
In the Matter of Factfinding

SERB Case Nos. 07-MED-04-0559,
0560, 0561, 0562

Between

Ohio Patrolmen's Benevolent
Association

Before: Harry Graham

And

The Huron County Sheriff's Office

APPEARANCES: For OPBA:

Justin D. Burnard
Allotta, Farley & Widman Co.
2222 Centennial Rd.
Toledo, OH. 43617

For Huron County Sheriff's Office:

Dick Gortz
Jeremy Iosue
Gortz & Iosue
24100 Chagrin Blvd, Suite 380
Beachwood, OH 44122

2008 APR 14 P 12: 36

STATE EMPLOYMENT
RELATIONS BOARD

INTRODUCTION: Pursuant to the procedures of the Ohio State Employment Relations Board a hearing was held in this matter before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. The record was closed at the conclusion of the hearing in Norwalk, OH on March 19, 2008.

BACKGROUND: There are four bargaining units involved in this proceeding. They are: Captains, Lieutenants, Sergeants and Dispatch Sergeant (0559), Patrol Officers, Corporals, Juvenile Investigator/Process Service (0560), Dispatchers and Jail Assistance Officer (0561) and Corrections

Officers/Correction Corporals, (0562). The issues for all bargaining units are largely, but not exclusively, the same.

In formulating this report I have considered the statutory criteria set forth in ORC 4117. A consistent issue is that the Ohio statute, in common with those of all other states, sets forth criteria to be considered, but does not specify the weight to be assigned to each. Thus, the neutral is free to weight the criteria as he or she sees fit. Traditionally, the most significant criteria are comparisons, both internally and externally. That would, for example, involve comparison between wage increases provided other employees of the employer and those involved in this proceeding. It would also involve comparison between the wages paid employees of the Huron County Sheriff's Office and their counterparts in other jurisdictions. The other highly significant criterion is the ability of the employer to pay. That is, the employer must have an ability to fund whatever recommendations made by the neutral. Traditionally neutrals have not looked favorably on compensation packages well below those found in the area or industry. If an employer cannot meet the going rate, layoffs may be required in order that remaining employees receive compensation approximating that found in the market. It should not be expected that employees would subsidize an employer with severely substandard compensation.

Finally, bargaining history bears upon this situation. It is the case that earlier in this decade members of these bargaining units accepted a wage freeze. They assisted the Employer when it was in serious financial difficulty. That history creates a moral claim that must be considered in making this report.

ISSUES: The parties agree upon the issues in dispute between them. These are:

1. Vacations
2. Holidays
3. Health Insurance
4. Wages and Compensation, Longevity
5. Wages and Compensation, Command, Corrections and Road Units
6. Shift Exchange, Corrections Unit only
7. Shift Bidding, Road Unit only
8. Wages and Compensation, Dispatch Unit only
9. Bereavement Leave

ISSUE 1, VACATIONS

POSITION OF THE UNION: The Union proposes vacation time be permitted to accumulate and carry-over for three years. It asserts that the Huron County Personnel Policy Manual as revised in June, 2002 (p.51) permits other employees of the County to carry over vacation for three years. There is one exception, the Health Department, which permits two years of carry-over.

The Union also proposes that vacation time be selected in January on the basis of departmental seniority. Unused vacation time after January would be selected on a "first come, first served" basis. The Union urges that seniority is an equitable criterion for vacation selection.

A final aspect of the Union proposal on vacations is concerned with the payout of vacation benefit in the event of the death of an employee with ten or more years of service. The Union proposes that in the event such a situated employee dies, vacation benefit should be paid to a decedent's surviving spouse, or, if no spouse, equally to the decedent's children, and, if no children, to the estate of the decedent. In the opinion of the Union that represents an equitable manner to divide vacation accrued by an employee who dies.

POSITION OF THE EMPLOYER: The Employer agrees to a three-year carry-over in the three years prior to retirement. It proposes that employees be able to carry over one year of vacation plus the current vacation time unless otherwise approved by the Sheriff. The Sheriff recognizes some merit in the carry over proposal of the Union. It proposes that "Starting with the three years prior to being eligible for full retirement benefits, an employee may accrue up to three years vacation accrual without further approval of the Sheriff." The Employer desires that no change be made in the current system of selecting vacation time, which is "first come, first served." In its view, that system is equitable.

The Sheriff points out that vacation carry over represents an unfunded liability. It desires that such liabilities remain at a minimum.

In the past vacation selection was done on a seniority basis. It resulted in senior employees securing prime time vacation, e.g. summers. Such a system is inequitable for junior employees. The present first come, first served vacation selection process is more equitable for less senior employees and should not be disturbed in the Sheriff's view.

DISCUSSION: The proposal of the Union concerning disposition of unused vacation time (Section 16.4) is unremarkable. It merely sets forth a procedure for distributing the value of such time in the event of the death of an employee with ten or more years of service. That proposal is recommended to the parties.

Of course, it is the case that the Union proposal regarding vacation selection confers an advantage to more senior versus less senior employees when selecting vacations. The rhetorical question must be asked, "so what?" The

Union formulated its proposal during its deliberations prior to negotiations. The membership was satisfied with it, otherwise it would not have been put forward. It is generally the case that more senior employees have advantages not provided to less senior employees. Vacation selection should be one such advantage. The proposal of the Union is recommended.

It is not the case that the Huron County Policy Manual calls for three year carry over of vacation. The language reads "In special and meritorious cases, the Appointing Authority **may authorize** an employee to receive payment for any unused vacation from the previous three (3) years, plus the current year's accrual." (emphasis supplied). The proposal of the Employer represents an accommodation to the proposal of the Union. It provides the ability for an employee planning retirement to engage in a form of pre-retirement savings. It is recommended to the parties.

ISSUE 2, HOLIDAYS

POSITION OF THE UNION: The Agreement presently provides that employees who work on Thanksgiving Day, Christmas Day, New Year's Day, Independence Day, Labor Day and Memorial Day receive pay at the rate of time and one-half. (1.5T). The Union proposes that Martin Luther King Day, President's Day, Columbus Day and Veterans Day be added to the list. It sees no rationale for paying some holidays worked at time and one-half and others at straight time.

Further, of the eleven County Sheriff Departments deemed comparable by the Union, seven pay all holidays at time and one-half. No reason exists for the Huron County Sheriff's Office to be different in the opinion of the Union.

POSITION OF THE EMPLOYER: The Employer opposes the proposal of the Union. It contends that a deal was struck with regard to holiday pay. Employees secured flexibility in the use of holidays in exchange for the two tiered method of holiday pay. That deal should not be disturbed the Sheriff contends.

The Sheriff has a proposal in Article 15, Holidays. He proposes that holiday time may neither be carried over from year-to-year nor may it be cashed out. A pro rata payment of holiday pay would be made to an employee who left service in the course of a year, less any holiday time used.

DISCUSSION: The proposal of the Union is supported by comparison data, given great weight in proceedings of this nature. It is also supported by equity. Why some holidays should be paid time and one half and others straight time is mysterious.

Strange as it may appear, the proposal of the Employer is also meritorious in the opinion of this Factfinder. Holiday time should not be carried over from year to year. Cash out on departure should be on the basis of the pro rata amount accrued, less any time used.

In short, the proposals of the Union and the Employer are recommended to the parties.

ISSUE 3, HEALTH INSURANCE

POSITION OF THE UNION: The Union is aware that Huron County has implemented a new health insurance program county-wide. That program contains several options, each of which carries a different premium payment to be made by employees. While not pleased with the new health insurance, the

Union grudgingly accepts it. The issue is the new premium to be paid by employees. At the Factfinding hearing the Employer indicated its expectation that employees make the new premium payments retroactively. The Union is adamantly opposed to this concept. In its view, the parties have bargained in good faith. A deal was not reached. Under these circumstances, retroactive payment is inappropriate the Union insists.

POSITION OF THE EMPLOYER: The Sheriff proposes language in Sections 22.1, 22.2 and 22.3 that deal with health insurance. It provides that employees of the Sheriff shall have the same choice of health insurance as other County employees. It also provides that should the Employer desire to change health insurance during the life of the Agreement that notice will be provided to the Union and an opportunity to bargain afforded. Other aspects of the Employer's proposal indicate that the cost to employees will not exceed that specified in a Memo from the County Commissioners of May 9, 2007. The Union is also afforded an opportunity to participate on a committee that is concerned with health insurance.

As noted above, the County is seeking a retroactive payment from employees to cover their cost of the premium for the changed insurance program. It is the view of the Employer that should such retroactive payment not be made, employees will be rewarded for intransigence in negotiations. That should not occur the Sheriff contends.

DISCUSSION: The language proposals of the Employer are unremarkable. They deal with implementation of the changed insurance program and afford the Union

an opportunity to participate in the Employee Review Committee. Those proposals are recommended to the parties without change.

It is a happenstance of negotiations that resolution of the successor Agreement has not been reached. It was not shown by the Employer that the Union bargained in bad faith. It was not shown that it was dilatory in negotiations or that it had adopted a policy of delay and obstruction. The proposal of the Employer that members of these bargaining units make retroactive health insurance premium payments is not recommended. The new health insurance payments to be made by members of these bargaining units should take effect with the first pay period following execution of the Agreements.

ISSUE 4, WAGES AND COMPENSATION-LONGEVITY

POSITION OF THE UNION: Presently the longevity payment is \$65.00 for each year of service after the fifth year. The Union proposes it be increased to \$75.00. Longevity pay has not increased for six years. Further, as seen by the Union, this issue does not stand alone. It must be viewed in the context of health insurance. As set out above, the Employer secured a substantial increase in the payment to be made by employees for health insurance. Under any likely wage settlement employees will experience a drop in real income. That should be avoided the Union insists. Adoption of its proposal will ameliorate the affect of a wage settlement that under any scenario is likely to trail inflation. Thus, the Union contends it should be recommended.

POSITION OF THE EMPLOYER: As might be expected the Employer is opposed to the proposal of the Union. It calculates it as amounting to a .5%

increase. Further, all other employees of the County are at the \$65.00 figure. There is no reason to treat OPBA-represented employees differently in its opinion.

DISCUSSION: That the longevity payment has not increased in six years is a strong point in favor of the Union. So too is the inflation that has transpired over the period. Reference to Inflation Calculator.com shows that in order to remain whole in terms of purchasing power, the \$65.00 of 2002 would need to be \$76.27 today. It is the case that neutrals in situations such as this attempt to keep employees whole for inflation, or at least minimize its effects. Those factors outweigh the fact that other employees of the County received longevity pay of \$65.00. The proposal of the Union is recommended.

ISSUE 5, WAGES AND COMPENSATION, COMMAND UNIT, JAIL AND CORRECTIONS UNITS

POSITION OF THE UNION: The Union makes an extraordinary innovative and altruistic proposal on this issue. Assuming *arguendo* that there occurs a three percent (3.0%) wage increase over each year of the forthcoming Agreement, the Union proposes that one-half of one percent (.5%) of that increase for members of the Command Bargaining Unit who are Captains or Lieutenants be diverted to the Sergeants. The Union is concerned about widening wage differentials among the employees it represents. Such a differential has adverse effects on morale. It is inequitable. It should not occur in the opinion of the Union. As that is the case, members of the Command Unit make this proposal to divert the .5% of their wage increase to their Sergeant colleagues.

The proposal of the Union is based upon a three percent (3.0%) wage increase. The Union points out that based on data supplied by SERB public sector wage settlements in Ohio have been in the three percent range. Further, the Union compares the pay of Lieutenants in Huron County with those of nearby Seneca County. Lieutenants in Seneca County earn more than a dollar (\$1.00) per hour more than those in Huron County. There is no good reason for this discrepancy to exist. The Union also proposes an expanded list of counties it regards as comparable to Huron. These are: Ashland, Athens, Darke, Hancock, Knox, Marion, Pickaway, Sandusky and Washington Counties. With respect to Sergeants, only those in Sandusky County earn less than those in Huron.

Inflation, currently running at over three percent per year justifies its proposal as well according to the Union. Even if its proposal is accepted members of the bargaining unit will lose ground to inflation. That should not be permitted to occur, or, if it does, the loss should be tolerable. The proposal of the Employer is for such a small wage increase that employees will lose more than one percent (1.0%) to inflation. That is impermissible the Union insists.

POSITION OF THE EMPLOYER: The Sheriff proposes there occur wage increases based on a cents per hour formula. For all bargaining units except Dispatch it proposes a base rate increase of .35 retroactive to July 1, 2007 and an additional .36 to occur on July 1, 2008. The Employer proposes there be a wage reopener on or after April 1 2009 to negotiate a wage increase for 2009. These increases approximate two percent (2.0%) rather than the three percent proposed by the Union.

The heart of the rationale forwarded by the Sheriff for its proposal is an inability to pay. The County carry over balance declined 12% from 2007 to 2008. Sales tax revenues through March, 2008 (est.) are down \$48,886 or 2.5% from 2007. The Employer simply cannot meet the proposal of the Union. It does not have the funds.

The Sheriff's Office has economized. People who leave are not replaced. In the Dispatch unit there were once ten (10) people, now there are five. (5). Workloads have increased for all employees of the Sheriff's office.

There are other bargaining units in County service. They reached agreement on a two percent (2.0%) wage increase and two wage reopeners. Given this situation the Employer contends it should not be required to make any greater increase to employees of the Sheriff's Office.

DISCUSSION: Obviously this is a dreadful situation. The claim of the employees for the "going rate" wage increase is very, very strong. The current economic climate, characterized by a greater level of inflation than recently seen supports the Union. So too does the SERB generated data which indicates settlements approximating three percent (3.0%) for comparable operations. Of course, the difficulty is the financial condition of the Employer. It is poor. Sales tax revenues through the first quarter are down 2.5%. The carryover balance, an indicator of fiscal health, has dropped.

History bears upon this issue. Several years ago the Union accepted a wage freeze. It assisted the Employer when the need arose. That action bolsters its moral claim when once again the County is in distress. The two percent

(2.0%) wage offer of the Employer is simply insufficient in these circumstances. In coming to a recommendation on the wage issue recollection must be had of the recommendation on the issue of longevity. I recommended adoption of the proposal of the Union without modification. Bearing that in mind, I recommend a retroactive wage increase of 2.75% for the year commencing July 1, 2007, another 2.75% increase for the year commencing July 1, 2008. Given the uncertain economic climate I recommend a wage reopener as proposed by the Employer for the year commencing July 1, 2009. This recommendation is for all bargaining units except Dispatch.

The proposal of the Union regarding a sharing of the wage increase between the Command Bargaining Unit and the Sergeants Bargaining Unit has much to commend it. Given the recommendation on the wage increase above, it is recommended the parties negotiate over this issue. It is to be expected that the magnitude of the diversion from one group of employees to another would change based upon the magnitude of the wage increase ultimately agreed upon. Jurisdiction is retained in the event the parties are unable to agree upon this issue.

ISSUE 6, SHIFT EXCHANGE, CORRECTIONS UNIT

POSITION OF THE UNION: The Union is proposing that staff in the jail be permitted to exchange or trade shifts on no shorter than a daily basis. In its view, such a provision will permit employees flexibility in their daily lives. It also has the potential for reducing overtime in the jail operations.

POSITION OF THE EMPLOYER: The sheriff is opposed to the proposal of the Union. In its opinion the present system which calls for approval of shift exchange has worked satisfactorily. There is no need for the proposal of the Union to be adopted.

DISCUSSION: Based upon the record made at the hearing I am not persuaded the proposal of the Union should be recommended. It does not appear that the problem alluded to by the Union is of sufficient magnitude as to call for alteration of the Agreement. No change is recommended.

ISSUE 7, SHIFT BIDDING, ROAD UNIT

POSITION OF THE UNION: The Union proposes that once an employee has bid and received a shift that the Sheriff be unable to change it without consent of the employee. It also proposes that all road patrol posts, including the Court House posts, be included in the bidding process. As the Union relates the situation in the County, deputies assigned to the Court House do not have an opportunity to perform road patrol. Similarly, those on the road do not have an opportunity to work the Court House detail. This has created a somewhat inequitable situation that should be rectified in the Union's view. Further, when an employee has a shift, they should be able to plan their off-duty lives around that shift. They should not have their shift changed with the attendant disruption on home and family life.

POSITION OF THE EMPLOYER: The Employer proposes shift rotation every three months. It is the view of the Sheriff that permanent shifts may generate a situation where the public becomes familiar with a particular officer. That can

lead to a potential for favoritism towards particular people which should be avoided.

DISCUSSION: Article 29, Section 29.1 presently provides for shifts to be assigned in two (2) month increments. There is extensive literature on the harmful effects of shift rotation on humans. The proposal of the Sheriff will reduce that effect. It will also give Sergeants functioning as shift commanders Thursdays and Fridays as days off on a regular basis. That is a benefit to employees in such situations. The proposal of the Sheriff on this issue is recommended.

The Union makes a strong case that those deputies serving at the Court House be included in the bidding process. Leaving them off the roster denies other bargaining unit members the opportunity to work at the Court House, often considered a good assignment. It also deprives those permanently assigned to the Court House of the chance to work road patrol. Some deputies at the Court House may desire such assignment. Thus, the proposal of the Union for a new Section 29.5 is recommended. Permanent shift assignments are not recommended.

ISSUE 8, WAGES AND COMPENSATION, DISPATCH UNIT ONLY

POSITION OF THE UNION: The Union asserts that Dispatchers in the Huron County Sheriff's Department are seriously underpaid. Further, as noted above, they have experienced a very significant increase in their workload in recent years as Dispatchers who have left have not been replaced. Thus, the Union proposes a flat \$1.00 per hour wage increase in the first year of the Agreement

plus the three percent (3.0%) that the Union proposed for the second and third years of the Agreement for other bargaining units.

Using its comparison group of like-sized counties in the State the data shows that Huron County Dispatchers lag their colleagues by a substantial amount. Thus, Ashland County Dispatchers earn \$14.40 per hour, compared to the \$13.92 per hour in Huron County. The average rate earned by Dispatchers in the ten-county comparison group urged by the Union is \$16.11. This substantial discrepancy calls for a greater than normal increase in the view of the Union.

POSITION OF THE EMPLOYER: The Sheriff proposes the same two percent (2.0%) he proposed for other bargaining units. These increases would be made in the first two years of the Agreement with a reopener for the third year. To this, the Sheriff proposes an additional ten cents (.10) be made in each of the first two years of the forthcoming Agreement.

DISCUSSION: There is a discrepancy in the wage data supplied by the Union and the Employer. For instance, the Union shows Sandusky County Dispatchers to be earning \$15.27 per hour. The Employer shows \$15.74. For Ashland County, the Union shows \$14.40, the Employer \$13.43. The fact remains that Huron County Dispatchers are poorly paid. To that must be added the fact that half the Dispatcher workforce has departed service with the Sheriff and has not been replaced. The work load of those remaining has increased. This is not inconsequential when dealing with a vital law enforcement function such as dispatch. Clearly the Sheriff recognizes the problem in the Dispatcher unit. His proposal calls for a greater increase than that proposed for the other bargaining

units involved in this proceeding. I am mindful of the fiscal difficulties confronting the Sheriff. They are serious and real. That said, the comparisons strongly favor the Union position on this issue. The Sheriff must do more for Dispatchers than has been proposed. I recommend a seventy-five cents (.75) per hour increase in the first year and the same 2.75% increase recommended for the other bargaining units in the second year. The seventy-five cent (.75) increase should be retroactive to July 1, 2007. As was the case with the other bargaining units, the Dispatcher Agreement should be subject to a reopener in the third year.

ISSUE 9, BEREAVEMENT LEAVE

POSITION OF THE UNION: The Union proposes no change in bereavement leave.

POSITION OF THE EMPLOYER: The Sheriff proposes that there be a change in the bereavement leave section of the Agreement. He desires that "Bereavement leave may only be used for death of an immediate family member as defined in Section 12.2 above." That section has an expansive definition of the "immediate family." The Employer further proposes that those employees who require additional bereavement leave be permitted to use sick leave. There would be a limitation of five days total for each occurrence.

DISCUSSION: The proposal of the Employer retains the expansive definition of immediate family shown in Section 12.2 of the Agreement. It combines sick and bereavement leave in the unfortunate circumstance that up to five days such time is needed. The proposal of the Employer is recommended.

Signed and dated this 12th day of April, 2008 at Solon, OH.

Harry Graham
Harry Graham, Factfinder