

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the matter of
Fact Finding between the

LORAIN COUNTY SHERIFF,
Employer

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SERB CASE NO. 2013-MED-07-0837

-and the-

JEFFREY A. BELKIN
Fact Finder

LORAIN COUNTY DEPUTY ASSOCIATION,
Union

This matter was heard on July 9, 2014. The parties' representatives are listed below:

For the Employer:

Robin Bell	Regional Manager, Clemans Nelson & Assoc.
Keven Shebesta	Senior Consultant, Clemans Nelson & Assoc.
Lt. Debbie Reinhardt	Administrative Secretary
Jack Hammond	Administrative Capt.

For the Union:

Joseph J. Guarino III., Esq.	Attorney
Charles Motylenski	Deputy Sheriff

FINDINGS AND RECOMMENDATIONS

I. BACKGROUND

The bargaining unit is comprised of 49 employees in the classification of Deputy Sheriff and one employee classified as Evidence Officer. The prior Agreement covering this unit expired December 31, 2013, but has remained in effect pending completion of a new agreement.

It should also be noted, by way of background, that the Lorain County Commissioners have strongly adhered to pattern bargaining, with respect to the many bargaining units covering county employees. That is, once having established the pattern, the commissioners are likely to reject any agreement that significantly deviates from it. While this fact is not dispositive, the parties strongly indicated a desire to avoid a rejection by either side.

II. FACT FINDERS REPORT

In reaching the Findings and Recommendations on the issues at impasse, the undersigned has considered the parties' pre-hearing statements, oral presentations, exhibits and witness statements. Also taken into account were the factors mandated by status:

Past collectively bargained agreements, if any, between the parties;

Comparison of the unresolved issues 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 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;

The lawful authority of the public employer;

Any stipulations of the parties;

Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

III. UNRESOLVED ISSUES

ISSUE 1 ARTICLE 25, SICK LEAVE

The Employer has proposed a bifurcated sick leave conversion schedule for employees hired after January 1, 2014. Under that proposal employees hired after January 1, 2014, with five (5) or more years of service will be able to convert, upon separation or retirement, 100% of their sick leave balance up to a maximum of 250 hours.

The Union proposes maintaining the status quo, that is, retaining the current language of Article 25.

Positions of the Parties

Employer Position

1. The Employer's proposal is consistent with other county contracts, including the Sheriff's agreements with the OBPA (Corrections Officers) and the FOP/OLC Promoted Law Unit.
2. The current benefit level for the bargaining unit members will not be affected by the Employer's proposal.
3. The current bargaining unit members will be able to benefit from the new language, should they meet the eligibility requirements, if their sick leave conversion payments would be higher under the new proposed section.
4. Currently, only employees with more than twenty (20) years of service are eligible for sick leave conversion. The Employer's proposal would lower that requirement to five (5) years. As a result, current employees between five (5) and twenty (20) years of service may benefit from this language if they separate from employment with the Sheriff's office before their twentieth anniversary.
5. The current benefit level for the bargaining unit member is generous and greater than O.R.C. 124.39. Current O.R.C. 124.39 only requires payment of thirty (30) days of sick leave, or two hundred forty (240) hours.
6. The bargaining unit members current benefit level is on the more generous side when compared with external comparables.

Union Position

When this benefit is measured against similar provisions in the bargaining agreements of four comparable Ohio counties (Butler, Lake, Warren and Clermont), there is no basis for any reduction. Thus the Employer has not provided sufficient facts to support its position.

Recommendation

The Employer's original proposal would have been effective January 1, 2014. At the fact finding hearing the date was modified, and is now proposed to go into effect as of the effective date of the new Agreement.

With that modification, the Employer's proposal is recommended. While the proposal does reduce the maximum number of accumulated sick leave hours that can be converted at time of separation (for newly hired employees only), the benefit is also broadened to cover all employees, including those currently on the payroll, who separate after as few as five years of service. Moreover, as will be discussed below, the modified proposal is consistent with other county agreements.

ISSUE 2 ARTICLE 34, VACATION LEAVE

The Employer proposes to change the current vacation scale by adding a new section covering employees hired after the effective date of the new Agreement, as follows:

Section 34.1. Full-time employees are entitled to vacation with pay after one (1) year of continuous service with the Employer. The amount of vacation leave to which an employee is entitled is based upon length of service, as follows:

A. For Employees Hired Before January 1, 2014

<u>Length of Service</u>	<u>Vacation</u>
Less than 1 year	None
1 year but less than 8 years	80 hours
8 years but less than 15 years	120 hours
15 years but less than 25 years	160 hours
25 years or more	200 hours

B. For Employees Hired After January 1, 2014

<u>Length of Service</u>	<u>Vacation Hours</u>
<i>Less than 1 year</i>	<i>none</i>
<i>1 year but less than 5 years</i>	<i>40</i>
<i>5 years but less than 12 years</i>	<i>80</i>
<i>12 years but less than 20 years</i>	<i>120</i>
<i>20 years but less than 30 years</i>	<i>160</i>
<i>30 years or more</i>	<i>200</i>

The Union proposes maintaining the status quo (that is, no second tier vacation eligibility for newly hired employees).

Positions of the Parties

Employer Position

1. Under the Employer's proposal current bargaining unit members will not have their vacation leave schedule changed.
2. The Employer's proposal is consistent with changes that have been made in other county contracts to reduce vacation leave for new hires.
3. New hires will still receive a fair amount of vacation under the Employer's proposal and will still be able to reach the maximum accrual of two hundred (200) annual vacation hours.

Union Position

The Employer is financially able to pay the current vacation schedule for all employees to be hired under the new Agreement. Further, the Employer's proposal is not consistent with the vacation scale of similarly situated bargaining units in the four counties (Butler, Lake, Warren and Clermont) the Union considers comparable to Lorain County.

Recommendation

The Union's position is recommended. While the Employer's rationale may be factually correct, it does not take into account the potential adverse impact of two distinct groups of deputies working side-by-side in the same unit. The issue of vacation entitlement is unlike the sick leave conversion benefit (above), where the Employer's proposal has been recommended,

in that the change in benefit would have no effect until after an employee is ultimately separated. Vacation eligibility issues, on the other hand, are a constant factor of the employment relationship. The current vacation eligibility rules (Article 34) treat all deputies equally, and in the absence of compelling evidence that the County cannot afford to maintain that benefit for all employees, there is not a sufficient basis for recommending the Employer's proposal.

ISSUE 3 ARTICLE 36, WAGES

The parties have stipulated that the County's pattern bargaining has been general wage increases of 3.0%, 2.5%, and 2.25% during the life of other bargaining units' contracts in the County. Both parties, however, have proposed a divergence from the pattern bargaining.

The Union proposes an equity wage increase of \$1.00 per hour and then general wage increases of 3%, 3%, and 3% throughout the term of the contract.

The Employer proposed general wage increases of 1.25% in 2014, 1.0% in 2015, and 1.0% in 2016. The Employer proposed the increases effective the first full pay period of the County fiscal year for the three years of the contract.

In addition, the Employer proposes to freeze the starting rate of pay and add a new first step rate of pay that is half way between the starting rate and the increased current first step.

Union Position

During the term of the last contract, the LDCA had to endure not only a wage freeze for three years, but also had their contractually entitled two, paid 15-minute breaks taken away. In

essence then, not only were these deputies forced to forgo any cost of living increase for the three year term of the contract, each was potentially required to work an extra 30 minutes per day, with no further compensation. That extra 30 minutes of work per day amounts to 2.5 hours per week, 125 hours per year, and 375 hours over the term of the contract. At the top of their pay grade of \$26.66 per hour, that meant the Deputies actually did not have a wage freeze, but instead lost \$9,997.5 in compensation for work performed.

Employer Position

1. The Employer's wage proposal is reasonable.
2. Lorain County and its residents have been adversely impacted by the recession as well as the longer term economic decline in manufacturing and business within Northeastern Ohio. The Employer's proposal of fiscal restraint therefore best comports with the interest and welfare of the public.
3. Lorain County's proposed sales tax increase was rejected by voters, and the county is facing a budget shortfall of almost 1.3 million dollars in 2014. The Sheriff's budget is approximately \$170,000 less than in 2013.
4. Employees within the bargaining unit are reasonably situated in consideration of external comparisons. Lorain County's deputies are paid very well when compared with other comparable and contiguous counties.
5. External comparables have settled for on average 1.83% in 2014 and 2.25% in 2015. The bargaining unit's proposal of approximately 7% and 3% is far above the average settlement for those two years.

6. Employees within the bargaining unit are at the top end of the pay range when compared with members of other County bargaining units. They make over 23% more than the average top rate of all other bargaining units.
7. Even under the Employer's proposal, the bargaining unit members will still be paid well when compared to the citizens they serve. The median family income in the county is just over \$58,000 based on Department of Labor Estimates. Many members of this unit make almost as much as the county median family income, solely based upon their wages.
8. Approximately 38% of families and 48% of households make less than the average bargaining unit member.
9. The Employer also provides generous health insurance at a low 10% monthly employee contribution and pays an amount equal to 18.10% into the PERS-Law for the bargaining unit members.
10. The Employer generally seeks internal consistency with wage increases. This bargaining unit is only **one** out of 19 bargaining units within Lorain County where the Board of Commissioners is either the Appointing Authority or the legislative body pursuant to 4117.10 ORC.
11. All of the other Lorain County bargaining units, with the exception of one, that have contracts beginning in 2013/2014 have settled for 3% - 2.5% - 2.25%. The lone exception is the County Department of Jobs and Family Services which received 4% - 2% - 1.75%, or the same percentage amount over three years.

12. All but one of the other county contracts in this negotiations cycle were settled without resorting to fact finding for the pattern wage increase of 3% - 2.5% - 2.25% and the new vacation schedule for new employees in exchange for the generous increase.
13. The Promoted Law Enforcement Unit representing Sergeants and Lieutenants in the Sheriff's Office has agreed to a contract providing for raises of 3% - 2.5% - 2.25% in accordance with the pattern.
14. The Union's proposal would cost the Employer over \$1,248,769.12 over the three years of the agreement. The Union's proposal is \$871,657.55 more expensive than the Employer's proposal.
15. The Employer's proposal to move to a five step system is reasonable as external comparables average around five steps to reach maximum pay.

Findings and Recommendation

The first and perhaps most important fact regarding this issue is that the Employer's initial wage proposal was significantly lower than the pattern increases approved by the County Commissioners in other agreements: wage increases of 3% (first year); 2.5% (second year); and 2.5% (third year). At the fact finding hearing, the Employer acknowledged that despite its stated wage proposal, it would be willing to adopt the pattern increases approved by the Commissioners in other contracts.

As noted earlier, the Union has relied on comparisons with four Ohio counties: Butler, Lake, Warren and Clermont, in support of its contention that the bargaining unit is

undercompensated. The Employer believes that such comparisons are invalid, and that more appropriate comparators are counties that are contiguous or nearby to Lorain County. Indeed three of the four counties utilized by the Union in support of its position (Butler, Warren and Clermont) are in southwest Ohio, near Cincinnati. To support its position the Employer introduced several charts and graphs comparing the pay rate (minimum \$22.54 – maximum \$26.66) and totality of wages and benefits (\$57,773) currently paid to Lorain County deputies, with those in other northern Ohio counties. Rather than copy such data into this Report, suffice it to say that the compensation of Lorain County deputies is above average for the region. In terms of external comparators, therefore, the Employer's position is more persuasive. Regarding internal comparators, the pattern of increases approved by the County, and already implemented in other units, is worthy of deference.

Nevertheless it is also a fact that the deputies have had no increase in their wage rates in three years. Further, the County has not claimed financial ability to meet the Union's demands, and stated that it is not opposed to a "reasonable" increase in wage rates, which in this instance would be the pattern already approved by the Commissioners.

Having considered the relevant facts and the positions of the parties, the undersigned recommends the following increases in wage rates, retroactive to January 1, 2014.

First year of Agreement: 2.75%

Second year of Agreement: 2.75%

Third year of Agreement: 2.50%

While these increases represent a small deviation from the pattern, the change in the timing of implementation would result in virtually the same expenditure of money for wage increases over the three-year period.

IV. OTHER UNRESOLVED ISSUES

The parties agreed to meet and resolve several outstanding issues, without the need for fact finding recommendations.

V. TENTATIVE AGREEMENTS

Prior to the fact finding hearing, the parties had reached tentative agreement on 15 articles/letters of understanding, including the effective dates of the new Agreement. At the hearing they agreed that it was unnecessary to recite or discuss the tentative agreements in this report, but that such could be incorporated by reference in the recommendations.

Respectfully submitted,



Jeffrey A. Belkin

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