

STATE EMPLOYMENT RELATIONS BOARD STATE EMPLOYMENT
RELATIONS BOARD

IN THE MATTER OF FACT FINDING BETWEEN:

2009 JUL -1 P 2: 33

**THE FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL,
INC., UNIT 2**

AND

THE STATE OF OHIO, OFFICE OF COLLECTIVE BARGAINING

SERB Case # 09-MED-04-0491

Hearing date: June 25, 2009

Fact Finding Report

E. William Lewis, Fact Finder

Presented to:

Mr. J. Russel Keith, General Council & Assistant Executive Director
State Employment Relations Board
65 East State Street, 12th floor
Columbus, Ohio 43215-4213

and

Mr. Michael P. Duco, Deputy Director
Office of Collective Bargaining
100 East Broad Street, 14th floor
Columbus, Ohio 43215

and

Ms. Catherine Brockman, Assistant Director
FOP/OLC, Inc.
222 East Town Street
Columbus, Ohio 43215

In Attendance for the Employer:

Mr. Michael Duco	Deputy Director, OCB
Mr. Joe Trejo	Mgr., Labor Realties-OCB (Chief Negotiator)
Mr. Bret Benack	ODNR/Labor Relations Administrator (witness)
Ms. Marlo Cain	Mental Health/ LRO
Mr. Harry Colson	Fiscal Administrator/ OCB
Mr. Michael Darcy	Assistant Deputy Director/OCB
Mr. Patrick Enright	ODNR/Director of Parks & Recreation
Ms. Ashley Hughes	Labor Counsel/OCB
Mr. Michael McCann	Deputy Director/OIU
Mr. Bill McGarity	Deputy Chief/ODNR Watercraft
Mr. Robert Patcher	Policy Analyst, DAS/HRO
Mr. Gregory Siegfried	Attorney/Taxation
Mr. Andrew Shuman	Labor Relations Administrator/ODNR
Ms. Kate Stires	Training & Central Services/OCB
Ms. Michele Ward-Tackett	HR Administrator/ODNR Division of Wildlife
Ms. Antionette Wallace	Labor Relations Officer/MRDD

In attendance for the Union:

Mr. Joel Barden	Chief Negotiator, Sr. Staff Rep./FOP
Mr. Ron Haines	Park Officer
Mr. Brian Baker	Wildlife
Mr. Richard Barna II	Wildlife Investigator
Mr. William Bullard II	State Wildlife Officer
Mr. David E. Dobbins	State Watercraft Officer, Specialist
Mr. Bill Ferkan	MRDD Police Officer II
Mr. Jim Goodall	Taxation
Mr. Byron Guinther	OIU
Mr. Andrew Hollenback	Watercraft
Mr. Mike Miller	Wildlife Officer/ODNR(witness)
Mr. Steven Laird	Police Officer II MRDD(witness)
Mr. Paul D. Parker Jr.	Police Officer II/ MH
Mr. Steve Stocker	Enforcement Agent/OIU

AUTHORITY

In Keeping with agreements between the parties, provisions of ORC 4117, and rules and regulations of the Ohio State Employment Relations Board(SERB), this matter was brought before, mutually selected and SERB appointed Fact Finder, E. William Lewis. The parties have complied in a timely manner with all procedural filings. The matter is properly before the Fact Finder for consideration and determination in accordance with the terms of ORC 4117.

BACKGROUND:

The State of Ohio, hereinafter known as the State/Employer, has approximately 59,000 employees. A substantial portion of the employees are covered by collective bargaining agreements. This particular bargaining unit has approximately 540 employees. They are represented by The Fraternal Order of Police, Ohio Labor Council, Inc., hereinafter known as the FOP/Union.

The State of Ohio, along with forty seven other states and most other organizations, is suffering from the severe economic recession. The State used its Rainey Day Fund to address the current fiscal year's shortfall, and is now struggling to address an estimated budgetary shortfall of 3.2 billion dollars, for the two year biennium, commencing July 1, 2009. These are extraordinary times. This is the most widespread recession that this fact finder has experienced. It has been extremely difficult for the parties to negotiate with this economy as a backdrop.

Before meeting with the fact finder, the parties had five negotiating sessions and settled a substantial number of issues. Thirteen Articles, or portions thereof, remained unresolved, therefore, they scheduled mediation sessions on June 19 and 22, with the fact finder. During the mediation sessions, tentative agreements were reached on all but five issues. By mutual agreement, they agreed to submit the five unresolved issues to a Fact Finding Hearing on June 25, 2009.

Preceding the commencement of the Fact Finding Hearing, the parties met with the fact finder in an attempt to further reduce the number of issues. Thus, a tentative agreement was reached on the Union's Contingency Wage proposal regarding Cost Saving Days, Section 55.02. The Union agreed to withdraw their Contingency proposal in exchange for a Parity/Me Too provision.

The Hearing was adjourned after the parties affirmed that they had no additional information to submit into the Hearing Record. Both parties affirmed, that they had ample opportunity to submit their relevant information and evidence into the Record.

This Fact Finding Report is based on the facts and evidence submitted. And is in compliance with ORC 4117.14(C)(4)(e), and rules and regulations of the State Employment Relations Board. The following criteria were given consideration in making this Recommendation:

- (1) Past collective bargaining agreements, if any, between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the 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 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 the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

ISSUES:

The following issues remained unresolved at the Hearing:

ARTICLE 29 -- Section 29.04 Equipment

ARTICLE 35 --(New Section) --Maintenance of Staffing in the Bargaining Unit

ARTICLE 55 -- Section 55.09(re-numbered)- Access to State Facilities and Services

ARTICLE 55 --Section 55.10(New) - Field Training Officer Pay

The format of this Report will be to list the Article, followed by a brief review of each party's position, and a fact finder discussion regarding the unresolved issues. My recommendation(s) will be accompanied by the Agreement language, when appropriate, reflecting the recommended changes.

ARTICLE 29 - UNIFORMS, EQUIPMENT, VEHICLES

Section 29.04 Equipment

UNION POSITION:

Change #5 to read as follows: Night sticks and tasers shall, and other equipment may, be provided and shall be used in accordance with the written policies of the Departments of Mental Health and Mental Retardation. A minimum of two (2) tasers will be issued to each Police Department in the Departments of Mental Health and Mental Retardation and Developmental Disabilities. Tasers are not to be carried inside buildings without authorization from supervisory personnel.

The Union argues that understaffing has seriously compromised officer safety. The Union noted, that Police Officers have been fired upon, have participated in local police firearm exchanges with criminals, on State property, and have been involved with drug arrests on State property. Union Exhibit 4, showed numerous officer safety instances in a number of MH and MR installations. These are fully accredited Ohio Peace Officers, and are required to respond to conflicts. They should be minimally armed with these intermediate weapons, declares the FOP.

EMPLOYER POSITION:

Current Language.

The State adamantly opposes tasers. Tasers would be an inherent liability for the State. They pointed out that their concern is for those with mental illnesses with cardiovascular problems, and may be on psychotropic drugs. A mistakenly tasered patient may have unintended consequences. We need to protect the residents. Tasers cost nearly one thousand dollars each.

DISCUSSION:

Evidence and testimony showed that that the Department of Mental Retardation and Developmental Disabilities, has three installations with tasers issued to their officers. They also have a policy governing taser use(UE-6). These are certified Peace Officers, and on limited occasions may need the protection of this less lethal conductive energy weapon. In the fact finder's opinion, tasers should be restricted to outside availability, and issued on a limited basis, for safety and cost containment.

RECOMMENDATION:

Change Section 29.04, #5, to read as follows:

5. Night sticks and an Electronic Shock Devise shall be provided, and other equipment may be issued all of which shall be used in accordance with the written policies in the Departments of Mental Health and Developmental Disabilities.

- a. An operational electronic shock device, at least one (1) device for each Department of Mental Health hospital and each Department of Developmental Disabilities Developmental Center, will be furnished and made available to employees.
- b. It is prohibited for any employee to carry or utilize an electric shock devise within any patient care, treatment or intake area of any Department of Mental Health hospital or any residential area of any Department of Developmental Disabilities developmental center. Use of an electronic shock devise on any patient or resident is strictly prohibited.
- c. An electronic shock devise is only permitted to be available to an authorized employee when it is to be carried outside the physical structure of the hospital or developmental center, such as during a perimeter safety and security check or when responding to a call for service.
- d. The Department of Mental Health and the Department of Developmental Disabilities shall each create policies for their employees that address the electronic shock devises. These policies shall be strictly adhered to by the employee.

- e. ODMH and the Department of Developmental Disabilities will create policies for the custody and utilization of the electronic shock devices, which shall be strictly adhered to and strictly enforced.
- f. Management will provide appropriate training which must be completed and documented before an individual can check out an electronic shock device.
- g. if there is a dispute regarding who checks out the electronic shock device between two or more employees, the most senior employee will check out the device.

ARTICLE 35 (New Section 35.08)-Maintenance of Staffing in the Bargaining Unit

UNION POSITION:

Add Section 35.08, to read as follows:

The number of Unit 2 bargaining positions in each Division covered by this Agreement shall not fall below the number of positions in effect on July 1, 2009, excluding Cadet classes.

The FOP argues that this proposal is the trade off for the economic concessions, in this round of bargaining. If the new cost savings language is to avoid layoff and keep the State running, then the Union's proposal should be adopted. They point out, that they have already given up thirty six positions since the last contract, and with the concessions in these negotiations, they would save the State \$ 3,600,000, per year. As the number of officers drop, use of force incidents increase, without proper proper back-up or partnering. Further reduction of Unit 2 staff cannot be justified, therefore, their proposal should be adopted.

EMPLOYER POSITION: Current language

The issue of staffing levels is a non-mandatory subject of bargaining. The State does not and has not engaged in such discussions with any Union. They also point out, that additional layoffs may be necessary to meet the 2.4 billion dollar, required budget cuts. The Employer has no idea when the economy is going to bottom.

The State is required under law to balance their budget, which may require employee cuts.

DISCUSSION:

A provision of this nature is not generally part of modern labor contracts. In lieu of this, the parties bargain hard on layoff and reduction in force provisions. In fact, a change was made in this Article 35, to address the expected loss of positions (Section 35.04). When the fact finder considers his charge, there are no identifiable comparables, and the ability of the State to finance would certainly be in question.

RECOMMENDATION:

Exclude the Maintenance of Staffing provision.

ARTICLE 55--(renamed) Section 55.09--Access to State Facilities and Services.

UNION POSITION:

Section 55.09, to read as follows: Bargaining Unit 2 members will have access to all State Parks, Recreational Facilities, Wildlife and Nature Preserves, State Forrests, and Displays--including Camping Facilities owned by the State-- without cost. Additionally, the members will be allowed shooting range permits, hunting and fishing licenses, and one watercraft registration, without cost.

The Union argues that this is at least some recognition, although minimal, of the concessionary sacrifices they have made, in these negotiations. Morale, after this contract becomes effective, will be a problem, and a gesture such as this would help. Basically, per the FOP, this proposal is a request for forgiveness of licensing fees, for hunting, fishing and watercrafts. The cost to the State, from the Union's perspective would be close to \$ 62,000. A minimal cost, therefore, the fact finder should grant their request.

EMPLOYER POSITION:

There is a Parity agreement with OCSEA, and the Employer is not sure how a provision such as this would impact the other union(s). A forgiveness of boating licensing fees could be a big revenue loss, if expanded to the other union(s). The concessions we have agreed to are designed to keep the State employees working. That should be the morale booster in these times of 10.4% unemployment, and 13.8% underemployment.

DISCUSSION:

According to Union testimony, these employees already enjoy free access to all State Parks, Recreation and Wildlife Facilities, along with State Forrests and shooting ranges. There were no comparables introduced to show others' forgiveness of requested fees. Although the Employer, through their witness, introduced a chart showing potential revenue loss, the chart, in the fact finder's opinion, sunstantially overstates the expected revenue loss. However, if forgiveness were to be expanded to other state employees, through parity or grievances, there could be a substantial loss of revenue.

RECOMMENDATION:

Continue current accesses without inclusion of the Union's proposed Section 55.09.

ARTICLE 55 (New) Section55.10--Field Training Officer Pay

UNION POSITION:

Section 55.10, to read as follows: Members of the bargaining unit who serve as Field Training Officers, and are not already being compensated at least two percent (2%), shall have their Base Rate of pay increased by two percent (2%) during the time they are serving as FTO's. Existing practices which meet at least the minimum of two percent (2%) are not to be disturbed by this provision.

They argue that the extra duties and liability justify the modest expense. This is an important assignment, and they take on additional responsibilities.

EMPLOYER POSITION:

Although there may be some comparables, in some other bargaining units, the State can't do this at this time. The State needed the concessions we have agreed to, to piecemeal it back makes no sense. The Employer needs the money, and this proposal should be deferred to another round of bargaining.

DISCUSSION:

The only bargaining unit members being compensated for this activity are the Ohio Investigative Unit Agents. Although there may have been at least six contract renewals, there has been no inclusion of a Field Training provision. Additionally, no evidence was submitted demonstrating a widespread activity of field training. With no evidence addressing the impact of such a proposal, the fact finder is not persuaded of the need for such a proposal.

RECOMMENDATION: Current language.

SUMMARY

The fact finder would like to commend the parties for the responsible way they addressed the economic crisis of the State of Ohio. The agreement to concede compensation while continuing to provide full time State services could only have been achieved in a sound labor/management environment. I enjoyed working with committees, and I wish them well.

This will affirm the foregoing Report consisting of 12 pages, and recommendations contained therein, are made in this matter of Fact Finding by the below signed Fact Finder. If there is found conflict in the Report between the Fact Finder's Discussion and Recommendations, the Recommendations shall prevail. All matters proposed by the parties not tentatively agreed to or incorporated herein are considered withdrawn.

All matters of tentative agreement are recommended to be included in the Agreement. All provisions of the Collective Bargaining Agreement that neither party proposed revisions to, are to be carried forward unchanged, into the new Collective Bargaining Agreement.

This concludes the Fact Finding Report.

Respectfully submitted and issued this 30th day of June 2009.

A handwritten signature in cursive script that reads "E. William Lewis".

E. William Lewis
Fact Finder

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Fact Finder's Report was hand delivered or sent by Regular U. S. mail.

Mr. Russel Keith, General Council & Assistant Executive Director
State Employment Relations Board
65 East State Street, 12th floor
Columbus, Ohio 43215

and

Mr. Michael P. Duco, Deputy Director
Office of Collective Bargaining
100 East Broad Street, 14th floor
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and

Ms. Catherine Brockman, Assistant Director
FOP/OLC, Inc.
222 East Town Street
Columbus, Ohio 43215

This 30th day of June, 2009



E. William Lewis
Fact Finder