

STATE OF OHIO
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF CONCILIATION	:	SERB Case Number: 2016-MED-03-0238
	:	
BETWEEN THE	:	
	:	
SANDUSKY COUNTY, OHIO	:	
SHERIFF,	:	
	:	Date of Conciliation Hearing:
Employer	:	December 19, 2016
	:	
AND THE	:	
	:	
OHIO PATROLMEN'S	:	
BENEVOLENT ASSOCIATION,	:	Howard D. Silver, Esquire
	:	Conciliator
Union	:	

OPINION AND ORDER OF THE CONCILIATOR

APPEARANCES

For: Sandusky County, Ohio Sheriff, Employer

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PROCEDURAL BACKGROUND

This matter came on for a conciliation hearing on December 19, 2016 at 10:00 a.m. in a conference room within the offices of the Sandusky County, Ohio Sheriff at 2323 Countryside Drive, Fremont, Ohio 43420. At the hearing both parties were afforded a full and fair opportunity to present evidence and arguments in support of their final offers on the only issue that remained unresolved between the parties. The conciliation hearing concluded at 11:00 a.m. on December 19, 2016 and the evidentiary record was closed at that time.

This matter proceeds under the authority of Ohio Revised Code section 4117.14 and in accordance with Ohio Administrative Code section 4117-9-06. Both parties have met their obligations in carrying out pre-hearing procedures. Each party submitted to the conciliator and the other party a final offer on the remaining unresolved Article. This matter is properly before the conciliator for review and resolution.

FINDINGS OF FACT

1. The parties to this conciliation proceeding, the Sandusky County, Ohio Sheriff, the Employer, and the Ohio Patrolmen's Benevolent Association, the Union, were parties to a collective bargaining agreement in effect from June 1, 2013 through May 31, 2016, an Agreement that covered the bargaining unit addressed by this proceeding.
2. At the time of the conciliation hearing, the bargaining unit was comprised of full-time regular Deputies in the Sandusky County, Ohio Sheriff's Office, including Patrol Officers, Corrections Officers, and Communications Officers.

3. The bargaining unit is comprised of thirty-four (34) bargaining unit members of whom twelve (12) serve as Road Patrol Deputies.
4. The parties engaged in bargaining a successor collective bargaining agreement for the bargaining unit on April 16, 2016; April 20, 2016; May 18, 2016 (mediation), and July 21, 2016 (fact-finding).
5. The parties reached a number of tentative agreements as to their successor collective bargaining agreement but were unable to reach complete agreement as to Article 23, Compensation and PERS Pickup, specifically Article 23, section 23.6, new language proposed by the Union that would compensate Sandusky County Deputy Sheriffs with an additional \$.50 for each hour of road patrol duty.
6. This matter came on for a conciliation hearing on December 19, 2016; the conciliation hearing concluded on the same day, December 19, 2016.
7. The parties agreed that the conciliator's opinion and order would be issued on January 18, 2017.

UNOPENED ARTICLES

The following Articles were not opened to bargaining by either party. The conciliator orders that these unopened Articles be included in the parties' successor Agreement unchanged.

Article 1 – Recognition

Article 2 – Dues Deduction

Article 3 – Management Rights

Article 4 – No Strike/No Lockout

Article 7 – Association Representation

Article 8 – Labor Relations Meetings

Article 10 – Discipline

Article 12 – Seniority

Article 13 – Layoff and Recall

Article 16 – Jury Duty

Article 17 – Military Leave

Article 18 – Sick Leave

Article 19 – Personal Leave Attendance Bonus

Article 20 – Injury Leave

Article 21 – Family and Medical Leave

Article 24 – Longevity Compensation

Article 25 – Education Pay

Article 26 – Uniforms

Article 27 – Travel and Expense Reimbursement

Article 28 – Bulletin Board

Article 29 – Waiver in Case of Emergency

Article 31 – Personnel Files

Article 32 – Conformity to Law

Article 33 – Negotiations

TENTATIVELY AGREED ARTICLES

The following Articles are the subjects of tentative agreements between the parties as to how these Articles are to be included in the parties' successor Agreement. The conciliator orders the inclusion of the parties' tentatively agreed Articles in the parties' successor Agreement in the form agreed by the parties.

Article 5 – Hours of Work/Overtime

Article 6 – Nondiscrimination

Article 9 – Grievance Procedure

Article 11 – Drug/Alcohol Testing

Article 14 – Holidays

Article 15 – Vacations

Article 22 – Group Insurance

Article 23 – Compensation and PERS Pickup – sections 23.1 through 23.5

Article 30 – Miscellaneous

Article 34 – Duration of Agreement

New Article – Vacations, Promotions and Assignments

UNRESOLVED ARTICLE

The following Article remained unresolved between the parties at the conclusion of the conciliation hearing and is subject to the conciliator's order in this proceeding.

Article 23 – Compensation and PERS Pickup - section 23.6

DISCUSSION AND SELECTION AMONG THE PARTIES' FINAL OFFERS

Article 23, Compensation and PERS Pickup – section 23.6

The Union's final offer is comprised of language intended to be located in Article 23 in section 23.6 that would require that a fifty cent (\$.50) per hour differential be paid to Sandusky County Deputy Sheriffs assigned to road patrol duties. The Union points to changes in law enforcement as a profession since the inception of the relationship between the Employer and the Union. The Union contends that in 1984 it had been common in Ohio Sheriff Offices to staff county jails with sworn county deputy sheriffs and thus the rates of pay for county deputy sheriffs assigned to road patrol and the rates of pay for deputy sheriffs assigned to corrections duties were often identical. Since that time, however, argues the Union, there has been a paradigm shift within the law enforcement profession, shown through the differences that have arisen between the wages paid to county deputy sheriffs serving as corrections officers and the wages paid to county deputy sheriffs assigned to road patrol duties. In this regard the Union points to the Statewide Wage Benchmark Report issued by the Ohio State Employment Relations Board dated November 2, 2016 that reflects the difference between the average pay for deputy sheriffs working as corrections officers and the average pay of deputy sheriffs assigned to road patrol duties, a wage difference that amounts to \$7,353.10 per year or 17.6%.

It is the Union's position in this conciliation proceeding that the dangers associated with performing road patrol duties have increased exponentially in recent years. The Union argues that the fifty cent (\$.50) per hour differential proposed to be paid to Sandusky County Deputy Sheriffs assigned to road patrol duties is intended to comport

with current practices in the state of Ohio's law enforcement community and serve as an acknowledgment of the increasingly difficult and dangerous work performed by road patrol officers in today's society.

The Union argues that its proposed fifty cent (\$.50) per hour differential for road patrol duties is modest in scope and cost. The Union claims that this small step intends to initiate movement in a direction that is affordable (\$12,500 in the first year of the successor Agreement) and aims to provide a reasonable approach that merits selection by the conciliator.

The Employer's final offer on Article 23 proposed to be included in the parties' successor Agreement does not contain new language in section 23.6. The Employer's final offer seeks a denial of the Union's final offer as to the fifty cent (\$.50) per hour differential proposed for Sandusky County Deputy Sheriffs performing road patrol duties.

The Employer notes that the collective bargaining relationship between the Employer and the Union is a mature one, having been in effect for over thirty years and is comparable to other similarly situated jurisdictions. The Employer argues that current wages paid in the Sandusky County Sheriff's Office compare very favorably to the wages paid to deputy sheriffs in Ohio counties surrounding Sandusky County. The Employer also emphasizes the 8.5% PERS pickup to be paid by the Employer for bargaining unit members, as tentatively agreed by the parties in negotiating the successor Agreement.

The Employer claims the Union has mislabeled the \$.50 per hour differential it has proposed for road patrol deputies as "hazardous duty pay." The Employer claims that the real issue is that road patrol deputies do not wish to earn the same hourly rate as corrections officer deputies. The Employer points out that neither group's duties have

changed and it is noted the same issue had arisen in prior negotiations between the parties and had been rejected. The Employer points out that the Sandusky County Sheriff Office's Command bargaining unit accepted the same wage increases tentatively agreed to take effect within the Sandusky County Deputy Sheriffs' bargaining unit. The Employer claims that awarding additional wages to one group of bargaining unit members will give rise to morale issues that could result in arguments from the Command bargaining unit that the integrity of wage differences between the Command bargaining unit and the Deputy Sheriffs' bargaining unit had been compromised.

The conciliator does not question the desire of Sandusky County Deputy Sheriffs assigned to road patrol duties to separate their wage rates from the hourly wage rates paid to Sandusky County Deputy Sheriffs assigned to corrections officer duties nor does the conciliator question the sincerity of the representatives of the Deputy Sheriffs' bargaining unit who spoke at the conciliation hearing of the greater dangers encountered when carrying out road patrol duties compared to the lesser dangers faced by deputy sheriffs in the more controlled atmosphere of a county jail. The conciliator finds both environments to present their own challenges and risks of harm.

The conciliator is reluctant to adopt the Union's final offer as to Article 23, section 23.6 for three reasons.

First, an increase in compensation for a portion of the bargaining unit would be in addition to wage increases already tentatively agreed by all parties, whether in the bargaining unit for Deputy Sheriffs or in the bargaining unit for Command Officers. The Command bargaining unit demands a particular ratio be maintained between its higher rates of pay and the rates of pay in the Deputy Sheriffs' bargaining unit. The conciliator

has the authority to order a differential in pay for a portion of the bargaining unit and therefore may consider the result of such a determination in deciding the outcome of this selection process. Such a pay differential applied to 35.3% of the Deputy Sheriffs' bargaining unit (12 of 34) would unavoidably alter the wage ratio between the Command bargaining unit and the Deputy Sheriffs' bargaining unit. This would give rise to a complication that would have to be resolved in the midst of any resentment by bargaining unit members who had not shared in the additional compensation proposed by the Union's final offer.

The conciliator finds the complications engendered by a pay increase for a portion of the bargaining unit to be a factor militating against selection of the Union's final offer.

A second reason the conciliator is reluctant to select the Union's final offer is that to do so requires a quantitative determination of the risk of harm inherent in road patrol duties in Sandusky County compared to the risk of harm encountered within the Sandusky County Jail. If such a quantitative difference is found the difference must then be monetized so as to compensate for the higher risk encountered while on road patrol duty.

The conciliator is not confident that he is able to determine the difference in the risk of harm threatened by road patrol duty from the risk of harm threatened by jail duty. The difference in hazards alleged by the Union between one group of bargaining unit members and another group of bargaining unit members is grounded, in part, in one's philosophy and experience. Such a comparison does not lend itself to an objective measurement of what separates these two assignments in terms of danger and offers little in how to specify the distance that separates these two bargaining unit groups in terms of

risk of harm and the amount of compensation that is proportionate and appropriate to an increase in risk that is found.

The conciliator is not persuaded that he can define the difference (if there is a difference) between the level of risk while on road patrol in Sandusky County and the level of risk while serving in the Sandusky County Jail. Without such a differentiation the conciliator is reluctant to adopt the Union's position that asserts the greater risks posed by road patrol duties and proposes a fifty cent (\$.50) per hour differential as compensation for this claimed difference in risk.

The third reason that the conciliator is reluctant to select the Union's final offer is that the alteration of direction proposed by a portion of the bargaining unit may be perfectly legitimate and reasonable but such a change in direction from what had traditionally been the case within the Sandusky County Sheriff's Office and the Sandusky County Deputy Sheriffs' bargaining unit is better served by being grounded in decisions arrived at by the bargaining unit through negotiations and consensus internally within the bargaining unit and externally with the Employer. Such a new trend in how bargaining unit members are to be distinguished for purposes of compensation is an important policy decision within the bargaining unit and external to the bargaining unit in describing how the Union and the Employer have agreed bargaining unit members are to be paid. Such an important policy decision deserves a firmer foundation than just the sympathetic ear of a third party conciliator. Because of the significant difference expected under the Union's final offer - within the bargaining unit and in the parties' working relationship - the conciliator declines to order the proposed change, preferring to defer to the evolution of

the bargaining unit rather than imposing such a significant change on the parties on these facts.

For the reasons set out above, the conciliator selects the Employer's final offer as to Article 23, section 23.6. The conciliator orders the inclusion of Article 23, sections 23.1 through 23.5 as tentatively agreed by the parties in the parties' successor Agreement. The conciliator orders the inclusion of Article 23 in the parties' successor Agreement without the new language proposed by the Union for Article 23, section 23.6.

CONCILIATION ORDER

The conciliator's selection between the final offers of the Employer and the Union as to Article 23, section 23.6, the sole issue that remained unresolved between the parties at the conclusion of the conciliation hearing, is as follows:

Article 23, Compensation and PERS Pickup – Include the language tentatively agreed by the parties for Article 23, sections 23.1 through 23.5.

Do not include language proposed for Article 23, section 23.6.

All unopened and tentatively agreed Articles shall be included in the parties' successor Agreement.

As stated in Ohio Revised Code section 4117.14(G)(11): "The parties may, at any time, amend or modify a conciliator's award or order by mutual agreement."

Howard D. Silver

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Columbus, Ohio
January 18, 2017

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Opinion and Order of the Conciliator in the Matter of the Sandusky County, Ohio Sheriff, the Employer, and the Ohio Patrolmen's Benevolent Association, the Union, SERB case number 2016-MED-03-0238, was filed electronically with the State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215, at MED@serb.state.oh.us and served electronically upon the following, this 18th day of January, 2017:

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Columbus, Ohio
January 18, 2017