

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

**FACT-FINDING PROCEEDING
CASE NO. 00-MED-11324**

**DANIEL N. KOSANOVICH
FACT-FINDER**

IN THE MATTER OF:

**FRATERNAL ORDER OF POLICE,
LODGE 101**

AND

BUTLER COUNTY SHERIFF

REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

APPEARANCES:

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REPORT AND RECOMMENDATIONS

I. Background and Procedural History

Butler County is located in Southwestern Ohio and is contiguous with four other counties. Those counties are Montgomery, Preble, Hamilton and Warren. Butler County has a population 332,807.¹ Montgomery County has a population of 559,062, Preble County has a population of approximately 42,337 persons, Hamilton County have a population of 845,000 and Warren County has a population of 158,383.²

The bargaining unit in question consists of Detectives, Deputy Sheriffs, and Deputy Sheriff/Court Security Personnel. The Lodge also represents the Sergeants and Lieutenants. The bargaining unit was originally certified in 1985. There are approximately 12 Detectives, 99 Deputy Sheriffs, and 21 Deputy Sheriffs/Court Security personnel in the bargaining unit.

The supervisory bargaining unit personnel³ and the non-supervisory personnel⁴ entered into the most recent round of collective bargaining jointly. All classifications of employees within these groups were represented on the bargaining team. The Chief Spokesperson was a Sergeant.

The parties met in bargaining sessions on March 6, 14, 15, 22, April 11, 13 and May 2, 2001. Ultimately, as a result of these negotiations, the supervisory group reached agreement with the Sheriff and County Commissioners on a wage proposal which provided increases of 13.5% in the

¹ Census Report for 2000 contained in Cincinnati Enquirer. (Union Attachment # 11)

² Union Attachment # 11.

³ This group consists of those employees ranked either as Sergeants or Lieutenants.

⁴ This group consists of Detectives, Deputy Sheriffs and Deputy Sheriffs Court Security personnel.

first year for the Sergeants and 18.7% in the first year for the Lieutenants.⁵ The wage increases for the 2nd and 3rd years of the contract are 3% of the base rate. The rank-and-file bargaining unit was offered a 3% base rate increase in each of the three years of the contract, which was rejected by the membership.

Originally, fact-finding was scheduled to be conducted in May of 2001. Mr. Frank Keenan was to serve as the Fact-Finder. As required by statute, Mr. Keenan offered to mediate the outstanding issues. That mediation process collapsed shortly after it began and Mr. Keenan ultimately recused himself. The undersigned was selected to serve and this hearing was scheduled for September 11, 2001.

The following issues were agreed upon prior to the fact-finding: Article VII, Seniority, Article IX, Discharge & Discipline, Article X, Grievance Procedure, Article XI, Layoff & Recall, Article XV, Paid Leave, Article XVII, Holidays, Article XVIII, Vacations, Article XXII, Uniforms, Article XXIII, Deputy Sheriff (Civil Division), and Appendix A, Promotions.

The unresolved issues were: wages, sick leave conversion, longevity pay, supplement for Field Training Officer, residency, life and health insurance, and duration of the agreement.

The parties declined the Fact-Finder's offer to mediate the outstanding issues. The hearing commenced at the appointed time. Presentations were made on the outstanding wage issue. The hearing was interrupted by news of the horrific, unprecedented and cowardly "terrorist attacks" on the United States at the World Trade Center Towers, the Pentagon and in Somerset Pennsylvania.

⁵ Correction Officers received a 7.1% increase in the first year of the new contract.

After discussions with the parties representatives, the wage presentations were concluded and an agreement was reached to submit the remaining issues to the Fact-Finder on the basis of the Pre-Hearing Statements submitted by the parties and the attachments thereto. Finally, it was agreed that in the event that the Fact-Finder required a clarification of the information submitted and/or additional explanation, a conference call would be scheduled to answer his questions. The undersigned's Report and Recommendations are due on or before September 24, 2001.

II. Criteria

In compliance with Ohio Revised Code Section 4117.14 (G)(7) and the Ohio Administrative Code 4117-9-05(J), the Fact-Finder considered the following criteria when making the recommendations contained in this report:

1. Past collectively bargained agreements between the parties;
2. Comparison of unresolved issues relative to the employees in the bargaining units 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 affect of the adjustments on normal standard of public service;
4. The lawful authority of the public employer;
5. Stipulations of the parties; and

6. Such factors not confined to those listed above, which are normally or traditionally taken into consideration.

III. Findings and Recommendations

Article XIX

Wages

FOP's Position

The Union is proposing an across the board wage increase of 13.5% for the Detective, Deputy Sheriff, and Deputy Sheriff/Court Security classifications in the first year of the new contract. In addition, the Union is proposing a 3% increase in both the 2nd and 3rd years of the contract for each of the classifications identified.

The Union vehemently denies that it has had a long time bargaining strategy of attempting to realize a 15% wage differential between the top wage rates in each of the classifications, as suggested by the Employer. The Union asserts that it is necessary to maintain the parity between the top of the Sergeant's wage rate and the top step of the Deputy Sheriff's wage rate. The County provided the Sergeants with a wage increase of 13.5% of their base rate in the 1st year of their new contract. In order to keep the parity between the top of the Sergeant's rate and the top of the Deputy Sheriff's rate, the Deputy Sheriff's must receive a 13.5 wage increase in the 1st year of their contract.⁶

⁶ The record indicates that the Union submitted an initial proposal that called for the Deputy Sheriffs to receive slightly more than a 7% wage increase (substantially less than the 13.5% increase that the Union is now seeking.). The proposed base rate wage increases varied by classification, however, the net result was

Further, the Union argues that the wage rates for Deputy Sheriffs in other governmental agencies suggest that the Butler County Deputy Sheriffs are under compensated. Finally, the Union urges that the 13.5% wage increase for all classifications is necessary to maintain the proper wage differentials between classifications.

Butler County's Position

The County argues that the Union's long standing agenda has been to develop a wage structure, which provided a 15% wage differential between all represented Sheriff classifications. The County acceded to the Union's demand and developed an economic package that accomplished this goal. It required the County to grant the Lieutenants an 18.7% wage increase and the Sergeants a 13.5% wage increase. Further, the County was constrained to offer the Detectives a 5.6% increase, the Sheriff's Deputies a 3% increase and the Sheriff's Deputy/Court Security personnel a 3 % increase, all in the 1st year of the contract.

The County points out that the Lieutenants and Sergeants were underpaid when considered in light of others similarly situated in the market. Moreover, the non-supervisory, rank-and-file bargaining unit members have realized the lion's share of the gains as a result of past negotiations.

to establish a 15% wage differential between the top positions in each of the classifications, including the Sergeants and Lieutenants.

According to the County's comparisons with other counties⁷, the Sheriff's Deputies are already receiving an hourly wage in excess of the comparable average. With respect to the Deputy Sheriff/Court Security personnel, the County points out that this originally was designed as a part-time job, which recently became a full time position. If it becomes cost prohibitive, the County may look for other alternatives to accomplish the security tasks. Finally, with respect to Court Security personnel the County notes that it is willing to collapse the steps in grade from 8 to 5, thereby producing a significant economic advantage for said personnel.

Findings and Recommendations

It is the recommendation of the Fact-Finder that the Detective, Deputy Sheriff, and Deputy Sheriff/Court Security classifications receive an across the board wage increase in the 1st year of the contract of 5.6% retroactive to the 1st pay period following the expiration of the predecessor collective bargaining agreement. For each of the remaining 2 years of the contract it is recommended that the Detective, Deputy Sheriff, and Deputy Sheriff/Court Security classifications receive a base wage rate increase of 3.0.

The Fact-Finder reaches his conclusion for the following reasons:

1. The Fact-Finder's recommendation provides for a meaningful promotional opportunity between the Detective and Sergeant's classifications. The Lieutenants and Sergeants wages were lagging

⁷ The County has defined parameters for its comparable data. The standard operating procedure is to survey the 4 contiguous counties, as well as, those counties with populations between 145,000 and 550,000.

behind. The wage differential between the Sergeant and the Detective was only 6.9%. Additionally, the top rate for Detective overlapped the bottom rate for Sergeant. The resultant effect of granting the Detective classification a 5.6% wage increase is to create a 15% spread between the top Sergeant rate and the top Detective rate. Moreover, the bottom rate for Sergeant no longer overlaps with the top rate for Detective. It is also consistent with the Union's initial proposal with respect to the wage differential between the 2 classifications.

2. Providing the Deputies and Court Security personnel with an identical wage increase in the 1st year, maintains the integrity of the wage differentials now in existence. The wage differential between the top of the Detective classification and the top of the Deputy classification is currently 12.2%. Under the Fact-Finder's recommendation, that spread would remain intact. The wage differential between the Deputy and Court Security classification also remains intact.
3. All 3 rank-and-file classifications realize a fair and equitable base rate increase in the 1st year of the contract.
4. The 1st year base rate increase is consistent with the comparable jurisdictions provided at the fact finding.⁸

Butler County's population is approximately 330,000.

⁸ The County's comparable wage data was compiled by surveying the 4 contiguous counties and those counties with populations of 145,000 to 550,000. The Fact Finder discounted the information from Preble County because its population is only 42,000. No meaningful comparison can be gained by focusing on Preble County. Likewise, I discounted the reference to Richland County because its population is approximately 125,000 and outside the base parameters set by Butler County for establishing comparable wage data. The Union offered wage comparisons, which include data from cities within Butler County.

5. The 2nd and 3rd year increases are consistent with the increases given to other bargaining units within the County. The Teamsters, for example, ultimately received a 3% wage increase.
6. The 3% increases in the 2nd and 3rd years of the contract are consistent with the amounts received by the Lieutenants and Sergeants. Thus, maintaining a certain symmetry and integrity in the wage structure.
7. The County admittedly is not advancing an inability to pay argument. However, the argument is one of fiscal restraint. According to the reports submitted, the County has the ability to pay the increases recommended.
8. The retroactive application of the 1st year increase is consistent with past bargaining efforts. The undersigned cannot fault the Union for exercising its right to assert that the mediator/fact finder harbored a bias against the organization and/or its position on wages. In addition, I am without sufficient information to make a judgment as to whether or not the Union's assertions were unfounded. Therefore, I reject the County's argument that the Union's claim of bias resulted in an improper delay of the fact-finding process. It is a product of the system.

The choices with respect to wages provided by the parties for the undersigned to consider are unsatisfactory. The Union is attempting to gain a 13.5% wage increase across the board for the Detectives, Deputies

and Court Security personnel on the strength of the a "alleged parity" between the top of the Sergeant's pay rate and the top of the Deputy's pay rate. However, the Union completely ignores the fact that sandwiched between those 2 classifications is the Detective classification. Moreover, the Union ignores the wage differential between the Court Security personnel and the Deputy. Parity as referenced in a wage comparison context such as this one connotes a parallelism between juxtaposed classifications. The Union is simply attempting to gain a greater piece of the economic pie by claiming the wage differential between the top of the Sergeant's rate and the top of the Deputy's has significance. This argument does not resonate with the Fact-Finder. Moreover, it is not analysis that is consistent with "industry practice."

While somewhat more appealing the County's position cannot be adopted. The County is essentially claiming that the Union wanted a 15% spread between classifications, so it complied. If the Deputies suffer, that is the price that has to be paid. The County ignores the fact that the rank-and-file bargaining unit rejected the County's proposal, indicating that the rank-and-file was unwilling to accept the uniform wage differential of 15%, if the non-supervisory bargaining unit received a less than modest increase in the base rate.

Article XVI

Sick Leave

FOP's Position

The FOP seeks to have the Fact-Finder increase the benefit in question, "such that Deputies be permitted to sell back ½ of their sick time with a maximum sell back of 480 hours."⁹ The Union offers comparables to underscore the assertion that the County's proposal is not consistent with other departments in the area.

Butler County's Position

The County's proposal seeks to limit the "sell back" of sick time to ¼ of the bargaining unit employee's accumulated sick time with a maximum of 320 hours. The County points out that the Ohio Revised Code 124.39(B) provides that county employees with at least 10 years of service are entitled to convert ¼ of their sick leave balance to cash on retirement up to a maximum of 30 day's pay. By policy and authority of O.R.C. 124.39(C) Butler County has extended the cap to 40 days. For the six bargaining units in the Sheriff's department the policy is even more liberal. The conversion rate is ½ the unused sick time and the minimum service requirement has been eliminated.

However, the County directs the Fact-Finder's attention to media reports highly critical of this practice. Thus, the County seeks to modify the policy. The County also notes that the cost implicates of liberalizing the policy in accordance with the FOP's request would be enormous and unjustified.

Findings and Recommendations

The Fact-Finder finds no compelling reason to alter the sick leave conversion policy for the bargaining unit as requested by the Union. The policy is quite liberal as currently fashioned and further liberalization of the policy would incur an unjustified financial burden on the financial resources of the County. Moreover, the comparables suggest that as currently stated the sick leave conversion policy is consistent with the market.

Nor is there a compelling reason to limit the current benefit conversion formula. While the media may be critical of such policies in general, the parties, through careful deliberations, negotiated the conversion formula. Therefore, it is the Fact Finder's recommendation that the sick leave provision of the 1998 collective bargaining agreement be adopted and incorporated into the 2001 contract.¹⁰

Article XX

Life and Health Insurance

FOP's Position

The FOP's initial offer sought to change the life insurance benefit from \$25,000.00 to \$50,000. Additionally, the Union sought to delete section 2 of Article XX.

Butler County's Position

⁹ The 1998 contract provided for a maximum of 320 hours.

¹⁰ Article XVI, pages 29-34 of the 1998 contract are incorporated by reference herein.

The County's initial position was to require employee contribution to increased health costs through payroll deduction in an amount "that represents an increase above the county's cost as of January 1, 2001 larger than the across-the-board increase provided under Article XIX (Wages) of this agreement."

Findings and Recommendations

The Fact-Finder is struck by fact that the supervisors received a base rate increase ranging from 13.5% to in excess of 18% in the first year of the contract, but maintained the 1998 contract language in their 2001 agreement. As a result, the supervisors are not required to contribute to the cost of health care. As desirable as it may be to share the burden of increased health care costs with the employees, there is a compelling need to treat the employees within the Sheriff's department equally.

Therefore, the Fact-Finder recommends that the parties maintain the existing contract language and incorporate it into their 2001 agreement.

Article XXI

Longevity Pay

FOP's Position

The FOP seeks to eliminate the provision of the 1998 agreement, which provides that employees hired after 1995 will not receive longevity pay. The FOP seeks to support its position by demonstrating the minor cost associated with the elimination this provision. According to the FOP, it would cost the County \$11,802.99 to satisfy the FOP's demand.

Butler County's Position

The County seeks to eliminate the longevity pay provision altogether. The County notes that the concept of longevity pay is a vestige of pre-collective bargaining days and fails to recognize merit. As reflected in its position statement: "If one is alive and breathing long enough, the employee earns the supplement, irrespective of any demonstrated skill."

The County submits that the basic premise for this form of compensation is so flawed as to warrant the complete elimination of the provision.

Findings and Recommendations

The Fact-Finder recommends that the longevity pay structure as set forth in the 1998 collective bargaining agreement remain intact in the parties' 2001 agreement. The parties gave careful thought to the gradual elimination of the longevity pay system in early 1990s. They agreed upon a provision that produced the desired result. It is consistent with the treatment of other bargaining units in the County. Therefore, it cannot be reversed based upon the minimal cost associated with the Union's proposal. Nor, should the longevity pay structure be totally eliminated. It is a significant portion of the compensation package for bargaining unit employees hired prior to 1995. It cannot simply be eliminated without some effort to accommodate those employees' interests.

Article XXIV

Residency Requirement

FOP's Position

The FOP seeks the elimination of the residency requirement. According to the Union, current housing prices in Butler County have soared. In addition, increase in population and the need for more housing has dramatically increased housing costs. Alternatively, the Union seeks a modified residency requirement such as the one provided for in the supervisor's contract, assuming, of course, that Fact-Finder awards the bargaining members a 13.5% increase in base wages.

Butler County's Position

The County asserts that the current residency requirement is "balanced and eminently reasonable." It is designed to insure a timely response by employees to emergencies. The County also notes that there is a grandfather proviso in the current language and that the Sheriff has discretion to waive the residency requirement on a case by case basis.

Findings and Recommendations

The Fact-Finder recommends that the parties adopt the residency requirement provision now contained in the supervisor's contract. More specifically that contract shall include the following reference:

1. Effective upon the ratification of this Agreement, all newly hired Employees who reside outside of Butler County are required to

establish and thereafter maintain their primary residence to within Butler County or to within a ten (10) mile radius of the County border within one hundred twenty (120) days of employment, provided however, that the Sheriff may grant or deny a requested extension within his sole discretion depending on the Employee's special circumstances.

This recommendation is being made because the population of Butler County is increasing, the demand for housing is also increasing, the cost of housing is increasing and the rank-and-file bargaining unit should be treated in a manner consistent with the Sheriff's treatment of the supervisors.

Article XXXV

Duration

FOP's Position

The FOP seeks to advance the termination date to December 31, 2003 rather than February 28, 2004. The Union argues that such a move will facilitate earlier negotiations.

Butler County's Position

The County seeks to keep the effect date of March 1, 2001 and a termination day for the contract of February 28, 2004.

Findings and Recommendations

The Fact-Finder recommends that the County position be adopted. There is no compelling reason to alter the term of the Agreement.

New Article

Field Training Officer

FOP's Position

The FOP calls for all officers working as Field Training Officers to be compensated for every shift the Officer works as an FTO at the rate of one (1) hour of pay at an overtime rate.

Butler County's Position

The County proposes to compensate the Deputy who works an entire shift as an FTO with an additional hour of compensatory time off or cash payment as determined by the Sheriff.

Findings and Recommendations

The Fact-Finder recommends that the County's proposal be adopted and incorporated into the new contract. The new language shall read as follows:

When a Deputy Sheriff is assigned to work as a Field Training Officer (FTO) for an entire work shift, the Sheriff shall credit the FTO with an additional hour of compensatory time off or cash payment, as determined by the Employer, for each completed shift of duty as an FTO. If the Employee has reached the maximum allotment of accrued compensatory time off as provided in Article XII, then the additional hour shall be paid in cash.

Assignment of Deputy Sheriffs as FTOs lies in the sole discretion of the Sheriff. Assignment as an FTO does not change the Employee's classification, and is neither a promotion nor a transfer within the meaning of this Agreement.

The adoption of this provision is fair and equitable. Moreover based on the comparisons offered by the Employer warranted.

Respectfully submitted,



Daniel N. Kosanovich
Fact-Finder
September 22, 2001