

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding Between:)	
)	
Ohio Patrolmen's Benevolent Association)	11-MED-05-0813
)	
And)	
)	
Williams County Sheriff)	Fact Finder: John T. Meredith

**REPORT AND RECOMMENDATIONS
ISSUED OCTOBER 14, 2011**

The parties to this Fact-Finding Proceeding are the Ohio Patrolmen's Benevolent Association and the Williams County Sheriff. The bargaining unit consists of all full-time "Sergeants and above" employed by the Sheriff. There are currently three (3) Sergeants in the unit.

Since the 1980's, the unit, and a companion unit of Deputies, were represented by the Fraternal Order of Police/Ohio Labor Council. The FOP/OLC units were consolidated for purposes of bargaining and the terms and conditions of employment for both Sergeants and Deputies were governed by a series of single collective bargaining agreements, the most recent of which covered January 1, 2008 to December 31, 2010. The OPBA successfully challenged the FOP/OLC for representation of the units and was certified by SERB as the bargaining representative in early 2011. A notice to negotiate was served in May 2011 and negotiations commenced. The Sheriff insisted on

bargaining separately for each unit. In both units, the parties agreed to numerous provisions for their new collective bargaining agreements, but were unable to resolve all issues. The Deputies unit initiated fact-finding first, and Fact Finder Greg Lavelle issued his Report and Recommendations on September 13, 2011 (“Deputies' Report”). The Union voted to reject the Report. The County Commissioners did not vote, and thus they were deemed to have accepted it. The matter is pending conciliation.

On August 1, 2011, SERB appointed the undersigned to serve as Fact Finder for the Sergeants' unit. By agreement of the parties, a hearing was set for October 4, 2011. Appearing for the Union at the hearing were: Michelle Sullivan, Attorney, Sgt. Jeff Romes, and Sgt Ryan Baird. Appearing for the Employer were: Fred Lord, Consultant; Sheriff Kevin Beck; Chief Deputy Jim Snivley, and Deb Nestor, Auditor.

The hearing commenced as scheduled. At the outset of the hearing, and again at its conclusion, the parties engaged in some informal bargaining and were able to resolve three pending issues – Section 13.5, Section 13.10 and Article 28. They were not, however, able to resolve the following issues: Article 3 – Union Security; Article 4 – Management Rights; Article 11 – Hours of Work; Section 13.6 – Sick Leave; Article 14 – Fitness for Duty; Section 18.14 – Vacation; Article 20 – Wages; Article 21 – Severance; Article 24 – Health Insurance.

The Fact Finder has thoroughly evaluated the proposals of the parties. His recommendations for resolving each issue are fully explained in the Recommendations Section of this Report, infra. In making his recommendations, the Fact Finder has given consideration to the following criteria prescribed by the 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.

“Other factors” noted in the sixth criteria include the desirability of equitable treatment among the various groups of the public employer's employees, especially those with similar job functions.

BACKGROUND

Williams County is located in the northwest corner of Ohio. Its population (37,642 in the 2010 census) has been stable since 1980. Median household income is \$44,734, slightly below the state median. The County's five largest employers are Allied Molded Products, Inc., Bryan City School District, Community Hospitals, ITW/Tremco Plastics and Kumi Kiser/KAMCO Industries. Much of the County is rural – there are 189 farms with 212,000 acres committed to agriculture.

Financially, 2008 was a good year for the County. Its total revenues were \$14,172,943, more than \$1 million above projections. However, revenues have since significantly declined, as follows: 2009 - \$11,773,582; 2010 - \$12,208,602; 2011 (projected) - \$11,875,000. Further, the Auditor projects continuing decline to

\$11,115,000 in 2012, \$10,930,000 in 2013, and \$10,629,000 in 2014.

The declining revenues reflect both state funding cutbacks and the general economic recession. The State's decision to reduce local government funds ("LGF") will cost the County \$300,000 in the next two years. Elimination of the tangible personal property tax has cost the county \$300,000 in annual revenue; there will be no personal property tax collected after this year. Public utility revenues from the State also declined by \$26,000. Further, there is the possibility of additional LGF cuts after July 1, 2012.

The economy also has impacted local revenues. Sales tax revenue has declined from \$4.9 million to \$4.6 million since 2008. Fee income is also down, and low interest rates have led to steady declines in annual interest income, which dropped from a high of \$819,000 in 2007 to \$379,000 in 2008 to approximately \$200,000 in 2009, 2010 and 2011.

In view of actual and projected declines in recurring revenue, the County has adjusted its expenditure patterns. At the beginning of 2008, when revenue was stronger, the County entered into a 3-year contract (2008-2010) with the Sheriff's Deputies and Sergeants bargaining units. It provided a 3% wage increase in each year of the contract. Three percent wage increases for 2008 also were granted to the County's non-union employees and were negotiated with two other small bargaining units. When economics deteriorated in 2009 and 2010, the County reacted by freezing wages and reducing severance benefits for non-union employees. Sheriff's Deputies and officers received their contractually guaranteed 3% increases, but costs were cut by restricting overtime and by laying off several department employees.

As a result, the County has avoided a financial crisis. Due to unexpected strong revenues in 2008, its beginning unencumbered balance in the General Fund increased

from \$3.01 million on January 1, 2008 to \$3.82 million on January 1, 2009. Further, expenditure reductions resulted in additional increases in the beginning carryover balance to \$4.23 million on January 1, 2010 and \$4.79 million on January 1, 2011. Prudent fiscal management, of course, dictates maintaining a carryover sufficient to cover at least two or three months expenses, and the 2011 beginning carryover is more than sufficient for this purpose. There is not a fiscal emergency at this time, though declining revenues may erode the current balance even without increased expenditures.

RECOMMENDATIONS AND RATIONALE

1. Article 3 – Union Security

Positions of the Parties: The Employer proposes deleting Sections 3.10 and 3.11, the fair share fee sections of the prior agreement. In support, it asserts that SB-5, which amended Ohio's Collective Bargaining Law, would prohibit fair share arrangements. Accordingly, the fair share provision will not be consistent with the new statute if the November referendum to repeal it fails. The Employer also proposes adding a paragraph to Section 3.2 to provide for a dues deduction revocation procedure, and amending Section 3.3 to substitute the OPBA for the FOP/OLC.

The Union is willing to agree to the Employer's proposed addition to Section 3.2. It also would substitute "OPBA" for "FOP/OLC" in both Sections 3.3 and 3.11. However, it opposes deletion of the fair share provision. It notes that, even if SB-5 goes into effect in November, it will not prohibit fair share provisions in collective bargaining agreements negotiated and signed before its effective date. It also argues that fair share in principal is necessary to prevent "free riders" from obtaining the benefits of union representation without contributing to union support.

RECOMMENDATION: Retain fair share fee for the duration of the new agreement. Retain language from prior Agreement, except modify Sections 3.2, 3.3 and 3.11 as follows:

Section 3.2. The signed payroll deduction form must be presented to the Employer by the employee. Upon receipt of the proper authorization, the Employer will deduct Union dues from the payroll check for the next pay period in which dues are normally deducted following the pay period in which the authorization was received by the employer.

Dues deduction authorizations may be revoked by employees during the period December 2 through December 31 of each year. Dues deduction authorizations not revoked during this 30-day period shall continue in effect for a successive contract year. Written notice of the dues deduction revocation shall be served upon the Employer and the Union by the employee to make the revocation effective.

Section 3.3. For the duration of this Agreement, the Employer agrees to remit the dues deducted from eligible bargaining unit employee's pay, in accordance with this Article once each month to the **OPBA, 10147 North Royalton Road, North Royalton, Ohio 44133.**

Section 3.11. The fair share fee amount shall be certified to the Employer by the **OPBA.** The deduction of the fair share fee from any earnings of the employee shall be automatic and does not require a written authorization for payroll deduction. Payment to the Union of fair share fees shall be made in accordance with the regular dues deductions as provided in this Article, Section 3.3.

Rationale: The fair share provision conforms to current law, which governs this proceeding. It also has been included in past agreements covering the Sheriff's bargaining units. There is no indication that this has created any problem. Further, retention of fair share was recommended in the Deputies' Report, and this recommendation was not the basis for rejection of that Report by either party. In view of past bargaining history, consistency with the deputies' bargaining unit is a consideration.

2. Article 4 – Management Rights

Positions of the parties: The Employer proposes to change Article 4 to conform to the expanded statutory management rights clause in SB-5. The Union proposes to

retain the prior Agreement's management rights clause, which conforms to the statutory management rights clause under current law.

RECOMMENDATION: Retain Article 4 Management Rights language from prior Agreement, as proposed by the Union.

Discussion and Rationale: This proceeding still is governed by current law. The management rights language has been in agreements covering the Sheriff's employees for years, and there was no evidence to suggest that it has caused any operational problem. Therefore, there is no reason to make a change at this time.

3. Article 11 – Hours of Work

Positions of the Parties. The parties have agreed to modifications in Sections 11.1(2),(3); 11.2(2)-(5), and 11.3 of the prior Agreement. Sections 11.1(1), 11.1(4) and 11.2(1) remain open. Section 11.1(1) defines the regular work schedule as “no more than one hundred sixty (160) hours in a twenty-eight (28) day work period.” Consistent with this definition, Section 11.2(1) provides overtime pay for hours worked in excess of 160 hours in the 28-day work period. Under current Section 11.1(4) employees are selected in inverse order of seniority when temporary change in shift is necessary to cover for absence, special training, or special circumstances.

The Union proposes to change the “work period” to 80 hours in a two-week period, and to provide overtime pay for hours worked in excess of 80 in two-weeks. It argues that most law enforcement units in neighboring jurisdictions use the 80-hour work period, and that the current system gives the Sheriff opportunity to manipulate employees' schedules to avoid overtime. The Employer opposes this change. It argues that the current system based on a 28-day work period has been incorporated in collective bargaining agreements since 1987, and that it is necessary so that the Sheriff can manage

and control overtime expenses.

Regarding Section 11.4, the Union proposes that temporary shift changes should first be filled by volunteers; inverse seniority could still be used if there were insufficient volunteers, but only with three days notice. The Employer asserts that this would be impractical. It points out that the Sheriff often has less than three days notice of absences requiring a temporary shift change.

RECOMMENDATION: Retain language of prior Agreement for Section 11.1(1), 11/1(4) and 11.2(1).

Discussion and Rationale: It is true that many jurisdictions use the 80-hour work period system proposed by the Union. However, comparability is not the only factor to consider. The current 28-day work period has been included in the Sheriff's bargaining agreements and apparently has functioned without administrative problems since 1987. Further, with a pattern of declining revenue, this would not be a good time to limit the Sheriff's ability to manage and control overtime expenses. Regarding Section 11.1(4), it appears that it is not always possible for the sheriff to seek volunteers and give three-day notice of temporary shift changes. Therefore, while use of volunteers when practical is desirable, it cannot be imposed as a requirement.

4. Article 13 – Sick Leave:

Positions of the Parties. The parties have agreed to Article 13 except for Section 13.6. Article 13.6 of the prior Agreement states that employees absent due to illness or injury, or to care for a family member, “are expected to remain at home ... or at a place which administers medical attention.” The Employer proposes to retain this provision. It states that the language was added to the Agreement as a compromise in 2004, and that it has not resulted in discipline or administrative problems. The Union claims it is too

restrictive, and would change it to provide that employees on sick leave “must conduct themselves in a manner that is consistent with the circumstances necessitating the sick leave usage.”

RECOMMENDATION: Consistent with the language recommended in the Deputies Report, Section 13.6 should state:

Employees on sick leave must be mindful of the perceptions of the public while absent from work due to an illness or injury and therefore must conduct themselves in a manner that is consistent with the circumstances necessitating the sick leave usage. Any absence from duty as a result of a claimed illness or injury may be investigated by the Sheriff or his designee.

Discussion and Rationale: This provision serves an important purpose of deterring abuse of sick leave and the public perception of such abuse. However, the current language is a bit rigid and may not include all legitimate activities of an employee on sick leave. Filling prescriptions at a drug store is an obvious example. The compromise proposed in the Deputies' Report offers a bit more flexibility while preserving the Sheriff's right to insist that employees on sick leave act in a manner consistent with their sick leave status.

5. Article 14 – Fitness for Duty

Positions of the Parties: The Employer proposes to add a paragraph to Article 14 which will address the status of employees who run out of leave and are still unable to perform their duties. The proposal simply states that such employees will use the statutory disability system, and it is consistent with the recommendation in the Deputies Report. The Union has expressed concern that the proposed language could be interpreted in a manner inconsistent with federal statute.

RECOMMENDATION: Add new Section 14.3 as proposed by the Employer, as follows:

Section 14.3. In event an employee becomes unable to perform the essential functions of his/her position, even if granted a reasonable accommodation, and has no approved leave time available, the parties will utilize the disability separation process contained in Ohio Administrative Code Chapter 123:1:30, Disability Separations – Reinstatement.

Discussion and Rationale: The Fact Finder is satisfied that the Employer's intent, and the intent manifested in the Deputies' Report, is to construe this section consistent with the requirements of federal disability discrimination law. Therefore, it is an appropriate clarification to add to the contract.

6. Article 18 – Vacation

Positions of the Parties: The Union proposes to add a new Section 18.14 which would prevent the Sheriff from requiring an employee to work overtime or cover for another employee on a previously approved vacation day or on a regularly scheduled day off which is contiguous to approved vacation. It argues that employees often make nonrefundable reservations based on their schedules, and that canceling such reservations due to a last minute overtime or call-in assignment poses a financial hardship and unwarranted inconvenience. The Employer opposes this change. It proposes leaving the language out of the Agreement, but stated at the hearing that it would agree to the compromise language suggested in the Deputies' Report.

RECOMMENDATION: Add the compromise language suggested in the Deputies' Report. New Section 18.14 would state:

Section 18.14. When an employee has requested and has been approved for vacation days adjacent to his regularly scheduled day or days off in order to attend a special event such as a family wedding, or out of town vacation, the employee shall notify his supervisor that the scheduling is due to a special event, and in such case, for the purpose of being called in on such vacation day or days off, the employee shall be considered the most senior employee. Employees may utilize this provision no more than one (1) time per calendar year.

Rationale and Discussion: The employees have a legitimate concern with last minute schedule changes disrupting personal plans at some significant personal expense. On the other hand, the Sheriff has a legitimate concern about his ability to cover operational needs when the department is unexpectedly short of staff. The compromise language, also recommended in the Deputies' Report, is intended to strike a reasonable balance and accommodate the employee's concerns to the extent practical without posing operational problems.

7. Article 20 – Wages

Positions of the Parties: The Employer proposes a three-year wage freeze. The Union proposes a wage freeze for 2011; a 2.75% increase effective the first full pay of January, 2012; and a wage reopener for 2013.

RECOMMENDATION: Wage freeze for 2011 and 2012, subject to a wage reopener for wage rates to be effective on or after January 1, 2013. Language of Section 20.1 to state:

The following wage schedules are adopted for the term of this Agreement:

<u>Class</u>	<u>Hire</u>	<u>End 1st yr.</u>	<u>End 2^d yr.</u>	<u>End 3rd yr.</u>	<u>End 4th yr.</u>
Sergeant	\$41,440.83	\$43,170.50	\$44,900.18	\$46,629.87	\$48,368.46
Lieutenant*	\$45,613.45	\$47,503.61	\$49,393.80	\$51,283.97	\$53,200.85

***Only if, at the sole discretion of the employer, the position of Lieutenant, now vacant, is filled during the term of this Agreement.**

Either party may reopen this Article 20 – Wages by providing written notice to the other party between September 1, 2012 and October 1, 2012 for the sole purpose of conducting negotiations on wage rates to be effective on or after January 1, 2013.

Discussion and Rationale: Although there is not a current fiscal crisis, the two-year wage freeze can be justified on several grounds. First, internal parity – the County's non-union employees have already had their wages frozen in 2009, 2010 and 2011.

Second, the projected continuing decline in revenue is likely to erode the current unencumbered balance even without expenditure increases. Third, there have been reductions in services and some Sheriff's Department employees are still on layoff. Fourth, the two-year wage freeze is consistent with the Deputies' Report. Finally, a wage freeze is a fairly common basis for public sector collective bargaining settlements this year. This is especially true when, as here, existing insurance contribution benefit rates are locked in for the term of the bargaining agreement, (see Issue No. 9, infra).

There also is clear justification for the 2013 reopener. The financial situation may, or may not, be better in two years. Even economists – in fact, especially economists – are having difficulty getting their economic forecasts right this year. Interest rate forecasts also have been unreliable. If the economy improves, then local revenues from sales tax and fees are likely to increase too. Similarly, if interest rates rise, then interest revenues will increase too. These events likely would permit the County to increase wages in 2013. However, the economy may not recover and/or interest rates may not increase. Therefore, a reopener is appropriate so the parties can determine 2013 wages when these uncertainties are resolved.

Finally, it is noted that the Deputies' Report also gave the parties an option of a 2013 reopener or a 2013 “cost of living” wage increase equal to “the percentage increase in the CPI-U all cities index from September 2011 to September 2012.” For all practical purposes, this is a reopener provision. I am recommending a reopener without the cost-of living option because cost-of-living is not properly the sole determinant of 2013 wage levels. Rather, the appropriate guidelines for a 2013 increase will include the factors enumerated in SERB Rule 4117.09-05, especially comparability data and the public interest, ability to pay and impact on level of services, see 4117.09-05(2)&(3).

8. Article 21 – Severance

Positions of the Parties: Bargaining unit employees with 5 to 15 years of service currently are eligible for severance pay on resignation or retirement equal to $\frac{1}{4}$ of accumulated sick leave up to 120 days. Employees with more than 15 years service, depending on seniority, may receive $\frac{1}{3}$, $\frac{1}{2}$ or $\frac{3}{4}$ of accumulated sick leave, not to exceed 120 days. The Union wants to retain this benefit. The Employer proposes to eliminate severance for resignation and to reduce all severance benefits to $\frac{1}{4}$ of accumulated sick leave up to 120 days, the state statutory minimum and the current benefit for employees with 5 to 15 years service. It notes that this reduced benefit already has been implemented for the County's nonunion employees. It further argues that some other neighboring Sheriff's Departments also receive the 25% of 120 days severance amount.

RECOMMENDATION: Retain current benefit and severance language of the prior Agreement.

Discussion and Rationale: The Deputies Report rejected the same Employer proposal. Evidence shows that severance will not be a major cost item, at least in the near term. It is generally inappropriate to eliminate an established benefit absent either a clear showing of economic need or a quid pro quo. There is neither in this case.

9. Article 24 – Health Insurance

Positions of the Parties: Bargaining unit employees currently pay 13.2% of the monthly premiums for family insurance and 11.5% for single plan coverage. The Union proposes to maintain these contribution rates. The Employer proposes to increase them to 15%, consistent with the insurance contribution rate set by SB-5. The Employer also would add a definition of “cost.”

RECOMMENDATION: Retain current maximum employee contribution rates of 13.2% and 11.5%. Add definition of “cost” proposed by Employer. Section 24.2 would state:

Section 24.2. The Employer shall pay its share of the cost of a single or family insurance plan. The employee's maximum contribution shall not exceed 13.2% of the total cost of the family plan coverage or 11.5% of the total cost of single plan coverage during each year of this Agreement, depending on coverage the bargaining unit employee elects. The additional cost of the premium plan shall be paid by the employee. **For purposes of this section, “cost” shall be defined as the total premium paid to the insurer or the COBRA rate established by the plan administrator if the County elects to have a partially self-funded plan, whichever is applicable.** The employee's share of the cost of either plan shall be collected through payroll deduction.

Discussion and Rationale: Although a little less than the 15% contribution which SB-5 will mandate for contracts negotiated if and after it goes into effect, the current employee contribution rates for bargaining unit employees are consistent with average contributions paid by Ohio public employees, as reported in SERB's 2011 19th Annual Report on the Cost of Health Insurance in Ohio's Public Sector. The Employer did not demonstrate a financial need to increase contributions. Absent a demonstrated need, it would not be appropriate to increase contributions in a year when employee's wages will be frozen.

INCORPORATION OF AGREEMENTS

The Fact-Finder incorporates by reference the initialed and signed agreements reached by the parties both during and before the Fact-Finding hearing, and recommends that they be included in the new Agreement.

ISSUANCE OF AWARD

This Award is issued this 14th day of October, 2011.

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

Shaker Heights, Ohio

CERTIFICATE OF SERVICE

This is to certify that the foregoing Report 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 14th day of October, 2011:

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