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STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

In the Matter of:

Ohio Patrolman's Benevolent Association

Employee Organization

And

Lake County, Ohio Sheriff

Employer

Conciliator: Jerry B. Sellman
Dated: November 25, 2011

Case No. 11-MED-01-0072

REPORT AND AWARD OF CONCILIATOR

APPEARANCES

For Union

Jeff Perry, Esq. – OPBA Business Agent representing the OPBA

For the Employer:

Tom Grabarczyk, Esq. – Representative with Labor Relations Management, Inc., representing the Lake County, Ohio Sheriff

BACKGROUND

The instant case involves an examination of the unresolved issues between the Lake County, Ohio Sheriff (hereinafter the "Employer," or "Sheriff") and the Ohio Patrolman's Benevolent Association (hereinafter the "Union" of "OPBA"). The Bargaining Unit subject to the conciliation consists of approximately seventy-two (72) members of the Corrections Officers Unit.

The Employer, Lake County Sheriff's Department, is located within Lake County and serves a population of approximately two hundred and thirty thousand and forty-one (230,041) people.

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 July 13, 2011 to consider eight (8) unresolved issues. Prior to the commencement of the hearing, mediation of the remaining unresolved issues was initiated by the Fact-Finder with the mutual consent of the parties. As a result of mediation discussions, the Parties were able to agree to and resolve five (5) of the issues; the three (3) remaining unresolved issues were submitted to the Fact-Finder for his consideration. On July 29, 2011 the Fact-Finder issued his Report of Findings and Recommendations. The Fact-Finder's Recommendations were not accepted by either party and unresolved issues were advanced to conciliation.

The Conciliator was appointed on August 29, 2011. The Parties mutually agreed to hold the Conciliation hearing on October 26, 2011 at the offices of the Sheriff in Lake County, Ohio. Pre-hearing statements were submitted five (5) calendar days prior to the Conciliation hearing by the parties. 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

The Employer submitted eight issues for consideration by the Conciliator. The Union objected to the presentation of final offers by the Employer containing eight issues, arguing that the Sheriff could only lawfully submit a final offer consisting of the three issues submitted to the Fact-Finder for resolution; all other issues had previously been agreed to by the parties. Both parties had rejected the Fact-Finder's Findings and Recommendations, which Report was based only upon the three (3) remaining disputed issues.

The Conciliator entertained arguments on the objection raised by the OPBA and then proceeded to take testimony concerning all issues presented at the hearing. It is incumbent upon the Conciliator to address the procedural issue raised by the OPBA before making an award on

any final settlement offers.

The Employer argues that the Conciliator should base an award on all issues that are submitted in the conciliation process, as long as those issues were initially the subject of collective bargaining among the parties. In this case, the Employer, subsequent to the Fact-finding hearing that was conducted in July, received additional financial information indicating that further reductions were projected in County revenue for 2011 through 2013. Deregulation reimbursements based on a settlement of property values for the Perry Nuclear Power plant was decreased by $324,994 and tangible personal property tax reimbursements were to be decreased by $403,182. When the State budget was set July 1, the County was notified that State and Local Government Sharing would be reduced by 25% in 2011 and an additional 25% in 2012. As a result of these additional projected losses in revenue, the County Commissioners had to reject the Fact-Finder's Recommendations and prior tentative agreements. It had to re-evaluate all of the offers on the table.

In March, 2011 when the bargaining process began, based on what was known of the projected finances, the Sheriff's Office proposed the following issues for discussion:

- Term of Agreement – three years
- Wages – 1.5% reduction in wages for 2011 and 2012; a wage reopener in 2013
- Seniority Payment (Longevity) – No payment to be made in 2011, 2012 (freeze payments) and discuss reopener in 2013
- Overtime – slight increase in compensatory bank
- Personal days - Eliminate three (3) personal days.
- Sick leave - accrual to ten (10) days per year.
- Furlough Days - Six (6) additional unpaid furlough days in 2012.

At Fact-finding, all of the above issues were resolved except the following, which were presented to the Fact-Finder:

- Wages
- Seniority Payment (Longevity)
- Furlough Days

Based on what was known at the time of conciliation, the Sheriff's Office argued that it has the right to and must revise its proposals to reflect the passing of time and further reductions in the 2011 budget.

The Employer's final settlement offer at conciliation was as follows:

- Freeze longevity payments for 2011, 2012 and 2013.
- Eliminate three (3) personal days beginning in 2012.
- Reduce sick leave accrual from 15 day a year to 10, effective upon implementation of the Agreement.
- A three percent (3%) across the board reduction in wages, based on a cent per hour of step 5 rate (0.66) effective January 1, 2012.
- Six (6) additional unpaid furlough days in 2012 and 2013.
- A wage rate re-opener in 2013.

The Employer argues that it has the lawful right to submit any and all issues initially proposed when the bargaining process began, particularly in light of the drastic change in financial condition throughout the process. It bases its argument on three premises: (1) there is no bad faith negotiating in returning to its initial offers; (2) O.R.C. §4117.10(B) permits such a procedure if a County Commission rejects a temporary agreement; and (3) when new financial information becomes available subsequent to a Fact-finding hearing, it has the right to modify its

position under the spirit of the Collective Bargaining laws.

The Union argues that only issues considered by a Fact-Finder are subject to conciliation, since all other issues have been agreed upon by the parties in the collective bargaining process. The Union further argued that under O.R.C. §4117.14(G)(11), several issues cannot be considered by the Conciliator because they have cost implications retroactive to the beginning of the fiscal year.[1]

The Conciliator finds the arguments of the Union regarding the lawful scope of issues to be presented in conciliation to have merit, but not because of the statutory provisions of O.R.C. §4117.14 (G)(11). A review of O.R.C. 4117.14 reveals that only those issues presented to a Fact-Finder for his/her consideration are appropriate for consideration by a conciliator under Ohio law. While the Employer is correct that under O.R.C. 4117.10 (B) either party may reopen all or part of the entire agreement, if the legislative body rejects the submission of the public employer, such language is only applicable prior to the Fact-finding process in collective bargaining. Once a Fact-Finder's Recommendation(s) is submitted and rejected by one or both parties, only those issues in dispute may be the subject to a final offer by either party to a conciliator.

O.R.C. 4117.14 (G)(1) provides:

> "(G) The following guidelines apply to final offer settlement proceedings under division (D)(1) of this section:
>
> (1) The parties shall submit to final offer settlement those issues that are subject to collective bargaining as provided by section 4117.08 of the Revised Code *and upon which the parties have not reached agreement* and other matters mutually agreed to by the public employer and the exclusive representative; except that the conciliator may attempt mediation at any time." *Emphasis added.*

If the parties have already reached agreement in the collective bargaining/fact-finding

[1] The Employer argued that the prohibition of awarding matters with cost implications retroactive to the beginning of the current fiscal year related only to increases; reductions in cost are not prohibited under this statutory

process, O.R.C. 4117.14(G)(1) does not provide for further consideration. This is further bolstered by O.R.C. 4117.14 (G)(1) wherein it provides;

> "(3) …Not later than five calendar days before the hearing, each of the parties shall submit to the conciliator, to the opposing party, and to the board, a written report summarizing the *unresolved issues*, the party's final offer as to the issues, and the rationale for that position." *Emphasis added.*

Issues to which agreement has been reached are not unresolved issues. To find otherwise would essentially impede a process designed to narrow issues and encourage a settlement process.

Based upon the above analysis, the only issues to be considered by the Conciliator in this case are those within the scope of issues considered in the Fact-Finders' Report and Recommendation.

Having determined the proper scope of issues before the Conciliator, 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 17 - Wages

The Employer is proposing a wage freeze for 2011, a three percent (3%) across the board reduction in wages, based on a cents per hour of step 5 rate (0.66) effective January 1, 2012 and a wage reopener in 2013.

The Union proposes a wage freeze in 2011, a wage freeze in 2012 and a wage reopener in 2013.

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provision.

The Employer Position

In August, 2011, as a result of the loss of revenue to the County described above, the Sheriff's budget was further reduced by three-hundred and two thousand dollars ($302,000.00) in 2011.

The Sheriff's Office financially operates under two (2) budgets: One for the Central Communications Division and one for all other Divisions in the Sheriff's Office. When the Sheriff's Office reached agreement with the first three (3) units, and calculated the savings if secured in all units, it was anticipated that with additional retirements and other cut backs, the Sheriff would be able to balance the budget for 2011. With no increases and freezing longevity payments, approximately $130,000 would be saved. By the end of July, 2011, based on expenses year to date and without agreements as proposed by the Employer, the combined total of the two budgets for 2011 was approximately $325,700 short. Now with the additional reduction in the budget, the Sheriff's Office faces a deficit in excess of six-hundred thousand dollars ($608,700) in 2011.

Lake County is facing what has been described by the County Budget Director as the perfect financial storm. County revenue in 2011 is now at 2001 levels. In 2008, the combined actual expenditures for the Sheriff's Office were $17,601,127. The 2011 combined budget is $14,964,265 or ($2,636,862) less than 2008. Both the Sheriff's Central Communications budget and the Sheriff's Office budget have seen reductions from 15.7% to 15% respectfully at the start of 2011. These budgets have now been further reduced by $6,000 and $302,000, respectively.

In 2008, Lake County overall granted 3% increases for each of the three (3) years of the current contract. Then the bottom fell out. Non-bargaining employees are now in their third (3rd) year with no increase. Employees in the Sheriff's Office were asked to forego the wages

that were previously negotiated. Employees declined to forego the base wage increase but seven (7) of the eight (8) Units in the Sheriff's Office agreed to six (6) unpaid furlough days in 2010 and 2011.

The Sheriff has had to close the Lake County Minimum Security facility, eliminate positions and reduce services in some areas. From 2009 to July of 2011, through retirements, terminations, resignations and layoffs, forty-five (45) positions had been eliminated. Based on the recent advisement by the Budget Director of the additional budget cuts for 2011, the Sheriff's Office has not filled four (4) positions vacated in August and September, and has laid off a combination of eighteen (18) part-time and full-time employees effective August 22, 2011. Laying off these employees only takes care of the three hundred thousand ($300,000) just presented and does not take into account the shortfall already forecast. With only a quarter of the year to go, it will require approximately another four (4) employees to be laid off, retire or resign to save $100,000 in this year's budget.

Without reductions and savings as proposed by the Employer that would have an effect on the current budget, shortfalls will mean more reduced services and employees. Based on the facts known as of the date of the hearing, the County will have a shortfall of approzimately $1,000,000 in 2011 , of which it is anticipated that the Sheriff's Budget will be allocated $325,700.00 of the shortfall. This will require an approximate 3¼ % reduction (annually) in wages across the board to cover the shortfall.

The Sheriff asserts that if the remaining units fail to realize the seriousness of this crisis, a number of further cuts and lay-offs must occur. An even greater issue is the effect of time running out to make reductions having only three (3) months to go in this budget year. The shortfall to the County in 2012 is currently expected to reach $2,000,000, of which 1/3 is

anticipated to be allocated to the Sheriff.

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 realizes that there was a financial recession. The World has not completely recovered from the recession as of yet. However, there are consistent signs of improvement worldwide. The improvements may not be showing up in every municipality as of yet, but it has already shown up in many. It argues that there is typically a twelve to eighteen (12-18) month lag between the private and public sector. The profits in the private sector have been increasing since the fall of 2009. Many of the public employers have had increased revenues for the last three to twelve (3-12) months as well. Despite the unique situation of Ohio in general and Lake County in particular, things are getting better.

Additionally, the Unit has attempted to help the County out of the budgetary problem in the past. Despite our prior concessions and the fact that we are one of the few employees whose jobs are mandated to exist and in order to run the jail by law, this Unit was hit harder with lay-offs than any other group of employees within the County. Among those other groups of employees that are not mandatory is included a Bargaining Unit that refused to join the rest of the County by failing to agree to temporary furloughs. They had hardly any lay-offs until recently and are not really required by law beyond responding to emergencies. They are willing to hold the line on wages, but a wage reduction, in light of all the other cuts and reductions the Unit has accepted, is unworkable and not in the public interest.

Analysis

The Employer has demonstrated an inability to pay any increase in wages, but the Conciliator must award the Union's final proposal. There is no question that the County's economic condition is in dire straits and significant shortfalls must be made up during the term of

this contract. There is clearly no basis for any increases in wages, which both parties recognize. While the Sheriff proposes a decrease in wages to make up the anticipated shortfall in revenues, the evidence supports a finding that the corrections officers are currently paid comparable wages to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved. The Conciliator recognizes the County and Sheriff's dilemma in crafting a budget to meet reduced revenues, but a reduction in wages is not justified in light of the other reduction in benefits set forth below, particularly when one considers the mandated services provided by the corrections officers. It may be inevitable that layoffs will occur, but those working are entitled to a fair wage for the work performed.

The Union expresses optimism that revenues could increase based upon revenues from anticipated fracking operations in the County; however, the County is much less optimistic. Should revenues increase and other expenses decrease, the Union should have the benefit of a re-opener in 2013 to examine the situation at that time, particularly in light of the other benefit reductions taken through the term of the contract.

Award

The Conciliator selects the Union's final offer which is a wage freeze for 2011, a wage freeze for 2012 and a wage reopener in 2013

Article 15 - Seniority Payment (Longevity)

The Employer proposes a freeze on longevity payments for 2011, 2012, and 2013. The Union opposes any change in the language of the current contract, which would allow for longevity payments in each of the contract years.

The Employer Position

For the same reasons supporting its arguments concerning any base wage increase, the

Employer argues that it cannot meet its budget requirements unless all levels of pay are either reduced or frozen.

The Union Position

The Union objects to freezing longevity pay because the language was placed in the contract to reward those for their dedication and years of service. If the County were in better financial condition, the Union would certainly be proposing to increase the payments, as they are well below the surrounding Counties.

Freezing the longevity payments unfairly harms those with seniority more so than those without seniority. The least senior Corrections Officers would stand to lose nothing, while those with more seniority could lose significant benefits. The language was placed into the contract to award the senior Corrections Officer's for their experience and service to the Sheriff. The proposal would do the exact opposite. The payments are too small as it is.

Analysis

The Conciliator must award the Employer's position. As discussed in the wages section above, the County and the Sheriff are in no position to increase any wages in light of the additional economic shortfalls of revenues forecast. Longevity payments do result in an increase in the wage package, which the Sheriff's office cannot afford to pay.

Award

The Conciliator selects the Employer's final offer. The contract shall provide for no longevity payments for 2011, 2012 or 2013.

Furlough Days (Memorandum)

The Employer seeks six (6) unpaid furlough days for 2012 and for 2013 on the same terms and conditions as scheduled in 2011. The Union proposes that furlough days will be scheduled in calendar year 2012 in the same manner and under the same terms and conditions as when they were scheduled in 2011 and, if the parties desire to discuss furloughs for 2013, there shall be a re-opener clause attached to discuss the possibility of furloughs again in the Fall of 2012.

The Employer Position

For the same reasons supporting its arguments concerning any base wage increase, the Employer argues that it cannot meet its budget requirements unless it has the right to call for Furlough Days in the remaining two years of the agreement.

The Union Position

The Union entered into the two (2) memorandums with the Sheriff with the understanding that the entire County would be doing the same. The Union members believed that the memorandum would be a temporary fix and the County would be able to use the savings along with any other changes required to make the County and the Sheriff's department better prepared for the future.

However, the changes that were thought to be forthcoming did not occur. Rather than reducing the size of other groups of employees, the lion's share of the reductions came from this Bargaining Unit. The Unit felt betrayed and would not agree to any concessions at all during this round of negotiations.

Maintaining a Corrections Unit is one of the few mandates for the Sheriff. In other departments across the Country and State, Corrections Officers are normally the last to be cut. In

Ashtabula County, they reduced the number of deputies so much that there are only two deputies on the road at any given time despite both the limited number of City police departments and the County being the largest in the State.

The Corrections Officers should not have to continue to bear the brunt of these unpaid furlough days.

Analysis

The Conciliator must award the Union's position. The difference in the proposals submitted by the parties is primarily the treatment of furlough days in the third year of the contract. If economic conditions do improve and revenues are on the upward swing, the Union should have the opportunity to seek the elimination of the agreed to furlough days, which result in a reduction of their wage package. While the County and the Sheriff need to have tools to reduce expenses, and the Union has agreed that furloughs can be part of their tool bag, there is no reason to eliminate the opportunity in the third year of this contract to re-examine the necessity for further furloughs.

Conclusion

After due consideration to the positions and arguments of the parties and the criteria enumerated in ORC §4117.14(G)(1) and ORC §4117.14(G)(3) regarding the scope of the issues before the Conciliator and ORC 4117.14(G)(7), the Conciliator awards the last best offer of the Union on the issue of Wages under Article 17, the last best offer of the Employer on the issue of Seniority (longevity) under Article 15 and the last best offer of the Union on the issue of furlough days. 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.

November 25, 2011
Columbus, Ohio

Jerry B. Sellman

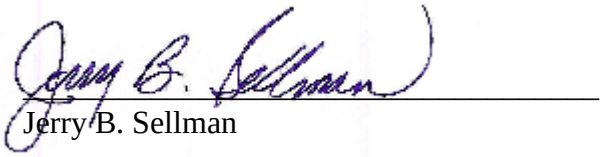
CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the Conciliator's Report and Award was sent via email, receipt confirmed, and by First Class Mail on November 25, 2011 to:

SERB
Mary E. Laurent
Administrative Assistant
65 E. State Street
Columbus, OH 43215
mary.laurent@serb.state.oh.us

Jeff Perry
OPBA
10147 Royalton Road, Suite J
PO Box 338003
North Royalton, OH 44133
jeffperryba@sbcglobal.com

Tom Grabarczyk
Labor Relations Management Inc.
6800 West Central, Suite L-2
Toledo, OH 43617
tomlrm@buckeye-express.com



Jerry B. Sellman