

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

In the Matter of Conciliation Between

Fraternal Order of Police, Ohio Labor Council, Inc.

Employee Organization

Case Nos. 11-MED-10-1522, 1523

And

Morrow County Sheriff

Conciliator: Jerry B. Sellman
Date of Report: May 15, 2012

The Employer

REPORT AND AWARD OF CONCILIATOR

APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:

Tracy Rader – Staff Representative with Fraternal Order of Police, Ohio Labor Council, Inc.,
representing the Blue and Gold Bargaining Units

FOR THE EMPLOYER:

John J. Krock – Vice President, Clemans, Nelson & Associates, Inc. representing the Employer.

Preliminary Information

The instant case involves an examination of two the current Collective Bargaining Agreements (“Collective Bargaining Agreements”) between the Morrow County Sheriff (hereinafter referred to as the “Employer” or the “Sheriff”) and the Fraternal Order of Police, Ohio Labor Council, Inc. (hereinafter referred to as the “Union”). Case No. 11-MED-10-1522 involves individuals employed as full-time Sergeants and Lieutenants (Unit A); Case No. 11-MED-10-1523 involves individuals employed full-time under the classification of Deputy Road Patrol, Deputy Dispatcher, Deputy Corrections Officer and Corporal (Unit B). The units consist of five (5) dispatchers, nine (9) deputies, two (2) corporals, twenty-four (24) corrections officers, and five (5) sergeants. All units have agreed to multi-unit bargaining and the only issue to be decided is wage rates. All issues are the same in both units.

This Collective Bargaining Agreements for both Units became effective February 1, 2011. All employees were given a 2.5% wage increase in the first year of the Agreement and wage reopeners for the last two (2) years of the three (3) year agreement. The February 2011 increase in wages was the first since February 1, 2008. When entering into the current year, the County Commissioners told all elected officials, including the Sheriff, that they would not be increasing their budgets for wage increases for fiscal year 2012.

This is a re-opener negotiation. The parties engaged in multi-unit bargaining on October 24, 2011, regarding wages for the last two years of the Collective Bargaining Agreement, but were unable to agree. They submitted their proposals to Fact-Finder Howard D. Silver for resolution on December 20, 2011. The Fact-Finder issued his Report and Recommendation on January 18, 2012, wherein he recommended a zero percent wage increase for the bargaining units effective February 1, 2012 and further recommended that during the last quarter of 2012 the

parties negotiate wage levels that are to be effective February 1, 2013. The Recommendation was accepted by the Employer and rejected by the Union.

The Conciliator was appointed on February 9, 2012. The Parties mutually agreed to hold the Conciliation hearing on March 26, 2012, at the offices of the Morrow County Sheriff. Pre-hearing statements were submitted 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

Since this is a re-opener to consider wages, the only disputed issue is in regard to wages.

At Fact-finding, the Union sought a two percent (2%) increase in wages for the years

commencing February 1, 2012 and February 1, 2013. The Employer sought a wage freeze for the year commencing February 1, 2012 and proposed that bargaining be reopened in a year to consider any wage increase that would be effective February 1, 2013. The Fact-Finder recommended the position of the Employer.

At this conciliation, the Union proposes a one percent (1%) increase in wages commencing February 1, 2012 and a one and one half percent (1.5%) increase in wages commencing February 1, 2013. The Employer proposes a wage freeze for 2012 and a reopener on wages for 2013.

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

Article 21 Wages

The Union proposes a one percent (1%) increase in wages commencing February 1, 2012 and a one and one half percent (1.5%) increase in wages commencing February 1, 2013.

The Employer proposes a wage freeze for 2012 and a reopener on wages for 2013.

The Union's Position

The Union seeks an increase for its bargaining unit members for primarily three reasons: (1) revenues from the "federal contract to house prisoners" program operated by the Sheriff's Department provides significant income to the County and some of that income could be used to pay the increases sought; (2) the salaries of the bargaining unit members are the lowest compared to employees doing like work in the State of Ohio, as well as in adjoining counties and counties in Ohio with populations of 26,000 to 36,000 residents; and (3) salary increases given

last year merely offset increases in the cost of insurance.

The Morrow County Jail, which is operated by the Morrow County Sheriff, has a federal contract from the Immigration and Customs Enforcement Agency of the Department of Homeland Security (ICE) that compensates the Morrow County Jail for holding illegal aliens after domestic criminal proceedings have concluded. The ICE contract began in 2009 and was fully implemented in 2010 and 2011. Revenues under this program have increased from \$927,953 to \$1,085,288 in 2011. This is a profit center for the Sheriff's Department.

The Union's clear argument is that since these revenues are generated by the Sheriff's Department, the County could easily use but a small portion of these revenues to pay for the small increase in wages proposed by the Union. Since it is the Sheriff's employees that provide the services that produce the revenue, the benefit from these services should go back to the officers who perform the work.

Much of the work under the ICE program is performed by new employees or employees that were brought back from the layoff in 2008. If the starting wage scale is not increased as proposed by the Union, the County will be unable to attract the employees with the necessary skills to administer and run the ICE program.

The Union argues that its bargaining unit members are nearly the lowest paid in Ohio. It compared bargaining unit member salaries to those in other Ohio counties with populations between 28,000 and 38,000. Bargaining unit members in both units were paid salaries below the average salaries of employees doing comparable work. The specifics of the Union's comparisons were the same as presented at the Fact-finding hearing.

Based upon the above factors, a modest increase to bring the bargaining unit pay scale at least toward the State average is in the best interest of the public.

The Employer's Position

The County Commissioners informed all elected officials, including the Sheriff, that they cannot provide for any increase in wages in any of their 2012 budgets due to the declining economic condition of the County. The County is projecting total general fund revenue of \$6,655,253 for fiscal year 2012, which is \$1.1 million less than was received in 2008 (\$7,727,452). This is a sixteen (16%) percent projected loss of revenue in the past four (4) years. At the same time, expenses have increased over the same period of time. As a result of reduced income and increased expenses, the County's General Fund ended 2011 with only a \$523,284 carry-over balance.

The biggest challenge for the County is to determine how to fund the requests of multiple agencies when overall revenues are decreasing and unencumbered carry-overs are diminishing. The Employer points out that the unencumbered carry-over figure for the Morrow County General Fund in 2010 was \$898,285; the unencumbered carryover figure for the Morrow County General Fund for 2011 was projected to be about one-half of the 2010 carry-over figure, and ended at \$523,284. Morrow County's monthly Operations expense is about \$576,084, reflecting a carry-over balance from 2011 to 2012 that is less than one month's expenses. Under the Auditor of the state of Ohio's Guidelines for Fiscal Caution, one of the circumstances that can lead to a declaration of fiscal caution is a low year end carry-over balance in the general fund such that the entity is unable to cover one month's expenses.

Increases to salaries must be reviewed in light of other financial needs of the Sheriff to operate his department. At present the Sheriff is employing a minimum staff and police cruisers that would have been replaced in the past have not been replaced because of fiscal constraints. Money would need to be expended in these areas before any increase in salaries could be

considered. The Sheriff's budget has increased over the years because he needs additional revenue to pay for the increased number of employees and expenses associated with the ICE program. Some of those funds naturally come from the ICE revenues.

While the Employer recognizes that the salaries of the Bargaining Unit members are low, they are nonetheless higher when compared to the other counties in Ohio with a similar fiscal condition.

While available revenues to the Morrow County General Fund have decreased, expenses have continued to rise. The Morrow County General Fund is the subject of "wish lists" from various Morrow County executive agencies funded through the Morrow County General Fund. The budget amount requested in the aggregate by the agencies funded by the Morrow County General Fund for 2012 was \$8,505,598. The projected income in the Morrow County General Fund Budget for 2012 is \$6,362,800. The amount requested from the Morrow County General Fund for 2012 exceeds by about one-third the amount of revenue projected to be available from the Morrow County General Fund in 2012. Such a disparity will require these agencies, under the oversight of the Morrow County Commissioners, to operate with about one-third less than the agencies, in the aggregate, stated they needed to operate.

Analysis

During uncertain economic times, wage re-openers are in the best interest of the public, as well as in employees' best interest, for it allows the parties to determine a fair level of wages over a multiple year period with the most current financial information. The parties in this proceeding recognized this in finalizing their Collective Bargaining Agreement. When one examines the level of pay received by members of this bargaining unit and the minimum staff used to perform the duties of the Sheriff's Department, it is understandable that the bargaining

units believe some increase is justified, particularly since living expenses have continued to rise.

The evidence demonstrates that while deserving, the County simply cannot afford to pay any increases to the Bargaining Unit Members in these two units. While the County does have a surplus entering 2012, that carry-over is barely sufficient to keep the County out of fiscal caution, or even worse, fiscal watch. With revenues declining and expenses increasing, now is not the time to consider increased wages.

The Union's argument that the Sheriff's Department is responsible for a significant contribution to the General Fund and it, therefore, should be entitled to modest increases has merit, but the argument cannot be accepted in light of the fragile economic condition of the County. The Fact-Finder was correct when he concluded that now was not the time for any increase in wages, particularly when considering the declining revenue forecast for the County and the fact the County's exemption to reduced funding from the State of Ohio due to its dire financial condition could cease and further drive the County into fiscal morass.

Based upon the economic factors presented, the current wages of the members of the bargaining units relative to the employees in the bargaining units with those related to other public and private employees doing comparable work as cited, giving consideration to factors peculiar to the area and classification involved, the interest 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, I find the last best offer of the Employer to be appropriate in this case.

Counties experiencing deteriorating fiscal conditions are left with deciding more who will get paid than how much they will get paid. A Conciliator's job is not to determine how commissioners allot money under their budgets, but to make final determinations based upon the

provisions of 4117.14(G)(7) of the Ohio Revised Code as it relates to the impact of collective bargaining agreement provisions on the governmental entity's employees balanced against the interest of the public. There is a point at which a county could be at risk in protecting the public if funds are not made available to the law enforcement agencies serving it. Here, insufficient starting salary ranges could even endanger the ability to perform under a contract that provides significant revenues to support the operations of the County. Notwithstanding these concerns, the Union's final offer to increase wages essentially 2.5% over two years cannot be accepted in light of the demonstrated current fiscal problems of the County. Since the Conciliator must select one of the last offers made by the parties in this case, it must be the Employer's.

Award

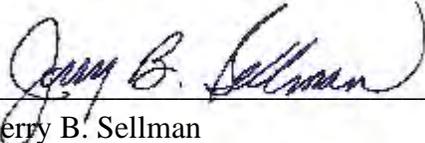
The Conciliator selects the Employer's final offer which is a wage freeze for 2012 and a reopener on wages for 2013.

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 Employer on the issue of Wages.

This concludes the Conciliator's Report and Award.

May 15, 2012
Columbus, Ohio



Jerry B. Sellman

CERTIFICATE OF SERVICE

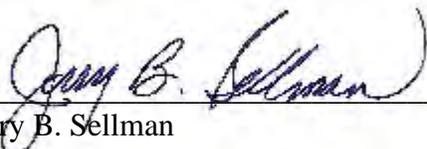
The undersigned certifies that a true copy of the Conciliator's Report and Award was sent via email, receipt confirmed, and by First Class Mail on May 15, 2012 to:

SERB

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

Tracy Rader
Staff Representative
Fraternal Order of Police
Ohio Labor Council, Inc.
222 E. Town Street
Columbus, Ohio 43215
trader@columbus.rr.com

John J. Krock
Vice President
Clemans, Nelson & Associates, Inc.
6500 Emerald Parkway, Suite 100
Dublin, Ohio 43016-6235
JKrock@clemansnelson.com



Jerry B. Sellman