

+

**IN THE MATTER
OF
FACT FINDING
REPORT**

STATE EMPLOYMENT
RELATIONS BOARD

2002 MAR 19 A 10: 22

BETWEEN	CASE NO: SERB 01-MED-10-0958/0959
The Ohio Patrolmen's Benevolent Association	FACT FINDER: JOHN S. WEISHEIT
And the	HEARING DATE(S): February 28, 2002
Meigs County Sheriff	AWARD ISSUED: March 18, 2002

**REPRESENTATION
by**

<u>Employer Representatives</u>	<u>Union Representatives</u>
Ben Albrecht, Esq.	Joseph M. Hegedus, Esq.

AUTHORITY

This matter was brought before Fact Finder John S. Weisheit, in keeping with applicable provisions of ORC 4117 and related rules and regulations of the Ohio State Employment Relations Board. The parties have complied in a timely manner with all procedural filings. The matters before the Fact Finder are for consideration and recommendation based on merit and fact according to the provisions of ORC 4117, particularly those applicable to safety forces.

BACKGROUND

The Meigs County Sheriff, hereinafter called the "Sheriff" and/or "Employer", recognizes the Ohio Patrolman Benevolent Association, hereinafter called the "OPBA" and/or the "Union", for all full-time Deputy Sheriffs employed by the Sheriff serving in the position of Road Patrol Deputy, Investigator, and/or Dispatcher positions. The bargaining unit consists of approximately nine (9) sworn officers. The above named parties engaged in bargaining for a successor Agreement to the one expiring in December 31, 2001. In the course of good faith bargaining, several issues were in tentative agreement prior to the Fact Finding Hearing with additional matters being so resolved during the Fact Finding Hearing.

On February 28, 2002, at the Meigs County Courthouse, Pomeroy, Ohio, the parties convened for a Fact-Finding Hearing to present such testimony and evidence of fact related to unresolved issues. The parties directly moved to Fact Finding, though a number of issues were tentatively agreed to in the course of the Fact Finding Hearing. Prior to the official closing of the Hearing, each party indicated it had no additional evidence to submit on behalf of their respective party and further acknowledged that they had sufficient opportunity to present such facts and documentation to support their respective positions. It was agreed that the Fact Finder Report would be issued on or before March 20, 2002. The Hearing was then adjourned.

In compliance with ORC 4117.14(C)(4)(e), and related rules and regulations of the State Employment Relations Board, the following criteria were given consideration in making this Award:

1. Past collectively bargained agreements 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 public service or in private employment.

This Report is based on facts provided in document and testimony introduced at that time and in keeping with statutory consideration cited above.

ISSUES OF TENTATIVE AGREEMENT

The following Articles, from the Agreement expiring December 31, 2001, were tentatively agreed to between the parties prior to Fact Finding:

Article	Issue
1	Agreement
2	Union Recognition
3	Dues Check-Off
4	Management Rights
5	Union Representation
6	No Strike/No Lockout
7	Pledge Against Discrimination
8	Labor Management Meetings
9	Grievance Procedure
11	Seniority
13	Layoff and Recall
14	Health & Safety
15	Subcontracting

Article	Issue
16	Work Rules
17	Hours of Work
19	Report-In & Call-In Work
23	Holidays
26	PERS Pickup
27	Severability
28	Waiver in Case of Emergency
29	Employee Rights
31	Uniforms
32	Substance Testing & Abuse
33	Training

The following issues were tentatively agreed to at the Fact Finding Hearing:

Article 12 Sec. 12.1	Filling of Positions (Vacancy Posting)
Article 21 Sec. 21.3(C)	Leaves & Leaves of Absence (Accrual notice to Employees)
Article 25 Sec. 25.1	Wages (Include Union proposed last paragraph re: scale step placement)
Article 31 Sec. 31.4	Uniforms (Equipment/Replacement Allowance Amount)
Article 35	Duration of Agreement (3-yrs. January 1, 2002 - December 31, 2004)

**SUMMARY OF THE RESPECTIVE POSITIONS
ON ISSUES AT IMPASSE**

Articles, in part and/or whole, unresolved at the Fact Finding Hearing, a summary of each party on the issue and identification of issues tentatively agreed at the Hearing follow. Provisions in Articles not identified at impasse are also tentatively agreed to or have been otherwise resolved.

Employer	Issue	Union
Retain Current Lang.	Article 10 Discipline Sec. 10.1	Add language regarding transfers or reassignments in the course of discipline.
Retain current lang.	Article 12 Filling of Positions Sec. 12 .3	Propose adding employees 1 st right to bid in filling a vacancy.

Employer	Issue	Union
<p>Include a 12 month probationary period.</p> <p>Retain current language.</p>	<p>Sec. 12.4</p>	<p>*Propose retaining current 6 month period.</p> <p>*Propose no extension of probation when a probationary employee is transferred from the position of Dispatcher to that of Road Patrol Officer.</p>
<p>Retain Current lang.</p>	<p>Article 18 Overtime Sec. 18.1</p>	<p>Reduce OT status from time worked in excess of 85.5 to 82 hrs.</p>
<p>Retain Current lang.</p>	<p>Sec. 18.2</p>	<p>Computation of OT based on all hours worked including pay leave time off.</p>
<p>Retain Current lang.</p>	<p>Sec. 18.3</p>	<p>(New) Min. court time pay from 1 hr. to 2 hrs.</p>
<p>Delete current lang. that addresses equalizing overtime.</p>	<p>Sec. 18.6</p>	<p>Add language regarding distribution of overtime.</p>
<p>Delete MOU regarding use of Comp. Time.</p> <p>Reject Union new lang. proposal.</p>	<p>Sec. 18.8</p>	<p>Retain MOU regarding use of Comp. Time.</p> <p>Propose added lang. regarding application of Comp. Time .</p>
<p>Decrease leave time for death of a family member from 5 to 3 days.</p>	<p>Article 20 Sick Leave Sec. 20.3 (D)</p>	<p>Propose limiting use of sick lv. for death of an employee's immediate family to 3 days with the addition of a new bereavement lv. (Art. 21)</p>

Employer	Issue	Union
Reject Union proposal.	Sec. 20.6 (G)	Propose the doctor's certificate issue be limited to defined immediate family as proposed.
Reject Union proposal.	Sec. 20.6 (H)	Propose call for doctor's certificate after 5 consecutive days instead of 3 days.
Add lang. that emp. abuse of sk. lv. subject to discipline.	Sec. 20.6 (I)	Reject Employer proposed add. lang.
Reject Union proposal.	Sec. 20.6 (K)	(New) Propose inclusion of sick leave bank.
Reject Union Proposal.	Sec. 20.8	(New) Propose annual pay-off of accrued and unused sick leave.
Reject Union Proposal	Article 21 Lvs of Absence Sec. 21.3 (C)	(New) Propose 5 day bereavement provision.
Reject Union Proposal	Sec. 21.3 (E)	(New) Propose inclusion of Injury Lv. Provision.
Reject Union proposal	Article 22 Vacations Sec. 22.2	Reduce minimum use of vacation time from 1 day to 1 hour.
Oppose continuation of annual carryover use of accrued vacation leave.	Sec. 22.4	Retain current lang.
Delete lang. allowing accum. & carry-over of vacation lv to the following yr. Reject Union proposal.	Sec. 22.5	Propose lang. to allow annual carry over of vacation time exceeding 480 hours or buy out, at employee's option.

Employer	Issue	Union
Reject Union proposal.	Sec. 22.8	Propose a change in lang..
Change lang. so BUM pay contribution rates at the same amount as other County Employees.	Article 24 Insurance	Retain employee contribution rates at current rate.
3% increase each year of the Agreement. Reject Union proposal.	Article 25 Wages Sec. 25.1	First year flexible rate increase the first year of the Agreement and 5% each succeeding year. Also includes adjustment of annual increments on wage schedule.
3% inc. for Barg Unit members not on pay schedule.	Sec. 25.2	Sgts. Pay to be 5% above the top Road Patrol Officer. Lt. Pay to be 5% above that of Sgt.
Reject Union Proposal.	Sec. 25.3	Propose \$0.25/hr shift differential.
Reject Union Proposal	Sec. 25.4	Propose \$0.15/hr longevity supplement.
Reject Union Proposal.	Sec. 25.5	Propose Special Duty Pay Rate at \$15.00/hr.
Uniform and equipment become property of the department upon an employee's termination of employment.	Article 31 Uniforms Sec. 31.1	Employee retains the property right to equipment and uniforms provided at time of employment.
Uniform and equipment becomes property of the department.	Sec. 31.2	Property right to equipment and uniform parts provided at employee cost.

Employer	Issue	Union
Reject Union proposal	Article 36 Use of Special Deputies and/or Part time Employees	Propose new Article
Reject continuation of MOU.	Memorandum of Understanding (MOU)	Retain MOU's in Agreement or specifically include the terms as provisions of the Agreement.

DISCUSSION & DETERMINATION

General

The unresolved economic issues, though addressed issue by issue as required under ORC 4117, were given due consideration regarding totality of cost. Economic impact was reviewed in context of cost estimates, comparables and other information deemed relevant and introduced by the parties at the Fact-Finding Hearing. This resulted from the manner in which costs were derived and inaccuracy in the number of employees used in figuring cost computations. "Ability to pay", as is applicable in the collective bargaining arena, was not cited as cause to reject or limit economic issues. However, arguments of "budgetary restraints" were raised by the Employer indicating a maximum of certain economic issues. The Employer also cited the argument of "appropriateness" regarding its position on economic issues in dispute. The Union contention on economic proposals rested on economic needs of bargaining unit and state and regional comparables.

The Employer submitted a number of cost projections to support its position regarding most economic issues. These documents included estimated costs of the Union and Employer economic proposals. A review of these documents by the parties at the Fact-Finding Hearing determined that the number of Bargaining Unit Members (BUM) used in the cost computations was higher than the parties ultimately agreed to. The parties concurred the actual number should be 9 or 10 as contrasted to the 15 used in the computation of cost projections initially given to the Fact Finder. This factor significantly altered the cost estimates in the data. Revisions were made, based on this matter and given due consideration in making economic issue recommendations.

In reviewing the comparables with other like bargaining units in southeastern Ohio counties, it is noted the bargaining unit employees wage and other economic benefits rank low. It is also noteworthy that the Employer recognizes additional funds for general operation and is attempting to increase its general revenue fund by seeking public approval of a tax rate increase.

It is determined essential to keep in mind which is the primary consideration in this situation. Is the interest and welfare of the public best served by an adequately staffed public safety force or is such service best served by first establishing rigid budget restraints and then deploy public safety service thereafter? It is recognized that this ultimate decision is that of the Employer and not in the purview of the Fact Finder. However, when considering the public interest in the course of making these recommendations, it does deserve notation of record. A final note is the consideration that most of the unresolved issues reflect a significant direct or indirect cost factor.

The Fact Finder has used generally accepted standards applied in making a finding and recommendation in interest rights matter in this instant situation.

Fact Finder's Determination

Issue by Issue

Issue	Discussion/Determination
<p>Article 10 Discipline. Sec. 10.1</p> <p>Recommendation</p>	<p>The Union proposal would expand contract authorized discipline action. This is related to concerns in other issues addressed and in dispute for inclusion in the Agreement. It is not considered persuasive to include this proposed language.</p> <p>It is recommended that Section 10.1 be included in the Agreement as set forth in the parties' contract expiring December 31, 2001.</p>
<p>Article 12 Sec. 12.3</p> <p>Recommendation</p>	<p>The Union seeks specific language in this provision that reflects an unrefuted general practice of job progression from initial hire as a Dispatcher to that of Road Deputy, when such opening occurs. The facts are not persuasive to modify existing provisions of this matter .</p> <p>It is recommended that Section 12.3 be included in the Agreement as set forth in the parties' contract expiring December 31, 2001.</p>
<p>Recommendation</p>	<p>The second issue is determined of the same force and effect without added language since "probation" is clearly stated for a specific period of time.</p> <p>It is recommended to include in the Agreement the Union's proposed language for Section 12.4, with the last sentence being deleted. It is further considered that the Memorandum of Understanding signed and dated February 7, 2000 not be included as an attachment to the Agreement.</p>

<p>Article 18 Overtime Sec. 18.1</p> <p>Recommendation</p>	<p>Argument and evidence are not persuasive to modify existing language on this provision.</p> <p>It is recommended that Section 18.1 be included in the Agreement as set forth in the parties' contract expiring December 31, 2001</p>
<p>Sec. 18.2</p> <p>Recommendation</p>	<p>Argument and evidence is not persuasive to modify existing language on this provision</p> <p>It is recommended that Section 18.2 be included in the Agreement as set forth in the parties' contract expiring December 31, 2001.</p>
<p>Sec. 18.3</p> <p>Recommendation</p>	<p>Argument and evidence is persuasive in supporting the proposed increase of minimum court reporting time from one (1) to two (2) hours. The related increase cost factor, though determined relatively small by itself, is considered in total context with other economic related recommendations.</p> <p>It is recommended to include in the Agreement the Union's proposed language for Section 18.3</p>

<p>Article 20 Sick Leave Sec. 20.3 (D)</p> <p>Recommendation</p>	<p>The facts and positions presented by the parties are not persuasive to recommend a change in this provision.</p> <p>It is recommended that Section 20.3(D) be included in the Agreement as set forth in the parties' contract expiring December 31, 2001.</p>
<p>Sec. 20.6 (G)</p> <p>Recommendation</p>	<p>The evidence and testimony are not persuasive to attain a Fact Finder's recommendation to change the existing language of this provision.</p> <p>It is recommended that Section 20.6(G) be included in the Agreement as set forth in the parties' contract expiring December 31, 2001.</p>
<p>Sec. 20.6 (H)</p> <p>Recommendation</p>	<p>The evidence and testimony are not persuasive to attain a Fact Finder's recommendation to change the existing language of this provision.</p> <p>It is recommended that Section 20.6(H) be included in the Agreement as set forth in the parties' contract expiring December 31, 2001.</p>
<p>Sec. 20.6 (I)</p> <p>Recommendation</p>	<p>The evidence and testimony are not persuasive to attain a Fact Finder's recommendation to change the existing language of this provision. Authority sought by the Employer's language already exists.</p> <p>It is recommended that Section 20.6(I) be included in the Agreement as set forth in the parties' contract expiring December 31, 2001.</p>

<p>Sec. 20.6 (K)</p> <p>Recommendation</p>	<p>The evidence and testimony are not persuasive to attain a Fact Finder's recommendation to change the existing language of this provision.</p> <p>It is recommended that this newly proposed provision not be included at this time.</p>
<p>Sec. 20.8</p> <p>Recommendation</p>	<p>The evidence and testimony are not persuasive to attain a Fact Finder's recommendation to change the existing language of this provision.</p> <p>It is recommended that Section 20.8, as proposed, not be included in the Agreement.</p>
<p>Article 21 Lvs of Absence Sec. 21.3 (C)</p> <p>Recommendation</p>	<p>Being consistent with the recommendation to retain status quo in Article 20, it is not recommended to include the Union proposal creating a Bereavement Leave provision in this Article.</p> <p>It is not recommended to include the proposed Bereavement Leave in the Agreement.</p>
<p>Sec. 21.3 (E)</p> <p>Recommendation</p>	<p>It is recognized that Injury Leave is a common contract provision, particularly in safety force collective bargaining agreements. However, it is recognized that the current contract and proposed Contract includes a significant number of leave provisions. It is also recognized the addition of such a provision will have potential cost implications. It is determined that, at this time, it is better to focus attention on other economic benefits that remain unresolved.</p> <p>It is not recommended to include the proposed Injury Leave in the Agreement.</p>

<p>Article 22 Vacations Sec. 22.1</p> <p>Recommendation</p>	<p>The Union proposed revision of vacation use application will carry an additional cost. It is determined best to limit economic reform recommendations to wages and insurance issues.</p> <p>It is recommended that Section 22.1 be included in the Agreement as set forth in the parties' contract expiring December 31, 2001.</p>
<p>Sec. 22.2</p> <p>Recommendation</p>	<p>The evidence and testimony is not persuasive to recommend the change in minimum time usage of Vacation from one (1) day to one(1) hour.</p> <p>It is recommended that Section 22.2 be included in the Agreement as set forth in the parties' contract expiring December 31, 2001.</p>
<p>Sec. 22.5</p> <p>Recommendation</p>	<p>The facts and testimony are not persuasive in attaining a recommendation other than to retain current language.</p> <p>It is recommended that Section 22.5 be included in the Agreement as set forth in the parties' contract expiring December 31, 2001.</p>
<p>Sec. 22.8</p> <p>Recommendation</p>	<p>Being consistent with the recommendation regarding Section 22.5, it is determined that Section.22.8 should retain current language.</p> <p>It is recommended that Section 22.8 be included in the Agreement as set forth in the parties' contract expiring December 31, 2001.</p>

<p>Article 24 Insurance</p> <p>Recommendation</p>	<p>The evidence and testimony indicate the Union has attained and retained a position in which bargaining unit members make a lower contribution for insurance benefits than other employee units in the County. Its current insurance premium rates have resulted through the collective bargaining basis including the enforcement of negotiated terms and concessions for members in the bargaining unit.</p> <p>A significant number of economic issues in dispute have not been recommended for inclusion in this Agreement. No reduction in premium rates is recommended from what is set forth in the expiring agreement.</p> <p>It is recommended that Article 24 be included in the Agreement as set forth in the parties' contract expiring December 31, 2001.</p>
<p>Article 25 Wages</p>	<p>The base wage rate for the bargaining unit is significantly low for the geographical area of the State of Ohio. Neighboring counties experience the same or similar general economic conditions. Closing the gap in such cases can rarely be achieved in the short term.</p> <p>Considering the observations reflected in the opening section of this Report and the other economic recommendations made, the recommendations on economic issues are focused on the benefit issues of wages and insurance. These are deemed to have the greatest importance to the parties.</p>

<p>Article 25 Wages cont'd</p> <p>Recommendation</p>	<p>The adjustment to the wage schedule is considered too radical in nature. Argument to change the structure is not persuasive at this time. While 3% wage increases are currently the trend, higher amounts are reported, particularly when current rates are lower than average and facts support a higher than the average increase. It is noted that cost for increases reflected in these recommendations are computed to reflect a cost not to exceed the annual increases projected in the Employer's computation for the Employer's wage offer.</p> <p>It is recommended the wage schedule in Section 25.1 of the agreement expiring December 31, 2001, be included in the Agreement with the following changes:</p> <p>Section 25.1 Effective January 1, 2002, each step of the wage schedule shall be increased by 4%.</p> <p>Section 25.2 Effective January 1, 2003, each step of the wage schedule shall be increased by 4%; And effective January 1, 2004, each step of the wage schedule shall be increased by 4%.</p>
<p>Sec. 25.2</p> <p>Recommendation</p>	<p>In keeping with rationale previously addressed, it is determined that the command officer positions should be increased in keeping with the following recommendation.</p> <p>Effective January 1, 2002, Sergeants shall be paid four percent (4% above the top Road Patrol Officer. Effective January 1, 2002, Lieutenants shall be paid four percent (4%) above the pay rate of Sergeant.</p>
<p>Sec. 25.3</p> <p>Recommendation</p>	<p>Focus in adjustments in these recommendations are on basic structure. It is not considered appropriate to recommend additions to the wage schedule at this time.</p> <p>It is not recommended to add shift differential to the Agreement.</p>

<p>Sec. 25.4</p> <p>Recommendation</p>	<p>Focus in adjustments in these recommendations are on basic structure. It is not considered appropriate to recommend additions to the wage schedule at this time.</p> <p>It is not recommended to add a longevity supplement to the Agreement.</p>
<p>Sec. 25.5</p> <p>Recommendation</p>	<p>Focus in adjustments in these recommendations are on basic structure. It is not considered appropriate to recommend additions to the wage schedule at this time.</p> <p>It is not recommended to add provisions addressing extra or special duty pay to the Agreement.</p>
<p>Article 31 Uniforms Sec. 31.1</p> <p>Recommendation</p>	<p>The Union is persuasive regarding its objection to part of the Employer's proposal regarding the Employer's retention of uniforms and equipment upon employment termination.</p> <p>The following shall be added as a second paragraph of this Section: "Upon separation of employment, articles of clothing and equipment purchased by the Employer shall be retained as the property of the Employer except as excluded by the following: Equipment or uniform parts provided by the employee, upon initial employment or replacement of such identified items , shall be retained as the personal property of the employee."</p> <p>The remaining sections of this Article shall remain as found in agreement expiring December 31, 2001, or otherwise tentatively agreed to by the parties.</p>

<p>Article 36</p> <p>Recommendation</p>	<p>This issue is addressed in the MOU between the current Sheriff and OPBA Officers with the heading of “REFERENCE: PART TIME OFFICERS”, and inclusive of 6 sections and reflects the general principals proposed for inclusion in this Article. Upon review, it determined more appropriate to include MOU in the text as agreed to by the parties.</p> <p>It is recommended that the above referred to MOU be included in the Agreement as an Addendum.</p>
<p>Memorandums of Understanding</p> <p>Recommendation</p>	<p>All Memorandums of Understanding have been addressed in previous recommendations that related to the subjects on a case by case basis.</p> <p>No further recommendation is considered necessary or appropriate.</p>

FACT FINDING & RECOMMENDATION

It is recommended that all items of tentative agreement prior to, or at, the Fact-Finding Hearing be included in the Agreement as are the Recommendations included in this Report. This includes the sections and/or subsections of articles containing unresolved sections and/or subsections and subject to the Fact-Finder’s recommendation set forth in the Report.

Where issues in dispute reflect a section or subsection of an article, such recommendation is limited to the express issue identified by the parties as being unresolved.

If not otherwise expressly addressed, modified, or deleted by the parties, or addressed and expressly recommended by the Fact-Finder, such terms of the expiring agreement should be included in the Agreement.

TOTALITY OF AGREEMENT

This will affirm the foregoing report, consisting of **21 pages**, inclusive of this page, and recommendations contained herein, are made in this matter of this Award by the below signed Fact Finder.

All matters presented before the Fact Finder and not specifically addressed were given consideration but are not recommended for inclusion in the Agreement.

If there is found conflict in the Report between the Fact Finder's Discussion and Recommendations, the language in the Recommendation shall prevail.

To the best of my knowledge, said Report and its included recommendations complies with applicable provisions of ORC 4117 and related Rules and Regulations adopted by the State Employment Relations Board.

I therefore affix my signature at the **City of Galion**, in the **County of Crawford**, in the **State of Ohio**, this date of **March 18, 2002**.


John S. Weisheit, Fact Finder

STATE EMPLOYMENT
RELATIONS BOARD

CERTIFICATE OF SERVICE

2002 MAR 19 A 10:22

This will affirm that the Fact finding Report in the Matter of Fact finding between

BETWEEN	
The Ohio Patrolmen's Benevolent Association	CASE NO: 01-MED-10-0958/0959
And the	
Meigs County Sheriff	

was served to the below named parties at the stated addresses

Joseph M. Hegedus, Esq.
Climaco, Lefkowitz, Peca, Wilcox & Garofoli,
Co., L.P.A.
175 S. Third St., Suite 820
Columbus, OH 43215

Benjamin Albrecht, Esq.
Downes, Hurst & Fishel
400 S. Fifth St., Suite 200
Columbus, OH 43215-5492

by Facsimile & U.S. Postal Service mailed, overnight express, on March 18, 2002.

*Copy of this Award was submitted U. S. Postal Service by First Class Mail to Dale Zimmer,
Director, Bureau of Mediation, SERB, 65 E. State St., Columbus, OH 43215-4213, on March,
2002.*

*I affirm, to the best of my knowledge that the foregoing is true and accurate and in keeping
with ORC 4117 and related SERB Rules and Regulations.*


John S. Weisheit, Fact Finder

Date 3-18-04