

STATE EMPLOYMENT RELATIONS BOARD

FACT FINDER'S REPORT

STATE EMPLOYMENT
RELATIONS BOARD

2007 NOV 28 A 11: 01

IN THE MATTER OF:

FRANKLIN COUNTY SHERIFF'S OFFICE

AND

FRATERNAL ORDER OF POLICE
CAPITAL CITY LODGE NO. 9

Case Numbers: 07-MED-01-0048 & 07-MED-01-0049

Before Fact Finder

E. William Lewis

Presented to:

Edward E. Turner, Administrator—Bureau of Mediation
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And

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E. William Lewis, was selected by the parties and duly appointed by the State Employment Relations Board to serve as the Fact Finder, in compliance with the Ohio Revised Code, Section 4117.14, C (3).

BACKGROUND:

This case evolves out of a collective bargaining dispute between the Franklin County Sheriff's Office, hereinafter known as the Sheriff/County, and the Fraternal Order of Police (Capital City Lodge), hereinafter known as the FOP/Union. The bargaining unit of 645 Officers, is composed of approximately 560 Deputies and 85 Officers ranking from Corporal to Lieutenant.

The Agreement expired on April 15, 2007, and the parties have agreed on, and timely filed, the necessary extensions. This is a mature contract that has been in effect a substantial number of years prior to the passing of the 1984 Collective Bargaining Bill.

The parties began bargaining on a successor Agreement on March 14, 2007, and after a number of meetings, plus the assistance of a State Mediator, tentative agreements were reached on all but twelve articles and two new issues.

September 26, 2007 was established as the initial fact finding date. At the request of the parties and in compliance with ORC 4117, we entered into mediation on the unresolved issues. Mediation sessions were held on September 26, 27, October 4 and 24. Through the strong efforts of the parties, the unresolved issues were narrowed to wages and insurance premiums. November 5th was selected as the evidentiary hearing date, and the parties timely filed the necessary pre-submittals. The unresolved Articles are as follows:

ARTICLE 14. PAY PLAN

ARTICLE 24. INSURANCE

The format of this report will be to list an Article followed by brief review of each party's position, and a fact finder discussion regarding the unresolved

issue(s). 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 Fact Finder will consider the following criteria:

- (1) Past collectively bargained agreements, if any, 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 and classification involved;
- (3) The interests 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 the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

ARTICLE 14 PAY PLAN

There are a number of issues open in this Article;

14.1 The general wage increase and the effective date of the first increase.

14.2 The Employer proposes to add Section J., to provide for “advance Step” hiring.

14.6 The FOP proposes to increase the Step E from 4% to 6% the first year, to 9% the second year, and to 14% the third year. Additionally, new hires, after 1/1/08, would not be eligible to advance to “E” Step unless they

had received Police Officer Training Certification, from the State of Ohio (POTC).

Section 14.1 Pay Plan

UNION POSITION:

The Union is proposing a general wage increase retroactive to April 15, 2007, arguing that the County is in sound financial condition. They note that their comparable data, other Franklin County law enforcement agencies, shows them behind (Un. Ex.A). Sales tax revenues, according to the FOP, have dramatically increased as a result of the one-half percent County tax increase, that was effective in 2005(Un. Ex.B-E). County General Fund revenues greatly exceed expenses, and soon the cash reserves will exceed \$100,000,000, they point out.

Specifically, Franklin County law enforcement comparables, per the FOP, show these Deputies ranking 14th out of the 20 County agencies (Un. Ex.A). The appropriate comparable market is the area, states the Union, not the other large county Sheriff Offices's. They also declare that the Employer's area wage comparables do not include PERS pick-up.

COUNTY POSITION:

The County states that the first year wage increase should not be effective prior to October 15, 2007. The last year of the expiring contract's (2004) wage increase only covered a six month's period (10/15/06—4/15/07). Thus, according to the County, to grant a wage increase April 15, 2007 would result in a compounding effect since the last increase (4%) was for only six months.

One quarter of one percent, of the sales tax increase ends as of December 31, 2007, resulting in a decrease in revenue of approximately \$32,000,000, they note. That coupled with a projected flat-line in expected property taxes, requires cautious fiscal management, the County points out.

The Employer's proposal of one-percent effective 10/15/07; two-percent effective 4/14/08; and two-percent effective 4/13/09, provides a highly competitive wage rate, they argue. The comparable data with other large county Sheriff Office's, shows this bargaining unit significantly higher, they

purport. (Deputies outside Corrections: entry level av.= \$34,318.69 versus Franklin Co. at \$35,413.20; Top level av. = \$46,584.80 versus Franklin Co. at \$61,672.00) The Sheriff also asserts that the majority (61%) of the Deputies are performing corrections duties, and therefore they are comparably overpaid from \$7000 to \$22,000/year (Brief pg. 13). Additionally, notes the County, this bargaining unit has received, even in tough times, greater increases than other County employees.

Ms. Christy Russell, Assistant Director County Office of Management & Budget, testified that General Fund Realestate Taxes are not expected to increase even though an update is scheduled for 2008. She also verified that one-quarter of one-percent of the sales tax would cease as of 12/31/07, as promised by the Commissioners. The purpose of the one-quarter percent was to rebuild the cash reserves to \$100,000,000 and preserve the County bond rating. The General Fund currently receives fifty-percent of its revenue from the sales tax, and eleven and one-half percent from property taxes, according to her testimony.

Section 14.2 J (NEW)

COUNTY POSITION:

The County is proposing to be able to hire a specifically certified and skilled, experienced job applicant, above Step A of the Pay Plan. This proposed change to hire at a higher rate of pay than Step A would provide the Sheriff the opportunity to hire highly skilled Deputies with specialized knowledge.

FOP POSITION;

The Union is against changing the contract to address a single incident. They also argue that the Sheriff already has at his disposal very capable law enforcement employees. There are Deputies readily available to go through any necessary training to meet the Sheriff's needs, claims the FOP.

Section 14.6 Training and Experience Retention Credit

FOP POSITION:

This provision was first introduced in the 2002 contract to compensate Deputies with ten plus years of experience more comparably with other Franklin County law enforcement officers, according to the Union. At the time of implementation (Step E), these senior Deputies were nearly \$7000 below Columbus Police Officers, states the Union.

In 1984, notes the FOP, the Sheriff's Deputies were nearly the highest paid law enforcement officers in Franklin County. By 2002, they had fallen way behind, and they are still behind Columbus by nearly \$3000, they claim.

By restricting access to Step E for new hires, not POTC certified, it would save the County money in the long run, according to the FOP. Those non-POTC certified would be paid less and they would remain in Corrections, they point out.

COUNTY POSITION:

First, the County points out that the restriction to Step E (Non-POTC) would be no benefit economically for ten years. During the ten year waiting period the additional cost of the proposed new "E" Step would be \$26,800,000, claims the Employer. The County declares the FOP "E" Step proposal as financially outrageous and excessive.

Furthermore, states the Employer, seventy percent of the bargaining unit are POTC, and with the increased percentages added to "E" Step, a greater incentive would be provided to be POTC trained. According to testimony, there is no great interest on the part of the current Sheriff to separate persons performing correction's duties and other law enforcement duties.

DISCUSSION:

Franklin County has, and continues to be, a well managed county. With sound management the County has come through some problematic economic times. Also, as exemplified by the excellent FOP power point presentation, Franklin County Deputies are well trained and provide a myriad of excellent law enforcement services to many sectors of our community.

It is impossible for this fact finder to discuss wages and “E” Step proposed changes separately. Two hundred and ten members are currently in Step E, with an additional two hundred and fifty nine members at Step D. By the end of 2010, one-half of the bargaining unit will be in Step E.

The County claims that the deputies performing “corrections” functions are over paid, however, no proposals were presented to address their allegation. The Union, in the fact finder’s opinion, somewhat opened the door for discussion with their “E” Step restrictions, however no Employer counter proposals were presented.

According to testimony, Step E was introduced, and agreed to by the parties, two contracts ago. The Step E was to address area comparable issues and to somewhat distinguish (economically) between Corrections duties and Certified Deputy duties. It appears to the fact finder, that with only 30 of the 210 Step E employees not-POTC, it has had a degree of success. Furthermore, with so many of the Deputies assigned to the Jail certified, it provides the Sheriff workforce flexibility.

One party claims that the Deputies are overpaid, the other underpaid. Both have some validity to their arguments when the evidence is reviewed. However, they both know that the Franklin County Sheriff’s Office is a “hybrid”, when compared to other law enforcement departments. Municipalities don’t generally operate long term incarceration facilities, and other county Sheriff’s Offices, normally separate, by contract, Corrections Facilities from patrol, investigation, etc. operations.

What is, is! Both parties receive benefits and disadvantages from such structuring. However, from a comparable point of view, “apples to apples” are hard to come by. This is a very mature contract. In 2002 the party’s, assisted by Conciliation, attempted to address the “hybrid platypus” (per Employer Rep.), by establishing Step E. As a result, per testimony, the Franklin County law enforcement area wage disparity has been significantly narrowed.

The County is not claiming inability to pay, with the exception of the Union’s Step E proposal. Evidence and testimony, shows that County is now operating in the black, and has rebuilt its cash reserves from a low of twenty eight million dollars to a 12/31/07 projected one hundred million

dollars. Evidence also showed that one-fourth of one percent of the one-half percent sales tax increase, will terminate as of 12/31/07. This reduction will reduce the anticipated revenue by thirty two million dollars, or approximately ten percent of the General Fund expenditures, per the County.

In reviewing the area comparables, the County did not consider PERS pick-up, and the FOP did include the pick-up. Those law enforcement departments appearing on both parties' submittals, when adjusted for the pension pick-up, shows top step Franklin County Sheriff's Deputies for 2007, are within \$400 of the average top step officer wage. This excludes any 2007 wage adjustments for this bargaining unit. However, the ranking would be eleventh out of fifteen.

The Employer's argument that the first year wage increase should be delayed until October 15, 2007, would provide the bargaining unit member only a five percent wage increase over an 18 month period. Both parties accepted the prior Fact Finder's recommendation on wages and duration, and it is difficult for this fact finder to believe that the County expected to achieve a postponement of the 2007 wage increase. They, according to Employer evidence, changed the expiration date to accommodate the County budgetary process. Furthermore, the October 2006 wage increase of four percent, versus the previous year's three percent, occurred in the middle of the spike in sales tax revenues.

The average 2007 top step wage increase for the area law enforcement agencies is 3.69% (Un. Ex. A). Additionally, for those reporting, the average top step wage increase for 2008 is 3.59% and 3.90% for 2009 (Un. Ex. A). Hearing testimony, for internal comparables, stated that the most recent AFSCME contract with the County included an effective increase of four percent per year.

The fact finder is satisfied that, at this time, the Step E added to the 2002 Agreement, is achieving its purpose. The area wage disparity continues to narrow even with the parties choosing to have this "hybrid" structured department.

Regarding the addition of J. (advanced step hiring) to Section 14.2, the fact finder is of the opinion that the issue generating the proposal was very limited in nature. Matters of this nature would be excellent topics for the

types of meeting outlined in Article 11 LABOR/MANAGEMENT MEETINGS.

Based on the evidence presented and the excellent testimony, I recommend the following:

FINDING & RECOMMENDATION:

I recommend no change to Step E at this time.

I do not recommend the addition of J (Advanced Step Hiring) to Section 14.2 Pay Plan Administration

I recommend the following increases to be applied to the current Pay Ranges and Rates, Section 14.1 of the Agreement;

In the first year, effective April 16, 2007	4.0 %
In the second year of the Agreement	4.0 %
In the third year of the Agreement	4.0 %

ARTICLE 24 INSURANCE

The parties signed a tentative agreement on 11/5/07, resolving all items in this Article except Section 24.1, employee premium contributions for 2009 and 2010. The union's proposal to add a new Section, Health and Physical Fitness Incentive, is also unresolved.

COUNTY POSITION:

The County is proposing that the 1/1/09 employee contribution be not more than \$50/ month, for employees and non-spousal dependents, and not more than \$110/ month for employees who have added their spouse to the coverage. They also propose to raise commensurate employee contributions to not more than \$65/ month and not more than \$155/ month, effective January 1, 2010.

The Employer also rejects the Union proposal to add a Physical Fitness Incentive Program.

They argue that they provide a “Cadillac Plan” and that their proposal is fair and reasonable. The County notes that the 2009 requested contributions are the same as agreed to by four other bargaining units.

Their position on greater increases for the addition of spousal coverage is based on significant increased costs to insure an adult versus children. Mr. Scott Solsman, assistant HR Director for Benefits, testified that spousal coverage is approximately \$5000/ year more costly.

FOP POSITION:

The Union is in agreement with the Employer proposed 2008 employee contributions, however, they propose more modest increases for 2009 and 2010:

- 2009----Single + dependents, up to \$40/ month
- Family coverage, up to \$95/onth
- 2010----Single + dependents, up to \$45/ month
- Family, up to \$105/ month

The County is financially sound and their health fund reserves are substantial, declares the Union. Their increases in employee contributions track what the Employer states are the expected health care percentage increases for 2009 and 2010. Therefore, according to the FOP, their proposal meets the County’s needs.

DISCUSSION:

In 2005, the County in conjunction with a Joint Benefits Committee(JBC), composed of County representatives and their bargaining units’ representatives, reached a consensus on a “Countywide” health care plan. The Plan became effective in April 2006, and was ultimately agreed to by this bargaining unit. This bargaining unit’s members, along with all other County employees, began making premium contributions. Effective January 2007 these bargaining unit members began contributing the countywide premium rates of \$20/ month (Single + dependent), and \$60/ month for the addition of spousal coverage. Furthermore, the FOP and County have agreed to modify the contribution rates to up to \$35/ month and \$85/ month for calendar year 2008.

Evidence and testimony, showed that through negotiations, the County has reached agreement with four other bargaining units for 2009, with contribution rates of; up to \$50/ month (Single + dep.) and no more than \$110/ month for the spousal addition. These internal comparables are difficult for the fact finder to ignore, there being no external evidence to show these rates to be excessive.

Unrefuted Employer testimony, stated that the JBC, to which the FOP has been encouraged to participate, did not prefer a percentage of total premium rate versus a maximum dollar amount. Most group health care plans with employee contributions have separate rates for single and family coverage. However, according to testimony, the JBC did not want a heavy burden to fall on single parents.

Mr. Solsman's testimony pointed out that the County was self-insured, and through actuarial recommendation and experience, they charge an annual composite rate to each agency for health care expenses. The County is currently charging \$10,332/ employee per year and projecting increase to \$13,667/ year by 2010. According to his testimony, moderate health care cost increases have been achieved heretofore, through plan consolidation and re-design through the JBC.

Both parties have proposed to continue the capped contribution approach, however, they differ in the amounts. Appropriately, the County maintains a health care reserve fund, although the FOP questioned the amount, the fact finder saw no evidence that the amount was excessive.

The Plan being provided by the County provides excellent coverage, and in the fact finder's opinion, the Employer proposed 2009 employee contribution maximums meet the comparability tests, both internally and externally. However, in keeping with the Joint Benefits Committee's stated interests, I consider the County's proposed cap increases for 2010 somewhat high, and above the 2008 and 2009 negotiated trend.

According to the Employer, the Union proposed, Section 24.9, Health and Physical Fitness Incentive, lacks by-partisanship and effective standards. Although the County pointed out that a program of this nature would be a good project for the JBC, in the fact finder's opinion, a physical fitness program is more commonly found in safety forces contracts. To implement

a program of this nature requires much joint discussion and dialogue to meet the needs of both parties. The parties have not had sufficient meaningful dialogue on this topic to convince the fact finder to recommend such a program be incorporated.

FINDING AND RECOMMENDATION:

Section 24.1 Employee Premium Contributions.

I recommend the following increases for 2009 and 2010:

Effective January 1, 2009, employees will pay the same amount towards the health insurance premiums as other employees under direct auspices of the Franklin County Board of Commissioners in 2009 but not to exceed \$50 per month for employees to cover themselves and any child(ren) they may have and no more than \$110 per month for employees who choose to cover their spouse. This \$110 is not in addition to the \$50, that is to say, in the event that an employee chooses to cover him/herself, any child(ren) and his/her spouse, he/she will pay no more than \$110 per month to cover all of them.

Effective January 1, 2010, employees will pay the same amount towards the health insurance premiums as other employees under the direct auspices of the Franklin County Board of Commissioners in 2010 but not to exceed \$55 per month for employees to cover themselves and any child(ren) they may have and no more than \$135 per month for employees who choose to cover their spouse. This \$135 is not in addition to the \$55, that is to say, in the event that an employee chooses to cover him/herself, any child(ren) and his/her spouse, he/she shall pay no more than \$135 per month to cover all of them.

Section 24.9 (new) Health and Physical Fitness Incentive.

I do not recommend inclusion in the Agreement.

SUMMARY

The Fact Finder enjoyed meeting and working with the parties. It took a lot of hard work and decision making by the bargaining committees to narrow the issues to those addressed in my recommendation. That is what collective

bargaining is all about, and for their efforts I am appreciative. This will affirm the foregoing Report consisting of 13 pages, and recommendations contained therein, are made in this matter of Fact Finding by the below signed Fact Finder. If there is found conflict in the Report between the Fact Finder's Discussion and Recommendations, the Recommendations shall prevail. All matters of tentative agreement are recommended to be included in the Agreement. All provisions of the Collective Bargaining Agreement that neither party proposed revisions to, are to be carried forward into the new Collective Bargaining Agreement unchanged.

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

This concludes the Fact Finding Report.

Respectfully submitted and issued this 27th day of November 2007.

A handwritten signature in cursive script that reads "E. William Lewis".

E. William Lewis
Fact Finder

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Fact-Finder's Report was personally delivered or sent by regular U. S. mail to:

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

And

Russell Carnahan, Attorney and FOP Advocate
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And

Aaron Granger, Attorney and County Advocate
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This 27th day of November 2007.



E. William Lewis