

HAND DELIVERED

**FACT FINDING REPORT/RECOMMENDATIONS
STATE EMPLOYMENT RELATIONS BOARD**

2012 JUL 27 P 3:28

STATE EMPLOYMENT
RELATIONS BOARD

Case Nos. 10-MED-09-1528 (Rank Unit)
10-MED-09-1529 (Deputy and Dispatchers Unit)
10-MED-09-1260 (Cooks and Maintenance Unit)
10-MED-09-1261 (Corrections Officer & Med Tech Unit)

10/18

10-MED-09-1258, 1259, 1260, 1261

OHIO PATROLMEN'S BENEFIT ASSOCIATION (OPBA)

-and-

SENECA COUNTY SHERIFF

Advocates: Justin D. Burnard, Allota, Farley & Widman, for OPBA
John J. Krock, Clemans, Nelson & Associates, for Seneca County

Proceedings before:
Donald R. Burkholder, Ph.D.,
Fact Finder

Hearing Date: June 13, 2012

STATE EMPLOYMENT RELATIONS BOARD [SERB]-(Ohio)--

SCOPE OF DUTIES OF THE FACT-FINDING PANEL in accord with
Section 4117 of the Administrative Code

- A. The fact-finding panel shall attempt to mediate the disputes of the parties prior to conducting a fact-finding hearing.
- B. When mediation efforts do not resolve all issues at impasse, the fact-finding panel shall hold an evidential hearing except that the parties may stipulate facts and waive a hearing. For purposes of hearing, the fact-finding panel shall have the power to regulate the time, place, course, and conduct of the hearing, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and request the Board to issue subpoenae to compel attendance of witnesses and the production of books, papers, and records relating to any matter before the fact-finding panel. The fact-finding panel may not choose a hearing location at a cost to the parties unless the parties fail to agree to an alternate cost-free location. Fact-finding hearings are to be held in private.
- C. The fact-finding panel, in making findings of fact, shall take into consideration all reliable information relevant to the issues before the fact-finding panel.
- D. The fact-finding panel, in making recommendations, shall take into consideration the following:
 - (1) Past collectively bargained agreements, if any, between the parties.
 - (2) Comparison of unresolved issues relative to the employees in the bargaining unit with the 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, and 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; and,
 - (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 in private employment.

RECOMMENDATIONS IN BRIEF

The Employer positions are justified and therefore recommended. Unpalatable as this may be, it is in line with the previous decision of the Union membership that no increase in pay, changes in medical insurance, etc. are preferable to members being laid off. More detail explanation of this recommendation is provided below in Summarizing Commentary/Analysis.

BACKGROUND

The complexity of the four part bargaining unit, the relationships between these relatively small groups, the length of bargaining, and the political/electoral factors involved require a rather detailed explanation. Although political/electoral factors are common in public sector disputes, they appear to be especially prominent here, given the usual contentious relationships over the county general fund budget, the Sheriff's budget, the relationship of the two, as well as concern among the four parts of the bargaining unit over ultimate priorities and preferences in the resulting Agreement.

The four OPBA bargaining units of the Seneca County Sheriff's Department, all units having agreed to and engaging in multi-unit bargaining for more than a year, reached impasse in May 2012, and so notified this fact finder, who had been appointed in May 2011. The groupings consist of 11 Deputies, 6 Dispatchers, 41 Corrections Officers, and 1 Maintenance employee.

The Seneca County Sheriff and the OPBA have a long history of bargaining. The current Sheriff, William Eckleberry, took office on November 17, 2010 after the previous Sheriff, Tom Steyer, resigned in January 2010. The Central Committee appointed Jeff Briggs as interim Sheriff, and Eckleberry defeated Briggs in the Primary Election of May, 2010. Eckleberry ran unopposed in November 2010, and was sworn in as the newly elected Sheriff on November 17, 2010.

The first bargaining session was on November 24, 2010. Both parties agreed to wait until the new Sheriff took office to start negotiations. The parties had four (4) additional sessions (December 10, 2010; December 16, 2010; December 29, 2010; January 27, 2011). On January 27th the parties reached impasse, but agreed to put the Fact Finding hearing on hold and go forth first with a grievance related to 2010. The Union gave up their 3% wage increase due 1-1-2010 in lieu of the Sheriff laying off several employees.

Some bargaining unit employees thought the 3% wage increase was just deferred and would go back into effect 1-1-11 and therefore the grievance. The Union requested that the Fact Finding be put on hold, because if they won the arbitration and received a 3% wage increase from the arbitrator, they would not pursue a wage increase in fact finding. The parties selected from three (3) separate arbitrators in 2011, had difficulty scheduling the hearing with all three (3) parties during much of 2011, and then finally held the hearing in August 2011. The Employer prevailed in the grievance.

As emphasized by the Employer advocate, the Sheriff has control of his budget only after the County Commissioners have appropriated and approved it. He does not control the amount of money the County Commissioners approve for his budget, and can only request. The County Commissioners have approved the Sheriff's 2012 budget at \$4,526,393. The Sheriff actually spent \$4,698,969 for 2011. His 2012 budget is \$175,576 less than he actually spent in 2011. Therefore, if the Union is granted a wage increase as requested for 2011 or 2012, the Sheriff asserts that he would have to lay off current employees in order to fund such an increase. This assertion was not disputed.

UNRESOLVEDISSUES-SUMMARIZED

The Union seeks wage increases and for each of the three years, improved uniform allowances (Section 28.2). The Employer is bargaining for changes in Article 19, Vacations; Article 28, Uniforms; Article 31, Health and Safety, Rationale; Minimum Manning; Article 32, Insurance, Rationale; Article 33, Wages and Compensation (Article 31 for Cooks and Maintenance), Rationale; Article 38, Duration of Agreement, Rationale. Employer requests include a provision for reopening negotiations.

UNRESOLVEDISSUES-DETAIL

Union Proposals

Wages: (Percentage Increase)

	Rank Unit	Deputies & Dispatch	Cooks & Maintenance	Corrections Officer & Med Tech
1/1/12 - 12/31/12	4	3	3	2
1/1/13 - 12/31/13	4	3	3	3
1/1/14 - 12/31/14	4	3	3	3

Section 28.2, Uniform Allowance

	2011	2012	2013
Road, Patrol Deputy, Transport Officer	\$750	\$750	\$750
Sergeant & Lieutenant	\$750	\$750	\$750
Corrections Officer	\$650	\$650	\$650
Dispatchers, Cooks, Med Techs & Maintenance	\$325	\$325	\$325

Employer Proposals:

Note: Recommended new language is in **boldface**. Language to be dropped is noted with x's between parentheses; original language may be referenced in the Agreement. Language otherwise not noted here remains status quo.

Article 19, Vacations

The Employer proposes to eliminate Article 19, Vacations, for all units because its language allows employees who accrue at least four (4) weeks of vacation per year the option of cashing in forty (40) hours of vacation each year. This cash-in, which occurs each December, is problematic for the Employer, and is an additional expense to the Sheriff's budget at year end when his budget is nearly depleted.

Effective date: Upon Ratification

Article 19, Recommendation:

The Employer position is recommended. The parties may find it constructive to negotiate language which would provide the Employer additional notice that an employee wishes to cash in vacation time, rather than the present system which is clearly problematic for the Employer.

Article 28, Uniforms -Rationale

Even though the language in this article clearly states that employees will have amounts in a reimbursement account, the County has provided a check to employees with the appropriate amount of deductions. The Sheriff proposes to stop that practice and provide the uniform reimbursement accounts as stated in the contract. The Sheriff is proposing to return to the 2009 amounts because the Union agreed to forego their uniform allowances in 2010 and never received the additional \$50.00 provided for in 2010.

Recommendation:

The Employer position is recommended. Article 28 language should be unchanged except for the following designated sections, which should read as follows, with new language in **boldface**.

Section 28.2. Bargaining unit employees shall have the following amounts in a reimbursement account for the purpose of replacing worn and aging uniform and equipment items, and for dry cleaning such uniforms. **The Sheriff may designate a uniform supplier to come on site to measure and/or take orders for uniforms and supplies.**

Classification	Total Amount
Road Patrol Deputy, Transport Officer, Sergeant, Lieutenant	\$650
Corrections Officer, Medical Technician	\$600
Dispatchers, Cooks, Maintenance	\$325

Sections 28.7 and 28.9. Rationale - The Employer proposes to eliminate baseball caps as an option for Road Deputies, and to have the ability to allow the Rank and Deputies to wear "BDU" uniforms under certain situations.

Recommendation:

Section 28.7. The option shall also be given to employees working as Road Deputies to wear their choice of necktie, dickie, or turtleneck with their uniform. Baseball caps (XXX) **shall not be worn.**

Section 28.9. (X X X) **The Sheriff may allow Deputies (X X X) to (X X X) wear "BDU" uniforms under certain situations. This section only applies to the Rank and Deputies contract.**

Article 31, Health and Safety, Rationale

The Employer proposes to delete Section 31.2 in both the Corrections Contract and the Rank Contract. Section 31.1 will remain in all four contracts. Minimum manning is a permissive subject of bargaining and a basic management right of the Sheriff. Effective date: Upon Ratification.

Recommendation/Analysis

The Employer position is recommended. Section 31.2 is eliminated. Section 31.1 will remain in all four current contracts, for the sake of consistency and common sense.

Article 32, Insurance, Rationale

The Employer proposes language recently negotiated with another county union, AFSCME, which represents the employees of the Department of Jobs and Family Services. The Sheriff's employees are the only county employees currently not paying 20% of the monthly premium.

Article 32, Insurance- Recommendation

Section 32.1 (X X X)

All full time employees are eligible for coverage under the County's group hospitalization insurance program. The employee's contribution to the single and family premiums will be the same as that designated for the nonbargaining county employees paid from the General Fund. Such employee contribution shall not exceed twenty percent (20%) of such premiums. The employee's share of the premiums will be deducted from the employee's paycheck.

The County Commissioners retain the sole authority to select types of insurance and insurance providers.

(X X X-- sign-off portion of Article 32.1)

Recommendation/Analysis

The Employer proposal, although a take-away from the current provision, is consistent with the undisputed dire financial situation of Seneca County and its Sheriff's department. It may provide slightly more latitude for discretionary spending by the Sheriff, perhaps benefiting the employees in other ways, depending on the selection of priorities, e.g., enhancing safety and professional training. Significantly, it increases the size of the 'pool' of employees the County can use as its basis for bargaining with insurance providers, providing crucial economy of scale.

Article 33, Wages and Compensation, Rationale
Article 31 for Cooks and Maintenance. ~~~~~

The Employer is proposing a wage freeze for 2012 and wage reopeners for 2013 and 2014. The Sheriff's budget for 2012 is \$172,576 less than he actually spent in 2011, and he has the same number of employees. The Sheriff has no control over the amount of money the County Commissioners budget him each year.

Six years (2006) ago the General Fund spent \$14,577,996 while the Sheriff spent \$4,128,421, which is 28.3% of the total General Fund. For 2012 the General Fund appropriation is \$14,416,347 while the Sheriff's appropriation is \$4,526,392, which is 31.3% of the total General Fund. In six (6) years the General Fund for all of Seneca County is projected to spend \$161,649 less, while the Sheriff's budget has been increased \$397,971 during the same time period.

The Sheriff asserts that he would love to give employees a pay increase, but not at the expense of jobs. The County Commissioners have informed the Sheriff that any pay increase for his employees will be funded from his current budget.

Effective date: Upon ratification.

Article 33, Wages and Compensation - Recommendation

The Employer position is preferable, with special emphasis on the provision for a reopening of negotiations concerning wage rates, as follows:

Section _____ The parties agree to reopen negotiations concerning wage rates listed in Section ____ for the second and third year of the agreement, in accordance with R.C. 4117. Such wage rates, if granted, shall be effective 1-1-13 and/or 1-1-14.

Article 38, Duration of Agreement, Rationale

The Employer proposes an agreement that is effective upon signing and expires December 31, 2014 for all four (4) contracts.

Article 38, Duration of Agreement - Recommendation

Section 38.1. This Agreement shall be effective upon signing and shall remain in full force through December 31, 2014.

Article 38, Duration of Agreement, Recommendation/Analysis

The employees of the Sheriff through no particular fault of their own have experienced a prolonged period of disruption and uncertainty. Budgetary limitations

and changes in leadership have been a fact of life. Especially in view of the possibility of a reduction in budget pressures, based on a close examination of budget and spending projections, the reopener provision(s) provide a glimmer of optimism over some positive development in the relationship among and between the parties. More to the point, the longer duration provides for increased stability which should strengthen fundamentally sound relationships.

SIGNED ARTICLES

Seven (7) articles were signed by the parties during negotiations prior to the Hearing, were included in the Union presentation, and thus will be part of the Agreement. They are as follows:

Article 24, Injury Leave

Article 22, Personal Leave

Article 30, Education/Training

Article 27, Layoff & Recall

Article 21, Sick Leave

Article 6, Nondiscrimination

Article 11, Discipline

SUMMARIZNG COMMENTARY/ANALYSIS

The parties are encouraged to discuss continuing possibilities for agreement on matters dealt with herein. Keep in mind that these are recommendations designed to facilitate progress toward a contract. They are not 'set in stone,' may be altered, traded, etc. In short, they may be the basis for movement. Seven articles signed off prior to the Hearing are indicative of a respectful and progressive bargaining environment.

A review of the budgetary/financial information supplied appears to confirm that the Sheriff is prudent in using his resources, that there is no evidence of wasteful or careless purchasing or spending, and that the Sheriff is seriously limited

by the budget he was given by the Seneca County Commission. There was no testimony or evidence in contradiction of this conclusion. In the audit or detailed listing of items/services purchased, \$500 orange pants, medical costs for prisoners, new or repaired police cruisers, and rodent extermination costs are memorable and impressive, perhaps educational for the Fact Finder more than anything else. Reviewing these spending details makes it clear that the Sheriff is doing a competent job of utilizing his limited resources. The Union apparently agrees that belt-tightening, ie., limited or no wage increases and alteration in health insurance payment, is preferable to layoffs. Thus no wage increases, along with adoption of the Employer proposal on health insurance, are recommended, the latter partly in consideration of the IRS Section 125 tax break regarding medical insurance, easing some of the stress on employees. As the over-used old saying has it, you can't get blood out of a stone. Nevertheless, the provision for wage reopeners provides at least the possibility of relief should circumstances change, with limited projections for a slightly healthier fund balance, so limited in fact that wholesale commitment of those resources would be irresponsible. And, other possibilities for fruitful settlement may become apparent.

The parties and the advocates conducted themselves in a forthcoming, helpful and professional manner during the Hearing, providing additional information to clarify matters as requested. The advocates' understanding and cooperation was especially appreciated in dealing with circumstances arising from this Fact Finder's automobile accident shortly after the Hearing, the brief delay needed to recover from injuries, and clarification of certain terms and acronyms, as requested.

Respectfully,



Donald R. Burkholder July 27, 2012

This certifies that this Fact Finding recommendation/report was sent on July 27, 2012, by commercial facsimile at Office Depot, Livonia, Michigan to Justin Burnard of the OPBA, John Krock of Clemans Nelson & Associates, and to SERB.

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