

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF
FINAL OFFER SETTLEMENT AWARD
BETWEEN:

Southwest Summit Council of Governments)
and) Case No: 2014-MED-09-1259
Ohio Patrolmen's Benevolent Association) Conciliator: Colman R. Lalka

HEARING

Date of Hearing: March 20, 2015
Location of Hearing: Norton, Ohio

ATTENDANCE AT HEARING

For SWSCOG:

Paul Jackson, Esq.
Janice Marshall, Copley Township Fiscal Officer
Karen Gregorcic, SWSCOM Dispatch Manager

For the Union:

Jeff Perry, OPBA Business Agent
Jerry Mirman, SWSCOM Union Representative
Merl Rich, SWSCOM Union Representative

BACKGROUND

Southwest Summit Council of Governments (SWSCOG) recognizes the Ohio Patrolmen's Benevolent Association as the bargaining representative for certain employees of the Southwest Summit Communications Center (SWSCOM). The Bargaining Unit is duly certified by the State Employment Relations Board, and consists of eighteen full-time and three part-time employees. The parties are in the process of creating their first Collective Bargaining Agreement. Formal bargaining between the parties has been ongoing, with Fact-Finding having

been conducted. The Fact-Finding Report, issued January 28, 2015, was rejected within applicable time limitations. Said Fact-Finding Report, which contains the history of SWSCOG and SWSCOM, as well as the rationale for the Fact-Finder's recommendations, is incorporated herein by reference.

The parties requested the Conciliator convene a hearing, and matters at impasse be determined pursuant to a final offer settlement procedure on an issue-by-issue basis in keeping with ORC 4117 and related Rules and Regulations adopted by SERB. Each Party timely submitted a written report to the conciliator as mandated by law and SERB Rules and Regulations.

The hearing was convened on the date and at the place indicated above. At that time the parties were provided the opportunity to present evidence and argument in such a manner that would allow the Conciliator to issue a Final Offer Settlement Award on all disputes between the parties on an issue-by-issue basis.

CRITERIA

After giving thorough consideration to the evidence and argument of the parties, the criteria used by the Conciliator in resolving the disputed issues were those set forth in ORC 4117.14(G)(7)(a) through (G)(7)(f) and Rules 4117-9-06(H)(1) through (H)(6) of the State Employment Relations Board, to wit:

- (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 involved 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 interests and welfare of the public, 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 above, 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.

ISSUES AT IMPASSE AND AWARDS

Without being too repetitious of matters set forth in the Fact-Finding Report (incorporated herein by reference), a brief overview will serve to bring the issues at impasse into focus. The Township of Copley, and the Cities of Barberton, and Norton entered into an agreement

whereby a new political subdivision was formed. The new subdivision, the Southwest Summit Council of Governments (SWSCOG), is responsible for the operation of the Southwest Summit Communications Center (SWSCOM), and SWSCOM is responsible for, *inter alia*, the dispatching of Police and Fire units for the three forming subdivisions. By combining three separate Dispatch Centers into one, economies of scale are to be achieved.

The employment of those working in the three separate Dispatch Centers was terminated, and all, with the exception of two who chose to retire, were rehired by SWSCOG. The Dispatchers in each of the three centers were represented by the OPBA under three separate Labor Agreements. SWSCOM began operations in early 2014, and the parties are in the process of entering into their first Collective Bargaining Agreement, with negotiations having been ongoing. This Conciliation will resolve the final outstanding issues.

ARTICLE 22, SICK LEAVE

The parties presented three separate issues regarding sick leave. While a Tentative Agreement has not been executed, they are in agreement regarding Article 22, Sections 22.1 through 22.9. The impasse begins at Section 22.10, with the Employer proposing that upon retirement the employee may elect to be paid to a maximum fifty percent (50%) of the value of his or her accumulated sick leave up to four-hundred-eighty (480) hours. The Union proposes the full value of the four-hundred-eighty hours (480) be paid.

Additionally, the Employer proposes that an employee must have worked for SWSCOG for seven years to be eligible for the sick leave cash-out. The Union proposes ten years of service to be eligible, however, the Union further proposes that prior service with Copley, Barberton, and Norton be included in determining entitlement to the benefit. Furthermore, in the event SWSCOG is dissolved, the Union proposes that employees terminated or laid off as the result are to receive a cash-out of up four-hundred-eighty hours (480) of accumulated sick leave.

For Section 22.11, both parties agree that employees be permitted to transfer their existing balance of sick leave from their prior Copley, Barberton, and Norton employment, up to nine-hundred-sixty (960) hours. The Employer, however, limits the transfer to those employees working full-time as of April 1, 2014, while the Union proposes all employees be permitted the transfer.

The Employer's main concern with Section 22.10 as proposed by the Union is that with credit for time served with Copley, Barberton, and Norton, some employees will be immediately eligible for retirement, at an approximate cost to SWSCOG of \$10,000.00 per retiring employee. Moreover, the Employer argues that the purpose of sick leave is to prevent a cessation of income in the event an employee is unable to work due to reasons enumerated in the Labor Agreement. It is not intended, the Employer continues, as a supplemental retirement benefit.

Between Fact-Finding and this Conciliation, the Union modified its proposal for Sections 22.10 and 22.11 to mirror the language recommended by the Fact-Finder, and the Union relies on the Fact-Finder's reasoning in setting forth its modifications. Regarding the cost concerns advanced by the Employer, the Fact-Finder reasoned as follows:

I am mindful of the fact that the current Dispatchers all were employed by political entities, which, through their Council Representatives, still control and/or strongly influence the funding, expenditures and operation of SWSCOG. . . .

Regarding the continuation of sick leave benefits, the Fact-Finder went on to indicate:

. . . It seems only fair that the former dispatchers, who still perform dispatching services for the three aforementioned political subdivisions, be credited in some manner with the sick leave that they accumulated while they were employed by those political subdivisions.

As a third issue of Article 22, the Union proposes new Sections 22.13 and 22.14, providing for sick leave incentives, to read as follows:

Section 22.13. The following Sick Leave Incentives shall be implemented in the first pay check following the earning of such incentives:

Number of Sick Hours Used:	Compensatory Hours:	Cash Bonus:
0 sick hours within half-year	16	\$125.00 Bonus
0.1 - 8.0 sick hours within half-year	12	\$100.00 Bonus
8.1 - 16.0 sick hours within half-year	8	\$75.00 Bonus

Section 22.14. In order to qualify for such incentives, an employee must work an entire half-year (i.e., January 1-June 30 or July 1-December 31) and be employed in active pay status as a bargaining unit member as of the last day of the half-year. These incentives are not subject to proration or retroactive application.

The Union contends every jurisdiction has a sick leave incentive, and, with wages being lower than other departments, the incentive is appropriate. The proposed language is taken

from the Copley Labor Agreement, with a smaller benefit. The Employer reiterates its argument that sick leave is a benefit to prevent cessation of income in the event of illness, not for other purposes.

Regarding Sections 22.13 and 22.14, the Fact-Finder reasoned:

. . . I am not convinced from the discussions during hearing and after viewing the past collective bargaining agreements from Barberton, Norton, and Copley Township of the necessity of including Sick Leave Incentives in this first proposed Contract. I am mindful of the fact that such an incentive was included in the former Copley Township contract, but it is not contained in the former Barberton or Norton contracts. I therefore find that the Employer's omission of that provision from its proposal on sick leave is preferable to the Union's suggestion that it be included.

This Conciliator is in agreement with the Fact-Finder's above-quoted rationale, as well as other rationale advanced in his Report. Accordingly, the Conciliator awards the following Article 22 language to be included in the parties' Collective Bargaining Agreement:

ARTICLE 22
SICK LEAVE

Section 22.1. Sick leave shall be defined as an absence pay necessitated by: (a) illness, injury or disability of an employee or a member of the employee's immediate family when the employee's presence is reasonable; (b) exposure by the employee to contagious disease communicable to other employees; (c) medical, dental, or optical examination or treatment of an employee or a member of the immediate family when the employee's presence is reasonable; or (d) pregnancy and/or childbirth and related conditions of an employee or an employee's spouse.

Section 22.2. All full-time employees shall earn sick leave at the rate of one and one quarter (1-1/4) days per month and may accumulate such sick leave without limit up to a maximum of two thousand (2,000) hours.

Section 22.3. An employee who is to be absent on sick leave shall notify his/her supervisor of such absence, the reason for such absence, and the expected length of such absence at least two (2) hours before the start of his/her work shift, except in case of an emergency. If sick leave continues past the first day, the employee shall notify the on duty supervisor every day unless the supervisor agrees notification is not necessary.

Section 22.4. Sick leave may be used in segments of not less than one (1) hour.

Section 22.5. Upon returning to work for all sick leave usages of three (3) days or more, in order for the time off work to be charged against accumulated sick leave, the employee shall submit such proof of illness, injury or disability as may be satisfactory to the Dispatch Manager.

Section 22.6. Any abuse of sick leave or the patterned use of sick leave shall be just and sufficient cause for discipline as may be determined by the Dispatch Manager, who shall then have the right to request truth of illness.

Section 22.7. The Dispatch Manager may require an employee who has been absent due to personal illness, injury or disability, prior to and as a condition of his/her return to duty, to be examined by a physician designated and paid for by the Employer, to establish that he is not disabled from the performance of his/her normal duties and that his/her return to duty will not jeopardize the health and safety of other employees. Should a Dispatch Manager make that request, the employee shall be placed upon a paid leave of absence. Should the physician designated by the Employer disagree with the employee's physician who has authorized a return to work, those physicians shall select a third physician who shall then examine that employee. That third physician's decision shall be binding upon the parties.

Section 22.8. When the use of sick leave is due to illness, injury or disability of a member of the immediate family or for medical, dental, or optical examination or treatment of a member of the immediate family, "immediate family" shall be defined to only include the employee's spouse, children, stepchildren, foster children residing in the home, or parents.

Section 22.9. Employees on sick and/or disability leave shall not engage in any outside employment without the written permission of the Employer until after returning to work and completing a tour of duty for the Employer. Violation of this provision will result in unpaid leave status for all days that the employee reported off sick while engaging in outside employment and may subject the employee to discipline.

Section 22.10. At the time of retirement from active service with the Employer, providing that the employee has completed ten (10) or more years of continuous service with the Employer, the employee may elect, by filing a written notice to the Dispatch Manager within thirty (30) days prior to the effective date of retirement, to be paid in cash for the value of his/her accumulated sick leave credit not to exceed four-hundred-eighty (480) hours at the employee's current rate of pay. Such payment shall eliminate all sick leave credit accumulated by the employee at that time. Such payment shall be made only once to an employee during his/her lifetime. Those employees hired on January 4, 2014 may include their prior years of service with Barberton, Norton or Copley Township as years of continuous service. Moreover, should SWSCOG dissolve and cease functioning as the Employer, or any members (Barberton, Norton, or Copley Township) leave or withdraw from SWSCOG, any Dispatcher was laid off or terminated as a result shall be entitled to cash out his/her accumulated sick leave up to four-hundred-eighty (480) hours.

Section 22.11. Employees shall be permitted to transfer in any existing balance of sick leave from their prior employment with Barberton, Copley Township, or Norton in an amount up to nine-hundred-sixty (960) hours, which sick leave shall be subject to all of the provisions of this Article 22.

ARTICLE 25, COMPENSATION

The Union presents four issues under Article 25. All four of the Union's proposals follow the Fact-Finder's recommendations. Under Section 25.1, the recommendations provide for

a one and one-half percent (1.5%) wage increase retroactive to July 1, 2014,¹ an additional one and one-half percent (1.5%) wage increase retroactive to January 1, 2015, and an additional one and one-half percent (1.5%) wage increase on July 1, 2015. The Union argues that the three jurisdictions comprising SWSCOG have had a stable and growing revenue stream for years, and are in a position to finance the wage increases. The Union also points out that at Copley, employees had not received a pay raise in their last three years. The Union goes on to note that SWSCOM employees are now required to dispatch for Copley, Barberton, and Norton, and each employee was required to learn two new jurisdictions along with their respective Police and Fire policies and personnel.

The Employer proposes a two percent (2%) wage increase retroactive to April 1, 2014. That increase, the Employer points out, is in excess of the range indicated by SERB data for annual increases, and, the Employer emphasizes, employees from Barberton and Norton received wage increases when rehired by SWSCOG, with employees from Barberton receiving a nine percent (9%) increase and employees from Norton a one-half percent (.5%) increase.

The Union also proposes that employees assigned by the Dispatch Manager as a Trainer be paid an additional \$1.50 per hour, that the Terminal Agency Coordinator (TAC) be paid an additional \$1.75 per hour, and that the Employer select and appoint Lead Dispatchers as needed, and the Lead Dispatchers be compensated an additional \$2.00 per hour. The Employer submits that an additional \$1.75 per hour, rather than \$2.00, for the Lead Dispatcher is reasonable, contending the duties of a Lead Dispatcher are no more complex than those of the TAC.

Considering the Employer's ability to finance the wage increases, the Fact-Finder noted:

. . . I do note that the Employer has not argued that the finances of Barberton, Norton, and Copley Township are currently imperiled in any manner, and they are now and for the foreseeable future the chief funding sources for SWSCOG. . . .

The Fact-Finder also took into consideration the Employer's arguments regarding wage increases when employees from Barberton and Norton were hired by SWSCOG:

In arriving at my recommendation concerning the issue of compensation, I have considered the aforementioned criteria under which such proposals are to be evaluated, including, among other things, the comparables offered by the Parties, the economic uncertainties of the new Employer, and the financial stability of Barberton, Norton, and Copley Township; the pay which was received by the dispatchers formerly employed by SWSCOG's three founding political subdivisions prior to the merger of

¹ The parties executed a waiver providing that matters with cost implications may be retroactive to April 1, 2014.

dispatcher services; the fact that certain dispatchers received a significant wage increase upon assuming their duties in the Unit; and the current wage structure of the Unit. Under all of the aforementioned circumstances, I find that certain aspects of both the Union's and the Employer's proposals regarding ARTICLE 25: COMPENSATION have merit and will be recommended.

Thus, the Fact-Finder's recommendations, which the Union submits as its last best offer in settlement, took into account the arguments raised in the Fact-Finding Hearing, and the Fact-Finder selected some, but not all of the Union's proposals. Specifically, the Fact-Finder rejected the Union's request for additional compensation for CPR and EMD certifications. The matters regarding CPR and EMD certifications were not proposed at the Conciliation Hearing, however, the other issues considered by the Fact-Finder were. This Conciliator, based on the presentations of the parties at Conciliation, reaches the same conclusions as the Fact-Finder and awards his recommendations, to wit:²

ARTICLE 25
COMPENSATION

Section 25.1.A. Effective retroactively from July 1, 2014 through December 31, 2014, the hourly rate of pay for bargaining unit members shall increase across-the-board by 1.5% and shall be as follows:

	2014 (From July 1, 2014 – Dec. 31, 2014)
Part-Time Training	\$17.65
Part-Time Completion of Training	\$18.63
Full-Time Training (up to 24 months)	\$21.26
Full-Time Completion of Training	\$22.28

Section 25.1.B. Effective retroactively from January 1, 2015 through June 30, 2015, the hourly rate of pay for bargaining unit members shall increase across-the-board by 1.5% and shall be as follows:

	2015 (From Jan. 1, 2015 – June 30, 2015)
Part-Time Training	\$17.91
Part-Time Completion of Training	\$18.91
Full-Time Training (up to 24 months)	\$21.58
Full-Time Completion of Training	\$22.61

Section 25.1.C. Effective from July 1, 2015 through December 31, 2015, the hourly rate of pay for bargaining unit members shall increase across-the-board by 1.5% and shall be as follows:

	2015 (From July 1, 2015 – Dec. 31, 2015)
Part-Time Training	\$18.18
Part-Time Completion of Training	\$19.19

² In addition to the award of the Conciliator regarding Article 25, the Fact-Finder also recommended Article 25, Sections 25.5, 25.6, and 25.7. Those sections were not included in the Union's Position Statement, cannot be considered at Conciliation, and are presumed withdrawn. Sections 25.5, 25.6, and 25.7 were presented in the Employer's Position Statement, however, they were not argued at the Conciliation Hearing, and the Conciliator presumes they were also withdrawn by the Employer.

Full-Time Training (up to 24 months)	\$21.90
Full-Time Completion of Training	\$22.95

Section 25.2. Employees who were assigned in writing by the Dispatch Manager as a trainer shall be paid one and one-half dollars (\$1.50) per hour in addition to their regular rate of pay for time spent training other employees.

Section 25.3. The TAC shall be paid an additional one dollar and seventy-five cents (\$1.75) per hour.

Section 25.4. The Employer shall be responsible for selecting, appointing, and determining the duties and numbers of Lead Dispatchers. Lead Dispatchers shall be paid an additional two dollars (\$2.00) per hour for all hours worked.

ARTICLE 26, INSURANCE AND BENEFITS

In its argument, the Union states it is adopting as its proposal the recommendations of the Fact-Finder regarding Article 26, Sections 26.1 through 26.5. However, its proposed language deviates from the language used by the Fact-Finder in his recommendations, including, at Sections 26.1 and 26.4, provisions for insurance coverage that is to be obtained retroactively.

The Employer's language tracks the Fact-Finder's, with a modification in Section 26.4 to provide for vision coverage after the October 1, 2014 date recommended by the Fact-Finder. The date used by the Employer is April 1, 2015, and, in that retroactive insurance coverage cannot be purchased, it is presumed the April 1, 2015 date was to allow for the passage of time from the date of the Fact-Finding to the date of the award of the Conciliator. In that the Conciliation Hearing was not conducted until March 20, 2015, the Conciliator will change the date from April 1, 2015 to June 1, 2015, to provide sufficient time for the Employer to obtain coverage, and otherwise awards the following language proposed by the Employer:

Section 26.1. Employer will provide, on behalf of each employee, insurance coverage that is substantially equivalent to the terms of Appendix A attached to this Agreement. Employees shall contribute \$20.00 per month for single coverage, \$40.00 per month for single plus one (1) coverage, and \$90.00 per month for family coverage. The parties agree, should that coverage not be available, that they shall reopen this Agreement for the sole purpose of discussing additional contributions or changes to the benefits provided by that health insurance.

Section 26.2. Employer shall, within sixty (60) days of ratification of this Agreement, adopt a Section 125 Plan so that employee participation as set forth in Section 26.1 shall be on a pre-tax basis.

Section 26.3. Employer shall provide for full-time employees coverage under a life insurance policy in the amount of \$50,000 for the employee only.

Section 26.4. Employer shall, effective June 1, 2015, provide and pay for employee vision coverage that is substantially equivalent to the terms of Appendix B attached to this Agreement. Employees shall have the option to purchase family vision coverage, if desired.

Section 26.5. Notwithstanding any other provision of this Agreement, part-time employees shall not receive sick leave, vacation pay or any benefits under this Article 26.

ARTICLE 26A, INJURY LEAVE

Both parties are in agreement that Injury Leave should be addressed in their Labor Agreement. Both parties would provide for Injury Leave up to twelve weeks, with the Union proposing the language recommended by the Fact-Finder, *viz.*, that Injury Leave be payable at one-hundred percent (100%) of wages. The Employer proposes full pay for the first six weeks, and eighty percent (80%) pay for the remaining six. It is the Employer's belief that the decreased benefit in the final six weeks will serve as incentive for an employee to return to work.

The Fact-Finder's recommendation was based on Injury Leave provisions in comparable Labor Agreements, including those of Copley, Barberton, and Norton. The Conciliator is in agreement with the Fact-Finder, and awards the language recommended in his report:

ARTICLE 26A INJURY LEAVE

Section 26 A.1. When a full-time employee is injured in the line of duty while actually at work for the Employer, that employee shall be eligible for paid leave not to exceed twelve (12) weeks, provided that the employee files for workers' compensation and signs such documents as are necessary to assign to the Employer those sums of money the employee would ordinarily receive as weekly compensation from the Bureau of Workers' Compensation (BWC). The employee may use any earned leave until he/she is approved for benefits by the BWC. The leave time used will be replenished and restored once the Employer receives the money from the BWC.

Section 26 A.2. The Employer shall have the right at any time to request that the employee have a physical exam by a physician appointed and paid for by the Employer to determine if the employee is unable to work due to that claimed work-related injury as a condition to the employee receiving benefits under this Article. Any time spent by the employee in having such an Employer-requested physical exam shall be paid for by the Employer in accordance with that employee's usual hourly wage rate.

ARTICLE 26B, LONGEVITY PAY

The Union proposes the Fact-Finder's recommendation, noting that it did not desire a cap on Longevity as the Fact-Finder recommended, but is willing to concede that point. The Union points out that all Dispatchers enjoyed Longevity in their former Labor Agreements.

The Employer agrees Longevity Pay is the norm in the public sector, however, under its proposal, Longevity, beginning after the fifth year, would amount to \$75.00 for each year of service up to a maximum of \$1,500.00.

The Fact-Finder noted that the formulas for determining the amounts of Longevity Incentive vary greatly, and went on to consider comparable Contracts offered by the parties, and recommended \$100.00 per year of service to a maximum of \$2,000.00. This Conciliator awards the Fact-Finder's recommendation, to wit:

ARTICLE 26B
LONGEVITY PAY

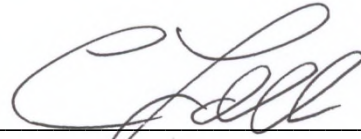
Beginning on the fifth year of service with the Employer, each full-time employee shall receive an annual longevity payment of \$100.00 for each year of service up to a maximum of \$2,000.00. That amount shall be paid in a lump sum on the anniversary date of that employee's completion of service and on each anniversary date thereafter while so employed. Service shall include prior full-time service as a dispatcher with Copley Township, Norton, or Barberton to the extent that the employee had no break in service between working as a dispatcher for Copley Township, Norton, or Barberton and working as a dispatcher for the Employer.

TENTATIVE AGREEMENTS

Negotiations have been ongoing, with Tentative Agreements being reached on the following issues. At the request of the parties and with permission of the Conciliator, said Tentative Agreements are included herein as the award of the Conciliator:

- Article 1: Preamble
- Article 2: Purpose and Intent
- Article 3: Recognition
- Article 4: Dues Deduction
- Article 5: Agency Shop
- Article 6: Management Rights
- Article 7: Employee Rights
- Article 8: No Strike
- Article 9: Discipline
- Article 10: Association Representation
- Article 11: Grievance Procedure
- Article 12: Arbitration Procedure
- Article 13: Non-Discrimination
- Article 14: Probationary Period
- Article 15: Gender and Plural
- Article 16: Obligation to Negotiate
- Article 17: Conformity to Law
- Article 18: Work Hours
- Article 19: Overtime
- Article 20: Holidays

Article 20 A: Personal Days
Article 21: Vacation
Article 23: Funeral Leave
Article 24: Special Leaves
Article 26 C: Educational Reimbursement
Article 26 D: Uniforms
Article 27: Alcohol and Drug Testing
Article 28: Miscellaneous (including Section 28.9: Past Practices)
Article 29: Layoffs
Article 30: Duration of Agreement



Colman R. Lalka, Conciliator

Dated: April 20, 2015
Madison, Lake County, Ohio