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STATE EMPLOYMENT
RELATIONS
Nov 1 10 39 AM '99

CONCILIATION AWARD AND ANALYSIS

In the Matter of)	
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Truck Drivers, Chauffeurs, and)	98-MED-08-0746
Helpers, Local 100 (Corrections Officers)	(
- and -)	
Hamilton County Sheriff	(

Conciliator: Lawrence I. Donnelly
Hamilton County, Ohio

For the Union: Susan D. Jansen, Esq.
Logothetis, Pence & Doll

For the Sheriff: Charles A. King
Clemans, Nelson & Associates

Place of Hearing: County Administration Building
Cincinnati, Ohio

Date of Hearing: September 28, 1999
9:00 AM

Date of Award: October 26, 1999

BACKGROUND

On April 15, 1999, Ms. Cynthia Stanley issued a fact-finding report with recommendations under ORC 4117 for the Hamilton County Sheriff (hereafter referred to as Sheriff or Employer) and Truck Drivers, Chauffeurs, and Helpers Local 100 (Corrections Officers) (hereafter referred to as the Union). The Parties had been unsuccessful in renegotiating their prior Agreement, effective through December 21, 1998 (submitted in Exhibit at this hearing). This Agreement covered some 420 Corrections Officers in the employment of the Sheriff. In a timely fashion, the County Commissioners voted to accept the recommendations of Fact-finder Stanley, three to none; the Corrections Officers voted to reject these recommendations 151 to one (out of 203 eligible members). The Union explained that the number of 203 represents union members whereas the 420 or so represents members in the bargaining unit. The Fact-finder's Report (entered as an Exhibit) covered her recommendations on issues in dispute in sixteen Articles of the prior Agreement.

On May 12, 1999, this Conciliator was notified by SERB of his appointment as conciliator in this matter in accordance with ORC 4117.14(D)(1); the Parties had mutually agreed to the selection of this Conciliator. He contacted the Parties who expressed a desire to resume and continue negotiations on the sixteen issues in the Fact-finder's report. The Parties eventually agreed to schedule a meeting with the Conciliator over their issues at impasse on September 28, 1999 in the County Administration Building. The Parties filed timely reports to the Conciliator pursuant to ORC 4117.14(G)(3) before this date.

Hearing was convened at 9:00 AM on September 28, 1999. Preliminaries were covered first. The Conciliator noted his notes (backed up by tape) would serve as the record. He also noted the timely receipt of materials from the Parties as covered by the Statute. He verified that only one

Article in the Agreement (Wages and Compensation) contained an issue at impasse; he congratulated the Parties for resolving all other differences in the fifteen other Articles with issues at impasse before the Fact-finder. He verified that the Parties judged that further mediation did not offer prospects of success. He verified that the Parties had no desire for swearing in witnesses. Advocate for the Union was Ms. Susan D. Jansen, Attorney; also present were Mr. Troy H. Stapleton, Business Agent, and Corrections Officers Ronald Walton, Robert Eckstein, Kevin Walker, and Robert O. Hampton; Mr. Reginald Sawyer appeared later as a subpoenaed witness. Advocate for the Sheriff was Mr. Charles A. King, Consultant; also present were Mr. Mark Lucas, Consultant, Mr. Lynn R. Preuth, County H.R. Manager, Ms. Robin Jarvis, County H.R. Officer, Mr. Joseph M. Schmitz, Director of Corrections, Mr. Mark Lillis, Sheriff's H.R. Officer, and Ms. Gail G. Wright, Sheriff Administrative Assistant.

At the hearing, by agreement between the Parties, the Union made its presentation first; then the Employer made its presentation. The Employer then offered comments of rebuttal to the Union's case and the Union offered comments of rebuttal to the Employer's case. Finally, each Party added further comments in support of their cases as they deemed appropriate. Before the hearing was closed, each Party acknowledged that it had the opportunity to present whatever it judged to be appropriate in support of its case before the Conciliator. Further, each Party acknowledged that it had the opportunity to examine whatever was presented by the other Party. The hearing was closed at 1:00 PM.

PROPOSALS AND ANALYSIS

Proposals: The Union proposes changes in ARTICLE 22, Section 22.1, Section 22.2, and Section

22.3 to provide for a 4% across the board wage increase in the first year, to provide for a 3% across the board wage increase in the second year, and to provide for a 3% across the board wage increase in the third year; the Union proposes a retention in the steps in these Sections. The Union seeks no other changes in ARTICLE 22. In particular, it seeks to retain longevity in Section 22.6. [Conciliator note: the Parties have already agreed to retroactivity of the new Agreement to the date of expiration of the prior Agreement.]

The Employer proposes to delete the current Sections 22.1, 22.2, and 22.3 in ARTICLE 22. In their stead, the Employer proposes a new system for the calculation of wages to replace the current step and longevity system. This plan provides the following: a) in the first year, a merit increase of 4% will be added to the beginning annual wage of each employee in the bargaining unit. This increase will be added to the annual wage reached at the beginning of the year; b) payable in a lump sum, but not added to the base wage, will be a 1% bonus of the 1999 beginning age effective January 1, 1999 and another 1% bonus effective July 1, 1999; c) if an employee would have received a 1999 step increase as of the date of this Agreement, the employee may elect to keep this in lieu of the 4%-1%-1% if the step increase was larger; d) in the second and third years, merit increases and bonuses "will be determined by the Employer for each employee based on the Employer's sole assessment of employee's performance"; these determinations are not grievable; e) in the second and third years, an average merit increase of 4% will be added to the base at the year's beginning as will the two 1% bonuses on the base but not to be added to the base; the actual amount of these for an individual (or the decision to not grant an increase to an individual) will be determined the Employer; f) in Section 22.4, all current and new employees would be assured a base wage of at least \$22,000 for the calculations above; g) minor language changes in Section 22.5; and, h) delete the longevity provisions

in Section 22.6.

Analysis: As noted above, the Parties presented material at the hearing in support of their respective cases; the Conciliator relies upon these materials and the comments of the Parties at the hearing. As directed, he brings to bear in his analysis of these materials the criteria spelled out in ORC 4117.14(G)(7)(a) through (f).

As his first point, he notes that the Employer does not plead financial hardship in the face of the Union's proposal. In fact, by the Employer's own estimate (presented by Mr. Lucas with Employer Exhibit E) the Union's proposal for increases within the current system of steps and longevity would cost slightly less than the Employer's proposed system of merit adjustments and bonuses (not added to base). Secondary levels for such benefits as overtime, holidays, retirement, etc. would cost slightly more under the Union's plan than under the Employer's plan (Employer Exhibit F). Some savings in aggregate payroll cost would be effected by the Employer's plan. [Conciliator's note: he used the Employer's data over the Union's because this data is more detailed and complete.] But, this was not the thrust of the Employer's case at the hearing. Hence, the Conciliator focuses upon the differences in the contents of the two proposals. The Union emphatically opposes the "merit/bonus" plan of the Employer; the Employer strongly urges details of the "merit/bonus" plan over continuing the current "step/longevity" plan with adjustments as proposed by the Union.

As some preliminary observations, the Conciliator notes that the level of adjustment in each Party's proposal would exceed recent increases in CPI, as illustrated in Employer Exhibit 8-G. Also, either proposal would exceed recent adjustments around the State, as illustrated by Employer Exhibit 8,H. Further, either would solidify the position of the Hamilton County Sheriff's Correction Officers

in the other seven Countries of comparables offered by the Union. No disputes exist about these matters.

Both Parties also emphasize that morale and esprit de corps are important among the 422 employees. They both view that wage adjustments can affect this morale; as noted below, they disagree upon the character of the impact from the two proposals. Both Parties also acknowledge that turnover among the workers is common. Both point out that many Corrections Officers do move out of Corrections after a few years to some other law enforcement service or to road patrol status with the Sheriff. This leaves a very bimodal distribution of workers according to service with a cluster at the bottom of the seniority list, a cluster at the over-seven year level, and the remainder of Officers spread over the intervening service levels of one through six years.

In support of its proposal, the Union cites the history of the wage system in the bargaining relationship. The existing system of steps predates the certification of the Union and the first Agreement reached through Conciliation in 1992. In the 1995 negotiations, the Parties changed from eight to seven steps and added longevity. The Union's original proposals in the current negotiations sought to further compress the steps to four; however, the Union comes to conciliation with a continuation of the current seven step plus longevity system. The Union notes that, except for the elimination of the eighth step, the percentage spreads between the steps have remained essentially constant between 1987 and 1999.

The Employer does not dispute the importance of precedent for the stability and harmony in the relationship between the Parties. However, the Sheriff argues that with changing circumstances changes to a system of performance-based pay are in order. Jurisdictions within the County are moving in this direction (as illustrated in Employer Exhibit 8-C). Longevity is specific to Sheriff units

among the County employee units. Many of these units do not use steps. The Sheriff is endeavoring to move in the direction of performance-based pay systems within its units. The first such unit to negotiate at present is the Corrections Officers' unit; others will soon follow. The Fact-finder in her report found in favor of the Employer by recommending the Employer's efforts to move to a performance-based pay system. The Employer has enhanced upon its plan before the Fact-finder in its proposal before the Conciliator.

The Conciliator clearly respects the efforts and recommendations of the Fact-finder in this matter. After all, her involvement is an integral part of the bargaining process under ORC 4117. So, he would be wrong to disregard these efforts. He would only move in a direction which differs from her recommendations for substantial, solid reasons.

The Union claims two such reasons exist for the Conciliator to disregard the Fact-finder's recommendation in support of the Employer's plan. First, as the Union sees the case, the Fact-finder awarded a new system to the Employer; she recommended in fact-finding what the Employer could not get in negotiation. She offered no give-and-take; she simply offered to the Employer its proposal. She offered no trade-off for eliminating the long-standing system of steps nor for eliminating longevity, which the Parties had just adopted in their prior negotiation. The Union claims such actions by the Fact-finder are disruptive to industrial harmony in the relationship.

As a second major complaint of the Fact-finder's recommendation, the Union claims that the Fact-finder recommended a system of pay that does not allow the employees the right to grieve about the Employer's decisions about pay. The Employer gains the sole power of the purse. This system is totally contrary to the employee's certification of the Union as bargaining agent over wages.

The Sheriff acknowledges that the Fact-finder recommended the plan; but, the Sheriff

applauds this. The Sheriff has no desire to undermine workers or the Union. Rather, the Employer thinks that morale will improve as workers' pay reflects performance. The Sheriff had introduced its plan into negotiations last November. In the period up to fact-finding, the Union had not offered any alternative, like other Unions did (especially AFSCME). The Conciliator notes that the plan before him has been modified to some extent since fact-finding. But, still for him to act on the Employer's plan, he must look at the plan and at the Union's concerns, as articulated in its opposition to the Fact-finder's recommendation. So, he examines the system presented to him by the Employer.

The plan is based on a Position Description for Correction Officers (entered as Employer Exhibit 8-A). This applies to the employees listed on the seniority list (entered as Employer Exhibit 8-B). The performance of the Employees is evaluated by their supervisors according to the Evaluation Report (entered as Employer Exhibit 8-I). The seven position characteristics (8-B) are evaluated according to ten traits or factors and each trait has four degrees (unacceptable, needs improvement, as expected/satisfactory, above expectations) (Employer Exhibit 8-I). Under Article 12 of the Agreement, the Parties agree that the results of evaluations are not subject to the grievance procedure but disciplinary action taken on the results of a performance evaluation may be grieved. Mr. Schmitz testified at length to how the review process with the form operates. He also stated that no supervisor determines dollar amounts for merit; also, he noted that any evaluation above or below satisfactory needs documentation. Ratees may check their rating and are provided with the opportunity to initial the rating; however, no appeal or review is provided. In the last rating period, 5% of the Officers received one of the two sub-acceptable ratings; 10% received above expectations, and 85% received as expected/satisfactory.

As to the pay plan, the minimum possible annual level would be \$22,000; \$38,000 would be

the maximum. All current workers would carry their current rates into the system and receive a 4% increase and two 1% bonuses in the first year. (An individual could substitute the step due for this year under the old system if this benefitted the worker.) In the second and third years, all adjustments would be by merit (both base and bonus). In each year, an average of 4% of the base would be available for merit and an average of 1% of the base for each bonus. The amount for any individual Officer would be determined by the Employer based on the Employer's sole assessment of the employee's performance. These determinations are not grievable.

The Union claims that workers are distrustful of such a system. The Union claims that difficulties have arisen with other systems of the Employer which rely upon Employer's discretion; the Union was upheld in arbitration involving cases with the health and fitness plan, attendance plan, and weight standards. The Union is concerned that the Employer could use the merit system as a tool of discipline that could not be grieved. Mr. Sawyer, an employee in another unit in the County, testified (without comment by the Employer) to confusion among the workers covered by the merit system in effect for them (although it differs from the Employer's proposal here). Officer Walton also expressed concern that Officers were not clear about the evaluation system. He expressed no concern about the form; it was the application that was of concern. At no time, did the Union claim the Employer lacked good faith; rather, in the Union's view, the system was open to abuse and problems.

In the Conciliator's view, there are two apparent major flaws in the system before him. First, in the ten trait or factor evaluation system, there are no weights for the relative importance of these factors in the overall evaluation (Employer Exhibit 8-I). Yet, in the position description (Employer Exhibit 8-A), each position characteristic is given a percentage weight. Also, there are four degrees for each factor in the evaluation, but there is no indication of the progression among the degrees for

a trait or factor. With these gaps in the system, reliable evaluations among different raters becomes problematic. Yet, these ratings, unreliable as they might be, become the basis for ultimate pay adjustments. As the Union suggests, if the system is to motivate the workers to performance, the workers must first know about their performance. This system can especially create a motivational problem for a worker whose performance is evaluated below satisfactory and whose wage is treated accordingly. Such ratings cannot be grieved or appealed, nor may the wage adjustments based on them.

In the Conciliator's judgment, a second major flaw exists in the absence of any conversion formula from the performance evaluation to wage adjustment. The Employer emphasizes that the entire 4% of the base (in its proposal) would be distributed among the workers. But, who would receive what amount? For instance, using the last period's numbers, would the 85% who might be evaluated as satisfactory each receive 4%; if so, then the 10% who are above expectations can only see an increase over 4% according to their share of what is subtracted from the increase for the 5% rated below satisfactory. So, in addition to potentially unreliable evaluations of their performance, the workers now face an uncertain situation about allocation of the merit increase. Further, they could not grieve these determinations even if they think they are made as a form of discipline. Within the logic of an incentive system, a pay for performance system, these are major flaws because they can interfere with the employees' motives about their performance. The Conciliator does not doubt that the Employer offered materials and answers to the Union about criteria which was requested during negotiations. He rather judges that in two key areas the plan does not evidence critical criteria. So, he cannot appropriately direct the Parties to adopt a plan which still needs basic refinements.

In his opinion above, the Conciliator clearly represents the judgment of both Parties that their differences are not simply over dollars and cents. The issue in dispute of steps/longevity or merit/bonuses involves principles important to both sides. The law requires the Conciliator to respect the interests of both the Employer and the Corrections Officers. It is clear that different jurisdictions in the County are moving to some form of pay for performance; yet, no one plan fits all. The Sheriff, as manager of its workforce, is now clearly moving towards adopting some type or types of pay for performance for its different groups of workers. This relationship is the first to bargain about the issue within the Sheriff's Department. The Conciliator judges as a supporting reason that it is not timely that the plan before him become the pattern setter for others. As he notes above, there are major flaws in the plan. He agrees with the Union that it would seem better for the relationship to retain for now steps/longevity and to continue to work out the flaws in this particular plan. An interest or principle of importance to the workers is to be represented by the Union in matters of their wages. The Employer's plan as it now stands turns both the question of determination and adjudication of individual's wages over to the Employer. The Conciliator cannot ignore the interests of the workers for representation on their wages..

Both Parties note that they will be back at the table in 24 months. Pay systems will almost certainly appear on their agenda. The Conciliator in these proceedings is obligated to choose the proposal of either the Union or the Sheriff. He recognizes the recommendation of the Fact-finder; but, he also notes the brevity of her discussion of the Employer's proposal before her in disagreeing with her recommendation. Time and experiences with other jurisdiction can serve to help the Parties address the obvious flaws in the current plan while they live with the system under the prior Agreement. With the use of the criteria in ORC 4117.14(G)(7)(a) through (f), he judges that the

Union's proposal has merit at the present time; he directs the Parties to adopt this and add it to all of their agreements on other issues negotiated and to all of the Articles agreed to in the prior Agreement to make their new Agreement, effective December 21, 1998. He commends the Parties for their professional efforts in conjunction with the conciliation; he wishes them well as they live out their new Agreement.

AWARD

THE CONCILIATOR DIRECTS THE PARTIES TO ADOPT THE UNION'S PROPOSAL TO:

- 1) **RETAIN THE STEP//LONGEVITY SYSTEM FOR PAY RATES IN ARTICLE 22; AND,**
- 2) **CHANGE SECTION 22.1, 22.2, AND 22.3 TO PROVIDE FOR ACROSS THE BOARD PAY INCREASES ACCORDING TO THEIR CURRENT SCHEDULE OF TIMING TO BE EFFECTIVE ON JANUARY 1, 1999 IN THE FIRST YEAR AND ON THE FIRST DAY OF THE FIRST FULL PAY PERIOD FOLLOWING THE FIRST AND SECOND ANNIVERSARY OF THE EFFECTIVE DATE OF THE AGREEMENT.**

Dated

October 26, 1999
October 26, 1999

Signed

Lawrence I. Donnelly
Lawrence I. Donnelly
Hamilton County, Ohio