

**FACT-FINDING TRIBUNAL OF THE
STATE EMPLOYMENT RELATIONS BOARD**

STATE EMPLOYMENT
RELATIONS BOARD
2001 FEB 11 AM 11:25

IN THE MATTER OF:

FRATERNAL ORDER OF POLICE,

OHIO LABOR COUNCIL, INC.

**Employee Organization,
and**

MUSKINGUM COUNTY SHERIFF,

Employer.

REPORT OF FACT FINDER

CASE NUMBERS:

00-MED-09-0907

00-MED-09-0908

00-MED-11-1301

00-MED-11-1302

DATES OF HEARING: February 7, 2001

PLACE OF HEARING: Muskingum County, Ohio

FACT FINDER: Charles W. Kohler

APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:

Frank Arnold, Staff Representative

FOR THE EMPLOYER:

James Stucko, Jr., Attorney at Law

PROCEDURAL BACKGROUND

On December 1, 2000, the State Employment Relations Board ("SERB") appointed the undersigned as fact finder for cases 00-MED-09-0907 and 00-MED-09-0908. On January 29, 2001, SERB appointed the undersigned as fact finder for cases 00-MED-11-1301 and 00-MED-11-1302. All appointments were made pursuant to Ohio Revised Code Section 4117.14(C)(3). A fact-finding hearing was held on February 7, 2001, in Muskingum County, Ohio. The report and recommendations of the fact finder are to be served upon the parties no later than February 15, 2001, pursuant to the mutual agreement of the parties.

This matter involves the negotiation of four successor collective bargaining agreements between the Muskingum County Sheriff ("Employer") and the Fraternal Order of Police, Ohio Labor Council, Inc. ("Union"). This fact-finding report pertains the following bargaining units:

<u>Case No.</u>	<u>Type of Unit</u>	<u>Contract Expiration Date</u>
00-MED-09-0907	Deputies	December 31, 2000
00-MED-09-0908	Sergeants, Lieutenants and Captains	December 31, 2000
00-MED-11-1301	Cooks	February 28, 2001
00-MED-11-1302	Corrections Officers, Communications Officers, Central Control Operators	February 28, 2001

Each bargaining unit has its own collective bargaining agreement, but most of the language is identical. The parties have engaged in multi-unit bargaining for the first time to negotiate successor agreements. Five formal negotiation sessions were held, beginning on September 28, 2000. The parties participated in a mediation session with an FMCS mediator on January 2, 2001. Tentative agreements were reached on most issues during these sessions. The issues of wages, longevity, and vacation remain unresolved in all four collective bargaining agreements.

MEDIATION

During the fact-finding session, the parties engaged in mediation with the fact finder, but no issues were resolved. Following the mediation, the fact finder conducted a hearing.

STATUTORY CRITERIA

The following findings and recommendations are offered for consideration by the parties; were arrived at pursuant to their mutual interests and concerns; are made in accordance with the data submitted; and in consideration of the following statutory criteria as set forth in Rule 4117-9-05 of the Ohio Administrative Code:

1. Past collectively bargained agreements, if any, between the parties;
2. 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;
3. 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;
4. The lawful authority of the public employer;
5. Any stipulations of the parties;
6. 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.

FINDINGS OF FACT AND RECOMMENDATIONS

The tentative agreements of the parties on these issues are hereby incorporated by reference into this report as recommendations. In addition, unless the fact finder has recommended a change in the language of the expired agreement, or the parties have tentatively agreed to a change, the fact finder recommends that the language of the expired agreement be retained.

WAGES¹

Position of the Employer

The Employer has proposed wage increases of 2.5 percent per year for each year of a 3 year agreement. It asserts that the bargaining unit members will receive more than a 3 percent annual increase in compensation when the effect of the reduction in health insurance contributions is considered. The Employer points out that the parties have tentatively agreed to reduce the employee premium contribution rate from 20 percent to 10 percent. The current monthly premium is \$225 for single coverage, and \$525 for family coverage. With the reduction in the premium, employees with single coverage will pay \$270 per year less for insurance, which is equal to 0.7 to 1.2 percent of annual compensation. Employees with family coverage will save \$630 per year, which is equal to 1.5 to 3.9 percent of annual compensation.

The Employer notes that these bargaining units have received annual wage increases of 3 percent during the last 6 years. Further, the only other bargaining unit in the county, represented by AFSCME, recently agreed to a contract which includes annual wage increases of 3 percent. The AFSCME unit did not receive any reduction in insurance contributions.

The Employer argues that a 3 percent wage increase should allow employees to maintain pace with inflation. Even though the 2000 inflation rate was 3.4 percent, inflation has averaged less than 3 percent over the previous 6 years. During this time, the wages of bargaining unit members have increased at a rate greater than the inflation rate. Over the last 6 years, the employees have received a total of 18 percent in wage increases while the cost of living has increased only 15.2 percent. The Employer states that bargaining unit members also benefit from average overtime compensation of about \$1300 per year.

The Employer also contends that when wages in the bargaining units are compared with wages in similar counties, there is no justification for a higher wage increase. The Employer contends that there are 6 counties in Ohio with populations between 70,000 and 90,000, which can be used for comparison. These counties include Belmont, Erie, Geauga, Jefferson, Scioto, and Tuscarawas. Although Erie and Geauga have similar populations to

¹Deputies Unit - Appendix A; Sergeants, Lieutenants and Captains - Article 26; Cooks - Article 25; and Corrections Officers, Communications Officers, and Central Control Operators - Appendix I & II.

Muskingum, they both have a much higher average income level. The Employer argues that, because of the higher average income, it makes sense that employees in Erie and Geauga have higher wage rates.

The Employer states that, for each position in the bargaining units, the wages in Muskingum County are in the top half compared with the comparable counties, when the 2.5 percent wage increase proposed by the Employer is included. Therefore, the Employer argues that there is no need for a wage increase to enable employees to "catch up" with employees in comparable jurisdictions.

The Employer asserts that there is no evidence that the Head Cook requires additional compensation. It notes that the Head Cook is not in a different rank than the other cooks, so the comparison between deputies and sergeants is not relevant.

Position of the Union

The Union proposes wage increases of 6 percent for the first year of the contract, 5 percent in the second year, and 5 percent in the third year. In addition, the Union proposes that the wages of the Head Cook be increased so that the wage is 7.9 percent greater than the wage of a cook.

The Union contends that bargaining unit employees are underpaid. It asserts that the average statewide wage increase for law-enforcement personnel during last year was 4.25 percent. The 3 percent annual wage increases which bargaining unit members have received for the last 6 years have caused them to fall behind their peers employed in other jurisdictions. The Union states that the cost of living increased in the Midwest by 3.6 percent last year. Therefore, bargaining unit members need a wage increase which will allow them to catch up to the wages of bargaining units in other comparable jurisdictions.

In addition to the comparable counties cited by the Employer, the Union includes Ashtabula, Miami and Delaware, but excludes Belmont. The Union notes that the average top wage for a deputy in these counties is \$16.57 per hour, compared with \$15.07 in Muskingum. For the six counties with sergeants, the average wage is \$18.05, compared with \$16.28 in Muskingum.

The Union points out that the sales tax revenue per capita is the second-highest in Ohio. The Union asserts that the economic conditions in Muskingum are good, and many new

facilities are under construction or in the planning stage. The Union alleges that the county has a surplus of over \$50 million. The Union points out that the county building inspector recently received a wage increase of over \$7000 to \$75,000. The Union also notes that private funds had to be raised in order to provide deputies with bulletproof vests, as the county did not provide funding for the vests.

The Union stresses that the law-enforcement community is expected to deal with the worst of society and should be fairly compensated for providing services to the residents. It points out that the communications officers have one of the most stressful jobs as they are often the first contact in emergency situations. The Union notes that Muskingum is one of the largest counties in Ohio in area, which means that deputies are spread out, making response times longer than those in smaller counties. Further, the fact that Interstate 70 goes through the county creates additional work for law-enforcement personnel.

The wage increase proposal for the Head Cook is based upon the current small differential of 37 cents per hour between the wage of the Head Cook and the regular cooks. The Union proposes making the rank differential equal to the differential between a sergeant and a lieutenant. The Union states that the duties of the Head Cook include supervising cooks, ordering food, and scheduling employees.

Discussion

The fact finder has reviewed the extensive documentation submitted by both parties in support of their positions. One of the jobs of fact finder is to sort through the data to determine the relevance of the information to the unresolved issues. One area of disagreement between the parties is which counties should be considered comparable to Muskingum. The two most obvious considerations are population and geographic location. In addition, demographic and economic characteristics must be considered.

The fact finder believes that 4 counties, Erie, Jefferson, Scioto and Tuscarawas, have characteristics very similar to Muskingum. Jefferson and Tuscarawas are located close to Muskingum and can be considered to be in the same labor market. Scioto is another county close to the southeastern Ohio region which is similar to Muskingum in average income and population. Jefferson, Scioto, and Tuscarawas have populations and average income levels

similar to Muskingum. Erie, although located outside of the region, is a county which is similar in population. Its largest city, Sandusky, is similar in population to Zanesville, the largest city in Muskingum. However, any analysis must consider the fact that the average tax return income in Erie is 21 percent higher than Muskingum.

The other counties cited by the parties are not as similar to Muskingum and are not as relevant for comparison purposes. These counties are Delaware, Belmont, Geauga, and Miami. These counties differ both economically and demographically. Delaware is the fastest growing county in Ohio with a population of 92,209 in 1998, an increase of 37.8 percent between 1990 and 1998. The population of Muskingum has remained steady since 1980. Delaware and Geauga residents have average tax return income of \$62,577 and \$54,288, respectively. Both of these averages are markedly greater than Muskingum, which has an average tax return income of \$30,303. Ashtabula and Miami have populations which are significantly larger than Muskingum, and the population of Belmont is significantly lower.

The following counties are sufficiently similar to be useful for comparative analysis. According to SERB data and 1997 Ohio personal income tax return data, these counties have the following characteristics:

	<u>Population</u>	<u>Average Tax Return Income</u>
Erie	76,799	\$36,774
Jefferson	80,298	\$30,197
Muskingum	82,068	\$30,303
Scioto	80,327	\$29,041
Tuscarawas	84,090	\$30,762

The ranking of wages, prior to any increase scheduled for 2001, from SERB data for selected positions at the top rate is as follows:

	<u>Top Wage Deputy</u>
Erie	\$37,606
Muskingum	\$31,346
Scioto	\$28,829
Tuscarawas	\$28,038
Jefferson	\$27,914
AVERAGE	\$30,747

Top Wage Dispatcher

Erie	\$35,672
Muskingum	\$29,266
Tuscarawas	\$27,518
Jefferson	\$22,214
Scioto	\$21,382
AVERAGE	\$27,210

Top Wage Sergeant

Erie	\$41,350
Muskingum	\$33,862
Scioto	\$31,262
Tuscarawas	\$30,202
Jefferson	\$29,328
AVERAGE	\$33,201

It is apparent from the comparable data that the wage rates of the deputies are related to the average income level of the residents. The region where the county is located is also a significant factor in determining wage rates. A comparison of the wages of bargaining unit members in Muskingum with the most comparable counties shows that wages compare favorably to those in the comparable counties. Wages in Muskingum are the highest among counties of similar population in the same geographic region, which may reflect some of the economic factors cited by the Union in its presentation. Muskingum wage rates are above the average, even with the inclusion of the higher wages in Erie. There is no evidence showing a reduction in the relative position of wage rates in Muskingum compared with comparable counties during the period of the last collective bargaining agreement.

The reduction in health insurance cost is of some benefit to employees. However, it is difficult to quantify as being equivalent to wage increase of 0.5 percent. While most employees will save money on the premiums, some employees may experience an increase in their out of pocket medical expenses. The relationship between salary and the amount saved varies greatly depending on the wage level of the employee, and whether an employee has individual or family coverage.

Recommendation and Rationale

Bargaining unit employees are not underpaid in comparison to employees in other comparable jurisdictions. However, with the inflation rate last year of 3.4 percent, employees lost purchasing power in 2000 with their wage increase of 3 percent. In 1999, the 3 percent wage increase was only 0.3 percent greater than the inflation rate of 2.7 percent. The bargaining unit members barely kept pace with inflation in 1999, and did not keep up with inflation in 2000. The fact finder believes that employees need a wage increase which will provide them with a realistic opportunity to at least keep up with the cost of living. A general wage increase of 4 percent for the first year of each collective bargaining agreement is necessary to make up for the loss of purchasing power in 2000, and provide protection against inflation in 2001. While the future rate of inflation is unknown, increases of 3.5 percent during the second and third years of each agreement are likely to at least maintain, if not improve, purchasing power.

The fact finder must reject the proposal of the Union for a wage percentage differential to be used to establish the compensation of the Head Cook. A wage differential is often used to determine the proper compensation within the ranks of law enforcement officers. However, there is no evidence that the differential is a proper method to determine the wage of a Head Cook. In addition, there is no evidence showing that the Head Cook is underpaid compared with employees in comparable positions in either the private or public sector.

The fact finder recommends that the following language be inserted in each collective bargaining agreement:

All wage rates shall be increased by 4 percent, beginning with the effective date of this agreement. All wage rates shall be increased by 3.5 percent during both the second and third years of the agreement.

LONGEVITY²

Position of the Union

The Union proposes that the method of payment of longevity be changed from a lump sum basis to an hourly basis. Currently, employees with at least five years of service receive

²Deputies Unit - Article 28; Sergeants, Lieutenants and Captains - Article 28; Cooks - Article 27; and Corrections Officers, Communications Officers, and Central Control Operators - Article 26.

an annual payment in June of each year. The proposal of the Union is that employees with 5 through 10 years of service receive 25 cents per hour; employees with 11 through 15 years of service receive 35 cents per hour; employees with 16 through 20 years of service receive 45 cents per hour; and employees with 21 or more years of service receive 55 cents per hour.

The Union asserts that the Fair Labor Standards Act requires the county to include longevity in the hourly rates for overtime pay. The Union also argues employees in Human Services are already paid longevity on an hourly basis and the amount is significantly higher than the amount paid to bargaining unit members. It acknowledges that its proposal would result in an increase in longevity pay, but the increase would only be about 0.5 to 1 percent of salary. The amount of longevity would still be less than that received by employees in Human Services. The Union asserts that longevity pay is important as it provides younger employees with an incentive to remain with the Employer.

The Union argues that the current system of paying longevity results in higher taxes for employees because longevity is now paid in a single pay period, and is added to regular compensation. This increases the rate of withholding for taxes, which reduces the amount of take-home pay for employees. The Union notes that spreading the longevity compensation over the entire year would result in lower amounts of withholding.

Position of the Employer

The Employer proposes that the current system of longevity payments be retained, and that longevity payments be increased by \$50 at each level. The Employer points out that all past agreements have provided for longevity pay in a lump sum. It asserts that the hourly method is more costly and causes budgeting problems because the cost fluctuates based on the number of hours worked. The Employer argues that the \$50 increase at each level is reasonable and is consistent with past agreements.

The Employer maintains that the proposal of the Union would result in increases in longevity of 16 to 53 percent over the current levels of longevity. The Employer notes that this does not include overtime hours. It contends that the payment of longevity on overtime hours would significantly increase costs.

The Employer argues that the comparison with employees in Human Services is not appropriate. It states that these employees have lower wages, and they do not have the benefit of step increases.

Discussion

Both parties are proposing to increase the amount of longevity pay. However, the Union also proposes a significant change in the manner of payment. The prior agreements of the parties have provided for longevity to be paid in one annual payment. Since the Union is attempting to change the status quo, it has the burden of persuading the fact finder that the change is necessary.

Although the Union has demonstrated that there are some disadvantages to the current system, such as higher withholding, the evidence does not support a finding that a change is needed at this time. The payment of longevity in one annual payment is an established practice which has been in place since collective bargaining began in the county.

Recommendation and Rationale

The fact finder believes that the proposal of the Employer to increase payments by \$50 at each level is reasonable. Employees at the lowest level of longevity pay would receive an increase from \$450 to \$500, which is approximately 11 percent. Employees at the highest level would receive an increase from \$750 to \$800, which is an increase of approximately 7 percent. The Employer's proposal would keep the established practice of annual payments in place. Therefore, the fact finder recommends that the proposal of the Employer be adopted by the parties and incorporated into each collective bargaining agreement.

VACATION³

Position of the Union

The Union proposes an increase in the vacation benefit. Its proposal would decrease the amount of time of service required to move to the next level of vacation. In addition, the proposal would provide for 6 weeks of vacation for employees with 25 or more years of service, compared with the 5 weeks which these employees currently receive. The Union notes that employees currently must have 8 years of service to be entitled to 3 weeks of

³Deputies Unit - Article 20; Sergeants, Lieutenants and Captains - Article 20; Cooks - Article 20; and Corrections Officers, Communications Officers, and Central Control Operators - Article 19.

vacation. The Union asserts that vacation is especially important to bargaining unit members as they often have to work on holidays. Further, time off is necessary in order to combat the high level of stress which is present in law enforcement positions. The Union points out that it has tentatively agreed in negotiations to a cap of 80 hours of compensatory time, which will reduce the amount of time which most employees will be able to be off work.

The Union contends that most law-enforcement bargaining units receive 3 weeks of vacation after 5 years of service. It notes that the employees in some other high stress positions, such as county children's services workers, receive 3 weeks of vacation after 3 years of employment.

Position of the Employer

The Employer proposes that the current vacation schedule be retained. It notes that the schedule has not been modified in prior negotiations and that it mirrors state law. The Employer argues that any increase in the amount of vacation is unwarranted. It states that any increase in time off will cause scheduling problems, and difficulty meeting the minimum manning guidelines. It notes that among the six counties which have been cited as comparable, the majority provide a maximum of five weeks of vacation. In addition, none of the comparable counties provides for a third, fourth, or fifth week of vacation as soon as that proposed by the Union.

The Employer points out that the parties have already tentatively agreed to one additional holiday. It asserts that the vacation schedules in Perry and Richland counties, which were presented by the Union, are not relevant as there is no evidence that these counties are comparable to Muskingum.

Discussion

Certainly, many law enforcement jobs are stressful. Adequate time away from the job can be helpful in coping with the stress. Many counties and cities have vacation schedules which are more favorable than the current vacation schedule of the bargaining unit members herein. The bargaining unit members now have to wait until the completion of 8 years of service to increase their vacation entitlement from 2 weeks to 3 weeks.

The current vacation schedule is based on state law, and generally represents the least favorable vacation benefit provided to public employees in Ohio. The fact finder believes that bargaining unit members should be provided a reasonable increase in vacation entitlement, but the Union has not shown that the increase it proposes is merited based on vacation benefits for law enforcement personnel in comparable jurisdictions. While the Employer is properly concerned about minimum manning and scheduling, these concerns must be balanced with the need for law enforcement employees to have a reasonable amount of vacation time.

Recommendation and Rationale

The fact finder believes that the vacation schedule should be adjusted so that bargaining unit members become entitled to greater amounts of vacation earlier in their careers. However, the fact finder is not persuaded that the maximum entitlement should be increased beyond the current level of 5 weeks. The adjustment which will be recommended should not be overly burdensome to the Employer.

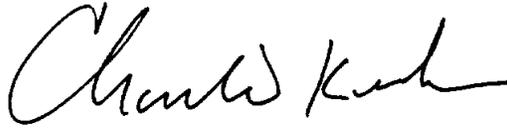
Only the portion of the vacation article which sets forth the amount of vacation entitlement is in dispute. The fact finder recommends that the following provision be adopted as Section 1 of the vacation article of each collective bargaining agreement, and that current language be retained in the other sections:

Full-time employees, after completion of one full year of service, shall have earned 80 hours of vacation leave with full pay. Thereafter, full-time employees shall accrue vacation leave at the following rates:

1- 6 years of service	80 hours (2 weeks)
7-13 years of service	120 hours (3 weeks)
14 - 22 years of service	160 hours (4 weeks)
23 or more years of service	200 hours (5 weeks)

The practice of crediting employees with vacation leave on their employment anniversary shall continue.

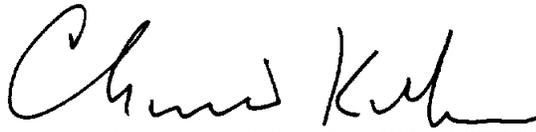
The above recommendations are respectfully submitted to the parties for their consideration.



Charles W. Kohler
Fact Finder

CERTIFICATE OF SERVICE

I do hereby certify that on this 15th day of February 2001, a copy of the foregoing Report and Recommendations of the Fact Finder was served upon Catherine A. Brockman, Assistant Executive Director, Fraternal Order of Police, Ohio Labor Council, Inc., 222 East Town Street, Columbus, Ohio 43215; and upon James K. Stucko, Jr., Scott, Scriven and Wahoff LLP, 50 West Broad Street, Suite 2500, LeVeque Tower, Columbus, Ohio 43215; each by Airborne Express overnight delivery; and upon the Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213 by regular U.S. Mail, postage prepaid.



Charles W. Kohler, Fact Finder