

2005 NOV -2 A 11: 48

**IN THE MATTER
OF
FACT FINDING
OPINION AND RECOMMENDATION**

BETWEEN)	CASE # 2004-MED-09-0863 ✓
)	CASE # 2004-MED-09-0864
)	
THE)	FACT FINDER: E. William Lewis
)	
THE LICKING COUNTY SHERIFF)	DATE OF HEARINGS: Sept. 20, 2005
)	Sept. 29, 2005
And the)	
)	
TEAMSTERS LOCAL UNION No. 637)	DATE OF REPORT: October 31, 2005

REPRESENTATION

By

Union Representatives	Employer Representatives
Ms. Susan Jansen, Attorney & Advocate	Mr. Benjamin Albrecht, Attorney & Advocate
Mr. John Sheriff, Sec./Treas. IBT Local 637	Mr. Randy Thorp, Sheriff
Ms. Linda Eveland, Deputy	Mr. Gary Blackford, Major
Ms. Shenan Day, Deputy	Mr. Rod Mitchell, Major
Ms. Dana Godfrey, Deputy	
Mr. George Rhodes, Deputy	
Mr. Howard Stonoking, Dispatcher	

AUTHORITY

This matter was brought before Fact Finder E. William Lewis, in keeping with applicable provisions of ORC 4117 and related rules and regulations of the Ohio State Employment Relations Board. The parties have complied in a timely manner with all procedural filings. The matter before the Fact Finder is for consideration and recommendation based on merit and fact according to the provisions of ORC 4117, in particular those that apply to safety forces.

BACKGROUND

The Fact Finder was appointed to hear this SERB Case in accordance with ORC Section 4117.14. The Employer, The Licking County Sheriff's Office, hereinafter known as the Employer, and the Union, International Brotherhood of Teamsters, Local 637, hereinafter known as the Union, are in the process of bargaining contract renewals. There are two separate bargaining units and Contracts involved in this appointment. The largest unit, that of, Deputy Sheriff's, has a bargaining component of approximately 110 employees. The smaller of the two units, Radio Dispatchers and Communications Personnel, has approximately 14 employees in the bargaining unit.

As the parties proceeded to bargain on successor contracts (2001-2004), the Fraternal Order of Police filed a Representation Petition, seeking to represent these two bargaining units. A Negotiations Stay was granted by SERB and a representation election was held in March 2005. The election results, re-certified Teamsters Local 637, and the parties resumed bargaining. Five negotiations sessions regarding the two units were held between July 19, 2005 and September 9, 2005.

The parties reached a number of resolutions during their bargaining process, however, there were still unresolved issues. In accordance with ORC 4117, the parties petitioned for Fact Finding assistance, and a Fact Finding date of September 20, 2005 at the Licking County Sheriff's Office was mutually agreed upon. The necessary pre-submittals were timely filed by the parties. The hearing date of September 20, 2005, was used by the parties and the fact finder as a mediation session. During the mediation process tentative agreements were reached on a substantial number of the unresolved issues. The parties agreed to re-submit and/or revise their positions on the remaining unresolved issues for the Fact Finding Hearing scheduled for September 29, 2005.

Concurrent to these Fact Finding hearings a Conciliation hearing and Award was occurring with one other bargaining unit and the other Civilians not part of this fact finding. The other bargaining unit (Sergeants) and Civilians are also represented by this union. The other units have traditionally bargained with these units. However, due to the decertification attempt by the FOP, these two unit's bargaining was delayed.

The September 29, 2005 Fact Finding Hearing was convened at the Licking County Sheriff's Office in Newark, Ohio. The parties timely submitted pre-hearing briefs and presented additional testimony and documents at the Hearing. Prior to commencing the fact finding the parties and the fact finder resolved three additional issues through mediation. The Hearing was adjourned after the parties had indicated they had nothing additional to submit on behalf of their bargaining position. Furthermore, they acknowledged that they had sufficient opportunity to present such facts and documentation to support their respective positions. The Fact Finder was asked to write a Fact Finder Report and submit it to the parties on or before October 31, 2005.

CRITERIA

In compliance with ORC 4117.14(C)(4)(e) and related rules and regulations of the State Employment Relations Board, the following criteria were given consideration in making this Award:

1. Past collectively bargained agreements 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 public service or in private employment.

This report is based on facts provided in documentation and testimony introduced at the Hearing and in keeping with statutory consideration cited above. The format of this report will be to list the unresolved articles in ascending order followed by a brief review of the position of each party, a discussion and my recommendation. My Fact-Finder's recommendation will be accompanied by the appropriate contract language.

ISSUES AT IMPASSE

The following Articles were at impasse in part or whole, at the time of the Fact Finding Hearing.

ARTICLE 22 (Civilian and Deputies Contracts)	WAGES AND MISCELANEOUS
ARTICLE 26 (Civilian and Deputies Contracts)	MEDICAL INSURANCE
ARTICLE 31 Civilian and Deputies Contracts)	HOURS OF WORK AND OVERTIME
ARTICLE 35 (Civilian and Deputies Contracts)	VACATION
ARTICLE 36 (Deputies Contract)	HOLIDAYS
ARTICLE 47 (Civilian and Deputies Contracts)	INJURY LEAVE
ARTICLE (NEW) (Deputies Contract)	MINIMUM STAFFING

PARTY POSITIONS-DISCUSSION-RECOMMENDATION

Article 22	WAGES
Union Position	

The Union's initial position at the Fact Finding Hearing was an across the board increase of 6% - 6% - 6% for the Civilian Unit, however, it was modified during the hearing. The Union's modified position on this issue is that the Civilian Unit should receive across the board (hereinafter ATB) increases of 3% effective January 1, 2005, 3% effective January 1, 2006 and 3.5% effective January 1, 2007. Furthermore, all the Civilian Dispatcher/Communications employees should receive a one-time equity raise of \$1.00/hour, effective January 1, 2005. This one dollar (\$1.00) per hour increase is to be applied to all Civilian Dispatch/Communication employee's base rates prior to implementation of the ATB increase.

The Deputies Unit should receive an ATB increase of 4% effective January 1, 2005, 4% effective January 1, 2006 and 4.5% effective January 1, 2007.

The above ATB increases represent the Union's position at the Conciliation Hearing for Sergeants and the other Civilian employees.

Employer Position

Concerning the ATB increase, the Employer acknowledged the existence of a soon to be released Conciliation Award. This Award would apply to the Sergeant's Unit and the other Civilians represented by this IBT Local. However, the employer urged the fact finder to strongly consider their submitted comparables and economic data. In the Conciliation Hearing as well as this Fact Finding Hearing the Employer's position was an ATB increase of 3% effective January 1, 2005, 3% effective January 1, 2006, and 3% effective January 1, 2007. These 3% increases were to be applied to the Civilians and the Deputies.

Regarding the pay equity increase of \$1.00/hour for Dispatch and Communication Personnel the Employer denies the need for such an adjustment. The Employer referred the Fact Finder to Fact Finder Brundige's April 25, 2005 report and recommendation. The Employer cites that the proposed equity adjustment represents a 6.5 to 6.8% increase to the two step pay scale. The Employer submitted comparables, are compatible to what is paid for similar work in the region, they argue.

Discussion

As referred to earlier in this report, other bargaining units, who heretofore had bargained with these units in multi-unit bargaining, were before a Conciliator on September 23, 2005. The Fact Finder and the parties, in discussions on September 29, 2005, concluded that the ATB Conciliation Award regarding the "sister" units would be strongly considered in this Recommendation. In this Fact Finder's opinion, based on the bargaining history of this Sheriff's Office and IBT 637, these two units would have been part of the September 25, 2005 Conciliation. Furthermore, regarding these two units' ATB increase, when the Fact Finder considers the April 25 Fact Finder Report and the October 11, 2005 Conciliation Award along with the evidence submitted by the parties and bargaining history, it is compelling.

In considering the equity pay increase of \$1.00/hour for Dispatch/Communications Personnel, I considered the submitted evidence as it relates to my Criteria Authority. The internal comparables do not show that the other Civilians, normally part of this bargaining process, were to receive an equity pay adjustment.

The external comparables submitted by the parties, although substantially different (two comparables), do confirm that the starting rate, is on average, more than comparable. The starting rate for Dispatch/Communication Personnel is meaningfully above the average starting rate of both parties submitted comparable data. This provides the employee with early occupational increased earnings. The Employer also benefits by an enhanced ability to recruit new employees. The "down side" to a two step system such as this, is that in comparison to four or more stepped systems, the employee may fall behind in later years. However, a longevity program such as contained in Section 24.1 does tend to reduce the actual impact of a short step system.

Based on the testimony and evidence brought forward by the parties, I recommend the following.

Recommendation

The Union position and the Conciliation Award of October 11, 2005 is recommended regarding the ATB increase.

The Civilian Classification of Dispatchers and Communication Personnel are to receive a 3% (percent) increase in 2005 and 2006, and a 3.5% (percent) increase in 2007.

The Classification of Deputy Sheriffs are to receive a 4% (percent) increase in 2005 and 2006, and a 4.5% (percent) increase in 2007.

The Civilian equity pay increase is not recommended.

ARTICLE 26

MEDICAL INSURANCE

Union Position

The Union's position on this issue is to modify Section 26.2 (**Premiums**) as follows:

Employees shall contribute to the Licking County Health Plan **20% of the total monthly premium cost of such Plan; however in no event will such contribution exceed \$200.00 per month for the family plan and \$75.00 per month for the single plan.** The Union shall be notified in advance of the amounts for employee contributions prior to the annual open enrollment.

Employer Position

Current Contract

Discussion

The Employer, as of the 2004/2005 Plan year, has gone to a "self-funded" Plan. Until becoming "self-funded" or since 2001, County employee health care had been provided by United Health Care. According to submitted data the County, from 2001 until "self-funding", experienced major annual premium increases from 34% to 67% for their primary Plan. The parties submitted data shows that the "self-funded" plan year of 2004/2005 experienced a minimal 3.7% increase.

In addition to going to "self-funding" to control costs, the Sheriff's Office, in these negotiations, agreed with the Union to establish a Labor-Management Health Care Review Committee.

I find the Employer's internal comparables to be compelling. No other County employees, bargaining unit or non-bargaining unit, have caps on their premium contributions. Furthermore, the Union's submitted external comparables do not show that the other eight counties have caps for employee premium contributions.

Recommendation

ARTICLE 26 Section 26.2

Current language

ARTICLE 31

HOURS OF WORK AND OVERTIME

Union Position

The Union's position on this issue is to add a provision in both Contracts to Section 31.4, providing for the use of compensatory time off in lieu of earned overtime pay. The proposed change would read as follows:

Compensatory time off in lieu of overtime pay shall be granted at the option of the employee. It shall be given on the basis of time and one-half for hours worked and may not accumulate in excess of 70 hours. If an employee is transferred to another section, any unused compensatory time which he/she may have accumulated shall continue to be available for the employee's use. No accumulation of compensatory time in excess of 70 hours will be paid. Use of compensatory time shall not be unreasonably denied.

Employer Position

Current language

Discussion

It was also understood that this issue would be deferred to the Conciliation Award of October 11, 2005 (SERB Case #'s 04-MED-09-0862/0865). The parties did not address this issue with testimony at the Fact Finding Hearing.

This type of issue, because of the specificities of an employer and union situation, is best left for the parties to negotiate. For a Fact Finder or a Conciliator to recommend or impose a provision such as this may cause more damage than good in a workplace environment.

The Union, in its Conciliation Position, saw the wisdom of in depth discussions on an issue of this nature. Their position on this issue at Conciliation regarding the “sister” units was to create an LMC focusing on the issue of compensatory time off.

Recommendation

Section 31.4 of ARTICLE 31 is to be current language.

ARTICLE 35

VACATION

Union Position

Section 35.4 Vacation Requests. This Section was the only section unresolved in this Article for both Units. The Union proposed to extend the “deadline” for scheduling vacation leave from April 30 of each year to June 30 of each year.

Employer Position

Change the current “deadline” in **Section 35.4** (3rd paragraph) from April 30 to May 30 of each year.

Discussion

No testimony was introduced by the parties at the hearing, with the understanding that my recommendation would be governed by the Conciliation Award of October 11, 2005. Furthermore, in this Fact Finder’s opinion, employees should know their vacation needs by the date of June 1st. As employees accumulate additional vacation time it becomes more time consuming to administer.

Recommendation

ARTICLE 35, Section 35.4, third paragraph, should read as follows:

1st paragraph—current language

2nd paragraph--- current language

Any vacation leave not scheduled by **May 30** of each year shall be lost or scheduled for the employee by the Employer or converted at year end if the amount is forty (40) hours or less. All not scheduled vacation leaves are subject to the operational needs of the Sheriff's Office. The Employer may cancel and reschedule vacation leave requests due to operational needs of the Office.

ARTICLE 36

HOLIDAYS

Union Position

The Union is seeking to add the following language to **Section 36.2 (Holidays Observed/Paid)**, to the Deputies Contract.

However, employees assigned as a Transport Officer in the jail division will be required to work holidays on the same basis as all other jail division employees.

Employer Position

Exclude the Union's proposed addition to **Section 36.2**

Discussion

Much time was spent by the parties on this particular issue both in mediation and at the Fact Finding Hearing. According to evidence and testimony there are three jail division Deputies assigned to do Court transportation work. These Deputies are not assigned to 24 hour operations. In fact, they work a Monday through Friday work week between the hours of 7am and 4pm.

During negotiations on this issue the parties reached two tentative agreements addressing some of the Union's concerns regarding the Transport Officer assignments. In the Fact Finder's opinion, the TA's should open up future opportunities for senior employees to work in such an assignment. This future opportunity should allow senior employees to enjoy some of the perceived advantages of being a Transport Officer.

Furthermore, the desire for more holiday time off for senior employees should be somewhat assisted by another tentative agreement allowing senior employees off in certain positions as designated by the Employer.

Requiring the Transport Officers to work holidays, as if being a 24 hour operations employee is not justified according to the evidence and testimony. There have been six holidays observed in 2005, to the date of the Hearing, and only two of those days reported the need for transportation. Not sufficient, in the Fact Finder's opinion, to revamp the contract for holiday work.

If, as implied by the testimony, the Employer has misused the Transportation Officer assignment, in violation of the Contract, the grievance procedure should have been considered for redress.

Recommendation

Not to include in ARTICLE 36 the Union's position regarding the Transportation Officers.

ARTICLE 47

INJURY LEAVE

Union Position

Add a third paragraph to **Section 47.1 Injury Leave** in both Contracts as follows:

In the event an employee does not elect to use sick leave or does not have sick leave available the Employer will be responsible for paying the difference in the regular rate of pay and worker's compensation for up to 90 days.

Employer Position

Current Contract

Discussion

Testimony and submitted evidence show that the current Injury Leave provision has been in the Contract since 1987. The Union submitted comparables showing that only two of the eight, similarly populated, counties did not have an Employer

fully paid injury leave provision. The eight Employer paid injury leave counties had leave ranging from a minimum of 7days to a maximum of 195 days.

The Employer argues that there are not enough injuries to merit enhancing the current injury leave provision. Furthermore, argues the Employer, the internal comparables with the “sister” units have the same provision. The Sergeant’s Unit did not submit the issue to Conciliation and Fact Finder Brundige did not recommend any change to the Injury Leave Article.

In reviewing Fact Finder Brundige’s April 25th Report, I find that his recommendation for no change in Injury Leave was based on the lack of any reported work injury in those bargaining units.

My review of the submitted work injury data shows that all the work injuries appear in the Deputy Classification. In the last three years, there have been twelve reported Deputy work injuries. Five of the work injuries showed no sick leave used and submitted evidence and testimony indicated that those injured employees had no sick leave available.

The Union comparables as well as SERB requested data are convincing regarding paid injury leave for Sheriff’s Offices. This Fact Finder is not in the habit of rewriting contract language, however, this particular benefit is sorely lacking when compared to a significant majority of other Sheriff Offices. Considering the uncertain economic times a major overhaul is not in order. However, in the Fact Finder’s opinion, a minimal modification is meritorious for the Deputy Classification.

Recommendation

Modify **Section 47.1 Injury Leave**, of **ARTICLE 47** of the Deputies Contract only, to read as follows:

New 3rd paragraph: **“In the event an employee does not have sick leave available or exhausts their sick leave in accordance with the above, the Employer will be responsible for paying the difference in the regular rate of pay and worker’s compensation for up to thirty (30) Calendar days.**

**ARTICLE (NEW)
(DEPUTIES)**

MINIMUM MANNING

Union Position

In the Jail Division, D Block, each shift will maintain a minimum of two (2) Deputies.

Employer Position

Current Contract

Discussion

Much discussion occurred between the parties on this issue before the Fact Finder at the hearing. Safety is a major concern in this facility by both parties. The Union in its presentation did not have comparables to submit, declaring that minimum manning is a rarity in labor contracts. There is a heightened concern about safety in D Block since it is the block for housing disciplinary problems.

The evidence and testimony submitted by the Employer is impressive to the Fact Finder. The State of Ohio has Standards regarding staffing for jails and periodically inspects all jails for compliance. The Licking County Sheriff's Office is in compliance and has been in compliance. The data submitted along with clarifying testimony shows D Block as being well run, in the Fact Finder's opinion.

There appears to be a conscious effort at this facility to maintain a high standard of safety by both the Employer and the employees. Their LMC, according to hearing discussions always considers matters of safety as a first priority. I commend the parties for their concern for the welfare of all. Based on the evidence, testimony and discussions I do not find a need to recommend the minimum manning proposal.

Recommendation

Current Contract

SUMMARY

The Fact Finder would like to commend the parties for their efforts in resolving many of the issues during our meetings. I hope that the recommendations contained in this report will allow the parties to move forward positively in their labor-management relationships.

To the best of my knowledge this Report and its included recommendations complies with applicable provisions of ORC 4117 and related Rules and Regulations adopted by the State Employment Relations Board.

During negotiations, mediation, and fact-finding the parties reached tentative agreements on many issues. These tentative agreements along with any sections of the current agreement not negotiated and/or changed are hereby part of the recommendations contained in this Report.

Respectfully submitted and issued in Columbus, Ohio this 31st day of October, 2005.



E. William Lewis
Fact Finder

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Fact Finders Report was served by regular U. S. mail upon Mr. Benjamin Albrecht, Downes, Hurst and Fishel, 400 South Fifth Street, Suite 200 Columbus, Ohio 43215-1156, Attorney for the Employer, and Ms. Susan Jansen, Doll, Jansen & Ford, Attorney for Teamsters Local 637, 111 West First Street, Suite 1100, Dayton, Ohio 45402-1156 and Mr. Dale Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213 this 31st day of October, 2005.


E. William Lewis
Fact Finder