

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

STATE EMPLOYMENT
RELATIONS BOARD

2004 MAR 22 A 9:44

BETWEEN Fraternal Order of Police, Ohio Labor Council, Inc. And the Multi County Correction Center	CASE NO: SERB 03-MED-02-0094 FACT FINDER: JOHN S. WEISHEIT HEARING DATE(S): March 1, 2004 AWARD ISSUED: March 19, 2004
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**REPRESENTATION
by**

<u>Employer Representatives</u>	<u>Union Representatives</u>
Thomas A. Frericks, Esq. MCCC Counsel Robert Bayler, Exec. Dir. Kim Taylor, Marion Co. Dep. Auditor Andy Appelfeller, Marion Co. Commissioner Gerald Potts, Hardin Co. Commissioner	Dennis Sterling, FOP-OLC Inc. Staff Rep. Billy J. Cordle, CO Mike King, CO Justin Wygle, CO

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 to the Fact Finder. It is determined the matters are properly before the Fact Finder for consideration and recommendation based on merit and fact according to the provisions of ORC 4117, particularly those applicable to safety forces.

BACKGROUND

The Multi-County Correction Commission, hereinafter called the “Employer” and/or the “Commission”, recognizes, for purposes of collective bargaining, the Fraternal Order of Police, Ohio Labor Council, Inc, hereinafter called the “Union” and/or “FOP”. The bargaining unit includes about 50 full-time employees in the position of Correction Officer. The above named parties engaged in collective bargaining for a successor Agreement to their initial agreement in effect from June 4, 2000 - June 1, 2003. The parties have mutually agreed to extend the Fact Finding period. In the course of good faith bargaining, a tentative agreement was reached between the parties; however, the bargaining unit membership rejected the agreement by more than a three-fifths (3/5) vote. Further negotiations failed to resolve the differences regarding the issues of major concern. This Fact Finder was called upon, as provided in ORC 4117, to assist in attaining resolution of three (3) issues remaining at impasse.

The Fact Finding Hearing was convened on March 1, 2004, at the Correction facility in Marion County, 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 the Hearing and in keeping with statutory consideration cited above.

ISSUES OF TENTATIVE AGREEMENT

The following Articles were resolved in negotiations by tentatively agreed to:

Article	Topic	Article	Topic
1	Union Recognition	15	Jury Duty Leave
2	Management Rights	16	Sick Leave
3	Work Rules	17	Holidays
4	Union Security	18	Vacation
5	Labor Relations Meetings	*	
6	Health and Safety	20	Uniforms
7	Pledge Against Unlawful Discrimination	21	Layoff and Recall
*		22	Grievance Procedure
9	Corrective Action/Personnel Files	23	Duration
10	Seniority	24	Interpretation/Severability
11	Hours of Work and Overtime	25	Complete Agreement
*		26	Unpaid Leave of Absence
13	Bereavement Leave	27	Bulletin Board
14	Family Medical Leave	28	Drug Free Workplace
		MOU for:	Liability of bargaining unit members who dispense medications.
		*	Issue at impasse

ISSUES AT IMPASSE

The following Articles were at impasse, in part or whole, at time of the Fact Finding Hearing:

Article	Title
8	New Hire Probationary Period/Required Training and Certification
12	Wages
19	Health Insurance

**SUMMARY PARTY POSITION
ISSUES AT IMPASSE**

The following Articles remain, in part and/or whole, unresolved at Fact Finding. Only those issues as specifically reflected below remain unresolved.

Employer	Issue	Union
<p>Increase probationary period from 180 days to 12 months.</p> <p>Retain current language regarding all officers being firearms certified.</p>	<p>Article 8 Probationary Period</p>	<p>Retain current language.</p> <p>Propose deletion of requirement that all bargaining unit members obtain and retain firearms certification. This requirement should apply only to officers primarily employed to transport inmates.</p>
<p>Retain current wage rate through 2004, with a wage re-opener for 2005 and 2006, conditional upon agreement with the Employer's proposed insurance premium contributions offer.</p>	<p>Article 12 Wages</p>	<p>Propose a base wage increase of 3% effective the first pay date in January, 2004, plus expand the current wage schedule from 3 yrs and above to include annual step increments through 7 yrs. and above.</p> <p>Effective January 1, 2005, the base wage of the revised schedule be increased by 5% and effective January 1, 2006, the base wage of the revised schedule be increased by 5%.</p> <p>It is also proposed to delete Section 12.4 of the expiring agreement.</p>
<p>With a wage freeze in effect for 2004, and wage re-opener for 2005, and 2006, the Employer proposes effective January 1, 2004, the Employer monthly premium contribution be 85% without a cap.</p>	<p>Article 19 Health Insurance</p>	<p>The FOP proposes the Employee contribution be a straight 10% share of premium cost without any cap.</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. Although recommendations are required to be made issue by issue, the totality of the financial condition must be given first consideration with priority of issues before given due attention and consideration on the issue. The Fact Finder has used generally accepted standards applied in making a finding and recommendation in interest rights before him in this instant situation.

The Union does not challenge the Employer's contention regarding its current financial situation, most notably the decline in income and increase in operating costs. The County does not raise an inability to pay argument in this instant situation .

The facility has noted inherent concerns not commonly found in Ohio's municipal and county correction facilities. There are few joint county/municipality correction facilities in the State. In this instant situation, the program is relatively young in its existence, approximately five years, and operates under the direction of a Correction Commission composed of elected and appointed members of Marion and Hardin Counties. Day to day operations are under the direction of a Commission employed Executive Director.

All three issues before the Fact-finder for consideration have significant financial implications. A determination of one cannot be made without understanding and consideration of the others. The issues in dispute have common points of reference that can be major factors in the resulting impasse. The lack of an independent source of funding, heavy reliance on funding from Marion and Hardin County General Fund appropriations, uniqueness of facility operation and funding, and relative newness of the correction facility in development and operation are viewed as some of the major influences considered by this Fact Finder.

**Fact Finder's Determination
Issue by Issue**

Issue #	Discussion/Determination
<p style="text-align: center;">#1 Article VIII Probationary Employment.</p>	<p>Current requirements provide for a correction officer to successfully complete the required police officer training, including certification in the use of a 9 mm firearm. This training and related certification must be completed before a new hire is removed from probationary employment status.</p> <p>While the Employer's main argument relates to extend minimum probation from 180 days to 12 months, the argument is not found persuasive to recommend the expanded time period. The position of the Employer to extend the probation time period focused primarily on the following: 1) To give the Employer more time to assess a new hire's ability and performance before putting them on regular employment status; and 2) to provide adequate time to attain required initial training and certification requirements.</p> <p>It is also understood, by unrefuted FOP argument, that extension of probation has been agreed to on a case by case basis.</p>

<p>#1 Article VIII Probationary Employment. Cont'd</p> <p>Recommendation</p>	<p>The FOP seeks to eliminate the firearms proficiency requirement, except for those officers assigned to transport prisoners. There is only one job classification in this bargaining unit. That is "correction officer". No employment classification exists for "transport officer". Transport is an assignment not a position. It is further considered in the best interest of all parties that all correction officers are knowledgeable in the use of firearms.</p> <p>Testimony regarding current language and practice do not support change of the current language.</p> <p>It is recommended that Article VIII be included in the Agreement as it is set forth in the expiring agreement including any modification or addition of terms tentatively agreed to between the parties.</p>
<p>#2 Article XII Wages</p>	<p>The issue of wages must be considered in concert with the health insurance premium issue. Both issues are related to the use of an unrefuted limited revenue source. The respective County Commissioners have established priorities in their budgetary process during recent years while experiencing declining economic times. A new joint program needs priority consideration if it is going to provide for the welfare of its employees and provide the service to the community served. The Insurance proposal put forth by the Employer is considered a meaningful position. The insurance issue is considered a significant keystone in establishing a meaningful multi-year agreement. However, it does not, by itself, provide the stability and continuity associated with such an agreement. The labor agreement would best serve all parties to enter into an agreement that can address the remaining economic issues for the duration of the Agreement without reopening negotiations prior to its expiration.</p> <p>Figures provided, at the Fact Finding Hearing, indicate a 1% increase in base wages for members of the bargaining unit would cost about \$10,000. The FOP health insurance premium 10/90 plan would cost about an additional \$100,000, i.e. equivalent to a 10% wage increase. The Employer's 15/85 proposed plan would cost about an additional \$70,000, i.e. equivalent of a 7% wage increase.</p>

<p>#2 Article XII Wages cont'd</p> <p>Recommendation</p>	<p>The Union also raises the issue of wage parity with a number of bargaining unit members being paid a premium amount in addition to the rate set forth in the wage scale. The FOP proposal merits consideration. The proposed structure is determined a fair and appropriate way to address the issue. However, the current economic conditions are determined insufficient to reach the limits proposed by the Union. Further, extending the wage scale structure to the lengths proposed exceeds necessary limits to resolve this inequity.</p> <p>It is recommended that Article XII, Wages, be included in the Agreement as set forth in the expiring agreement, as modified by tentative agreement between the parties and inclusive of the following:</p> <p>Section 12.1 The following wage rates shall be in effect for members of the bargaining unit based upon their seniority for the duration of the calendar year of 2004. Said schedule and rates shall remain at the current rates. Annual increment increases will be paid to those eligible.</p> <p>Current step "3 years and above" is to be changed to "3 years - 4 years" and a step "4 years and above" is to be added at a rate of \$11.73.</p> <p>Section 12.2 Effective January 1, 2005, the wage schedule shall be in effect for members of the bargaining unit based upon their seniority.</p> <p>Current step "4 years and above" is to be changed to "4 years - 5 years" and a step "4 years and above" is to be added at a rate of \$11.96.</p> <p>Section 12.3 Effective January 1, 2006, the following wage shall be in effect for members of the bargaining unit based upon their seniority.</p> <p>All steps on the wage schedule shall be increased by 2%.</p> <p>Section 4 During the life of the Agreement, no bargaining unit member shall be at a wage less than the amount paid as of the effective date of this Agreement.</p>
<p>#3 Article XIX Health Insurance</p> <p>Recommendation</p>	<p>Based on the discussion in the foregoing, the following recommendation is made:</p> <p>It is recommended that Article XIX, Health Insurance, be included in the Agreement as set forth in the expiring agreement, as modified by tentative agreement between the parties and inclusive of the following:</p> <p>Effective January 1, 2004, the employee shall pay 15% and the Employer will pay 85% of the monthly health insurance premium cost.</p>

SUMMATION OF FACT FINDING RECOMMENDATIONS

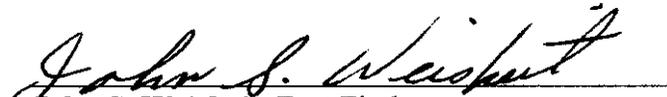
<p>Article VIII Probationary Employment.</p>	<p>It is recommended that Article VIII be included in the Agreement as it is set forth in the expiring agreement including any modification or addition of terms tentatively agreed to between the parties.</p>
<p>Article XII Wages</p>	<p>It is recommended that Article XII, Wages, be included in the Agreement as set forth in the expiring agreement, as modified by tentative agreement between the parties and inclusive of the following:</p> <p>Section 12.1 The following wage rates shall be in effect for members of the bargaining unit based upon their seniority for the duration of the calendar year of 2004. Said schedule and rates shall remain at the current rates. Annual increment increases will be paid to those eligible.</p> <p>Current step “3 years and above” is to be changed to “3 years - 4 years” and a step “4 years and above” is to be added at a rate of \$11.73.</p> <p>Section 12.2 Effective January 1, 2005, the wage schedule shall be in effect for members of the bargaining unit based upon their seniority.</p> <p>Current step “4 years and above” is to be changed to “4 years - 5 years” and a step “4 years and above” is to be added at a rate of \$11.96.</p> <p>Section 12.3 Effective January 1, 2006, the following wage shall be in effect for members of the bargaining unit based upon their seniority.</p> <p>All steps on the wage schedule shall be increased by 2%.</p> <p>Section 4 During the life of the Agreement, no bargaining unit member shall be at a wage less than the amount paid as of the effective date of this Agreement.</p>
<p>Article XIX Health Insurance Recommendation</p>	<p>It is recommended that Article XIX, Health Insurance, be included in the Agreement as set forth in the expiring agreement, as modified by tentative agreement between the parties and inclusive of the following:</p> <p>Effective January 1, 2004, the employee shall pay 15% and the Employer will pay 85% of the monthly health insurance premium cost.</p>

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 **11 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 March 19, 2004.



John S. Weisheit, Fact Finder

JOHN S. WEISHEIT

Arbitrator

440 Portland Way S.
Galion, OH 44833
Phone: 419-462-5228
Fax: 419-462-1230

STATE EMPLOYMENT
RELATIONS BOARD

2004 MAR 22 A 9:44

March 12, 2004

Dale Zimmer, Director
Bureau of Mediation
State Employment Relations Board
65 East State Street
Columbus, OH 43215-4213

SERB Case No(s).	Parties
03-MED-02-0094	Fraternal Order of Police , OLC v Multi-County Correction Center M-H

Mr. Zimmer:

Find enclosed a copy of the Fact Finder's Award in the above cited case.

Sincerely,



John S. Weisheit, Conciliator

JSW:jw

enc.

JOHN S. WEISHEIT

Arbitrator

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Galion, OH 44833
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March 19, 2004

Mr. Thomas A. Frericks, Esq.
FRERICKS & HOWARD
152 E. Center St.
Marion, OH 43302

Dennis Sterling, Staff Representative
FOP, OLC, Inc.
225 E. Town St.
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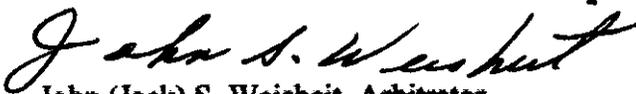
Case No(s): 03-MED-02-0094
Fraternal Order of Police , OLC
Parties: v
Multi County Corrections Center
Issue: Fact Finding
Site: OH

Messrs Sterling and Frerick:

Enclosed find a copy of the Determination and Award, W-9 Form, and the Invoice for professional services and related expenses in the above cited case. This is submitted in keeping with the terms of the Contract and understandings at the Hearing.

Thank you for the opportunity to be of service.

Sincerely,



John (Jack) S. Weisheit, Arbitrator

JSW:jw

cc: Robert E. Bayles, Exec. Dir MCCC

Dale Zimmer, SERB-Award only

enc.

CERTIFICATE OF SERVICE

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

BETWEEN The Fraternal Order of Police, Ohio Labor Council Inc. And the Multi-County Corrections Commission	CASE NO: 03-MED-02-0094
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was served to the below named parties at the stated addresses

Mr. Thomas A. Frericks, Esq. FRERICKS & HOWARD 152 E. Center St. Marion, OH 43302 FAX No. 419-382-2167	Dennis Sterling, Staff Representative FOP, OLC, Inc. 225 E. Town St. Columbus, OH 43215 FAX No. 419-462-0821
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by Facsimile and U.S. Postal Service mailed, overnight express, as of March 19, 2004.

Copy of this Award was also submitted U. S. Postal Service, First Class Mail, as of March 19, 2004, to the Director, Bureau of Mediation, SERB, 65 E. State St., Columbus, OH 43215-4213.

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 3-19-04
John S. Weisheit, Fact Finder **Date**