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STATE EMPLOYMENT
RELATIONS BOARD

2002 SEP 13 A 10: 25

STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

In the Matter of]
Fact-finding Between:]
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MARION COUNTY SHERIFF,]
EMPLOYER]
]
and]
]
]
FRATERNAL ORDER of POLICE,]
OHIO LABOR COUNCIL, INC.]
EMPLOYEE ORGANIZATION]
]
]

SERB Case No. 02-MED-02-0128
SERB Case No. 02-MED-02-0129
SERB Case No. 02-MED-02-0130

Raymond J. Navarre,
Fact-finder

FACT-FINDING REPORT
and
RECOMMENDATIONS

Date of Issuance: September 11, 2002

STATE EMPLOYMENT
RELATIONS BOARD

2002 SEP 13 A 10: 25

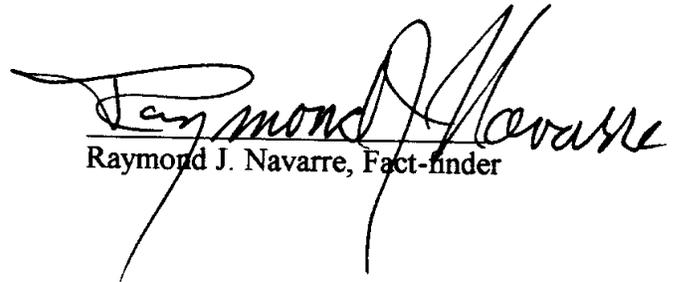
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CERTIFICATE OF SERVICE

Originals of the foregoing Fact-finding Report and Recommendations were served upon Lawrence Deck, Fraternal Order of Police, Ohio Labor Council, Inc., Staff Representative, Main Office, 222 East Town Street, Columbus, Ohio 43215 and upon Jim Slagle, Marion County Prosecuting Attorney, 133 ½ Center Street, Marion, Ohio 43302-3801, and upon Dale A. Zimmer, Administrator, Bureau of Mediation, Ohio State Employment Relations Board, 65 East State St., 12th Floor, Columbus, Ohio 43215-4213, each by United States mail, sufficient postage prepaid, this 11th day of September, 2002.


Raymond J. Navarre, Fact-finder

SERB Case Nos. 02-MED-02-0128, 02-MED-02-0129, 02-MED-02-0130

Date of Hearings: August 27, 2002

Location of Hearing: Marion County Courthouse
Marion, Ohio

Present for the Fact-finding: August 27, 2002
Lawrence Deck, FOP/OLC

Representing the Union:
Monica Gruber
Brian Parish
Rich Hare

Jim Slagle, Marion County Prosecuting Attorney

Representing the Employer:
John H. Butterworth, Marion County Sheriff
Michelle Pearson, Marion County Auditor
Tim Bailey

Note that for purposes of identification in this document, The Marion County Sheriff Department and the representative, Jim Slagle, will be referred to as the Employer and Lawrence Deck, FOP/OLC, Staff, will be referred to as the Union.

The Fact-finding started about 9:00 AM and concluded at approximately 2:30 PM.

BACKGROUND

The Marion County Sheriff's Office is the chief law enforcement agency for the county.

The FOP/OLC and the Marion County Sheriff's office engaged in multi-unit bargaining.

- A. The first bargaining unit is described as a unit of dispatchers and includes approximately 8 employees.
- B. The second bargaining unit is described as a unit of Deputy Sheriffs, including court security officers and clerk/process servers and includes approximately 20 deputies and no clerk/process servers.
- C. The third bargaining unit is described as a unit of Sergeants and includes approximately 4 employees.

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Background (Continued)

SERB certified the three bargaining units on July 22, 1999.

The parties met to negotiate on:

03-15-2002

04-10-2002

04-26-2002

05-10-2002

05-24-2002

A tentative agreement was reached on 05-26-2002 but was rejected by FOP/OLC. Before the fact-finding started, the Parties were asked about mediation but both agreed that there was no possibility, at that time, for mediation.

This matter came for a hearing on August 27, 2002, before Raymond J. Navarre, who had been appointed as Fact-finder in a letter dated May 31, 2002, in compliance with Ohio Revised Code Section 4117.14 (C)(3) and Ohio Administrative Code Section 4117-9-05.

At the beginning of the fact-finding, all present were asked to affirm that what they say would be the whole truth. They so affirmed.

FACT-FINDING CRITERIA

In determining the facts and making the recommendations contained in this document, the Fact-finder considered the applicable criteria as required by the Ohio Revised Code Section 4117.14 and the Ohio Administrative Code Section 4117-9-05. These criteria are:

- (1) Past collectively bargained agreements, if any between the parties;
- (2) Comparison of 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, and 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; and,
- (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.

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FINDING of FACT and RECOMMENDATIONS

The unresolved issues submitted by the Union and the Employer to the Fact-finder will be considered in what follows.

Below, the finding of fact will be presented for each issue, followed by the Fact-finder's recommendation in respect to that issue. When applicable, the recommended language for the Agreement will be given. The Fact-finder's report needs to be considered in its entirety as to the overall effect on the parties and their bargaining positions

UNRESOLVED ISSUES

Unresolved Issue No. 1

Article 23-Wages. Section 23.1

Unresolved Issue No. 2

Article 23-Wages. 23.1 Concerns a fifth pay range for Sergeants.

Unresolved Issue No. 3

Article 24-Health and Liability Insurance. Section 24.2 Premiums

Unresolved Issue No. 4

Article 27-Holidays and Personal Leave. Section 27.2 (H)

Unresolved Issue No. 5

Article 28-Sick Leave/Injury Leave. Section 28.3 Conversion of Sick Leave at Retirement or death

Unresolved Issue No. 6

Article 31-Court Leave. Section 31.4 Compensation

Lastly, the FOP/OLC submits Sections 12.0 (drug Testing) and 28.6 (Sick Leave) as tentatively agreed upon on April 10, 2002. For all other articles not addressed in the report the FOP/OLC proposes current contract language. The Employer agreed with this and both parties asked that it be included in this report. It is so included.

Another issue that both parties agreed upon was that the contract be in force through June 30, 2005.

Also, both parties agreed that any wage increase would take place on January 1, 2003, 2004, and 2005.

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Unresolved Issue No. 1

Article 23 WAGES AND OTHER COMPENSATION Section 23.1

The Employer proposes 2.5% increase across the board. The Union proposes a 3.5% increase effective January 01, 2003; a 3.5% increase January 01, 2004 and a 3.5% increase January 01, 2005.

The Employer has made a 6.0% budget cut for all general fund departments and nearly all other County general fund employees received no wage increase in 2002. The Employer requested the Union forgo its 3.25% increase for 2002. The Union offered to stagger the wage increase but the County Commissioners rejected this. The Union received a 3.25% increase per the contract for 2002.

The Employer offered a number of Exhibits to support its position. One was a Wage Comparison per SERB Data and the SERB Clearinghouse Benchmark Report. The Exhibits covered the present salaries in respect to the average in the state as well as entry level salaries with its rank in the state and top salaries with its rank in the state. All these exhibits placed Union's wages in a competitive position. The Employer noted the Consumer Price Index for the past 12 months at 0.7% as well as the longevity increases.

The Union noted that it accomplished these wages through its negotiations and it needs to retain these positions in the state for retention and recruitment purposes.

The Union presented a number of Exhibits to support its position, the SERB Clearinghouse Wage Increase Report and Calls for Service by the Years. Discussion took place comparing the wages of the City of Marion Police and the County. In Exhibit 3, the Union pointed out that the city's pension pickup of 8 1/2% of the member's earned compensation of the Marion Police, gave another large advantage over the County.

The Union offered some suggestions how the County might reduce some of its costs.

The Employer responded.

Both parties made good arguments and points. However, the members need to receive a wage increase comparable to other county employees.

In view of all of the above and taking into account all the financial aspects of the contract, the Fact-finder recommends the following.

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Unresolved Issue No. 1 (continued)

RECOMMENDATION

After considering the findings of fact above and the statutory criteria, the Fact-Finder's recommendation is that the Collective Bargaining Agreement in Article 23, Section 23.1 the wage increase be as follows.

January 1, 2003 an increase of 3.00% (three percent)

January 1, 2004 an increase of 3.25% (three and one quarter percent)

January 1, 2005 an increase of 3.25% (three and one quarter percent)

Please note that the wage increases should be calculated on the rates contained in the present Collective Bargaining Agreement (1999-2002) in Attachment A.

Unresolved Issue No. 2

Article 23 WAGES AND COMPENSATION Section 23.1

The FOP/OLC proposes a fifth pay range for Sergeants, which is an increase of one percent (1%) over the current fourth pay range, effective January 01, 2003 and one percent (1%) effective January 01, 2004.

The increases will bring the Sergeants to a twelve percent (12%) pay differential between the top pay range for Sergeants and Deputy Sheriffs.

It was noted that much of the discussion above (Unresolved Issue No. 1) also pertains to this issue.

The Union discussed the disparity between the Lieutenants in the City of Marion and the Sergeants in Marion County, as to the rank differential. The city supervisors have a rank differential of 14.25% over the police officer.

Both the Employer and the Union referred back to the discussions involved above concerning the wages.

Both parties presented good considerations in respect to this issue. The Fact-finder feels that with the County's budget concerns, the wage differential needs to be raised but not entirely in one contract.

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Unresolved Issue No. 2 (continued)

RECOMMENDATION

After considering the findings of fact above and the statutory criteria, the Fact-finder's recommendation is that the Collective Bargaining Agreement in Article 23, Section 23.1 provide a one time wage increase for Sergeants of one percent (1%), effective January 01, 2003.

Unresolved Issue No. 3

Article 24 Health and Liability Insurance Section 24.2 Premiums

The Union proposes current contract language. This would require all employees subscribing to the health plan to continue to contribute ten percent (10%) of the premium.

The Employer proposes that the employees contribute to the premium for the health insurance at the same rate as the employees in the other County General Fund departments.

The Employer says that changes in the contract would not diminish the benefits to the Sheriff's employees. The Employer further states that if there are changes in the future to the health insurance, its proposal would allow the Sheriff's employees to be treated the same as other County employees.

The Employer went on to explain future possibilities in regard to the County Health plan as well as details concerning the Insurance Committee. The Employer noted that even though no one wants benefits reduced, it is required that the County balance its budget.

Both parties offered good arguments to support their positions. However, the Fact-finder would make the following recommendation.

RECOMMENDATION

After considering the findings of fact above and the statutory criteria, the Fact-finder's recommendation is that the Collective Bargaining Agreement in Article 24, Section 24.2 remains the same. The current language in Section 24, Section 24.2 of the present Collective Bargaining Agreement remains the same in the new Collective Bargaining Agreement.

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Unresolved Issue No. 4

Article 27 Holidays and Personal Leave Section 27.2 (H)

The Union proposes the following additional language to Section 27. (H): “In addition, when a member actually works on Christmas and Thanksgiving, the member will be paid at one and one half (1 ½) times his or her regular hourly rate of pay for all hours worked on Christmas or Thanksgiving.”

The Union feels the additional compensation is well deserved, as these days are difficult for the members to be separated from their families.

The Employer states that the members are already paid at double times if they actually work these days. The Employer also notes that when employees are hired at the Sheriff’s Office it is explained to them that work is a 24/7 situation as a public safety operation. The Employer added that the proposal would cost the County an additional \$15,000 per year which is roughly equivalent to a one percent (1%) increase in the wage scale. Further, the Employer states that the employees are already on one of the highest pay scales in the state.

Considering the arguments offered by both parties and in view of the other economic recommendations offered for the contract, the Fact-finder makes the following recommendation.

RECOMMENDATION

After considering the findings of fact above and the statutory criteria, the Fact-finder’s recommendation is that the Collective Bargaining Agreement in Article 27, Section 27.2 (H) remains the same. The current language in Section 27, Section 27.2 (H) of the present Collective Bargaining Agreement remains the same in the new Collective Bargaining Agreement.

Unresolved Issue No. 5

Article 28 Sick Leave/Injury Leave Section 28.3 Conversion of Sick Leave at Retirement or Death

The Union proposes the following language: Upon retirement, all employees will be eligible for payment in whichever of the following amounts is greater:

A. Up to twenty-three hundred and forty (2,340) hours of accumulated unused sick leave at twenty-five percent (25%) of the first 960 of accumulated unused sick leave, thirty-three percent (33%) of the next 540 hours of accumulated unused sick leave (hours 961-1500), fifty percent (50%) of the next six hundred (600) hours of accumulated unused sick leave (hours 1500-2100), and one hundred percent (100%) of the next 240 hours of accumulated unused sick leave (hours 2101-2340), of the employees' last, latest rate of pay; or

B. Up to nine hundred sixty (960) hours of the lesser of the employees' accumulated unused sick leave balance at the time of retirement or the employees' accumulated unused sick leave balance as of June 30, 2002, at one hundred percent (100%) of the employees' last, latest rate of pay.

If an employee dies while on active status, the surviving spouse or others as listed in R.C. 2113.04, will be eligible to receive sick leave conversion for which descendent would otherwise have accumulated at the time of death. Such payments shall be based on the rate of pay of the employee at that time and subject to the limits of this section.

The Union states that this proposal allows members an incentive to continue to accumulate sick leave as the more sick leave they accumulate but do not use the better their compensation will be.

The Employer proposes that Section 28.3 be amended so that on retirement or death, the employees would be paid twenty-five percent (25%) of their accumulated and unused leave up to 960 hours.

The arguments offered by the Employer for this position are:

Sick leave is to be used for being sick.

Sick leave was never intended to be a retirement bonus.

The present contract language is a serious budgeting problem.

There is no control over when an employee decides to retire.

There is a significant liability issue involved.

The arguments presented by both parties have merit. The position of the Employer to reduce the percentage for accumulated unused sick leave from 100% to 25% for the 960

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Unresolved Issue No. 5 (continued)

hours is severe. To raise the number of accumulated hours to 2340 with a variety of percentage payouts at various levels of accumulation is also severe.

The Fact-finder would recommend some compromise. The maximum hours of accumulated unused sick leave shall remain at nine hundred and sixty (960) hours. The payout shall be 75% percent of the employee's last, latest rate of pay.

Considering the arguments offered by both parties and in view of the other economic recommendations offered for the contract, the Fact-finder makes the following recommendation.

RECOMMENDATION

After considering the findings of fact above and the statutory criteria, the Fact-finder's recommendation is that the language of the Collective Bargaining Agreement in Article 28, Section 28.3 be as follows.

Section 28.3 Conversion Of Sick Leave At Retirement Or Death Upon retirement, all employees will be eligible for payment for up to nine hundred sixty hours (960) hours at seventy-five percent (75%) of the employee's last, latest rate of pay.

Up to nine hundred and sixty (960) hours of the accumulated unused sick leave balance as of June 30, 2002, shall be paid at one hundred percent (100%) of the employees' last, latest rate of pay at the time of retirement.

If an employee dies while on active status, the surviving spouse or others as listed in R.C. 2113.04, will be eligible to receive sick leave conversion for which descendent would otherwise have accumulated at the time of death. Such payments shall be based on the rate of pay of the employee at that time and subject to the limits of this section.

Unresolved Issue No. 6

Article 31 COURT LEAVE Section 31.4 Compensation

The Union proposes the current language of the agreement. Its arguments are based on present status, inconveniences to the officer.

The Employer has no objection to a three-hour minimum and the time and one half rate but proposes that the officer perform three hours of service to be paid.

The Fact-finder sees no reason for a change in the agreement as to this issue.

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Unresolved Issue No. 6 (continued)

Considering the arguments offered by both parties and in view of the other economic recommendations offered for the contract, the Fact-finder makes the following recommendation.

RECOMMENDATION

After considering the findings of fact above and the statutory criteria, the Fact-finder's recommendation is that the language of the Collective Bargaining Agreement in Article 31, Section 31.4 remains the same as the language of the current contract.

NOTE

Both the Union and Employer asked that the following be noted and included as part of the contract; Sections 12.0 (Drug Testing) and Section 28.6 (Sick Leave), which were tentatively agreed on April 10, 2002. Also, for all articles not addressed in the report to the Fact-finder, the current contract language be retained.


Raymond J. Navarre, Fact-finder
Dated 9/11/02