

STATE EMPLOYMENT RELATIONS BOARD
Fact-Finding Case No. 11-MED-10-1486

STATE EMPLOYMENT
RELATIONS BOARD

Ohio Patrolmen's Benevolent Association, Inc.
Union

2012 JUN -4 A 9:11

And

Fact-Finding and Recommendations
Burt W. Griffin, Fact-Finder

David W. Doak, Portage County Sheriff
Employer

On February 28, 2012, the Fact-Finder was appointed by the State Employment Relations Board, pursuant to Ohio Revised Code Section 4117.14(C)(3), to serve in the collective bargaining negotiation concerning corrections officers of the Portage County Sheriff's Department and Sheriff David W. Doak (hereafter sometimes the Employer). The corrections officers are members of and represented by the Ohio Patrolmen's Benevolent Association, Inc.(hereafter sometimes the Union).

On May 21, 2012, a fact-finding hearing was held at the Portage County administration building, 449 South Meridian Street, Ravenna, Ohio. Present on behalf of the Union were Michael J. Hostler, attorney; Sonny R. Jones, Union director for the corrections officers; and Francis Puck. Present on behalf of the Employer were Ronald J. Habowski, attorney; David W. Doak, Sheriff of Portage County; Audrey C. Tillis, Director of Budget and Financial Management for Portage County; and Karen U'Halie, Director of Human Resources for Portage County.

The hearing lasted from 10:00 a.m. until 7:45 p.m. A stenographic reporter was present. Testimony was received from Ronald R. Rost, finance officer for the Portage County Sheriff, and from Ms. Tillis, Ms. U'Halie, Mr. Jones, and Mr. Puck.

The Employer introduced into evidence Portage County General Fund budget experience

for 2009, 2010, and 2011 together with budget projections for 2012, 2013, and 2014. That evidence showed:

2009	\$2,969,964 deficit
2010	\$1,869,948 surplus
2011	\$ 928,641 surplus
2012	\$2,713,668 projected deficit
2013	\$3,428,483 projected deficit
2014	\$3,029,490 projected deficit.

Expenses were projected to increase over 2011 expenses by approximately \$1,600,000 in 2012, \$1,100,000 in 2013, and 1,300,000 in 2014. Salaries were expected to remain the same; but increased expenses were expected in materials and supplies, contract services, and health benefits.

A major reason for the projected deficits in 2012, 2013, and 2014 was decreased revenues. Because of action by the state legislature, income from the State of Ohio provided through the Local Government Fund was expected to fall from \$2,490,000 in 2011 to approximately \$1,300,000 in 2014. Because of low interest rates, income from investments was expected to fall from \$1,515,869 in 2011 to approximately \$900,000 in 2014. Sales tax revenues constitute nearly half of the County's income and were expected to increase by approximately \$500,000 in 2014 over 2011.

Evidence showed, however, that past budget projections had been quite unreliable. The need to economize has been clear; but, both the ability to cut costs and the projections of sales tax receipts have been under-estimated. In 2010, for example, Portage County had originally projected a deficit of \$2,638,832. It's final accounting showed a surplus of \$1,642,056. A major reason for the inaccurate projection was that income from sales taxes was \$1,677,926 greater than expected, and income from services rendered was approximately \$700,000 greater

than expected. Portage County has been a county with a growing population and expanding retail facilities; thus, sales tax revenues have increased even with a weakened national economy.

Making conservative projections of income and over-estimating expenses is, of course, wise and prudent management. It creates pressure to reduce expenses and, where possible, to increase income.

The pressure in 2010 which resulted from a pessimistic budget projection resulted in substantial reductions in actual costs to Portage County. In almost every County department, significant cost reductions were achieved by reducing contract services. The experience of the Sheriff's department is a good example. On June 30, 2010, the Portage County Sheriff expected a departmental deficit for 2010 of \$70,000. In that year, the Sheriff actually had a surplus. The surplus resulted, in part, because the Sheriff's department was able pay for food and medical services to inmates at 2009 prices rather than incur a price increase from the contracting parties.

The pessimistic budget projections for 2010 were turned into a surplus for Portage County in 2010 also because the County persuaded its employees to accept reductions in their salaries. Under considerable pressure, the corrections officers in the Sheriff's department accepted a 5% one-time salary reduction. That was also incurred by other County employees.

Unlike corrections officers, the lost income of some County employees was offset, to some extent, by the benefit of being able also to gain time off from work in the form of furlough time. Since the county jail must be fully staffed at all times, furlough time was not available to corrections officers.¹

¹Testimony on this issue was not entirely clear. Employer's Exhibit F showed that nine employees in the Sheriff's received furloughs while taking a 5% pay reduction. Testimony did not identify any of those furloughed employees to be Corrections Officers.

The 5% reduction is a significant source of the financial dispute in this contract negotiation. The Union seeks a 3% wage increase in each of the years 2012, 2013, and 2014. That would recover the previous 5% reduction and achieve approximately a net 5% increase after three years. It would also bring corrections officers in Portage County closer to the pay of comparable officers in comparable counties. The Union points out that the corrections officers in Portage County are already the lowest paid corrections officers in comparison to Medina and Geauga County.²

The Sheriff seeks a wage freeze for 2012 and 2013. He proposes a wage re-opener in 2014.

Areas of Agreement

The parties have agreed that the following Articles in the existing collective bargaining agreement should remain unchanged or changed only as indicated:

- Article 1: Preamble
- Article 2: Purpose and Recognition
- Article 3: Management Rights (In clause numbered "2" change "off" to "off")
- Article 4: Recognition
- Article 5: Union Representation
- Article 6: Dues Deduction
- Article 7: Employee Rights
- Article 9: Probationary Period
- Article 10: Duty Hours
- Article 11: Work Schedules
- Article 12: Seniority (In Section 12.03, strike "of the various bargaining units".)
- Article 15: Discipline
- Article 16: Disciplinary Procedures
- Article 17: Grievance Procedure
- Article 18: Arbitration Procedure

²When uniform allowances and shift differentials are considered, Lake and Portage County wages are similar; however, Geauga, Lorain, and Medina Counties pay from \$1,700 to \$6,200 more at the top level for a 10 year employee.

- Article 20: Acting Supervisor
- Article 21: Shift Differential
- Article 23: Longevity [“\$4.251/1/03), \$.450(1/104) and (1/1/05)” shall be deleted]
- Article 24: Clothing Allowance
- Article 26: Vacations
- Article 27: Holidays
- Article 28: Personal Days
- Article 29: Sick Leave
- Article 31: Family Medical Leave. [The parties agree to retain Sections 31.01 and 31.02 and to add the following: “Section 31.03: There is no light duty assignment in the Corrections Division.”]
- Article 32: Funeral Leave [Change last sentence of Section 32.01 to read: “In the case of a death of the employee’s grandparent or spouse’s grandparent, an employee shall receive one (1) day with pay for the purpose of attending the funeral service.”]
- Article 33: Jury Duty
- Article 35: No Strike
- Article 36: Health and Safety
- Article 37: Bulletin Boards
- Article 38: Non-Discrimination
- Article 40: Waiver in Case of Emergency
- Article 41: Conformity to Law
- Article 42: Gender and Plural
- Article 43: Headings
- Article 44: Opportunity to Negotiate
- Article 45: Total Agreement
- Article 46: Duration [The following language was agreed to: “46.01 This Agreement shall become effective on January 1, 2012 and shall continue in full force and effect, along with any amendments made or annexed hereto, until midnight, December 31, 2014.”]
- Article 47: Execution [The following language was agreed to: 47.01 IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed this _____ day of _____.”]

Areas of Disagreement

The parties are in disagreement with respect to the following Articles in the proposed collective bargaining agreement:

- Article 8: Residency
- Article 13: Vacancies and Promotions
- Article 14: Lay-Offs and Recall

Article 19:	Compensation
Article 25:	Insurance
Article 30:	Injury Leave
Article 39:	Miscellaneous

Discussion and Recommendations

Under Section 4117(G)(7) of the Ohio Revised Code, a fact-finder must consider the following factors:

- 1) The past collective bargaining agreement between the parties.
- 2) Comparison of the issues submitted to fact finding relative to the employees of 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 classifications involved.
- 3) The interests 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 stipulations of the parties.
- 6) Other factors, not confined to those listed above, which are normally or traditionally taken into consideration in determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact finding, or other impasse resolution procedures in the public service or in private employment.

Article 8: Residency

The present collective bargaining agreement precludes non-residents of Portage County from employment as corrections officers unless they became Portage County residents within 18 months of employment or were employees prior to January 1, 1994. Legislation has been enacted which allows non-residents to become and remain employees of Portage County and makes the present contract language inoperable

The Employer seeks to remove the entire Article, arguing that it is unnecessary. The Union seeks to replace the existing sections with the following:

8.01 Those individuals employed prior to December 31 2015 shall be allowed to reside outside the confines of Portage County.

The Union argues that the language is needed to assure that no residency requirement is established, notwithstanding existing legislation.

Recommendation. The Union's request is reasonable, and the policy expressed in the proposed Section 8.01 is not opposed by the Employer. The Employer's only argument is that the proposed section is unnecessary.

The Fact-Finder recommends that Article 8 be amended to delete the existing sections and include only the language requested by the Union:

Section 8.01 Those individuals employed prior to December 31, 2015 shall be allowed to reside outside the confines of Portage County.

The recommended change imposes no financial burden on the Employer and is consistent with current public policy. If the Union desires added security with respect to residency, the language offers such security and does so without burdening anyone.

Article 13: Vacancies and Promotions

The current Article 13 contains seven sections. Section 13.01 identifies three levels of employees within the Corrections Department (Corrections Officers, Corrections Corporal, and Corrections Sergeant). Section 13.02 provides that ranks above Corrections Officers "shall be filled by promotion" and precludes abolishing superior positions, keeping them vacant for more than six months, or filling them on a temporary basis. Section 13.03 provides for merit promotion based upon an "objective, written, competitive examination administered from outside the Sheriff's Department." Section 13.04 provides for adding seniority credit to the examination grade. Section 13.05 provides for a probationary period with respect to promotions and

establishes general criteria for determining whether the probationary period has been satisfactorily fulfilled. Section 13.06 allows new employees to be hired to fill supervisory vacancies if a qualified existing employee does not apply. Section 13.07 precludes promoting a Corrections Officer if the officer has not “satisfactorily completed the required probationary period for his existing position.”

The Employer proposes to delete the entire Article because it refers to officers who are not in the bargaining unit.

The Union objects to striking Article 13 because corrections officers have historically been able to bid for the positions of corporal and sergeant and because they do not want to be supervised by people who have not been corrections officers.

The Union also proposes that the following language be added to Section 13.02:

The total part-time work force of the Corrections Division of the Portage County Sheriff's Office shall not exceed ten percent of the total Corrections Division work force as outlined in 13.01.

The Union seeks that language to limit the extent that part-time workers can be used to deprive full-time corrections officers of overtime and because part-time workers increase the burden on full-time officers to train and supervise the part-timers. The Employer opposes a limitation on part-time workers; however, there is a memorandum of understanding between the parties that currently limits the Employer to more than 10% of the workforce as part-time workers.

Recommendation. The Fact-Finder makes three recommendations. First, the Fact-Finder recommends that Section 13.01 should be amended to read:

The following rank structure exists within the Corrections

Department: 1) Corrections Officer, 2) Corrections Corporal, 3) Corrections Sergeant.

That amendment changes Section 13.01 from a mandatory provision affecting other bargaining units to a simple statement of fact about the existing and historic command structure of the Department.³ The recommended change meets the objection of the Employer without impairing the many protections for Corrections Officers included in Sections 13.02 to 13.07.

The Fact-Finder's second recommendation is that the Employer's proposal to eliminate Sections 13.02 to 13.07 not be adopted. The Employer's proposal to eliminate those sections would seriously impair the advancement protections that Corrections Officers have long possessed.

Counsel for the Employer erroneously called its proposal a "housekeeping change." Quite the contrary, if adopted, deletion of Sections 13.02 to 13.07 would eliminate important "furniture" in the house. More substantial changes in Article 13 warrant extensive discussions and negotiation. Such discussion and negotiation have not occurred.

Absent evidence that would reveal that Sections 13.02 and 13.07 have impaired the effective or efficient operation of the Department, changes are not appropriate in those sections. No such evidence has been presented.

The Fact-Finder's third recommendation is that the Union's proposed contractual limitation of part-time limitation of the work force to 10% should not be adopted but that a Section 13.08 should be added to the collective bargaining agreement which should read as follows:

³There are also supervisory positions superior to sergeant.

13.08 *The existing memorandum of understanding with respect to use of part-time employees should not be changed without consultation between the Employer and the Union. Any changes should reflect the mutual interest of the Employer, the employees, inmates, and the public in, at all times, staffing the Corrections Department with experienced full-time employees to the extent possible.*

Article 14: Lay-offs and Recall.

Article 14 contains nine sections. The Employer proposes changes in Sections 14.03, 14.04, and 14.09. The Union says the proposed changes would reduce existing seniority protections in the event of lay-offs and recall.

The Employer proposes the following changes in Sections 14.03 and 14.04:

14.03 Employees who are laid off from one POSITION ~~corrections rank~~ may displace (bump) another corrections employee(s) with lesser departmental seniority ~~in a lower rated corrections rank~~.

14.04 Corrections employee(s) who are displaced (bumped) by a more senior corrections employee shall be able to displace (bump) another corrections employee with lesser seniority, ~~in a lower rated corrections rank pursuant to the provisions of Section 14.03 above~~.

Those suggested changes introduce ambiguity where clarity now prevails. Section 14.03 is now written to allow a higher ranked officer to displace only a less senior Corrections Officer of lower rank. Section 14.04 then allows a lower ranked corrections officer who is bumped by a higher ranked officer to displace an equally ranked corrections officer of lesser seniority.

Evidence has not been presented as to why Section 14.03 and 14.04 were originally so written. One might argue that seniority always supersedes rank and that a senior employee of the same rank can always displace a less senior employee. The present language makes abundantly clear that seniority prevails over rank and that an employee displaced through seniority by a

higher ranked officer can always displace a less senior employee of the same rank.

Whatever the reason, the Employer's suggested change is one of substance—not one of housekeeping. No reasons have been given why such a substantive change should be made.

The Employer also proposes deleting Section 14.09 in its entirety. Section 14.09 now provides:

Any corrections employee on lay-off from one bargaining unit shall receive preferential hiring rights into any other position in the Sheriff's Department to which they are qualified. If said position is offered and accepted, said employee will not give tip[sic] his right to recall to his regular position if that position becomes available during the recall period.

Again, except for the misprint "tip", Section 14.09 is not a housekeeping change. As presently drafted, Section 14.09 allows the laid off correction officer, if qualified, to have preference by means of recall over any new hire proposed to be placed in a vacant position in another unit of the Sheriff's Department. If Section 14.09 deleted, a corrections officer would lose that right.

No evidence has been presented nor has any discussion occurred in the fact-finding hearing as to why that change should take place.

Recommendation. The Fact-Finder recommends that none of the changes proposed by the Employer to Article 14 be adopted; however, the Fact-Finder recommends that the word "tip" in Section 14.09 should be changed to "up".

The reasons for the Fact-Finder's rejection of all of the Employer's proposed changes in Article 14 is that those proposed changes involve substantive changes for which the Employer has offered no evidence and, in deed, has not even argued. The Employer's position has simply

been that they are “housekeeping” changes to language that is inappropriate and unnecessary in a contract for this bargaining unit.

That argument is wrong. The language that the Employer desires to delete eliminates substantive rights of corrections officers and clarifies seniority rights of higher ranked officers vis-a-vis corrections officers.

Article 19: Compensation

The Union seeks a 3% annual raise in the hourly rate of the bargaining unit for each year of a three year contract—2012, 2013, and 2014. It alleges that the demand is appropriate because County employees have not had a pay raise since 2008, because in 2010 its members, along with other County employees, accepted a 5% pay reduction for one year, because the value of present wages have been reduced by inflation, because the pay rate for corrections officers in Portage County is less than in some other counties, and because the 5% pay reduction in 2010 was not necessary for the Employer to balance its budget.

It argues that the Employer has persistently under-estimated its income. In 2009, the Employer projected a County deficit of \$ \$4,009,159 but had a \$2,969,964 deficit. For 2010, it projected a \$2,845,459 deficit but had a \$1,869,948 surplus. For 2011, the County projected a \$1,794,633 deficit. It actually ran a \$928,641 surplus. Looking to the future, the Union says that Portage County has a growing retail base which will produce higher sales tax revenue than has been estimated.

The County Sheriff argues that the County is unable to afford any pay increase for its employees. It projects deficits of \$2,713,660 in 2012, \$3,428,483 in 2013, and \$3,029,400 in

2014. Major reasons for these deficits are the more than \$700,00 reduction in income from the state local government fund in 2012 and the more than \$1 million reduction in 2013 and 2014. Another cause of lost income is the low interest rate on investments projected by the Federal Reserve Bank through 2014. Interest income in 2014 is expected to be \$600,000 less than in 2011 and \$2 million less than in 2009. Expenses are expected to increase by \$1 million in 2012, 2013, and 2014 over 2011—mostly for contract services that were not explained during the fact-finding hearing.

Discussion. Some matters are clear. First, corrections officers and other County employees in 2009 accorded the County a 5% give-back on their previously agreed wages for 2010. That give-back was not returned to the employees when the County's final accounts for 2010 and 2011 showed a surplus. Some might argue that the give-back money used by the County to help produce a budget surplus should be considered un-repaid loans from the employees.⁴ Second, the County is suffering a short-term reduction in income because of low interest rates and a longer-term reduction in contributions from state government because of political action at the state level. Third, future income for Portage County is extremely difficult to predict.

Next, no evidence has been presented to the Fact-Finder as to what economies beside a salary freeze are possible to secure a balanced budget. In the past, savings on contract services have been important.

⁴During the Great Depression of the 1930's, some local governments in Ohio issued salary vouchers (called scrips) to employees which were accepted by local merchants and were ultimately redeemed in cash. Thus, the "give-backs" during the Great Depression were ultimately repaid by local government.

In sum, under the present economic and political circumstances, it is impossible to predict whether the Portage County government will run a surplus or deficit in 2012, 2013, or 2014.⁵

Finally, 2012 is an election year for County, State, and Federal officials. The outcome can affect the willingness of State officials to reconsider their policies with respect to the local government fund.⁶ Portage County's own budget and tax policies can be expected to be issues in the November 2012 election. Thus, 2012 is not an advantageous year for either the Employer or Union to predict budget conditions or to negotiate changes in wage rates. However, 2014 is too long to wait re-examine the budget. That will be another election year, and all employees will already have gone five years without a raise in wages while inflation has persisted.

Recommendations. The Fact-Finder recommends that wages be continued at the present level through 2014 but that wages be renegotiated beginning July 1, 2013 based upon economic conditions and known County income. By that date, the parties will know whether Portage County incurred a deficit or had a surplus in 2012. The parties will also have a clearer picture of the economic and political climates that affect budgeting during the remaining period of the collective bargaining agreement.

The Fact-Finder also recommends that wages lost because of the 2010 "give-back" and not accompanied by furlough should be repaid. The repayments should commence on a bi-weekly basis beginning the first pay period in August, 2012. Repayment should be made over

⁵Another complicating factor is the world economy. While the U.S. economy and Portage County seem to have entered a period of slow growth, some fear that Europe is on the brink of another possible recession. If Europe enters a recession, the American economy may be adversely affected. Those factors may affect sales tax revenue.

⁶County and municipal officials can be expected to join with organized labor in bringing pressure on state officials to change local government fund policies.

the same period of time as the particular employee suffered a salary reduction until the employee is fully repaid.⁷

The status of the budget should not affect those payments.⁸ If necessary, repayment should be made from the County's reserve or "rainy day" fund or other available resources. The budgetary impact of that wage payback should not be compensated for by furloughs or other reductions in wages during the contract period..

Article 19 should read therefor:

19.01 Effective the first (1st) regular pay of January 2012, 2013, and 2014, compensation shall be paid per the following schedule:

<u>Wage Rate</u>	<u>2012</u>	<u>2013 & 2014</u>
<i>Entry</i>	<i>\$37,668</i>	<i>\$37,668 Re-opener July 1, 2013</i>
<i>1 Year</i>	<i>\$39,966</i>	<i>\$39,966 Re-opener July 1, 2013</i>
<i>2 Year</i>	<i>\$41,443</i>	<i>\$41,443 Re-opener July 1, 2013</i>
<i>3 Year</i>	<i>\$42,929</i>	<i>\$42,920 Re-opener July 1, 2013</i>
<i>4 Year</i>	<i>\$44,390</i>	<i>\$44,390 Re-opener July 1, 2013</i>

19.02 Beginning August 1, 2012, the Employer shall return to each employee the money lost by the employee as a "give-back" and not accommodated through furlough during the period of the prior collective bargaining agreement. The repayment shall be made in equal amounts over the same period of time as the particular employee relinquished his/her rights to wages under the prior agreement.

The intention of Section 19.02 is to provide one-time cash compensation only for pay reductions in 2010 that were not accompanied by furloughs.

⁷For example, if the employee took a \$2,000 pay reduction over 40 weeks, the employee should be repaid in the amount of \$100 per week in 20 bi-weekly payments.

⁸The Fact-Finder recognizes that the County may be experiencing a deficit during the period of repayment. In retrospect, the County did not need to ask employees to take a 5% wage reduction in 2010. Equity and Justice require that the employees be reimbursed for their willingness to shoulder some of the County's budget problems when an emergency arose.

Article 25: Insurance

Article 25 provides for medical insurance. In its present form the Article has one section, which states:

23.01 Effective August 1, 2007, the Employer will provide to his employees that [sic] same medical insurance coverage and upon the same terms and conditions, if any, as that provided by the Portage County Commissioners for their other County employees. In any event, the bargaining unit members will not pay a higher premium for health insurance than any employee of the Portage County Commissioner's medical insurance plan.

This is a "most favored employee" plan. That is, members of the bargaining unit secure whatever medical insurance is provided for the most favored County employees. The Employer is free to negotiate whatever plan it believes is best. The Article contains no language on how much the employee must contribute toward the premium or pay in deductibles or co-payments.

The Employer now wants simply to remove the obsolete language as to the effective date of the Article--- 2007. Certainly that change is a "housekeeping" change.

In discussions with the Union, the Employer has suggested that it would like to shift 2.5% of the cost of medical insurance to the employees in 2013 and an additional 2.5% in 2014. That proposal has not been made by the Employer in this negotiating session.

Recognizing that pressure now exists not only in Portage County but throughout the country to shift more of the burden of health care costs to public sector employees, the Union proposes that Section 25.01 be amended to read as follows:

The Employer will provide to his employees that same medical insurance coverage upon the same terms and conditions in effect 12-01-2011 for the term of this agreement. In any event the

bargaining unit members will not pay a higher premium for health insurance than any employee of the Portage County Commissioners' medical coverage plan(s).

At the fact-finding hearing, the Union said that the purpose of that language was to “freeze” the cost to employees of insurance premiums and co-payments at existing levels. The language suggested by the Union does not explicitly state that, however.

No evidence was offered at the fact-finding hearing as to any premium levels, co-payments, or other insurance costs presently sustained by employees.

Discussion. Health insurance costs are a major expense for the County, a major concern for employees, and a political “hot potato” throughout the nation at both the state and federal governmental levels. Health benefits are approximately 10% of the County’s budget. They constitute slightly less than 15% of amounts paid by the County for personnel.

For the last three years, health insurance expenditures for Portage County have been relatively stable--\$3,585,512 in 2009, \$3,622,438 in 2010, and \$3,509,639 in 2011. The County projects, however, that those costs will increase from \$3,512,639 in 2012 to \$3,872,900 in 2014.

Health insurance costs are complicated. The Affordable Care Act adopted in 2010 by the federal government attempts to create a broader market for insurance purchases and to reduce health care costs. Whether and when, the Act will achieve those goals is a matter of heated political debate. A new Congress may enact substantial changes. Consequently, the health insurance market itself is complicated and is changing rapidly. Predictions of future health care costs for the County may be no more reliable than predictions of County income.

In addition, employee expenses for health insurance are inextricably related to wages. What the right hand gives the left hand may take away. Both affect the net disposable income of

the employee.

Thus, health insurance costs to the Employer and the employee are as important as wages. Policies on that subject are no longer easily determined by general principles written into a collective bargaining agreement. A complex set of insurance options and costs must be examined before the parties can reach agreement.

Unfortunately for the Fact-Finder, no such information has been provided. Perhaps, it can never be provided to a fact-finder. The best that a collective bargaining agreement may be able to provide at this stage of public life is a process by which the parties can, in a trusting way, explore the rapidly changing realities of health insurance costs.

Recommendations. The Fact-Finder Recommends that Article 25 be amended to read as follows:

25.01 The Employer will provide to his employees the same medical insurance coverage and upon the same terms and conditions, if any, as that provided by the Portage County Commissioners for their other County employees on December 31, 2011. The bargaining unit members will not pay a higher premium for medical insurance than any employee of the Portage County Commissioner's medical insurance plan.

25.02 The Employer, at its discretion, may establish a medical insurance planning committee including a representative of the Union and of such other unions as the Employer may determine. The committee may retain a qualified health insurance consultant to present possible medical insurance options to the committee.

25.03 The purpose of the medical insurance planning committee shall be to secure facts on medical insurance options and costs that can be used by both the Employer and the Union(s). Any consultant shall present options that consider the interests of both the Employer and the Union.

25.04. Either party may re-open negotiations on medical insurance upon 60 days notice to the other party. Such notice

shall include a copy of the proposed medical insurance policy, a statement of cost to the Employer, and a statement of cost—if any—to the employee.

This recommendation retains existing Section 25.01 in its present form. The recommendation is intended to freeze health insurance provisions until a negotiating process can be concluded. If an impasse develops, the parties can use the provisions of Ohio Revised Code Chapter 4117 to resolve their differences.

Sections 25.02 and 25.03 reflect the Fact-Finder's belief that collective bargaining negotiations for medical insurance coverage should be preceded by a joint committee of inquiry intended to produce a fact-based, professionally advised set of options that have been openly developed by the parties. It is the Fact-Finder's belief that such a joint gathering of facts and exploration of options prior to negotiation is more likely to achieve a workable accommodation of the parties' interests than a negotiation that begins with one side presenting a proposal developed entirely in secret.

The right to form the committee is given to the Employer. Of course, either party could propose to the other that the committee be formed. The Union could decline to participate in the committee. No committee can succeed without mutuality. Prior consultation among parties as to the formation of a committee is always best.

Section 25.04 allows either party to initiate negotiations with a specific proposal including statements of costs. Although Sections 25.02 and 25.03 permit establishment of a joint medical insurance committee to gather facts and explore options, Section 25.04 permits negotiations to be initiated without such a committee.

Article 30: Injury Leave

Article 30 contains three sections. The section in dispute is Section 30.01.⁹

Section 30.01 now provides:

When an employee is injured while actually working for the Employer, he shall be eligible for a paid leave not to exceed one hundred twenty (120) calendar days. There will be a five (5) working day waiting period before this provision applies, in which the employee may use sick leave. If the employee received Workers' Compensation Benefits during the period of injury, the benefits will be paid to the Employer and any sick days used during the waiting period shall be returned to the employee to the percentage that Workers' Compensation reimbursed the Employer.

The Employer originally proposed to cap its liability over a five year period. During the fact-finding hearing, the Employer withdrew that request.

The Union proposed that Section 30.01 be amended to read:

An employee shall be eligible for injury/illness leave, not to exceed one hundred twenty (120) calendar days, if such injury/illness is the result of (1) an interaction with an inmate while engaged in the performance of assigned duties (2) responding to a call for assistance; or (3) participating in Employer-mandated training. There will be a five (5) working day waiting period before this provision applies, in which the employee may use sick leave. The granting of injury/illness leave shall not be unreasonably denied and shall be granted within five (5) calendar days after the request has been made. If the employee qualifies for Workers' Compensation Benefits during the period of injury, the benefits shall be paid to the Employer and any sick days or sick time used during the waiting period shall be returned to the Employer.

The Union's proposal makes two basic changes in Section 30.01. First, in the first

⁹Prior to the fact-finding hearing the Employer requested changes in Section 30.02. During the hearing, the Employer withdrew those requests.

sentence, it substitutes very specific language as to the circumstances giving rise to “injury/illness” benefits for the general language that “When an employee is injured while actually working for the Employer” the employee may receive paid leave . . .”. The Union’s suggestion obviously broadens Section 30.01 to include illness and defines “actually working” to include a training program.

None of those implications were discussed at the fact-finding hearing. The issue presented at the hearing was the Employer’s refusal on one occasion to accept an employee’s worker’s compensation benefits in return for sick leave payments. The result of that was that the employee lost sick leave days. That issue is dealt with in the last sentence of the Union’s proposed amendment.

The Union’s third suggested change is the third sentence in its proposal. That sentence simply says that the granting of leave “shall not be unreasonably denied” and “shall be granted within five working days of the request.” That proposal also was not discussed at the fact-finding hearing.

Recommendation. The Fact-Finder recommends that Section 30.01 be amended to read as follows:

When an employee is injured with performing responsibilities required by the Employer, he shall be eligible for a paid leave not to exceed one hundred twenty (120) calendar days. There will be a five (5) working day waiting period before this provision applies, in which the employee may use sick leave. The granting of injury leave shall not be unreasonably denied. If the employee qualifies for Workers’ Compensation Benefits during the period of injury, the benefits shall be paid to the Employer and any sick days or sick time used during the waiting period shall be returned to the Employer.

This recommendation modifies the first sentence of existing Section 30.01 to substitute

“performing responsibilities required by” for the language “actually working for” the Employer.. It adopts the Union’s proposals on Workers’ Compensation benefits and not unreasonably denying injury leave..

The Union’s proposal on Worker’s Compensation Benefits is entirely reasonable and imposes no significant burden on the Employer. The Employer was unreasonable when it previously refused to accept the employee’s Workers’ Compensation payments in exchange for restoration of sick days

The Fact-Finder has also accepted the Union’s proposed sentence that “The granting of injury leave shall not be unreasonably denied . . .” That provision is a simple statement of fairness.

The Fact-Finder has modified the first sentence of Section 30.01 to use the term “performing responsibilities required” in order to accommodate the Union’s request that injuries occurring during a training session should also be covered. The request is reasonable.

The Fact-Finder has not accepted the Union’s more specific redefinition of what makes an employee eligible for “injury leave.” No discussion occurred with respect to those detailed changes. They involve substantive changes which could have significant implications.

For example, the Union’s detailed modification broadens the leave provision to include “illness.” It also replaces the condition “while actually working for the employer” with a statement of circumstances which would constitute “actually working for the Employer.”

The Union has given no reasons for its proposed redefinition of eligibility. Some of the specifically identified circumstances of eligibility would seem to encompassed by the term “while actually working for the Employer.” It is arguable that injuries sustained at a training

session might not be ones that occurred “while actually working.” Yet, it seems reasonable to include injuries sustained while training.

Article 39: Miscellaneous

Article 39 contains provisions covering three different work practices. Section 39.01 addresses the sending of an employee for medical examinations. The Employer suggests, as a purported “housekeeping” change, that Section 39.01 be amended to read as follows:

*In any instance where the Employer sends an employee for a medical examination, **INCLUDING DRUG TESTING**, the Employer shall pay the cost of the examination and shall pay the cost of the examination, **AND/OR TESTING**, and shall pay the employee for the time expended taking such examination **AND/OR TESTING**, provided such time is beyond the employee’s regular scheduled shift.*

The Portage County Sheriff believes strongly that the proposed amendment should be adopted. It is a crime for anyone to use certain drugs of abuse. Corrections officers must abide by the law. Inmates are often illegal drug users. The danger persists that such drugs might be smuggled into the County jail—even by corrections officers. The strong feelings of the Sheriff are, thus, reasonable.

Except at the time of employment, testing of corrections officers for use of illegal drugs has not previously been a practice of the Sheriff’s Department. More extensive testing is common in other counties. Random testing is done under agreement with the Ohio Patrolmen Benevolent Association by the Lake County Sheriff’s Department,¹⁰ the Lorain County Sheriff’s

¹⁰See, Union Exhibit 32a, Article 37, Section 2.

Department,¹¹ and the Medina County Sheriff's Department.¹² The Union as agreed to drug testing upon "reasonable suspicion" by the Geauga County Sheriff's Department.¹³

The Union has objected to the Employer's proposed modification but has not stated specific reasons or offered an alternative.

Recommendation. The Fact-Finder recommends that Section 39.01 be amended to read as follows:

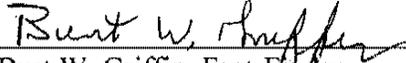
In any instance where the Employer sends an employee for a medical examination, including drug testing, the Employer shall pay the cost of the examination and shall pay the cost of the examination and/or testing, and shall pay the employee for the time expended taking such examination and/or testing, provided such time is beyond the employee's regular scheduled shift. Prior to initiating a program of drug testing of any reason except for cause to believe the employee is using illegal drugs, the Employer will meet with the Union to discuss, but not negotiate, the procedures and circumstances under which drug testing will be conducted.

Although not a "housekeeping" change, the Employer's proposed modification of Section 39.01 is a reasonable measure to assure the integrity of the work force and the jail. Because testing of employees for illegal drugs has ramifications that go beyond the security of the jail and the integrity of the work force, the Fact-Finder has recommended that the parties also include in the amended Section 39.01 a provision on consultation between the Employer and the Union similar to the provision that is contained in Section 25.02 of the collective bargaining agreement between the Union and the Medina County Sheriff.

¹¹See, Union Exhibit 32b, Article 42, Section 42.10.

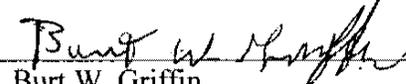
¹²See, Union Exhibit 32d, Article 25, Section 25.01.

¹³See, Union Exhibit 32c, Article 40,


Burt W. Griffin, Fact-Finder
May 28, 2012

Notice of Service

A copy of the foregoing Fact-Finder's Report and Recommendation was sent by E-mail this 28th day of May, 2012 to Ronald J. Habowski, counsel for the Portage County Sheriff, rjh@chpohlaw.com, to Michael J. Hostler, counsel for the Union, attyhostler@yahoo.com and by regular mail to Donald M. Collins, General Counsel, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213. Signed copies are being sent to the foregoing by regular mail.


Burt W. Griffin

JUDGE BURT W. GRIFFIN
2914 WOODBURY ROAD
SHAKER HEIGHTS, OHIO 44120-2427

TEL: (216) 561-2777
FAX: (216) 561-2886
EMAIL: burtgriffin@cs.com

May 28, 2012

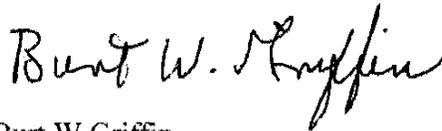
Mr. Donald M. Collins, General Counsel
Ohio State Employment Relations Board
65 East State Street, 12th Floor
Columbus, Ohio 43215-4213

Dear Mr. Collins:

Enclosed is a signed copy of my fact-finder's report and recommendation in Fact-Finding Case No. 11-MED-10-1486.

Please advise if you need any additional information.

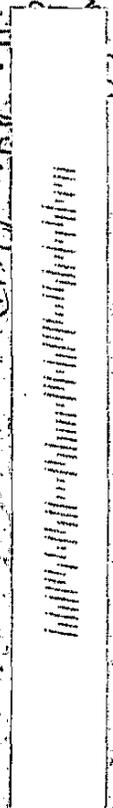
Sincerely,



Burt W. Griffin

STATE EMPLOYMENT
RELATIONS BOARD
2012 JUN -4 A 9:11

Gen
We
or
20-2487



Mr Donald W. Collins, General Counsel
State Employment Relations Board
65 East State Street, 12th Floor
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