

I. BACKGROUND

The Fact Finder was appointed by the State Employment Relations Board (SERB) on December 20, 2005, pursuant to Ohio Revised Code Section 4117.14(C)(3). The parties mutually agreed to extend the fact-finding period as provided in Ohio Administrative Code Rule 4117-9-05(G). The parties are the Ohio Patrolmen's Benevolent Association (Union), representing the Corrections Corporals and Sergeants, and the Portage County Sheriff (Employer). Portage County is located in northeastern Ohio. It has a population of approximately 156,000 according to the 2000 U. S. Census. It has a diversified economy. Kent State University and Geauga Lake Amusement Park are large employers. The County is also home to heavy and light industry and retail, service, and medical businesses.

The fact-finding involves the Sheriff's Department of the County and its Corrections Corporals and Sergeants. The bargaining unit is comprised of one (1) Corrections Officer Corporal and four (4) Corrections Officer Sergeants. The Corrections Division supervises the County jail prisoners, a full service jail that includes federal prisoners. These employees provide direct supervision of the various Corrections Officers. The unit is represented by the Ohio Patrolmen's Benevolent Association. The parties have had a lengthy collective bargaining relationship spanning a number of collective bargaining agreements.

The Sheriff's Department also has bargaining units with its Dispatchers, Corrections Officers, Deputies, Sergeants and Lieutenants, and Dispatch Sergeants. All are represented by the Union. All the bargaining agreements expired on December 31, 2005, but the units have been operating under the previous agreements. All the units reached

impasse and are proceeding through the statutory process for safety forces.

II. THE HEARING

The fact-finding hearing was held on Wednesday, April 25, 2007 at the Portage County Justice Center, 8240 Infirmary Road, Ravenna, Ohio. Both parties provided pre-hearing statements. The hearing began at 10:00 a.m and adjourned at approximately 3:30 p.m. The parties attended, introduced evidence, and presented their positions regarding the issues at impasse. The parties jointly introduced the following exhibit into evidence:

1. Collective Bargaining Agreement, Corrections Corporals and Sergeants, term of agreement through December 31, 2005 (Agreement).

Additionally, the parties introduced the following exhibits into evidence:

Employer Exhibits

1. Union's Pre-Hearing Brief to Fact Finder Charles Adamson in Case No. 05-MED-10-1084.
2. Ohio Revised Code §4117.14.
3. Ohio Administrative Code §4117-9-05.
4. Tentative Agreement.
5. Fact Finding Report of Charles Adamson in Case No. 05-MED-10-1084.
6. Transcript of fact finding hearing in Case No. 05-MED-10-1084.
7. Portage County Sheriff Response to SERB, Case No. 06-ULP-09-0448.
8. SERB Dismissal of Unfair Labor Practice Charge, Case No. 06-ULP-09-0448.
9. Printout of June 8, 2006 email from Michael Hostler to Ronald Habowski and attachments.

10. Collective Bargaining Agreement between Portage County Sheriff's Department and OPBA covering Deputy Sheriffs unit, through December 31, 2005.
11. Collective Bargaining Agreement between Portage County Sheriff's Department and OPBA covering Sergeants and Lieutenants unit, through December 31, 2005.
12. Collective Bargaining Agreement between Portage County Commissioners and Teamsters Local 436, January 1, 2005 - December 31, 2007.
13. Collective Bargaining Agreement between Portage County Commissioners, Portage County Dog Warden, and Teamsters Local 436, January 1, 2006 - December 31, 2008.
14. Collective Bargaining Agreement between Portage County Engineer and Teamsters Local 436, November 12, 2004 - November 12, 2007.
15. Collective Bargaining Agreement between the Portage County Department of Job and Family Services and the American Federation of State, County and Municipal Employees, Local 1696, and Ohio Council 8, AFL-CIO, October 23, 2006 - June 30, 2009.
16. Collective Bargaining Agreement between Portage County Commissioners, Portage County Motor Pool Department and Teamsters Local 436, January 1, 2006 - December 31, 2008.
17. Collective Bargaining Agreement between Portage County Commissioners, Portage County Nursing Home (The Woodlands at Robinson) and American Federation of State, County and Municipal Employees, Ohio Council 8, Local 3630, effective upon execution through June 30, 2007.
18. Collective Bargaining Agreement between Portage County Commissioners, Portage County Sanitary Engineer, and Teamsters Local 436, September 1, 2005 - August 31, 2008.
19. Collective Bargaining Agreement between Portage County Solid Waste Management District and Freight Drivers, Dockworkers and Helpers Union, Local 24, November 1, 2004 - October 31, 2007..

Union Exhibits

1. 2005 Medical Plan Comparison.

The Ohio public employee bargaining statute provides that SERB shall establish criteria the Fact Finder is to consider in making recommendations. The criteria are set forth in Rule 4117-9-05(K) and are:

- (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 interests 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.

The Fact Finder hopes the discussion of the issues is sufficiently clear to the parties. Should either or both parties have any questions regarding this Report, the Fact Finder would be glad to meet with the parties to discuss any remaining questions.

III. ISSUES AND RECOMMENDATIONS

This fact finding revolves around the issue of health care. Indeed, the parties even dispute those issues that are unresolved at this juncture. The parties engaged in

bargaining and reached a tentative agreement. The agreement set forth four (4) items. Item No. 1 provided that the current Agreement would continue in effect except for the changes listed. Item No. 2 set forth the agreed upon wages, clothing allowance, and duration of the new agreement. It also provided that Attorney Hostler would draft the agreement and holiday pay would be paid on the actual holiday. Since the Sheriff was not available for the negotiation session when the tentative agreement was reached, Item No. 3 set forth various issues that would be presented to him for his approval or rejection. Item No. 4 set forth issues to be presented in fact finding. It reads:

9:1 ratio cap on future health care cost increases ANNUALLY.

Attorney Habowski promised to recommend to the County Commissioners that this be adopted, but the Commissioners would have the final word.

The dispute centers on the language of Article 25. The current Agreement, which continues in effect, sets forth the various health insurance coverage for employees. The Employer contends that the parties had agreed on everything but health insurance. It argues that this is supported by the bargaining history. The Union claims that the dispute was simply as to the cap on health care costs. However, since Item No. 1 provided that the current Agreement would continue except for the listed changes, the current language of Article 25 would continue into the new agreement.

The current Agreement was reached in 2003. The dispatch and corrections units reached an agreement approximately six (6) months before the road patrol units. This resulted in two (2) major differences in the language regarding health care. First, the dispatch and corrections units do not pay a premium for health care. Second, the dispatch and corrections units have language setting forth the specific coverages for health

insurance. The road units do not. Their language simply provides that the Employer will provide coverage on the same terms and conditions as provided to other County employees. In the current negotiations, the Sheriff and County have attempted to negotiate the same health care coverage for all units.

The tentative agreement was reached on April 4, 2006. Since the Union represents six (6) units, the parties reached agreement on all units. On April 30, Attorney Habowski faxed attorney Hostler a summary of what the Employer believed the agreements to be. As to the dispatch and corrections units, the summary provided that the current language of Article 25 be deleted and replaced with the language that the road patrol units had, namely, that the Employer would provide coverage on the same terms and conditions as provided to other County employees. After a number of unsuccessful attempts to finalize matters, Hostler sent an email to Habowski on June 8. The email listed eight (8) items as to the final offers. No. 4 reads "Language from Deputy contract as far as health care costs." It also listed two (2) items that needed to be answered. These involved the demand that dispatchers get separate checks for clothing allowance and the day after Thanksgiving as a holiday.

The Union submitted the tentative agreement to all the bargaining units on June 20. All units voted to accept the agreement. Hostler prepared the contracts and sent them to Habowski. On June 22, Habowski sent another fax to Hostler with the notation "My half of the we thinks we are done." Again, this noted that the corrections and dispatch units needed to remove the language of Article 25 and replace it with the language from the road patrol units. Later that same day, Hostler emailed Habowski:

This is the agreed language. You left off the last part.

25.01 The Employer will provide to his employees that same medical insurance coverage and upon the same terms and conditions, if an as that provided by the Portage County Commissioners for their other County Employees. In any event, the bargaining unit members will not pay a higher premium for health insurance than any employee or covered person of the Portage County Commissioners medical coverage plan.

Also, I assume the retro pay from January. (Italics in original).

Habowski sent a letter to Hostler on August 17. The letter reads:

This letter will summarize our numerous telephone conversations and/or proposals since the April 4, 2006 tentative agreement.

Per your request, we added your proposal on Union Training, Section 5.04, and we also increased lay-off notice to fifteen (15) days, Section 14.08. This information was faxed to you on June 22, 2006.

Subsequent to those changes, you also requested and we agreed, that the employees would have until this fall to select insurance coverage and that the new terms would not go into effect until January, 2007.

Notwithstanding the above post tentative agreement changes, you most recently asked to change the terms and conditions of the insurance language to match that of the Solid Waste Management Department. This I cannot agree to.

I am resubmitting the terms and conditions of our June 22, 2006, [sic] summary and I am still willing to make the necessary changes to assure that the effective date for insurance will be January, 2007.

...

On August 25, Habowski sent another letter that reads:

...

After that, you raised another issue concerning insurance and we said no. Our position on insurance is that the Corrections Officers and Dispatchers get the same deal on insurance that the Deputies and all other county employees have had for the last three (3) years. This position was repeated in subsequent telephone conversations and most recently at the hour long meeting you and I had with Lynn Leslie at his office August 2, 2006.

In my opinion, if the Corrections Officers and Dispatchers accept the

Deputies' insurance language then we should be done. If they don't, we should proceed to Fact Finding on that issue.

Hostler responded on August 28. His letter reads:

It is the opinion of the OPBA that we were done with not only the Articles concerning Insurance, but the entire CBA. However, that is clearly not the case.

During the long negotiation process, the parties never discussed the deletion of any insurance language contained in Article 25 of the Corrections and Dispatch Division. During the first 2 meetings, the County presented a sheet of paper outlining what insurance programs are offered and how much employees currently pay for each of the three different programs. The only other conversations held in regards to insurance was [sic] how to minimize any increases in premiums charged to the employees.

The tentative agreement of April 2006 clearly states the only issue to be presented to the fact finder (and that issue would be presented only if we could not reach a solution on the subject) was a "9 to 1 ratio" on any premium increases.

If the April agreement is not acceptable, the OPBA plans to submit our demands on all issues relating to this negotiation process. All items agreed upon in the April T/A was [sic] "package" proposals submitted by the County. Our acceptance was based on the entire package. Clearly that package did not include the deletion of the current contract language found in the corrections and dispatch contract, but rather additional language to stem any increases in premiums.

For the above reasons, the OPBA agrees we have reached an impasse on all subjects and should proceed to fact finder [sic], with all issues of this negation [sic].

Eventually, the Union filed an unfair labor practice charge with SERB, alleging that the Employer failed to ratify that tentative agreement. SERB dismissed the charge on the basis that the parties failed to reach a tentative agreement on several issues, including health care costs.

It is clear that, despite the tentative agreement of April 4, the parties had not truly reached an agreement. Hostler agreed to as much in his August 28 letter. While they

agreed that the only issue to be presented in fact finding was the nine (9) to one (1) ratio for health care costs, they were not in agreement as to the health care coverage. The Employer believed that the language of Article 25 was to be replaced with language providing that the unit would received the same health care provided to other County employees. The Union thought that it was only the cost of the coverage that was at issue and the language of Article 25 would remain as is with the new language proposed by the Employer to be added to Article 25. In short, there was no meeting of the minds as to Article 25. The question, then, centers on the effect of this disagreement. The Employer asserts that the only issue before the Fact Finder is whether to recommend the nine (9) to one (1) ratio. The Union argues that deleting the insurance language altered the tentative agreement, nullifying it. All issues were then reopened and the Union offered proposals on fifteen (15) different contract provisions.

The Fact Finder determined that he would resolve the issue as to health care initially. If the Employer's position is upheld and the issue as to health care is the only one to be decided, then the fact finding would be concluded. However, if the Union's argument is sustained and the disagreement as to health care essentially voids the tentative agreement, the parties will convene again, present their positions as to any unresolved issues, and the Fact Finder will make recommendations as to those issues.

There is no question that health care benefits are an important issue in collective bargaining. It is perhaps the most important issue in recent years. Given the rise in health care costs, employers have made attempts to control costs and pass some of the costs to employees. Obviously, employees have been reluctant to agree to share these costs. When cost sharing has been agreed to, employees have attempted to take on as little of

the cost as possible. Indeed, agreeing to paying part of the health care premiums can sometimes result in negating any agreed upon wage increases. In the Fact Finder's experience, based on the evidence presented to him in numerous fact findings and conciliations, employee cost sharing has been more and more the norm.

Taken on its own, the Union's position is reasonable. There was no meeting of the minds on the issue of health care. The Union believed that the language of Article 25 was to be retained and the only issue was the cap on the premiums. The tentative agreement was based on this understanding, in the Union's view. When the Employer stated that the language of Article 25 had to be altered, the changed the facts upon which the Union had accepted the tentative agreement. The Employer's view also has merit. It had been negotiating with its other units the language that it now proposes. In trying to get all employees under the same provision and health care plan, it would not have agreed to keep the language of Article 25 as is.

These negotiations, however, must be looked at in the bigger picture. The Union represents six (6) different units in the County. After the Union agreed to the current corrections unit contract, the road patrol units negotiated their contracts. They negotiated different language in Article 25, the language the Sheriff seeks in the new contract. The road patrol units also began paying premiums for their health care coverage. The County also negotiated a number of other collective bargaining agreements. The contracts with Teamsters Local 436 for the Motor Pool Department, County Engineers, the Building Department, and the Dog Warden contain the language the Sheriff proposes for health care coverage. AFSCME Locals 1696 and 3630 negotiated the same language for the Department of Job and Family Services and the County Nursing Home, respectively.

Given this background, the Union must have been aware that the County and Sheriff wanted the corrections units to join the fold. In fact, the units met with Lynn Leslie, who oversees the County's health benefits plans, to discuss the plans and coverage. In doing so, the language would necessarily change to mirror the other units. It does not make sense that the Employer, seeking to get all bargaining units under the same coverage, would propose to keep the current language of Article 25.

The Union argues that the language of Article 25 is necessary to protect the levels of coverage. Without it, the County could change the plans at its whim. The other units were willing to agree to new language because the language in their contracts, that the County would provide the same coverage other employees received, tied them to the protections of Article 25 at issue here. So long as the Article 25 language were in place, other County employees were protected. Further, the road patrol units were willing to accept different language for this very reason. The Fact Finder does not agree. The proposed language adequately protects employees. It provides that coverage will be provided on the same terms and conditions as provided to other County employees. Therefore, the County cannot change coverage without changing it for all employees. It also provides that any premiums will be no greater than those required of other employees. The Union's argument omits that the road patrol units agreed to pay a premium, something the corrections units did not agree to only months before. Additionally, the current language of Article 25 does not prohibit the County from changing coverage so long as it is equal to or better than what is provided. These facts beg the issue, however. The County is attempting to get all employees under the same coverage as a cost saving measure. In negotiating as to health care, what, if anything, did the parties agreed to

regarding the language of Article 25? Given the bargaining history of this and the other units, the Union was on notice that the County's offer regarding health care coverage involved changing the language of Article 25.

Even accepting the Union's argument, the Fact Finder disagrees that it essentially nullifies the tentative agreement. The parties had agreed to everything but health care. They agreed to present the health care issue in fact finding. At the time, the parties believed that the only issue as to health care was the ratio to cap costs. As they attempted to finalize the new agreement, it became clear that they were at odds as to the language of Article 25. In short, there was no agreement on the issue of health care. The Fact Finder concludes that this became an unresolved issue regarding health care that was to be resolved in fact finding.

The Employer seeks the same language for Article 25 that it has negotiated with its other units. Besides the corrections units, there is only one (1) bargaining unit within the County that has different language regarding health care coverage. This unit contains employees of the Portage County Solid Waste Management District. This entity is separate from the County Commissioners. Currently, the District has chosen to join the County's health care plan, but it can decide to provide other coverage. The County Commissioners have instructed Leslie to negotiate similar language as to health care when the District's collective bargaining agreement expires on October 31, 2007. If these steps are accomplished, all employees will be covered by the same plans and language.

Uniformity of conditions of employment among a public employer's bargaining units is a reasonable goal. In fact, one (1) of the factors SERB has established for Fact Finders to consider in making recommendations is comparing the bargaining unit to other units

doing comparable work. Fact Finders recognize that other bargaining units within a public employer are comparable relative to terms and conditions of employment. They are often subject to the same or similar pay scales and benefits. Since they are employed by the same public employer, the same conditions exist as to the financial condition of the employer. In this case, several units are represented by the Union within the Sheriff's Department and share other terms and conditions of employment.

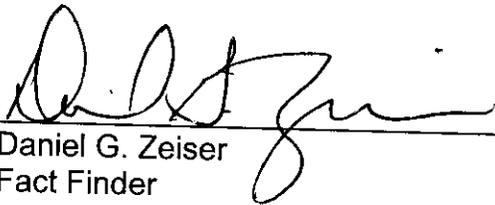
On this record, seeking uniformity in health care coverage among all bargaining units is reasonable. The Employer can achieve cost savings by having more employees covered by the same plan and administering only one (1) plan rather than several. Other than the Corrections units, the only unit with different coverage is the Waste Management Department unit, whose collective bargaining agreement expires later this year. The Employer will endeavor to negotiate this unit under the same coverage. Further, the parties have gone through fact finding for the Corrections Officers and it was recommended that the language of their contract be changed to the language the Employer seeks in this case. Recommending a 9 to 1 ratio for health care costs would defeat the goal of providing the same health care coverage for all employees. The benefits of uniformity of health care coverage outweigh the unit's interest in capping health care premiums.

Recommendation: The current language of Article 25 is to be deleted and replaced with the following:

25.01 The Employer will provide to its employees the same medical insurance coverage and upon the same terms and conditions, if any, as that provided by the Portage County Commissioners for other County employees. In any event, the bargaining unit members will not pay a higher premium for medical insurance coverage than any

employee of the Portage County Commissioners medical insurance plan.

Dated: June 6, 2007


Daniel G. Zeiser
Fact Finder