

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

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IN THE MATTER OF CONCILIATION

MAR 22 12 44 PM '99

between : Case Number: 98-MED-08-0722
: :
AUGLAIZE COUNTY SHERIFF, : :
: : Date of Conciliation Hearing:
EMPLOYER : March 5, 1999
: :
and : :
: : Howard D. Silver
OHIO PATROLMEN'S BENEVOLENT : Conciliator
ASSOCIATION, : :
: :
UNION :

DECISION OF CONCILIATOR

APPEARANCES

For: Auglaize County Sheriff, Employer

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This matter came on for conciliation hearing on March 5, 1999, at 8:30 a.m., Auglaize County Courthouse, Wapakoneta, Ohio. Both parties were afforded a full and fair opportunity to present evidence and arguments in support of their positions. The fact-finder's report, issued by fact-finder Lewis M. Thomson, Jr., was

entered into the record and considered by the conciliator. The conciliation hearing concluded at 10:00 a.m. and the record in this matter was closed at that time.

BACKGROUND

The Auglaize County Sheriff, the employer, and the Ohio Patrolmen's Benevolent Association, the union, bargained in late 1998 and early 1999 about a collective bargaining agreement. The parties have bargained to agreement all but two issues, the issues which have given rise to this conciliation.

The bargaining unit represented by the union in bargaining with the Auglaize County Sheriff is comprised of twenty-one full-time uniformed corrections officers who work in Auglaize County's new jail facility. With the staffing of this new facility, the bargaining unit grew from seven positions to twenty-one positions. The collective bargaining agreement which is the subject of this conciliation will be the initial agreement between the union and the employer for this twenty-one member bargaining unit.

ISSUES

The two issues separating the parties from their initial collective bargaining agreement are in Article 32, Uniforms and Equipment, and in Article 27, Wage Schedule.

Article 32 - Uniforms and Equipment

Section 32.1 of Article 32 requires the employer to provide uniforms and equipment for bargaining unit employees who are required to wear a specific uniform by the employer. Section 32.1 of Article 32 refers to a listing of required uniform and equipment items in Appendix A, attached to and incorporated by reference into section 32.1 of Article 32.

At the conciliation hearing on March 5, 1999, the employer agreed that within Appendix A, for handcuffs, case, and handcuffs key, each will be made available to employees to use on an as needed basis.

In its conciliation position on uniforms and equipment, the employer does not agree to provide one pair of shoes per contract period (three years) as proposed by the union in its conciliation position. This disagreement stands in contrast to the fact-finder's finding that the parties had agreed to one pair of shoes per contract period. This one pair of shoes per contract period (the parties have agreed to three years as the duration of the parties' initial collective bargaining agreement) is what separates the parties from agreement on Article 32.

The conciliator finds one pair of shoes per contract period (three years) to be appropriate to the uniform and equipment items listed in Appendix A and referenced in section 32.1 of Article 32. The conciliator adopts the union's position on this issue.

Conciliation language - Appendix A - Article 32

<u>Item</u>	<u>Quantity</u>
Pants	7
Shirts	11
Shoes	1 Pair Per Contract
Flashlight (small and large with mag lightholders)	1 Each will be made available to employees to use on an as needed basis
Handcuffs, Case, and Handcuff Key	1 Each will be made available to employees to use on an as-needed basis
Coat or jacket	1
Black Belt	1
Keyholder	1

Article 27- Wage Schedule

Article 27, Wage Schedule, regrettably, presents a wider gulf between the parties than presented by Article 32 and its pair of shoes.

Over the past fourteen years, the duly elected Auglaize County Sheriff has paid uniformed employees of the Auglaize County Sheriff's Department through a wage schedule that has included wage steps proportionate to length of service through five years.¹ Just prior to commencing collective bargaining with the union, the Auglaize County Sheriff, in April, 1998, recruited candidates for uniformed service positions with the Auglaize County Sheriff's Department with the promise of wages paid through a wage schedule

¹ The present duly elected Auglaize County Sheriff, Larry R. Longworth, has served as Auglaize County Sheriff for ten years. His predecessor also used a wage schedule which had length of service wage steps.

that included length of service steps for the first five years of employment.

The amount of the budget of the Auglaize County Sheriff is set by the Auglaize County Commissioners. While the Auglaize County Sheriff, an elected public official, has wide discretion in determining how his office's budget is to be spent, the amount of the budget for the Auglaize County Sheriff's Office is determined by the Auglaize County Commissioners. The Auglaize County Commissioners oppose wage steps.

There was evidence presented at the conciliation hearing to the effect that, until recently, the Auglaize County Commissioners had not known that the Auglaize County Sheriff was paying uniformed employees of the Auglaize County Sheriff's Department through a wage schedule that included wage steps tied to length of service. The Auglaize County Administrator explained at the conciliation hearing that the Auglaize County Commissioners are opposed to wage steps tied to length of service for any county employee and have moved deliberately in recent times to eliminate wage steps for Auglaize County employees based on length of service.

The Auglaize County Sheriff, Larry R. Longworth, attended the conciliation hearing and confirmed that as Sheriff, he and his predecessor, over the past fourteen years, prior to collective bargaining, paid uniformed employees of the Auglaize County Sheriff's Department through a wage schedule that contained wage steps which rose with length of service.

The Auglaize County Administrator explained that a new

Auglaize County jail facility has increased the bargaining unit from what until recently had been seven uniformed corrections officers to twenty-one uniformed corrections officers. The County Administrator pointed out that requiring wage steps based on length of service, along with a wage increase for the first and second years of the contract (at the conciliation hearing the parties agreed to a wage reopener for the third year of the contract), as proposed by the union, would greatly increase the costs associated with wages in this bargaining unit, in comparison to no wage steps and a five percent across the board wage increase, as proposed by the employer.

The union emphasizes that wage steps tied to length of service has been an established practice within the Auglaize County Sheriff's Department over many years. The union points out that the only economic increase proposed by the union in these collective bargaining negotiations has been in the area of wages. The union contends that eliminating wage steps tied to length of service, steps which have traditionally been afforded uniformed corrections officers, would reduce bargaining unit members' compensation in the only area in which an increase has been proposed.

The employer, through the Auglaize County Administrator, raised the issue of the ability of Auglaize County to pay the increased wages which would result from a retention of the wage steps as proposed by the union. The Auglaize County Administrator emphasized at the conciliation hearing that the bargaining unit has increased by 200% recently, from seven to twenty-one, and wage

steps contravene the Auglaize County Commissioners' philosophy in opposition to such wage steps. The Auglaize County Administrator notes that to adopt the union's position on wages would move the bargaining unit in a direction opposite to what other Auglaize County employees have agreed to and would cause a serious drain upon the revenues available to Auglaize County to operate all of its departments, including the Auglaize County Sheriff's Department.

Ohio Administrative Code section 4117-9-06(H) presents a variety of factors a conciliator is to take into consideration in resolving a dispute between the parties. These factors include past collectively bargained agreements between the parties (none in this case), a 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; 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; the lawful authority of the public employer; the stipulations of the parties; and such other factors which are normally or traditionally taken into consideration in the determination of issues submitted to final offer settlement to voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

The fact-finder who served the parties in their negotiations recommended as follows for Article 27:

The union proposes a wage schedule based on six (6) step program. The exhibit on correction officers reveals that sixteen (16) of the counties, at present, have a step system and seven (7) do not including Auglaize County. The present entry wage is \$22,505. and a top rate of \$24,814. While the County's entry rate places them higher than the average the top rate is in the "middle of the pack". The sheriff proposes a 5% across the board in each of the three years with no pay step.

The County will be going into their new jail facilities shortly and must have a well-trained and experienced cadre of correction officers. Their needs to by (sic) a stability in the work force otherwise they will leave for better jobs. The money is better spent in wages than in losing experienced corrections officer and spending for training new recruits.

Use union language in Article 25 (sic) as to wages.

The union argues in the case herein, that unless there is sufficient evidence to support a rejection of the fact-finder's recommendation, the conciliator should follow the fact-finder's recommendation, as to do otherwise is to devalue the fact-finding process. In support of this claim the union cites two conciliation reports, an October 23, 1992 conciliation decision by Dennis A. Minni, and a July 6, 1998 conciliator decision by Dana F. Castle.

Conciliator Minni, at page four of his October 23, 1992 conciliation decision between the city of Ashland and the OPBA, case numbers 91-MED-10-1183 and 91-MED-10-1184, writes as follows:

...It is clear to both sides that proceeding to conciliation has left the finalization of the unresolved terms to the undersigned in accordance with the precedental (sic) law that has been developed and followed in Ohio in recent years. That was formulated during the early period of proceedings under this law by

Professor John Drotning, who, in a conciliation award, first espoused the need to show clear error on the part of a factfinder before overturning in a conciliation award terms contained in a fully arrived at report and recommendation. That is the guideline employed herein.

In Conciliator Castle's conciliation report of July 6, 1998 between the Cuyahoga County Sheriff and the OPBA, the following language appears:

It is this conciliator's view that deference should be given and that a fact-finder's recommendation should not be overturned lightly. The primary purpose of fact-finding is for the neutral to reach a fair and proper resolution of the matter(s) in dispute, which will hopefully be acceptable to both sides based on the evidence presented. Giving deference would encourage such acceptance. This position does not undermine the purpose of conciliation, which still serves an important safety check when necessary, for correcting error or abuse of discretion in the previous stage. In fact, to not give deference to the fact-finder's decision would reduce fact-finding to little more than a "dress rehearsal" with neither side having much to lose in relitigating an issue whenever it believes it can present a stronger argument the second time around.

Furthermore, conciliation is an alternative for safety forces to the right to strike which non-safety force employees possess. In that regard, it should be viewed as an extraordinary measure and not a routine step which prolongs final resolution instead of encouraging it at the earliest possible stage.

The undersigned finds no language in Ohio Administrative Code section 4117-9-06 which creates a presumption of validity of the fact-finder's recommended language in the context of a conciliation. The factors to be considered by the conciliator are expressed within Ohio Administrative Code section 4117-9-06(H). Although these express factors may include the fact-finder's report (though no express language refers specifically to the fact-finder's report), there is within these regulations which describe

the duties and authority of a conciliator nothing which serves to limit the discretion of the conciliator in choosing between the employer's position and the union's position.

The union in this case argues that the decision of the conciliator is quasi-judicial in nature, that is, subject to a burden of proof. The burden of proof, argues the union, is the burden of persuasion which the employer in this case must carry, by a preponderance of evidence, showing the wage schedule recommended by the fact-finder should not be adopted. The union contends that in the absence of sufficient evidence to this effect, the conciliator is to follow the fact-finder's recommendation.

It bears noting that fact-finders are not limited to choosing between the parties' positions. Unlike a conciliator, a fact-finder may recommend language that is different from either of the positions. It is possible for a fact-finder's report to recommend language that is not the same as either parties' proposal at conciliation; such a circumstance would make it impossible for the conciliator to adopt the recommendation of the fact-finder as the conciliator must choose one position or the other unchanged.

In this case, the union has proposed the same recommendation proposed by the fact-finder. Neither party was obligated to present such a proposal at conciliation. The fact that the union in this proceeding has proposed language recommended by the fact-finder, language rejected by the employer, does not create a presumption in favor of the union's position.

The undersigned conciliator finds nothing in conciliation as mandated by Ohio Administrative Code section 4117-9-06 which detracts from the efficacy of fact-finding. Conciliation and fact-finding are different processes, with different purposes and methods, under different Ohio regulations. Fact-finding is a non-binding process intended to move the parties, voluntarily, to agree on contractual language. Conciliation is a binding process that imposes contractual language upon parties who cannot agree.

The conciliator herein is not persuaded to the view expressed by Conciliators Minni and Castle that the fact-finder's report affects the discretion of a conciliator in making choices between the parties' positions. This conciliator considered the fact-finder's report and the factors expressed in Ohio Administrative Code section 4117-9-06(H), but this conciliator has operated under no restraint from the fact-finder's report in the exercise of discretion by this conciliator in choosing between the employer's position and the union's position. The conciliator has been bound by the factors to be considered in Ohio Administrative Code section 4117-09-06.

The conciliator in this case has considered all of the factors expressed within Ohio Administrative Code section 4117-9-06(H) as they relate to the wage proposals of the parties. No past collective bargaining agreement exists between the parties. The conciliator has kept in mind that other Auglaize County employees are not subject to wage steps but wage steps are not uncommon among similarly situated county sheriffs' departments in Ohio counties

comparable to Auglaize County. The conciliator has considered the evidence and arguments presented by both parties as to the ability of the public employer to finance the wage language proposed by the parties. Both parties have proposed a five percent across the board wage increase. There is a preponderance of evidence in the record reflecting that the public employer responsible for financing the wage increases proposed by the parties is capable of funding either proposal. Union Exhibit 8 presents the Auglaize County financial condition for the year ending December, 31, 1997, as well as for years 1996, 1995, 1994, and 1993. These combined statements of revenue, expenditures, and changes in fund balances describe a county on the economic upswing, a county with the wherewithal to finance either of the wage increases proposed by the parties in this conciliation. The proposals of the parties each include a five percent across the board wage increase. What separates the parties are the six wage steps proposed by the union which are proportionate to length of service, from entry level (step 1) to five years of service (step 6). The employer's proposal would not include these six wage steps.

State's Exhibit 1 is correspondence dated April 14, 1998 from the Auglaize County Sheriff, Larry R. Longworth, to a candidate who had been selected for employment as a corrections officer with the Auglaize County Sheriff. Contingent upon passing a pre-employment psychological test and physical examination, this correspondence to an applicant for employment with of the Auglaize County Sheriff's Department as a corrections officer informed the candidate that

upon hire the new employee would be paid \$10.30 per hour; after a one year probationary period the employee would be paid \$12.32 per hour; after two years the employee would move to \$13.68 per hour; after three years the employee would move to \$14.10 per hour; after four years the employee would move to \$14.55 per hour; and after five years of service the employee would move to \$15.00 per hour. This correspondence was issued by the Auglaize County Sheriff at a time prior to the certification of the bargaining unit and collective bargaining on wages for this bargaining unit.

The union's proposal, with one minor exception, adds five percent to each of the hourly wages presented in the Auglaize County Sheriff's August 14, 1998 correspondence for the wage schedule to be effective January 1, 1999, and adds five percent to these January 1, 1999 figures to arrive at the wage schedule to be effective January 1, 2000 (second year of contract). The third year of the parties' initial collective bargaining agreement, beginning January 1, 2001, by agreement of the parties at conciliation, is to trigger a wage reopener for negotiations on the third year's wage increase.²

What is also comparable between the Auglaize County Sheriff's Office wage schedule as expressed in Sheriff Longworth's April 14, 1998 letter, Exhibit 1, and the union's proposal in this

² The written conciliation proposal on wages from the employer proposes a five percent across the board wage increase for January 1, 1999; January 1, 2000; and January 1, 2001. At the conciliation hearing the employer agreed with the union's proposal that a wage reopener occur in lieu of a wage increase to be effective January 1, 2001 determined at this time.

conciliation, are the percentage increases from a wage step to the next higher wage step. For example, the difference between the entry level wage step (\$10.30) in the Sheriff's letter, and the next wage step, the step reached after successfully completing the first year (one year probationary period), is 19.6%. The union's proposal shows a 19.2% increase from entry level to the beginning of the second year after successful completion of a one year probationary period.³ The difference from the Sheriff's April 14, 1998 letter's step two to step three was 11%, as is the increase in the union's proposal from step two to step three. From step three to step four in the Sheriff's April 14, 1998 letter is a 3.1% increase, the same increase found in the union's proposal for the increase from step three to step four. A 3.2% increase in the Sheriff's step four to step five is also the increase in the union's proposal from wage step four to step five. A 3.1% increase in the wage schedule in the Sheriff's April 14, 1998 letter from step five to step six equals the increase in the union's proposal for these wage steps.

³ The union has recommended an entry level wage of \$10.86, a 5.43% increase over the \$10.30 entry rate within the April 14, 1998 letter of Auglaize County Sheriff Larry R. Longworth. The 5% increase of \$10.30 equates to \$10.82. This is the only wage step which proposes a more than five percent increase in the Sheriff's April 14, 1998 letter. The conciliator does not know whether this was a calculation error, a typographical error, or an intentional increase of more than 5%. In any event, it is the proposal of the union and therefore the conciliator makes no change to this proposed entry level wage. It is this mathematical anomaly, however, which accounts for the difference, in percentage, between steps one and two, from the employer, 19.6%, and from the union, 19.2%.

The employer proposes a five percent across the board wage increase for all employees of the bargaining unit but would eliminate all wage steps. A five percent increase on the entry level wage expressed within the Sheriff's letter of April 14, 1998, Exhibit 1, shows that the entry wage under the employer's proposal to be \$10.82, a 5% increase.

The inclusion or exclusion of wage steps tied to length of service, from zero years to five years, makes little difference on the entry level wage effective January 1, 1999. Both parties propose a five percent increase in this figure, with the employer proposing \$10.82 per hour, and the union proposing \$10.86 per hour. Significant differences occur, however, after a year of service following January 1, 1999. After the first year is when the absence of a wage step makes itself felt through a significant decrease in the wages which would otherwise be paid to this one year bargaining unit member had the wage steps been retained.

For example, an employee entering the bargaining unit on January 1, 1999 under the union's proposal would receive \$10.86 per hour, and under the employer's proposal would receive \$10.82 per hour, a difference of four cents per hour (.4%). See footnote 3. After one year, however, the wage step schedule proposed by the union would pay this employee, moving to step two, effective January 1, 2000, at \$13.59 per hour, while the employer's proposal would move the employee at the beginning of the employee's second year, to \$11.36 per hour, a 5% increase over his previous wage. The employer's proposal would pay the one year employee, after the

completion of his probationary period, a per hour wage on January 1, 2000 that is 16.4% less than the union's proposed wage for that date, an amount that is 7% less than the step which would have been paid under the Sheriff's wage schedule presented in the Sheriff's letter of April 14, 1998. Thus, for a new employee hired on January 1, 1999, after successfully completing one year of service, the employee would make 7% less than the Sheriff's wage schedule in effect on April 14, 1998, almost two years earlier.

More senior members of the bargaining unit with less than five years service would lose out on a wage step that could be 11% or 3.1%, depending on the step. All bargaining unit members with more than five years of service would appear to lose nothing. The elimination of wage steps would keep bargaining unit members limited to a 5% increase in the second year of the contract and would eliminate increases built into wage steps tied to length of service.

The conciliator understands that the bargaining unit has increased from seven to twenty-one due to the opening of a new jail facility by Auglaize County. The conciliator finds the increased size of the bargaining unit does nothing to dilute the importance of a wage schedule encouraging experienced and skilled employees to remain in their positions and to provide a fair and reasonable wage schedule for the members of this bargaining unit which encourages quality work.

While the employer proposes a 5% across the board wage increase for the first two years of the contract, the elimination

of the wage steps as proposed by the employer would reduce significantly the compensation paid to bargaining unit members, especially after the first year of the contract. This reduction in wages as a result of the elimination of the wage steps moves the conciliator to select the union's proposal on wages as a fair, consistent, uniform, and reasonable method of compensating members of the bargaining unit based on duties and the of years of service provided to the employer. While the conciliator understands the Auglaize County Commissioners' philosophy in opposition to wage steps of this type, the elimination of such wage steps can be the subject of future bargaining. The conciliator, at this time, is not persuaded to eliminate the wage steps for these bargaining unit members, finds the public employer capable of financing these wage increases, and finds the union's proposal on wage increases, in the context of wage steps, to be consistent with the history of the Auglaize County Sheriff's Office, consistent with the factors to be considered by the conciliator pursuant to Ohio Administrative Code section 4117-9-06(H), and to comprise the preferable wage position as proposed by the parties at conciliation.

Conciliation Language - Article 27 - Wage Schedule

ARTICLE 27 - WAGE SCHEDULE

Section 27.1. Effective January 1, 1999, the following wage and pay steps shall be effective:

<u>Classification</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>
Correction Officer	10.86	12.94	14.36	14.81	15.28	15.75

Section 27.2. Effective January 1, 2000, the following wage and pay steps shall be effective:

<u>Classification</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>
Correction Officer	11.40	13.59	15.09	15.55	16.04	16.54

Section 27.3. The parties agree that the contract shall be reopened for bargaining on the issue of a wage increase to be effective on January 1, 2001.

Section 27.4. Employees in the classification of Correction Officer shall be assigned to the appropriate pay steps and wage rates based on the length of continuous service in the classification as follows:

- Step 1 - Starting Wage Rate
- Step 2 - After completion of one (1) year of service in the classification
- Step 3 - After completion of two (2) years of service in the classification
- Step 4 - After completion of three (3) years of service in the classification
- Step 5 - After completion of four (4) years of service in the classification
- Step 6 - After completion of five (5) years of service in the classification

Section 27.5. The Employer agrees to adopt a resolution permitting the Auglaize County Auditor to pick up through the salary reduction method the contributions of bargaining unit employees to the Public Employees Retirement System (PERS). The Employer shall then, if required by PERS, request approval from the Internal Revenue Service of the plan to ensure that such picked-up contributions are deductible from the employees' gross salaries for federal tax purposes.

Upon receipt of approval from PERS and/or a favorable IRS private letter ruling, if required, the Employer will request the Auglaize County Auditor to report the employees' contributions to the pension fund as picked up by the Employer. The Union agrees that this method of "pick up" is one which requires no additional outlay of monies by the Employer and agrees that the "pick up" shall not be effective until after the Employer receives approval from PERS and the favorable IRS ruling, if required.

Section 27.6. Any employee required to serve in the capacity of shift supervisor because of the absence of the regular supervisor, shall receive acting supervisor pay of an additional One Dollar (\$1.00) per hour for all hours served in that capacity.

In addition to the conciliation language presented in this decision, the conciliator adopts by reference as if fully rewritten herein all other articles agreed by the parties.

In making the conciliation decisions presented in this report, the conciliator has considered the criteria required by Ohio Revised Code Chapter 4117. and section 4117-9-06(H) of the Ohio Administrative Code.


Howard D. Silver
Conciliator

March 22, 1999
Columbus, Ohio


CERTIFICATE OF FILING

I hereby certify that the foregoing Decision of Conciliator was filed with the State Employment Relations Board and mailed this 22th day of March, 1999, to the following:

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Howard D. Silver
Conciliator

March 22, 1999
Columbus, Ohio