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STATE OF OHIO**

**STATE EMPLOYMENT RELATIONS BOARD
CASE NO. (S) 11-MED-08-1034, 11-MED-08-1035, 11-MED-08-1036**

Fact-Finding Report

December 7, 2011

In the Matter of the Fact-Finding Between:

Pickaway County Sheriff

and

Fraternal Order of Police, Ohio Labor Council, Inc.

APPEARANCES

For the Sheriff:

John J. Krock	Vice President Clemans-Nelson & Associates, Inc.
Brad Lutz	Pickaway County, Ohio Administrator
Lt. Robert B. Radcliff	Administrative Lieutenant
Lt. John Monce	Patrol/Communication Lieutenant

For the Union:

Andrea H. Johan, Esq.	Staff Representative, Fraternal Order of Police, Ohio Labor Council, Inc.
Shauna Eitel	Representative
Todd Fortner	Representative

BEFORE RICHARD J. COLVIN, J.D., FACT-FINDER

A. INTRODUCTION

In compliance with Ohio Revised Code §4117.14(C) (3) the Fact Finder was appointed to conduct a hearing and issue a Report concerning the above-cited cases on November 16, 2011. The hearing was conducted on December 7, 2011 in City of Circleville, County of Pickaway and State of Ohio pursuant to the joint agreement of the parties. Such hearing was duly convened at 10:13 A.M. in the Training Room at the Pickaway County Sheriff's Office and was adjourned at 1:00 P.M.

Copies of the three (3) current Collective Bargaining Agreement(s) were submitted, as were the parties' position statements and sworn testimony was given.

Employees covered by these Agreements are those individuals employed full-time as: Sergeants, Road Patrol Deputy Sheriffs, Detectives (Unit A), civilian Dispatchers/Communications Officers and Communication Corporals (Unit #4). All such Agreements shall remain in full force and effect through midnight, August 31, 2012. Reopeners as provided for in the current Agreement¹, consist of wages and health insurance for all three (3) units, and shift bidding, which applies, only to the Dispatchers' unit.

¹ Article 37.2 DURATION of the DISPATCHERS/COMMUNICATIONS AGREEMENT provides in part that..."the parties agree to reopen Articles 24, 28, Section 22.10 and Appendix A for the 2nd and 3rd year of the Agreement in accordance with R.C. 4117, with said re-opener negotiations starting on or about October each year." Article 24 COMPENSATION of the two (2) FOP AGREEMENTS provides at Section 24.11:"The parties agree to reopen Articles 25,29, and Appendix A for the 2nd and 3rd year of the Agreement in accordance with R.C. 4117."

The parties have agreed that the Fact-Finder will issue his Report and Recommendations by electronic mail on Wednesday, December 21, 2011.

UNRESOLVED ISSUES AND THE POSITIONS OF THE PARTIES

B. THE SHERIFF:

1. Wages. Appendix A. applying to all Agreements

The Sheriff proposes a wage freeze for all bargaining unit employees in each of the three (3) Agreements effective upon ratification for the period January 1, 2012 through August 31, 2012.

Rationale:

The County Commissioners have stated that the Sheriff will be funded in 2012 at less than his total expenditures for 2011. The Sheriff's budget for the year 2011 is actually less than his budget for 2008. A wage increase would entail the possibility of his having to eliminate positions and lay off employees. The Sheriff has also stated that the County could not afford to give the bargaining unit employees a pay increase for 2012. The County is concerned and mindful of the necessity to reduce costs.

2. Article 28. 29 (In part) Insurance. applying to all Agreements

The Sheriff proposes "new language" which would state the current practice, which is: All county employees are treated the same for health insurance. The employee contributions listed in the Agreements are the same as currently paid by other general fund non-bargaining unit employees. Modifications are proposed for Article 29, Sections 29.2 and 29.4 as follows effective upon ratification:

Section 29.2. ~~“The Employer agrees to contribute ninety-three percent (93%) of the coverage for insurance premiums for single employees, and seventy-five (75%) of the premium for employees requiring family coverage. If the county commissioners increase the Employer contribution for health insurance for other bargaining unit general fund employees, it will also apply to bargaining unit employees the same percentage of the health insurance premiums for both single and family coverage as is paid for non-bargaining unit employees paid from the County general fund.”~~

Section 29.4 ~~“The Employer agrees to continue to contribute sixty percent (60%) of the same percentage of the premiums for dental and vision insurance as that provided to the non-bargaining general fund employees.”~~

It is to be noted here that the Sheriff has stated that, in fact, employees' percentage of premium will actually go down effective January 1, 2012, since the County will absorb the increase in premium cost for 2012.

3. **Article 22. Hours of Work and Overtime (Dispatchers)**

Section 22.9. Shift Selection was added to this contract in 2010, the first year of the current contract. The Sheriff is proposing to keep the current shift selection process in place, however, add a sentence that would allow him to assign employees, after the selection process, if he deemed it necessary effective upon ratification.

4. **Article 22 Hours of Work and Overtime**

Section 22.9. Add a paragraph at the end of this Section that reads: **“The Sheriff has the sole discretion to schedule employees, and this Section cannot be grieved beyond Step 3. Of the Grievance Procedure.”**

C. THE UNION

1. Description/size of the unit:

Road Deputies and Detective Deputies	Approximately 16
Sergeants	Approximately 5
Dispatch/Communications Officers	Approximately 8
Total	29

Description of the function of the employees in the Bargaining Unit:

The members in the Deputy and Sergeant bargaining units are responsible for law enforcement within Pickaway County. They mainly keep the peace by patrolling the roads and responding to calls for assistance at crime scenes and accidents. Employees in the Sergeant Unit are responsible for supervision of the road officers and also perform routine duties on the road. The Sergeants are the first line supervisors and serve as shift supervisors.

The members in the Dispatch Unit are responsible for answering calls from the public, for responding to calls in emergency as well as non-emergency situations and then dispatching officer(s) to the scene and, are also responsible for monitoring the whereabouts of all road officers on shift. Additionally, they are responsible for entering, maintaining and updating information on warrants.

Bargaining History:

The parties met only one time, engaging in multi-unit bargaining on October 26, 2011 without reaching tentative agreement.

Position on the Issues:

1. Article 25 Longevity

(a) The Union proposes that the amount of longevity payment per hour remain at the current amounts for 2012.

(b) The Union also requests that the fact-finder recommend current contract language for this Article.

2. Article 29 Insurances

The Union proposes that there be no change in the now-current contract language (i.e. the language that resulted from last year's re-opener) for the remainder of the contract term.

Rationale:

1. Last year's re-opener resulted in a change of the benefit language in that our bargaining unit members now receive the same level of benefits as all other non-bargaining unit employees paid from the General Fund of the County. Prior contract language specified benefits were substantially equal to those then currently provided. Our members understood and agreed that since the County was part of a health insurance consortium with two (2) other counties, dominated by one of the three (3) largest counties in the State (Franklin), the benefits were controlled by a committee rather than by this specific employer.

2. The Sheriff will argue that all employees in the County, paid from the General Fund and enrolled in Health Insurance are treated the same and that this is only conforming language to current practice. This may be true. However, without language in the Agreement specifying the percent(s) of premium split there is nothing to stop the Sheriff from changing, either immediately or over time, from the current split to something more onerous. There is nothing to stop the Sheriff from requiring, for example, a 50%-50% split of health premium and flipping the vision and dental premium split so the Sheriff will pay less than one half.

The Union therefore requests that the fact-finder recommend that the insurance article remain as now-current contract language for the remainder of the contract term.

3. **Appendix A Wage Scale**

The Union proposes that the Fact-Finder adopt the Union position as to Appendix A. Wages.

The Sheriff proposes another zero (0%) wage increase to cover the year 2012. If the Fact-Finder recommends this, it will be the third consecutive year with no wage increase, all the while having to pay more for health insurance. The bargaining unit members cannot accept another zero. To do so under any circumstances would cause a loss of net income, but especially so if the Sheriff's proposal for health insurance is recommended.

The Union proposes a **2.5%** wage increase for 2012. The Union recognizes that the economic climate has seen brighter days. However, to even propose a third

year of flat wages borders on the unconscionable. Continued flat wages with an increase in health care costs (through the elimination of a specified premium split) results in a net loss of income for the members. Further, continued flat wages encourages members to look elsewhere for employment.

The Union requests that the Fact-Finder recommend an increase in wages of 2.5% for 2012 for all members in each of the bargaining units.

4. Section 22.9 Shift Selection (Hours of Work and Overtime Article)

This issue pertains to the dispatch unit only.

This Section specifies how and when the dispatchers will bid for their work shifts. The Union proposes no change in this section, as it is only two (2) years old. The Union submits that the current system of shift selection works well. Additionally, the Sheriff has the ability to fill any vacancies in the schedule at his discretion until the next formal bidding period.

The Sheriff has proposed new language that will erode the selection process to such an extent that it will be *de facto* elimination. The Sheriff already retains the right to schedule employees through the rights reserved in Article 4 of the Agreement. To add the additional proposed language is redundant and simply not necessary. The new language obviates the bidding process, thus undermining the intent of the section. If the Sheriff retains the sole discretion to schedule employees, then there is no need for a bidding process.

CONCLUSION

In addition to asking that the Fact-Finder accept and adopt the Union's positions on the three (3) common issues at impasse and the one (1) dispatch-only

issue at impasse, the Union asks the Fact-Finder reiterate, as part of his Recommendation and Report, that all other Articles and/or Sections not part of this contract-reopener remain in full force and effect for the remainder of the contract term, unless/until otherwise modified by the parties.

CRITERIA

D. When making his Report and Recommendations upon the unresolved issue(s), the Fact-Finder has been mindful of and has been guided by the criteria set forth in Ohio Revised Code §4117.14 (C) (4) (3) and Ohio Administrative Code §4117-9-05 (J) and §4117-9-05(K).

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved 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) The stipulation of the parties;
- (6) Such other facts, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution proceedings in the public service or private employment.

E. RECOMMENDATIONS

Having studied the testimony and the evidence presented at this hearing, the Fact-Finder makes the following Recommendations on the unresolved issues:

1. **Wages Appendix A:**

The Fact-Finder adopts the **Sheriff's position** that is, that there be no general increase paid to bargaining unit personnel through August 31, 2012, the expiration of the current Agreements. The Fact-Finder rejects the Union's proposal for a 2.5% wage increase for 2012. The Union has presented no compelling argument in support of its position. The current economic position of the Sheriff does not support any general increase. His budget for 2012 will be less than his budget for 2011.

Rationale:

The parties' current Agreements will expire on August 31, 2012. We can logically assume that they will be actively engaged in collective bargaining on or about July 2012. The Union has stated the economic climate has seen brighter days. The County's Administrator gave credible testimony in support of the Sheriff's need to contain costs. The Sheriff's Department now represents 45% of the budget and 2012 expenses must be kept flat.

The Administrator supported the Sheriff's statement to the Union that the County has determined that it will absorb the increases in Health Insurance Premiums in 2012 thereby actually reducing the cost to employee participants.

During the hearing the parties jointly researched increases bargaining unit employees have received, beginning in the year 2008:

JANUARY 2008	3%	JANUARY 2010	0%
JANUARY 2009	2%	JANUARY 2011	0%

During the remaining term of these Agreements in 2012, only seven (7) bargaining unit employees will not receive a Longevity payment. No

bargaining unit employees will see an increase in the cost of their health insurance premium.

2. Article 28 INSURANCE (DISPATCHERS): Article 29 (FOP BLUE UNIT and FOP GOLD UNIT):

The Fact-Finder adopts the Union's position in that there be no change in the **now current language of the Agreements** (i.e. the language that resulted from last year's re-opener for the remainder of the contract term upon which no joint agreement of authorization has been signed/initialed by the parties.

Rationale:

A review of the testimony and the evidence shows that the Sheriff has presented no persuasive arguments as to any compelling reason(s) to amend the language. This is a question for the parties to jointly address in the next series of negotiations.

3. Article 22, HOURS OF WORK AND OVERTIME (DISPATCHERS ONLY)

The Fact-Finder adopts the Union's position

Rationale:

The Sheriff's proposal, adding a sentence² that would allow him, in effect, to schedule employees after the selection process, if he deemed it necessary, is somewhat unique. There always could be problems as pointed out in the Sheriff's defense of this proposal. In reviewing the history of the process there have been no insurmountable issues, no incidences of jeopardizing public safety or trained verses untrained employee issues. The proper time to address this concern is during the

² Proposed added sentence: "The Sheriff has sole discretion to schedule employees, and this Section cannot be grieved beyond Step 3 of the Grievance Procedure."

next labor negotiation. The relationship between the parties has been testified to as being cooperative, not combative. There is no justification in this instance for us to allow a modification of the Grievance Procedure.

Dated: December 19, 2011

/s/ Richard J. Colvin, Fact-Finder

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Fact-Finders Report was sent via e-mail on the 21st day of December 2011 at approximately 10:00 a.m. to:

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Administrator, SERB

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Dated: December 19, 2011

/s/ Richard J. Colvin, Fact-Finder