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IN THE MATTER OF CONCILIATION

BETWEEN

LAKE COUNTY SHERIFF

AND

OHIO PATROLMEN'S BENEVOLENT ASSOCIATION

SERB CASE # 11-MED-01-0071(Deputies, Court Officers)

Robert G. Stein, Conciliator

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INTRODUCTION

The parties to this matter are the Ohio Patrolmen's Benevolent Association (hereinafter "Union" or "Local") and the Lake County Sheriff (hereinafter "Sheriff", "Employer" or "County"). The Employer is located in northeastern Ohio. The bargaining unit is comprised of approximately twenty-five (25) full-time Deputy Sheriffs and Court Officers of the Lake County Sheriff's Office. The bargaining unit is one of eight bargaining units organized with the Employer. Prior to conciliation in this matter, the Employer and three of the bargaining units reached tentative agreement without having to resort to impasse proceedings; however, the Lake County Commissioners subsequently rejected the tentative agreements for financial reasons. Another fact finding report addressing the Dispatcher's unit was rejected by its union in July, and in the instant matter the Union rejected the fact finder's report in August of 2011. Following fact finding and during the conciliation hearing the parties were able to resolve several more of issues on their own, leaving the below listed matters for conciliation:

- Article 7, Layoff and Recall
- Article 12, Disciplinary Procedure
- Article 14, Sick Leave (2 Issues)

- Article 15, Holidays (2 Issues)
- Article 17, Seniority Payment
- Article 18, Wages
- Article 21, Injury Leave
- Article 30, Union Leave
- Article 37, Term of the Agreement
- Furlough Days

Before commencing the conciliation hearing the conciliator offered to resolve all issues through mediation. While the parties were able to resolve a few sections of issues submitted to conciliation following this offer, the long negotiations process rendered mediation at this point to be ineffective in dealing with the majority of the issues at impasse. Pre-hearing submissions were received from both parties in a timely fashion.

General/State/Local Economic Outlook

General/State: Uncertainty appears to be an apt characterization of the state of the current national and international economy. World economic interdependence is underscored when a fragile recovering world economy can suffer a setback by virtue of a small European country defaulting on its debt, eventually impacting small geographic locations in northeastern Ohio. The economy in Ohio continues to suffer the effects of a national recession that is subject to the financial health of the United States and the world. In Ohio the most recent unemployment rate is 9% and it has not moved appreciable in

several months. The facts indicate that Ohio is in a very slow recovery that is still plagued by foreclosures and a lack of well-paying jobs. Several months ago what has been called the great recession was declared to be officially ended. Yet, for people in Ohio who are unemployed, underemployed, have experienced dramatic declines in their home values, face or have faced foreclosure, have given back benefits and paid days, have foregone wage increases for years, and have been laid off, such declarations are meaningless. The impact of the recession upon Ohio's revenue stream is plain and employers in the public sector are feeling the effects of the state of Ohio reducing its financial support to local governments. The Ohio legislature and the Governor have dramatically reduced funding to local governments as the state of Ohio seeks ways to cut costs, generate revenue, and balance its budget. Counties like Lake that were already weakened by years of experiencing losses in manufacturing capacity were particularly vulnerable to the effects of a Wall Street/Banking financial meltdown. As the rapid economic decline took hold, business as usual was about to change in a very real sense. However, it took a while for management and labor in the public sector to experience the effects of a dramatic decline in what were formerly dependable revenue streams and to come to terms with the new reality. At this point in time it is difficult to say what path Ohio must take to economic recovery or even how economic recovery will be defined in the future. As stated above we are living in uncertain economic times and every month, and lately it seems every week, on a national

and international front, there is both positive and negative economic news that causes wild fluctuations in the financial sector. And given the contentious climate in Washington, little help seems to be forthcoming to Ohio in the near term. One of the more certain and troubling aspects of the current Ohio economy is the loss of high paying skilled jobs. They number in the tens of thousands and clearly underscore the existing structural problems of unemployment in areas such as manufacturing and construction. All the news is not negative; there are indicators of recovery and some employers are doing well in the aftermath of the recession. Natural gas exploration has provided a reason for cautionary optimism for a large portion of eastern Ohio that has long suffered losses in its economic base. And, there are states that are weathering the recession much successfully than Ohio. Prudence would dictate that the sobering realities of dramatically fluctuating and anemic economic indices currently need to be factored into any projected budgeting process for a public employer in Ohio. To their credit, public employee unions and employees in Ohio have, in the main, recognized and responded to their employers who continue to experience a shortfall in revenue coupled with rising costs. State employees and many county, city, and township public employees in and outside of Ohio continue to make unprecedented financial sacrifices in the form of layoffs, wage freezes, benefit givebacks, furlough days and in paying more for their medical coverage. However, the most recent contract settlement secured with Ohio's largest state employees union (OCSEA) that does not expire

until the spring of 2015, restores temporary concessions made by public employees in the areas of personal days, longevity, and step increases, while maintaining wages without any increases for 3 years. It was these temporary concessions that signaled a trend 3 years ago for local jurisdictions and the state may now be indicating another trend. When dealing with concessionary bargaining, evenhandedness of sacrifice takes on even greater significance than it does in more normal times where needed market based equity adjustments can be reasonably addressed as a customary subject of negotiations. The critical and central factor during times of economic hardship is authenticity. If sacrifice is called for by employees and managers alike, then it must be based upon reality and not hyperbole.

Locally, Lake County and the Lake County Sheriff have recently experienced several rounds of unfavorable financial news, with the most recent being an August 2011 reduction of an additional \$300,000 to the Sheriff's budget (Ex. 13). Due to a variety of factors, articulated in the Employer's pre-hearing statement, Lake County revenues are currently hovering around 2001 levels and the Sheriff, according to the Employer, is facing a \$325,700 deficit for 2011 (see p. 4 of the Employer's Position Statement). Michael Matas, was the former Budget Director, before recently taking a new position of Chief Deputy Auditor in the County. He testified that last year's reappraisal reduced revenues by 10% and he is projecting another 8% to 12% decrease next year. In the words of the Employer's advocate, "We are chasing a moving target." The Employer states that in

recognizing the problems with revenue in the County, 7 out of 8 of the bargaining units within the Sheriff's Department accepted 6 unpaid furlough days in 2010 and 2011. The Employer asserts that ability to pay is clearly a condition in these negotiations. The Union's view is less pessimistic than that of the Employer. While recognizing that the Employer is facing economic challenges, it does not agree that the situation is as dire as it is being described by the Employer. It points to a slight increase in population in Lake County and stabilizing revenues, now that many cuts have taken place and the bargaining unit itself has been reduced from 42 employees to 26 employees, resulting in an annual savings of more than 1.5 million dollars. The Union also points out that it was prepared to accept furlough days in the past and but they were never imposed.

Issues 1 Article 7, Layoff and Recall

Current Language (see CBA)

Employer's Position. The Employer proposes current language indicating that at this time it must have sufficient flexibility to address the adequacy of personnel in order to continue to provide vital services with dwindling resources. The Employer states that what the Union is proposing will simply not work. It asserts that Court Officers and Deputy Sheriffs are not interchangeable and that other employees (e.g. dive team) have special skills that are not readily found among all bargaining unit members. The Employer also points out that the current layoff procedure is similar to what exists in the Dispatcher's agreement.

Union's Position. The Union argues that the current language does not clearly define the order of layoffs and is not a specific enough procedure that recognizes seniority and provides employees with some security. Moreover, it does not recognize their years of service or employment status (full-time vs. part-time). The Union points out that its proposal is more in line with what exists in a

conventional layoff provisions. The Union also asserts that the layoff in 2011 did not conform with the Ohio Administrative Code, in terms of laying off part-time employees prior to full-time employees.

Discussion: The fact finder recommended language that was not proposed by either party. The Employer made a cogent argument regarding qualifications. The current language has existed since 2005, when the language was changed in negotiations. It has become the foundation in terms of staff allocation, training, and manpower planning by an Employer. Laying off employees in the public sector, as opposed to the private sector, is not based upon the profit motive and for the most part is an action of last resort. The Employer has organized and trained the staff based upon its rights under the Agreement and in order to function following a layoff employees who remain must be able to properly carry out their duties. The Employer pointed out there are bargaining unit members with who possess a special skill set, like a dive team, making it difficult for someone to bump them in a layoff situation. It is however, commonly recognized in collective bargaining and even where no collective bargaining contract exists that part-time employees are laid off prior to full-time employees. While the Union made some very important points in terms of job security, the Employer as well as the employees are in the midst of a substantial economic downturn that has episodically grown worse. It is as the Employer describes, "a moving target." And while job security has understandably taken on an important emphasis and has become paramount to employees, fundamentally changing layoff language during a time of extreme financial uncertainty will create serious problems in terms of service to the public. Layoffs that result in a smaller work force must be planned for in terms of manpower allocation, recruitment, job experience, education, training and cross-training in order for an organization to be able to continue to carry out its mission.

Issues 2 Article 12, Disciplinary Procedure

Current Language (see CBA)

Employer's Position. The Employer proposes to maintain current language and points out that in terms of internal comparable data; the current language is consistent from one bargaining unit to another.

Union's Position. The Union proposes that the current reckoning period be reduced for discipline and that its proposed language is more in line with what exists in other jurisdictions, particularly outside of Lake County.

Discussion: The fact finder recommended the Employer's position regarding this issue. The Union's that the length of time discipline remains on the record is excessive, based upon external comparable data. However, in matters such as discipline, there exists an emphasis upon internal comparable data over external data that is based upon the unique characteristics of a particular employer and the individualities of the employment situation. There was no data presented to demonstrate that in terms of managerial practice the Employer tends to favor cautionary warnings and written warnings over a tendency to more readily utilize suspensions in correcting behavior. In some employment settings employers may provide lip service to progressive discipline, but in practice are more punitive than progressive. In the instant matter no data was provided to determine the type of discipline favored within the Sheriff's Department, which by its very nature is a para-military organization that would predictably place emphasize on order and discipline in carrying out its duties. Also, with the existence of a just cause standard for discipline, an employee has the right to challenge any allegedly unjustified discipline in order to tests its validity. There is simply insufficient evidence to justify a change in language at this point in time.

Issues 2, 3 Article 14, Sick Leave

Current Language (see CBA)

Employer's Position. The Employer proposes to reduce the rate of accumulation of sick leave to potentially reduce the incidents of absenteeism in order to lower overtime costs and provide for adequate coverage with a reduced staff.

Union's Position. The Union opposes a reduction in the rate of sick leave accumulation and argues it has seen no data to support a fiscal advantage to reducing sick leave accumulation below that which exists in the Ohio Revised Code. The Union also seeks to clarify the procedure than an employee must follow when faced with a long-term illness or injury.

Discussion. The fact finder recommended a modification of accumulation sought by the Employer, but supported the Union in its proposal to clarify the procedure for long-term illness. During an economic crisis sometimes one party seeks changes in collective bargaining that may or may not be related to the challenges of revenue reductions. Such appears to be the case of reducing the rate of sick leave accumulation. To simply say sick leave accumulation is excessive, is contrary to what is contained in the Ohio Revised Code and what has existed for decades in the public sector in Ohio. While I understand that the

Employer is extremely concerned about maintaining an adequate level of staffing and minimizing overtime costs in maintaining it, to alter a long standing benefit of this nature requires more direct evidence that the rate of accumulation affects an employee's behavior, rather than other factors that may influence work attendance such as morale, work ethic, and job content. Moreover, there are employees who year after year use little or no sick leave independent of the rate of allocation. Additionally, there was no data presented to indicate that changing the rate of accumulation would have a significant impact upon the "cash out" aspect of sick leave upon resignation, death, or retirement in order to bring timely relief during the current financial situation faced by the Employer.

Issues 5, 6 Article 15, Holidays

Current Language (see CBA)

Employer's Position. The Employer proposes to eliminate 3 personal days effective 2012 as part of a cost savings measure.

Union's Position. The Union proposes language that would restrict the use of personal leave during 2012 and 2013, but would not permanently eliminate this benefit. The Union also proposed to change the approval process for taking personal leave.

Discussion. The fact finder recommended the Employer's position in this matter. The exigent financial circumstances and the need for bold cost cutting reductions in the face of what can only be describe as severe financial uncertainty is painful, but necessary. But what the Employer is proposes presumes a permanent state of dramatically decreased revenue for the Department, the evidence of which must come over time. As previously stated, the State of Ohio and its largest employees union recently settled a labor contract that restores the temporary freeze in personal days, longevity, and step increases that helped the state get through a period of extreme financial uncertainty. The Union is proposing a temporary freeze for 2012 and 2013, and the parties can again address this matter if the financial situation does not improve in 2014 and beyond. The evidence also supports a reasonable change in the process of approving personal leave proposed by the Union.

Issues 7 Article 17, Seniority Payment

Current Language (see CBA)

Employer's Position. The Employer is seeking a 3 year freeze on longevity payments based upon its current and near future financial situation.

Union's Position. The Union seeks to maintain current language and opposes any freezing of longevity.

Discussion. The fact finder recommended the Employer's position on this issue. The pressing financial circumstances and the need for serious and immediate cost cutting reductions are absolutely necessary. I understand the Union's argument regarding the unevenness of this temporary freeze because not everyone receives longevity, yet there appears to be little choice in terms of financial conditions.

Issue 8 Article 18, Wages

Current Language (see CBA)

Employer's Position. Based upon current conditions and what is expected in the near future, the Employer proposes to reduce wages by 3% across-the-board, with a wage re-opener in 2013.

Union's Position. The Union proposes to freeze wages for 2011 and 2012, Agreement, with a wage re-opener in 2013.

Discussion. The fact finder did not recommend a reduction in wages. Equity of sacrifice is an important value in addressing serious matters of this nature and there was no evidence that any other employees are required to reduce their wages on a permanent basis. Clearly the Employer is facing fiscal hardship, the understanding of which is reflected in the dicta and determinations of this report. However, to take the step of permanently reducing wages, as opposed to temporarily reducing them (e.g. furlough days) is a matter that gives up on the future. Financial health is a combination of revenue and costs. The Employer in its proposal appears to be saying that without permanent wage reductions there will be no return to financial health in spite of having a smaller work force that translates into reduced labor costs, and having secured long-term temporary concessions in other benefit areas, many of which are contained in this report. While there is plenty of concern in the economy, that conclusion is not supported by the evidence, particularly in a county which is still experience growth, albeit modest growth.

Issue 9 Article 21, Injury Leave

Current Language (see CBA)

Employer's Position. The Employer proposed to maintain current language. The Employer also argues that its current benefit is comparable to other jurisdictions in terms of time off for on the job illness or injury.

Union's Position. The Union proposes to increase the number of days an employee is eligible for on-duty illness/injury leave from 60 to 90 days effective January 1, 2013. The Union argues it has an increasing concern for officer safety given the cutbacks in personnel.

Discussion. The fact finder recommended the Employer's position regarding this issue. After viewing comparable data and an accurate accounting of work days as compared to calendar days in an "apple to apple" comparison, I find the current benefit is in line with what several other jurisdictions are currently offering (Ux. 18).

Issue 10 Article 30, Union Leave

Current Language (see CBA)

Employer's Position. The Employer proposes to maintain current language and not to expand this benefit.

Union's Position. The Union proposes to expand this benefit to attend union seminars and training.

Discussion. The fact finder recommended the Employer's position in this matter, however, it is recognized that the Union modified its position for conciliation. I find that during the current financial circumstances and shortage of personnel there is insufficient evidence to support this change in language.

Issue 11 Article 37, Terms of Agreement

Current Language (see CBA)

Employer's Position. See Discussion

Union's Position. See Discussion

Discussion. The parties both agree on the length of the Agreement, on a wage re-opener in 2013 and upon notification requirements. The only difference is the proposal of the Union that continues the Agreement absent notice to negotiate a successor agreement. I find the Union's proposal to be consistent with convention in Ohio under O.R.C. 4117.

Issue 12 Furlough Days

Employer's Position. The Employer is proposing 6 unpaid furlough days in each of the last two years of the Agreement, 2012 and 2013, as another cost cutting measure.

Union's Position. In the past, the Employer has come to employees at the end of the year and proposed furlough days, which were then voted upon. The Union is opposed to putting furlough days in the Agreement. The Union also points out that it was one of the first bargaining units to accept furlough days in 2009, but they were never implemented. Subsequently, the bargaining unit has rejected the concept of furlough days and has experienced reductions in personnel.

Discussion. The fact finder recommended the Employer's position on this matter. I understand the Union's reluctance to accept furlough days that are specifically addressed in the Agreement. However, the Employer's proposal does not call for a permanent reduction in wages, as it has proposed under Article 18. It is seeking temporary reductions in labor costs, as has been common in the public sector throughout Ohio during the past several years. I understand that such a change, even on a temporary basis, will provide hardships for bargaining unit members, but unfortunately the current and near future financial situation justifies this temporary reduction in pay.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (G) (7) establishes the criteria to be considered for conciliators. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements, if any, between the parties;
2. Comparison of 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;
6. Such 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.

These criteria provide the basis upon which the following recommendations are made: These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they,

along with the evidence and testimony placed into the record, provide the basis upon which the following determinations are made:

Issue 1 Article 7 Layoff and Recall

DETERMINATION:

The position of the Employer is awarded

Issue 2 Article 12 Disciplinary Procedures

DETERMINATION:

The position the Employer is awarded

Issues 3, 4 Article 14 Sick Leave

DETERMINATION:

The position of the Union is awarded for both Issues 3 and 4.

Issues 5, 6 Article 15 Holidays

DETERMINATION:

The position of the Union is awarded for both Issues 5 and 6.

Issue 7 Article 17 Seniority Payment

DETERMINATION:

The position of the Employer is awarded

Issue 8 Article 18 Wages

DETERMINATION:

The position of the Union is awarded

Issue 9 Article 21 Injury Leave

DETERMINATION:

The position of the Employer is awarded

Issue 10 Article 30 Union Leave

DETERMINATION:

The position of the Employer is awarded

Issue 11 Article 37 Terms of Agreement

DETERMINATION:

The position of the Union is awarded

Issue 12 Furlough Days

DETERMINATION:

The position of the Employer is awarded

TENTATIVE AGREEMENT

During negotiations and during and following impasse proceedings, the parties reached tentative agreements on several issues. These tentative agreements and any unchanged current language are part of the determinations contained in this report.

The conciliator respectfully submits the above recommendations to the parties this ____ day of November 2011 in Portage County, Ohio.

Robert G. Stein, Conciliator