

STATE EMPLOYMENT
RELATIONS BOARD

IN THE MATTER
OF
INTEREST ARBITRATION
FACT FINDING
AWARD

2005 DEC 14 A 10: 57

BETWEEN	CASE NO: SERB 05-MED-04-0488
Ohio Patrolmen's Benevolent Association (Correction Officers)	FACT FINDER: JOHN S. WEISHEIT
And the	HEARING DATE(S): Nov. 10, 2005
Lorain County Sheriff	AWARD ISSUED: November 13, 2005

REPRESENTATION
by

<u>Employer Representatives</u>	<u>Union Representatives</u>
Robin Bell, CNA Reg. Mngr. Howard Heffelfinger, CNA, Ex. VP John A. Reiber-Captain Deborah Stanko, Lt.	Kevin Powers, Esq.- Counsel/Advocate Brenda Meador-Typist I Michael D. Mettel-Loc. Pres. Christopher Carreon-Correction Officer Deana M. Makruski Gerald Szpanski

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 Lorain 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 employees holding the title of Correction Officer, Typist, and/or Maintenance Worker. There are approximately 125 employees in this bargaining unit. This is the first collective bargained agreement (CBA) entered into between the Employer and the OPBA since OPBA became the recognized bargaining agent for this unit of employees. Prior contracts resulted from negotiations with the Sheriff with other agents.

The parties have engaged in collective bargaining to attain a successor to the agreement currently in effect. In the course of good faith bargaining, the majority of items introduced were resolved in tentative agreement, withdrawn, or otherwise resolved. Some issues remained unresolved. The issues at impasse are listed in a following section of this Award.

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 an alternate dispute resolution procedures in the course of said Fact-Finding determined appropriate rather than adhering to strict provisions set forth in ORC 4117. The Fact-Finder engaged in a limited mediation effort which resulted in attaining tentative agreement regarding the issue of the “Duration of the Agreement”. Said matter is identified and set forth regarding the tentative agreement of the parties.

The Fact Finding Hearing was convened on November 10, 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.

The 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.

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

PRIOR TO FACT FINDING

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

Article	Title	Article	Title
3	Union Representation	20	Grievance Procedure
5	Fair Share Fee	22	Disability Leave
7	Employee Rights	24	Military Leave

ISSUES AT IMPASSE

AT FACT FINDING

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

Article 13	Job Vacancies	Article 35	Uniforms
Article 29	Health Care	Article 36	Wages
Article 32	Holidays	(New)	Phys. Abilities Testing
Article 33	Longevity	Article 43	Duration
Article 34	Hours of Work & Overtime		

SUMMARY PARTY POSITION

ISSUES AT IMPASSE

The following terms are at impasse.

Employer Position	Issue	OPBA Position
The Employer rejects Union proposal.	Article 13- Job Vacancy	Propose qualified barg. unit members be given first consideration for c/o vacancies before non-unit hire/placement.
<p>Sec. 29.2/3 Propose lang. identifying the Lorain Co. Comm. as the body authorized to procure health care benefits.</p> <p>Sec. 24 (renumbered) Propose the employee pays \$5.00 Ind/\$35.00 family monthly contribution contingent on Union agreement to the Employer's wage proposal and no other modifications in any compensation.</p>	Article 29- Health Care	<p>Prop. rev. lang. in Sec. 29.2/3.</p> <p>Prop. emp. Contribution be \$5.00/mth. for ind. coverage and \$35.00/mth for family coverage.</p>
Propose lang. to require employees to work on their last scheduled day preceding the holiday and the first scheduled day following the holiday in order for the employee to be eligible for holiday pay or the holiday rate of pay.	Article 32- Holidays	While not in agreement, have not strongly opposed.
Rejects the Union proposed increase in the rate for longevity pay.	Article 33 - Longevity	Proposes Long. Pay at \$82.00/yr. after 3 yrs. Service, as barg. unit member. Rate factor inc. at 16-30 yrs. to \$90.00, and inc. to \$94.00 at 21 yrs. service.

Employer Position	Issue	OPBA Position
Rejects the Union proposal.	Article 34 - Hours of Work & Overtime	Propose c/o's reg. Hrs. Of work be 40 hour/wk.
Propose to increase uniform allowance by \$50.00 per year for all members of the bargaining unit.	Article 35 - Uniforms	Propose uniform allowance for all barg. unit members of \$800/yr.
Propose a wage increase of 1% ea. yr. for the 3 yr. Contract.	Article 36 - Wages	Propose a 3 % inc. for C/O's eff. 1-1-06, and 3.5% each yr. thereafter for duration of the Contract. Propose for other classifications, drop two-tier wage scale and pay all on the higher tier rate.
Reject the OPBA proposed. bonus plan for any classification group in the barg. unit.	(New) - Phys. Abilities Testing	Propose including the provision currently included in the Correction Sergeant's Agreement into this Agreement.
Tent. Agreed to at Hearing	Article 43 - Duration	Tent. Agreed to at Hearing.

All other articles in the expiring Agreement, not addressed in the preceding two (2) sections of this Award, will be included as written, unless specifically agreed to be omitted by the parties.

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.

Ability to pay is not raised in this matter. However, the Employer does argue that because funds are available is not rationale to agree to grant economic increases that exceed reasonable levels.

Most issues in dispute are of an economic nature. The Fact-Finder's first consideration, when assessing the economic issues, is projecting the total cost related to all economic issues in relation to the effect such costs would be if the total estimated increase in cost was applied to base wages only. This is a common principle applied by neutrals in interest arbitration.

The Union's argument attain wage and benefit parity among the different job classifications within the bargaining unit. The Employer's contention regarding the total cost of the remaining economic issues is likewise given full consideration.

Fact-Finder's Discussion and Determinations

Issue by Issue

Article 13- Job Vacancy	The Union seeks to attain a first consideration right in matters of c/o vacancies before outside candidates are given consideration. The evidence presented indicates that typist and/or maintenance employees have been granted c/o vacancy placement. The Union is not found to prevail. Historically and prior practice reflects, in evidence introduced, do not support the proposed change at this time.
Determination	It is determined that Article 13-Job Vacancy should be brought forward from the prior agreement and included in prior language in this Agreement.

<p>Article 29- Health Care</p>	<p>Employees of the Sheriff are covered by health care benefits attained by the Lorain County Commissioners and provided for most, if not all, County employees.</p> <p>While it is undisputed that the County Commissioners have the primary power and authority actually, under ORC 4117, the Sheriff is recognized as the “Employer” for matters of collective bargaining. It is also recognized that, in addition to the Commissioners power of the purse in this matter, they have the final vote for the Employer in this step in of dispute resolution. It is considered more appropriate to apply the definition set forth in ORC 4117 as synonym of “Employer”, that being “Sheriff”, in the this instant matter.</p> <p>It is recognized that the Employer’s last offer and that of the Union provides the employee contribution rate at the same amount of \$5.00 monthly for the individual employee, and \$35.00 a month for the family benefit. The result of including such a change in the employee contribution for health care benefits is considered a significant economic benefit to bargaining unit members.</p> <p>The language addressing this issue is found more appropriate in the Union’s last proposal and therefore used in the following recommendation.</p>
<p>Determination</p>	<p>It is determined that Article 29 - Health Care should include the language set forth in the Union’s proposal brought forward at the Fact-Finding Hearing.</p>
<p>Article 32- Holidays</p>	<p>The Employer proposed changes reflect a common modifying control in this matter. This is the recognized forum to accommodate modification of labor Contract terms. Further, the similar language is found in four other bargaining units in the County.</p>
<p>Determination</p>	<p>It is determined that Article 32-Holidays is to reflect the terms set forth in the Employer’s offer requiring employees to work on their last scheduled day preceding the holiday and the first scheduled day of work following the holiday in order to be eligible for holiday pay or the holiday rate of pay.</p>

<p>Article 33 - Longevity</p> <p>Determination</p>	<p>Longevity pay, as currently in place for this bargaining unit, is found to reflect a favorable comparable bargaining unit in like and similar occupation classifications as well as internally with this employer. Added with the fact that there is a significant benefit increase under the insurance program and modest wage increase, it is determined the longevity pay rate should remain without change for the duration of the Contract.</p> <p>It is determined that Article 33 - Longevity is to be brought forward, from its current context into this Agreement.</p>																									
<p>Article 34 - Hours of Work & Overtime</p> <p>Determination</p>	<p>It is recognized that this is the first round of bargaining for the current bargaining unit. However, the unit employees have been a party to prior negotiations and resulting settlements. While the OPBA proposals are considered worthy, there is a recognized potential, if not actual, a major cost factor related to this matter. The modification in health care cost, as set forth in this Award, is considerable. Included with other economic changes, it is determined that this issue should remain status quo for a future bargaining period.</p> <p>It is determined that Article 34 - Hours of Work and Overtime, should be brought forward in the Contract in context as it currently exists in the expiring Agreement.</p>																									
<p>Article 35 - Uniforms</p> <p>Determination</p>	<p>The OPBA's argument to attain a parity regarding this benefit within all bargaining unit employees is seen with some merit. No uniform cost factors were introduced by either party. The parties have each proposed an increase in the annual rate. The provision would have less cost impact if applied with a limited annual increase as applied for the Deputies. Based on the facts introduced at the Hearing, the following recommendation is considered appropriate as part of the total economic package.</p> <p>It is determined that Article 35 - Uniforms, is to be included as it exists in its previous agreement, except for Section 35.2 which shall read:</p> <p>Non-probationary bargaining unit employees shall be provided with an annual uniform allowance account as follows:</p> <table border="1" data-bbox="548 1549 1291 1732"> <thead> <tr> <th><u>Classification</u></th> <th><u>Year</u></th> <th><u>2006</u></th> <th><u>2007</u></th> <th><u>2008</u></th> </tr> </thead> <tbody> <tr> <td>Correction Officer</td> <td></td> <td>\$650</td> <td>\$700</td> <td>\$750</td> </tr> <tr> <td>Clerical Specialist</td> <td></td> <td>\$650</td> <td>\$700</td> <td>\$750</td> </tr> <tr> <td>Typist</td> <td></td> <td>\$650</td> <td>\$700</td> <td>\$750</td> </tr> <tr> <td>Maintenance Repair Worker</td> <td></td> <td>\$470</td> <td>\$520</td> <td>\$570</td> </tr> </tbody> </table>	<u>Classification</u>	<u>Year</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	Correction Officer		\$650	\$700	\$750	Clerical Specialist		\$650	\$700	\$750	Typist		\$650	\$700	\$750	Maintenance Repair Worker		\$470	\$520	\$570
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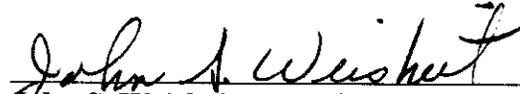
<p>Article 36 - Wages</p> <p>Determination</p>	<p>Minimal wage and benefit increases have been recommended as part of a total economic package. To modify the existing wage schedule, as proposed by the Union, cannot be accomplished without making a significant cost impact on the total economic package put before the Fact-Finder. At the same time, such an action would have a counter-productive effect on the parity argument so often raised by the OPBA in these proceedings.</p> <p>At this time, recognizing the cost associated with the total economic benefit package, a wage structure change is not considered appropriate</p> <p>It is determined that Article 36 - Wages should be brought forward into the Agreement as it is currently set forth in Article 40 written except for the effective dates and amounts stated in the wage schedules.</p> <p>Each date shall reflect the change in applicable years and amount as follows:</p> <p>Effective January 1, 2006. 1.5% increase of the current rate on each step of the salary schedule.</p> <p>Effective January 1, 2007. 1.5% increase of the current rate on each step of the salary schedule.</p> <p>Effective January 1, 2008. 1.5% increase of the current rate on each step of the salary schedule.</p>
<p>(New) - Phys. Abilities Testing</p> <p>Determination</p>	<p>The inclusion of the Physical Abilities Testing for Correction officers, while including some merit, does not have a convincing argument for inclusion in this Agreement.</p> <p>It is not determined appropriate to include this provision in the Contract at this time.</p>
<p>Article 43 - Duration</p> <p>Determination</p>	<p>This matter was resolved with tentative agreement at the Fact-Finding Hearing working from the language in the Union's proposal put before the Fact-Finder at the Hearing.</p> <p>It is determined the Agreement should include the language as agreed to at the Fact Finding Hearing.</p>

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 **11 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 Determinations, the language reflected in the Determination 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 **December 13, 2006**.



John S. Weisheit, Fact-Finder