
In the Matter of Conciliation

Between

Case No. 2014-MED-07-0964

Ohio Patrolmen's Benevolent
Association

Before: Harry Graham

And

Cuyahoga County, OH.

APPEARANCES: For OPBA:

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INTRODUCTION: Pursuant to the procedures of the Ohio State Employment Relations Board a hearing was held in this matter before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. The record was closed at the conclusion of oral argument in Cleveland, OH. on January 15, 2015.

BACKGROUND: Per the dispute resolution procedure pertinent to this situation in the Ohio Revised Code the parties had recourse to Factfinding. The Factfinder was Nels

Nelson, a nationally respected labor relations neutral. Factfinder Nelson conducted a hearing on November 18, 2014 and his report was issued on December 3, 2014. That report was rejected by the Employer, hence this proceeding.

When Factfinder Nelson initially met with the parties there were over 50 unresolved issues. Some were resolved. Many were not. Thus the report of the Factfinder is voluminous and addresses many contentious issues. Upon arrival at Conciliation the parties withdrew many of the issues they presented to the Factfinder. They also agreed upon some issues that were considered by the Factfinder. Consequently, the number of issues in this proceeding is much fewer than the number considered by Factfinder Nelson. Before me are four issues. These are:

Article 14, Wages

Article 26, Health and Safety

Article 35, Outside Employment

Article 40, Vacation Leave

ISSUE 1, ARTICLE 14, WAGES

POSITION OF THE UNION: The Union embraces the report of the Factfinder. He recommended there be a wage increase as follows:

2015: Effective January 1, 2015 each step of the wage schedule shall be Increased by \$750. Following this adjustment to the wage schedule, each Step of the schedule shall be increased by 2%.

2016: Effective January 1, 2016, each step of the wage schedule shall be Increased by 2%

2017: Effective January 1, 2017, each step of the wage schedule shall be Increased by 2%.

The following chart illustrates the above wage increase applied to the corresponding hourly step wage rates.

<u>Current</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>
\$20.33	\$21.10	\$21.53	\$21.96
\$21.69	\$22.49	\$22.94	\$23.40
\$23.03	\$23.86	\$24.34	\$24.82
\$24.39	\$25.25	\$25.75	\$26.27
\$25.73	\$26.61	\$27.14	\$27.69
\$26.72	\$27.62	\$28.17	\$28.74
\$27.25	\$28.16	\$28.73	\$29.30

The Union points out that its proposal largely tracks wage increases secured by Deputies in other comparable County Sheriff's departments throughout the State. It also tracks increases being seen in Cuyahoga County in various municipalities. In essence there is a "going rate" for increases in Sheriff's Departments and local jurisdictions. As that is the case deviation from what is being witnessed in the State and County is not warranted the Union contends.

Further, as shown on page 6 of the Factfinder's report, wages of Deputies with 10 years of service in Cuyahoga lag behind wages paid their counterparts elsewhere in Northeast Ohio. On average they are paid 96.53% of the wage seen in Geauga, Lake, Lorain, Medina and Summit Counties. Including supplements such as uniform, shift differential etc. continues to produce an unfavorable comparison for Cuyahoga County Deputies. They are paid 97.25% of the area-wide average. Similarly, the comparison of members of this bargaining unit to Deputies in other large, urban counties in Ohio is unfavorable to them. Again, using the 10 year deputy as a benchmark, Cuyahoga County Deputies receive 88.80% of the urban county average wage and 89.73% of the average total compensation.¹ The Factfinder determined that:

...the significant difference in wages and compensation cannot be ignored.

¹ Nelson Report, p. 6

The county is requiring deputies to take on more of the duties typically performed by city police officers. For example, deputies have assisted East Cleveland and North Randall by performing police duties in those cities and serve on a number of important law enforcement task forces. The Sheriff's Department has also instituted a downtown patrol that shares duties with Cleveland police officers. The county's decision to expand the role of the deputies suggests that the gap between their wages and compensation of city police officers should be reduced.²

The Union embraces that commentary and the recommendation of the Factfinder.

POSITION OF THE EMPLOYER: The County proposes there be made a one-half of one percent (0.50%) equity adjustment to each step of the wage scale effective in the first pay period of January 2015. Following that adjustment, the Employer proposes a further two percent (2.0%) increase occur effective in the first pay period of January, 2015. The County also proposes there be made two percent (2.0%) increases in the first pay periods of 2016 and 2017. Details of its proposal are shown in the table below:

<u>Current</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>
\$20.33	\$20.84	\$21.26	\$21.68
\$21.69	\$22.23	\$22.68	\$23.13
\$23.03	\$23.61	\$24.08	\$24.56
\$24.39	\$25.00	\$25.50	\$26.01
\$25.73	\$26.38	\$26.90	\$27.44
\$26.72	\$27.39	\$27.94	\$28.50
\$27.25	\$27.93	\$28.49	\$29.06

The County points out that there is a pattern to settlements reached with its various unions including AFSCME Local 1746 which represents the largest bargaining unit in County service. That pattern is reflected in its proposal of two percent (2.0%) wage increases for 2015, 2016 and 2017. On occasion equity adjustments have been made when a compelling case is presented. That is not the situation in these

² Nelson, p. 7

negotiations according to the County. The \$750.00 lump sum proposal of the Union cannot be justified as no substantial inequity exists. Nor has the Union placed on the table a quid-pro-quo in support of its proposal. As there exists a pattern of settlements in County service that pattern should be given great weight in this proceeding the Employer asserts.

The County disputes the conclusion of Factfinder Nelson that a \$750.00 equity adjustment is warranted.³ Consideration must be given to the fact that Cuyahoga County provides a no-contribution health insurance plan. That sort of plan is extraordinarily rare today. Further, Deputies in Cuyahoga County do not perform tasks similar to their counterparts elsewhere. They do not patrol nor do they make 911 response.

The Employer acknowledges that the local economy is improving. That said, it is not improving at the rate seen nationwide. Given that, the first year lump sum proposed by the Union and the Factfinder is excessive and should not be awarded the County asserts. Rather, under the circumstances as they exist in January, 2015 the County proposal is more appropriate it contends.

DISCUSSION: Clearly comparisons play a significant role in interest disputes.

Employees measure themselves against others in the same industry and area. When they compare unfavorably to those doing the same work for different jurisdictions a sense of disgruntlement, of grievance, inevitably arises. Similarly, when an employer negotiates with many unions and deals with a group of non-union employees it should be expected that a high degree of commonality will prevail with respect to the magnitude of wage increases provided to each group, union and non-union alike.

³ Nelson, p. 8

In the twentieth century the practice of interest arbitration became commonplace in some industries following the conclusion of World War I and again after World War II. In particular, it was widespread in textiles in New England, men's and woman's clothing manufacture and public transport. To this day the Amalgamated Transit Workers routinely engages in interest arbitration with public and private transport systems alike. Certainly as is well known interest arbitration was extended to employers and employees in the public sector towards the end of the twentieth century. There is a great deal of discourse on the proper weight to give to comparison data and the sorts of comparisons that are appropriate.

From the Roosevelt administration through the Clinton administration one of the preeminent economists in the United States was John Dunlop of Harvard University.⁴ It was Dunlop's view as a practicing arbitrator as well as an eminent academician (and counselor to President's) that a wage increase generated via interest arbitration should not disturb the internal wage structure of the Employer. Dunlop opined that:

A salary increase by arbitration should provide a minimum change in the salary structure negotiated by the parties. The relative differentials in dollar terms among employees in the same group ... should likewise be generally preserved by the arbitrator.⁵

Dunlop's view is pertinent to this situation. The County has a long history of negotiating with various employee groups. These are represented by different unions: e.g. AFSCME, UAW, Teamsters, FOP, and OPBA. In this round of negotiations the concept of the two percent (2.0%) increase has become commonplace in County service. The Corrections Officers bargaining unit went to Factfinding before Robert

⁴ Professor Dunlop, now deceased, routinely informed his listeners how he visited the White House on a weekly basis to tell the President what to do. I had such a conversation with him and was immediately dismissed from his consciousness as I had not visited the White House to instruct the President.

⁵ New York Times and Newspaper Guild, 15 LA 333 (1950) Dunlop, Arbitrator

Stein. Factfinder Stein noted that the Employer had acknowledged that the starting rate for Corrections Officers was “inadequate.”⁶ Thus, he recommended an adjustment in the steps for Correction Officers. He also recommended a two percent (2.0%) wage increase for 2015 and 2016. The two percent (2.0%) increase is general in County service. In this proceeding the Union asks I alter it on behalf of this bargaining unit. I am unwilling to do so. The potential for mischief in County service is sufficiently great as to not justify the increase sought by the Union.

The current environment is characterized by low inflation. The most recent data from the Bureau of Labor Statistics shows inflation for all of 2014 at 1.6%.⁷ The proposal of the County keeps employees whole against inflation and provides an increase in real income. The objective the Union is to secure an increase in real income for its members. The proposal of the County, including as it does the equity adjustment of .50% meets that objective.

The Union stresses the significance of the Factfinder’s report and urges it be ratified by me. Certainly convention and I have stressed that unless assurance may be had that the Factfinder erred or circumstances have changed from the time of the Factfinding report to the date of Conciliation the Factfinder is due deference. That said, it is the case that the same job title in different organizations may include different duties. Road patrol forms the basis for the mainstay of duties of Deputies in other departments, e.g. Geauga, Lake, Medina, etc. etc. Examination of the Position Description of the Deputy in Cuyahoga County⁸ shows no reference to road patrol. A fundamental commonality between members of this bargaining unit and their colleagues

⁶ Case No. 13-MED-09-1204, p. 11, Stein

⁷ BLS website, January 17, 2015

⁸ Er. Ex 6

elsewhere is missing. Nor do Cuyahoga County Deputies respond to 911 calls.

Testimony was received at the hearing to the effect that the Sheriff's Office in Cuyahoga County is principally a support agency for other jurisdictions.⁹ A small proportion of Deputies perform traditional law enforcement tasks daily.

Further, data in County Exhibit 8C show that deputies in nearby counties are the primary law enforcement agency for smaller jurisdictions within those counties. Deputies in Lorain, Medina and Geauga Counties are particularly active in this function.¹⁰ That activity is not a substantial part of the duties of Cuyahoga County Deputies.

Significant as well is that the County substantially altered its proposal from that before the Factfinder and the one before me. To recall, the County was proposing a one percent (1.0%) wage increase for 2015 and reopeners for 2016 and 2017 at Factfinding. To reiterate, in this proceeding the County is proposing three two percent increases, for 2015, 2016 and 2017, plus the .05% equity adjustment for 2015. That is not a substandard offer in any respect.

Further, the comparison data must be viewed carefully. County Exhibit 8C represents a comparison of Cuyahoga County Deputies with others in Northeast Ohio.¹¹ The seventh page shows "Total Compensation" (excluding health insurance) for 2017 with the proposal of the County as well as the wages through 2016 for the comparison group. Cuyahoga County compares well. Scrutiny must be given to Geauga County. The data on page 7 of County Exhibit 8C show a total compensation¹² for Geauga County Deputies of \$70,605.43. This is well above the figure being seen anywhere else

⁹ Testimony of Sheriff Bova.

¹⁰ This excludes Portage County whose relationship to this proceeding is weak.

¹¹ Geauga, Lake, Lorain, Medina, Portage and Summit County Deputies

¹² Top of wage scale plus 10 year longevity plus uniform allowance.]

in the region. Excluding Geauga County the Employer has calculated the average total compensation in the region to be \$58,335.29 in 2017. Under its proposal Cuyahoga County Deputies will be earning \$62,600.02. Further, Cuyahoga County offers a health insurance plan through the Metro Health system that is cost-free to employees. At hearing it was represented that approximately 40% of the members of this bargaining unit are enrolled in the Metro Health insurance plan. That cannot be disregarded. Page 8 of County Exhibit 8C shows the effect of the Metro Health plan plus the cost to employees of nearby counties of health insurance. Those costs cannot be ignored.

The Employer sensibly changed its proposal from that it made to the Factfinder to the one before me. Taken as a whole, that proposal is superior to that of the Union. This is especially the case when consideration is given the effect adoption of the Union proposal would have on the internal wage structure of the County and the multiplicity of unions with which it bargains. The proposal of the County is awarded.

ISSUE 2, ARTICLE 26, HEALTH AND SAFETY

POSITION OF THE UNION: The Union proposes no change in the current contract language on health and safety. This issue was considered by the Factfinder. He acknowledged that the parties were concerned about fitness. That said, he recommended no change in the existing contract language relevant to this issue. As that is the case the Union stands on the report of the Factfinder and urges no change to the present Article 26.

POSITION OF THE EMPLOYER: The County altered its health and safety proposal for purposes of Conciliation. It is substantially different from that before the Factfinder. The County now proposes:

The parties shall form a Labor-Management Committee to address ongoing issues of security and safety, with one emphasis being the appropriate use of force. The parties recognize that all Sheriff Deputies must be physically and mentally fit to perform their jobs effectively and so that they do not constitute a threat to themselves or others. The County may require that all Sheriff Deputies take part in reasonable, valid and job-related training to assess an employee's ability to perform the actual or simulated tasks such as but not limited to, use of force, self-defense and other training or testing that is job-related and consistent with the operational needs of the Employer. Prior to implementing training or assessment pursuant to this Article the County shall use an expert to certify the validity of the test or assessment measure. If an employee does not complete and pass required training and/or assessment, he/she shall be given an opportunity to re-train and/or be re-assessed. If an employee subsequently fails to complete and pass training and/or assessment required by the County, he/she shall receive written notification which may be considered for purposes of performance evaluations and promotions.

The County points out that contract language dealing with fitness is not unusual in the Sheriff's Office. The present Agreement between the employer and this Union covering the Correction Officers for the January 1, 2014 – December 31, 2016 term contains language dealing with fitness. That language differs from the proposal made in this proceeding. Thus, the Correction Officers agreement provides that if the Employer has a "reasonable suspicion to believe that an employee is unable to perform the duties of his/her job the Employer may relieve the employee from duty." Further, if an employee is found by a qualified medical professional "to be unable to perform his/her duties that employee shall be relieved of duty." The proposal before me lacks those provisions. The Correction Officers Agreement was reached after Factfinding before Robert Stein.¹³ It was he who drafted the language. It was accepted by the parties. Further, the County points out that the Agreement covering the Correction Officer Corporals' has language in Article 35 that is close to that it proposes for the Deputies. The proposal for the Deputies includes a labor-management committee. The Agreement

¹³ SERB Case No. 13-MED-09-1204, Stein, Factfinder

with the Corporals does not. Further, the Corporals are represented by the United Auto Workers. Thus, both the OPBA and the UWA have assented to language dealing with fitness.

At the hearing the Sheriff of Cuyahoga County, Frank Bova, testified. Sheriff Bova is a veteran of 30 years experience in law enforcement. All were in Northeast Ohio in various jurisdictions. Sheriff Bova provided eloquent testimony regarding the necessity for law enforcement personnel to be fit. In particular he related the concept of fitness to the use of weapons by officers. It was his view that a fit officer would have more options when confronted with a difficult situation than quick recourse to his/her weapon. Sheriff Bova recounted when he was a young officer he was able to deal with a violent person as he was fit. He did not have recourse to his weapon. It was his view that his personal experience is general in law enforcement.

As part of its presentation the County introduced an article from Police Chief,¹⁴ dated January, 2015. In addition to pointing out that law enforcement officers should be fit as part of the requirements for the job, the article noted that agencies were exposed to a potential liability if they were indifferent to the fitness of their officers. The article continued to note that "Studies have shown repeatedly that physical fitness has a direct impact on reducing injuries and improving personal well-being as well as work performance." The Employer notes that there have been recent well-publicized instances of law enforcement personnel using their weapons in the County. We will never know if enhanced fitness would have prevented or lessened those situations.

¹⁴ "Fit for Duty? The Need for Physical Fitness Programs for Law Enforcement Officers" Adrienne Quigley, Police Chief, January, 2015,

That said, intuitively and based on the testimony of the Sheriff, improved fitness on behalf of Deputies is a worthy objective the County asserts.

DISCUSSION: As was the case with the wage issue, the Employer has made substantial change in its proposal from that which it proffered to Factfinder Nelson and that before me. The concept of fitness is not foreign to these parties. The Agreement covering the Correction Officers deals with it. So too does the Agreement covering the Correction Officer Corporals who are represented by the UAW. These parties are not writing on a blank slate on this issue. Close examination of the proposal of the County shows it to be unexceptionable. It provides for a labor – management committee. It mandates that training be validated and reasonable. Recourse to an expert is established. The expert is to validate the test or assessment measure. If an employee does not measure up the employee is to be given an opportunity to re-train or be re-assessed. The proposal of the Employer for this bargaining unit is broadly similar to that codified in the Corrections Officers bargaining unit. The language therein provides that if the Employer has “reasonable suspicion” the employee is unable to perform his/her duties, the Employer may relieve the employee from duty and place the employee on administrative leave. If the employee is found by competent medical personnel to be unable to perform their duties they “shall be relieved of duty.” That language is absent from the proposal in this situation. The rejection of the proposal of the Employer by the Factfinder was salutary. It prompted a rethinking by the County. As physical fitness language is found in other Sheriff’s Office bargaining units and was accepted by the parties voluntarily and this proposal represents a very reasonable expression of the desirability and need for fitness it is awarded.

ISSUE 3 ARTICLE 35, OUTSIDE EMPLOYMENT

POSITION OF THE UNION: As was the case with issues 1 and 2 above the Union stands on the Report of the Factfinder. He recommended that the current Agreement be modified to provide that Deputies apply to the “Sheriff and obtain the Sheriff’s written permission prior to engaging in employment outside the Sheriff’s Office.” The current Agreement provides that employees apply to the “Employer” and secure its written permission prior to engaging in outside employment.

As the current situation was related to the Factfinder and myself employees who seek permission for outside employment are vetted by the Inspector General of the County. This is problematic according to the Union. It has proved cumbersome. As the Sheriff is more attuned to the needs of the operation than the Inspector General and the Factfinder essentially recommended the position of the Union it urges it be awarded in this proceeding.

POSITION OF THE EMPLOYER: The County proposes no change in the existing language. All other County employees, represented and non-represented alike, are subject to the same permission and reporting requirements with regard to outside employment. In fact, the County has enacted an ordinance which deals with this situation. (Tab 10, Employer Exhibit book). Examination of the Agreements covering other bargaining units in the Sheriff’s Office e.g. the Corrections Sergeants’ and the FOP-OLC, the Protective Services Officers and the OPBA, the Protective Services Sergeants and the OPBA, the Deputy Sergeants and the OPBA etc. shows them to be identical for all intents and purposes to the present language on this issue in the Deputies contract. No reason exists to alter it the Employer contends.

DISCUSSION: To reiterate, the Employer has an internal pattern on this situation. The Union is seeking to alter that pattern in this proceeding. In situations involving a novel or unique or breakthrough issue neutrals should be circumspect. Breakthroughs are not normally awarded by neutrals. Nor should they be. If it could be shown this bargaining unit was a laggard with respect to outside employment the Union would have a stronger position than it does before me. No such showing can be made. Members of this bargaining unit are treated similarly to their colleagues in the Sheriff's Office and throughout the County. For this reason the position of the Employer on this issue is awarded.

ISSUE 4, ARTICLE 40, VACATION

POSITION OF THE UNION: The Union is seeking an improvement in the vacation accrual to four weeks vacation after 13 years of service. The present accrual is four weeks after 15 years. The Factfinder recommended this change. It was his view that the current accrual rate was substandard when compared to other jurisdictions. As was the case with the other issues in this proceeding the Union stands on the Factfinder's report. He determined that Deputies in Cuyahoga County lagged well behind their counterparts elsewhere when accruing four weeks of vacation.¹⁵ He rejected the argument of the Employer that all County employees received four weeks' vacation after 15 years of service. The external comparisons were controlling for the Factfinder. Given his recommendation and the data he relied upon the Union urges acceptance of its position on this issue.

POSITION OF THE EMPLOYER: As was the case with the other issues in this proceeding the County relies upon the principle of internal consistency to support its

¹⁵ Nelson, p. 21.

position that no change in the vacation accrual rate is warranted. As shown behind Tab 11 of the Employer's exhibit book, all non-bargaining personnel in County service earn four weeks' vacation after 15 years. Similarly, all bargaining unit employees have the same accrual rate. Internal consistency argues for an award on its behalf the County contends.

DISCUSSION: It is obvious that I regard existing bargaining relationships as of paramount importance. Industrial stability is a significant factor that must be considered by a neutral. History does not show that one group has been able to secure a breakthrough benefit in proceedings such as this. With respect to this issue County employees, represented and non-represented alike, have the same vacation: 4 weeks after 15 years of service. No imagination is required to conceive of the pressure the Employer will experience to extend the enhanced accrual: 4 weeks after 13 years, throughout County service should the Union prevail on this issue. Further, Unions that have bargained and reached agreement without the increment sought by the Union in this proceeding will feel aggrieved to put it mildly. The potential for industrial turmoil throughout the County is obvious. For these reasons the proposal of the Union is rejected. The proposal of the Employer on the issue of vacation is awarded.

SUMMARY OF AWARD: The position of the Employer is awarded on all issues.

Signed and dated this _____ day of February, 2015 at Solon, OH.

Harry Graham
Conciliator

