

**BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

**In the Matter of Fact Finding Between:**

**Colerain Township, Ohio – Employer**

**And**

**SERB Case #09-MED-07-0747**

**Fraternal Order of Police, Ohio Labor Council, Inc. – Union**

**Appearances:**

**For the Township: James E. Reuter, Esq.  
Cincinnati, Ohio**

**For the Union: Thomas J. Fehr  
Staff Representative  
F.O.P., O.L.C., Inc.  
Cincinnati, Ohio**

STATE EMPLOYMENT  
RELATIONS BOARD  
2009 DEC -9 A 11: 56

**REPORT AND RECOMMENDATIONS OF THE FACT FINDER**

**Frank A. Keenan  
Fact Finder**

**BACKGROUND:**

This case came on for hearing on December 4, 2009. It involves the parties' negotiations for a successor Agreement to their November 1, 2006 through October 31, 2009 Agreement.

Prior to the setting of the hearing date, the parties reached tentative Agreements with respect to Article 15 – Hours of Work And Overtime; Article 15 Wages And Compensation, Sections 15.2 and 15.3 only; Article 16 – court Time/Call In/Stand-By Time; Article 17 – Insurance “Total Cost of the Program” Language Only; Article 18 – Holidays/ Personal Leave; Article 19 – Vacations; Article 20 – Sick Leave; Article 26 – Police Professional Liability Insurance; article 20 – Wellness Incentive; and Article 31 – Mid-Term Bargaining. Additionally, the parties either left unopened, or agreed to retain, the language of the November 1, 2006 through October 31, 2009 Collective Bargaining Agreement, as follows: article 1 – Agreement/Purpose; Article 2 – Recognition; Article 3 – Union Representation; Article 4 – Management Rights; Article 5 – Non-Discrimination; Article 6 – Labor/Management Meetings; Article 7 – Grievance Procedure; Article 8 – Discipline; Article 9 – Personnel File; Article 10 – Probationary Period; Article 11 – Seniority; Article 12 – Layoff & Recall; Article 13 – Work Rules – General Orders; Article 21 – Uniforms & Equipment; Article 22 – Expenses; Article 23 – Leaves of Absence; Article 24 – Severability; Article 25 – Waiver In Case of Emergency; Article 28 – Medical/Physical Examinations; and Article 29 – No Stroke/No Lockout. The parties are agreed that the aforesaid listed unopened or tentatively-agreed-to Articles, should be included in their successor Agreement and that they therefore be recommended by the undersigned in his Fact Finder's Report & Recommendations. Accordingly, as of

the date set for the Fact Finding hearing, the parties were at impasse with respect to three (3) issues.

Their first impasse concerns Article 15 – Wages and Compensation, Section 15.1. [It will be recalled that Sections 15.2 and 15.3 of the predecessor Agreement were left unopened]. Going into Fact Finding the Union sought wage increases of 2.75% for 2009; 3% for 2010; and 3% for 2011. The township proposed wage increases of 2% in each year of the parties' three-year successive Agreement.

Their second impasse concerns Article 17 Insurances. At impasse is the percentage of the premium cost for which the employees shall be responsible. Thus in its position statement filed prior to the hearing date, the Union sought to retain the language of the last sentence of Article 17 of the predecessor Agreement, which set the employee's contribution at 15% of the premium cost for all three years of the successor Agreement; the Employer sought a 17% employee contribution to the premium cost for each year of the successor Agreement.

The parties' third impasse concerns Article 27 – Duration. In its position statement filed prior to the hearing date, the Union sought an effective date for the parties' successor Agreement of November 1, 2009; the Employer urged that the effective date be the date the parties' executed their Agreement. Both parties are agreed that their successor Agreement "shall remain in full force and effect through midnight October 31, 2012." Through the diligent and good faith efforts of the parties

Respective negotiation teams, and particularly their respective chief spokespersons and advocates, Mr. Reuter and Mr. Fehr, with some assistance from the Undersigned, the

parties reached Agreement on all three issues at impasse. Concerning the undersigned's "assistance" to the parties, such was informed by the factors outlined in the Ohio Revised code Section 4117.14 (G) (7) to the extent that the parties put these factors into play by virtue of their respective contentions made in their pre-hearing position statement and in mediation. The mediated Agreement reached was reduced to writing and executed on December 4, 2009 by: Township Counsel Reuter; Township Administrator Foglesong; F.O.P., O.L.C. Staff Representative Fehr; F.O.P., O.L.C. Negotiation Team Member Officer Steven Karwisch; and the undersigned, as Fact Finder in S.E.R.B. Case #09-MED-07-0747, on December 4, 2009. Said written mediated settlement Agreement reads as follows:

"F.O.P. Colerain Township Patrol Officers and Colerain Township Board of Trustees

Memorandum of Agreement at Conclusion of Mediation

The negotiation committees for the Union and the Employer have reached Agreement on the following matters, as a package, subject to notification by the Union and final approval by the Board of Trustees:

1) wages increases shall be as follows:

Effective 11/01/2009	2.25% increase
Effective 11/01/2010	2.50% increase
Effective 11/01/2011	2.75% increase

2) Employees' share of total cost of the health insurance program is:

First year	15%
Second year	15%
Third year	17%

3) The term of this successor collective Agreement is 11/01/2009 – 10/31/2012.

The Agreement is retroactive to 11/01/2009.

Approved 12/04/2009”

Furthermore, with respect to Article 27 – duration, the parties reduced to writing, and executed, the following specific language for Article 27 – Duration:

“ ARTICLE 27

DURATION

Section 27.1

This Agreement shall be effective as of November 1, 2009 and shall remain in full force and effect through midnight October 31, 2012.

Section 27.2

If either party desires to modify or amend this Agreement, it shall give written notice of such intent no earlier than one hundred-twenty (120) calendar days prior to the expiration, or no later than ninety (90) calendar days prior to the expiration date of this Agreement. Such notice shall be by certified mail with return receipt requested. The parties shall commence negotiations within two weeks upon receiving notice of intent.

Section 27.3

This Agreement is retroactive to November 1, 2009.

Section 27.4

The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right to make demands and proposals on any subject matter not

removed by law from the area of collective bargaining, and that the entire understandings and Agreement arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. The provisions of this Agreement constitute the entire Agreement between the Employer and the Union and all prior Agreements, practices and policies, either oral or written, are hereby canceled. Therefore, both parties, for the life of this Agreement, voluntarily and unequivocally waive the right, and each agrees that the other shall not be obligated to bargain collectively or individually with respect to any subject or matter referred to or covered in this Agreement, or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge of either or both parties at the time they negotiated or signed this Agreement.”

Further with respect to article 17 – INSURANCES, both parties were in Agreement to retain and continue in their successor Agreement, paragraphs one and two of the predecessor Agreement. Additionally, neither party expressed an interest in changing the concept in the first sentence of the third paragraph of the predecessor Agreement, which expresses “the desire of Management to continue to provide Family Health Care (HMP, Blue Cross/Blue Shield, Prescription and Dental) Insurance.” Nor did either party express an interest in changing the concept of constancy expressed in sentence two of paragraph three, namely, the concept that for the life of the Agreement, “the Employer will maintain the same quality of health care coverage.” Likewise, neither party sought to alter the Employer’s pledge, set forth in sentence two of paragraph three of Article 27 of the predecessor Agreement, to not look to bargaining unit employees, by way of an increase in the percentage of the premium cost for which said employees were

responsible, for any help or reimbursement to the Employer for potential increases in premiums triggered and necessitated by management's obligation "to maintain the same quality of health care coverage" throughout the life of the contract.

The precise language of paragraph three of Article 17 in the predecessor Agreement was based upon the fact that the employees' share of the premium cost remained the same each year of the Agreement. Since the parties have agreed in their mediated settlement to increase the employees' percentage share of the cost of the health insurance premium to 17% in the third year of the successor Agreement, up from the 15% contribution provided for in years one and two of the successor Agreement, some changes in the language of paragraph three of Article 27 are necessary. In my view the language which follows preserves the concepts of the predecessor Agreement presumptively intended by the parties to be retained in their successor Agreement, (referenced above), and takes into account the mediated agreed-to increase from 15% to 17% of the health insurance premium in the third year of the Agreement. Such language will be recommended.

“  
ARTICLE 17  
INSURANCES

[Paragraph three]:

It is the desire of management to continue to provide Family Health Care (HMP, Blue Cross/Blue Shield, Prescription and Dental) Insurance. In the first and second years of the parties' collective Bargaining Agreement the Employer will maintain the same quality of percentage cost to the employees. The employees' contribution for the first and second years of the Agreement shall be 15% of the premium cost. In the third year of the parties'

Agreement the Employer will maintain the same quality of health care coverage as in years one and two of the Agreement. The employees' contribution in the third year of the Agreement shall be 17% of the premium cost."

### **RECOMMENDATIONS**

It is Recommended that the parties provide for the wage increases called for in their written Memorandum of Agreement At the Conclusion of Mediation dated December 4, 2009, more fully set forth hereinabove, in their successor Agreement.

It is further Recommended that the parties' successor Agreement Retain the language of paragraphs one and two of Article 17 – INSURANCES of the predecessor Agreement; but that paragraph three(3) of Article 17 of their successor Agreement read as follows:

"It is the desire of management to continue to provide Family Health Care (HMP, Blue Cross/Blue Shield, Prescription and Dental) Insurance. In the first and second years of the parties' Collective Bargaining Agreement the Employer will maintain the same quality of health care coverage at no increase of percentage cost to the employees. The employees' contribution for the first and second years of the Agreement shall be 15% of the premium cost. In the third year of the parties' Agreement the Employer will maintain the same quality of health care coverage as in years one and two of the Agreement. The employees' contribution in the third year of the Agreement shall be 17% of the premium cost."

It is additionally recommended that Article 27 – DURATION of the parties' successor Agreement read as follows:

## ARTICLE 27

### DURATION

#### Section 27.1

This Agreement shall be effective as of November 1, 2009 and shall remain in full force and effect through midnight October 31, 2012.

Section 27.2 [Retain the language of the predecessor Agreement].

#### Section 27.3

This Agreement is retroactive to November 1, 2009.

Section 27.4 [Retain the language of the predecessor Agreement].

Additionally it is noted that the Union, in its position statement for fact finding submitted to the Fact Finder and the Township, requested that “the Fact Finder include in his decision that all Articles unopened and tentatively agreed to by the parties shall be included in the successor Agreement.” In its position statement for fact finding submitted to the Fact finder, the Township stated that it agreed “with the Union’s list of unopened and tentatively agreed articles as set forth in its position statement, and joins in the Union’s request that the Fact finder include in his decision that these articles be included in the Successor Agreement.” Accordingly, it is Recommended that all articles, or parts thereof, of the parties’ predecessor Agreement left unopened, (referenced and identified hereinabove in the “Background” paragraph), and all articles or parts thereof tentatively agreed to prior to December 4, 2009 (referenced and identified hereinabove in the “Background” paragraph) are hereby Recommended to be included in the parties’ successor Agreement.

**This concludes the Fact Finder's Report and Recommendations.**

December 8, 2009

A handwritten signature in black ink, appearing to read "Frank A. Keenan", written over a horizontal line.

**Frank A. Keenan  
Fact Finder**

FRANK A. KEENAN, Esq.  
ARBITRATOR  
841 Ludlow Avenue  
Cincinnati, OH 45220  
e-mail: [fjkeenan@fuse.net](mailto:fjkeenan@fuse.net)

Phone: 513-861-7095

Fax: 513-861-7044

Mr. James E. Reuter, Esq.  
3025 W. Galbraith Rd.  
Cincinnati, OH 45239

Mr. Thomas J. Fehr  
Staff Representative  
5752 Cheviot Rd., Suite D  
Cincinnati, OH 45247

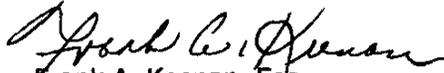
STATE EMPLOYMENT  
RELATIONS BOARD  
2009 DEC - 9 A 11: 56

Re: Colerain Township, Ohio & F.O.P., O.L.C., Inc. (Fact Finding), SERB #09-MED-07-0747,

Gentlemen:

Please find enclosed the Report and Recommendations in the above-captioned matter, which adheres to the mediated settlement agreements, along with my bill. Please note that I noticed some tension and/or ambiguity with the precise language of Article 17 - INSURANCES para. three (3), which could lead to grievances down the road. Accordingly, I have modified it somewhat. I felt such was necessary since under SERB's rules a Fact Finding Report must set forth the exact terms being "recommended" or the "recommendation" must be otherwise clear and ascertainable, such as expressing and recommending wages in terms of the %age increases only.

Very truly yours,

  
Frank A. Keenan, Esq.  
Arbitrator

CC: State Employment Relations Board, Edward E. Turner, Administrator, Bureau of Mediation

P.S. Tom: Thank you for the Report you sent me as a way to write up the mediated agreement as a Fact Finder's Report and Recommendations to be voted on, thereby giving both parties the security they desired of a voted-on or "deemed accepted" Fact finding Report instead of just a tentative settlement agreement of the negotiators. In an abundance of caution perhaps, I thought it best to craft a more formal "Report and Recommendations."