

FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
May 11, 2013

In the Matter of:)	
)	
The Ohio Patrolmen’s Benevolent Association)	
)	
)	SERB Case No:
)	12-MED-05-0536
vs.)	
)	
The Putnam County Sheriff)	
)	
)	

APPEARANCES

For the Union:

Michelle Sullivan, Special Counsel for the OPBA
Laura Schwarzman, Putnam County Sheriff’s Office Dispatcher

For the Putnam County Sheriff:

Fred Lord, Clemans, Nelson and Associates; Attorney for the Sheriff
Brad Brubaker, Putnam County Sheriff 911 Coordinator
Laura Huff, Administrative Assistant to the Putnam County Sheriff
Aaron Weare, Clemans, Nelson and Associates, Senior Consultant

Fact Finder: Dennis M. Byrne

Background

The fact-finding involves the Putnam County Sheriff (Employer) and Sheriff's Office Communications Staff (Dispatchers/Union) represented by the Ohio Patrolmen's Benevolent Association. The bargaining unit consists of the nine (9) full time communications personnel employed by the Sheriff. Prior to the Fact Finding Hearing, the parties engaged in a number of negotiating sessions over a successor agreement for a contract that expired on December 31, 2012. The parties made numerous changes to their contract, but were unable to reach agreement on all of the open issues. Consequently, there are four (4) issues still on the table. These issues are (1) Life and Medical Insurance; (2) Holidays; (3) Overtime, and (4) Wages.

The Fact Finder offered to mediate the outstanding issues, but the parties did not agree to a mediation session. The Hearing commenced at 10:00 A.M. on April 18, 2013 at the Putnam County Sheriff's Office and ended at approximately 12:00 P. M.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations in Rule 4117-9-05. The criteria are:

- (1) Past collectively bargained agreements, if any.
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved.
- (3) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards of public service.
- (4) The lawful authority of the public employer.
- (5) Any stipulations of the parties.
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or private employment.

Introduction:

Prior to the current round of negotiations, the Sheriff negotiated with the four unions that represented his employees at the same time. Therefore, the changes to the individual contracts were negotiated at the same time that provisions affecting all four contracts were discussed. However, before these negotiations, the Sheriff decided that he would negotiate with each unit independently. The communications operators are the last of the four units to finish negotiations. Unfortunately, the other units were unable to reach agreement on new contracts, and each unit went to Fact Finding. It is possible that all four units will also go through the conciliation procedures of ORC 4117. This may lead to a situation where eight (8) different Neutrals opine over the same or similar issues.

This may cause a problem. First, there may be similar issues between the parties, and the conciliation process may lead to different contract language on these issues. For example: this Fact Finder must give a recommendation on the health care provision of the contract, and that recommendation may not be the same as the Fact Finder's recommendation for the patrolmen. This problem may persist at conciliation because the different Conciliators may believe that each Fact Finder's recommendation(s) was reasonable. Consequently, there is a possibility that the different bargaining units may have different contract language on the same issue. This may ultimately lead to more negotiations between the parties to align the different contracts after the parties exhaust the dispute resolution procedures in ORC 4117.

This Fact Finder is aware of this conundrum; however, the instant case is between the Sheriff and the Communications Operators. Therefore, the Fact Finder will examine

the parties' positions on the issues in this dispute and make recommendations based on the evidence before him with regard to the communications staff.

There is a second potential problem. The Sheriff changed his outside Counsel for this round of negotiations. The new consultants suggested that the current contract(s) should be analyzed to determine if there were problems with the existing labor agreement. As a result, the Employer made numerous recommendations on almost all of the articles in the agreement. Many of these changes are editorial, but some are substantive. For example, there have been changes in the interpretation of the law or new laws enacted that necessitated changes in the language of the parties' agreement.

However, the results of the consultant's analysis may affect this fact-finding if the analysis identifies contract clauses that are somewhat unusual or that may cause future problems from the Employer's viewpoint. Collective Bargaining is not an exact science. Many clauses find their way into contracts as the result of compromises and trade offs that allowed the parties to reach an agreement at a given moment in time. Unfortunately, an analysis of the contract at a later date often does not recognize the tradeoffs, only the fact that the clause is "unusual." Therefore, an analysis of a contract, without an understanding of the bargaining history behind the language, may lead to demands that create problems for the parties. As a case in point, the Holiday issue may be an illustration of this problem.

One final issue that must be discussed before the issues in dispute are analyzed is the financial condition of the Employer and the County. The evidence presented by the parties shows that the County is in relatively good financial condition. The recession that affected the national and state economies did not miss Putnam County. However, the

County was able to manage its finances in a way that allowed it to be spared from the financial catastrophes that many other jurisdictions faced over the past few years. The evidence put into the record by the Union shows that the County's General Fund is financially sound and the Commissioners have been able to move funds into different accounts to pay off debts, etc.¹ The Employer did not dispute this presentation.

The Employer did argue that the Sheriff's budgetary allocation had been cut over the years and that currently the Sheriff's has a budget shortfall of \$35,000.00. In addition, the Employer pointed out that the Sheriff had lost funding for a number of grants and that the financial outlook for the Department was uncertain. The Employer went on to testify that the Emergency Communications Division had a pressing need for new equipment and that there was some possibility that the citizens would not vote for the communications levy when it came up for renewal.

The Union responded that the communications levy had comfortably passed every time that it was on the ballot. Moreover, the Union pointed out that 911 fund budget carryover could pay for new equipment and also pay for the 911 operations for a year. The Union believes that the data prove that the County and the Sheriff have the ability to pay its demands. The Employer concurred with the assertion that the County was well run. However, the Employer reiterated that because the future was uncertain, the Employer must take a very conservative view of its financial outlook.

The final testimony on this issue showed that the Sheriff turned back unused funds to the County over the past few years. That is, the Department did not spend its

¹ The data presented by the Union was voluminous records from the County Fiscal (Auditor's) Office. The Union also presented a General Fund Budget Analysis and a 911 Fund Balance Analysis.

allocation from the Commissioners and returned the unused funds. Given this history, it is not surprising that that Sheriff's budget allocation has been cut over the past few years.

The parties presented hundreds of pages of information on the County's finances and after reading and studying the entire record, the Fact Finder believes that the evidence proves that the Sheriff can afford to pay the Union's demands. That is, there is an unwillingness to pay rather than an inability to pay.

Issue: Holidays - Article 53

Sheriff's Position: The Sheriff demands that the premium pay for Easter Sunday be deleted from the contract.

Union Position: The Union demands the status quo on this issue.

Discussion: The Employer argued that no other employee in the Department receives premium pay for Easter. In addition, the comparables show that only Hancock County pays an Easter premium. Therefore, the Employer argues that there is no justification for this language in the communication workers contract.

The Union disagrees with this analysis. The Union testified that many other employees do not work on Easter Sunday, but the communications staff works 24 hours a day 365 days a year; and there is always someone working Easter. In addition, the Union claims that the Employer is asking for a concession and is offering no quid pro quo. Finally, the Union testified that the benefit was added into the contract during the last round of negotiations and that the Employer has given no reason for any need to change the existing language.

The Fact Finder believes that this is a time when the Employer's representative's analysis of the contract showed that the dispatchers enjoyed an "unusual benefit," and there was no reason for to pay the benefit. Moreover, the Employer's representative sees this as a bad precedent or a potential problem for the Sheriff, and would like to see the language removed. The Fact Finder cannot be sure of the exact reason for the Employer's demand; but regardless, the Employer gave no reason for demanding this concession. Therefore, based on the evidence in the record, the Fact Finder does not find that the Employer proved that the current language should be changed.

Finding of Fact: The Employer did not prove that there was a need for a concession from the Union.

Suggested Language: Current contract language.

Issue: Article 24 - Overtime

Sheriff's Position: The Employer desires to change the definition of "hours worked." The current language counts sick leave and compensatory time as hours worked for the determination of overtime.

Union Position: The Union rejects the Employer's demand and wants to maintain the status quo.

Discussion: The current contract language allows for the pyramiding of overtime. That is, if an employee calls off sick and/ or takes compensatory time, then that person's replacement must be (will probably be) paid overtime for any hours worked. Therefore, the person who misses a shift is paid either straight time or time and one-half, and his replacement is also paid overtime. The Employer wants to amend the definition of hours

to state that overtime will be paid for time in active pay status. This will reduce the overtime payments made by the Employer and reduce labor cost.

The Employer presented comparables data on this issue. That data show that only three (3) of ten (10) surrounding Counties allow either the use of compensatory time or sick leave in the definition of hours worked. The data shows that adopting the Employer's position on this article will save the Sheriff somewhat over \$6,500.00. This is not an excessive amount of money, and it will not make a large difference in the Sheriff's budgetary position. In many ways the \$6,500.00 is more valuable to the Dispatchers than it is to the Sheriff.

The Fact Finder is aware of the literature on pyramiding of overtime; and although the data do not suggest that is a severe problem in the Putnam County 911 operations, pyramiding is a problem. Compensatory time must be paid at time and one half because it is earned in lieu of overtime pay. Therefore, if an employee chooses to take time off rather than overtime pay, she/he is paid overtime, and her/his replacement is also paid at the overtime rate. Again, the data do not show that this is a severe problem, but it is a problem nonetheless.

Given all of the data and testimony on this issue, the Fact Finder believes that the Employer's demand to change the definition of time worked to delete compensatory time is reasonable.

However, there is little reason to include sick leave in this demand. The data show that sick leave use is minimal, and counting sick leave in the definition of hours worked will have little impact on the Sheriff's budget. Moreover, the change in the definition of hours worked will negatively impact the employee's take-home pay.

Consequently, the Fact Finder is not recommending the deletion of sick leave in the definition of hours worked. If sick leave is a problem, then future negotiations are the place to address that problem.

Finding of Fact: The current definition of time worked for the calculation of overtime allows the pyramiding of overtime.

Suggested Language:

A - G Current Contract Language:

H. Hours actually worked in excess of forty (40) hours in the seven (7) consecutive calendar day work period will be considered as being overtime. For purposes of this article, hours actually worked shall include time compensated for sick leave, holiday pay, and vacation leave. Hours actually worked shall exclude overtime hours worked, compensatory leave, and time spent in unpaid status.

I - J Current Contract Language

Issue: Article 20: Life and Medical Insurance

Sheriff's Position: The Employer wishes to remove the cap on the employee's potential contributions to the medical plan.

Union Position: The Union rejects the Employer's proposal with regard to the cap. In addition, the Union wants to maintain current language with respect to the CEBCO-4 insurance plan found in Article 20 (C).

Discussion: The CEBCO-4 plan is the health insurance plan in effect at the current time. The Sheriff wishes to change the language to, "the Putnam County Commissioner's Insurance Plan(s)." The Union argues that this change would allow the Employer 'carte blanche' to determine a matter that is a mandatory subject of bargaining. The Employer disagrees with this contention. The Sheriff contends that there is some chance that the

CEBCO-4 plan will be eliminated or that the Commissioners might find a plan that better fits the needs of the Putnam County labor force.

The Fact Finder agrees with the Employer in this instance. The Union must be consulted if the County plans to change insurance carriers. If the Union believes that the new plan is substantially different from the existing plan, then it has the right to grieve the issue. This is settled in law, and the Fact Finder does not believe that the Union's concerns are justified under the language proposed by the County.

However, the main disagreement is over the cap on premium contributions paid by the Union membership. The language in the contract states, "The employees' contributions for medical care will not increase by more than twenty percent (20%) during the life of the collective bargaining agreement." The Employer argues that no other County employee is covered by a cap, and if the 911 operators benefit from the insurance plan, then they should shoulder the same risk as the other individuals covered by the same plan. The Union disagrees.

Both parties agree that the cap has not been binding for a number of years because the premium growth rate has not approached 20% over the last few years. Moreover, both sides use this fact to buttress their positions. The Employer contends the cap is unnecessary and should be eliminated. The Union argues that the cap is not binding and keeping the language in the contract has no impact on the Employer.

The implementation of the new health care law further clouds this issue. Discussions of the impact of the Affordable Care Act on premiums range from no change to changes of over 30%. There is no consensus on the issue, but it is reasonable to assume that premiums will increase as the new plan is implemented. The size of any

increase is unknown. Therefore, there is uncertainty surrounding the impact that the Affordable Care Act will have on health insurance premiums. This uncertainty adds to the Employer's desire to see the cap deleted from the agreement and to the Union's desire to maintain the status quo on the issue.

The Employer's argument that all other county employees do not have a cap is true, but not totally germane. It is also true that some other comparable jurisdictions do not have a cap, but that does not necessarily mean that the cap should be deleted from the communication workers contract. Comparability is a factor that a Fact Finder must consider when making a recommendation, but there are other considerations and current contract language must also be considered. That is, there is some reason that the current language found its way into the agreement. There is no reason to delete current language without a compelling reason. The Employer did not present any evidence that the cap was causing any problems for the County.

There was discussion about the reason that a cap was in the contract. The parties agree that the language was a quid pro quo for the Union accepting a wage freeze. The Employer claims that the language makes it clear that the cap was supposed to expire at the end of the prior agreement. The Union disagrees with that interpretation and claims that there is nothing in the bargaining history that states or implies that the cap would (should) expire at the expiration date of the contract. The contract in question went to both Fact Finding and Conciliation, and this Fact Finder has looked at both the Fact Finding and Conciliation reports and does not see anything that makes him believe that the cap was a one time item meant to expire when the contract expired.

Given all of the facts in this matter, the Fact Finder cannot agree with the Employer's position. There is no evidence that the cap is a problem. Moreover, the uncertainty surrounding the effect that the Affordable Care Act will have on the current health care system and the impact that rising premiums could have on the communications staff's take home income convince the Fact Finder that the current language should remain in the contract.

Finding of Fact: The Employer did not prove that the current language capping the premium contributions made by the employees should be changed.

Suggested Language: Article 20

- A. Current language
- B. Current language
- C. Should the coverage provided to other county employees, by and through the Putnam County Commissioners Office, be changed or altered, such changes shall be applicable to the coverage herein provided following notice and meeting with the Union at least forty –five days prior to implementation for bargaining unit employees. The Employer will provide medical insurance coverage under the Putnam County Commissioners Insurance plan(s) during the life of this agreement.
- D. Employees must opt for either a high deductible or low deductible plan at the rates established by the Putnam County Commissioners and the insurance plan.
- E. Current language
- F. Insurance Opt Out. Any employee who has been covered under the County's Health Insurance and who has insurance available to them through their spouse or other family member, can elect to "opt out" of the County Sponsored health insurance. In lieu of the employee taking the county sponsored health insurance, the Employer shall pay \$1000.00 per year on the first pay period in January for the Calendar years 2013, 2014, 2015.

If the employee must sign up for the County's health insurance for some unforeseen reason, any prepaid stipend for the calendar year will be pro-rated by the Putnam County Commissioner's Office, and repaid to the Employer by the employee through payroll deduction.

Employees eligible for the “opt out” payment set forth above include the following employees; 1) Employees eligible for the “opt out” payment under the prior collective bargaining agreement; and 2) current employees who have been covered by the county’s health insurance for an uninterrupted two-year period as of the date the employee requests to “opt out” of the county’s health insurance.

Note: The Fact Finder is recommending that the Union’s suggested language be added to the contract under Section F. The Fact Finder is not recommending a change in the “opt out” provision. The Fact Finder read the Union’s language and does not believe that it changes anything in the “opt out” provision. If that is not the case and the County wishes to contest this language, the Fact Finder will maintain jurisdiction of this issue to discuss any concerns raised by the County.

Note: The discussion and recommendation on Health Insurance is also related to the discussion on wages and the effect that removing the cap might have on the take home earnings of the dispatchers. The two issues should be seen as interrelated because of the effect both have on earnings.

Issue: Article 57 – Wages

Sheriff’s Position: The Employer is proposing a 1.0% increase in the first and second year of the proposed contract and 1.5% in the third year.

Union Position: The Union is proposing 4.0% in the first year, 3.0% in the second year and 3.0% in the third year of the proposed contract. The Union also wants to increase the step raises. Finally, the Union demands that a Dispatcher who is designated by the Sheriff to supervise the dispatch office should be given a \$.25 per hour increase in his/her pay.

Note: The Union demanded an increase in the step payments, but did not give a proposed increase. Consequently, the Fact Finder assumes that the demand is the same as the wage demand.

Discussion: The introduction of this report answered the question whether the Sheriff could afford to meet the Union’s wage demand. The data provided by the

parties proved that the answer is yes. However, the second part of the equation is whether the Sheriff should meet the Union's wage demand. The following discussion will attempt to answer that question.

The Sheriff's representatives presented evidence on all open issues before the Fact Finder, especially an analysis of the wage issue. The data seems to show that the dispatchers are paid as well as other individuals performing the same or similar work in comparable jurisdictions. For example, the data show that the average wage of starting and top end individuals in Putnam County is similar to the same data for communications workers in the surrounding area. The same data is presented for average annual salaries.²

However, a closer examination of the numbers shows that two (2) of the nine (9) dispatchers (Williams and Hovest) are paid approximately \$10,000.00 more than the other employees. The reason seems to be that Williams is a twenty-seven (27) year employee and Hovest is a twenty-four (24) year employee. If these two individuals are not counted in the average, then the data show that the average communications operator in Putnam County makes significantly less than other similarly situated workers.³

This data show that the average dispatcher is paid an hourly wage of \$15.02. That number falls to \$14.14 if Williams and Hovest are not included in the calculation. This means that the average wage for the majority of the dispatch

² This is SERB data and it does not match with the data supplied by the Auditor's office.

³ The data used in this report are the data supplied by the County dated April 12, 2013 in the costing section of the Management binder. There are four or five different wage scales and yearly incomes listed in the parties' submissions. The Fact Finder believes that data supplied by the County is payroll data and accurate.

staff is over 6.2% lower than the total department average. The same analysis shows that the average yearly income for the dispatchers falls from \$31,835.00 to \$29,403.00 or approximately 7.6% less than the average for all nine (9) dispatchers. It must also be noted that the other seven (7) dispatchers have an average tenure of over six (6) years.

For comparison, the Employer presented data that shows the starting yearly wages of dispatchers in Henry, Paulding and Van Wert counties is \$28,724.00. That is, the Putnam County dispatchers with an average of over six (6) years of service are paid only 2.3% more than starting dispatchers in contiguous counties.⁴ Therefore, the Fact Finder believes that the data cited by the Employer show that the dispatchers are underpaid if the two dispatchers with very long tenure are analyzed separately.

The next factor to be considered is the testimony in the record. Laura Schwarzman testified for the dispatchers. Ms. Schwarzman stated that she was a single mother and was forced to apply for welfare because her salary did not meet her family's needs. She went on to testify that other single dispatchers held multiple jobs and had trouble making ends meet. She stated that the Employer's concessionary demands coupled with its wage offer, would lower her income

⁴ The data on contiguous counties is based on an Employer exhibit and the Fact Finder excluded Williams County. If Williams County is included, the exhibit shows the Putnam Dispatchers with over six (6) years of service are paid 12% more than other starting dispatchers. Williams County pays a starting salary of \$9.00 per hour and has a starting salary of \$18,720.00. This is slightly above minimum wage. Therefore, the Fact Finder does not believe Williams County is a realistic comparable to Putman County in any sense of the word.

enough to qualify for welfare. She stated that her current income was only \$100.00 dollars above the threshold level needed to qualify for welfare.

The Employer did not try to refute Ms. Schwarzman's testimony; rather, the Employer stated that the County and the Sheriff had a very conservative fiscal outlook and tried to keep expenses below revenue. Using the common analogy, the Sheriff planned for a rainy day. The evidence proves that this frugal outlook has been successful, and Putnam County has weathered the fiscal storm that has plagued the state and nation since 2007. However, both the state and national economies are strengthening; and consequently, the County's fiscal outlook is also much brighter than it was a few years ago.

A dispatcher must have an unusual skill set, and the dispatcher is the only interface between a person in need of assistance and the public safety forces that provide assistance. The dispatcher is an integral part of a well trained, professional public safety team. Consequently, dispatchers should be paid a living wage. A ten (10) year veteran dispatcher should not need welfare to support herself and her children. This is especially true when the evidence proves that the County and the Sheriff can afford to pay a living wage.

In the last few years, Fact Finders and Conciliators have recommended wage freezes, increased contributions for medical care, etc. However, in almost all of these instances, the jurisdiction under examination needed fiscal relief. That is not the situation in Putnam County. Again, the Commissioners and the County's fiscal staff navigated through the storm of the past years. But, at least as it regards the communications staff, the rainy day has arrived.

The Fact Finder does not believe that a jurisdiction should pay increased wages and benefits simply because it has a carryover in its General Fund. In order for a neutral to recommend a wage and/or benefit increase, two questions must be answered. First, can the jurisdiction afford to pay higher wages and benefits? Second, does the evidence prove that the employees deserve an increase? In this case, the answer to both questions is yes. The Fact Finder believes the combination of the facts in the record and the testimony of the witnesses proves that the wages paid to the dispatchers are well below the market rate.

Given all of the information in the record, the Fact Finder is recommending the Union's position with a slight modification on this issue. That is, the Fact Finder recommends that the communications staff receive a three percent (3%) increase in each year of the prospective contract. The Fact Finder finds that the evidence strongly supports the Union's position.

There are two other issues on the table with regard to wages. First, the Union demands an increase in the step payments found in the contract. After some work, the Fact Finder determined that the difference between the steps is \$1,107.00. This flat rate difference means that the percentage wage increase paid to the less tenured employees is greater than the percentage increase paid to the more tenured staff. This is unusual, but not unheard of. However, given that the Fact Finder has recommended the Union's wage position, he does not recommend a change in the dollar amount paid as a dispatcher moves through the steps.

In the same vein, the Fact Finder is not recommending a change in the amount paid to the lead dispatcher. However, given the size of the payment, that is an issue that probably should be examined in future negotiations.

Finding of Fact: The record shows that the Putnam County Communications Staff are not paid as well as other individuals performing the same or similar work. The record also shows that the Putnam County General Fund and the Sheriff's dispatch budget can afford to pay a wage increase to the dispatchers.

Suggested Language: Article 57 (B)

...Employees will receive annual percentage increases as follows:
effective January 1, 2013 – three percent (3.0%) increase; effective
January 1, 2014 – three percent (3.0%) increase; effective January 1, 2015
– three percent (3%) increase.

Sections A, C, and D Current Language

Signed this ____day of May 2013, at Munroe Falls, Ohio.

Dennis M. Byrne, Fact Finder