

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of: : 2016-MED-10-1130
: :
Ohio Patrolmen's Benevolent :
Association : CONCILIATION AWARD
: :
and :
: April 13, 2018
Delaware County Sheriff :
:

APPEARANCES

For the Union:

Joseph M. Hegedus, Attorney
Rusty L. Yates, Deputy Sheriff and Director of OPBA
James B. Mox, Deputy Sheriff and Director of OPBA
Chris Stayer, Deputy Sheriff and Director of OPBA

For the Employer:

Daniel J. Guttman, Attorney
Pam Sonagere, Director of Labor and Employment Relations
Russell L. Martin, Sheriff
Jon Scowden, Chief Deputy
Davis Wiseman, Chief Deputy
Jeffrey C. Balzer, Chief Deputy

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I. BACKGROUND

The Conciliator was appointed by the State Employment Relations Board (SERB) on February 27, 2018, pursuant to Ohio Revised Code Section 4117.14(D)(1). The parties are the Ohio Patrolmen's Benevolent Association (Union or OPBA) and the Delaware County Sheriff (Employer or Sheriff). Delaware County is located in central Ohio due north of Columbus. Founded in 1808, it is the fastest growing county in Ohio. Its population in the 2010 census was 174,214 in the 2010 Census and is projected to be 203,433 by the end of 2018. The Union represents Deputy Sheriffs and Detectives below the rank of Sergeant. The bargaining unit is currently authorized for over 80, but the current strength is less. The Sheriff has hired a number of new Deputies in the last several months.

The collective bargaining agreement expired on December 31, 2016. The parties have agreed to continue its terms while attempting to negotiate a new agreement and during the fact-finding and conciliation process. They also agreed upon retroactivity. They began negotiations in early 2017 and held a number of negotiating sessions. On March 17, 2017, they reached a tentative agreement on non-economic issues and, on June 21, 2017, they reached a tentative agreement on the remaining issues and all economic issues. However, the OPBA voted to reject the tentative agreement by one vote. They then conducted fact-finding and, on January 29, 2018, the Fact Finder's Report and Recommendations were issued. The OPBA rejected the report and the parties entered into conciliation. As noted above, the Conciliator was appointed on February 27, 2018.

II. THE HEARING

The conciliation hearing was held on Thursday, April 12, 2018 at the Sheriff's Administrative Offices, 149 N. Sandusky Street, Delaware, Ohio. Each party provided a pre-hearing statement. The hearing began at 10:00 a.m and adjourned at approximately 1 p.m. The Conciliator attempted mediation, but was not successful. The parties jointly introduced the following exhibit into evidence:

1. Agreement between Delaware County Sheriff and Ohio Patrolmen's Benevolent Association, Effective: January 1, 2014, Expires: December 31, 2016, SERB Case No. 2013-MED-10-1248.

Additionally, the parties introduced the following exhibits into evidence:

Union Exhibits

1. Map of Ohio Counties.
2. Report and Recommendations of Fact Finder John T. Meredith issued April 26, 2008.
3. Wage Rates for New Hires in Comparable Counties Statewide.
4. Comparables Concerning Initial Wage Rates for New Hires in Nearby Counties.
5. Comparables Concerning Initial Wage Rates for New Hires in Nearby Communities.
6. Statewide Physical Fitness Testing Comparables for Deputy Sheriffs.
7. *Easterling v. Dept. of Corrections*, 783 F. Supp. 2d 323 (D. Conn., 2011).
8. *United States v. City of Erie*, 411 F. Supp. 2d 524 W.D. Pa., 2005).
9. *In re City of North Ridgeville*, 2000-SERB-008 (6-22-2000).
10. 42 U.S.C. Section 2000e-2.

Employer Exhibits

1. Complete Tentative Agreement.
2. Expired Agreement.
3. Tentative Agreement on 3/17/17 "Package Proposal."
4. Tentative Agreement on 6/21/17 "Package Proposal."
5. Issues to be Adjudicated
 - A. Section 28.4 language.
 - B. Article 32 language.

The Ohio public employee bargaining statute provides that SERB shall establish criteria the Fact Finder is to consider in making recommendations. The criteria are set forth in Rule 4117-9-05(K) and are:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the unresolved issues 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;
- (3) 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;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

The Conciliator hopes the discussion of the issues is sufficiently clear to the parties. Should either or both parties have any questions regarding this Report, the Conciliator would be glad to meet with the parties to discuss any remaining questions and clarify any ambiguities.

III. ISSUES AND RECOMMENDATIONS

Introduction

The procedural history of this matter is unique. The parties reached a tentative agreement and the OPBA negotiating committee recommended it to the bargaining unit. However, the unit rejected the tentative agreement by only one vote and took the matter to fact-finding. In fact-finding, the OPBA contested some of the provisions that had been tentatively agreed upon, but voted down. The issues remaining at impasse for fact-finding included:

1. Article 6, Corrective Action and Records.
2. Article 23, Paid Leaves.
3. Article 27, Health Insurance.
4. Article 28, Wages and Pay Steps.
5. New Article, Physical Fitness.

As to Article 23, Sick Leave, there were two provisions at issue, Conversion and Bridge to Separation. As to Article 28, there were two issues, Wages (i.e., wage increases) and Placement Within the Step System.

The Sheriff took the position that the Fact Finder should not disturb the tentative agreement that the parties had reached as the best resolution of the issues. The Union objected that this would render meaningless the membership's vote to reject the tentative agreement. The Sheriff also argued that, if the Fact Finder modified the tentative agreement in any way in the Union's favor, the economic benefits gained by the Union should also be modified downward in exchange. The Fact Finder ruled on each of the issues in dispute in favor of the parties' tentative agreement. She ruled that the tentative agreement became the status quo and the Union had the burden of persuading the Fact Finder to deviate from it.

In its Pre-Hearing Statement, the OPBA indicated that its positions on Article 6, Corrective Action and Records, Article 23, Paid Leaves, and Article 27, Health Insurance, were the same as the Fact Finder's, although it disagreed with her rationale in giving deference to the alleged tentative agreement of the parties as the status quo, since that tentative agreement was rejected twice by the bargaining unit.

Additionally, during mediation, it became clear that the Employer's proposal regarding the new Physical Fitness article needed clarification. When the Employer proposed the Physical Fitness article in 2017, it proposed that it would only affect employees hired on or after January 1, 2018 and the program would not be administered until 2018. Since the bargaining process has continued beyond that date, the question arose when it would become effective. Further, when the Conciliator inquired as to how discipline issued for non-compliance with the physical fitness program would affect other discipline, the Employer indicated it was intended to be separate. However, this was not clear from the proposed language. When mediation was not successful, the Employer modified its proposed article as to the Physical Fitness Program and submitted the modified language as its last best offer on this issue. The Union agreed to the new proposed language, which is attached to this award as Exhibit A. The tentative agreement on this article is accepted and incorporated into this award.

Thus, once the hearing commenced, there remained only one issue, Wages and Pay Steps, specifically the language as to Section 28.4 of Article 28. The Union proposes the following language:

The following shall apply to advancement from Step A to Step D in the rank of Deputy Sheriff. Step A shall be the hiring rate, except that the Sheriff may

start a new hire at a step that is higher than Step A, but lower than Step D, if the new hire is currently certified as having completed the Ohio Peace Officer's Training Program and has 2 years minimum full-time, sworn law enforcement experience with a public safety organization. For avoidance of doubt, regardless of the initial placement within the wage schedule, the applicable probationary period will still apply. Nothing contained in this Section will confer any additional seniority on any new hire beyond his or her hire date as a Deputy Sheriff with the Delaware County Sheriff.

The OPBA asserts that the Fact Finder erred in awarding the Sheriff's proposed language for Section 28.4 by not considering it separate and apart from the alleged tentative agreement to which the Fact Finder deferred. This Conciliator has written more than once that a fact finder's report should be given some deference and the only question is how much weight should be accorded it. In the Conciliator's view, the weight depends on a number of factors, including the experience and expertise of the fact finder, the persuasiveness of the report, the quality of the parties' presentations at fact-finding, and the grounds asserted to challenge the recommendation of the fact finder. Finally, the Conciliator looks at each recommendation on an issue by issue basis. The OPBA contends that the Fact Finder in this matter is inexperienced and provided little in the way of a persuasive, substantive rationale in that her only rationale was to support the alleged tentative agreement. Indeed, she ignored the statutory factors. Additionally, since the Section 28.4 language recommended by the Fact Finder is new, the burden should have been on the Sheriff to persuade the Fact Finder that the language was needed, which the Sheriff could not do.

The Conciliator notes that the Fact Finder is not as inexperienced as the Union suggests. She has been a Fact Finder for a number of years and has issued eight fact-finding reports. This was not her first rodeo. The Fact Finder did not ignore the statutory factors. She noted that the last statutory factor, which are the same for fact finders and

conciliators, is a catch-all and that tentative agreements reached by parties are a factor to be considered. Specifically, she noted that a tentative agreement shows the parties thought it was a fair settlement arrived at through negotiation and the intent of interest arbitration is to encourage the voluntary settlement of issues. The Conciliator notes that he has accepted many a tentative agreement both as a fact finder and conciliator. Thus, while reasonable minds can differ as to the weight given to the “alleged” tentative agreement here, it is clear that she did not ignore the statutory factors. Furthermore, the Fact Finder considered the external comparables introduced by the Employer, noting that other central Ohio jurisdictions have similar provisions, while other county Sheriffs have similar discretion to place a new employee at an advanced step. She also noted its usefulness as a recruiting tool and that seniority rights were protected. Simply put, the Conciliator finds that the Fact Finder considered the statutory factors and issued a reasoned report. To the extent the Union objects to the Fact Finder’s rationale in deferring to the tentative agreement regarding Articles 6, 23, and 27, the Conciliator disagrees.

Moreover, the Sheriff’s evidence, introduced at both fact-finding and conciliation, supports its language. It introduced language from the contract between the Columbus Regional Airport Authority and the OPBA giving the Authority discretion to grant advanced placement on the wage scale on the basis of prior experience and/or training or other recruitment considerations; the contract of the City of Dublin and the FOP authorizing the City Manager to recognize past relevant experience in determining placement; language agreed to by the City of Hilliard and the FOP giving the Police Chief sole discretion to place a new hire at certain steps; the Butler County Sheriff’s

contract with the FOP giving the Sheriff sole discretion to place a new employee at other than the initial step to reflect the employee's experience, education, skill, or ability; the language agreed to by the Clermont County Deputy Sheriff's Association and the Clermont County Sheriff giving the Sheriff the right to place a new hire at certain salary steps above the entry step; language between the FOP and the Lake County Sheriff, which allows the Sheriff to place a new employee at a higher than entry level step where the new employee's skills and ability exceed the entry level step; and the agreement between the Medina County Sheriff and the OPBA reserving the right to the Sheriff to start a newly hired employee at a higher step based on experience. The Sheriff argues that, as central Ohio has grown, there is increased competition for the top law enforcement recruits between his office and other jurisdictions. Other jurisdictions can offer higher starting salaries and giving him flexibility to offer more than the first step wage rate would allow him to hire these top recruits. The proposed language would allow the Sheriff to recruit and reward applicants with relevant experience in community law enforcement. Additionally, the proposed language encourages the Sheriff, though it does not require him, to place a new employee at a higher step based on experience. The language also protects seniority rights and only adjusts the entry pay level, not seniority dates.

The Conciliator concludes that there was additional evidence to support the Fact Finder's recommendation to accept the Sheriff's language as to Section 28.4. This was in addition to the evidence as to the tentative agreement. The Conciliator adopts that the Fact Finder's recommendation of the Sheriff's proposed language on Section 28.4.

IV. AWARD

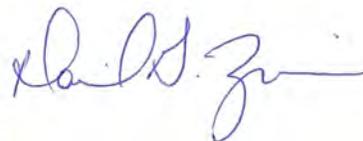
The parties reached an agreement as to the Physical Fitness Program Article. The Conciliator hereby adopts that agreement. The language is attached as Exhibit A to this award.

The only issue as to language involves Section 28.4. The Conciliator awards the language proposed by the Sheriff as follows:

28.4 A Deputy newly hired into this bargaining unit may be placed into any Step below the "top step"/"Step D" in the wage schedule at the sole discretion of the Sheriff; the Sheriff is authorized (but not required) to recognize the past relevant experience of applicants as well as recruiting needs in determining their placement within the wage schedule and, if an applicant is placed at a step above Step "A," he or she shall then advance to the next applicable step in the usual and customary course. For avoidance of doubt, regardless of the initial placement within the wage schedule, the applicable probationary period will still apply. Nothing contained in this Section will confer any additional seniority on any new hire beyond his or her hire date as a Deputy Sheriff with the Delaware County Sheriff.

Given that the OPBA disputes the Fact Finder's rationale for her recommendations, though not the recommendations themselves, as to Articles 6, 23, and 27, the Conciliator wants to make it clear that he adopts the Fact Finder's report, including her rationale, and recommendations on these issues. The Fact Finder's Report is attached as Exhibit B. The Fact Finder included the contract language she adopted and attached it to her report. That language is attached as Exhibit. C.

Dated: April 13, 2018



Daniel G. Zeiser
Conciliator