

HAND DELIVERED

STATE OF OHIO
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD

In The Matter Of Fact-Finding	:	
	:	
Between The	:	
	:	SERB Case No.: 2007-MED-03-0205
OHIO PATROLMEN'S BENEVOLENT ASSOCIATION,	:	
	:	
Union	:	
	:	
And The	:	Howard D. Silver
	:	Fact Finder
SANDUSKY COUNTY SHERIFF,	:	
	:	
Employer	:	

2007 AUG 27 A 9:13
 STATE EMPLOYMENT
 RELATIONS BOARD

REPORT AND RECOMMENDED LANGUAGE OF THE FACT FINDER

APPEARANCES

For: Ohio Patrolmen's Benevolent Association, Union

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 Ohio Patrolmen's Benevolent Association
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For: Sandusky County Sheriff, Employer

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This matter was submitted to the fact finder through written arguments and exhibits received by the fact finder from each of the parties on July 27, 2007. On June 28, 2007, a mediation had been attempted that resolved two of the issues separating the parties

from a successor collective bargaining agreement. At the mediation the parties agreed that the fact-finding hearing would be waived and the positions of the parties would be submitted to the fact finder in writing.

This fact-finding proceeds under the authority of Ohio Revised Code section 4117.14 and Ohio Administrative Code section 4117-9-05. The parties have performed all of the acts necessary to move this matter before a fact finder for the preparation of a report that includes language recommended for inclusion in the parties' successor Agreement.

BACKGROUND

The parties to this fact-finding, the Ohio Patrolmen's Benevolent Association, the Union, and the Sandusky, Ohio County Sheriff, the Employer, were parties to a collective bargaining agreement in effect from June 1, 2004 to June 1, 2007, and are now engaged in the process of fashioning a successor Agreement. This fact-finding process finds the parties, at this point in time, separated by proposals among three Articles: Article 5, Hours of Work/Overtime; Article 23, Compensation and PERS Pickup; and Article 25, Education Pay. It is the fact finder's understanding, based on the submissions of the parties, that all other Articles (with one minor exception) intended for the parties' successor collective bargaining agreement have been tentatively agreed by the parties. Recent agreements tentatively reached on language to be

included within the successor Agreement include Article 20, Miscellaneous; Article 22, Group Insurance; a minor (technical) change to Article 14, Holidays, that does not require a change in the holidays agreed in the predecessor Agreement but corrects an internal reference in the Article; and the addition of family medical leave language to Article 19. It is the fact finder's understanding that all other Articles not specified in this fact-finding have been agreed by the parties, utilizing language from the parties' predecessor Agreement in the parties' successor Agreement. It is also the fact finder's understanding that Article 34, Duration of Agreement, is tentatively agreed by the parties, a three-year Contract duration. The fact finder also finds a tentative agreement as to Article 30, section 30.1, Miscellaneous (residency) that adds, following "within", "...Sandusky County or any county adjacent to..."

The bargaining unit at issue in this fact-finding is comprised of Sandusky County deputy sheriffs and communications officers (dispatchers). The Sandusky County deputy sheriffs within the bargaining unit are either assigned to road patrol duties or serve within the Sandusky County Jail as corrections officers. The bargaining unit is comprised of thirty-four members: twelve deputies assigned to road patrol, fourteen deputies assigned to serve as corrections officers, and eight communications officers. Sergeants and captains employed as deputies within the Sandusky County Sheriff's Office are members of a separate bargaining unit represented by a different exclusive representative.

The parties have a bargaining history dating to 1985.

POSITIONS OF THE PARTIES

Article 5-Hours of Work/Overtime

Each of the parties has proposed changes to Article 5, Hours of Work/Overtime. The Employer suggests that in section 5.6, prior language that limits employees to an accumulation of sixty hours of compensatory time be changed to limit employees to thirty hours of accumulated compensatory time. The Union opposes this change and proposes that the prior language on compensatory time accumulation be retained in the successor Agreement.

The language of the predecessor collective bargaining agreement between the parties had communications officers assigned to a work week of forty hours, from 12:01 a.m. on Sunday to 12:00 midnight the following Saturday. Sandusky deputy sheriffs, road patrol officers and corrections officers, were assigned to work periods of eighty hours, extending over fourteen days.

The Union proposes changes to Article 5, sections 5.2, 5.3, and 5.4 that would move the Sandusky County deputy sheriffs to a forty-hour work week. The Union points to data provided by the State Employment Relations Board's Clearinghouse that shows 27.1% of Ohio sheriffs' departments using an eighty-hour, fourteen-day work period; 43.4% using a forty-hour work week; and 25.6% using an eight-hour work day. The Union points out that its proposal would equalize the work week for all bargaining unit members and would

bring the Sandusky County Sheriff's Office in line with a practice followed by the majority of Ohio sheriffs' offices.

The Employer opposes the changes suggested by the Union for Article 5, sections 5.2, 5.3, and 5.4, noting that the fourteen-day, eighty-hour work period has been in effect since 1992 when it was originally agreed as a result of bargaining. The Employer claims that the changes proposed by the Union among these sections would cause disruption to the Employer's payroll administration and to the Sandusky County Auditor who has the responsibility for the preparation of payroll for the entire county. The Employer finds a lack of need or explanation for these proposed changes and urges that prior language be retained.

The Union proposes a change to Article 5, section 5.7 that would increase court call-out pay from a minimum of two hours to a minimum of three hours. The Union points out that a majority of sheriffs' offices either provide for three or more hours of minimum call-out pay or offer two hours of call-out pay at overtime rates. The Union points out that the minimum two-hour court call-out pay expressed in Article 5 has been unchanged since the first contract between the parties.

The Employer opposes an increase to the court call-out pay expressed in Article 5, section 5.7, claiming that the standard comparable court duty is a two-hour minimum, and also points out that sergeants and captains employed by the Sandusky County Sheriff receive the same two-hour minimum pay for court duty. The Employer emphasizes the increased costs under the Union's proposal.

The Union proposes adding a new section, Article 5, section 5.11, which would require, among bargaining unit positions, a first offer of overtime work to perform the work of the bargaining unit. The Union points out that, at present, sergeants and captains are offered overtime assignments involving road patrol or jail duties and therefore OPBA bargaining unit work is being offered to and performed by non-OPBA bargaining unit members. The Union finds this practice serves to erode the work of the bargaining unit by assigning the work of the bargaining unit to persons who are not members of the bargaining unit. The Union also points out that by using sergeants and captains to perform overtime work involving bargaining unit duties the cost to the Employer increases.

The Employer opposes the new language suggested by the Union for Article 5, section 5.11. The Employer finds no justification for this proposal, no complaint, and no grievance concerning overtime assignments. It is noted that the Employer is entitled to organize his office as he sees fit; bargaining unit employees do not "own" the work performed in the Sheriff's Office, and the Employer utilizes a rank system of deputy sheriffs and is authorized by law, Ohio Revised Code section 311.04, to appoint one or more deputies and is not required to maintain a different rank structure or other division of labor. The Employer urges that the new language suggested by the Union for Article 5, section 5.11 not be recommended for inclusion in the parties' successor Agreement.

Article 23 - Wages

The Employer proposes a three percent (3%) annual wage increase across the board for all employees of the bargaining unit beginning June 1, 2007 and occurring on June 1, 2008 and June 1, 2009. The Employer points out that this wage increase is comparable to wage increases among sheriffs' offices in region 7 of the State Employment Relations Board and mirrors the annual wage increases agreed among sergeants and captains.

The Union proposes wage increases that are 3.5% and 3.5% effective June 1, 2008 and June 1, 2009, respectively, but for June 1, 2007, the initial annual wage increase under the parties' successor Agreement, a much larger wage increase is proposed.

The Union also proposes a differentiation among bargaining unit members as to assigned base wage rates based on assigned duties and peace officer certification. The Union proposes to pay road patrol deputies more than deputy sheriffs working in the jail who possess peace officer certification, who are to be paid more than deputy sheriffs working in the jail who do not possess peace officer certification. The Union also proposes that a third wage step for communications officers, at twenty-four months, be added to bring the communications officers' wage steps in line with other bargaining unit members.

The wage increases for road patrol deputies as proposed by the Union would increase starting pay by 11%; twelve-month pay by 10.22%; and top pay at twenty-four months by 10.32%. Corrections officers' starting pay would increase by 7.1%; communications

officers pay would increase by 5.19% among communications officers with twelve to twenty-four months of service, and among those with twenty-four months of service or more, pay would increase by 8.7%.

The Union points out that the duties assigned to road patrol officers and the duties assigned to corrections officers are different and call for a difference in compensation between the two. The Union also argues that holding peace officer certification empowers a deputy to perform a greater range of law enforcement duties than is the case of a corrections officer without such certification. The Union argues that the certification and its enhanced powers and responsibilities support an increased wage.

The Employer opposes the reorganization of the bargaining unit as proposed by the Union and opposes the wage increases suggested by the Union that are in excess of three percent annually. The Employer points to Article 3, section 3.1(E), an Article found in the parties' predecessor collective bargaining agreement, language tentatively agreed for inclusion in the parties' successor Agreement, that extends to the Employer the right to determine the structure of the Employer's organization. The Employer points to the PERS pickup of eight and one-half percent (of 10.1% contributed for each employee) and notes that sheriffs' offices in region 7 of SERB are generally in the three percent wage increase range. The Employer also points out that as of June, 2007, the consumer price index was 2.7%.

Article 25 - Education Pay

The parties' predecessor collective bargaining agreement, in Article 25, Education Pay, provided for an annual increase of three hundred dollars to be paid for an associate's degree and five hundred dollars to be paid for a bachelor's degree. The Union points out that sergeants and captains within the Sandusky County Sheriff's Office are paid four hundred dollars for an associate's degree and six hundred dollars for a bachelor's degree, and the Union asks that the bonuses paid for these academic achievements be adjusted in the deputy sheriffs and communication officers bargaining unit to bring them into conformance with the bonuses paid for advanced educational degrees to sergeants and captains within their collective bargaining agreement. The Union points to Union Exhibit 12, page 3, Article XXVI within the Sergeants and Captains collective bargaining agreement, in effect from June 1, 2007 through June 1, 2010, that provides for four hundred dollars in education pay for an associate's degree and six hundred dollars for a bachelor's degree.

The Employer opposes the changes suggested by the Union for Article 25 and proposes that prior language be retained in the parties' successor Agreement.

DISCUSSION AND RECOMMENDED LANGUAGE

The fact finder does not recommend the change proposed by the Employer to Article 5, section 5.6, which would reduce by one-half

the amount of compensatory time permitted to be accumulated by bargaining unit members. The fact finder finds no basis for diminishing this benefit and declines to recommend the alteration in this regard suggested by the Employer.

The fact finder is also not persuaded to recommend the changes proposed by the Union that would move deputy sheriffs in the bargaining unit to a forty-hour work week from the current eighty-hour work period extending over fourteen days. There is nothing inherently wrong or illogical about the change proposed by the Union; the majority of workers employed full-time work on the basis of a forty-hour work week.

The fact finder is mindful, however, that the alteration suggested by the Union would have direct and substantial consequences in the administration of the Department and in overtime costs. The fact finder understands that overtime would be more prevalent among forty-hour per week workers in comparison to workers employed during an eighty-hour work period. The fact finder is cognizant of the Employer's prerogatives in structuring his organization as acknowledged in Article 3, section 3.1(E), an Article in the parties' predecessor collective bargaining agreement that has been tentatively agreed for inclusion in the parties' successor Agreement. While the fact finder finds nothing to fault the Union's proposal, the fact finder defers to the legitimate authority of the Employer to determine how the organization is to be structured, subject to negotiated, agreed language in the parties' Contract. In the face of the Employer's strong opposition

to the restructuring of the Department through altering the work period utilized to determine overtime, the fact finder recommends the retention of language in the parties' predecessor collective bargaining agreement in their successor Agreement in Article 5, sections 5.2, 5.3, and 5.4.

As to the court call-out pay, the fact finder is not persuaded that an increase is justified. In the event a bargaining unit member is required to report for court duty during an otherwise unscheduled time period and is on duty for less than two hours, this deputy sheriff would be entitled to two hours of pay at the employee's normal rate. In the event the deputy sheriff is required to spend more than two hours on the call-out, the deputy sheriff is compensated for all of the hours worked. The change proposed by the Union would increase the minimum pay from two hours to three hours, an increase of fifty percent. The fact finder does not find sufficient grounds to recommend this increase. The fact finder recommends the retention of Article 5, section 5.7 as expressed in the parties' predecessor collective bargaining agreement in the parties' successor Agreement.

The language suggested by the Union for Article 5, section 5.11 has as its purpose the protection of work assigned to the bargaining unit. This is not an instance of bargaining unit members determining what the bargaining unit work is, rather the work of the bargaining unit as assigned by the Employer comprises the work of the bargaining unit and it is this assigned work which the proposed language for Article 5, section 5.11 addresses.

The work of a bargaining unit comprises the value and very reason for the bargaining unit, the performance of work assigned to bargaining unit members. The Union's interest in protecting this work as bargaining unit work is legitimate. The fact finder finds no language within the parties' predecessor Agreement which empowers the Employer to assign bargaining unit work to employees who are not members of the bargaining unit. To do so diminishes the work available to the bargaining unit and therefore diminishes the unit itself.

The members of the bargaining unit at issue in this proceeding do not perform supervisory functions that are assigned to sergeants and captains. Sergeants and captains belong to a different bargaining unit and are entitled to their own protections when it comes to the work of their bargaining unit. The fact finder fails to find any authority within the parties' predecessor Agreement or among the Articles tentatively agreed for inclusion in the parties' successor Agreement that would authorize the assignment of work of the OPBA bargaining unit to the members of an FOP bargaining unit. Such cross-assignments diffuse the borders separating these bargaining units and move employment benefits otherwise intended for the OPBA bargaining unit (overtime) to a different bargaining unit, the FOP bargaining unit.

The fact finder finds the language proposed by the Union for inclusion in the successor Agreement, Article 5, section 5.11, to be a legitimate protection of bargaining unit members and the fact finder proposes its inclusion in the parties' successor Agreement.

Recommended Language

Article 5-Hours of Work/Overtime

The fact finder recommends that current language within Article 5, sections 5.1 through 5.10 be included in the parties' successor Agreement, and that section 5.11 be added as follows:

Section 5.11. - All overtime assignments within each classification of employee in the bargaining unit will be first offered to qualified persons within the appropriate bargaining unit classification and then to other qualified bargaining unit members before it is offered to any employee outside of the bargaining unit.

Article 23 - Wages

The Employer's proposed annual wage increases of three percent for each of the three years of the successor Agreement is in conformity with pay raises in this region of Ohio and among Ohio sheriffs' offices generally. The wage increases proposed by the Employer maintain a small increase over the cost of living (2.7%).

The Union's wage proposal in its final two years of the successor Agreement seeks only a small increase over the three percent offered by the Employer. The Union's wage proposal, however, proposes very substantial increases in the first year of the successor Agreement and also proposes a fundamental change to the organization of the Sandusky County Sheriff's Office as it relates to pay.

The Union proposes not only to differentiate among deputy sheriffs within the bargaining unit based on road patrol duties,

jail duties, and peace officer certification, but also intends that this differentiation be reflected in the differences between pay levels among these bargaining unit members. The Union not only requests a sweeping change to the pay structure of the Sandusky County Sheriff's Office but recommends a substantial boost in earnings to reflect these changes, with the Employer paying for the privilege.

The fact finder finds no fault with the intention of the Union's proposal to differentiate between deputy sheriffs based on job duties and certification as is done in many other sheriffs' offices in the state of Ohio. There are a substantial number of sheriffs' offices, however, who do not make the differentiation proposed by the Union and one of these, the Employer herein, has operated without such differentiation for fifteen years. The Employer is emphatically opposed to the differentiation suggested by the Union in its wage proposal and offers a more modest wage increase than that proposed by the Union.

The fact finder has no philosophical or analytical quarrel with the Union's wage proposal as it relates to the differentiation of deputies within the bargaining unit, but such a change is fundamental to the structure of the Employer and therefore, on this issue, the fact finder defers to the discretion of the Employer based on language within the parties' predecessor Agreement that is to be included in the parties' successor Agreement that reserves to the Employer the right to determine the structure of the

organization. This is not to say that no such change can occur, only that in the context of this fact-finding, in an attempt to move the parties to a successor Agreement, the fact finder declines to propose the changes suggested by the Union. The fact finder finds the wage proposals of the Employer, retroactive to the first full pay period that includes June 1, 2007, to be appropriate and proportionate to pay raises generally in the public sector in the state of Ohio at this time.

Recommended Language

Article 23, Compensation and PERS Pick-Up

Section 23.1. Effective the first full pay period that includes June 1, 2007, the wage rates of all bargaining unit employees shall be increased by three percent (3.0%). (Appendix A).

Section 23.2. Effective the first full pay period that includes June 1, 2008, the wage rates of all bargaining unit employees shall be increased by three percent (3.0%). (Appendix A).

Section 23.3. Effective the first full pay period that includes June 1, 2009, the wage rates of all bargaining unit employees shall be increased by three percent (3.0%). (Appendix A).

The fact finder proposes that the language in Article 23, sections 23.4 and 23.5 as expressed in the parties' predecessor Agreement be retained in the parties' successor Agreement.

Article 14 - Holidays

The parties have reached a tentative agreement as to retaining current language as to holidays. However, in section 14.3, a section reference is required to be changed so as to correct an internal reference that is mistaken. This entails changing "section 15.1" to "section 14.1." The fact finder recommends this change.

Recommended Language

Article 14 - Holidays

Sections 14.1 and 14.2 are recommended retained as written in the parties' predecessor collective bargaining agreement in the parties' successor Agreement.

Section 14.3. An employee who is scheduled to work on one of the holidays listed in Section 14.1 shall receive time and one-half (1-1/2) for all hours worked, plus regular holiday pay of eight (8) hours. When an employee is required to work at least four (4) hours of a double shift on a holiday, the employee shall receive two and one-half (2-1/2) times his base rate of pay for the hours worked on the double shift. If the employee works less than four (4) hours, he shall receive time and one-half (1-1/2) pay for the additional shift hours.

Article 25 - Education Pay

The Employer urges that current language be retained, paying an annual bonus of three hundred dollars for an associate's degree

in law enforcement and a five hundred dollar annual bonus for a bachelor's degree in law enforcement or criminal justice. The Union asks that the bonuses provided for in Article 25 be changed to bring them into conformity with the extra one hundred dollars paid to sergeants and captains for the same academic achievements. Union Exhibit 12, page 3, presents Article XXVI of the collective bargaining agreement between the Sandusky County Sheriff's Office and the Fraternal Order of Police, Ohio Labor Council, Inc. for a bargaining unit containing Sandusky County Sheriff's sergeants and captains. Article XXVI of the Sandusky County Sheriff's sergeants and captains Contract provides for a four hundred dollar annual bonus for an associate's degree in law enforcement and a six hundred dollar annual bonus for a bachelor's degree in law enforcement or criminal justice.

The duties of the two bargaining units are different but there is no difference between what is required to obtain an associate's degree or a bachelor's degree in law enforcement or criminal justice. These academic programs do not change based on which bargaining unit contains the member who has obtained either of these degrees. The expense, the time, the energy, the discipline, and the perseverance necessary to secure an associate's or bachelor's degree remains the same, and the value added to the Department due to such educational attainment in the form of better law enforcement is manifest.

The fact finder can find no reason to provide a smaller bonus to deputy sheriffs than to sergeants and captains for the same

academic achievement. Accordingly, the fact finder recommends the Union's proposal on education pay.

Recommended Language

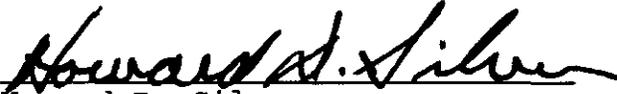
Article 25 - Education Pay

Section 25.1. The Employer agrees to increase the annual compensation of a bargaining unit employee who receives his Associate Degree in Law Enforcement from an accredited university. The amount of the educational increase shall be four hundred dollars (\$400) annually and shall become part of the eligible employee's bi-weekly pay.

Section 25.2. A bargaining unit employee who receives a Bachelor's Degree in Law Enforcement or Criminal Justice from an accredited university shall receive an education increase of five hundred dollars (\$500) annually and this increase shall become part of the eligible employee's bi-weekly pay. An employee who is eligible for the six hundred dollar (\$600) education increase shall not also be eligible for the four hundred dollar (\$400) education increase.

In addition to the recommended language proposed by the fact finder through this report, the fact finder adopts by reference, as if fully rewritten herein, all other Articles agreed by the parties.

In making the fact-finding recommendations presented in this report, the fact finder has considered the criteria required by Ohio Revised Code Chapter 4117., and sections 4117-9-05(K)(1)-(6) of the Ohio Administrative Code.


Howard D. Silver
Fact Finder

August 27, 2007
Columbus, Ohio

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Report and Recommended Language of the Fact Finder was filed, via hand-delivery, with the State Employment Relations Board, and mailed, regular U.S. mail, postage prepaid, and faxed to the following, this 27th day of August, 2007:

Joseph M. Hegedus, Esquire
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Columbus, Ohio 43235

and

Donald J. Binkley
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