

STATE EMPLOYMENT
RELATIONS BOARD

**FACT-FINDING TRIBUNAL OF THE
STATE EMPLOYMENT RELATIONS BOARD**

2005 MAY 16 P 12: 02

IN THE MATTER OF:

**FRATERNAL ORDER OF POLICE,
OHIO LABOR COUNCIL, INC.**

**Employee Organization,
and**

RICHLAND COUNTY SHERIFF,

Employer.

**REPORT AND RECOMMENDATIONS
OF THE FACT FINDER**

**CASES: 04-MED-09-0816 ✓
04-MED-09-0817
04-MED-09-0818
04-MED-09-0819**

DATES OF HEARING: March 29, 2005

PLACE OF HEARING: Mansfield, Ohio

FACT FINDER: Charles W. Kohler

APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:

Mark E. Drum, Staff Representative

FOR THE EMPLOYER:

Harry M. Welsh, Attorney at Law

PROCEDURAL BACKGROUND

By letters, dated November 29, 2004, and November 30, 2004, the State Employment Relations Board (“SERB”) appointed the undersigned as fact finder pursuant to Ohio Revised Code Section 4117.14(C)(3).

This matter involves the negotiation of three successor collective bargaining agreements involving four bargaining units. The parties to the agreements are the Richland County Sheriff (“Sheriff” or “Employer”) and the Fraternal Order of Police, Ohio Labor Council, Inc. (“FOP”). The four bargaining units are:

- Supervisors (Sergeants, Lieutenants, and Captains)
- Deputies
- Corrections Officers
- Civilians

The Deputies and Supervisors have separate collective bargaining agreements. The Corrections Officers and Civilians are covered by a single collective bargaining agreement. All three of the agreements expired on December 31, 2004.

A fact-finding hearing was held on March 29, 2005, in Mansfield, Ohio. Prior to the fact-finding hearing, the parties engaged in nine formal negotiation sessions, beginning on October 7, 2004. During negotiations, the parties reached a tentative agreement on many of the provisions to be included in the new collective bargaining agreements. The twelve issues not resolved by tentative agreement were presented to the fact finder on March 31, 2005.

MEDIATION

During fact-finding, the fact finder mediated the twelve outstanding issues. Eight of the issues were resolved during the mediation phase of fact-finding. Following the mediation session, the fact finder conducted an evidentiary hearing on the four remaining issues.

TENTATIVE AGREEMENTS

The tentative agreements of the parties are hereby incorporated by reference into this report as recommendations. In addition, unless the fact finder has recommended a change in the language of the expired agreement, or the parties have tentatively agreed to a change, the fact finder recommends that the language of the expired agreement be retained.

FINDINGS OF FACT AND RECOMMENDATIONS

The following findings and recommendations are offered for consideration by the parties; were arrived at pursuant to their mutual interests and concerns; are made in accordance with the data submitted; and in consideration of the following statutory criteria as set forth in Rule 4117-9-05 of the Ohio Administrative Code:

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 the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

TUITION REIMBURSEMENT (CIVILIANS & CORRECTIONS OFFICERS ONLY)

The current language provides for tuition reimbursement for courses which are directly related to the employee's current position, or for the next highest position in a normal career path within the Sheriff's Office.

Some corrections officers would like to embark on a course of study leading to the Ohio Peace Officer Certification. The Sheriff has historically denied approval for this type of training.

Position of the FOP

The FOP proposes that language be added to the agreement which would include Ohio Peace Officer Certification Training as a reimbursable course of study. The FOP asserts that the training would be relevant to the duties of corrections officers. It points out that some corrections officers transport prisoners and, for this assignment, they carry a weapon. Since they carry a weapon, they are performing duties which are similar to some of the duties of Deputy Sheriffs.

The FOP proposes that, if the Sheriff is concerned that persons receiving the training would leave the department after the training was completed, the FOP would not object to language which requires an individual to reimburse the Sheriff if he or she resigns within three years of obtaining the training.

Position of the Employer

The Employer asserts that the purpose of the tuition reimbursement program is to train someone to better perform their current job. Training is also provided for courses which would assist the employee in obtaining the next highest position in the normal career path within the County. If corrections officers can take Ohio Peace Officer Certification Training, they would be preparing themselves to become deputy sheriffs or police officers.

New deputies are required to have Ohio Peace Officer Certification Training in order to be hired. The Sheriff hires new deputies from many sources other than corrections officers. The Sheriff is concerned that if corrections officers can obtain the training at the Employer's expense, they would use the training in order to attempt to be employed as deputies or police officers in other jurisdictions.

The Employer asserts that requiring a payback of tuition reimbursement for an employee who leaves within three years of completing the training will not remedy the situation. The Sheriff asserts that it would be difficult to collect the tuition reimbursement as employees may move out of state, or may go bankrupt.

The Sheriff states that the existing language allows the employees to enhance their current skills and it proposes that the language be retained.

Discussion

The current language allows the Sheriff to determine whether a course is eligible for tuition reimbursement. The proposed language would require the Sheriff to approve all courses related to Ohio Peace Officer Certification Training.

The fact finder believes that the Sheriff should retain the authority to approve or disapprove courses. The FOP's proposal would require blanket approval of one particular course of study. If a large number of employees decided to enroll, the cost implications could be significant. Although I presume that all corrections officers would derive some benefit from the Ohio Peace Officer Certification Training, the evidence does not show that the training is directly relevant to the duties of corrections officers.

Recommendation

The current language should be retained in Article 18.

WAGES (ALL AGREEMENTS)

The parties have agreed that any wage increase will be retroactive to January 1, 2005. The Employer proposes wage increases of two percent per year during each year of the contract. The FOP proposes increases of five percent for each year of the contract. The FOP also proposes that the rank differential between Deputies and Sergeants be increased from 13 percent to 15 percent. It also proposes that the shift differential between Sergeants and Lieutenants be increased from 10 percent to 11 percent, and the differential between Lieutenants and Captains be increased from 10 percent to 11 percent.

Position of the FOP

For comparison purposes the FOP uses all counties in Ohio with similar populations. Richland County's population is 128,852. The 15 counties selected by the FOP range from Miami County with a population of 98,868, to Clermont County with a population of 177,911. Of the counties selected by the FOP, Richland County ranks thirteenth for deputies in the top pay range. The average top rate in these counties is \$44,896. A deputy at the top pay range in Richland County earns an annual salary of \$40,010.

For corrections officers, Richland County ranks thirteenth among the sixteen counties with a top pay range of \$32,230. The average is \$37,775. For sergeants, Richland County ranks fourteenth with a top rate of \$45,221. The average rate of pay for Sergeants is \$50,565.

The top wage rate for civilian clerks and cooks is \$30,007. The sixteen counties have an average pay for clerks of \$31,592. Richland County ranks tenth of the sixteen counties.

The FOP argues that clerks who work for the Sheriff's Office have more responsibility than clerks working in other positions. The clerks must deal with sex offenders, and must process applications for carrying concealed weapons. The clerks must also do records checks, and prepare documents for Sheriff's sales. The FOP states that the correct comparison is to other Sheriff departments and not to other clerical employees.

The FOP asserts that Richland County cannot proclaim that they have an inability to pay a proper wage increase. Voters in the County recently passed a permanent one-half percent permissive sales tax. In addition, the County had a general fund capitalized carry-over of \$3.5 million, which was carried over from 2004 to 2005.

The FOP points out that wage increases in the expired collective bargaining agreement were 4 percent, 3.5 percent, and 3 percent. It asserts that these increases were relatively low because the County had some financial difficulties when that contract was negotiated.

Position of the Employer

The County proposes going from the current four steps for deputies to one wage rate for all deputies. The Employer proposes raising the probationary step from the current \$25,000 to \$29,000. A wage rate of \$29,000 is necessary to attract new deputies. The Employer proposes that the current deputies receive a raise of 2 percent per year during each year of the agreement. The Employer states that the rank differentials will provide comparable wage increases for Sergeants, Lieutenants and Captains.

The Employer proposes freezing the rate for cooks during the life of the contract because the cooks are already paid a very competitive wage. The cooks earn about \$10,000 more per year than other cooks who work for the County, and are represented by AFSCME. For other civilian employees such as clerks and nurses, the Employer proposes a two percent per year wage increase. For the corrections officers and for the three classifications of other civilian employees, the Employer has calculated the two percent at the step four level. The amount of the increase at the step four level is then used to compute wages for steps one, two, three and five. This actually results in a raise of less than two percent for employees in step five.

The Employer asserts that the FOP's method of using counties with a similar population is not reflective of actual economic conditions in the counties. Most of the counties used by the FOP as comparables are near metropolitan areas. The population figures don't account for the

unemployment rate in Richland County, which is 7 percent, compared with 5.9 percent statewide. In addition, income in Richland County is only 91 percent of the state average. The Employer contends that, of the 15 counties proposed by the FOP, only Clark County and Allen County are good comparisons. Both of these counties are in non-metropolitan areas.

The Employer agrees that the County is in a relatively strong financial condition. It wants to ensure that the County remain financially sound. The Sheriff maintains that a raise of not more than two percent per year is needed for the County to help the County remain in a strong financial position. The County needs to maintain its AAA bond-rating as it anticipates borrowing \$11 million for a new jail. The Employer asserts that the new jail, which will cost \$18 million, will substantially improve working conditions for corrections officers. The new jail will be much larger, which will result in \$300,000 to \$400,000 per year in additional operating expenses.

Discussion

For comparable jurisdictions, the FOP has used 15 Ohio counties with populations in the same range as Richland County. The Employer has not proposed any comparable counties of its own but has suggested that, of the counties selected by the FOP, Clark County and Allen County would be most comparable.

The fact finder agrees with the Sheriff that many of the counties selected for comparison are near larger metropolitan areas. The fact finder believes that counties which are economically tied to a metropolitan area usually have better economic conditions than those counties which stand alone.

When using jurisdictions for comparisons, population is only one of several factors which should be used to make comparisons. For instance, the economic picture of a jurisdiction is an important consideration. Factors such as the level of income, value of property, and tax rates can differentiate one county from another, even if they are similar in size. However, neither party has presented information regarding other economic factors in the comparable counties.

For comparison purposes, the fact finder has considered seven counties which are more stand-alone than suburban. The counties include Allen, Ashtabula, Clark, Fairfield, Licking, Portage and Wayne. These counties are most likely to be similar to Richland County in general economic conditions.

The average top wage for a Deputy Sheriff in these counties is \$41,680. The current top deputy rate in Richland County is \$40,010. There is a wide range of salaries in these counties ranging from \$47,444 in Clark County to \$35,901 in Allen County.

A wage increase of two percent as proposed by the Employer would translate into an annual salary of \$40,810, which is \$869 below the average. Raising the salary to \$44,896, the average of the counties cited by the FOP, would require a substantial wage increase. Such a large wage increase would not be fiscally prudent.

The Employer desires to remain financially strong. The County has sufficient funds to pay for a reasonable wage increase and remain strong. However, the County has committed to building a new jail facility. The County will be responsible for 100 percent of the cost of this facility, which is about \$18 million. It will need to issue \$11 million in bonds to finance the project. Thus, any wage increase must be moderate in order that the AAA bond rating not be jeopardized.

The fact finder believes that a wage increase should bring the deputies closer to the average of the seven most relevant counties noted above. A wage increase of four percent for 2005 would immediately bring the salaries of the deputies close to the average of the selected counties. With a four percent increase in 2005, deputies would earn \$41,610, which is very close to the seven county average of \$41,680.

The wage increase will be applied to the salary of Deputy Sheriff. The raises for sergeants, lieutenants and captains will be calculated based on rank differential using the wage for deputies. The fact finder finds that there is no compelling reason to disturb the rank differential at this time. The FOP has not presented evidence that the change is necessary. In fact, the wage differential between deputies and sergeants is 13 percent, which is equal to the average of the 16 counties cited by the FOP. Thus, the fact finder will recommend that rank differentials remain as in the expired agreement.

For corrections officers, the average top wage in the jurisdictions cited by the FOP is \$37,775. The average in the seven counties selected by the fact finder is \$37,455. However, if those counties that use deputies as jailers are excluded, the average wage is \$33,833. At \$32,230, the corrections officers in Richland County are paid appreciably less. Based on the need to bring the salaries of corrections officers closer to the average, a wage increase of 4 percent, which would increase wages to \$33,519, is justified for corrections officers for 2005.

For civilian employees, the Sheriff proposes that no wage increase be given to cooks. However, the fact finder does not believe it is conducive to good labor relations to exclude one group of employees from wage increases being granted to all other employees in the department. In the seven selected counties, the average civilian salary is \$31,849. The rate in Richland

County is \$30,007. A four percent increase would raise it to \$31,207. An increase of 4 percent for 2005 is also justified for civilian employees.

It appears that the parties are in agreement that the steps be eliminated for the Deputy Sheriff classification. The fact finder will therefore recommend that there be two classifications for deputies, a probationary step and a deputy step. The wage increases set forth above will be applied to the current top step of the deputy classification and will constitute the single classification for Deputy Sheriffs.

The parties seem to be agreed that the wage for probationary deputies should be substantially increased to attract qualified recruits. Currently, the probationary wage rate is \$25,000. The Employer states that a wage rate of \$29,000 for the life of the contract should be sufficient to attract new talent. The fact finder will recommend that the probationary wage be set at \$29,000 for 2005. In order that the probationary wage keep up with other jurisdictions, the fact finder believes that a wage increase needs to be applied to the probationary rate for 2006 and 2007.

The Union presented a document from the State Employment Relations Board which sets forth wage increases for all of the Sheriff's offices in Ohio. In order to obtain the most relevant information, the fact finder only considers those contracts in which wages for 2005 and 2006 have been negotiated as relevant. These counties have engaged in collective bargaining in a relatively recent time period. The average wage increase for these counties averages approximately 3.3 percent.

With the recommended wage increases, wages in 2005 will approximate the average of the selected counties. The wage increases in the remaining two years of the contract should keep

the wage close to the average of the seven counties. The most appropriate way to determine proper wage increases for 2006 and 2007 is to look at what was negotiated in contracts for other Ohio Sheriff's departments. The fact finder believes that the wage increase should be close to the 3.3 percent statewide average. Thus, the fact finder will recommend an increase of 3.5 percent in 2006, and 3.5 percent in 2007, for all employees covered by the agreements.

Recommendations

The fact finder recommends that wages be increased by 4 percent for 2005, except that the probationary rate for deputy sheriffs will be increased to \$29,000. All rates will increase by 3.5 percent in 2006, and 3.5 percent in 2007.

INSURANCE (ALL AGREEMENTS)

Health insurance continues to be a contentious issue in public sector collective bargaining. Health insurance is a major expense, and employers want to have some control over expenditures. Employees want to have an insurance plan which will provide high quality healthcare for employees and their families. Employees also want to be assured that they will not have to pay an unmanageable amount in contributions to the cost of the insurance.

Position of the FOP

The FOP proposes several changes to the insurance article. First, it proposes that, for the life of the contract, the Employer be required to provide the same coverage currently provided. The FOP also proposes that the employees' portion of the premium have a cap of \$5.00 per

month for the second and third year of the contract. It notes that many other collective bargaining agreements between the County and other bargaining units have a \$5.00 per month cap. The FOP states that this will protect employees from large and unexpected hikes in the premium.

The FOP also proposes that if both spouses are employed full-time by the County, neither of them will be required to pay the monthly payroll contribution. Further, the FOP proposes that the Employer provide criminal defense insurance at a cost of up to \$14.00 per month per employee.

Position of the Employer

The Employer proposes that current language be retained which allows the County to provide bargaining unit members with the same coverage as the majority of County employees paid from the general fund. The Employer asserts that it would be unmanageable to have one plan for the Sheriff's office and a different plan for the rest of the County.

The Employer proposes that contribution rates for 2005 be established at \$83.00 for family coverage and \$55.00 for single coverage. The Sheriff recommends that the cap on premium increases be removed. It states that employees now pay 8 percent of the premium, while with the rates proposed by the Employer they would be paying only 7 percent of the total premium. The Employer asserts that a cap on the increase will prevent the Employer from maintaining this same ratio in future years, as the cost of insurance will likely increase more than can be covered with a \$5.00 cap.

The County points out that health insurance is a major expense. In 2004, it expended \$7.9 million for health insurance, and expects to spend \$8.8 million in 2005. Insurance is a large

part of the of the \$28 million County budget.

The Employer opposes the FOP's proposal to waive contributions if both spouses are employed full-time by the County. The Employer points out that the current agreement offers a \$1,000 payment per year to any employee who opts out of the health insurance plan.

The Employer opposes criminal defense insurance. The Employer notes that Employees already receive insurance provided by the County for civil liability. Since the function of the Sheriff's department is to enforce the law, providing criminal defense insurance would be a violation of public policy.

Discussion

The FOP proposes that the Sheriff provide the same coverage for the life of the contract. However, in order to help the County to control its insurance costs, it needs to have the flexibility to change insurance plans from time-to-time. It is very common to change to a different plan in order to control costs. To be locked into one plan for even three years would be detrimental to the County's ability to control costs. No other county agency has health insurance which differs from the County plan. Thus, the fact finder will recommend current language which requires the County to provide employees with the same coverage as most other County employees.

The Employer has proposed a contribution rate of \$83.00 for family coverage, which is an increase of \$10.00 over the current rate for plan A. The Employer proposes an increase to \$55.00 for single coverage, which is \$12.00 more than the current rate. With these increases, the employees would be paying 7 percent of the premium, as opposed to the 8 percent which they currently pay. The premium increases requested by the Employer are reasonable and should be implemented.

While the Employer desires to use a percentage to determine employee contributions, the fact finder believes that the current cap of \$5.00 per month for the second and third years of the contract is necessary to protect the employees from substantially higher premiums. An increase of \$5.00 on an \$83.00 contribution represents an increase of 6 percent for employees. Collective bargaining agreements in four other county departments have the \$5.00 cap. The fact finder notes that the collective bargaining agreement with the County Engineer that became effective on March 1, 2005, includes the \$5.00 per month cap.

The fact finder recognizes that the Employer wants the ability to increase the employee contribution to keep up with the cost of insurance. The fact finder agrees with the 2005 increases proposed by the Employer. However, contributions should be capped the in second and third years of the agreement. If costs increase dramatically in those years, the situation can be addressed in the next collective bargaining agreement. Therefore, the fact finder recommends that the \$5.00 per month cap be retained.

The FOP proposes to waive the employee contribution when both spouses are employed by the County. The parties previously negotiated a provision which pays employees who don't use health insurance a reward of \$1,000 per year. The proposal is a concept which requires further development. At the least, the parties would need to review the cost implications of the proposal. It is a concept that would be better resolved through negotiations than through fact-finding.

The fact finder agrees with the Employer that it is poor public policy for law enforcement agencies to provide employees with criminal defense insurance. At \$14.00 per month per employee, the cost to the Sheriff would be significant. It is rare for law enforcement personnel to

be charged with a criminal offense as a result of legitimate work related activity. Thus, the fact finder will not recommend that the provision be included in the agreement.

Recommendations

1. Beginning with the January 2005 contribution, the monthly employee contribution will be \$83.00 for family coverage, and \$55.00 for single coverage.
2. For 2006 and 2007, the employee contribution shall be the same contribution made by the majority of other County employees, except that the contribution may be increased by a maximum of \$5.00 per month each year of the agreement.
3. All other provisions remain as in the expired agreement.

POLITICAL ACTIVITY (ALL AGREEMENTS)

Position of the FOP

The Union proposes that a provision should be added to the contracts which allows certain forms of partisan political activity. The Union has proposed language which would supercede parts of Section 124.57 of the Ohio Revised Code. Specifically, the proposal would allow certain activities which are now prohibited by the Statute. The proposal would allow a bargaining unit member to participate in the FOP's Political Screening Committee and to participate in campaigning for partisan political candidates. The political activity would have to be done when off-duty and out of uniform.

The proposal specifically provides that a bargaining unit member is prohibited from filing a petition as a candidate for the office of the Richland County Sheriff against an elected

incumbent. Further, the proposal provides that bargaining unit members would not be required to make any political contributions, or be required to engage in other political activity for a candidate for any elected position in the County.

The Union asserts that this proposal is necessary so that bargaining unit members may be free to engage in partisan political activity while off-duty without fear of discipline by the Employer. The Union points out that many other states have revised their “Little Hatch Act” to allow partisan political activity. Some states even allow classified employees to be a candidate in a partisan election.

Position of the Employer

The Employer notes that the state legislature is considering changing ORC 124.57. It notes that ORC 124.57 has been in force for a long time and has been interpreted by the courts and by the Attorney General. The Employer suggests that changes in this area of the law should be done at the state level, rather than within a particular agency.

The Employer points out that there will most likely be no election for Richland County Sheriff during the life of this agreement. It proposes that no language be adopted at this time. The Employer maintains that it is likely that the legislature will make some changes in Section 124.57 during the life of this agreement. If necessary, language can be negotiated in the next round of negotiations.

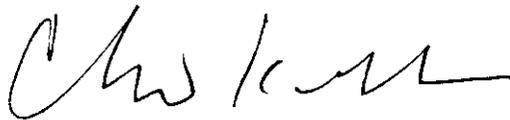
Discussion and Recommendations

The parties generally agree on the concept of allowing employees to engage in partisan and non-partisan political activity while off-duty and out of uniform so long as they do not represent that their conduct is undertaken in any official capacity.

There is no evidence as to whether other jurisdictions in Ohio have such language in a collective bargaining agreement. The Union does not assert that the current Sheriff has attempted to discipline employees for off-duty political activity. Obviously, the situation becomes complicated during an election for Sheriff, as employees of the Sheriff may have different views concerning the candidates running for Sheriff.

The fact finder believes that the proposal has merit. However, the fact finder believes that the proposal may have certain legal ramifications which are not apparent on the face of the proposal. Language which is superceding state law must be drafted very carefully. It is a subject on which the parties would be best served by a negotiated agreement. For these reasons, the fact finder recommends that the proposal not be included in the new agreement.

Respectfully Submitted,



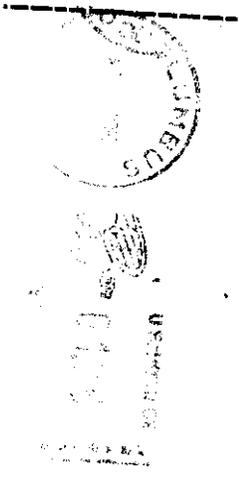
Charles W. Kohler, Fact Finder

CERTIFICATE OF SERVICE

I do hereby certify that on this 13th day of May 2005, a copy of the foregoing Report and Recommendations of the Fact Finder was served upon Mark E. Drum, Staff Representative, Fraternal Order of Police, Ohio Labor Council, Inc., 222 East Town Street, Columbus, Ohio 43215; and upon Harry M. Welsh, Attorney at Law, Renwick, Welsh & Burton, 9 N. Mulberry Street, Mansfield, Ohio 44902; each by Federal Express overnight delivery; and upon Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213 by regular U.S. Mail, postage prepaid.



Charles W. Kohler, Fact Finder



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