CONCILIATION DECISION

STATE EMPLOYMENT RELATIONS BOARD

STATE OF OHIO

October 3, 2014

In the Matter of:

Hamilton County Sheriff's Office	)	
	)	
and	)	Case No. 13-MED-11-1537
	)	Corrections Supervisors
Hamilton County Deputy Sheriff's	)	
Supervisors Association	)	

APPEARANCES

For the Employer:

Brett Geary, Consultant to Management
David Helm, Hamilton County Human Resources
Keith Clepper, Sheriff's Office

For the Union:

Steve Lazarus, Attorney
Ross Gillingham, Attorney
John Magee, Bargaining Unit Representative
John Murray, Bargaining Unit Representative
Steve Toelke, Bargaining Unit Representative

Conciliator:

Nels E. Nelson

BACKGROUND

The instant dispute involves the Hamilton County Sheriff's Office and the Hamilton County Deputy Sheriff's Supervisors Association. The employer operates a jail which houses approximately 1400 individuals. The union represents approximately 30 Corrections Sergeants, Lieutenants, and Captains.

The parties' 2011 collective bargaining agreement includes a reopener for wages to be effective December 19, 2013, through December 18, 2014. When the parties were unable to reach agreement regarding the wages, a Fact Finder was appointed. A hearing was held on May 29, 2014. At that time, the union sought a 5% wage increase. It argued that the employer had increased the Corrections Supervisors' duties; that the employer had imposed additional costs on them, including the purchase of new guns and leathers; that there was a disparity between the wages of the Corrections Supervisors and the Court Services Supervisors; and that the Hamilton County Corrections Supervisors are paid significantly less than Corrections Supervisors in comparable jurisdictions.

The employer offered a 3% wage increase. It claimed that 3% was a reasonable wage increase; that internal parity requires that the Corrections Supervisors receive the same 3% wage increase as other County employees; and that the budget situation of the Sheriff's Office indictates that 3% is all that the employer can prudently offer to members of the bargaining unit.

The Fact Finder issued his report on June 23, 2014. He found that the duties and responsibilities of the Corrections Supervisors had increased, which justified a greater increase than the 3% offered by the employer. On that basis, the Fact Finder recommended a 5% wage increase.

When the Fact Finder's recommendation was rejected by the employer, the dispute proceeded to conciliation. The Conciliator was notified of his appointment on July 16, 2014. A hearing was held on September 10, 2014.

When extensive discussions with the parties failed to result in an agreement, the parties adopted a mutually agreed-upon dispute resolution procedure allowing the Conciliator the flexibility to award whatever wage increase he deemed appropriate without regard to their final positions.

The award of the Conciliator 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;
>
> (d) The lawful authority of the public employer;
>
> (e) The stipulations of the parties;
>
> (f) 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.

ISSUE

As indicated above, the sole issue is wages for 2014. At the hearing, the union demanded a 5% wage increase effective with the first pay period of 2014. The employer proposed rank differentials where Sergeants would earn 20% more than the top rate for Corrections Officers;

Lieutenants would earn 15.75% more than Sergeants; and Captains would earn 15.75% more than Lieutenants. It indicated that the adoption of its proposed wage differentials would result in a general wage increase of a little more than 3%.

UNION'S POSITION

The union argues that the employer has significantly increased the Corrections Supervisors' duties which have resulted in cost savings for the Sheriff's Office. It points out that in some instances, members of the bargaining unit have been assigned duties previously performed by higher ranking officers, e.g., an Administrative Captain has been assigned to the duties previously performed by a Division Commander. The union notes that bargaining unit members have also taken on additional tasks, including the investigation of major assaults and drug charges in the jail. It claims that based on recently completed training, it expects that bargaining unit members will continue to take on more responsibility.

The union contends that the costs borne by bargaining unit members have increased. It complains that the employer required members of the union to purchase guns and holsters at a cost of approximately $600 due to a change in weapons. The union adds that Corrections Supervisors have also seen uniform costs increase by $800.

The union maintains that there is an enormous disparity in compensation between the members of the bargaining unit and the Court Services Supervisors. It states that even though the Sheriff combined Corrections and Court Services into a single division and plans to use those employees interchangeably, members of the bargaining unit earn 27.4% less than the corresponding ranks in Court Services.

The union argues that bargaining unit members are subject to unsafe working conditions. It claims that understaffing is documented in an audit performed by Greenwood and Streicher and the Sheriff's 2013 Annual Report. The union indicates that the problem is compounded by poor facilities and deficient equipment. It believes that "bargaining members' compensation should reflect the difficult working conditions in which they must perform." (Union Pre-Hearing Statement, page 6)

The union contends that external comparables support its demand. It reports that a Corrections Sergeant with 10 years of service earns $4,705 or 8.6% less than the area average and a Lieutenant earns $4,760 or 7.5% less than in nearby departments (Union Pre-Hearing Statement, Appendix 16). The union observes that Sergeants earn $13,589 or 24.9% less than average for Sergeants in Butler, Cuyahoga, Franklin, and Warren counties and Lieutenants earn $17,307 or 27.3% less than those in Butler, Franklin, and Warren counties. (Union Pre-Hearing Statement, Appendix 19)

The union maintains that internal comparables also support its position. It points out that in 2014, Corrections Officers received a 3% general wage increase plus the addition of a 2% wage step at seven years of service; that Communications Officers received a guaranteed 3% increase plus 3% in merit raises; that members of the Benevolent Employees of the Hamilton County Sheriff were placed on a new wage schedule where they received an average wage increase of 3.46% in 2014 and increases ranging from 5.5% to 10.3% in 2015.

The union acknowledges that Patrol Officers and Supervisors received a general increase of only 3% but claims that they retained an arguably more valuable benefit. It observes that increases in their health insurance premiums are limited to the percentage increase in their wages. The union reports that as a result, their 2014 premium for family coverage under the POS 500 Plan is $1,082 per year while other county employees pay $6,187 per year. It stresses that for the Corrections Sergeants, this equates to a 9.44% wage increase." (Union Pre-Hearing Statement, page 9)

The union argues that its demand mirrors the Fact Finder's "well-reasoned" report. It states that the Fact Finder determined that there was a disparity between the pay of the Corrections Supervisors and similarly situated employees; that the employer failed to establish the existence of the uniform wage increase in the County; and that the Patrol bargaining units enjoyed a "unique benefit" with respect to health insurance. The union emphasizes that the Fact Finder ultimately found:

> The testimony and entire record from the hearing show that the job duties and requirements of the Corrections Supervisors have increased. Increased duties and responsibilities should be compensated accordingly. (Fact Finder's Report, page 11)

The union contends that the county has the ability to pay its demand. It points out that the parties agreed at fact-finding that the difference between the employer's and the union's proposals was approximately $39,000. The union notes that the Fact Finder stated:

> There is no realistic way that the Sheriff cannot afford the Union's demand. It is undoubtedly true that the Sheriff's Office has budgetary problems, but it is also true that the Sheriff has an unwillingness to pay rather than an inability to pay. (Fact Finder's Report, page 4)

The union maintains that the county's financial position has improved since the fact-finding hearing. It indicates that as a result of increased revenue projections, the projected 2014 General Fund carryover grew from 11% in March, 2014 to 13.2% in June, 2014 and the budget deficit shrank from $4.25 million to $1.1 million. The union claims that "given the small cost difference in the [parties'] proposals and the county's improved revenue and General Fund projections, the employer is well-positioned to fund the union's justified wage increase proposal." (Union Pre-Hearing Statement, page 14)

The union argues that the county has forgone significant revenue. It points out that the county could increase its 6.75% sales tax rate and that a .25% increase would generate at least $30 million. The union notes that the county could also eliminate the property tax credit adopted when voters approved a .5% increase in the sales tax to build two sports stadiums. The union claims that eliminating the property tax credit would provide $23 million in additional revenue in 2014.

The union concludes that the Conciliator should grant its demand for a 5% wage increase effective the first regular pay period of 2014.

EMPLOYER’S POSITION

The employer argues that the Corrections Supervisors have faired “far better” than other bargaining units and non-bargaining unit employees. It points out that in 2007 the Corrections Supervisors received a 2% wage increase while other employees received no increase. The employer notes that in 2011 the Corrections Supervisors got a 3% wage increase and were one of only two units in the county to receive an increase.

The employer contends that the Sheriff’s budget limits any wage increase. It reports that in 2013 the Sheriff’s Office had a recommended expenditure level of $57.5 million and expenditures were $62.3 million. The employer observes that the latter figure plus $1 million for bargaining unit wage increases and $1.7 million for lost levy proceeds means anticipated expenditures of $65 million in 2014. The employer suggests that despite this, the County Administrator recommended expenditures of $64.4 million dollars or $600,000 less than the Sheriff’s Office expects to spend. It emphasizes that “based on actual activity … and anticipated changes that will occur throughout the year, the Sheriff’s Office’s expenses are $3.5 million over budget.” (Employer Pre-Hearing Statement, pages 1-2)

The employer maintains that the county must continue to attempt to "right-size" the Sheriff's Office's budget. It points out that sales tax revenue is projected to be 1.8% or $1.2 million less in 2014 than in 2013; that 2014 property taxes are estimated to be $3.5 million or $700,000 less than in 2013; that the Local Government is budgeted for $10.8 million or $400,000 less than in 2013; and that real estate transaction fees and interest earnings will also fall. The employer notes, however, that as of July 2014, General Fund revenues are $4.3 million above projections, due to sales tax and transfer tax performance.

The employer argues that General Fund expenditures have exceeded the recommended level. It states that mid-year General Fund expenditures were $5.4 million above the $204 million recommended level. The employer indicates that 90% of the overage was due to the Sheriff's Office and the Juvenile Court.

The employer contends that the General Fund Reserve Fund reflects the county's fiscal health. It reports that the 2014 budgeted reserve was $26.5 million or 13.2% of expenditures but at midyear it was $150,000 below the projected amount. The employer observes that Government Financial Officers Association's guidelines recommend a 15% or two-month reserve.

The employer maintains that the Fact Finder "lost sight of the larger picture and the ramifications of additional wage increases." (Employer Pre-Hearing Statement, page 4) It claims that each time a bargaining unit is awarded a wage increase, another bargaining unit will receive a greater increase, "fueling an endless cycle of base rate increases and other benefits … in order to 'catch up' with other bargaining units in the County." (Ibid.)

The employer argues that the union's external comparables do not justify the union's wage demand. It indicates that a better comparison for the Corrections Supervisors than

Corrections Supervisors in other counties is to compare their wages to Corrections Officers in Hamilton County. The employer claims that its proposed rank differentials would mean that the Corrections Supervisors would compare "very well" to the Corrections Officers.

The employer contends that the 2014 wage increases received by other county employees support its position. It points out that with only two exceptions, Benevolent Employees of the Hamilton County Sheriff and AFSCME, Local 1760, bargaining unit and non-bargaining unit employees received base rate wage increases of 3%. The employer notes that in case of BEHCS, new pay scales were adopted to account for cross-training. It adds that the Department of Job and Family Services, where the employees are represented by AFSCME, has a different funding source than other county agencies.

The employer rejects the other arguments the union offered in support of its demand. It claims that the duties of the Corrections Supervisors have not been substantially increased and that employees are not required to buy guns because their job classification does not require OPOTA certification. The employer indicates that leathers are replaced according to a replacement schedule.

The employer disputes the union's claim that there is a pay disparity between the Corrections Supervisors and Court Services Supervisors. It acknowledges that the Corrections Supervisors are paid less than the Court Services Supervisors but observes that the positions have different qualifications. The employer states that in contrast to the Court Services Supervisors, members of the bargaining unit are not acting as Patrol Officers.

The employer dismisses the union's suggestion that the sales tax rate should be increased to pay its demand. It acknowledges that the county could increase the rate but claims that it would be detrimental to the General Fund because "it would eliminate the County's ability to make emergency adjustments to address situations like infrastructure failures, dramatic economic downturns, or adverse legal judgments." (Employer Pre-Hearing Statement, page 6) The employer adds that it could also lead to a lower bond rating.

The employer challenges any suggestion by the union that it should use its Reserve Fund to pay for a 5% wage increase. It points out that at mid-year the Reserve Fund was only 13.2% of expenditures. The employer notes that this is less than the recommended 15% of expenditures. It claims that "it would be reckless to further draw down the general fund reserve." (Ibid.)

The employer concludes that its proposal is "fair, internally consistent, and reasonable, based upon [its] current economic climate." (Employer Pre-hearing Statement, page 7) It asks the Conciliator to award its wage proposal.

ANALYSIS

The issue before the Conciliator is the wage increase to be for effective the beginning of the pay period that is paid on the first regular payday in January 2014. The parties have adopted different approaches. The union demands a 5% increase in the existing wage schedule. The employer seeks to establish a rank differential for Sergeants, Lieutenants, and Captains, where Sergeants earn 20% more than the top step for Corrections Officers, Lieutenants earn 15.75% more than Sergeants, and Captains earn 15.75% more than Lieutenants. It states that the implementation of the proposed rank differentials would result in a wage increase of approximately 3%.

The Conciliator cannot recommend the adoption of rank differentials. The record indicates that up to the conciliation hearing, the parties attempted to reach agreement on a percentage increase in wages and, in fact, the union did not learn of the new direction being taken by the employer until it received the employer's pre-hearing statements just prior to the conciliation hearing. Without the parties having an opportunity to consider and explore rank differentials, the Conciliator believes that it would be unwise to ignore the union's opposition to the employer's proposal.

The Conciliator understands the employer's desire to increase the Corrections Supervisors wage by what it believes is the pattern settlement for the county. As the Fact Finder recognized, "all neutrals must consider internal parity when making wage recommendations, and any recommendation that breaks the pattern must be carefully considered." (Fact Finder's Report, page 5) The Fact Finder found, however, that there were a variety of wage settlements in the Sheriff's Office and concluded that there was no binding wage pattern, rather "each unit has been able to craft a wage agreement that fits their unique needs." (Fact Finder's Report, page 6)

The Conciliator is less willing to dismiss the county's argument that there is no wage pattern. On this basis, the Conciliator believes that the Corrections Supervisors should receive a 3% increase in their wage schedule.

The Conciliator finds, however, that the members of the bargaining unit are entitled to a wage adjustment separate and apart from the county pattern wage settlement. First, the data submitted by the union indicate that the Hamilton County's Corrections Supervisors are paid less than comparable employees in nearby counties and in other large counties in Ohio. While the Conciliator understands that Hamilton County may have difficulty in offering the same compensation as some wealthy suburban counties, he cannot ignore the significantly higher earnings in other large Ohio counties.

Second, the Conciliator believes that members of the bargaining unit have been required to assume more challenging, higher-level duties. This has resulted in improved efficiency in the Sheriff's Office and has produced cost savings. Given that the Sheriff's Office is likely to continue to make such changes, the Conciliator concludes that the Corrections Supervisors are entitled to a wage adjustment of $1100 for Sergeants, $1200 for Lieutenants, and $1350 for Captains.

The Conciliator has carefully considered the county's financial situation. The county's improving financial situation, especially its growing sales tax revenue, along with its efforts to control costs, indicate that the county can afford the wage adjustment in addition to the 3% pattern wage settlement.

Award

The award of the Conciliator is as follows:

> Effective the beginning of the pay period that is paid on the first regular payday in January 2014, the wage schedule for the Correction Supervisors shall be increased by 3%. After this increase is applied, the base wage for Sergeants shall be increased by $1100; the base wage for Lieutenants shall be increased by $1200; and the base wage for Captains shall be increased by $1350. The resulting wage schedule is as follows:

Sergeants	$56,826.85
Lieutenants	$65,844.61
Captains	$76,337.93

Nels E. Nelson

Nels E. Nelson
Conciliator

October 3, 2014
Russell Township
Geauga County, Ohio