

SERB FACT-FINDING

OHIO PATROLMEN’S BENEVOLENT ASSOCIATION) SERB CASE: 2012-MED-10-1097
) HEARING HELD ON THE ABOVE MATTER
 and.) JUNE 25, 2013
)
 ATHENS COUNTY COMMISSION) BEFORE WILLIAM BINNING PH.D.
) SERB FACT-FINDER
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PRINCIPAL ADVOCATE FOR THE OPBA

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 Mark J. Volcheck, OPBA Attorney
 Teresa Savage, OPBA Representative
 Elizabeth McQuade, OPBA Representative

Present at the Hearing for the Employer:
 Edward S. Kim –Employer Legal Representative
 Lenny Eliason – Athens County Commissioner
 Dan Pfeiffer - Athens County 911 Interim Director

INTRODUCTION

This Fact-finder was properly appointed to this case by Ohio SERB on May 1, 2013. The parties agreed to a hearing date of July 2, 2013 at the Athens County 911 Center.

The parties met to negotiate on November 9 and December 20, 2012 and on February 20 and March 21, 2013.

The parties tentatively agreed to a number of issues. At the time of the hearing,, there were five outstanding issues and a number of sub issues.

The parties engaged in good faith mediation with this Fact-finder and few issues were resolved. The parties tentatively agreed to accept existing language in Article 35 "Duration of Agreement". This was agreed to with the understanding that any percentage wage increases granted for 2013 would be retroactive to January 1, 2013. The parties have an initialed tentative agreement on that issue.

The parties also agreed to the following Vacation language: Section 25.5. The order of selection vacation leave shall be by classification seniority. In order to be granted preference based on classification seniority, requested vacation time must be submitted to the employee's immediate supervisor by April 15 of each calendar year. At least two bargaining unit employees shall be permitted vacation leave at any one time. Additional employees shall be permitted vacation leave so long as authorized by the Employer.

These Tentative Agreements reached by the parties were initialed by the parties and are part of the recommendations of this report.

The Fact-finder would like to thank the Advocates Edward S. Kim and Mark J. Volcheck for their excellent pre-hearing statements. I would also like to acknowledge their excellent and patient presentations to educate this Fact-finder on the outstanding issues.

OUTSTANDING ISSUES

The remaining issues after mediation include:

1. Article 20 Report-in and Call in Work. The Union has proposed additional language under this Article.
2. Article 26 Insurance
3. Article 27 Wage Schedule, and the Union has proposed increases for and new supplemental pay for certain tasks.

CRITERIA

OHIO REVISED CODE

The Ohio Revised Code, Section 4117.14 (C) (4) (E) establishes the criteria that is to be considered by the Fact-finder. The criteria are listed below and were given weight by this Fact-finder in making his recommendations for this matter. The criteria are:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement.
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors, not listed above, which are normally or traditionally used in disputes of this nature.

ISSUE 1

ARTICLE 20 REPORT-IN AND CALL-IN WORK

The parties tentatively agreed to the following language changes for this article. The **emboldened** changes were offered by the Union and accepted by the Employer:

Section 20.1 Any employee, who accepts an authorized request to work during hours outside his regularly scheduled time, excluding court duty, shall be paid in the following manner after reporting to his regular work assignment:

- A. An employee called while at home and required to begin work anytime more than one (1) hour prior to his regularly scheduled shift shall be guaranteed a minimum of two (2) hours pay at his regular rate of pay for such work in addition to his regularly scheduled shift pay.
- B. An employee requested to begin work anytime within the one (1) hour immediately preceding the start of his regular shift shall be paid only for the time actually worked.

Section 20.2 The following shall be the order of call-out if replacing employees who call in sick, **use personal leave, or utilize other authorized leave** with less than three (3) days notice to the Employer.

- A. Full-time employees on day off by seniority.
- B. Remaining full-time employees by seniority.
- C. Split shift between employees coming off or coming on duty by seniority.
- D. **Voluntary call-in of intermittent employee**
- E. Mandatory call-in of an intermittent employee
- F. Mandatory call-in of a full-time employee per Section 20.3

Section 20.3 Distribution of Overtime. The Employer will maintain an overtime list by seniority. When the Employer determines to offer an overtime opportunity not referenced in Section 20.2 above, it shall offer the opportunity in the following manner:

- A. For vacations, compensatory time or personal leave of three (3) consecutive days or less and submitted two (2) weeks or more prior to the scheduled date. Overtime shall be offered **to full-time employees first.**
 - 1. The first employee on the overtime list. If that employee rejects the opportunity, the Employer shall move down the list until the opportunity is accepted. If the first employee on the list accepts or rejects the opportunity, that employee shall be moved to the bottom of the list. The process will continue until the overtime opportunity has been accepted;
 - 2. Intermittent employees;

3. Mandate that an intermittent employee work the overtime;
 4. If all intermittent employees are working or unavailable, the Employer may mandate that an employee work the overtime opportunity by starting at the bottom of the list with the least senior employee and moving up the list each time it is necessary to mandate overtime.
- B.** For vacations, compensatory time or personal leave of more than three (3) consecutive days. Overtime shall be offered/filled in the following manner.
1. Intermittent employees
 2. Mandate that an Intermittent employee work the overtime;
 3. The first employee on the overtime list. If that employee rejects the opportunity, the Employer shall move down the list until the opportunity is accepted. If the first employee on the list accepts or rejects the opportunity, that employee shall be moved to the bottom of the list. This process will continue until the overtime opportunity has been accepted;
 4. In the event that the overtime opportunity is not voluntarily accepted, the Employer may mandate that an employee work the overtime opportunity by starting at the bottom of the list with the least senior employee and moving up the list each time it is necessary to mandate overtime.
- C.** Leave may be cancelled or rescheduled by the requesting employee with four (4) weeks in advance notice.
- D.** All other overtime opportunities not addressed above, **including but not limited to bereavement leave and employees absent for training shall be offered/filled in the following manner:**

There are no additional language changes offered to existing language under this Article. The parties agree and the Fact-finder recommends the above language. There are additional sections proposed by the Union for this Article and they are addressed below.

ISSUE 1 CONTINUED

The Union proposed the following additional sections under Article 20 of the Contract:

Section 20.5 Special events/ details requiring dispatch services for jurisdictions served by Athens County 911 shall be offered to bargaining unit employees and filled by bargaining unit employees in order of most seniority before such are offered to and/or filled by any other personnel.

UNION POSITION

The Union argues that when a concert or festival operator hires members of the County Sheriff office for security, management often takes the dispatching work for themselves. The Union members believe they should be offered this work and propose the language stated above.

COUNTY POSITION

The County is opposed to this language since it is a private party, not the county, that is paying for this work and this proposed language could lead to a number of complications.

DISCUSSION AND RECOMMENDATION

Since this work does not involve county funds for payment of the work because a private party is paying the security providers, in this case deputies, directly, then the work does not appear to come under the contract. Adoption of this language might lead to further complications. However, management to retain good moral should take into account the resentment of the dispatcher unit about this issue. **The proposed language is not recommended.**

ISSUE 1 CONTINUED

The Union proposes the following language to Section 20 of the contract: The following language was amended during the hearing. It is that language that is offered below:

Section 20.6 The employer is prohibited from requiring employees to answer/respond and/or report to work if contacted by telephone message or texted (or otherwise given a message) by the Employer while the employee is off duty.

UNION POSITION

This issue arose after bargaining by the parties was completed in 2013. The Acting Director of the 911 Center sent a memo to all employees of Athens 911 on May 22, 2013 requiring them to **“return ALL TEXTS or CALLS ...within one hour.** (see OPBA Exhibit 1) The Union argues this policy is unfair and proposes the above language to protect them from being disciplined for not answering their phone, which they might not even have access to.

EMPLOYER POSITION

The Employer is opposed to the language because it will preclude them from mandatory call-ins when they need staff.

DISCUSSION AND RECOMMENDATION

At the hearing, the Employer withdrew the memo to All Employees dated May 22, 2013 from the Acting Director. The Union, while preferring its offered contract language stated above, expressed few concerns about the past practice, which was in effect prior to the May 22nd memo. The Employer wishes to retain the management right of mandatory call in, which is in the current language. This Fact-finder assumes the language in the May 22, 2013 policy will not be reinstated, that past practice will remain undisturbed and therefore **the proposed Union language is not recommended**. If this Fact-finding report is rejected and moves to conciliation, this Fact-finder is concerned about protecting management's right of mandatory call in. On the other side, the recently promulgated rule requiring a response to a telephone call or text in one hour, which was withdrawn during this hearing, in the view of this Fact-finder, was excessive and unreasonable. If the policy is reinstated, then the Union has cause to demand protection in the contract. Again this proposed language is not recommended at this time.

ISSUE 2

INSURANCE

EMPLOYER POSITION

The Employer proposes that the Employer contribute ninety 90% and the Employee shall contribute ten 10% percent of the total insurance premium for major medical, prescription, dental ,and vision for a single plan.

The Employer proposes that the Employer contribute eighty 80% and the Employee shall contribute twenty 20% of the total insurance premium for major medical, prescription, dental, and vision for a family plan.

UNION POSITION

The Union proposes current language on premium sharing percentages that are 10% for single coverage and 15% for family coverage.

The Union also proposed additional language addressing "substantially equivalent" benefits.

DISCUSSION AND RECOMMENDATION

The parties offered different sets of comparables. The Union relied on SERB data on premium sharing and state averages. (See OPBA Exhibit 7). The Employer relied on internal comparables specifically the other two Athens Sheriff and OPBA contracts. (Athens County

Commissioners Tab 20). Those contracts have the 20% premium share for family coverage. The 15% premium share came from the last conciliation award for this unit (See OPBA Exhibit 5). The most interesting and most complex argument was the County's argument about the impact of the Affordability Care Act on premium sharing and benefits, which was presented as the basis for the employer to deny "substantially equivalent" language. Substantially equivalent language is quite common in contracts that this Fact-finder is familiar with. Management has a stipulated right to select the carrier. (See below)

RECOMMENDATION

The following language is recommended for Insurance:

Section 26.1 The Employer shall contribute ninety (90%) percent and the Employee shall contribute ten (10%) percent of the total insurance premium for major medical, prescription, dental and vision for a single plan.

The Employer shall contribute eighty-five (85%) and the Employee shall contribute fifteen (15%) percent of the total insurance premium for major medical, prescription, dental and vision for a family plan. The County shall choose the carrier.

For the insurance plans described in this section, the Employer shall continue to provide benefits and coverage substantially equivalent to the level of benefits and coverage presently provided.

ISSUE 3

WAGES

The third issue is wages. In addition to a percentage increase in wages, the Union has proposed an increase for one supplemental pay and has proposed a new supplement. They will be addressed separately as Wages –A, Wages-B, Wages-C. The Fact-finder recognizes that they are only separated as issues for the purpose of discussion and recommendation. All wage increases should be seen as part of a total wage package, and an increased financial burden on Athens County.

WAGES-A

UNION POSITION

"The Union proposes across-the- board increases to the wage scales of 3.5%, effective January 1, 2013, 3.5% effective January 1, 2014, and 3.5% January 1, 2015."

EMPLOYER POSITION

"The Employer proposes wage increases throughout the life of the contract as follows:"

Year	Increase
2013	1%
2014	1%
2015	1%

“The 2013 increase would be retroactive to the first full paid period following December 31, 2012.”

DISCUSSION AND RECOMMENDATIONS

The discussion of the proposed wage increase provided here should also be taken into account when the supplemental pay proposals are discussed below, to avoid repetition.

The comparables offered by the parties are quite different. The Union relies heavily on the Dispatcher contracts for the City of Athens and the Dispatchers at Ohio University. The County argues these are not proper comparables and offer as their comparables the hourly rates of pay for all Dispatcher contracts by political subdivisions in the state of Ohio. They also break that data down and organize it by the size of the county to show how Athens County compares to counties of similar size in Ohio.

The Union offered as one of its exhibits (OPBA – 16) the General Wage Increase for this bargaining unit since 2004, which showed very generous wage increases in the very difficult times during and after the Great Recession.

The Union presented data on the financial condition of the Athens County call center, which has a dedicated revenue stream of .25% sales tax and has carried a significant carry over balance in recent years. (OPBA – 23). The County emphasized that any percentage increase would result in significantly larger pay increases because the employees also enjoy step increases. (Employer Tab 7). The Employer placed on the record extensive financial data on the County’s finances. (Employer Tabs 10, 11, 12). The Employer presented evidence that the total revenue for the call center, primarily from the .25% sales tax is close to breaking even with expenditures. (Employer Tab 11).

Athens County has not had a robust recovery since the Great Recession and its revenue for the call center is a percentage of the sales tax, which is a very elastic tax. That means that revenue can vary significantly over a short period of time. The national recovery at this time is very tepid. This Fact-finder is reluctant to recommend significant increases in personnel costs, even though they are merited in some instances.

RECOMMENDATION WAGES-A

Year	Wage Increase
2013	2%
2014	2%
2015	3%

If this wage increase is accepted, the language offered by management is recommended: "The 2013 pay increase will be retroactive to the first full pay period following December 31, 2012 period." (Athens County, Position Statement, p. 4).

RECOMMENDATION WAGES-B

Training Officer Supplement

The Union is proposing increasing the compensation for training. The Union's recommended language for Section 27.7 is, "The Training Officer shall be compensated an additional one dollar and fifty cents (\$1.50)." That is a proposed \$1.00 increase from the current supplement of fifty cents. The evidence provided for this increase was presented by the testimony of the members of the bargaining unit, who were present at the hearing. This Fact-finder was persuaded that this was a burdensome responsibility. There was no evidence provided on what the total training costs were in past years for the County. It appears to be intermittent work and the pay is not placed in the base salary of the employee. **Therefore the following recommendation is made:**

Section 27.7 The Training Officer shall be compensated an additional one dollar (\$1.00) per hour for all hours worked in that capacity. (If this is accepted, this additional pay is not retroactive, the increase will be paid in the first full pay period after the contract is executed.)

WAGES-C

UNION POSITION

The Union is proposing new language as **Section 27.8: As long as the bargaining unit is required to provide emergency medical dispatch services and/or dispatch for Athens County EMS and/or any such successor organization, all employees shall be paid an additional \$1.25 per hour which shall be added to each employees' base salary.**

EMPLOYER POSITION

The employer is opposed to this new language and argues that some units in the state have EMS duty and receive less compensation than the Athens County Dispatchers. They argue that they have added an additional staff member to alleviate the burden of the additional duties.

DISCUSSION AND RECOMMENDATION

Most of the evidence presented about the Union proposed Section 27.8 by both sides was by testimony at the hearing. The Fact-finder was persuaded that despite the disputed claim that this new responsibility resulted in more calls, the Fact-finder was persuaded by the testimony of the employees at the table that these additional EMS duties did increase the responsibility and stress for the employees. This Fact-finder took that into consideration in the wage increases recommended in WAGES-A above. This added responsibility gives strength to the case for the adoption of the recommended wage increases proposed under WAGES-A above. **Adding the additional contract language for a supplemental pay of \$1.25 that is proposed to be a part of the base salary is not recommended.**

This Fact-finder recommends all of the above and all Tentative Agreements reached by the parties for this contract.

This Fact-finder submits the above recommendations to the parties this 23rd day of July 2013 in Mahoning County Ohio.

William C. Binning
SERB Fact-finder