STATE EMPLOYMENT
RELATIONS BOARD
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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Conciliation Between:	)	
FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL, INC.	)	Case No. 97-MED-08-0819
-and-	)	Jonathan I. Klein, Conciliator
FULTON COUNTY SHERIFF	)	

FINAL OFFER SETTLEMENT AWARD

APPEARANCES

For Union:

Jackie Wegman
FOP Staff Representative
Kay Cremeans, Esq.
FOP General Counsel

For Employer:

Steven Graf
Acct. Manager, Clemans & Nelson
Pete B. Lowe,
Vice Pres., Clemans & Nelson

Date of Issuance: August 10, 1998

I. BACKGROUND

This matter came on for hearing on May 7, 1998, before Jonathan I. Klein, appointed as conciliator by the State Employment Relations Board ("SERB") on January 20, 1998, pursuant to Ohio Rev. Code Section 4117.14(D)(1). The hearing was conducted between the Fulton County Sheriff (hereinafter "Employer" or "Sheriff"), and the Fraternal Order of Police, Ohio Labor Council (hereinafter "Union" or "FOP"), at the offices of the Fulton County Sheriff located at 129 Courthouse Plaza, Wauseon, Ohio.

A fact-finding hearing took place on December 15, 1997, and the fact-finder issued his report and recommendations on December 26, 1997, for inclusion in the parties initial collective bargaining agreement. The recommendations were rejected by both the Union and Employer, and as of the conciliation hearing the parties remained at impasse on four issues pertaining to past practice, sick leave conversion, longevity and wages. The present bargaining unit consisting of fifteen road patrol deputies was certified by SERB to be represented by the FOP on July 10, 1997.

II. CONCILIATION CRITERIA

In the determination of the facts and the selection, on an issue-by-issue basis, from between each of the party's final settlement offers, the conciliator considered the applicable criteria from those enumerated in Ohio Rev. Code Section 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-06(H)(1)-(6). This criteria consists of the following:

(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 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;
(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 offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

III. FINDINGS OF FACT AND OPINION

Issue No. 1: Past Practices/Prevailing Rights

The Union has proposed language which would continue in full force and effect any rights, privileges and working conditions currently enjoyed by members of the bargaining unit which are not included in the collective bargaining agreement. The proposal also seeks to require the Employer and Union to "meet to work out comparable benefits for the Union" in the event that negotiations with any other bargaining unit in Fulton County result in financial benefits "more liberal" than those provided in the collective bargaining agreement. The Union reasons this language is necessary due to the absence of a manual of operations, or "policy and procedure" in the Sheriff's Department. Matters which need to be changed will simply wait

until the next set of negotiations, and employees will better know what is required of them. It is not expected that the employees will automatically receive the same financial benefits as those of other bargaining units in the county, but this language requires the parties to meet and work things out. There is only one other organized unit in the County Engineer's office with which the bargaining unit might be compared.

The Employer counters that such language seeks to improperly infringe on its right to effectively manage the department, and represents an unjustified "me too" clause. Simply because employees in the County Engineer's office receive a benefit does not entitle the members of this bargaining unit to an identical benefit due to differences in funding methods. The Sheriff must rely entirely on the general fund for all revenues, and other county employees receive funds from different sources. Any changes in wages, hours, terms and conditions of employment are subject to negotiations between the parties — this proposed provision is vague and ambiguous. While the Employer recognizes that the absence of a standard operations and personnel manual is a problem, a manual is under construction with the assistance of Defiance College. It is simply unfair to ask the Employer to accept a proposal that has no boundaries or limits, and improperly infringes on management's rights to operate the department and fulfill its mission.

Last Best Offer

The conciliator has reviewed the parties respective arguments, and determines that the Employer's position represents the last best offer. First, the fact-finder concurred with the

Employer's assertion that the Union's proposal lacks specificity and may possibly lead to an increase in grievances by both parties. Second, evidence presented from a number of sheriff departments within the northwest Ohio region in which the Employer is located indicate that only two such agreements, Ottawa County and Hancock County, include any form of what might be referred to as a "past practices" provision. Third, there is no similar provision in the collective bargaining agreement with the only other internal bargaining unit in the county. Moreover, the Union's proposal differs significantly from the past practices language of Ottawa County in that the Union's language precludes mid-term changes absent mutual agreement, it is far broader in scope and contains what amounts to a "me too" provision present in no other collective bargaining agreement provided to the conciliator.

Issue No. 2: Sick Leave Conversion

The Union has proposed that the conciliator adopt the fact-finder's recommendation that an employee with ten or more years of service with the Employer who retires from active service with the Employer be paid for one-third of the value of the employee's accrued, but unused sick leave up to a maximum of one-third of 120 days, or maximum payout of forty days. This proposal represents a modification from the Union's original proposal seeking one-third of a maximum of 150 days of accrued sick leave. An employee who does not use sick leave should not be penalized, and should be allowed payment for accrued and unused sick leave to the greatest extent possible.

The Employer offers language providing payment for one-fourth of the value of accrued sick leave, and the maximum payout would amount to one-fourth of 120 days, or a maximum of thirty days. While the collective bargaining agreement between the Fulton County Engineer and AFSCME, Ohio Council 8 permits an employee to be paid one-third of the value of accrued but unused sick leave, the maximum payout under that agreement cannot exceed thirty days. The purpose of such a provision is to allow employees up to thirty days pay until such time that their benefits under PERS commence. Moreover, GAP conversion requires such monies due and payable to employees to be shown as a liability which can affect the county's bond rating, and therefore the ability to borrow funds for major projects. The cost of the parties respective proposals on sick leave conversion are set forth in Employer's Exhibit 6(F), and the liability only increases as wages escalate. With the exception of the County Engineers office, all Fulton County employees paid out of the general fund are paid one-fourth of the value of the employee's accrued but unused sick leave credit not to exceed thirty days in accordance with Ohio Rev. Code §124.39.

Last Best Offer

The conciliator has carefully reviewed each of the parties respective positions on sick leave conversion. Compromise in conciliation is a luxury afforded the parties, not the conciliator. It is significant to note that the Union offered no probative evidence of bargaining

units performing comparable work which receive similar benefits to support its proposal.[1] All non-bargaining unit Fulton County employees currently receive payment for unused sick leave in accordance with Ohio Rev. Code §124.39. While the collective bargaining agreement between AFSCME, Local 2782 and the Fulton County Engineer is some evidence of relevant contract language on this issue, the conciliator notes that the Union's proposal differs from this contractual provision by including a maximum payout of forty days, rather than the thirty days for employees in the County Engineer's office. There is no rationale contained in the report of the fact-finder on this issue, and based upon the foregoing evidence, the conciliator selects the County's position as the last best offer.

Issue No. 3: Longevity

Prior to fact-finding, the Union proposed a longevity pay schedule which utilized increasing percentages of annual salary based on numbers of years of service as a means to retain existing employees and as a tool for recruiting new employees. The Employer opposed any longevity pay arguing that its current rates of pay are already higher than the average top rates for similar agencies, and longevity payments are built into its proposed pay rates. The fact-finder recommended a lump sum payment of $250.00 on the first pay period of every December commencing with the first December after the employees' twelfth anniversary date.

1. For comparability purposes, the conciliator assigns the greatest weight to bargaining units performing similar work in counties within the SERB designated Northwestern Ohio region.

He further recommended that the longevity payment be rolled into the base pay as part of the salary compensation.

At conciliation the Employer remained opposed to any longevity schedule for members of the bargaining unit. It urges that when fifteen counties in northwest Ohio are compared, only nine sheriff's offices pay longevity, and of the top six jurisdiction including Fulton County, only one county provides a longevity payment. (Employer Ex. 6(H)). In addition, any lump sum payment will reflect compensation for the overtime hours worked and the $250.00 fails to reflect the total cost to the Employer. Moreover, the fact-finder's recommendation would require one employee with twenty years of service to receive a $.95 per hour decrease in pay, or $1,976.00 per year in exchange for $250.00 when this recommendation is considered in conjunction with the fact-finder's recommendation on wages. This strikes the Employer as unfair, although of less cost overall. Longevity is simply an admission by the Employer that it is not paying the employees enough, and such compensation should be included in the pay plan. Once included in the collective bargaining agreement, a longevity provision will remain.

The Union countered that its proposal on longevity reflects the added value of having a more experienced work force. It is a wide spread benefit of public employment in law enforcement, and longevity also accrues to the benefit of the Employer as well by aiding in the retention of current employees and providing a recruitment tool for new employees. The Union accepts the fact-finder's report on longevity. The wages simply do not reflect longevity built into them, and it is an extra benefit that compensates the bargaining unit for all the work

its members perform on midnight shifts and holidays. The Union urges that its comparables support the small longevity payment requested and recommended by the fact-finder.

Last Best Offer

A careful review of the evidence submitted by the Union in support of its proposal indicates that none of the other county sheriff's departments referenced by the Union which fall within the SERB designated Northwestern region provide longevity payments to its employees. (Union Ex. Tab 2). Indeed, evidence from the counties which comprise SERB's Northwestern Region: Williams, Defiance, Paulding, Van Wert, Fulton, Henry, Putnam, Allen, Lucas, Wood, Hancock and Hardin reveals that only five of the twelve jurisdictions contain any longevity provision. (Employer Ex. Tab 6(H)). Of the six highest compensated departments, including Fulton County at the Employer's proposed top salary, only Putnam County pays longevity.[2]

Further, the conciliator finds no rationale given by the fact-finder for this recommendation. As indicated above, those jurisdictions with salary levels most similar to the Employer offer no support for the Union's proposal. There is no empirical evidence to indicate that longevity payments serve to compensate employees for working midnight shifts or holidays — those issues are usually addressed through various contractual mechanisms such as shift differential and premium pay when warranted. The conciliator is well aware that should

2. The parties agreed that it takes twenty-two years to reach the top pay scale in Putnam.

a jurisdiction fail to sufficiently reward its experienced employees financially, underpayment in compensation may result in one law enforcement agency serving as a training ground for other, more lucrative departments. Taking into consideration the Employer's relative position vis-a-vis other comparable departments on longevity and wages, the wages ordered by the conciliator in this award, the fact this agreement represents the initial collective bargaining agreement between the parties, the absence of probative evidence that comparable departments with similar wage levels provide such compensation, and the lack of any probative evidence the inclusion of this provision will materially impact the departure of experienced deputies to more lucrative positions, the conciliator is compelled to reject the Union's proposal on longevity.

Issue No. 4: Wages

The Employer emphasizes that it attempted to mediate wages with the fact-finder, and it recognizes that its starting pay is probably low. It agreed to start deputies at $11.00 per hour instead of $10.00 per hour using a pay scale with 3% increments between pay steps. Each deputy would be assigned to the first step increment which would result in a wage increase of at least 3% effective January 1, 1999. The employees would then receive a 1% increase effective January 1, 2000, in addition to any step increase. Costing out the Union's proposal, according to the Employer, the first year increase of 8% would cost $75,174, and the 4% increase effective in the year 2000 plus the step increase would cost $34,065, or a total of $109,239. This figure should be compared with the cost of the Employer's wage proposal

which for the years 1999 and 2000 would result in a total cost of $41,219. One reason the Employer articulated that it would not accept the Union's proposal is that two of the highest paid employees would be frozen — one employee has twenty years of service, the other fifteen years of service.

The compensation at the entry level and top level wage rates proposed by the Employer when compared to current rates paid in other jurisdictions would place the bargaining unit in the 8th and 5th rankings, respectively, of those fifteen jurisdictions cited by the Employer. (Employer Ex. 6(K)). The conciliator notes that when the Employer's current rates are compared the compensation falls to the 10th and 6th rankings.[3] The Employer stresses that these placements are affected by the differences in monthly employee health insurance contributions between jurisdictions.

From a historical standpoint, the evidence shows that new employees are hired at various wage rates depending on their experience at the discretion of the sheriff. For example, one employee was hired in 1995 at $10 per hour, but received a wage increase of 17.5% in 1996. Another employee was hired in 1995 at $11.25 per hour and received a 6.3% increase in 1996. In 1995 the wages increased an average of 4.4%; the increase in 1996 was 5.5%. The Employer acknowledged that because of the Union's representational activities and bargaining unit certification proceedings in 1997, an across-the-board wage increase of 3%

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3. The conciliator further notes that using the five counties referenced by the Employer with populations within a 25% range of Fulton County, three have collective bargaining agreements which expire this year.

was provided to the employees to avoid an unfair labor practice charge. The conciliator notes that the total average wage increases for the past three years was 12.9%. (Employer Ex. 6(M)).

Evidence of appropriations for the period 1994-97 reveal a fairly consistent split in funds between those appropriated for the jail and those monies paid as salaries. The monies appropriated for salaries have been adjusted upward from $615,000 in 1994 to $760,800 in 1997. Evidence of appropriations to the Sheriff's Department as a percentage of the general fund has remained between 22.8% and 23.3% for the period 1995 to 1997. It was suggested, however, that completion of various major construction projects has reduced the source of revenue from permissive taxes in Fulton County.

The Union agrees with the fact-finder's recommendation on wages with two slight modifications to the award. It proposes that bargaining unit members wages which fall above its proposed scale should be frozen until they are able to be upgraded according to the schedule. Due to the failure to have a conciliator appointed by the end of the last fiscal year, and in order to comply with the statutory guidelines on economic awards, the Union proposes an eight (8)% increase effective January 1, 1999, and a four (4)% increase effective January 1, 2000, rather than the 4%, 4% and 4% recommended by the fact-finder. This request is the result of promises made by the Employer that there would be retroactivity upon signing of the agreement. After fact-finding, a breakdown in the bargaining relationship occurred, and since the Union had not reduced the Employer's promise to writing, the offer of retroactivity was withdrawn. With these increases, the bargaining unit members will remain economically

competitive with other comparable jurisdictions. Further, the Employer's proposal is a twelve step scale to reach top pay which fails to recognize equal pay for equal work. It should only take five to six years to reach parity with the fifteen-year veteran. The Employer has simply confused a step increase with a wage increase, and the associated costs claimed by the Employer remain essentially the same before and after any such increase.

Further, the Union points out there has been no rationale to the pay increases which have been awarded. (Union Tab 2). For example, a deputy hired on January 28, 1991, currently receives $13.44 per hour while a deputy hired on July 29, 1991, earns $13.71 per hour. It was only during fact-finding that the Employer even acknowledged that its starting wages were low. The Union also submitted various newspaper articles quoting the Fulton County administrator and a Fulton County commissioner noting the healthy state of the county's finances. Fulton County is a growing, thriving community with expensive homes. (Union Ex. Tab 2; Fulton County Combined Balance Sheet and Statement of Revenues, Expenditures, and Changes in Fund Balances Year Ended December 31, 1996).

In response to the Employer's remarks regarding freezing those employees above the scale, the Union agrees at least one employee would be frozen. However, had the Union's original proposal on longevity been recommended by the fact-finder and accepted by the Employer, this particular employee would have seen a substantial cash payment. Twelve years is simply too long a period of time to reach the top step, and there are only three more bargaining unit employees than the total number of steps proposed by the Employer. In fact,

the Union argues the Employer's proposal differs little from Putnam County with the inclusion of a large number of steps and employees scattered throughout the scale.

Last Best Offer

The conciliator has carefully weighed the statutory criteria in selecting the last best offer on wages. It is noted that through prudent fiscal management Fulton County clearly has the ability to pay the wage increase represented by either proposal. Second, it became readily apparent that this issue is problematic for two reasons: 1) the spread of previously unorganized employees across a broad wage range dictated by experience, performance and any other factors the Employer has chosen to utilize in determining compensation; and 2) in an effort to represent an entire group of employees situated at various points along a wage spectrum, the controlling interests of the majority of employees at the bargaining table may very well have an impact upon the status individual employees achieved prior to the implementation of a collective bargaining agreement. It is not a smooth transition in all cases.

Though this is an initial collective bargaining agreement, there is a history of wage increases which, despite their discretionary nature, demonstrate that the across-the-board percentage increases and scale proposed by the Union are not unreasonable. In so finding, the conciliator recognizes that the size of the percentage increase effective January 1, 1999, seeks to compensate for the failure to achieve a timely appointment of a conciliator after the fact-finding report and recommendation. Nevertheless, when reviewed in its totality the Union's offer was supported by the documentary evidence before the conciliator. It was also the position selected by the fact-finder but for the request at conciliation to freeze those employees

whose wages currently fall above the scale. The conciliator finds the Union's proposal of six steps, including the starting pay to be fair and reasonable, and in keeping with compensation paid by comparable jurisdictions.

Finally, there is inherent in the Employer's proposal language which makes any increase other than the January 1, 1999, increase of 3% and an increase of 1% effective January 1, 2000, potentially illusory. (Employer Ex. 5(D)). Section 3 of the Employer's wage proposal clearly provides that only upon satisfactory completion of a performance evaluation may an employee receive a step increase of 3%. Yet, as of the date of hearing no standards and operating procedure manual was in place; there was no evidence of comparable bargaining agreements which provided similarly contingent language on step increases; and there was unrefuted testimony at hearing that bargaining unit employees had been evaluated by supervisors other than their direct supervisors.

The conciliator sought to mediate this dispute, but those efforts failed. For each of the foregoing reasons, the conciliator directs that the Union's proposal on wages be included in the collective bargaining agreement. The conciliator further directs that all previously executed tentative agreements, including the tentative agreements reached on the day of the conciliation hearing pertaining to health insurance and the grievance procedure be incorporated into the new collective bargaining agreement.

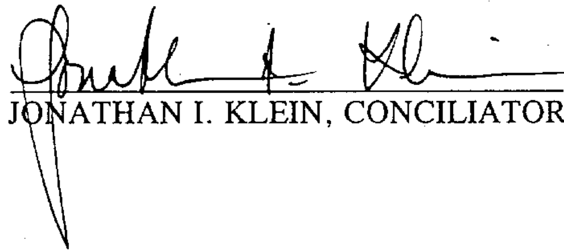
JONATHAN I. KLEIN, CONCILIATOR

Dated: August 10, 1998

SERB Case No. 97-MED-08-0819

CERTIFICATE OF SERVICE

An original of the foregoing Final Offer Settlement Award was served upon Jackie A. Wegman, Staff Representative, Fraternal Order of Police, Ohio Labor Council, Inc., 545 Dussel Drive, Maumee, Ohio 43527, and upon Steven A. Graf, Account Manager, Clemans, Nelson & Associates, Inc., 1519 North Main Street, Suite 6, Lima, Ohio 45801-2822, and upon G. Thomas Worley, Administrator, Bureau of Mediation, Ohio State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, each by express mail, sufficient postage prepaid, this 10th day of August 1998.



JONATHAN I. KLEIN, CONCILIATOR