

Paolucci

STATE EMPLOYMENT
RELATIONS BOARD

2009 MAY 29 P 1:40

May 28, 2009

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via fax/e-mail — Cover Letter only
(Regular Mail — Entire Package)

RE: Wayne County Sheriff -and- OPBA
SERB Case No.: 09-MED-01-0052; 0053 and 0054 (Sergeants, Deputies and
Lieutenants)
Issue: Factfinding

To each,

Enclosed please find two (2) copies each of the report and recommendations and one (1) of the Factfinder's Bill. The submission of the enclosed should bring my services for the above-captioned matter to an end and, unless notified to the contrary, I will close my file.

In the meantime, I thank both Parties for giving me the opportunity to serve you in this matter and, if the occasion should so arise, I look forward to working with you in the future.

Cordially yours,

Michael Paolucci

cc: SERB ✓

IN THE MATTER

OF

FACTFINDING

BETWEEN

WAYNE COUNTY SHERIFF

AND

OHIO PATROLMENS BENEVOLENT ASSOCIATION

EMPLOYMENT
RELATIONS BOARD

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Hearings: April 29, 2009
SERB Case Nos.: 09-MED-01-0052; 0053 and 0054 (Sergeants, Deputies and Lieutenants)
Date of Report: May 28, 2009
Issue: Factfinding

Union Representative:

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Sheriff Representative:

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REPORT AND RECOMMENDATIONS

Michael Paolucci
Factfinder

Administration

By letter dated February 19, 2009, from the Ohio State Employment Relations Board, the undersigned was informed of his designation to serve as Factfinder for the Parties. On April 29, 2009, a hearing was scheduled and some mediation took place prior to the start of a hearing. Said mediation resulted in one (1) issue being resolved, as set forth below, but was otherwise unsuccessful. Following mediation, the Parties submitted the issues to the undersigned with a brief formal hearing. The record was closed at the end of the hearing on April 29, 2009, and is now ready for a factfinding report.

Factual Background

The employer is the duly elected Sheriff of Wayne County, which is centrally located in Northeastern Ohio between Columbus and Cleveland and is served by State Route 30. Its Patrol Officers, Sergeants and Lieutenants are represented by the Union. There are approximately forty eight (48) Patrol Officers; eight (8) Sergeants; and five (5) Lieutenants in three (3) separate bargaining units all represented by the Union. Significant here is the issue of funding. Although the Sheriff presented facts regarding its financial stability, the Union focused on the fact that the County is not having the same type of economic difficulties that are common around the State. Unlike many other locales, the County has traditionally kept spending under control and it is not suffering economically like other counties.

Notwithstanding this fact, and consistent with its history of tightly controlling spending, the County is pulling back funding on the Sheriff. In response, the Sheriff is cutting back on services because the County is refusing to allow more money to be spent in areas that are necessary. As it

applies to this case, the Sheriff's case was focused on its budget – as dictated by the County Commissioners. The Union's case was focused on the financial wherewithal of the County rather than on the budget that the County has allowed the Sheriff to operate under. The Union presented the Wayne County Audit for the year ending December 31, 2007 as prepared by the County Auditor.

That report states:

“With the steady growth both in residential and commercial construction, the financial outlook for the County appears positive (p. viii)...total assets increased \$1MM...Net assets of governmental activities increased \$1.5MM...which represents a 1.31% increase over 2006. Net assets of business-type activities decreased \$473K..or 6.59% from 2006... (p.3)...” and “In the general fund, the actual revenues came in \$3.996MM higher than they were originally budgeted and actual expenditures were \$1.147MM higher than the amount in the original budget.” P. 3.

The Union's documents showed that the County had an unencumbered balance on its General Fund of \$4.15MM.

Before going over the issues on a case-by-case basis, it is necessary to add to this background. The Union presented an almost overwhelming case of a County that has historically claimed poor financial conditions and aggressive negotiating postures. The Union showed that in previous contracts the Sheriff has taken the stance that it could only afford 0% wage increases, only to eventually give in to percentage raises that are in line with comparable jurisdictions. It showed that the Sheriff always takes this very aggressive posture and then backs off only when conciliation or factfinding reach critical junctures. It presented previous factfinding reports that support this contention. Of particular note, Factfinder Stein wrote in 2005 as follows:

According to evidence in the last and current round of negotiations, the County communicated to the entities under its jurisdiction that it would not provide funding for wage increases beyond a certain threshold. While I can appreciate the difficulty the County Commissioners have in dealing with rising costs and increased demand

for services, particularly with the reality of dwindling state support, the fact is that such declarations can only serve an internal purpose. They have no meaningful impact upon neutrals due to the specific statutory requirements place upon factfinders in ORC 4117. Both the fact-finder and conciliator in the last round of negotiations were not deterred in the execution of their statutory duty by the reality that the Sheriff would have to makeup the difference between what the County would fund and the negotiated terms of the agreement. They simply and appropriately applied the statutory criteria as required by law. ...declarations made by county commissioners to their various jurisdictions cannot reasonably be considered in fact-finding or conciliation proceedings as anything more than internal managerial strategy and or cost shifting. The same would be said if a parent union declared to one of its locals, prior to bargaining, that it must see certain concessions exacted from the Employer, or otherwise it will take some type of action. A neutral fact finder would be acting in a manner contrary to his charge if he would base a determination (even in part) upon union threats to take action or upon employer mandates to limit funding for wages to one of its units.

As an example, the past general wage increases show that this bargaining unit has received:

5% for each year 1999, 2000, 2001; and,

3%, 3.5% and 4% in years 2002, 2003, and 2004. (Factfinder and Conciliator)

In each negotiation the County started out proposing 0% wage increases, only to ultimately accept the recommendations.

Having reviewed the records, it is significant that the Union's case is so undeniable. The Sheriff, and importantly the County that has employed this methodology, has lost credibility when it comes to its financial claims. Like the boy who cried wolf, it is impossible to rely on the Sheriff's claims when it comes to its financial wherewithal. There must be some cost for taking untenable positions so many times, and the cost here is that the Sheriff's (and really, the County's) financial evidence was not trustworthy. It is a strange result in that the County that is in charge of following principles of fiduciary trustworthiness over public money has taken positions that require a finding that they are not trustworthy. It is not the duty of the undersigned to opine on what consequences

that should follow from this position other than its impact on this particular factfinding. There being little else a Factfinder can do other than find that a position a party has taken is untrustworthy, it is necessary to simply state that the County's financial evidence was given little weight due to its history.

The exception to this is the County Auditor, who the Union and the undersigned relied on in reaching conclusions regarding the actual wherewithal of the County. A review of the most recent of those documents show that the County is in stable financial condition; that its economic viability is diversified between agricultural and industry; and that it did not decrease at the same rate as much of the rest of the state. Therefore, the inability to pay argument must be rejected as unproven and the impact of this conclusion will be felt most heavily in the wages section.

Section 4117-9-05 of SERB's administrative rules addresses the issues that a factfinder must consider when making recommendations. That section, in pertinent part, reads as follows:

(K) The fact-finding panel, in making recommendations, shall take into consideration the following factors pursuant to division (C)(4)(e) of section 4117.14 of the Revised Code:

- (1) Past collectively bargained 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. (emphasis added)

There were seven (7) essential issues presented:

1. Article 12 - Layoff and Recall
2. Article 15 - Conversion of Unused Sick Leave
3. Article 19 - Extra Details
4. Article 21 – Miscellaneous
5. Article 26 – Holidays
6. Article 27 – Vacation
7. Article 31 – Wages

There was also mention to a Side Agreement on Extra Detail Security Work and Side Agreement on Wayne County Fair. These issues will be referenced summarily hereunder.

The issues will be addressed giving consideration to all of the required factors.

1.

ARTICLE 12 LAYOFF AND RECALL

The Union proposed the *status quo*.

The Sheriff made several proposals. It proposes adding language that clarifies that layoffs can be done for economic reasons; it proposes a restriction on bumping rights that would force an employee to exercise their right within two (2) days; it proposes restricting the recall period to twelve (12) months, and it proposes preemption language that specifically states that the Agreement take precedence over statute. The Sheriff stated that its real concern was not being clear on which controlled – contract language or the statute. Its position was to remove the potential confusion by making it clear that bargaining unit members would either have statutory rights, or rights under the Agreement.

RECOMMENDATION

The Union's objection to the Sheriff's proposal seemed to focus on the provision that states that the eligibility of a recall was only for twelve (12) months, and only existed if the officer was "able to perform the essential functions" of the job. Based on this near-agreement, it is recommended that the Sheriff's changes be made, but that an officer who is eligible to return but who is required take a refresher course by law, shall be permitted to complete that refresher course in order to accept the recall, and that any delay that is due to the need to take a refresher shall not be counted toward determining whether the twelve (12) month period has expired. The remaining changes appear to be reasonable; the Sheriff's problem with having either the statute or the Agreement control was logical; and the remaining portions are recommended. It is recommended that the Agreement control and that the Parties state as much here.

2.

ARTICLE 15 CONVERSION OF SICK LEAVE

The Union proposed increasing the benefit so that the limit sick leave conversion was raised from 240 hours to 500 hours. Its proposal also made changes to the time calculation.

The Sheriff proposes *status quo*.

Union Position

The Union cites comparables where sick leave conversions are higher than 240 hours. It believes that to remain comparable this bargaining unit must receive an increase to match the benefit of contiguous and similar counties.

Sheriff Position

Other than the economic problems that the Sheriff has argued, it points to the fact that employees with 20-25 years of service already get an additional four hundred (400) hours of conversion upon retirement. It complains that when this is added to the current benefit, the comparables do not justify it, the benefit becomes too expensive, and there is no justification.

RECOMMENDATION

The Union's proposal is rejected. The extra four (400) hundred hours makes its position untenable at this point. Although without this extra number the comparables have some support; with the extra benefit the Union's proposal is alone in its level compared to other jurisdictions.

3.

ARTICLE 19 EXTRA DETAILS

RECOMMENDATION

The Parties reached an Agreement on this issue, and it is attached for signature. It is recommended that the change be made consistent with the agreement below.

4.

ARTICLE 21 MISCELLANEOUS

The record of the undersigned is that the Sheriff's proposal on this section was tentatively agreed to. Further, it was the understanding of the Factfinder that the Sheriff's proposal were mostly "clean-up" changes of language that had become moot or inapplicable. The tentatively agreed to

changes are recommended; and any such “clean up” items are recommended.

5.

**ARTICLE 26
HOLIDAYS**

The Parties reached a tentative agreement on the Holiday Language. In the event it is not resolved as part of this process, the tentative agreement is recommended.

6.

**ARTICLE 27
VACATION**

The Union proposes shorter years between eligibility for greater amounts of vacation.

The Sheriff has proposed the *status quo*.

Union Position

The Union presented evidence that many comparable jurisdictions more aggressively move their police officers into higher amounts of vacation earlier in their career. It showed that the jurisdiction that retain the older, slower moving vacation benefit are becoming rarer. Its position is that this County should move with Stark, Summit, and Medina forces by giving more vacation time more quickly.

Sheriff Position

The Sheriff contends that its economic condition prevents it from affording increasing this benefit. It contends that it will be forced to layoff employees, and this is a costly benefit that will go directly towards its increase in costs. It contends that the comparables show that it is already generous on this benefit – better than all but one (1) external comparable, and better than the internal,

non-bargaining unit employees.

RECOMMENDATION

Normally the Union's position would have great influence. Based on the remaining recommendations, and because there are still a large number of police forces that match the current benefit received by these officers, it is recommended that the increase not be made. Notwithstanding this recommendation, it is fair to conclude that this bargaining unit must eventually change to the more aggressive schedule, and the question is not if, but when.

7.

ARTICLE 31 WAGES

The Union proposes 4% wage increase in each year of a three (3) year agreement; it proposes increases to the Longevity Schedule such that it takes a shorter amount of time to reach the top, and the cap is increased to \$900.00 instead of \$700.00; and it proposes adding OIC pay. The Union also proposes that Sergeants wages be adjusted an additional .5% each year to increase the rank differential between Deputy Sheriff and Sergeant by 1.5% during the term of the Agreement.

The County proposes a 0% wage increase, with a wage re-opener in July 1, 2010 for the final year of a three (3) year agreement. The Sheriff also proposes deletion of Section 1 and 2; re-numbering to follow; that longevity pay be frozen; and that no other employee be permitted to receive longevity; and it rejects an officer in charge payment.

Union Position

The Union raises a concern that the Sheriff is not engaged in good faith bargaining. It claims that if the Sheriff keeps engaging in this pattern of bargaining then it will have used bad faith bargaining as its methodology. The Union cites an audit conducted in 2007 by the County Auditor that shows that the County is in good financial condition. It shows that the County has a history of over-budgeting its expenses, and under-budgeting its revenues. When the more accurate numbers are shown, the County always has a surplus. The Union cites the cash position of the County as having a \$4 million carry-over, which represents 17% of the total budget. Since all ratings agencies rate a County "fiscally healthy" if the carry over is over 5%; and based on the 17% carry over, it argues that the County is in extremely good financial condition.

The Union asserts that the County's refusal to properly fund the Sheriff means that services are being taken away from the citizens. It contends that Sheriff is being prevented from filling positions; that the County is sitting on money and refusing to spend it; and that the police are not able to provide the services that citizens have come to rely on. Even if there were a revenue issue, it cites the fact that the County has the lowest tax rate in the state. It asserts that among the costs of the County's refusal to pay for services, pertinent here is the cost of underpaid police officers.

The Union contends that each of its wage based proposals are comparable to other jurisdictions and are justified.

Sheriff Contentions

The Sheriff argued against using the same comparables as the Union since many Sheriff's offices do not provide correctional officers who are also certified police officers. The Sheriff asserts

that it is unable to pay for any wage or wage-based increases. It maintains that because of its budget every \$10,000 increase in cost will result in 1 police officer being laid off. It asserts that it is in severe financial distress and that it has even looked at stimulus money – but without success. It complains that during the last three (3) Agreements the County Commissioners refused to make any changes to the budget even though conciliation resulted in rulings against it. Since the County Commissioners refused to fund conciliation orders, then it contends that its financial distress now, as then, is real.

The Sheriff cites its loss of personnel as proof of its financial problems. It showed that in 2002 it had 87 full time employees and 6 part time employees; and now it has only 77 full time employees and 3 part time. It asserts that any other increases in costs will just result in a further reduction in staff, including the bargaining unit.

RECOMMENDATION

The difficult part about this recommendation is recommending a fair wage increase with only one (1) party presenting credible evidence. Based on the previous statements regarding the County's case, it is not necessary to go further. However, the impact is addressed here in the form of a recommendation that relies almost solely on the Union's presented evidence – which includes the County Auditor's CAFR. It is significant that the Sheriff's case concedes that regardless of what occurs here the County Commissioners are unlikely to change its budget. Since the Commissioners have chosen to ignore the results of an independent review of what their police officers should be fairly compensated, then it is fair to ignore, in equal fashion, their refusal to participate in collective bargaining. Otherwise, the police officers would be victims of an ongoing problem between the

Sheriff's office and the County Commissioners. If layoffs occur it will not be due to the County's inability to pay, but the refusal to pay. If the Commissioners choose to allow a reduction in force despite the uncontested fact that it is in stable financial condition, then that is their choice.

The decision by the undersigned, based on the statutory mandate, is that there is not an inability to pay – there is only the refusal to participate in collective bargaining as required by statute. This has been hinted at by prior factfinders and conciliators, and must be made express at this point. The County's ongoing strategy in negotiations has rendered their position untenable. In contrast, the Union's position is comparable; is only a little high based on the Parties' bargaining history; and is within reason based on the County's financial health. Therefore, to meet statutory criteria, and considering all of the credible evidence, the recommendation is that the bargaining unit receive a wage increase, and that increases to the remaining economic benefits be made in a similar manner.

Based on the credible evidence, it is recommended that the bargaining unit receive a 3.5% wage increase in each year of a three (3) year Agreement. The Union's Longevity Pay proposal is comparable and is recommended. Finally, the Sergeant differential matches the remaining jurisdictions, and it is recommended.

The Parties agreed to a stipend to employees who work as "Officers in Charge" or OIC pay. The Parties agreed that the effective date of the change shall be upon execution. This is the recommendation.

Tentative Agreements:

All tentatively agreed to issues are incorporated herein by reference as if included in their entirety. All such tentative agreements are recommended as tentatively agreed to.

May 28, 2009
Cincinnati, Ohio



Michael Paolucci

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OF
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WAYNE COUNTY SHERIFF
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MEDIATED ISSUES

Michael Paolucci
Factfinder

At the hearing in the above-captioned matter, the Parties agreed to the following issues:

1. Extra Details. The Parties agree that the following language shall be added.

The Sheriff will not arbitrarily oppose any application for workers' compensation, which is properly supported and filed by an employee injured while working an extra detail.

The Union concedes that the Sheriff does not administer the workers compensation program and that determination of coverage is not within its power to decide. This agreement is only intended as a promise not to oppose such coverage under the circumstances set forth above.

Howard D. Heffelfinger

Joseph Hegedus

May 28, 2009
Cincinnati, Ohio



Michael Paolucci