

STATE OF OHIO

STATE EMPLOYMENT
RELATIONS BOARD

BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

2009 OCT 23 P 12:48

FACT FINDING PROCEEDING

Case No. 08-MED-09-0832

Fraternal Order of Police, Ohio Labor Council, Inc.

and

Clermont County Commissioners

REPORT AND RECOMMENDATIONS OF THE FACT FINDER

Daniel N. Kosanovich

ISSUED: October 22, 2009

Appearances:

**Barry Gray, Staff Representative
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(For the Employer)**

REPORT AND RECOMMENDATIONS

I. Background

The bargaining unit employees are represented by the Fraternal Order of Police, Ohio Labor Council, Inc. It consists of employees in the job classification of Emergency Resource Technician (ERT), who are employed in the Department of Public Safety Services. Ultimate control and direction of this group of employees rests with the County Administrator, who serves as Chief Executive Officer of the Board of County Commissioners. The primary duty of the ERT is to operate radios, telecommunications and the computer equipment, and process telephone calls (including 911) and/or radio calls to ensure quality dispatch of resources in an efficient and effective manner. There are approximately fifteen (15) individuals within the scope of the ERT position. The Employer is the Board of Clermont County Commissioners.

On August 5, 2009, the State Employment Relations Board issued a letter to Tara M. Crawford of the FOP and Robert E. Sander on behalf of the Clermont County Commissioners appointing the undersigned as a fact finder in this matter. The appointment followed the withdraw of Michael Paolucci.

The parties mutually agreed to extend the fact finding, as provided under the Ohio Administrative Code, Section 4117-9-05(G). The hearing was set and conducted on October 2, 2009.

Following the negotiations efforts that the parties undertook from January through May of 2009, many unresolved issues were carried to the fact finding hearing. There were thirteen (13) unresolved issues presented for consideration at the fact finding. Those unresolved issues involved the following provisions of the contract: Article 2 – Recognition; Article 8 – FOP Representation; Article 9 – Rights of Bargaining Unit

Members; Article 11 – Probationary Period; Article 18 – Equalization of Overtime; Article 19 – Shift Assignments; Article 22 – Wages; Article 24 – Holidays; Article 25 – Sick Leave; Article 27 – Paid Absence Days; Article 28 – Severance; Article 29 – Leave of Absence; and Article 42 – Duration.

Prior to commencing the fact finding proceedings, the undersigned offered to mediate the outstanding issues identified by the parties in their pre-hearing statements. The parties accepted the offer. As a result of the mediation effort, the parties settled all but two (2) of the unresolved matters.

The resolutions reached by the parties during the mediation session that preceded the fact finding hearing are incorporated herein, along with the tentative agreements reached during the negotiations efforts that took place between January and May of 2009, as if fully re-written herein.

The tentative agreements reached by the parties during the mediation on October 2, 2009, are reflected in Appendix “A” attached hereto. Following the mediation effort by the parties, two (2) issues remained unresolved. Article 22 – Wages and Article 42 – Duration.

It must be noted that during the course of the fact finding hearing conducted on October 2, 2009, both parties were given full opportunity to submit evidence in support of their respective positions on the remaining unresolved issues and they availed themselves of those opportunities. 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 collectively bargained agreements between the parties;
- 2) Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employers in comparable work, given consideration to factors peculiar to that area or 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 on the normal standards of public service;
- 4) The 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

ARTICLE 22. WAGES-SCHEDULE OF RATES

FOP's Position

The FOP's position is reflected in its proposal submitted at the fact finding hearing.

Section 22.1. Bargaining unit employees shall receive wage compensation based on assignment and years of service with the Clermont County Communications Center in accordance with the following schedule.

Emergency Resource Technician:

Rate	Step 1 Less than 1 year	Step 2 1-2 years	Step 3 2-3 years	Step 4 3-4 years	Step 5 4-5 Years	Step 6 5-6 Years	Step 7 6-7 years	Step 7-8 years	Step 9 8-9 years	Step 10 9-10 years	Step 11 10+ years
1/1/06	13.50	14.38	14.77	15.21	15.63	16.06	16.53	16.99	17.44	18.58	N/A
1/1/07	13.77	14.58	14.98	15.42	15.85	16.28	16.76	17.23	18.95	N/A	N/A
1/1/08	13.77	14.78	15.19	15.64	16.07	16.51	16.99	17.47	19.33	N/A	N/A
Date	Step 1 Less than 1 year	Step 2 1-2 years	Step 3 2-3 years	Step 4 3-4 years	Step 5 4-5 years	Step 6 5-6 years	Step 7 6-7 years	Step 8 7-8 years			
1/1/2009	\$14.18	\$15.22	\$15.65	\$16.11	\$16.55	\$17.01	\$17.50	\$19.91			
1/1/2010	\$14.61	\$15.68	\$16.12	\$16.59	\$17.05	\$17.52	\$20.51	N/A			
1/1/2011	\$15.05	\$16.15	\$16.60	\$17.09	\$17.56	\$21.12	N/A	N/A			

Public Safety Call Takers

Date	Step 1 Less than 1 year	Step 2 1-2 years	Step 3 2-3 years	Step 4 3-4 years	Step 5 4-5 years	Step 6 5-6 years	Step 7 6-7 years	Step 8 7-8 years
1/1/2009	\$12.06	\$12.94	\$13.30	\$13.69	\$14.07	\$14.45	\$14.87	\$16.92
1/1/2010	\$12.42	\$13.33	\$13.70	\$14.10	\$14.49	\$14.89	\$17.43	N/A
1/1/2011	\$12.79	\$13.73	\$14.11	\$14.53	\$14.93	\$17.95	N/A	N/A

The Fraternal Order of Police, Ohio Labor Council, Inc. desires a three percent (3%) increase in wages for each of the three (3) years of the Collective Bargaining Agreement. The FOP/OLCI also seeks a wage table for Public Safety Call Takers.

During the negotiation process, the Union has continually heard of the Employer's desire not to give wage increases to any County employee for the year 2009. The Union proposed a plan which would cost the Employer no more money than it is paying out, but rather restructuring monies that a few bargaining unit members receive in an assignment to all Bargaining Unit Members. The County refused. The Union is now presenting a 3%-3%-3% wage proposal in order to maintain an "average" wage increase for the three (3)

years of the Agreement. The Union proposal also includes the reduction of steps in the wage rates, a concept agreed to in principle by the Employer during the negotiation of the current Agreement.

The County is not alleging the inability to finance the proposal. In fact, notwithstanding the reduction in revenues, the County has the assets and unencumbered General Funds to sustain the proposal.

County's Proposal

The County's proposal on wages is reflected below.

Section 22.1. Bargaining unit employees shall receive wage compensation based on assignment and years of service with the Clermont County Communications Center in accordance with the following schedule for the term of this Agreement.

Emergency Resource Technician:

Date	Step 1 less than 1 yr.	Step 2 1-2 yrs	Step 3 2-3 yrs	Step 4 3-4 yrs	Step 5 4-5 yrs	Step 6 5-6 yrs	Step 7 6-7 yrs	Step 8 7-8 yrs	Step 9 8-9 yrs	Step 10 9-10 yrs	Step 11 10+ yrs
1/1/06	13.50	14.38	14.77	15.21	15.63	16.06	16.53	16.99	17.44	18.58	N/A
1/1/07	13.77	14.58	14.98	15.42	15.85	16.28	16.76	17.23	18.95	N/A	N/A
1/1/08	13.77	14.78	15.19	15.64	16.07	16.51	16.99	17.47	19.33	N/A	N/A
	13.26	14.23	14.63	15.06	15.48	15.90	16.36	16.82	18.62		

During the term of this Agreement all members below Step 9 shall remain on their current step for one additional year and shall not receive a step increase until the following anniversary.

Clermont County has experienced a substantial decline in General Funds revenues. In 2007, the County experienced its highest revenue ever. It is anticipated by the end of 2010, operating revenues will have declined by over fifteen percent (15%) and total revenues by over seventeen percent (17%) since that 2007 peak.

The State legislature adopted changes to state and civil service laws (L.R.C. 124.393) which will allow for the furlough of public employees to achieve cost savings. Clermont County has adopted a furlough guideline for those operations under the control of the County Commissioners.

The new law permits furloughs of eighty (80) hours. The loss of eighty (80) hours equals 3.84% reduction in compensation. Many County employees will experience a furlough.

Not all County operations are a minimal to furlough. Virtually no operation is overstaffed. An absent employee must be replaced. DPSS is such an operation.

The only way the County can operate within its revenues is to reduce costs. Since staff reductions are not feasible for DPSS, the only option is to reduce labor cost.

The economic outlook is far more bleak now than it was when the bargaining began. The initial proposal of a wage freeze is no longer an acceptable option.

The County is proposing a reduction of the current rates of all steps of 3.84%. This reduction is equal to the same wage loss as will result from an eighty (80) hour furlough.

The County proposes that all employees will remain at their current salary step for the term of this Agreement. The Employer is also proposing a 2-year Agreement expiring December 31, 2010.

The Employer recognizes that there are alternative measures which could help the Department to meet the County's cost cutting objectives. These measures have not been presented or discussed in bargaining and may not be appropriate as proposals at fact finding. Nonetheless, some cost cutting could be achieved. In Section 17.2.1 of the tentatively agreed upon Hours of Work Article, which includes various forms of paid

time off, if the calculation of hours worked for overtime purposes is deleted, a significant savings could be achieved.

RECOMMENDATION

At the fact finding hearing, the County offered up a detailed assessment of the present economic situation and future economic projections. In other words, the County took great pains to lay a foundation which it contends supports the call for the reduction of labor costs in the form for a 3.84% wage reduction for the bargaining unit employees. Here are just a few of the economic downturns identified by the County in support of its position.

In July of 2009, the unemployment rate in Clermont County hit a record high of 10.4%. Without employment the streams of spendable income are reduced dramatically, which in turn implicates a decline in sales taxes. Requests for building permits hit the lowest level in nine (9) years and the medium home sales value has been reduced. The revenue streams have been further disrupted by the drop in interest earnings. Even conveyance fees have been detrimentally affected.

Most significantly, the General Funds have realized a substantial decline in revenue, particularly since 2007. In the year of 2007 revenues in the General Funds hit their historical high. The drop from 2007 in operating revenues is 15% and is anticipated to be 17% by 2010.

Another rationale offered to support the County's wage reduction proposal can be found in the changes of the Civil Service laws. The State of Ohio has adopted changes in the Civil Service laws (O.R.C. 124.93) which allows for the furlough of public employees. These furloughs may equal up to eighty (80) hours. A loss of eighty (80) hours in a furlough equates to 3.84% in reduction in compensation. Unfortunately, the

bargaining unit is not staffed to implement the furlough process. The savings can be realized through the reduction of labor costs by reducing wages, hence the County's proposal.

In response to the County's assertions, the Union submits that the present case is not one in which the Employer is claiming an inability to finance the Union's proposal. The Union points to the growth in the County's net assets from 2004 through 2008. The net assets grew during that period to \$493,709,821.00, as reflected by the Auditor's reports.

Moreover, the Union notes that the County maintains a large reserve which can be used to finance the wage increases demanded by the Union. Finally, the Union submits that historically the bargaining unit employees in this particular bargaining unit get the "short end of the stick" in the way of wages because of their position in the rotation of collective bargaining with the County.

In order to conduct a proper assessment of the positions adopted by the parties in the negotiations, it is necessary to consider the context in which the collective bargaining has taken place. The predecessor contract expired at midnight on December 31, 2008, and the first bargaining session took place on January 22, 2009. The bargaining continued through April of 2009. This period was the onset for one of the worst economic declines in the country's history. The country was on the verge of total collapse economically. Of course, interest earnings were sharply reduced. Further, unemployment rates grew throughout the nation. Clermont County was not unique in its experiences in that economic environment.

Fortunately, the County's assets have grown. More importantly, the County has managed to maintain a 25% unencumbered reserve from the General Funds. Finally, on October 14, 2009 the DOW JONES flirted with 10,000 for the first time since October

2008. It must be noted that the cost of a 1% wage increase for the bargaining unit is \$7,800.00 per year, which means that the cost for a 2% increase would be \$15,600.00 absent roll-up costs.

Notwithstanding the fact that virtually all of the economic indicators have declined to some extent from the peak economic period in 2007, Clermont County still possesses the ability to finance a modest increase in wages for the bargaining unit based on the maintenance of the 25% unencumbered fund balance which can be used to offset any shortfall in revenues. The County's comparison of 2007 to 2009 exaggerates the economic decline and diminishes the persuasiveness of its position.

Therefore, I recommend that the FOP's proposal be adopted with a 2% increase in wages rather than a 3% increase. The bargaining unit employees receive a 2% wage increase retroactive to January 1, 2009 and another increase in the second year of the contract effective January 1, 2010. In addition, I recommend the Union's proposal for a step scale for the Call Takers to be adopted as proposed.

ARTICLE 42. DURATION

FOP's Position

It is the FOP's position that the duration of the term of the Agreement ought to be three (3) years commencing January 1, 2009 and expiring by its terms on December 31, 2011. It is the Union's position that the Agreement should take effect January 1, 2009 and to provide the maximum amount of security and stability for the bargaining unit members should terminate by its terms on December 31, 2011.

County's Position

It is the County's position that a two (2) year Agreement is more appropriate. Such an Agreement would minimize the exposure the County has in the uncertain economic future.

RECOMMENDATION

It is recommended that the term of the Agreement extend from January 1, 2009 to December 31, 2010. This would meet both parties' interests and provides minimum risk for the Employer along with stability for the bargaining unit.

IV. Certification

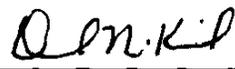
The fact-finding report and recommendations are based upon the evidence and testimony presented to me as at a fact-finding hearing conducted on October, 2, 2009. Recommendations contained herein are developed in conformity with the criteria set forth for a fact-finding in accordance with the Ohio Revised Code 4717(7)(a-f) and the associated administration of rules developed by SERB.



Daniel N. Kosanovich
Fact-Finder

V. Proof of Service

This fact-finding report was mailed to Barry Gray, Staff Representative, Fraternal Order of Police, Ohio Labor Council Inc., 5752 Cheviot Road, Suite D, Cincinnati, OH 45247-7008, and Paul R. Berninger, Wood & Lamping LLP, 600 Pine Street, Suite 2500, Cincinnati OH 45202-2491. This report was also emailed to the Barry Gray and Paul Berninger parties on October 22, 2009.



Daniel N. Kosanovich Fact Finder

**APPENDIX "A" – AGREEMENTS REACHED
DURING MEDIATION ON 10-2-09**

**ARTICLE 2. FOP RECOGNITION
(Language set forth below reflects the parties' tentative agreement)**

Section 2.1. The Employer recognizes the FOP as the sole and exclusive representative for those employees of the Employer in the bargaining unit. Wherever used in this agreement, the term "bargaining unit" shall be deemed to include those full-time employees employed by the Employer in the classification of Telecommunications Specialist / Emergency Resource Technician (Radio Dispatcher) as certified by the Ohio State Employment Relations Board in case number 92-REP-06-0119, dated September 10, 1992 **and all full time Public Safety Call Takers as certified by the Ohio State Employment Relations Board in case number 09-REP-02-0023, dated April 15, 2009.**

Section 2.2. All management level employees, supervisors, confidential employees, professional employees, seasonal and casual employees, and all other employees of the Employer not classified as Telecommunicators (Radio Dispatchers), ~~or~~ Emergency Resource Technicians **or Public Safety Call Takers** are specifically excluded from the bargaining unit.

Section 2.3. Telecommunications Specialists (Radio Dispatchers) as certified by the Ohio State Employment Relations Board have been re-named Telecommunicator. The parties have agreed to file a joint petition to add the classification of Emergency Resource Technician.

ARTICLE 8. FOP REPRESENTATION

Tentative agreement to maintain current contract language.

ARTICLE 9. RIGHTS OF BARGAINING UNIT MEMBERS

Tentative agreement to maintain current contract language.

ARTICLE 11. PROBATIONARY PERIOD

(Language set forth below reflects the parties' tentative agreement)

Section 11.3. Any employee who is appointed to the position of Emergency Resource Technician (ERT) from that of Public Safety Call Taker shall be required to successfully complete a probationary period. The probationary period shall begin on the first day of which the employee receives compensation from the Employer at the position or ERT and shall continue for a period of six (6) months. Upon appointment to the position of Emergency Resource Technician from that of Public Safety Call Taker, the employee shall be permitted to return to the position of Public Safety Call Taker upon failure of probation in the position of ERT. The employee may voluntarily return to the position of Public Safety Call Taker within sixty (60) days after the date of the appointment to ERT. Nothing in this Article requires the Employer to fill an Emergency Resource Technician (ERT) position by promotion of a Public Safety Call Taker.

ARTICLE 18. EQUALIZATION OF OVERTIME

Tentative agreement to maintain current contract language.

ARTICLE 19. SHIFT ASSIGNMENTS

Tentative agreement to maintain current contract language.

ARTICLE 24. HOLIDAYS
(Language set forth below reflects the parties' tentative agreement)

Section 24.3. The length of the holidays listed above shall be equal to **eight (8)** an employee's ~~normal daily~~ work hours for one (1) day.

Section 24.4. All employees shall receive holiday pay equal to **eight (8)** ~~their normal~~ daily work hours, if the employee is in active pay status on his scheduled work days preceding and following the holiday. With approval, an Employee scheduled to work on a holiday, may take the day off with pay upon the Employee's written request. Employees may elect to have their holiday pay added to their compensatory time account.

ARTICLE 25. SICK LEAVE
(Language set forth below reflects the parties' tentative agreement)

Section 25.5. The amount of sick leave time any one employee may accrue is unlimited, but may not exceed **one hundred twenty (120) hours** ~~fifteen (15) work days~~ per employee in an anniversary year.

Section 25.13. Annual Sick Leave Conversion

- A. A county employee may at his/her option, convert up to **forty-eight (48) hours** ~~six (6) unused sick leave days~~ to personal leave days with pay on the basis of two for one (2 for 1) provided the employee maintains a balance of at least 240 hours of total accumulated sick leave. A maximum number of three (3) personal lave days may be obtained under this procedure each calendar year and these personal days shall be subject to the provisions of Section 4.5 of the County Personnel Manual regarding request for use of and accrual.

- B. Conversion of sick leave under this policy shall eliminate those converted credits from the employee's accrued balance.
- C. For purposes of sick leave conversion, sick leave earned and accrued during employment with any other state or local government shall be excluded from the calculation of the employee's sick leave balance.

ARTICLE 27. PAID ABSENCE DAYS

Tentatively agreed to prior to the 10-2-09 mediation.

ARTICLE 28. SEVERANCE

Tentative agreement to maintain current contract language.

ARTICLE 29. LEAVE OF ABSENCE

Tentative agreement to maintain current contract language.