

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

In the matter of	*	SERB Case Nos.
	*	13-MED-10-1305
	*	13-MED-10-1306
	*	13-MED-10-1308
Conciliation between:	*	
	*	Conciliator:
	*	
Trumbull County Sheriff's Office	*	Martin R. Fitts
	*	
and	*	
	*	
Ohio Patrolmen's Benevolent Association	*	January 22, 2015
	*	
	*	
	*	

AWARD OF THE CONCILIATOR

APPEARANCES

For Trumbull County Sheriff (the Employer):
Curtis J. Ambrosy, Attorney

For the OPBA (the Union):
S. Randall Weltman, Attorney

PRELIMINARY COMMENTS

The Employer and the Union are parties to two Collective Bargaining Agreements covering the terms January 1, 2011 through December 31, 2013. The Agreements cover four (4) separate bargaining units. One of the Agreements covers three units including: Unit 1 - Commissioned Road Deputies (containing approximately 44 employees); Unit 2 - Law Enforcement Sergeants and Lieutenants (containing approximately 10 employees), and Unit 4 - Assistant Wardens (containing approximately 5 employees). Covered by the second Agreement is Unit 5 (approximately 11 employees) including Secretaries, Clerks, Cooks and Custodians.

The parties began negotiations and ultimately reached impasse with respect to Unit 1, Unit 2, and Unit 5. The parties then proceeded to Fact-finding, with a Fact-finding Hearing conducted on August 5 & 25, 2014. Fact-finder Floyd D. Weatherspoon issued his Fact-finding Report on September 26, 2014. That Report was subsequently rejected by the Sheriff.

The three bargaining units covered in this proceeding are: Unit 1 consisting of Commissioned Road Deputy Sheriffs; Unit 2 consisting of Law Enforcement Sergeants and Lieutenants; and Unit 5 consisting of Secretaries, Clerks, Cooks and Custodians.

The undersigned was appointed by SERB to serve as Conciliator on October 29, 2014. A Conciliation hearing was held on December 4, 2014 at the Trumbull County Law Library in Warren, Ohio. Both parties attended the hearing, presented written positions, and elaborated upon their respective positions. The parties agreed that the hearing would be conducted without a stenographic record.

The parties reached several tentative agreements at the hearing. The following issues were ultimately submitted for Conciliation: Compensation; Continuation of Benefits; and Injury Leave.

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.

ISSUES AND AWARD

Issue: Compensation – Article 30 (Unit 5) / Article 32 (Units 1&2)

Positions of the Parties

The Union proposal for the Deputies, Sergeants and Lieutenants called for a \$0.50/hour across the board (Units 1 & 2) raise effective January 1, 2014; an additional \$0.50/hour across the board (Units 1 & 2) raise effective January 1, 2015; and an additional \$0.25/hour across the board (Units 1 & 2) raise effective January 1, 2016. Further, the Union proposed that the Units 1 & 2 employees would be entitled to \$.25 per hour for all hours paid at the end of year 5 as a Sheriff employee; an additional \$.25 per hour for all hours paid at the end of year 7 as a Sheriff employee; and an additional \$.25 per hour for all hours paid at the end of year 10 as a Sheriff employee.

The Union proposal for the Unit 5 employees called for a \$0.50/hour across the board raise effective January 1, 2014; an additional \$0.50/hour across the board raise effective January 1, 2015; and an additional \$0.25/hour across the board raise effective January 1, 2016. Further, the Union proposed that the Unit 5 employees would be entitled to \$.25 per hour for all hours paid at the end of year 5 as a Sheriff employee; an additional \$.25 per hour for all hours paid at the end of year 7 as a Sheriff employee; and an additional \$.25 per hour for all hours paid at the end of year 10 as a Sheriff employee.

Lastly, the Union proposed that Deputies, Sergeants and Lieutenants (Units 1 & 2) be provided hazardous duty pay of \$0.65 per hour effective January 1, 2014.

The Employer proposal for Unit 5 called for a \$0.40 per hour increase for the Receptionist/Clerk position and \$0.45 per hour increase for all other positions effective January 1, 2014; an additional \$0.45 per hour increase for all positions effective January

1, 2015; and an additional \$0.25 per hour increase for all positions effective January 1, 2016. The Employer also proposed that starting January 1, 2016, a "step" of \$0.25 at the end of the 5th year of service would be added to the then existing starting rate. Further, after seven (7) full years of employment in Unit 5, the employees would receive an additional \$0.25 per hour increase to the employee's base wage rate. After ten (10) full years of employment in Unit 5, the employees would receive an additional \$0.25 per hour increase to the employee's base wage rate. Beginning January 1, 2016, after five (5) full years of employment in Unit 5, the employee would receive a "step" increase of \$0.25 per hour to the base rate.

The Employer proposal for Units 1 & 2 called for the hourly rate for starting pay, and pay after one and after two years service to remain unchanged. It generally called for \$0.45 per hour wage increase effective January 1, 2014; an additional \$0.45 per hour wage increase effective January 1, 2015; and an additional \$0.25 wage increase effective January 1, 2016. The Employer proposed that after seven (7) full years of employment in Units 1 and 2, the employee shall receive an additional \$0.25 per hour increase to the employee's base wage rate. After ten (10) full years of employment in Units 1 and 2 the employee shall receive an additional \$0.25 per hour increase to the employee's base wage rate. These steps commence as of January 1, 2014, and do not apply retroactively (i.e., no back pay for years prior to 2014 even though year seven (7) or ten (10) were completed prior to 2014. Beginning January 1, 2016, after five (5) full years of employment in Units 1 and 2, the employee shall receive an additional \$0.25.

Lastly, the Employer proposed that the Hazardous Duty pay provision in the current agreement be kept at current contract language.

Discussion

The parties' respective proposals for wage increases were not very far apart, with an approximate difference of \$0.05 per hour in wage increases between them in years one and two. While the Union's proposed essentially an across the board increase, the

Employer's proposal contained variances for employees with less than three years of service, and some other variances.

The most significant difference in the compensation proposals was the Union's inclusion of a provision for Deputies, Sergeants and Lieutenants in Units 1 & 2 to receive \$0.65 per hour in Hazardous Duty pay as opposed to the current provision for \$0.40 per hour.

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. The Fact-Finder recommended a \$.50 an hour wage increase for 2014 and 2015 and a \$.25 an hour increase for 2016. The Fact-Finder also recommended a \$.25 an hour "step" at the end of year 5 and an additional \$.25 an hour "step" at the end of year 7 and an additional \$.25 an hour "step" at the end of year 10 for all job titles within Unit 5 and/or all members of Units 1 & 2. Stating that it was based on the County's ability to pay, the Fact-Finder did not recommend \$.25/hr. hazardous duty pay for the unified personnel. The Fact-Finder also stated that he attempted to recommend portions of both parties' proposals.

In the Conciliation proceeding the Union's proposals for wages generally followed the Recommendations of the Fact-finder Weatherspoon. However, the proposal deviated from the Recommendations in that the proposal includes an increase in Hazardous Duty pay that was rejected by the Fact-finder.

There was considerable testimony and evidence provided by the Employer and the Union as to the financial condition of Trumbull County. The parties stated that much of the financial information had also been presented at the Fact-finding hearing. There is no reason to re-state all of that in this Award. However, what is important to note here is that the County's reserve fund has been decreasing for several years, and is now below the GFOA recommended levels.

Certainly the Union was correct to point out some evidence of future economic growth. However, the Conciliator agrees with Fact-finder Weatherspoon when he states in his

Report that he “cannot base the County’s ability to pay on unrealized future economic possibilities, no matter how great the potential.”

The Employer’s wage proposals were clearly crafted with the County’s financial condition in mind. That being said, the Employer proposed wage increases at nearly the same levels as the Union proposed. Further, it is noteworthy that the Sheriff testified that he has attempted to maintain current staffing levels, and expressed his concern that the Union’s wage proposals would likely result in his needing to lay off some employees in order to stay within his authorized budget.

Award

Based on the above, the Conciliator believes that the Employer’s proposal is fair to the bargaining unit employees, and fair to the taxpaying public.

Therefore, the Conciliator awards the Employer’s proposal, such that the contracts should read as follows:

(For Unit 5)

ARTICLE XXX COMPENSATION

30.1 Effective January 1, 2014, employees shall be compensated at the rates set forth below, effective January 1 of each year:

	<u>Hourly Rate</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>
Receptionist/Clerk		\$10.59	\$10.99	\$11.24
Clerk		\$15.01	\$15.46	\$15.71
Cook (2)		\$13.50	\$13.95	\$14.20
Kitchen Supervisor		\$16.23	\$16.68	\$16.93
Custodian		\$15.01	\$15.46	\$15.71
Civil Process		\$15.91	\$16.46	\$16.71
Records Clerk		\$15.01	\$15.46	\$15.71
Civil Coordinator		\$19.44	\$19.89	\$20.14
Accts.Pay/Commissary		\$19.44	\$19.89	\$20.14
ID/Warrants		\$19.44	\$19.89	\$20.14
ID/Warrants/CCW		\$19.44	\$19.89	\$20.14
Civil Clerk		\$15.92	\$16.37	\$16.62

Employees hired after the execution of this Agreement shall start at eighty (80%) percent of the applicable "starting rate". After one (1) year, the employee shall be compensated at eighty-five (85%) percent of the applicable "starting rate". After two (2) years, the employee shall be compensated at ninety (90%) percent of the applicable "starting rate". After three (3) years of employment, the employee shall be compensated at ninety-five (95%) percent of the applicable "starting rate". After four (4) years of employment, the employee shall be compensated at one hundred (100%) percent of the applicable "starting rate". Starting January 1, 2016, a "step" of \$0.25 at the end of the 5th year of service will be added to the then existing starting rate.

- 30.2 After seven (7) full years of employment in Unit 5, the employee shall receive an additional \$0.25 per hour increase to the employee's base wage rate. After ten (10) full years of employment in Unit 5, the employee shall receive an additional \$0.25 per hour increase to the employee's base wage rate. Beginning January 1, 2016, after five (5) full years of employment in Unit 5, the employee shall receive a "step" increase of \$0.25 per hour to the base rate.

(For Units 1 & 2)

ARTICLE XXXII COMPENSATION-DEPUTIES, SERGEANTS,
LIEUTENANTS

- 32.01 Effective January 1, 2014, employees shall be compensated as follows:

<u>Length of Service in Grade</u>	<u>Hourly Rate</u>
Sergeants	\$24.15
Deputy	
Start	\$16.83
After one (1) year	\$17.67
After two (2) years	\$18.49
After three (3) years	\$20.28
After four (4) years	\$21.06
After seven (7) years	\$21.31
After ten (10) years	\$21.56
Lieutenant	\$27.08

- 32.02 Effective January 1, 2015, employees shall be compensated as follows:

<u>Length of Service in Grade</u>	<u>Hourly Rate</u>
Sergeants	\$24.65

Deputy	
Start	\$16.83
After one (1) year	\$17.67
After two (2) years	\$18.49
After three (3) years	\$20.73
After four (4) years	\$21.51
After seven (7) years	\$21.76
After ten (10) years	\$22.01
Lieutenant	\$27.61

32.03 Effective January 1, 2016, employees shall be compensated as follows:

<u>Length of Service in Grade</u>	<u>Hourly Rate</u>
Sergeants	\$25.21
Deputy	
Start	\$16.83
After one (1) year	\$17.67
After two (2) years	\$18.49
After three (3) years	\$20.98
After four (4) years	\$21.76
After five (5) years	\$22.01
After seven (7) years	\$22.26
After ten (10) years	\$22.51
Lieutenant	\$28.24

32.03B After seven (7) full years of employment in Units 1 and 2, the employee shall receive an additional \$0.25 per hour increase to the employee's base wage rate. After ten (10) full years of employment in Units 1 and 2 the employee shall receive an additional \$0.25 per hour increase to the employee's base wage rate. These steps commence as of January 1, 2014, and do not apply retroactively (i.e., no back pay for years prior to 2014 even though year seven (7) or ten (10) were completed prior to 2014. Beginning January 1, 2016, after five (5) full years of employment in Units 1 and 2, the employee shall receive an additional \$0.25.

32.04 Current Contract Language

32.05 Current Contract Language

32.06 (Strike Entire Paragraph and re-number Current Section 32.07 as 32.06)

32.07 Current Contract Language but re-number as 32.06

Issue: Continuation of Benefits – Article 28 (Unit 5) / Article 29 (Units 1&2)

Positions of the Parties

The Employer proposed that Section 28.01/29.01 part C be amended by including a 180 day time limit for eligibility for continuation of benefits when an employee sustains an on-the-job injury and is approved for total temporary disability benefits through Ohio Worker's Compensation.

Under this proposal the retention of coverage would terminate upon an employee being approved for disability through the Public Employees Retirement System, upon being removed from Total Temporary Disability Benefits and/or status, upon expiration of the 180th day of injury leave or upon obtaining other employment whichever occurs earlier.

The Union proposed the retention of current contract language, which contains no time limits.

Discussion

The Employer presented evidence that the County has other labor agreements that contain the 180-day limits, and noted that the County's contract with AFSCME recently reduced the time limit to 6 months from the previous limit of one year. The Employer also provided evidence that four Mahoning County labor agreements contain limits of 90 days for continuation of benefits.

The Employer acknowledged that this situation has only occurred once, and that the individual has legitimately been off work for 17 months. The Union argued that this single occurrence showed little evidence of need. The Employer countered that this 180-day limitation would provide an incentive for a return to work.

As noted earlier in this Award, 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 fact-finding the Employer proposed a 150-day limitation rather than the 180-day time limit of its proposal in the instant proceeding. The Fact-finder found “no evidence that the County has suffered a burden.” He recommended the retention of current contract language.

There was no evidence or testimony that employees have been malingering on workers comp leave rather than returning to work. In fact, the Employer’s own witness, Major Harold Firster (a former physician) testified that “everything heals in six months.” This would lend credence to the Union’s contention that this change is unnecessary, especially as it is reasonable to assume that the Bureau of Workers Compensation has its own processes in place to get injured workers off temporary total disability and to encourage a swift return to work.

Award

Based on the above, the Conciliator believes that there was no sufficient or compelling evidence that would warrant a different conclusion than was reached by the Fact-finder in this matter.

Therefore, the Conciliator awards the Union’s proposal for the retention of current contract language for Article 28 (Unit 5) / Article 29 (Units 1&2).

Issue: Injury Leave – Article 33 (Unit 5 / Article 36 (Units 1&2))

Positions of the Parties

The Employer proposed that a new provision, proposed to be Sections 33.05 (Unit 5) and Section 36.05 (Units 1&2), be added to the Injury Leave article.

Specifically, the Employer proposed that after 180 days of a service related injury leave, participation in the Employer's group health insurance would be pursuant to COBRA. This Section would apply only to an employee who has been recognized as eligible to participate in the State of Ohio Bureau of Worker's Compensation Fund and such participation continues beyond 180 days.

The Union proposed the retention of current contract language, which does not provide for any time limits.

Discussion

The Employer presented similar arguments to those above for its proposal for the Continuation of Benefits article.

Again, 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 fact-finding the Employer proposed a 150-day limitation rather than the 180-day time limit of its proposal in the instant proceeding. The Fact-finder determined that there were “insufficient reasons to recommend the County’s proposal” and therefore recommended the Union’s proposal in Fact-finding for the retention of current contract language.

Award

Based on the above, and consistent with the award for the Continuation of Benefits article above, the Conciliator believes that the Employer's proposal lacks sufficient compelling evidence.

Therefore, the Conciliator awards the Union's proposal for the retention of current contract language for Article 33 (Unit 5) / Article 36 (Units 1&2).

The above represents in total my Award in this matter.



Martin R. Fitts, Conciliator
January 22, 2015

Certificate of Service

I hereby certify that an exact copy of this Conciliation Award was transmitted this day by email to S. Randall Weltman, Attorney for OPBA (srwelt@sbcglobal.net), Curtis J. Ambrosy, Attorney for Trumbull County Sheriff (af44481@aol.com), and the State Employment Relations Board (MED@serb.state.oh.us).



Martin R. Fitts, Conciliator
January 22, 2015