

BEFORE THE STATE EMPLOYMENT RELATIONS BOARD
FOR THE STATE OF OHIO

IN THE MATTER OF FACT FINDING BETWEEN:

The Preble County Sheriff's Department
Employer

SERB Cases nos. 11-MED-03-0262
 11-MED-03-0263
 11-MED-03-0264

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AND

The Fraternal Order of Police
Employee Organization/Union

Appearances:

For the Sheriff's Department: John J. Krock, Vice President
 Clemans, Nelson & Associates, Inc.
 Dublin, OH

For the Union: Thomas Fehr, Staff Representative

REPORT AND RECOMMENDATIONS OF THE FACT FINDER

Frank A. Keenan
Fact Finder

Background

This proceeding involves Recommendations with respect to certain matters at impasse in the parties' negotiations for a successor Contract to replace the parties' multi-bargaining unit Contract which provided at Article 27 - DURATION, Section 37.1, that said Contract "shall remain in full force and effect until June 27, 2011, unless otherwise modified, amended, or terminated as provided herein below." This multi-bargaining unit Contract is referred to hereinafter as the parties' "current Contract."

The record reflects that the parties' collective bargaining relationship is a mature one. Thus, the record discloses (Article 2 - FOP/OLC RECOGNITION OF THE CURRENT Contract) that the Union was certified by the State's Employment Relations Board (SERB) in SERB Case No. 90-REP- 03-0081, as the exclusive collective bargaining representative: of a bargaining unit comprised of the Deputies and Corrections Officers in SERB case No. 90-REP-03-0081 from and after June 28, 1990; of a bargaining unit comprised of Sergeants and above in SERB Case No. 90-REP-02-0036, from and after June 28, 1990; and of a bargaining unit comprised of Dispatchers/911 Dispatchers, in SERB Case No. 94-REP-11-0255, from and after April 6, 1995.

In arriving at the Recommendations hereinafter made, the undersigned has taken into consideration the factors listed in O.R.C. 4117.14 (G) (7) (a) to (f).

The parties' current Contract was comprised of thirty-seven (37) Articles. The Union asserts without contradiction, that going into Fact Finding some thirty-two (32) Articles were unopened by the parties during negotiations. The inescapable inference to be drawn, and the inference I do draw is that in failing to reopen these thirty-two current Contract Articles (Enumerated at page two and three of the Union's Pre-hearing

Statement of June 16, 2011) the parties are agreed to continue these thirty-two Articles in their successor Contract. Accordingly, and as expressly requested by the Union, it will be recommended that these thirty-two unopened provisions in the current Contract be included by the parties in their successor Contract.

The record also shows that, going into Fact Finding, the parties had reached tentative agreements with respect : ARTICLE 12 – PERSONNEL FILES; ARTICLE 14- LAYOFF AND RECALL; ARTICLES 21 – OVERTIME; ARTICLE 23 – WAGES, Section 23.2; Section 23.3; Section 23.4; Section 23.5; Section 23.6; and Section 23.7 – Longevity. Accordingly, and as expressly requested by the Union, it will be recommended that these tentative agreements be included by the parties in their successor Contract.

The parties have NOT reached agreement, however, and indeed are at impasse, with respect to ARTICLE 23 – WAGES, SECTION 23.1, providing for “pay ranges and wage rates” for the bargaining units’ employees “according to their classification.” And with respect to the number of employee incumbents in the classifications covered in the current Contract, and to be covered in the successor Contract as well, the record shows that there are: nine (9) Road Deputies; eighteen (18) Correction Officers; five (5) Jail Sergeants; two (2) Road Captains; and seven (7) Dispatchers.

The parties have also NOT reached agreement and are at impasse, with respect to the duration of their successor Contract, to be provided for at Article 37 – DURATION. More particularly the parties are at impasse only with respect to Section 37.1 of Article 37; comparison of the parties’ respective proposals for Section 37.2 and 37.3 reflect no differences in the parties’ respective proposals. Indeed, comparison of the parties’

proposals for Section 37.2 and Section 37.3 reflect that both parties are simply seeking to retain the current Contract's language at Article 37. DURATION, Section 37.1 and Section 37.2.

EVIDENCE AND ARGUMENTS, & RECOMMENDATIONS THAT WILL BE MADE

The position taken by both parties concerning their dispute with respect to the increase in the rate of compensation, or not, to which the bargaining units' employees will be entitled to under the successor Contract, and their dispute concerning the duration, or "term" of the successor Contract, are both direct and to the point.

First addressed is the parties' impasse over the duration or term of the successor Contract. The Employer proposes a one (1) year Collective Bargaining Agreement. Accordingly, the Employer proposes as follows:

“ARTICLE 37

DURATION

Section 37.1. This Agreement shall be in effect upon signing, and shall remain in full force and effect until June 27, 2012, unless otherwise modified, amended, or terminated as provided herein below. [As noted above, the Employer (and the Union) would retain the current Contract's language at Sections 37.2 and 37.3].”

The Union, on the other hand, proposes a three-year Contract. Thus the Union proposes as follows:

ARTICLE 37

DURATION

Section 37.1. This Agreement shall be in effect upon signing, and shall remain in full force and effect until June 27, 2014, unless otherwise modified, amended, or terminated

as provided herein below. [Again, as noted above, the Union (and the Employer would retain the current Contract's language at Section's 37.2 and 37.3].” The Employer puts forth two arguments in support of its position. The first is that “due to the economy, the Sheriff is unsure of his budget for 2012, and secondly, if Senate Bill No. 5 takes effect after the November, 2011 election, the County desires to take advantage of the cost saving measures provided by the new law. While the latter ground, the desire for but a one-year successor Contract in order to take advantage of the cost saving measures provided in Senate Bill No. 5 in the event it becomes law following the November 2011 election, is certainly an understandable rationale for any Ohio public employer presently negotiating a collective bargaining agreement covering its employees, I find no support or sanction for the County's rationale being properly considered and/or relied upon by a Fact Finder, amongst the statutory factors and guidelines at O.R.C. 4117.14 (G) (7) (a) through (f), which factors the Fact Finder must take into consideration and follow in reaching and rendering a “recommendation” concerning a matter in dispute and at impasse. Additionally, the Employer points to no such statutory factor, as supportive of its desire for a one-year successor Contract.

Concerning the uncertainty of the economy and the uncertainty concerning the Sheriff Department's 2012 budget, relied on by the Employer to support but a one-year agreement, in my judgment, while such circumstances may well have relevance with respect to the “wage increase, or not” impasse here, I fail to see the relevance of these circumstances to the Duration issue. Concerns about an uncertain economy (and hence concern about incoming revenue) in 2012, are more traditionally addressed by proposing

little or no increases in wages in 2012, rather than declining to enter into any collectively bargaining agreement at all.

Moreover, I take administrative notice of the fact that the normal and traditional duration or “term” for a collective bargaining agreement in Ohio, and indeed nationally, in both the private and public sector collective bargaining agreements is three (3) years, as proposed by the Union. Thus the “such other factors, etc.” guideline found at O.R.C., 4117.14 (G) (7) (f), serves to support the Union’s duration proposal. Then, too, as the Union contends, the statutory factor and guideline of past collectively bargained Contracts between the parties, such as the current Contract, and, as claimed by the Union without contradiction, Contracts prior thereto, clearly support the Union’s proposal for a three (3) year successor Contract, rather than a one (1) year successor Contract.

In sum, therefore, in my view the statutory factors upon which the Fact Finder must rely, preponderate in favor of the Union’s proposal for a three (3) year contract. Accordingly, such shall be recommended.

Turning to the parties’ dispute and impasse regarding what, if any, wage rate increase should obtain, the Employer seeks and proposes a “wage freeze” for the term of the one-year successor Contract it proposes. Put another way, the City proposes to continue the “pay ranges and wage rates according to their classification effective June 27, 2010 “which are set forth on page 28 of the parties’ current Contract.

In support of its “wage freeze” on 0% wage increase proposal the Employer contends that the Sheriff Department’s 2011 budget is already set, and it does not provide for any wage increase. The Employer also points out that while all general fund County employees, other than the bargaining units’ employees, received no wage increase in

2009, 2010, and 2011, the bargaining units' employees in the Sheriff's Department received a three percent (3%) increase in 2009 and an additional three percent (3%) increase in 2010. The Employer also points out that the Sheriff Department, in response to budget cuts by the Commissioners, laid off fourteen (14) employees in 2009, to wit: three (3) Detectives; two (2) dispatchers; four (4) road deputies; four (4) correction officers; and 1 clerical employee.

The Employer notes that the record shows that budget cuts in 2009 led to the lay off of fourteen (14) employees in the Sheriff's Department, namely, three (3) Detectives; two (2) Dispatchers; four (4) Road Deputies; four Correctional Officers; and a Clerical employee. The Employer states that given that these employees recall rights have expired, these fourteen positions "are gone." Pointing to its external comparables, other County (versus Municipal) law enforcement agencies, the Employer succinctly and correctly notes that "there are a lot of zeros out there."

Addressing the Union's proposal to the effect that it seeks an increase in wages for the bargaining units' employees of 5% spread over the life of a three (3) year agreement, with the Fact Finder to determine the percentages for each year of the successor Contract, the Employer points out that front loading or end loading raises to get to the total of 5% can make for significant cost differences. Thus, the Employer notes that under a 2-2-1% calculation it would incur a three-year cost of \$219,245; under a 0-3-2% calculation it would incur a three-year cost of \$159,201, the point being that the difference, \$60,044, is of significance, states the Employer, in the present state of County finances.

The Employer also points out that in 2008, 2009, and 2010 the bargaining units' employees received 3% increases per annum under the current Contract, while most other general fund financial County employees received 0% wage increases, and continue to receive 0% increases.

The highlights of the Union's case include the fact that recently sales tax receipts and local government fund receipts have exceeded estimates. And as of May 20, 2011, year to date revenues are above estimates by 6.46% and expenditures are below estimates by 1.23%. The Union also points to what it views to be healthy monthly cash balances, contending that they support its claim that the County can afford its 5% over-the-life of the successor Contract proposal. This conclusion is bolstered, argues the Union, by the fact that other general fund dependent employees, such as certain Probate Court employees received wage increases. The Union also points to the fact that in 2010 the Sheriff turned back some of his appropriated monies, but the County, instead of using same to budget the Sheriff's Department in 2011, budgeted it to other agencies.

In my views the timing of the parties entering into the current Contract was fortuitous for the bargaining units' employees, the impact of the dramatic recession having not then fully manifested at the time of signing. In any event, presently the internal equity issue here, whereby most other County employees have been working without any wage increase for the past three years, and continue to do so to date, dictates a more modest recommendation with respect to a wage increase than sought is recommended. To grant the Union's request for a 5% increase over the life of the Contract, in the face of the bargaining units' coming off three years of 3% increases, and no increase over these years and into the foreseeable future due to the persistent and

ongoing lack of a truly recovering economy, would predictably serve to unduly demoralize other County employees. Such demoralization would in turn adversely impact their work performance. At the same time, given the added work burdens of the bargaining units' employees after the lay offs in the Department requires some modest increase in wages, both in light of the added work loads and the need to blunt a demoralization problem among the bargaining units' employees as well. In my judgment an appropriate balance would be struck by a 0% increase in the first year of the successor contract; a 0% increase in the second year of the successor Contract; and a 2.5% increase in the third year of the successor Contract.

In sum therefore, it is recommended that the parties adopt the Union's proposal concerning Article 37. With respect to Article 23.. – WAGES, Section 23.1, it is recommended that a 0% increase obtain in this first year of the Contract, i.e. from June 27, 2011 to June 26, 2012; a 0% increase obtain in the second year of the contract, i.e. from June 27, 2012 to June 26, 2013; and an across-the-board increase of 2.5% obtain in the third year of the successor Contract, i.e. from June 27, 2013 to June 26, 2014.

It is further recommended that all unopened Articles and all tentatively agreed-to Articles and/or provisions within an Article be included in the parties' successor Contract. This concludes the Fact Finding Report and Recommendations.

Dated July 9, 2011

Frank A. Keenan
Fact Finder