

**State of Ohio
State Employment Relations Board
Fact-Finding Report**

2004 APR -7 A 10: 29

In the Matter Between:

JEFFERSON COUNTY SHERIFF

and

**OHIO PATROLMEN'S BENEVOLENT ASSOCIATION
And
OHIO PATROLMEN'S BENEVOLENT ASSOCIATION
(OPBA) CORRECTIONS SERGEANTS, LIEUTENANTS**

FACT-FINDER REPORT

CASE NUMBERS:

03-MED-07-0763
03-MED-07-0764
03-MED-07-0765
03-MED-07-0766
03-MED-07-0767

FACT-FINDER: Thomas L. Hewitt
HEARING DATE: March 10, 2004
REPORT ISSUED: March 22, 2004

APPEARANCES

FOR THE COUNTY:

Michael L. Seyer, Sr. Consultant
Clemens-Nelson & Associates
Fred J. Abdalla, Jefferson County Sheriff

FOR THE ASSOCIATION:

Randy Weltman, OPBA Attorney
Kevin Santoro, OPBA Director
Mark Turner, Negotiating Committee
Sean Rath, Negotiating Committee
Melinda Martino, Negotiating Committee

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Ohio Patrolmen's Benevolent Assoc.**

BACKGROUND

The fact-finder was appointed by the State Employment Relations Board in compliance with Ohio Revised Code Section 4117.14(c)(3) to hear Case Numbers 03-MED-07-0763, 03-MED-07-0764, 03-MED-07-0765, 03-MED-07-0766, and 03-MED-07-0767 between Jefferson County Sheriff and Ohio Patrolmen's Benevolent Association. The labor agreement between the parties is in effect from October 1, 2000 through September 30, 2003. There is a second labor agreement between Jefferson County Sheriff and the Ohio Patrolmen's Benevolent Association (OPBA) Corrections Sergeants, Lieutenants, which has the same expiration date that is involved with this matter. There are four (4) bargaining units included under the labor agreement including, Bargaining Unit #1, Full-Time Sergeants, Full-Time Lieutenants and Full-Time Captains, Bargaining Unit #2, Full-Time Deputies, Bargaining Unit #3, Full-Time Dispatchers and Bargaining Unit #4, All Cooks, Clerks and Custodians. The parties mutually agreed to extend the period of fact-finding as provided under Ohio Administrative Code Rule 4117-9-05(G). Both parties submitted position statements to the Fact-Finder at least one day prior to the hearing and were in compliance with the Ohio Administrative Code.

In an attempt to resolve the impasse in negotiations a fact-finding hearing was held at the Jefferson County Justice Center located on State Route 7 in Steubenville, Ohio on March 10, 2004. All witnesses were sworn and both parties had full and equal opportunities to make statements, present evidence, examine, and cross examine witnesses.

The fact-finder takes into consideration all reliable information relevant to the submitted issues and makes recommendations based upon the following:

1. Past collectively bargained agreements, if any between 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.

* * * * *

At the pre-hearing conference at the outset of the hearing the parties signed off on the attached exhibits:

Exhibit 1	Article 6	Disciplinary Procedure
Exhibit 2	Article 7	Employee Rights
Exhibit 3	Article 15	Probationary Periods

During the course of the hearing the following language became acceptable to the parties':

Article 16 – Seniority

Section 1. Seniority shall be defined as the total length of continuous service as a full-time employee within the Sheriff's Department of the County of Jefferson. **Effective upon the signing date of this agreement and any time thereafter, any individual new to the bargaining unit shall have his/her seniority begin on the effective date of such appointment.**

Section 2.

A. A break in continuous service shall occur when an employee:

1. **quits, resigns from employment;**
2. retires;
3. is discharged;
4. is laid off for a period in excess of fifteen (15) months;
5. fails to timely return without permission from:
 - a. leave of absence;
 - b. recall after layoff; or
 - c. sick leave.

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Article 33 – Wages

Section 2. Whenever an employee (deputy) is assigned the duties of a higher paying classification (sergeant) for a period of five (5) **or more** consecutive work days/shifts **or 36/40 hours, depending upon work schedule**, said employee shall be paid the higher hourly rate of pay for all hours worked in the higher classification.

Article 35 – Insurance Coverage

Employees on non-paid leave such as a **layoff**, disability separation or worker's compensation shall be provided hospitalization not to exceed three (3) premium months from the employee receiving his/her final active pay status pay check.

* * * * *

An impasse was reached and the parties elected fact-finding in an attempt to resolve the hard core economic issues.

The following extension agreement was presented and testimony was provided as to its intent:

EXTENSION AND RETROACTIVITY AGREEMENT

It is hereby agreed by the Jefferson County Sheriff (Employer) that in consideration of the Ohio Patrolmen's Benevolent Association (Union) agreeing to extend the time limits until February 1, 2004 for the parties to initiate the process of fact-finding, including the conducting of a fact-finding hearing in the matter of contract negotiations between the Employer and Union, SERB Case Nos. 03-MED-07-0763, 0764, 0765 and 0766, Employer agrees to waive all limitations on the Conciliator's powers as provided in R.C. 4117.14(G)(11), and agrees that increases in rates of compensation and other matters with cost implications awarded by the Conciliator may be effective in the 2004 calendar year and thereafter

Dated: 10/23/03

FOR THE EMPLOYER:

s/ Michael L. Seyer

Dated: 10/10/03

FOR THE UNION

s/ Randy Weltman

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Based upon well prepared presentations by each of the parties, evidence and testimony, rebuttal and opening and closing arguments, the Fact-Finder finds the following:

FINDINGS

Article 21 – Manning Staffing Levels

This involves more than a cost item and the Chief has authority to address this matter. The Chief has determined that staffing is paramount and examine the calling in replacements for absentees through the use of compensatory time, as budget constraints limit overtime expenditures.

Insurance

The problem which gave rise to this dispute had its genesis in the negotiated language of the expired labor agreement. Under that agreement, the County Commissioners had the unilateral right to modify the terms and conditions of the hospitalization coverage and the unilateral right to implement a contribution by the employees and determine its amount. The previous contract (2000-2003) read:

Section 1. Insurance coverage (hospitalization, major medical, dental, optical, prescription) shall remain the same as presently provided during the term of this contract. In the event the premium payment for such coverage becomes a factor, or should the carrier attempt to modify the existing hospitalization coverage, it may be necessary to solicit bids for an alternate plan(s). Other options may include the employee contributing a portion of the premium payment at some point during the term of this contract.

During the course of the previous contract, the County Commissioner exercised these contract prerogatives and instituted an employee contribution of \$31.00 per month for single coverage and \$54.00 per month for family coverage. In the subsequent year of this contract, the County Commissioners increased the required employee contribution for hospitalization to \$87.00 per month for single coverage and \$128.00 per month for family coverage. In addition to the installation of employee contributions for hospitalization, the

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deductibles, co-pays for drugs and the employee's cost for doctor visits were all increased. With a wage freeze, this resulted in an economic loss to employees.

Excessive cost of insurance and a multi million dollar debt which resulted from unanticipated claims and insufficient reserves developed for the self insured Jefferson County. The County loaned itself money to cover this eight million dollar debt and set up a repayment plan. During this time, the County contribution per employee rose from \$650.00 per month to \$1,170.00 per month with a \$125.00 per month debt reduction contribution which is revised to a \$70.00 a month debt reduction payment. All other employees and bargaining units have been affected by this drastic hospitalization and medical cost increases as they are all under the same plan.

For the year of October 1, 2003 to October 1, 2004 the County has implemented a wage freeze even though contributions by employees for the medical were increased. The insurance changes and the contributions by employees have been implemented to all County Union and non-Union employees alike. In addition, budgeting restrictions have necessitated layoffs throughout, including some employees in this Sheriff's Department.

The Union asks that the Fact-Finder remove this insurance language from the agreement and complains that it resulted in unreasonable and unfair treatment. There is no doubt the results were catastrophic to both the bargaining unit employees, and laid off employees, as well as to the County's budget and its contribution level. However, that was negotiated language and one would not expect a fact-finder to cut wages or other negotiated benefits included in a prior agreement based upon budgeting changes or catastrophic events.

FINDING

Insurance

Consequently, the Fact-Finder retains the status quo on insurance with the covenant that no substantial additional insurance coverage modifications may be implemented and no additional contribution may be required during the life of this new agreement. This does not preclude the County from changing carriers, as it is believed this is outside the province of the Fact-Finder. If benefits are increased and/or contributions reduced for any other

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Jefferson County employees, such changes shall be applicable to these two (2) bargaining units. The features included in a hospitalization plan are terms and conditions of employment, as such are frozen for the life of this agreement.

FINDING

Wages

Wage Freeze

All County employees, except one unit whose budget is based upon fees, have accepted a one year wage increase and based upon budgetary restraints, testimony and evidence this finding is for a one year wage freeze from October 1, 2003 through September 30, 2004.

FINDING

Wage Reopener

A wage reopener shall become effective October 1, 2004 and a conciliator as provided in R.C. 4117.14(G)(11) shall have the power and authority to rule on wages and other matters with cost implications based upon and as described in the Extension and Retroactivity Agreement dated February 1, 2004 included above. The other matters of cost implications are very dependent upon and related to the total monies available for wages at that time.

Article 39 – Duration of Agreement

Section 1. This agreement shall be effective **October 1, 2003** and shall remain in full force and effect until **September 30, 2006**.

All Articles and issues not addressed in this fact-finding report are considered resolved and if not addressed in this report are denied. There shall be no other changes, additions or modifications to this initial labor agreement. This report is all-inclusive.

Thomas L. Hewitt, Fact-Finder

Issued on the 22nd day of March, 2004



ARTICLE 6

DISCIPLINARY PROCEDURE

Section 1. No employee shall be reduced in pay or position, suspended, discharged, removed, or otherwise disciplined, except for just cause.

Section 2. Except in instances wherein an employee is found guilty of serious misconduct, discipline will be applied in a corrective, progressive, and uniform manner in accordance with the Employer's policy.

Section 3.

- A. Whenever the Employer or his designee determines that an employee may be suspended, reduced, or terminated, a predisciplinary ~~conference~~ **meeting** will be scheduled to give the employee an opportunity to offer an explanation of the alleged misconduct. *The affected employee shall be permitted to have a Union representative be present at the meeting.*

Not less than twenty-four (24) hours prior to the scheduled time of the meeting, the Sheriff will provide the employee a written outline of the alleged misconduct.

~~B. Not less than twenty four (24) hours prior to the scheduled starting time of the conference, the Employer will provide to the employee a written outline of the charges which may be the basis for disciplinary action. The employee must choose to:~~

~~1. appear at the conference to present an oral or written statement in his/her defense;~~

~~2. appear at the conference and have a chosen representative present an oral or written statement in defense of the employee; or,~~

~~3. elect in writing to waive the opportunity to have a predisciplinary conference.~~

~~Failure to elect and pursue one (1) of these three (3) options will be deemed a waiver of the employee's right to the disciplinary conference.~~

C. At ~~the predisciplinary conference~~ *this meeting*, the ~~Employer~~ *Sheriff*/designee will ask the employee or his representative to respond to the allegations of misconduct which were outlined to the employee.

~~D. The employee or his representative may present any testimony, witnesses, or documents which explain whether or not the alleged conduct occurred. The employee and the Employer shall provide a list of witnesses to each other not later than one (1) hour prior to the predisciplinary conference.~~

~~E. The employee or his representative will be permitted to confront and cross-examine witnesses. A written report will be prepared by the hearing officer concluding as to whether or not the alleged conduct/incident occurred. The Employer will decide what discipline, if any, is appropriate. A copy of this report will be provided to the employee by the Sheriff within three (3) days following its submission to the Sheriff.~~

~~F. The predisciplinary conference will be held by a neutral individual who will be selected by the Employer or his designee.~~

G. The decision of the Sheriff, excluding verbal/written reprimands, may be appealed by filing a grievance at Step 2 of the grievance procedure within five (5) calendar days of receipt of the decision.

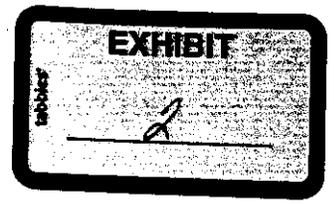
Section 4. Records of disciplinary action involving verbal and/or written reprimands shall cease to have force and effect eighteen (18) months after their effective date, providing there is no intervening disciplinary action taken during that time period. All other records of disciplinary action shall cease to have force and effect twenty-four (24) months after their effective date, providing that there has been no intervening disciplinary action taken during that time period.

FOR THE EMPLOYER

DATE SUBMITTED _____

DATE SIGNED _____

FOR THE UNION



ARTICLE 7
EMPLOYEE RIGHTS

Section 1. Questioning or interviewing of an employee in the course of an internal investigation will be conducted at hours reasonably related to the employee's shift, unless operational necessities require otherwise. Investigative sessions shall be for reasonable periods of time. In the event an employee is to be questioned or interviewed concerning an allegation of misconduct, the employee shall be informed at the commencement of the investigation as to the general nature of the alleged misconduct.

Section 2. When an investigation moves from investigatory to accusatory and/or the affected employee reasonably believes disciplinary action may result, the affected employee shall have the right to request and have a Union representative or Union attorney present. Such request shall not unreasonably delay the continuation of the investigation.

Section 3. Upon notice to the other party, the affected employee or the Employer may mechanically record the investigation session. A copy of the recording will be provided to the other party upon request.

Section 4. All complaints by citizens which may result in suspension, reduction, or discharge of a bargaining unit employee shall be in writing and signed by the complainant. *Upon written request from the employee, the Sheriff will provide a copy of such complaint to the employee.* However, the Employer reserves the right to investigate any complaint and to question a bargaining unit employee regarding any complaint, including an anonymous complaint. Discipline shall not be imposed solely on the basis of an anonymous complaint.

Section 5. If, in the course of an internal investigation, an employee has been given a *voluntary* polygraph examination, such examination shall not be used in any subsequent court action, except in accordance with applicable rules of evidence. *No employer shall be required to take a polygraph.*

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Fact Finder

Section 6. If an employee to be questioned is, at that time, a witness and not under investigation, he shall be so advised of such status.

FOR THE EMPLOYER

DATE SUBMITTED _____

DATE SIGNED _____

FOR THE UNION

2/10/01

ARTICLE 15

PROBATIONARY PERIODS

Section 1. ~~Every newly hired employee will be required to successfully complete a probationary period. The probationary period for a newly hired employee shall begin on the first day for which the employee receives compensation from the Employer and shall extend for a period of one (1) calendar year.~~ *Every individual or employee hired, transferred, or who bids into a classification in Bargaining Units #2 and/or #3 will be required to successfully complete a probationary period of one (1) calendar year. The probationary period shall begin on the first day the individual or employee receives compensation from the Employer for the applicable classification in Bargaining Units #2 and/or #3, and shall extend for the one (1) calendar year period. The probationary period for a newly hired employee in Bargaining Unit #4 shall be one hundred eighty (180) calendar days, beginning the first day the employee receives compensation from the Employer. A newly hired probationary employee may be terminated at any time during the probationary period and shall have no appeal over such removal.*

Section 2. An employee promoted to a higher classification *within Bargaining Unit #1* shall be required to successfully complete a promotional probationary period in the new position. The promotional probationary period shall begin on the first day the employee performs the duties of the promoted position and shall continue for a period of one (1) calendar year. A newly promoted employee may be returned to his former position at any time during his promotional probationary period; however, said employee may appeal, through the grievance procedure, such return if it occurs during the second half of the probationary period.

Section 3. A probationary employee (newly hired or promotional) who has lost work time of more than five (5) work days due to injury or illness, or who has lost work time due to an unpaid leave of absence, shall have their probationary period extended by the length of time lost. Such extension shall be computed on a day for day basis; that is, for each day absent, the probationary period shall be extended an additional day.

FOR THE EMPLOYER

FOR THE UNION

DATE SUBMITTED _____

DATE SIGNED _____