STATE EMPLOYMENT RELATIONS BOARD
CONCILIATION PROCEEDINGS

In the Matter of the Conciliation between:

Crawford County Sheriff's Office	:	Case Nos. 13- MED-10-1459, 1460, 1461
and	:	Award
Fraternal Order of Police Ohio Labor Council, Inc.	:	Margaret Nancy Johnson Conciliator

Statement of the Case

This matter came on for hearing on September 9, 2014, in a conference room at the Office of the Sheriff, hereinafter "Sheriff" or "Employer," in Bucyrus, Ohio. While the Crawford County Sheriff is an independently elected official, County Commissioners "authorize expenditures as well as serve as the budget and taxing authority" for the Sheriff (See Sheriff Exhibit 5, Crawford County, Ohio Financial Forecast). Thus, the County Commissioners are responsible for establishing the Sheriff's budget and appropriating funds needed for fulfilling the duties of the Office.

Located in north-central Ohio, the County is primarily agricultural. As of 2012, the median household income was $41,228. Since 1970, the population of Crawford County has been steadily declining. From 2010 through 2012, however, per capita personal income has risen from just under $30,000 to $33,109 (See Sheriff Exhibit 3, Crawford County Ohio Profile).

The Sheriff provides law enforcement services throughout the County including but not limited to police operations and traffic control, dispatching of emergency personnel, security for the jail and County Courthouse. These functions are performed by employees within three bargaining units: approximately nine (9) Dispatchers, fifteen (15) Road Patrol Deputies, twenty-nine (29) Corrections Deputies, and seven (7) ranked officers in the classifications of Sergeant and Captain/Lieutenants.

The three bargaining units are represented by the Fraternal Order of Police, Ohio Labor Council, Inc., hereinafter "FOP" or "Union." For the purpose of collective bargaining with the Sheriff, these units have been consolidated and are parties to a single labor contract with the Sheriff. A wage re-opener for the final year of the contract is included within the January 1, 2012 through December 31, 2014 Agreement.

Unable to negotiate a wage increase for the final year, the parties engaged in fact-finding on April 29, 2014, before Felicia Bernadini, whose report and recommendation were issued on May 13, 2014. As the FOP rejected the recommendation set forth therein, on June 10, 2014, the State Employment Relations Board, hereinafter "SERB," appointed Margaret Nancy Johnson to serve as Conciliator pursuant to the statutory authority set forth in Ohio Revised Code

Section 4117.14(D)(1). Prior to the hearing, the parties submitted Positions Statements setting forth respective positions on a wage increase to be retroactive to January 1, 2014.

The case for the FOP was argued by Ross Rader, FOP Representative. Edward Kim, Partner with the Columbus, Ohio, law firm of Fishel, Hass, Kim and Albrecht, represented the Office of the Sheriff. Both parties had the opportunity to make opening statements, to examine and cross-examine witnesses under oath, and to introduce into the record documentary evidence supportive of relative positions. All procedural prerequisites to this conciliation have been met, including a waiver of an official transcript and agreement to the record maintained by the Conciliator.

Issue

The sole issue before the Conciliator is the wage increase to be awarded to the bargaining units for the final year of the 2012-2014 Agreement as set forth in Article 41, Compensation.

Position of the Parties

FOP

The final offer of the FOP on the disputed wage increase is a **3 %** across the board increase for each bargaining unit, effective January 1, 2014. While the FOP challenges the financial contentions of the Sheriff, its principal argument is that the members of this bargaining unit are significantly underpaid considering wages of comparable units in similar jurisdictions. In the presentation of its case, the FOP has pointed out that not only are the units paid less, but unit members pay a higher percentage (23%) of their health insurance than counterparts in adjacent counties. In addition to the external comparability argument, the FOP cites a 10% wage increase granted to select administrative staff performing non safety services within the County. The FOP asserts the external disparity and internal inequity must be addressed.

Sheriff

The Sheriff proposes a **1.85%** increase effective January 1, 2014. This is the same increase offered at fact-finding and recommended by the fact-finder. In support of its position, the Sheriff cites economic and demographic data from within the county as well as comparative data from other counties and from the Wage Settlement Report issued by SERB. Financially, the Sheriff relies upon an argument of stable revenues with increasing expenditures. For the last eight (8) years, expenditures with transfers out have exceeded revenues and, the Sheriff argues, this trend is anticipated to continue at least through 2016 at which time the carry-over balance in the General Fund will be a deficit. Considering the economic position of the County and its funding sources, the Sheriff asserts its 1.85% is justified.

Discussion

Statutory Criteria

With the current contract expiring on December 31, 2014, the parties in this matter are soon to begin negotiations for a successor Agreement. As in the report and recommendations issued by the fact-finder on May 13, 2014, the up-coming contract negotiations have had an influence upon this conciliation decision. Analysis of evidence that follows—much of which will be used in subsequent bargaining-- is intended to apply statutory criteria to the current impasse involving a wage increase for 2014, recognizing the parties will shortly be engaging in further wage negotiations for a three year agreement.

Criteria to be considered in conciliation is the same as in fact-finding, to-wit: the factors outlined in Ohio Revised Code Section 4117.14(G)(7). Though not binding in any way upon a conciliator, deference to the analysis of the fact-finder has evolved in SERB proceedings as a "traditional factor," cited by conciliators as justification for awards issued under SERB jurisdiction. While this conciliator may view the demographic and economic data submitted by the parties differently than the fact-finder, she concurs with her observation that "there are certainly better opportunities than in an end-of-contract wage reopener" for undertaking "an equity adjustment" (Fact-finder's Report, p. 8).

In this conciliation proceeding, choice must be made between the respective positions of the parties taking into account the context in which these final offers arise—conciliation involving a wage re-opener. Parties negotiate a wage reopener for the final year of a three year contract because of economic uncertainty, an inability to ascertain future financial conditions. Their agreement, therefore, is to wait and see what transpires in the region economically. Although statutory criteria, such as comparability, is certainly to be considered in wage re-openers and will be further discussed, still, the principal consideration to be addressed in wage re-openers is the current fiscal climate rather than correcting a wage disparity which had been in place at the time the parties engaged in collective bargaining for the three year contract.

Demographic and Geographic Considerations

In analyzing fiscal ability the Sheriff has cited the demographic composition of the County. In its prehearing statement, the Sheriff expressed concern that "the County does not compare well with [six] contiguous counties on key factors that will impact its recovery," (Pre-hearing statement, p. 6). To sustain this assertion, the Sheriff submits that of the six counties, Crawford County has the third lowest per capita income, second lowest median home value, the second largest population living below the poverty level. Additionally, the Sheriff cites unemployment in excess of national and state rates. "Most problematic," the Sheriff documents an anticipated population decline of 6.6% by 2020 (See Pre-hearing Statement, p. 6,7 and Sheriff Exhibit 3, including Ohio County Profiles, Office of Policy, Research and Strategic Planning, and Projected Percent Population Change 2010-2020, Ohio Development Services Agency).

While it behooves the County to consider future developments, the issue in review is a wage reopener for the current year. Moreover, regardless of income or population decline, the residents of Crawford County require the services rendered by the Office of the Sheriff, and employees within that Department must be appropriately compensated for the vital service provided. Indeed, the population of neighboring Wyandot County is smaller than that of Crawford, has a per capita income only slightly higher, and yet, the safety employees in the Office of the Wyandot Sheriff receive substantially more in wages at both the starting and top pay levels in all classifications of service.

In its pre-hearing statement, the Office of the Sheriff posits "the problem with the financial situation in Crawford County is not just the current problem but when there will be a turnaround" (Sheriff Position Statement, p. 6). Yet, much has transpired in the five years since 2009, an extraordinary and transformative year for national and local economies. The conciliator finds that while the unemployment rate in Crawford County remains high measured by both federal and state percentages , it has declined from 14.5% in 2009 to 8.8% in 2013 (See Sheriff Exhibit 3, Ohio County Profiles, Office of Policy, Research and Strategic Planning).

The Sheriff also argues that "*in 2009*, property values in Crawford County decreased by .19%" (Sheriff Position Statement, p. 7). When evaluating evidence presented, a neutral does not view the jurisdiction in a vacuum but assesses the probative worth of an argument in light of current trends. Thus, this conciliator cannot give the 2009 property decline much weight when 80% of County land is used for agricultural purposes (See Sheriff Exhibit 3) and *since 2009*, average value per acre of cropland in Ohio is up 46%.

One of the statutory criteria to be considered in conciliation is "the interests and welfare of the public." The residents of Crawford County, regardless of number, wealth, or public dependence, deserve law enforcement personnel who are adequately compensated for services rendered. Although public safety is an obligation, not an option, the problematic question is how to pay for this essential service.

Ability to Pay Analysis

As stated above, the reason for an agreement to engage in a wage re-opener for 2014 was fiscal uncertainty in the County. In the evidence submitted, the County argues that although income is stable, its expenditures continue to outpace revenue. The Office of the Sheriff has three (3) major funding sources: the County General Fund, a Jail Operating Levy Fund, and a Criminal Justice Levy Fund. Additional funds and departmental revenue are described by the Auditor in the Financial Forecast dated December 20, 2013 (See Employer Exhibit 5). In analyzing the economic evidence and fiscal implications, the three principal revenue sources are individually discussed.

a) <u>General Fund</u>

Citing stagnant revenues and increasing expenditures, the County projects a deficit of $578,955 in the carry-over fund balance by the year 2016 (Sheriff Pre-hearing Statement, p. 5, Sheriff Exhibit 5, and Sheriff Exhibit 6, Summary of General Fund Revenue and Expenditures). As noted by the fact-finder, "revenue forecasts for 2014-2016 are conservative" (Fact-finder Report, p. 7). While actual data from fiscal year 2014 was not available at conciliation, financial figures from 2013 are the actual numbers and not estimates, indicating that as to revenue, the Sheriff was, indeed, conservative.

In a January 27, 2014 Quarterly Newsletter, the County Auditor states, "The cash balance of the General Fund at December 31, 2013 was $5,043,194.38 as compared to $3,958,619.82 at December 31, 2012," higher than anticipated (Sheriff Exhibit 4). In a chart describing the 2013 General Fund Budget versus Actual Revenues, the increase in income over estimated revenue is documented. While property taxes remained unchanged from the estimates based on the prior year, in 2013 sales taxes, charges for services, licenses and permits, intergovernmental funds, other sources of income, even revenue from interest *all* exceeded the budgeted figure. Actual revenue was $8,911,950 as compared to the estimated amount of $8,715,616, a positive difference of almost $200,000. Even so, actual revenue in 2013 was $86,755.72 less than in 2012.

Moreover, while operating expenditures were less than appropriated, still, operating expenditures for 2013 exceeded expenditures for 2012. In the January, 2014 Newsletter, the Auditor states on page 2 that "for 2013 revenues exceeded operating expenditures by $932,558.*15 as compared to $1,120,237.61 for the same time period last year"* (See Sheriff Exhibit 4, emphasis added). Clearly, costs must be contained.

In the July 23, 2014 Quarterly Newsletter, the Auditor advises County constituents that the cash balance in the General Fund as of June 30, 2014, is $282,773.50 greater than at the same time in 2013. Still, operating expenditures for first quarter of 2014 exceeded expenditures for the same time period in 2013 by $1,165,177.94 (Sheriff Exhibit 14). Furthermore, for the first six months of 2014, operating expenditures exceeded operating revenue by $1,140,823.87 (Ibid).

Financial evidence confirms that revenue is not keeping up with costs. Given the documented evidence that for 2013 and into 2014 disbursements exceed receipts in the General Operating Fund of the County, the wage proposal submitted by the Sheriff for the wage reopener for 2014 more accurately reflects economic realities at this time.

b) <u>Jail Operating Levy Fund</u>

Used exclusively for the operation of the County Jail, the Jail Operating Levy Fund consists of a one-half of one percent tax on retail sales and charges for services such as housing of prisoners and work release fees. This sales tax expires in 2019. Revenue received from the Fund is not sufficient to cover the expenditures required to manage the Jail, and transfers from the General Operating Fund make up the shortfall.

As with the General Fund, the conciliator notes that while revenue to the Jail Operating Fund increased in 2012 and some additional increase is anticipated, those increases are insufficient to keep up with rising expenditures. Consequently, cash balances in the Jail Operating Fund are being depleted. On a positive note, the conciliator observes that actual transfers in 2012, and estimated transfers in 2013 from the General Fund to the Jail Operating Fund are actually less than in 2010 and 2011 (See Sheriff Exhibits 5 and 7). Nonetheless, it may be anticipated that the County will be required to continue to advance monies from the General Fund to the Jail Fund in order to maintain operations.

c. <u>Criminal Justice Levy</u>

A third major source of revenue for the Sheriff is the Criminal Justice Levy Fund, a five year county wide property tax passed by the voters starting in calendar year 2011. Revenue from this levy is used to support road patrol (Sheriff's Position Statement, p. 6) and criminal justice services (Sheriff Exhibit 5, p. 54). This levy expires in 2016 in the midst of a new contract between the parties, and testimony at the hearing indicates intent to place the levy once again before the voters. A campaign for passage of this levy provides an opportunity for the Union and the Sheriff to work together for a mutually beneficial outcome.

While the fact-finder alludes to "repeated defeat of various levies by voters," (Fact-finding Report, p. 7), nothing in evidence before the conciliator pertaining to Crawford County warrants this conclusion. Moreover, even though the Sheriff suggests the passage was a close vote (Sheriff Exhibit 11), the conciliator finds 53% of the voting public indicated support for the levy in 2010, a time of high anti-tax (*anti-government*!) sentiment, indicating that enthusiastic, prevalent, and articulate arguments are persuasive with voters—and that voters support law enforcement. Certainly, the outcome of a levy is never guaranteed, but just as the fact-finder encouraged vigorous bargaining for the successor agreement, the parties should also engage in a well-structured and coordinated mid-contract campaign for passage of the levy

On the issue of County finances, the FOP contends that the transfers out of the General Fund to cover deficits in both the Criminal Justice and Jail Operating Fund are "what the County is supposed to do" and that is "what the General Operating Fund is for." Although the conciliator agrees that transfers out to cover expenditures is, indeed, a function of the General Operating Fund, what is disconcerting is that, consistently, disbursements from the three funds exceed revenue. Until revenue increases more routinely, expenditures must be contained. The 1.85% wage increase offered by the Sheriff is more in line with a demonstrated need to control costs.

Comparability

Comparability is always a challenging criterion to analyze, with parties at impasse presenting differing jurisdictions deemed to be "comparable." Rather than a simple numerical computation, geographic and demographic differences as well as the varying negotiated components of a labor contract should be considered. Moreover, as observed by the fact-finder, the give and take of negotiations and the bargaining histories of comparable jurisdictions are often undisclosed or unknown.

On comparability, the Sheriff deems the population of the County to be the standard by which a comparison should be made. Accordingly, the Sheriff submits data from SERB Reports on the entry and top levels of pay for each of the three units in counties having populations between 30,000 and 65,000 (See Sheriff Exhibits 8, 9, and 10). This evidence sets forth entry and top levels of pay in thirty (30) counties having Deputies, twenty-seven (27) counties having Sergeants, and twenty four (24) counties having Dispatchers.

Comparative charts submitted by the FOP uses five contiguous counties: Marion, Morrow, Richland, Seneca and Wyandot. Using average start and top pay of classifications in each unit within the five counties as a comparison, the FOP identifies significant wage disparities in each unit and level of pay. Additionally, as the Crawford County units often interact with safety personnel from other jurisdictions within the County, the FOP charts average start and top pay of several law enforcement units within Crawford County. As a final comparative statistic, the FOP cites statewide averages in starting and top pay for County Dispatchers, Deputies, and Sergeants, Captains, and Lieutenants, comparing each to the rate of pay for the Crawford County counterpart, and contending that the rate of pay for these employees is below the state average.

As to the Union's data, the Sheriff argues it is inappropriate to liken the Office of the Sheriff to state or city law enforcement departments within the county since funding for those patrol and police units is so different. Additionally, the Sheriff cites SERB's wage settlements by jurisdiction, region and unit (Sheriff Exhibit 13), indicating that its 1.85% offer is closer to state-wide settlements, both jurisdictionally and by unit type. Furthermore, the Sheriff contends that the 5.5% increase in the County for top pay in each classification between 2010 and 2014, is, in fact, quite comparable to the pay increases in those jurisdictions relied upon by the FOP (See Sheriff Exhibit 12). Finally, the Sheriff suggests that using averages which include a more populous County, such as Richland, distorts comparative data.

Before analyzing the data, the conciliator addresses the very different approaches to comparability taken by the parties. Because of different income sources and available funding, comparisons are generally made between comparable units in the same type of jurisdiction. Although the conciliator understands the FOP contention that the Crawford County law enforcement officers often work hand-in-hand with law enforcement personnel from agencies within the County, still the differing "lawful authority" of the employers has an impact upon wages negotiated in those jurisdictions.

The conciliator also concurs with the Sheriff that in comparing counties, population is a factor to be considered. Yet, except for Richland County, the counties cited by the FOP are, indeed, very similar to Crawford County in terms of population as well as geographic location. Three counties are larger and two are smaller. Moreover, two of the comparables cited by the FOP—Seneca and Morrow—are among those also used by the Sheriff.

In considering comparability as a criterion, a neutral will most generally focus on a few select jurisdictions within the same geographic area, the reason being a commonality in revenue sources, property values, demography, retail and commercial activity. Given differing socio-economic as well as geographic factors within counties, a large number of comparables across the state not only is difficult to analyze but also tends to obscure data. Counties located in southeastern Ohio are quite different from those of north-central Ohio. Pertinent information is more readily apparent in a smaller sampling based on population as well as location.

FOP evidence on wage disparity is quite compelling. Yet, averages can, as the Sheriff pointed out, skew data. For example, the FOP argues that the starting pay for Crawford County Dispatchers is 5.9% less than the average start pay for Dispatchers in comparable counties. Except for two of the five comparable jurisdictions, entry level Dispatchers in Crawford County are actually paid more than their counterparts. The FOP contends, too, the difference between the average top pay for Dispatchers is 12.75%. Again, top level of pay for Crawford Dispatchers is between two counties paying less and three counties paying more.

In terms of pay for the classifications of Deputy and above, however, the ranking of the Crawford Sheriff among comparable jurisdictions shifts downward. Of the five comparable jurisdictions, only Morrow County is below Crawford in both the entry and top levels of pay for Deputies. The top level pay for a Deputy in Crawford County is **$4,617** less than the next lowest paid comparable (Seneca County).

Above the rank of Deputy, the wage disparity increases with Crawford County Officers being the lowest paid of all comparable jurisdictions by significant differences. Excluding Morrow County, top level pay for a Crawford County Sergeant is **$5,637** less than the next lowest paid comparable (Wyandot). As to Captains and Lieutenants, excluding Richland County having the highest paid officer, the top paid Lieutenant is in Marion County, earning **$20,288** more than the top paid Captain in Crawford County.

To be sure, the comparables cited by the Sheriff temper these statistics. Even so, evidence submitted by the Sheriff indicates that of the twenty-four jurisdictions listed, Crawford ranks in the lower half in terms of wages paid to Dispatchers; in terms of top pay for Sergeants, Crawford County ranks forth from the bottom; of the 30 counties listed by the Sheriff for Deputies, only five are below Crawford County in terms of wages paid to Deputies. Even using the Sheriff's data, across the state Crawford County ranks close to the bottom in terms of compensation paid to its law enforcement officers.

Problematic as the external comparables may be, the 10% wage increase granted by the County to selective non-unionized clerical staff is troubling. The Conciliator understands that the aggregate sum of these increases is substantially less than any wage increase for an entire bargaining unit with which the County must negotiate. Even so, when Captain Baldosser testified that the increase was like a "slap in the face," the Conciliator felt his pain! At the very least, such an increase undermines the assumptions stated in the Auditor's forecast regarding a uniform 1.85% increase budgeted for all personnel.

Moreover, the FOP provided testimony that some County clerical workers receive more in pay than men and women in safety units. Not only do members of these units daily put their lives at risk but they also engage in life saving missions throughout the County. While a wage re-opener is not the appropriate time to do so, the Conciliator notes an internal wage disparity which must be addressed.

Perhaps most persuasive, though, in terms of the appropriate wage increase for this wage reopener are the average percentage increases currently negotiated by public employers and unions. The Union seeks a 3% wage increase in the 2014 wage. In every jurisdiction and unit type across the state, the last time 3% was an average rate increase in any contract year was 2008 (See Sheriff Exhibit 13, SERB Wage Settlement Breakdown). In 2013, the highest average wage increase was 1.90% in southeast Ohio. Specific average increases in 2013 by region, jurisdiction and unit type are: Toledo (1.39%); County (1.81%); and Police (1.66%).

In its evidence the Sheriff contends that since 2010, the units have received a 5.5% increase, comparing favorably with average increases in neighboring jurisdictions in that time span. For Dispatchers, without bargaining history to explain the disproportionately high and low adjustments made in Wyandot and Marion respectively, the average increases in the four (4) year period has limited relevance. But, for Sergeants and Deputies in neighboring counties, the evidence indicates that, indeed, the percentage annual wage increase since 2010 in neighboring jurisdictions more closely follows SERB data and the last offer of the Sheriff than does the FOP final position.

Concurring with the fact-finder, the Conciliator finds an adjustment to the pay disparity apparent in the evidence is best addressed through negotiation for a three year contract. Although the conciliator notes that these units are paying considerably more for health insurance than counterparts, there are other benefits by which to improve income for bargaining unit members, from lump sum payments to adjustments in steps or other service based incentives. In addition to an appropriate percentage increase in wages, these types of benefits should be explored in collective bargaining.

Conclusions

The issue before the conciliator is which offer best satisfies statutory criteria for a 2014 wage reopener. Evidence is conclusive that these units deserve more than the 1.85% offered by the Sheriff, but fiscal realities do not justify the 3% sought by the Union. Absence of a sustained growth in revenue requires caution with expenditures. The 1.85% offer by the Sheriff is more consistent with County finances than the 3% sought by the FOP. Accordingly, the Conciliator awards the position of the Sheriff for the 2014 wage reopener, a 1.85% wage increase effective January 1, 2014.

Award

The Position of the Sheriff, a 1.85% wage increase effective January 1, 2014, for all positions and Steps, is awarded.

Respectfully submitted,

/s/ Margaret Nancy Johnson
Conciliator

Dated and issued this 25th day of September, 2014.

Service

A copy of this Award has been electronically issued this 25th day of September, 2014 to: Fraternal Order of Police, rossrader@columbus.rr.com; Crawford County Sheriff, ekim@fishelhass.com; and State Employment Relations Board, med@serb.state.oh.us.