STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

In the Matter of Fact-finding:

Crawford County Sheriff's Office Bucyrus, Ohio	:	Case Nos. 05 MED 09 0923 05 MED 09 0924 05 MED 09 0925
And	:	Fact-finder's Recommendations
The Fraternal Order of Police Ohio Labor Council	:	Margaret Nancy Johnson Fact-finder

In accordance with Ohio Revised Code Section 4117.14 (c), the State Employment Relations Board, hereinafter "SERB," appointed Margaret Nancy Johnson to serve as fact finder in the bargaining impasse between the above named parties. Following a mutually agreed upon extension for the process, a fact-finding hearing convened on March 1, 2006 in a conference room at the Office of the Sheriff in Bucyrus, Ohio. Prior thereto the parties had timely submitted position statements for review by the fact-finder on issues in contention. Evidence and argument upon those matters were presented to the fact-finder at the scheduled hearing.

The Office of the Sheriff has been represented in this proceeding by Marc Fishel, attorney with the law firm of Downes, Hurst and Fishel. Staff Representative Andrea Johan argued the case on behalf of the Fraternal Order of Police. Compliant with all of the statutory requirements, the fact-finder now issues her report setting forth recommendations and rationale for those issues upon which the parties had not been able to reach consensus.

Background

The Office of the Sheriff, also "Employer," is the law enforcement agent for the County of Crawford, principally a rural/agricultural community with a population of approximately 47,000. Three bargaining units representing the Deputies, Dispatchers, and Captains/Sergeants have engaged in multi-unit bargaining. These are represented by the Fraternal Order of Police, also "FOP" or "Union," for the purpose of collective bargaining and contract administration. All three of the bargaining units were certified by SERB on or about May 1, 2003.

Approximately 32 of the 52 unit employees are Deputies whose assigned duties include road patrol, investigations, and corrections responsibilities at the County operated jail. Eleven unit members in the Captain/Sergeant unit provide supervision in addition to road and corrections duties. Nine Dispatchers are responsible for answering calls, rendering assistance to the public, as well as monitoring officers on the road for the purpose of dispatching aid. The Collective Bargaining Agreement for all three of these units expired on December 31, 2005, with the parties being unable to negotiate a successor Agreement.

Issues

In negotiations prior to the fact-finding hearing and with the withdrawal of a Union proposal for a new article, the parties have been able to reach agreement on all but two Articles—Wages and Health Insurance. These two issues were presented to the fact-finder for review and recommendations.

Position of the Parties

I Wages

A. Employer

Arguing a limited ability to pay, the Sheriff has offered a **2% wage increase** for each year of a three year Agreement. This wage proposal is quite consistent with wage increases throughout the State, which reflect a tendency towards smaller increases and cautionary bargaining by parties in the public sector. Other counties within the state having also experienced economic stagnancy may now be improving, but demographics in Crawford County indicate a continuing decline rather than a recovery.

High unemployment and poverty levels have an impact upon the ability of the County to sustain the increases sought by the Union. In the past, the County has had to borrow in order to avoid cuts in services and personnel. Although the Office of the Sheriff is funded primarily by revenues from a sales tax, the income thus generated is inadequate to cover expenditures which must, therefore, be subsidized by the General Fund. Revenues to the General Fund, however, have not kept pace with County expenditures. Accordingly, consistent with statutory requirements, the Sheriff advocates a fiscally reasonable wage increase.

B. Union

Citing comparability, the FOP proposes **a wage increase of 4%** for each year of the three year contract. The Union points out that 2% increase proposed by the Employer is less than that received by other county employees for 2006. Additionally, the Union argues the negotiated wage increase for these FOP units averaged 1.85% each year of the prior contract, substantially below the average annual wage increase of 2.99% negotiated by police officers in the State. Accordingly, the Union argues its position is both reasonable and warranted based upon the statutory criteria of comparability.

In order to retain its work force as well as recruit high calibre staff, the Sheriff must provide a wage in line with that in jurisdictions of similar population and characteristics. A review of such comparables demonstrates that the wage offered by the Sheriff will not only keep the county amongst the lowest paid, but will also cause the employees of these FOP units to continue to fall further behind their counterparts in other jurisdictions.

Having made modifications to its economic wage offers and having withdrawn other proposals for financial enhancements, the FOP argues its 4% wage increase is fiscally responsible and ought to be recommended by the fact-finder.

II Health Insurance

A. Union

Arguing **current contract language** and the retention of previously bargained benefits, the Union is adamant that current health insurance provisions be maintained in the successor agreement. Health benefits provided to this unit off set the lower wages the employees will continue to experience even with the wage proposal on the table for the Union. Moreover, there is no need to modify present contract language by which these bargaining units secure the same health benefits as other county employees. Indeed, in order to address the rising cost of health insurance, in the prior negotiations the parties agreed upon a re-opener should premiums increase by more than 7.5%. Thus, the mechanism to address rising costs is already in place and the Employer ought to avail itself of the flexibility presently provided.

The present proposal by the Sheriff requests the Union to relinquish completely its statutory right to bargain on a term and condition of employment and to enable the Employer make changes in coverage and benefits. A prior attempt by the Employer to make a unilateral change in benefits resulted in a grievance which the parties were able to resolve. But the Union cannot permit the Employer to unilaterally eviscerate health benefits without the oversight of the employees who are the recipients of the benefits.

While the Union simply cannot countenance such a usurpation of bargaining rights, it is also cognizant of the financial realities of health insurance costs. Thus, in an effort to create greater flexibility in insurance benefits, the Union proposes the mutual exploration by the parties of alternatives, including implementation of health savings accounts. Evidence secured by the Union indicates that such accounts have the potential to save money while enabling employees to control health coverage. During the mutual examination of cost savings measures such as **health savings accounts,** the Union seeks to maintain the status quo on health insurance provisions. Absent a demonstrated need to change current contract language, the Union proposes current contract language pending the joint review of health savings accounts.

B. Employer

Insofar as the Employer currently provides the unit with a costly health insurance plan, it must seek relief in these negotiations and now proposes two changes to the Health Insurance Article. Because current language locks the employer in to benefits and coverage that are "comparable to or better," there is no flexibility enabling the Employer to secure adjustments which trade-off between costs and services. Language put forth by the Employer, eliminating the "comparable to or better" phrase and substituting "**equal to the coverage provided to County employees under the jurisdiction of the Commissioners**," is intended to provide this manoeuvrability.

Since the County cannot afford the current language, it is crucial that the Employer be able to make the changes in insurance that it now seeks. Insurance costs to the Employer have soared in recent years, monthly premiums for family coverage increasing by 121.5% between 2000 and 2006, or about 24% annually. As a self-funded insurer, the county is experiencing significantly greater financial liability for medical costs. Changes are imperative.

Arguing comparability, the Sheriff points out that these units presently enjoy a substantially superior health plan than similarly situated employees. Under current contract language, the County provides the bargaining unit with a plan having no deductibles, but with the lowest co-pays and the highest level of benefits in the region. To remedy this imbalance, the Employer proposes language that is practically identical to that in contracts in neighboring counties. Moreover, the position of the County is consistent with national trends reflecting increases in employee shared costs.

Additionally, the County proposal includes adjusting the per centage change triggering re-opening insurance negotiations from 7.5% to **15%**, providing that "**either party may reopen negotiations**," and streamlining the negotiation process by requiring bargaining to continue for thirty days after which the parties shall proceed directly to final and binding conciliation. Since the premium increases are expected to exceed 7.5% each year, retaining current provisions and the status quo would result in annual renegotiations. The Sheriff's proposal is intended to eliminate an annual reopener and to ensure an expeditious resolution of insurance negotiations. Insurance proposals presented by the Sheriff reasonably balance a need of the Employer for flexibility and the intent of the Union to protect its membership from burdensome health care costs while maintaining major medical, hospitalization and prescription coverage.

Criteria

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

Discussion

Unable to resolve the terms of two economic issues, the FOP and the Crawford County Sheriff have presented the matter of wages and health insurance benefits to this fact-finder for review and recommendations. Having thoroughly reviewed the information submitted for analysis, the fact-finder is of the opinion that both issues are best resolved by compromise, each party to the dispute giving as well as gaining. While at first glance the positions may appear to be diametrically opposed to each other, especially on the question of healthcare, in fact, the parties have objectives which are not mutually exclusive. Through carefully structured contract language modifications and wage adjustments, these objectives may be achieved while preserving the bargaining relationship and accomplishing stated purposes.

I Wages

Coming into fact-finding with a 5% wage increase proposal, the FOP modified its position on wages to 4% in its submission to the hearing officer. For its wage proposal, the Sheriff has offered a 2% across the board increase for each year of the three year contract. While the Sheriff argues the statutory criterion of inability to pay, the FOP cites comparables in support of its wage adjustment proposal. Both arguments have been considered in making the recommendation which follows.

In its pre-hearing Position Statement the Sheriff makes the assertion "the Union must prove that the County can fund its proposed increase without impacting services" (p.4). Generally, however, it is incumbent upon the Employer rather than the Union to present the facts and figures which convince the neutral hearing officer that management lacks the funds with which to make *any* significant wage adjustment. Inability to pay arguments usually are made and prevail in dire situations in which the Employer is seeking a wage freeze, or only a fractionalized per cent wage increase. Moreover, the "impact" upon services usually references a wide-spread shutdown of basic health and safety needs routinely provided by a public agency rather than the budgetary adjustments and financial decisions which every entity must make to accommodate market place vicissitudes.

Although there is evidence of expenditures outpacing revenues, in the case at hand the Employer has not demonstrated spread-sheet imbalances of the magnitude to sustain an inability to pay argument. Clearly, the Employer has "an extremely limited ability to pay," (Statement p. 2), but the Employer has not demonstrated an "inability" to do so. In addition, there is some evidence that other County employees have received wage increases of 3%, undermining the concept of "inability" to pay.

Moreover, the evidence establishes bargaining history justifies a wage increase greater than that offered by the Employer. While comparable units negotiated increases of almost 3% for 2004, this unit sustained an annual average increase below 2% for the past three years. Accordingly, it is appropriate for the wage adjustments instituted for the successor Agreement to more closely align with those now being negotiated in similar jurisdictions.

In summary, the fact-finder is of the opinion that the Employer has the ability to make adjustments more comparable to those provided law enforcement officers in similarly situated counties. Additionally, a wage recommendation must take into account the Agreement as a whole. Thus, in order to adjust for the recommended modification in the health insurance provisions, as discussed hereafter, the fact-finder recommends a wage increase of 3.5% for each year of the contract for each of the three bargaining units.

II Health Insurance

Indisputably, employer expenditures arising from health insurance are increasing at an unsustainable rate, not just for the county, but for the country as a whole. As in many bargaining relationships, the issue of health care is a looming behemoth for the parties to this Agreement. Health Insurance provisions, then, must be reviewed against the back drop of escalating expenditures and the need to institute changes to curtail and control costs.

Both parties have come to the bargaining table with proposals addressing the issue. The Employer seeks language granting it flexibility to make adjustments in coverage and benefits that will provide financial relief from increasing insurance costs. For its part, while arguing maintaining current contract language, the Union offers exploration of instituting health savings accounts as a way to contain costs and at the same time to preserve employee control over coverage.

Though divergent, the mutual objectives of the parties on insurance are not necessarily irreconcilable. Joint effort and compromise may enable the employer to contain costs while the Union retains control over health benefits. Building upon the stated intents and purposes of the parties, the fact-finder recommends language on health insurance provisions for the Agreement between the parties as set forth hereinafter.

Recommendations

I Wages:

3.5%, 3.5%, 3.5% for 2006, 2007, and 2008

II Health Insurance

Section 13.1 The Employer shall continue to provide the current health insurance coverage for 2006. The Employer and the Union shall establish a joint committee to analyze health insurance savings, including health savings accounts, to take effect in contract year 2007. The committee shall be a co-operative sharing of information and resources and shall include representatives of the Union, the Employer and the County. In the event the Union and the Employer are unable through the jointly established committee to resolve health insurance issues, then the Employer has the option either to take reasonable action to keep insurance costs from exceeding a 7.5% increase, or to reopen negotiations for the purpose of health insurance for contract years 2007 and 2008. Any such negotiations shall commence on or about November 1, 2006, and should the parties be unable to resolve the issue through negotiations, then the parties shall proceed to final and binding conciliation no later than December 7, 2006. All insurance shall include hospitalization, major medical and prescription coverage.

The process set forth above shall continue in 2007 for health insurance in 2008. If a re-opener for health insurance purposes is necessary in 2007, the negotiations shall commence on or about November 1, 2007 and should the parties be unable to resolve the matter through negotiations then the parties shall proceed directly to final and binding arbitration no later than December 7, 2007.

All tentative agreements previously negotiated by the parties are incorporated herewith.

Respectfully submitted,

Margaret Nancy Johnson

Margaret Nancy Johnson
Fact-finder

Service

A copy of the foregoing Report and Recommendations has been personally served on Andrea Johan, Staff Representative, at the FOP, Ohio Labor Council Inc.'s offices at 222 East Town Street, Columbus, Ohio, and on Marc Fishel, at the offices of Downes, Hurst and Fishel located at 400 South Fifth Street, Columbus, Ohio, and by regular mail on Craig R. Mayton, Executive Director/Administrator, State Employment Relations Board, 65 East State Street, Columbus, Ohio, 43215, this 9th day of March, 2006.

Margaret Nancy Johnson