

**CONCILIATION REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
August 28, 2013**

In the Matter of:

OHIO PATROLMEN'S BENEVOLENT
ASSOCIATION

12-MED-05-0537

and

PUTNAM COUNTY SHERIFF

**REPORT OF CONCILIATOR
TOBIE BRAVERMAN**

APPEARANCES

For the Employer:

Patrick A. Hire, Regional Manager
Aaron Weare, Consultant
Laura Huff, Administrative Assistant
David Roney, Jail Administrator

For the Union:

Michelle T. Sullivan, Counsel
Jonathan J. Winters, Counsel
Brent Meyers, Union Representative
Christopher Slick, Union Representative

INTRODUCTION

The undersigned was duly appointed by SERB by letter dated June 4, 2013 to serve as Conciliator in the matter of the Ohio Patrolmen's Benevolent Association (hereinafter referred to as "Union") and Putnam County Sheriff (hereinafter referred to as "Employer") pursuant to Ohio Revised Code §4117.14(D)(1). A Factfinding Report was issued in this matter by Factfinder Daniel G. Zeiser on May 7, 2013. That report was rejected by the Employer, and the matter therefore proceeded to conciliation. Hearing was held at Ottawa, Ohio on August 6, 2013. The Union was represented by Michelle Sullivan, Special Counsel, and the City was represented by Patrick Hire, Regional Manager. The parties acknowledged that pursuant to O.R.C. §4117.14(G)(11) the Conciliator may only award compensation increases effective in the fiscal year following the date of the Award herein, and the Employer has not waived this limitation. The Union verbally waived the taking of a verbatim transcript of hearing. While the Employer acknowledged both that neither party had arranged for the taking of a verbatim transcript and that there would therefore be no transcript of the hearing, it declined to expressly waive the requirement. Pursuant to OAC §4117-9-06(F), the Conciliator's handwritten notes and tape recording shall constitute the record of hearing.¹ The parties each filed timely Position Statements with the Conciliator. The parties were permitted to present testimony and exhibits concerning each of the outstanding provisions on which agreement has not been reached.

Pursuant to Ohio Revised Code §4117.14, the Conciliator has considered the past collectively bargained agreements between the parties, comparison of the issues submitted relative to other public employees doing comparable work, the interests and welfare of the public, the ability of the Employer to finance and administer the issues proposed, the effect of the adjustments on the normal standard of public service, the lawful authority of the Employer, and other factors traditionally

¹ It should be noted that these notes are extremely difficult to read and do not represent a thorough record of the hearing.

considered in the determination of issues submitted.

FACTUAL BACKGROUND

The Employer is the County law enforcement agency for Putnam County, located in Northwest, Ohio. Putnam County is predominantly rural, and has a population of approximately 34,300. The bargaining unit involved here represents the Employer's correction's officers who are responsible for staffing the county jail. The bargaining unit is currently comprised of seventeen employees. While the Employer has been party to a number of Collective Bargaining Agreements for these employees, the Union has represented the bargaining unit only since April, 2010. This is therefore only the second Agreement between these parties. The prior Collective Bargaining Agreement expired on December 31, 2012, and the parties began bargaining for the current Agreement in September, 2012. They met in bargaining and mediation on eight separate occasions. The provisions of the Agreement on which the parties have reached agreement are set forth in Exhibit A attached hereto, are incorporated herein by reference, and are adopted as part of the parties' final agreement. Although included in the parties' Position Statements as an unresolved issue, they were able to reach agreement on the issue of Insurance, and asked that the Conciliator include the agreed upon language in this Award. The unresolved issue at the time of hearing, was as follows:

Article 57 - Wages & Appendix A

ISSUES

ARTICLE 20 - LIFE AND MEDICAL INSURANCE

The parties reached resolution the language of Article 20 before the start of the hearing. The agreed upon language is as follows:

- A. During the term of the agreement, the Employer agrees to provide health care to the employees with the premium costs to be split 80% Employer and 20% employee. Employees shall receive the same level of benefits as other county employees under the Putnam County Commissioners Insurance Plan although the Employer will meet with the Union to discuss any changes to the Plan at least thirty (30) days prior to proposed implementation. Effective January 1, 2014 the employee's contributions for insurance will not increase more than thirty percent (30%) over the life of the Collective Bargaining Agreement.
- B. The Employer agrees to continue a minimum of \$15,000.00 in life insurance on each employee.
- C. Should the coverage provided to other county employees, by and through the Putnam County Commissioners' Office be changed or altered, such changes shall be applicable to the coverage herein provided following notice and meeting with the Union at least forty-five (45) days prior to implementation for bargaining unit employees. The Employer will provide medical coverage under CEBCO during the life of this Agreement.
- D. Employees must opt for either a high deductible or low deductible plan at the rates established by the Putnam County Commissioners and the insurance plan.
- E. If the current health care policy provides for a no cost wellness benefit for annual physical examinations, employees will have said physical examinations during the 1st quarter of the year and provide documentation of exam to the Division Lieutenant.
- F. Effective January 1, 2014, insurance opt outs shall not be offered to any bargaining unit employees unless offered by the Board of County Commissioners to all non-bargaining unit employees.

ARTICLE 57 - WAGES AND APPENDIX A

Union Position: The Union proposes essentially the recommendation of the Factfinder, which was accepted by the Union, but rejected by the Employer as its wage proposal. That recommendation is a 0% increase in 2013, a 2.75% increase effective January 1, 2014, a 2.25 % increase effective January 1, 2015 and a \$1,000.00 lump sum payment to each bargaining unit

member in the first pay period after January 1, 2015. The Union notes that this recommendation was the result of a mediated settlement between the parties which was nonetheless rejected by the Employer. The Union further proposes that the wage increases be applied to all employees including those within the steps as noted in Appendix A. In the past, wage increases have only been applied to those employees who have moved beyond the contractual steps. This exacerbates the disparity between this group and comparable groups in surrounding counties. While the Employer argues that the Union's proposal regarding the increases within the steps violates 4117.17 (G)(11) because it provides that it is effective upon ratification in the Appendix A attached to the Union's Position Statement, the proposal as stated in the Position Statement clearly states the effective dates of all increases, and the language in Appendix A is clearly a typographical error. The Union further argues that this increase will help this bargaining unit make up some ground in relationship to corrections officers in comparable surrounding counties in which this bargaining unit currently ranks second to last in both starting pay and top pay. Finally, the Union argues that the Employer has an ability to pay the proposed increase. The County has a positive general fund balance and revenues have been increasing over the past few years. The jail, unlike most other county services, earns income by housing inmates from other counties. That income is running well ahead of budgeted revenues from this source, and the Sheriff's Department has routinely been under budget. These factors when taken together indicate an ability to pay the modest increases proposed here.

Employer Position: The Employer proposes an increase of 2.5% effective January 1, 2014 and a 2.5% increase effective January 1, 2015. The Employer rejects, however, the \$1,000.00 lump sum payment recommended by the Factfinder. While O.R.C. 4419.17(G)(11) prohibits the awarding of a wage increase in the current fiscal year, the Employer should not be faulted or penalized for that fact. The ability to pay is not as positive as portrayed by the Union. The Employer has lost significant grant money, and has lost significant sources of revenue from the State of Ohio. Clearly the Employer is simply doing more with less, and the County carryover

balance has been shrinking every year. There is a limit to what the Employer can afford. While both proposals provide a 5% increase over the next two years of the Agreement, the wage proposal should not apply to those employees within the steps. The Factfinder did not address this point, and it should be assumed that the wage increase was intended to be applied as it has historically, which provides the increase only to those employees who are beyond the steps set forth in the Agreement. This affects about half of the bargaining unit. The Employer further argues that because the language in the Union's proposal as attached to its position statement refers to it being effective upon ratification, it is impermissible under Ohio law. Insofar as the \$1,000.00 lump sum payment is concerned, the Factfinder failed to consider that pursuant to Department of Labor rules, the lump sum payment must be added in to the computation of employee's hourly rate for purposes of overtime since it is not given in the first year of the contract. This will add an additional seventy-two cents per hour to employees' wages for purposes of computing overtime in perpetuity, and represents a significant expense to the Employer. In addressing the comparables when the two counties which are most comparable to the Employer are analyzed, this bargaining unit comes at the top for the top wages.

Discussion: Before discussing the selection between the parties' proposals themselves, it is necessary to address the Employer's contention that the Conciliator may not consider the Union's proposal since the language of Appendix A attached to the Union's Position Statement clearly calls for the payment of the proposed lump sum payment during the current fiscal year in violation of O.R.C, 4117.14(G)(11). Appendix A does state that the lump sum payment shall be paid in the first pay period after ratification. The Union argues that this is clearly a typographical error remaining in the document by mistake from a prior proposal, as evidenced by the fact that there is not a requirement or need for ratification after a Conciliation Report. The Conciliator is persuaded that such is the case based upon that factor as well as the fact that the Union's proposal is clearly spelled out in the body of the Position Statement. At page five of the Position Statement which sets out the proposed contractual language regarding wages, the document

provides for language to be included in Article 57(B) which states that "Employees will receive a \$1,000 lump sum payment on the first period on or after January 1, 2015." The Conciliator finds that this is the clearly intended proposal, and the proposal may therefore be appropriately considered here.

On the merits of the two proposals, although the Conciliator would like to adopt some blend of the two, this being conciliation, only one or the other can be accepted. The Employer's proposal would provide for a total wage increase of five percent solely for those employees who are beyond the contractual longevity steps over the course of the three year Agreement. Those employees within the steps would receive their step increases which amount to percentage increases ranging from 4.2 percent to 3.7 percent. The Union's proposal, on the other hand, would provide a total of five percent increases over the course of the Agreement to all employees, and would further provide a lump sum payment in the third year of the Agreement in order to compensate for the lack of an increase in the first year. While the Employer argues that the Sheriff's Department is running at a deficit in its budget in the current year to date, as the Union points out, revenues for the Department from the housing of inmates from other counties are running at substantially greater amounts than budgeted. The County's unemployment rate is below national averages, and while the Employer is surely not flush with cash, neither is there a demonstrated inability to pay. As Factfinder Zeiser noted, these employees are near the bottom in both starting and top pay when compared to surrounding counties which operate a correctional facility. Further, the Employer has reaped some savings through the ten percent agreed upon increase in the cap on insurance contributions by employees. This increase will in turn, however, erode the wages of the employees. As a result, the employees, and particularly those in the steps, who have five years or less of service, and therefore the lowest wages, could well be left with effectively no increase in wages if not afforded the percentage increases. In view of this fact, the contention that the wage increases have not been applied to employees in the steps in the past is not sufficiently persuasive in itself to deny the wage increases to employees who are still within

the steps.

The Employer contends that the Factfinder failed to consider the impact on overtime which results from the lump sum bonus. The Employer cites a Department of Labor regulation which provides that the lump sum must be calculated into the hourly rate for purposes of overtime, and would be included in that calculation in perpetuity. Because of this ongoing additional cost, the Employer argues, the lump sum should not be paid. The Employer has not provided the regulation to the Conciliator, and the Conciliator was unable to locate any such regulation. While the Conciliator understands that the lump sum would effect hourly rates for purposes of overtime in 2015, the year in which it is paid, since the sum is not added to the employee's base pay, there is simply no support for the proposition that this cost would be ongoing as argued. Its effect on overtime would be for a period of one year, and it therefore would not present a burden as onerous as argued by the Employer. While the Employer notes that the Union could have requested conciliation sooner so that SERB's issuance of an order for conciliation was issued during the past fiscal year, thus allowing for an increase during the current fiscal year, the parties were continuing to engage in mediation until the end of November, 2012. For reasons that were not explained, the Factfinding hearing did not occur until April 30, 2013. There was no evidence that this delay was the fault of either party or that either party engaged in tactics intended to delay the process. That being the case, it seems inappropriate to assume that the employees should bear the full burden of the statutory limitation.

For the foregoing reasons, the Conciliator adopts the Union's proposal regarding wages.

Article 57 shall read as follows:

A. Wages to be paid employees during the term of this Agreement are set forth in the accompanying Appendix A, which by reference thereto, is incorporated and made part of this Agreement.

B. Employees in their first 5 years of service will receive a step increase in accordance with the following: Employees who are hired in the months of January through June, will receive their first step increase in the January immediately following their date of hire. Employees who are hired in July through December, will receive their first step increase in the January immediately following their first anniversary date. After the initial step increase, employees in grades 2

through 5 will receive their step increase each year in accordance with section C of this Article. All employees will receive annual percentage increases as follows: effective January 1, 2013 - zero percent (0%) increase; effective January 1, 2014 - two and three quarter percent (2.75%) increase; effective January 1, 2015 - two and one quarter percent (2.25%) increase. All employees will receive a one thousand dollar (\$1,000.00) lump sum payment in the first pay period on or after January 1, 2015.

C. New wages will become effective on the onset of the pay period in which January 1st falls, regardless of whether the pay period begins in December of the previous year.

D. Non-Ranking Corrections Officers who are assigned by the Sheriff as shift supervisors shall receive additional compensation of fifty cents (\$.50) per hour worked. All such supervising assignments shall be made in the sole discretion of the Sheriff.

E. Corrections Officers who hold an Ohio Peace Officer's Commission shall receive additional compensation of one dollar (\$1.00) per hour worked.

Appendix A shall be amended as follows:

	Grade 1	Grade 2	Grade 3	Grade 4	Grade 5
1-1-2013	\$26,234.37	\$27,341.30	\$28,448.23	\$29,556.26	\$30,663.19
1-1-2014 (2.75%)	\$26,955.82	\$28,093.19	\$29,230.56	\$30,369.06	\$31,506.43
1-1-2015 (2.25%)	\$27,562.33	\$28,095.44	\$29,888.25	\$31,052.36	\$32,215.32

Effective January 1, 2015 employees will receive a lump sum payment in the amount of \$1,000.00.

Effective 1-1-2014

- Employees currently in grade 1 will move to new grade 1
- Employees currently in grade 2 will move to new grade 2
- Employees currently in grade 3 will move to new grade 3
- Employees currently in grade 4 will move to new grade 4
- Employees currently in grade 5 will move to new grade 5
- Employees currently in grade 6 will move from the steps.

Dated: August 28, 2013


Tobie Braverman, Conciliator

EXHIBIT A

ARTICLE 1 - PREAMBLE
ARTICLE 2 - RECOGNITION
ARTICLE 7 - LABOR MANAGEMENT MEETINGS
ARTICLE 5 - NON-DISCRIMINATION
ARTICLE 10 - PERSONNEL FILES
ARTICLE 13 - PROBATIONARY PERIODS
ARTICLE 14 - PERFORMANCE EVALUATIONS
ARTICLE 15 - SEVERANCE PAY
ARTICLE 17 - WORKERS' COMPENSATIONS
ARTICLE 18 - HEALTH AND SAFETY
ARTICLE 20 - LIFE AND HEALTH INSURANCE (in part)
ARTICLE 21 - HOURS OF WORK
ARTICLE 22 - WORK SCHEDULES
ARTICLE 23 - COMPENSATORY LEAVE
ARTICLE 24 - OVERTIME
ARTICLE 25 - SENIORITY
ARTICLE 26 - LAYOFF AND RECALL
ARTICLE 28 - PROMOTIONS
ARTICLE 29 - UNION REPRESENTATION
ARTICLE 31 - POLITICAL ACTIVITY
ARTICLE 32 - SOLICITATION AND DISTRIBUTION
ARTICLE 33 - GAMBLING
ARTICLE 34 - GARNISHMENT
ARTICLE 35 - TOOLS AND EQUIPMENT
ARTICLE 36 - TARDINESS AND ABSENCE
ARTICLE 37 - PRE-DISCIPLINARY CONFERENCE
ARTICLE 38 - DISCIPLINE
ARTICLE 39 - INTERNAL INVESTIGATIONS
ARTICLE 40 - GRIEVANCE PROCEDURE
ARTICLE 41 - UNIFORMS
ARTICLE 42 - TRAINING
ARTICLE 43 - MILITARY LEAVE
ARTICLE 45 - SICK LEAVE
ARTICLE 46 - MEDICAL LEAVE/FMLA
ARTICLE 47 - USE OF COUNTY VEHICLE
ARTICLE 48 - FUNERAL LEAVE
ARTICLE 49 - LEAVE OF ABSENCE
ARTICLE 51 - INCLEMENT WEATHER
ARTICLE 52 - VACATION
ARTICLE 53 - HOLIDAYS
ARTICLE 56 - DURATION
ARTICLE 58 - RETIREMENT
NEW ARTICLE - WORK RULES