

FOP/OLC (UNION)

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LORAIN COUNTY (OHIO)

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SHERIFF (EMPLOYER)

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2009 SEP 30 A 11:35

Case No. 08-MED-10-1173

**FACT - FINDER'S REPORT AND RECOMMENDATIONS**

September 28, 2009

Proceedings before Jared D. Simmer, Fact-Finder, pursuant to the provisions of Section 4117-9-05 of the Ohio Revised Code.

**I. APPEARANCES**

Robin L. Bell, Esq. (for the County), Lucy DiNardo (for the Union).

**II. BACKGROUND**

This proceeding involves bargaining between a unit consisting of nine (9) Road Patrol Seargents) and one (1) lieutenant, and the Lorain County, Ohio Sheriff's Department. The current three-year collective bargaining expired on December 31, 2008.

Prior to hearing, the parties met a number of times and negotiated to impasse. A fact-finding hearing was then scheduled. Both Parties chose to file pre-hearing position statements that were duly received and considered by the Fact-Finder in advance of the hearing.

On January 28, 2009, the Fact-Finder and the parties met, and at the request of the parties, the Fact-Finder

engaged in mediation in an attempt to settle the remaining issues. A proposed settlement was reached, but thereafter some additional issues emerged that prevented the T.A.'s eventual acceptance by both Parties.

As a result, a second fact-finding hearing was held on August 19, 2009. After due consideration of the testimony and evidence presented by the parties including their pre-hearing submissions and opening statements, the Fact-Finder issues the following Report and Recommendation.

### **III. OPEN ISSUES**

The pre-existing provisions of the current contract that remained unchanged, as well as the provisions agreed to by the parties in negotiations, are formally recognized and adopted by the Fact-Finder.

Both Parties arrived at the hearing prepared to present justification for changing numerous articles in the contract. However, prior to the start of the hearing, the Parties asked for the opportunity to engage in additional negotiations which the Fact-Finder granted. During the course of those negotiations, the Parties summarily abandoned many of their proposals and thereby narrowed the scope of the discussion. They signed off on changes to Articles 11, 16, 17, 20, 30, New article – Non-Discrimination, and Memorandum of Understanding – Physical Ability Testing.

At the conclusion of these additional negotiations, only the following issues remained open:

1. Article 27 – Health Care Benefits
2. Article 33 – Uniforms
3. Article 38 – Rank Differential
4. Article 43 – Duration of Agreement

Therefore, this Report will only address these few remaining open issues.

#### **IV. FACT-FINDER'S REPORT AND RECOMMENDATIONS**

In issuing this Report and Recommendations, the Fact-Finder took notice of all the oral and written testimony presented by, and as stipulated by, the parties, as well as those six factors that the State Employment Relations Board requires, including but not limited to:

1. Prior collective bargaining agreements, if any, between the parties.
2. Comparison of the issues in the instant case with those issues involving other public and private employees doing comparable work, giving consideration to the factors peculiar to the area and classification involved.
3. The public interest and welfare, the ability of the employer to finance and administer the items involved, 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, which are normally or traditionally considered in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

This Report sets forth recommendations which the Fact-Finder believes are reasonable and fair and which both parties can be comfortable recommending to their respective constituencies, although it is recognized that

acceptance of the same will involve a degree of mutual sacrifice on the part of both parties.

It must be pointed out that these negotiations took place during what is generally recognized as the most depressed economic conditions since the great depression. With this in mind, it is this Fact-Finder's intent that the recommendations set forth in the following Report balances the financial health of the Sheriff's Department with the economic interests of the Local.

### **Article 27 – Health Care Benefits**

#### Union Position

The Union requested no change in the current language.

#### Employer's Position

Members of this locale currently pay \$5/month for single coverage, and \$35/month for family coverage. The Employer points out that these current contribution levels are too de minimus and proposes that these respective contributions be changed so that these employees pay a flat 10% of the costs (i.e., a 90-10% premium split). In support of its position, it points out that the deputy's unit, the corrections officer's unit and communication's officer unit already contribute 10% and it is both fair and consistent for this unit to pay the same amount. And, it asks that the 90-10 split be effective retroactive to the date of the new agreement.

#### Recommendation

For the following reasons, the Fact-Finder recommends that the Employer's position be adopted. First, all other Department bargaining units are already paying 10% of their healthcare costs and there is no compelling reason

why this unit should be the exception. Two, the larger the purchasing pool the better able are employers to negotiate more favorable premium rates, something which benefits this local and all other employees in the long run. Three, healthcare costs are escalating significantly and unpredictably which in turn make it difficult for employers to budget for this expense. It is only fair that by moving away from a flat monthly contribution to a percentage contribution this allows for employees and the Department to mutually share in some of the risk of rising premiums going forward. And, finally, it's clear from the published SERB data that the emerging norm among public sector employers in Ohio is for employees to assume 10% of the premium costs.

However, being cognizant of the fact that this cost is not insignificant, in order to smooth the transition to this new payment structure the Fact-Finder recommends that the effective date of this proposed change be September 1, 2009 rather applied than retroactively.

### **Article 33 - Uniforms**

#### The Union

The Union believes that the uniform allowance should be increased by \$200 in 2009, \$250 in 2010, and another \$250 in 2011. In addition, it proposes that should any changes be made by the employer to the current policy that those costs be borne by the Employer.

#### The Employer

The Employer proposes to increase the current uniform allowance by \$75 in the first year, \$50 in the second, and an additional \$50 in the third.

#### Recommendation

Given the rising cost of uniforms, and the substantive recommendation that this unit pick up a significantly larger share of its healthcare costs, the Fact-Finder recommends a modest increase in the uniform allowance in each year of the contract; given that he is recommending a two-year agreement, *infra*, he recommends an increase to \$1,000 in the first year of the contract, and to \$1,050 in the second.

### **Article 38 - Rank Differential**

#### Union

The Union proposes a rank differential of 26% above the highest paid deputy for the sergeants, and a rank differential of 26% above the highest paid sergeant for the lieutenant.

#### Employer

For the following reasons, the Employer, on the other hand, opposes any increase contending that the current 16% differential between deputy and sergeant, and between sergeant and lieutenant, is more than adequate. First, it points out that members of this unit have already received a 4% wage increase retroactive to January 2008, an additional 2.5% in 2009, with a further 2.5% increase scheduled for 2010. The employer further resists any increase in this differential pointing out that its budget has been cut by 20% and 10 full-time and 11 part-time deputies have already been laid off. Finally, it asks that the wage differential for the first year of any promotion be 8% for both sergeants and lieutenants.

#### Recommendation

For the reasons laid out by the Employer, the Fact-Finder finds no justification for the increases in the rank differentials proposed by the Union. Rather, he believes that the economic realities warrant a move in the other direction.

In light of the substantial wage increases that this unit has already received, and the cuts in the department budget that have led to the unfortunate layoffs of numerous deputies, the Fact-Finder recommends a modest adjustment downward, to wit, that the rank differential for new promoted sergeant be 10% above the highest existing deputy rate for the first six (6) months in the rank of sergeant, and a similar amount above the highest existing sergeant rate for the first six (6) months in the rank of lieutenant.

### **Duration of the Agreement**

#### Union

The Union proposes that the new contract run from January 1, 2009 through March 31, 2011, with all economic benefits retroactive.

#### Employer

The Employer, on the other hand, proposes the duration of the successor agreement run from January 1, 2009 through December 31, 2011, with no retroactivity.

#### Recommendation

The Fact-Finder concurs with the Parties' mutually proposed start date of January 1, 2009, but agrees with the Union's position that an earlier termination date makes sense, particularly when the economic climate remains so unsettled even though an earlier termination date would require the Parties to begin preparing for the successor agreement that much sooner,

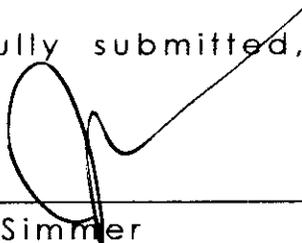
For this reason, it is recommended that the successor agreement run from January 1, 2009 through March 31, 2011, with the proviso, however, that any and all economic benefits appurtenant thereto be made retroactive.

### **V. Conclusion**

The Parties should be commended for making the extra effort to resolve as many of the open issues as they did, both with and without the Fact-Finder's assistance. There is an old saying that the sign of a "good agreement" is when both parties are equally dissatisfied with the results. I believe that to be the case in this matter.

Issued: September 28, 2009

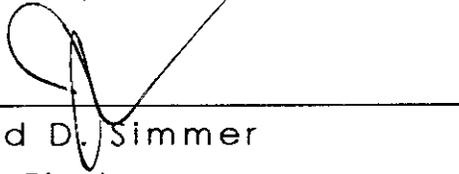
Respectfully submitted,

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Jared D. Simmer  
Fact-Finder  
Attach.

## **CERTIFICATE OF SERVICE**

I hereby certify that the above Fact-Finder's Report and Recommendations were served upon the following parties, to wit, the Lorain County Sheriff's Department (via Ms. Bell) and the FOP/OLC (via Ms. DiNardo) by facsimile transmission, and upon the Ohio State Employment Relations Board by first class mail, this 28<sup>th</sup> day of September, 2009.

A handwritten signature in black ink, appearing to read 'Jared D. Simmer', is written over a horizontal line. The signature is stylized with a large loop at the beginning.

Jared D. Simmer  
Fact-Finder