

**IN THE MATTER OF FACT-FINDING**

**BETWEEN**

**OHIO ATTORNEY GENERAL**

**AND**

**FRATERNAL ORDER OF POLICE  
OHIO LABOR COUNCIL INC.  
UNIT 46**

**BEFORE: E. WILLIAM LEWIS**

SERB Case # 06-MED-04-0456

PRINCIPAL ADVOCATE FOR THE ATTORNEY GENERAL

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**AUTHORITY**

This matter was brought before Factfinder E. William Lewis, in keeping with applicable provisions of ORC 4117 and related Rules & Regulations of the Ohio State Employment Relations Board. The parties have complied in a timely manner with all procedural filings. The matter before the Factfinder is for consideration and recommendation based on merit and fact according to the provisions of ORC 4117.

Committee members in attendance:

For the Employer:

Mr. James Canepa	First Assistant, Attorney General
Mr. John Guthrie	Chief Deputy, Attorney General
Ms. Megan Kish	Human Resources Director
Mr. David J. Meyer	(BCI) Special Agent Supervisor
Ms. Keesha Mitchel	Sr. Deputy, Health Care Fraud
Mr. Steven W. Shierholt	Executive Director OPOTA

For the Union:

Mr. Gary Fossaceca	Unit 46, Chair—BCI Special Agent
Mr. James Hawke	Special Agent BCI
Mr. Andy Mulinix	Special Agent BCI
Mr. David A. Peters	Instructor, OPOTA
Mr. Mark A. Rohrer	Special Agent, Health Care Fraud

## **BACKGROUND:**

The Fact Finder was appointed to hear this SERB Case in accordance with ORC, Section 4117.14. The Ohio Attorney General, hereinafter known as the Employer, and the Fraternal Order of Police, Ohio Labor Council, hereinafter known as the Union, are in the process of bargaining a successor Agreement. The current Contract, which expired on June 30 2006, has been extended by mutual agreement. The Union represents a bargaining unit composed of approximately 120 employees. The bargaining unit members work in various units within the Attorney General's office. Members include BCI Special Agents, who are sworn personnel employed by the Bureau of Criminal identification and Investigation, which provides assistance to local law enforcement personnel in the investigation of crimes; Medicaid Special Agents employed by the Health Care Fraud Section; instructors at the Ohio Peace Officers' Training Academy; and Environmental Background Investigators, employed by the Environmental Protection Section.

The parties began bargaining on a renewal Agreement on June 6, 2006. They held seven negotiation sessions (two with FMCS mediation) prior to appealing to Fact-finding. The first Fact-finding hearing was held on September 12, and was devoted entirely to mediation. Two additional Fact Finding meetings were held on September 22 and October 16, primarily in mediation, with time set aside on 9/22 to conduct a Fact-Finding Hearing. All issues (Articles) were resolved through negotiations or mediation except for four, Articles 42, 45, 47 and 55.

The format for this report for addressing unresolved issues will be to list an Article, followed by a brief review of the position of each party, then a Factfinder discussion. My recommendation will be accompanied by the Agreement language, when appropriate, reflecting the recommended changes.

When addressing the unresolved issues, as required by ORC 4117.14, pursuant to Division (C)(4)(e), the Factfinder will consider the following criteria:

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

## UNRESOLVED ISSUES

### ARTICLE 42      DISABILITY LEAVE

#### **EMPLOYER POSITION:**

#### **Section 42.1 Eligibility** (change to read as follows)

**A fulltime permanent employee with a disabling illness, injury or condition that will last more than twenty-one (21) consecutive days may be eligible for disability leave. Except as otherwise provided in this Article, eligibility and administration of disability benefits shall be pursuant to current Ohio Laws and the Administrative Rules of the Department of Administrative Services.**

**If an employee has received a notice of predisciplinary conference prior to filing a request for benefits under this Article, the Employer may proceed to process and impose such discipline prior to the employee receiving any disability benefits.**

#### **Section 42.2 Waiting Period.** (change to read as follows)

Disability leave benefits shall commence with the employee's first scheduled workday following a waiting period of **twenty-one (21)** consecutive calendar days. The waiting period shall commence the day after the occurrence of the disabling illness, injury or condition.

**Section 42.3 Standard.** (change first paragraph to read as follows, the rest of this Section 42.3, current language)

An employee eligible for disability leave benefits under this Article may receive disability leave benefits for an initial period **up to** three months if it is determined that the employee is incapable of performing the duties of the position held by the employee immediately prior to becoming disabled. If during that initial three-month period it is determined that the employee is capable of performing the duties of the position held by the employee immediately prior to becoming disabled, then disability benefits shall be discontinued.

**Section 42.4 Return to Work.** (current language)

**Section 42.5 Length of Disability.** (change to read as follows)

Disability leave benefits shall remain payable until it is determined that the employee is no longer disabled or for a maximum of **eighteen (18) months**, whichever is earlier.

**Section 42.6 Subsequent Disability.** (current language, except change 3<sup>rd</sup> paragraph to read)

A related disability claim separated by a return to work of six months or less will be considered as the same disability claim. Benefits may be payable from the first day of the subsequent disability if the employee remains disabled and off work for at least **21** days.

**Section 42.7 Application for Disability Leave Benefits.** ( first paragraph, change 45 days to 28 days, balance of Section current language)

**Section 42.8 Conditions Precluding Receipt of Disability Leave Benefits.** (current language)

**Section 42.9 Notice of Disqualification from Receipt of Disability Leave Benefits.** (current language)

**Section 42.10 Payment of Disability Leave benefits.** (change first paragraph to read as follows)

Disability leave benefits will be paid at 70% of the employee's base rate of pay **for the first six months and 50% for the next twelve months up to a lifetime maximum of thirty-six (36) months.** For the purpose of determining disability leave benefits, an employee's base rate of pay shall be determined as of the date the employee becomes disabled.

--Balance of this Section to be current language.

**Section 42.11 Appeal of a Denial.** (current language)

**Section 42.12 Disability Separation.** (first two paragraphs, current language, balance of this Section, delete)

**Section 42.13 Reinstatement Rights.** (change first paragraph to read as follows) An employee given disability separation shall have the right to reinstatement within eighteen (18) months after having been given a disability separation to a position in the classification the employee held at the time of separation. If the classification the employee held at the time of separation no longer exists or no longer is utilized by the Employer, the employee shall be placed in a similar classification. If no similar classification exists the employee will be laid off.

( second paragraph, current language)

(Change third paragraph to read as follows)

An employee given a disability separation subsequent to a leave of absence without pay for the same disabling injury or illness shall retain the right to reinstatement for a period of up to **eighteen (18) months** from the time the employee began a leave of absence without pay.

**Section 42.14 Request for Reinstatement.** (change to read as follows)

Any request for reinstatement following a disability separation must not be later than the **eighteen (18) months** following: a disability separation, a leave of absence followed by a disability separation, or the period the employee received disability leave benefits followed by a disability separation. The request must be in writing.

**Section 42.15 Medical Examination.** (current language)

**Section 42.16 Failure to be Reinstated.** (current language)

**Section 42.17 Early Reinstatement.** (current language)

**Section 42.18 Notice of Return Date.** (current language)

**Section 42.19 Abuse of Disability Separation.** (current language)

**Section 42.20 Disability Retirement.** (current language)

**Section 42.21 Probationary Period of an Employee Receiving Disability Leave Benefits.** (current language)

**Section 42.22 Civil Service Examination.** (current language)

**Section 42.23 Disability Leave Benefits After Disability Separation.**  
(change to read as follows)

Any employee who is given a disability separation under the provisions of Section 12, and who is eligible to receive disability leave benefits under the provisions of this article may apply for disability leave benefits within 30 calendar days after the date the employee is given a disability separation **if that employee has not previously applied for disability leave benefits.**

**Section 42.24 State Law.** (change to read as follows)

**Where this Article specifically addresses a provision of the disability leave provisions it shall supersede the provisions of Ohio Administrative Code Chapter 123:1-33.**

In conjunction with its herein contained proposal on Article 42, and contingent upon the recommendation of the Employer's position on Article 42, Disability Leave, the Employer also proposes that a new one-half step be added to pay range 32. The amount of the one-half step is to be 2% (two percent) greater than the top step (step 8), calculated from the new rate effective with the pay raises recommended by the Factfinder.

**UNION POSITION:**

Current language.

**DUSCUSSION:**

The Employer's proposals on this issue were made as a package. The Employer also argues that the wage package was offered to other bargaining units, specifically OCSEA/OCB, partially as a trade off for Employer proposals regarding Disability Leave. Evidence shows (EE 10) that other Unions contracts negotiated by the Employer this year shows significant changes to some disability provisions. With the exception of Unit 48 of the AG's office, other State disability leave contract provisions are more restrictive than this one. Nearly all of the internal comparables have a 70%-

50% benefit split, along with a lifetime maximum. The lifetime maximum ranges from a minimum of twelve months to a maximum of forty eight months.

Evidence further shows that usage of this provision has been very limited by members of this bargaining unit (EE 11). No bargaining unit member has used more than ten months, in recent years.

**RECOMMENDATION:**

Employer's position, including a one-half step 2% (two percent) greater than the top step (step 8) of pay range 32, calculated from the rate effective with the pay raises.

**ARTICLE 45                      WAGES**

**UNION POSITION:**

**1. Section 1. Schedule of Pay Adjustments.**

- a. A general wage increase of 7% (seven percent), retroactive to the pay period that includes July 1, 2006.
- b. 7% (seven percent) general wage increase effective the pay period that includes July 1, 2007.
- c. 7% (seven percent) general wage increase effective the pay period that includes July 1, 2008.

**2. Section 2. Step Movement.**

Effective with the pay period including July 1, 2006, each member of the bargaining unit who would have been eligible for a step increase between July 1, 2003 and June 30, 2005, shall have the missing steps restored and will continue normal step movement.

- 3. Increase the following classifications one pay range:  
Certification Officer  
Peace Officer Training Compliance Officer

**4. Section 5 Senior Special Agents.**

**New:** Senior Special Agents in BCI will be paid an additional 5% (five percent) of their base rate of pay.

**EMPLOYER POSITION:**

**Section 45.1 Schedule of Pay Adjustment.**

- a. Effective with the pay period that includes the first full pay period following execution of the Agreement, pay schedules shall be increased by 3% (three percent).
- b. Effective the pay period that includes July 1, 2007, pay schedules shall be increased by 3½ (three and one-half percent).
- c. Effective with the pay period that includes July 1, 2008, pay schedules shall be increased by 3½ (three and one-half percent).

All other **Sections of Article 45:** current language

**DISCUSSION:**

The Employer's wage proposal represents the settlement wage package agreed to with its other Unions, that have settled in 2006 negotiations. Although the Union argues that pattern bargaining doesn't necessarily apply to law enforcement, recent survey data, including law enforcement, shows the Employer's offer to be more than competitive. Furthermore, the Union's wage proposal is not commensurate with bargaining settlements in recent years. The criteria comparisons for Factfinder recommendations does not substantiate the Union's proposal.

However, with regards to the effective date of the wage increase, the Factfinder can find no economic justification for not making the first year wage increase retroactive.

Regarding the Union's proposal to restore missed steps during the period of July 1, 2003 and June 30, 2005, the Factfinder must assume that during that period a need was addressed jointly by the parties. A resumption of the step progression has occurred effective July 1, 2005, and all employees are currently moving on an annualized basis. Although those employees in the bargaining unit during that period were frozen, thus delaying their progression to top step, they still will, or have reached top step.

Furthermore, the internal comparables do not show revisions to this provision, as the Union proposes.

The parties have not reached agreement on the issue of position reclassification, for the Jobs of Certification Officer and Peace Officer Training Compliance Officer. No meaningful, substantive evidence or data was submitted to the Factfinder that motivates him to substantiate the Union's proposals. However, in the Factfinder's opinion, issues of this nature can be addressed during the life of the Agreement under Articles 11 and 29.

The FOP's proposal to increase the pay of Senior Special Agents in BCI, has, in the Factfinders opinion, been jointly and substantively addressed by the parties with the addition of the one-half step for pay grade 32. All of the BCI Senior Special Agents are in pay range 32.

**RECOMMENDATION:**

**Section 1. Schedule of Pay Adjustments.**

Pay adjustments under this contract are to be as follows:

- a. Effective with the pay period that includes July 1, 2006, for active employees in the bargaining unit as of the date of ratification, pay schedules shall be increased 3%.
- b. Effective with the pay period that includes July 1, 2007, the pay schedules will be increased 3 ½%.
- c. Effective with the pay period that includes July 1, 2008, the pay schedules shall be increased 3 ½%.

Pay schedules reflecting the foregoing increases are attached hereto.  
( calculations are to be executed by the parties )

**Section 2 Step Movement.** Current language

**Section 3 Promotions.** Current language

**Section 4 Pay Range Assignments.** Current language

**Section 5 Senior Special Agents.** Current language

## **Article 47      LONGEVITY PAY**

### **UNION POSITION:**

1. Restore longevity increases frozen during the current contract.
2. Credit current bargaining unit members with previous service with State of Ohio and/or its political subdivisions in the determination of length of service for the computation of longevity.

### **EMPLOYER POSITION:**

Current language

### **DISCUSSION:**

These bargaining unit employees are approximately 4% to 35% ahead of what other State bargaining unit employees might receive in longevity pay, if other bargaining unit employees were compensated on a percentage of their schedule rate of pay (unit 46) in stead of their base rate of pay. To restore the July 1, 2003 to June 30, 2005 freeze on longevity progression, would further exacerbate the comparable differential. As stated before, the progression freeze does not deny employees getting to the maximum of 10%, the current language only delays them up to a maximum of two years.

Prior Employer service only to be counted for the purpose of computing longevity, has been a provision in this contract going back to at least 2000, according to evidence and testimony. Longevity, in the Factfinder's opinion, is a mutual reward, for loyalty and service. Although the Union argues it would help recruitment, there are much more effective ways of recruitment enhancement. There was no internal or external data submitted to convince the Factfinder that the Employer's provision was out of step.

### **RECOMMENDATION:**

Current language.

## ARTICLE 55 DURATION

### EMPLOYER POSITION:

#### Section 55.1 Effective Date.

The effective date of this Agreement shall be the date on which it is ratified and approved and executed by the parties hereto. It shall remain in full force and effect through June 30, 2009.

#### Section 55.2 Execution.

The parties have caused this Agreement to be executed this \_\_\_\_\_ day of \_\_\_\_\_.

### UNION POSITION:

#### Section 55.1 Effective Date.

The effective date of this Agreement shall be July 1, 2006. It shall remain in full force and effect through June 30, 2009.

#### Section 55.2 Execution.

The parties have caused this Agreement to be executed this \_\_\_\_\_ day of \_\_\_\_\_.

### DISCUSSION:

This was a mutual issue. As stated earlier in this recommendation, the Factfinder has seen no convincing arguments or evidence, not to make the wages retroactive. However there are other provisions, either agreed to or being recommended, that retroactivity would be an unnecessary problem for, or complexity to the parties.

### RECOMMENDATION:

- 1.) The effective date of this Agreement shall be the date on which it is ratified and approved by the parties hereto, except, that upon ratification and approval, the first year wage increase will be retroactive to the pay period including July 1, 2006, for

all active employees as of the date of ratification and approval. This Agreement shall remain in full force and effect through June 30, 2009.

2.) The parties have caused this Agreement to be executed this \_\_\_\_\_ day of \_\_\_\_\_.

### SUMMARY

The Factfinder enjoyed working with the parties in mediation and the Hearing. I would like commend the parties for their efforts to resolve the unresolved issues. I hope the recommendations contained in this Report will allow the parties to continue their positive labor-management relationship.

To the best of my knowledge, this Report and its included recommendations complies with applicable provisions of ORC 4117 and its related Rules and Regulations adopted by the State Employment Relations Board.

During negotiations, mediation and fact-finding the parties reached tentative agreement on many issues. These tentative agreements, along with the sections of the current Agreement not negotiated and/or changed are hereby part of the recommendations contained in this Report.

Respectfully submitted and issued in Columbus, Ohio this 31<sup>st</sup> day of October, 2006.



E. William Lewis  
Factfinder