

STATE EMPLOYMENT
RELATIONS BOARD
2005 JUN -2 A 11: 52

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the matter of	*	04-MED-09-0941 ✓
	*	04-MED-09-0942
Fact-finding between:	*	04-MED-09-0943
	*	
Auglaize County Sheriff's Office	*	Fact-finder
	*	Martin R. Fitts
	*	
and	*	
	*	
Ohio Patrolmen's Benevolent Association	*	May 31, 2005
(Law Enforcement Unit)	*	
	*	

REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

APPEARANCES

For the Auglaize County Sheriff's Office (the Employer):

Patrick A. Hire, Consultant
Joseph R. Lenhart, County Administrator

For OPBA (the Union):

Matthew B. Baker, Staff Attorney
Charisse McDonnall, Dispatcher
Carolyn Zenz, Dispatcher
Jerry Sawmiller, Deputy Sheriff
Brent Henschen, Deputy Sheriff

PRELIMINARY COMMENTS

The bargaining unit consists of all Full-time Deputy Sheriffs, Full-time Deputy Sheriff Sergeants, and Full-time Dispatchers Sheriffs employed by the Auglaize County Sheriff's Office. There are approximately 24 employees in the bargaining unit. The State Employment Relations Board (SERB) appointed the undersigned as Fact-finder in this dispute on March 9, 2005. The parties had agreed to combine the three previously separate collective bargaining agreements into a single agreement. The parties met on multiple dates for negotiations, and reached tentative agreements on numerous issues. A Fact-finding hearing for the issues at impasse was held on May 13, 2005 at the Auglaize County Sheriff's Office in Wapakoneta, Ohio. Both parties attended the hearing, presented written positions, and elaborated upon their respective positions. During mediation at the hearing the parties reached a number of additional tentative agreements. Following mediation there were four major issues at impasse: Uniforms & Equipment; Use of Part-time Employees; Duration; and Wages. Thus these four issues were submitted for Fact-finding.

In rendering the recommendations in this Fact-finding Report, the Fact-finder has given full consideration to all testimony and exhibits presented by the parties. In compliance with Ohio Revised Code, Section 4117.14 (G) (7) and Ohio Administrative Code Rule 4117-9-05 (J), the Fact-Finder considered the following criteria in making the findings and recommendations contained in this Report:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of 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, and 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; and
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.

All references by the Fact-finder in this report to the Employer's proposal and the Union's proposal are references to their respective final proposals as presented to the Fact-finder at the May 13, 2005 hearing.

ISSUES AND RECOMMENDATIONS

Issue: Uniforms & Equipment

Positions of the Parties

The Union proposed that Section 30.1 specify that the Deputies and Sergeants are to receive body armor. This provision has been in both of their contracts, and the addition of the proposed language is simply to clarify that the Dispatchers do not receive this.

The Union also proposed that the Employer provide up to a maximum of \$125 for boots or shoes for each employee once during the term of this agreement, and proposed that the Dispatchers be given the option of using that money for a sweater instead.

The Employer proposed the retention of current language. It argued that the current level of \$100 is adequate for shoes or boots. It argued that the Dispatchers do not require a shoe or boot allowance.

The Employer also objected to the inclusion of the Union's proposal for the sweater option for Dispatchers. It argued that this proposal was not forwarded in a timely manner as required under the "Guidelines for Negotiations" that the parties agreed upon. The Union countered that the requirement for the Dispatchers to wear uniforms was not settled when negotiations began, and that this since is multi-unit bargaining, it was appropriate to include this

Discussion

Regarding the Employer's argument as to the appropriateness of the Union proposal for the sweater option for Dispatchers, the Fact-finder notes that this is a consolidation of three collective bargaining agreements into one. While the Union's proposal for the Dispatchers may not have been clarified at the beginning of negotiations, the blending of the three agreements requires that the parties both exercise flexibility with regard to the modification of proposals.

It is exactly the blending of these three agreements that leads to the issue of which employees are entitled to the shoe/boot allowance at all. The Dispatchers certainly have no compelling need for footwear, as their job duties keep them inside and seated most of the time. However, the fact that uniforms are now required of them provides enough reason to conclude that a sweater may be as valuable a uniform allowance for them as a shoe/boot allowance is for those on the road.

There is no question that those on road patrol need good quality footwear. Two years ago the parties agreed on a \$100 maximum, and while that amount may not cover completely the cost of a high-end boot or shoe today, it likely did not cover the entire cost of a high end boot or shoe two years ago, either. That being said, the Fact-finder does believe that the costs for such footwear have likely increased over the last two years, but not at a 25% rate. Therefore the Fact-finder believes an appropriate maximum is \$110. This new level reflects inflation yet is consistent with the basic reimbursement level that the parties have previously found adequate.

Findings and Recommendation

The blending of the three contracts into a single agreement dictates that the language in Section 30.1 be modified. In addition the Union's argument for the Dispatcher option for the purchase of a sweater is compelling. As stated above, the Fact-finder finds a maximum allowance of \$110 to be proper.

Therefore, the Fact-finder recommends the Union's proposal for Section 30.1, except that the maximum allowance shall be \$110.00

Issue: Use of Part-time Employees

Positions of the Parties

The Employer proposed that Sections 32.2, 32.3, 32.4 and 32.5 of the current Sergeants agreement be deleted. These sections deal with several issues, including pay and staffing levels for part-time Deputies, lay-off requirements for part-time Deputies vis-à-vis Sergeants, and remedies for missed overtime opportunities for Sergeants.

The Union proposed the retention of these sections in the new consolidated agreement.

Discussion

The Employer argued that Section 32.2 is duplicate language that is already covered by the provisions of Article 13 - Layoff and Recall. However, Section 32.2 contains a contractual obligation for the Employer that does not appear in Article 13. Article 13 merely requires that all part-time employees within a classification must be laid off prior to full-time employees in that classification being laid off. Section 32.2 specifically requires the Employer to lay off all part-time Deputy Sheriffs prior to laying-off any full-time Sergeant. This is a wholly different obligation than is found in Article 13. The part-

time employees are not a party to a collective bargaining agreement, thus decisions regarding lay-offs for the part-time employees is solely a management right. As a management right, it is something that the Employer properly has the ability to bargain away. Obviously at some point in the past the Employer did bargain this management right away, and the Fact-finder can see no compelling reason to recommend a change in this provision at this time.

The Employer argued that Section 32.3 deals with compensation levels for part-time Deputy Sheriffs who are not part of any of the three current bargaining units. It argued that there is no ability for the instant collective bargaining agreement to convey rights to non-bargaining unit members, nor would any arbitrator be empowered to find any remedy for such non-bargaining unit employees should this provision ever be grieved. The Union argued that at one point the parties obviously felt compelled to include this provision in the contract, and that they should be kept. The Employer's argument is compelling and correct on all points. Unlike the provisions of Section 32.2, which conveyed employments rights to members of this bargaining unit, Section 32.3 conveys no rights to members of this bargaining unit. The Fact-finder can see no reason for Section 32.3 to exist in the agreement, and no harm to the bargaining unit if it is removed.

Section 32.4 provides a remedy for violations of overtime provisions for Sergeants. The Employer argued that these violations are grievable and that ultimately an arbitrator should have the authority to fix a remedy for such violations. The Union argued for retention. The Fact-finder does not find it unusual or unreasonable for the parties to have a fixed remedy in the agreement for a specific violation of certain provisions of the collective bargaining agreement. In fact, it may be more desirable for the parties to have agree-upon remedies for violations of contractual provisions than for a third party, or possibly many third parties, to fashion those remedies. The agreed-upon remedy in the matter of overtime violations ensures consistency and fairness for all employees and the Employer itself.

Section 32.5 provides that no more than two part-time Deputy Sheriffs may be on duty at any one time. As was the case with Section 32.2, this is a management right that has been previously bargained away by the Employer. No compelling reason was offered for the deletion of this section, yet no compelling reason was offered for the retention, either. It is likely that the rationale for the language has been lost by the parties. To delete this section could confront the parties with an unintended consequence that could harm the parties, while retaining it will at worst provide only the status quo. Therefore retention of Section 32.5 appears to the Fact-finder to be the most prudent course of action. Should the parties desire to remove this language in future negotiations they are obviously free to do so.

Findings and Recommendation

Regarding Section 32.2, the Fact-finder finds no compelling reason for the removal of this language.

Therefore, the Fact-finder recommends the retention of current language in Section 32.2.

Regarding Section 32.3, the Fact-finder finds the Employer's proposal for the deletion of this language to be quite compelling.

Therefore, the Fact-finder recommends the deletion of Section 32.3.

Regarding Section 32.4, the Fact-finder finds the Unions' argument compelling for the retention of current language.

Therefore, the Fact-finder recommends the retention of Section 32.4.

Regarding Section 32.5, the Fact-finder believes that retention of this language will be the most reasonable course to follow.

Therefore, the Fact-finder recommends the retention of Section 32.5.

Issue: Duration

Positions of the Parties

The Employer proposed that the effective date for the new agreement be the date of signing. It also proposed that Section 33.1 be amended to allow for contract negotiations to begin 120 calendar days in advance of the expiration date rather than the current 90 days.

The Union proposed that the effective date be January 1, 2005. It agreed with the Employer's proposal for the amendment of Section 33.1 to allow for contract negotiations to begin 120 calendar days in advance of the expiration date.

Discussion

As noted earlier, the current negotiations represent an agreement by the parties to consolidate three collective bargaining agreements into a single agreement. Each of the three respective previous agreements had provisions for the effective date of each to be the date of execution. The Union offered no argument that the negotiations this time reflected any undue delay or mitigating circumstance that prevented the parties from

concluding negotiations earlier. It is noted by the Fact-finder that the parties did not sign the previous agreements until mid May of 2003, so an effective date of this agreement being at execution will not differ greatly from what the parties have previously experienced.

In addition, the amendment calling for negotiations to begin 120 days prior to expiration should help the parties conclude their next negotiations prior to the expiration of the new agreement.

Findings and Recommendation

Finding no compelling argument in support of the Union's position, and finding that in the past the parties have agreed to the contract being effective on the date of signing, the Fact-finder believes the Employer's proposal is consistent and fair.

Therefore, the Fact-finder recommends the Employer's proposal for the amendment Section 33.1 of Article 33 - Duration.

Issue: Wages

Positions of the Parties

The Union proposed amending Section 25.1 to reflect a 4% across the board wage increase effective January 1, 2005, an additional 4% across the board wage increase effective January 1, 2006, and an additional 4% across the board wage increase effective January 7, 2007. In addition, the Union proposed amending language to reflect that a Deputy required to serve as a shift supervisor would receive an additional \$2.00/hour for all hours served in such capacity, up from the current \$1.50/hour.

The Union proposed that a new section be added to the agreement providing for longevity in the amount of \$40.00 for each continuous year of service after five years, to be added to the base wage rate of the employee in a formula it prescribed. The Union also proposed that a new section be added to the agreement to provide for a shift differential of \$0.40/hour for Deputies and Sergeants working between the hours of 4:00 p.m. and 8:00 a.m., and a shift differential of \$0.40/hour for Dispatchers working between the hours of 3:00 p.m. and 7:00 a.m.

The Employer proposed a 1.5% across the board wage increase effective upon signing of the agreement, an additional 1.5% across the board wage increase effective January 1, 2006, and an additional 2% across the board wage increase effective January 1, 2007.

The Employer proposed the retention of current language providing for acting pay in the amount of \$1.50/hour for any Deputy serving in the capacity of shift supervisor. The Employer also proposed that no new language be added to the agreement providing for either longevity or a shift differential.

Discussion

Regarding its across the board wage increase proposal, the Union argued the bargaining history of the parties has solidly been at around 3%. It also pointed to data from the SERB Dayton region that shows wage increases averaging 2.6% for 2005 and 3.08% for 2006. It argued that a review of the contiguous counties shows wage increases averaging 2.8% for 2005 and averaging 3% for 2006.

The Employer stated that the Sheriff desires to provide the bargaining unit employees with a reasonable wage increase. It argued that there is uncertainty in the future due to the expiration of a dedicated tax levy for law enforcement in mid 2006. If that revenue is not replaced, this will result in a \$2 million reduction in revenue for the Sheriff's Office. It argued that its wages are already competitive, and that the Office has no problem recruiting or retaining employees. It stated that it is not arguing that it is poor, only that the future is uncertain and that it desires to be fiscally prudent. It also stated that when it has been flush with cash in the past the Employer has provided good wage increases.

The Employer acknowledged that a replacement or renewal levy will be attempted, and that the expiration of the existing levy does not necessarily mean the loss of the \$2 million in revenue the levy currently generates. The difficulty for the Fact-finder in accepting the Employer's argument that its future is uncertain due to the expiration of the levy is two-fold. First, the levy will be in place throughout the first half of the time period covered by this agreement. Secondly, there is a flaw in claiming economic uncertainty solely on the possibility of the non-renewal of a tax levy. School districts face ongoing operational levy renewal efforts. If a Fact-finder based wage increase recommendations for school district employees solely on the uncertainty of future levy renewals, school employees would never receive any wage increases at all. Auglaize County has demonstrated both the willingness and the ability to fund law enforcement at the current level, and there was no compelling evidence presented at the hearing to convince the Fact-finder that it will be unable to do so for the term of this new agreement.

Having said this, the wage increases proposed by both parties are found to be inadequate when measured by reason and fairness. A review of the history of wage increases provided for in the past for these bargaining unit employees' compared to the County's non-bargaining unit employees shows that these employees have enjoyed equal or slightly higher wage increases than the other County employees. The Employer provided evidence that the non-bargaining unit Auglaize County employees received a 2.5% increase for 2005. This serves as a guideline for what is reasonable and fair to these bargaining unit employees.

Regarding the effective date of the first wage increase, the Fact-finder notes that in the most recent previous agreements reached with each of the three bargaining units, the first year's wage increase was effective on January 1st, irregardless of the fact that each of the three agreements contained duration clauses that stated the effective date for each of the agreements was at signing. There was no evidence presented by the Employer that this created any undue hardship in 2003, the first year of the previous agreements, nor was there any claim that this would present an undue financial hardship in 2005. Therefore the reasonable conclusion is that the parties past practice in the last round of negotiations of providing that the first year wage increase would be retroactive to January 1st should be maintained in this current round of negotiations.

Regarding the Union proposal to amend the contract to provide that a Deputy required to serve as a shift supervisor would receive an additional \$2.00/hour for all hours served in such capacity, up from the current \$1.50/hour, the Employer properly noted that if this was adopted a senior Deputy could earn more than the beginning rate for a Sergeant. This hardly seems fair. True, the spread between the wage rates for more junior Deputies is greater, and the proposed \$2.00/hour would narrow this gap. However, it seems more likely to the Fact-finder that the majority of the time a more senior Deputy will be serving in the shift supervisor capacity, making the current \$1.50/hour a much more appropriate rate.

Regarding longevity, the Union argued that this was a major issue to the bargaining unit members. It even offered to take a reduced wage increase in order to provide funds to implement a longevity provision in the new agreement. It offered evidence that three of the six contiguous county Sheriff Offices have some form of longevity, and that a majority of the Sheriff Offices in Ohio also have some form of longevity as well. The Employer countered that in those contracts providing for longevity something major has been given up by those bargaining units in order to gain such provisions in their agreements. It also offered the internal comparable of Auglaize County, where no other employees receive longevity payments. It also maintained that it has no problem retaining employees. Lastly, it noted that there are actually seven contiguous counties and that only three of the seven have longevity.

Given the lack of evidence that retaining senior employees is difficult or that they are enticed in troublesome numbers to move to other contiguous Sheriff Offices that provide longevity, and noting that no other employees within Auglaize County enjoy longevity benefits, it is difficult to find support for the Union's position. Seniority already benefits the bargaining unit members in a variety of ways in the current agreement. While the bargaining unit members would certainly benefit economically from longevity provisions, there just is simply no compelling reason to recommend them at this time.

Regarding shift differential, the Union offers this proposal in an attempt to compensate employees for working on less desirable shifts. It argued that a shift differential would serve as an attraction to more senior employees to work on these less desirable shifts as well. The Employer cited a virtual absence of shift differentials in the contiguous county

Sheriff Offices, and a complete absence of shift differentials in other Auglaize County agencies or departments (both organized and non-organized), and argued that there is simply no reasonable argument that it should now provide such a benefit. It also noted that the Sheriff has no problem filling shifts under the current contract. The Fact-finder simply finds a lack of a compelling argument that a shift differential is warranted.

Findings and Recommendation

Regarding the wage increases, the Fact-finder finds that the past bargaining history and the economic viability of the County supports wage increases in between those proposed by the Employer and those of the Union.

Regarding the effective date for the first year wage increase, no compelling reason was presented to the Fact-finder that the previous pattern of providing that the first year's wage increase be retroactive to January 1st should not be maintained in the instant agreement.

Therefore, the Fact-finder recommends a 3.0% across the board wage increase effective January 1, 2005, an additional 2.5% across the board wage increase to be effective January 1, 2006, and an additional 3.0% across the board wage increase to be effective January 1, 2007.

Regarding the proposal to increase the amount that a Deputy required to serve as a shift supervisor receives for all hours served in such capacity, the current contractual provisions for an additional \$1.50 are reasonable and no compelling reason found to support an increase.

Therefore, the Fact-finder recommends the Employer's proposal that no change be made in the provisions for a Deputy serving in the capacity of a shift supervisor.

Regarding longevity, the Fact-finder does not find compelling evidence to support the creation of such a provision in the current agreement.

Therefore, the Fact-finder recommends the Employer's proposal that no longevity provisions be added to the agreement.

Regarding shift differential, the Fact-finder does not find compelling evidence to support the creation of such a provision in the current agreement.

Therefore, the Fact-finder recommends the Employer's proposal that no shift differential provisions be added to the agreement.

Additional recommendations of the Fact-finder

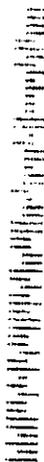
In addition to the above, the Fact-finder notes that the parties have agreed that they will re-number the articles and sections as necessary due to the consolidation of the three previous agreements into a single agreement. In addition, there were a number of instances where language needed to be amended to reflect this consolidation, and the parties reached agreement on those as well. These were identified by the parties throughout the fact-finding hearing and mediation, but may not be explicitly mentioned in this Report. Regardless of whether or not these are explicitly mentioned in this Report, the Fact-finder recommends these changes.

Further, the Fact-finder recommends all the tentative agreements reached by the parties during their negotiations, including those reached in mediation conducted by this Fact-finder.

A handwritten signature in black ink, appearing to read 'M. R. Fitts', written over a horizontal line.

Martin R. Fitts
Fact-finder
May 31, 2005

Martin R. Fitts
Labor Arbitrator
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First Class Mail
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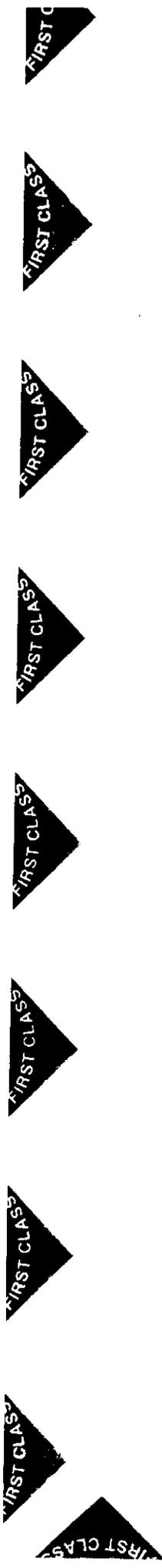
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May 31, 2005

Mr. Matthew B. Baker
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Re: SERB # 04-MED-09-0941 ✓
SERB # 04-MED-09-0942
SERB # 04-MED-09-0943
Auglaize County Sheriff & Ohio Patrolmen's Benevolent Association

Gentlemen:

With this letter I am sending to each of you via USPS Express Mail my Fact-finding Report in the above-referenced matter.

By copy of this letter I am also sending a copy of this Report to SERB via regular USPS mail.

Sincerely,



Martin R. Fitts
Fact-finder

Cc: SERB ✓

STATE EMPLOYMENT
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