

**IN THE MATTER  
OF  
INTEREST ARBITRATION  
FACT FINDING  
AWARD**

STATE EMPLOYMENT  
RELATIONS BOARD  
2005 SEP 20 P 12: 22

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| <p><b>BETWEEN</b></p> <p><b>Ohio Patrolmen's Benevolent Association<br/>(Correction Officers)</b></p> <p><b>And the</b></p> <p><b>Delaware County Sheriff</b></p> | <p><b>CASE NO: SERB 04-MED-10-1104</b></p> <p><b>FACT FINDER: JOHN S. WEISHEIT</b></p> <p><b>HEARING DATE(S): August 31, 2005</b></p> <p><b>AWARD ISSUED: September 15, 2005</b></p> |
|---|--|

**REPRESENTATION  
by**

| <u><b>Employer Representatives</b></u>  | <u><b>Union Representatives</b></u>   |
|---|---|
| <p>Chris Russell, Attorney for Employer<br/>Gil Borchers, Chief Deputy<br/>Mark Lisater, Jail Administrator</p> | <p>Joseph Hegudus, Attorney for Union<br/>Scott Hartley, Local Director<br/>Vern Boster, Local Director</p> |

**AUTHORITY**

The matter was brought before Fact Finder John S. Weisheit, 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 matters before the Fact Finder are for consideration and recommendation based on merit and fact according to the provisions of ORC 4117, particularly those applicable to safety forces.

## BACKGROUND

The Delaware County Sheriff, hereinafter called the “Employer” and/or the “Sheriff”, recognizes the Ohio Patrolmen’s Benevolent Association, hereinafter called the “Union” and/or “OPBA”, for all full-time Correction Officers employed by the Employer. The number of said bargaining unit members consists of about 27 employees. The parties engaged in bargaining for a successor Agreement to the one expiring December 31, 2004. In the course of lengthy good faith bargaining, the majority of items introduced were resolved in tentative agreement, withdrawn, or otherwise resolved. A few issues remained unresolved and mediation and tentative agreement at the Fact-Finding Hearing resulted in the number of unresolved issues being reduced to Article 25 - Health Insurance and Article 26 - Wages.

This Fact Finder was selected by the parties to assist in mediation as well as to make recommendations on these remaining as provided in ORC 4117. The parties mutually agreed to utilize commonly alternate dispute resolution procedures in the course of said procedures rather than strictly adhering to provisions set forth in ORC 4117. The Fact Finding Hearing was convened on August 31, 2005. The Hearing was adjourned after the parties indicated they had no additional information or documents to put before the Fact Finder and acknowledged having been given a fair and ample opportunity to present such information considered relevant to presenting their respective positions regarding the matters remaining unresolved.

These Opinions and Determinations set forth in this Award take into consideration expressed provisions required under ORC 4117 and applying generally accepted principles and practices commonly applied in labor interest arbitration proceedings.

In particular, 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.

**ISSUES OF TENTATIVE AGREEMENT**

The following issues were resolved in negotiations and tentatively agreed to by the parties:

| <b>Article</b> | <b>Title</b>                     | <b>Article</b> | <b>Title</b>  |
|----------------|----------------------------------|----------------|---|
| 1              | Preamble                         | 19             | Overtime Pay and Court Time (b)   |
| 2              | Recognition                      | 20             | Jury Duty Leave   |
| 3              | Non-Discrimination               | 21             | Military Leave  |
| 4              | Gender and Plural                | 22             | Sick Leave (b)  |
| 5              | Dues Deduction                   | 23             | Holidays/Personal Days (b)  |
| 6              | Grievance/Liaison Representative | 24             | Vacations (b)   |
| 7              | Corrective Action & Records      | 25             | Health Insurance (a)  |
| 8              | Probationary Employees           | 26             | Wages (a)   |
| 9              | Seniority                        | 27             | Savings Clause  |
| 10             | Discipline/Discharge             | 28             | Conformity to Law   |
| 11             | Layoffs                          | 29             | No Strike   |
| 12             | Grievance Procedure              | 30             | Management Rights   |
| 13             | Standard Operating Procedure     | 31             | Scope and Severability  |
| 14             | Miscellaneous                    | 32             | Labor Relations Meetings  |
| 15             | Uniform Allowance                | 33             | Injury Leave  |
| 16             | Education and Training           | 34             | Drug & Alcohol Testing  |
| 17             | Shifts and/or Assignments        | 35             | Duration  |
| 18             | Duty Hours                       | (a)            | Tentatively Agreed to accept for the specific terms addressed in following section. |
|                |                                  | (b)            | Tentatively agreed to at the Fact-Finding Hearing.                                  |

## SUMMARY PARTY POSITION

### ISSUES AT IMPASSE

The following terms remain at impasse at Fact-Finding. Other terms in the Contract not specifically addressed are tentatively agreed to, withdrawn, or otherwise resolved by the parties.

| <b>Employer</b>   | <b>Issue</b>  | <b>Union</b>  |
|---|---|---|
| <p>The Employer contends that the health insurance program currently in place shall remain in place for the duration of the Agreement.</p> <p>Current agreement language should be maintained in the successor Agreement.</p> | <p><b>Article 25</b></p> <p><b>Health Insurance</b></p> | <p>The Union argues the following changes should modify the terms of the expiring agreement:</p> <ol style="list-style-type: none"><li data-bbox="1122 751 1487 1010">1. The Employer provided group health benefits plan shall equal or be better than the plan in effect during the 2004 plan year. The Employer shall pay 100% of the premium of said plan.</li><li data-bbox="1122 1052 1487 1461">2. The Employer may implement reasonable changes in the health benefits plan subject to the restrictions contained in paragraph 1 above. The Union or employees may file a grievance to challenge the Employer's compliance with the Article, including the reasonableness standard.</li><li data-bbox="1122 1503 1487 1791">3. The Employer will provide and pay for term life insurance in an amount at least equivalent to that provided to Delaware County General Fund employees by the County Commissioners.</li></ol> |

| Employer  | Issue                                 | Union  |
|---|---------------------------------------|--|
| The Employer contends language in the current agreement should be maintained in the successor Agreement, with the following change: there shall be a 3% annual wage increase of the existing pay schedule for each year of the Agreement. | <b>Article 26</b><br><br><b>Wages</b> | The Union proposes the following changes to the structure of the wage schedule: <ul style="list-style-type: none"> <li>a. The addition of column "E".</li> <li>b. Increase the pay rate at each step as set forth in the Union's Revised Position Statement.</li> <li>c.. Add longevity pay on a sliding scale of \$500 - \$2,500. Said scale consists of 5 steps commencing with 5yrs of service through 25 + years.</li> </ul> |

**DISCUSSION & DETERMINATION**

**General**

The economic issues at impasse are first considered collectively. Economic impact was reviewed in context of cost estimates of the issues at impasse. Recommendations are made issue by issue. The Fact Finder has used generally accepted standards applied in making a finding and recommendation in interest rights matters in this instant situation.

**Fact Finder's Discussion**

**General  
Financial  
Condition**

The Delaware County Auditor's Comprehensive Annual Financial Report for the year ending December 31, 2004, (Union Exhibit #1) provides a background of relevant information concerning the financial condition of the County. Assessed property valuations increased 84% between 1999 and 2004 to \$4.55 billion.

**General  
Financial  
Condition  
cont'd**

While population continues to grow, the County's unemployment rate in 2004 remains at 4% during 2004, as compared to the State average of 6.1%.

A review of the County's General Fund documents reflecting actual and projected income and expenses for document establishes a sound financial condition. For Fiscal Year 2004, Government Revenues amounted to \$114,957,479 with Total Expenditures in the amount of \$ 92,313, 124. Recorded expenses to the Sheriff amounted to \$10,635,672. The Report portrays a very healthy fiscal condition for the County and projects a continued growth in the predictable future. General Fund figures reflect an actual income of about \$52,200,000 and expenditures of about \$23,900,000 in the fiscal year 2004, and it is projected the income will be about \$54,500,000 with expenditures of about \$44,830,000 in fiscal year 2005.

The ability to pay is not a factor raised as a factor in resolving the disputed issues of health insurance and wages. The parties tend to focus on the willingness to pay, acceptance of a revised medical insurance program, and a mutual determination of fairness, reasonableness, and appropriateness.

**Employer Authority** For purposes of collective bargaining, pursuant to ORC 4117, The Sheriff is the “Employer”. The County Commissioners retain jurisdiction regarding budgetary matters regarding the funding of various County departments and agencies including that of the Sheriff’s department. It is also noted that while the Sheriff is the Employer of record under ORC 4117, the County Commissioners are signatories as well as the Sheriff to the collective bargaining agreement.

**Fact-Finder Authority cont’d** Under the rules and regulations of ORC 4117, the Fact-Finder’s authority is limited to making determinations in matters of “interest arbitration” as contrasted with “rights arbitration”. Interest Arbitration addresses matters related to the formation of the terms and conditions bargained into the collective bargaining agreement. Rights Arbitration is making determinations regarding the interpretation and application of the terms and conditions in an existing collective bargaining agreement.

This distinction of this separation of general arbitral authority is applied in reviewing the following matters in the following issues and applying generally accepted principles in the course of making the findings and determinations presented.

**Fact Finder's Review & Determination  
Issue by Issue**

**Article 25**  
**Health**  
**Insurance**

The Employer maintains it has the authority to change the medical insurance carrier and contends the replacement plan put in effect by the Country Commissioners in December, 2004, makes a similar level of coverage available to bargaining unit members. The Employer contends the increase in its premium costs justifies assessing a co-payment of bargaining unit members for Plan 2 benefits in the amount of \$22.07 per individual and \$55.17 per family each month. It further notes that Plan 1 does not require an employee to make any monthly co-pay. The Employer also acknowledges that the Plan 1 benefit level is significantly less than that of Plan 2. The Employer contends Plan 2 benefits, placed in effect December 1, 2005, offers comparable benefits to that in the benefit plan being replaced. The Employer also notes that the monthly co-pay rates assessed bargaining unit members is the same amount paid by all other County employees. The Employer contends the benefits offered is reasonable, appropriate, and fair to all employees.

The OPBA contends the Sheriff has the necessary authority and resources to incorporate the terms proposed by the Union. The Union, while not challenging the benefit level extensively, does take issue with the employee's premium shared cost and the manner in which it was put into effect.

**Article 25** This is particularly unacceptable in light of the quality of the plan  
**Health** previously in place and the fact that the benefit was without cost to the  
**Insurance** employees. The Union further argues the Employer's wage offer would  
**cont'd** be more than offset by the insurance premium and reduced benefit costs.

The question of employee rights issue in this matter is currently in other forums for resolution and are not before this Fact-Finder.

It is a common bargaining practice, under the circumstances in this instant case, to consider the applicable cost of new or increased economic benefit in terms as of such would translate to an increase in base wage increase for the duration of the Contract. It is therefore only reasonable to consider when the benefit cost of an economic benefit is reduced in take-back bargaining, it is reasonable and appropriate to give due consideration in a reverse manner.

The data put before the Fact - Finder by the parties indicates insurance benefit level plans are being scrutinized more closely by other municipal and county employers. These medical insurance plans vary as do the manner in which they are managed on an employer by employer basis. It is noted that the health insurance program in place in Delaware County is a singular plan for all County employees.

**Article 25** While supportive data from the Union demonstrates a number of similar  
**Health** employers continue to pay the total cost for employee health insurance,  
**Insurance** the general trend in recent years reflects a decline in such a practice.  
**cont'd**

It is further noted that the OPBA 's Deputy Sheriff bargaining unit Contract with the Sheriff in effect January 1, 2001 -December 31, 2004, substantially addresses the issues at impasse in this instant case. Its language is determined appropriate for application in this current case.

**Determination** **It is therefore determined that Article 25 - Health Insurance of the Agreement should include the following:**

**A. As currently written. With the following.**

**Add: For the duration of this Agreement, the employee's will not be required to make any monthly co-pay premiums selecting Plan 1 benefit level. For Plan 2 employees will not be required to pay more than \$22.07 in monthly co-payment premiums for individual coverage or to pay more than \$55.17 a month co-payment for Plan 2.**

**B. As per language in the expiring contract.**

**C. As per language in the expiring contract.**

**Article 26**

**Wages**

The proposed OPBA wage provision not only increases the base wage but also expands the structure of the base rate schedule and adds a new wage provision, longevity pay. The Union's computation of cost reflects a 14% wage increase in the first year of the Contract and 5% in each of the following years. The Union argues such raise is justified to attain parity with comparable similar employers as well as to establish equity within the department.

**Article 26**

**Wages**

The Sheriff considers a 3% increase of the current schedule fair and appropriate at this time. The Employer bases its rationale on the average of recent law enforcement settlements.

While there is little question that the financial condition of the County could cover the implementation of the Union's position, such is not, by itself, justification to grant such a raise.

The Delaware County situation is in a period of attaining continued growth and ranking first in the State. It's unique status gives cause to place the weight of consideration on some traditional factors as well as the bargaining unit's conditions.

Article 26

Wages

The current pay scale structure was agreed to in the course of prior bargaining. While it is appropriate to seek modification of pay scale structure in subsequent contract negotiations, the primary purpose of the Union proposed changes, at this time, is to generate an increase in pay and offset loss of the economic effects of the 100% medical insurance. To that end, the testimony and evidence is not found to support the proposal.

Longevity is a common economic benefit and widely included for public safety officers. While the structure of the OPBA proposal is determined appropriate, the amount is assessed as being too aggressive as an initial economic benefit.

The wage offer by the Employer of 3% reflects the average in recent SERB settlement reports. However, an above average wage increase is appropriate considering the incorporating of a co-pay of medical insurance premiums, comparable employment data, and other economic recommendations set forth in testimony and documents introduced at the Fact-Finding Hearing.

**Article 26  
Wages**

**Determination**

It is there determined that Article 26 - Wages should be included in the Agreement as set forth in the expiring agreement of December 31, 2004, with a 3.5 % increase at each step of the wage schedule effective January 1, 2005. The wage schedule is to be increased by 3.5% effective January 1, 2006, and increased 3.5% effective January 1, 2007.

**Add:**

**B. Longevity pay will be paid at the following rates and manner for the duration of the Agreement:**

- 1. 5-9 years of service with the Sheriff \$ 250.00**
- 2. 10 - 14 years of service with the Sheriff \$ 500.00**
- 3. 15 - 19 years of service with the Sheriff \$1,000.00**
- 4. 20 or more years service with the Sheriff \$1,500.00**

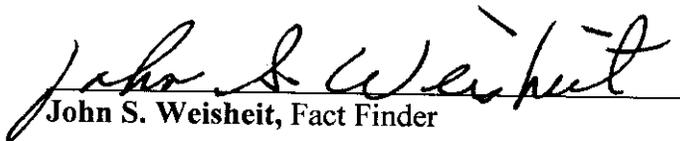
**Longevity payments will be made as part of the Correctional Officers regular bi-weekly paycheck.**

### TOTALITY OF FACT-FINDING RECOMMENDATION

- It is recommended that all items of tentative agreement be included in the Agreement. If not otherwise agreed to by the parties, it is recommended all provisions of the expiring agreement be included in the Agreement as stated in the expiring agreement, unless recommended otherwise by the Fact Finder in this Award.
- This will affirm the foregoing report, consisting of **15 pages**, includes the findings and recommendations set forth in this Award by the below signed Fact Finder.
- If there is found conflict in the Report between the Fact Finder's Discussion and Recommendations, the language in the Recommendation shall prevail.

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

I therefore affix my signature at the City of Galion, in the County of Crawford, in the State of Ohio, this date of **September 19, 2005**

  
John S. Weisheit, Fact Finder