

**CONCILIATION AWARD
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
JUNE 22, 2018**

In the Matter of:

	}	Case No.:
DELAWARE COUNTY COMMISSIONERS	}	2017-MED-10-1280
and	}	
OHIO PATROLMEN'S BENEVOLENT ASSOCIATION	}	Carol J. Bader, Esq. Conciliator

APPEARANCES:

For the Employer:

Mr. Mark Fishel, Esq.
Fishel, Haas, Kim, Albrecht, Downey
7775 Walton Parkway, Suite 200
New Albany, Ohio 43054

For the Union:

Mr. Joseph M. Hegedus
Ohio Patrolmen's' Benevolent Association
92 North Woods Boulevard, Suite 2-B
Columbus, Ohio 43235

Team Members:

Pamela Sonagere, Director of Labor and Employment Relations
Patrick Brand, Director of Emergency Communications

Team Members:

Kaylyn Heading, Union President
Bryan Brand, Union Member

Background:

The undersigned was duly appointed as Conciliator on April 28, 2018 under Ohio revised Code 4117.14 (D). Delaware County Commissioners (hereinafter "County") and the Ohio Patrolmen's Benevolent Association (hereinafter "Union"), are parties to a collective bargaining agreement. The bargaining unit consists of twenty (20) full time and one (1) part time telecommunications operators (911). They provide dispatch services for two police departments, (plus Ohio Wesleyan College) and 13 Fire Departments. The parties bargained into the fall, 2017 reaching impasse by March, 2018. As "civilian dispatchers employed by other than a police, fire or sheriff's Department", they have no right to strike. Therefore, they are subject to the Conciliation process under the Ohio Collective Bargaining Law for public employees. (ORC.

4117.14 D (1))

The parties selected Factfinder Christopher Miles, and the hearing was held in March. He issued his report on April 11, 2018. The unresolved issues were Wages, Vacation and Holidays (Personal Leave). The County Commissioners rejected the report and the parties moved to conciliation, which was held on June 8, in accordance with ORC 4117. Each party provided a timely complete position statement. The hearing was held in a conference room at the County Commissioners building located in the City of Delaware, Ohio. A digital recording was made of the hearing and, in conjunction with the Conciliator's notes, serves as the official record. The Conciliator provided a full opportunity for the presentation of arguments and evidence. The record was closed at the conclusion of the hearing.

Factors for Consideration:

The Conciliator is bound by statute to consider certain factors for determination of the award. Each party is to present their last best offer for review, on an issue by issue basis. (ORC 4117.14(G) (7)).

- (1.) Past collectively bargained agreements, if any, between the parties.
- (2.) 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.
- (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.) The stipulations of the parties; and
- (6.) 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 settlement through voluntary collective bargaining, mediation, conciliation or other impasse procedures in the public service or private employment.

In the years since the enactment of the Ohio collective bargaining law (1984), it is

traditional to give "great weight" to the Factfinder's report and recommendations. (Union position statement, p. 2, H. Graham). This well-known principle was developed by respected Ohio arbitrators, who say that to ignore the factfinder's report is to render the process "meaningless" (Union position statement, p.3.). Unless there is some "mistake in fact or logic", the circumstances have changed, or new evidence is submitted, the report should be adopted (Union position statement, p.2, D. Byrne). Furthermore, it cannot just be that the conciliator would have done something different, but there must be proof of "serious error" (Byrne). The Union, having accepted Factfinder Miles recommendations, urged the conciliator to apply this thinking to the instant case (Union position statement).

The County took an opposing view, responding that there is nothing in the statute that requires a conciliator to defer to or "rubber stamp" the Factfinder's recommendations. In this case, they assert that the Factfinder's recommendations are "unreasonable" (County oral argument).

The Conciliator's review included the ORC mandated factors as well as the arguments of the parties regarding the "weight" that should be given to the Miles report. Furthermore, all the materials submitted, oral arguments made and other discussions were considered to determine the award. The Conciliator appreciates the time and effort required to prepare for a conciliation hearing and notes that each party made well organized and in depth presentations.

Unresolved Issues:

There were three unresolved issues before the Conciliator. The wage issue is a dispute over the amount of increase for the three years of the contract and an introduction of a wage step table. The Union proposes an increase of the amount of vacation an employee can earn per years of service. Finally, the "Holiday" issue is a new benefit in the form of personal leave. This would either be used the same as vacation or deducted as sick time depending on the proposal selected.

The Conciliator sets forth the parties final offers, Factfinder Miles' recommendations, and the Award:

A. Wages

1. County Final Offer:

Delaware County's final offer is 3%, 3% and 3%, annually for the life of the contract. They

object to the Factfinder's recommendation because they find his overall increase of 12.6 % (using wage steps chart) to be "unreasonable" in light of the statutory criteria. (CX-7) They referred to other comparable jurisdictions (CX- 3, CX-4 and CX-5), of which the majority of increases were less than 9%. The County argues that their offer of 9% is more generous than most other jurisdictions and they are not seeking other concessions. They also maintain that no other Conciliation awards over the last 2 years have been as high as the 12.6% recommended. Finally, this outcome would lead to having 21 employees receiving increases higher than the other 400 Delaware employees under contract with the Commissioners (County position statement, pp.5-6).

2. Union Final Offer:

The Union adopted the Factfinder's recommendation for a wage chart approach as their final offer. This would include an average 4% increase the first year, with 2.5% for the second year and 2.5% for the third (Miles report, p. 4). They also accepted the Factfinder's proposed wage chart. The Union urges the Conciliator to give "weight" to the Factfinders report, as described in the background section above. Furthermore, the wage chart and red circling is necessary to correct discrepancies in pay among the individual dispatchers (UX- B2). Per the Union, it is helpful to provide good pay in order to attract and keep good/experienced dispatchers. In fact, the unit has recently been able to recruit experienced dispatchers from other Counties. In addition, the Union provided evidence that the majority of Ohio jurisdictions have wage charts (UX-5). Without wage charts, according to the Union, the less senior employees would never reach the maximum pay rates.

3. Factfinder Recommendation:

After a thorough financial analysis of each party's position, the Factfinder rejected both parties' proposals. He considered the County's argument that the cost of the Union's proposal was "unreasonable and prohibitive". Some employees, under the union's plan, would, for example, gain as much as 26.9% in the first year. (Miles' report, p.4)

On the other hand, he recognized the problem of disparity between individuals who were hired at the same time (Miles, p.4). In consideration of the cost factor for the employer, Mr. Miles created a wage/step chart with more steps/years than the Union's, extending the time for an individual to reach the maximum wage to ten years. (Miles, p.5)

This plan brings the cost down considerably, and the Factfinder determined that the County could afford his new plan. He based his determination on the County's high ranking for population growth, high median income, its unencumbered surplus and current bond rating (Miles, p.5).

Award:

The Conciliator finds no major flaw in the Factfinder's logic, material mistake, nor change in circumstances sufficient to overturn his recommendation. She concurs with his proposed solution to the Wage issue and provides the contract language below. While these wage increases are higher than the SERB average, Delaware County is in the enviable position of being well off compared to other jurisdictions. Since the wage charts are new, some of the average increase is due to the movement up the chart by certain individuals. Upon review of the maximum wage and increases, the Factfinder's recommendation keeps Delaware County employees at or near the top of SERB wage rankings for dispatchers. That is not unreasonable for one of the richest, if not the richest county, in the state.

ARTICLE 19- WAGES, BENEFITS

Section 19.1. Wage Schedule. The wage schedule for the employees in the bargaining unit is based upon the years of service as of January 1 of each year and shall be as follows:

Effective January 1, 2018

Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
Hire to 2 years	Years 2&3	Years 4&5	Years 6&7	Years 8&9	Years 10+
\$18.13	\$19.17	\$20.09	\$22.34	\$23.46	\$24.64

Effective January 1, 2019^a

Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
Hire to 2 years	Years 2&3	Years 4&5	Years 6&7	Years 8&9	Years 10+
\$18.58	\$19.65	\$20.59	\$22.90	\$24.05	\$25.26

Effective January 1, 2020^b

Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
Hire to 2 years	Years 2&3	Years 4&5	Years 6&7	Years 8&9	Years 10+
\$19.05	\$20.14	\$21.11	\$23.47	\$24.65	\$25.89

a. the hourly rates represent a 2.5% increase for each Step.

b. the hourly rates represent a 2.5% increase for each Step.

B. Vacation

1. County final offer:

The County's final offer on vacation is the same as their proposal at factfinding. They

offer current language, which provides for the first increase in vacation at 8 years of service. At that point the dispatchers move from 80 hours, annually to 120 hours. After 25 years of service, they would be earning at a 200 hours or a five week annual rate. This vacation plan is the same as the other Delaware County bargaining units (about 400 employees). They argue that if the current language is changed, the 21 dispatchers will have a benefit over and above that of other County employees. Furthermore, the additional vacation will create more overtime, and additional cost to the County.

2. Union final offer:

The Union's final offer is for an acceleration of vacation weeks earned and an additional week at 20 years (UX-3). They also refer to the vacation allowed the Delaware County Sheriff's dispatchers.

3. Factfinder Recommendation:

The Factfinder agreed that most of the 911 dispatch units had plans like that proposed by the Union. Delaware County Sheriff's already have the additional vacation. So he recommended the Union proposal.

AWARD

The Conciliator could not find serious fault with the Factfinder's reasoning. The primary basis for his decision was state wide comparables. This is consistent with the statutory factors that need to be considered. Therefore, she awards the Factfinder's recommendation for Vacation.

Article 17 VACATIONS

Section 17.1. Vacation Earned. Full-time employees, after completion of one full year of service, shall have earned 80 hours of vacation leave with full pay. Thereafter, full time employees shall earn and accrue vacation leave pro rata over 26 bi-weekly pays at the following annual rates.

40 Hours Per Week Employees

Service Time

1 to less than 6 years service
6 to less than 15 years service
15 to less than 20 years service
20 years or more service

Vacation Earned

80 hours (two weeks)
120 hours (three weeks)
160 hours (four weeks)
200 hours (five weeks)

Time spent on authorized leaves of absence for military leave counts according to the applicable Revised Code. However, no vacation is earned while an employee is on leave without pay or layoff.

C. Holidays (Personal Leave Issue)

1. County final offer:

Personal leave is a new benefit proposed by both parties. The County offers two days personal leave for employees who have accrued 120 hours of sick leave. The two days are to be deducted from sick time. All of the other County bargaining units, have personal leave time (CX- 9). The County proposal is consistent with the County non-bargaining unit employees.

2. Union final offer:

The Union changed their original proposal to match that of the Factfinder's recommendation. This includes one day of personal leave to be used as vacation. They cite the comparables of other units in the state (UX-3). Delaware County dispatchers were near the bottom in number of holidays allowed. The Union argued that the Factfinder's recommendation of one day was based on flawed reasoning. With the inclusion of one personal day, the Delaware dispatchers are still below the average. But, the Union representative was clear that they were not changing their final offer.

3. Factfinder's recommendation:

The Factfinder's recommendation was a compromise of sorts. He reduced the personal leave time proposed by both parties from two days to one. On page 2 of his report, Factfinder Miles noted that the Delaware County communications operators had fewer holidays than the majority of comparable units and 2.5 days less than the Delaware County Sheriff's dispatchers. Based on that, recommended that allowed personal leave should be one day annually, to be used as vacation.

After review of the Factfinder's recommendation, the Conciliator sees no reason to overturn his recommendation. He based his recommendation on the comparable units in the state. Even though this does not bring the bargaining unit employees up to the average holidays of other state wide comparables, they received the benefit of utilizing the leave as vacation time,

not to be deducted from sick time. The Factfinder's decision was reasonable in light of the factors considered.

Award

Article 16 Holidays:

Section 16.4. All employees with at least one year of continuous service with Delaware County shall be entitled to one (1) paid personal leave day, annually. The personal leave day shall be utilized by the employee in the same manner as vacation leave, pursuant to Section 17.3 of the Agreement

Certification of Delivery

This Award was emailed to both parties' representatives (Fishel and Hegedus) and SERB counsel, Don Collins on June 22, 2018.

Respectfully Submitted,

Carol J. Bader

Conciliator