

STATE EMPLOYMENT RELATIONS BOARD

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CONCILIATOR'S AWARD

7-22-00

DARKE COUNTY SHERIFF

AND

FOP/OLC

CASE NUMBER 99-MED-07-0628

MICHAEL MARMO

CONCILIATOR

FEBRUARY 24, 2000

HEARING

The Hearing in the above referenced conciliation case took place on Tuesday, February 8, 2000 in the conference room of the Darke County Government Center in Greenville, Ohio. The Hearing lasted from 10:00 a.m. until 12:45 p.m.

Appearing on behalf of the Sheriff were Ronald Smalldon, the Chief Deputy, and Timothy Werdmann, a Senior Consultant with Clemans, Nelson and Associates, and the principal representative of the Sheriff. Representing the FOP/OLC were Robert L. Bryson, Deputy, Corrections Officer; Barbara E. Skinner, a Dispatcher; Mark Whittaker, Road Patrol; and their principal representative Thomas Fehr, from the FOP/OLC.

The parties were given full opportunity to present their positions on each of the unresolved issues and to allow questions with respect to those issues. Prior to the Hearing, the parties presented full and complete written statements of their positions.

ISSUES REMAINING AT IMPASSE

At the time of the Hearing, the following issues remained at impasse:

Article 22—Wages

Article 36—Duration

Union Proposal on Off Duty Employment

MEDIATION

Mediation was attempted, but was not successful in resolving any of the issues at impasse.

CRITERIA FOR DECISION

As provided by the rules of the State Employment Relations Board, the Conciliator based his award on the following:

1. The past collectively bargained agreements between the parties;
2. A 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 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 rule, 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.

DISCUSSION AND AWARDS ON UNRESOLVED ISSUES

Article 22—WAGES

FINAL PROPOSALS OF THE PARTIES

The Sheriff proposed a wage package granting a seventy-five cent (\$0.75) increase in the first year, a four percent (4%) increase in the second year, and a four percent (4%) increase in the third year. The FOP/OLC proposed an across the board increase of one dollar (\$1.00) the first year, four percent (4%) the second year, and five percent (5%) the third year.

ARGUMENTS OF THE PARTIES

The FOP/OLC argued that it was simply requesting what the Factfinder had recommended. Although the FOP/OLC conceded that the Factfinder had made an error in computing salary increases, they contended that her intent was clear, to dramatically increase the wages of bargaining unit members. The Union provided extensive documentation, showing that bargaining unit members receive salaries that are considerably lower than those of comparable employees.

The Sheriff argued that the Factfinder's recommendations were inappropriate because she recommended salary increases that were higher than those requested by the Union. In addition, he pointed out that an error had been made when the Factfinder computed the increases recommended. The Sheriff conceded that bargaining unit members receive salaries that are somewhat below those of comparable employees; and this is the reason, they said, that they offered above average salary increases.

DISCUSSION

The Conciliator believes that a considerable burden exists on any party that wishes to deviate from a Factfinder's recommendations. In this case, he believes, this burden has been met. Because bargaining unit members receive salaries that are below those of their appropriate comparables, a higher than average increase is appropriate. However, the size of the increase recommended by the Factfinder is not in line with what is typical in dispute resolution procedures. Depending on the current salary of bargaining unit

members, the recommended increases ranged from 7.35% to 12.65% for the first year. Recommended increases for the second and third years were 4% and 5% respectively.

Ideally, a Factfinder or Conciliator should render a recommendation or award that does not surprise the parties. In this case, the recommended salary increase is considerably higher than a reasonable party would expect; and for this reason, it cannot be supported.

The Sheriff's offer is considerably higher than the increases currently being achieved by groups of comparable employees. By awarding the Sheriff's final offer, bargaining unit members will improve their relative position with respect to their salaries.

AWARD

For the reasons cited, it is ruled that the Sheriff's position be incorporated into the new collective bargaining Agreement.

N.B. The specific language awarded is included at the end of this award.

ARTICLE 36-- DURATION

FINAL POSITIONS OF THE PARTIES

The Sheriff proposed a three year agreement that would take effect upon execution. The FOP/OLC also proposed a three year agreement, but believes it should be retroactive to October 21, 1999.

ARGUMENTS OF THE PARTIES

The Sheriff argued that he was seeking the position recommended by the Factfinder. He also pointed out that making the Agreement retroactive could potentially lead to grievances based on actions that did not constitute contractual violations when they occurred.

The FOP/OLC argued that because neither party was responsible for unduly delaying negotiations, it would be unfair to deny retroactivity.

DISCUSSION

Because neither party intentionally delayed negotiations, it would unduly penalize bargaining unit members if contractual changes were not made retroactive. Denying retroactivity would, in effect, deprive bargaining unit members of more than one-third of their first year salary increases.

Although the Factfinder did not recommend retroactivity, she based her recommendation on the fact that she recommended an exceptionally high salary increase.

Because the Conciliator did not support the Factfinder's salary recommendations, retroactivity is appropriate.

AWARD

For the reasons cited, it is ruled that the position of the FOP/OLC be incorporated in the new Agreement.

N.B. The specific language awarded is included at the end of this award.

UNION PROPOSAL ON OFF DUTY EMPLOYMENT

FINAL POSITIONS OF THE PARTIES

The FOP proposed contractual language that would guarantee bargaining unit members the ability to work both law enforcement and non-law enforcement off-duty details.

The Sheriff proposed that no such language be included in the Agreement.

ARGUMENTS OF THE PARTIES

The FOP argued that at present all off-duty details are run through the Sheriff's Auxiliary. As a result, they said, bargaining unit members rarely get to work such extra details. The FOP argued that off-duty work assignments are typically addressed in collective bargaining agreements. They also pointed out that the Sheriff may incur legal liability, if an Auxiliary member acts inappropriately.

The Sheriff opposed to inclusion of such language in the Agreement. The present arrangement, it was argued, has worked well for a long time. Finally, the Sheriff contended that it would take a considerable amount of administrative time to schedule such off-duty assignments.

DISCUSSION

The FOP is correct when it argues that they are missing opportunities to earn extra money by being denied a full opportunity to work these off-duty assignments. They are also correct in arguing that collective bargaining agreements often contain provisions dealing with this issue.

However, because a contractual provision on this issue could have considerable operational implications, because retroactivity was awarded, and because bargaining unit members were awarded relatively high salary increases, it is not appropriate to include a provision dealing with off-duty assignments.

AWARD

For the reasons cited, it is awarded that the Sheriff's position be adopted.

This awarded position is that the Agreement not contain a provision dealing with off-duty employment.

SPECIFIC CONTRACT LANGUAGE AWARDED:

Article 22

Wages

Section 22.1. Effective the beginning of the first full pay period following October 21, 1999, the base hourly rate of pay for bargaining unit employees shall be:

<u>CLASS</u>	<u>STEP 0</u>	<u>STEP 1</u>	<u>STEP 2</u>	<u>STEP 3</u>	<u>STEP 4</u>
Cook	\$8.36	\$8.87	\$9.38	\$9.91	\$10.43
Dispatcher	\$8.74	\$9.50	\$10.24	\$10.99	\$11.78
Corrections Officer	\$9.93	\$10.67	\$11.42	\$12.17	\$12.94
Patrol Officer	\$11.24	\$12.11	\$12.96	\$13.81	\$14.68
Corrections Officer/ Corporal	\$13.31				

The above rates reflect a seventy-five cent (\$0.75) increase in pay.

Section 22.2. Effective the beginning of the first full pay period following the first anniversary date of this Agreement, the base hourly rate of pay for bargaining unit employees shall be:

<u>CLASS</u>	<u>STEP 0</u>	<u>STEP 1</u>	<u>STEP 2</u>	<u>STEP 3</u>	<u>STEP4</u>
Cook	\$8.69	\$9.22	\$9.76	\$10.31	\$10.85
Dispatcher	\$9.09	\$9.88	\$10.65	\$11.43	\$12.25
Corrections Officer	\$10.33	\$11.10	\$11.88	\$12.66	\$13.46
Patrol Officer	\$11.69	\$12.59	\$13.48	\$14.36	\$15.27
Corrections Officer/ Corporal	\$13.84				

The above rates reflect a four percent (4.0%) increase in pay.

Section 22.3. Effective the beginning of the first full pay period following the second anniversary date of this Agreement, the base hourly rate of pay for bargaining unit employees shall be:

<u>CLASS</u>	<u>STEP 0</u>	<u>STEP 1</u>	<u>STEP 2</u>	<u>STEP 3</u>	<u>STEP4</u>
Cook	\$9.04	\$9.59	\$10.15	\$10.72	\$11.28
Dispatcher	\$9.45	\$10.28	\$11.08	\$11.89	\$12.74
Corrections Officer	\$10.74	\$11.54	\$12.36	\$13.17	\$14.00
Patrol Officer	\$12.16	\$13.09	\$14.02	\$14.93	\$15.88
Corrections Officer/ Corporal	\$14.39				

The above rates reflect a four percent (4.0%) increase in pay.

Section 22.4. Current language.

Article 36

Duration

Section 36.1. This Agreement shall be effective as of October 21, 1999 and shall remain in full force and effect for a period of three (3) years.

Section 36.2. Current language.

Section 36.3. Current language.

This concludes the Conciliator's award.

Michael Marmo

Michael Marmo
Conciliator

Cincinnati, Ohio
February 24, 2000

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served by U.S. Mail, overnight delivery, on February 24, 2000 to Timothy Werdmann, Clemans, Nelson & Associates, 8520 E. Kemper Road, Suite 4, Cincinnati, Ohio 45249; and to Thomas Fehr, FOP/OLC, 10921 Reed Hartman Highway, Suite 317, Blue Ash, Ohio 45242; and by regular U.S. mail to George M. Albu, SERB, 65 E. State Street, 12th floor, Columbus, Ohio 43215-4213.

Michael Marmo

Michael Marmo
Conciliator