

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD
2004 DEC -6 P 4:27

In the Matter of)
Fact-Finding Between:)

HURON COUNTY SHERIFF)

-and-)

OHIO PATROLMEN'S BENEVOLENT)
ASSOCIATION)

Case Nos. 04-MED-03-0258
04-MED-03-0259
04-MED-03-0260
04-MED-03-0261

Jonathan I. Klein,
Fact-Finder

FACT-FINDING REPORT
and
RECOMMENDATIONS

Appearances

For the Union:

Justin D. Burnard, Esq. - Attorney for Union
Lee Schnell - Corrections Officer
Joseph DeMaria - Corrections Officer
Gregory W. Gadberry - Patrol Sergeant
Ruth Goodin - Dispatcher

For the Employer:

Richard P. Gortz - Gortz & Associates, Inc.
Jeremy Iosue - Gortz & Associates, Inc.
Richard Sutherland - Sheriff
Mary Cain - Huron County Administrator

Date of Issuance: December 4, 2004

I. PROCEDURAL BACKGROUND

This matter came on for hearing on November 30, 2004, before Jonathan I. Klein, appointed as fact-finder pursuant to Ohio Revised Code Section 4117.14, and Ohio Administrative Code Section 4117-9-05, on July 2, 2004. The hearing was conducted between the Huron County Sheriff (“Employer”), and the Ohio Patrolmen’s Benevolent Association (“Union”), at the Huron County Emergency Management Agency and Office of Homeland Security, Norwalk, Ohio. The four bargaining units involved in the fact-finding process represented by the Union are the corrections officers, dispatchers, road command officers and road patrol officers.

After further negotiations and mediation proved unsuccessful, the fact-finder commenced the evidentiary portion of the fact-finding hearing. The Employer raised the issue of the Union’s failure to provide the Employer and fact-finder with a copy of its written statement as required by Ohio Rev. Code §4117-9-05, and argued that the mandate of the rule must be followed. The Union acknowledged that it had inadvertently failed to provide its written statement to the Employer and fact-finder prior to the commencement of the hearing, but argued that the Employer had heard all of its positions and issues previously and no element of surprise would be involved by receiving the Union’s position statement.

Ohio Rev. Code §4117.14 (C)(3)(a) requires the fact-finder to gather facts and make recommendations in accordance with the rules and procedures established by SERB. Ohio

Admin. Code §4117-9-05 (F) states, in relevant part as follows:

Pursuant to division (C)(3)(a) of section 4117.14 of the Revised Code, upon notice of appointment of the fact-finding panel and prior to the hearing, each party shall submit to the fact-finding panel and serve on the other party a written statement. A failure to submit such a written statement to the fact-finder and the other party prior to the day of the hearing shall cause the fact-finding panel to take evidence only in support of matters raised in the written statement that was submitted prior to the hearing.

The fact-finder held that the language of the statute and rule cited above deprives the fact-finder of any discretion to take evidence from the non-complying party. Accordingly, only the evidence presented by the Employer on those issues raised in its timely filed submission were held to be properly before the fact-finder. The Union was offered, however, the opportunity to cross-examination and/or argue the merits of the position put forward by the Employer. Any contract language proposed by the Employer in its written position statement upon which no evidence or argument was presented at hearing has not been included in this Report and Recommendations.

Nine (9) issues are properly before the fact-finder:

1. Article 2 - Dues/Fair Share Fees
2. Article 12 - Sick Leave

3. Article 16 - Vacation
4. Article 17 - Personal Leave
5. Article 19 - Overtime
6. Article 20 - Shift Exchange
7. Article 21 - Court Duty
8. Article 22 - Insurance
9. Article 31 - Drug/Alcohol Testing

The fact-finder incorporates by reference into this Report and Recommendation all tentative agreements between the parties relative to the current negotiations, and any provisions of the current collective bargaining agreement not otherwise modified during negotiations and fact-finding. In making the recommendations which follow, the fact-finder has reviewed the arguments and evidence presented by the parties at hearing and the Employer's written position statement. Again, only those issues raised by the Employer at the evidentiary hearing of the fact-finding process have been addressed by the fact-finder.

II. FACT-FINDING CRITERIA

In the determination of the facts and recommendation contained herein, the fact-finder considered the applicable criteria required by Ohio Rev. Code Section 4117.14(C)(4)(e), as

listed in 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-05(K)(1)-(6). These fact-finding criteria are enumerated in Ohio Admin. Code Section 4117-9-05(K), as follows:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

III. FINDINGS OF FACT AND FINAL RECOMMENDATIONS

Issue 1: Article 2 -Dues/Fair Share Fees

At hearing, the Employer withdrew its objection to the placement of fair share fee language in the collective bargaining agreement. The Union stated it had no objection to the Employer's proposal.

Final Recommendation

Based upon the evidence presented at the fact-finding hearing, the following provision shall be added to Article 2 of the collective bargaining agreement.

Effective thirty (30) days following the beginning of employment, members of the bargaining unit who are not members of the OPBA shall pay the OPBA a Fair Share Fee. This does not require any member of the bargaining unit to become a member of the OPBA, nor shall the Fair Share Fee exceed dues paid by members of the OPBA who are in the bargaining unit. The deduction of a Fair Share Fee from the payroll checks of members of the bargaining unit and its payment to the OPBA is automatic and does not require the authorization of the member. A rebate procedure shall be established by the Union in accordance with Ohio Revised Code §4117.09 (C). No member of the bargaining unit shall be required to become a member of the OPBA as a condition for securing or retaining employment.

Issue 2: Article 12 - Sick Leave

The Employer proposed, without objection by the Union, to add “father” and “step grandparent” to the definition of immediate family under Article 12.3 of the collective bargaining agreement.

Final Recommendation

Based upon the evidence presented at the fact-finding hearing, the following language shall be contained in Article 12, §12.3 (B) of the collective bargaining agreement.

- B. Definition of immediate family: grandparents, step grandparents, brother, sister, brother-in-law, sister-in-law, daughter-in-law, son-in-law, father, father-in-law, mother, mother-in-law, spouse, child,

grandchild, stepmother, stepfather, stepbrother, stepsister, stepson, stepdaughter, a legal guardian or other person who stands in place of a parent (*loco parentis*).

Issue 3: Article 16 - Vacation

The Employer proposed to lower the years at which five (5) weeks vacation is accrued from the current twenty-five years to twenty years as provided in Article 16, §16.1. It further proposed to allow the employees in the bargaining units to carry over one year's worth of vacation to the next year. This would be a change in the current language of Article 16, §16.5 which does not permit any vacation carryover without the express written authorization of the appointing authority. The Employer was also agreeable to the elimination of the pre-scheduled and block vacation distinctions, offering a shorter notice period for vacation requests and approving vacations on a first-come, first-served basis. The proposal also included the ability of employees to use vacation in increments of one work day.

The Union responded that it did not disagree with the proposed elimination of the distinction between prescheduled and non-scheduled vacations, but had no response to the balance of the Employer's proposed modifications to Article 16.

Final Recommendation

Based upon the evidence presented at the fact-finding hearing, Article 16 of the collective bargaining agreement entitled, "Vacations," shall provide, as follows.

Section 16.1 Each full-time employee shall earn and be entitled to paid vacation in accordance with the following schedule:

<u>Length of Service</u>	<u>Hours of Vacation</u>
After one (1) year	80 hours
After eight (8) years	120 hours
After fifteen (15) years	160 hours
After twenty (20) years	200 hours

Section 16.2 Earned vacation shall be awarded on the employee's service anniversary date in accordance with the above schedule, provided the employee is employed by the Employer at the time. There shall be no proration of vacation time.

Section 16.3 Vacation time shall be taken at a time approved by the appointing authority.

Section 16.4 Any employee who quits or is terminated or retires and has unused vacation time shall receive such vacation time or shall be paid for such time.

Section 16.5 An employee may carry over from one anniversary year to the next no more than the amount of vacation awarded in the previous year. Additional vacation time shall not be carried over from one year to another without the express written authorization of the Sheriff. Any vacation time other than that authorized above that is unused shall be deemed forfeited.

Section 16.6 An employee who has accumulated and earned vacation time from being employed by the State of Ohio or any other political subdivisions of the State of Ohio; and who was hired on or after April 1, 1999, shall not be entitled to prior service credit for the purposes of vacation. Employees hired before April 1, 1999 or who were granted prior service credit prior

to December 31, 1985, shall retain such prior service credit. An employee who is hired on or after April 1, 1999 who has accumulated earned vacation time from being employed previously with Huron County or the National Military shall not be entitled to prior service credit for the purposes of vacation.

Section 16.7 Semi-annually, once in January and once in July, employees will be notified in writing of the balance of their vacation leave.

Section 16.8 Vacation shall be granted on a “first come, first served” basis. Requests for use of vacation of five (5) consecutive work days or more shall be submitted for approval no less than two (2) weeks prior to the start of vacation. Requests for use of vacation of less than five consecutive work days shall be submitted for approval no less than twenty-four (24) hours prior to the start of vacation. Vacation requests shall be submitted directly to the employee’s division head, or in the absence of the division head, the person acting in the stead of the division head.

Vacation shall be used in increments of one work day. The vacation request shall be approved unless the absence of the employee would cause overtime, or cause an operational hardship (e.g., ongoing investigation would be interrupted). Requests for vacation shall not be unreasonably denied.

Issue 4: Article 17 - Personal Leave

The Employer proposed increasing personal leave from sixteen hours to twenty-four hours. The Union had no objection to the proposal

Final Recommendation

Based upon the evidence presented at the fact-finding hearing, Article 17, §17.1 shall read, as follows:

Section 17.1. At the beginning of the calendar year, each employee shall be credited with twenty-four (24) hours of personal leave.

Issue 5: Article 19 - Overtime

The Employer proposed adding holidays worked to the hours worked for purposes of calculating overtime pay under Article 19. The Union offered no response at hearing.

Final Recommendation

It is the fact-finder's recommendation that Article 19, §19.2 of the new collective bargaining agreement be modified to read, as follows:

Section 19.2. Overtime pay shall be computed on the basis of hours worked in excess of forty (40) in the normally scheduled work period. The overtime pay rate shall be one and one-half (1½) of the employee's base hourly pay rate. Hours worked shall include actual work hours, holiday time and vacation hours only. The Employer shall not reduce an employee's normally scheduled work hours to avoid overtime payment in any given week. Example. An employee who works one (1) hour beyond his scheduled shift on Monday will not be sent home one (1) hour early on Friday to avoid overtime payment.

Issue 6: Article 20 - Shift Exchange

The Employer proposes maintaining current contract language. The Union had no response to the Employer's position.

Final Recommendation

It is the fact-finder's recommendation that Article 20 retain current language in the new collective bargaining agreement.

Issue 7: Article 21 - Court Duty

The Employer proposes changes to Article 21, §21.1 only. These changes would result in a two-hour guaranteed payment to an employee who is required by subpoena to testify in court in the performance of his or her authorized job duties if the employee is scheduled and works the second shift, and a three-hour guarantee for those subpoenaed employees who worked a third shift or who must report to court on their scheduled day off. The Union expressed no position on the Employer's proposal.

Final Recommendation

It is the fact-finder's recommendation that Article 21, §21.1 of the new collective bargaining agreement be modified to read, as follows:

Section 21.1. An employee subpoenaed into court to testify as the result of the authorized performance of his job duties with the Employer, where such appearance occurs outside of his regular scheduled working hours, shall be compensated: A) For those who are scheduled and work the second shift on a day the employee is subpoenaed into court, a minimum of two (2) hours pay at the applicable rate; or B) For those who were scheduled and worked the previous third shift, and those who are subpoenaed to court

on their scheduled day off, a minimum of three (3) hours pay at the applicable rate of pay.

Issue 8: Article 22 - Insurance

The Employer proposes modifications to Article 22. During the term of the current collective bargaining agreement, the insurance plans have changed and the parties entered into an interim agreement with respect to those changes. A portion of that agreement is now proposed as Article 22, §22.2 addressing the dental plan.

Under Article 22, §22.1 the Employer proposes that the insurance clause be modified to offer the employees the same coverage at the same cost as provided to non-bargaining employees of the Huron County Board of County Commissioners. The Union will receive thirty (30) days notice of any changes in the coverage, plan design and premium paid prior to the change(s) becoming effective. In addition, the Union may select one bargaining unit member from each of the bargaining units to participate on the Employee Review Committee. The Employer opined that it did not anticipate an increase in the amount employees pay for such insurance. The Union had no response to the Employer's proposed changes to Article 22.

Final Recommendation

The final recommendation of the fact-finder concerning the issue of health insurance is the following. The fact-finder recommends the Employer's proposal with several changes in

language. First, the fact-finder holds that if uniformity of basic health insurance plans is an important tool in maintaining control of health care costs, it is also reasonable to recommend that the bargaining unit employees shall be entitled to a health and medical insurance plan equivalent to the highest benefits and coverage to which *any* employee in the county, bargaining unit or non-bargaining unit, is provided. The same limitation built into the proposed language on the parties' intended application of the Employee Review Committee's recommendations should also be removed. Second, the fact-finder recommends a sixty-day, rather than thirty-day notice provision. Therefore, it is recommended that Article 22 of the new collective bargaining agreement provide, as follows:

Article 22
INSURANCE

Section 22.1 The health insurance plan provided to the employees in the bargaining units shall be equivalent to the health insurance plan with the highest benefits and coverage available to any County employee. Should the Employer wish to change the coverage, plan design or premium paid, consistent with the above provision, the Employer will provide sixty (60) days notice to the Union prior to the change becoming effective.

Section 22.2 In addition to the health insurance referred to in Section 22.1, above, the Employer shall provide to OPBA bargaining unit employees, beginning July 1, 2004, a dental plan equivalent to the "Dental Plan II" proposed by CEBCO as of October 10, 2003 at the following cost per month to those bargaining unit members who elect to participate in the Dental Plan:

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July 1, 2004 – June 30, 2005: no cost

July 1, 2005 – June 30, 2006: twenty-five percent (25%) of monthly premium per employee

July 1, 2006 – December 31, 2007: fifty percent (50%) of monthly premium per employee

The employee premium contribution to the Dental Plan shall be taken through payroll deduction.

Section 22.3 One employee from each bargaining unit selected by the Union may participate in the Employee Review Committee. The recommendations of the committee shall be advisory only. It is the intent of the parties that any recommendations of the committee concerning a change in benefit levels be applied to all County employees equally.

Issue 9: Article 31 - Drug/Alcohol Testing

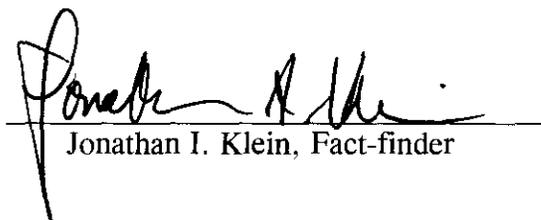
The Employer proposes a complete revision to the language contained in the current Article 31, including language on random and post-accident testing. While few other departments in the County have random testing except where CDLs are required or the positions are otherwise safety sensitive, a limited number of classifications within the Sheriff's Department will be subject to random testing under the Employer's proposal.

The Union's only response was its desire to maintain current language.

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Final Recommendation

It is the fact-finder's recommendation that Article 31 in the new collective bargaining agreement provide as set forth in the Employer's proposal, attached hereto and marked Exhibit "A."


Jonathan I. Klein, Fact-finder

Dated: December 4, 2004

ARTICLE 31
DRUG/ALCOHOL TESTING

Section 31.1. Testing

Reasonable Suspicion Testing

Drug/alcohol testing for administrative purposes may be conducted on employees upon reasonable suspicion that an employee is under the influence of or abusing drugs or alcohol. Reasonable suspicion that an employee used or is using a controlled substance or alcohol in an unlawful or abusive manner may be based upon, but not be limited to, any of the following:

- A. Observable phenomena, such as direct observation of drug or alcohol use or possession and/or the physical symptoms of being under the influence of a drug or alcohol;
- B. A pattern of abnormal conduct or erratic behavior;
- C. Arrest or conviction for a drug or alcohol-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug or alcohol possession, use, or trafficking, on the basis of information provided by reliable and credible sources or independently corroborated;
- D. Evidence that an employee has tampered with a previous drug test;
- E. Facts or circumstances developed in the course of an authorized investigation of an accident or unsafe working practice.

Whenever possible, observable phenomena, as referenced in Subsection "A" herein, shall be witnessed by more than one (1) individual.

Random Testing

Employees holding the classification of Deputy Sheriff, Corrections Officer or Dispatcher shall be subject to random drug testing. Not more than twenty-five percent of the total number of employees in the above classifications in the bargaining unit shall be annually, with selection done on a random basis by the approved testing agency. Employees who are randomly selected shall proceed directly to the testing facility upon notification. Failure to proceed directly to the testing facility for testing shall be treated for purposes of this policy, as a positive test result.

Post Accident Testing

An employee in the bargaining unit who is the driver of a county owned vehicle, or a driver of his/her their personal vehicle on County business shall be subject to post

accident testing if involved in an collision with another vehicle, pedestrian or stationary object while on county business, or while driving such county vehicle and,

1) the employee or a passenger, or the driver or passenger of any other vehicle involved in the collision is

a) killed;

b) injured to the extent he/she receives medical attention by a EMT, EMT/Paramedic, or where the employee or his/her passenger seeks medical attention of any medical professional as a result of the accident;

2) any vehicle involved in the collision is towed,

must present him/her self as soon as possible, but in no event longer than four (4) hours, for drug testing at an approved agency. Failure of an employee to present him/her self to the testing facility for testing within four hours shall be treated for purposes of this policy as a positive test result, unless such failure not in the control of the employee.

Section 31.2. Initial tests shall be made by a medical professional or institution qualified to administer such tests. Confirmatory drug screening tests shall be conducted by medical laboratories meeting the standards of the National Institute of Drug Abuse and the National Institute of Health. The procedures utilized by the Employer and testing laboratory shall include an evidentiary chain of custody control. All samples collected shall be contained in three (3) separate containers for use in the prescribed testing procedures. All procedures will be outlined in writing.

Section 31.3. Alcohol testing shall be done in accordance with the law of the State of Ohio to detect drivers operating a motor vehicle under the influence. A positive result shall entitle the Employer to proceed with disciplinary procedures.

Section 31.4. The results of the testing shall be delivered to the Employer and to the employee tested. An employee whose confirmatory test result is positive shall have the right to request a certified copy of the testing results in which the vendor shall affirm that the test results were obtained using the approved protocol methods. The employee shall provide a signed release for disclosure of the testing results to the Sheriff. Refusal to submit to the testing provided for under this agreement will be treated as a positive test and may be grounds for disciplinary procedures.

Section 31.5.

A. If a drug screening test is positive, a confirmatory test shall be conducted utilizing the fluid from no more than two (2) of the three (3) containers collected in the manner prescribed above.

B. In the event the second test confirms the results of the first test, the Employer may proceed with the sanctions as set forth in this article.

- C. In the event that the second test contradicts the result of the first test, the Employer or employee may request a third test in accordance with the procedures prescribed above. The results of this test, if positive, shall allow the Employer to proceed with sanctions as set forth in this article. If the results are negative, the employee shall be given the benefit of the doubt and no sanctions shall be imposed.

Section 31.6. The Employer shall maintain a list of three (3) testing laboratories or facilities. These laboratories shall conduct any testing directed by the Employer.

Section 31.7. If the testing required above has produced a positive result, the Employer may take disciplinary action. Discipline allowed by the positive findings provided for above may be deferred pending rehabilitation of the employee within a reasonable period. An employee who participates in a rehabilitation or detoxification program shall be allowed to use sick time, compensatory days, or vacation leave, for the period of the rehabilitation or detoxification program. Upon completion of such program, and upon receiving results from a re-test demonstrating that the employee is no longer abusing a controlled substance, the employee shall be returned to the same or similar position, provided such position(s) still exists and/or is utilized. Such employee may be subject to periodic re-testing upon his return to his position for a period of one (1) year from the date of his return to work. Any employee in a rehabilitation or detoxification program in accordance with this article will not lose any seniority or benefits, should it be necessary for the employee to be placed on medical leave of absence without pay for a period not to exceed ninety (90) days.

Section 31.8. If the employee refuses to undergo rehabilitation or detoxification, or if he tests positive during a re-testing within one (1) year after his return to work from such a program, the employee shall be subject to disciplinary action, including a termination of employment.

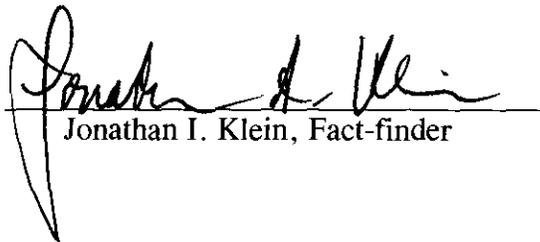
Section 31.9. Costs of all drug screening tests and confirmatory tests shall be borne by the Employer except that any test initiated at the request of the employee shall be at the employee's expense.

Section 31.10. ~~The provisions of this article shall not require the Employer to offer a rehabilitation/detoxification program to any employee more than once.~~

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CERTIFICATE OF SERVICE

Originals of this Fact-finding Report and Recommendations were served upon on Richard P. Gortz, Gortz & Associates, Inc., 24100 Chagrin Blvd., Suite 260, Beachwood, Ohio 44122, and upon Justin D. Burnard, Esq. Allota, Farley & Widman Co., L.P.A., 2222 Centennial Road, Toledo, Ohio 43617, and upon Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, each by express mail, sufficient postage prepaid, this 4th day of December, 2004.


Jonathan I. Klein, Fact-finder