

FACT FINDERS REPORT

STATE EMPLOYMENT
RELATIONS BOARD
2005 FEB -8 A 11:25

IN THE MATTER OF:

Fraternal Order of Police, Capital City Lodge No. 9
And
The Franklin County Sheriff

Case Numbers:
04-MED-06-0653
04-MED-06-0654

Before Fact Finder
N. Eugene Brundige

PRESENTED TO:

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

And

Russell E. Carnahan, Attorney and Advocate
For FOP Lodge No. 9
3360 Tremont Road, 2nd Floor
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And

Michael T. Short Attorney and Advocate
For Franklin County Sheriff
The Huntington Center
41 South High Street
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Fact Finder N. Eugene Brundige was selected by the parties and appointed by The State Employment Relations Board in compliance with Ohio Revised Code Section 4117.14 ©(3).

The parties agreed upon a hearing date of December 15, 2004 at the Franklin County Courthouse. The parties timely filed the required pre-hearing briefs.¹

The Fact Finder invited the parties to attempt to mediate the remaining issues. The parties noted that they had made significant progress with the assistance of the SERB mediator, but were willing to make additional attempts. Mediation was attempted but it was apparent that the parties were very far apart on economic issues and no further issues were resolved through the mediation process.

In their pre-hearing filings one or more of the parties identified the following issues, and/or contract provisions as being unresolved:

Wages,	Article 14
Shift Differential,	Article 15
Vacation,	Article 21
Sick Leave,	Article 22
Insurance,	Article 24
Definitions,	Article 25

¹ Even though the hearing was conducted at the end of 2004, the parties jointly indicated to the Fact Finder that they had agreed to retroactivity into the previous year.

Duration, Article 26

This fact finding deals with two separate units. The first is composed of full-time sworn uniformed deputies below the rank of corporal. The second includes full time sworn uniformed deputies of the FCSO of the rank of corporal, sergeant, lieutenant and captain. All issues presented by the parties pertained to both units.

The Fraternal Order of Police was represented by Russ Carnahan, Spokesperson; Tony Graves, Chairperson and Team Members: Zachary Scott, Ben Jones, Geoff Stobart, Jeremy Copas, Stephanie Klumpp, and Jason Ronk.

The County was represented by Michael Short, Spokesperson and Robert Weisman, Counsel for the County, Also appearing for the County and Sheriff were Patrick Garrity, Director of Management Services, Sheriff's Office; Sue Wolfe Schoener, Assistant Human Resources Director, Sheriff's Office; Chris Whistler, County Director of Management Service; Mark J. Barrett, Chief Deputy (Corrections) F.C.S.O.; and Gilbert H. Jones, Chief Deputy (Patrol) F.C.S.O.

The respective cases were presented in a clear and concise manner.

The issues presented to the Fact Finder are all financial in nature. The relationship between the parties is a mature one and, in most cases, they have been able to resolve the non-economic issues.

In this report the Fact Finder will consider each of the issues, the positions of each of the parties and then will offer a recommendation. In those areas where a change in Contract language is proposed, the implementing language will also be recommended.

I. CONTRACT DURATION:

Management proposes a one year agreement and a re-opener for wages only. The rest of the agreement would remain in effect for three years. While they are not interested in immediately bargaining new wages, the county is concerned about finances. They believe a one year agreement on salary would allow the financial situation to solidify and they would have more clarity when considering salaries during a wage re-opener. The County notes that a new Commissioner has just been elected which has led to a reorganization of the Commission. This short term economic package would permit the new Commission to more fully consider the matter in the future.

FOP is opposed to a re-opener on wages. They list the myriad of difficulties surrounding such a time period, not the least of which is the requirement to remain in bargaining almost year round. There is recognition by FOP and the County that the current timing of the agreement is difficult. The expiration of the agreement toward the end of the Calendar year (current agreement ended October 24, 2004) is prior to the submission and adoption of the next budget. They support a full three year agreement.

Discussion:

This Fact Finder has not found short contracts and re-opener clauses to effectively serve the goal of ORC 4117 to establish labor-management stability.

While there continues to be significant uncertainty regarding the future of public service financing in Ohio, there is no sign that there will be any clearer signals one year from now, particularly in light of the fact the parties would have to begin bargaining again almost immediately.

There is compelling evidence to demonstrate the difficulty of bargaining within the time cycle of the past and current Collective Bargaining Agreements. Thus, I recommend a contract somewhat shorter than three years to break this pattern and allow the parties more data as they bargain their next agreement.

Finding and Recommendation:

This agreement shall be in effect for approximately two and one half years or until April 24, 2007.

Section 26.1 Duration. , First sentence shall be amended to read:

"The provisions of this Agreement are effective at 12:01 A.M. _____, 2005 and continue in full force and effect through midnight April 24, 2007 except that the parties have agreed wages shall be retroactive to the expiration date of the previous agreement."

II. COMPENSATION:**a. Wages:****FOP POSITION:**

FOP acknowledges the economic downturn of the last few years but notes the current economy is affecting municipalities more significantly than is has the County.

The proposal of FOP is for a six (6) % increase in each of the three years of the agreement. In pointing to the comparable data, it is noted that almost all other units are settling at or slightly above 4% per year.

As was present in the last Fact Finding Hearing conducted by this fact finder in these units, FOP has significant concerns about

the comparable jurisdictions offered by the County. FOP believes the most relevant comparable jurisdictions are other FOP Units within Franklin County.

The FOP also notes that the County submitted data does not include pension pickup amounts. The FOP asserts that to exclude this benefit is not an "apples to apples" comparison.

The FOP points to the "e-step" or training step that was recommended by this Fact Finder in the last report. It is noted that the transferring out time period has dropped over the life of this agreement. They propose the e-step be lowered to five years.

COUNTY POSITION:

Franklin County and Sheriff's representatives note that the economy continues to be a significant problem and has been so since 2001.

It is noted that the County funds the Sheriff's Office from the General Fund.

The bottom line is that the County has been spending more money than it has been taking in.

Chris Whistler, the Director of the County's Office of Management and Budget, presented the County's view of its economic situation. While the overall budget is increasing, the

General Fund is declining. He notes that the Sheriff's Office expenditures account for 31% of the General Fund.

Of the new dollars spent since 1998, the Sheriff's Office has received 47% of that amount.

Mr. Whistler discussed the revenues that support the General Fund. 37% comes from Sales Tax. The local government fund is projected at 11%. It was noted that the State Deficit has generated discussion regarding the elimination or further reduction in this fund.

He projects a modest increase in the General Revenue Fund from 227 million in 2004 to 236.4 million in 2005.

Mr. Whistler discussed the projected General Fund Resources for 2004 which was the Projected General Fund plus the year end beginning balance. The County carried over 72.7 million for a total of 299.6 million.

He notes that the 2005 projected General Fund Resources is lower (\$277.2) due to the lower beginning balance (\$40.8 million down from \$ 73 million from last year.

Sales taxes do appear to be turning around.

The view of the County is that the economic situation remains serious. While there are some signs of improvement in

revenues, the elimination of a sizable year end balance means there will be no quick turnaround.

The County notes that this bargaining unit has fared better than most other County employees in tough economic times.

The County believes the appropriate population for comparable consideration is the other urban County Sheriff's Departments.

The County makes a distinction between those deputies assigned to corrections and those assigned outside of corrections. When looking at the comparables within this group, Franklin County Deputies fare well beside those counties that use non deputies in the corrections function. (Entry level average is \$26,161.84 in other counties and \$32,115.20 in Franklin County). The distinction at the Top level when comparing corrections officers to Franklin County Deputies, is even more pronounced. (Corrections officers (\$36,055.92 – Franklin County \$55,889.60).

A Deputy to Deputy comparison within the population identified by the County is much closer. The average for the major urban Sheriff's Departments is \$32,620.17 at the entry level, and \$44,176.86 at the top level. Franklin County entry salary is \$32,115.20 and the top level the average is \$55,889.60. Ranks above Deputy show similar comparables.

The County views the employees as being fairly compensated and within the confines of the current economic situation, believes any increases recommended must be modest.

The County proposes a 1% increase in the first year of the agreement with salary re-openers thereafter. The County opposes any further lowering of the e-step noting its significant cost.

DISCUSSION:

Franklin County continues to be a very well managed county. The Sheriff and the County have worked well together to provide outstanding Law Enforcement services. National attention has been focused on the County Sheriff's Department because of the I-270 shooter and the support given to protect presidential candidates as they crossed Ohio on numerous occasions.

Several facts are apparent:

Neither party expects to have their salary proposal recommended. The system of Collective Bargaining promotes somewhat extreme positions.

Even though there is no question in the mind of this Fact Finder that the county continues to face tough economic times, it cannot expect this Fact Finder to recommend a 1% increase.

To do so would force Franklin County FOP members to drop significantly under any external comparisons.

Likewise, the FOP, as much as it's members would like to receive a 6% increase over the proposed three years, do not expect such a recommendation. Such a recommendation would lead to undesirable outcomes within the Sheriff's Department.

The County submits comparable information viewing the compensation of Franklin County Sheriff's Office Personnel with other Urban Sheriff's Departments. While this ranking is helpful, it does not give the Fact Finder a view of the increases being negotiated into Contracts in those departments.

There is no way for a Fact Finder to understand the unique circumstances that led to those salaries in each department and, there is likely little recruitment or competition for employees between Departments over such a wide geographic area.

The data does give the Fact Finder a general sense of how fairly an employee is compensated in the larger world of similar departments. However, a more helpful number is the amount of negotiated salary increases in each of these jurisdictions.

The Fact Finder does not give much weight in a proceeding like this to composite figures that include overtime pay. The

scheduling and payment of overtime is dictated by circumstances and by management policy and procedure.

For my purposes, I look to base rates to determine comparability.

While the well prepared Power Point presentation of the FOP provided much good data, it pointed to a much rosier picture than facts dictate.

The increases awarded in other Franklin County jurisdictions are informative. The 4.12% increase in 2005 is a significant factor to be considered. This, of course, must be balanced against other criteria. There is nothing magic about the Franklin County universe. Certainly persons from outside of Franklin County vie for jobs with the FCSO, and also are subject to similar economic conditions in Central Ohio.

I am not convinced that the County can afford across the board increases of 4%, especially in light of the economic uncertainty, the desire of the County not to enter into layoffs, and the generous health care program they are now funding.

Thus, what is the appropriate data a Fact Finder should consider? If we look to internal comparables, the number is 2%. Other Fact Finders, looking at similar data, have concluded and recommended other County employees receive 2% increases.

While I have great empathy for all County employees, it must be noted that the Police function is a different creature. A comparison of wage increases in all types of jurisdictions will generally reveal a higher increase in the Safety Forces.

A review of external comparables would reveal that all police agencies in the state that have negotiated increases to be effective January 1, 2005 averages just under 3%.² This report includes all size departments in various jurisdictions including those which have wage freezes in place.

Hopefully there are optimistic signs on the horizon. The modest increase in the sales tax may be a signal that the economy will soon improve.

Based upon the data I have reviewed, I recommend the following.

Finding and Recommendation:

I recommend no change in the e-step at this time.

I recommend the following increases applied to the current salary schedule.

In the first year of the Agreement	3.0%
In the second year of the Agreement	3.0%
In the third year of the Agreement	4.0%

Article 15: Shift Differential:

The FOP proposes an increase in the shift differential from its current \$.70 per hour to \$.90 per hour over the course of this agreement. Comparables were offered from the same jurisdictions previously cited by FOP. They noted Columbus is at \$.85 per hour and will be entering negotiations again this year. Of the jurisdictions cited that offer pay shift differentials in 2004, they ranges from \$.55 in Bexley to \$1.10 in Worthington. The FOP notes that there has not been an increase in this benefit during either the current or previous contracts.

They note that, as a percentage of base salary, the shift differential is declining.

The County proposes status quo noting that only Mahoning County Sheriff offers a shift differential. There \$.30 is offered for the afternoon shift and \$.40 for the evening shift.

Discussion:

There is a value for a person working the late shifts and once a Department establishes an expectation of shift differentials, it is important to keep it competitive. In a benefit such as shift differential, this fact finder looks closely to those comparable units

² Actual amount 2.798%, State Employment Relations Board Clearinghouse – Wage

that share a recruitment/ employment pool. The evidence supports a modest increase to keep the Franklin County Sheriff's Office in the competitive range.

Finding and Recommendation:

The current shift differential be maintained in the first year of the agreement, increased by \$.05 in the second year to \$.75, and by an additional \$.05 in the third year to a total of \$.80.

VACATION ACCURAL RATES:

FOP Position:

The FOP proposes a 40 hour increase for persons at the twenty year level and a 20 hour increase at the 15 year level. FOP argues that these units have not had a significant increase in the last several years.

They note that the County submission includes compensatory time in it's time available calculations. The FOP does not believe that should be included in that the employee had to work extra to earn the compensatory time and thus defeats the concept of time away from a challenging job.

County Position:

The County notes the significant amount of time employees have available to be away from work and point to the cost of any increase in such a benefit in these tight economic times.

Discussion and Findings:

There can be no denial that the job of law enforcement is a stressful and demanding one. Likewise, an officer must have time away for mental and physical R and R as well as to take care of other aspects of his or her lives.

This Fact Finder is also aware that increasing the amount of leaves is very expensive for the employer, both in coverage and loss of services.

In this matter the Fact Finder also gives great weight to internal comparables even though there is a wide variation in job duties.

A review of SERB data and settlement reports³ notes that almost no jurisdictions are adding benefits or additional time allotments in the midst of the recession in which we find ourselves.

I do not find adequate or compelling evidence that would demand an increase in vacation accrual rates.

Finding:

³ State Employment Relations Board Clearinghouse Report, generated January 28, 2005.

I recommend the vacation accrual language of the current agreement be maintained.

SICK LEAVE:

The FOP has submitted a novel sick leave proposal. The changes they seek would be found in Article 22, Section 22.1. Currently persons retiring from the Franklin County Sheriff's office may elect to be paid for one half (1/2) of the accrued but unused sick leave credit.

Under the FOP plan a member retiring within the window of 25 to 30 years of service would have their unused sick leave paid out at 100%. Persons electing to stay beyond their 31st year would again be reduced to the 50% level of payout.

The effect of the plan would mirror an early retirement incentive. The FOP argues that this would help both their members and the County. Persons encouraged to retire within this age would likely reduce some dependence on health care that comes with advancing age.

Likewise, they argue, the County could replace retiring persons with entry level people thus reducing personnel costs.

County Position:

The County has concerns about the legal implications of such a plan fearing it would violate the *Age Discrimination in*

Employment Act. They also are concerned about the unknown costs, both financial and loss of experience.

Finally they note the initial implementation costs would be prohibitive.

Discussion:

I find the proposal to be interesting and possibly of advantage to all parties. *If the parties share the goal of encouraging early retirement, (emphasis added)* this plan would have great potential.

It is apparent much more work would need to be done to explore the implications of such an arrangement.

While there appears to be merit in the proposal it is not the type of program or change that a Fact Finder can or should award. There is simply not enough evidence and facts to determine if it meets the statutory criteria that guide the Fact Finding process.

I would recommend that, if the parties share a joint interest in this area, they might explore it prior to the next round of bargaining.

Findings:

I recommend the current sick leave language be maintained.

INSURANCE:

County Position:

The County notes that the Insurance benefit is a very expensive and generous one. They also note the uncertainty of the market will likely necessitate significant changes in the future.

At this time there are no planned or imminent changes proposed to the Insurance Program for any County employee.

The County proposes language that would give the County the exclusive right to make unilateral changes in the County-wide insurance plan.

The County notes that other units have agreed to such language and argues that it is essential all county employees remain under the same plan for efficiency and economy.

FOP Position:

The FOP notes that the current language has been in their agreement through several contracts. They argue that they have been reasonable in working with the employer in the past and that they would continue to do so in the future.

They assert and believe it is unreasonable to ask them to give up the protective language of Article 24.

DISCUSSION:

This Fact Finder has great empathy for any employer offering Health Care Coverage in this economy. The benefit is very

expensive and the costs are rising faster than employers can adjust to them.

Employers and Bargaining Unit Representatives in all jurisdictions are struggling with ways to readjust benefits, negotiate costs sharing and find ways to slow the increases.

The County has chosen to attempt to continue to provide very good benefits with a low cost to the employees. This is commendable and it is likely that this will have to change in the future.

However, this Fact Finder cannot endorse a management proposal that, in essence, says "trust us."

The evidence would indicate that it is likely there will have to be adjustments made in the health care program possibly within the terms of the agreement, but they must be addressed in a collaborative, bargaining process.

In the "Findings" section of this report, the Fact Finder has recommended language which will hopefully provide a vehicle for that bargaining to take place. If the parties, prior to the final implementation of their new agreement, can improve upon that language, they are invited and encouraged to do so. If not, the recommended language should provide a vehicle for dealing with this difficult subject within the term of this agreement.

FINDINGS:

The Fact Finder finds no evidence to support the major changes proposed by management but does recognize the need for additional flexibility in possible upcoming changes in plan design. I recommend the following language for Article 24.

Section 24.1 Health, Hospitalization, Surgical, and Major Medical.

Except as noted below, for the duration of this Agreement, the Employer shall maintain for all bargaining unit members ~~the~~ health, hospitalization, surgical, major medical coverage and ~~prepaid~~ prescription card plan. CURRENT COVERAGES SHALL REMAIN IN EFFECT UNTIL THE COUNTY DETERMINES THE NEED TO MODIFY THAT PLAN FOR ALL COUNTY EMPLOYEES. IF THE COUNTY DETERMINES THE NEED TO MODIFY THAT PLAN, THE LODGE WILL BE CONSULTED. THE LODGE RECOGNIZES THE DESIRABILITY OF PROVIDING ONE INSURANCE PLAN FOR ALL COUNTY EMPLOYEES. IF THE LODGE AND THE COUNTY ARE UNABLE TO AGREE UPON THE PROPOSED CHANGES, THE PARTIES WILL MEET TO NEGOTIATE SUCH CHANGES SUBJECT TO THE STATUTORY DISPUTE RESOLUTION PROCEDURE.

Section 24.2 Personal Liability Insurance. No changes proposed. No changes recommended.

Section 24.3 Dental Care Plan. The Employer shall maintain for all bargaining unit members the dental coverage currently in effect, EXCEPT THAT THE COUNTY MAY PROPOSES CHANGES AS INDICATED IN SECTION 24.1.

Section 24.4 Vision Care. The Employer shall maintain for all bargaining unit members the vision care coverage currently in effect, EXCEPT THAT THE COUNTY MAY PROPOSES CHANGES AS INDICATED IN SECTION 24.1.

Section 24.5 Life Insurance. No changes proposed. No changes recommended.

Section 24.6 Employee Assistance Program. No changes proposed. No changes recommended.

ARTICLE 25—Definitions

The FOP proposes to add a definition for **Plain Clothes Assignment** that would clarify who receives the plain clothes allowance and would add two Lodge officials to those eligible.

They argue this the definition would clarify the current situation and that it is not unusual for persons serving as grievance chair and currently as Lodge President to receive this type of an allowance.

County Position:

The County opposes the FOP proposal noting that the situation is currently clear. The employees in *Warrants and Extraditions* are currently covered by a MOU that awards them 50% of the Uniform allowance and 50% of the Plain Clothes allowance.

The County also notes that employees in *Training* are required to wear uniforms.

The County fails to see any justification for the Grievance Chair and the Lodge President receiving the Plain Clothes allowance.

Discussion:

It appears that the situation regarding persons working in regular law assignments is pretty clear now. When an issue arose, the parties were able to clarify it by use of a *Memorandum of Understanding*. Thus, I fail to be persuaded that there is a need to spell out the various categories in this section.

There remains the question of the Lodge Officials (currently two). It is not unusual for persons similarly situated to receive this special consideration. In their roles they represent not only the Lodge, but also the Department in various functions.

I find this argument to be persuasive. I recommend the following:

Finding:

I recommend the addition of a definition regarding Plains Clothes Allowance which read as follows: "Those bargaining unit members entitled to the Plains Clothes allowance shall include those members on special assignment for more than 35 hours per week in accordance with Section 3.10(B) or Section 3.13." (For the sake of clarity I suggest the parties may jointly decide to place this item in Article 16 rather than definitions.)

Definition of Work Related Degree.

The FOP proposes extending the availability of tuition reimbursement through modification of the language in the definition section. They argue that this is a non-economic benefit in that the negotiated budget for tuition reimbursement is not regularly expended.

County

The Sheriff feels strongly that all tuition reimbursement must be expended on courses that are work-related. The County argues that the amendments proposed by FOP are aimed more at preparing persons for future careers.

Discussion:

This Fact Finder agrees with the Sheriff that there must be a strong tie to determine that all courses are work related.

The purpose of tuition reimbursement is to provide a vehicle for bargaining unit members to improve themselves and thus improve their service to the Sheriff's Department. The list included in the current definitions wherein the only Master's Degrees to be considered are public administration or business administration, seems to this Fact Finder to be overly restrictive.

On the other hand, some of the additional degrees proposed are hard to relate to direct benefit for the Department.

I do agree with the FOP that overall a better educated employee does have a value for the employee but, most departments are hesitant to base tuition reimbursement programs on these more theoretical values.

I recommend a middle ground. Under the language of Article 17 the Sheriff clearly has discretion in approval of "educational courses that directly benefit the member in his or her duties in the Sheriff's Office."

I propose a change in the definition that will permit this same degree of discretion to be applied to a broader range of programs, including the Master's Degree.

Finding:

I propose Article 25, Section 21 be amended to read:

Work Related Degree. A bachelor's or associate's degree with a major in criminal justice, criminology, law enforcement, business administration, business management, communications arts, economics, cross-disciplinary studies, philosophy, political science, psychology, social science, and sociology are considered work-related. A master's degree in business administration or public administration are also considered work-related. COURSES AS A PART OF OTHER MAJORS, AT ANY LEVEL MAY BE SUBMITTED TO THE

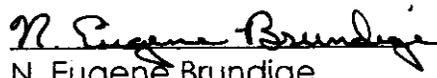
SHERIFF FOR CONSIDERATION TO DETERMINE IF THEY MEETS THE CRITERIA OF "EDUCATIONAL COURSES THAT DIRECTLY BENEFIT THE MEMBER IN HIS OR HER DUTIES IN THE SHERIFF'S OFFICE."

Summary:

After giving due consideration to the positions and arguments of the parties and to the criteria enumerated on SERB Rule 4117-9-05(J) the Fact Finder recommends the provisions as enumerated herein.

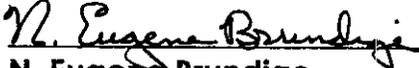
In addition, all agreements previously reached by and between the parties and tentative agreed to, along with any sections of the current agreement not negotiated and/or changed, are hereby incorporated by reference into this Fact Finding Report, and should be included in the resulting Collective Bargaining Agreement.

Respectfully submitted and issued at London, Ohio this 7th day of February, 2005.


N. Eugene Brundige,
Fact Finder

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing **Fact Finders Report** was served by overnight delivery upon Michael T. Short, Schottenstein, Zox and Dunn, 41 South High Street, Suite 2600, Columbus, Ohio 43215, Attorney for the Employer, and Russell E. Carnahan, Attorney for FOP Lodge No. 9, 3360 Tremont Road, 2nd Floor Columbus, Ohio 43221, and by regular U.S. Mail upon Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th floor, Columbus, Ohio 43215-4213, this 7th day of February 2005.


N. Eugene Brundige,
Fact Finder