

STATE EMPLOYMENT RELATIONS BOARD STATE EMPLOYMENT  
RELATIONS BOARD

March 6, 2009

2009 MAR -9 P 12:45

In the Matter of the Fact Finding Hearing Between:

FRATERNAL ORDER OF POLICE/	)	
OHIO LABOR COUNCIL, INC.	)	SERB Case No. <sup>08</sup> 06-MED-09-0864
	)	
And	)	Communications Officer, Vehicle
	)	Maintenance Worker, Vehicle
LORAIN COUTY SHERIFF	)	Maintenance Coordinator

APPEARANCES

For the Union:

Lucy DiNardo	Staff Representative, FOP/OLC
Grant Koba-Nelson	Vehicle Maintenance Worker
Susan Neely	Communications Officer
Robert J. Iski	Vehicle Maintenance Coordinator

For the Sheriff's Office:

Robin Bell, Esq.	Clemans Nelson & Associates
Jonathan Noe, Esq.	Clemans Nelson & Associates
John Reiber	Captain
Phil Stammitti	Sheriff

Fact-Finder:

Virginia Wallace-Curry

## INTRODUCTION

This matter concerns the fact-finding proceeding between the Lorain County Sheriff (the "Employer" or "Sheriff's Department") and the Fraternal Order of Police, Ohio Labor Council, Inc. (the "Union" or "FOP"). There are three classifications in the Union: Communications Officer, Vehicle Maintenance Coordinator and Vehicle Maintenance Worker. There are approximately 11 employees in the bargaining unit. The parties' collective bargaining agreement expired on December 31, 2008.

The parties met on November 26, 2008, which was their only meeting. The Union requested to proceed directly to fact-finding. Virginia Wallace-Curry was appointed Fact-finder in this matter by SERB. A hearing on the unresolved issues was held on January 6, 2008. At the hearing, the parties accepted the Fact-finder's offer to mediate, and many of the outstanding issues were resolved. The tentative agreements on all these issues are incorporated in this report and recommended by the Fact-finder.

The Fact-finder conducted a hearing on the remaining unresolved issues. The parties were given a full opportunity to present their respective positions. The fact-finding proceeding was conducted pursuant to Ohio Collective Bargaining Law and the rules and regulations of the State Employment Relations Board, as amended.

In making the recommendations in this report, consideration was given to the following criteria listed in Rule 4117-9-05 (K) of the State Employment Relations Board:

1. Past collectively bargaining agreements, if any, between the parties;
2. Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification 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 adjustments on the normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the parties;
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

## UNRESOLVED ISSUES

1. Article 24, Sick Leave Accrual
2. Article 25.3, Health Care Benefits
3. Article 28.3, Holidays
4. Article 31.2, Uniforms - Payment
5. Article 35, Wages
6. Article 40, Duration

## INTRODUCTION

The Lorain county sheriff was informed by the Lorain County Commissioners that he would be required to cut his General Fund salaries by \$1.2 million for 2009. The budget cuts are the result of an anticipated \$6 million deficit for Lorain County for 2009.

As a result of the budget cuts, the Lorain County Sheriff has laid off twelve full-time deputies and two Records clerks. In addition, the Sheriff has notified eight part-time (intermittent) deputies that their services will not be utilized as a result of the budget cuts. In addition, the Sheriff has cut his support car policy and practice and otherwise juggled his budget so that he can maintain as many employees as he can.

No one has been laid off from this bargaining unit. In fact, a dispatcher was hired to fill a vacant position.

Prior to the announcement by the Commissioners that the budget would be cut, the other bargaining units in the Sheriff's Department received 9% wage increases over three years.

## UNRESOLVED ISSUES

### 1. ARTICLE 24 - SICK LEAVE ACCRUAL

Union's Proposal – The Union proposes an increase of 15 days of sick leave per year. Leave will be earned at 4.6 hours for each 80 hours of service in active pay status.

The Dispatch (Vehicle Maintenance) bargaining unit is comprised mostly of employees who have families. Compared to surrounding agencies, the Sheriff's

Department employees receive far less accumulated sick leave. Similar employees of the Sheriff's Department of Ashland County, Erie County, Huron County, Lake County, Medina County, and Sandusky County receive 15 sick leave and bereavement days compared to Lorain County's 8 days.

Employer's Proposal – The Employer is opposed to the Union's proposal. The current sick leave accrual rate is 2.46 hours for each 80 hours in active pay status. As a result, an employee earns 8 days of sick leave and 6 days of bonus time. Under the Union's proposal, employees would earn 15 days of sick leave and maintain the right to earn 6 days of "bonus time." If the Union wishes to go to the higher accrual rate, then the 6 days of bonus time must be deleted from the agreement.

Recommendation – It is not recommended that the number of sick leave days be increased if the bonus days are retained. The jurisdictions mentioned by the Union that have 15 sick days per year do not have bonus time awarded. If the Union wants to increase the number of sick days for employees because many have children, then the Union could have accepted the Employer's offer to switch to a higher accrual of sick days in lieu of the bonus time. However, the Union was not willing to accept this offer. Therefore, it must be assumed that the bonus time is important to many of its members. The bonus time can be used in the following year as scheduled time off; added to sick leave at full value; or converted to cash at ½ the value of the unused bonus time. Given that the Union wanted to keep the bonus, the increase in sick leave accrual is not recommended. Keeping the current contract language is recommended.

## 2. ARTICLE 25.3 - HEALTH CARE BENEFITS

Union's Proposal – The Union's position is to maintain the current contract language. Under the current contract, this bargaining unit pays \$35.00 a month for family coverage.

In 2002-2005 this unit paid in excess of \$100.00 a month for family coverage, when non-bargaining unit employees and officials paid \$35.00. During the last negotiations, this Fact-finder reduced the premiums for this unit to \$35.00 a month because of the lower than average wage increases that were awarded.

The Employer asserts that the increase it proposes is the same as everyone will be paying. However, the Employer has managed to get one unit to agree to this increase in premiums by granting them a substantially higher wage increase than given in former years. The Deputy's unit was granted wages increases of 4% in 2008, 2.5% in 2009, and 2.5% in 2010. The Deputy's unit was also given language within its successor agreement that allows it to dispute any premium increase after January 1, 2009, to Step 3 of the grievance procedure. The Employer has proposed a wage freeze for all three years of the successor bargaining agreement for this unit. There is no justification for an increase to health care contributions.

Employer's Proposal – The Employer proposes a 90%-10% premium split with the Union. This bargaining unit is one of the three smallest units in the Sheriff's Office that does not have a 90/10 premium split. The Deputies Unit and the Corrections officers Unit have the premium split in place.

The rising costs of health care have lead most public employers to seek either employee premium sharing or drastic changes in plan provisions. The Lorain County Commissioners have not sought any consequential changes in the plan benefits, and the benefits provided are a premier plan. The costs of the plan, which include vision, dental and prescription benefits have remained relatively steady over the last four years.

The current 10% share, paid by all non-bargaining unit employees and employees of 17 bargaining units in the County, is lower than most jurisdictions in the Cleveland

area that contribute to premiums. The average monthly contribution for Cleveland area employees is \$144.76. The current family contribution for Lorain County is \$117.90 and includes vision and dental, which the others do not.

The Sheriff also proposes that language be added to Article 25 that explains that only full-time employees in active pay status receive Employer paid health care except as provided for in the FMLA.

**Recommendation** – It is recommended that the bargaining unit members make the same premium contribution for health care as the other employees in the Sheriff's Office. Therefore, the Employer's proposal for a 90/10 split of the health care premium cost is recommended. However, the Employer cannot propose such an increase in health care costs without offsetting the cost with some wage increases. Therefore, as discussed below, a commensurate wage increase is necessary to sustain the health care increases and put all employees on the same footing.

## RECOMMENDED CONTRACT LANGUAGE

### ARTICLE 27 – HEALTH CARE BENEFITS

**Section 27.3.** Effective January 1, 2009, the employee will be required to contribute, through payroll deduction, an amount not to exceed ten percent (10%) of the premium cost per month for family or single coverage.

**Section 27.5.** Full-time employee must remain in an active pay status in order to continue to be eligible for Employer paid health care coverage except as provided for in the Family Medical Leave Act (FMLA) and the Employer's FMLA policy. Employees who are on an approved leave of absence shall be afforded the opportunity to pay for hospitalization, at the existing group rate, for the duration of their leave of absence.

### 3. **ARTILCE 28.3 – HOLIDAYS**

**Union's Proposal** – The Union proposes that employees be permitted to schedule personal time regardless if it causes overtime. Currently, the dispatch classification is

afforded only one day (Fridays) to utilize as personal time off, and if not granted the benefit is lost. The contract states that scheduling of the employee's personal day off will be based on operational needs of the Department. The Union has proposed minimum manning language several times, but the Employer refuses to bargain over the issue stating that it is a permissive, not mandatory, topic.

Day and afternoon shifts are manned with two dispatchers; however, the night shift is manned by one. This does not allow ample opportunity for the night shift dispatcher to utilize her personal time off. The afternoon shift dispatch also finds it difficult to obtain their Friday personal day off, if overtime use is not permitted. The contract does not state that only Fridays can be used as time off for personal days, but the employer has now established that practice at the expense of the bargaining unit.

Employer's Proposal – The Employer is opposed to the Union's proposal to add language that the scheduling of a personal day off "shall not be denied for the sole purpose of avoiding overtime." The Dispatch Operation operates 24/7. Scheduling additional time off for dispatchers is difficult and means the payment of additional overtime. The Sheriff should be able to maintain its management right to schedule in the most effective and efficient manner.

Recommendation – The Fact-finder is sympathetic to the Union's concern. The Union asserts that the contract gives them a benefit they are seldom allowed to use, because the Employer refuses to allow the use of personal days if such use would require that overtime be incurred. However, because the budget of the Sheriff's Office has been significantly cut by the Lorain County Commissioners, the Fact-finder cannot recommend the language proposed by the Union, which would add more overtime costs. However, if finances improve, this issue may be revisited during the next negotiating

cycle.

4. **ARTICLE 31.2 – UNIFORMS (PAYMENT)**

Union's Proposal – The Union proposes an increase in the uniform allowance equal to that awarded to other bargaining units to achieve parity. The uniform of a Communications Officer has to be maintained and kept professional looking and clean, just as the other bargaining units in this office. In addition, the Vehicle Maintenance Coordinator and Worker go through uniforms more frequently than anyone. Grease and oils spills on these garments make them virtually impossible to clean.

Employer's Proposal – The Employer proposes to maintain the uniform allowance at the amount of \$700.00 for the duration of the Agreement and is opposed to any increases in the allowance as proposed by the Union. The Employer is also opposed to moving the payment date for the uniform from May 1<sup>st</sup> of every year to January 1<sup>st</sup>.

The costs for uniforms for this bargaining unit are not as great as the costs of deputy uniforms. Neither Vehicle Maintenance Personnel nor Communications Officers need the full leather goods that a deputy needs, nor are they required to wear a uniform hat or the uniform cold weather gear needed by a patrol deputy. The current uniform allowance is adequate based upon reference to comparable jurisdictions.

The Union has provided no justification for moving the payment date from May to January.

**Recommendation** – It is recommended that the bargaining unit receive the same uniform allowance increases that other units received. Although the Employer argues that the uniform costs are less for these classifications, parity is recommended. However, the Union did not substantiate a need to have the uniform allowance paid in January as opposed to May of each year. Therefore, the payment date will remain May 1<sup>st</sup>.

**RECOMMENDED CONTRACT LANGUAGE**

**ARTICLE 31 – UNIFORMS**

**Section 31.2. Non-probationary employees shall be provided with an annual uniform allowance account as follows.**

**A. The annual uniform allowance for the classification listed below shall be as follows:**

<u>Classification</u>	<u>2009</u>	<u>2010</u>
Communications Officer	\$750	\$800

**B. The annual uniform allowance for the classification listed below shall be as follows:**

<u>Classification</u>	<u>2009</u>	<u>2010</u>
Vehicle Maintenance Coordinator	\$750	\$800
Vehicle Maintenance Worker	\$750	\$800

**Payment for such uniform allowance shall be made to each employee no later than May 1<sup>st</sup> of each year.**

5 & 6.        **ARTICLE 35 – WAGES and ARTICLE 40 - DURATION**

Union's Proposal – The Union proposes wage increase of 5% for each year of the agreement, except that it proposes a 6% wage increase for the Vehicle Maintenance Worker for 2009 whose job duties have increased significantly in the last few years. The Union afforded the Employer an opportunity to freeze the current collective bargaining agreement until May 2009. The Employer declined that offer and advised the Union that would not be in agreement to a waiver with regard to a Conciliator's ability to award wages for 2009.

The Employer budget projection for next year obviously allowed it to grant wage increases of 9% over three years to the deputy unit, along with other economic increases afforded to other bargaining unit employees. The Union believes that the Employer is

not in such financial straits as it claims because the Employer rejected the Union's offer to freeze the current Agreement.

In addition, at the fact-finding mediation/hearing, the Union proposed a two-year duration for the Agreement. That would place the Union in the same cycle as the larger bargaining units and prevent the unit from leading the units in concessions or lagging behind wage increases.

Employer's Proposal – The Employer proposes that wages be frozen at the 2008 rate of pay for the life of the three year Agreement. The Sheriff's Office has suffered a drastic 20% cut in its general fund salary budget – in the amount of \$1.2 million. This cut has resulted in the lay off of 12 full time deputy sheriffs, 8 part time deputies, and 2 records clerks. The members of this bargaining unit are paid from the general fund. The sheriff cannot justify agreeing to any wage increases for any employees from the general fund when so many employees have been laid off.

The hourly rate of pay and the total annual compensation of the Lorain Sheriff Communications Officers is well above the average wages of the comparable county communications officers. Communications Officers.

A three-year wage freeze would allow the Sheriff's office time for the economy to recover, at which time wage increases may be permitted within the budget.

Recommendation – It is recommended that the contract be of a two-year duration. The current negotiating cycle put this small union far behind the other larger units. The other units received wages increases of 9% over three years. Shortly after the contracts were negotiated, the Lorain County Commissioners cut the Sheriff's Department budget. This prompted the Sheriff to offer only a wage freeze for this bargaining unit. By having this contract last for only two years, the unit would be on the same schedule as the rest of the

bargaining units and would minimize the problems in the past, like this unit leading in accepting health care increases or lagging in wage increases.

Based on a two-year contract, the Fact-finder recommends that the unit receive a 4% increase 2009 and a 2.5% increase in 2010, both starting with the first full pay period of the contract year. (This includes a retroactive wage increase to the first pay period of 2009.) These are the same wage increases that the other bargaining units received. Employers are always touting the advantages of pattern bargaining and having all employees be on the same health care plan with the same premium contributions and wage increases. They should be willing to follow this concept in this instance. This is a very small unit, and the financial impact of following the wage increases offered to others will be small and will last for only two years.

In addition, it is recommended that the Vehicle Maintenance Worker's wage increase be 5% for 2009 and 2.5% for 2010. The Union sufficiently supported its contention that the VMW's job has been expanded to include responsibility for transporting the three armored carriers for the SWAT team to call outs and training and for transporting the boat to diving instruction exercises. These activities require a CDL.

## **RECOMMENDED CONTRACT LANGUAGE**

### **ARTICLE 35 - WAGES**

**Section 35.1. Effective the first full pay period in 2009 fiscal year, the hourly base rates of pay for bargaining unit employees shall be increased by four percent (4%). The Vehicle Maintenance Worker shall be compensated at five percent (5%).**

**Section 35.2. Effective the first full pay period in the 2010 fiscal year, the hourly base rates of pay for the bargaining unit employees shall be two and one-half percent (2.5%).**

## ARTICLE 40 – DURATION

### Section 40.1.

A. This agreement shall be effective as of the date of signing, and shall remain in full force and effect until December 31, 2010.

### TENTATIVE AGREEMENTS

All tentative agreements reached by the parties during the course of negotiations are recommended and incorporated into this report.

Submitted by:

  
Virginia Wallace-Curry, Fact-Finder

March 6, 2009  
Cuyahoga County, OH

**CERTIFICATE OF SERVICE**

This is to certify that a true copy of the Fact-Finding Report for the Lorain County Sheriff and the Fraternal Order of Police/Ohio Labor Council, Inc. was sent to the parties by overnight mail and to the State Employment Relations Board by regular U.S. mail on this day, March 6, 2009. The Fact-Finding Report was served upon:

Lucy Dinardo  
Staff Representative  
FOP/OLC, Inc.  
2721 Manchester Road  
Akron, OH 44319-1020

Robin L Bell, Esq.  
Regional Manager  
Clemans Nelson & Associates, Inc.  
2351 South Arlington Rd., Suite A  
Akron, OH 44319-4949

Mr. Edward E. Turner  
Administrator, Bureau of Mediation  
State Employment Relations Board  
65 East State Street  
Columbus, Ohio 43215-4213

  
Virginia Wallace-Curry, Fact-Finder

**CERTIFICATE OF SERVICE**

This is to certify that a true copy of the Fact-Finding Report for the Lorain County Sheriff and the Fraternal Order of Police/Ohio Labor Council, Inc. was sent to the parties by overnight mail and to the State Employment Relations Board by regular U.S. mail on this day, March 6, 2009. The Fact-Finding Report was served upon:

Lucy Dinardo  
Staff Representative  
FOP/OLC, Inc.  
2721 Manchester Road  
Akron, OH 44319-1020

Robin L Bell, Esq.  
Regional Manager  
Clemans Nelson & Associates, Inc.  
2351 South Arlington Rd., Suite A  
Akron, OH 44319-4949

Mr. Edward E. Turner  
Administrator, Bureau of Mediation  
State Employment Relations Board  
65 East State Street  
Columbus, Ohio 43215-4213

*Virginia Wallace-Curry*  
Virginia Wallace-Curry, Fact-Finder

Virginia Wallace-Curry

THE EMPLOYMENT  
RELATIONS BOARD

Attorney-at-Law

30799 Pinetree Road #417

Cleveland, Ohio 44124

(440) 248-1394

2009 MAR -9 P 12:45

Arbitrator  
Mediator

Fax (440) 248-3252  
vwcurry@att.net

March 6, 2009

Ms. Lucy Dinardo  
Staff Representative  
FOP/OLC, Inc.  
2721 Manchester Road  
Akron, OH 44319-1020

Robin L. Bell, Esq.  
Clemans Nelson & Associates, Inc.  
2351 South Arlington Rd., Suite A  
Akron, OH 44319-4949

Re: FOP and Lorain County Sheriff  
SERB Case No. 06-MED-09-0864

Ms. Dinardo and Ms. Bell:

Enclosed is a copy of my Fact-Finding Award in the above captioned matter, along with the statement for my services and expenses rendered as Fact-Finder.

I enjoyed working with you and hope I will have the opportunity to do so again in the future.

Sincerely,



Virginia Wallace-Curry

cc: Edward E. Turner, SERB