

STATE EMPLOYMENT
RELATIONS BOARD

2003 MAY 15 A 10:28

IN THE MATTER OF THE FACTFINDING

BETWEEN

BELMONT COUNTY SHERIFF

AND

**FRATERNAL ORDER OF POLICE,
OHIO LABOR COUNCIL, INC.
(Deputies)**

SERB NO. 02-MED-08-0716

SERB NO. 02-MED-08-0717

CHRISTOPHER E. MILES, ESQUIRE
Fact Finder

Michael Kinter, Employer Representative
Representing the County

Pat Daugherty, Senior Staff Representative
Representing the Union

BACKGROUND

This case involves the fact finding proceedings between Belmont County, Ohio [the Belmont County Sheriff's Department] (hereinafter referred to as the "County") and the Fraternal Order of Police, Ohio Labor Council, Inc. (hereinafter referred to as the "Union"). The undersigned, Christopher E. Miles, Esquire, was appointed as the Fact Finder in this matter through the offices of the State Employment Relations Board (SERB). The parties entered into an extension agreement for the fact finding process.

The fact finding proceedings were conducted pursuant to the Ohio Collective Bargaining Law and the rules and regulations of SERB, as amended. The County and the Union engaged in the collective bargaining process for a period of time prior to the appointment of a Fact Finder and additional negotiations were conducted by the parties after the Fact Finder was appointed. During their negotiations, the parties were able to resolve several provisions for the new collective bargaining agreement. In addition, prior to the fact finding proceedings, the Fact Finder offered to attempt mediation of any of the unresolved issues and the parties agreed; however, mediation efforts were unsuccessful. After mediation, the following issues remained unresolved:

- Article 2 - Union Recognition
- Article 14 - Vacancy and Promotions
- Article 16 - Leaves and Leaves of Absence
- Article 19 - Overtime/Compensatory Time
- Article 22 - Training
- Article 23 - Vacations
- Article 25 - Health and Safety
- Article 28 - Hospitalization and Major Medical
- Article 29 - Wages

- New Article - Injury Leave.

The items which were resolved by the parties as tentative agreements during negotiations prior to the fact finding hearing are hereby incorporated in this fact finding report. After mediation on April 21, 2003, the parties presented their positions concerning the unresolved issues set forth above. The hearing was conducted at the Sheriff's Office located in St. Clairsville, Ohio and the County was represented by Mr. Michael Kinter and the Union was represented by Mr. Pat Daugherty, Senior Staff Representative.

FINDINGS AND RECOMMENDATIONS

After consideration and a thorough review of the information and documentation supplied by the parties, as well as their presentations and positions, the Fact Finder makes the following recommendations for the issues which remained at impasse:

ISSUE 1: **ARTICLE 2 - UNION RECOGNITION**

The Union is proposing to delete the classification of Deputy Jailers listed in Unit "A" in Section 2 of Article 2. The list of full time employees set forth in Section 2 under Unit "A" is as follows:

- Deputy Office
- Deputy Dispatchers
- Deputy Matrons (Cook)
- Deputy Jailers
- Deputies

According to the County, there are two different classifications of "Jail Deputies" and "Road Deputies" which have different duties and require different certifications. The Road Deputies are not trained in jail policies and procedures and visa versa. The County submits that to consider these as one and the same poses a potential safety problem if employees are permitted to jump back and forth between the two positions.

RECOMMENDATION

Based upon the record which was developed in this case, the Fact Finder recommends that the full time employees identified in Unit "A" in Section 2 of Article 2 as "Deputy Jailers" be deleted. This leaves the classification of "Deputies". Contrary to the County's position, there is no group identified as "Road Deputies" and in my opinion this is a distinction that is apparently handled by job assignments and job bids which will continue to be the case. In addition, the Road Deputies and Deputy Jailers are paid the same and are covered under the same job description.

ISSUE 2: **ARTICLE 14 - VACANCY AND PROMOTIONS**

Section 2. The Union is proposing to strike certain language in Article 14, Section 2, of the current agreement regarding non-departmental applicants. The Union contends that the existing language provides an opportunity for the County to promote to a higher classification from an applicant outside of the department. However, it maintains that the intent of a

promotion is to allow an opportunity for the employee to upgrade his position with the department. The County counters that the current language has worked. It submits that there are occasions where no one may want to take a promotional examination or they don't pass an exam. It feels that it is unfair to other employees and the citizens of Belmont County to award promotional positions to an applicant may achieve the "highest failing score".

RECOMMENDATION

The Fact Finder recommends that no change in the language of Section 2, Article 14, be made for the new agreement. The language in dispute is only applicable if there are fewer than two applicants for a particular position and the current language in Section 2 also requires a minimum of five years of full time law enforcement experience for non-department applicants.

Section 8. In Section 8 of Article 14, the Union wishes to strike language allowing temporary appointment to be extended more than 45 days with the agreement of both Union and Management. The County's position is to leave the language as it is.

RECOMMENDATION

The Fact Finder recommends that no change be made to the current language of Section 8 of Article 14. The current language still gives the Union the right to "not" extend a temporary appointment, however, it allows the flexibility of an extension if both parties agree. Thus, in essence, the Union can limit the extension as the current language exists.

New Section 9. The Union has proposed new language calling for promotional tests to be given before an active eligibility list expires. The County does not agree to this additional language.

RECOMMENDATION

The Fact Finder recommends that this new language not be added to the new Agreement. It is pointed out that the County has agreed in Section 2, B., of Article 14 to extend the period that a test will be valid from one to two years from the date of posting.

ISSUE 3: **ARTICLE 16 - LEAVES AND LEAVES OF ABSENCE**

In Section 2.C. of Article 16, the Union is proposing that the current language allowing for three personal days which is deducted from an employee's sick leave be changed so that the three personal days are separate and apart from the sick leave balance. The County contends that in essence this would result in three additional paid days off for the employees.

RECOMMENDATION

After review and consideration of the parties' position in this matter, the Fact Finder recommends that full time employees be entitled to two personal paid days off which shall not be deducted from an employee's previously earned sick leave. Accordingly, the language in Section 2.C., of Article 16 shall read as follows:

C. Personal Leave

Each employee, after one (1) year of full-time employment, shall be entitled to two (2) days of paid personal leave per payroll year. Each request for personal leave shall, whenever possible, be made at least one (1) day in advance of its intended day of usage (emergency considerations will be given). Personal leave is non-accumulative and must be used each year of the Labor Agreement.

ISSUE 4: **ARTICLE 19 - OVERTIME/COMPENSATORY TIME**

The Union seeks to change language in Section 3 from "the Employer will make a concerted effort to equally distribute overtime opportunities" to "the Employer shall equally distribute overtime opportunities." The County opposes this change to the language and views it as too restrictive and disregards the situations in which equal distribution of overtime may not be possible.

RECOMMENDATION

The Fact Finder recommends that no change be made in Section 3 of Article 19. The language currently requires the County to make a concerted effort to equally distribute overtime opportunities. As noted by the County, if a discrepancy in overtime becomes too unequal, the Union could resort to the grievance procedure in the event there is an allegation the Employer's failure to follow this current language.

ISSUE 5: **ARTICLE 22 - TRAINING**

Section 1. The Union proposed a change of the word “may” to “shall” in Section 1 of Article 22 regarding the offering of 40 hours of training per calendar year. The Union believes that all the employees should have an opportunity to advance their skills. On the other hand, the County suggests that to change the word “may” to “shall” removes its right to direct the work force.

RECOMMENDATION

The Fact Finder recommends that the current language be retained in the new Agreement for Section 1, Article 22. It is noted that the training for employees is not mandatory and the current language allows for the Managerial discretion concerning the amount and necessity for training.

Section 3. The Union has proposed language in Section 3 of Article 22 which would allow for employees participating in the Special Operations Branch to receive additional ammunition for training. The County position is that employees involved in the Special Operations Branch do so on a voluntary basis and the specification of a specific amount of ammunition is not appropriation.

RECOMMENDATION

The Fact Finder recommends that in addition to the language set forth in Section 3 of Article 22 that an allowance also be made for additional ammunition for those employees in training for the Special Operations Branch. The language shall read as follows:

Section 3. Certified bargaining unit employees shall be provided with fifty (50) rounds of ammunition per month for training purposes. The Special Operations Branch Officers shall receive fifty (50) rounds of ammunition for each weapon used by the members of the SOB.

Section 4. The Union has proposed language in Section 4 of Article 22 which would provide and pay for training of employees who do not work in the jail to maintain their qualifications in order to work in the jail. The County asserts that this requirement to pay for training would be cost prohibitive and could be demanded by employees who might want to work in the jail.

RECOMMENDATION

After review of the record and the parties' position, the Fact Finder recommends that no change of the language of Section 4 be made for the new Agreement. The main thrust of the Union's argument with regard to this section is that more overtime occurs in the jail and some Patrol Officers may want to be certified to work in the jail for overtime opportunities. However, to mandate the County to pay for such training is not recommended at this time because it is not clear as to whether the County would receive a benefit from this. The Patrol Officers can be certified through training to work in the jail at their cost and then receive the benefit of additional overtime opportunities in return.

ISSUE 6: **ARTICLE 23 - VACATIONS**

The Union is proposing an increase in vacation accrual set forth in Section 1 of Article 23. The Union seeks to upgrade the time limits to benefit the employees and cites a memo which provided increased vacation time for non-bargaining unit employees. The County opposes any increase to the vacation benefit as it would represent a major economic impact.

RECOMMENDATION

Based upon the record developed in this matter, a change in the language of Section 1, Article 23 is not recommended at this time by the Fact Finder. The record reveals that the increased vacation for non-bargaining unit employees was due to the fact that they no longer earn compensatory time or overtime.

ISSUE 7: **ARTICLE 25 - HEALTH AND SAFETY**

Section 4. The Union is seeking to have additional language set forth in Section 4 of Article 25 concerning allegations of safety issues to be investigated by the Labor Management Committee.

RECOMMENDATION

The Fact Finder recommends that the additional language sought by the Union for Section 4 be added. The section shall read as follows:

Section 4. The Labor Management Committee shall investigate and make recommendations to the Employer regarding the disposition of high mileage vehicles, and any allegation of a safety issue described in this Article.

Section 6. The County currently replaces ammunition for certified employees in order for employees to qualify for their certification. The Union seeks to include those employees in the Special Operations Branch with regard to this ammunition replenishment. The County's position is that this again is a voluntary group and should not be added to this section.

RECOMMENDATION

The Fact Finder does not recommend that the employees in the Special Operations Branch be included in Section 6 of Article 25. An allowance was recommended for additional ammunition for employees participating in the Special Operations Branch as set forth above in Section 3 of Article 22.

Section 7. The Union seeks new language in Section 7 of Article 25. It proposes the replacement of the words "will made every reasonable effort to" to "shall" in the prefatory sentence of Section 7. The Union also seeks language which would specify employment levels for Road Deputies and Jail Deputies. The County's position is that these changes are not necessary and contends that it impinges upon Management's rights to schedule and direct the work force.

RECOMMENDATION

After review of the positions of the parties, the Fact Finder recommends that no change or additional language be added to Section 7 of Article 25. It is my considered opinion that such language would set forth certain staffing requirements for the County which it has not agreed to and would be contrary to its Management discretion concerning scheduling of the work force and staffing levels.

ISSUE 8: **ARTICLE 28 - HOSPITALIZATION AND MAJOR MEDICAL**

The Union seeks in Section 3 of Article 28 to have a cap placed upon the amount that employee's shall pay for their insurance premiums of no more than \$88.00 per month. The County is opposed to such language being added to the Agreement.

RECOMMENDATION

The Fact Finder recommends that the Union's proposal be added to the new Agreement. Section 3 of Article 28 shall read as follows:

Section 3. All employees shall pay, through payroll deduction, ten

percent (10%) of their insurance premiums during the life of this Agreement; provided however that a cap of no more than \$88.00 per month be paid by an employee for the life of this Agreement.

The Fact Finder recommends such change in conjunction with the recommended wage increases set forth in Article 29 below. In exchange for a cap on the amount that each employee contributes for insurance premiums, a lower increase in wages is recommended for the second and third years that what was proposed by the Union. In addition, currently the employees pay from \$68 to \$86 per month for their health and prescription coverage. The County pays for the vision, dental, and life insurance. The Fact Finder recommends that the cap of \$88 be added for the life of the new Agreement.

Section 5. The Union seeks an increase in the amount of life insurance currently provided in Section 5 of Article 28. The County is opposed to an increase at this time. The Union also seeks life insurance coverage for employees who retire from the Belmont County Sheriff's department.

RECOMMENDATION

The Fact Finder recommends that an increase in life insurance and accidental death and dismemberment coverage be increased from \$15,000 to \$25,000 for each eligible full time employee. The Fact Finder does not recommend that life insurance coverage be added for retirees. The language in Section 5 of Article 28 which is recommended by the Fact Finder shall read as follows:

Section 5. Belmont County provides all eligible full time employees under the age of 65, life insurance protection of \$25,000.00. Also, accidental death and dismemberment (AD&D) coverage of \$25,000.00, is provided.

ISSUE 9: ARTICLE 29 - WAGES

The Union has proposed a four percent (4%) wage increase for each year of the new Agreement. It has also requested an increase in the longevity supplement for each year of the new Agreement equal to five cents (\$.05) per hour for the first year; six cents (\$.06) per hour for the second year; and seven cents (\$.07) per hour for the third year in Section 2 of Article 29. The County's counterproposal for wages was two and one-half percent (2.5%) for the first year; three percent (3%) for the second year; and three and one-half percent (3.5%) for the

third year with a sliding scale longevity payment of three cents (\$.03) for years five through nine, five cents (\$.05) for years ten through 20, and seven cents (\$.07) for each year 21 through 25.

RECOMMENDATION

After review of the record and the parties' contentions in this regard, the Fact Finder recommends that wages be increased four percent (4%) for the first year, three and one-half percent (3.5%) for the second year, and three and one-half percent (3.5%) for the third year. This recommendation is made in consideration of the cap on health insurance contributions which was set forth in Article 28 above. With regard to the longevity supplement in Section 2 of Article 29, the Fact Finder recommends that the County's proposal of the sliding scale for the longevity supplement be added to the new Agreement in Section 2 of Article 29.

ISSUE 10: NEW ARTICLE - INJURY LEAVE

The Union proposes new language to be set forth in the Agreement concerning injury leave. It maintains that should an officer become seriously injured and is required to be off work for an extended leave period, it feels that the time provided for this absence should be covered by the Employer and at no expense to the Officer. The County is opposed to the addition of this new language.

RECOMMENDATION

After review and consideration of the Union's proposal in this regard, the Fact Finder recommends that the language be added to the new Agreement. It appears that the Employer would receive a waiver from the employee concerning a reimbursement agreement for workers compensation. Therefore, the total cost would not be covered by the Employer, as such. In addition, the comparables provided by the Union indicate that coverage for injury leave ranges from 30 days to 480 days. Therefore, it is recommended that the 120 days proposed by the Union is not unreasonable. The new Article recommended for the Agreement is set forth as follows:

NEW ARTICLE
INJURY LEAVE

Section 1. In the event of an occupational injury incurred as a direct result of performing an assigned or sworn function within the scope of the employee's authority, said employee shall be entitled to up to, but not more than one hundred twenty (120) work days of injury leave.

Section 2. To apply for and/or receive any benefits under this article, the employee shall first make application for workers' compensation benefits and complete a "reimbursement agreement" (attached to this agreement as an exhibit).

Written application shall then be made to the Employer or his designee accompanied by the "reimbursement agreement" and a certificate from a licensed physician stating that the employee is unable to work, and that such disability is the result of the duties of the employee.

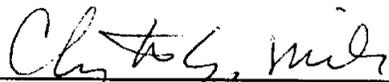
Section 3. Upon receipt and approval of the employee application, the Employer shall place the employee on injury leave, retroactive to the first day the employee was unable to report to work as the result of the injury.

- A. When workers' compensation begins making payments, the employee shall submit payments received to the Employer. The Employer shall credit the employee's sick time utilized while the claim was pending with the Bureau of Workers' compensation within thirty (30) days of receipt of payment.
- B. Once, however, an employee has been determined as partially or totally disabled by the workers' compensation department, or after approved injury leave has been concluded and reimbursement made for all hours permitted, all payments received thereafter shall be retained by the employee.

Section 4. There shall be no deduction of sick leave from the employee unless the request for workers' compensation benefits are disallowed, and such deduction shall be for all time off taken for any claim of injury under Section 25.2.

CONCLUSION

In conclusion, the Fact Finder submits the Findings and Recommendations as set forth herein.



Christopher E. Miles, Esquire
Fact Finder

May 13, 2003

CHRISTOPHER E. MILES, ESQUIRE

Labor Arbitrator
330 East Beau Street
Washington, Pennsylvania 15301
(724) 228-1138
email: cemiles@pulsenet.com

STATE EMPLOYMENT
RELATIONS BOARD

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May 13, 2003

Mr. Michael Kinter, Employer Representative
Belmont County Sheriff
310 Fox Shannon Place
St. Clairsville, OH 43950

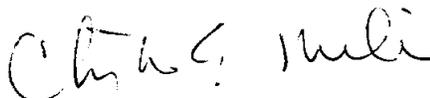
Mr. Pat Daugherty, Sr. Staff Representative
Fraternal Order of Police
2721 Manchester Road
Akron, OH 44319-1020

Re: SERB Nos. 02-MED-08-0716 and 02-MED-08-0717
Belmont County Sheriff and F.O.P., Ohio Labor Council, Inc. (Deputies)

Gentlemen:

Please find enclosed the Fact Finding Report for the above referenced case along with my invoice for the same. In accordance with Ohio Administrative Code Rule 4117-9-05(M) and (N), the parties must conduct an election to accept or reject the report within seven (7) days of its issuance. Failure to meet the time lines of conducting or reporting the vote will result in the fact finder's recommendations being deemed accepted.

Very truly yours,



Christopher E. Miles, Esquire
Fact Finder

CEM:abr
Enclosure

cc: Dale A. Zimmer, Administrator, Bureau of Mediation
Belmont County Commissioners
Fraternal Order of Police, Columbus, Ohio



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CHRISTOPHER E. MILES, ESQUIRE
LABOR ARBITRATOR
330 EAST BEAU STREET
WASHINGTON, PENNSYLVANIA 15301

To:

DALE A ZIMMER ADMINISTRATOR
STATE EMPLOYMENT RELATIONS BOARD
65 EAST STATE STREET 12TH FLOOR
COLUMBUS OH 43215-4213