STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding Between:

	)	
Fraternal Order of Police,	)	
Ohio Labor Council, Inc.	)	10-MED-09-1100
	)	
-And-	)	
	)	Fact-Finder:
MH Corrections Commission, dba	)	John T. Meredith
Multi-County Corrections Facility	)	

REPORT AND RECOMMENDATIONS ISSUED JANUARY 12, 2011

APPEARANCES

Present for the Union:

Robert L. Goheen, Staff Representative
Dan Lehman, Corrections Officer
Ben Kruder, Corrections Officer
Sheila Moore, Corrections Officer
Scott Mead, Corrections Officer

Present for the Employer:

Thomas A. Frericks, Attorney
Dale Osborn, Executive Director

INTRODUCTION

The parties to this Fact-Finding proceeding are the Fraternal Order of Police, Ohio Labor Council ("FOP" or "Union"), and MH Corrections Commission, dba Multi-County Corrections Center ("MCCC"). The bargaining unit consists of all full-time Corrections Officers employed at MCCC. The approximate number of bargaining unit employees is 37.

The FOP and MCCC are currently parties to a collective bargaining agreement (the "Agreement") which runs from January 1, 2010 through December 31, 2012. Section 25.2 of the Agreement provides that it may be reopened "for purposes of negotiating effective disciplinary suspension, use of sick leave, and hourly wage rates to be effective on and after January 1, 2011 and January 1, 2012." The parties timely commenced negotiations pursuant to this re-opener in the Fall of 2010. The State Employment Relations Board, by letter dated November 29, 2010, appointed the undersigned, John T. Meredith, to serve as Fact-Finder. However, negotiations continued after appointment of the Fact-Finder, and in early December, the negotiating teams reached a tentative agreement on a package which modified the disciplinary procedure, and provided a longevity bonus and wage increases of 1.5% on January 1, 2011 and 1.5% on January 1, 2012. The Union membership rejected this settlement package by a vote of 5 to 16. The negotiating teams then modified their tentative agreement to eliminate the proposed disciplinary provision, but the membership again rejected it, albeit by a narrower margin (9 to14).

A hearing was held on December 23, 2010 to take evidence on the open issues. Prior to the hearing, the parties timely submitted their Position Statements to the Fact-Finder. The hearing was conducted in accordance with Ohio Collective Bargaining Law and applicable SERB Rules and Regulations. The Fact-Finder's recommendation and rationale are fully discussed in the Unresolved Issues section of this Report.

In making his recommendation, the Fact-Finder has given consideration to the following criteria prescribed by Ohio Collective Bargaining Law and listed in SERB Rule 4117-09-05:

(1) Past collective bargaining 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 determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

BACKGROUND

Multi-County Corrections Center ("MCCC") is a 182-bed regional jail with an average daily population of 162 inmates. It is operated by the MH Corrections Commission, which consists of representatives of both Marion and Hardin Counties. The 37 full-time Corrections Officers employed at MCCC are represented by the FOP/OLC.

MCCC generates a small amount of its own revenue from sources including social security fees, telephone revenues, "pay for stay" (a fee collected from inmates who are able to pay), fees for transport collected from the Marion County Sheriff, and interstate transfer fees collected when federal prisoners are being transferred from one facility to another stay overnight at MCCC. Modest revenue also is collected in the inmate commissary, but this is maintained in a separate fund and its use is restricted by statute.

The remainder of MCCC's revenue - approximately 93% - comes from the general funds of Marion and Hardin Counties. Of this, Marion County contributes about 80% and Hardin County provides approximately 20%. MCCC's financial situation, therefore, is tied closely to the financial fortunes of the two counties, especially Marion County.

Unfortunately, Marion and Hardin Counties have been hit hard by the recession. Joan Kasotis, the Marion County Auditor, testified at the hearing. According to Ms. Kasotis, Marion County's General Fund revenues dropped from a peak of $17,336,495 in 2007 to $16,644,529 in 2008 and $14,687,444 in 2009. With a week to go, 2010 revenue collected to date was $14,499,255. This revenue decline is specifically attributable to decreases in sales tax receipts, real property transfer fees, interest income, and personal property tax receipts (attributable to a scheduled phase-out of personal property tax to be completed in 2018). Hardin County revenues also declined about 4% from 2007 to 2009, but officials were projecting some recovery in 2010.

Due to Marion County's declining General Fund revenues, MCCC Executive Director Dale Osborn testified that the County ordered the agencies and departments it funds to reduce spending by 6% in July 2009, which translated to a $212,000 reduction for MCCC. A second reduction to the MCCC budget, this time 11.53% of Marion County's share, was implemented in January 2010. Effects of the reductions included a reduction in MCCC's staff from 60 to 55 employees, and a wage freeze in the first year of the 2010-2012 FOP/MCCC Agreement.

For 2011, Ms Kasotis is projecting a $600,000 operating deficit in Marion County's General Fund, which, absent cuts, will require transferring about 40% of its beginning balance to cover 2011 expenses. As the County must maintain some balance to cover expenses at the beginning of the year and to maintain its credit rating, funding operations through balance transfer will not work over a period of time. Specific budget concerns for 2011 include increased health insurance costs, continuing phase-out of personal property tax revenue, and expected reductions in state funding due to the State of Ohio's own budget crisis. In view of this projection and these concerns, the County is not planning 2011 wage increases for its employees.

The MCCC budget similarly reflects financial constraints for 2011. Executive Director Dale Osborn testified that no significant expenditure increases are projected for 2011, except for health care costs. Even under these conditions, for the third straight year MCCC expects to have to transfer funds from its beginning balance to make ends meet. Assuming the projected $162,000 budget transfer is made, MCCC's beginning balance will be reduced to $124,000 in 2012. Any wage increase will have to be paid out of this remaining balance, as Director Osborn testified that further reductions in Corrections Officer positions would increase the safety risk at the facility and adversely impact the level of service. See Employer Exh. 3.

RESOLUTION OF ISSUES

1. Preliminary Issue: The Scope of the Re-Opener

The scope of issues for the re-opener and this Fact-Finding are defined by the language of Section 24.1, which states that the parties may re-open "only for the purpose of negotiating effective disciplinary suspension, use of sick leave, and hourly wage rates to be effective on and after January 1, 2011 and January 1, 2012." During negotiations leading to this fact-finding, neither party made a proposal on sick leave. The Employer proposed new wage rates and made (but has since withdrawn) a proposal on effective disciplinary suspension. The Union made, and continues to press, proposals on wage rates, longevity and shift differential. The Employer objects to the longevity and shift differential proposals as beyond the scope of the re-opener. (The Employer did offer longevity in December contingent on ratification of a settlement before fact-finding, but preserved its right to continue to object to including longevity in the re-opener.) The Union argues that longevity and shift differential should be included because both would be reported as wages on employees' W-2 forms and both could be paid as additions to the hourly rate. At the hearing, the Fact-Finder deferred ruling until issuance of this Report.

Having fully considered the arguments of both parties, the Fact-Finder has determined that longevity and shift differential are <u>not</u> included in the re-opener. The plain language of Section 25.1 is quite clear: It specifically limits the re-opener to "hourly wage rates," not more generally to compensation. Section 12.1 lists "hourly wage rates" as dollar amounts payable for each hour worked, and Section 12.2 states: "The hourly wage rates for the bargaining unit to be paid during the second and third years of this Agreement shall be subject to negotiation as hereinafter provided in Article 25." Reading sections 12.2 and 25.1 together and giving effect to both, it is clear that the "hourly wage rates" to which section 25.1 refers are the "hourly wage rates" listed in Article 12, not other wage and compensation items. The fact that shift differentials and longevity pay would be included on Form W-2 is not inconsistent with this interpretation, as Box 1 of the W-2 Forms requires reporting of "wages, tips and other compensation," and W-2 instructions list numerous forms of non-wage compensation which must be reported.

RULING: Proposals for longevity and shift differential must be rejected as they are not within the scope of the re-opener. Therefore, the Fact-Finder recommends no change in or addition of contract language concerning these topics.

2. Article 12 – Wage Rates

Positions of the Parties: The Employer proposes increasing Article 12 wage rates by 1.5% effective January 1, 2011 and 1.5% effective January 1, 2012. The Employer asserts that this is the most it can be expected to pay in view of the financial situation detailed in the Background section of this Report, pages 3 – 5, supra.

The Union counters by proposing increases of 3% for January 1, 2011 and 3% for January 1, 2012. It acknowledges that the Employer has legitimate financial concerns, but asserts that the proposed increases would not put the Employer in a deficit situation during the term of this Agreement. The Union states that comparability data gives compelling support to its position. It noted the annual wages paid to Corrections Officers in Hancock, Seneca, Ottawa, Ross, and Richland Counties and at the Tri-County facility range from $35,000 (Tri-County) to $39,618 (Richland), all significantly better than the $31,345 paid to MCCC Corrections Officers in 2010.

RULING: The Fact-Finder recommends a 1.5% increase effective January 1, 2011; a 1.0% increase effective January 1, 2012; and a 1.25% increase effective July 1, 2012.

Rationale: The economic data summarized at pages 3 – 5 of this Report shows the need for wage restraint unless and until the region experiences some economic recovery resulting in increased county revenue available to fund MCCC. Examination of MCCC's budget does not reveal any excess money in non-salary accounts. Moreover, it appears that money for wages cannot come from additional personnel cuts, as Director Osborn testified that this would increase the safety risk and adversely impact the level of service at the facility. See SERB Rule 4117-09-05(3)

Nevertheless, the relatively low wages paid by MCCC to its Corrections Officers is a legitimate concern. See SERB Rule 4117-09-05(2). Some comparables cited by the Union may be inappropriate. Neighboring Richland County, for example, is much larger than Marion and Harden Counties and it has a different economic profile. However, a broader examination of the October 2010 SERB Benchmark data for County Corrections Officers, submitted as a Union Exhibit, confirms that MCCC Corrections Officers are paid less than most Ohio Correction Officers. Of 54 counties reported, only ten (10) (including neighboring Morrow County) pay Corrections Officers less than the $31,350 now earned by MCCC Corrections Officers. Thirty-two (32) counties now pay $35,000 or more.

The recommended increases – 1.5% January 1, 2011, 1.0% January 1, 2012, and 1.25% July 1, 2012 – will not cost the Employer appreciably more during the term of the Agreement than its 1.5%/1.5% proposal, but will enable the employees to make a little more progress towards a more competitive compensation level by the end of the Agreement's term.

ISSUANCE OF AWARD

The Award is issued this 12th day of January, 2011.

/s/John T. Meredith
John T. Meredith, Fact-Finder

Shaker Heights, OH

CERTIFICATE OF SERVICE

This is to certify that the foregoing Opinion and Award was electronically filed with the State Employment Relations Board and electronically served upon the parties by e-mailing it to their representatives, listed below, this 12th day of January, 2011:

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A hard copy of the Opinion and Award was also mailed to the above-named party representatives on this date.

/s/John T. Meredith
John T. Meredith, Fact-Finder