

STATE EMPLOYMENT
RELATIONS BOARD

2007 AUG -3 A 11:46

IN THE MATTER OF FACT FINDING

BETWEEN

**THE FRATERNAL ORDER OF POLICE
OHIO LABOR COUNCIL, INC.
CAPITAL CITY LODGE NO. 9**

AND

FRANKLIN COUNTY SHERIFF

**SERB CASE NO. 06-MED-⁰⁹~~06~~-0968
Unit I: Civilian Employees**

ADVOCATE FOR THE EMPLOYER:

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ADVOCATE FOR THE UNION:

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INTRODUCTION STATE EMPLOYMENT
RELATIONS BOARD

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The issues in dispute before the fact-finder are wages, shift differential, service credit, lump sum service credit, training compensation and Injury leave. The parties to this dispute are the Franklin County Sheriff and the Fraternal Order of Police. The Employer in this case is the Franklin County Sheriff's Department which is located in Franklin County Ohio. It has law enforcement responsibilities for all unincorporated areas located in Franklin County and for operation of County jails. The Union is FOP, Capital City Lodge No. 9, which represents four bargaining units within the Employer's jurisdiction: Deputies, Unit I Civilian Employees, Unit II Patrol Communications Technicians, and Unit III Professionals. This fact-finding involves Unit I Civilian Employees. Patrol Communication Technicians are responsible for all 911 calls, dispatching fire, medical, law enforcement and emergency responses within Franklin County. The parties have had a collective bargaining relationship since late 1997, when Unit II became certified under the authority of the State Employment Relations Board.

On February 12, 2007, following several negotiation sessions held in late 2006 and early 2007, the parties with the assistance and adoption of proposals formulated by a SERB appointed mediator reached tentative agreement on all of the unresolved issues. The Union membership, by a wide margin, subsequently rejected the tentative agreement leading to the fact-finding hearing that was held April 19, 2007. On that same date a fact-finding hearing was held for Unit II, Patrol Communication Technicians.

The rejection of the tentative agreement, as stated in the Employer's Position Statement, does considerable damage to the trust placed in the negotiations process. According to the facts, this is the second time a tentative agreement, presumably reached in good faith, was rejected by the bargaining unit. What is particularly troubling is that the most recent rejection involved the assistance of a professional mediator. This pattern of rejection will obviously affect future negotiations. The parties will be particularly reluctant to deal openly with one another.

The rejected tentative agreement presents the fact finder with the burden of attempting to render a report that is reasonable and follows the statutory criteria. The burden of a rejected tentative agreement falls upon the party who experienced the rejection. The Union in this matter carries the burden of demonstrating why the fact finder should render a decision on issues the parties themselves once agreed were reasonably resolved. The statutory dispute resolution process is intended to encourage and not discourage collective bargaining. It is meant to narrow the parameters of the dispute and not widen them. Therefore, the reintroduction of issues that were withdrawn during collective bargaining or the introduction of new issues never presented in negotiations run contrary to good faith bargaining.

The professional demeanor and conduct of the advocates from both bargaining teams demonstrated their commitment to law enforcement and the employees who serve the Department.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C) (4) (E) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement.
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.

These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made.

OVERALL RATIONALE FOR DETERMINATIONS

Although perceptively better than in the earlier part of the decade, Ohio's economy remains uncertain as does the financial outlook for many Ohio public employers, including many of its cities. One notable exception is Franklin County, which continues to be one of the most economically stable counties in Ohio. However, the state of Ohio continues to struggle to find ways to fund the many obligations it shoulders such as Medicaid costs, K-12 education, higher education, job growth, and a myriad of other pressing economic demands. Although somewhat improved in the last several months, the state's economy has struggled with the shortfall between revenue and expenses fueled by substantial and likely permanent losses of relatively high paying manufacturing jobs in particular sectors of the state.

On February 20, 2007 a report from Moody's Investor's Service reduced Ohio's economic outlook from stable to negative, citing Ohio's declining manufacturing base, changes in tax structure, investment losses, and the need to spend more on health care and education (See Associated Press Release by John McCarthy). Between the second quarter of 2000 and the second quarter of 2005 Ohio lost some 200,000 jobs (See "Economic Indicators" Job Growth in Ohio Counties, April 2006 produced by The Center for Community Solutions, Cleveland, Ohio, www.communitySolutions.com). As the report states, "The overwhelming majority of economic activity within regions is generated through

job earnings...There is no more fundamental measure of economic activity in a local jurisdiction than trends in jobs and aggregate paycheck earnings from those jobs" (p. 1 "Economic Indicators"). Unfortunately, many of the jobs lost have not been replaced by new jobs and new income. There continues to be a marked movement of manufacturing jobs out of the country and reluctance by companies remaining to restore manufacturing jobs even when the economy turns more favorable.

During this same period the federal government is reducing aid to the states and, in turn, the states are reducing aid to municipalities and other local government entities. Although Franklin County has weathered Ohio's economic struggles with more success than most counties in Ohio, and it has through prudent management been able to maintain a bond rating that many Ohio counties would like to have, the County faces revenue shortfalls that have resulted from changes in Ohio's economy and the economic challenges that are resulting from national issues such as rising health care costs. These fundamental changes present new challenges to its political leaders. Although well managed by many standards, the economic realities facing the County are challenging and the limitations they create are not lost on the analysis of this fact finder.

After carefully considering the facts and evidence presented in this case the following determinations are made:

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| Issue 1 Article 18 Wages |
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The Union proposes annual wage increases of 4% in each year of the Agreement. The Employer proposes that the tentative agreement of 3% increases be adopted. The parties reached tentative agreement on annual wage increases of 3% per year. The Union made a strong argument that the fact finder should consider the relationship between the wages of Deputies as compared to other comparable counties and the wages of the Civilian Unit as compared to other, the evidence submitted does not indicate this relationship was ever mutually adopted by the parties as a criterion to evaluate wage levels. Arguably, the work of Unit II, Patrol Communication Technicians, could be considered more closely integrated with the concept of direct law enforcement than that of Unit I, which while important, appears to be less direct and more supportive nature.

As referenced in the fact finding report for Unit II, internal comparables are in essence comparable groups of employees who are arguably similar regarding membership, work content, service value to the community, work responsibility, and risk. While I understand that employees of Unit I may believe they should be treated in a fashion similar to the Deputies' unit and should maintain a consistent distance between their wages and those of Deputies, there was no evidence presented in fact finding to suggest that there has been a recognition of the importance of making this comparison in the history of

bargaining between the parties. I find the evidence, particularly the internal comparable evidence, supports a recommendation to support the original tentative agreement. For example, other contractual settlements, which have recently been resolved through the rigors of the fact finding (e.g. Unit III) as well as other recommended settlements that the undersigned fact finder has rendered (i.e. Unit II) call for increases of 3% each year of the Agreement. An annual wage increase of around 3% is in line with many settlements throughout the state.

Determination:

Section 1. Wage Increases. The Sheriff shall provide a wage increase of three percent (3%) to all bargaining unit classifications effective with the pay period that commences on Monday of the first full pay period of January 2007, three percent (3%) effective on the Monday of the first pay period of January 2008, and three percent (3%) effective on the Monday of the first full pay period of January 2009.

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| Issue 2 Article 18 Shift Differential |
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The shift differential for Unit III, following fact finding was established at .65 per hour. The undersigned fact finder has proposed that the same shift differential be paid to Unit II employees. The Union is seeking parity with Deputies unit who currently have a shift differential of .80 per hour. The Employer urges the fact finder to adopt the original tentative agreement calling for maintaining the shift differential at .65 per hour. Based upon the Unit III and Unit II internal comparables I find the .65 per hour shift differential to be competitive.

Determination:

Maintain Current Language

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| Issues 3 and 4 Article 1 Service Credit and New Length of Service Lump Sum Payment |
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The current longevity paid to Unit I employees mirrors the longevity agreed upon by Unit III employees following fact finding in late 2006. On the basis of regular service credit, the facts support the status quo. Yet, it is recognized that while the regular service credit for Unit II employees also mirrors that which is paid to Unit III and currently to Unit I employees, Unit II employees have the benefit of an additional lump sum service credit for which they are paid. There is clearly a disparity in this regard among internally comparable bargaining units. If it can be argued that Units I, II, and III are comparable in terms of other benefits, such as shift differential, it is difficult to reconcile the disparity that exists regarding the length of service lump sum service payment issue. The Employer made the assertion, supported by evidence (submitted into the record by the Union and the Employer), that the issue of adding a lump sum service payment was not part of the tentative agreement reached by the parties on February 12, 2007 and later rejected. The Union was unable to refute this assertion and the evidence in support of it. Therefore, it would be inappropriate for the fact finder to consider an issue that either was never proposed by the Union, or was withdrawn and was not part of the tentative agreement reached by the parties

prior to fact-finding. This issue will need to be dealt with in the next round of negotiations.

Determination:

Maintain Current Language

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| Issue 5 Article New Article for Compensation for Training Duties |
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The Union makes a strong argument regarding the contention that Unit I employees, who are responsible for the training of other employees, should be treated in a similar fashion as employees in Unit II and the Deputies Unit. In other words, they should receive compensation for this additional duty. Under conventional circumstances and after careful review of the facts, this issue would normally be given serious consideration by the fact finder. Unfortunately for the Union, the evidence indicates that the issue of compensation for training was either not proposed by the Union in negotiations or was withdrawn prior to a tentative agreement being reached by the parties on February 12, 2007. Therefore, it would be inappropriate for the fact finder to consider an issue that was either withdrawn, was never proposed in negotiations, or appears in a different form in fact finding.

Determination:

Maintain Current Language

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| Issue 6 Article New Article Injury Leave |
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This issue was not listed in the Position Statement submitted by the Union and the facts indicate it was withdrawn by the Union during negotiations. Therefore, as previously stated, it is not properly before the fact finder and needs to be considered in the next round of negotiations.

Determination:

Maintain Current Language

TENTATIVE AGREEMENT

During negotiations, mediation, and fact-finding the parties reached tentative agreements on several issues. These tentative agreements and any unchanged current language are part of the recommendations contained in this report.

The Fact-finder respectfully submits the above recommendations to the parties this 1st day of August 2007 in Portage County, Ohio.



Robert G. Stein, Fact-finder