

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

In the matter of	*	Case No. 11-MED-04-0648
	*	
	*	
Conciliation between:	*	Conciliator:
	*	
Cuyahoga County Sheriff's Office	*	Martin R. Fitts
	*	
and	*	
	*	
Ohio Patrolmen's Benevolent Association	*	December 6, 2011
	*	
	*	
	*	

AWARD OF THE CONCILIATOR

APPEARANCES

For Cuyahoga County (the Employer):

Christopher J. Russ, Assistant Law Director
W. Keith Fletcher, Employee Relations Specialist – HR
Ed Morales, Assistant Law Director

For the OPBA (the Union):

Max Rieker, OPBA Attorney
Daniel Cipollone, OPBA Director
Anthony D. Church, OPBA Member

PRELIMINARY COMMENTS

The bargaining unit consists of approximately 140 deputy sheriffs assigned to numerous duties. The Employer and the Union are parties to a collective bargaining agreement through December 31, 2011. Article 14 – Wages of that agreement provides in relevant part that wages for 2011 will be determined through a wage re-opener negotiation.

The parties began negotiations and ultimately reached impasse. The parties then proceeded to Fact-finding, with a Fact-finding Hearing conducted on August 16, 2011. Fact-finder Richard P. Gortz issued his Fact-finding Report on September 7, 2011. That Report was subsequently rejected by the Cuyahoga County Council.

The undersigned was appointed by SERB to serve as Conciliator on October 5, 2011. A Conciliation hearing was held on November 8, 2011 at the Cuyahoga County Sheriff's administrative offices in the Justice Center in Cleveland, Ohio. Both parties attended the hearing, presented written positions, and elaborated upon their respective positions. The parties executed a written agreement stipulating that the hearing would be conducted without a stenographic record. The following issue was submitted for Conciliation: Article 14 – Wages (specifically the wage re-opener for 2011.)

In rendering the recommendations in this Conciliation Award, the Conciliator has given full consideration to all testimony and exhibits presented by the parties. In compliance with Ohio Revised Code, Section 4117.14 (G) (6) the Report & Recommendations issued by the Fact-finder in this matter were reviewed and considered. In compliance with Ohio Revised Code, Section 4117.14 (G) (7) and Ohio Administrative Code Rule 4117-9-06 (H), the Conciliator considered the following criteria in making the findings and recommendations contained in this Report:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of 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;
3. 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;
4. The lawful authority of the public employer;
5. Any stipulations of the parties; and
6. Such other factors, not confined to those listed above, 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.

ISSUE AND AWARD

Issue: Article 14 – Wages (Wage Re-opener for 2011)

Positions of the Parties

The Union proposed that effective on January 1, 2012 the bargaining unit's wages should increase by 1.5% from the 2010 rate of pay for each step in the wage scale. In addition the Union proposed that every member of the bargaining unit be paid a \$195.59 lump sum signing bonus, with that bonus to be paid out to the employees in the first pay period of January 2012.

The Employer proposed that the current wage seven-step wage scale that was implemented following the Conciliation Award for the 2010 wage re-opener be maintained with no additional increases.

Discussion

SERB and the Ohio Revised Code require a conciliator to review and consider fact-finding reports issued prior to the parties moving on to conciliation. In the instant matter that Report was issued by Fact-finder Richard P. Gortz. Fact-finder Gortz opened his discussion by stating:

A serious incongruity has been created by the County administration. It continues to plead inability to pay any wage increases, while proposing to add twenty percent to the bargaining unit workforce (28 additional deputies). Some additional workforce is indeed mandated for security at the new juvenile justice center, however programs for which the employees are being hired include many which are not mandated, such as community policing programs, downtown Cleveland patrol, and assisting suburban police departments with traffic control and crime prevention. Certainly, the decision to expand the Sheriff's law enforcement programs is rightly solely within the sphere of the County Administration, but to do so at considerable additional cost while pleading an inability to pay any wage increases at all for current employees, raises questions as to County priorities.

The Employer presented evidence at the hearing that of the 28 new deputy positions contemplated by the County, 18 of them are necessary due to the physical configuration of the new juvenile justice center. This was un-rebutted by the Union. It would be

disingenuous, therefore, to hold against the County the staffing of these 18 deputy positions as they clearly are justified. The remaining 10 positions, however, are clearly discretionary. It is noted by the Conciliator that these ten positions represent an approximate 7% increase in the current number of deputies, for discretionary responsibilities, with an apparent goal of increasing the law enforcement footprint of the Cuyahoga County Sheriff by providing assistance to police departments throughout the county. There was no evidence offered to the Conciliator that this is driven by requests from those same departments for such assistance, or that the area police departments contemplated reimbursing the Sheriff for these additional services. No argument was offered that the increased number of deputies would reduce overtime costs caused by temporary staffing shortages or temporary vacancies. This Conciliator agrees with Fact-finder Gortz's comments that questions arise when the County spent considerable effort discussing the need for furlough days and other cost-cutting efforts throughout the county while at the same time proposing a fully discretionary 7% increase in the number of deputy positions within the Sheriff's Office.

This Conciliator, however, does not believe it is the place of the neutral fact-finder or conciliator to question priorities for a political subdivision; those are clearly within the purview of the respective elected officials. The County's arguments at the hearing centered on its inability to pay for the Union's proposed wage increase, not that it simply had other priorities that precluded it from paying any wage increases.

Matt Rubino, the Director of the Office of Budget & Management, gave detailed testimony and evidence regarding the historical, current and projected financial outlook for Cuyahoga County. There is no question that the real general fund operating revenue has trended significantly downward since 2001. It is also clear that the several revenue streams will either continue to decline or remain flat in 2012, such as from the state's Local Government Fund and local property taxes. There is a slight increase in sales tax revenue in 2011 over 2010, but Mr. Rubino indicated that overall the County expects its general revenue fund income to be essentially flat for 2012.

The bulk of the Employer's argument for there to be no wage increase rests with the projections of flat revenue in 2012, the sacrifices that have been made by other County employees (including those in other bargaining units), and the fact that, due to the wage differentials for command officers in the Sheriff's Office, a wage increase for this bargaining unit will trigger additional wage increases (and thus additional costs) for the County.

The Employer also noted that the change in the form of County government has created new initiatives in the County (economic development and a scholarship fund) that were approved by voters and now must be funded out of the existing budget. While this change in the structure of County has resulted in the elimination of many duplicative positions, it has clearly also resulted in new expectations on the part of voters for what they want county government services to look like.

Simply finding that there is enough money to fund a wage increase *somewhere* in the total revenue is not enough to award such an increase. Most public entities generate enough total revenue that they could fund generous wage and benefits within a *single* department if that department was the sole focus, and all other services were eliminated or minimized. That is not the reality that local elected officials must deal with, however. Whether we are talking about counties, cities, townships, or school districts, elected officials are faced with making policy decisions and setting priorities among many competing and worthy services. The instant matter is no different. When the taxpayers voted to change the structure of Cuyahoga County, they undoubtedly expected some change in the programs and services provided. They did not, however, provide the County with additional funds to make that happen. Surely this is a clear example of the public, through the ballot box and its elected officials, properly setting its own priorities.

This Conciliator does not take lightly making an award that varies from the Fact-finder's determination on what is proper. However, it is noted that Fact-finder Gortz stated in his Report the following: *Equally important to the public employer's duty to provide services to the community it serves, is the duty to treat employees fairly, even under harsh economic circumstances. Services may have to be cut, but those employees who remain must be treated fairly.*

Not lost on this Conciliator is the Fact-finding Report issued by Harry Graham in October 2010 for the Cuyahoga County Sanitary Engineer and IBT Local 436. Even though the Sanitary Engineer is NOT funded by the County's general fund, Fact-finder Graham wrote: *It would be incongruous if members of this bargaining unit received a wage increase while their colleagues elsewhere in County service did not.* Here the Fact-finder determined that the existence of adequate funds did not trump the Employer's desire to treat its all of its employees as equally as possible.

This Conciliator notes that the economic condition of Cuyahoga County has not markedly improved in the year since Fact-finder Graham's Report. In October of this year Conciliator Howard Silver issued an Award based upon, to be sure, the same economic information as was presented to this Conciliator when he issued his October 2011 Conciliation Award for the Cuyahoga County Sheriff and the OPBA-represented Corrections Officers. Even though he noted that the members of that bargaining unit were paid less than the average for similar work elsewhere, Conciliator Silver was clearly persuaded by the County's economic realities when he gave greater weight to the Employer's ability to pay. The result was an Award that granted no wage increase for 2011.

Also compelling is the tentative agreement reached by the County with its AFSCME bargaining unit in the County's Health and Human Services Department, the largest bargaining unit in County government. It calls for no increase in the first year (effective July 1, 2011).

In the instant matter, this Conciliator finds the County's current economic situation, and the resultant sacrifices of other County bargaining unit and non-bargaining unit employees, to be compelling.

Also compelling is the independent review and the resultant conclusions of both Fact-finder Graham and Conciliator Silver in their respective cases. I concur with their assessment of the foreseeable economic conditions facing Cuyahoga County, and the need for all employees to participate in County's efforts to cope with them.

The parties will shortly commence negotiations for a successor contract, and again will be discussing wages for this bargaining unit for 2012 and beyond. That will give the parties an ability to discuss possible wage increases in the context of discussing other economic and non-economic issues as well, and perhaps allow for some creativity as part of a total package. In isolation, however, there is simply no compelling argument for the Union's proposal in this proceeding for a 1.5% increase (effective January 1, 2012) coupled with a signing bonus. The Employer's proposal for no wage increase in 2011 is much more reasonable and compelling.

Award

Based on the above, the Conciliator believes that the Employer's proposal is the fairest resolution of this impasse, both for the parties and the taxpayers.

Therefore, the Conciliator awards the Employer's proposal that there be no wage increases in 2011 and no wage increase effective January 1, 2012.

The above represents in total my Award in this matter.



Martin R. Fitts, Conciliator
December 6, 2011

Certificate of Service

I hereby certify that an exact copy of this Conciliation Award was transmitted this day by email to Max Rieker (OPBA Attorney), Christopher J. Russ (Assistant Law Director, Cuyahoga County), and Mary Laurent (State Employment Relations Board).



Martin R. Fitts, Conciliator
December 6, 2011