental operations are to be conducted;

(7) Determine the overall mission of the employer as a unit of government;

(9) Take actions to carry out the mission of the public employer as a governmental unit.

Section 4117.08 (C) further provides that the employer "is not required to bargain on subjects reserved to the management and direction of the governmental unit except as affect wages, hours, terms and conditions of employment, and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement."

The Sheriff will cease operating of the Lorain County Sheriff Communications Center. The Memorandum of Understanding provides for the Board of Commissioner's 911 Center to take on the responsibility for dispatching services for the Lorain County Sheriff operations. The Board of Commissioners is the appointing authority (employer) of the employees at the 911

Center and the Board of Commissioners currently has an agreement with the USW covering the employees at the 911 Center.

The Union's proposal, which is the Fact-Finder's recommendation, improperly seeks to bind another public agency - a separate appointing authority to the terms and conditions of a collective bargaining agreement negotiated with the Lorain County Sheriff. The Fact-Finder clearly and erroneously exceeded his authority.

In addition, the Union seeks to impose the terms of the agreement with the Sheriff upon not only another public employer but also upon members of a bargaining unit represented by another Union. The proposal would, therefore, be unenforceable under Ohio Revised Code 4113.30. The FOP cannot be permitted to force its will upon another employer and another bargaining unit and its properly recognized representative.

The Employer does not take lightly the duty of the Union to protect and negotiate the benefits of the bargaining unit it represents. However, that duty cannot include the attempt to force the terms of a contract upon a different public entity or for employees that would be represented by a different union.

The Employer indicated that it has agreed to meet and discuss the effects of the layoff of the dispatchers employed by the Sheriff. The Employer has been forthcoming with the information it has, and has, in fact, met multiple times with the Union to discuss this matter.

Analysis

The Conciliator must award the Employer's position. The economic plight of Lorain County, as well as the Sheriff of Lorain County, was so evident neither party found it necessary to provide any economic data to the Conciliator. The Lorain County Sheriff's Office suffered a 20% cut in its General Fund salary budget in the amount of \$1.2 million dollars in 2009,

resulting in the layoff of 12 full-time deputy sheriffs, 8 part-time deputy sheriffs, and 2 record clerks. The members of the instant bargaining were fortunate not to have suffered any layoffs as a result of this budget downturn. The Sheriff did not have a change in his budget in 2010 but anticipates a possible second round of significant budget reductions in 2011 and beyond. Responding to these factors, the County and the Sheriff have had discussions over a period of time about consolidating communication and dispatch services within the County for purposes of efficiency and eventually saving money. Such discussions did not move into the direction of action until the Spring of 2011. Once it became apparent that a proposed layoff would affect FOP employees, the FOP, not having been a part of any discussions, took action to address this issue at the bargaining table.

While the Fact-Finder recommended the position proffered by the Union, at the time the Recommendation was issued, the County Commissioners and the Sheriff had not entered into a Memorandum of Understanding (MOU). Since that time they have. While the August 24, 2011 MOU continues to be vague about many of the proposed details of a new proposed operation, it is clear that a new employer (the County) will be taking on the responsibility for dispatch services currently provided by the Sheriff, that new positions will be created combining the duties of 911 call services and dispatch services, and that the employees hired will be subject to another labor organization (USWA). The Employer is correct that under Ohio Revised Code §4117.08 and O.R.C. §4113.30, the inclusion of the proposed clause is permissive in nature and not subject to mandatory bargaining.

The Conciliator would agree with the Union that the action of the Employer does look like an attempt to continue the same services, with essentially the same job descriptions, at a lower wage and with reduced benefits resulting from a reduction of seniority. It is also a unique

situation where the “employer,” the Sheriff, must have any collective bargaining agreement approved by the Board of County Commissioners, which is considered in this case to be the “new employer,” and whether that really is a difference without a distinction from a contractual perspective. Under Ohio collective bargaining laws, as referenced above, the Board of County Commissions would be considered a different employer for collective bargaining purposes. As such, requiring mandatory bargaining and a resolution of the issue through the collective bargaining/conciliation process is inappropriate. Whether such action constitutes a breach of the terms of an existing collective bargaining agreement or rises to the level of an unfair labor practice under other laws is an issue not before the Conciliator.

Award

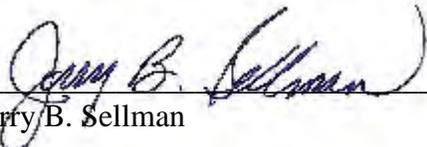
The Conciliator selects the Employer’s final offer to reject a new article concerning Reorganization.

Conclusion

After due consideration to the positions and arguments of the parties and the criteria enumerated in ORC 4117.14(G)(7), the Conciliator awards the last best offer of the Employer on the issue of Wages under Article 35 and the last best offer of the Employer on the issue of Regionalization. In addition, all agreements previously reached by and between the parties and tentatively agreed to, are hereby incorporated by reference into this Conciliation Report, and shall be included in the resulting Collective Bargaining Agreement.

This concludes the Conciliator’s Report and Award.

September 7, 2011
Columbus, Ohio



Jerry B. Sellman

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the Conciliator's Report and Award was sent by First Class Mail and email on September 7, 2011 to:

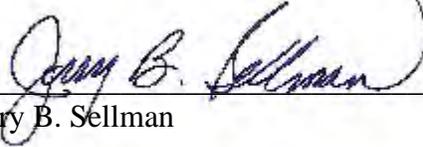
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