

**STATE OF OHIO
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD
IN THE MATTER OF THE FACT FINDING PROCEEDING IN
CASE NOS. 11-MED-09-1217 AND 11- MED-1220**

FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL, INC.

and

THE RICHLAND COUNTY SHERIFF'S OFFICE

FACT FINDING REPORT

Submitted by John F. Lenehan

June 24, 2013

TO:

VIA E-MAIL

Union Representative

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FINDING AND RECOMMENDATION

I BACKGROUND

On November 28, 2011, The State Employment Relations Board (SERB) appointed John F. Lenehan as the Fact Finder in the cases of Fraternal Order of Police/ Ohio Labor Council, Inc. and The Richland County Sheriff (Case Nos. 11-MED – 09 -1217 and 11- MED -09- 1220). A Fact Finding Hearing was held at 10:00 A.M. on May 30, 2013, at the Richland County Sheriff's Office Training Room, 597 Park Avenue East, Mansfield, Ohio 44905. The Fraternal Order of Police/Ohio Labor Council ("FOP" or "Union") was representative by Chuck Choate, Senior Staff Representative, FOP/OLC, Inc., and the Richland County Sheriff ("Sheriff" or "Employer") was represented by Daniel T. Downey, Esquire, Weston Hurd LLP. In attendance on behalf of the FOP were Deputy Sheriff James A. Nicholson and Sergeant John H. Nicholson. Also, in attendance on behalf of the Employer were: Payroll Supervisor Ericka Spicer and Chief Deputy Major Dale Fortney.

As required by SERB's rules, an inquiry was made by the Fact Finder as to feasibility and practicality of mediation. Since there was only one issue, the parties indicated that it would not be productive to attempt mediation. The Fact finding Hearing then commenced at approximately 10:15 A.M. Both parties presented testimony and documentary evidence in support of their respective positions. At the conclusion of the hearing, the parties agreed that the Fact Finding Report would be issued via email to the parties' representatives and SERB on June 24, 2013.

A. Description of the Bargaining Units

The parties are the Fraternal Order of Police, Ohio Labor Council and the Richland County Sheriff. There are two (2) bargaining units consisting of a total of thirty (30) employees. One unit is for the classification of Deputy Sheriff consisting of twenty-one (21) employees, and the other unit is for Supervisors consisting of nine (9) employees. The bargaining unit for supervisors includes the classification of Sergeant and above, but excludes the classifications of Major and Administrative Assistant.

B. History of Bargaining

The parties had separate Collective Bargaining Agreements with each bargaining unit that expired on December 16, 2010. Since then the parties agreed to several extensions of the bargaining agreements and entered into memoranda of understanding that maintained the employees' 2010 wage rates through 2011 and provided for reopener for wages only on January 1, 2012. Although, the Employer and the FOP bargaining teams met on May 31, 2012, December 12, 2012, December 18, 2012, January 31, 2013 and February 12, 2013, they were unable to reach an agreement. The parties agreed to a joint Fact Finding Hearing for both bargaining units. This matter is now pending before the Fact Finder for a finding and recommendation.

II CRITERIA

Pursuant to the Ohio Revised Code, Section 4117.14 (G) (7), and the Ohio Administrative Code, Section 4117-95-05 (J), the Fact Finder considered the following criteria in making the recommendations contained in this Report.

- 1) Past collectively bargained agreements between the parties;
- 2) Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employers in comparable work, given consideration to factors peculiar to the area and the classifications 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 on the normal standards of public service;
- 4) Lawful authority of the public employer;
- 5) Stipulations of the parties; and,
- 6) Such factors as not confined to those above which are normally and traditionally taken into consideration.

III ISSUE
ARTICLE 25, WAGES

FOP'S POSITION

The FOP in its pre-hearing position statement argued for an increase of 3.5% above the 2010 rate of pay for all bargaining unit members covered under both contracts. The proposed increase was to be retroactive to June 1, 2012 through December 31, 2012. During the fact finding hearing the FOP in response to the Employer's offer of a one-time lump sum cash payment of \$500.00, after taxes, not tied to any contractual wage rate, offered to accept a lump sum payment of \$1000.00 for each bargaining unit member in lieu of any increase in the base wage rates.

The FOP in support of its position submitted three (3) Exhibits and testimony that there were: 1) an approximate increase in the Consumer Price Index (CPI) of 3% during 2012; 2) annual wage settlements for police and fire in Ohio, according to SERB reports, averaging approximately 1.20 %; 3) budgeting by the County Commissioners for pay raises of 2.5% to 3% according to an article in the *Mansfield Sunday News Journal* on Richland County's top paid employees; and, 4) pay increases grant to some county employees for the year 2012.

In addition, the FOP argued that its members should receive more than the Correction Officers and the Clerks in a wage settlement or lump sum payment because those employees are not peace officers. Neither the Correction Officers nor the Clerks require the extensive training that is required of a Sheriff's Deputy, i.e., at least 500 hours of training and classes. The requirement of recertification is more than that required of a Corrections Officer. Also, deputies must go through periodic retraining for weapons qualifications, which is not required of the corrections officer or clerks.

Although the statewide wage settlements for police and fire units during 2012 were offered as an exhibit, no such comparables were offered for the contiguous counties. Instead the FOP representative stated the Richland County Sheriff's Office wage rates were competitive with those of similar bargaining units in the surrounding counties. In fact according to the FOP Representative, it set the standard for wages and salaries for Sheriff Departments in the area.

SHERIFF'S POSITION

The Sheriff states in its prehearing statement that the bargaining units have demanded a one-time payment of \$1,000.00 for the year 2012. Contrary to what appears on the FOP's prehearing statement the Sheriff's Office only offered a one-time payment of \$250.00 to the Deputies and Supervisors, not \$500.00. The Sheriff noted that a \$500.00 offer was made to, and accepted by, the Correction Officers and Clerks bargaining units. Also, the Sheriff states that he is not aware of ever receiving a demand from these units for "an across the board increase of 3.5% (above the 2010 rate of pay) for the employees in both bargaining units.

According to the Sheriff, the Department is funded by Richland County and the County's total income has diminished significantly. The wage increases that the FOP has demanded for the Deputies and Supervisors would put substantial strains on the County and the Sheriff's Office resulting in the risk of layoffs and other cost cutting measures that could affect the delivery of services. In addition, the wages the bargaining units are demanding would take them out of line with the Corrections Officers bargaining unit. Finally, the issue of wages for the Deputies and Supervisors units for the 2013-15 will be the subject of fact-finding that has been scheduled for later this year. Thus, the Sheriff proposes maintaining the Deputies and Supervisors units' wages at the 2010 rates for the year 2012 so that the parties can then continue negotiating raises to those wages for the new contracts, which will cover 2013 to 2015.

In support of its position, the Sheriff submitted the testimony of two witness and seven exhibits. This evidence, according to the Sheriff, establishes that the County and Sheriff's Office does not have sufficient resources to support the 3.5% pay increase proposed by the FOP.

The first exhibit submitted and the testimony of Ericka Spicer, Payroll Supervisor, indicated that the County Commissioners borrowed \$1.6 million from the Health Insurance Fund in 2008 and this loan will not be fully paid back until sometime this year. Also, there currently are no funds appropriated at this time to make the final payment.

The second exhibit submitted with the testimony of Erika Spicer was a comparison of General Fund Revenues for Richland County for the period from 2004 through 2012 reflecting declining revenues in the General Fund for the years 2009 through 2012, even though an emergency sales tax was passed in 2012. Employer's Exhibit 3 substantiates Ericka Spicer's testimony that actual salaries of the Sheriff's employees for 2011 and 2012 exceed what was

budgeted for those years, even though there was a wage freeze in 2011 and no settlement on wages for 2012.

The Employer's fourth exhibit is an analysis of the cost to the Employer of a 3%, 3.5% and a lump sum payment. The additional cost of granting a 3.5% increase for the period from June 1, 2012 through December 31, 2012 (15 pays or 1200 hours) would be \$28,630.31 versus the cost of a lump sum payment of \$500.00 for a total of \$14,500.

Exhibits 5, 6 and 7 submitted under the testimony of Ericka Spicer related to the costs to the Sheriff's Office of past, present and future retirements. Specifically, Exhibit 5 indicates that the payout for retirees during 2012 was \$103,658.22. Exhibit 6 indicated that the cost of potential future retirees to the Sheriff's Office at \$312,082.69 and Exhibit 7 indicated the negative effective of actual retirements for 2013 to be \$214,823.51.

FINDING AND OPINION

The only issue before the Fact Finder is a wage reopener for 2012. The parties have indicated that they will be going to fact finding on a new contract for 2013-2015 later this year. On the issue of wages for 2012, the parties have submitted the following proposals. The FOP has proposed a 3.5% increase on the current base wage rates, or \$1,000.00 lump sum settlement. The Employer has proposed a \$500.00 lump sum payment with no increase in base wage rates.

FOP's proposal for a 3.5 % increase on the 2010 base wage rates, or \$1,000.00 one-time lump sum settlement.

Based upon the evidence submitted at the hearing, the Employer's position of no increase in the base wage rates for 2012 is more persuasive than the FOP's proposal for a 3.5% increase. The evidence clearly established that the Sheriff, as with many public employers, saw a reduction in available funding. The Sheriff's source of funding is through allocation by the County Commissioners. In recent years, in addition to reduction in funding, the County had to borrow from the Health Insurance Fund the sum of \$1.6 million dollars and has had to pay it back over several years. A final payment of \$614,000.00 is due in 2013. This has resulted in a reduction of available funds to cover operations and liabilities for the Sheriff's Office. For the years 2009 through 2012 there was a continuous decline in the county's general fund revenue resulting with less monies available for allocation to the operation of the Sheriff's Office. The

actual cost for salaries in the operation of the Sheriff's Office for 2011 and 2012 exceeded what was budgeted by the county. Although there was a reduction in the decline of funds for operations by the county for 2012, additional costs for providing services and pay outs for retirees have been incurred by the Sheriff's Office.

In summary, the Sheriff simply did not have the available resources to justify a 3.5% wage increase for 2012. Such an increase would not be in the interest and the welfare of the public. It would inhibit the ability of the public employer to finance and administer the increase for future years, and could have a profound effect on the normal standards of public service.

For the foregoing reasons, it is the opinion of the Fact Finder that there should be no increase of the base wage rate for these units for 2012. Any increase in the base wage rate would have a compounding effect in subsequent years and would impact future negotiations, especially for the 2013-2015 contract term. Also, neither the external or internal comparables support any increase in the base wage rates for 2012. As stated by the FOP representative regarding external comparables, and concurred with by the Employer's representative, the current wage rates paid to the deputies and supervisors are competitive and set the standard for the surrounding counties, even with wage rates being frozen since 2010. As to the internal comparables, the Employer has granted no increase in base wage rates since 2010 to other bargaining units.

Likewise, it is the opinion of the Fact Finder that a lump sum payment of \$1,000.00 in lieu of any increase in base wage rates for 2012 would be excessive considering the settlements with other units, the pending negotiations for a new contract, and the employer's financial condition. The cost of the lump sum \$1,000.00 payment to the bargaining units' employees would be \$29,000.00, or more than the wages that would be paid under the 3.5% increase for the period from June 1, 2012 through December 31, 2012; although, it does have the benefit of not compounding with subsequent wages that may be negotiated.

The FOP's argument that the additional training, qualifications and education required of the employees in these units warrant additional compensation certainly has merit regarding the setting of wage rates, but it is less relevant here. It can be assumed that training, qualifications and education have been considered in setting basic wage rates, and such should be given less weight, if any, as a factor in considering a one-time lump sum settlement.

Employer's proposal for a \$500.00 lump sum payment with no increase in base wage rates.

The Employer at the hearing proposed a \$500.00 one-time lump sum payment in lieu of any increase on base wage rates. This was the same proposal made to, and accepted by, the Correction Officers and Clerks. A lump sum payment would be appropriate under the circumstances here. However, the FOP's argument that the employees in the bargaining units should receive more than \$500.00 because of additional training, education and qualifications has some merit, but not a \$1,000.00 worth. There has to be some cost to the employees maintaining and acquiring the continuing education and training to meet the required qualifications for peace officer status. Thus, it is opinion of the Fact Finder that the one-time lump sum payment should be \$600.00 rather than the \$500.00 as proposed by the Employer.

RECOMMENDATION

Therefore, it is the finding and recommendation of the Fact Finder that there be a one-time lump sum payment of \$600.00 in lieu of any increase on the base wage rates for 2012 for all employees in the bargaining units for the Non-Supervisor Deputies and Supervisors.

IV

CERTIFICATION

The fact finding report and recommendations are based on the evidence and testimony presented to me at a fact finding hearing conducted May 30, 2013. Recommendations contained herein are developed in conformity to the criteria for a fact finding found in the Ohio Revised Code 4717(7) and in the associated administrative rules developed by SERB.

Respectfully submitted,

/s/ John F. Lenehan
John F. Lenehan
Fact Finder

June 24, 2012

V

PROOF OF SERVICE

This fact-finding report was electronically transmitted this 24th day of June, 2013, to the persons named below.

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/S/ John F. Lenehan
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