

STATE EMPLOYMENT
RELATIONS BOARD

2007 JAN 19 P 1:00

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January 17, 2007

Edward E. Turner
Administrator, Bureau of Mediation
State Employment Relations Board
65 East State Street, 12th Floor
Columbus, Ohio 43215-4213

Re: **Fraternal Order of Police, Ohio Labor
Council, Inc., and MH Corrections
Center, 06-MED-07-0806**

Dear Mr. Turner:

Enclosed is my fact-finding for the above captioned contract negotiation.

Very truly yours,



Philip H. Sheridan, Jr.

PHS/ps
Enclosure

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

2007 JAN 19 P 12:59

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

:

Employee Organization,

:

-and-

: Case No. 06-MED-07-0806

MH CORRECTIONS COMMISSION,
DBA MULTI-COUNTY CORRECTIONS
CENTER

:

:

Employer.

:

FACT-FINDING

Philip H. Sheridan, Jr., Fact-finder

Issued: January 17, 2007

Thomas A. Frericks
Frericks and Howard, LPA,
152 East Center Street
Marion, Ohio 43302-3878

For The Employer

Dennis Sterling
Staff Representative
Fraternal Order of Police,
Ohio Labor Council, Inc.
222 East Town St.
Columbus, Ohio 43215

For The Employee Organization

STATEMENT OF THE CASE

The parties, the MH Corrections Commission, DBA Multi-County Corrections Center, represented by Thomas A. Frericks, Esq., and the bargaining unit, Fraternal Order of Police, Ohio Labor Council, Inc., including 39 full-time Corrections Officers, represented by Dennis Sterling, Staff Representative, have entered into negotiations for a successor contract to the contract that expired December 31, 2006.

The parties met and bargained in good faith with seven meetings between the parties. The parties without dispute, or through negotiation, reached apparent tentative agreement on all of the Articles that were negotiated. The tentative agreement was submitted to the parties and the bargaining unit voted to reject the contract

Pursuant to R.C. §4117.14 and Admin. R. 4117-9-05, the State Employment Relations Board appointed Philip H. Sheridan, Jr., 915 South High Street, Columbus, Ohio, as fact-finder.

The parties agreed to a fact-finding hearing on January 4, 2007, and the meeting was convened at the Multi-County Corrections Center in Marion. In addition to their representative, Dale Osborn, the Director, appeared at the hearing on behalf of the Commission. In addition to their representative, Drema K. Arthur, First Chairperson, Larry Smith, Second Shift union representative, Sheila Moore, First Shift contract negotiation committee, and Mark Scranton, F.O.P.-O.L.C. representative observer, appeared on behalf of the bargaining unit. The parties and the fact-finder discussed the procedure to be followed.

The parties decided that mediation would not be appropriate given the vote of the bargaining unit. The parties submitted the matter upon statements, documents, and arguments presented to the fact-finder.

In accordance with the provisions of R.C. Chapter 4117, the parties provided me with a copy of the current contract, the issues that have been resolved, and each party's proposal on the remaining issues. In issuing this fact-finding report, I have given consideration to the provisions of R.C. Chapter 4117 and, in particular, the criteria contained within Admin. R. 4117-9-05(I).

THE POSITION OF THE PARTIES AND RECOMMENDATIONS

The parties proposed no changes in Articles 1, 7, 10, 13, 15, 21, 22, 23, 24, 26, 27, and 28. I recommend adoption of the unchanged Articles in accordance with the parties' agreement.

At fact-finding the parties agreed to Article 25, Duration of the Agreement from January 1, 2007 through December 31, 2009. The parties had a difference of opinion on the remaining Articles that are tentatively agreed. There is consensus that a tentative agreement has been reached on Articles 2, 3, 4, 5, 8, 9, 17, and 20. The union argues that there is also tentative agreement on Articles 11 and 18, but management argues that the dispute between them over Article 14, Family Medical Leave, also affects Article 11, Hours of Work and Overtime, and Article 18, Vacation. I recommend the adoption of the articles tentatively agreed, except for Articles 11 and 18, which will be considered along with Article 14.

ISSUES IN DISPUTE

Article 6, Health and Safety

The Commission's position: Management takes the position that current contract language is appropriate. Management is making adequate provisions for safe working conditions and staffing levels are at management discretion under the Management Rights Article of the Contract. Despite the bargaining unit's argument, the Fire Policy does not mandate minimum staffing levels. The bargaining unit has made no complaints, pointed to no specific recurring problems, and filed no grievances over this issue.

The bargaining unit's position: The bargaining unit points to the tentative agreement that its members rejected, which contained Section 6.7, a requirement for staffing of seven corrections officers at all times, not including the officer in charge or a lieutenant. According to the union, the Center's fire policy requires 9 total employees including management and office staff to properly administer the fire policy.

Recommendation: I recommend the language of the expired contract. My examination of the fire policy as submitted by the Commission indicates that it states the duties of every employee who could be at work during a fire emergency, and I find no requirement for a certain number of staff. A lack of complaints, reported problems, or grievances satisfies me that the bargaining unit should rely on negotiation for a change in this section. The changes in Sections 6.5 and 6.6 are not in dispute and should be adopted.

Article 12, Wages

The Commission's position: Management proposes a 10 percent wage increase across-the-board in the first year of the contract, a 3 percent wage increase across-the-board effective January 1, 2008, and an additional 3 percent wage increase across-the-board

effective January 1, 2009. The only exception would be that the two Corrections Officers who are being paid more than any of the other Corrections Officers would not receive raises until the other employees with the same seniority at the Center reach the higher paid Officers' current wage rate. The Commission argues that these generous increases correct the acknowledged wage issues raised by the Corrections Officers and provide equal pay for equal work. The substantial increases in health care costs have also been partially funded by management, and the increases proposed by the bargaining unit are so high as to be substantially above any reasonable increase. Such an action would not be acceptable by the Marion or Hardin County Commissioners, who approve and fund the Center's budget.

The bargaining unit's position: The bargaining unit proposes a \$2.50 per hour wage increase across-the-board in the first year of the contract, effective January 1, 2007, a 5 percent wage increase across-the-board effective January 1, 2008, and a 5 percent wage increase across-the-board effective January 1, 2009. The bargaining unit proposes these increases for all members of the bargaining unit even though such an increase perpetuates and worsens the disparity between the two highest paid corrections officers and the remaining 37 members. No one received a raise in the first two years of the last contract. The union presented comparables from similar size county jail operations and from surrounding counties that it alleges support its wage increase proposals. The bargaining unit is currently losing members to higher paying corrections jobs in surrounding areas, and over 50 percent of members receive reduced cost lunches for their children and other public assistance.

Recommendation: I recommend an across-the-board wage increase of 10 percent, effective January 1, 2007, an across-the-board wage increase of 4 percent, effective January 1, 2008, and an across-the-board wage increase of 4 percent, effective January 1, 2009.

It appears to me that the major funding source for the Commission, Marion County, has a healthy carryover balance of about 15 percent, which can support the wage increases I recommend. The Commission's proposal satisfied me that more than a cost-of-living increase was acceptable, and I increased the last two year's increases by 1 percent to offset the expected continued rise in health care costs.

After consideration, I recommend the Commission's position with respect to the two higher paid employees. The union's position attempts to represent all of the members of the bargaining unit equally by having everyone receive the same increase, but I think equal pay for the same work within the same classification and pay scale benefits the other 37 members of the bargaining unit more than maintenance of the status quo.

Article 14, Family Medical Leave

The Commission's position: Management proposes a change in Section 14.4 that it alleges is necessary to clarify the order in which sick, compensatory and vacation leave must be taken when the bargaining unit member qualifies for and applies for Family Medical Leave. The proposed language requires the use of available compensatory time, accrued vacation time, and then accrued sick leave (if the reason for the leave qualifies the member for sick leave) in that order. The Commission also argues that if I propose some other language in this section then Sections 11.4, 11.5, 18.3(H), and 18.3(I) must also be changed because changes in all were a part of a package agreed to in the original tentative agreement.

The bargaining unit's position: The bargaining unit argues that the language of Section 14.4 is clear and that the members should have the option of using sick leave first if the Family Medical Leave reason would support sick leave usage. The bargaining unit alleges that the Family Medical Leave Act supports its position. The bargaining unit objects to the Commission's position with respect to the other sections mentioned in the Commission's written and oral presentations because of alleged failure of notice on those issues.

Recommendation: I recommend revising Section 14.4 to read as follows:
"Bargaining unit employees are required to use accrued leave when they apply for Family Medical Leave. The accrued leave shall be used in the following order: accrued compensatory time, accrued vacation time, and then accrued sick leave, except that the bargaining unit member may choose to use accrued sick leave first when the reason given for using Family Medical Leave would qualify for use of sick leave."

Neither party presented argument or evidence that supported the changes in Sections 11.4, and 11.5, and the additions of Section 18.3(H) and 18.3(I). The issues were raised in the Commission's presentation to me that was served on the union, so I believe they are properly before me for determination. With nothing to guide me, I recommend the language of the expired contract for Sections 11.4 and 11.5, and removal of Sections 18.3(H) and 18.3(I).

Article 16, Sick Leave

The Commission's position: Management proposes a change to Section 16.4 as follows: "Sick leave shall be charged in minimum units of one (1) hour and paid at Eighty Percent (80 %) of the employee's current hourly rate." The employer asserts a serious

concern with continued usage of large amounts of sick leave by bargaining unit members, and proposes the above quoted language as a remedy that will encourage employees to return to work when they are using sick leave as a convenience rather than as it should be used.

The bargaining unit's position: The bargaining unit proposes no change to the existing language in the expired contract. If management believes that there is a serious problem with "abuse" of sick leave the employer has agreed procedures in place for correction of unacceptable behavior. The bargaining unit feels this proposal "throws out the baby with the bathwater" especially when there has been significant improvement after the positive incentive offered to employees who do not use any sick leave for a quarter. This would be an undeserved punishment for chronically ill members or those with significant family obligations.

Recommendation: I recommend the language of the current expired contract. This sort of change should be implemented through the give and take of negotiation. Both parties have significant interests involved, and I don't know the details of the work force in order to determine how significant management's and the bargaining unit's concerns are concerning current usage. Such a proposal is not unknown. Parts of the State of Ohio have a contract in which the first 40 hours of annual sick leave used is paid at 100% pay, the next 40 hours of sick leave used is paid at 70%, and then the remainder of sick leave used in the year is paid at 100%. Ultimately, although I acknowledge the difficulty of disciplining employees who truly abuse their leave, it is possible with effective supervision and use of the tools already provided in the contract.

Article 19, Health Insurance

The Commission's position: The employer reserves the right at all times under the collective bargaining agreement to select the health insurance provider and to modify the coverage, benefits, and conditions of such policies. The Commission "piggybacks" onto the Marion County Plan for health insurance. This year's premium was an increase of more than 37 percent for a plan with higher deductible amounts. Last year the Commission paid 75% of the deductible into the employee's Health Savings Account. The Commission proposes paying 60% of the deductible into the Health Savings Accounts over the life of the contract. The net paid by the Commission still amounts to significantly more than the Commission paid for each employee in 2006. The Commission continues to pay 85% of the insurance premium. The Commission is willing to decrease the waiting period for new employees to qualify for health insurance to 60 days and to qualify for dental insurance to 120 days.

The bargaining unit's position: The bargaining unit proposes a 30 day waiting period for both health and dental insurance for new employees. The bargaining unit understands the necessity of participating in the costs of its benefits, and has agreed to pay 15% of the insurance premiums. However, the establishment of the Health Savings Accounts and the increased deductible amounts has a significant impact on bargaining unit members' budgets. The members argue that the employer should continue to pay 75% of the deductible amount into each member's Health Savings Account.

Recommendation: I recommend the bargaining unit's proposal that makes new employees eligible for health insurance coverage after 30 days and the Commission's proposal that makes new employees eligible for dental insurance after 60 days. The

Commission's presentation convinces me that the increases in its costs for health insurance support its position with respect to payment into the Health Savings Accounts at 60% for the term of the contract.

CONCLUSION

I recommend that the parties adopt the tentative agreements reached by them. The parties cooperated in presenting their positions to me, and in reaching tentative agreement on all of the issues. If the parties are unable to accept my recommendations they are capable of negotiating a successful agreement.

Respectfully submitted,



PHILIP H. SHERIDAN, JR.

Fact-finder

S.C. #0006486

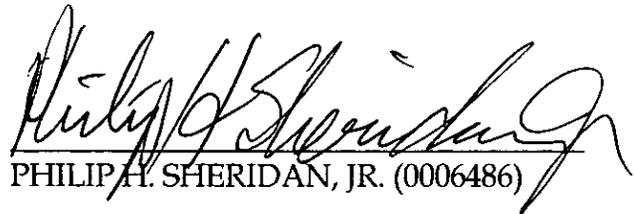
915 South High Street

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CERTIFICATE OF SERVICE

A copy of the foregoing Fact-Finder Report was served by Regular U.S. Mail and by E-mail transmission this 17th day of January, 2007, to the principal representatives of the parties and by Regular U.S. Mail, postage prepaid, to State Employment Relations Board, 65 E. State St., 12th Floor, Columbus, OH 43215-4213.


PHILIP H. SHERIDAN, JR. (0006486)