

**STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO**

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RELATIONS BOARD

2008 DEC -5 P 12: 18

In the matter of Fact Finding between:)
)
FRANKLIN COUNTY BOARD OF)
COMMISSIONERS, PUBLIC FACILITIES)
MANAGEMENT DEPARTMENT)
)
and)
)
FRATERNAL ORDER OF POLICE,)
OHIO LABOR COUNCIL, INC.)

SERB No. 08-MED-04-0394

Hearing: November 10, 2008

Date of Report:
December 3, 2008

FACT FINDING REPORT

Appearances:

Mitchell B. Goldberg,

Appointed Fact Finder

For the Public Employer:

Robert D. Weisman, Esq.,
Aaron Granger, Esq.,
Jim Goodenow,
Maggie Snow,
Carolyn Bethel,
Dennis Jolly,
Christy Russell,

Chief Negotiator, Counsel
Counsel
Director, Public Facilities Management
Director, Human Resources
Assistant Director, PFM

Assistant Director of Office of Management
and Budget in the Commissioners' Office

For the FOP-OLC:

Ross Rader,
Ron Turner,
John Justus,
John Hicks,

Staff Representative
Negotiating Team/CSO
Negotiating Team/CSO
Negotiating Team/CSO

I. Introduction and Background.

SERB appointed the undersigned as the Fact Finder for this public employment dispute on June 11, 2008. The parties agreed to extend the timelines for the issuance of this Report. A hearing was held on November 10, 2008, and the parties agreed that this Report should be issued on December 3, 2008.

The hearing was held at the County's offices in Columbus, Ohio. The parties complied with their statutory obligations by timely submitting pre-hearing statements to the Fact Finder before the commencement of the hearing. They presented their respective positions on each of the unresolved issues, and each party submitted documentary exhibits.

The bargaining unit consists of approximately 58 court security officers. The unit was certified on March 3, 2008. Their collective bargaining agreement expired on December 31, 2007. They engaged in bargaining on approximately 15 sessions from April 30 through October 23. One session involved assistance from a mediator. Many issues were resolved, but 8 issues remain unresolved.

The members of the bargaining unit are referred to as Court Security Officers. Their primary responsibilities are to conduct specialized screening at screening ports for all persons, vehicles, packages and mail entering secured county facilities. Their duties involve other security related functions such as testing equipment, providing escort

services, investigate incidents, prepare reports, assist in emergencies, administer parking citations and related services in the parking garages, perform security checks and provide certain relief services. The CSOs are not licensed police officers, but they perform police related services. The Department prefers that CSOs receive training through the Ohio Police Officers Training Academy (OPOTA) or equivalent, 2 years of military police active duty, or Associate Degrees in Law Enforcement. At present, all CSOs are paid the same wages.

The Fact Finder conducted a mediation session with the parties on November 7. Some issues, or parts of issues were agreed upon, and the parties' positions on the unresolved issues were more clarified. The parties agreed to the Fact Finder's recommended language in Article 8, Internal Review Procedure, and to the definition of a grievance in Article 10, Grievance Procedure. Certain other language was agreed upon relating to the FOP's proposed language relative to mid-term bargaining. The following issues, or parts thereof remain unresolved: (1) Grievance Procedure – Article 10, (2) Hours of Work and Overtime - Article 19, (3) Compensation – Article 20, (4) Holidays/Personal Days – Article 22, (5) Bereavement Leave - Article 28, (6) Mid-Term Bargaining – Article 33, and (7) Duration – Article 34.

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

expired CBA, and all items and issues tentatively agreed upon between the parties are hereby adopted for purposes of this Report, and are hereby incorporated herein.

II. Economic Evidence.

The present global and national economic crisis has adversely affected the state and local governments in Ohio. State unemployment is now at 6.1%. Franklin County unemployment numbers are somewhat better than the statewide figures. The decreased state tax revenues have required a commensurate reduction in the amount of state funding that will be provided to local governments. The problems appear worse than the downturn in 2001 caused by the 9/11 tragedies. The 2001 budget reserves of 100 million were depleted until a 55 million dollar deficit resulted in 2006.

Christy Russell testified about the general trends in preparing for the 2009 County budget. Revenues are flat compared to 2008, but expenses have increased in health care premiums and in the payroll due to a 27th month pay period. Health care premiums for 12,000 employees will be increased by 8.8%. The 27th pay period will cost an additional \$6 million.

Management intends to address these problems by limiting the growth in expenditures to 4%, equal to the CPI. This will be done by curtailing new employment positions, limiting overtime and compensatory time payments and not filling positions that are reduced by attrition or retirements.

On the revenue side, the County expects reductions or no increases in investment earnings, sales tax receipts and property tax revenues due to lower property valuations. The sales tax increase that was temporary was reduced by 1/4%, so those revenues will not be reflected in 2009. Investment earnings due to the recession are expected to be decline to \$31 million per year, down from \$40 million in 2007. There will be decreased grant funding from federal and state governments that will put added burdens upon the general fund if the programs are maintained because the funding is mandatory.

The Commissioners passed a resolution on October 28 that provided for tightening spending controls, controlling payroll expenditures, controlling fuel and energy expenditures, and controlling discretionary spending.

The FOP counters this bleak picture by pointing out that as of September 2008 the County still had \$242.8 million in the general fund, and that its operating budget for 2008 is \$315 million. This has allowed the County to compensate its other represented and unrepresented employees with 3% and 4% annual pay increases.

III. Unresolved Issues.

(1) Article 12, Internal Review

The FOP proposes extensive new language regarding the conduct of employee investigations, complaint notification, the conduct of questioning at employee interviews, and employee access to documents. The County countered with a less extensive proposal.

Recommendation.

The new language for Article 8, Internal Review Procedure shall be that set forth in Exhibit "A" attached hereto and made a part hereof.

(2) Article 10, Grievance Procedure.

The FOP proposes changes in the language of 10.1 where a grievance is defined. It also proposes changes in the language that provides that the loser in any arbitration proceeding shall bear the costs and fees of the arbitrator. I find that the existing language should be retained due to the fact that it was bargained between the parties, and the County presumably gave something up to obtain this provision. There should be no change in the absence of the FOP granting some benefit to the County in exchange for it achieving the new language it desires, or some other evidence compelling such a change.

Recommendation.

Section 10.1 Grievance Defined, shall read as follows:

A grievance is any disagreement or dispute regarding the interpretation or application of a specific provision of this Agreement, which in turn reflects the parties' agreements relative to wages, hours, terms, or other conditions of employment.

The remaining provisions of the Grievance Procedure (and Arbitration) shall remain unchanged.

(3) Article 19, Hours of Work and Overtime.

The FOP proposes the inclusion of personal leave time, vacation time, and compensatory time in the calculation for overtime pay. Paid holidays are now included in the overtime calculation. The County opposes this due to the added costs. The non-

bargaining unit employees operate under the existing language where overtime calculations do not include these items.

Recommendation.

I recommend no change in the existing calculation for overtime pay. Article 19.1 of the FOP's proposal shall be removed. I do recommend the inclusion of one paid personal day for the members of the bargaining unit as mentioned below, but that day shall not be included in the overtime calculation.

(4) Article 20 Compensation.

The Union proposes a new pay system beginning with the present rate of \$13.94 as the probationary pay rate. Pay rates are higher after 7 months of service, 19 months and 31 months. The rates increase each year from 2008 through 2010. The present pay rate system with a uniform pay rate for all employees, regardless of the length of service makes no sense. Longevity and consistent good service should be recognized to provide a stable and reliable workforce.

The County is unwilling to change back to a step or tier system. There was a tier system in place when the predecessor union bargained for a flat fee for each member regardless of seniority. This is when the unit consisted of primarily younger members because of a high turnover. Now that the unit has stabilized somewhat those members who have now acquired more service want to be recognized and compensated for their additional service. The County argues that it went through an extensive bargaining effort the last time and it cannot be expected to change systems after only one contract. It

increased the pay so everyone would be paid the same last time. It brought rates up dramatically for many employees, and it further agreed to 2% across the board increases for each year. The FOP's new proposal would provide increases for some employees as much as 8% per year. This is a cost that cannot and should not be borne by the County at this time.

The Union also proposes a shift differential increase, additional pay for the Field Training Officer, and longevity pay increases ranging from \$.12 per hour after five years to \$.53 per hour after 22 years. The County opposes the increases because of the high additional cost of these proposals. The FOP argues, however, that its members are extremely underpaid. Municipal Court security officers performing the same work, or lesser work with fewer duties earn much more, \$14.65 after two years, \$16.04 after three years, \$17.00 per hour after 9 years of service and \$18.02 per hour after 12 years of service. CSOs in nearby areas performing the same work earn from \$19 per hour to \$22 per hour as the top rate of pay. The low pay for this unit has resulted in members having to resort to food stamps and other assistance to support their families.

Recommendation.

Article 20, Compensation shall be changed as follows:

Section 20.1. Upon ratification of this Agreement, and upon approval by the Franklin County Board of Commissioners, all employees shall receive a three percent (3%) across the board increase effective retroactive to the first full pay period in February 2008.

Effective the first full pay period in January 2009, each bargaining unit employee will receive a three percent (3%) increase.

Effective the first full pay period in January 2010, each bargaining unit employee will receive a three percent (3%) increase.

In addition to the percentage increases to base wages identified above, there will be a market adjustment of one percent (1%) added to the base wages commencing retroactive to the first pay period in February 2008, and effective the first full pay period in January 2009, and January 2010.

In addition to the percentage increases and the market adjustment added to base wages identified above, upon ratification of this Agreement and upon approval of the Franklin County Board of Commissioners, all employees on the day the contract is approved by the Franklin County Board of Commissioners who have completed a minimum of two (2) years of service within the bargaining unit, shall receive a one time lump sum payment of \$225.00 which will not be applied to the employee's base wage. Each bargaining unit employee who has completed four (4) or more years of service within the bargaining unit shall receive a one time lump sum payment of \$450.00, which will not be applied to the employee's base wage. Years of service shall be calculated as of the number of years completed as of November 10, 2008.

Section 20.2. Effective retroactive to February 1, 2008, a differential in pay of \$.40 per hour over the regular hourly rate shall be paid to all employees who are regularly scheduled to work 2nd or 3rd shift for all hours the employee is in active paid status, except sick leave.

A differential pay of \$.40 per hour over the hourly rate shall be paid to all employees required to work by the Employer a full eight (8) hour shift during the 2nd or 3rd shift for all hours actually worked during the 2nd or 3rd shift.

The FOP's proposals for FTO compensation and for longevity pay are not accepted.

(5) Article 22 Holidays/Personal Days.

Recommendation.

The FOP's proposal for adding one personal leave day per year shall be added in accordance with its proposed language of Section 22.5.

(6) Article 28 Bereavement.

The present language provides for using sick leave not to exceed 5 working days. The FOP proposes a change providing for use of any other available form of paid leave if the employee does not have sufficient accrued sick leave. The County opposes the change due to increased costs.

Recommendation.

No change.

(7) Article 33 Mid-Term Bargaining.

The FOP proposes new language providing for expanded rights in the event the County, during the term of the CBA, proposes any change in the contract, or in wages, hours and/or conditions of employment. Such a change would not be implemented without mandatory bargaining and negotiating the issue to impasse. Once impasse is reached, the County may implement the change, but the FOP would have the right to bring the issue to conciliation for a final resolution pursuant to O.R.C. 4117.

The County opposes any change that would diminish its legal rights under present law.

Recommendation.

The FOP's proposal is rejected. However, the following language shall be added to Article 35, Miscellaneous (second paragraph);

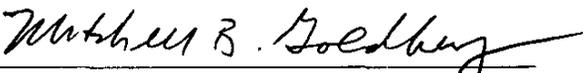
If the Employer is contemplating any unilateral change that would affect wages, hours, and/or conditions of employment for bargaining unit members, and such change is a mandatory subject of bargaining, the Employer may only implement such a change pursuant to the provisions of O.R.C. 4117, and controlling case law.

(8) Article 34 Duration.

Recommendation.

The CBA shall be effective on January 1, 2008 and remain in full force and effect through December 31, 2010.

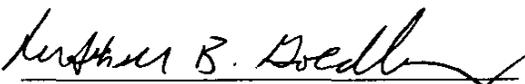
Date of Report: December 3, 2008



Mitchell B. Goldberg, Appointed Fact Finder

CERTIFICATE OF SERVICE

The within Report was sent to Edward E. Turner, Administrator, Bureau of Mediation, SERB, by U.S. Mail, First Class, this 3rd day of December, 2008. Copies were served upon Ross Rader, Staff Representative, FOP-OLC, 222 E. Town St., Columbus, Ohio 43215-4611, and Robert D. Weisman, Esq., attorney for the Employer, Schottenstein, Zox & Dunn, 250 West St., Columbus, Ohio 43215, by U.S. Mail, First Class on the same date.



Mitchell B. Goldberg

ARTICLE 8
INTERNAL REVIEW PROCEDURES

Section 8.1 Right to Representation.

Whenever management questions an employee, and the nature of the questioning presents a reasonable expectation of disciplinary action for that employee, that employee has the right to request the presence of a Union representative for advice and assistance. In such event, the employee shall be provided a reasonable time to obtain Union representation. The Union representative shall be entitled to accompany the employee during the questioning, and shall be afforded the opportunity to consult with the employee during the questioning.

Section 8.2. Complaint Notification.

An employee (member) under investigation, prior to any questioning, shall be advised of the nature and specifications of the alleged complaint, and will be given a brief synopsis of the facts surrounding the investigation.

Section 8.3, Conduct of Questioning.

Prior to questioning, an employee who is the subject of the questioning shall be advised of his *Garrity* rights; that the questioning is being done for administrative, internal department purposes only, and will not be used as part of a criminal investigation. When the employee is ordered by supervision to respond to the questioning, the employee can be disciplined for insubordination by refusing to obey the order to respond. Discipline may include punishment up to and including termination of employment.

An employee may not be subjected to a polygraph examination or other similar test without their express written consent.

EXHIBIT "A"