

BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

FOR THE STATE OF OHIO

FRATERNAL ORDER OF POLICE : CASE NO. 2014 -MED-01-0090  
LODGE 101,

:

AND

:

THE BUTLER COUNTY SHERIFF  
BUTLER COUNTY OHIO

REPORT OF CONCILIATOR JACK E. McCORMICK

HEARING DATE JANUARY 22, 2015

REPORT DATE JANUARY 26, 2015

Pursuant to the Rules and Regulations of the State Employment Relations Board a conciliation hearing was convened at 10:00 a.m., January 22, 2015, at the Butler County Sheriff's Office 705 Hanover St., Hamilton, OH 45011

Present at the fact-finding were the following:

For the Union

Steven Lazarus, Esq., Spokesperson Hardin, Lazurus & Lewis, LLC

Ross Gillingham, Esq.

Greg Wargo, Deputy Butler County Sheriff's Office

Jeff Gebhart, President Fraternal Order of Police Lodge 101

Erik Betz, Deputy, Butler County Sheriff's Office

John D. Smith, " " " " " " " "

Joe Fuller, Sgt., " " " " " " " "

Terry Carroll, " " " " " " " "

For the Employer

Joseph Scholler, Esq., Spokesperson Frost Brown & Todd LLC

Julie E. Byrne, Esq. " " " "

Mike Craft, Butler County, Sheriff's Office

Vickie Jo Barger, Finance Director, Butler County Sheriff's Office

Jack Hemenway, Esq. (Observer)

Norman Lewis, Major, Butler County Sheriff's Office

The Parties waived a record hearing in writing (Conciliator Ex-1). Furthermore the parties stipulated that the Employer has available funds to fund either party's economic proposal.

Butler County, Ohio is in the southwest corner of the State just north of Cincinnati. In 2012 its population was 370,589. Its unemployment rate is among the lowest in this state.

The Butler County Sheriff's Office is full service law enforcement agency for the County.

The bargaining unit is 110 non-supervisor deputies represented by the Fraternal Order of Police, Lodge 101.

The only issue for conciliation is a wage re-opener for 2014 and 2015. Both parties agree that their respective wage offers are co-dependent on the Pay for Performance offered by the Employer. That is, they wish to have the Conciliator treat them as a single indivisible issue.

The negotiations to date have been unsuccessful and on September 18, 2014 a Fact-Finding was held before Fact-Finder Felicia Bernardini. Her report of October 10, 2014 was rejected by the Employer.

The parties were informed that in conciliation the Conciliator may only choose one party's final offer on each issue, in this case – wages.

The Employer's last best offer was a 2.5% increase for 2014 and 1.5% for 2015, BUT in addition it proposes a "a Pay for Performance" bonus up to of \$1,200.00 each year. This "bonus" would be based on an employee successfully completing all, or some the tasks, set forth in Exhibit C-25 (attached). Its wage proposal is conditional on the Union accepting this provision. The Union adamantly opposes the Pay for performance, which Ms. Bernardini refused to grant at Fact Finding.

PAY FOR PERFORMANCE

The Employer asserts it needs this incentive to increase productivity, to improve morale and reflects the Butler County Commissioners wish to move all county agencies to such a system. The Union points out that there is no history of this Unit bargaining Pay for Performance over the twenty-five years of bargaining with this unit, and that the criteria in C-25 are, with some exceptions, too subjective and subject to arbitrary actions by management.

When the Employer was asked by the Conciliator what, if any problem(s) there was that this this new regime was to address, they stated that these were requirements that deputies are already required to meet and “probably all would get some, if not all of the “bonus.” In addition, they assert that this would improve morale and it was the mandate from the County Commissioners.

The Employer cited drastic budget cuts that had to be taken during the recent recession as another rationale. They assert it will increase productivity of the reduced work force.

When asked to how that would occur they pointed out the provisions on Safe Driving and Attendance Reward (see C-25).

The Employer also asserts that if any member of the unit is unhappy with an evaluation that denies him any, or all of the bonus, they may file a grievance. Further they assert that other bargaining units in the county have accepted similar plans (two out of twenty).

Pay for performance is nothing new in both the private and public sectors. Pay for attendance, safety records, use of sick leave, etc. are quite common. In fact, today most professional sports teams give bonuses to players who meet, or exceed a certain benchmarks.

However, the “devil is in the details”. Pay for performance must have objective criterion.

Further, they must be well defined, and capable of measurement, i.e, sick leave, attendance, etc..

When questioned by the Conciliator what specific problems currently exist that needed to be addressed one of the Employer's own witness testified (twice) under oath, "there are no problems" Another testified that there were nine deputies in the last year that failed some portion of the performance evaluation, out 110 employees none whom were disciplined.

As to the Employer's assertion that aggrieved an employee can file a grievance if he fails to qualify for any, or all of the bonus. That will likely result in more fact-findings and conciliations. Now a neutral will be asked to decide things like: How shiny must a badge be? How neat must a deputy be? Was his leather and/ or shoes clean and polished enough? Will their patrol cars, weapons, uniforms, etc. be secured in Evidence Room until they can evaluated in the future by a neutral? ad absurdum.

Certainty has a quality all of its own. If this change is made, (and I concur with Ms. Bernardini this will be a "radical change") it does not address any existing "problem(s)". It only creates more. It will not improve morale (the membership voted 110 -0 against it). It does not improve productivity, except the attendance bonus, which actually could increase productivity and can be objectively judged. It is apparent it is driven mainly by the County Commissioners mandate to their bargaining team. As with Ms. Bernardini's Fact-Finding, the Conciliator is not bound to give deference to a county's legislative body. If that were the case we would not need a Collective Bargaining Law. Legislative bodies could simply set wages and working conditions as they wished. That has not been the law since 1984. One of the Employer's advocates stressed that "after all they [the County Commissioners] are elected by the people of Butler County and,

ergo must be given deference”. This neutral cannot find anything in the Collective Bargaining Law to support this assertion.

## **INTERNAL AND EXTERNAL COMPARABLES**

Butler County currently has twenty departments with Collective Bargaining Agreements (CBA's). Currently only two contain merit pay. Externally none of Fact-Finder Bernardini's comparables have such a provision. Those include:

Clermont County, the cities of Fairfield, Hamilton, Middletown, Monroe, Oxford, Trenton, Fairfield Township, Greene County, Hamilton County, Miami County, Montgomery County, Warren County and West Chester Township. It must be noted that these are the same comparables that the Employer used in the 2010 negotiations. Thus, neither the internal, nor external comparables support the Employer's Pay for Performance proposal.

The Counties spokesperson conceded that this was “new” to Butler County and was part of the Commissioner's wish to “move all departments to merit pay.” Further, he asked the Conciliator to give the system “a chance” and “trust in the Employer” to implement the system which he “believes” the Employees will embrace once they see how it works. It would indeed be nice if all employees (both public and private) could just place their trust in their employers to “do the right thing”, but alas we cannot. The Ohio General Assembly, when enacting the Collective Bargaining Law over three decade ago was not willing to leave to public employers or local legislatures the benefit of trust. In this particular case, there exists virtually no trust between the parties, exemplified by the plethora of fact-findings and conciliations in the recent past.

These parties will enter negotiations in September of this year. The Employer will have an opportunity to bargain for this at that time.

**THE EMPLOYER'S PROPOSED PAY FOR PERFORMANCE IN 2014 AND 2015 IS REJECTED.**

**HOURLY WAGES**

Inasmuch as the Employer and the Union agree that the Pay for Performance proposal is to be considered as inextricably linked to their hourly wage proposals, that is, this is one single issue, and under the rules of conciliation, the Conciliator must choose between the two proposals of the parties, and since the Conciliator has chosen the Unions position on Pay for Performance it follows that the Union's hourly wage proposal is becomes a categorical imperative.

However, in the event that a reviewing court should take issue with the combining the two issues, in spite of the parties stipulation to do so, this Conciliator will briefly review the hourly wage issue independent from the Pay for Performance issue.

The parties are not far apart on this issue and the County concedes it has an ability to fund the Union's wage proposal (in fact the Union's proposal is less costly to the County than that proposed by the Employer.)

Though not required to, the Conciliator adopts the external comparables used by Fact-Finder Bernardini. (see above page 5). Therein one finds that at one time this unit was only .43% below the average wages of those comparables, in 2014 they fell behind by 4.72%.

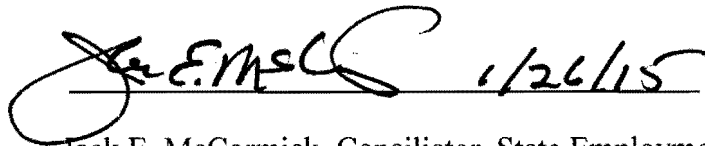
This bargaining unit has made concessions when economic conditions were worse than the present. For example, in 2010 they returned to the County over \$300,000 in benefits. Some of

the deputies gave wage concessions of \$38,000. Their wages were frozen in 2010 and 2011 and in 2013 they received a lump sum payment of \$550.

Accordingly the Union's proposed hourly wage increase are reasonable and justified by the factual evidence.

**AWARD**

**THE BUTLER COUNTY NON-SUPERVISOR DEPUTY SHERIFFS WAGES SHALL BE INCREASED EFFECTIVE THE FIRST PAY PERIOD IN FEBRUARY 2014 BY TWO AND ONE HALF PERCENT (2.5%) AND BY TWO AND ONE HALF PERCENT (2.5%) EFFECTIVE THE FIRST PAY PERIOD IN FEBRUARY 2015.**

A handwritten signature in black ink, appearing to read "Jack E. McCormick", is written over a horizontal line. To the right of the signature, the date "1/26/15" is handwritten.

Jack E. McCormick, Conciliator, State Employment Relations Board

500 City Park Avenue

Columbus, OH 43215-5707



C-1

In matter of Conciliated

Between:

Case No. 2014-MED-01-

For Lodge #101

0090

and

Butler County Sheriff

Jack E. McCormick, Conciliator.

The Employer & Union hereby waive the presence & use of a Court Report at this hearing.

ASL  
Union

1/22/15  
Date

[Signature] - 1/22/15  
Employer Date

# Butler County Sheriff's Office

## 2015 Performance Based Pay

Category	Value	# Pass	# Fail	Award
<b>Basic Expectations</b> (One (1) failed category = Failed Expectations) Uniform Insepections - <u>May</u> Firearm Inspections Vehicle Inspections - <u>May</u> Firearm Qualifications - <u>Twice Yearly</u> OPOTA In-Service Requiremants - <u>OPOTA Training/</u> <u>Annual Requirements</u>	\$600.00			Jan-16
<b>Employee Evaluations - On Anniversary Dates</b> (Four (4) or more rated unacceptable = Failed Evaluation) Quality of Work Quantity of Work Adaptability Dependability Team Effort/Cooperation Judgement/Problem Solving Initiative Professionalism Technical Abilities Agency Representation	\$200.00			Jan-16
<b>Employee Goals - End of Year Assessment</b> Safe Driving Award (Check for at Fault Accidents)	\$200.00			Jan-16
Attendance Award (Five (5) or less Sick Occurances)	\$200.00			Jan-16

Employee  
C-25

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One (1) Check Issued Jan-16

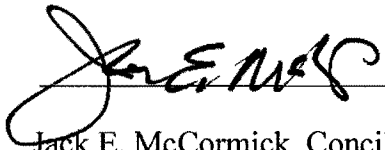
CERTIFICATE OF SERVICE

The preceding Conciliator's report was served upon the following on January 26, 2015 by email pdf format:

Stephen S. Lazarus, Esq. Hardin, Lazarus & Lewis, LLC, Union Spokesperson

W. Joseph Scholler, Esq. Frost, Brown Todd LLC, Butler County Spokesperson

Donald M. Collins, Esq. General Counsel State Employment Relations Board

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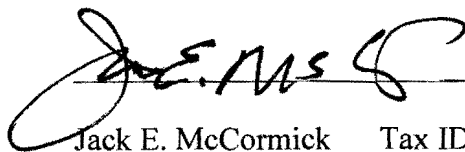
Jack E. McCormick, Conciliator State Employment Relations Board

CONCILIATOR'S FEE STATEMENT

Review pre-hearing materials 1.5 days -	\$1,425.00
Travel & conduct hearing 1.0 days -	\$ 950.00
Study and draft report .5 days	\$ 475.00
Mileage 230 miles @ \$.50 per mile	<u>\$ 115.00</u>
Total -	\$2,965.00

Employer total - \$1,482.50

Union total \$1,482.50

  
\_\_\_\_\_  
Jack E. McCormick Tax ID #31-1410950

W-9 attached

Form **W-9**  
(Rev. January 2011)  
Department of the Treasury  
Internal Revenue Service

### Request for Taxpayer Identification Number and Certification

Give Form to the  
requester. Do not  
send to the IRS.

Print or type  
See Specific Instructions on page 2.

Name (as shown on your income tax return)  
**JACK E M E C O R M I C K E , A T T O R N E Y**

Business name/disregarded entity name, if different from above

Check appropriate box for federal tax classification (required):  
 Individual/sole proprietor     C Corporation     S Corporation     Partnership     Trust/estate  
 Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ \_\_\_\_\_  
 Other (see instructions) ▶ \_\_\_\_\_

Address (number, street, and apt. or suite no.)  
**500 CITY PARK AVE**

City, state, and ZIP code  
**COLUMBUS, OH 43215-5707**

List account number(s) here (optional)

Requester's name and address (optional)

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Social security number**

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**Employer identification number**

3	1	-	1	4	1	0	9	5	0
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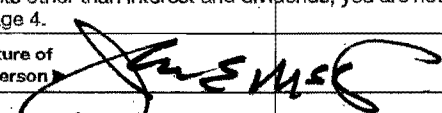
**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

**Part II Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

**Sign Here**      Signature of U.S. person:       Date: **1/26/15**

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Purpose of Form**

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.