

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

MADISON COUNTY SHERIFF,

Employer,

-and-

Case No. 09-MED-08-0782

FRATERNAL ORDER OF POLICE,
OHIO LABOR COUNCIL, INC.,

Employee Organization.

FACT-FINDING

Philip H. Sheridan, Jr., Fact-finder

Issued: May 28, 2010

Rufus B. Hurst
Downes, Hurst & Fishel
400 S. Fifth Ave., Suite 200
Columbus OH 43215

For The Employer

Andrea H. Johan
Staff Representative FOP-OLC
222 East Town St.
Columbus OH 43215-4611

For The Employee Organization

STATE EMPLOYMENT
RELATIONS BOARD
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STATEMENT OF THE CASE

The parties, the Madison County Sheriff, represented by Rufus B. Hurst, Esq., and the bargaining unit, the Fraternal Order of Police, Ohio Labor Council, Inc., 21 regular classified Deputies of the Madison County Sheriff including Road Patrol and Communications, represented by Andrea H. Johan, Staff Representative, have entered into negotiations for a successor contract to the contract that expired November 30, 2009.

The parties met and bargained in good faith with at least eight meetings between the parties. The parties without dispute, or through negotiation, reached tentative agreement on current language or changes in the collective bargaining agreement. Issues remain in one article of the agreement.

Pursuant to R.C. §4117.14 and Admin. R. 4117-9-05, the State Employment Relations Board appointed Philip H. Sheridan, Jr., 915 South High Street, Columbus, Ohio, as fact-finder.

The parties agreed to a fact-finding hearing on May 12, 2010, and the meeting was convened at 10:00 a.m. at the Madison County Sheriff's office. In addition to their representative, James Saban, Sheriff, and Robert Henry, Chief Deputy, appeared at the hearing. In addition to their representative, Deputies Anna Bingman and Nick Lisska appeared on behalf of the bargaining unit. The parties and the fact-finder discussed the procedure to be followed by the parties.

After an attempt at mediation the parties agreed that the remaining issue was not amenable to additional mediation. The parties submitted the matter upon testimony, statements, documents, and arguments presented to the fact-finder.

In accordance with the provisions of R.C. Chapter 4117, the parties provided me with a copy of the current (expired) contract, the articles that are unchanged or have been resolved, the unresolved article, and each party's proposal on the unresolved issue.

In issuing this fact-finding report, I have given consideration to the provisions of R.C. Chapter 4117 and, in particular, the criteria contained within Admin. R. 4117-9-05(I).

THE POSITION OF THE PARTIES AND RECOMMENDATIONS

Article 28, Wages

The Sheriff's Position: The Sheriff proposes no wage increase for 2010, a 2% wage increase for 2011, and a 2% wage increase for 2012. He argues that the current deputy staffing is less than he would like by five positions, his personnel costs are 84% of his annual budget, and the County Commissioners are providing general fund revenues to him for his operation that are at about the same level of funding received by him from the Commissioners in 2006. Expenses have remained static through the Sheriff's efforts to control spending, juggle the funds he has available, and live within the budget allocated to him.

The bargaining unit's Position: The bargaining unit proposes a wage increase for 2010 that restores the rate of wages that would have been paid for 2009 under the expired contract had the bargaining unit not agreed to forego that increase and be paid at the 2008 rate (or a wage increase of 3% from the 2008 rate), a wage increase of 3% for 2011, and a wage increase of 3% for 2012. The bargaining unit rejected the 2% wage increase the Sheriff granted his non-union employees for 2010 because the members believe that when the Sheriff came to them and asked them to forego the raise their contract provided for 2009 he promised that

they would get that raise back in the current negotiations. The bargaining unit members have not enjoyed a wage increase (except for the brief period in the beginning of 2009 before they agreed to go back to the 2008 rate) for two years.

Discussion and recommendation: The parties have been close to settling their differences and reaching an agreement on several occasions during these negotiations, and their positions were closer to one another than their current fact finding positions. However, the sticking point appears to be the perception of the Sheriff and bargaining unit members concerning what the Sheriff promised when the bargaining unit agreed to reduce their wages in 2009 because of the Sheriff's reasonable concerns about staffing and about the Commissioners' failure to provide him with the necessary funds.

The testimony of Deputy Jacob Gibson was credible, and established to my satisfaction that the bargaining unit members believed that they would have no trouble recouping the raise that they gave up when the new contract was negotiated. Based on discussion with the Sheriff at that time they thought that negotiations would begin from the 2009 wage rate. Sheriff Sabin was credible as well in his testimony that he believed there would be open contract negotiations for this contract, but he denied making any specific promise about the 2009 wage rate. He outlined his efforts to use the moneys at his discretion to keep the current staff levels, his efforts to get the Commissioners to increase his budget, and his efforts to pass the tax levy that would have increased funding for his office, but failed by 149 votes.

Commissioner Chris R. Snyder testified to the decreases in the County's revenues from 2006 to the present, their budget projections that show expenditures exceeding revenues by approximately \$700,000 for 2010, and the continued drain and reduction in the

County's ending balance for the third year in a row. He pointed out that the Commissioners have not granted raises to non-bargaining unit employees for 2009 or 2010, and that the extra pay period in 2010 is another concern. The documents identified by him support his testimony concerning the County finances. However, it appears that the employer has at least a limited ability to fund a pay increase, and despite the hard times experienced by the County, my recommendations are consistent with historic raises (at least 3% each year in the previous contract). From the comparables presented by the parties it appears that neither proposal would move the bargaining unit to the top or the bottom of counties with similar populations or those within the area established by State Employment Relations Board statistics.

In addition to the comments above, I considered the information provided to me by both parties and am making my recommendation after consideration of the statutory and administrative requirements provided in Chapter 4117 of the Revised Code. I recommend a 3% across the board wage increase effective upon the ratification of the contract (with no retroactive pay from the first pay period of 2010), a 2% across the board wage increase for calendar year 2011, and a 2% across the board wage increase for calendar year 2012.

CONCLUSION

I recommend that the parties adopt the unchanged articles and the tentative agreements reached by them. The parties cooperated in presenting their positions to me and in dealing with one another. The courtesy and professional behavior was evidence of the good relations between the parties. Good faith bargaining does not necessarily lead to agreement, but I encourage the parties to continue to bargain in good faith even if they are unable to agree on my recommendations.

Respectfully submitted,



PHILIP H. SHERIDAN, JR.

Fact-finder

S.C. #0006486

915 South High Street

Columbus, Ohio 43206-2523

CERTIFICATE OF SERVICE

A copy of the foregoing Fact-Finder Report was served by email and Ordinary U.S. Mail, postage prepaid, this 28th day of May, 2010, to the principal representatives of the parties, and by Ordinary U.S. Mail, postage prepaid, to State Employment Relations Board, 65 E. State St., 12th Floor, Columbus, OH 43215-4213.



PHILIP H. SHERIDAN, JR.

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May 28, 2010

J. Russell Keith
General Counsel & Assistant Executive Director
State Employment Relations Bd.
65 East State St. 12th Floor
Columbus, Ohio 43215-4213

**RE: Case No. 09-MED-08-0782, Madison County Sheriff
and Fraternal Order of Police, Ohio Labor Council**

Dear Mr. Keith:

Enclosed please find fact finder report for this matter. Thank you for your consideration.

Very truly yours,



Philip H. Sheridan, Jr.

PHS/ps
Enclosure
cc: file