

**FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
May 3, 2006**

STATE EMPLOYMENT
RELATIONS BOARD

2006 MAY -8 A 11: 48

In the Matter of:

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

Employee Organization

-and-

**CLERMONT COMMUNICATIONS
CENTER**

Employer

CASE NO(s): 05-MED-10-1177

APPEARANCES

FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL, INC.

Barry L. Gray, Staff Representative
Michael S. Pierce, ERT
Sandra Snyder, ERT
Mable Sheppard, ERT

CLERMONT COUNTY,

Paul Berninger, Esq.
Bob Sander, Director Human Resources
Sukie Scheetz, Director, Office of Management and Budget
Beth Nevel, Director, Department Public Safety Service
Brenda Durham, Supervisor 911 Center

Fact Finder: Howard Tolley, Jr., Profesor, University of Cincinnati

Introduction

In negotiations for a three-year successor agreement to begin January 1, 2006, the parties agreed to extend current language of 27 contract articles, and reached tentative agreement to changes on three others. They were unable to agree on wages, insurance, holidays, sick leave conversion, Lead Workers, equalization of overtime, and duration. After several bargaining sessions, the union rejected a final offer from the county on February 7, and the parties scheduled an April 27, 2006 fact-finding hearing.

The Bargaining Unit includes fifteen current employees, one part time—all Emergency Resource Technicians. Clermont County, with about 178,000 residents, employs approximately 1,000 individuals full time, including police, corrections, supervisors, and clerical personnel represented by five separate bargaining units as well as unrepresented employees. The Employer and FOP/OLCI have been parties to collective bargaining agreements since 1992 (92-REP-06-0119).

The parties exchanged and submitted pre-hearing position statements that summarized their proposals, and they prepared supporting documents for presentation at the hearing to address the criteria established by the Ohio Public Employees Bargaining Statute in Rule 4117-9-05:

- 1) Past collectively bargained agreements, between the parties
- 2) Comparison of 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, and 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; and,
- 6) Such other actors, 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 the public service or in private employment.”

Fact Finding Hearing: April 17, 2006, Clermont County Administration Building

Mediated Agreements: Immediately prior to the hearing, the fact-finder mediated a resolution of changes to Articles 18, Overtime; 24, Holidays; and 33, Temporary Supervisors and Communications Training Officers. The parties also agreed to Article 42 Duration as well as to current language in Articles 25 and 28 on Sick Leave Conversion.

The fact-finding hearing was then conducted from 10:30 a.m. until 1:20 p.m. with presentation of evidence and argument on Article 22, Wages and Article 30, Insurance. At the conclusion of the hearing, the FOP accepted the employer’s proposed Article 30 on Insurance, leaving Article 22, wages the only unresolved issue requiring a recommendation by the fact-finder.

Agreements

At the hearing, the parties confirmed their tentative agreement on new language for Articles 14.4, Personnel Files; 17 Hours of Work and Overtime; 18, Equalization of Overtime; 20, Shift Premium; 30, Health Insurance; 33 Temporary Supervisors and Communications Training Officers. The Fact-Finder recommends that all those previously negotiated terms be included in the successor agreement.

Article 22 Wages

Since the first agreement in 1992, Emergency Resource Technicians have received annual step increases for the first ten years of employment, based on the eleven step scale provided under state law prior to the start of collective bargaining. Under the current agreement, in addition to a 2.8% increase for each step, the hourly pay rate for each step was increased in the first two years by 3%. In the final year of the agreement following negotiations under a wage reopener, each employee received the annual step increase of 2.8% plus a 2.8% increase applied to each step. Five of the 15 bargaining unit members currently have more than ten years experience, and so are only eligible for the increase applied to the top step. Based on a starting hourly wage of \$13.50 in the first year, Emergency Resource Technicians entry-level annual pay is \$27,310, and top pay after ten years is \$36,8575.60, a 35% increase.

FOP/OLCI Position:

As noted in the table below, the union seeks to reduce from eleven to eight the number of annual steps using the current pay schedule while

- a) granting to each employee a two step increase in each year of the three year agreement,
- b) applying a three per cent annual increase to the top step, and
- c) freezing the entry level step at the current hourly rate of \$13.50

Effective Date	STEP A LESS THAN 1 YR.	STEP B 1-2 YRS.	STEP C 2-3 YRS.	STEP D 3-4 YRS.	STEP E 4-5 YRS.	STEP F 5-6 YRS.	STEP G 6-7 YRS.	STEP H 7-8 YRS.	STEP I 8- 9YRS.	STEP J 9+YRS.
1/1/06	\$13.50	14.57	15.00	15.41	15.84	16.30	\$16.75	\$17.20	\$17.72	\$18.77
									8+YRS	
1/1/07	\$13.50	\$15.00	\$15.41	\$15.84	\$16.30	\$16.75	\$17.20	\$17.72	\$19.33	N/A
								7+YRS		
1/1/08	\$13.50	\$15.41	\$15.84	\$16.30	\$16.75	\$17.20	\$17.72	\$19.91	N/A	

In order to show an ability to pay for the proposed increases, the FOP provided annual reports from the State Auditor indicating that Clermont County had increased reserves and reduced debts for the past several years. The County has regularly maintained a budget surplus and recently invested in land purchases for development. Additional revenues are anticipated from a forthcoming agreement to lease jail space to Hamilton County, and projected population increases.

In support of its proposal to reduce the number of steps, the union provided information showing that other represented employees had fewer steps and reached the top step much sooner than Emergency Resource Technicians.

In support of a three per cent annual increase at the top step, the FOP offered documents indicating that non-represented county employees were being granted comparable increases.

County Position:

The employer proposed a freeze to the current steps for the first year of the agreement, a two per cent increase in the second year, and a wage reopener in the final year.

During negotiations for the wage reopener in the prior agreement, as well in negotiations as for the successor agreement, the County offered higher increases if the FOP would agree to a merit based component. The County would like to extend performance based compensation currently used for unrepresented employees to members of the bargaining units, but the FOP has never agreed.

The employer noted that the Ohio auditor's reports provided by the union despite showing an increase in reserves, actually showed a decline in **unrestricted** general funds. The County Commissioners have mandated that projected operating expenditures not exceed actual operating revenues from the prior year, and they seek to maintain a 25% cash reserve in order to preserve and if possible enhance a good credit rating. After enjoying up to a 6% budget surplus for several years, recent declines in sales tax revenues have led to three years with only a 1 to 3% growth in operating revenue. Rapidly escalating expenses for health care insurance and energy that are difficult to project dictate restraint in making multi-year commitments to personnel. The union's proposal to accelerate progress to the top wage step would have long-term financial consequences.

The closing of the 3M plant and the scheduled closing of a Ford plant employing 2,000 means both lost jobs and tax revenue. The County anticipates major expenses in the coming years for infrastructure development essential to keep pace with adjoining counties seeking to attract new residents and businesses. In order to reduce projected debt service, the County protects its recently upgraded AA2 credit rating by prudent budgeting.

Since 1996, the Employer argues that wages for unit members have increased 32% ahead of increases in the cost of living. Based on actual 2005 general fund operating revenues, the County Commissioners have limited the funds provided to departments for salary increases in 2006. In accord with budgeted increases for other county employees, ten of the 15 bargaining unit members would receive the annual step increase of 2.8% in 2006 despite the proposed first year freeze. The proposed 2% raise in the second year would be added to another 2.8% step increase, and by the final year of the agreement a clearer picture of the county's financial status will facilitate negotiation for a wage reopener.

During negotiations with the FOP in 2005, voters rejected a Children's Services levy renewal, and the County faced uncertainty about whether subsequent rejection in the upcoming May 2006 primary would necessitate a reallocation of \$3 million in general funds to cover mandated expenditures.

Discussion:

The parties agreed to a two-day extension for this fact-finding report to May 3, a day after the May 2 primary. The voters approved a renewal of the Children's Services Levy, so the County will not have to reallocate general funds for that program. The fact-finder declines as a result to endorse the proposed wage reopener in the final year of the agreement, based in part on the small size of the bargaining unit with salary increases for relatively few employees.

Performance Based Component: In both the pre-hearing statement and in testimony at the hearing, the County stressed its determination to include an increase for merit in the wage package. None of the other bargaining agreements in the County include a performance based component, and the employer acknowledged that during negotiations merit assessment criteria were discussed without submission of a formal proposal. In the absence of any specific proposal with draft contract language, the fact-finder's recommendation does not include any merit component.

First Year Increase: In order to pay the annual step increases as well as the annual increase to each step in the 2002-2005 agreement while staying with budget limits for personnel, the County maintained two vacancies in the bargaining unit. The Union used data on overtime hours worked paid at time and a half to show that the County could save money by filling a vacant position. The County has decided to create three new lower paid "call taker" positions with shorter training and probationary periods than those for ERTs, and those new hires may reduce the need for overtime and will be eligible for promotion to ERT.

The recent decline in unencumbered general funds operating reserves to \$12 million resulted from an investment of \$8 million in property the County intends to sell for development. Moody's Investor's Service offers a guideline for "undesignated reserves that equal one to two months of operating expenses or between 5% to 10% of annual revenue," but given fluctuating revenues the County has prudently decided to set aside a larger reserve in accord with more general guidance from Moody's.

Recommendation: The fact-finder concludes that without significant impact on its existing ample reserve, the County has the ability to pay all members of the bargaining unit annual pay increases, including employees at the top step.

Steps: The Employer provided data on salaries for safety dispatcher/communications units from the SERB Clearinghouse Benchmark Report for five counties and twelve cities in the region. The number of steps ranges from 2 to 11, with 6 the median. Other than Clermont, only two had eleven steps. The number of years to reach the top step was only provided for eight jurisdictions that ranged from 3 to 20 years, with 8 the median.

Clermont County's bargaining agreement with the more highly paid, FOP represented sheriff's deputies and court service deputies provides for five steps, and the Corrections Officers agreement has four steps. The Deputy Corporals and Sergeants agreement provides only one step, and the County does not have a step system for its unrepresented employees.

Recommendation: The fact finder concludes that the number of steps should be reduced from eleven to nine in order to bring the Emergency Resource Technicians step scale more in line with other represented employees in Clermont County and in neighboring jurisdictions.

Per Cent Increase: Data on salaries for safety dispatcher/communications units from the SERB Clearinghouse Benchmark Report for five counties and twelve cities in the region shows that the pay differential from entry to top level ranged from 2.7% to 45%. (A more sophisticated analysis of longevity increases would adjust for inflation and base calculations on individuals' actual entry-level pay that was lower than the current starting hourly rate.) Clermont County's bargaining agreement with the sheriff's deputies and court services deputies provides for a 41% increase to the first year entry pay after six years. The Clermont Corrections Officers agreement has an increase of 28% after 4 years.

At the time the prior agreement was negotiated, the County's operating revenues had increased by more than 6% a year for six consecutive years, and the employer agreed to 3% annual increases above additional annual step increases of 2.8% for employees below the top step. In the past four years, the annual operating revenue increases have averaged less than 2%, limiting the County's ability to pay the same level of increase. At the same time, wage increases granted to employees are partially offset by increased health care premiums as the cost of living index has begun to rise.

As a result of a proposed freeze to the entry level hourly wage at \$13.50 for four years, the FOP proposal to raise the top step by 3% each year would take the entry level to top level increase for Emergency Resource Technicians from 35% after ten years to 48% after seven years. In the prior agreement the first year wage was annually increased by 2.8% in line with other steps. The fact-finder assumes that the County proposal for a 2% increase in the second year of the agreement would apply to the entry level step, but that point was not addressed at the hearing or in the written submissions. Entry-level salaries in Clermont County will fall behind Butler County if the first step is frozen at \$13.50 for four years,

Recommendation: The fact-finder recommends

- a) a 2% increase at the entry level step in the second year of the agreement from \$13.50 to \$13.77, and
- b) annual 1.4% increases for three years to all other steps prior to the final step, and
- c) annual increases of 2% for three years at the top step.

By the end of the agreement, the increase from entry level to top step would then be 40% after eight years, just under the six year increase for sheriff's deputies.

Fact Finder Recommended Wage Schedule

ARTICLE 22. WAGES-SCHEDULE OF RATES

Section 21.1. Bargaining unit employees shall receive wage compensation based on assignment and years of service with the Clermont County Communications Center in accord with the following schedule:

Date	<u>Emergency Resource Technician:</u>										
	Step 1 1st yr	Step 2 2d Yr	Step 3 3d Yr	Step 4 4th Yr	Step 5 5th yr	Step 6 6th yr	Step 7 7th Yr	Step 8 8th Yr	Step 9 9th Yr	Step 10 10th yr	Step 11 11th yr
1/1/06	13.50	14.58	14.78	15.18	15.63	16.06	16.51	16.98	17.47	18.58	NA
1/1/07	13.77	14.99	15.19	15.40	15.82	16.29	16.73	17.20	18.95	NA	NA
1/1/08	13.77	15.40	15.61	15.83	16.05	16.48	16.97	17.43	19.33	NA	NA

Section 22.2 Delete

Conclusion:

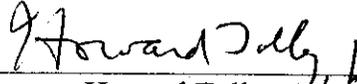
A three page appendix to this report provides text for the mediated Articles 18 on Equalization of Overtime, 24 on Holidays, 30 Insurance, 33 on Temporary Supervisors, and 42 on Duration. Language on other articles accepted by the parties prior to the hearing is attached to the electronic version of this report sent by email.

The fact finder has attempted to resolve the wage issues presented with careful attention to all the evidence and argument presented. If the parties find any substantive error in this report needing correction, a conference call should be arranged to discuss the concern, and a request may be filed with SERB for authorization to adjust the report [O.A.C Rule 4117-9-05(L)]. The Fact Finder appreciates the courtesy extended by all individuals involved in the process.

Professor Howard Tolley, Jr., University of Cincinnati
May 3, 2006

CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the foregoing Fact Finding Report has been served via electronic mail and by regular mail to Barry L. Gray, Staff Representative, Fraternal Order of Police, Ohio Labor Council, Inc., 5752 Cheviot Road, Suite D, Cincinnati, Ohio 45247-7008, and Paul Berninger, C/o Wood & Lamping LLP, 600 Vine Street, Suite 2500 Cincinnati, OH 45202-2491 on this 3rd day of May, 2006. In addition an electronic mail copy was sent to Bob Sander rsander@co.clermont.oh.us Clermont County Human Resources Department 107 E. Main St., Room #322 Batavia, OH 45103


Howard Tolley, Jr.

ARTICLE 18. EQUALIZATION OF OVERTIME

Section 18.1. Short Notice Overtime. When there is a need to schedule bargaining unit members to work overtime with less than forty-eight hours notice, it shall be offered in two (2) or four (4) hour increments as determined by the Employer, and in the following manner:

Step 1: First **Either** in two (2) or four (4) hour increments to unit members on the shift preceding the shift where the absence occurs, and/or as a two (2) or four (4) hour early call-in for unit members on the shift following the shift where the absence occurs.

~~**Step 2:** If no member volunteers to take the overtime opportunity, as provided in Step 1, it shall then be offered to members who are scheduled to be off duty on the day that the absence occurs.~~

Step 2: If no off-duty member **voluntarily** accepts the overtime, as provided in step 1, 2 it shall be assigned to the member or members who are not scheduled off duty with the least number of overtime hours worked (excluding overtime hours worked during voluntary classes or meetings), in two (2) or four (4) hour increments.

- A. **In case of voluntary overtime,** Employees shall be offered overtime based on the total number of overtime hours worked during that calendar year. In **each** step 1, Employees with the least amount of overtime worked during the calendar year, shall be offered the overtime first. In cases where two or more employees have the same number of overtime hours worked, the most senior employee shall first be offered the overtime. In cases of mandatory overtime assignments, as described in Step 32 above, the **ON DUTY** employee with the least amount of overtime hours worked shall be assigned the overtime. In cases where two or more employees have the same number of overtime hours worked, the least senior employee shall be assigned the overtime.
- B. In no case shall an employee work more than twelve (12) consecutive hours in a twenty-four (24) hour period.
- C. No member shall be required to work overtime on two consecutive days except during a countywide declaration of emergency.
- ~~D. Once each quarter employees shall select their overtime availability preference. On this overtime preference form, employees shall notify the Employer of their desire to be contacted, or to not be contacted for overtime on their off-days.~~

Section 18.2. Extended Notice Overtime. When there is a need to schedule bargaining unit members to work overtime with more than forty-eight (48) hours notice, it shall be offered in the following manner:

1. The Employer shall promptly post in a consistent and obvious location the details of the available overtime slot. This posting shall include an opportunity for employees to bid for the available overtime.
2. If more than one employee bids for the same overtime slot, the overtime shall be awarded to the employee with the **highest least** number of **short notice** overtime hours worked (excluding overtime hours worked during voluntary classes or meetings). In cases where two (2) or more employees have the same number of **short notice** overtime hours worked, the most senior employee shall be given the overtime.
3. The bid deadline shall be clearly stated in the posting. The Employer based on operational need, shall select the deadline date.
4. If no employee bids for the available overtime, it shall be assigned to those employees who are qualified to do the job, and in accordance with the procedure set forth in Section 18.1, Step 2 3 of this Article.

Section 18.3. ~~When more than one member volunteers for overtime, it shall be offered to the member with the least number of overtime hours worked. In cases where two (2) or more employees have the same number of overtime hours worked, the most senior employee shall be given the overtime.~~ Nothing in this Article is intended to restrict the right of the Employer to use part-time Employees to meet staffing needs. It is recognized, however, that probationary employees shall not be included in the equalization of overtime procedure.

Section 18.4. The Employer shall make every reasonable effort to correctly follow the procedures set forth in this article. Alleged violations of this procedure may generate grievances by affected employees. However, if the Employer has demonstrated a good faith effort to follow the requirements of this article, the grievance shall not seek a monetary remedy. The remedy sought may include the placing of the aggrieved employee at the top of the list for the next overtime opportunity.

ARTICLE 24. HOLIDAYS

Section 24.1. All full-time bargaining unit employees are entitled to the following ten (10) legal holidays:

New Year's Day	(1 st day of January)
Martin Luther King Day	(3 rd Monday in January)
President's Day	(3 rd Monday in February)
Memorial Day	(Last Monday in May)
Independence Day	(4 th day of July)
Labor Day	(1 st Monday in September)
Columbus Day	(2nd Monday of October)
Veterans Day	(11 th day of November)
Thanksgiving Day	(4 th Thursday of November)
Day After Thanksgiving	
Christmas Day	(25 th day of December)

ARTICLE 30 HEALTH INSURANCE

Section 30.1. Bargaining unit members shall accept and receive county health insurance program and shall make the required employee contribution on the same basis as all other county employees. In the event that the County's contribution, as set forth in Section 2, is increased to the benefit of all other county employees covered by the general county health insurance plan, then such increase shall be made by the County to the benefit of all bargaining unit members.

Section 30.2.

PRO Family
PPO Single
HMP Family
HMP Single

Section 30.3.

Employer shall provide to each bargaining unit member term life insurance in the amount of \$15,000.00.

ARTICLE 33. TEMPORARY SUPERVISORS AND COMMUNICATIONS TRAINING OFFICERS

Section 33.1. TEMPORARY SUPERVISORS. Management may designate selected bargaining unit employees to be Temporary Supervisors. These Temporary Supervisors shall have responsibility for supervising employees on their shift, according to the policies

and procedures of the Communications Center. A policy defining the duties, responsibilities and authority of a temporary supervisor shall be provided to all bargaining unit employees.

Section 33.2. Persons designated as Temporary Supervisors shall receive additional hourly compensation of **one dollar and twenty-five cents (\$1.25)** per hour, for all hours worked.

Section 33.3. Management shall have the sole authority for selecting persons to be designated as Temporary Supervisors, Management shall establish and may from time to time, modify the criteria for selection. These selections and criteria shall not be appealable, nor subject to the grievance or arbitration process.

Section 33.4 COMMUNICATIONS TRAINING OFFICERS. Management may designate selected **ERT's** to be Communications Training Officers (CTO). These CTO's have full responsibility for training probationary employees in the policies and procedures of the Communications Center.

Section 33.5 Persons designated as CTO's shall receive additional hourly compensation of one dollar and twenty-five cents (\$1.25) per hour, for each hour worked in a training assignment.

CTO's shall receive their regular pay when they are not performing a training assignment.

Section 33.6 Management shall have the sole authority for selecting persons to be designated as CTO's. Management shall establish, and may from time to time, modify the criteria for selection. These selections and criteria shall not be appealable, nor subject to the grievance or arbitration process.

Section 33.7 Management shall determine what procedures shall be used to train probationary employees.

ARTICLE 42. DURATION

This Agreement shall be effective from the 1st day of January, 2006, and shall remain in full force and effect until midnight of the last day of December 2008. Should either party desire to terminate or modify this Agreement, they shall give written notice to the other party no later than sixty (60) days prior to December 31, 2008.