
In the Matter of Conciliation

Between

SERB Case No. 2016-MED-10-1137

Ohio Patrolmen's Benevolent Association

and

Before: Harry Graham

Montgomery County Sheriff's Office

APPEARANCES: For Ohio Patrolmen's Benevolent Association:

Joseph M. Hegedus
Ohio Patrolmen's Benevolent Association
92 Northwoods Blvd. Suite B-2
Columbus, OH. 43235

For Montgomery County Sheriff's Office:

Julie Droessler, Personnel Director
Montgomery County Sheriff's Office
345 West Second St.
Dayton, OH. 45412

INTRODUCTION: Pursuant to the procedures of the Ohio State Employment Relations Board a hearing was held in this matter before Harry Graham. At that hearing the parties were provided complete opportunity to present evidence and testimony. The record was closed at the conclusion of oral argument in Dayton, OH. on June 30, 2017.

BACKGROUND: This proceeding involves the civilian employees of the Montgomery County Sheriff's Office. Included in the Bargaining Unit are the classifications of Corrections Officer, Security Officer, Clerk-Typist, Recreation Specialist, Communication Technician II and III, Inmate Program Coordinator, Victim Advocate, Dispatcher and Accreditation Clerk-Typist. There are approximately 200 employees in this Bargaining Unit. When the parties negotiated

for a successor to the expiring Collective Bargaining Agreement they were unable to reach a meeting of the minds. They proceeded to Factfinding before Factfinder Felicia Bernardini. Her report issued on April 20, 2017. It was not mutually accepted. Hence, this recourse to Conciliation. (aka Interest Arbitration).

ISSUES: As is often the case in proceedings of this nature the dispute centers on the magnitude of the wage increase to be made in the forthcoming Agreement. The Union stands by the Report of the Factfinder. The Sheriff does not.

POSITION OF THE UNION: As noted immediately above, the Union embraces the recommendation of Factfinder Bernardini. It is the case that recommendations of Factfinders are given weight in proceedings of this nature. The Factfinder has explored the data presented by the parties and listened to their arguments. A report has been prepared which evaluates those arguments and makes conclusions. Absent error or changes in the circumstances of the parties the recommendations of a Factfinder bear strongly on the outcome of interest arbitration. They must not be lightly disregarded.

In her well-reasoned opinion Factfinder Bernardini found that Corrections Officers in the Montgomery County Sheriff's Office were earning 90.8% of the average wage in a comparison group composed of Butler, Clark, Clermont, Cuyahoga, Delaware, Franklin, Geauga, Greene, Hamilton, Lake, Lorain, Lucas, Summit and Warren counties in Ohio. She noted as well that there was high turnover in the Dispatcher classification. Looking at dispatch operations near to that of the Montgomery County Sheriff, Kettering, Huber Heights, Centerville, Moraine, Oakwood and Vandalia she found that the average top step for Dispatchers was \$27.53 per hour while that of the Sheriff was \$23.26 per hour.¹

¹ Bernardini, p. 7

Before the Factfinder was a proposal by the Union to reduce the number of steps to top step for members of the Bargaining Unit.² In the Montgomery County Sheriff's Office it takes thirteen years for a Corrections Officer to reach the top step, a step that yields an hourly rate below the average for others performing the same work. Statewide data from SERB indicates the average length of service required for CO's to reach the top step in Ohio counties is five years. In the case of Dispatchers ten years are necessary to reach the top step in Montgomery County. Statewide five years of service serve to generate the top step. Factfinder Bernardini found that "Without question, this data shows that MCSO pay scales are outliers when it comes to the number of years to rise to the top level of pay."³ Note well the conclusion of the Factfinder that the pay scales of the Sheriff's Office are "outliers." Examination of the data provided by the parties indicates this to be the case without susceptibility of doubt. This is a very strong point in favor of the position of the Union in this proceeding.

The Union contends that the Sheriff has no fiscal difficulty in meeting its wage proposal including a reduction in the number of steps to reach the top. Factfinder Bernardini found as much. She found that "There is no dispute among the parties that the County's General Fund is healthy and stable, and that sales tax revenues have steadily increased over the past four years and are projected to remain stable throughout the term of this collective bargaining agreement."⁴ When the Factfinder considered the circumstances of the parties in the spring of 2017 there was the possibility that the County would be required to deal with a situation involving the Medicaid Managed Care Sales Tax. A potential loss of about \$8 million was anticipated. In fact, any loss has been deferred to 2019 and is speculative according to the

² Ibid.

³ Ibid

⁴ Bernardini, p. 8

Union. Certainly no loss will occur in 2017 and 2018. As a result it is the case that the Employer has ample resources to meet its wage proposal the Union insists.

At the hearing the Union provided a report from Mary Schultz of Sargent & Associates of Spencer, OH. Ms. Schultz is a CPA and specializes in analysis of public finances. She examined the accounts of the County and found that as of December 31, 2016 there was a 28% carryover reserve in the General Fund. The Government Finance Officers Association recommends a 16% carryover. A separate fund, the Regional Dispatch Fund, had a balance of \$1.37 million.⁵ As the Union reads the data, it is inescapable that the Employer can afford a wage increase larger than what it has on the table in this proceeding.

When she came to evaluate the evidence Factfinder Bernardini she found that:

The most compelling comparable data and the most persuasive aspect of the wage proposals is the Union's focus on the number of steps in the wage scales for these bargaining unit members. At 10-13 steps MCSO is clearly an outlier in what is considered a reasonable step progression for these jobs. All of the data presented by the Union which includes SERB's report for all reporting county sheriffs in Ohio shows the standard to be 5-6 steps in a pay scale. For a pay scale to have 10-13 steps and after that long haul only be at, or somewhat below, an average wage rate creates a genuine deficit. The workforce principle for including step increases in the development of a pay scale is to increase wages early in an individual's career (or tenure) in order to account for, and compensate for, the exponential growth in competency that occurs over the first years in a job (or profession). In the early years of tenure the Employer's investment in a worker is recouped as on-the-job training and experience add depth and breadth to the worker's skills and competency. In most jobs, as tenure increases the annual growth in competency diminishes as the worker achieves full mastery. Only the most highly complex and technical jobs can reasonably support 10-13 years of step increases.⁶

In her cogent report Factfinder Bernardini also pointed to the "high rate of turnover experienced in this bargaining unit."⁷ In the term of the expired Agreement 68 bargaining unit positions were filled. Of the Dispatcher and Correction Officer rosters 27% of the budgeted

⁵ Sargent, pp 3-4.

⁶ Bernardini, p. 10.

⁷ Ibid.

positions changed hands. It goes without saying that this situation imposes a cost on the Employer, albeit a cost that is difficult to quantify. The Union embraced the recommendations of the Factfinder and urges them upon me as well.

POSITION OF THE EMPLOYER: The Sheriff proposes that there occur a 1.25% wage increase January 1 – June 30, 2017. The same increase should be made on July 1, 2017 through December 31, 2017. Step movement would also occur for those employees not at the top of their wage scale. The same wage increases would be made in 2018 and 2019.

In support of its proposal the Employer relies principally upon its fiscal condition. The finances of the County and the Sheriff are sound, but not robust. For 2017 the General Fund is 1.5% or \$2.2 million above the 2016 adopted budget.⁸ That notwithstanding the Employer is proposing the wage increase set forth above. Coupled with that increase is an estimated 7.7% increase in health insurance costs. That amounts to a \$1.0 million (rounded) increase over the 2016 level.

The General Fund has experienced a modest increase in recent years coupled with a \$10.0 million increase in 2016. That large increase was an anomaly resulting from a large late increase in sales tax revenues. More accurate is the trend in the increase in General Fund revenues which have grown roughly in line with inflation from 2013 – 2016. The breakdown of General Fund expenditures shows that the largest proportion of them, 70.1%, is spent on Judicial/Law Enforcement items. As that is the case the Sheriff should not be required to do more the County contends.

⁸ All financial data is from the report of the County behind the tab “Montgomery County Budget Presentation” in the binder provided at the hearing.

The County maintains an Unencumbered Cash Reserves account in the General Fund. From 2012 through 2016 the amount in that account has been roughly stable, increasing from \$25.6 million in 2012 to an estimated \$30.3 million in 2017.

The County is keenly aware of looming risks to its finances. It is anticipated that the Medicaid Managed Care Sales Tax revenues will be eliminated in 2019. This will result in a loss of \$8.0 million. Health insurance expenditures continue their inexorable rise. The County anticipates a 7.6% annual increase in the 2012 – 2017 period. Translated into dollars, that amounts to a rise from \$42 million in 2012 to \$58 million in 2017. (Rounded). Further, in 2016 the County experienced a large increase in its medical claims. Its prescription drug costs have risen substantially on a yearly basis. Given that its wage increase offer is reasonable no more should be expected it contends.

The Sheriff compares well with a group of similar size counties in Ohio with respect to pay. Thus, if looking at the Dispatcher classification the maximum rate in Montgomery County is \$48,480.80. This is the midpoint between the maximum in Butler County of \$52,680.40 and the minimum of \$39,748.80 in Summit County. The same is true with respect to the Corrections Officer and Clerical classifications. Butler County pays the most. Summit County pays the least. Montgomery County is in the middle. As that is the case no further wage adjustment beyond what it proposes in this proceeding need be made according to the Sheriff.

DISCUSSION: The fiscal position of the County is sound. At the end of 2016 it had a 28% carryover balance in the General Fund. That is anticipated to continue in 2017. Further, independent evaluators have concluded that the County is in a good financial position. The two largest independent bond rating agencies, Moody's Investors Services and Standard and Poor's rate debt of Montgomery County as investment grade. Moody's evaluates long term

County debt as Aa1. Standard and Poor's gives it AA with a stable outlook.⁹ That independent expert evaluators have found the County to be in good financial condition is a very important consideration in this proceeding.

When she examined the data Factfinder Bernardini found the County had not argued it could not pay the wage increase sought by the Union.¹⁰ She determined the cost of the Union proposal was "significant" in the first year of the Agreement. It was less so in years two and three.¹¹ The Factfinder was correct in her analysis of the finances of the County. It can meet the wage proposal of the Union at Conciliation without strain.

The comparability data introduced by the County is accurate but incomplete. Certainly the wages for the various classifications in this bargaining unit are reasonable when compared with other counties. Much less so when compared with nearby jurisdictions, e.g. Centerville, Kettering, Moraine. Those comparisons do not present the entire picture. It is very, very significant that it takes this group of employees many more years of service to reach the top step of their classifications. As referenced by the Factfinder in her report¹² the most compelling and persuasive aspect of the wage proposal of the Union is its focus on the number of steps it takes employees to reach the top of the wage scale. She found that the County was an "outlier"¹³ in this regard. Data from SERB show substantially more time in the Montgomery County Sheriff's Office to reach top step than is normal for these classifications elsewhere in the State.

⁹ Union Exhibit 13. That Exhibit is dated October 22, 2013. At the hearing I inquired if any changes had occurred subsequently. It was indicated the 2013 ratings remained unchanged.

¹⁰ Bernardini, p. 8.

¹¹ Bernardini, p. 9.

¹² Bernardini, p. 10, cited above.

¹³ Ibid.

As a result the Sheriff has experienced high turnover amongst members of this bargaining unit. During the term of the expired Agreement, January 2014 – December 2016, 68 vacancies were filled. This represented 27% of the positions for the Dispatcher and Correction Officer positions.¹⁴ The Factfinder noted that “The loss of productivity and the cost of overtime to fill vacant positions make it worth considering increasing wages to a more competitive level in an effort to keep employees on the job.”¹⁵ I concur. The costs of turnover are difficult to measure. Nonetheless they are real. They cannot be ignored. The turnover experience of the Sheriff’s Office provides substantial support for the proposal of the Union.

AWARD: Based upon the preceding discussion I award as follows:

July 1, 2017 the pay scales will be adjusted as proposed by the Union and edited by the fact finder to eliminate the 84-month step for all by the Correction Officer pay scale.

In 2018 wages will increase by 1.25% on January 1 and on July 1.

In 2019 wages will increase by 1.25% on January 1 and on July 1.

Relevant contract language shall read:

Article 26, Section 26.1 – Wages

A. Wages during the term of this Agreement are as follows:

Effective July 1, 2017 revised pay scales will be adopted. Employees will be moved to the new step corresponding to their cumulated months of service on July 1, 2017. Further step movement will be on the employee’s anniversary date in accordance with the step progression established by the pay scales. *(Note: Adopted pay scales are those in the Union’s fact finding wage proposal, eliminating the 84 – month step in the pay scales other than the Correction Officer scale. This means that the Accreditation Clerk and the Program Coordinator can have the same scale as the Correction Officer without the 84 – month step.)*

Effective January 1, 2018 wages will increase one and one quarter percent (1.25%).

Effective July 1, 2018 wages will increase one and one quarter percent (1.25%).

¹⁴ Bernardini, pp. 10-11.

¹⁵ Bernardini, p. 11.

Effective January 1, 2019 wages will increase one and one quarter percent (1.25%).

Effective July 1, 2019 wages will increase one and one quarter percent (1.25%).¹⁶

MISCELLANY: At the hearing the parties identified two other issues that were unresolved.

These are Article 19, Uniforms and Equipment and a proposed new Article 32, Drugs and Alcohol. Article 19 Section A should be amended to read at the final sentence:

The Employer will purchase, on an as-needed basis, but no more frequently than annually, one pair of shoes or boots at a cost not to exceed one-hundred fifty dollars (\$150).

With respect to a proposed new article, Article 32 regarding drug and alcohol testing, the Factfinder recommended against including such in the Agreement. She found the Employer had not demonstrated there was a problem that would be addressed by inclusion of the language proposed by the Employer. She rejected its proposal. I find her rationale to be cogent. The proposal of the Employer for new language regarding drug and alcohol testing is rejected.

All tentative agreements of the parties are incorporated into this award and made part of it by reference.

Electronically signed and dated this 14th day of July, 2017 at Solon, OH.

Harry Graham
Conciliator

¹⁶ Bernardini, pp. 12-13.