

FACT-FINDER REPORT AND RECOMMENDATIONS
SERB CASE: 03-MED-09-0874

STATE EMPLOYMENT
RELATIONS BOARD

OHIO PATROLMEN'S BENEVOLENT ASSOCIATION

2003 MAR -5 A 10:30

- and -

MONTGOMERY COUNTY SHERIFF

FACT-FINDER: Lawrence I. Donnelly
FOR THE UNION: Joseph M. Hegedus
Attorney-at-Law
FOR THE EMPLOYER: Jonathan J. Downes
Attorney-at-Law

INTRODUCTION

By letter of October 16, 2003, Mr. Dale A. Zimmer, Administrator of the Ohio Bureau of Mediation, appointed Lawrence I. Donnelly to serve as Fact-Finder in Case # 03-MED-09-0874 under ORC 4117.14 (C) (3). This case involves negotiations between the Ohio Patrolmen's Benevolent Association (hereafter referred to as the Union) and the Montgomery County Sheriff (hereafter referred to as the Employer). The Sheriff's office is responsible for police, communications, and jail facilities for Montgomery County, Ohio with a staff of some 460 people and a budget of some \$40,000,000. The Union is represented by Mr. Joseph M. Hegedus, attorney with Climaco, Lefkowitz, Peca, Wilcox & Garofoli Co., L.P.A.; the Employer is represented by Mr. Jonathan J. Downes, attorney with Downes, Hurst and Fishel. Upon receipt of the appointment letter, the Fact-finder contacted representatives of the Parties. Accordingly, they agreed to a hearing for October 27, 2003 at the Sheriff's quarters in downtown Dayton, Ohio.

The Fact-finding meeting was convened at about 9:00 am on October 27, 2003 as agreed to. Present for the Union, in addition to Mr. Hegedus, were members of the Union Committee: namely, Lt. Sandra Buck, Sgt. Gregory Brock, Sgt. George Chambers, Sgt. Harold Clark, and Sgt. Jo Renee O’Ryan. Present for the Employer, in addition to Mr. Downes, were the following: Maj. Jeff Busch, Maj. Phil Plummer, Maj. Steve Riegler, Capt. Mike Nolan, and Ms. Brenda Gisenite (Confidential Secretary). As required by ORC 4117.14 (C) (3) (a) the Parties submitted pre-hearing statements to the Fact-finder with copies sent to each other.

At the beginning of the hearing, the Fact-finder reviewed many matters with the Parties about this case. In this case, the Union had recently been certified under Board proceedings to replace a former agent for the employees involved. The unit is a supervisor’s unit with forty Sergeants and five Lieutenants. A copy of the prior Agreement (effective July 2, 2000 through June 30, 2003) had been provided to the Fact-finder with its thirty-three Articles. The negotiations preceding the fact-finding were first negotiations in the newly established relationship.

The Parties had met several times during September and October prior to the Fact-finding; no mediator was involved in these deliberations. During these sessions, the Parties had tentatively agreed to and signed off on some nineteen Articles; all Articles of the prior Agreement were open for re-negotiation.

As a result, the Parties approached the fact-finding with fifteen unresolved Articles from the “prior” Agreement. These were:

- Article 3: Non-discrimination
- Article 6: Transfers, Trades, Assignments & Postings
- Article 7: Seniority
- Article 8: Layoff & Recall

Article 10: Employee Disciplinary Procedure
Article 11: Personnel Records
Article 19: Uniforms
Article 24: Promotional Process
Article 25: Leaves of Absence
Article 26: Wage Rates and Longevity
Article 27: Hours of Work and Overtime
Article 28: Holidays and Holiday Premium
Article 29: Vacation
Article 30: Insurance
Article 34: Me-Too (New Article)

After the Fact-finder briefly reviewed their positions with the Parties on these Articles (as detailed in their pre-hearing statements), the Fact-finder asked the Parties about their desire to try mediation. The Parties immediately supported this suggestion. Accordingly, the entire October 27 session was turned over to mediation. During the day several issues were signed off as tentatively agreed to; however, several issues remained unresolved. Accordingly, the Parties agreed at the end of the day to return for further mediation on November 4, 2003. The Parties met with the Fact-finder on that day and several more issues were signed off and tentatively agreed to. Because differences were reduced to three Articles, the Parties agreed to meet again on these three Articles after they had the opportunity to reexamine their positions on the Articles in dispute. This third meeting was convened at 1:00 pm on November 18 for a final effort at a mediated agreement on the following three Articles:

Article 26: Wage Rates and Longevity
Article 30: Insurance
Article 34: Me Too

The Parties concurred that they had tentative agreements on all the other Articles and had signed off on the other thirty-one Articles. Again, this session was conducted as a mediation period, with full committees of both Parties present. Before the session, the

Parties had reviewed their positions on these three Articles. During the meditative discussions, the Parties concurred that they had reached genuine impasse about these three Articles. In addition, negotiations with two other units with the Sheriff were in place. Accordingly, the Parties agreed to extend the date for the Fact-finding report to February 29, 2004. They agreed to meet again on February 12, 2004.

At 9:30 am on February 12, 2004, the hearing was reconvened by the Fact-finder with the Representatives and Committees of both Parties present. The Parties did agree that their differences remained in these three Articles; the Fact-finder briefly reviewed these as stated in their position statements submitted to the Fact-finder before the hearing. In reviewing preliminaries at this session, the Fact-finder learned that the Parties wished to have witnesses sworn in. The Parties agreed to use the following form, administered as each witness was to testify.

(With right hand raised), I (name)
do affirm that any testimony I provide
at these proceedings is the truth, to the
best of my understanding.

The Parties also agreed to separation of witnesses, beyond the committee members. The Employer was to call as witnesses: Ms. Deborah Feldman, Montgomery County Administrator, Ms. Amy Wiedeman, Administrative Services Director, and Sheriff Dave Vore; these three people attended as they were called. Other testimony came through the members of the committees. The Parties agreed that testimony and exhibits would principally be entered through the several witnesses called by the Employer as well as through examination of and replies to such testimony. The Representatives also would make statements on topics and offer supporting Exhibits. No reporter was present; the Fact-finder's notes serve as a record.

ISSUES, POSITIONS, AND ANALYSIS

As noted above, the disputes between the Parties exist with the following three Articles.

Article 26: Wage Rates and Longevity
Article 30: Insurance
Article 34: Me Too

The Parties concur that they have tentatively agreed to all other Issues and Articles which have come before them during these negotiations. They mutually agreed that the Fact-finder should make as part of his set of recommendations the recommendation that the Parties adopt all of their tentative agreements about provisions with the other thirty-one Articles addressed during their negotiations. The Fact-finder does include this within his recommendations. He will so note this again in his summary statement of Recommendations.

During their presentations at the hearing, both Parties were pointed in their discussion of the Fact-finder's responsibility in his decision-making under the Statute. He quotes the applicable sections of the Statute here:

ORC 4117.14, (C), (4), (e)...In making its recommendations, the fact-finding panel shall take into consideration the factors listed in divisions (G) (7) (a) to (f) of this section.

The factors listed in these divisions are as follows:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with these issues related to other public and private employees doing comparable work,

- giving consideration to factors peculiar to the area and classification involved;
- (c) The interests 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;
 - (d) The lawful authority of the public employer;
 - (e) The stipulations of the parties;
 - (f) Such other factors not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

The Fact-finder does affirm that he uses these factors in his analysis of the testimony of the witnesses, the Exhibits provided by the Parties, and the statements offered by the Representatives. Accordingly, he moves to his statements of positions, his analyses of the Parties' presentations, and his recommendations of the issues in dispute.

ARTICLE 26: WAGE RATES AND LONGEVITY

Positions of the Parties:

The Union proposes that Section 1 with its discussion of differentials be carried from the earlier Agreement into the new Agreement (with appropriate changes of dates.) As to Section 2 about longevity, the Union proposes that effective July 1, 2003, the listed schedule with its increases be carried over, that effective January 1, 2005, the listed schedule be increased by another ½% at each of the five steps, and that effective January 1, 2006, the listed schedule be increased another ½% at each of the five steps. The above payments shall be paid in lump sums on the second payday in November 2003, in November 2005, and in November 2006.

For its part, the Employer accepts the carry-through of Section 1 on differentials with only one minor clean-up about the listed date. The Employer also agrees to the schedule for longevity as found in the earlier Agreement with only one clarification and with an update of dates for 2003, 2004, and 2005 (as applicable). The Employer seeks a new Section 3, to void the adjustment for 2004, to clarify starting rates for new employees in 2004, and to provide two lump sum adjustments of \$850.00 at the execution of the Agreement and on January 2005 (with clarifying language).

Analysis:

Quite appropriately, the Employer relied extensively and fundamentally upon the presentation of Ms. Feldman for its financial pictures. She is after all the County Administrator and Principal Budgetary Officer for the Commissioners. She spoke of the overall budget picture for the present time, February 2004, with current estimates and revisions of these with actual figures. The Fact-finder reminds himself that he was not called to make recommendations for the entire County. His attention must be on the Sheriff who has a staff of some 470 out of some 4,800 employees throughout all County Departments (TAB 4). Some 18% of the General Fund goes to the Sheriff. Further, only 45 of the 470 in the Sheriff's Department are in the bargaining unit covered by this fact-finding. These 45 are a very small part of the entire 4,800 workforce but, they are truly a part of this workforce. Sheriff Vore, Maj. Busch and Maj. Riegler did testify about this particular group.

Ms. Feldman focused on the General Fund as the source for payment of wages within the bargaining unit. Her testimony about TAB 4 data dealt with the overall picture around the General Fund with a budget of some \$150,000,000. Sales tax revenues, as

some 45% of General Fund revenues, have been stable for several years at about \$64,000,000 a year. She forecasts that such revenues will not likely grow in the near future because population growth and shopping growth (as sources for sales taxes) favor neighboring Greene County over Montgomery County. Investment incomes, making up about 11% of General Fund revenues, had dropped some \$10,000,000 during the last few years as a reflection of interest rate declines. She projects some growth in this segment in the near future. Local General Fund amounts have been steady at around \$15,000,000 lately, but uncertain population shifts could cause this to drop; this segment consists of some 11% of total revenues. Property Taxes have been rising to about \$15,500,000 due to the treatment of inside millage. This too comprises some 11% of total revenues. She did not examine the other 22% or so of revenues in any detail. She originally estimated revenues from all sources would approximate some \$140,000,000. She revised this to over \$150,000,000; this is a figure reflected on Union Exhibit 1 and is drawn from the County as of February 11, 2004. Ms. Feldman did address estimated expenditures, but not nearly as extensively as expected revenues. By her forecast projections about the budget, the General Fund would take a hit of some \$2,000,000 under current estimates. She finally projects the Sheriff's budget to run about \$26,000,000. Accordingly she had addressed officials, managers and Union representatives in late August, 2003 of the need to implement a 3% budget cut in expenditures (described under TAB 3). With Union Exhibit 3, the Union disputed the expenditure estimates, using a financial analysis inquiry from the County. Further the Union with Union Exhibit 2 (again financial data from the County) pointed out that the County can expect an unencumbered fund balance of some \$35,700,000.

In her presentation, Ms. Feldman did in the Fact-finder's view make a reasonable case that now is the time in Montgomery County for fiscal caution. She was convincing with her concern that revenues in the near future might be subject to systematic downturns rather than cyclic downturns.

The Employer portrayed negotiated adjustments with AFSCME employees (some 900) as reflecting such fiscal concerns throughout the County. The Fact-finder sees these monetary adjustments as a reasonable pattern for this unit of forty-five employees. True, the two groups are in different departments with different administrative lines. True, also with each unit other different issues were agreed to during negotiations. But, it would be reasonable for the current unit to receive adjustments in line with those in the AFSCME unit. The Employer does propose two adjustments of \$850.00 per person in the first two years; these would reflect about 2.5% increases. These would be financed from the Anthem demutualization fund and thus would not be a draft against General Fund revenues. Patterned after a third year adjustment in the AFSCME unit it would be reasonable to adopt the Union's proposal for the third year. This would consist of a longevity adjustment of +2% to +3%. Longevity adjustments in the first two years would be substituted for with the two lump-sum adjustments, as in the Employer's proposal.

This package meets the Employer's concern about an early freeze on General Fund monies to underwrite an adjustment of wages in the supervisor's unit. Then, after two years, the County would be in a better position to meet a 2-3% longevity adjustment in the third year. If needed, a small fraction of this could come from unencumbered funds as a transitional step because budget forecasting is an inexact process. Also, part of this would come from the contract funds from the three Townships served by the Sheriff.

If the Fact-finder reads data in TAB 16 correctly, each 1% would run some \$28,000, a manageable amount. Finally, the Fact-finder is reminded that Ms. Feldman omitted any discussion of over 20% of General Fund revenues.

This approach harmonizes with Sheriff Vore's expressed budgetary concerns. It incorporates a consideration of revenues from the three Townships while it honors his concern that his operating budget will be tight. Any growth in funds needed to cover the operations of the renovated and expanded jail and/or to address over-crowded conditions would still have to come from other "planned" revenues. This approach also resembles the approach he wrote about under TAB 14 in other negotiations within his Department. As a piece of a pattern this approach resembles both this Sheriff's unit and the AFSCME unit; but, it is not identical. It also harmonizes with adjustments for the ranking officials as described by Maj. Busch. This approach also recognizes the Union's expressed desire of carrying out the long-standing pattern of some visible wage adjustment although these would seem to be near 2 ½% instead of 3% and they would not be pensionable in the first two years.

Both Parties spoke about comparables, yet they disagreed on what sheriff units should be used. The Union through its Exhibits 10-15 and the Employer through its TABS 4, 5, 8, and 9 offered several frames of reference. From all of this a clear picture shows up: namely, that the Sergeants and Lieutenants in Montgomery County are well-paid (as the character of their work warrants). The recommended pattern would neither appreciably improve nor deteriorate their position relative to other Sheriff's units throughout the State or throughout the region of southwestern Ohio.

Both Parties agree that any adjustment to Deputy wages will show up in Article 26, Section 1, Differential. The above discussion does not affect this issue (described in TAB 14 and TAB 16). Also, the Fact-finder notes that the above discussion of “longevity” adjustments does not affect the issues tentatively agreed upon and signed off which involve holidays, vacation, and other fringes.

Finally, the Fact-finder has relied upon several of the criteria in ORC 4117.14, (G), (7), (a) – (f) in his analysis above. In particular, he notes his use of criterion (c): “...the ability of the public employer to finance and administer the issues proposed.”

Recommendation:

**ARTICLE 26
WAGE RATES AND LONGEVITY
SECTION 1 – DIFFERENTIAL**

As proposed by both Parties, carry forth the provisions in the prior Agreement (with appropriate changes of date).

SECTION 2 – LONGEVITY

Carry forth proposal of the Employer for Section 2, but restricted to 2003 and 2004.

SECTION 3 – WAGE MAINTENANCE

Carry forth proposal of Employer.

SECTION 4 – LONGEVITY

Carry forth proposal of the Union with the effective date of November 1, 2005.

ARTICLE 30: INSURANCE

Positions of the Parties:

The Union proposes modified language for Section 1, A. This would provide that all “full-time employees shall be entitled to Health Insurance coverage with a level of benefits equal to or greater than the level of benefits in existence on the effective date of this Agreement.” The Union proposes that all the remaining provisions in Article 30 be carried forward without change.

The Employer proposes a modification in the Premiums section. The plan would remain 90%/10%, but the cap for the employees’ 10% would rise from \$40.00 to \$80.00 per month beginning in January 1, 2004 and \$90.00 on January 1, 2005. All other provisions would remain as under the prior Agreement.

Analysis:

In its proposal for modifications, the Union focuses on Section 1, A with an entitlement for “Health Insurance coverage with a level of benefits equal to or greater than the level of benefits in existence on the effective date of the Agreement.” This is an understandable proposal by people who are covered by the benefit package of Health Insurance. Both Parties submitted exhibits of protected benefits in the Health Insurance Plan. The Employer’s Exhibit focuses on current benefits; interestingly, the Union does not express discontent with the current benefit package. Rather, in questioning Ms. Amy Wiedeman, Administrative Services Director, the Union pointed out how many current benefits reflect a type of lessening of the similar benefits from the last period covered. The Union expresses a concern over further lessening of benefits in the upcoming plan and subsequent plans under the Agreement. The Employer indicated how the current

plan involves two principal available carriers, United and Anthem. Also, some 46 employees with the Sheriff use the waiver due to coverage by another plan by a spouse. The benefit packages of these two carriers are offered to all the employees throughout the County. Obviously, it makes no fiscal sense to have a plan for simply the forty-five Sergeants and Lieutenants. Instead, this unit receives the same benefits as all in the County. So, anyone in the unit who chooses coverage will receive the same benefits as all others covered throughout the County employment. It is well known how this coverage in insurance plans is quite dynamic in the current economy. So, the Fact-finder recommends that the Parties adopt Section 1, A, as proposed by the Employer in preference to the Union's proposal for a new guaranteed plan. This is not necessarily a pleasant recommendation but one which reflects existing practice in this critical area of insurance benefits.

The Union proposes that the Parties retain the current 90/10 with a \$40 cap in premiums under Section 2. The Employer accepts retention of a 90/10 plan but proposes a two step increase of cap to \$80 beginning January 1, 2004; then to \$90 per month beginning January 1, 2005.

Ms. Feldman testified a bit about the basis for the Employer's proposal for an increase in the cap. But, the Employer relied principally upon Ms. Amy Wiedeman, Administrative Services Director, to cover materials and exhibits in its TAB 2. She emphasized the Employer's concern about the budgetary picture (described above in coverages on Article 26). As part of this concern is a concern about the increases in premium rates for the two Health Insurance plans. Of special concern are the two rates for family plans. On an annual basis, these family plans cost either \$9,435 or \$9,641 a

year. She showed how these cost figures have been rising in the last four years, and earlier. She would anticipate that they will continue to rise into the future under the two plans currently offered to the employees. The Employer judges that an increase in the cap from \$40.00 per month to \$80.00 per month and then \$90.00 per month, will help to relieve some of the cost pressures on the County. The County is targeting an \$80.00 per month cap in all units in the County. This includes both unionized and unorganized employees.

The Union opposes any increase in the cap. It pointed out how different units in the County have been paying different caps. The Employer's own Exhibits show that many have been at \$40.00 a month for a family, and some have been below \$40.00. This question of a cap is in negotiations with other units around the County. At the hearing, each Party produced comparables in support of their respective cases; these figures are "all over the scale." With whichever source one wishes to compare the current payments for this unit, the members of the unit seem to be paying about a median amount under the 90/10 with a \$40 cap for family coverage. Comparables really do not support one Party's proposal over the other Party. Even within the County, different units have different CAPS. Also a few other Fact-finding Reports do not provide determinative support to the Employer. So, a compelling concern over this issue of a cap is "the ability of the public employer to finance and administer the issue proposed" (ORC 4117.14, (G), (7), (c)). A rise in monthly premiums from \$565 and \$575 in 2000 to \$786 and \$803 in 2003 is, by any measure, a steep increase. Thus, the Employer is paying progressively more than the \$40 a month cap for the employees in the family plans. Some consideration is obviously in order.

The Employer's proposal tries to make up for the "cap gap" in one swoop. The Employer seeks to have an \$80.00 cap throughout the County; thus an employee's share could go to \$960 a year (\$80 a month times 12 months) from the current level of \$480 a year. At current levels, the Employee's payment could go to \$960 a year under a family contract from the current level of \$480 a year. It would seem more reasonable if the cap would rise \$10 and then \$20 a month to \$50 a month beginning July 1, 2004 and \$60 a month beginning July 1, 2005. The July date is selected as renewal dates. Instead of a 100% rise in the cap in July 2004, the Fact-finder's recommendation provides for a more gradual rise of 25% over the current cap. Both Parties propose to keep the basic 90/10 plan. The caps proposed by the Fact-finder seem to be more reflective of keeping the basic plan while addressing the basic financial crunch faced by the Employer as administrator of the plans. It still helps to defray costs at the rate of \$10.00 a month for covered employees but at a more tolerable rate of increase. There is no need for discussion of single coverage, which still does not approach the level of the current cap. All other provisions of Article 30 would be carried over into the new Agreement.

These recommendations reflect a balance of interests between the Employer and those of the Sergeants and Lieutenants; such a balance is of the essence of collective bargaining. As the Union emphasized and as the record throughout the County indicates, bargaining over premiums is an appropriate matter for these proceedings. As with the Wage proposals, these recommendations rely upon the materials and arguments presented by the Parties and the guidelines in ORC 4117.14 to be used by the Fact-finder in his analysis leading up to the Recommendations.

ARTICLE 30

INSURANCE

SECTION 1, 3, AND 4.

Carry over into the new Agreement as contained in the prior Agreement.

SECTION 2 PREMIUMS

- A. Commencing with the premium for the month of July 1, 2003, the Employer will pay ninety percent (90%) of the premium cost for each health coverage plan offered and the employee will pay ten percent (10%), not to exceed \$40.00 per month, to change to fifty dollars (\$50.00) per month beginning July 1, 2004 and sixty dollars (\$60.00) per month beginning July 1, 2005 and for the duration of this agreement.

Article 34: Me Too (New Article)

Positions of the Parties:

The Union proposes a new article under which any improvements of benefits granted by the Sheriff to any other employees in his office would automatically be granted to members of this unit. The Employer opposes such a provision.

Analysis:

The Parties did not spend a noticeable amount of time on this at the hearing. The Union expressed a special concern about negotiations between two other units and the Sheriff. True, basic wages under the Agreement are to be modified if the base rates of pay of Deputies are adjusted. (Article 26, Section 1). But, this provision has been mutually agreed upon to maintain a rate differential between the ranks. The proposal of

the Union in Article 34 is different. It opens the possibility of an in-term modification of any benefit within the Agreement. Because the Parties have had the opportunity to re-negotiate any benefit within the Agreement (and have in fact renegotiated several), it makes more sense under collective bargaining common sense to settle issues within the limits of the Agreement. This provides a degree of stability in the relationship, which is an obvious advantage of a three-year agreement. The Union, further, offered no specific issue or concern for its proposal. So, the Fact-finder cannot see how this provision benefits the Parties.

Recommendation:

ARTICLE 34

ME-TOO

The Fact-finder recommends against the adoption of this Article.

CONCLUSION AND SUMMARY

As called upon by his appointment by SERB as Fact-finder in this case, the Fact-finder met several times with the Parties to address their impasses in negotiating a first Agreement in their new relationship. However, the Parties were using a prior Agreement as a basis for their negotiations; this existed between the Employer and another Union. During their negotiations, the Parties tentatively agreed to and signed off on nineteen issues. Then, during mediation sessions, the Parties tentatively agreed to and signed off on twelve more issues. The Fact-finder accordingly recommends that the Parties accept all thirty-one of these Articles. Issues in three Articles were submitted to Fact-finding. The Fact-finder wishes to commend the Parties (and their Committees in attendance) for

their energetic and professional manners in representing their clients during and surrounding both mediation and fact-finding sessions. The Fact-finder notes that, at the close of the hearing, each Party acknowledged they had the opportunity to present during the hearing any materials or testimony which they judged to be supportive of their respective cases. Additionally, each Party acknowledged that they had the opportunity to examine whatever had been provided by the other Party.

As discussed above, the Fact-finder analyzed the materials presented by the Parties at the hearing with the criteria provided in ORC 4117.14 (G) (7) (a) to (f) in the three Issues at Impasse. He has made recommendations to dispose of the impasses on these issues; these are contained within the test above. He recommends to the Parties that they adopt his recommendations as well as all tentative agreements signed off by the Parties during their negotiations and during the mediations. Finally, he wishes the Parties well as they move forward under this new Agreement for "the interests and the welfare of the public," and for the employment interests of the Parties.

Dated March 4, 2004 Signed Lawrence I. Donnelly
March 4, 2004 Lawrence I. Donnelly