

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD
2004 DEC 15 A 11:29

SOUTHEASTERN OHIO REGIONAL JAIL, :

Employer, :

-and-

: Case Nos. 2004 MED 09-0958⁷

OHIO PATROLMEN'S BENEVOLENT :
ASSOCIATION :

Employee Organization. :

FACT-FINDING

Philip H. Sheridan, Jr., Fact-finder

Issued: December 13, 2004

GARRY E. HUNTER
26 SOUTH CONGRESS STREET
ATHENS OH 45701-2805

FOR THE EMPLOYER

MATTHEW B. BAKER
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FOR THE EMPLOYEE ORGANIZATION

STATEMENT OF THE CASE

The parties, the Corrections Commission of Southeast Ohio, Southeastern Ohio Regional Jail, (hereafter SEORJ) represented by Garry E. Hunter, Esq., and the bargaining unit, including 36 full-time Corrections Officers, represented by Matthew B. Baker, Esq., have entered into negotiations for a successor contract to the contract that expires December 31, 2004.

The parties met and bargained in good faith with a number of meetings between the parties. The parties without dispute, or through negotiation, reached apparent tentative agreement on all but eleven of the issues that were negotiated

Pursuant to R.C. §4117.14 and Admin. R. 4117-9-05, Philip H. Sheridan, Jr., 915 South High Street, Columbus, Ohio, was chosen as fact-finder.

The parties agreed to a fact-finding hearing on December 6, 2004, and the meeting was convened at 10:30 a.m., at the Southeastern Ohio Regional Jail. In addition to their representative, William H. (Bill) Theisen, Athens County Commissioner, Greg Green, Hocking County Commissioner, Vicki Adams, Fiscal Director SEORJ, Jeff Gillespie, Warden SEORJ, Gary Woodward, Morgan County Auditor, and Ken Wilson, Hocking County Auditor, appeared on behalf of the Southeastern Ohio Regional Jail. In addition to their representative, R. W. McDonald, Corrections Officer, Jason Gail, Corrections Officer, and Greg Wilfong, Corrections Officer, appeared on behalf of the bargaining unit. The parties and the fact-finder discussed the procedure to be followed by the parties.

The remaining issues were discussed, but were not amenable to additional mediation. The matter was submitted upon statements, documents, and arguments presented to the fact-finder.

In accordance with the provisions of R.C. Chapter 4117, the parties provided me with a copy of the current contract, the issues that have been resolved, the unresolved issues, and each party's proposal on the unresolved issues.

In issuing this fact-finding report, I have given consideration to the provisions of R.C. Chapter 4117 and, in particular, the criteria contained within Admin. R. 4117-9-05(I).

THE POSITION OF THE PARTIES AND RECOMMENDATIONS

ARTICLE 3, Dues Check-Off

The SEORJ's Position: The SEORJ proposes deletion of the Fair Share Fee. The stated reason is that the Fair Share Fee violates the right of freedom of association.

The OPBA's Position: The bargaining unit points out that they have 100 percent membership and recommends current language.

Discussion and Recommendation: I recommend no change. The Fair Share Fee language is unexceptionable, and as far as I know no court has determined that such an agreed contract clause is unconstitutional as long as the clause protects employees who choose not to be union members from violations of the rights contained in R.C. 4117.09(C).

Article 10 Discipline

The SEORJ's position: The SEORJ wants to increase the amount of time written reprimands are kept in the personnel file and to allow suspensions to be kept in the personnel file permanently because of alleged increased challenges to discipline based on progressive discipline arguments.

The SEORJ rejects the bargaining unit's proposal that would require any complaint against a Corrections Officer to be investigated by a different supervisor or other neutral person.

The investigation of complaints is a part of the job of the Administrative Lieutenant, and the Corrections Officers have contract remedies if they dispute disciplinary action. The proposal that a subject of an investigation must be notified of an investigation within 48 hours of the initiation of the investigation is also rejected.

The OPBA's position: The bargaining unit proposes a reduction by six months of the retention of written reprimands and suspensions. The bargaining unit also claims that the notice to employees of investigations and the banning of the complaining employee from participation in the investigation of the complaint are fairness issues. Secret investigations violate the Corrections Officer's right to union representation, the time limit allows the affected officer to prepare, contact potential witnesses, and recollect facts that might affect the outcome. When the officer who makes the complaint also conducts the investigation the tendency is that the officer looks only for facts, witnesses and information that supports the complaint.

Discussion and Recommendation: I recommend current contract language. Neither party presented specific incidents that supported their positions, and the parties should be left to the bargaining process if their proposed changes are based on fears of future problems. I would be in favor of timely notice of proposed discipline if there had been problems.

Article 17 Overtime

The SEORJ's position: The SEORJ proposes deletion of compensatory time from the contract. The usage of compensatory time is causing uncontrollable costs to the jail that cannot be budgeted or paid without hardship to the member counties.

The SEORJ also proposes that overtime be offered first to the shift that is then on duty before the overtime list is used. The suggestion is that such a change would result in a cost savings.

The OPBA's position: The bargaining unit proposes credit toward overtime for hours spent on sick leave that is supported by a physician's certificate. The bargaining unit proposed increasing the overtime pay to employees who are "frozen" and mandated to remain past his or her shift due to a manpower shortage to two times the employee's regular hourly rate. The bargaining unit requests an increase in the amount of compensatory time that can be accumulated of up to 100 hours and a payout for accumulated compensatory time once on the first pay period in June and once on the first pay period in December. The bargaining unit proposed that compensatory time shall not be denied for the reasons that another employee is on extended medical leave or has been terminated. The bargaining unit proposes one-day notice of a request for use of compensatory time.

Discussion and recommendation: I recommend current contract language. Although use, or misuse of sick leave may be one of the causes of overtime, disciplinary actions are more likely to solve that problem than doing away with compensatory time. Sick time authorized by a doctor is still sick time, and sick time does not normally "count" toward qualification for overtime. Some employees opt for overtime pay each time they choose to work or are mandated to work overtime, and some want the additional time off if it can be scheduled. I don't see use of compensatory time as any more expensive than overtime in general if management is in charge of when compensatory time can be used, which it is, so that there is no requirement that another employee be offered overtime in order to replace an employee who is authorized to take compensatory time. There is no showing of the need for additional accumulation, and two pay offs in a year would result in the effective increase to at least 80 hours of accumulation. Since the overtime list is voluntary, I believe it should be used before an employee is frozen. I did not hear how often an employee is frozen, and I don't think increasing the pay for the frozen employee to double time pay is appropriate without a serious problem that required correction.

Article 19: Sick Leave

The SEORJ's Position: The SEORJ proposes increasing the notice requirement to 3 hours for first shift employees and requiring a doctor's certificate within 72 hours for any sick leave usage.

The OPBA's position: The bargaining unit proposes adding "domestic partner" language to the list of family members for which an employee may use sick leave to care for. The bargaining unit proposes one day of personal leave for each six months in which an employee doesn't use sick leave.

Discussion and recommendation: I recommend current contract language. I agree with the SEORJ's position that State Issue One probably prevents new "domestic partner" language in the contract. The requirement of a medical excuse for every sick leave usage is also without precedent in any of the contracts that I have reviewed over the last 25 years. I have seen effective language that requires such an excuse after a certain number of occurrences by the employee. The proposal for an additional day of personal leave for every six-month period in which the employee doesn't use sick leave might be a way to cut down on usage, if it is in fact a problem, but I would rather the parties negotiate such a change.

Article 21: Holidays

The SEORJ's position: The SEORJ proposes current contract language.

The OPBA's position: The bargaining unit proposes an increase from 10 holidays to 13 holidays.

Discussion and recommendation: I recommend current contract language. The issue is one of additional pay as the jail is operated 365 days a year, and the financial information offered to me does not support such an increase.

Article 22: Vacations

The SEORJ's position: The SEORJ proposes current contract language.

The OPBA's position: The bargaining unit proposes compression of the number of years required for additional vacation accrual, and a reduction to one day of the request for the use of one day of vacation.

Discussion and recommendation: I recommend current contract language. There is no showing of a clear problem with the number of years required for accrual of additional vacation, and additional accrual is a financial issue. I heard no problems with waiver of the three-day notice for use of vacation in an emergency.

Article 23: Insurance

The SEORJ's position: The SEORJ proposes current contract language except to change the employee contribution to 20 percent. The SEORJ claims that history shows that the insurance premiums will go up after the current insurance contract expires and that employee contributions have continued to rise throughout the area.

The OPBA's position: The bargaining unit proposes the current contract language except that those employees who choose to decline the provided health insurance should be provided a monthly payment of \$100.

Discussion and recommendation: I recommend current contract language. The unlimited payment of 15 percent of the insurance premium is within the comparables in the area and state

wide, and many contracts have dollar limits. I don't see the benefit of encouraging employees to decline insurance coverage in return for an additional payment.

Article 24: Wages

The SEORJ's position: The SEORJ proposes 1 percent raises across the board in each of the three years of the contract and objects to new sections proposed by the bargaining unit on the addition of longevity to the contract and a requirement that pay errors be corrected in 24 hours when they are caused by management error. The SEORJ points out that the bargaining unit enjoyed 4 percent raises in each of the three years of the previous contract while the income in each of the four counties that fund the SEORJ have remained flat or gone down. Testimony from Mr. Theisen on behalf of Athens County is that the County's administrative employees have been given a 2 percent raise in 2003 and no raise in 2004. The outlook for increased revenues is bleak, and the County cannot continue to fund increases at the jail. Similar testimony from Mr. Woodward, the Morgan County Auditor, and Mr. Wilson, the Hocking County Auditor, supported the SEORJ's position that the County incomes will not support significant increases in costs. The Auditors' budgets have remained the same or decreased, and they have had to reduce staff.

The OPBA's position: The bargaining unit proposes eight percent raises across the board in each of the three years of the contract. The bargaining unit proposes a new section that includes longevity pay of \$100 per year after five years of continuous service, added to the employee's base wage rate over the course of the year, starting on the employee's anniversary date. The bargaining unit also proposes that where an employee is underpaid through no fault of the employee the employer shall issue a corrective payroll check within 24 hours of being advised of the error.

The bargaining unit proposes the substantial raises because the Corrections Officers are paid less than Corrections Officers in surrounding counties and in the State at large. The existence of

Schedule B in the contract shows that the member counties had paid their Corrections Officers more than the Commission decided to pay new hires at the SEORJ. Many of the Corrections Officers who have families are below the poverty level established by the federal government, and the nature of the job is such that they should be entitled to increases that bring them closer to the norm. The addition of longevity will encourage experienced employees to stay at the jail and reward that loyalty. The administration of the jail has the ability to immediately correct errors in pay that are not the Corrections Officer's fault.

Discussion and recommendation: I recommend no change in the contract that adds longevity or the change in the correction of errors. Errors are now corrected in the next pay period, and that seems quick enough to me. The additional administrative hassle of cutting a separate check is not supported by the seriousness of the problem, if there is one. The financial affairs of the counties involved in the jail do not support an additional cost for longevity, especially since I was not presented with any estimate of the actual cost per year.

I do recommend raises of three percent in each of the three years of the contract, starting with January 1, 2005. The four percent raises enjoyed in the last three years of the contract were in keeping with the average raises for Corrections Officers in that period of time, and it is clear that county economies have slowed since that time. However, one percent would barely keep up with the anticipated additional cost of the employees' part of the health insurance premiums, and at three percent a current top pay of \$11.07 per hour in Schedule A would be increased to \$11.40, a \$0.33 raise per hour, while Schedule B would be increased from \$12.19 to \$12.56, a \$0.37 raise per hour in the first year of the contract. Similarly, in the second year of the contract the top pay in Schedule A would increase to \$11.74, and Schedule B would increase to \$12.94, and in the third year of the contract Schedule A would increase to \$12.09 and Schedule B would increase to \$13.33. I estimate

that the approximate annual cost for a one percent raise, plus benefits, is around \$10,000 for the 36 employees covered by the agreement. It appears that the SEORJ can afford to pay the amount of the proposed increase over the life of the contract, especially where the Commission returned \$400,000 to the Counties in the recent past.

Article 28: Uniforms

The parties did not present anything on this issue except written proposals: The SEORJ proposed addition of language that management would provide a list of approved uniform items, and the OPBA proposed current language.

Discussion and recommendation: I recommend current language, except for the removal of language that refers to employees no longer in the bargaining unit, which is now limited to Corrections Officers. Management already controls the specific uniform worn, and I see no reason to list it in the contract.

Article 29: Duration of Agreement

The parties agree that a three-year contract is proper. The contract shall be effective January 1, 2005, and shall remain in force and in effect until December 31, 2007.

CONCLUSION

I recommend that the parties adopt the tentative agreements reached by them. I further recommend that the parties remove language throughout the contract that refers to any employees of the SEORJ who are not Corrections Officers. The parties cooperated in presenting their positions to me, and in our mediation efforts. The courtesy and professional behavior was evidence of the good relations between the parties, and I encourage them to continue to bargain in good faith even if they are unable to agree on my recommendations.

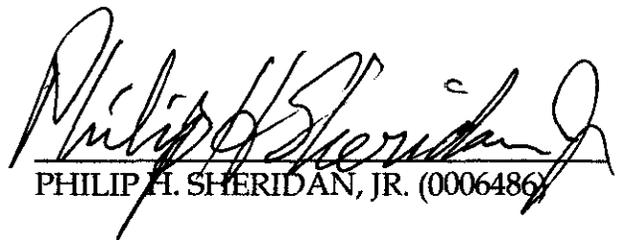
Respectfully submitted,

A handwritten signature in black ink, reading "Philip H. Sheridan, Jr." in a cursive style. The signature is written over a horizontal line.

PHILIP H. SHERIDAN, JR.
Fact-finder
S.C. #0006486
915 South High Street
Columbus, Ohio 43206-2523
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CERTIFICATE OF SERVICE

A copy of the foregoing Fact-Finder Report was served by overnight mail and FAX transmission this 14th day of December, 2004, to the principal representatives of the parties and by Regular U.S. Mail, postage prepaid, to State Employment Relations Board, 65 E. State St., 12th Floor, Columbus, OH 43215-4213.


PHILIP H. SHERIDAN, JR. (0006486)