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September 8, 2011

State Employment Relations Board
65 East State Street
12th Floor
Columbus, Ohio 43215-4213

ATTN: J. RUSSELL KEITH – www.serb.state.oh.us (via e-mail)
GENERAL COUNSEL & ASSISTANT EXECUTIVE DIRECTOR

**RE: STATE EMPLOYMENT RELATIONS BOARD
(FACT-FINDING)**

**LAKE COUNTY SHERIFF (Employer)
and**

**OHIO PATROLMEN'S BENEVOLENT ASSOCIATION
(OPBA) (FULL-TIME DEPUTIZED DEPUTIES, COURT
OFFICERS & COURT OFFICER CORPORALS) (Union)
CASE NO.: 11-MED-01-0071**

Dear Mr. Keith:

Enclosed herein, please find a Fact-Finding Report and Recommendation, in regard to the above-captioned matter.

Thank for your courtesy and cooperation herein.

Very truly yours,



Thomas R. Skulina

TRS/cad
Enclosure

cc: Tom Grabarczyk w/copy Enclosure (Overnight Mail)
Daniel Leffler, Esquire w/copy Enclosure (Overnight Mail)

STATE OF OHIO STATE EMPLOYMENT RELATIONS BOARD

**RE: LAKE COUNTY SHERIFF (Employer)
and
OHIO PATROLMEN'S BENEVOLENT ASSOCIATION
(OPBA) (FULL-TIME DEPUTIZED DEPUTIES, COURT
OFFICERS & COURT OFFICER CORPORALS) (Union)
CASE NO.: 11-MED-01-0071**

**FACT-FINDING REPORT AND RECOMMENDATION OF THOMAS R.
SKULINA, FACT-FINDER**

APPEARANCES

For the Lake County Sheriff:

Tom Grabarczyk
Labor Relations Management, Inc.
6800 W. Central Avenue, Suite #L-2
Toledo, Ohio 43617

For the OPBA:

Daniel Leffler, Esquire
10147 Royalton Road, Suite J
North Royalton, Ohio 44133

HEARING

Hearings were conducted on August 23rd and August 24th, 2011 at the offices of the Sheriff (104 East Erie Street, Painesville, Ohio 44077).

Evidence was received from Chief Deputy Frank Leon Bruno; Budget Director Michael Matas for employer, and deputies James A. Wheeler and Angela Gondor for the union.

The parties currently have an Agreement effective April 1, 2008 and ending March 31, 2011. When the fact-finding recommendation is "current language" it refers to this Collective Bargaining Agreement.

BACKGROUND

There are eight units represented in the Lake County Sheriff's office. A tentative agreement was reached with three of these units.

Evidence clearly proved that the financial situation of the county, and therefore, the office of the sheriff, is in a very bad state.

The state and local, tangible property deregulation loss to the county in 2011 totaled \$1,000,000. The portion removed from the sheriff's budget is approximately thirty percent, i.e., \$300,000.

On August 16, 2011 the sheriff's office was advised his budget would be reduced by \$300,000 this year.

As of July 1, 2011, there were also shortfalls in both of the sheriff's funds. The sheriff's office was short \$229,369 and the central communication was down \$126,080.

Overall, therefore, there is a shortfall of \$655,449.

The expenditures for 2008 were \$15,581,734 for the sheriff's office and 2,039,677 for Central Communications. The budget dropped to \$13,271,051 and \$1,719,234.

With the shortfall situation, advice was rendered that cuts had to be made in the work force. Before advice of the latest shortfall, fifteen employees would be laid off but it only saves \$300,000 and does not reach the remaining \$355,449.

Thus, lay-offs will necessarily be made.

Initially, the employer sought a 3% pay cut.

In the mediation process, with adjustments in each side's positions on ways, rather than a salary cut, was put on the table.

I shall be recommending these adjustments to avoid the adoption of this two year 3% drop in pay.

The shortfall of \$625,700 in 2011 would require a 6.25% reduction in wages across the board to cover. The shortfall now is even higher, i.e. \$655,449.

NOTE

The fact-finders in the cases heard; found their facts without knowledge of the recent \$300,000 shortfall.

ARTICLES – ISSUES PRESENTED

ARTICLE 5 – Seniority

See later in report.

ARTICLE 7 – LAYOFF AND RECALL

See later in report.

ARTICLE 10 – GRIEVANCE AND ARBITRATION

See later in report.

ARTICLE 11 – REVIEW OF PERSONNEL FILE

Union withdrew its proposal and the parties shall retain the current contract language for this issue.

ARTICLE 12 – DISCIPLINARY PROCEDURE

See later in report.

ARTICLE 13 – INTERNAL INVESTIGATION PROCEDURES

See later in report.

ARTICLE 14 – SICK LEAVE

See later in report.

ARTICLE 15 – HOLIDAYS

See later in report.

ARTICLE 16 – ANNUAL LEAVE (Vacation)

Union withdrew its proposal. Parties retain contract language, except in Section 6. The following shall be added:

Employees shall be permitted to conduct day and shift trades throughout the year subject to the approval of the employer.

ARTICLE 18 – WAGES

Current language agreed, but Section 5, the last sentence, shall state either party wishing to reopen Article 18 – Wages shall give the other party written notice of such intention at least sixty days prior to the 2nd anniversary date of this agreement.

ARTICLE 19 – BEREAVEMENT DAYS

Parties agree to current contract language.

ARTICLE 20 – LEAVE OF ABSENCE

Current language, except in Section 4:

. . . the employer may require a pregnant employee to begin a maternity leave consistent with the FMLA subject to the attending physician’s certification after the sixth (6th) month of their pregnancy. Such determination shall be made based on the employee’s condition and duties in relation to position. . .(current language for last part of Section 4).

ARTICLE 21 – INJURY LEAVE

Current language except add to last section:

“An employee on injury leave that is authenticated to extend beyond two weeks, need not be confined to home upon approval by the employer”. Note: evidence discussed, an example of a broken wrist or arm that does not allow work but could allow the employee to visit relatives, the beach, sport events, etc.

ARTICLE 27 – OVERTIME

Use current language, except Section 4.

Compensatory time is enlarged to forty-eight hours from the present thirty-two hour bank.

ARTICLE 28 – PAY FOR TRAINING TIME

Union agreed to changes in proposal by the employer.

Section 1:

“A bargaining unit member who is required to attend training programs on off duty time shall be compensated in pay or compensatory time at the applicable rate for such training time with a minimum charge of two hours unless the training is contiguous to the shift.

ARTICLE 30 –UNION LEAVE

Recommend current language.

It is the same in all the other CBA's.

ARTICLE 31 – FATAL FORCE

Current contract language agreed to by the union.

(NEW) ARTICLE 37 – EMPLOYEE ASSIGNMENT AND TRANSFER

The Union agreed to withdraw this provision.

(NEW) ARTICLE 38 – DISTRIBUTION OF RULES, DIRECTIVES AND PROCEDURES

The Union agreed to withdraw this provision.

(NEW) ARTICLE 39 – SPECIAL DEPUTIES

The Union agreed to withdraw this provision.

(NEW) ARTICLE 40 – JURY DUTY LEAVE

The Union agreed to withdraw this provision.

(NEW) ARTICLE 41 – SIDE JOBS

The Union agreed to withdraw this provision:

ARTICLE 37 – TERMS OF AGREEMENT

The parties agree to the amendment recommended by the union.

The era for the year, i.e., “March 31, 2014”, change to a real year “2014”.

Add to this Article:

“If neither party gives notice at least sixty (60) days prior to expiration, this agreement will continue in full force and effect for one (1) year”.

SIDE LETTER AGREEMENT

Current language, except Paragraph 2, shall be amended to set the allowable cap for compensatory time by Court Officers working a ten hour, four day work week shall be forty-eight hours.

Articles that have recommended changes other than agreed changes, and those either recommended or accepted changes already discussed.

Article 5, 7, 10, 12, 14 and 15.

ARTICLE 5 – SENORITY

Current language, except Section 2c shall list thirty-six (36) consecutive months instead of eighteen (18) and Section 2 E shall change the time for failure to report to work when recalled from lay-off to ten (10) days from five (5) days.

The parties agree to these changes recommended by the union.

ARTICLE 15 – HOLIDAYS

Current language, except the addition to Section 6, i.e.:

“Employees shall be permitted to conduct day and shift trades throughout the year subject to approval of the employer.

ARTICLE 7 – LAYOFF AND RECALL

Current language, but in Section 1 recall rights shall be “thirty-six (36) months” from the current eighteen (18) months.

There are two paragraphs which were preferred by the employer. I shall recommend the first and recommend the second with a slight modification.

The two divisions shall have different lay-off procedures.

Paragraph 2 for the Road Patrol Division shall be that all part-time Road Deputies shall be laid off first before all full-time Road Deputies.

With respect to the Court Officers, the employer discussed the many functions performed by part-time officers that are not performed by full-time officers. The union wanted the same procedure for this unit as for the other unit.

In view of the differences, I am suggesting a compromise, namely for Paragraph 3. The employer shall have the discretion to lay-off Court Officers, however, before any full-time officer is laid off, up to two part-time officers shall have been laid off. Thereafter, the Sheriff may lay off full-time Officers without necessarily first laying off part-time officers through the expiration of this CBA.

ARTICLE 10 – GRIEVANCE AND ARBITRATION

Both parties agreed to current language and eight changes proposed by the union.

SECTION 2 add:

“Days” herein are defined as work days, excluding Saturday, Sunday and holidays.

SECTION 3:

A grievance “may be filed by the union as a “group” grievance and. . .”

STEP 1:

“A grievance. . .within ten (10) working days of the occurrence or within ten (10) days after it has become known to the employee”.

Note: this is five (5) days more time then on the existing CBA.

“The Shift Supervisor. . .shall have ten (10) days. . .to submit a oral response.

STEP 2:

“Written grievance must be presented. . .within ten (10) working days. . .

reply in writing within ten (10) days. . .

STEP 3:

. . .appeal. . .within ten (10) days, reply within ten (10) working days.

SECTION 4 – ARBITRATION

. . .ten days of receipt of said test for the purpose of selecting the arbitrator. . .

SECTION 5:

If the parties are unable to mutually agree to schedule a hearing date within sixty (60) calendar days. . .

ARTICLE 12 – DISCIPLINARY PROCEDURE

SECTION 4:

Various disciplines have different periods for staying on a person’s record in the event of future discipline. I recommend that the current contract language be retained, i.e., one year for a reprimand; five years for a three day suspension; seven years for suspensions greater than three days.

The position of a Deputy Sheriff is a highly respected task and failure to fulfill the necessary behavior should not be tolerated, however, in a matter of degree. Hence, a violation that warrants only one year of retention is less serious then discipline involving three or even more days. But because of the stature of these individuals, serious behavior breaches deserve to stay on one’s record to emphasize the need to not violate behavior rules.

ARTICLE 13 – INTERNAL INVESTIGATION PROCEDURES

The Article remains the same except:

The parties agreed to change the second sentence of Section 2 to read:

“The member shall have the opportunity to request to consult with their OPBA Representative.

SECTION 3 shall add:

“Any testing of blood, breath or urine from an employee or polygraph testing by the employer voluntarily or otherwise, shall be done at the employer’s expense and all results will be shared with the OPBA.

ARTICLE 14 – SICK LEAVE

Current contract except for two changes proposed by the union.

SECTION 3 – ABUSE OF SICK LEAVE

Second sentence shall read:

“If the employee is not at home during their normally scheduled hours. . .

SECTION 3

Ninth line shall add:

“An employee on long term illness or injury that is anticipated to extend beyond two (2) weeks or is in an FMLA or on-duty illness/injury need not be confined to home, upon approval of the employer”.

This is an appropriate addition since, as mentioned before, there are injuries that are incompatible for duty performance but do not require confinement at home.

ARTICLE 15 – HOLIDAYS

The current language shall be retained except in Section 6. A new sentence shall be inserted:

“Employees shall be permitted to conduct day and shift trades throughout the year subject to approval of the employer”.

This is a freedom and enhancement for performing duties at the best time for an individual at times throughout the year. If it is abused, then the employer could deny it. Again, the employer must act reasonably and not abuse the authority extended. There is a grievance process.

The last recommendation shall address matters of monetary significance to the employees.

As indicated earlier, just recently there was revealed a serious decline in the revenue behind wages, etc. Ordinarily, the presence of fact-finding reports for this CBA are very helpful. Unfortunately they did not have knowledge of the recent turn of events. The position of the state regarding counties is another matter of concern besides the matters discussed.

In mediation, I definitely leaned away from a reduction in the base salary. The employer sought a 1 ½% per year reduction for two (2) years or 3%. It did bargain that if a series of other savings be accepted by the union, it would drop the 3% reduction.

I am going to recommend a series of articles that would submit this new CBA.

The other units did accept and I, therefore, recommend:

6 furlough days in 2012
6 furlough days in 2013

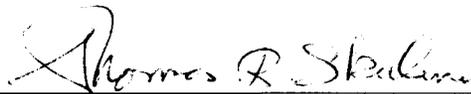
Longevity payments shall be frozen for 2011, 2012 and 2013.

The three (3) personal days shall be reduced in 2012.

The sick leave accrued shall be reduced from fifteen days to ten days upon execution of the contract.

There shall be no change in the pay scale for 2011 and 2012. There shall be a re-opener in 2013.

Though circumstances of this difficult economy creates the need for some assistance from the work force, it makes sense that it is just for 2011 and 2012 and hopefully things will change for the better and the economic status of the work force will accordingly be enhanced.


THOMAS R. SKULINA
FACT-FINDER

Dated: September 8, 2011