

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

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CLINTON COUNTY SHERIFF,)
)
Public Employer,)
)
and)
)
FRATERNAL ORDER OF POLICE,)
OHIO LABOR COUNCIL, INC.,)
)
Employee Organization.)

No. 2004-MED-02-0159

FACT FINDING REPORT

Date of Award:
December 8, 2004

APPEARANCES:

Mitchell B. Goldberg, Appointed Fact Finder

For the Employer:

Brett A. Geary, Regional Manager
Clemans, Nelson & Associates, Inc.
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Loveland, OH 45140

For the Union:

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FOP/OLC SW Office
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I. Introduction and Background.

SERB appointed the undersigned, Mitchell B. Goldberg, as the Fact Finder of this public employment dispute on May 4, 2004. The parties entered into agreements extending the fact-finding period. They agreed to the date of November 22, 2004 for the hearing in this matter. The parties further agreed that the Report is to be issued on December 8, 2004.

The parties submitted position statements in accordance with SERB rules and guidelines. The bargaining unit consists of approximately 21 employees in the classification of full time deputy sheriff. The unit was certified on or about February 17, 2004. The functions of the public employer and the employees in the unit were described in detail.

For purposes of this Report, all articles or provisions tentatively agreed upon between the parties are hereby adopted, included, and incorporated herein and made a part hereof. The parties engaged in multiple negotiating sessions leading up to this hearing. The following issues remain unresolved: (1) Article 2 – Dues Deduction; (2) Article __ - Vacancies; (3) Article __ - Health Insurance; (4) Article __ - Wages; (5) Article 28 – Drug/Alcohol Testing; (6) Article __ - Residency; and (7) Article 36 – Duration. The matter proceeded to hearing on November 22, 2002 at Wilmington, Ohio. The parties engaged in mediation in an attempt to resolve some of the above issues. Although the mediation efforts were successful in bringing the parties closer to a resolution of some issues, they remain apart in terms of their final positions.

The following recommendations take into consideration all of the criteria set forth in SERB Rule 4117-9-05 (J).

II Unresolved Issues.

A. Article I – Dues Deduction.

The parties disagree over the inclusion of a fair share provision. The Union wants to include fair share over the Employer's objection . The Employer opposes fair share for philosophical reasons, because it believes that its employees should not be forced to pay money to the Union as a fair share fee. This should only occur on a voluntary basis. This is the first collective bargaining agreement. The issue, therefore, should be resolved through negotiations and should not be imposed on the employer by a neutral. This was the rationale of Fact Finder Heekin in his Conciliation Award issued in 1988 between Hamilton County and AFSCME.

The Union contends that the employees are not being forced to contribute a fair share fee; the issue is being taken to the bargaining unit for a vote based upon the recommendations of the Fact Finder. The fact that this is an initial contract is of no relevance. The employees voted to have the FOP represent their interests in collective bargaining. The fairness principles underlying the inclusion of a fair share fee apply regardless of whether this is an initial contract or a successive agreement.

Recommendation.

The Union's proposal for a fair share provision should be accepted for the following reasons: The Heekin 1988 decision is now somewhat dated. Other Fact Finders such as Keenan and Stanton have found that fair share fees are now accepted as the norm or standard throughout the state including public employment contracts in southern Ohio. This is supported by the Union's evidence showing that FOP contracts with Adams County, Greene County, Brown County and Highland County have fair share provisions. These are all neighboring counties to Clinton County.

Ohio law permits the inclusion of fair share provisions in collective bargaining agreements. State and federal laws are now well established in this area. Employees may not be forced to join a union or to contribute to a Union's expenditures for matters outside the realm of collective bargaining, such as for political or ideological causes. However, non-member employees may be charged a fair amount for services rendered by a union on behalf of non-members for collective bargaining services and grievance processing. The Union is legally bound to represent members and non-members, or all of the members of the bargaining unit. If non-members are excused from paying for these services they become free riders and gain benefits obtained by the Union in the form of increased wages and benefits, or better working conditions, without any payment in return. The members who pay dues are then required to subsidize the free riders. The courts have remedied this inherent injustice by requiring at least a fair share contribution to be paid to the Union for the provision of its collective bargaining services to non-members who receive these benefits. Right to work groups and other anti-union forces

have managed to fine tune the required formula for determining the fair share calculations to insure that non-members are protected from paying any money beyond the amounts reasonably related to the Union's services for collective bargaining and related matters, and to make sure non-members are not improperly charged for Union expenditures related to political or ideological matters.

B. Vacancies.

The Employer proposes a system for filling vacancies. The Union agrees in principle that a system is needed to correct problems that have occurred in the past when vacancies were filled in the road patrol, but there is disagreement over the criteria that should be used and the application of the criteria by the Employer. The Employer wants to fill positions with the most qualified applicants, wherever they come from. The Union does not necessarily disagree, except it believes that the deputies who now serve in corrections should have preference if they apply to fill openings in the road patrol because they are already qualified and certified as sworn peace officers.

The corrections department is being staffed with civilian employees who are now members of a separate bargaining unit. Some deputies still remain in corrections, but the Employer's goal is to eventually move all of the deputies over from corrections to road patrol and staff the corrections department with an all-civilian workforce. The Employer, however, is opposed to any guarantee that the corrections deputies receive preferential treatment when being considered for a road opening. The best applicant should be selected, even if the applicant comes from outside the unit.

The Union agrees with most of the Employer's proposed language, but objects to the broad, vague and subjective criteria and discretion of the Employer, particularly in the consideration of physical fitness, and attendance records of employees.

Recommendation.

The Employer's proposed language shall be accepted with the following recommended language changes in order to address some of the Union's concerns:

Section 14.1 Any vacancy within the bargaining unit in which the Employer intends to fill shall be posted for bid pursuant to this Article. Notices of vacancies shall be posted on one (1) bulletin board in each facility where employee notices are usually posted for ten (10) calendar days prior to filling the vacancy. The posting shall contain a description of the position to be filled, special qualifications required or desired, and location and shift for reporting and working. Interested employees must submit their bid, in writing, within the posting period to the Employer or designee as listed on the posting. In the selection of a successful applicant for a vacancy, the following factors shall be considered:

- A. Ability and qualifications to perform the work;
- B. Physical fitness, which may include medical examinations as required under Article 29 herein, and other physical fitness requirements presently in effect among existing employees in the job. So long as an applicant meets the existing standard, he or she shall not be disqualified solely on the basis that a competing applicant is more physically fit;
- C. Records of attendance, and discipline, except that no applicant shall be unfavorably considered because he or she used an excused absence or used an approved and authorized leave of absence, including a sick leave, injury while on duty leave, workers compensation leave, FMLA, maternity leave or military leave.

D. Seniority.

In all cases where the ability and qualifications of applicants are substantially equal, seniority shall be the controlling factor for the selection of the applicant to fill the vacant position.

C. Health Insurance.

The parties agree that the present countywide PPO health insurance will apply to the bargaining unit members. There is a disagreement, however, as to the amount or percentage of the premium to be charged to the employees. All county employees presently contribute 22% of the monthly premium. The Employer is proposing that the bargaining unit employees continue to contribute the same amount toward the premiums as the rest of the county employees; however, it is willing to cap the premium contribution at a 25% level for the duration of the contract.

The Union objects to a 25% contribution level, which will likely occur during the contract because of high premium costs that have risen substantially over the years. This level of contribution, even the present level of 22%, is an unreasonable financial burden for unit employees. There are many low paid employees who suffer the most when premium contributions are increased. Furthermore, none of the employees have received pay raises in the past two years. The Union proposes a percentage contribution of 15%, which is more in line with the contribution percentages of comparable counties. For example, Brown and Highland counties are both at a 15% level.

The current cost for a single plan is \$325.00 per month, and the monthly cost for family coverage is \$919.88. The county plan is self-insured with stop loss coverage for large claims. The county determines how much it wants to set aside for insurance coverage. Presently, other counties contribute more for their plans. The average cost of plans for 15 other comparable counties is \$365/\$1,024. This shows that Clinton County is under funding its insurance plans for its employees. It, therefore, could comfortably increase its contribution and reduce the contribution of its employees.

Recommendation.

The problem of ever increasing health insurance costs under the present so-called system where premiums are primarily being paid from employers is a problem entirely out of the control of either of the parties. The high costs are managed only by increasing the employees' share of the premium increases, or reducing the benefits and coverage by offering less quality of care, higher co-payments, and higher deductibles. The increases are particularly a concern for employees who earn lower wages. The increases in premiums have in many cases wiped out any cost of living pay increases, and in many cases result in a net decrease in pay. The following recommendation is premised upon the recommendation that wages be substantially increased as discussed below, in order to achieve substantial comparability with neighboring counties.

The unit members shall continue to participate in the countywide plan and contribute the current amount of 22% toward single and family monthly premiums. This amount, however, shall be capped during the life of the agreement.

D. Wages.

The Union's compensation proposal includes the implementation of salary steps, 4% increases, longevity pay, and a requirement that the Employer contribute the employee's contribution to the PERS retirement plan. The extensive proposal is based upon the Union's premise that the officers are substantially underpaid relative to their contemporaries working in comparable counties. The starting wage is particularly low and is equivalent to the pay received by unskilled workers such as store clerks and general maintenance employees. A deputy sheriff earning the starting wage of \$9.50 per hour ranks in the lower 30% of the household incomes in the county, based upon 1999 statistics. Families with children earning this amount approach the 2004 federal poverty level.

The present criterion for awarding pay increases is unpublished and unclear, although it supposedly is based upon merit evaluations including some type of attendance criteria. The entire system needs to be overhauled so that an objective understandable system can be installed. A substantial pay increase is also needed because the employees have not received an increase in approximately two years. They have fallen further behind their counterparts in neighboring counties.

The Employer is not contending that it is unable to pay the requested increases and make the necessary pay adjustments. The evidence shows that the county is one of the fastest growing areas in the state. The projections are that it will grow substantially into the future. Business and commercial development has also grown at a steady rate

resulting in a relatively low unemployment rate in the county. The recent merger of DHL and Airborne Express will create many new jobs and produce increased revenues for the region. The economic and population growth has increased the property values within the county. The wages of skilled employees must also rise in order to maintain a decent standard of living for county residents. A growing community with increased urbanization places additional demands upon the safety forces in terms of skills and training. Businesses and homeowners demand capable and competent law enforcement officers. The county must recognize that wages must be increased to obtain and retain these officers.

Accordingly, the specific Union proposal includes an increase in the starting wage (less than one year of service) to \$12.50/hr. It proposes four pay steps, 1-3 years, 3-8 years, 8-15 years, and 15+ years. Increases across the board are proposed for years two and three of the contract at 4% each year. The Union also proposes longevity pay starting at five years of service, full contribution of the employee's PERS share, and a "me too" clause.

The Employer believes that the Union proposal is fiscally unsound and could result in financial problems for the county. It computes that its labor costs would increase over 30% in the first year. It believes that its proposal of 2% across the board increases for each of the three years is more in line with pay raises in comparable counties, the increase in the cost of living, and the raises it is paying to the rest of its employees.

The evidence supports the Union's position that a substantial wage increase is needed together with a structured objective compensation system in order to address the future needs of this growing more urbanized county. Presently, the wage comparisons show that Clinton County ranks second to last among 16 comparable counties in the lowest wages paid to deputies. The average annual wage is \$29,484.76; Putnam County is the lowest at \$24,014.00; and Clinton is next at \$25,480.00. Defiance is the highest at \$34,051.00. Brown is at \$28,496.00, and Highland is at \$28,350.40. In terms of the highest wages paid, Clinton is ranked at number three among the same counties, but the statistics are misleading. This salary of over \$42,000 is paid to only one of 21 officers, an employee hired in 1981. Another employee hired in 1977 earns only a little over \$34,000 per year. Most of the other employees earn under \$30,000 with various hiring dates in the late '90's to early 00's.

Recommendation.

I recommend that the parties institute the following pay system in order to bring the department more in line with the pay received by officers doing similar work in the neighboring counties of Brown and Highland:

A step system shall be instituted providing for step increases at year one of service to three years, three years to eight years, and eight or more years of service. The starting wage shall be increased to \$26,000.00 or \$12.50 per hour. The first step shall receive an 8% increase: \$28,080.00 (\$13.50/hr) for 1-3 years of service; the second step shall receive an 8% increase, \$30,326.00 (\$14.58/hr) for 3-8 years of service; and the

third step shall receive a 8% increase to \$32,752.00 (\$15.75/hr) for 8 or more years of service. Employees presently earning more than that provided within their compensation steps shall not have their pay reduced; however, their pay shall be frozen at the present level and red circled until their compensation falls in line with the above steps. I compute the cost of the increases in year one to be approximately \$54,000 plus the cost of fringes and roll up compensation over the existing rates.

There shall be no additional longevity pay as proposed by the Union, and the Employer shall not be required to pay the employee's contribution to PERS as proposed by the Union.

There shall be an across the board increase of 3% in each of the two remaining contract years.

E. Drug/Alcohol Testing.

The Union is in agreement with the Employer's proposal to institute a drug and alcohol testing policy, however, it disagrees with the proposed standard for triggering a test, and the test result calculation that establishes a violation.

The Union proposes that the standard for requiring a test should be "probable cause" for believing an employee is under the influence. The Employer proposes a "reasonable suspicion" standard. The contiguous counties of Brown and Highland

employ the higher standard for purposes of determining employee misconduct and discipline in this area.

The Employer wants to impose a violation standard of .00. The Union proposes a positive result and violation if the alcohol content in the blood exceeds .02%. The Union believes that the Employer's .00 standard does not reasonably allow for the inaccuracy of the breath testing equipment, which presently has acceptable tolerances established by the Department of Health of .005%. This means that employees can be charged with violations of the policy when the test result is inaccurate because of the existing tolerances. This problem should be addressed and rectified. Information from NHTSA shows that impairment in 73% of the persons tested appeared at a .039 BAC level.

Recommendation.

Safety forces are among those employees who should be held to the highest standard when it comes to being under the influence of drugs or alcohol when working. Road patrol officers, in particular, should be held to the highest standards the same as truck drivers, and other transportation employees who regularly drive on the roads as part of their regular duties. Law enforcement officers have even more responsibility to the public because they carry firearms. It is absolutely necessary that their judgment and responsiveness be unimpaired when performing their duties.

I recommend that the standard for determining when to test and the BAC level that determines a violation of the policy be the same as the standards presently used and in effect by the Ohio State Highway Patrol Department.

F. Residency.

The parties agree in principle as to the benefit of a residency requirement and the need to have officers respond to emergency situations within a reasonable time. They disagree, however, as to the treatment of those employees who presently live within the required residency area, and want to move outside at some point. The Union opposes a residency requirement for all current employees. The Employer wants to require residency for all current employees who live within the required area and for all employees presently living outside the area who move into the area during their employment. The Employer is proposing a 25-mile radius from the Sheriff department location in downtown Wilmington.

The Employer states that the Sheriff has always required county residence for its employees, and so advised all employees when they were hired. Limited exceptions were granted, however, over time, on a case-by-case basis. The Employer still believes that it is important for its officers to be citizens within the county and that they support the county revenues with their taxes. More importantly, it is important that officers be able to respond to emergencies in a timely fashion by living somewhat close to their duty stations.

The Union wants to grandfather those employees who now live outside of the county. The residency requirement should only apply to new hires, who must reside within the county within 180 days of being hired. Those employees who live outside the county may continue to do so, and should be free to move in and out of the county as they please. The 25-mile radius is acceptable. Many of the members of the unit would not be able to reasonably withstand an increase in their cost of living that would occur with a requirement that they live within the county. The cost of living within Wilmington and other parts of the county has increased because of increased population, increased business, increased public services, and urbanization.

Recommendation.

I find that the Union's position on this issue is more reasonable. So long as current employees live within the required 25-mile radius of the Sheriff's department in downtown Wilmington, they should be permitted to reside outside the county. There was no evidence presented as to the reasons exemptions were granted to employees in the past from compliance with the Employer's residency policy. It is not clear whether residency was ever a required condition of employment when employees were hired.

The most persuasive reason for some requirement is the response time requirement. The 25-mile radius serves this purpose. Now that there is a clear policy in effect, it is reasonable to require it for new hires, but existing employees should be exempted. Moreover, the need for a rule that catches employees who move into the county, and prevents them from moving out without losing their livelihood seems

somewhat excessive. There was not a clear showing of the Employer's need for such a rule.

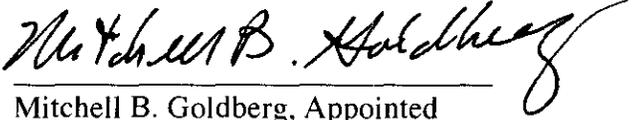
G. Duration.

The parties are in substantial agreement that a three-year agreement is appropriate.

Recommendation.

The term of the contract shall be for three years.

Date of Award: December 8, 2004



Mitchell B. Goldberg, Appointed
Fact Finder