

OHIO STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

IN THE MATTER OF FACT-FINDING BETWEEN

2011 MAR 10 P 3:01

 FRATERNAL ORDER OF POLICE
 OHIO LABOR COUNCIL, INC.,

and

10-Med-09-1146 *

 ALLEN COUNTY SHERIFF'S OFFICE /

PRESENTED TO:

J. Russell Keith- Administrator,
 Bureau of Mediation
 State Employment Relations Board
 65 East State Street, Suite 1200
 Columbus, Ohio 43215-4213

And

Brenda Goheen, Staff Representative
 Fraternal Order of Police
 Ohio labor Council, Inc.
 222 E. Town Street
 Columbus, Ohio 43215-4611
 bbbgh@live.com

And

Benjamin S. Albrecht, Attorney and Advocate
 Attorney for the Employer
 Downes, Hurst, and Fishel
 400 South Fifth Street, Suite 200
 Columbus, Ohio 43215-5492
 balbrecht@dhflaw.com

 Before Fact Finder: Betty R. Widgeon

Introduction

This Fact Finding arises pursuant to the Ohio Revised Code Section 41117.14 between the Fraternal Order of Police, Ohio Labor Council, Inc. (Union) and the Allen County Sheriff's Office (Employer). The report of Betty R. Widgeon, who was selected as Fact Finder, is issued

below. A pre-hearing conference call with counsel for the parties and the Fact Finder was initiated by the Fact Finder on February 9, 2011. Prehearing statements were received by the Fact Finder and were served by each party upon the opposing party via email on February 9, 2011.

In compliance with the Ohio Public Employee Bargaining Statute Rule 4117-9-05, representatives Brenda Goheen (hereafter Goheen) for the Union, and Benjamin Albrecht (hereafter Albrecht) for the Employer, met with the Fact Finder for the hearing on February 11, 2011 at the Allen County Sheriff's Office. The Fact Finder asked the parties if it appeared that mediation would assist in the settlement of any outstanding issues. The parties agreed to attempt mediation for a limited time. However, mediation did not produce any further movement toward settlement, and the Fact Finder convened the hearing. The parties summarized their positions and presented testimony, arguments, and exhibits in support. At the conclusion of their presentations, the parties initially waived the statutory time for receipt of the Fact Finder's report. On Monday, February 21, 2011 the parties waived receipt of the Fact Finder's report until Monday, March 7, 2011. This report is submitted on March 7, 2011 at the time and in the manner (via email attachment) stipulated to by the parties.

Attendees:

For the Fraternal Order of Police

Brenda Goheen, Staff Representative

Andre McConahea, Allen Co. Sheriff Office Blue Unit Rep.

Matthew Johnson, Allen Co. Sheriff Office Blue Unit Rep.

For the Allen County Sheriff's Office

Benjamin Albrecht, Attorney for ACSO, DOWNES FISHEL HASS KIM LLP

James K. Everett, Chief Deputy

Dan Reiff, Allen Co. Commissioner

Stacy Pollock, Attorney for ACSO, DOWNES FISHEL HASS KIM LLP

Positions of the Parties

The Union identified five issues and the Employer identified four issues which remain open. The positions of the parties were clearly and fully articulated. Those jointly identified unresolved issues include:

- | | |
|-----------------------------|-----------------------|
| 1- Article 18, Section 18.1 | Wages |
| 2- Article 19, Section 19.1 | Health Insurance |
| 3- Article 11, Section 11.1 | Internal Review |
| 4- Proposed New Article | Mutual Respect Clause |

The Union separately identified the duration of the contract as a fifth issue:

- | | |
|-----------------------------|----------|
| 5- Article 27, Section 27.1 | Duration |
|-----------------------------|----------|

Criteria for the Fact Finder

Rule 4117-9-05 sets forth the criteria the Fact Finder is to consider in making recommendations:

1. Past collectively bargained agreements, if any.
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 standards of public service.
4. The lawful authority of the public employer.
5. Any stipulation 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 private employment.

Therefore, with the above listed criteria in mind, the Fact Finder considered the evidence.

She considered all arguments, positions, and data presented in formulating her recommendations. The Fact Finder here examines each issue, summarizes the parties' positions and then offers a recommendation.

Article 18, Section 18.1 Wages

UNION POSITION:

The Union proposes a 3% increase for each of three years effective January 1, 2011, January 1, 2012 and January 1, 2013, but would also support a 3% increase effective January 1, 2011 and a wage re-opener in January, 2012. The Union explains that:

- a) "Last year unit members agreed to furlough two hours per pay period for 2010 in order to assist with the Employer's budgetary concerns."
- b) "Last year's sales tax increase of 7.62% directly increased the Employer's coffers."

Aside from those two points, the Union did not make an in dept argument at the hearing respecting wages. Instead, it pointed out that it wants to keep afloat. It concludes that in order for the unit employees to remain where they are on the wage scale in comparison with similarly situated employees, the requested pay increase would be reasonable.

EMPLOYER POSITION:

The Employer proposes a 0% wage increase for 2011, a re-opener effective January 1, 2012 and January 1, 2013. It highlights the following:

- a. That over the prior five years members of the Blue Unit received wage increases at a rate greater than the increase in the cost-of-living.
- b. During the negotiation of the prior agreement the parties agreed upon new longevity language which the Employer believes effectively granted an additional increase in excess of 1% at 5 years of service. The Employer interprets that increase, coupled with the 2% wage increases for 2008 and 2009, as a 3% net Union gain. In this configuration, the Employer views members of the Blue Unit as having received wage increases greater than the statewide average.
- c. Their fund balance is lower than the recommended appropriate levels.
- d. The increase highlighted by the Union is relative, and it must be juxtaposed with how far down this revenue had fallen in the immediately preceding years.

- e. The principle of internal consistency should be applied here, where non-bargaining County employees are not receiving a wage increase for 2011.
- f. Employers must exercise caution and prudence in these uncertain economic times.

The Employer argues that what may appear to the Union as a definite ability to pay is in reality not that not that clear cut. Although sales taxes have slowly started to increase, they are still five years behind where they were in 2006. It states that the County is going along cautiously and must take each year as it comes because of the uncertainty it faces going forward. Additionally, it has done everything it could to cut costs and recognizes the importance of demonstrating internal consistency.

DISCUSSION AND RECOMMENDATION:

The Union does not argue that it is currently behind its counter-parts, and the SERB documents presented by the parties support this reality. The Employer highlights that the County's budget deficit is affecting everyone. The 4 million dollars the Union views as an unencumbered fund balance in actuality must be used to start taking care of capital repairs. Based on the data I have reviewed, I recommend the following: **0% for 2011 and a wage re-opener in 2012 with respect to wages.**

Article 19, Section 19.1 Health Insurance

UNION POSITION:

The Union proposes that the terms and conditions of Insurance include coverage for spouses and increases the *opt out* provisions from \$1000 to \$3000. It argues that other county employees receive a \$3000 opt-out payment and, in line with the principle of internal comparability, they should be brought up to this level. Additionally, currently only 8 of all eligible members take advantage of the \$1000 opt out. If the payment is raised to the \$3000

level, the Union believes more employees would opt out, and therefore, the Employer would reap the financial savings.

Secondly, the Union states that, with respect to insurance coverage, the Employer has unilaterally changed the definition of family to exclude spouses. The Union argues that the appropriate, usual and plain interpretation of the term “family” reasonably and includes spouses. It underscores that until very recently everyone considered this to be the case. It complains that this change has put a big burden on about 18 of the unit’s members. The Union requests that the Fact Finder’s report specifically address the definition and interpretation of the word “family”.

In response to the Employer’s position that it is improper to bring this issue to Fact finding at this time, the Union disagrees with the representation that it was not discussed at all at negotiations. Rather, it states that the Employer made it plain from day one that this was an issue about which it did not care to negotiate. The Union underscores that management had already put the change into effect prior to negotiations. The Union urges that the language already in place is accurate, but requests a recommendation that language be added to clearly specify that the term *family* includes spouses.

Finally, the Union believes that by removing spouses from the family category the Employer saved approximately \$10,000. The Union reasons, however, that by increasing the opt out payment from \$1000 to \$3000 the Employer would save much more than \$10,000 because more employees would be persuaded to take advantage of the option.

EMPLOYER POSITION:

The Employer contends that the current *opt out* level is more appropriate because the other county employees who receive the higher payment for *opting out* have not received a wage

increase for the past several years, and that these other employees continue to sustain furlough days and other cuts. With respect to the definition of family, the Employer only responded that a grievance is pending related to this issue, and that it doubts the appropriateness of bringing it before the Fact Finder because of this pendency.

DISCUSSION AND RECOMMENDATION:

According to the Employer, this bargaining unit negotiated a 20% premium contribution cap, whereas no cap exists for the County General Fund employees. In addition, the Employer points out that the proposed *opt out* payment increase is greater than that received by the Gold and Support Units of the ASCO. Exhibit 4 shows that of the few counties that do have an opt-out payment provision in their contracts, the maximum amount paid to those opting out is \$1000.00. Based on the representations of the parties at the hearing and all data I have reviewed, I recommend the following: **No change to Article 19, Section 19.9 : Insurance Opt-out**

According to the Union, up until recently the general understanding was that the term family included spouses. Nothing contrary was brought at the hearing to persuade the Fact Finder that a different meaning was ever contemplated by the parties. Based on the representations of the parties at the hearing and all data I have reviewed, I recommend that Article 19, Section 19.2 be modified to include the following language: **The term family shall include spouses.**

Article 11, Section 11.1 Internal Review

UNION POSITION:

The Union voices concern about the current internal review procedure that assigns employees in a bargaining unit to conduct investigations on employees within the same unit. The apprehension stems from the reality that the employee-investigator of the same rank as the

employee being investigated could someday be paired up to work side by side with the employee he or she investigated. The Union describes that possibility as a potential moral issue as personal conflicts often arise. It further notes that deputies on the road are treated differently than co-worker investigators, and feels that it would be easier for everyone if this procedure was ended. The Union's proposed new language would read: *all internal administrative investigations that could result in discipline shall be assigned to investigators outside the bargaining unit.*

EMPLOYER POSITION:

The Employer views this issue as falling inside management's rights to direct employees with respect to their job duties. Secondly, it views the Union's proposal as impractical, as the detective/investigative division is made up more Blue Unit employees than non-Blue Unit employees. Fluctuating case load levels would make it impossible to always be able to select a non-Blue Unit investigator. Trying to adhere to the Union's proposal could potentially cripple or slow down the internal investigations process. Moreover, agreements of comparables within the area do not include such language.

DISCUSSION AND RECOMMENDATION:

The Union offers scenarios about the tension that could result from investigations by co-workers. Conversely, the Employer points out that the opportunity to challenge an alleged unfair or incomplete investigation is available in the negotiated grievance procedure. No information was presented regarding past or anticipated futility in directing such concerns to the Sheriff or Chief deputy. Based on the representations of the parties at the hearing and all data I have reviewed, I recommend **no change in the current language.**

Proposed New Article Mutual Respect

UNION POSITION:

The Union proposes that the contract include a new provision entitled *Mutual Respect* which would provide a guideline for all employees' behavior. The Union highlights particular incidences of individuals standing up in roll call and berating others. It argues that inclusion of the proposed language "would be an enhancement of the workplace." Exhibit 13 sets forth the specific language proposed and depicts in a chart a wide range of behaviors, such as derogatory remarks, malicious rumors, verbal aggression, mobbing or swarming and misuse of power and/or authority. It contends that the impact of those behaviors includes embarrassment, humiliation, fear and demoralization. The Union's language would also expressly prohibit retaliation of any kind.

The Union recognizes that the Employer has a workplace/harassment policy in place currently. However, it feels that the incidents still arise. Both the Gold and Blue units are supposed to follow their own contracts, but issues have arisen between the unit group members that are not specifically addressed in either of the contracts. While the incidences have not been numerous, enough complaints come up from time to time to make this subject an important one to address.

EMPLOYER POSITION:

The Employer opposes addition of any new language for the reasons that a) it believes the Union did not convincingly establish that such new language is necessary, b) it believes that the Employer's current harassment/discrimination policy is a sufficient avenue for employees who believe they are being harassed and c) the Gold Unit is not subject to the Collective Bargaining Agreement between the Blue Unit and the Employer. The Employer points out that

the current harassment policy covers more than sexual harassment, and that there have been no complaints filed with respect to *mutual respect*. It also underscores that “a host of problems would be associated” with trying to put a policy in one CBA that purported to apply to employees covered by a completely different agreement.

DISCUSSION AND RECOMMENDATION:

Fact Finder received no evidence that complaints of harassment asserted thus far have fallen outside the parameters of the current policy, or that those voiced in the future would automatically be excluded by that policy. Based on the representations of the parties at the hearing and all data I have reviewed, I recommend **no change in the current language**.

Article 27, Section 27.1 Duration of the Contract

UNION POSITION:

The Union proposes that the contract duration be effective January 1, 2011 through December 31, 2013. The proposed language is: *Unless otherwise stated in this Agreement, this Agreement shall be effective on January 1, 2011 unless indicated otherwise, and shall remain in full force and effect until December 31, 2013 unless otherwise terminated as provided herein.*

EMPLOYER POSITION:

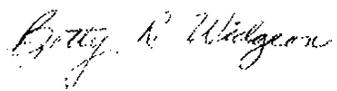
The Employer proposes re-opener for both 2012 and 2013 with respect to wages only.

DISCUSSION AND RECOMMENDATION:

The Employer takes the position that it must continue to be conservative during these depressed economic times. However, the evidence does demonstrate that it is moving toward a more positive outlook and balance sheet in many of the parameters presented. Both sides appropriately seek a degree of stability. Based on the representations of the parties at the hearing

and all data I have reviewed, I recommend a **three year contract effective January 1, 2011 through December 31, 2013**, with a re-opener on wages only in 2012.

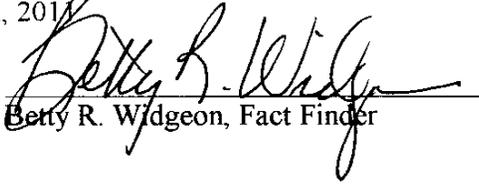
Respectfully submitted and issued this 7th day of March 2011.

A handwritten signature in cursive script that reads "Betty R. Widgeon".

Betty R. Widgeon

Certificate of Service

I, Betty R. Widgeon hereby certify that a true copy of the foregoing Fact Finder's Report was served by electronic mail¹ via email attachment on March 7, 2011 upon Benjamin S. Albrecht, Downes, Hurst, and Fishel, 400 South Fifth Street, Suite 200, Columbus, Ohio 43215-5492, balbrecht@dhflaw.com, Attorney for the Employer, and Brenda Goheen, 222 E. Town Street, Columbus, Ohio 43215-4611, bbbgh@live.com **as stipulated to by the parties**, and upon the Ohio State Employment Relations Board (via **J. Russell Keith- Administrator, Bureau of Mediation State Employment Relations Board, 65 East State Street, Suite 1200, Columbus, Ohio 43215-4213**) by first class mail, this 7th day of March, 2011.


Betty R. Widgeon, Fact Finder

B. Widgerson
Facet Blinden
P.O. Box 3500
Ann Arbor, MI
48106

J. Russell Keith Administrator
Bureau of Mediation
SEEB
65 East State Street
Suite 1200
Columbus, Ohio 43215-4213

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