

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD
FACT-FINDING PROCEEDING

STATE EMPLOYMENT
RELATIONS BOARD
2008 JUN 18 P 1:51

Case NO. 07-MED-12-1285

**Ohio Patrolmen's Benevolent Association,
Employee Organization**

and

**Logan County Sheriff,
Employer**

REPORT AND RECOMMENDATIONS OF THE FACT FINDER

Daniel N. Kosanovich

ISSUED: June 16, 2008

Appearances:

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(For the Union)**

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REPORT AND RECOMMENDATIONS

I. Background

The bargaining unit in this case consists of all full-time employees employed in the classification of Corrections Officer, including Juvenile Corrections Officers, and all full-time employees employed in the classification of Corrections Supervisor I (Corporal), including Juvenile Corrections Supervisor I (Corporal). The unit is comprised of approximately thirty nine employees. The OPBA (Ohio Patrolmen's Benevolent Association) was certified as the collective bargaining representative of the bargaining unit by SERB on November 29, 2007.

The OPBA and the Logan County Sheriff's Department engaged in negotiations for an initial contract beginning in January of 2008 and concluding in March of 2008. The undersigned was appointed in compliance with Ohio Revised Code 4117.14(C)(3), by the State Employment Relations Board on March 12, 2008. A Fact-Finding hearing was conducted on May 5, 2008.

At the outset of the hearing, an offer to mediate the open issues was made and accepted by the parties. The unresolved issues included: dues check off; discipline; hours of work; overtime; report-in/call-in/overtime equalization; sick leave; holidays; wages; employee rights; uniforms and equipment; miscellaneous; and duration. Through the mediation effort, the parties were able to resolve seven of those outstanding issues they came with to the Fact-Finding hearing.

The agreements made on the issues resolved through mediation conducted on May 5, 2008 included: dues check off; discipline; hours of work; overtime; report-in/call-in/overtime equalization; sick leave; employee rights and duration and are incorporated in this Fact-Finding Report as if fully re-written herein.

It must be noted that during the course of the Fact-Finding hearing both parties were given a full opportunity to submit evidence in support of their respective positions on the remaining unresolved issues and they availed themselves of those opportunities. During the course of the hearing, the Union withdrew its proposal on shift differential and accepted the Sheriff's position on OIC pay. Set forth below are the undersigned's recommendations on the remaining unresolved issues.

II. Criteria

In compliance with Ohio Revised Code, Section 4117.14(G)(7), and the Ohio Administrative Code, Section 4117-95-05(J), the Fact-Finder considered the following criteria in making the recommendations contained in this Report:

- 1) Past collective bargaining agreements between the parties;
- 2) Comparison of unresolved issues relative to the employees in the bargaining units with those issues related to other public and private employers in comparable work, given consideration to factors peculiar to the area in the classifications involved;
- 3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the normal standards of public service;
- 4) Lawful authority of the public employer;
- 5) Stipulations of the parties; and,
- 6) Such factors as not confined to those above which are normally and traditionally taken into consideration.

III. Findings and Recommendations

Issue #1-Holidays/Personal Days

OPBA's Position

The Union asserts that it is the current practice of the Logan County Sheriff to afford members of the bargaining unit eight hours of holiday pay for each of the following holidays: New Year's Day; Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day; Veteran's Day; Thanksgiving Day; Day After Thanksgiving; Christmas Day; and the employee's birthday. In addition, all bargaining unit employees are afforded three personal days for which they are paid. The OPBA is seeking a recommendation to memorialize the current allotment of holidays and personal days into the collective bargaining agreement. According to the Union, there simply is no compelling reason advanced by the Employer to testify in reducing the allotment of holidays and personal days. Moreover, the employees in the bargaining unit should not suffer for their attempt to organize and be represented by a collective bargaining representative.

Finally, the Union notes that other employees that are employed by the Logan County Sheriff's Office receive all of the holidays listed above, as well as three personal days. Thus, the argument goes, internal comparables dictate the result sought by the Union.

Specifically, the Union proposes that the language in the collective bargaining agreement reads:

"ARTICLE 22-HOLIDAYS

Section 22.1.

All employees shall be entitled to eight hours of holiday pay for each of the following holidays: New Year's Day, Martin Luther King Day, President's Day, Memorial Day,

Independence Day, Labor Day; Veteran's Day, Thanksgiving Day, Day After Thanksgiving, Christmas Day, and the employee's birthday.

The payment of the holidays referenced above has been earned in accordance with this Article and shall be paid with the last paycheck of November of each year of the agreement. Any holiday that occurs after the last pay in November shall be included in the paycheck which coincides with the pay period in which the holiday occurred in accordance with this Article.

Section 22.2

Employees shall be paid time and one half for all hours worked on any of the holidays set forth above, in addition to the holiday pay referenced in Section 22.1. This payment shall be made during the pay period in which the holiday occurs.

Section 22.3

All bargaining unit employees shall receive three personal days annually subject to the same terms and conditions which presently exist.”

Logan County Sheriff's Position

The Logan County Sheriff's position is gleaned from its Fact-Finding statement. “The employer proposes the current list of holidays currently enjoyed by bargaining unit employees with a slight modification. Currently, employees receive three personal days and the employee's birthday as a holiday (for a total of four additional days). The employer is proposing that in addition to the holidays listed, the employees receive two personal days.

It is recognized that bargaining unit employees do receive two additional days off being proposed by the employer. However, in light of numerous economic proposals of the Union that employees do not currently receive (such as longevity, shift differential,

and a large wage increase), as well as, the economic impact of the Union's proposals, it is necessary for the employer to propose fewer than four additional days off as time off has an economic impact."

RECOMMENDATION

While a public employer must always be cognizant of the economic impact that a "benefit", such as holiday pay, can have on the finances of the entity, it is hardly a compelling reason to reduce an existing benefit because the Union has made a number of economic proposals, in its initial round of bargaining, which taken together form a comprehensive package that is expensive. Such an assertion is premised upon the faulty assumption that the Union will prevail on each element of its comprehensive economic package and it ignores the give and take of collective bargaining.

Also, it is significant to note that the Union's proposal with regards to holidays and personal days seeks to maintain the status quo of the bargaining unit members. Moreover, the Sheriff concedes that all of the Logan County Sheriff's Department employees receive a birthday-holiday and three personal days in addition to the calendar holidays referenced above. The review of internal comparables suggests support for the Union's position.

Given the circumstances, it is the recommendation of the Fact-Finder that the status quo be maintained and the Union's position is adopted. It is also the recommendation of the Fact-Finder that the language proposed by the OPBA be adopted and incorporated into the collective bargaining agreement.

Issue 2 – Uniforms

OPBA’S POSITION

It is the OPBA’s position regarding uniforms that the parties should identify the required uniform and equipment compliment in the collective bargaining agreement. Additionally, the OPBA proposal seeks to have uniforms and required equipment items that are sufficiently damaged or worn out in the line of duty immediately replaced at no cost to the employee with a purchase of new uniforms and/or equipment items. The thrust of the Union’s position is that replacement items should not come from supplies maintained in the Sheriff’s storage shed at the Logan County Jail. It is noteworthy to recognize that the information supplied at the fact-finding hearing suggests anecdotally that the Road Patrol Deputies are treated differently than the Corrections Officers with regard to the replacement or initial allotment of uniforms and equipment.

Thus, the Union is seeking a recommendation in this report directing the employer to supply the initial allotment of uniforms and equipment with the purchase of new uniforms and equipment and do the same with replacement items.

LOGAN COUNTY SHERIFF’S POSITION

“The employer proposes language establishing that it retains the discretion and authority to determine the uniform worn by bargaining unit personnel. Similarly, the employer proposes that it will continue its practice of providing uniforms and replacement uniforms to bargaining unit employees. Because uniforms are provided to bargaining unit employees, and replacement worn in the line of duty, it is not necessary for a specific listing of the quantity of items to be provided be contained in this agreement. Uniforms are provided at no cost to the employee.”

RECOMMENDATION

Both parties agree that the Sheriff shall retain the discretion to determine whether uniforms will be worn by bargaining unit members while on duty. The Union and the Employer both recognize that, if uniforms are required to be worn by the Corrections Officers, the Sheriff has an obligation to provide those uniforms at no cost to the employees. Additionally, the OPBA and the Logan County Sheriff's Department agree that uniforms (and/or equipment) sufficiently worn or damaged in the line of duty shall be replaced at no cost to the employees. However, the agreement on this issue ends there.

As noted, it is the Union's position that the collective bargaining agreement should identify the full allotment of uniforms to be supplied by the Sheriff. In addition, the initial allotment of uniforms and any replacement articles should be purchased "new" by the Sheriff's Department. The Employer opposes both of these ideas.

It is the Union that is seeking to change or modify the existing practice that allows the Sheriff's Department to realize a small cost savings by utilizing supplies housed in the storage "shed" to replenish uniforms and/or equipment sufficiently worn or damaged in the line of duty. Therefore, it is incumbent upon the Union to demonstrate the compelling reason(s) for adopting the change in the existing practice. Unfortunately, the Union has not met its obligation in this instance.

At best the Union's evidence constitutes anecdotal information concerning Deputies being treated better than Corrections Officers. Also, the Union asserts that its proposal is not unreasonable, which is not sufficient grounds to warrant changing the existing practice.

Under the circumstances, it is the undersigned's recommendation that the Employer's proposal on uniforms and equipment be adopted and incorporated into the collective bargaining agreement.

Issue 3 – Miscellaneous

OPBA'S POSITION

It is the OPBA's position that the collective bargaining agreement should contain three references in the miscellaneous provision which are designed to memorialize current practice. First, the Union seeks to obligate the Sheriff's Department to continue to provide gym memberships under the same terms and conditions as currently exist. Next, the Union seeks a provision that will require the Sheriff to continue to provide dry cleaning under the terms and conditions as currently exist. Finally, the Union seeks to secure the employee's rights to continue to have access to the kitchen and have access to meals under the terms and conditions as currently exist.

The OPBA asserts that it is not unreasonable to continue these practices. Therefore, the Union is seeking a recommendation that includes the adoption of their provision and proposed contract language.

LOGAN COUNTY SHERIFF'S POSITION

It is the Logan County Sheriff's position that the department could realize an economic savings from the elimination of its obligation to pay for gym memberships to Sheriff's Department employees. The record reflects that only nine of the approximately thirty nine bargaining unit members take advantage of the gym membership currently. Moreover, in December 2007 the Sheriff elected to rescind the gym memberships due to budget constraints. However, that order was rescinded and the Sheriff opted to utilize the collective bargaining process to affect the change.

With respect to the meals provided to Logan County Sheriff's Office employees, it is the Employer's position that "due to increasing costs, the Employer opposes the inclusion of a provision in the agreement because it may need to make modifications to the present practice to offset costs".

"Finally, as to dry cleaning, it is a cost that the Sheriff's Office must retain the discretion and authority to manage. While the Sheriff's Office will recognize that it provides the employees a benefit, such a benefit does have a cost. Therefore, it may not be feasible to provide the benefit. Similarly, in the event the Sheriff's Office opts to provide a uniform that does not require cleaning, it makes little sense to contain such a provision in the agreement."

RECOMMENDATION

As noted above, a public employer must always be cognizant of the economic impact that providing a benefit has on the finances of the entity. However, it is hardly a compelling reason to eliminate or reduce an existing benefit because the Union has made a number of economic proposals in the initial round of bargaining which taken together form a comprehensive package that is expensive. Such a position is founded upon the notion that the Union will prevail on each element of its comprehensive economic package. It ignores the give and take in collective bargaining.

The Employer's reliance upon the concept that it may in the future need the discretion to alter or eliminate a benefit is equally misplaced. Once again, the position ignores the reality of the give and take of collective bargaining.

With respect to the gym membership specifically, the employer argues that the elimination of said benefit would result in a cost savings. The record indicates that only nine members of the current bargaining unit avail themselves of the benefit and utilize a

gym membership. The cost per month per member is \$28.95 which amounts to \$250.55 per month for the members of the bargaining unit. The undersigned finds that the potential cost savings associated with the benefit is less than a compelling reason to eliminate the benefit. The Union's proposal seeks only to maintain the status quo for the bargaining unit members. Therefore, unless a compelling reason can be advanced to eliminate the benefits contained and referenced in the Union's miscellaneous proposal, the undersigned is inclined to adopt the Union's proposal. It is the recommendation of the Fact-Finder that the language proposed by the OPBA be adopted and incorporated in the collective bargaining agreement.

Issue 4 – Wages

LOGAN COUNTY SHERIFF'S POSITION

The Sheriff's Department asserts that it is unable to finance any wage increase during the life of the contract except, perhaps, a wage increase as a result of the re-opener proposed. Therefore, it is the employer's wage proposal that the wage increase effective upon signing the collective bargaining agreement be zero. The Sheriff's proposal includes a provision that effective January 1, 2009, there will be a 0% wage increase coupled with a re-opener at the midway point of the collective bargaining agreement on July 1, 2009.

In addition to the percentage increases reflected above, the Sheriff's Department proposes that the Officer-In-Charge (OIC) supplement of \$1.25 be paid consistent with current practice. Additionally, the Employer opposes the inclusion of payments for longevity pay and shift differential due to the costs of those proposals. Also, the Sheriff notes that no other employee in the Logan County Sheriff's Office receives such payments.

The Sheriff's Department's contends that the Union's wage proposal will result in an increase expenditure of \$260,416.00 (absent roll-up costs). Likewise the shift differential proposal results in an additional \$40,884.50 cost, while the longevity proposal costs \$16,000.00. Thus, the employer contends that the total Union wage proposal adds an additional \$317,300.50 to the Sheriff's Department expenditures.

The County Auditor, Mr. Yoder, testified at the fact-finding hearing that both the cash on hand and unencumbered fund balance dropped considerably since 2003. In fact, as of the end of the year 2007 the carryover cash balance was \$1,467,305.00 and unencumbered reserves stood at \$998,000.00. Further the Auditor testified that it is his view that the on hand reserves ought to equal 15-20% of the budget which in this case is \$16,500,000.00 (10% of that budget would equal 1.6 million).

Moreover, while the estimated revenues had increased, the costs have increased as well and the outlook for the general fund is not particularly bright. For instance, the jail will not be holding out of county prisoners in the near future. Thus, those revenues will be denied the County. In addition, interest rates are going down and the sales tax is flat. All of these factors suggest conservative budgeting in a minimum amount of expenditures.

In fact the five major revenue sources suggest that the general fund will remain flat or lose ground. As noted, the sales tax has been relatively flat since 2003. The real estate taxes have increased in the last year due to the re-valuation of property beginning January 1, 2007. Mr. Yoder testified that the decline in interest income will offset the increase realized from real estate taxes. Local government revenue has been frozen by the State and it appears to be on its way out and the personal property taxes have been changed to a cat tax which is collected by the State and reimbursed to the County. Finally Mr. Yoder

testified that in taking a snapshot of the fund between January 1, 2008 and March 31, 2008, the unencumbered fund balance was a negative number.

The conclusion to be drawn, according to the Employer, is that it does not have the ability to pay any wage increases for the bargaining unit. Thus, the Sheriff's Department seeks to have its proposal adopted by the undersigned.

OPBA'S POSITION

It is the OPBA's position that effective January 1, 2008, the following wage steps and pay shall be effective: Corporal (Step 1-\$22.88); Corrections Officer (Step 1-\$12.65; Step 2-\$13.73; Step 3-\$14.80; Step 4-15.86; Step 5-\$16.93; Step 6-\$18.00). Additionally, the employees in the classification of Corrections Officer shall be assigned the appropriate pay steps and wage rates based on length of continuous service in the classification as follows: Step 1-starting rate; Step 2-after completion of one year of service in the classification; Step 3-after completion of two years of service in the classification; Step 4-after completion of three years of service in the classification; Step 5-after completion of four years of service in the classification; and Step 6-after five years of service in the classification.

Effective January 1, 2009 the above wage and pay steps shall be increased by four percent. Effective January 1, 2010, the then effective wage and pay steps shall be increased by four percent.¹

The OPBA also proposes a longevity scale at the following rates: an employee with 5-9 years longevity will receive \$500.00. An employee with 10-14 years longevity will receive \$1000.00. An employee with 15-19 years of service will receive \$1500.00. An

¹ During the course of the hearing, the OPBA withdrew its shift differential proposal and accepted the Sheriff's Officer-In-Charge (OIC) proposal of \$1.25 per hour for all hours worked in that capacity.

employee with 20-24 years of service will receive \$2000.00. An employee with 25 years or more of service will receive \$2500.00.

The Union directed the undersigned's attention to certain comparables submitted during the course of the hearing. The first external comparable indicates that the average Corrections Officer receives \$34,962.00 salary per year whereas the average Corrections Officer in the Logan County Sheriff's Department receives \$26,791.00 per year salary. In other words the Logan County Sheriff's Office Corrections Officer receives 76% of the average in comparable groups performing the same type of work. The Union argues that further support can be found for the comparison. Taking the top ten average Correction Officer's yields an average of \$29,000.00 per year or 84% of the average of external comparables of Correction Officers.

The Consumer Price Index over the last twelve months has risen by 4%. This fact alone would suggest that an increase is necessary for the Corrections Officers in the bargaining unit to keep pace with inflation.

Moreover, wage increase comparables indicate that wages are being increased by 3.0-3.5% throughout the state. Yet, Logan County Sheriff wants the Correction Officers to accept a 0% wage increase for two years. This is neither fair nor reasonable.

As noted above in addition to proposing a wage increase of 4% in the last two years of the contract, the Union proposes the introduction of a wage scale in year one which provides progressive steps based on continuous service in the classification. Finally, the Union proposes a longevity payment based on years of service.

The Union finds support for its step progression pay scale and longevity requested in the alleged disparate treatment of the Sheriff's Department of the Corrections Officers. The Union argues that the Sheriff's Department is in dire need of a structured plan based

on seniority to compensate its employees to eliminate turnover and create morale among the employees. There is no rhyme or reason, according to the Union, to the manner in which the Sheriff's Department compensates its Correction Officers. Moreover when it comes to comparison with the Deputy population, the road patrol receives preferential treatment. For example, the evidence indicates that in 2006, the Sheriff provided the Deputies, Sergeants, and Lieutenants with a 10% increase while providing the Correction Officers a 5% increase. It is vital, the Union argues, to strike a balance between length of service and compensation to remove any attempt to treat Correction Officers in a despairing manner.

The Union also asserts that the employer is attempting to hide behind an "inability to pay" which does not satisfy the statutory criteria which references an ability to finance wage increases. It is the Union's position that the Sheriff's Department can fund its proposal and that the employer has failed to meet its burden to demonstrate an inability to pay. In support of its contention, the Union directs the undersigned's attention to 2006 when the Sheriff's budget is almost identical to current budget, yet the Sheriff was able to reward the Deputies, Sergeants, and Lieutenants with a 10% increase while providing the Correction Officers a 5% increase. The Union also points out that at the end of 2007 the Employer maintained an unencumbered fund balance of almost \$1,000,000. Overall the County budget is \$16,000,000. The union rejects the notion that somehow in the first three months of 2008, the unencumbered fund balance went from \$1,000,000 in the black to \$1,000,000 in the red. Simply put, the Union submits that the Employer has attempted to hide behind a claimed inability to finance its proposal when in fact there is sufficient revenue to do so. Therefore, the Union urges the undersigned to adopt its proposal and recommends its incorporation into the collective bargaining agreement.

RECOMMENDATION

As one can see the Sheriff and the OPBA have arrived at diametrically opposed positions on wages. Essentially, the Sheriff wants to freeze the Corrections Officers' wages and the Union wants to incorporate a wages scale which is premised on step progressions into the wage provision, along with a 4% raise in wages in the second and third years of the agreement. The Sheriff defends his position on the basis of an "inability to pay" argument.² On the other hand, the Union asserts³ that the Sheriff has misinterpreted the statute and, therefore, reliance on the inability to pay argument is misplaced.

The Union's argument on this issue is very persuasive and compelling reasons exist for examining the proposals closely. The criteria that a Fact-Finder uses to make the necessary recommendations include an examination of the public's interests and welfare. In addition, a Fact-Finder will consider both internal and external comparables when making recommendations. Finally, and perhaps most importantly in this instance, said criteria also includes consideration of the public employer's ability to finance the proposal presented.⁴

It is difficult to imagine the public's interests and welfare being served by a group of employees in the Sheriff's department whose last raise was in 2006, suffer from high turn over on the job, and low morale. It is equally difficult to imagine the same employee group facing the prospects of not receiving a pay raise for 2008 and 2009.

These employees are caught in a downward financial spiral wherein the cost of gasoline is over \$4.00 for a gallon and the CPI is 4%. Furthermore, their wages compare

² Evidence was adduced at the hearing which supported the Sheriff's argument.

³ There is also evidence in the record to support the Union's assertion.

⁴ See, Ohio Revised Code 4117.14(G)(7) and Ohio Administrative Code 4117-95-05.

unfavorably to Corrections Officers in other facilities in the general area, as well as throughout the State of Ohio. For instance, the record demonstrates that the average COs in Logan County earn about 76% of the yearly wage earned by one comparable group. Additionally, the data shows that Corrections Officers throughout the State are garnering 3.0% to 3.5% in wage increases each year. These are all compelling reasons that support the Union's proposal.

With respect to the Employer's ability to finance the proposal raised, the point is made by the Sheriff is that as costs rise revenue streams are, at best, flat or falling. The Sheriff emphasizes the loss of revenue associated with the inability to factor in housing prisoners from other counties in the Logan County jail.

The Union counters with the assertion that the Sheriff had approximately the same budget (roughly \$6,000,000.00) in 2006, when he granted the Deputies, Sergeants, and Lieutenants a 10% wage increase and COs received a 5% increase, as he does today. On the strength of this argument the Sheriff cannot demonstrate a lack of ability to finance a wage increase. The Union also points out that the record shows a 1.6 million dollar cash reserve and almost a 1 million dollar unencumbered fund balance, a portion of which could be used to finance a wage increase.⁵

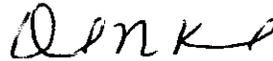
On balance the undersigned is constrained to find that the Logan County Sheriff has the ability to finance a wage increase, albeit not the exact proposal presented by the OPBA. The Union's original wage proposal costs out at \$317,300.00 (without roll-up costs), which constitutes almost a third of the 2007 unencumbered fund balance. Rather

⁵ At the hearing the Employer introduced a document that reflected the fact that the entire unencumbered fund has been consumed and now the balance is a negative number. It was a snapshot of the first quarter of 2008 and it was unaudited. The consumption of the unencumbered fund balance was not linked to any particular extraordinary event. Given the circumstances I give very little weight to this summary document.

than adopt the union's proposal in total, it is more fiscally conservative and reasonable to recommend a 3% wage increase retroactive to January, 2008; a 3% wage increase effective January 1, 2009; and a 3% wage increase effective January 1, 2010.

IV. Certification

The fact-finding report and recommendations are based on the evidence and testimony presented to me as at a fact-finding hearing conducted on May 5, 2008. Recommendations contained herein are developed in conformity to the criteria for a fact-finding found in Ohio Revised Code 4717(7)(a-f) in the associated administrative rules developed by SERB.



Daniel N. Kosanovich
Fact-Finder

V. Proof of Service

This fact-finding report was mailed to Joseph M. Hegedus, 92 Northwoods Blvd, Suite B-2, Columbus, OH 43235 and Benjamin S. Albrecht, Downes, Hurst & Fishel, 400 S. Fifth Street, Suite 200, Columbus OH 43215. This report was also emailed to the parties on June 16, 2008.



Daniel N. Kosanovich
Fact-Finder