

STATE EMPLOYMENT RELATIONS BOARD

CONCILIATOR'S AWARD

IN THE MATTER OF:

ALLEN COUNTY SHERIFF

AND

FRATERNAL ORDER OF POLICE
OHIO LABOR COUNCIL, INC.

Case Numbers: 2013-MED-02-0120; 2013-MED-02-0122

Before Conciliator: Thomas J. Nowel
September 24, 2013

PRESENTED TO:

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INTRODUCTION

Thomas J. Nowel was appointed to serve as Conciliator in the cases as captioned on the cover page by the State Employment Relations Board on July 23, 2013 in accordance with Ohio Revised Code Section 4117.14 (D) (1). Hearing was conducted on September 17, 2013 at the offices of the Allen County Sheriff's Department.

Case No. 2013-MED-02-0120 involves a wage reopener for the Support Unit at the Allen County Sheriff. Classifications in the bargaining unit include Records Clerk, Head Cook, Cook, Mechanic and Assistant Mechanic. Case No. 2013-MED-02-0122 involves a wage reopener for the Gold Unit at the Allen County Sheriff. Classifications include Sergeant and Lieutenant. While the parties engaged in negotiations, the Board of Allen County Commissioners indicated disapproval of any wage increase in 2013. This compelled the Union to invoke Fact Finding. The Fact Finder conducted a hearing pursuant to the statute and supported the Employer's position of a wage freeze in 2013. The Union rejected the Report and Recommendation of the Fact Finder, and the matter proceeded to conciliation. Initially both the Support and Gold Units were scheduled for conciliation. Nevertheless, the Support Unit is not a no-strike bargaining unit pursuant to ORC Section 4117, and the parties had not entered into a mutually agreed dispute settlement procedure (MAD), prior to hearing at conciliation, which would allow for the Support bargaining unit impasse to be heard in this forum. At hearing, the parties discussed this issue and petitioned the conciliator to hear arguments on behalf of both units and then craft a conciliator's award for Support and Gold.

Therefore, by agreement of the parties, the Conciliator will present an award for both units. The parties have agreed to accept and implement the Award as it impacts the Support Unit (2013-MED-02-0120).

The collective bargaining agreement representing the Gold Unit has a term of December 16, 2011 to December 15, 2014. The term of the Support Unit is January 1, 2011 to December 31, 2013. Both Agreements provide for a re-opener for 2013 wages. There are approximately 13 employees in the Support Unit and approximately 20 employees in the Gold Unit.

BACKGROUND

In analyzing the positions of the parties regarding the wage re-opener and then selecting one or the other final offer, the Conciliator is guided by the principles which are outlined in ORC Section 4117.14 (G) (7) (a-f).

1. The past collectively bargained agreement between the parties.
2. Comparison of the issues submitted to fact finding relative to the employees in the bargaining unit involved 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 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. Other factors, not confined to those listed above, which are normally or traditionally taken into consideration in determination of the 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.

In addition to the above guidelines, the Report and Recommendation of the Fact Finder in this matter is given consideration in the development of an Award regarding the wage re-opener for the Gold and Support Units.

Prior to the commencement of the evidentiary hearing, the Conciliator suggested that the parties attempt to resolve the dispute through mediation. They did so in good faith and explored a number of options to settle the negotiations. Nevertheless, the impasse remained unresolved, and the evidentiary hearing commenced at noon.

Those participating for the Employer were as follows:

Benjamin Albrecht, Attorney
Becky Saine, County Administrator
Diane W. French, Attorney, ACSO
Jim Everett, Chief Deputy
Cory Noonan, Allen County Commissioner

Those participating for the Union were as follows:

Ross Rader, FOP Staff Representative
Gregory B. Crites, Gold Unit
Terry L. Sneary, Gold Unit
Kerrilan S. Allen, Support Unit

POSITION OF THE SHERIFF'S OFFICE

The Employer proposes a wage freeze for both units in 2013. The Employer also recommends a re-opener for Gold Unit wages in 2014. The Employer states

that, based on county finances, the Board of County Commissioners has directed the Employer's bargaining team to propose a wage freeze in 2013. The Employer argues that the Conciliator give deference to the Report and Recommendation of the Fact Finder in this matter (Emp. Exb. 9) as the same evidence at conciliation was submitted at fact finding. The Employer argues that conciliators generally defer to the Fact Finding Report and Recommendation unless new information is brought forward at hearing or there is a substantially critical reason to arrive at a different conclusion. The Employer states that this is not the case in this matter. The Employer states the parties agreed to a \$400 lump sum payment in lieu of a wage increase for 2012 as monies were available due to a number of employees being on military leave and therefore not on the payroll. Nevertheless, the economy in Allen County has not recovered since the recession. The Employer states that the unemployment rate in Allen County is 8.1% based on July 2013 figures (Emp. Exb. 1) which is an increase from the 2011 average of 7.8% and compared to the 2005 average of 6%. The current rate of unemployment is higher than most contiguous and double contiguous counties. The County's General Fund receives most of its revenue from sales tax, and high unemployment has a negative impact on this source of revenue. Voters recently rejected a sales tax increase. The Employer states that the number of active businesses in Allen County have been on a steady decline since 2007, and 2013 reflects the lowest number of active businesses since 2000 (Emp. Exb. 1). The Sheriff's Office receives its operating revenue from the General Fund. The Employer states that the cash balance of the General Fund at the end of 2012 was \$3,958,194, but due to a 27th payroll in 2013 and other carry over

expenses, the unencumbered balance at the end of 2012 was actually \$1,391,026. The Employer states that the projected unencumbered balance at the end of 2013 will be \$1,961 (Emp. Exb. 2). The Employer argues that, based on this number, it clearly is unable to meet the wage demands of the Union. The Employer states further that the General Fund includes a \$1.267 million reserve fund which is to be used only in the event of a catastrophe. This amount represents approximately two months of payroll for county departments which rely on the General Fund. The Employer argues that it is imperative this fund not be utilized for pay increases. The Employer states that most General Fund departments have realized reductions in their individual budgets, and a number of employees were forced to take furlough days in 2011. The vast majority of Sheriff Department expenditures are personnel costs (Emp. Exb. 4). The Employer states that wages for Sergeants are generally in the middle range, not the lowest and not the highest, when compared to other counties based on population, contiguous and double contiguous (Emp. Exb. 5). The same is true for Lieutenants. Where comparable data was available for Support Unit classifications, wages in Allen County were in the middle range although, the Employer admits, wages for the department Records Clerk position was below average. The Employer points to its exhibit which illustrates the high number of wage freezes in its list of comparable Sheriff Departments in 2011, 2012, 2013 and 2014. The Employer states that Allen County ranks below the average of comparable counties in demographics such as median home value, median household income, median earnings and median per capita income. The Employer states that the Union's argument, that the 3% wage increase for deputies in 2010

disrupted the pay differential with supervisors, is not accurate. Deputies were subjected to furlough days to offset the pay increase, and a review of the differential reveals little change since the deputies' increase. Finally the Employer points to the various fact finding reports and conciliation awards over the past few years for the Allen County Sheriff in which wage freezes were universal due to economic and budget concerns. The Employer requests that the Conciliator adopt its proposal for a wage freeze in 2013 for the Gold and Support Units and a re-opener for 2014 wages for the Gold Unit.

POSITION OF THE UNION

The Union proposes a 1.5% across the board wage increase for members of the Gold Unit effective January 1, 2013. The Union proposes a 2% across the board wage increase for members of the Support Unit effective January 1, 2013. The Union proposes a re-opener for 2014 Gold Unit wages. The Union argues that the Fact Finder in this matter "missed it." The recommendation was not based on evidence presented at hearing. The Union argues, with emphasis, that an inequity exists in that the Blue Unit, Sheriff Department nonsupervisory deputies, received a 3% wage increase in 2010, and all other department employees realized a wage freeze. While members of the Blue Unit were subjected to furlough days to offset the wage increase in 2010, the base wage increase has been fully realized in 2011, 2012, 2013 and going forward. The Union states that the Board of County Commissioners rejected the same proposal for the Gold Unit. The differential between supervisors, Sergeants and Lieutenants, and deputies has been negatively impacted. The current

proposal of the Union attempts to partially close the gap. The Union states that a Fact Finder stated that the Gold Unit was entitled to a wage increase in 2010 as “the need to keep them in a proper relationship to the person they supervise is necessary.” (Union Exb. 1, pg. 11) The Union argues that the \$400.00 lump sum payment in 2012 did not close the gap between deputies and supervisors. The Union argues that the cost of its proposals for wage increases for the Gold and Support Units are minimal (Union Exb. 1, pg. 3 and 7). The Union argues that the County has the ability to fund these minimal wage increases by utilizing the Reserve Fund. The Union argues further, that while external comparables are important, most SERB neutrals view internal comparables as most relevant in the development of a recommendation or award. In this light, the Union suggests that the conciliator in the instant matter consider the 3% wage increase achieved by the Blue Unit in the development of an Award for 2013 wages. The Union states that police officers employed at the City of Lima, which is located in Allen County, received wage increases in 2010, 2011, 2012 and 2013. Lima police personnel will continue to receive across the board wage increases in 2014 and 2015 (Union Exb. 1, pgs. 13 – 18). Employees in regional sheriff departments have consistently enjoyed wage increases in 2011, 2012 and 2013. This includes Hancock, Hardin, Henry, Seneca, Shelby and Wood Counties (Union Exb. 1, pgs. 20 – 25). The Union states that employees of the Allen County Sanitary Engineer received a 2.5% wage increase for 2013. The Union argues that casino revenues, which have been distributed to Ohio counties including Allen, are available to fund its minimal wage proposals. The Union states that resources are available to finance its proposals and requests that

the Conciliator grant its proposals for 2013 wage increases for the Gold and Support Units.

DISCUSSION

The parties have made strong and relevant arguments for their respective positions, and they have agreed to a re-opener for 2014 wages for the Gold Unit. The Union's argument, that the 3% wage increase granted to the Blue Unit in 2010 has negatively impacted the differential between supervisors and deputies, is meritorious, and Fact Finder Skulina's concern regarding this issue in 2010 is so noted. This is also a morale issue. Members of the Blue Unit may have offset the impact of the wage increase with furlough days in 2010, but the Union's argument, that the increase compounds year after year, is accurate. The Union's argument, that internal comparables are often more relevant than external ones, is also accurate and one which this neutral often finds compelling. And although the 3% Blue Unit increase is the paramount argument of the Union in this case, its proposals for 2013 wage increases are minimal and reasonable. The question is one of affordability, and the Conciliator is directed by the statute to consider the Employer's ability to fund economic proposals.

The Employer argues inability to pay. The General Fund is supported primarily by the countywide sales tax. With an unemployment rate at 8.1% in July 2013, an increase from previous years, sales tax revenues are further depressed, as the Employer has argued. In good faith, the Board of County Commissioners increased the sales tax rate only to have it rejected during a citizen referendum. At

the end of 2012, the unencumbered balance in the General Fund was \$1,391,026. This is not a healthy carry over. The projected balance at the end of 2013 is \$1,961. The General Fund supports the Sheriff's Department and all other departments within the jurisdiction of the Board of County Commissioners. It is clear that the small increases proposed by the Union are unaffordable based on current projections. It is important to note that the Union does not dispute the numbers. The Union argues however that the Employer should tap the \$1.267 million reserve to fund its proposals. The Conciliator does not find this to be prudent. In the absence of a healthy General Fund carry over, the reserve fund is the only fall back upon which the Employer would rely in the case of additional loss of revenue. The Employer stated that the reserve fund is approximately 5% of the General Fund and represents two payrolls for all employees within the jurisdiction of the Board of County Commissioners. The Union argues further, and presents relevant data, that the Employer has the option of utilizing funds generated from casinos in Ohio. The Employer counters that these funds are not stable and should not be relied upon for employee wages. The Conciliator agrees. Recent media reports indicate that Ohio's casinos have realized a drop in customers and revenue. While members of the Gold and Support Units certainly are deserving of a wage increase, external comparables indicate that the wages of most bargaining unit classifications are in the mid range.

Finally, the Conciliator is persuaded by the Employer's argument, that the Fact Finder's Report and Recommendation should carry significant weight in the development of the award at conciliation. There has been little or no change in the facts, data and economic reality since the parties were engaged in the fact finding

process. The Union does not dispute the economic data presented by the Employer. There is no compelling reason to modify what the Fact Finder recommended in his Report.

AWARD

The Employer's proposal of a wage freeze for the Support Unit is hereby granted. Article 18, Section 18.1 will remain unchanged for 2013.

The Employer's proposal of a wage freeze for the Gold Unit is hereby granted. Article 18, Section 18.1 will remain unchanged for 2013.

The proposal of the Employer and Union for a wage re-opener for the Gold Unit for 2014 wages is granted. New Section 18.6 in the Gold Unit collective bargaining agreement will read as follows based upon the Memorandum of Understanding which was executed by the parties for the 2013 re-opener, and by agreement of the parties hereto.

Section 18.6 2014 Re-Opener

The parties agree to re-open negotiations concerning wages for 2014. Said negotiations will commence on or about February 15, 2014, which may be retroactive to January 1, 2014, and shall be pursuant to Ohio Revised Code Chapter 4117.

CONCLUSION

After review of the pre-hearing statements of the parties, all facts presented at hearing, all exhibits and testimony presented at hearing, and the Report and Recommendation of the Fact Finder, the Conciliator has developed the Award as contained in this report. In addition, the Conciliator has given consideration to the positions taken by each party regarding the impasse and to the criteria enumerated in Ohio Revised Code Section 4117.14 (G) (7) (a-f).

Respectfully submitted and issued at Cleveland, Ohio this 24th Day of September, 2013.

A handwritten signature in cursive script that reads "Thomas J. Nowel". The signature is written in black ink on a light-colored background.

Thomas J. Nowel
Conciliator

CERTIFICATE OF SERVICE

I hereby certify that on this 24th Day of September, 2013, a copy of the foregoing Award of the Conciliator was served by way of electronic mail upon Ross Rader, representing the Fraternal Order of Police, Ohio Labor Council, Inc.; Benjamin S. Albrecht representing the Allen County Sheriff Department; and Donald M. Collins, General Counsel, State Employment Relations Board.

A handwritten signature in cursive script that reads "Thomas J. Nowel". The signature is written in black ink on a white background.

Thomas J. Nowel
Conciliator