

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

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RELATIONS BOARD

FACT FINDING BETWEEN

2006 SEP 29 P 12:01

FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL

AND

RICHLAND COUNTY, OHIO, COMMISSIONERS

FACT FINDER: JACK E. McCORMICK
HEARING: SEPTEMBER 13, 2006
Case No. 05-MED-10-1254

FACT FINDING

FOR THE EMPLOYER:

Harry M. Welsh, Esq.
Renwick, Welsh & Burton
Nine North Mulberry St.
Mansfield, OH 44902

FOR THE UNION:

Mark Drum,
Staff Representative
Fraternal Order of Police
Ohio Labor Council
222 East Town Street
Columbus, Ohio 43215

BACKGROUND

On September 13, 2006, a fact-finding hearing was held in case number 05-MED-10-1254, the Fraternal Order of Police, Ohio Labor Council, Inc. and the Richland County Commissioners (Dog Wardens) at 597 Park Ave. East, Mansfield, OH 44903.

Present at the hearing for the Employer were Kelly Cicolani, David Jordan, and Harry M. Welsh, Esq. For the Union, Arden Stannard, and Mark Drum, FOP representative.

The parties were fully informed of the statutory and administrative rule surrounding Chapter 4701 et seq.

The bargaining unit consists of Deputy Dog Wardens for the County of Mansfield, Ohio, numbering three in total.

Deputy Dog Wardens patrol the county and enforce statutes governing licensing and regulation of dogs with owners, e.g., conduct license checks during complaint calls; warn owners found in violation; issue citations; seize and impounds dogs; investigate claims of dogs destroying private property or livestock; appear in court as subpoenaed. Feed, water, and provide proper care of impounded dogs; maintain sanitary conditions by cleaning and disinfecting bins, floors, food pans; utilize firearms to destroy injured dogs or livestock. Assist general public with the sale of licensing of dogs; accept strays or unwanted dogs; respond to complaints or inquires. Prepare and submits records, reports, and other documentation, e.g., livestock claim reports, work reports (complaints handled-citations issued), respond to telephone requests or inquiries; operate base radio console to receive and

transmit messages. All members of the bargaining unit are sworn personnel and carry firearms. All three members are certified by the Peace Officers Training Academy and meet the definition of "law enforcement officers" as set forth in the Ohio Revised Code.

The issues in dispute are Article 26, section 26.1, Rate of Pay and Article 26, section 26.2, Longevity Pay.

The current bargaining agreement expired on January 14, 2006 and the parties met and engaged in collective bargaining on December 16, 2005; January 5, 2006; February 17, 2006; and March 24, 2006.

DISCUSSION

Longevity Pay

Under the language of the expiring contract each member of the bargaining unit received longevity pay at the rate of \$100.00 for each completed year of service for up to a maximum of ten years of service.

This is consistent with the rate received by other employees of the Sheriff's Office in Richland County, however, Sheriff's Office deputies and civilians have no cap on the longevity and the 911 dispatchers are capped after twenty years of service.

The FOP proposes removing the cap for Deputy Wardens. During the life of the new Agreement. This change would only affect one bargaining unit and would cost the Employer approximately \$900.00.

The Employer neither in its written statement, nor oral presentation provided any argument, nor presented any facts in opposition to the Union's proposal. In view of this fact, as well as the fact that the total cost to the Employer for the life of this contract would be \$900.00, the Fact-Finder makes the following findings:

This Employer has available funds to fund the Union's proposed change to section 26.2 of the prior contract and further there were no facts presented which would justify treating these employees any different than other sworn employees of the Richland County Sheriff's Office and, accordingly, the Union's proposed change is hereby adopted.

WAGES

Under the current wage scale the most senior deputy (hired 2/23/95) is being paid at the rate of \$15.12 per hour. A second deputy (hired 7/7/03) is paid at \$11.50 per hour and the third (hired 8/14/05) is paid \$11.00 per hour. If these pay rates were to remain in place, and if the current step raises were to remain intact, the current cost for these personnel to the Employer through the next three years would be \$236,636 without fringe benefits. (Neither party presented any evidence as to fringe benefits cost to the Employer and therefore they are not being considered by the Fact-Finder).

The Union proposes that the bargaining unit receive wage increases of 4% per each of the three years of a new Agreement and notes that these pay increases are identical to those received by non-striking bargaining members in the County. Further, they

propose that the current step raise structure remain in place in the new contract.

The Employer proposes that the members of the bargaining unit receive a raise of \$.25 an hour for 2006 and no increases for 2007 or 2008. In addition the Employer proposes the removal of all steps as currently listed in Article 26.1 of the contract.

The rationale for the Employer's proposal is that it alleges that the expenses for the Dog Wardens' Office are rising faster than the rate of income and that the carry-over balances for the last few years have been rapidly diminishing. It notes that as of December 31, 2005 the unexpended funds in the Dog and Kennel Fund had a balance of \$121,740.71, while as of August 31, 2006, the unencumbered balance in the fund was \$47,668.80. The Employer asserts that this means that with projected expenditures for 2006 the unencumbered balance on December 31, 2005 will be reduced by 65.3%.

The Employer does not necessarily deny the merits of wage increases for these employees (although it alleges that the current wages are already above those in comparable counties), but bases most of its opposition to the Union's proposal on the availability of funds.

The statutory guidelines and administrative rules require that any Fact-Finder, in making his findings, must certify that he has found sufficient facts regarding availability of funds to support his finding. Accordingly, a detailed and thorough examination of all information available to the Fact-Finder must be conducted.

It is uncontroverted that the Union's proposal for the next three years would bring the Employer's total wage cost for the bargaining unit to \$256,063, or an increase of \$19,427. Further, the FOP provided a budget document indicating that the Employer expects this particular fund to expend \$481,234 in county year 2006. Therefore the Union's proposal would cause a 4% increase in those expenditures over three years.

However, as noted by the Employer, there is an extraordinary expenditure occurring in 2006, which it states, precludes consideration of the Union's current proposal. Recently a new dog pound was constructed which necessitated the Employer to incur bonded indebtedness through 2010. The original amount of the bond is 1.5 million dollars on which the county paid interest only in 2005 of \$34,020. In FOP Exhibit 8 the county in making its estimated budget for 2006 budgeted \$30,000 to be paid on this bond. The Employer now states that it currently intends to make a payment of \$124,000 so that it may reduce the principal as well as accruing interest in this matter. Accordingly, more than all of the diminution of the unencumbered surplus, which the Employer cites as the rationale for not granting the Union's wage proposal, is caused by the County's unilateral decision to triple the amount that it had previously paid on its bonded indebtedness. Furthermore, the Employer states that because of raising interest rates the interest to be paid in 2006 will actually be \$59,574.85, which will necessarily increase the amount to be paid on this bond.

Any entity, public or private, that seeks to reduce long-term indebtedness and the interest thereon, is certainly engaging in a worthwhile goal. Furthermore, this is a political decision which should be left to publicly elected officials. On the other hand, it should not be used, either intentionally or unintentionally, to deny otherwise meritorious wage increases to any county employee. The wage increases proposed by the Union are **less than** \$3,500 each and every year of the contract. In other words, merely by reducing the bond payments by \$3,500 for each of the three years the Union's proposal could be easily funded. Instead this Employer proposes to grant these three members of the bargaining unit pay raises in the amount of \$.0833 per hour each year one of this Agreement. It then attempts to justify this paltry wage increase by their own discretionary decision to increase the payments on the bonded debt. It staggers the imagination to believe that if they made \$3,500 smaller payments in each of the next three years that their total interest costs would be somehow unmanageable.

However, if the Employer's action discussed herein above is incredulous, then the following action is completely inexplicable. The Union, in uncontroverted testimony asserts that prior to 2006 there was a penalty for all dog owners in Richland County who did not renew their dog license by February 1st each year. Recently the County Auditor waived those penalties which historically has brought into the county \$20,000 per year! Certainly it is in the sound discretion of the publicly elected County Auditor to make this decision, however, while the county is bemoaning the reduction

in their unencumbered surplus, it takes a totally unnecessary action which exacerbates the situation. One can only conclude that this county wishes to give preference to scofflaws over their own professional employees. In this regard one is reminded of the child who, after having murdered both his parents, pleads with the sentencing judge for mercy on the grounds that he is now an orphan. These penalties, by themselves, could fund for the three year period of this contract the Union's entire wage proposal.

Accordingly, the Fact-Finder makes the following findings:

As a factual matter there are sufficient funds available to this governmental unit to fund the wage proposals of these employees.

However, the findings that there are funds available to fund a party's proposal can never be sufficient, standing on its own, to grant a wage proposal. The administrative rules require additional findings.

In FOP Exhibit 3 the Union points out that the average increases from 1996 to 2005 for the State Employment Relations Board Annual Wage Settlement Report was 3.58%. Another external comparable is contained in FOP Exhibit 2 which shows that for POTA certified dog wardens, Richland County's starting salary ranks below all other counties except Portage County. Furthermore, it's top salary ranks below several counties where the dog wardens are not POTA certified. As it relates to internal comparables the Employer was not able to point to any employee of the county (union or otherwise) who received wage increases amounting to \$.0833 per hour for three years. On the contrary Richland County granted its

Sheriff's Department 4% raises in its recent contract with that unit. (It should be noted that the bargaining unit members are paid from a dedicated fund and not the general revenue fund. It is also noted that there is nothing that precludes, if necessary, the county from supplementing the Dog and Kennel Fund from general revenue, although, the Union's proposal herein would not make that necessary).

However, one must remember not only does the Employer propose \$.0833 an hour raises for the next three years, it also proposes to eliminate all step increases for these employees which were bargained for in the previous contract. This is a give-back. The Employer's representative argued that this did not amount to a "pay-cut", but that is clearly wrong on two counts. Under the Employer's proposal the Senior Dog Warden would receive increases of .005% in each of the next three years. The other two would receive approximately .007%. Assuming an inflation factor of 2% the Employer's proposal does not even come close to covering inflation. That is, in effect, a pay-cut. The County's representative further argues that it was actually a "pay increase" because they would be seeing more in their check. While it is true that they would be receiving between .005% and .007% increases they would also be giving back the step increases that they previously had bargained for in a prior contract. One may call this a "give-back" while another person may call it a "pay-cut". However, you can call a pig a rose, but it still remains a pig. Raises of \$.0833 per hour over each of the next three years and the loss of step increases can

hardly be called a "wage increase". The County's position in this matter is factually untenable. Accordingly, the Fact-Finder makes the following recommendation:

Members of the bargaining unit shall, effective January 14, 2006 and continuing through January 14, 2009, receive wage increases of 3% each year of this contract.

Furthermore, the Fact-Finder makes the following recommendation:

The step increase provisions set forth in the contract between the parties expiring on June 14, 2006 shall be adopted in the new bargaining agreement, adjusted for the recommendation immediately herein above.

The undersigned hereby certifies that there are sufficient facts present evidencing the availability of the funds to this Employer to fund the recommendations contained herein.



Jack E. McCormick
Fact-Finder

September 18, 2006
Columbus, Ohio

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Fact-Finder's Report and Recommendation was mailed, via ordinary mail, postage prepaid, this 18th day of September, 2006, to:

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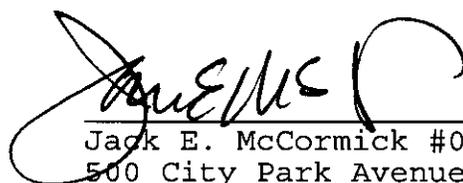
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