

STATE OF OHIO
THE STATE EMPLOYEE RELATIONS BOARD
FACT FINDING REPORT

STATE EMPLOYMENT
RELATIONS BOARD
2002 JAN -7 A 9 58

In Re: :
: :
Fraternal Order of Police, : Case No. 2001-MED-07-0625 (Sergeants)
Ohio Labor Council, Inc. : Case No. 2001-MED-08-723 (Deputies)
and Union County Sheriff : Case No. 2001-MED-08-0724 (Dispatchers)

FACT FINDING REPORT

The undersigned, Steven L. Ball, appointed as State Employee Relations Board fact-finder, makes the following report:

I. Hearing

This matter was heard at the offices of the Union County Sheriff, Marysville, Ohio, on December 19, 2001 commencing at 9:00 a.m. The following were present on behalf of the respective parties:

Union County Sheriff

John Overly - Sheriff
Cindy McCreary - Dir. Of Administration
John J. Krock - Consultant, Clemans-Nelson & Associates, Inc.

F.O.P. - Deputies, Sergeants, and Dispatchers Bargaining Units

Ross Rader - Staff Rep. F.O.P.
Lyle Herman - Sergeant
Danielle Somerlot - Dispatch
Matthew J. Warden - Deputy
Randy Barker - Deputy
Jon Kleiber - Detective/Deputy
Anne Barr - Dispatch
Michael Burton - Sergeant

II. Mediation and Preliminary Matters

These cases are consolidated for the following bargaining units of the Union County Sheriff: full-time deputy sheriffs, full-time sergeants, and full-time and part-time dispatchers. All three units have been unable to agree on wage rates. The deputies and sergeants are at issue with the Sheriff as to certain physical abilities testing. The dispatchers' unit and the Sheriff, in addition to the wage issue, are in dispute as to issues relating to services as "officer in charge," and supervisors, and shift differentials.

All parties were extremely well prepared for the fact-finding and timely submitted detailed position statements. The evidence admitted by the Fact-Finder was well organized and presented by the parties.

With the consent of the parties, an attempt at mediation was unsuccessful.

III. Criteria

The parties were advised that consideration would be given to the criteria listed in §4117.14 O.R.C. and Rule 4117-9-05(K) of the State Employee Relations Board, as follows:

- (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 issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

IV. Issues and Recommendations

The parties agreed that any pay increase would be effective with the new year. The Sergeants' agreement expired in October, 2001, and the other two agreements expired December 15, 2001.

Finding of Fact No. 1 - Physical Fitness Testing

The Sheriff has proposed a system of physical fitness testing to be applied to the deputies and sergeants that has been accepted by many law enforcement agencies. He wishes his sworn employees to maintain physical standards; both to protect them, and to maximize their law enforcement capabilities. The Sheriff has installed a gym or workout area on premises as an incentive to physical fitness for his employees. The sergeants tentatively agreed to the policy as modified during the bargaining process.

The deputies and sergeants are concerned that implementation of such a policy may lead to unfair disciplinary actions.

This fact-finder was presented with no information to indicate that the physical fitness policy proposed by the Sheriff in a tentative agreement November 15, 2001 with the sergeants at Tab 5 E (copy attached hereto) is either unreasonable, or susceptible to unreasonable and arbitrary use as a pretext for disciplinary actions, and the policy has sufficient procedural safeguards to avoid misuse. Moreover, the physical fitness testing is rationally related to obvious law enforcement, safety, and performance goals.

The new physical fitness testing policy attached hereto should be adopted.

Finding of Fact No. 2 - Dispatcher's Shift Differential

The dispatchers currently receive a \$.25 per hour wage differential for second and third shifts. The F.O.P. proposes that the shift differential be increased to \$.45 per hour. The Sheriff wants the current differential continued. The present shift differential compares favorably with that provided in similar counties, which range from a low of "0" to \$.50, with the great preponderance of counties providing differentials at or below that now provided. This fact-finder sees no evidence to dictate that the current differential should be changed, or any unfairness resulting if it is not changed.

Recommendation

The current shift differential of \$.25 per hour should continue unchanged from the current agreement.

Finding of Fact No. 3 - Dispatcher "Officer in Charge" Pay

Currently dispatchers which serve as "officers in charge" for six or more shifts per pay period receive a \$.50 per hour stipend while working as supervisors. The Sheriff contends that such pay is not provided by other comparable employers and the current provision should stay. The dispatchers argue that if a dispatcher assumes supervisory duties, he or she should be paid as such. Currently Dispatch Supervisors receive \$.50 per hour more than dispatchers. The dispatchers argue that the current language, which only provides additional pay for supervisors duties after six shifts or more per pay period is unfair and unworkable. As now written, a dispatcher not in a supervisory position may perform supervisory duties for five shifts per pay period and receive nothing for the extra duties, but would receive supervisor's pay for all shifts worked in supervision if worked six shifts or over.

The dispatchers wish the current O.I.C. provision to require payment of \$1.00 per hour extra for all hours worked as a supervisor for four hours or more per pay period. The proposal for a \$1.00 per hour increase for such services is not comparable to any such pay received by dispatchers in comparable units. Moreover, the drastic change proposed by the dispatchers does not appear reasonable given prior acceptance of the current provision. This fact-finder, however, views the current provision as unfair and unworkable and not likely to benefit morale or performance.

Recommendation

The current language of Section 23.7 should be modified in the new agreement by providing a \$.50 per hour stipend for all hours worked as a supervisor if the employee is assigned the duties of a supervisor for two or more shifts per pay period. The recommended language of §23.7 is as follows:

“O.I.C. Pay. Employees (both full-time or part-time) that are assigned the duties of a Supervisor for two (2) shifts or more, per pay period, will receive a \$.50 per hour stipend for all such hours worked as a supervisor. Part-time employees will not be eligible for O.I.C. pay until they have completed their probationary period.”

Finding of Fact No. 4 - Dispatcher Supervisor's Pay

The dispatcher supervisors propose that they be paid an additional \$1.00 per hour for supervisory duties. At fact-finding it appeared that the dispatchers wished such pay to be provided, even if the supervisor worked under another supervisor in overtime situations. However, it appears to this fact-finder that the current \$.50 per hour extra that a supervisor receives is both reasonable and commensurate with such duties and comparable to pay received by dispatch supervisors in other comparable locales. The current language does not permit such extra pay when the employee is working under another shift supervisor. This appears to be a reasonable approach to pay for

work performed. Moreover, the most likely scenarios wherein supervisors would be working under other supervisors is in overtime situations, and they would then be receiving overtime pay.

Recommendation

The current supervisor's pay of \$.50 per hour in addition to dispatcher pay is reasonable and should remain as stated in Section 23.8 of the current agreement.

Finding of Fact No. 5 - General Wage Rates for All Units

The Sheriff proposes a 3% across-the-board increase to pay each year, in keeping with the County Commissioners' stated policy. The F.O.P. want pay raises which would provide parity with Marysville Police Officers and Dispatchers. This would require pay increases of approximately 9.5% for sergeants, and 7% for deputies and dispatchers for step A pay in the first year of the new agreement.

The County Commissioners have stated a maximum 3% yearly wage increase policy, to apply to all office-holders. Though this Fact-Finder deems the Commissioners' Memorandum of November 8, 2001 to be material to the wage issues herein, it is not determinative. To do so would be to render lifeless the statutory factors to be considered by this fact-finder and would negate the entire collective bargaining process. Moreover, collective bargaining units must be considered upon their own merits. County employees working for other county offices and for the County Commissioners may not be equated for purposes of Ohio's collective bargaining law.

The pay of the Marysville Police is no more a final determinative factor than the Commissioners's Memorandum. Certainly the pay received by Marysville officers, by any criteria, may be considered as a comparable bargaining unit to the Sheriff. Geography, the overlapping jurisdictions of the two law enforcement agencies, and their duties, compel comparison as to wages.

Moreover, the Sheriff's staffing is necessarily affected by the wage rates provided by the City to its police officers as they, to some greater or less degree, compete in the same job market.

The employer's survey of comparable county wages show the present wages slightly below average for deputies and above average for sergeants. However, this Fact-Finder finds the wages in Marion and Delaware County compelling in demonstrating that increases in the wage structure over 3% are reasonable and necessary to fairly compensate the employees and to insure the recruitment of qualified employees. Respectively, the Marion and Delaware deputies are currently paid \$3,889 and \$4,493 more, than Union County deputies (Employer's wage survey Tab G §1). Similar disparities exist for Sergeants (Tab G §2). The Employee's figures show pay for deputies to be 23.5% to 32.4% below the average wages they claim as comparable. Dispatchers are paid slightly more than average in the comparable wages provided by the employer, but rates have not been included for Marion or Delaware Counties. The F.O.P. has presented comparable figures, including those for Delaware County which show dispatchers are paid below average from 15% at the low range to 18% at the top.

The Fact-Finder concludes that the wage rates for all three bargaining units should be increased by 6% commencing January 1, 2002, 6% commencing January 1, 2003, and 5% commencing January 1, 2004. This will not achieve immediate "parity" with the City, but it will place pay for each of the three bargaining units within reason of comparable pay for employees in similar counties. Attached hereto are proposed provisions for each noted unit.

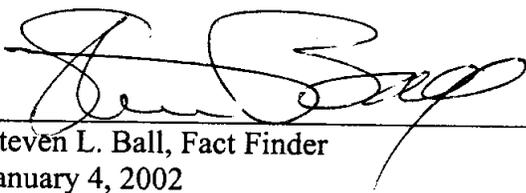
These percentages are to be applied after a \$.60 per hour increase to Sergeants over the 2001 pay. The \$.60 per hour is to replace the approximate value of the employees' use of patrol vehicles which they were assigned in prior years and which are no longer assigned to the sergeants for 24 hour use.

The Fact-Finder was presented with evidence to show that the county received a \$2,000,000 sales tax windfall in 2001, and increases in the sales tax are projected by the County Auditor. The County Commissioners and the Auditor apparently dispute the status of projections and/or available funds. However, the cost of the above increases is but \$318,700 over three years in a yearly sheriff's budget of \$3,223,294. This Fact-Finder is compelled to the conclusion that funds are available for the noted increases.

Recommendation

The three bargaining units each will receive pay raises of 6% for 2002, 6% for 2003, and 5% for 2004. The sergeants will receive such pay increases after the application of an increase of \$.60 per hour upon 2001 wages. The recommended language for the agreements is attached hereto.

Respectfully submitted,



Steven L. Ball, Fact Finder
January 4, 2002

CERTIFICATE OF MAILING

I hereby certify that a copy of the above report was mailed (overnight mail) to James M. McCloskey, Clemans, Nelson & Associates, Inc., 5100 Parkcenter Avenue, Suite 120, Dublin, Ohio 43017 and Catherine A. Brockman, FOP/OLC, Inc., 222 E. Town Street, Columbus, Ohio 43215 on the 4th day of January, 2002 and on the same date the original of said report was mailed by regular mail to the State Employees Relations Board.



Steven L. Ball

ARTICLE 24

WAGES

Section 24.1. Effective January 1, 2002, bargaining unit employees shall receive a six percent (6%) across-the board increase. The increases shall be computed upon the rates of \$18.78 for Step A and \$19.85 for Step B, which includes a \$.60 per hour one-time increase over the pay rates which were effective at the close of the last agreement.

Effective January 1, 2003, bargaining unit employees shall receive a six percent (6%) across-the-board increase.

Effective January 1, 2004, bargaining unit employees shall receive a five percent (5%) across-the-board increase.

ARTICLE 24

WAGES

Section 24.1. Effective January 1, 2002, bargaining unit employees shall receive a six percent (6%) across-the board increase.

Effective January 1, 2003, bargaining unit employees shall receive a six percent (6%) across-the-board increase.

Effective January 1, 2004, bargaining unit employees shall receive a five percent (5%) across-the-board increase.

ARTICLE 24

WAGES

Section 24.1. Effective January 1, 2002, bargaining unit employees shall receive a six percent (6%) across-the board increase.

Effective January 1, 2003, bargaining unit employees shall receive a six percent (6%) across-the-board increase.

Effective January 1, 2004, bargaining unit employees shall receive a five percent (5%) across-the-board increase.

NEW ARTICLE

MANDATORY PHYSICAL ABILITIES TESTING

Section 1. Sworn personnel shall participate in the Mandatory Physical Abilities Testing program. The Physical Abilities Test shall measure whether employees are physically able to perform the essential functions of their position. The program may be subject to change for valid reasons following official notification to the FOP/OLC. Employees who refuse to participate in any part of the Physical Abilities Testing program (other than due to a medical exemption) may be subject to disciplinary action ~~containing~~.

Section 2. The Employer shall comply with the Americans With Disabilities Act, and shall defend, indemnify, and hold harmless the Fraternal Order of Police, agents, officers, representatives, and members of any of the aforementioned against any and all claims and/or costs arising from or in any way related to the implementation and enforcement of Physical Abilities Testing, specifically including, but not limited to, any cost arising from an action in any court or administrative agency. This section shall not apply to any action brought by the Fraternal Order of Police or any affiliate.

Section 3. Employees shall be notified of their Physical Abilities Test score upon completion of the test or as soon thereafter as is practical.

MANDATORY PHYSICAL ABILITIES TESTING (continued)

Section 4. An employee who is exempt under Section 7 below, or for any other reason set forth in this section, shall be required to engage in a fitness program, provided such program is approved by the employee's physician.

Section 5. Sworn personnel shall be tested twice each year.

Section 6. Physical Abilities Test performance scores shall not be used as a criteria for promotions or special assignments, except in cases where it is reasonably determined that the candidate must possess a unique physical standard that is germane to that position.

Section 7. An employee may provide the Employer with a written statement from a licensed physician stating that participation in all or any part of the Physical Abilities Test will be detrimental to the employee's health. In such cases the employees shall not be required to participate in the prohibited part(s) of the Physical Abilities Testing procedures except as hereinafter provided.

Section 8. An employee requesting an exemption from all or any part of the Physical Abilities Test, by providing a written statement from a licensed physician, may at the sole discretion of the Employer be required to submit to a physical examination by a licensed physician selected

MANDATORY PHYSICAL ABILITIES TESTING (continued)

by the Employer, at the Employer's expense. In the event that there is a disagreement between the physician selected by the employee and the physician selected by the Employer as to whether participation by the employee in all or any part of the Physical Abilities Test will be detrimental to the employee's health, at the option of the Employer, another licensed physician shall be selected by agreement of the Employer and the employee to make a determination as to whether participation by the employee in all or any part of the Physical Abilities Test will be detrimental to the employee's health. The cost of this determination shall be shared by the Employer and the employee. The decision of the physician so selected by the Employer and the employee shall be binding upon the parties as to whether the employee shall be required to participate in the Physical Abilities Test.

Section 9. An employee who is temporarily unable to perform the essential functions of the position with a reasonable accommodation may be placed on leave.

Section 10. An employee who is exempted from all or any part of the Physical Abilities Test shall upon request from the Employer give the Employer a medical information release authorization which will allow the Employer to obtain information from the licensed physician issuing the written statement describing the medical or physical condition of the employee, and how such condition relates to the Physical Abilities Test, or any particular part of the test.

MANDATORY PHYSICAL ABILITIES TESTING (continued)

in such a way as to make participation in the test, or any part thereof, detrimental to the employee's health. All information received by the Employer shall be confidential and maintained separately from the employee's personnel file.

Section 11. Employees shall provide the Employer a medical clearance from the employee's physician on a form provided by the Employer. The form shall be updated no less than every two (2) years. The form shall describe the tests the employee will be required to undergo.

Section 12. During the testing process, any employee who exhibits or complains of any condition which suggests that further participation in the testing process may be detrimental to the employee's health shall not be required or permitted to continue in the testing process. The Employer, at the Employer's sole discretion, or at the request of the employee, may transport the employee to a licensed physician or emergency care facility for immediate action, or if immediate attention is not deemed necessary, the Employer may require the employee to provide a new medical clearance. The cost of any emergency or immediate medical attention shall be paid by the Employer.

Section 13. An employee who fails to achieve a satisfactory level of physical fitness ~~may~~ **will** be subject to ~~administrative action~~ **discipline as outlined herein**. An employee shall be

MANDATORY PHYSICAL ABILITIES TESTING (continued)

deemed physically fit for the position of Deputy Sheriff if the employee achieves the minimum passing score on the test adopted by the Employer as part of the Physical Abilities Testing program. ~~The Employer may deem an employee unfit for duty for physical reasons if the employee does not achieve the minimum passing score on the test at the conclusion of the retest periods set forth below.~~ ~~The Employer will give the test~~ ✓

~~starting in calendar year 2002, however, employees hired will not be subject to discipline.~~

Section 14. After the first failure to achieve a minimum passing score on the Physical Abilities Test ~~in calendar year 2003~~, an employee shall be retested again after ninety (90) days; ~~provided that an employee may after fourteen (14) days after the first failure be retested at the employee's written request. An employee requesting retesting shall be tested within fourteen (14) days after the written request. An employee passing a mandatory or requested retest shall not be tested again until the next regularly scheduled test for that employee. An employee who fails a retest which the employee requested shall not be subject to administrative action because of such failure.~~

~~Employees who fail the first test in calendar year 2003 will receive a written warning.~~ ✓

~~Employees who fail the retest in 2003 will receive an unpaid two (2) day suspension.~~

MANDATORY PHYSICAL ABILITIES TESTING (continued)

~~Employees who fail the first test in calendar year 2004 will receive an immediate 90 day suspension. Employees who fail the first test in 2004 shall be suspended for a period of ninety (90) days. Employees who fail the test in 2004 will receive an immediate 90 day suspension.~~

~~Section 15. An employee who fails the first required retest shall be issued a counseling letter suggesting how the employee could improve test performance, and shall be tested again after sixty (60) days. An employee failing a second retest shall be issued a warning letter advising the employee that, should the employee fail the next scheduled retest, the employee may be deemed unfit for duty for physical reasons and may be separated from service.~~

~~Section 16~~ 15. ~~Counseling letters and w~~ Written warnings ~~and suspensions~~ received for a failed Physical Abilities Test shall not be recorded as disciplinary action. These entries shall be recorded only as notices to the employee and shall not be used as part of any future progressive discipline.

~~Section 17. An employee receiving a written warning after failing the second retest shall be tested no less than thirty (30) days later. If the employee fails to pass the~~

MANDATORY PHYSICAL ABILITIES TESTING (continued)

~~Physical Abilities Test after the thirty (30) day period, the employee may be deemed by the Employer to be physically unfit to perform the duties of the position of Deputy Sheriff and may be separated from service for physical ability reasons:~~

~~Section 18. Notwithstanding any other provision of the article, nothing shall restrict the right of Employer to remove an employee from employment if the employee is unable to perform the essential functions of the position, with or without reasonable accommodation:~~

Section 19 ~~16~~. The Sheriff's goal is to ensure the employees are screened for health risks in those areas recognized by the American Heart Association or other professional medical personnel to be indicators of serious physical health problems. All sworn personnel must complete this component before participating in either the mandatory or voluntary physical abilities testing. Those areas of screening provided by the department will be at least the following and may include other tests;

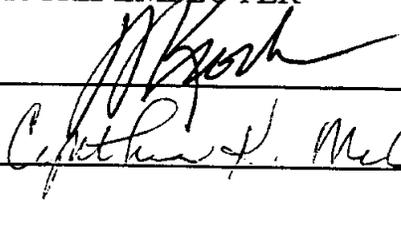
1. Blood pressure evaluation – Use of the American Heart Association standards; those medically at risk will be provided further resources in accordance with the County's health insurance plan.

MANDATORY PHYSICAL ABILITIES TESTING (continued)

2. Cholesterol screening – Use of the American Heart Association standards for reference; those medically at risk will be provided further resources or references through the County's health insurance plan for cholesterol reduction.

3. Should officers exhibit signs during health screenings indicating a possible health problem exists, the officers should seek appropriate screening and further advice from their own doctor pursuant to the health plan provided by the County.

FOR THE EMPLOYER



Captain H. McCrory

FOR THE UNION



DATE SUBMITTED: _____

DATE SIGNED: 11-15-01