

BEFORE  
STATE EMPLOYMENT RELATIONS BOARD  
STATE OF OHIO

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RELATIONS BOARD

Apr 23 10 23 AM '97

FRATERNAL ORDER OF POLICE,  
OHIO LABOR COUNCIL  
EMPLOYEE ORGANIZATION

and

COLUMBIANA COUNTY SHERIFF  
EMPLOYER

CASE NOS. <sup>6</sup>95-MED-10-1003  
1004, 1005, 1006

CONCILIATOR'S FINAL OFFER  
SETTLEMENT AWARD

DATE ISSUED: APRIL 21, 1997

CONCILIATOR: NORMAN R. PRUSA

APPEARANCES:

For the Employee  
Organization

Hugh C. Bennett, Staff  
Representative

For the Employer

John N. Barkan, Jr.

In accordance with the provisions of Ohio Revised Code Section 4117.14(D)(1), I was, on January 7, 1997, appointed conciliator in this matter by the State Employment Relations Board (SERB). As conciliator, I am to resolve the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the party's final settlement offers.

In so doing, I have taken into consideration the written report and recommendations of the fact finder and also the following:

1. Past collective bargaining agreements 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 employers 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 adjustment on the normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the parties; and
6. Such other factors, not confined to those listed here, which are normally or traditionally taken into consideration in the determination of 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.

A hearing was held in Highland Heights, Ohio on April 10, 1997 at which the parties presented their evidence, both oral and documentary, and argued their positions as to each of the unresolved issues.

#### BACKGROUND

The Employee Organization (hereafter Union), and the Employer are parties to a Collective Bargaining Agreement with an effective date of January 1, 1995 and an expiration date of December 31, 1997.

The Agreement is a multi-unit one, covering four individual SERB-certified bargaining units: (1) Sergeants and above; (2) Deputy Sheriffs, Road Deputies, Detectives and Correction Officers; (3) Communication Personnel, Dispatchers; Program Coordinators, and Office Personnel; and (4) Cooks and Maintenance Personnel.

Among the provisions of the Agreement is Article 35, Section 2 which reads:

There shall be a reopener of this Agreement, to negotiate wages under Article 25 WAGES, of this agreement to establish wages effective January 1, 1996 and January 1, 1997. In addition, said reopener shall include negotiations on personal days, under Article 18 HOLIDAYS, of this agreement, Negotiations shall be conducted in accordance with ORC Chapter 4117.

Pursuant to this reopener provision, the parties met, negotiated, and ultimately agreed to a 3% wage increase effective January 1, 1997, and an additional personal day for all employees. The Union membership voted to accept the settlement. The Employer's legislative body, in this case the Board of Columbiana County

Commissioners, rejected the settlement.

As a result of the Commissioners' rejection, the matter proceeded to statutory fact-finding under the provisions of Chapter 4117 of the Ohio Revised Code.

In the fact-finding process, the parties did not change their positions with respect to the settlement they previously had reached. In his Report, dated December 12, 1996, the fact finder noted that there was no basis upon which he could recommend something other than that to which the parties already had agreed; recommended a 3% wage increase effective January 1, 1997; and the addition of a personal day to the contract provision covering holidays, also to become effective January 1, 1997.

The fact finder's recommendations suffered the same fate as the parties' original settlement: the Union accepted the recommendations; the County Commissioners rejected the recommendation.

Thus, because the employees are prohibited by statute from striking, the parties find themselves in Conciliation.

#### DISCUSSION AND AWARDS

This, obviously, is not the typical conciliation case. The Union and the Employer are in agreement as to the terms of settlement; the legislative body which funds the Employer's settlement does not agree with it; and so the agreement is rejected.

Under these circumstances, I shall, for purposes of this Report, consider the Sheriff (the employing entity) and the

County Commissioners (the funding entity) as one, and refer to them collectively as the Employer.

#### THE WAGE INCREASE

As noted above, the fact finder recommended a 3% wage increase for all classifications, effective January 1, 1997. Although this recommendation followed the agreement of the parties, the Employer now takes the position that the effective date of the increase be the date of this report, not January 1, 1997.

The Employer argues that considerable time has elapsed since the fact finder's report and recommendations. To make the increase retroactive to January 1, 1997 would require four months of additional funding, which is unreasonable, unwarranted, and financially burdensome. The Union would retain the January effective date.

In the absence of any evidence warranting a departure from the fact finder's recommendation of a 3% wage increase for all classifications, I award this issue to the Union.

#### THE EFFECTIVE DATE OF THE INCREASE

While it is true that almost four months will have elapsed since the fact finder's recommendation of a January 1, 1997 effective date, the delay is not the fault of either party.

Following the rejection of the fact finder's recommendations, the parties delayed conciliation, hoping that a delay would prevent a decrease in workload for unit employees and the resultant layoff of some employees. When the decreased

workload and layoff did in fact occur, the parties reinstated conciliation.

Obviously, the employees who remain at work would have continued to work irrespective of the outcome of the delay in conciliation. I think it unfair to, in effect, punish these employees by withholding the wage increase, to which they are entitled, for a period of four months.

I award the retroactivity issue to the Union.

#### ADDITIONAL HOLIDAY

In the absence of any evidence to dispute the fact finder's recommendation that an additional personal day be added to Article 18, HOLIDAYS, of the current collective bargaining agreement, I concur with the fact finder's recommendation and award this issue to the Union.

#### ADDITIONAL ISSUE

Because of problems associated with the opening of a new confinement facility in Columbiana County, the Employer finds it necessary to house certain prisoners in facilities operated and maintained by authorities in surrounding counties.

On or about April 3, 1997, the Union requested to meet with the Employer, alleging that the housing of prisoners in other jurisdictions amounted to the subcontracting of unit work. The Union argues that this issue is negotiable. Because this proceeding is part of the negotiating process, it asks that I order negotiations over the subcontracting issue.

The Employer recognizes that it must, and will, meet with

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EMPLOYER	)	DATE ISSUED: APRIL 21, 1997
	)	
	)	CONCILIATOR: NORMAN R. PRUSA

CORRECTION TO AWARD

On page 7, in the Summary section of my Award in this matter, the last sentence reads:

I have dismissed the Employer's request to consider its position with respect to alleged subcontracting.

As the text of the Award shows, the subcontracting issue was raised by the Union but the Summary erroneously attributes it to the Employer.

So that the Summary correctly reflects the facts and my Award, I hereby correct the final sentence of the Award Summary to read:

I have dismissed the Union's request to consider its position with respect to alleged subcontracting.

April 22, 1997  
Date

Norman R. Prusa  
Norman R. Prusa, Conciliator