

CONCILIATION DECISION

STATE EMPLOYMENT RELATIONS BOARD

STATE OF OHIO

August 17, 2017

In the Matter of:

Trumbull County Sheriff's Office)	
)	Case No. 2016-MED-10-1112
and)	Corrections Officers & Sergeants
)	
Ohio Patrolmen's Benevolent Association)	

APPEARANCES

For the Employer:

Curt Ambrosy, Attorney
Paul Munro, Sheriff
Richard Jackson, Commissioners' Representative
Debbie Santangelo, Chief Accountant
Paula Maas, Personnel Director
Tracy Wix, Corrections Lieutenant

For the Union:

Max Riker, OPBA Attorney
Mary Schultz, Financial Consultant
Yale Watkins, OPBA Representative
Dustin Casvin, OPBA Representative

Conciliator:

Nels E. Nelson

BACKGROUND

The instant dispute involves the Trumbull County Sheriff's Office and the Ohio Patrolmen's Benevolent Association. The employer provides a variety of law enforcement services in the county, including the operation of a jail. The union represents employees in a number of different bargaining units. The bargaining unit involved in the instant dispute consists of 55 corrections officers and 7 corrections sergeants.

The parties are involved in negotiating a successor agreement to the one that expired on December 31, 2016. They began negotiations in January 2017 and resolved a number of issues. However, when no overall agreement was reached, the dispute was appealed to fact-finding.

Richard Gortz was appointed as the Factfinder. He conducted a fact-finding hearing on April 6, 2017. In response to the employer's request to submit a post-hearing brief, the Factfinder allowed the parties until April 25, 2017, to do so.

The Factfinder issued his report on May 26, 2017. He offered recommendations for a number of issues, including wages and the pension pick-up. The union accepted the Factfinder's recommendations but the County Commissioners rejected them.

The dispute proceeded to conciliation. The Conciliator was appointed on June 20, 2017. The parties submitted their position statements, including their final offers for the unresolved issues, to the Conciliator, the State Employment Relations Board, and the other side on August 3, 2017. The conciliation hearing took place on August 8, 2017.

The Conciliator is required to select the most reasonable final offer for each issue without modification. The selection of a final offer is based upon the criteria set forth in Section 4117.14(G)(7) of the Ohio Revised Code. They are:

- (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 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 interest and welfare of the public, and 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 in this section, 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.

ABILITY TO PAY

An important statutory criterion is the ability to pay. It is relevant in considering not only the parties' wage proposals but also the other issues placed before the Conciliator. The union's position was presented by Mary Schultz, an experienced financial consultant. The employer's position was presented by Debbie Santangelo, the Chief Accountant in the County Auditor's Office,

Union Position - The union argues that the employer can afford its wage demand. It points out that the General Fund revenue, including money transferred from the sales tax funds, Local Government Fund, the Casino Revenue Fund, and property taxes, and has grown from \$42.9 million in 2012 to \$45.1 million in 2016. The union notes that at the same time, General Fund expenditures have risen from \$42.0 million to \$44.6 million.

The union reports that the year-end General Fund balances have grown from \$2.9 million in 2012 to \$4.0 million in 2016. It observes that while the Assistant County Auditor stated that the county preferred a carryover balance of at least \$3.6 million, its carryover balance was \$4.0 million on December 31, 2016, and \$4.2 million on June 30, 2017. The union adds that “the General Fund carryover can be increased or decreased at the discretion of the Commissioners and the amounts transferred from other funds.” (Union Exhibit 5, page 3)

The union estimates that the December 31, 2017, General Fund balance will be \$4.0 million. It states that because the county does not enter estimated revenues on its ledgers, it used the county’s 2016 General Fund revenues to calculate the 2017 year-end balance.

The union contends that “the General Fund year-end balances do not reflect the full picture of the General Fund fiscal health.” (Ibid.) It points out that the county deposits sales tax revenue in separate funds and then transfers money to the General Fund. The union notes, however, that “the county does not distribute the full amount of the collected Sales Tax available for operating [but] a substantial balance remains in the Sales Tax Fund, which serves as a reserve.” (Ibid.)

The union maintains that sales tax revenue has grown. It states that sales tax receipts were \$17.4 million in 2012 and grew to \$19.7 million in 2016. The union indicates that sales tax collections through June 30, 2017, were \$10.1 million, which is \$485,000 more than collected in the first six months of 2016.

The union observes that there is a separate Sales Tax Fund for the Justice System, which gets 25% of the total sales tax collected. It reports that the fund is “designed specifically to subsidize the General Fund for the cost of public safety.” (Ibid.) The union notes that the 2016

year-end balance for the fund was to \$2.3 million. It adds that collections for the first half of 2017 were \$162,000 more than the first half of 2016.

The union argues that “the entire year-end balance [of the Sales Tax Justice System Fund] could and should be transferred to the General Fund.” (Union Exhibit 5, page 4) It points out that General Fund expenditures related to the justice system, which include the Sheriff’s Office, the prosecutor, and the courts, exceed \$10 million per year. The union stresses, however, that there are no other expenses paid from the Sales Tax Justice System Fund.

The union contends that the county has underestimated its 2017 sales tax collections for the two sales tax funds. It states that the county estimated collections to be \$888,000 less than 2016 based on a \$800,000 reduction in revenue due to the loss of the sales tax on Medicare Managed Care Organizations in the second half of the year. The union responds, however, that the county “has collected ... 62% of the full-year estimate at 58% of the year ... [providing] for a cushion of over \$1,000,000 indicating that the sales tax collections should still exceed the full-year estimate even with the loss of the Medicaid tax.” (Ibid.) It adds that the most current information from the state indicates that counties will be reimbursed in full for any losses in 2017 and by a formula in 2018. (Union Exhibit 22)

The union maintains that the Casino Shared Revenue Fund must also be considered. It points out that the fund has two expense accounts -- one for capital outlays and one for inter-fund transfers. The union notes that the Casino Shared Revenue Fund has had year-end carryover balances each year since it was created in 2012. It adds that through June 30, 2017, the county has received \$1.2 million of casino revenue but none has been transferred to the General Fund.

The union argues that true carryover of the General Fund must include the year-end balances of the General Fund, both Sales Tax Funds, and the Casino Shared Revenue Fund. It observes that the true balance has grown from \$6.3 million in 2012 to \$8.7 million in 2016. The union reports that the \$8.7 million balance (including \$4.0 million from the General Fund, \$2.1 million and \$2.3 million from the two sales tax funds, and \$331,000 in undistributed casino revenue) is a 19.5% carryover reserve. (Union Exhibit 5, page 5)

The union contends that this balance exceeds what is considered necessary. It points out that the Government Financial Officers Association recommends a 16% carryover balance but adds that a smaller amount may be appropriate for larger governments. The union claims that given the size of Trumbull County, it can operate responsibly with less than a 16% carryover balance.

The union maintains that the county's Hospitalization Trust Fund has consistently exceeded the recommended 25% carryover balance, which is necessary as a reserve against run-out claims. It states that "it appears that the county took an insurance premium 'holiday' in 2015, meaning they charged the General Fund and other funds less for medical coverage premiums paid to the Self-Insurance Fund." (Union Exhibit 5, page 5) The union indicates that despite the reduction in premiums, the December 31, 2016, Hospitalization Trust Fund carryover balance was \$4.7 million -- a 33% reserve.

The union argues that the Workers Compensation Fund may provide savings to the General Fund. It points out that the \$5.8 million carryover in 2016 represents a 257% reserve based on 2016 expenditures. The union notes that this means that the General Fund could reduce premiums paid to the Workers Compensation Fund.

The union reports on the cost of the jail and the overall cost of the Sheriff's Office. It points out that the overall cost of the Sheriff's Office has remained constant at 24% of the General Fund and that the 2017 budget for the corrections officers increased by \$108,000 or 1.7% from 2016 expenditures. The union notes however, that the budget includes no money for wage and benefit increases.¹

The union concludes that the County can afford to pay the wage and benefit increases it seeks.

Employer Position - The employer argues that Trumbull County has been declining for more than 25 years. It points out that it once was a "vibrant steel-making center and home to Packard Electric Company that once made all of the wiring for General Motors cars while employing more than 15,000 in Trumbull County alone." (Employer Position Statement, page 2) The employer notes that when the recession hit, three of its five largest employers filed for bankruptcy. It adds that in the last few months, the K-Mart Distribution Center and the Kellogg's Distribution Warehouse have closed.

The employer contends that it has suffered from high unemployment. It states that at one point in 2008, the county led the nation in the loss of jobs. The employer indicates that it currently has the 11th highest unemployment rate among the state's 88 counties (Employer Exhibit 2, page 1)

The employer maintains that its economic difficulties have led to a decline in population. It reports that its population has fallen from 224,938 in 2000 to 201,825 in 2016. (Employer Exhibit 1, page 1) The employer observes that since the 2010 census, it has lost 4% of its

¹ The union calculated that the cost of a 1% increase in the Corrections Officers wage, based on 2016 expenditures, including pension contributions, Medicare, and Workers Compensation, is \$44,148

population and in late-2014, the Warren-Youngstown-Mercer Metropolitan area was shrinking faster than any other metropolitan area in the country. (Employer Exhibit 1, pages 2-3)

The employer argues that it faces a number of financial challenges. It states that the Local Government Fund was cut and will be cut by an additional \$200,000 in 2018; that casino revenue is projected to decline by \$200,000 in 2017 and is expected to continue to decline because of competition from the Racinos; and that the elimination of the Medicare sales tax will reduce receipts by \$800,000 in 2017.

ISSUES

The parties submitted seven issues to the Conciliator. For each issue the Conciliator will present the positions of the parties, summarize the arguments they offered in support of their positions, provide his analysis of the issue, and indicate which of the parties' final offers he is selecting. Where the selected offer differs from the current contract language, the Conciliator will include the text of the prevailing party's final offer.

1) Article 19 -Wages - Wage Schedule - The current contract has a wage schedule with six annual steps starting at \$15.66 per hour and reaching \$19.345 cents per hour after five years with additional steps at 7 and 10 years with a rate of \$19.845 cents per hour after 10 years. The union's final offer calls for a \$.35 per hour increase effective January 1, 2017, and \$.30 per hour increases effective January 1, 2017, and January 1, 2018. The employer's offer calls for freezing the starting wage and increasing the other steps by \$.30 per hour effective January 1, 2017, and January 1, 2018, with a wage reopener for wages to be effective January 1, 2019.

Union Position - The union argues that the county can afford to pay its wage demand.

It states that the State Auditor gave the county a “positive” and healthy the fiscal outlook, nearly all relevant economic indicators are pointed in a positive direction, year-end General Fund cash balances have been increasing for seven years, and sales taxes have come in strong.

The union contends that wage increases in Ohio support its position. It reports that SERB’s 2016 Annual Wage Settlement Report indicates that the average wage increase was 2.18% for Ohio, 2.23% for counties, and 2.36% for law enforcement. (Union Exhibit 6) The union observes that these increases were “all well north of 2%.” (Union Position Statement, page 4) It stated that it’s wage demand for 2017 increased the starting wage by 1.8% and the ten-year wage by 1.5%.

The union maintains that the wages paid by comparable counties “demonstrate with great clarity that the Trumbull County Corrections Unit is underpaid.” (Ibid.) It points out that in 2016 the average pay for a 10-year corrections officer in the nine nearby counties was \$49,514 compared to \$41,277 in Trumbull County.² (Union Exhibit 7, page 6) The union notes that the average total compensation is \$51,259 compared to \$46,008 in Trumbull County. (Ibid.)

The union argues that the 2017 wage increases in comparable counties support its demand. It states that the wage increases for eight counties within 60 miles of Trumbull County ranged from 2% to 3%.³ (Ibid.) It complains that “Trumbull County has painfully demonstrated that it is unwilling to voluntarily prevent its employees from dropping even more in comparison to the geographically local industry.” (Union Position Statement, page 5)

² The counties are Ashtabula, Cuyahoga, Geauga, Lake, Mahoning, Medina, Portage, Stark, and Summit counties. Mahoning and Summit counties staff their jails with deputies.

³ No wage increase was listed for Mahoning County.

The union stresses that it adopted the Factfinder's wage recommendation as its final offer. It states that he "took to heart all of the statutory requirements ... and came to the correct conclusion." (Ibid.) The union adds that while "much of the Union membership did not believe that the Fact-finding recommendation went nearly far enough, ... a majority of the membership saw the wisdom and reasonableness contained in the Factfinder's analysis." (Ibid.)

Employer Position - The employer argues that bargaining history supports its wage offer. It states that the corrections officers' bargaining unit is the only county unit that received a pay raise in each of the last four years. The employer indicates that this is shown by an examination of the Memorandum of Understanding arising out of the 2013 reopener and the 2014 contract. The employer indicates that while the corrections officers took a wage freeze, they received a "longevity equity adjustment" that ranged from \$250 to \$1500. (Employer Position Statement, page 5)

The employer contends that wage increases in the area support its offer. It reports that SERB's 2016 Annual Wage Settlement Report indicates that the average wage increase in the Warren/Youngstown region was 1.61%. The employer claims that this rate is more appropriate than the ones cited by the union.

The employer maintains that "when the pension pick-up is factored into the actual wage rate, the Trumbull County Corrections Officers are similarly situated to all other Corrections Officers employed by the State of Ohio as well as to those in private employment." (Ibid.) It charges that the union's comparisons fail to include Columbiana County's private jail but stresses that the statute refers to "comparison with public and private employees doing comparable work." The employer complains that the union distorted the comparisons by

including wealthy counties and excluding the sergeants who make up almost 10% of the bargaining unit.

The employer argues that a comparison between private sector and public sector wages supports its position. It points out that in 2014 the average public sector wage in Trumbull County was \$38,844 versus \$38,324 in the private sector. (Employer Exhibit 12, page 1) It notes that for the Mahoning Valley, public sector wages were \$38,029 compared to \$35,412 in the private sector.⁴

The employer submitted a SERB Benchmark Report for Corrections Officers/Jailers dated March 3, 2017, which shows the entry and top wages for 79 employers, including counties and cities. (Employer Exhibit 8 pages 2-5) It observes that the average entry level wage for the 79 jurisdictions (including Trumbull County) is \$34,204 compared to \$32,572 in Trumbull County and the top level wage for the 79 jurisdictions is \$41,986 compared to \$41,277 in Trumbull County.

The employer contends that its pension pick-up must be considered in comparing wages. It states that while it is not required to pay the employee share of the statutory pension contribution, it has agreed to do so. The employer indicates that data from the State Employment Relations Board suggests that only three counties have pension pick-ups.⁵ (Employer Exhibit 8, page 6)

The employer maintains that a wage reopener for 2019 is appropriate. It points out that Paul Munro became Sheriff on January 1, 2017, after the budget for the Sheriff's Office had

⁴ The counties are Ashtabula, Columbiana, Geauga, Jefferson, Lake, Mahoning, Portage, and Trumbull. The data is from the Ohio Department of Development.

⁵ In addition to these three counties, the employer reported that Mahoning County picks up 3% of the employees' pension obligations for the deputies who work in its jail.

already been set by the County Finance Committee and the County Commissioners. The employer notes that at the time, the County Auditor was expecting losses in sales tax revenues in 2017 and 2018.

Analysis - The Conciliator selects the union's final offer. First, the economy of Trumbull County has improved. Sales tax revenues have grown steadily from 2012 through 2016 and continued to grow in the first half of 2017. At the same time, the county has limited the growth of expenditures, which has resulted in increasing year-end General Fund cash balances. If the year-end balances of the sales tax and casino revenue funds are added to the General Fund balance, the year-end balance in 2016 was \$8.7 million or 19.6% of 2016 General Fund expenditures of \$44.6 million.

Second, the wages of the Trumbull County corrections officers are below those in comparable counties. In 2016 the top pay for corrections officers in the four contiguous counties are as follows:

<u>County</u>	<u>Top Pay</u>
Ashtabula	\$43,556
Geauga	\$57,844
Mahoning	\$47,956
Portage	\$47,813
Average	\$49,292
Trumbull	\$41,277

(Data from Union Exhibit 7, page 6)

Trumbull's top pay is \$8015 less than the average for the contiguous counties and ranks last among the counties. If Geauga County, which is significantly wealthier than Trumbull County is omitted, the Trumbull County is \$5165 below the average top wage of \$46,442 for the remaining counties.

Trumbull County corrections officers compare more favorably with respect to total compensation, which includes the pension pick-up. The data is as follows:

<u>County</u>	<u>Total Compensation</u>
Ashtabula	\$44,796
Geauga	\$59,595
Mahoning	\$51,317
Portage	\$50,171
Average	\$51,470
Trumbull	\$46,009

(Data from Union Exhibit 7, page 6)

Even including the pension pick-up, the Trumbull County corrections officers are \$5461 behind the four contiguous counties. If Geauga County is omitted, Trumbull County is \$2752 below the \$48,761 average for the remaining counties.

The employer presented no evidence to show that its corrections officers' wages are competitive with comparable jurisdictions. Its SERB Benchmark data included both county corrections officers and city jailers from all parts of Ohio. For what it's worth, the average top pay was \$41,986 compared to \$41,277 in Trumbull County.

Third, the wage increases for corrections officers in comparable counties support the union's demand. The average increases for the corrections officers in the four contiguous counties was 2.5% and 2.31% for the nine counties offered by the union. None of the increases were less than 2%.

Fourth, wage increases for public employees in Ohio are consistent with the union's final offer. The 2016 SERB Annual Wage Settlement Report indicates that the average wage increase was 2.18% for Ohio, 2.23% for counties, and 2.36% for law enforcement units. The employer is correct that SERB reported that the average wage increase for the Warren/Youngstown Region

was 1.61%. However, the union's wage demand for 2017 was 1.5% for the top wage and 1.8% for the starting wage. The employer's wage offer freezes the starting wage for 2017.

Fifth, the Conciliator does not find any basis for the wage reopener for 2019, which is part of the employer's final offer. While the parties would have more information regarding economic and other conditions on May 1, 2019, the date the employer proposes the contract be reopened to negotiate wages to be effective January 1, 2019, he sees no particular uncertainty facing the county that would justify the disruption and expense of a reopener to be effective only 18 months after the conclusion of the current negotiations.

Finally, the union adopted the Factfinder's recommendation for wages as its final offer. While the Conciliator might have recommended a higher or lower wage increase or structured the increases differently, the Factfinder is an experienced neutral and his recommendations cannot be ignored by the Conciliator.

Award - The Conciliator awards the following contract language:

"Length of Service" means time commencing with the first day that an employee is on active pay status with the Bargaining Unit. Commencing and retroactive back to January 1, 2017, all employees shall be compensated at rates of pay articulated in this Article based on their length of service with the Bargaining Unit

All Corrections Officers, regardless of their hire date:

Commencing and retroactive back to January 1, 2017:

<u>Length of Service:</u>	<u>Hourly Rate:</u>
Start	\$16.01
After one (1) year	\$16.71
After two (2) years	\$17.66
After three (3) years	\$18.79
After four (4) years	\$19.52
After five (5) years	\$19.695
After seven (7) years	\$19.945
After ten (10) years	\$20.195

Commencing January 1, 2018:

<u>Length of Service:</u>	<u>Hourly Rate:</u>
Start	\$16.31
After one (1) year	\$17.01
After two (2) years	\$17.96
After three (3) years	\$19.09
After four (4) years	\$19.82
After five (5) years	\$19.995
After seven (7) years	\$20.245
After ten (10) years	\$20.495

Commencing January 1, 2019:

<u>Length of Service:</u>	<u>Hourly Rate:</u>
Start	\$16.61
After one (1) year	\$17.31
After two (2) years	\$18.26
After three (3) years	\$19.39
After four (4) years	\$20.12
After five (5) years	\$20.295
After seven (7) years	\$20.545
After ten (10) years	\$20.795

Corrections Sergeants shall be compensated at a rate of pay which is ten percent (10%) higher than the rate of pay of the highest paid Corrections Officer.

2) Article 19 - Wages - 15-Year Step - The current contract has six annual wage steps followed by seven-year and a ten-year steps. The union's final offer adds a step at 15 years of service that is \$.30 per hour above the rate at 10 years of service. The employer's offer does not include the addition of a new step.

Union Position - The union argues that its demand to add a 15-year wage step of \$.30 per hour should be awarded. It claims that "the most senior corrections officers have suffered through many years of substandard wages [and] ... need to be caught up and this proposal is a

way to do it.” (Union Position Statement, page 7) The union notes that it proposed a 15-year wage step of \$.50 per hour at fact-finding but it reduced its demand because it was rejected by the Factfinder. It adds that proposal would affect only six sergeants and six or seven corrections officers.

Employer Position - The employer argues that the union’s demand should be rejected. It states that the addition of a new wage step is “unreasonable in light of the current economic conditions in the county and also because the creation of the Corrections Sergeant position just four (4) years ago was to create a higher paid Corrections Officer position for almost 10% of the bargaining unit.” (Employer Position Statement, page 4) The employer notes that all of the scheduling, evaluating, and disciplining is done by the Corrections Lieutenants. It adds that the Factfinder rejected the union’s demand for a new step.

Analysis - The Conciliator denies the union requests for a \$.30 per hour wage step at 15 years of service. First, as the employer pointed out, during the 2013 reopener it agreed to the creation of Corrections Sergeants, who are currently paid 10% more than the highest paid Corrections Officer. While this benefit applies to only a fraction of the bargaining unit, it is a way for corrections officers to increase their wage.

Second, because the wages of the corrections officers at Trumbull County are less than in comparable jurisdictions, the focus should be on increasing the entire wage schedule rather than the wages of a few at the top.

Finally, the Conciliator’s decision is consistent with the Factfinder’s recommendation. In denying the union’s request for a new wage step, he stated that “any available funds must be

used to grant wage increases and help to eliminate the PERS inequity.” (Union Exhibit 2, page 13)

Award - The Conciliator awards the current contract language.

3) Article 19 - Wages - Pension Pick-up - The current contract requires the employer to pay the entire 8.5% employee pension contribution for those hired before the execution of the 2010 collective bargaining agreement and 4% of the employee contribution for employees hired after that time. The union’s final offer demands that the employer increase its pension contribution for employees hired after the execution of the 2010 agreement by 2.25% on January 1, 2018, and January 1, 2019.

The employer’s final offer states that effective April 1, 2018, it will increase the pension pick-up for employees who are entitled to a 4% pension pick-up by 2.25% to 6.25% and those employees entitled to a 8.5% pension pick-up will have 2.25% of their current 8.5% pick-up converted to wages, resulting in all employees having a 6.25% pension pick-up.

Union Position - The union argues that its final offer should be adopted. It points out that in 2010 the prior bargaining agent “struck a horrid deal for this bargaining unit to create a two-tiered wage and benefit structure for newer employees.” (Union Position Statement, page 5) The union notes that in the 2014-2016 contract, it equalized the wages of the pre-2010 and post-2010 corrections officers and increased the pension pick-up of the pre-2010 corrections officers from 0% to 4%.

The union contends that “the [remaining] internal disparity among Corrections Officers on the contractual pension pick-up issue is of paramount moral importance to all members of the

bargaining unit.” (Union Position Statement, page 7) It states that the fact that employees hired before 2010 have an 8.5% pick-up and those hired after that time have a 4% pick-up “has presented enormous resentment among all of the members of the bargaining unit.” (Union Position Statement, page 8) The union indicates that while the Factfinder’s recommendation to eliminate the disparity over the term of the agreement was not all that the OPBA membership had desired, it accepted his recommendation.

Employer Position - The employer argues that its demand should be adopted. It states that it “has been seeking to move away from paying the lion’s share of an employee’s pension obligation.” (Employer Position Statement, page 4) The employer indicates that one reason is that there is an additional raise generated by a pension pick-up. It explains that for a \$.30 per hour wage increase, employees receive an additional \$.0255 dollar per hour increase because the \$.30 per hour wage increase is subject to the 8.5% pension pick-up. The employer complains that it is “a benefit that is not transparent to the taxpaying public [and] denigrates the importance of retirement planning and personal responsibility for one’s eventual retirement years.” (Employer Position Statement, page 4)

The employer charges that the Factfinder ignored its evidence regarding pension pick-ups. It states that “very few Counties pick up the employee’s share of their pension obligation.” (Employer Position Statement, page 6) The employer adds that Mahoning County picks up only 3% of the pensions for the deputies who staff its jail.

Analysis - The Conciliator awards the union’s final offer. While he understands the employer’s desire to reduce or eliminate the pension pick-up, the continuing disparity has

complicated the bargaining process and the time has come to end the problems associated with having significantly different levels of compensation for employees doing the same work.

While the Conciliator might have suggested a different approach to the pension-pick-up than the union has proposed, its proposal is what was recommended by an experienced Factfinder. He recognized the financial impact of eliminating the disparity and delayed its implementation until 2018 and 2019. The Conciliator finds the union's final offer a reasonable way to resolve the problem.

Award - The Conciliator awards the following contract language:

The Employer shall continue to make pension contributions as may be required by the appropriate state pension system:

For employees hired before the execution of the 2010 collective bargaining agreement between the Employer and the U.A.W., the employer shall pay an amount equal to eight and one-half percent (8.5%) of the employee's gross wage, each pay period to the appropriate state pension system (i.e., eight and one-half percent (8.5%)) of the employees' mandated total contribution.

For employees hired after the execution of the 2010 collective bargaining agreement between the Employer and the U.A.W., the employer shall pay a portion of the employees mandated total contribution to the appropriate state pension system as follows:

Commencing on and retroactive back to January 1, 2017: four percent (4.0%)

Commencing on January 1, 2018: an additional two and one-quarter percent (2.25%)

Commencing on January 1, 2019: an additional two and one-quarter percent (2.25%)

(i.e., 8.5% starting January 1, 2019)

4) Article - 29 Sick Leave, Section 2 - Use of Sick Leave - Return-to-Work

Slip - The current contract requires employees who are off more than three days to submit

return-to-work slips from” a licensed doctor” or forfeit the right to use sick leave for the absence. The employer proposes to require employees to submit return-to-work slips for absences of more than two days. The union proposes the current contract requirement be retained.

Employer Position - The employer argues that its offer should be selected. It points out that Munro testified that when he assumed office on January 1, 2017, he recognized that there was an attendance problem among the corrections officers and that he “observed a tendency of employees to remain off work for three (3) consecutive days and then return on the fourth in order to avoid the present, contractually required return-to-work slip and other employees, who have been off sick and seen a physician, to choose to wait and remain off duty for an additional day before returning to work with the slip they have already obtained from their physician.” (Employer Position Statement, page 7)

Union Position - The union argues that its final offer should be adopted. It points out that it had previously offered a counter proposal to the employer’s position but “seeing the reasonableness of the Factfinder’s recommendation in favor of current contract language, [it] has abandoned that proposal.” (Union Position Statement, page 9) It asserts that “the employer cannot meet its burden of proof justifying an alteration to long-standing contract language which has extensive bargaining history.” (Ibid.)

Analysis - The Conciliator selects the union’s final offer. First, since the employer is attempting to change a long-standing contract language, it needs to present evidence that there is an abuse of sick leave and that its proposal will help resolve the problem. The testimony of Munro and Tracy Wix, a Corrections Lieutenant, that there is a problem with the abuse of sick leave, is not, by itself, sufficient.

Second, the Factfinder's report supports the union's position. The Factfinder stated that "the employer's proposal to reduce the time for a return to work note from [more than] 3 to [more than] 2 day consecutive days is not recommended." (Union Exhibit 2, page 4) The only change in Article 29 he recommended is related to using sick leave for the illness of a family member. (Union Exhibit 2, page 16)

Award -The Conciliator awards the current contract language.

5) Article 29 - Sick Leave, Section 2 - Use of Sick Leave - Immediate

Family Member - The current contract provides that when an employee requests sick leave to care for a member of their immediate family, the employer "may" require the employee to submit "a physician's certificate to the effect that the presence of the employee is necessary to care for the ill family member." The employer proposes to retain the current contract language. The union provided no final offer.

Employer Position - The employer argues that the last sentence of Section 2 of Article 29, which gives it the authority to require a physician's certificate when employees are absent to care for members of their immediate family, should be retained. It states that "the language does not mandate on every occasion for an employee to provide such a certificate but simply recognizes the discretion of the employer to require such depending on the circumstances." (Employer Position Statement, page 7) The employer indicates that Section 124.38 of the Ohio Revised Code "specifically requires an appointing authority to require the furnishing of a written statement justifying the use of sick leave." (Ibid.)

Union Position - The union submitted no final offer.

Analysis - The Conciliator must award the Employer's offices final offer. First, the parties appeared to agree that the employer has not abused its discretion to require a physician's certificate when corrections officers are absent to care for a member of their immediate family. Second, the Factfinder's recommendation indicated that it was not inappropriate for the employer to require a physician's certificate for illnesses of immediate family members.⁶ Most importantly, the union provided no final offer for this issue. Thus, the Conciliator must select the only offer before him.

Award - The Conciliator awards the current contract language.

6) Article 34 - Abuse of Sick Leave, Sections 34.02 & 34.03 - Occurrences -

The current contract states that on the fourth occurrence in a 12-month period, an employee is subject to disciplinary action, beginning with a "written caution letter" and ending with the employer having the discretion to terminate an employee who reaches seven occurrences in a 12-month period.⁷ The employer proposes that the disciplinary sequence begin on the third occurrence so that termination may occur on the sixth occurrence. The union seeks to retain the current contract language

Employer Position - The employer argues that its final offer should be adopted. It points out that Munro testified that he has witnessed a significant absenteeism problem in the bargaining unit. The employer notes that in order to curb absenteeism, it is seeking to reduce the number of occurrences before an employee is subject to discipline from four to three

⁶ The Factfinder limited the employer's right to request a return-to-work slip from an corrections officer employee who was absent to care for a member of the immediate family to cases where the corrections officer was absent for three or more days.

⁷ An occurrence is an absence of one day or more.

occurrences. It observes that this provision does not apply to qualifying Family and Medical Leave Act absences.

Union Position - The union argues that its final offer should be selected. It points out that at fact-finding, the employer sought to reduce the number of occurrences needed to “ratchet up discipline.” The union notes that “for very good reason, the Factfinder expressly rejected the employer’s proposal.” (Union Position Statement, page 9) It claims that “the employer cannot meet its burden of proof justifying an alteration to long-standing contract language which has extensive bargaining history.” (Union Position Statement, page 10)

Analysis - The Conciliator selects the union’s final offer. First, as indicated above, while Munro and Wix testified that they felt that the Corrections Officers were abusing sick leave, including the patterned use of sick leave, they offered no data to indicate that the jail was experiencing anything more than the usual use of sick leave.

Second, the Factfinder denied the employer’s request to reduce the number of occurrences before beginning the progressive discipline sequence. He stated that he believed that “it would be unfair ... to eliminate a perceived benefit while severely restricting wages.” (Union Exhibit 2, page 15)

Award - The Conciliator awards the current contract language.

7) Article 34 - Abuse of Sick Leave, Section 34.03 - Leaving Early - The current contract states that leaving work early due to an illness does not constitute an occurrence under the no-fault attendance policy subject to a limit of two early outs per calendar year. The

employer seeks to add that any early out is an occurrence if it results in a shift going below the minimum. The union offered no proposal.

Employer Position - The employer argues that its offer is reasonable. It states that its proposal “specifically seeks to curb a recognized absenteeism problem.” (Employer Position Statement, page 8) The employer acknowledges that the Factfinder indicated that he saw no logic in charging an employee with an occurrence when it caused the shift to go below minimum staffing but not charging an occurrence if it did not. It claims, however, that “the logic is ... when an employee’s early departure from a shift results in staffing falling below the minimum, there are genuine safety concerns that are not present when the early departure does not cause staffing to fall below minimums.” (Employer Position Statement, pages 8-9)

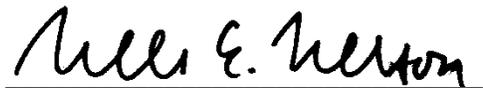
Union Position - The union submitted no final offer.

Analysis - The Conciliator must award the only offer before him. First, the employer did supply a rationale for its offer. More importantly, the union submitted no final offer.

Award - The Conciliator awards the following contract language:

* * *

Leaving work because of the employee’s illness does not constitute an “occasion” for purposes of this Section. This benefit shall be limited to two (2) times per calendar year so long as the employee does not cause the shift to go below minimum.



Nels E. Nelson
Conciliator

August 17, 2017
Russell Township
Geauga County, Ohio