

STATE EMPLOYMENT  
RELATIONS BOARD

2004 FEB -5 A 10: 27

**ATHENS COUNTY COMMISSIONERS/911**

**and**

**OHIO PATROLMEN'S BENEVOLENT ASSOCIATION**

**SERB CASE NO.: 2003 MED-09-0853**

**FACT-FINDING HEARING  
JANUARY 30, 2004**

**JACK E. MCCORMICK  
FACT-FINDER**

**FEBRUARY 3, 2004**

On January 30, 2004, there was conducted a fact-finding between the Ohio Patrolmen's Benevolent Association (OPBA) and Athens County Commissioners (911 Center) at the basement conference room of the Athens County Sheriff's Department, 911 Center. Present at the hearing were the following:

For the Employer: Kenneth L. Edsall and Doug Bentley, Chief of Operations 911 Center.

For the Union: Matthew Baker; Randy Jago, Curtis Jago, and Warren G. Ferguson.

The purpose of the fact-finding was to conduct a hearing on certain unresolved issues between the parties whose current labor agreement expired on December 31, 2003. All of the parties were instructed as to the applicable guidelines under the fact-finding/mediation process and they declined to enter into any mediation on any issues at this time. The parties mutually agreed and stipulated that the following issues would be subject to fact-finding:

- Sick leave
- Personal leave
- Holidays
- Vacations
- Insurance
- Wage Schedule
- Duration of Agreement
- Education Assistance
- and
- Incentives

SICK LEAVE

The Union proposes to add language to the current language in the contract at Section 21.4(H) that would, in effect, allow an employee to take sick leave to care for not only those persons

currently listed, but to add "a person who stands in the place of a spouse".

It is noted that the current language has existed since 1996. The Union representatives believe that this is necessary as there often may be cases where persons who are unmarried and living together may not meet the other criteria set forth in the existing language, for whom the employee must provide care.

The Employer feels this is an unnecessary extension of the definition contained in the current language and may be a first step towards attempting to have "significant others" included in future health insurance programs.

The Fact-Finder declines to make any fact-finding based on possible future intentions of the Union, but would rather focus on a factual situation which would support such a change. The party making the proposal (the Union) was unable to provide any factual evidence of problems that the current language creates. Furthermore, the Union concedes that the proposed language is painfully ambiguous. No one at the hearing could define who a "person who stands in the place of a spouse" would be. This ambiguity could only lead to complicated litigation and grievances in the future. Absent an adequate definition and absent a factual finding that the current language has created any problems, this proposal must be rejected.

FINDING OF FACT

There is not sufficient factual basis to support the Union's proposed change to Section 21.4(H) of the current contract.

PERSONAL LEAVE

The Union proposes a change to Section 23.1 of the current contract to allow employees to have five, as opposed to four working days of paid personal leave.

The main arguing point for the Union in this particular issue is that it would make the current 911 employees' contract consistent with the Athens County Deputy Sheriffs and Sergeants and Lieutenants. It is noted that the 911 Center is not a part of the Sheriff's Department, but rather is under the appointing authority, i.e., the Athens County Commissioners. However, the Fact-Finder believes that it is not inappropriate to consider the Sheriff's Department employees as comparables for the purpose of this Article.

The Union also proposes a change to Section 23.2 of the current contract to allow employees to carry-over a maximum ten personal days to the next calendar year as opposed to the current existing language which states that personal leave may not be accumulated from year to year, but personal leave either must be used, as requested and granted, or paid.

The Employer opposes this and notes that neither the Sheriff's office, the Athens County Engineer, or the Athens County Solid Waste District, all of whom have collective bargaining agreements,

have such provisions in their contracts. The Employer further argues that allowing such accumulation could cause scheduling problems, however, the Union argues this could be covered by intermittent employees.

The party making this proposal (the Union) did not provide any instances where this inability to carry-over personal leave has been a problem except for one employee who because of his physical problems has had to use virtually all of his vacation and sick leave and would thereby benefit by having this carry-over.

#### FINDING OF FACT

The awarding of a fifth personal day at Section 23.1 of the current contract would have a minimal cost impact upon the Employer of \$14,746.35 per year if every personal day would necessitate that employee's replacement. Furthermore, the awarding of the day would be consistent with a reasonably comparable unit. Accordingly the Fact-Finder finds there is factual basis for granting this additional personal day as proposed by the Union and notes that this may be of assistance to those persons who may find it necessary to take a day off for a person who "stands in place of a spouse", which provision was rejected by the Fact-Finder herein above. However, the Fact-Finder does not find a sufficient factual justification for the proposed change in the accumulation of personal leave.

### HOLIDAYS

The Union proposes that a twelfth holiday be awarded to the employees, that being a "floating holiday" to be selected by the employee.

Currently employees of the bargaining unit have eleven holidays. The Employer notes that such an additional holiday would necessarily involve a cost to the Employer of \$14,746.35. Furthermore, the Employer states that the additional holiday would be inconsistent not only with the deputies and lieutenants of the Sheriff's Department, but also the Athens Police Department and the Ohio University Police Department.

### FINDING OF FACT

The Fact-Finder finds that there is not a sufficient factual basis on which to award this twelfth holiday to this bargaining unit as it would be inconsistent with reasonable comparables and in view of the fact that the Fact-Finder has found that an additional day of personal day would be granted herein above.

### VACATIONS

The Union proposes to reduce the years of service necessary to become entitled to vacation leave at Article XXV of the current contract.

The Employer resists this and advocates current language be retained. The current vacation accumulation schedule is using the current statutory scheme. Furthermore, it follows the vacation

accumulation scheme currently set forth in the Athens County Sheriff's and Sheriff Deputy Sergeant's and Lieutenant's contracts. They point out that the proposed change would increase the current number of vacation weeks over the next three years from 91 to 110 weeks. This would have a cost impact upon the Employer between \$11,020 and \$16,530.

The Union fails to provide any factual evidence as to why this unit should receive a vacation accumulation schedule in such wide variance to that of other reasonable comparable units.

#### FINDING OF FACT

There is an insufficient factual basis for implementing the Union's proposed changes to Sections 25.1 and 25.6 of the existing contract.

#### INSURANCE

The Employer proposes that Article XXVI, Section 26.2 be changed from current language so that effective January 21, 2005, the Employer agrees to contribute 95% of the premium cost for single hospitalization and 85% of the premium cost for family coverage, and in January 21, 2006, contribute 90% of the premium cost for singles, and 80% of the premium cost for family.

The current language provides that the Employer pay 100% of single and 90% of family coverage. The Employer provided data showing the explosive rise in hospitalization costs and expressed a concern that such costs will continue to escalate in the future

and therefore believes that the employees must contribute more so that these costs can be mutually absorbed.

Obviously, the Union adamantly opposes this change as it is, in effect, a give-back.

The Fact-Finder agrees entirely with the Employer's position that insurance costs have increased dramatically and must necessarily continue to increase. However, the Employer's arguments must be rejected. First, as stated above, this Fact-Finder will not make a fact-finding report based on speculation as to future events. Secondly, and more importantly, the party making a proposal (the Employer) provided insufficient factual data to support this proposed change. As will be discussed later in this report, notwithstanding the historical increases in health insurance coverage, this particular unit has in the past few years, and continues to, enjoy a healthy budget carry-over from year to year. Although this carry-over has diminished occasionally, there was no presentation of facts by the Employer that this diminution was directly caused by an increase in insurance premiums. That being the case, the Employer's proposed change must be rejected. The current language was fairly bargained for in the past contract and therefore should not be disturbed absent some extraordinary event. Should there be such an extraordinary event, i.e., a dramatic increase in insurance premiums, then this should be a matter for the Labor-Management Committee, or at the end of the next contract.

### FINDING OF FACT

There is insufficient factual basis for the Employer's proposed change to Article XXVI of the current contract.

### WAGE SCHEDULE

The parties each have their own proposal for wage schedule which can be best summarized as follows: the Employer has offered the wage schedule with an offer of 0%, 2%, 3% for the next contract. At the fact-finding the Union proposed an 8% increase for each of the three years.

Before addressing these remaining and difficult economic issues it is important for the Fact-Finder to provide his historical perspective on this matter.

This is a mature bargaining unit made up of ten full-time employees engaged in one of the most critical tasks of any employees in the County of Athens. They are 911 dispatchers for the entire county, providing twenty-four hour, seven day a week coverage to the citizens of Athens County. They are a critical link between the safety fire and health services throughout a rural county. The citizens of Athens County have voted upon themselves a .25% sales tax in the form of a permanent levy to fund this specific operation. The Fact-Finder attaches hereto as Exhibit U-23 a 911 Center budget analysis showing that for the last three years this unit has only spent 87.2%, 82.9% and 79.2% of its revenue and currently projects it will carry forward a balance of \$970,000 into 2004. The Employer argues that although there have been carry-

overs, that the carry-over amount is growing smaller each year. Further, the Employer argues that by statute surplus funds from the 911 tax levy are to be used for a community improvement fund. Based on the facts presented to the Fact-Finder, the Employer's arguments must be rejected out-of-hand. The Employer argues that it must use this surplus for the community improvement fund, but yet, at least for the last three years it has not. Instead it has continued to allow surpluses to be built up and to be carried over. This is not only contrary to the their own mandate, but likewise a breach of promise to the taxpayers of Athens County. Presumably when they voted in the tax levy it was to fund the 911 unit and the community improvement fund to the extent necessary and to the extent funds were available. If the Athens County Commissioners do not intend to use these surpluses as mandated, then they have at least a moral obligation to return the taxpayers' money to the taxpayers of Athens County. They cannot have it both ways. They cannot collect a dedicated tax levy and then carry-over the surplus except for no other reason than to carry-over the surplus. In this Fact-Finder's opinion they must either use it as the law mandates, or give it back to the taxpayers. However, that is obviously a political decision outside of this Fact-Finder's province. It is not outside of the Fact-Finder's provision though for him to find that there are sufficient funds available to the Employer to pay all the economic recommendations made in this report. Furthermore, the Employer does not at this time dispute that fact.

FINDING OF FACT

There are sufficient funds available to the Employer to fund any and all economic recommendations and findings of fact contained in this report.

The question now becomes what shall the increase in wages and other matters be?

Clearly the Union's proposed wages are beyond any historical precedents whether one looks at this particular unit or as to units across the state who have been engaged in collective bargaining over the last year. That is likewise true for the Employer's proposal. The Fact-Finder believes where an employer has available funds and where a bargaining unit, such as this, conducts a critical function and that the morale of that unit is essential to the taxpayers whom they serve, reasonable wage increases must be granted.

The Fact-Finder thoroughly reviewed the plethora of documents submitted by both parties concerning this issue. The Fact-Finder will not detail herein his analysis of all those documents, but will state generally that in arriving at the wage issues hereinafter layed each document presented to him next to the provision contained at 4117-9-05(J) and (K). When taking all of those factors into account, the Fact-Finder makes the following recommendations as to wages at Article XXVII:

Section 27.1, effective January 21, 2004, the Wage and Pay Steps shall be increased in current language by 2.5%.

Section 27.2, effective January 21, 2005, the Wage and Pay Steps shall be increased by 3.0%.

Section 27.3, effective January 21, 2006, the Wage and Pay Steps shall be increased by 3.5%.

Section 27.4, step 6, at the completion of four years (4) of service in the classification beginning on January 1, 2004.

Section 27.5 the Fact-Finder finds there are sufficient facts to support an increase of the longevity pay supplemental to an annual rate of Seventy-Five Dollars (\$75.00) over the current Sixty Dollars (\$60.00). However, the Fact-Finder rejects as unworkable the Union's proposal that the longevity supplement shall be paid at the end of the year as opposed to being paid during each of the Employee's pay periods as this would be a bookkeeping nightmare for the Employer.

Section 27.7, Shift Differential, the Union proposes that employees working between the hours of 3:00 p.m. to 7:00 a.m. shall be paid a \$.75 per hour premium in the form of a shift differential. The Fact-Finder finds that the amount requested by the Union is not supported by sufficient facts presented to the Fact-Finder. However the Fact-Finder finds there are sufficient facts to support a shift differential wherein 50% of shift after 3:00 p.m. shall receive a \$.15 per hour premium and where 50% of shift is after 11:00 p.m., \$.25 per hour shift differential premium

shall be received. (As set forth for the Ohio University PD in Exhibit U9 (attached)).

#### DURATION OF AGREEMENT

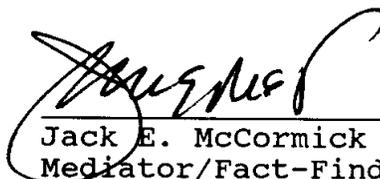
Without discussion the Fact-Finder finds there is no rational basis for not having the duration of this Agreement to extend from January 1, 2004 through December 31, 2006.

#### EDUCATION ASSISTANCE AND INCENTIVE

The Union proposes that the Employer agree to reimburse bargaining unit employees for education incentives when they have obtained associate, bachelor's, or master's degree. This is a highly desirable provision as it provides the Employer with better trained, better educated employees, and provides employees an incentive to stay with an employer. Unfortunately, the party making the proposal (the Union) failed to provide any facts (other than it is a desirable proposal) which would support the addition of this new provision. In fact, at the conclusion of the argument of this provision, a representative of the Union indicated that he could not "cost" this particular item because he "Didn't even know if anyone would use it." Having been left with this factual statement, the Fact-Finder has no choice, regrettably, to make any recommended change in this Article.

FINDING OF FACT

There is an insufficient factual basis for adding a new Article Education Assistance and Incentive to this Agreement.



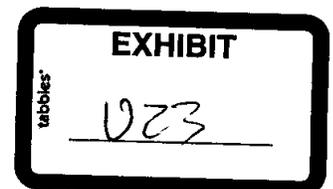
---

Jack E. McCormick  
Mediator/Fact-Finder  
500 City Park Ave.  
Columbus, OH 43215  
telephone 614-221-2718  
facsimile 614-221-2719

**ATHENS COUNTY 911 CENTER  
911 CENTER BUDGET ANALYSIS  
FACTFINDING HEARING 2004**

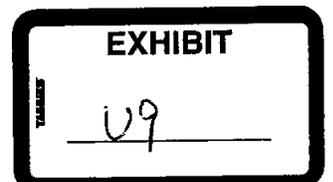
<b>YEAR</b>	<b>STARTING BALANCE</b>	<b>REVENUE</b>	<b>EXPENDITURES</b>	<b>ENDING BALANCE</b>	<b>PERCENTAGE OF REVENUE SPENT</b>
<b>2002</b>	\$ 899,788	\$1,047,004	\$ 914,012	\$1,032,770	87.2%
<b>2001</b>	\$ 726,898	\$1,014,150	\$ 841,270	\$ 899,778	82.9%
<b>2000</b>	\$ 500,033	\$ 989,493	\$ 783,900	\$ 705,626	79.2%

- In 2000 the total expenditures accounted for only **47%** of the total (starting balance and revenue) funding available.
- In 2001 the total expenditures accounted for only **52%** of the total (starting balance and revenue) funding available.
- In 2002 the total expenditures accounted for only **53%** of the total (starting balance and revenue) funding available.



**ATHENS COUNTY 911 CENTER  
SHIFT DIFFERENTIAL COMPARISON  
DISPATCHING UNITS IN ATHENS COUNTY  
FACTFINDING HEARING 2004**

<b>AGENCY</b>	<b>SHIFT DIFFERENTIAL?</b>	<b>BENEFIT</b>
Ohio University PD	Yes	50% of shift after 3 pm = \$ .15 per hour 50% of shift after 11 pm = \$ .25 per hour
Athens City PD	Yes	50% of shift after 5 pm = \$ .30 per hour 50% of shift after 11 pm = \$ .50 per hour
Athens 911 Center	<b>NO</b>	NONE



CERTIFICATE OF SERVICE

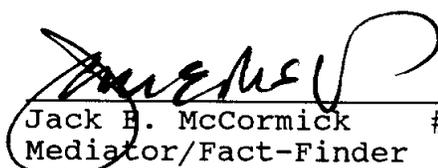
I certify that a copy of the foregoing was served upon the following individuals by U.S. mail, postage prepaid, this 3rd day of February, 2004:

Dale A. Zimmer  
Administrator, Bureau of Mediation  
65 East State Street, 12th Floor  
Columbus, OH 43215-4213

Matthew B. Baker  
175 S. Third Street, Suite 820  
Columbus, OH 43215

and

James H. McCloskey  
Clemens, Nelson & Associates, Inc.  
5100 Parlecenter Avenue - Suite 120  
Dublin, Ohio 43017

  
\_\_\_\_\_  
Jack E. McCormick #0000948  
Mediator/Fact-Finder  
500 City Park Ave.  
Columbus, OH 43215  
telephone 614-221-2718  
facsimile 614-221-2719