

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF :
CONCILIATION BETWEEN: : CASE NOS. 2016-MED-10-1135
:
:
OHIO PATROLMEN'S BENVOLENT :
ASSOCIATION, : Date of Hearing: June 26, 2017
:
Date of Award: July 26, 2017
Union, :
and :
:
MONTGOMERY COUNTY SHERIFF :
:
Employer. :

CONCILIATION AWARD

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CONCILIATION AWARD

I BACKGROUND

On May 30, 2017, The State Employment Relations Board (SERB) appointed John F. Lenehan as the Conciliator in the matter of the Ohio Patrolmen's Benevolent Association (Lieutenants and Sergeants) and the Montgomery County Sheriff (Case No. 2016 –MED – 10-1135). A Conciliation Hearing was held at 9:30 A.M. on June 26, 2017, at the Montgomery County Sheriff's Office, 345 West First Street, 3rd Floor Conference Room, Dayton, Ohio 45422. The Ohio Patrolmen's Benevolent Association ("OPBA", "Union" or "Association") was represented by Joseph M. Hegedus, Esquire. The Montgomery County Sheriff ("Sheriff" or "Employer") was represented by Julie A. Droessler, Esquire, Personnel Director. In attendance on behalf of the OPBA were: Mike Williams, Dennis Krust and Dan Adkens. Chief Deputy Rob Streck and Confidential Secretary Beth Lainhart were present on behalf of the Sheriff.

Prior to the commencement of the hearing, the Union through its counsel and representative raised the issue of the Conciliator accepting or considering any evidence on behalf of the Employer's final positions on the issues submitted for conciliation. The Union cited, and presented copies of, Ohio Revised Code Section 4117.14, Ohio Administrative Code Section 4117-9-06, and SERB case decision *In the Matter of State Employment Relations Board, Complainant, v, Greenville Patrol Officers Association, Respondent*, 17 OPER p1510; 2000 OH SERB LEXIS 50. Before rendering any decision on the issue of the propriety of accepting evidence submitted on a party's final position, the Conciliator attempted to mediate the issues in dispute. As a result, both parties mutually agreed to modify their final settlement positions on wages.

Evidence was accepted and considered in accordance with Ohio Revised Code Section 4117.14, Ohio Administrative Code Section 4117-9-06 and SERB's decision *In the Matter of State Employment Relations Board, Complainant, v. Greenville Patrol Officers Association*. This

award is being issued within thirty (30) days as required by the foregoing provisions of the Ohio Revised Code and the Ohio Administrative Code.

A. Description of the Bargaining Units and Employer

The Union is the certified exclusive representative for a bargaining unit consisting of all Lieutenants and Sergeants in the Montgomery County Sheriff's Office. There are approximately forty- three (43) Sergeants and no Lieutenants currently in the bargaining unit. There are twenty-four (24) Sergeants working in general law enforcement, and nineteen (19) in revenue-based positions. The revenue based positions are associated with contract law enforcement services the Sheriff provides to local townships.

The Employer, the Montgomery County Sheriff, provides countywide law enforcement, custody services, and emergency communication services for the fifth most populous county in Ohio, which includes the major metropolitan area of Dayton. It also has an agreement with the Union for a bargaining unit that covers approximately 228 positions including the classifications of Correction Officer, Security Officer, Clerk-Typist, Execution Clerk, Recreation Specialist, Communication Technician II & III, Inmate Program Coordinator, Victim Advocate, Dispatcher and Accreditation Clerk/Typist. The Jail Division is funded out of the County's General Fund, whereas the Personnel Dispatch Center is funded by revenue collected under service contracts with the area jurisdictions participating in the regional 911 center

B. History of Bargaining

The parties met and engaged in negotiations on November 9, 2016, November 30, 2016, December 14, 2016 and January 30, 2017. As a result of those negotiations, the parties reached agreement on most issues. A fact finding hearing was held on March 14, 2017, in Dayton, Ohio, before Fact Finder Michael King.

C. Summary of the Fact Finder's Recommendations

Fact Finder Michael King in his report made the following recommendations as to the Articles that were in dispute.

ISSUE 1: ARTICLE 26, WAGE RATES AND LONGEVITY

Recommendation: The Fact Finder recommended a rank differential to Sergeants of sixteen (16%) percent, plus an additional one (1%) percentage point to compensate Sergeants for additional administrative chores and reduced overtime opportunities. Further, he recommended an annual wage adjustment of three (3) percent.

ISSUE 2: ARTICLE 29, VACATION

Recommendation: The Fact Finder recommended current contract language.

ISSUE 3: ARTICLE 30 INSURANCE

Recommendation: The Fact finder recommended and proposed the following contract language:

“Within thirty (30) days of the time the Employer becomes aware of any proposed changes in health insurance costs for members of this bargaining unit, the parties shall meet and negotiate on this issue. One goal of said negotiations shall be to examine and agree upon ways to lessen the impact of said higher insurance costs on employees. “

ISSUE 4: DRUG AND ALCOHOL TESTING

Recommendation: The Fact Finder recommended that the new article proposed by the Employer on Drug and Alcohol Testing not be added to the collective bargaining agreement.

D. Rejection of the Fact Finder's Recommendations

Pursuant to the Ohio Revised Code and SERB's Administrative Rules the Fact Finder's Report and Recommendations were rejected.

E. Resolved Issues

OPBA in its final settlement position statement for Conciliation withdrew its previous proposal at fact finding for an additional week of vacation at twenty-four years of service. All tentative agreements are incorporated as being part of this Conciliation Award and the successor CBA. They will not be more specifically addressed in this report.

F. Unresolved Issues

The following are the remaining unresolved issues for determination by the Conciliator.

1. Article 26- Wage Rates and Longevity
2. Article 30- Insurance
3. New Article- Drug and Alcohol Testing

II CRITERIA

Under Ohio Revised Code, Sections 4117.14 (E) and (G) (7), and the Ohio Administrative Code, Section 4117-95-05 (J), the Conciliator is required to give consideration to the following criteria in choosing between the Parties' proposals, on an issue- by- issue basis. That statute in pertinent part reads as follows:

(e) The board shall prescribe guidelines for the fact-finding panel to follow in making findings. In making its recommendations, the fact –finding panel shall take into consideration the factors listed in divisions (G) (7) (a) to (f) of this section.

* * *

(G)(7) After hearing the conciliator shall resolve the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the party's final settlement offers, taking into consideration the following:

- (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 stipulation 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 the 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.

The remaining unresolved issues in this matter will be determined by giving consideration to all of the foregoing criteria, and thereafter, according to the provisions of the Ohio Revised and Administrative Codes, choosing between each of the Parties' final settlement or last best offer on the each issue.

III ISSUES

ISSUE 1: ARTICLE 26, WAGE RATES AND LONGEVITY

Fact Finder's Recommendation:

The Fact Finder recommended a rank differential to Sergeants of sixteen (16%) percent, plus an additional one (1%) percentage point to compensate Sergeants for additional administrative chores and reduced overtime opportunities. Further, he recommended an annual wage adjustment of three (3) percent.

Employer's Position

At fact finding the Employer proposed to maintain the sixteen (16%) percent classification differential between the next lowest rank and an annual wage adjustment of one and three quarters (1.75%) percent. There was no change in its submission to the Conciliator, if such were to be considered. However, by mutual agreement and consent with the Union, the

Employer agreed it would have submitted a proposal of increasing the rank differential to Sergeants to seventeen (17%) percent, as proposed by the Union and recommended by the Fact Finder. It also agreed it would have submitted a proposal to increase the annual wage adjustment from 1.75 % to two (2%) percent.

Union's Position

The OPBA proposed in its initial submission for the Conciliation Hearing that the Fact Finder's recommendation be adopted. Citing a number of Conciliation Awards, it argued that because OPBA is asking the Conciliator to accept the Factfinder's recommendations, the Employer must rebut the presumption that the Factfinder's Report should be affirmed by proving that relevant circumstances have materially changed since the report was issued, that significant evidence was not available or considered by the Factfinder, or the data relied upon was flawed or otherwise misinterpreted. As Conciliator Byrne held in *City of Lakewood and Local 382, IAFF, SERB 00-MED—09-0952*, May 1, 2002, p.4, the moving party must prove serious error. Accordingly, for the case herein, the Factfinder's Report and Recommendation should be sustained and ordered.

Finally, the Union argues that over the past several years, there has been an unprecedented increase in the costs of health insurance mandated on the employees by the County.

Subsequent, to the initial submission of its final settlement offer to the Conciliator, OPBA with the mutual agreement and consent of the Employer modified its final settlement offer to provide annual wage adjustments of two and half (2.5%) for the term of the CBA.

Discussion and Award

Based upon the evidence submitted and the Factfinder's Report and Recommendation, the Conciliator concurs with the rationale set forth by the Factfinder. The Factfinder's report is based upon a careful analysis of the evidence, specifically, past wage increases, the cost of benefits, and internal and external comparables. In consideration of the modification by OPBA of its final proposal for settlement, withdrawal of its proposal on vacations and acceptance of

the Factfinder's recommendation on insurance, the Conciliator finds that OPBA's modified Final Settlement Offer on Wages and Longevity should be adopted and incorporated into the CBA. Therefore, Article 26 –Wage Rates and Longevity shall read as follows:

ARTICLE 26

WAGE RATES AND LONGEVITY

Section 26.1 Differential

- A. Employees of the rank of Sergeant in this bargaining unit will receive a rate of pay at least seventeen (17%) percent greater than the base rate of pay for the next lower classification/rank. This is to compensate Sergeants for the additional managerial and administrative responsibilities that have arisen, as well as to compensate existing Sergeants for reduced opportunities for promotion and to attract qualified candidates to the classification/rank of Sergeant. The base rate of pay for Sergeants may not be less than seventeen percent (17%) higher than the top step of the Deputy Sheriff's salary rate schedule. The base rate of Lieutenants will be calculated on the base rate of pay of Sergeants.
- B. In addition, there shall be a sixteen percent (16%) differential between Sergeants and Lieutenants.
- C. During their probationary periods, employees in both the Sergeants' and Lieutenants' classification/rank will receive a rate of pay equal to ninety-five percent (95%) of the base rate of pay for their classification/rank. Upon completion of probation, all bargaining unit employees shall move to Step 2 of the wage scale.
- D. In addition to any other increases set forth in this Article, all bargaining unit members will receive at least the following increases to their base rates:

Year one,	January 1, 2017 – December 31, 2017:	2.5%
Year two,	January 1, 2018 – December 31, 2018:	2.5%
Year three,	January 1, 2019 = December 31, 2019:	2.5%

Section 26.2 – No change.

ISSUE 2:

ARTICLE 30, INSURANCE

Fact Finder's Recommendation

Recommendation: The Fact finder recommended and proposed the following contract language:

“Within thirty (30) days of the time the Employer becomes aware of any proposed changes in health insurance costs for members of this bargaining unit, the parties shall meet and negotiate on this issue. One goal of said negotiations shall be to examine and agree upon ways to lessen the impact of said higher insurance costs on employees. “

Union's Position:

At fact finding the Union proposed to amend Section 30.2 of Article 30 to provide that employee contribution rates in effect January 1, 2017 would continue unchanged through December 31, 2019. It also proposed to amend current language to provide that bargaining unit members would not contribute more toward their benefits than other county employees during the 2016-2019 benefit plan years. In the alternate, the Union proposed consideration of a higher wage increase based on the increased costs employees are asked to shoulder for health insurance.

As its final offer for settlement for Conciliation, the OPBA modified its proposal from fact finding to adopt the above recommendation of Factfinder King. According to the Union this is a significant concession.

Employer's Position

At Fact finding the Employer noted that the Sheriff lacked authority to contract for insurance plan design and employee contribution rates. Instead it proposed a contract reopener in 2018 to address potential health insurance plan and cost changes.

Discussion and Award

The Conciliator concurs with the Factfinder's recommendation. Neither side presented evidence of a reliable estimate of the amount by which premiums are likely to rise during this contract cycle. There is nothing in the record that would allow a determination of an

appropriate wage adjustment to compensate employees for a cost increase of undetermined amount. Also, there is no evidence that would give a rational basis to recommend that the Sheriff be locked into absorbing the full measure of an undetermined increase in employee health insurance costs. Thus, it is recommended that there be a reopener to deal with the costs of employee health insurance. Article 30, Insurance shall read as follows:

ARTICLE 30

INSURANCE

Section 30.1 - No Change.

Section 30.2 – Premiums

A. Effective January 1, 2017, the employee will contribute to the plans as follows:

Coverage Level	Monthly Payroll Deduction		
	Buy-Up	County Advantage	Plan
Employee only	\$195.00	\$40.00	\$25.00
Employee + Child(ren)	\$255.00	\$45.00	\$30.00
Employee + Spouse	\$270.00	\$55.00	\$35.00
Family	\$330.00	\$65.00	\$45.00

These insurance premium rates shall be effective through June 30, 2018. Every year thereafter, the negotiated premium rates shall take effect upon commencement of the County Insurance plan year as established by the County.

B. Employees may participate in the County’s wellness incentive program, if offered, to reduce monthly contributions in the Buy-Up Plan or to increase contributions to the Health Savings Account for participants in the County Plan.

C. In no event, will bargaining unit employees contribute more towards their benefits than any other county employee during the 2016-2018 benefit plan years. Likewise, should the County offer a waiver of contribution during the plan year, the benefit will be offered to employees covered by this Agreement.

- D. Within thirty (30) days of the time the Employer becomes aware of any proposed changes in health insurance costs for members of this bargaining unit, the parties shall meet and negotiate on this issue. One goal of said negotiations shall be to examine and agree upon ways to lessen the impact of said higher insurance costs on employees.

Sections 30.3 – 30.4 - No change.

ISSUE 3:

NEW ARTICLE

DRUG AND ALCOHOL TESTING

Factfinder's Recommendation: The Fact Finder recommended that the new article proposed by the Employer on Drug and Alcohol Testing not be added to the collective bargaining agreement.

Employer's Position

At Fact Finding, the Employer offered Article 32 as a new contract provision and proposed the following language:

- A. The parties agree that bargaining unit members will be subject to drug and alcohol testing as outlined in the Sheriff's Office Policy GOM 3.5.1, Drug –Free and Alcohol-Free Workplace Policy.
- B. The parties agree that an arbitrator hearing a case involving drug testing will have no authority to change and/or modify the Sheriff's policy.

During the Fact Finding Hearing the Employer argued that society has changed and now reflects widespread drug experimentation. As a result almost every new hire has experimented with drugs. For that reason, the Sheriff says it is imperative that he can tell the community that a random testing policy assures that current employees are not abusing legal drugs, or using illegal drugs. Employees not covered by a collective bargaining agreement already are subject to random drug testing, and according to the employer the Union covering deputies recently agreed to a drug testing policy.

Union Position

The OPBA adopts the Finding and Recommendation of the Factfinder as set forth at p. 15 of the Factfinder's Report, which concluded that the "new Article on Drug and Alcohol Testing not be added to the Collective Bargaining Agreement.

Discussion and Award

Factfinder King King's Finding and Recommendation on this issue in pertinent part reads as follows:

"As previously stated, the party seeking to modify a collective bargaining agreement bears the burden of persuasion that the proposed changes are appropriate and necessary. I find that the evidence presented at hearing was inadequate to establish a need for this proposed Article. The stated purpose of the proposed new contract term is to eliminate drug abuse. However, there is no evidence of drug abuse among members of this bargaining unit. Finally, I note that the Sheriff already has the power to impose appropriate discipline, and to punish actual wrongful behavior."

In the absence of evidence of drug abuse submitted at either the Fact Finding or the Conciliation Hearing, the Conciliator concurs with the Fact Finder's Recommendation and the Union's final settlement offer on this issue.

Therefore, the proposed new article on Drug and Alcohol Testing should not be added to the collective bargaining agreement.

CERTIFICATION

The Conciliation Report and Award are based on the position statements, and the evidence and testimony allowed to be presented under the provisions of the Ohio Revised and Administrative Codes to me for the hearing conducted on June 26, 2017. Recommendations contained herein are developed in conformity to the criteria for fact finding and conciliation found in the Ohio Revised Code 4717(7) and in the associated administrative rules developed by SERB.

Respectfully submitted,

/s/ John F. Lenehan
John F. Lenehan
Conciliator

July 26, 2017

PROOF OF SERVICE

This Conciliation Report was electronically transmitted this 26th^t day of July, 2017, to the persons named below.

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**/s/ John F. Lenehan
John F. Lenehan**

