STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

In the matter of Fact Finding between:	)	SERB No. 06-MED-11-1321
	)	
CLERMONT COUNTY SHERIFF	)	Hearing: April 5, 2007
	)	at Batavia, Ohio
and	)	
	)	
FRATERNAL ORDER OF POLICE,	)	
OHIO LABOR COUNCIL, INC.	)	

FACT FINDING REPORT

Appearances:

Mitchell B. Goldberg, Appointed Fact Finder

For the Sheriff:

Paul Berninger, Esq.,	Attorney
James Malloni,	Chief Administrative Officer
Chris Willis,	Sheriff's Office
Sukie Scheetz,	Director, Office of Management and Budget
Rick Combs,	Chief Deputy

For the FOP:

Thomas Fehr,	OLC Staff Representative
Keith Schockman,	Representative
Rick Elliott,	Representative
Todd C. Cousneau,	Representative

I. Introduction and Background.

The State Employment Relations Board ("SERB") appointed the undersigned as the Fact Finder for this public employment labor dispute on February 2, 2007. The parties entered into a written agreement extending the date for the issuance of the Fact Finding Report to May 31, 2007. A hearing was held on April 5, 2007 at the Sheriff's offices in Batavia, Ohio. The parties complied with their statutory obligations by timely submitting pre-hearing statements to the undersigned before the commencement of the hearing.

Some mediation efforts assisted the Fact Finder in clarifying the unresolved issues, but the same issues set forth in the pre-hearing statements remained unresolved after the mediation. The parties presented their respective positions on the issues, and each party submitted documentary exhibits. The parties further agreed that the Fact Finding Report would be issued on April 27, 2007 and mailed to SERB by U.S. first class mail on that date.

The Fact Finder considered all of the required factors set forth in the Ohio Revised Code, the Administrative Code, and SERB guidelines in issuing the following recommendations on the unresolved issues.

II. Economic Evidence.

Most of the unresolved issues relate to compensation and fringe benefit matters. The parties presented substantial economic evidence supporting their respective positions. Certain general conclusions may be drawn from this evidence. The county has the ability to fund and pay the economic proposals from the FOP – it does not claim otherwise. Its counter proposals on the issues are based upon its historically conservative methods for operating the county departments and managing its revenues and expenses. The FOP believes that its proposals will keep the compensation and benefits in line with the compensation and benefits paid in neighboring and comparable law enforcement agencies. It believes that this agency has fallen behind in certain identified areas. The Sheriff disagrees, believing that the members are fairly compensated relative to comparable departments.

Some of the disagreements involve the sources for the information. The Sheriff relies on SERB published information. The FOP believes some of the SERB information is unreliable and outdated. It has gathered its own information from the various agencies. The parties also disagree as to which agencies to use in order to determine comparables. The inclusion or exclusion of certain agencies affects the averages. One particular item of disagreement concerns the treatment of the Sheriff's pension contribution for the FOP members. It contributes 5.05% of wages to the pension fund as the employees' contribution and believes that this contribution should be included with the wages when determining comparable hourly rates because other agencies do not make such contributions for their employees. The FOP compares only hourly rates, without including the pension contribution. It believes that it is difficult if not impossible to obtain true comparisons if fringe benefits of this type are rolled in to the calculations. Other agencies have different types of additional economic benefits such as longevity payments, shift differentials, court pay etc. One cannot easily compare these different types of benefits in determining whether compensation is comparable. It believes that the best approach is to compare wages to wages without injecting other types of economic fringe benefits. Although, it agrees that the pension contribution is a valuable economic benefit that officers in other agencies do not receive.

The Sheriff highlights certain budgetary trends and results. Sales tax receipts, the largest revenue component only increased 1.5% from 2005 to 2006. Receipts through March 2007 have increased 3.1%, showing a better than expected growth. The estimate for 2007 is only a 0.3% increase. Property tax revenues are estimated to increase 1.2%. License and Permits fees are expected to decline somewhat based upon the decline in the economy and specifically the housing market. Deregulation revenues are reduced $137,000 in the 2007 budget, and are expected to remain at that level for five years. Charges for services, representing 20% of the General Fund, are showing a 4.1% increase through March over 2006 figures. This is expected to moderate through the rest of the year based upon reductions in conveyance and recorder fees due to the slowing economy. Investment income is up significantly, but is expected decline somewhat if the interest rates decline. Non-operating revenues for 2006 were up dramatically over 2005, but this revenue is earmarked for development investments in the hope that commercial development will bring important additional revenue in the future. $857,317 was taken from a conveyance fee increase to spike commercial economic development in the 2007 appropriation.

The estimated 2007 General Fund balance at year-end is expected to be $16M, well over the 25% figure that the county historically likes to keep as a reserve. The county's conservative approach is evidenced by the way it manages its appropriations or expenditures. For example, the Sheriff's department budget appropriation for 2006 was based upon 2005 revenues. It started 2006 with $190,000 less than it requested. Going into 2007, the estimated operating revenue is approximately $53M, $1.4M over actual revenue in 2005. The target is $1.6M over the current operating appropriation. The county appropriation to the Sheriff's department for 2007 leaves three existing positions unfunded and does not fund two deputy positions and three clerical positions that were requested by the Sheriff.

The FOP contends that there is plenty of money to fund their proposals if the county determined that it preferred to raise the members' compensation levels to comparable levels. Sales tax revenues have increased. Investment income is up substantially. The average amount of money invested from February 2005 to February 2006 was $117M. The investment earnings have been substantial. The ending General Fund unencumbered fund balances are more than sufficient to operate and to provide for comfortable reserves for unexpected contingencies. The county enjoys an outstanding bond rating of Aa2 due to its excellent financial condition. It has chosen other areas for the direction of its expenditures. It decided to purchase land for $5.48M and $2.4 M to spur commercial development. The development plans and conveyance fee increases will counteract the economic losses from the closing of the Ford plant. FAA offices are moving to the county, increasing the payroll by $4M. Accordingly, the economic proposals can comfortably be absorbed within the existing budget, and would bring the members of this unit more in line with wages and benefits paid to officers performing similar services within the county, and in neighboring areas.

II. Unresolved Issues.

ARTICLE 14 – WAGES

The FOP proposes across the board wage increases of 4.5% for three years, retroactive to the expiration of the last contract. The Employer counters with a 2% across the board increase for the term ending February 28, 2010, and no retroactivity. After studying the evidence supplied by each of the parties relative to wages paid to officers in surrounding areas, I conclude that the most appropriate areas to examine are the communities abutting I-275 around the Cincinnati beltway. These are the areas enjoying the economic development and growth due to the expansion of the greater Cincinnati area. Accordingly, I decided to pay closer attentions to the statistics for agencies in Hamilton County, Warren County and Butler County. This would include some townships that operate police departments.

The Employer, based upon SERB data, computes that the average hourly wage for Clermont County, including the 5.05% pension pick-up is $26.14 ($54,473 divided by 2080 hours). Hamilton County is the same. Warren County is at $25.81. Butler is at $24.57. None of these other counties contribute to pensions. Clermont's figure without including the pension pick-up is $24.81.

The FOP's figures show Warren at $24.67 for 2006 and $25.41 for 2007. Hamilton is at $25.36, $26.14 and 26.92 for 2006, 2007 and 2008. Miami Township is at $25.75 for 2006 and $26.78 for 2007. Union Township is at $25.75 for 2006 and $26.78 for 2007. The City of Milford is at $25.30 for 2006 and $26.57 for 2007. All of these compare to Clermont's present rate of $24.93 (without pension). Its proposal would produce rates of $26.05 for 2007 and $27.22 for 2008. In terms of percentage across the board increases, Warren is at 3% for 2006 and 2007, Hamilton is at 3% for 2006, 2007 and 2008, Miami Twp. is at 4% for 2007, Union Twp. is at 4% for 2006 and 2007, and Milford is at 4% for 2006 and 5% for 2007.

<u>Recommendation:</u>

The Employer shall pay across the board wage increases as follows: 3% in year one, 3.5% in year two and 3.5% in year three. The wages shall be retroactive to the first day after the expiration of the last CBA.

Court Service Deputies

The FOP proposes an increase in the wages of court service deputies to keep them in line with the pay received for similar work in comparable communities. It wants to change the disparity between their pay and the pay to road patrol officers. The disparity is now 8%. The FOP wants to provide that their pay should be pegged at $1.00 per hour below the road patrol hourly rates.

The Employer would like to keep the present disparity in place because the present rates reflect the differences in the duties and services performed by each classification. A fixed dollar difference would become compacted over time. Court service is on a regular 8-5 weekly schedule; road deputies work 24-7 when they are on duty. Their work is more dangerous, and more complicated.

The hourly rate in Clermont is $23.02 (without pension) for 2006. Warren pays the same as patrol officers. Hamilton is at $23.87 for 2006, 24.58 for 2007 and $25.32 for 2008. The rates with the recommended increases will be $23.71, $24.53 and $25.39 without including the pension pick-up. I find that the court service deputies will remain comparable with similar departments with the above increases, such that there is no compelling need to provide for a special increase in their wages.

Recommendation.

No change.

ARTICLE 13 – HOURS OF WORK

The FOP proposes new language permitting officers to pick their work shifts by seniority. The Employer objects to this proposal because of operational needs. It believes that each work shift should contain experienced and inexperienced personnel, and that special units need to be staffed with qualified personnel regardless of seniority.

The evidence shows that this is not a major problem at this time. Most officers are working on the shifts that they want. The Sheriff attempts to honor both long- term and short- term requests for shift changes. The FOP did not present any hard evidence that shift preference is a concern or problem for more senior members.

Recommendation.

No Change.

ARTICLE 15 – HEALTH INSURANCE

The expired contract contained a contribution cap of 21%. A conciliator ordered this cap during the negotiations for the last contract. The FOP proposes to decrease the members' contribution level to 15% or $100 per month, whichever is lower for family coverage. The Employer would pay 100% for single coverage. The FOP believes that its members are paying the highest contributions among comparable agencies.

The Employer wants to remove the cap. No other county employee has a cap. There is no justification for the FOP members to enjoy a privileged status relative to the rest of the county employees. Medical insurance is a costly item in the budget. All employees should participate in keeping the costs in line and sharing the burden.

After reviewing all of the evidence, I find that there is no compelling reason to disturb the present status. A conciliator ordered the cap, and no material change has occurred to alter the conciliator's decision. The parties may always negotiate changes by offering suggestions and compromises. The fact that all other employees operate without a cap is just one factor among many. It is just as important to examine what other employees performing the same work are contributing in nearby areas. Warren county has a cap of 15% with a maximum $40 per month contribution. Hamilton has the same plan for all employees, but annual increases may not exceed 3%. Miami Twp. requires employees to pay 25% of the excess premium over $410 per month. Union Twp. has no contribution from employees.

Recommendation.

No change.

ARTICLE 16 – HOLIDAYS

Presently, an employee who works a holiday receives 2.5 times their hourly rate for a regular work shift. If the shift goes into overtime mode, the employee only receives 1.5 times the hourly rate for the overtime hours. The FOP believes this is unfair since the employee is being required to perform the work on a holiday.

The Sheriff believes that the members already enjoy a windfall when it comes to holiday pay. Members who work 12-hour and 10-hour shifts receive premium pay for all of the hours worked on their regular shift. All other employees receive 10 days off with pay. FOP members working 12-hour shifts receive holiday pay plus premium pay for the extended work shifts when they work a holiday.

Other agencies pay premium pay for all hours worked on a holiday. This benefit has existed in the contract for many years.

Recommendation.

No change.

ARTICLE 18 – SICK LEAVE

The FOP proposes a yearly sellback of sick leave time, up to 40 hours of sick time at the rate of one to one. The Employer will benefit because it will be paying back sick time at a lesser cost than it would pay upon retirement. Moreover, employees will have an incentive not to use sick time. This will save overtime costs.

The Employer thinks little of this proposal. Employees already enjoy generous sick leave time, which in most cases will never be fully used. They receive a bonus of a payback at retirement. Sick leave was meant to cover pay when an employee is ill. It was never meant to provide a vehicle for additional compensation.

Recommendation.

No change.

ARTICLE 19 – PAID ABSENCE DAYS

The FOP wants to increase the paid absence days from 2 to 3 per year. Other agencies have 3 paid absence days. The Employer does not believe it must provide another day off with pay. This is an additional economic item without any justification.

Recommendation.

No change.

ARTICLE 21 – SEVERANCE

The FOP proposes an increase of 60 hours in the number of hours of sick leave for which an employee can be paid at retirement. This is presently at the state statutory rate. This benefit was higher in past years. Other agencies have much higher sellbacks.

The Employer believes that there is no justification for a higher number. Now, a deputy can earn and accumulate 3600 hours of sick leave over a career. Even using 80 sick leave hours a year would still result in a large severance payment. The additional sell back is unnecessary and unwarranted.

Recommendation.

No change.

ARTICLE 30 – MID-TERM BARGAINING

Under the recent Toledo SERB decision, unwritten terms must be carried through the term of the contract. Employer requested mid-term changes are not implemented when the parties reach an impasse in bargaining. This is different from the private sector where an employer may implement a change once the parties negotiate to impasse over a subject not contained in the CBA. The FOP proposes language that requires bargaining to impasse for changes requested by either party. Once the parties reach impasse, the matter would be resolved through fact-finding and conciliation. The Employer believes that the FOP's proposal will require the parties to engage in constant bargaining and dispute resolution. It wants to avoid mid-term bargaining whenever possible.

The issue of mid-term bargaining has not reached the courts. I believe that the courts will eventually set the parameters for this complicated area. The status quo should remain until the parties receive judicial guidance.

Recommendation.

No change.

ARTICLE 36 – DURATION

The FOP proposes a contract that ends on December 31, 2009. The contract would begin on March 1, 2007. Ending in 2009 provides sufficient time for a conciliator to be appointed if the parties are at impasse in their negotiations, and would permit the conciliator to award retroactive wages. The Employer objects to retroactivity and prefers and ending date of a full three years, instead of a 2-year, 10-month contract. A short contract would probably provide the members with a sooner pay increase and cost the Employer two months of pay at a lower level.

Recommendation.

The FOP's proposal is preferable to prevent the members from losing a possible pay increase if a conciliator cannot be appointed in time. The contract shall be retroactive to March 1, 2007 and shall expire December 31, 2009.

Date: April 27, 2007

Mitchell B. Goldberg

Mitchell B. Goldberg, Appointed
Fact Finder

CERTIFICATE OF SERVICE

This Report was served upon Edward E. Turner, Administrator, Bureau of Mediation, SERB, 65 East State St., 12th Fl., Columbus, OH 43215-4213 this 27th day of April 2007 by U.S First Class mail. Copies were sent to the following persons on the same date:

Thomas J. Fehr, Staff Representative
FOP, Ohio Labor Council, Inc.
5752 Cheviot Rd., Suite D
Cincinnati, OH 45247

Paul R. Berninger, Esq.
Wood & Lamping LLP
600 Vine St., Suite 2500
Cincinnati, OH 45202-2491

Mitchell B. Goldberg

Mitchell B. Goldberg