

**FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
October 27, 2009**

In the Matter of:

Fraternal Order of Police, Ohio Labor
Council, Inc. (Records Clerks)

08-MED-07-0710

and

Delaware County Sheriff

**REPORT AND RECOMMENDATIONS OF FACT-FINDER
TOBIE BRAVERMAN**

APPEARANCES

For the Employer:

Christopher C. Russell, Counsel
Walter L. Davis, III, Sheriff
Kevin Sauage, Captain
Judy Fransen, Executive Assistant

For the Union:

Robert L. Goheen, Staff Representative
Donna Brewer, Records Clerk
Barbara Merrmann, Records Clerk
Cathy Bass, Records Clerk

INTRODUCTION

The undersigned was duly appointed by SERB by letter dated September 17, 2008 to serve as Fact-Finder in the matter of the Fraternal Order of Police, Ohio Labor Council, Inc (hereinafter referred to as "Union") and Delaware County Sheriff (hereinafter referred to as "Employer") pursuant to OAC 4117-9-5(D). The parties agreed to extend the deadline for the Fact Finder's Report until October 27, 2009. Hearing was held at Delaware, Ohio on October 7, 2009. The Union was represented by Robert L. Goheen, Staff Representative, and the Employer was represented by Christopher C. Russell, Counsel. The parties were permitted to present testimony and exhibits concerning each of the outstanding provisions on which agreement had not been reached. The parties have waived service of this Report via overnight delivery, and have agreed that statutory time lines will run from receipt of fax and email delivery of the Report and Recommendations.

Pursuant to Ohio Revised Code §4117.14, the Fact-Finder has considered, to the extent submitted by the parties, previously bargained collective bargaining agreements, the comparison of the issues submitted relative to other public employees doing comparable work, the interests and welfare of the public, the ability of the Employer to finance and administer the issues proposed, the effect of the adjustments on the normal standard of public service, the lawful authority of the Employer, and other factors traditionally considered in the determination of issues submitted.

FACTUAL BACKGROUND

The Employer operates the Sheriff Department of Delaware County, Ohio, a county in central Ohio with a population of approximately 165,000 according to 2008 census estimates. The Employer employs employees in a total of six bargaining units representing various classifications of employees including deputies and detectives, corrections, dispatch, and two supervisor units in addition to the one which is the subject of this Report. The bargaining unit involved here is a newly

certified unit which represents the eight full time Records Clerks employed by the Employer. The Records Clerks process traffic violations, warrants, foreclosure documents, other civil documents, missing persons reports, and stolen vehicle reports among other duties. They operate on a 24 hour 365 day schedule. The Union was certified by SERB as the exclusive bargaining representative for the Employer's Records Clerks on January 10, 2008. This is the initial collective bargaining agreement between the parties.

The parties met in bargaining from sometime during the summer of 2008 through August 12, 2009 when the Union declared impasse and requested that the parties proceed to fact-finding. The parties were able to reach agreement on a substantial number of contractual provisions. The Articles agreed upon, either in whole or in part, are referenced in the attached Exhibit A, and are incorporated herein by reference and adopted as part of the parties' final agreement. Additionally, the parties were able to reach agreement on or withdrawal of the following items in the course of mediation at the time of hearing, and those agreements are additionally adopted as part of the parties' final agreement. Those items include the following:

Article 8.4 - Shift Transfers

Article 15.3 - Agreement Copies

Article 19 - Training

The remaining unresolved issues are as follows:

Article 20.1(D) - Definition of Immediate Family

Article 24 - Wages

ISSUES

ARTICLE 20.1 (D) DEFINITION OF IMMEDIATE FAMILY

Union Position: The Union proposes a definition of immediate family which mirrors the definition included in the Collective Bargaining Agreement between the Employer and its

dispatch bargaining unit which includes spouse, children, parents, step-children, grandparents, siblings, grandchildren, mother in-law and father in-law. The Employer seeks to limit the definition of family to those who live in the employee's household. This definition is too restrictive in that it prevents individuals from utilizing sick leave to care for sick grandchildren or to take an elderly parent to a doctor's appointment. The definition is restrictive beyond the definition of family in the FMLA, and is unsupported. The definition of family should be the same as that contained in the dispatch Collective Bargaining Agreement.

Employer Position: There is no dispute that the Agreements of other bargaining units within the Sheriff's department provide for the definition of immediate family as proposed by the Union. However, the current Sheriff was not in office at the time those Agreements were negotiated. He desires to change the language, and this being a new Agreement, this is the appropriate place to begin the initiative to change the language throughout the Agreements. The limitation on the use of sick leave to family members who reside in the same household with the Employee is a reasonable one which should be incorporated into the contractual language.

Discussion: The language regarding the definition of family for purposes of use of sick leave as included in the agreements of the five other bargaining units and as proposed by the Union, permits an employee to utilize sick leave to care for enumerated family members, including spouse, children, parents, step-children, grandparents, siblings, grandchildren, and mothers and fathers- in-law. The Employer proposes that the list of family members remain the same, but that sick leave use be restricted to family members with whom the employee resides. The rationale advanced by the Employer for this limitation is that the Sheriff seeks to impose this limitation on all six bargaining units, and seeks to begin with this one since it is an initial Agreement.

The Employer has not submitted any evidence to demonstrate that the language as included in the other Agreements has resulted in a problem of any kind regarding sick leave usage or abuse. There was further no evidence to demonstrate that the employees of this

bargaining unit have experienced an excessive or abusive use of sick leave. The Employer thus seeks to impose the limitation in this and other bargaining units without articulating any need for the new restriction. As the Union notes, the employees would be permitted to use FMLA leave for most of the family members listed. The proposed restriction then, would force them to take unpaid FMLA leave to care, for example, for a parent not residing in their household, when they would otherwise be able to utilize available sick leave in conjunction with the FMLA leave to care for that parent.¹ Without a clearly articulated rationale for the proposed restriction there is no basis for its inclusion in the Agreement. This is particularly the case since all other bargaining unit employees within the Sheriff's office are not subject to the proposed residency restriction.

Recommendation: Article 20.1D shall read as follows: "Immediate family" for purposes of this policy include: employee's spouse, children, parents, step-children, grandparents, siblings, grandchildren, and mothers-in-law or fathers-in-law.

ARTICLE 24 - WAGES

Union Position: The Union proposes a wage increase of 3.5% retroactive to January 1, 2008, a 3.25% increase retroactive to January 1, 2009, and a 3.5% wage increase effective January 1, 2010. This bargaining has been protracted through no fault of the bargaining unit. All other bargaining unit employees within the other five bargaining units have received and will receive the wage increases as proposed by the Union effective January 1 of each year. This bargaining unit did not receive any wage increases in either 2008 or 2009 due to the ongoing collective bargaining. The Employer offered this wage proposal by letter dated March 5, 2009, but withdrew it when the Union was unable to respond to the proposal by the arbitrary deadline of March 9, 2009 set by the Employer. When the Union responded affirmatively on March 12,

¹ Although the Sheriff's FMLA policy was not submitted to the Fact-finder, most such policies require the use of paid sick leave while on FMLA leave so as to prevent the Employer from being required to grant the employee unpaid leave while paid leaves remain for future use. The Employer's proposal would not permit this.

the Union was advised that the proposal was withdrawn. There is no basis for providing these employees with any less than the wage increases given to other bargaining units. Delaware County is a prospering and growing County which has not demonstrated any inability to pay.

Employer Position: The Employer agrees that negotiations have been protracted. While the fault is not that of the bargaining unit, it is similarly not through the fault of or unwillingness to negotiate on the part of the Employer. The Employer argues although the other bargaining units within the Sheriff's department have either received or are scheduled to receive the wage increases as proposed by the Union, economic times have changed since the time those Agreements were bargained. With the impact of the current recession and job loss, the increase proposed is simply not justified. Whole departments have been eliminated in the sheriff departments of surrounding counties due to the economic crisis. In light of the current economic situation, the Employer now proposes a 3.25% increase retroactive to January 1, 2009 and a wage re-opener for 2010.

Discussion: The Employer argues that due to the difficult economic times, it cannot afford the wage increases proposed by the Union. However, although the Employer has pointed to other counties that are laying off, it has not presented any evidence concerning its own fiscal situation. There was no evidence presented to demonstrate that Delaware County's fiscal situation is problematic. Several web sites tout the County as the fastest growing county, not only in Ohio, but in the nation. Census figures from the U.S. Census Bureau indicate that median household income in the County is nearly double the State median. The median value of owner-occupied housing is \$86,700 greater than the State median value. A presentation to the County Commissioners in August, 2009 indicated that the County experienced a 1.9% job loss between December, 2007 and June, 2009 compared to a 5.9% job loss in the State of Ohio. The same report noted that between 2007 and 2008 job growth was up in the County by 3.1% while figures for the region declined. The picture is thus simply not of a county struggling to balance its budget. Rather, it is one of a county which is sustaining growth and revenues despite the

economic downturn. The Employer has simply failed to demonstrate that it does not have the ability to pay wage increases.²

Although the Union has presented some external comparables, the Fact-finder finds the internal comparables here to be the most compelling evidence regarding wages. The five other bargaining units all received a 3.5% increase in 2008, a 3.25% increase in 2009, and will receive a 3.5% increase in 2010. Both parties agree that while these negotiations have been unduly protracted, the delays cannot be attributed to the fault or misdeeds of either party. Rather, a series of circumstances for which neither party can be blamed resulted in long delays. This bargaining unit, therefore, should not be forced to forego wage increases comparable to those given to other bargaining units absent some compelling reason for the distinction. Other than making general references to tough economic times, the Employer has not justified its position that the Records Clerks should receive no increase for 2008, and be forced to immediately re-open negotiations, starting from an Employer proposal of 0% increase for 2010. This bargaining unit has already conceded its proposal for step increases even though the other bargaining units have step increases in their Agreements. There is simply no articulated basis for their receipt of lesser wage increases than those of the other five bargaining units.

Recommendation: Wage increase of 3.5 % retroactive to January 1, 2008; wage increase of 3.25% retroactive to January 1, 2009; wage increase of 3.5% effective January 1, 2010.

Dated: October 27, 2009



Tobie Brayerman, Fact-Finder

² It should be further noted, that the cost of a 3.5% wage increase for this small bargaining unit of eight is estimated to be \$14,000 per year before consideration of benefits.

CERTIFICATE OF SERVICE

The foregoing Report and Recommendations was delivered via fax and email this 27th day of October, 2009 to, Robert L. Goheen, FOP Staff Representative at (614) 224-5775 and bobgoheen@yahoo.com and to Christopher C. Russell, Porter Wright at (614) 227-2100 and crussell@porterwright.com.


Tobie Braverman

EXHIBIT A

| | |
|------------|---------------------------------|
| Article 1 | Preamble. |
| Article 2 | Recognition |
| Article 3 | Dues Deduction |
| Article 4 | Non-Discrimination |
| Article 5 | Probation |
| Article 6 | Corrective Action - Records |
| Article 7 | Discipline Meetings |
| Article 8 | Transfers and Assignments |
| Article 9 | Conformity to Law |
| Article 10 | Labor Relations Meetings |
| Article 11 | Standard Operating Procedures |
| Article 12 | Grievance Procedure |
| Article 13 | Seniority |
| Article 14 | Layoff and Seniority |
| Article 15 | Miscellaneous |
| Article 16 | Unpaid Leaves of Absence |
| Article 17 | Military Leave |
| Article 18 | Standard Work Week and Overtime |
| Article 21 | Vacations |
| Article 22 | Holidays |
| Article 23 | Health Insurance |
| Article 25 | Scope |
| Article 26 | Management Rights |
| Article 27 | Substance Abuse Policy |
| Article 28 | Duration |