STATE EMPLOYMENT RELATIONS BOARD

CONCILIATOR'S AWARD

IN THE MATTER OF:

TUSCARAWAS COUNTY SHERIFF

AND

FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL, INC.

Case Number: 2017-MED-09-1148
911 Telecommunicators

Before Conciliator: Thomas J. Nowel, NAA
October 9, 2018

PRESENTED TO:

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INTRODUCTION

The State Employment Relations Board appointed Thomas J. Nowel to serve as Conciliator, in the case as captioned on the cover page, on July 17, 2018 in accordance with Ohio Revised Code Section 4117.14 (D) (1). Hearing was held on September 25, 2018 at the office of the Tuscarawas County Sheriff in New Philadelphia, Ohio.

The collective bargaining agreement between the parties had expired on December 31, 2017. The parties engaged in several negotiating sessions, and bargaining for the 911 Telecommunicators bargaining unit occurred at the same time other FOP bargaining units were engaged in collective bargaining with the Sheriff's Office. The parties reached tentative agreement on a number of issues but impasse occurred on three unresolved items. The parties proceeded to Fact Finding. Arbitrator Susan Grody Ruben conducted a Fact Finding hearing on June 7, 2018. Members of the 911 Telecommunicators bargaining unit voted to reject the Fact Finding Report and Recommendation. Other FOP bargaining units, representing Sheriff Office employees, either reached tentative agreement or accepted the Fact Finding Report and Recommendation. Correction Officers, represented by the Teamsters Union, also reached tentative agreement. Two issues at impasse are the subject of this Award.

OUTSTANDING ISSUES:
1. Article 16, Hours of Work/Overtime
Section 16.3 and 16.4
2. Article 25, Wages

Those participating at hearing for the Employer:
Jonathan J. Downes, Esq., Labor Counsel
Orvis Campbell, Tuscarawas County Sheriff

Larry J. Lindberg, Tuscarawas County Auditor
Ryan Lawrence, 911 Lieutenant
Jim Torch, Fiscal and Human Resources

Those participating at hearing for the Union:
Robert Goheen, FOP Staff Representative
Winona Goss, Bargaining Unit representative
Julie Polka, Bargaining Unit Representative

BACKGROUND

In analyzing the positions of the parties regarding each issue at impasse and then selecting one or the other final offer of the parties, the Conciliator is guided by the principles which are outlined in Ohio Revised Code Section 4117.14 (G) (7) (a-f) as follows.

1. Past collectively bargained agreements between the parties.

2. Comparison of the issues submitted to fact finding [conciliation] 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.

3. The interest 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. The stipulations of the parties.

6. Other factors, not confined to those listed above, which are normally or traditionally taken into consideration in 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.

In addition to the statutory guidelines, the Report and Recommendation of the Fact Finder in this matter is given consideration in the development of the Award. During the course of the hearing, the parties had full opportunity to advocate for their respective positions, submit exhibits, present testimony and discussion, and engage in rebuttal of the submissions and arguments of the other party.

By agreement of the parties, a general discussion of Tuscarawas County finances was presented by County Auditor Larry Lindberg. He presented the following scenario. Tuscarawas County is a rural jurisdiction supported by property tax and sales tax. Revenues amount to approximately $24 million annually. 31.8% of the general fund budget is allocated to the Sheriff's Office. General Fund revenues did not return to pre-recession levels until 2015. Permissive sales tax receipts are the dominant source of general fund cash. Receipts will remain flat for 2018. Sales tax rate is 6.75% with an increase in 2018 to 7.25% which will expire in 2020. The additional monies are dedicated funds. Beginning in 2017, receipts were negatively impacted by the state's repeal of sales tax on Medicaid health insuring corporations. As with all local jurisdictions in Ohio, the County lost significant revenue from reductions in the local government fund. Receipts were $1,746,492.06 in 2008 and $862,161.18 in 2017. Additionally, the County's investments have under-performed over the past several years. Tuscarawas County's property tax rate ranks 8th from the bottom of Ohio counties. The goal of the County Commissioners is an 18% budgetary carry-over which exceeds the 16% recommendation of the Government Finance Officers Association. Due to belt tightening and prudent fiscal management, there were no layoffs during the "Great Recession." $586,412 has been earmarked for capital improvements in the Sheriff Office for 2018. The County maintains very little debt. In light of prudent and cautious budgeting, the State Auditor, nevertheless, in its 2016 report, outlined four “Cautionary” outlooks and one “Critical” outlook. Factors included depreciation expense, elimination of the personal property tax by the State, declining revenues in certain areas and other concerns. The shopping mall in the county has lost a number of significant anchors. Revenue from casino enterprises has not met expectations. Tuscarawas County provides excellent health insurance benefits for its employees. The Employer’s cost for health insurance (Sheriff’s Office) during the month of May was $110,012.97. Annual cost is approximately $1.3 million. The County should not be penalized for prudent budgeting. The presentation by the County Auditor was comprehensive and was supported by a series of financial documents.

The Union presented rebuttal and states that the County is not in economic stress. It has not claimed inability to pay, and, in fact, the Union proposals are easily affordable. The Union employed Ms. Mary Schultz of Sargent and Associates to analyze the County’s budget in relation to the proposals made by the Union. Ms. Schultz cites the combined 2017 general fund balance of $6,065,000 with the Budget Stabilization Fund balance of $1,008,000. This represents a 30.5% carryover reserve. Ms. Schultz suggests that the Union’s proposals are easily affordable by the Sheriff’s Office. Tuscarawas County was named the number two micropolitan region in the United States due to job creation, new construction for business and industry and expansion of existing industry. There are 11 companies in the county which service the gas and oil exploration industry. Available funding for the 911 Dispatch Department is significant with monies available to support wage increases for employees.

ANALYSIS AND AWARD

1. Article 16, Sections 3 and 4, Hours of Work/Overtime

The Employer proposes to maintain the existing compensatory time cap for 2018 but to clarify that accrued comp time rolls over into the following year and applies to the maximum accumulation for that following year. The Employer proposes a hard cap of 100 hours in 2019. The Employer proposes a hard cap of 80 hours in 2020. In Section 16.4, the Employer proposes annual conversion of unused comp time for up to 20 hours in 2019 and 40 hours in 2020 at the option of the employee.

The Union proposes current contract language in Article 16.

EMPLOYER POSITION: The Employer states that its proposal is designed to reduce the uncertainty of scheduling in a 24/7 operation. Current use of compensatory time creates a compounding effect. The use of compensatory time creates more overtime which creates more compensatory time and so forth. The Employer states that various leave provisions in the collective bargaining agreement exasperate scheduling issues among employees in the unit. The Employer's hard cap proposals and cash out options will begin to solve scheduling difficulties. The Employer argues that the personal lives of Telecommunicators will be improved as well. The Employer emphasizes that cash out is at the option of the employee. The Employer's Exhibit 7 illustrates the amount of overtime required in 2017 to cover for comp time used. The Employer emphasizes that all other bargaining units in the Sheriff's Office have agreed to the same or similar proposed modifications to the comp time provision as proposed for the Telecommunicators bargaining agreement and which has been presented at conciliation. Additionally, Fact Finder Susan Grady Ruben recommended the Employer's proposal in her Report and Recommendation for this bargaining unit. The Employer states that the Union failed to show that the Fact finder erred in her recommendation and urges the Conciliator to award its proposals regarding compensatory time.

UNION POSITION: The Union presents it overarching argument regarding staffing levels. The Union states that the Telecommunicators operation is significantly understaffed. Although three new employees have been hired recently, the department continues to be understaffed. New employees are not currently in the rotation and will not be in a position to provide regular 911 duties until December 2018, and it is known that a number of current employees may leave the department due to excessive overtime requirements. The Union believes that a staff of 21 Telecommunicators is necessary to provide adequate service with controlled overtime requirements. The Union states that history indicates that the Employer has refused to adequately staff the department. The Union argues that current provisions of the compensatory time provision of the Agreement may, at some point, force the Employer to deal with the understaffing of the department. The Union is therefore opposed to a hard cap. The Union believes that the Fact Finder in this case made a mistake when the Employer's proposal was recommended, but she recognized the problems which understaffing have caused. She emphasized the need of the Sheriff's Office to increase staffing levels as quickly as possible. The Union believes that its proposal should be awarded by the Conciliator.

AWARD: The Conciliator is sympathetic to the concerns and issues facing members of the bargaining unit regarding staffing levels and high levels of overtime. Understaffing impacts levels of service, morale, safety of employees and the public, and the ability of the Sheriff to attract and retain qualified and dedicated employees. During the closing moments of the hearing, the Union submitted an exhibit noting current employees, those who have left the department, total overtime worked in 2018 to date and compensatory time in the bank of each bargaining unit employee to date. The exhibit notes that three employees have left the employment of the 911 department. A number of employees have worked in excess of 160 hours of overtime. The Union's arguments are genuine and, as Fact Finder Ruben noted, must be given immediate consideration by the Sheriff. Nevertheless, the Employer's arguments regarding parity and pattern bargaining are compelling. Following the fact finding process, the Deputies bargaining unit accepted the Report and Recommendation which includes the Employer's compensatory time proposals which are the final offer in the instant matter. Further, bargaining units representing Sergeants and Detectives had reached tentative agreements which incorporated the Employer's compensatory time proposals which, again, are the final offers in the Telecommunicators conciliation case. It must be noted that, while the Fact Finder in this case recommended the Employer's proposals, it was a choice, at that time, between a Union proposal to increase compensatory time balances and the current modifications proffered by the Sheriff's Office. Additionally, the collective bargaining agreement for the Sheriff's Office Corrections unit, represented by the Teamsters Union, contains compensatory time language which is similar to the final offer on the table at conciliation. This neutral is hard pressed to award the Union's proposal in light of the overwhelming evidence regarding parity and pattern bargaining. Four of the five Sheriff Office bargaining units are represented by the same labor organization. Three of the four FOP units have incorporated the Employer's proposal in their collective bargaining agreements. Nevertheless, there are portions of the Employer's proposal which could be of benefit to employees, the increased cap to 100 hours in 2019 and the ability and option to cash out a portion of the comp time bank. The Conciliator notes that, based on the last minute exhibit submitted by the Union, which outlines overtime hours worked and comp time banks, no bargaining unit employees had reached the 80 hour limit on September 24, 2018. One member of the bargaining unit had 75 hours in the bank and another was at 72 hours. The next employee had 50 hours banked, and the remainder were below 43 hours.

The final offer of the Employer is awarded. Language is as follows.

Article 16, Hours of Work/Overtime
Section 16.3. Overtime/Compensatory Time. When an employee is required by the Employer to work more than forty (40) hours in a work week, as defined in Section 16.2 above, including the lunch period, she shall be paid by either overtime pay or by compensatory time for all time worked in excess of forty (40) hours. For the purpose of computing overtime/compensatory time, approved vacation, personal days, funeral leave, compensatory time, and sick leave shall be considered as time worked.

Overtime pay/compensatory time shall be paid at the rate of one and one-half time the employee's regular hourly rate of pay.

<u>Through the last pay period of 2018, compensatory time may be accrued up to a maximum of eighty (80) hours.</u>

<u>Beginning with pay period 1 of 2019, employees may accrue/bank compensatory time to maximum of one hundred (100) hours in a pay year which will begin with the first day of pay period 1 each year. Any accrued, unused compensatory time at the end of the calendar year shall be carried over to the following year and apply to the maximum allowed to be</u>

accumulated in that year: for example, an employee with 50 hours balance at the end of a calendar year may then only accumulate an additional 50 hours in the following year.

Beginning with pay period 1 of 2020, employees may accrue/bank compensatory time to a maximum of eighty (80) hours in a pay year which will begin with the first day of pay period 1 each year. Any accrued, unused compensatory time at the end of the calendar year shall be carried over to the following year and apply to the maximum allowed to be accumulated in that year: for example, an employee with 40 hours of balance at the end of a calendar year may then only accumulate 40 hours in the following year.

Compensatory leave may be requested in increments of one-half (1/2) hour and must be submitted at least three (3) days prior to the date requested. It is understood that the Sheriff reserves the right to deny a compensatory time leave request if another employee on same shift is scheduled for an approved vacation or personal day. The Sheriff has the right to deny a compensatory time request based on operational needs, load requirements and staffing needs and such denial is non-grievable.

Nothing contained herein shall prohibit the parties from mutually agreeing to waive the advance notice time periods described in the above paragraph on a non-precedent/non-grievable basis.

Section 16.4. Annual Conversion of Unused Compensatory Time.
Beginning in November 2019 annually employees may convert unused compensatory time. Written request to convert compensatory time shall be submitted by November 10. Payment will be made in December. The maximum conversion will be 20 hours in 2019 and thereafter 40 hours.

Old Section 16.4 becomes 16.5; Section 16.5 becomes 16.6; Section 16.6 becomes 16.7; Section 16.7 becomes 16.8.

2. Article 25, Wages

The Union's proposal is multi-faceted. Delete the pay scale's training rate allowing new employees to go immediately to the "starting rate." All bargaining unit employees receive a $1.00 per hour pay increase effective January 1, 2018. 3% wage increase effective January 1, 2018; 3% wage increase effective January 1, 2019; 3% wage increase effective January 1, 2020. Although not in its written pre-hearing statement, the Union proposed, during the hearing, that bargaining unit employees, who have left employment since January 1, 2018, would be eligible for any negotiated increase in wages, the difference between what was earned and the greater hourly rate.

The Employer's proposal at conciliation is as follows. 3% wage increase effective January 1, 2018 for those employed on the date of the award at conciliation; 3% wage increase effective January 1, 2019; 3% wage increase effective January 1, 2020.

UNION POSITION: The Union states that the Employer has the ability to fund its proposal. SERB data illustrates that Tuscarawas County Telecommunicators are paid less than their peers in the region and across the state thus justifying the $1.00 increase beyond what the Employer has offered. The ratio of wage rates between Deputies and Telecommunicators is less at the Tuscarawas Sheriff's Office compared to most other Sheriff Offices in the region. This is a primary reason for the proposed equity increase. The Union states in its pre-hearing statement that the bargaining unit's pay scale is 71% of the Deputies pay. The Union states that Correction Officers pay is 81% of Deputies wages. The Union argues that, in other jurisdictions, wages of 911 employees are often comparable to those of Corrections employees. The Union states that Dispatchers and Corrections employees earn the same hourly rate in Carroll and Coshocton Counties. The $1.00 increase will begin to close the gap and bring Telecommunicators wages to 89% of Deputies. The Union argues that this is a more reasonable pay gap. The Union cites the $1.00 equity increase received by Detectives based on their loss of overtime assignments. The Union also argues equity regarding its proposal to delete the training rate of the wage scale. Closing the wage gap will assist in attracting and retaining employees which continues to be a significant concern of the bargaining unit as illustrated in its arguments regarding compensatory time. Although the proposal was submitted at hearing and not contained in its pre-hearing position statement, the Union argues that prior bargaining unit employees, who have left the department since January 1, 2018, must receive the difference in their pay created by retroactivity.

EMPLOYER POSITION: The Employer states that bargaining unit wages are very competitive especially based upon total compensation. When considering total compensation, bargaining unit employees rank fourth of eleven regional county Sheriff Offices, and pay increases proposed by the Employer are greater than those which are illustrated by the regional SERB wage survey. The Employer discounts any comparison between Dispatchers and Corrections employees. The Employer states that Dispatchers, who perform the duties of Corrections employees in other counties, are certified to do so. Job duties are otherwise vastly different. The Employer states that historically bargaining unit wage increases have exceeded cost of living increases (CPI-U), and the Employer granted additional hourly wage increases in 2015 to off-set an increased cost of health insurance. The Employer states that there is no basis for Union proposals to add the $1.00 wage increase and the elimination of the training rate. The Employer's proposal at conciliation reflects the Fact Finder's recommendation. The Employer argues that there is no reason or compelling evidence which would invalidate the Fact Finding Report and Recommendation. The Union has the burden at conciliation to show that the Fact

Finder erred, and it has failed to do so. The Employer states that its case at Fact Finding was based on three factors, parity, fiscal management and external comparables. Nothing has changed since fact finding, and the Conciliator should grant the Employer's wage proposal.

AWARD: The first issue to be addressed is the proposal to provide past employees with the portion of the retroactive wage increase in 2018 which they would have earned had they continued their employment in the department. This proposal was not included in the Union's pre-hearing position statement and was not included in its attached detailed Article 25 wage proposal. This proposal therefore cannot be considered at conciliation as the neutral must choose between one or the other final offer presented in the pre-hearing statements which are issued prior to the evidentiary hearing unless the inclusion of the proposal is by mutual agreement. The Employer opposed any consideration of the additional proposal. It therefore cannot be considered.

Both parties present compelling arguments to support their proposals. As Fact Finder Ruben stated, Tuscarawas is a rural county which operates on low sales and property taxes. The County is fiscally conservative, but it has managed its finances in such a way that no layoffs occurred during the recent recession. Evidence provided by the Employer regarding total compensation of bargaining unit employees compared to their peers in surrounding counties indicates that wages are competitive even in light of the lower wage ratio between Deputies and Telecommunicators at Tuscarawas County. In addition to the issue of parity, as highlighted in Fact Finder Ruben's Report, the wage and benefit package compares favorably with other jurisdictions. Fact Finder Ruben quoted Arbitrator Jerry Sellman in the Hancock County Sheriff case in her Report, and it is worth quoting herein.

> Where an Employer demonstrates consistency in negotiating parity on core economic terms and conditions, consistent treatment should be afforded unless there are clear extenuating circumstances supporting such an exception.

And in responding to issues of parity and pattern bargaining, this neutral wrote the following in Case Number 2014-MED-10-1465, Conciliation between the City of Middleburg Heights and the Ohio Patrolmen's Benevolent Association.

> The Fact Finder agrees with the City that the Patrolmen share a community of interest with the Firefighters rather than administrative employees. Thus, pattern of bargaining is an important factor. The Employer cites recommendations by Fact Finders Harry Graham, Marvin Feldman and John Drotning which recognize the principle of pattern bargaining in certain cases of impasse with a bargaining unit in the same jurisdiction. And this neutral, while not in lock step if circumstances dictate, often recognizes the well established principle. In some cases this may not support a Union position, but in others it may work in its benefit.

The Union cited the stipend granted to Detectives as an internal comparable in respect to its $1.00 proposal. But evidence suggests that this was granted to maintain equity with Deputies as Detectives work schedules preclude overtime. There are only three Detectives in the Sheriff's Office. Fact Finder Ruben commented on the Union argument regarding the disparity in pay with Corrections employees. She concluded that the pay differential is legitimate. There was no evidence at hearing to suggest that the Fact Finder erred when arriving at this conclusion. Perhaps the Employer or Fact Finder may have considered a small equity adjustment spread over the term of the new Agreement as opposed to the $1.00 proposal. But a one dollar equity adjustment in tandem with the three across the board increases goes well beyond the negotiated wage increases bargained with the other Sheriff Department bargaining units.

Bargaining units including Deputies, Sergeants and Detectives, represented by the FOP, OLC Inc., agreed to the three 3% wage increases as found in the Employer's proposal in this conciliation. In addition, Correction Officers, represented by the Teamsters Union, agreed at the bargaining table to the Employer's wage proposal. Accordingly, the Employer's wage proposal is hereby granted at Conciliation as follows.

Effective 1/1/2018: 3% base wage rate increase for all steps for those employed as of the date of the Conciliator's Award.
Effective 1/1/2019: 3% base wage rate increase for all steps.
Effective 1/1/2020: 3% base wage rate increase for all steps.
The County Auditor will calculate the hourly wage rates prior to execution of the CBA.

CONCLUSION

The Conciliator has reviewed the pre-hearing statements of the parties and all facts presented at hearing including exhibits presented during the evidentiary hearing. In addition, the Conciliator has considered the positions and arguments presented by the parties and their committees; the Report and Recommendation of the Fact Finder; and the criteria enumerated in the statute.

In addition to the decisions contained in this Award, all tentative agreements reached by the parties are hereby incorporated in this Award by reference.

The Award includes the following:

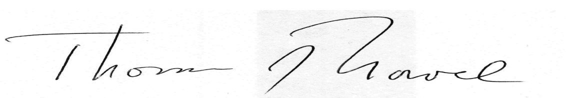
1. Article 16, Hours of Work/Overtime

   Employer Proposal

2. Article 25, Wages

   Employer Proposal

Respectfully submitted and issued at Lakewood, Ohio on this 9th Day of October 2018.



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Thomas J. Nowel, NAA
Conciliator

CERTIFICATE OF SERVICE

I hereby certify that, on this 9th Day of October 2018, a copy of the foregoing Award at Conciliation was served by electronic mail upon Jonathan J. Downes, Zashin & Rich Co., LPA, representing the Tuscarawas County Sheriff's Office; Robert Goheen, Staff Representative, representing the Fraternal Order of Police, Ohio Labor Council Inc.; and Donald M. Collins, General Counsel, State Employment Relation Board.

Thomas J. Nowel, NAA
Conciliator