

**IN THE MATTER
OF
INTEREST ARBITRATION
FACT FINDING
AWARD**

STATE EMPLOYMENT
RELATIONS BOARD

2003 FEB 25 A 10: 33

BETWEEN FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL, INC. And the MORROW COUNTY SHERIFF'S OFFICE	CASE NO: SERB 02-MED-10-1098 02-MED-10-1099 FACT FINDER: JOHN S. WEISHEIT HEARING DATE(S): Jan. 22, 2003 AWARD ISSUED: Feb. 24, 2003
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**REPRESENTATION
by**

<u>Employer Representatives</u>	<u>Union Representatives</u>
Jeff Appel, Esq. Counsel for the Employer Steven Brenneman, Chief Deputy Olan D. Jackson, Co. Comm. Jean McClintock	Frank Arnold, FOP, OLC Staff Rep. Troy Landon Sara Fulk Debbie Nelson Penni Edwards Bill Christins

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 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 **Morrow County Sheriff's Office**, hereinafter called the "**Employer**" and/or the "**Sheriff**", recognizes the **Fraternal Order of Police, OLC, Inc.**, hereinafter called the "**Union**" and/or "**FOP**", for all full-time **Sergeants, Lieutenants, Deputy Road Patrol, Deputy Dispatcher and Deputy Correction Officers** employed by the Employer. The above named parties engaged in bargaining for a successor Agreement to the one expiring **January 31, 2003**. In the course of good faith bargaining, several issues were resolved in tentative agreement. Some issues remained unresolved and this Fact Finder was called upon as provided in ORC 4117. The Fact Finding period has been extended by the parties until **February 28, 2003**.

The Fact Finding Hearing was convened on **January 22, 2003, at the 911 Communication Center, Mt. Gilead, Ohio**. The parties timely submitted pre-hearing briefs and presented additional testimony and documentation at the Hearing. The Hearing was adjourned after the parties had indicated they had nothing additional to submit on behalf of their bargaining position and acknowledged that they had sufficient opportunity to present such facts and documentation to support their respective positions.

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 the Hearing and in keeping with statutory consideration cited above.

ISSUES OF TENTATIVE AGREEMENT

The following issues were resolved in negotiations and tentatively agreed to:

Article	Title	Article	Title
1	Preamble/Purpose	19	Work Rules
2	Labor Council Recognition	20	Substance Testing & Abuse
3	Union Dues Deduction	21	Wages*
4	Nondiscrimination	22	PERS Pickup
5	Labor Council Representation	23	Vacation
6	Bulletin Boards	24	Holidays
7	Management Rights	25	Sick Leave
8	Grievance Procedure	26	Sick Leave Conversion
9	Labor/Management Meetings	27	Uniform Allowance
10	Corrective Action	28	Training Expenses
11	Personnel Files	29	Insurance*
12	Probationary Period	30	Liability Protection
13	Seniority	31	Leaves of Absence
14	Vacancy & Promotions*	32	Health & Safety*
15	Layoff & Recall	33	No Strike/No Lockout
16	Hours of Work & Overtime*	34	Severability
17	Days-Off Assignments	35	Waiver in Case of Emergency
18	Shift Assignments	36	Duration
19	Work Rules		Signature Page
			Letter of Understanding

***TA'd except for provisions cited in the following section:**

ISSUES AT IMPASSE

The following Articles were at impasse at time of the Fact Finding Hearing. Such impasse is limited to the express provisions noted with all other terms of the Article tentatively agreed to.

Article	Issue(s) at Impasse
14 - Vacancy & Promotions	14.1, 14.2, 14.3, 14.4, 14.6 Posting time limits. Criteria used in filling entry level position. definition of entry level position. Promotion criteria .
16 - Hours of Work & Overtime	16.5 Extra duty pay rate.
21 - Wages	21.1 21.1F Rate of pay for duration of contract. Longevity pay
29 - Insurance	Employee contribution rate. Life insurance, face value amount.
32 - Health & Safety	Minimum staffing level.

SUMMARY PARTY POSITION

ISSUES AT IMPASSE

The following issues remain unresolved at Fact Finding.

Employer	Issue	Union
<p>14.1 Vacancies Change notification period from 5 to 7 days. Delete language regarding procedure to fill vacancies in entry level positions by outside applicants.</p> <p>14.2 Replacement language addressing the consideration used when filling entry level positions in line with proposed changes in 14.1.</p> <p>14.3 Promotions Refer proposed changes to the L-M meetings</p>	<p>Article 14 Vacancy & Promotion</p>	<p>14.1 Maintain current language.</p> <p>14.2 Maintain current language.</p> <p>14.3 Maintain current language.</p>
<p>16.5 Maintain current language.</p>	<p>Article 16 Hours of Work & Overtime</p>	<p>16.5 Increase special duty pay rates by \$1.00/hr.</p>
<p>21.1 Increase rate of pay for all classifications by 0% 2003; 3%-2004; and 3% 2005</p>	<p>Article 21 Wages</p>	<p>21. Increase rate of pay for all classifications by 6% 2003; 5%-2004; and 5% 2005</p>
<p>Maintain current language.</p>	<p>Article 32 Health & Safety</p>	<p>Increase minimum staffing level.</p>

Employer	Issue	Union
<p>29. 2</p> <p>Set Employer contribution rate at 80% for all plans.</p> <p>End current practice of capping bargaining unit contribution “caps”.</p> <p>Retain current value of life insurance.</p>	<p>Article 29</p> <p>Insurance</p>	<p>Propose bargaining unit members pay 10% contribution rate for all plans.</p> <p>Increase life insurance benefit to \$10,000.</p>

DISCUSSION & DETERMINATION

General

The economic issues at impasse are first considered collectively. Economic impact was reviewed in context of cost estimates of the issues at impasse. Recommendations are made issue by issue. The Fact Finder has used generally accepted standards applied in making a finding and recommendation in interest rights matters in this instant situation.

Reducing services, staff cuts, and reducing staff benefits is not the only way available to the Employer to demonstrate fiscal responsibility while providing adequate services to the public. The Employer has options to raise additional local funds by action of the governing board, the County Commissioners. Though not the most desirable options, they remain alternative means in providing staffing levels to adequately render necessary safety services to the public. It is rare that the public will ask for an increase in taxes or the instituting additional direct fees for services of any public governmental agency. However such public opinion or action is an unknown quantity until after it is openly and meaningfully addressed with full and honest disclosure of possible alternatives will result if funding levels are not restored. No concerted effort to explore such option was introduced in the Hearing that such initiative had been introduced to the public nor was there any evidence of the intent to do so. If there is no local self-help initiative in this matter in the foreseeable future, it is most likely erosion of safety services will occur.

The bargaining unit members must recognize, in this time of general economic hardship, that a “business as usual” wage and benefit bargaining atmosphere is on hold due to the economic reality of the times. In the collective bargaining forum, both sides must temper bargaining postures for the good of the residents as well as the safety and well being of the employees.

The Employer, in a like manner, needs to seek extraordinary means to sustain vital services to the citizens and businesses of the County. The record does not reflect such action has occurred to date.

Ability to Pay

There is no challenge to the Employer's argument that its services have been greatly reduced and continues to decline from State funds for local service operations. Again, it is noted that no local effort to increase operating funds has been mentioned or attempted during at present.

Review of Facts

The realities of the general economy, in this situation, is seen as a two-way street. The issues at impasse are interrelated and, for the most part, economically driven.

Time is also a significant factor in this matter. The economic trends causing the current condition did not occur overnight nor will they likely improve in the near future. Alternatives must be explored. The ultimate right of the Employer determines the manner and amount in which services and staffing are provided for the citizenry of the County. The Fact Finder is without authority to impose directives on such rights reserved to the Employer. In the collective bargaining forum a union is limited to make demands for wages, hours, terms and conditions of employment. It is without the bargaining authority to demand how or from where the employer attains the funds necessary to provide the appropriate benefits and employment terms.

The discussion in this section sets forth these points for party consideration and resolution of the issues remaining unresolved as well as major issues considered by this Fact Finder in rendering the following findings and determinations.

Fact Finder's Determination

Issue by Issue

Issue	Discussion/Determination												
<p>Article 14 Vacancy & Promotion</p> <p>Determination</p>	<p>The disputed issues in this Article can be readily addressed by the parties in Labor-Management Meetings to attain consensus. This exercise is considered most appropriate prior to seeking a neutral party's intervention to attain change.</p> <p>It is determined and recommended that Article 14 should be included in the Agreement as written in the expiring agreement.</p>												
<p>Article 16 Hours of Work & Overtime</p> <p>Determination</p>	<p>The only issue in dispute in this Article is the matter of the rate of special duty pay. The proposed rate increase is not a cost factor to the Employer. Funds for these services are on a fee basis payment from contracting parties. The determination and recommendation is made with consideration of all other economic issues addressed in this Award.</p> <p>It is determined and recommended that Article 16 should be included in the Agreement as written in the expiring agreement with Section 16.5 reflecting the following change for the rate of special duty pay:</p> <table style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th></th> <th style="text-align: center;">2003*</th> <th style="text-align: center;">2004**</th> <th style="text-align: center;">2005**</th> </tr> </thead> <tbody> <tr> <td>For Profit Organizations</td> <td style="text-align: center;">\$20.00</td> <td style="text-align: center;">\$21.00</td> <td style="text-align: center;">\$22.00</td> </tr> <tr> <td>Not For Profit Organizations</td> <td style="text-align: center;">16.00</td> <td style="text-align: center;">17.00</td> <td style="text-align: center;">18.00</td> </tr> </tbody> </table> <p>* As of the effective date of this Agreement. ** Effective January 1, 2004 *** Effective January 1, 2005</p>		2003*	2004**	2005**	For Profit Organizations	\$20.00	\$21.00	\$22.00	Not For Profit Organizations	16.00	17.00	18.00
	2003*	2004**	2005**										
For Profit Organizations	\$20.00	\$21.00	\$22.00										
Not For Profit Organizations	16.00	17.00	18.00										

<p>Article 21 Wages</p> <p>Determination</p>	<p>Recognizing the economic atmosphere previously discussed, the following recommendation is made as part of total consideration of other economic matters being addressed in this Report.</p> <p>It is determined and recommended that Article 21 should be included in the Agreement as written in the expiring agreement, including the following change in Section 21.1:</p> <p>Effective January 1, 2003, the wage schedule in effect for 2002, will remain without change.</p> <p>Effective January 1, 2004, the wage schedule in effect for 2003, will be increased by 3%.</p> <p>Effective January 1, 2005, the wage schedule in effect for 2004, will be increased by 3.5%.</p>
<p>Article 29 Insurance</p> <p>Determination</p>	<p>It is considered inappropriate to selectively impose terms of employment on members of a bargaining unit. Bargaining unit employees contractually agree to certain collective terms for considerations and concessions attained in the course of the bargaining process for a stipulated period of time. Non bargaining unit employees have not engaged in such process.</p> <p>Pattern bargaining, used by employers and unions alike, may seek to attain like benefits or terms of employment are not automatic. Such agreements require consideration of the totality of issues given consideration in the bargaining process at a given time. The recommendation that follows is made after taking into consideration the totality of issues before the Fact Finder at this time.</p> <p>The current life insurance benefit is found considerably behind the times; however, recognizing the economic conditions of the time, it is considered inappropriate for recommending any increase at this time.</p> <p>It is determined and recommended that Article 29 should be included in the Agreement as written in the expiring agreement with the following change in Section 29.2:</p> <p>As of the effective date of this Agreement, the Employer will pay eighty-five percent (85%) of the monthly premium for single, double, or family coverage for a medical program that equals or is greater than the PHP plan currently provided members of the bargaining unit.</p>

Article 32 Level	Current minimum staffing language clearly reserves the context of the issue to management. It addresses the issue of the numbers as goals, not minimums. It is not recommended at this time to include any language that reflects misleading intents. Further, an increase in actual staffing of shifts would incur additional cost. This is would be contrary to the findings of the current economic conditions.
Determination	It is determined and recommended that Article 32 should be included in the Agreement as written in the expiring agreement.

TOTALITY OF AGREEMENT

- It is recommended that all items of tentative agreement prior to Fact Finding be included in the Agreement. If not otherwise agreed to by the parties, it is recommended all provisions of the expiring agreement be included in the Agreement as stated in the expiring agreement, unless recommended otherwise by the Fact Finder in the Award.

- This will affirm the foregoing report, consisting of **13 pages**, includes the findings and recommendations set forth in this Award by the below signed Fact Finder.

- * Any matter presented before the Fact Finder and not specifically addressed in this Determination and Award 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 **February 24, 2003**.

A handwritten signature in cursive script, reading "John S. Weisheit", written over a horizontal line.

John S. Weisheit, Fact Finder