

State of Ohio

State Employment Relations Board

In the Matter of Fact Finding	:	SERB Case Number: 12-MED-01-0018,
	:	0019, 0020
Between:	:	
	:	
Meigs County Sheriff,	:	
Pomeroy, Ohio	:	
Employer	:	Date of Hearing: October 10, 2012
	:	Date of Report: November 16, 2012
And:	:	
	:	
Ohio Patrolmen's Benevolent	:	
Association	:	Felicia Bernardini, Fact Finder
Union	:	

Fact Finder Report and Recommendation

Appearances:

For Meigs County Sheriff

Colleen S. Williams Esq., Meigs County Prosecutor, Fact Finding Spokesperson
Amanda Franzmann Esq., Assistant Prosecutor
Robert Beegle, Sheriff

For Ohio Patrolmen's Benevolent Association

Mark J. Volcheck, Esq., Fact Finding Spokesperson
Mark Griffin, Deputy Sheriff
Bill Gilkey, Deputy Sheriff
Scott Trussell, Sergeant

Introduction

Case Background

Felicia Bernardini was appointed to serve as Fact Finder in the above referenced case by the State Employment Relations Board (SERB) on July 5, 2012 in compliance with Ohio Revised Code (ORC) Section 4117.14C(3). The case concerns a fact finding proceeding between the Meigs County Sheriff (hereafter referred to as the “Employer” or the “County” or the “Sheriff”) and the Ohio Patrolmen’s Benevolent Association (hereafter referred to as the “Union” or the “Unit” or “OPBA”).

The current contract expired on March 31, 2012. The parties engaged in contract negotiations achieving tentative agreements on some issues, but reaching impasse with six unresolved issues. After an initial contact with the parties, a hearing was scheduled for September 25, 2012. Both parties timely filed the required pre-hearing statements. The day of the hearing, the Fact Finder proposed mediation of the outstanding issues prior to moving to the evidentiary hearing. The parties accepted the offer to mediate; however, after a long day of mediation no resolution was forthcoming. A subsequent date was scheduled for the evidentiary hearing. The hearing was held on October 10, 2012. At the conclusion of the hearing, it was mutually agreed that the record would remain open for the limited purpose of receiving revenue and budget data from the Employer, and subsequent rebuttal from the Union. During the time that the record remained open following the hearing (October 10, 2012 through November 1, 2012) the parties voluntarily undertook further settlement discussions which resulted in the negotiated settlement of Article 22: Insurance and Article 23: Wages. By request of the parties and agreement of the Fact Finder, the parties’ negotiated settlements of these two articles are incorporated by the Fact Finder as part of the Fact Finding Report and subject to the three-fifths voting standard of the statute. Said settlements are found below at the end of the **Positions, Discussion and Recommendations** Section of this Report.

The remaining open issues addressed by both parties at the hearing are as follows:

Article 13: Health and Safety

Article 28: Vehicles

Article 29: Uniforms

Article 33: Duration

General Background Information

The collective bargaining agreement is a master agreement for three bargaining units of the County Sheriff's Office: fulltime Sergeants and Lieutenants, fulltime Deputies, and fulltime Dispatchers. Across the three units there are 17 positions; 13 are filled, four are vacant. Unit members provide professional law enforcement services for Meigs County. The County is located in the Southeast quadrant of the State along the Ohio River. It covers approximately 430 square miles, 80% of which is forest; the 2010 census places the county population at 23,770 and the median household income at \$33,407.¹ According to the Department of Development, County Profile, 16.7% of families in the county have an income below the poverty level, and four of the seven largest employers in the county are governmental entities (three school districts and county government). The September (not seasonally adjusted) unemployment rate for Meigs County is 10.7% almost twice that of Ohio's overall unemployment rate of 6.5%.²

Positions, Discussion and Recommendations

At the hearing the parties agreed to present each unresolved issue in numeric order based upon the number of the contract article. Therefore the format of this report will follow the same progression. On an issue-by-issue basis, the position of each party is briefly summarized; position summaries are followed by a brief analysis and discussion, which is followed by the recommendation of the Fact Finder.

In analyzing the positions of the parties and making recommendations the Fact Finder is guided by available, relevant evidence and the criteria set forth in ORC 4117.14(G)(7)(a) to (f):

- (a). Past collective bargaining agreements, if any between the parties;
- (b). 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;
- (c). 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;
- (d). The lawful authority of the public employer;

¹ www.development.ohio.gov/files/research/c1054.pdf

² Ohioلمي.com/laus/colorRateMap.pdf; Ohio Department of Job and Family Services

- (e). Any stipulations of the parties;
- (f). Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

1. Article 13: Health and Safety

Employer Position

The County seeks to eliminate language in section 13.5 which requires at least two road patrol deputies be scheduled per shift. It is the Employer's position that this language creates an undue hardship on the Employer. The Sheriff's Office must also contend with minimum staffing requirements imposed by the State for staffing the jail. Jail staffing requirements paired with vacation and sick leave absences often result in insufficient deputies to cover road patrol. Overtime is then needed to ensure that there are two road deputies on duty each shift. This drives the Sheriff's overtime cost up, creating too great of a financial burden on the County. Deputy concerns that elimination of the requirement creates a health and safety risk for deputies are not justified. The County's position is that deputies are not required to handle dangerous calls without backup, and mutual-aid agreements with other law enforcement jurisdictions allow for said backup.

Union Position

The Union opposes elimination of the minimum staffing language and seeks to maintain current contract language. The language dates back to 2005 and was negotiated specifically because of the hazardous nature of the work; nothing has changed in this regard. Minimum staffing on road patrol continues to be an important safety issue. There is virtually nothing that a deputy can do without backup. Deputies often respond to domestic violence calls; these calls typically involve guns, other weapons, and/or alcohol and drugs. It can take upwards of 45 minutes for backup to arrive; meanwhile the public is at risk, as is the deputy. This is not a unique provision; other counties have similar language – Jackson and Hocking are examples.

Discussion and Recommendation

Unrebutted testimony at the hearing indicates that unit members have worked with the Sheriff to find alternatives to using overtime when it comes to complying with the minimum staffing

requirement for road patrol. The Sheriff himself has been the backup on the dayshift. The Unit has also allowed the Sheriff to use qualified non-bargaining unit members, such as part-time and/or auxiliary deputies, to cover the staffing requirement. These types of arrangements have not been grieved precisely because the Union recognizes the need for fiscal restraint while at the same time protecting the health and safety of bargaining unit members. This contract provision was negotiated several contracts ago and provides a considerable benefit to the deputies and the public. The societal realities that made this contract language a good idea when it was negotiated in 2005 have not changed. If the provisions of this Article are to change, it is best handled in negotiations where the parties can fully explore the ramifications.

Recommendation

With consideration given to the bargaining history of the parties, and the interests and welfare of the public, the Fact Finder recommends retaining current language in Article 13: Health and Safety.

2. Article 28: Vehicles

Employer Position

The Employer seeks to delete language permitting specified employees of the Sheriff's office the use of a Sheriff's Department vehicle to drive to and from work, and insert new language that would expressly prohibit such a practice except in specific, limited situations permitted by the Sheriff. This change is proposed for three reasons: the rising cost of gasoline, wear and tear on the vehicles, and fleet size. The Employer argues that the cost of gasoline has almost tripled in the past ten years making this provision an expense that was unanticipated at the time it was originally negotiated. At \$3.50 per gallon or more, the cost of this benefit has become an undue burden on the Sheriff's budget. Furthermore, the additional mileage driving to and from an employee's home adds wear and tear on an aged fleet. All but one of the vehicles is model-year 2008 or older, more than half of the fleet is model-year 2005 or older. Allowing employees to take vehicles home also dictates that the Employer maintains a fleet large enough for each employee to have his/her own vehicle, as opposed to sharing a smaller pool of vehicles garaged at a central location. The Employer's proposed change in this Article would allow the County to reduce costs and develop a smaller, more reliable fleet of vehicles.

Union Position

The Union would maintain current language. This is a contract provision that dates back to at least 1999. In the 2005-2007 collective bargaining agreement the language was modified to clarify which employees are allowed to drive Sheriff's Department vehicles to and from home. The Union points out that this is a provision found in the contracts of other County Sheriffs, such as Morgan County and Gallia County. Beyond actual contract provisions, many counties have a practice of providing take-home vehicles. This is not simply an employee perk; there is a benefit to the County in that deputies are on duty from the time they get in their departmental vehicle at home until they return home at the end of the shift. Deputies are often directed to report to a call as soon as they mark-on-the-air which eliminates the standard notion of a home-to-office commute. There have also been instances where a deputy has been called at home and told to report to a call. This being the case, the fuel costs which the Employer argues are associated with driving to and from each deputy's residence and therefore "extra" expenses, cannot legitimately be categorized as such.

Discussion and Recommendation

Both parties make compelling arguments concerning this provision of the contract. The Union's point that the Employer receives a benefit by having deputies available for duty in departmental vehicles, decentralized by virtue of the fact that they are at the deputies' homes, is well taken. The Employer makes an excellent point that some operational restrictions on the language are warranted. The Employer's argument is bolstered by the Union's own fact finding exhibits. Both the Morgan County and Gallia County contract provisions offered by the Union as comparables have limiting language of the type sought by the Employer. To the Fact Finder, it seems that the interests of both parties can be achieved by negotiating some restrictions that do not change the fundamental benefit of deputies taking Sheriff's Department vehicles home (this is a benefit for both the deputies and the Sheriff), while at the same time providing for commonsense limitations that promote operational efficiency (e.g., keeping vehicles within County borders, returning vehicles during periods of absence). Only the parties know what would make the most sense and therefore a negotiated change is the best approach.

Recommendation

In deference to the bargaining history of the parties and past collective bargaining agreements the Fact Finder recommends retaining current language.

3. Article 29: Uniforms

Union Position

The Union seeks to increase the annual allotment from \$400 to \$500. The allowance has been \$400 since 2004. SERB data shows that most Counties provide the uniform and replace uniform items as needed. Both Gallia County and Hocking County provide the uniform and have a maintenance allowance somewhat like Meigs County. In Meigs County, in addition to the stipend being used to replace uniform items as needed, the stipend is also used by unit members to purchase equipment not provided by the Employer, which includes the purchase of ammunition for non-qualifying practice.

Employer Position

The Employer proposes a change in contract language to establish that all uniform items and equipment purchased by the Employer is to be returned to the Employer upon an employee's separation from service. Further, the Employer proposes that carry forward of any unused portion of the annual uniform and equipment stipend be limited to one year, after which any unused portion of the stipend is returned to the County. The Employer's proposal is supported by records showing that all deputies have carried forward some balance from the previous year; a few deputies have carried forward a balance greater than the annual stipend suggesting that the stipend isn't being used on an annual basis.

Discussion and Recommendation

The evidentiary record shows that an annual stipend of \$400 is more than adequate to meet the current needs of bargaining unit members. Furthermore, the record shows that both Gallia County and Hocking County stipulate that all Employer provided uniforms and equipment remain the property of the County and are returned to the County upon separation. Neither Gallia nor Hocking County allow for the rollover, or carry forward, of any unused portion of the annual uniform allowance.

Recommendation

In light of the evidence and the practice of comparable jurisdictions, the Fact Finder recommends adoption of the Employer's proposal. The relevant contract language shall read in part as follows:

Sections 29.1. Effective upon commencement of employment, the Employer shall provide, at the same level as provided as of the effective date of this Agreement, uniforms and equipment for those bargaining unit employees required by the Employer to wear specific uniforms. The Employer shall determine the appropriate uniform if required to be worn by the employee; an employee shall be required to be in proper uniform upon reporting for duty.

Articles of clothing and equipment purchased by the Employer, ~~except firearms~~, shall become the property of the ~~employee~~ **County** upon separation.

Section 29.2. No change to existing language.

Section 29.3. No change to existing language.

Section 29.4. The Employer shall make available to each employee, on an annual basis, a uniform and equipment stipend of four hundred dollars (\$400). The stipend may be utilized by each employee to purchase uniform and equipment items. Any amount of the stipend not utilized by December 31 of each calendar year may be carried (**limited rollover**) over and added to the subsequent year's annual stipend. **Any money not used within this time shall be returned to the County.**

4. Article 33: Duration

Union Position

The Union seeks a three-year contract with effective dates from April 1, 2012 to March 31, 2015. Further edits proposed by the Union include a provision that would eliminate language that requires the use of certified mail when providing notice of the intent to negotiate a successor Agreement, and elimination of language providing for a retroactive wage settlement.

Employer Position

The Employer seeks the same three-year contract with the same effective dates. The Employer has also proposed elimination of the language referencing a retroactive wage settlement.

Discussion and Recommendation

The Duration Article is not actually in dispute between the parties; it remains open because other provisions of the contract have not been settled. The parties propose the same edits to the language, with the exception of a minor housekeeping edit suggested by the Union. In this matter, the Union seeks to update the language concerning notice of intent to negotiate a successor

Agreement. The Union's proposed language provides that the parties make such notice in accordance with Ohio law which has been modified to allow for the use of electronic mail.

Recommendation

The Fact Finder recommends adoption of the mutually agreed edits and the Union's proposed language change in Section 33.1. Relevant contract language shall read in part as follows:

Section 33.1. Except as otherwise provided herein, this Agreement shall be effective ~~January 1, 2014~~ **April 1, 2012**, and shall remain in full force and effect until 12:00 midnight, March 31, ~~2012~~ **2015**. Written notice of the intent to negotiate a successor Agreement shall be given no earlier than ninety (90) calendar days prior to the expiration date, nor later than sixty (60) calendar days prior to the expiration of this Agreement. Such notice shall be **given in accordance with Ohio law.** ~~by certified mail with return receipt.~~ The parties shall commence negotiations within two (2) calendar weeks upon receiving notice of intent.

The parties waive application of R.C. 4117.14(G)(11) to the negotiations for the collective bargaining agreement following this agreement and agree that R.C. 4117.14(G)(11) shall not apply to those negotiations. ~~Any wage increases ordered by any conciliator during any dispute resolution proceedings for the bargaining agreement succeeding this agreement may be retroactive to April 1, 2012. The parties agree that this waiver only applies to any wage increases ordered by any conciliator for the collective bargaining agreement between the parties immediately subsequent to this agreement.~~

Section 33.2. No change to existing language.

Section 33.3. No change to existing language.

The following provisions were agreed to by the parties and shall be in addition to the tentative agreements previously agreed to by the Union and Employer.

ARTICLE 22, INSURANCE

Section 22.1. The Employer shall continue to provide all employees in the bargaining unit with health insurance at the present or substantially equivalent benefit levels, both single and family coverage, **subject to the provisions of the following:**

For the plan year effective August 1, 2012 – July 31, 2013, for medical/prescription benefits, the Employer shall continue to contribute to each

employee's HRA account the full amount of the family deductible for employees with family coverage and the full amount of the single deductible for employees with single coverage as was done the previous plan year.

Effective August 1, 2013, for medical/prescription benefits, the employer shall contribute to each employee's HRA account annually in the amount of 50% of the family deductible for employees with family coverage and 50% of the single deductible for employees with single coverage. This shall be paid at the commencement of each plan year. Such annual plan year contribution shall be limited to the extent that such contribution does not push the HRA account of a family coverage employee over the family deductible for that plan year and does not push the HRA account of a single coverage employee over the single deductible for that plan year. In such cases the employer shall contribute up to said maximum deductible amounts. For example, if after a plan year, an employee with family coverage has \$6,000.00 in his HRA and the family deductible for the next year is \$8,000.00, the employer shall contribute \$2,000.00 in that employee's account at the beginning of the plan year instead of \$4,000.00. Additionally, if charges are paid or are to be paid in the subsequent plan year for services rendered during the previous plan year, the employee's HRA amount for assessing the employer's contribution for such subsequent plan year shall be less such charges and the employer's contribution shall be increased in the amount of such charges. The parties stipulate that the full balance of each employee's HRA account carries over from year to year and shall not be forfeited to the Employer, such shall be subject to law.

Effective ~~January 1, 2011~~ **April 1, 2012**, employees with family coverage shall pay \$110 of the health insurance premium. ~~For the life of this Agreement~~ **and** employees with single coverage shall pay \$25 of the health insurance premium.

Effective **April 1, 2013**, employees with family coverage shall pay 15% of the health insurance premium (medical/prescription, vision and dental). Effective **April 1, 2013**, employees with single coverage shall pay 15% of the health insurance premium (medical/prescription, vision and dental).

Section 22.2. The Employer shall continue to provide all employees in the bargaining unit life insurance at the present or substantially equivalent benefit levels. Effective **April 1, 2013**, employees shall pay 15% of the premium.

ARTICLE 23, WAGES

Section 23.1. The following pay scale will be used to compensate Deputies:

	Effective January 1, 2011	Effective April 1, 2012	Effective April 1, 2013	Effective April 1, 2014
Deputies				
0-3 years	\$11.48	\$11.48	\$11.73	\$12.23
3-4 years	\$11.90	\$11.90	\$12.15	\$12.65
4-5 years	\$12.31	\$12.31	\$12.56	\$13.06
5-6 years	\$12.72	\$12.72	\$12.97	\$13.47
6-7 years	\$13.13	\$13.13	\$13.38	\$13.88
7-8 years	\$13.55	\$13.55	\$13.80	\$14.30
8-9 years	\$13.96	\$13.96	\$14.21	\$14.71
9-10 years	\$14.36	\$14.36	\$14.61	\$15.11
10-11 years	\$14.77	\$14.77	\$15.02	\$15.52
11-12 years and greater	\$15.20	\$15.20	\$15.45	\$15.95

Section 23.2. Sergeants shall be paid **the following hourly rate:** ~~three percent (3%) above~~ the top Road Patrol Officer.

Effective January 1, 2011	\$18.20
Effective April 1, 2012	\$18.20
Effective April 1, 2013	\$18.45
Effective April 1, 2014	\$18.95

Lieutenants shall be paid three percent (3%) above the pay rate for the Sergeants.

Section 23.3. The following pay scale will be used to compensate Civilian Dispatchers:

	Effective January 1, 2011	Effective April 1, 2012	Effective April 1, 2013	Effective April 1, 2014
Dispatchers				
0-3 years	\$10.57	\$10.57	\$10.82	\$11.32
3-4 years	\$10.83	\$10.83	\$11.08	\$11.58
4-5 years	\$11.11	\$11.11	\$11.36	\$11.86
5-6 years	\$11.42	\$11.42	\$11.67	\$12.17

6-7 years	\$11.73	\$11.73	\$11.98	\$12.48
7-8 years	\$12.07	\$12.07	\$12.32	\$12.82
8-9 years	\$12.41	\$12.41	\$12.66	\$13.16
9-10 years and greater	\$12.76	\$12.76	\$13.01	\$13.51

Section 23.4. Longevity Pay. All full-time bargaining unit employees in the classification of Deputy, Sergeant or Lieutenant who have completed twelve (12) years of continuous service in the employment of the County, shall have, commencing on the anniversary date beginning their thirteenth year of service, an additional twenty cents (\$.20) added to their hourly base pay effective January 1, 2005. This amount shall increase to twenty-five cents, effective January 1, 2006, and again increase to thirty cents (\$.30), effective January 1, 2007. **For an eligible employee, this amount is added to his/her wage rate(s) but it does not multiply. Such eligible employees who are not currently receiving the benefit shall begin receiving it on April 1, 2013.**

Section 23.5. Longevity Pay. All full-time bargaining unit employees in the classification of Dispatcher who have completed ten (10) years of continuous service in the employment of the County, shall have, commencing on the anniversary date beginning their eleventh year of service, an additional twenty cents (\$.20) added to their hourly base pay effective January 1, 2005. This amount shall increase to twenty-five cents, effective January 1, 2006, and again increase to thirty cents (\$.30), effective January 1, 2007. **For an eligible employee, this amount is added to his/her wage rate(s) but it does not multiply. Such eligible employees who are not currently receiving the benefit shall begin receiving it on April 1, 2013.**

Notwithstanding the above language, the following employees will receive the corresponding amount of longevity pay through the life of this Agreement: ~~Scott Trussel, \$2.40~~; Don Mohler, \$.90; Brian Holman \$.90, **Jim Stacy \$.90.**

Conclusion

In this report I have attempted to make reasonable recommendations that both parties will find acceptable. If errors are discovered or if the parties believe they can improve upon the recommendations, the parties by mutual agreement may adopt alternative language.

After giving due consideration to the positions and arguments of the parties and to the criteria enumerated in ORC 4117.14(G)(7)(a) to (f) the Fact Finder recommends the provisions as enumerated herein. In addition, all tentative agreements (TAs) previously reached by the parties along with all sections of the current Agreement not negotiated and/or changed, are incorporated by reference into this Fact Finding Report and should be included in the resulting collective bargaining agreement.

Respectfully submitted and issued at Columbus, Ohio this 16th day of November 2012.



Felicia Bernardini,
Fact Finder

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of this Fact Finder Report was sent by e-mail and First Class USPS Mail on November 16, 2012 to:

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