

FACT FINDERS REPORT

IN THE MATTER OF:

Fraternal Order of Police, Ohio Labor Council, Inc.
And
Gallia County, Ohio

Case Numbers:
2006-MED-10-1209
2006-MED-10-1210

Before Fact Finder
N. Eugene Brundige

PRESENTED TO:

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

And

Mark E. Drum
Fraternal Order of Police, Ohio Labor Council, Inc.
222 East Town Street
Columbus, Ohio 43215

And

Kenneth L. Edsall
Clemans, Nelson & Associates, Inc.
6500 Emerald Pkwy – Suite 100
Dublin, Ohio 43016-6235

Fact Finder N. Eugene Brundige was selected by the parties on November 21, 2006 and appointed by The State Employment Relations Board in compliance with Ohio Revised Code Section 4117.14 (c)(3) on November 22, 2006..

Prior to the hearing date the parties timely filed the required pre-hearing briefs and statements.

The parties executed a waiver regarding all matters of compensation pursuant to 4117.14(G)(11). The date of this waiver was November 30, 2006.

The parties met July 6, 2007 in Gallipolis, Ohio. Management was represented by Kenneth L. Edsall of Clemans, Nelson and Associates and Captain John E. Perry. The FOP/OLC was represented by Mark L. Drum, FOP/OLC Staff Representative and bargaining team members Eric Werry, Jeff Smith, Chad A. Wallace and Kimberly S. Blackburn.

Pursuant to the Ohio Administrative Code and the Policies of SERB, the Fact Finder invited the parties to enter into mediation in an effort to resolve the open issues.

Both parties worked hard to find acceptable solutions and were able to resolve a number of issues, These included Article 15.2 "hours of Work and Overtime", Article 15.4 "Call In", Article 15.5 "Court Time", Article 15.8 "Extra Duty Pay", Article 15.9 "Schedule Selection", and Article 15.11 "Work Schedule".

The FOP/OLC withdrew its proposal on Article 16.5 "Dispatching Pay".

The then proceeded to the Fact Finding Hearing.

The remaining open issues identified and discussed by both parties included:

Article 8 – Grievance Procedure

Article 16.1 Wages

Article 16.3 PERS Pickup

Article 16.4 LEADS TAC Pay

Article 22 Insurance

Article 28 Longevity

BACKGROUND

Gsallis County is located along the Ohio River in beautiful Southeastern Ohio and has approximately 31,000 citizens. The Sheriff's office covers approximately 445 square miles.

This case involves two bargaining units. The first consists of full-time sworn Deputies below the rank of Sergeant. There are approximately fifteen (15) members of this unit. The second unit consists of full-time Sergeants. There is currently one employee in this unit.

Gallia County is one of those Counties that employs and utilizes Correction Officers (or Jailers).

Prior to the opening of collective bargaining for this successor agreement, the Sheriff and some bargaining unit members, with the knowledge and agreement of their designated representative, met for informal discussions.

The parties met formally for collective bargaining of a successor agreement on four occasions: January 25, 2007, February 6, 2007, March 9, 2007 and April 9, 2007.

In this report the Fact Finder will examine the submissions and arguments offered by each party regarding their respective positions on each open issue and will then offer findings and recommendations regarding each item.

ARTICLE 8 – GRIEVANCE PROCEDURE

Position of the County

The County is the moving party regarding this Article. Currently the Collective Bargaining agreement specifies that the parties will request FMCS provide a list of Ohio arbitrators and selection will be made by the alternate strike method.

The County proposes that the requirement of National Academy Membership be added.

The other substantive change proposed by the County is that the loser in an arbitration proceeding would pay the entire cost of the arbitrator (loser pay all) Currently the costs of arbitration are shared equally by the parties.

The County argues that the first change would permit the parties to receive the names of more well known arbitrators and that the addition of “loser pay all” would serve as a deterrent to the filing of frivolous arbitration cases.

The County submitted a list of thirteen (13) southern Ohio Counties as appropriate comparable jurisdictions. It notes that Athens, Meigs and Scioto Counties all provide a “loser pay all” system.

Position of the FOP/OLC

The FOP/OLC notes that the arbitration procedure is seldom utilized and there is no record of abuse of the procedure. The FOP/OLC sees no need for any change to the grievance procedure.

The Union submitted a statewide comparison of Sheriff Departments which indicated that of the eighty one (81) jurisdictions cited only twenty five (25) of them had a “loser pay all” system. Of those twenty five (25) only five (5) were represented by FOP/OLC.

The FOP/OLC also notes that all other Gallia County Collective Bargaining Agreements have an equal split of arbitration costs.

FINDING AND RECOMMENDATION

As the moving party the Employer needs to convince this Fact Finder that there is a substantial rationale and necessity for altering the current language. There is no evidence that this is the case regarding the grievance procedure.

There is no evidence that anyone has abused the present system. Likewise, it is highly unlikely that a list of Ohio Arbitrators would be so foreign to the parties that they could not find persons on the list with whose work they are acquainted.

I find no reason to disturb the status quo. I recommend the current grievance procedure be incorporated in the new collective bargaining agreement.

ARTICLE 16.1 – WAGES

Position of the FOP/OLC

The FOP/OLC proposes a three year agreement with annual wage increases of 6% each year retroactive to January 1, 2007.

For comparable jurisdictions the FOP/OLC submitted seventeen (17) contiguous southern Ohio counties.

Address the pay of Jailers, the FOP/OLC submitted evidence that the starting and top hourly rate places Gallia County as the twelfth lowest out of the thirteen (13) counties¹ which utilize jailers.

The starting hourly rate of jailers in Gallia County is \$10.83 per hour while the average for the comparable jurisdictions is \$11.46. The Highest rate cited was Washington County with a starting of \$12.25 and a top of \$16.90.

Only Jackson County is lower with a \$10.18 beginning step and \$10.71 top step.

From this date the FOP/OLC asserts that Gallia County Deputies are nearly 13% behind the average Jailer's hourly rate.

According to the data presented by the FOP/OLC the comparison for Deputies looks very similar. Gallia County ranks 16th out of 17 in both beginning salary \$11.85 and top salary \$14.01. The averages for the 17 counties are \$13.00 beginning step and \$15.97 top step.

This places deputies nearly 14% below the average.

The FOP/OLC also presented data regarding the Sergeant classification. In this situation Gallia County ranked 12th out of 13 comparisons.²

Gallia County has a starting rate for Sergeants of \$12.29 per hour and a top rate of \$14.45. The average is \$15.05 beginning and \$17.35 top.

FOP/OLC concludes that Sergeants in Gallia County are 20% behind comparable counties.

Another cornerstone of the FOP/OLC's argument for significant increased compensation is that the workload of Gallia County Deputies has increased. Evidence presented shows that there were 2,280 criminal reports in 1997 or a per deputy average of 88.

There was a significant yearly increase through 2002 which showed a total of 3,638 reports. While the number dropped in 2003 to 3,099 the per deputy average remained at 172.

In 2006 there were 3,530 reports, 14 commissioned members and 252 reports per deputy.

Similar data was presented regarding other duties of the Deputy such as complaints served, warrants served, papers served, etc.

The FOP/OLC also provided information regarding internal comparables which compared the average wage per hour in each County Department. This comparison led to a County Average of \$15.04 and led the Union to conclude that persons in this bargaining unit had a "deficit" for \$1.19 per hour.

¹ Four cited counties (Hocking, Noble, Perry and Vinton) do not utilize the Jailer job classification.

² Adams, Morgan, Noble and Ross Counties do not use the classification of Sergeant.

The FOP/OLC also offered a wage schedule comparison of employees in the Engineers Office and the Jobs and Family Services Office with Sheriff office employees.

The FOP/OLC acknowledges that the requested 6% increase annual is somewhat higher than is usually requested but believes the current disparity based upon both internal and external comparables justifies a significant increase.

Position of the County

The County recommends a 3% increase in each of the three years of the agreement beginning the first full pay period following the ratification of the agreement.

The Employer first notes that the funding sources for the County Engineer employees and the Jobs and Family Services employees are different and thus to compare them with the Sheriff's department is like comparing apples and oranges.

The Employer also presented evidence showing the long tenure of many of the persons cited within these departments.

The Comparables presented by the County were very similar to those presented by FOP/OLC except they used thirteen (13) rather than seventeen (17).

The Employer notes that Gallia County is not a rich county and actually has a stable to declining population.³

³ Gallia County falls within the 0.18- to 0.18+ population change range. Management Exhibit 7-3

According to data presented from The Jobs and Family Services Department, Gallia County has an unemployment rate of 5.6%

The County presented data illustrating that Sales Tax growth in Gallia County is very modest.

Likewise the County presented evidence that the average income for Gallia County is approximately 79% of the state average. In 2004 the state average was \$46,517 and the Gallia County average was \$36,873.

Gallia County's per capita personal income falls below both state and federal averages. In 2004 the averages were: Gallia County \$26,407, Ohio \$31,860 and US \$34,471.

The County also offered documentation and analysis of the Sheriff's budget noting that for 2007 the Sheriff request \$1,908,146 and actually received from the commissioners \$1,792,619.

The County noted that the Sheriff's budget comprises the largest part of the total County budget. In 2003 the Sheriff's portion of the County budget was 23%, in 2004 it was 22%, 2005 -24%, and in 2006 23%.

The Employer voiced a concern regarding the impact large wage increases in this unit would have on other County employees and bargaining units.

The County believes, in light of the finances of the county, the make-up of the population and other factors, that their wage proposal is fair.

FINDINGS AND RECOMMENDATIONS

I am persuaded by the evidence that employees in these bargaining units are below the average regardless of which set of external comparables are utilized.

Internal comparables are harder to analyze. It is true that the two units compared by FOP/OLC have different funding sources, but it also appears that there are employees within other areas of the County that fare better comparatively than do the members of these bargaining units.

It also must be noted that while the County is not asserting an “ability to pay” argument Gallia County is an area with limited financial resources. The tax documents and the surrounding geography give evidence to this conclusion.

The challenge before this Fact Finder is how to allow these employees to gain some ground without putting the County into a bad financial situation.

According to the annual SERB Wage Report wages are up in all categories. There are relevant to our consideration in this case.

2006 reports for Counties in 2006 averaged 3.01%. In Southeastern Ohio Region the average was 3.17% and for Police wages statewide the percent was 3.23%.

In order for these units to do any type of catch-up it is necessary for wage increases to be greater than these amounts.

I am sympathetic to the management of the County as it attempts to treat all employees fairly and thus managers are correct to worry about the impact of raises in this bargaining unit.

However, as I wrote in a 2005 case “While I have great empathy for all County employees, it must be noted that the Police function is a different creature. A comparison of wage increases in all types of jurisdictions will generally reveal a higher increase in the Safety Forces.”⁴

The issue of the effective date of any increase must also be addressed. While the G-11 waiver is permissive in nature, it does appear that the parties clearly intended increases retroactive to the end of the last Contract.

The professionals executing the G-11 waiver were clearly aware of the practices that have developed surrounding the period of time it takes to secure a new collective bargaining agreement in Ohio’s safety forces. I will recommend that any increase be retroactive to January 1, 2007.

The pattern, according to the SERB report also shows larger increases in the first year of three year contracts beginning in 2006. (3.08% in the first year, 3.04% in the second and 3.01 in the third.)

Based upon the evidence presented, I recommend an increase retroactive to January 1, 2007 of 4.5%, January 1, 2008 of 4% and January 1, 2009 of 4%.

ARTICLE 16.3 – P.E.R.S. PICKUP

Position of the FOP/OLC

The FOP/OLC proposes to add to the current amount of the employee’s PERS contribution. Currently the County picks up 5%.

The FOP/OLC proposal is to add an additional 2% during 2007, taking the total to 7%. During 2008 the FOP/OLC would add an additional 1.5% taking the

⁴ Franklin County Sheriff and FOP Fact Finding Report, February 7, 2005.

total to 8.5%. In the final year of this agreement (2009) the FOP/OLC proposes the employer add an additional 1.5% taking the total to 10%.

Position of the County

The County notes that the current 5% pickup has a very positive impact for bargaining unit employees and sees no reason to change the status quo.

The Employer notes that of their 13 comparable jurisdictions Gallia County is the only one to have any employer paid pension pickup at all.

FINDINGS AND RECOMMENDATIONS

While the PERS pickup is a valuable benefit to employees, the comparable data simply does not support an increase being recommended by a Fact Finder. This is the type of benefit improvement that is best gained in the give and take of bargaining rather than this process. I recommend no change to the status quo.

ARTICLE 16.4 – LEADS TAC PAY

Position of the FOP/OLC

The FOP/OLC proposes that the corrections officer assigned as the L.E.A.D.S TAC Officer receive an additional seventy-five cents per hour.

The FOP/OLC explained that the duties associated with this assignment are difficult and time consuming and the person presently fulfilling the assignment has done a good job remedying some of the problems that were present in the past and identified by external audits of the system.

The FOP/OLC submitted evidence indicating that the Sheriff's Department had been cited for improvements made. In addition data was submitted demonstrating the volume of work involved.

The FOP/OLC notes that the incumbent in the position had attempted to resign the duties but her resignation had been rejected.

Position of the County

The County notes that of their comparable jurisdictions, only Lawrence County provides an additional stipend for the LEADS Tac Officer.

They note that many bargaining unit employees assume additional assignments as a part of their duties and these persons do not receive a stipend for their additional responsibilities. Some of these additional assignments include the Evidence Room Manager, the PR person, the Crime Prevention Officer, the MIBTS Technician, the Inmate Work Release Coordinator, and the Firearms Instruction Trainers.

The County notes that it would not be fair to those persons for one to be singled out and receive a stipend when others don't.

FINDINGS AND RECOMMENDATIONS

In order for a small department like Gallia County to work as well as it apparently does, many people assume additional duties and responsibilities.

The current LEADS TAC Officer is to be commended for the improvements she has made in the operation but it is not a correct assumption that the performance of these duties leads to additional compensation.

The comparable data does not support such a recommendation. I recommend that the proposed language and benefit in 16.4 not be added to this collective bargaining agreement and the status quo be maintained.

ARTICLE 22 – HEALTH INSURANCE

Position of the FOP/OLC

The FOP/OLC notes that under the current language there has been significant cost shifting in the providing of health care benefits, and the employer has the ability to dramatically change the levels of coverage.

The FOP/OLC proposes to change the health care article by reducing the employee's share of premiums to 10% of premium for both single and family coverage.

The Union would also like to lock in current levels of benefit by inserting the word "currently" before provided in the first sentence of Article 22.

To support this proposal the FOP/OLC asserts that eleven (11) of the seventeen (17) jurisdictions cited as comparable provide some form of guarantee that the coverage will be equal or substantially equal to current benefit levels.

The Union also provided data from the SERB Clearing House Report which would indicate that five (5) of the jurisdictions provide a greater percentage than Gallia County.⁵

Position of the County

⁵ This Fact Finder was unable to assign a percentage value to those jurisdictions specifying dollar amounts. Likewise, the FOP/OLC Report indicates that Hocking County is fully paid. This Fact Finder has first hand knowledge that the amount fully paid is only for single coverage.

The County argues that the proposals of FOP/OLC are simply too expensive for the Employer to fund. If the contract were to include the amounts proposed by the FOP/OLC for Wages, Insurance, PERS Pickup and the LEADS TAC Officer, the amount would be the equivalent of a \$3.52 per hour increase.

Further the Employer argues that the current Insurance contributions are in line with comparable jurisdictions using the thirteen (13) Counties designated by the Employer.

The County further notes that all County Employees funded from the General Fund receive the same percentage contributions for Health Care. The County notes that the Department of Jobs and Family Services has a different funding source, and while they do pay 100% of employee costs, none of the cost can be passed on to the General Fund.

The County Engineer also utilized a different funding source and yet its contribution is nearly the same (86/14).

FINDINGS AND RECOMMENDATION

Often employers propose to increase the employee contributions to health care costs. The County is not making such a recommendation in this case. I find that, based upon the comparables presented and the situation in this County, the percentage rates should be maintained at the same level they are in the current contract.

The question of benefit levels is a different one. Clearly in units this small it is very difficult to treat employees differently from other bargaining units and

employees, but there does exist within the collective bargaining agreement, the possibility of a joint health care committee which would include FOP/OLC representation.

Certainly employees need to be consulted prior to making changes. I suggest that Article 22 be amended by adding the following to the end of the first paragraph of Article 22 Section 1. ***Proposed changes in insurance benefits shall be discussed with the FOP/OLC at least thirty (30) days prior to implementation. The FOP/OLC shall have the right to raise questions and/or suggest alternatives to the County. This discussion may be accomplished by utilizing the joint committee or procedure anticipated in paragraph 2 of this section.***

All other parts of Article 22 should remain at current language.

ARTICLE 28 – LONGEVITY

Position of the FOP/OLC

The Current Collective Bargaining Agreement includes a longevity plan that adds .10 cents after five years of service, .20 cents after ten, .30 cents after fifteen and .40 after twenty.

The FOP/OLC proposes to add two additional steps which will provide a benefit of .50 cents after twenty five years and .60 cents after thirty years.

The FOP/OLC believes this benefit provide some additional compensation of veteran officers when they reach the upper end of their career.

The FOP/OLC notes that of their seventeen (17) comparable jurisdictions, seven (7) of them provide some benefit beyond twenty (20) years of service.

Position of the County

The County prefers this benefit remain status quo. The data submitted for their thirteen (13) comparable jurisdictions shows only three (3) which have a benefit beyond twenty (20) years and most have a lower top range.

FINDINGS AND RECOMMENDATIONS:

This Fact Finder commends the parties on their selection of comparable jurisdictions and their similar reporting of the content of each.

The data regarding longevity is not as closely matched but that is understandable because different contracts handle this topic in different ways.

This Fact Finder does have a soft spot for those persons who have had long and successful careers in law enforcement especially as they are planning for retirement.

Longevity is a low cost benefit that does allow some extra acknowledgement to long term employees and assists in a small way in building the best three years for pension compensation purposes.

I recommend the twenty five (25) year step be added. I do not recommend the thirty (30) year step at this time.

Article 28 should be amended by the addition of this sentence:

“TWENTY-FIVE YEARS .50 CENTS”

All other parts of Article 28 should remain at current contract language.

Summary:

The Fact Finder has appreciated the opportunity to work with the parties in this situation and wishes them well in their relationship. If, in considering this report, there are recommendations that the parties can jointly agree to improve upon, I urge them to do so. Otherwise, hopefully these recommendations will provide a foundation for moving forward.

After giving due consideration to the positions and arguments of the parties and to the criteria enumerated on SERB Rule 4117-9-05(k) the Fact Finder recommends the provisions as listed herein.

In addition, all agreements previously reached by and between the parties and tentative agreed to, along with any sections of the current agreement not negotiated and/or changed, are hereby incorporated by reference into this Fact Finding Report, and should be included in the resulting Collective Bargaining Agreement.

Respectfully submitted and issued at London, Ohio this 20th day of August, 2007.

N. Eugene Brundige,
Fact Finder

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of this Fact Finder's Report was served by regular U.S. Mail⁶ upon Kenneth L. Edsall, for the Gallia County Sheriff, Clemans, Nelson & Associates, 6500 Emerald Parkway, Suite 100, Dublin, Ohio 43016-6235; and Mark E. Drum, Staff Representative, FOP/OLC. Inc., 222 East Town Street, Columbus, Ohio 43215; and Edward E. Turner, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th floor, Columbus, Ohio 43215-4213, this 20th day of August, 2007.

N. Eugene Brundige,
Fact Finder

⁶ At the Hearing the parties executed a waiver of overnight delivery of the Report.