

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

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2004 DEC 16 A 11: 37

In the Matter of the Fact-finding Between:

Ohio Patrolmen's Benevolent Association : Case No. 04 MED—09-0956  
And : Fact-finding Recommendations  
Southeastern Ohio Regional Jail : Margaret Nancy Johnson  
Fact-finder

Pursuant to Ohio Revised Code Section 4117.14 (c), the State Employment Relations Board (hereinafter "SERB") appointed Margaret Nancy Johnson as fact finder in the above referenced bargaining impasse. Issued on December 1, 2004 the appointing papers require service of the written report of the hearing officer on or before December 15, 2004. Consistent with the appointing papers, this report is hereby served on the parties and on SERB.

The parties convened on December 11, 2004, in a conference room at the Southeastern Regional Jail (hereinafter "Jail" or "SEORJ") to present evidence and argument upon the matters in contention. Prior thereto, the parties had timely submitted position statements for review by the fact-finder. At the scheduled hearing the fact-finder heard sworn testimony of witnesses and admitted into the record documentary evidence pertaining to the outstanding issues. Compliant with all of the statutory time requirements, the fact-finder now issues her report setting forth recommendations and rationale for those issues upon which the parties had not been able to reach consensus.

Background

Under provisions of the Ohio Revised Code, the Southeastern Regional Jail came into existence in April, 1998, and was built pursuant to a grant obtained by the four participating counties, Athens, Hocking, Perry and Morgan. A commission composed of representatives from the four counties are responsible for operation and funding of the jail. Having a Fiscal Officer, the Jail functions as an independent entity. Nonetheless, except for "beds" which it may rent to other counties, the Jail is almost completely dependent upon appropriations from the four counties it services.

Ohio Patrolmen's Benevolent Association (hereinafter "OPBA" or "Union") is the bargaining agent for the unit, currently consisting of three full time Corrections Sergeants. The prior three year agreement negotiated by the parties is due to expire on December 31, 2004. Unable to reach an agreement on nine (9) outstanding issues for a successor contract, the parties reached an impasse in their collective bargaining.

### Issues

Issues upon which the parties remain in impasse include: Dues Check-off, Discipline, Holidays, Vacations, Insurance, Wage Schedule, Employee Rights, Uniforms and Equipment, Duration of Agreement.

### Criteria

In submitting the recommendations which follow, the fact-finder has given consideration to those factors regularly relied upon by neutrals in impasse situations and as outlined in Ohio Revised Code, Section 4117.14(G)(7) and in Ohio Administrative Code Rule 4117-0-05.

### Position of the Parties

#### 1. Article 3 - Dues Check-Off

Because of an asserted violation of freedom of association, SEORJ proposes deletion of the Fair Share Fee language currently included in Article 3. Indicating that all three employees in the bargaining unit are Union members and therefore, there is no infringement on the rights of any employee, the Union proposes retention of current language.

#### 2. Article 10 – Discipline

While the Union seeks to reduce the length of time written reprimands and suspensions are kept in the personnel file of an employee, SEORJ seeks to increase the same. Citing the unique accountability of the regional jail to a public constituency, the Jail argues it must have the maximum ability to address disciplinary concerns. A shortening of the duration of penalties assessed by the Jail undermines the progressive discipline policy now in effect and impedes management of the work force. In addition to the reduction of time written reprimands and suspensions are retained in personnel files, the Union seeks notice from management when disciplinary action is to be removed from personnel files, an obligation for which the Jail argues it does not have sufficient staff.

#### 3. Article 21 – Holidays

Citing comparability, the Union proposes the addition of two new holidays, which the Jail opposes as being unaffordable and not warranted. In support of its proposal, the Union points out that unlike comparable employers, the jail does not provide its employees with any personal days for use in emergency situations.

#### 4. Article 22- Vacations

By proposing a reduction in the number of years required to earn vacation time, the Union seeks to enhance vacation benefits. In addition, the Union advocates the conversion of up to three (3) vacation days per year to personal days for emergencies. A third component of the Union proposal is pay in lieu of vacation for two weeks rather than the current one week.

5. Article 23 - Insurance

As insurance costs are increasing from 15% to 25% per year, the Jail proposes increasing the employee contribution from 15% to 20%, a percentage that is consistent with employee contributions in the region. In reliance upon state-wide figures, the Union argues that a 10% employee contribution is more consistent with averages.

6. Article 24 – Wage Schedule

Although in the predecessor contract, this bargaining unit received increases of 4% annually, organized county employees received between 0 and 2% and non-union employees had no increase. The commission argues it simply does not have the resources to pay the increases proposed by the Union. To sustain its position on this issue, the Jail solicited testimony and documentation from representatives from three of the four counties who testified as to the fiscal hardship incurred by those Counties (see *i.e.* Employer Exhibits 3,5,6). Additionally, the Fiscal Officer testified as to the inability of the Jail to pay the increases proposed by the Union, the need of the Jail to expend funds on maintenance, and increasing costs (Employer Exhibit 4). Increases in budget items include a 41.5% increase in liability insurance, 18.3% increase in medical insurance, and a 64% increase in utilities. Finally, the Jail Warden provided testimony concerning the need of the Jail to raise the frozen per diem cost of “beds” in order to meet current expenses as well as the incomparability of Deputy Sheriffs with the Corrections Sergeants at the regional jail.

In contrast, the Union submitted documentary evidence on comparables indicating that the starting salary for the bargaining unit is 30% less than that for the average Corrections Sergeant at fifty-five reporting counties in the State of Ohio (Union Exhibit 5), while the top salary is 25% less. To rectify the disparity in comparables, the Union proposes a 6% increase for each contract year. In addition, the Union seeks a longevity payment of \$300.00 after six years of employment, and additional Fifty Dollars (\$50.00) each year thereafter. The Union argues that the Commission used a substantial contingency fund to pay “dividends” to each of the four counties, monies that could have been used to provide salary increases for the unit (Union Exhibits 11 and 12). Additionally, pointing out that the per diem cost of beds is set by the Commission, the Union argues that the individual counties reap the benefit of housing inmates at a lower price than if they used another facility or if the individual Counties were to provide their own Corrections Sergeants for detainees (Union Exhibit 8).

7. Article 27 - Employee Rights

The Union proposes language which would compensate employees at overtime rates for interviews taking place during off-duty hours. Opposing the proposal, the SEORJ contends that internal interviews are incidental to corrections work and should not be compensable time.

8. Article 28 - Uniforms

Although the SEORJ will agree to language setting forth a list of approved items that employees may purchase, it is opposed to the Union proposal of an additional \$50 designated as \$100 for shoes.

## 9. Article 29 - Duration of the Agreement

It appears that both parties favour a three year contract.

### Discussion

#### 1. Article 3 - Dues Check-off

Constitutionality of dues check-off and fair share fees has been upheld in the course of extensive litigation and judicial review. Accordingly, Article 3 of the Agreement between the parties setting forth a fair share fee arrangement cannot be found to unduly infringe upon First Amendment Rights. Moreover, in the course of negotiations, the Commission *agreed* to the fair share fee provisions. Finally, there is no present employee who is affected by the fair share fee language.

The fact-finder recommends current language.

#### 2. Article 10 – Discipline

Neither party has justified its proposed change on the basis of evidence that current language is unworkable. The present language was mutually agreed to by the parties and in the absence of evidence that modification is warranted, current language should be retained. As employees have access to their personnel files, a proposal that the employer provide written notification of removal of dated disciplinary action is without justification.

The fact-finder recommends current language.

#### 3. Article 21 – Holidays

A proposal to add two additional holidays is an additional expense which is not supported by any of the statutory criteria for implementing modifications to collective bargaining agreements. Present holiday provisions are consistent with those provided by Sheriffs across Ohio.

The fact-finder recommends current language.

#### 4. Article 22 – Vacations

At this particular time in bargaining history between these parties, the financial impact of the Union proposal on vacations can not be sustained by the employer. Moreover, and significantly, a perusal of Union Exhibit 2 demonstrates that present vacation provisions provided by the Jail are remarkably comparable to the vacation accrual provided by Sheriff Offices throughout the state, including even those of the major metropolitan areas. Accordingly, the proposal to modify the vacation provisions cannot be justified.

As to the proposal on personal days intended for use in emergency situations, had the Union been able to demonstrate a need for personal days by evidence of employee hardship created by lack of such a benefit, the proposal would, perhaps, have been more persuasive. Other than hypothetically, however, the Union has not demonstrated a rationale for the proposed contract enhancement. Instead, the evidence demonstrates that currently the Jail is experiencing substantial overtime costs, which would only increase should personal days be implemented.

The fact-finder recommends current contract language.

## 5. Article 23 – Insurance

Both parties propose changes to the insurance provisions of the Agreement. Presently at 15%, the Union seeks to reduce the employee contribution to 10%, and the Jail advocates an increase in employee participation to 20%. The proposal of the SEORJ is characteristic of concessionary bargaining—requesting employees to give up a benefit previously negotiated in good faith. To sustain such a proposal, the Jail would have to demonstrate an inability to meet its present insurance obligations. While the employer has successfully demonstrated a significant decline in the revenues of the participating Counties, as well as an increase in insurance expenses, an inability to pay *existing* insurance obligations requires specificity as to insurance costs. Other than a memorandum from the Fiscal Officer, the Jail has not presented any evidence from which the fact-finder can conclude an inability to pay existing health insurance benefits for this unit.

On the other hand, the Union has not justified the proposed reduction in employee contributions. Rather, Union Exhibit 2 indicates the present provisions are relatively comparable in terms of employee/employer contributions in comparable units across the state.

Contractual insurance provisions in collectively bargained agreements may have a variety of components, including, for example, co-pays, caps, and deductibles. Absolutely no evidence was elicited as to consideration given by the parties to such components, or to any endeavour to pursue creative cost sharing. Again, in the absence of evidence of a demonstrated need for modification or of any collective bargaining on this matter, the fact-finder recommends retention of current language rather than increasing or decreasing the participation of either party.

The fact-finder recommends current language.

## 6. Article 24- Wages Schedule

While the Union seeks increases of 6% for each contract year, as well as longevity language, the SEORJ proposes a 1% annual increase. Clearly, the economic climate across Ohio does not warrant the increases proposed by the Union. Budgetary constraints hamper public employers from providing the wage increases previously negotiated by bargaining units. While the loss of industry has had an impact on communities throughout the state, the southeast region of Ohio is particularly plagued by issues of job loss and declining revenue. Indeed, the discouragement over the economic landscape as testified to by the Athens County Commissioner was genuine and persuasive. Built by grants at a time when the national economy was relatively strong, the financial picture now confronting the employer is considerably different. Nonetheless, the evidence elicited in this proceeding does not indicate an inability to pay a meaningful wage increase to the three employees of this bargaining unit. Rather, the evidence is clear that some wage adjustment is warranted and appropriate.

Three of the participating counties rendered testimony through a representative as to the decline in income and the corresponding increase in the cost of the jail as a component of the budgets of respective counties. In reviewing the financial data, however, the fact-finder is struck by the remarkable consistency in the figures. For example, a review of the pie chart in Employer Exhibit 3, General Fund Revenues for

Athens County, indicates that from 1999 through 2004, the jail remained at 9% of the general fund budget except for 2002 and 2003, when it rose to 10% and then returned to 9%. The figures from Morgan County are consistent with this finding. Again, the pie chart on Employer Exhibit 5, General Fund data from Morgan County, shows jail expense as a component of the budget at 9% in 2004, compared with 10% in 2001, 5% in 2002, and 12% in 2003. Finally, the figures from Hocking County, though considerably higher and more varied, demonstrate a consistent jump in the jail expenses in 2003, but then a return to figures comparable to those of 2002. Indeed, jail expenses as a percentage of the Budget of the Sheriff for Hocking County for 2004 and those projected for 2005 are lower than the expenses of 2003, and the projected cost for 2005 is lower than the cost in 2002. While flat revenues in the counties may be proffered for the dismal financial picture portrayed, the evidence does not warrant a conclusion that escalating jail expenditures are part of the economic dilemma.

Although the Jail has its own Fiscal Officer, noticeably absent in the testimony and evidence presented is monetary data specifically for the Jail. The fact-finder understands that the Jail is funded by the participating counties, but, even so, the Jail has its own budget, receipts, expenditures, and financial office. Yet, the only information on receipts and expenditures for the Jail itself were offered through the Union in the Audits for 1998, 1999, 2000, and 2001 (Union Exhibits 9 and 10), which indicate expenditures being met by receipts with some carryover balance.

Additional testimony on the Jail budget includes a "dividend" issued to participating counties in late 2003 and paid from a then substantial contingency fund maintained by the Jail (Union Exhibits 11 and 12). The prerogative of the Jail Commissioners to distribute contingency fund monies to the counties is not challenged, but such a transfer of monies is clear evidence of an ability on the part of the jail to pay some reasonable wage increase for the three Corrections Sergeants employed by the Jail, whose salaries are a minute percentage of the overall budget.

Moreover, nowhere in the evidence is there any testimony as to endeavors by the Commission to off-set the "flat" county revenues by seeking funds from other sources. Except for the sale of "beds" to public entities, there is no evidence the Commission has explored finding additional funding options.

In summary, the evidence simply does not conclusively establish an inability to pay. In the absence of such evidence, the fact-finder considers the statutory criteria on comparability. As pointed out by Counsel for the Jail, comparables are difficult to identify. Regionally, southeast Ohio is its own unique labor market. Moreover, the employer is a unique entity, one of only four multi-county jails in the State. Thus, the annual salary of a corrections sergeant in southeast Ohio may not be comparable to that paid to a corrections sergeant in a major metropolitan area.

Nonetheless, a review of wage increases negotiated by comparable employers provides a framework for an appropriate wage increase for this bargaining unit. The fact-finder notes that Athens County, the county in which the jail is located, negotiated a 3.5% increase for employees in its Sheriff's Department for 2005 (Union Exhibit 8). Additionally, the Sheriffs in Clermont, Erie, Guernsey, Holmes, Miami, Muskingum, Pike, Portage, Stark, and Tuscarawas Counties each negotiated 3% increases for bargaining unit employees for 2005 (Union Exhibit 5). Indeed, consistently across the state, increases in the 3% to 3 1/2 % range have been negotiated for employees of Sheriff

Offices (Union Exhibit 5). Reviewing internal comparables, the hearing officer observes that salary increases of up to 2% have been noted for Jail employees (See Position Statement of SEORJ), but there is no evidence in the record as to the internal salary schedule at the Jail.

In the opinion of the fact-finder, then, a wage increase of 3% 3% and 3 % is consistent with comparables as well as with evidence on ability to pay. The intent of the recommended annual three per cent increase is not to rectify perceived disparities in the salary schedule for the bargaining unit. Rather, the intended percentage is a wage increase consistent with increases negotiated across the State of Ohio for Corrections classifications within Sheriff Offices.

As indicated by Counsel for the Jail, in law enforcement jurisdictions across the state employers are striving to move away from the concept of longevity pay. While an employer may certainly elect to negotiate the same with a bargaining unit, the fact-finder is of the opinion that such a provision ought not to be initiated without the concurrence of both parties. Accordingly, the fact-finder does not recommend the introduction of either longevity pay or an additional step on the salary schedule.

The fact-finder recommends an annual 3% increase in salaries. The fact-finder does not recommend any additional changes to current language.

#### 7. Article 27- Employee Rights

Concurring with the SEORJ, the fact-finder does not recommend compensating employees for time expended for internal interviews. In the work of safety forces, special consideration must be given to ensuring the public perception of employee performance is above reproach. To pay overtime to employees who, as a component of their job are required to demonstrate proper conduct in the line of duty, is not warranted.

The fact-finder recommends current language.

#### 8. Article 28- Uniforms

While the Employer has not demonstrated that current contract language does not sufficiently address its managerial prerogatives on the matter of uniformity in dress, the evidence does establish that the current contractual provision on uniform allowance is substantially lower than the allowance provided in comparable units and that some adjustment on this issue is warranted. Accordingly, although the fact-finder does not recommend changing Section 28.1 of the current agreement, she does recommend changing Section 28.3 to reflect the Employer shall budget three hundred dollars for the purchase and maintenance of uniforms and equipment for Sergeants required by the employer to wear a specific uniform and an additional \$100.00 yearly for the purchase of footwear.

The fact-finder recommends a uniform allocation of \$300.00 and a footwear allocation of \$100.00.

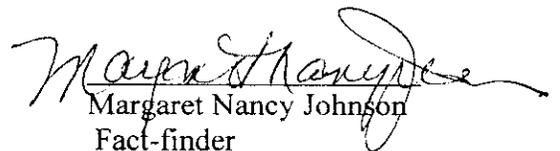
#### 9. Article 20 – Duration

Insofar as both parties propose a three year contract, the fact-finder recommends the same.

Summary

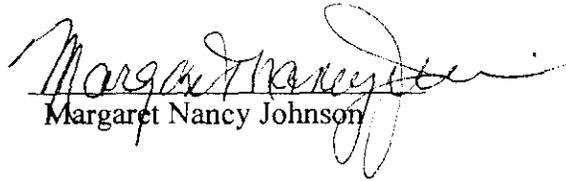
1. Article 3 – Dues Check-Off  
The fact-finder recommends current contract language.
2. Article 10 – Discipline  
The fact-finder recommends current contract language.
3. Article 21 – Holidays  
The fact-finder recommends current contract language.
4. Article 22 – Vacations  
The fact-finder recommends current contract language.
5. Article 23 - Insurance  
The fact-finder recommends current contract language
6. Article 24 – Wage Schedule  
The fact-finder recommends a 3%, 3%, and 3% increase each year of the contract.
7. Article 27 – Employee Rights  
The fact-finder recommends current contract language.
8. Article 28 – Uniforms  
The fact-finder recommends modifying Section 28.3 to provide:  
  
Effective January 1, 2005, the Employer shall budget three hundred dollars (\$300.00) per employee, to purchase or replace uniforms and equipment required by the Employer. The Employer shall also budget one hundred dollars (\$100.00) yearly per employee to purchase duty footwear.
9. Article 29 – Duration  
The fact finder recommends a three year contract.

Respectfully submitted,

  
Margaret Nancy Johnson  
Fact-finder

Service

On this 15<sup>th</sup> day of December, 2004, the fact-finder issued her recommendations by first class mail to the Statement Employment Relations Board, 65 East State Street, Columbus, Ohio 43215, and by facsimile and by Express Mail to the respective parties as follows: Garry E. Hunter, Esq., Legal Counsel for SEORJ, 26 S. Congress Street, Athens, Ohio 45701 (740) 592-5290; and Matthew B. Baker, Esq., Legal Counsel for OPBA, 555 Metro Place North, Suite 100, Dublin, Ohio 43017 (614) 791-3244.

  
Margaret Nancy Johnson