

Received after business hours on 12/16/14, processed next business day

**IN THE MATTER OF CONCILIATION
BETWEEN**

LAKE COUNTY SHERIFF'S OFFICE)	SERB NO. 2014-MED-01-0034
)	
)	<u>OPINION AND AWARD</u>
AND)	
)	
)	NON-COMMISSIONED
OHIO PATROLMEN'S BENEVOLENT)	CORRECTIONS SERGEANTS &
ASSOCIATION)	CORRECTIONS LIEUTENANTS

JAMES M. MANCINI, CONCILIATOR

APPEARANCES:

FOR THE COUNTY

Tom Grabarczyk, Consultant

FOR THE OPBA

Michael J. Hostler, Esq.

SUBMISSION

This matter concerns conciliation proceedings between the Lake County Sheriff's Office (hereinafter referred to as the Employer or Sheriff) and the Ohio Patrolmen's Benevolent Association (hereinafter referred to as the Union or OPBA). The State Employment Relations Board (SERB) duly appointed the undersigned as conciliator in this matter. The conciliation proceedings were conducted on November 14, 2014 in Painesville, Ohio.

The bargaining unit involved herein consists of six Non-commissioned Corrections Sergeants and four Non-commissioned Corrections Lieutenants.

The conciliation proceeding was conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of SERB. During the conciliation hearing, this conciliator attempted mediation of the issues at impasse. The issues remaining for this conciliator's consideration are more fully set forth in this report. This conciliator in resolving this dispute by selection between each of the parties' final settlement offers has taken into consideration the criteria set forth in Ohio Revised Code Section 4117.14(C)(4)(a through f) and RC Section 4117.14(G)(7). Therefore, this conciliator after reviewing all of the evidence and arguments presented by the parties hereby submits his Opinion and Award with respect to each of the outstanding issues.

1. SICK LEAVE

The Employer proposes to reduce the amount of earned sick leave from 4.6 hours for each completed and paid 80 hours of service to 3.077 hours or the equivalent of ten days per year. The Employer also proposes to reduce sick time cash out upon termination in good standing or retirement. The Sheriff proposes a three tiered system based upon years of service. All employees hired on or prior to April 1, 1998 (Tier A) shall be entitled to cash out unused sick leave for each five year period of employment up to 100% of 960 hours after thirty-five years of employment. Employees hired between April 2, 1998 and April 1, 2005 (Tier B) shall be entitled to receive up to 660 hours maximum. All employees hired on or after April 2, 2005 (Tier C) who have completed ten years of employment shall be entitled to a payout of 50% of their unused sick leave accumulation up to a maximum payment of 480 hours.

The Union opposes any change in the current Sick Leave Provision. The Union proposes that the employees continue to receive 4.6 hours of sick time per 80 hours worked. The Union also proposes to retain the current sick leave cash out provision.

The Sheriff argues that employees' use of sick leave has been excessive in the department. The amount of sick leave usage has increased dramatically over recent years. This creates a problem for the Sheriff who must pay another employee at the overtime rate to cover for the sick employee. It is for that reason that the Sheriff is

proposing to reduce the number of sick days which can be used per year from the current fifteen days to ten days.

The Employer also contends that the mounting liability of accrued sick leave cash out is unsustainable by the County. Due to a decline in revenue in recent years, the County has undertaken measures to reduce expenditures in order to remain sustainable at current levels. The accrued sick leave pay out must be scaled back in order to enable the County to balance its budget now and into the future.

The Employer cites internal comparisons in support of its proposals for changes to the Sick Leave Provision. The bargaining unit herein is one of eight units represented in the Lake County Sheriff's Office. There currently is one unit which has been going through a decertification of the incumbent Union and recently has been certified with a new union. However, the Employer points out that five of the seven other units have agreed through negotiations to accept the proposal to reduce the amount of earned sick leave from the current fifteen days to ten days per year. For the other sixth unit, a conciliator also awarded these changes. They have agreed to the three tiered system for sick time cash out upon termination in good standing or retirement. The Employer argues that these internal comparisons with the other bargaining units in the Sheriff's Office should be controlling in this case and clearly support its final offer with respect to the Sick Leave Provision.

The Employer further submits that a review of the contracts in the bargaining units in the Lake County Sheriff's Department shows that essentially the same benefits

and provisions are found in all contracts. Moreover, fact-finders and conciliators who have heard cases with the Lake County Sheriff's Office have historically given great weight to the settlements of other units within the department. A recognized goal of the Employer is to have consistency in its Collective Bargaining Agreements. Any award that would alter the agreements reached with the other units could cause long term animosity among the units within the Sheriff's Office.

The Union contends that there is no justification for the changes proposed by the Employer with respect to the Sick Leave Provision. The Union points out that this particular bargaining unit is the one unit that does not misuse sick time. The County should address any sick leave usage problems with individuals in the other units. Additionally, this supervisory unit is more advanced in age. Therefore, the 4.6 hours of sick time per 80 hours worked is very important. The Union points out that 4.6 hours is the standard in the public sector in Ohio. It cited numerous contracts in the other jurisdictions in support of its action.

The Union also objects to the Sheriff's attempt to reduce the amount of sick leave cash out upon termination in good standing or retirement. The Union argues that there is no need to do so at this time. There is little justification for doing so when the economy is doing so well. The Employer has failed to demonstrate that the change in sick leave cash out is financially necessary.

The OPBA submits that the majority of the supervisors in the bargaining unit here are closer to retirement than others in the Sheriff's Department. The amount of

sick leave they have accumulated is of utmost importance to them. The Sick Leave Cash Out Provision was meant to award employees who retire based upon their years of service and the amount of sick leave they have left. The Union points out that it has worked well for many years without any problems developing. In that many supervisors have minimized their use of sick leave with their retirement in mind, it would make little sense to now take away that benefit.

ANALYSIS - After a careful review of the evidence presented by the parties, this conciliator selects the Employer's final proposal with respect to the Sick Leave issue. That is, the conciliator finds that the number of sick leave days shall be reduced from the current fifteen to ten days per year. The sick leave cash out upon termination in good standing or retirement shall be changed to reflect the Employer's proposed three tiered system based upon years of service. The three tiered plan provides for a cash out of 50% of an employee's unused sick leave accumulation up to a maximum payment of 480 hours after ten years of service for employees hired after April 1, 2005. Employees hired between April 2, 1998 and April 1, 2005 would be provided with a maximum pay out of 660 hours. Employees hired before April 1, 1998 will retain the 960 hour maximum payout.

Internal comparisons provides support for the adoption of the Sheriff's final sick leave proposal. The bargaining unit involved in this case is one of eight bargaining units in the Sheriff's Office. Five of the seven bargaining units have conducted negotiations and agreed to the same three tiered system for cash out payments and for

the reduction in the number of annual sick leave days to ten days from the current fifteen days. With respect to the sixth bargaining unit, a conciliator awarded the same Sick Leave Provision being awarded herein. It should be noted that another bargaining unit has gone through a decertification of the incumbent Union and has been recently certified with a new union. Therefore with that lone exception, all other bargaining units in the Sheriff's Office will have a Sick Leave Provision identical to that which is being awarded in the instant matter. Evidence of internal comparisons must be given significant weight because it was shown that the Sheriff's Office has always attempted to promote internal parity. There has always been an attempt by the Sheriff's Office to provide the same benefits and provisions in all contracts. Moreover, fact-finders as well as conciliators who had heard cases with the Lake County Sheriff's Office have in the past given great weight to the settlements reached by other units within the department.

The Employer produced evidence that there was a need to reduce the number of annual sick leave days allowed to ten days from the current fifteen days. There was evidence that an excessive amount of sick leave usage has occurred in one or more of the other bargaining units. In the corrections officers unit for example, it was shown that during the past year employees have used over fifteen days of sick leave on average. The OPBA has argued in the instant matter that it was not established that there has been any abuse of sick leave privileges by the corrections sergeants or lieutenants. As a result, the OPBA contends that there should be no reduction in the

number of sick days for this unit. This conciliator fully recognizes the Union's argument as well as the fact that for the vast majority of public sector contracts in the state, 4.6 hours or fifteen days of sick leave per year is the standard. However as previously discussed, this conciliator has determined to give significant weight to internal comparisons. The other bargaining units who have concluded negotiations have all agreed to accept a reduction in the number of sick leave days to ten days from the current fifteen days. As noted, the Sheriff in the past has always attempted to have consistency with respect to benefits and provisions in all of its Collective Bargaining Agreements. This conciliator finds that it would be inappropriate to allow the bargaining unit here to retain fifteen days of sick leave when all of the other units in the Sheriff's Department will have a reduction in the number of sick leave days to ten days.

This conciliator's award with respect to the number of sick leave days is what the fact-finder recommended in this case. This conciliator like others typically gives significant weight to a well reasoned fact-finder's recommendation unless there is new evidence presented to vary from that recommendation. In the instant matter, there was no basis established for varying from the fact-finder's recommendation.

There was also substantial evidence presented to support the Employer's proposal to modify the current Sick Leave Pay Out Provision to a three tiered system which would allow the most senior employees to retain the current maximum cash out of 960 hours but for others there would be a reduction in the amount of cash out upon termination in good standing or retirement. The Employer presented evidence showing

that due to the economic recession which began in 2008, the Sheriff's Department has experienced a sharp decline in its revenue. The Sheriff's combined budgets for all divisions were \$17,621,411 in 2008. However in 2014, the combined budgets are now \$14,081,946. It is reasonable for the Employer to attempt to reduce expenditures given the economic forces at work. In that regard, the County Commissioners and the Sheriff's Department have undertaken an effort to reduce sick time cash out upon termination in good standing or retirement. It is for that reason that the three tiered system proposal has been made. This conciliator finds that given the economic climate facing the Sheriff's Department, there is a need to reduce the amount of sick leave cash out upon termination or retirement of employees. It is important to note that the three tiered system essentially grandfathers in the most senior employees in this bargaining unit so that there would be no reduction in the maximum cash out of 960 hours for those employees. In all respects, this conciliator finds that the three tiered system for sick time cash out appears to be reasonable and should be adopted.

A W A R D

This conciliator hereby awards the Employer's final sick leave proposal as follows:

ARTICLE 14, SICK LEAVE

It is the award of this conciliator that Article 14, Sick Leave be modified to a three tiered sick leave cash out provision as proposed by the Employer and that Section 1 be changed to provide that sick leave shall accumulate at the rate of 3.077 hours for each completed and paid 80 hours of service (10 days per year).

2. WAGES

The Employer proposes a 2.5% wage increase in each of the three years of the Agreement. The Union's position is that it would propose 2.5% wage increases but only as part of a package which would include no changes in the Sick Leave Provision.

The Employer argues that its wage proposal is reasonable and is identical to that which the other bargaining units in the Sheriff's Department have accepted. The Employer does not believe that there is any basis for varying from the wage increases granted to other Sheriff Department employees. The Employer also notes that the fact-finder recommended the 2.5% wage increases proposed herein. Finally, the Employer points out that given the economic climate facing the Sheriff's Office, there would be no basis for providing for any greater wage increase for this particular bargaining unit.

The Union argues that the 2.5% wage increase would only be appropriate if there would be no change in the Sick Leave Provision. If there are modifications in the Sick Leave Provision as sought by the Employer, then the Union would propose a greater wage increase for this unit. The Union points out that there have been significant signs of improvement in the local economy. The County and the Sheriff's Department has the ability to fund the proposed 2.5% wage increases for this bargaining unit.

ANAYLSIS - This conciliator hereby awards 2.5% wage increases for each year of the three year Agreement. Once again, internal comparisons in the Sheriff's Department support the 2.5% wage increases. The other bargaining units in the

Sheriff's Department have all agreed to accept 2.5% wage increases which have been proposed for this bargaining unit. There was no basis established for providing this bargaining unit with any greater wage increase than that given to all other Sheriff Department employees.

Moreover, this conciliator gives weight to the fact-finder's recommendation with respect to the wage issue. The fact-finder recommended 2.5% wage increases for each year of the Agreement. In doing so, he noted that the wage increases were in line with those provided to other employees in the County. The evidence shows that the 2.5% wage increases are the same as that provided to other bargaining and non-bargaining unit employees in the Sheriff's Department. Therefore, this conciliator finds that the 2.5% wage increases proposed by the Employer should be adopted.

A W A R D

This conciliator hereby awards the Employer's final wage proposal which provides for a 2.5% wage increase in each year of the Agreement as set forth in the new Appendix C.

3. INJURY LEAVE

The Employer proposes to delete the word "credited" and replace it with "charged". The Union did not raise any specific objection to this particular change in the Injury Leave Provision.

The Employer was able to establish that the change proposed reflects the original intention of the parties. Moreover, six of the other bargaining units in the Sheriff's Department have not objected to the change. As indicated, the Union here appears to agree to this relatively minor change. Therefore, this conciliator has determine to award the change proposed by the Employer.

A W A R D

This conciliator provides that with respect to Article 20, Injury Leave, the word "credited" shall be deleted and replaced with the word "charged" in Section 3 of this provision.

4. OTHER ISSUES

The Employer proposes under Article 27 to eliminate all references to comp time throughout the Agreement. In addition under Article 26, Section 3, the Sheriff proposes to eliminate Sick Leave for purposes of calculating overtime. Under Article 33, the Sheriff proposes to eliminate Specialized Training and Skills. With respect to Article 16, Longevity, the Employer proposes to eliminate this particular seniority payment.

With respect to these additional issues raised by the Employer, it must be noted that there is mention of these issues in the fact-finder's report. Moreover, there was no evidence presented at conciliation to support any changes in these other articles.

Therefore based upon the lack of any evidence to support any of the changes proposed by the Employer with reference to these additional provisions, this conciliator must find that there shall be no change in any of these articles referred to under the Employer's proposal. That is, Article 27; Article 26 Section 3; Article 33; and Article 16 shall remain the same without any change.

A W A R D

It is the award of this conciliator that there is to be no change as proposed by the Employer for the following articles:

ARTICLE 27 - No change, current language.

ARTICLE 26 - No change, current language.

ARTICLE 33 - No change, current language.

ARTICLE 16 - No change, current language.

CONCLUSION

In conclusion, this conciliator hereby renders his award for each of the outstanding issues presented.

DECEMBER 16, 2014

James M. Mancini /s/

James M. Mancini, Conciliator

JAMES M. MANCINI

ATTORNEY AT LAW - ARBITRATOR

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December 16, 2014

IN THE MATTER OF CONCILIATION BETWEEN:

LAKE COUNTY SHERIFF'S OFFICE)	CASE NO. 2014-med-01-0034
)	
AND)	
)	NON-COMMISSIONED
OHIO PATROLMEN'S BENEVOLENT ASSOCIATION)	CORRECTIONS SERGEANTS & CORRECTIONS LIEUTENANTS

FEE STATEMENT:

Hearing (1 day).....	\$ 950.00
Study & Preparation of Report (3 days).....	\$ 2,850.00
Expenses:	
Transportation (84 miles x \$.55/mile).....	\$ 46.20
Meals (1).....	\$ 10.54
TOTAL.....	\$ 3,856.74

PAYABLE BY THE SHERIFF (1/2)..... \$ 1,928.37

PAYABLE BY THE OPBA (1/2)..... \$ 1,928.37

James M. Mancini /s/
 James M. Mancini, Conciliator
 Federal ID #84-1661482