

FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
June 13, 2003

STATE EMPLOYMENT
RELATIONS BOARD
2003 JUN 16 A 10:18

In the Matter of:

Clermont County, Ohio Sheriff
and

02
02-MED-12-1249

Fraternal Order of Police, Ohio
Labor Council, Inc. -
Corrections Officers

REPORT AND RECOMMENDATIONS OF FACT-FINDER
TOBIE BRAVERMAN

APPEARANCES

For the Employer:

Paul R. Berninger, Attorney
Jim Malloni, Chief
Administrative Officer
David Spinney, County
Administrator
Chris Willis, Chief Dputy

For the Union:

Thomas J. Fehr, Staff
Representative
James Murphy, Union
Representative
Timothy C. Roc, Union
Representative
Michael Hatter, Union
Representative

INTRODUCTION

The undersigned was appointed by SERB by letter dated January 29, 2003, to serve as Fact-Finder in the matter of the Clermont County Sheriff (hereinafter referred to as "Employer") and FOP, Ohio Labor Council, Corrections Officers (hereinafter referred to as "Union") pursuant to OAC 4117-9-5(D). The parties agreed to extend the deadline for the Fact Finder's Report until June 13, 2003. Hearing was held at Batavia, Ohio on May 28, 2003. The Union was represented by Thomas J. Fehr, Staff Representative, and the City was represented by Paul R. Berninger, Attorney.

FACTUAL BACKGROUND

Clermont County is located in Southwest, Ohio with a population of 177,977. The County employs approximately 1,200 full time employees. Among the full time employees, there are four separate bargaining units. Those include: supervisors and deputies, represented by FOP; communications center, represented by FOP; corrections officers; represented by FOP; and job and family services, represented by AFSCME. The corrections officers bargaining unit consists of 84 employees, and currently has approximately 10 openings to be filled. The Collective Bargaining Agreement between the parties expired on March 2, 2003. After a number of negotiation sessions, the parties submitted their remaining disputed bargaining issues to fact finding. All

tentative agreements made between the parties are deemed to have been incorporated herein and are adopted as part of the parties' final agreement.¹

The unresolved issues are as follows:

Article 3 - Fair Share Fees

Article 14 - Wages

Article 15 - Insurance

Article 18 - Sick Leave

Article 37 - Duration

ISSUES

ARTICLE 3 - FAIR SHARE FEES

Union Position: The Union proposes the inclusion a provision for the requirement of payment of fair share fees by those members of the bargaining unit who choose not to become members of the Union. These individuals, of course receive all of the same contractual benefits as members and must be represented by the Union. They should therefore pay their fair share in the form of a fair share fee. Further the comparable bargaining units utilized by the Union overwhelmingly include a fair share fee.

Employer Position: The Employer argues that none of the

¹ The following Articles are agreed upon with current contractual language: 1, 2, 4, 6, 10, 11, 12, 13, 16, 17, 19, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32 and 35. The parties have reached tentative agreement on the following Articles: 7, 8, 9, 18, 20, 21, 23, 33, 34 and 36.

collective bargaining agreements with any of its four bargaining units includes a fair share fee provision. Although the Employer has a long history of collective bargaining, it has long opposed the infringement on constitutional rights which is inherent in a fair share provision.

Discussion: The arguments for and against fair share fees are ones which present long standing and deep seated philosophical and practical concerns on the part of Unions and Public Employers. On the one hand is the Union's desire to collect fees from all of those who receive the benefits of its representation and who it is obligated to represent. Juxtaposed against this, is the Employer's strongly held beliefs that public employees should not be required to pay fees to the Union as a condition of public employment. These two points of view can never be satisfactorily reconciled.

In this case, the Fact-Finder is required to look to a number of factors in making a recommendation, including comparable bargaining units as well as to the collective bargaining history of the parties. While, as the Union notes, many comparable bargaining units across the State of Ohio do include fair share language, the long standing record of collective bargaining agreements between this Employer and its four bargaining units excludes the language. None of those agreements contains the language proposed by the Union, and its inclusion would constitute a significant departure from the historic exclusion of the fair share requirement.

Recommendation:

Current Language.

ARTICLE 14 - WAGES

Union Position: The Union has proposed wage increases in the amount of 6% in each year of a three year Agreement. This increase is warranted since the health insurance premium increases which the employees have been required to bear have substantially eroded past wage increases. The County is by no means financially insolvent, and in fact received 4.2 million dollars from the Anthem stock conversion. This windfall should be shared, at least in part, with the County's employees. The data submitted for comparable counties indicates an average wage increase of 3.5%.

Employer Position: The Employer proposes a 1.5% wage increase. It points out that while the Employer is not insolvent, its revenues have declined in the last year. Sales tax receipts are down, and it is likely that the County will receive decreased revenues from the State of Ohio in view of the State's budget crisis when the budget is completed in June. Further, investments are earning far less than they have earned in prior years. The County has been fiscally conservative, and has, as a result built up a reserve fund balance, but that balance has been drawn down during the past year, primarily for necessary capital expenditures. Under the circumstances, the County cannot afford the substantial wage increases proposed by

the Union. Of the current 84 bargaining unit employees, 39 will receive a step increase which is approximately equivalent to a 3% wage increase. Further, non-organized employees have received only a 1.5 % increase for the current year.

Discussion: As both parties seem to agree, the Employer is not by any means broke. Its projections indicate a revenue decline and a declining reserve fund balance. As the Union points out, however, these are projections only, and will change based upon what actually happens with the economy. Further, the County still maintains a healthy reserve fund. As the County points out, on the other hand, it is necessary to be fiscally conservative, particularly in the current uncertain economic times. It is entirely unclear at this juncture whether the Employer's projections will be unduly pessimistic or optimistic.

As noted above, the substantial insurance increases which the employees have had to bear have substantially eroded wage increases in the last two years. Additionally, the comparable wage data indicates average wage increases for surrounding counties in the amount of 3.5%. Finally, although non-bargaining unit employees will receive only a 1.5% increase, the deputies and supervisors unit will receive a 4.5% increase in 2003 and a 4% increase in 2004. There was no evidence presented as to what the AFSCME bargaining unit's increase will be during this period.

In light of the greater than average insurance percentage

which the bargaining unit employees are paying, and in light of the fact that the County may be required to increase its insurance contributions during the life of the Agreement, a conservative wage increase which is slightly less than the average of the comparable data submitted is appropriate. Recommendation: 3% wage increase in each of the first two years of the Agreement.² It is recommended that this increase be retroactive to March 2, 2003.

ARTICLE 15 - HEALTH INSURANCE

Union Position: The Union proposes a substantial change in the current contractual language concerning insurance. Current language allows the Employer to set an amount for its cafeteria benefit plan county wide. The employees must then pay the difference in the cost for the benefit plan items which they select. The Union's proposal would cap employee contributions for health insurance at 5% of the cost of the plan. The Union further proposes increases in the amount of compensation provided to an employee who opts out of insurance from \$30.00 to \$50.00 per pay period, and proposes an increase in the life insurance benefit currently provided to employees from \$10,000.00 to one years' salary. The Union argues that the health insurance cap is necessary to take employees off the insurance premium "roller coaster" which they have been on for the last several years. Premiums have seen dramatic increases

² See recommendation of duration below.

in the last several years, eroding employee pay increases.

Employer Position: The Employer acknowledges that the increases in the employees' share of health insurance premiums have been substantial, but the amount of the increases are outside of the County's control. All county employees except those in the AFSCME unit receive the same amount of insurance contribution. A change in this unit would alter the county wide pattern. Further, although the County is not currently in dire economic straits, its revenues appear to be decreasing, and the Employer's current contribution amount should be maintained in the interest of county fiscal responsibility.

Discussion: As the Union points out, insurance premium contributions for the employees have in fact increased by dramatic proportions in recent years. While the Employer has also increased the amount of its available cafeteria plan benefit to employees with family coverage by approximately 10% per year, the costs for some of the health insurance options have increased by as much as 55% over the past two years. The result is that the employee burden has become increasingly greater for those requiring family coverage. In fact, those employees are placed in a position wherein they can choose only health insurance from among the available coverages since any additional benefits would require them to pay 100% of the cost. Employees with single coverage are in a far better position since the Employer's contribution covers their health insurance premiums entirely with funds left over to choose additional

coverages such as dental or optical. This is in part due to the fact that the premiums are less expensive, but is also due to the fact that the percentage increases provided by the Employer for single coverage employees have been more than double the percentage increases provided for those employees requiring family coverage. There was no explanation offered by either party for this apparent inequity.

Under the current contractual language, employees with family insurance coverage are paying from 17% to 21% of the health insurance premium. This is significantly higher than the percentage paid by any of the counties provided as comparable, with the highest of those being at a 15% employee contribution.³ While the Employer desires to maintain uniformity as to its contribution for the cafeteria plan, there already exists a lack of uniformity. The AFSCME bargaining unit has a separate insurance plan, and there was no evidence presented at hearing as to what the contribution level is for the Employer's employees in that bargaining unit.

The Union has not offered any data on its opt out provision. While employees who opt out of insurance of course result in a savings to the Employer, under the insurance provisions, there is also a savings to the employee in the amount of the employee contribution which should serve as sufficient incentive to opt out if the employee's spouse has

³ The Employer did not provide any comparable data with regard to health insurance.

coverage elsewhere.

The Union has additionally proposed an increase in the life insurance benefit to the equivalent of one years' salary. It must be noted, however, that none of the comparable jurisdictions submitted by the Union provides a life insurance benefit of that magnitude. The greatest of those is \$25,000.00 and the smallest is \$10,000.00. That being the case, there does not seem to be justification for the increase proposed here. A more moderate increase, to \$20,000.00 would appear to be more appropriate.

Recommendation: It is recommended that Article 15.1, be amended to read as follows:

Bargaining unit members shall accept and receive the county health insurance program and shall make the required Employee contribution on the same basis as all other county Employees to a maximum of 21% of the monthly premium. The Employer shall increase the amount of its cafeteria plan contribution to absorb increases in premium which would require an employee contribution of more than 21% of the monthly premium for the Employer's PPO option. If insurance costs decrease, the Employer may, at its option, decrease the Employer cafeteria plan contribution by an amount necessary to maintain employee contributions at 21% of the PPO option.

It is recommended that a new subsection be added as follows:

Life Insurance: The Employer shall provide bargaining unit members with life insurance in an amount equal to \$25,000.00.

It is recommended that the balance of the Section remain unchanged.

ARTICLE 18 - SICK LEAVE

Employer Position: The Employer has proposed a change in the language of Section 18.1(B) which would require that absences of two consecutive days be accompanied with a physician's statement upon the employee's return to work. The current language requires a physician's statement for absences of three or more consecutive days. The Employer argues that this language is necessary due to a problem with sick leave abuse which it has been experiencing in this bargaining unit. The average days of sick leave use has increased on an annual basis. Approximately 35% of the bargaining unit is currently utilizing more than the average amount. Further, a small but significant number of employees have established a pattern of abuse by taking two consecutive days over the weekend when the weekend is a scheduled work period, or on days surrounding their scheduled days off. The Employer's proposal is an effort to attempt to address that situation.

Union Position: The Union objects to the Employer's proposed language, and makes a counter-proposal which would prohibit the Employer's current practice of issuing written reprimands for the use of sick leave. The Union argues that this is a contractual benefit, and those who utilize their contractual benefits should not be penalized in any way for using the days to which they are entitled.

Discussion: The evidence presented does in fact seem to demonstrate that there is a pattern of sick leave usage

surrounding scheduled days off and weekends. While some of that sick leave may well be for legitimate reasons, the presence of such a pattern likely indicates some usage for the taking of days off for reasons other than illness. The Union correctly notes that employees are indeed entitled to utilize all of the accumulated sick leave which they earn pursuant to the terms of the Collective Bargaining Agreement. However, the purpose of those days is to permit time off for illness or injury, not merely to provide additional days off. It is the taking of sick leave days for those other reasons that constitutes abuse. The Employer, as noted by the Union, is hard pressed to prove that an employee with a demonstrated pattern of weekend or day off sick leave use is in fact not ill on any particular sick leave day off. The Employer's proposal is an attempt to make this pattern usage more difficult by requiring that the employee obtain a doctor's statement verifying illness.

Recommendation: It is recommended that Article 18 Section 18.1(B) be amended to read as follows:

A physician's certificate may be required when an employee has been absent more than two (2) consecutive days.

ARTICLE 37 - DURATION

Union Position: The Union proposes a three year agreement. The economy appears to be improving and the Employer is by no means insolvent. There is no reason to implement less than a

three year agreement.

Employer Position: The Employer proposes a one year agreement. Although the Employer hopes that the Union's optimism concerning the economy is accurate, its current outlook does not support that. The Employer is concerned that it would be simply unable to fund a three year agreement at this point in time.

Discussion: While the Union's outlook is indeed optimistic concerning the economy, none of us is able to predict the economic future with any degree of certainty. The Employer can, however clearly see current trends, which indicate a decline in revenues. The recommendations concerning insurance are additionally likely to increase the Employer's insurance costs in year two of the Agreement. For these reasons, the Fact Finder believes that a three year Agreement on language with a wage reopener in year three of the agreement may accommodate the needs of the parties to reassess the economic situation during the term of the Agreement.

Recommendation: It is recommended that the parties adopt a three year agreement with a wage reopener in the third year of the Agreement.

Dated: 6/13/03

Tobie Braverman
Tobie Braverman, Fact-Finder

CERTIFICATE OF SERVICE

The foregoing Report was mailed this 13th day of June, 2003 to Paul R. Berninger, Wood & Lamping, LLP, 600 Vine Street, Suite 2500, Cincinnati, Ohio 45202-6000, Counsel for Clermont County Sheriff, and to Thomas J. Fehr, Staff Representative, FOP/Ohio Labor Council, 5752 Cheviot Road, Suite D, Cincinnati, Ohio 45247, by Overnight U.S. mail.

Tobie Braverman
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STATE EMPLOYMENT
RELATIONS BOARD

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June 13, 2003

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Re: Clermont County, Ohio Sheriff and Fraternal Order of Police,
Corrections Officers, Serb #03-MED-12-1249 My File #03-052.

Dear Mr. Berninger and Mr. Fehr:

Enclosed please find my Report and Recommendations in the above-referenced matter. Also enclosed please find my invoice for services rendered. It was a pleasure to be of service to the parties.

Thank you in advance for your cooperation in this matter. If you have any questions or comments, please do not hesitate to contact me.

Very truly yours,

Tobie Braverman

Enclosure
cc: Dale A. Zimmer