



**FACT-FINDING TRIBUNAL OF THE STATE EMPLOYMENT
STATE EMPLOYMENT RELATIONS BOARD**

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IN THE MATTER OF:

**FRATERNAL ORDER OF POLICE,
OHIO LABOR COUNCIL, INC.**

**Employee Organization,
and**

**FAIRFIELD COUNTY SHERIFF
Employer.**

REPORT OF FACT FINDER

**CASE NO.: 05-MED-08-0815
DEPUTIES**

DATE OF REPORT: March 17, 2006

DATE OF HEARING: February 16, 2006

PLACE OF HEARING: Lancaster, Ohio

FACT FINDER: Charles W. Kohler

APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:

Marc Drum, Staff Representative

FOR THE EMPLOYER:

Marc A. Fishel, Attorney at Law

INTRODUCTION

On November 18, 2005, the State Employment Relations Board ("SERB") appointed the undersigned as fact finder pursuant to Ohio Revised Code Section 4117.14(C)(3). This matter involves the negotiation of a successor collective bargaining agreement between the Fairfield County Sheriff ("Employer" or "Sheriff") and the Fraternal Order of Police, Ohio Labor Council, Inc. ("Union" or "FOP"). A fact-finding hearing was held on February 16, 2006, in Lancaster, Ohio. The report and recommendations of the fact finder are to be served upon the parties no later than March 17, 2006, pursuant to the mutual agreement of the parties.

The following findings and recommendations are offered for consideration by the parties; were arrived at pursuant to their mutual interests and concerns; are made in accordance with the data submitted; and in consideration of the following statutory criteria as set forth in Rule 4117-9-05 of the Ohio Administrative Code:

1. Past collectively bargained agreements, if any, 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 the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

FACTUAL BACKGROUND

The Union represents a bargaining unit composed of all full-time deputies and corrections officers. The prior collective bargaining agreement expired on December 15, 2005.

Prior to the fact-finding hearing, the parties engaged in eight formal negotiation sessions. The parties resolved many issues during negotiations. The tentative agreements of the parties on these issues are hereby incorporated by reference into this report as recommendations. In addition, unless the fact finder has recommended a change in the language of the expired agreement, or the parties have tentatively agreed to a change, the fact finder recommends that the language of the expired agreement be retained.

The fact finder observes that the Union initially proposed over 120 changes to the agreement. A substantial number of important provisions remain unresolved. Some of the changes proposed by the Union involve entirely new subjects, such as political activity, mid-term bargaining, and alternative dispute resolution. It appears that the large number of issues, as well as the complexity of the issues, has hampered the parties in fully discussing all of the outstanding issues.

The following articles contain terms which remain in dispute:

ARTICLE 9 - PERSONNEL FILES

ARTICLE 13 -- LAYOFF AND RECALL

ARTICLE 16 - FILLING OF POSITIONS

ARTICLE 18 - WAGES

ARTICLE 22 - INSURANCE

ARTICLE 25 - TRAINING AND EDUCATION

ARTICLE 27 - SPECIAL DUTY

NEW ARTICLE - ALTERNATIVE DISPUTE RESOLUTION

NEW ARTICLE - POLITICAL ACTIVITY

NEW ARTICLE - MID-TERM BARGAINING

ARTICLE 9 - PERSONNEL FILES

The Union proposes that language be added to Article 9 stating that the Sheriff will only release those items to the public that he is required by law to release to the public. Recently, ORC Section 149.43 went into effect. This law provides that peace officers' "residential and familial information" is not generally considered to be a "public record." The Ohio Supreme Court has concluded that photos of peace officers are not considered "public records" because they constitute "Peace Officer residential and familial information." Therefore, photographs do not have to be produced in response to a public records request.

The current collective bargaining agreement establishes a procedure which provides that a bargaining unit member must be notified when a public records request

is made for his/her personnel file. The bargaining unit member is provided with an opportunity to review the file prior to disclosure. The member has the right to present reasons to the Sheriff as to why certain records should not be released. However, the Sheriff is not bound by such a request.

The Union argues that language prohibiting the disclosure of certain documents is commonly found in collective bargaining agreements with Sheriffs in many Ohio counties. The deputies desire that the Sheriff not have the discretion to determine which information is to be disclosed in a public records request.

Although the Sheriff is not required to produce residential and familial information in response to a public records request, the Sheriff is not prohibited from doing so. The Sheriff argues that the proposal would inhibit its ability to comply with lawful requests for public records. The Sheriff points out that the proposal advanced by the Union may put the Sheriff in a difficult situation in which the Sheriff must either violate the collective bargaining agreement or violate the law. The Sheriff notes that the Ohio Supreme Court has concluded that collective bargaining agreements cannot supersede the requirements found in statutes requiring the production of public records. This concern of the Sheriff is valid given the broad language in the Union proposal.

The fact finder believes that the Union's goal can be obtained with less restrictive language, similar to the provision in the Franklin County Sheriff's agreement with the FOP. Therefore, the fact finder recommends that the following statement be included as part of Section 9.1:

No information which is not required by law to be disclosed shall be disclosed in response to a public records request.

This language allows the Sheriff to produce records that are required to be released in response to a public records request. Because the provision only applies to public records requests, the Sheriff would be able to disclose information which is required to be disclosed for other reasons. For example, the Sheriff would not be restricted from complying with a legitimate discovery request.

ARTICLE 13 -- LAYOFF AND RECALL

Section 13.7 permits the Sheriff to use "Special Deputies." Special Deputies are trained volunteers who work at least 16 hours per month.

The Union proposes that the Sheriff be prohibited from using Special Deputies at a time when any deputies are on layoff. The Union argues that the use of Special Deputies amounts to the subcontracting of bargaining unit work.

There is no evidence to show that the Sheriff has stepped up the use of Special Deputies since the recent layoffs. The Employer has proposed language which provides that the Sheriff would not use Special Deputies to avoid calling regular deputies back to work from a layoff.

The Employer's proposal addresses many of the concerns that the FOP has raised as to the use of Special Deputies. Therefore, the fact-finder recommends that the proposal of the Employer for Section 13.7 be adopted in the new collective bargaining agreement.

ARTICLE 16 - FILLING OF POSITIONS

Currently, the Sheriff has the discretion to make work assignments. The job descriptions of the deputies include both road patrol and corrections officer work. The Union is concerned that the Employer is abusing his discretion by making assignments for punitive reasons. Following recent layoffs, the Sheriff assigned the most senior deputy from the road patrol to the jail.

The FOP contends that the assignment to the jail was punitive. To prevent the Sheriff from taking punitive action, the FOP proposes that job assignments be made by seniority.

The proposal of the Union would require that the Employer post all vacancies for a period of 14 consecutive workdays. After the posting, the Sheriff would be required to select the individual with the highest seniority among those deputies who applied for the position. Under the Union's proposal, only persons who applied for a position could be considered for employment.

Under the proposal of the Union, the Sheriff would no longer have any discretion in regard to assigning individuals to jobs. The Sheriff would have no ability to try to obtain a balance between experienced and inexperienced employees on particular assignments. The public interest is not well served if, for instance, only the least experienced employees were assigned to the jail. It is important for the safety of citizens that a balance be obtained between experienced and inexperienced employees in various assignments. The FOP proposal would not allow this. Therefore, the fact finder will recommend that the proposal of the Union not be adopted in the new collective bargaining agreement.

The Sheriff has proposed that, for certain specialized positions, such as detective bureau, major crimes unit, or DARE, a posting is required and applications are submitted. The Employer can then select the most qualified.

The fact finder recommends that the proposal of the Sheriff be rejected. It is the opinion of the fact finder that the procedures for filling vacancies and specialized positions should be negotiated by the parties. This is not the type of provision that a fact finder should impose unless there are extenuating circumstances. In this case, there are no extenuating circumstances. Therefore, the fact finder recommends that the Employer's proposal for Section 16.9 should not be included in the collective bargaining agreement.

ARTICLE 18 - WAGES

Article 18 contains the parties' agreements on wages. The Employer proposes a general wage increase of 2 percent per year for each year of the new contract. The FOP proposes a wage scale which institutes step increases. Under the Union's proposal, the hourly wage of a deputy in 2006 would increase between 3 percent and 7 percent, depending on step placement. The Union proposal would increase each step by an additional four percent in both the second and third year of the collective bargaining agreement.

The Union also proposes increases in longevity pay, and officer in charge pay. It also proposes the implementation of shift differential pay and on-call pay.

The Employer contends that it has extremely limited resources to fund any increases in compensation. The Employer points out that, in February 2005, voters rejected a one half percent increase in the sales tax by a margin of 66 percent to 34

percent. The campaign for the issue emphasized that most of the increase would be spent on law enforcement.

In March 2005, the Fairfield County Sheriff laid off 12 bargaining unit members including nine deputies and three corrections officers. Additionally, three high level administrative employees were laid off. The Sheriff also eliminated the rank of Captain.

Overall, the Sheriff has 30 fewer employees than it did three years ago. However, most laid off employees have been able to return to work through attrition.

In November 2006, a constitutional amendment will be on the statewide ballot. If the amendment is passed, the ability of public employers to increase spending will be strictly limited.

The County Commissioners reduced the allocation to the Sheriff's office from \$7.5 million in 2004 to \$6.8 million in 2005. For 2006, the Commissioners restored the Sheriff 's Office to the 2004 level and allocated \$7.5 million for 2006. The Employer contends, however, that it needs most of the additional \$700,000 in order to pay current salaries and to prevent further layoffs.

Wage Rates

The Union notes that only five percent of agreements with county Sheriffs in Ohio do not have a step increase provision. The Union is proposing that step increases be implemented in the new collective bargaining agreement. The Union points out that the dispatchers' unit in Fairfield County has a step provision which includes five to six steps. In contrast, the step provision proposed by the Union requires an employee to work 15 years to get to the top step.

The Union asserts that the wages of bargaining unit members are substantially below the wages in most similarly sized counties in Ohio. The average of 18 similarly sized counties for a top deputy is \$45,939.00 per year. The compensation for a top deputy in Fairfield County is \$40,560.00, which is 13 percent below the average. The Union asserts that one reason for the lower compensation in Fairfield County is the lack of a step increase provision.

The fact-finder recognizes the value of providing step increases. Step increases reward employees as they become more experienced, and can help the Employer to retain experienced employees. However, employees eligible for step increases would receive both a step increase and a general wage rate increase during the course of a year. This means that, over time, personnel costs will increase at a faster rate. The determination of the true future costs of the implementation of a step increase provision is more difficult than the costing out of a general wage rate increase.

Designing a compensation system with step increases requires an analysis of the optimal number of steps, as well as the rate at which employees advance through the steps. Due to the numerous decisions that must be made to design a plan, a step increase provision is something that should be carefully negotiated by the parties. In this way all relevant factors can be considered, and the long term costs can be better estimated. This proposal is essentially a total reworking of the compensation plan, and should be developed by the parties, rather than implemented by a fact finder. Therefore, the fact-finder recommends against the adoption of the Union's proposal to implement a step increase system.

In determining wage rate increases, fact-finders must consider both the financial ability of the Employer to fund a wage increase, and the wages paid to employees doing comparable work in other similar jurisdictions. Comparables submitted by the Union suggest that a significant increase should be provided to bargaining unit members. However, the financial situation of Fairfield County requires that the wage increase be moderated. Ideally, the wage increase will avoid putting the Sheriff in a position where further layoffs are necessary.

Non-bargaining unit employees of Fairfield County received a three percent wage increase for 2006. The Employer's proposal provides a lower wage increase to bargaining unit members than the raise which the County Commissioners have already approved for non- bargaining unit employees. The fact-finder believes that bargaining unit employees should receive an increase which is somewhat larger than non-represented county employees. The larger increase is justified by comparing wages in Fairfield County to other similar counties. Counties geographically close to Fairfield include Licking, Pickaway, Union, Delaware and Madison counties. The rates for a top deputy are as follows:

Delaware	\$51,480
Union	\$44,179
Licking	\$41,932
Madison	\$41,494
Pickaway	\$40,809
Fairfield	\$40,560
MEDIAN	\$41,713

The fact finder believes that the median is more reflective of the wage differential than the average. If an average is used, the substantially higher wage rates in Union and Delaware counties obscure the result. Union and Delaware counties are paid

higher wages because they are bedroom communities for Columbus and are in better financial shape than Fairfield.

A wage increase of 3.5 percent would increase the top deputy wage to \$41,976, which is slightly above the median. The fact finder therefore recommends a wage increase of 3.5 percent for 2006. The wage increase in 2006 will be retroactive to the beginning year. Based upon a cost of \$34,000 for each one percent wage increase, the total cost for 2006 would be \$119,000.

The fact finder recommends an additional 3.5 percent increase for both the second and third years of the agreement. This rate of increase should allow the Fairfield County deputies to maintain a wage rate comparable to similar nearby counties.

Shift Differential and On-Call Pay

The FOP proposes the implementation of shift differential and on-call-pay. The shift differential proposal would provide a differential of \$0.25 per hour for any shift in which the majority of hours occur after 3:00 p.m. and before 7:00 a.m. Essentially, all shifts except the daytime shift would be eligible to receive shift differential.

Further, the FOP proposes an annual payment of \$750.00 to bargaining unit members who are assigned full time to the detective position. The payment is to compensate detectives because they have to be on-call during a portion of their off-duty time.

Essentially, the shift differential pay and the on-call pay compensate individuals for their inconvenience. While these proposals do have merit, the fact-finder is

concerned about the additional costs to the Sheriff's office. Considering the economic plight of the county, it would be unwise to implement these new programs at this time. Therefore, the fact-finder will recommend that the proposals of the Union for Section 18.7 and 18.8 not be adopted by the parties.

Officer in Charge Pay

Currently, an employee in the classification of deputy who is appointed to serve as an officer in charge and to act in the place of a supervisor receives an additional \$1.00 per hour. The Union proposes that this rate be increased and that an officer in charge pay be equal to the rate of pay for the top Sergeant's position. The increase would be \$2.55 per hour if a top rate deputy is assigned as officer in charge. The increase for a deputy who is not at the top step would be greater. The Union has not presented sufficient evidence to show that an increase in officer in charge is warranted. The fact-finder will not recommend the implementation of the FOP proposal for Section 18.2.

Longevity Pay

The Union proposes to increase longevity pay so that all employees with at least five years of employment receive longevity pay. Currently, only those employees hired prior to 1993 are eligible for longevity pay. In 2006, the amount of longevity pay was \$35.00 for each year of service. Currently, only eight bargaining unit members are eligible for longevity pay. In the proposal, the amount of longevity pay varies from \$300.00 per year after five years of service, to \$1050.00 per year after 25 years of service.

The FOP asserts that most counties in Ohio provide more longevity pay than is provided by Fairfield county. It is not unusual for deputies with 20 years of service to receive longevity pay of \$1000.00 or more. The Employer contends that the Union's proposal would cost an additional \$80,000.00 during the term of the agreement. Employer asserts that this would be equal to a 2.4% across the board increase.

The proposal by the Union represents a substantial change from the current provision for longevity pay. In the current contract, the parties have restricted longevity pay to those who were hired in the early 90s. Likely, the current language was negotiated along with other compensation issues. The low longevity pay was most likely agreed to by the Union, during prior contract negotiations, in exchange for other financial benefits. It appears that the current language has been in place for a lengthy period of time. The implementation of the Union's proposal would require a substantial cash outlay by the Sheriff. Even though many other jurisdictions do provide substantially more in longevity pay, the Employer is not in a financial position to increase spending on longevity pay. Therefore, the fact-finder will recommend the current language for Section 18.6.

ARTICLE 18 - INSURANCE

The Union makes two proposals regarding health insurance. The first proposal provides that the Employer must maintain the insurance plan which was in place as of January 1, 2006. The proposal provides that, if it becomes necessary for the Employer to change either the carrier or the benefits, the Employer must meet with the Union at least 60 days in advance to discuss and negotiate the changes. Further, if the parties

are not able to reach an agreement, the Union proposal provides that the Union may utilize either the statutory or contractual dispute resolution procedure.

The Union points out that the employees' share of the premium of family coverage has increased from \$80.00 to \$172.00 per month during the period of the last collective bargaining agreement. In 2006, the premium remained stable. However, some benefits, such as the co-pay for prescriptions, were reduced. The Union proposes that bargaining unit members pay a premium equal to 15 percent of the Employer's cost, with a cap of \$170.00 per month for family coverage, and \$75.00 per month for single coverage. The Union points out that members of the bargaining unit in the Fairfield County Engineer's office pay only \$50.00 per month for family coverage.

The Union asserts that the cost of insurance for bargaining unit members is excessive compared with other public employees in Ohio. According to the 2004 SERB health insurance report, public employees pay an average of \$41.30 per month for single coverage, and \$112.43 per month for family coverage.

Beginning in 2005, Fairfield County joined with Franklin County and some other surrounding counties to purchase health insurance together. The program is operated by Franklin County and Franklin County determines the benefits available. The Employer asserts that Fairfield County is prohibited, as a member of the consortium, from making any changes in coverage. The Employer contends that it could not have entered into the Franklin County consortium if the proposal of the Union was in place.

The Union, however, argues that the terms of the cooperative agreement do not prohibit adjustments in coverage. It points out that the contract between the Franklin County Sheriff's Office and FOP Lodge 9 contains language similar to that which the

Union proposes herein. Further, in Pickaway County, which is part of the consortium, the collective bargaining agreement with the sheriff's office requires the Employer to maintain the "level of benefits substantially equal to the plan currently provided."

The Employer proposes current language for the insurance article. The article currently provides that benefits and premiums are to be the same as county employees paid by the general fund. The Employer asserts that this plan contains substantially better benefits than the prior plan with no increase in cost to employees. The fact-finder notes that the current insurance plan contains significantly better benefits than the previous plan. The deductible for in-network providers was reduced from \$200.00 to zero for families, and from \$100.00 to zero for individuals. The prior plan required employees to pay 20% of hospital and professional services such as laboratory work and x-rays. Under the terms of the current agreement, the insurer pays 100% of these costs, if in-network providers are used.

Many collective bargaining agreements have some restrictions on the employers' ability to make changes in benefits. However, all employers, both private and public are struggling to provide quality health insurance to employees at a reasonable cost. It is unwise to impose any requirements which impede an employer's ability to obtain the most favorable package. The fact that the Employer is required to provide bargaining unit members with the same benefits as all county employees paid from the general fund provides a some assurance members that benefits will be fairly determined.

In 2000, employees nationally paid an average of \$1,370.00 for premiums and out-of-pocket payments for health care. In 2005, the average cost increased to \$2,810.00. The costs to employers have increased more drastically.

The Union proposal to maintain current benefits would be more understandable if the Employer had substantially reduced the benefits during the last collective bargaining agreement. However, the evidence clearly shows that benefit levels have increased since Fairfield County joined the Franklin County group. Requiring the Employer to go through a dispute resolution process in the event that the Employer and the Union cannot agree on changes to coverage, would be time consuming and costly for both parties. The fact-finder will therefore recommend that the parties adopt the current language in Section 22.1 of the agreement.

Counties in the Franklin County consortium are free to determine how to split premiums between employers and employees. The fact-finder notes that employees of the Fairfield County Engineer pay \$50.00 per month for family insurance coverage, and \$25.00 a month for single coverage. The Union proposes that employees in this bargaining unit pay 15 percent of the premium costs, with a cap of \$170.00 per family coverage, and \$75.00 for single coverage. These amounts are still substantially higher than the average amount paid by public employees in Ohio.

The proposal of the Union for premium costs is reasonable and will provide a stable premium for employees for the next three years. Thus, the fact-finder recommends the adoption of the Union proposal for Section 22.3 of the collective bargaining agreement.

ARTICLE 25-TRAINING AND EDUCATION

Currently, Article 25 requires that deputies who change assignments must meet job requirements (accreditation, licensure, or certification) as soon as possible consistent with applicable law.

The FOP proposes that language be added to the article which requires the Sheriff to provide training for all deputies who need training to comply with proficiency or certification requirements. The proposal also prohibits the Sheriff from requiring anyone to work in an assignment who does not have the necessary training, or who lacks proficiency or certification for the position.

The Union maintains that the language is necessary because the Sheriff has been assigning deputies to positions without the proper training. The example cited by the FOP is the assignment of road deputies to the jail following the 2005 layoffs. The FOP argues that assigning a bargaining unit member to a position when he/she does not have mandatory training or certification subjects them to civil liability and perhaps criminal charges.

The Employer asserts that it tries to provide as much training as possible for deputies. It points out that, in 2003, it provided over 1,000 hours of training. However, the Employer states that its ability to provide more training has been hampered by its recent financial problems.

The Sheriff points out that, in addition to paying for the training, he must pay the employee his/her regular wage. In addition, it is often necessary to hire another employee at the overtime rate to replace the employee being trained. Thus, the Employer argues that the true cost of training is equal to the cost of training plus two and one half times the trainee's regular wage rate.

It appears to the fact-finder that the Union's primary concern is with the road patrol officers who were assigned to the jail. These employees were immediately assigned to the jail from road patrol without any training.

The evidence reflects, however, that jail employees are required to have two weeks of training during their first year of assignment. Thus, the Sheriff is not violating state standards for jails as long as the training is completed during the first year of assignment. The Sheriff has stated that he is in the process of sending six deputies for jail certification training.

The Union notes that certification is required in order for deputies to act as a K-9 officer, or to administer an alcohol breath test. Certification is also necessary for various other areas. The evidence does not show that the Sheriff is out of compliance with any mandatory requirements. Providing training is an important function of the Sheriff, but the cost of training is significant. Since it has not been shown that a problem exists in regard to training, the fact-finder does not think that this is the proper time to impose new requirements with financial implications. Therefore, the fact-finder recommends that the current language in Article 25 be retained.

ARTICLE 27 - SPECIAL DUTY

Article 27 of the collective bargaining agreement pertains to those deputies who desire to work on special duty assignments. The only item in dispute is the rate which a hiring party must pay for a Special Duty Officer. In July 2004, the minimum hourly rate was increased to \$22.50 per hour from \$20.00. Special Duty Officers assigned to hazardous situations such as traffic control, receive an additional \$5.00 per hour.

The FOP proposes that the rate be set at an amount equal to one and one-fourth times the rate of a top level deputy. Based on a 2005 top rate of \$19.50 per hour, the special duty rate would be \$24.37 per hour. The FOP points out that deputies in Delaware County receive \$30.00 per hour and deputies in Licking, Madison, and Pickaway County all receive \$25.00 per hour. State Highway Patrol officers, who do only traffic control, receive \$39.00 per hour. The FOP points out that the proposal would not result in any additional cost to the Sheriff.

The Employer urges the fact-finder to consider the fact that many of the organizations that hire Special Duty Officers are school or charitable groups with limited resources. The Employer points out that the special duty rate was just increased by 12.5 percent less than two years ago. The Sheriff also notes that the City of Lancaster recently increased its special duty rate to \$22.50 per hour as a result of the increase for deputies.

The evidence presented by the FOP shows that the prevailing rate for deputy sheriffs hired as Special Duty Officers is at least \$25.00 per hour. This is the rate in the adjacent counties of Pickaway and Licking. An increase of \$2.50 per hour is not likely to hinder the ability of school and charitable organizations to hire Special Duty Officers. Therefore, the fact-finder recommends that Article 27.1 be amended to state that the special duty rate is \$25.00 per hour.

NEW ARTICLE - ALTERNATIVE DISPUTE RESOLUTION

The FOP proposes that the parties agree to a dispute resolution procedure to be used for future contract negotiations, in lieu of the current statutory provisions.

Essentially, the proposal of the Union would eliminate the fact-finding step. Under the proposal, if the parties remained at impasse thirty-one days before the end of the contract, an arbitrator would be selected to make a final and binding award on the unresolved issues.

The Union has not pointed to any specific reason that such a change is necessary. The Union has not explained how the procedure would be more beneficial to the parties than the statutory procedure. There is no evidence that similar alternative dispute resolution procedures are found in other collective bargaining agreements involving similar types of employees.

Since this is a new article, the Union has the burden of proof to establish valid reasons that the provisions should be recommended by the fact finder. There is insufficient evidence before the fact finder to support the addition of this new article in the collective bargaining agreement. The fact finder will recommend that the proposed new article on establishing an alternative dispute resolution procedure should not be included in the new collective bargaining agreement.

NEW ARTICLE - POLITICAL ACTIVITY

The Union has proposed a new article, which would allow members of the bargaining unit to participate in partisan politics. Such activities are now prohibited by Ohio Revised Code section 124.57. The proposal would override the statutory provision and would allow a bargaining unit member to participate in certain partisan political activities. The proposal would specifically allow employees to participate in the FOP's political screening committee.

The proposal would also specifically allow employees to participate in non-partisan political activity, including being a candidate for a non-partisan office, such as a member of a board of education.

The fact finder was presented with a similar proposal in a recent fact-finding hearing in the matter of Fraternal Order of Police, Ohio Labor Council Inc. and the Richland County Sheriff, Case Nos. 04-MED-09-0816 through 04-MED-09-0819. In the fact finding report, issued on May 13, 2005, the undersigned fact finder made the following recommendation, which is also applicable to the current situation:

The fact finder believes that the [political activity] proposal has merit. However, the fact finder believes that the proposal may have certain legal ramifications which are not apparent on the face of the proposal. Language which is superceding state law must be drafted very carefully. It is a subject on which the parties would be best served by a negotiated agreement. For these reasons, the fact finder recommends that the proposal not be included in the new agreement.

NEW ARTICLE - MID-TERM BARGAINING

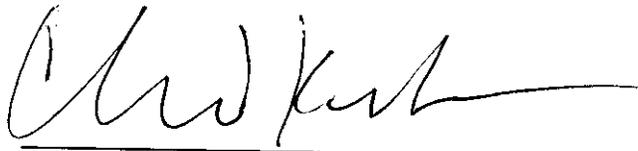
This is a proposal by the Union for a new article establishing a mechanism to address and resolve mid-term changes in wages, hours and working conditions. The proposal sets forth a detailed process which is to be used to resolve mid-term disputes. The FOP states that the proposal is necessary in order to allow bargaining unit members some recourse if the Employer changes the conditions of employment mid-term. The Union argues that the only current recourse for the Union is to file an Unfair Labor Practice with SERB, which is a time consuming process, and may not resolve the issue.

During the last collective bargaining agreement, one issue involving a mid-term dispute arose. In that case, the Union filed a ULP with SERB. The ULP was eventually dismissed by SERB.

Certainly, the development of a procedure to resolve disputes is desirable. If the parties can agree in advance on a specified procedure, later disputes can be more readily resolved. However, in order to have an effective procedure, it is necessary that the parties are in agreement. Here, the Employer is opposed to this article. The Employer contends that there is not sufficient evidence that the proposal addresses actual problems which are likely to arise in this bargaining unit. As this is new language proposed by the Union, the Union has the burden of proof to show that such a change should be adopted. Here, the Union failed to present evidence showing that this procedure is necessary and desirable. At the current time, it appears that few bargaining units statewide have this type of provision in the collective bargaining agreement.

For the above reasons, the fact finder does not recommend that the proposal of the Union for mid-term bargaining be included in the new collective bargaining agreement.

The above recommendations are respectfully submitted to the parties for their consideration,



Charles W. Kohler
Fact Finder

CERTIFICATE OF SERVICE

I do hereby certify that on this 17th day of March 2006, a copy of the foregoing Report and Recommendations of the Fact Finder was served upon Catherine A. Brockman, Assistant Executive Director, Fraternal Order of Police, Ohio Labor Council, Inc., 222 East Town Street, Columbus, Ohio 43215; and upon Marc A. Fishel, Downes & Hurst, 300 South Second Street - 2nd Floor, Columbus, Ohio 43215; each by Federal Express overnight delivery; and upon Craig Mayton, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213 by regular U.S. Mail, postage prepaid.



Charles W. Kohler, Fact Finder