

**FACT-FINDING REPORT  
STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD**

**March 26, 2014**

**In the Matter of** )  
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)  
**Montgomery County Sheriff's Office** )  
)  
)  
**And** )  
)  
)  
**Fraternal Order of Police,** )  
**Ohio Labor Council, Lodge 104** )

**13-MED-09-1088**

**APPEARANCES**

**For the Sheriff's Office  
Major David Hale**

**For the FOP Lodge 104  
Mark A. Scranton,  
Staff Representative**

**Fact-Finder, Marc A. Winters**

## **BACKGROUND**

The Fact-Finding involves the Montgomery County Sheriff's Office, (hereafter referred to as the "Employer") and the FOP Lodge 104, (hereafter referred to as the "Union"). The Union's bargaining unit is comprised of approximately one hundred and fifty (150) full-time Deputy Sheriffs all in accordance with SERB rules. The Montgomery County Sheriff's Office is located in Dayton, Ohio and is the fifth largest Sheriff's Office by population in the State of Ohio.

In a letter, dated December 19, 2013, the State Employment Relations Board duly appointed Marc A. Winters as Fact-Finder for this matter under the Ohio Administrative Code Rule 4117.

The parties to this fact-finding have had an ongoing bargaining relationship. The most recent collective bargaining agreement between the parties, a three (3) year agreement, expired on December 31, 2013. The parties have met on numerous occasions, October 29, November 1, November 14 and December 19, 2013, to negotiate a successor agreement and have signed approximately eight (8) tentative agreements. Although successful in resolving most issues, the parties, unable to reach an Agreement, declared impasse and proceeded to Fact-Finding.

The parties have a signed extension agreement whereby they have agreed to extend the time period for the issuance of the findings of fact and recommendations of this Fact-Finder.

The Fact-Finding Hearing was conducted on Friday, March 21, 2014, in the offices of the Montgomery County Sheriff, Dayton, Ohio. The Fact-Finding Hearing began approximately 10:00 A. M., and was adjourned at approximately 11:45 A. M.

Mediation after the Hearing was discussed and clarification of the issues were given by the parties to this Fact-Finder which created a better understanding of each party's respective position.

This Fact-Finder would like to convey his appreciation not only for the courtesy and cooperation given to the Fact-Finder by both parties, but to each other as well.

The Hearing was conducted in accordance with the Ohio Public Employee Bargaining Statue set forth in rule 4117. Rule 4117-9-05 sets forth the criteria this Fact-Finder is to consider in making recommendations. The criteria are:

1. Past collectively bargained agreements, if any.
2. Comparisons 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, given 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 issue 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 determining of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or private employment.

In addition to, the testimony given and the evidence presented, taking into consideration the Ohio Rule 4117 criteria, internal and external parity, this Fact-Finder studies and relies on various Collective Bargaining Agreements, Fact-Finding Reports and Conciliation Awards, as posted online by SERB, in writing this and any Fact-Finding Report.

Any and all items or proposals not previously agreed upon or specifically addressed within this Report are considered to be withdrawn. Any and all items or proposals agreed to and any tentative agreements made prior to the date of this Report that are not specifically addressed in this Report, are recommended to be incorporated into the new Agreement. The Parties have approximately eight (8) signed tentative agreements.

The following Articles resulted in tentative agreements.

ARTICLE 10 – Employee Disciplinary Procedure  
ARTICLE 13 – Written Directives  
ARTICLE 18 – Distribution of the Contract  
ARTICLE 19 – Uniforms  
ARTICLE 25 – Leaves of Absence  
ARTICLE 27 – Hours of Work and Overtime  
ARTICLE 28 – Holidays & Holiday Premium Pay  
ARTICLE 29 – Vacation

Except as recommended and/or modified below or mentioned above, the provisions of the predecessor agreement are to be incorporated into the new Agreement without modification.

The following Articles were unopened and will remain current language.

ARTICLE 1 – Preamble  
ARTICLE 2 – Recognition and Dues  
ARTICLE 3 – Non-Discrimination  
ARTICLE 4 – Union Business  
ARTICLE 5 – Management Rights  
ARTICLE 6 – Transfers, Trades, Assignments and Postings (to be signed)  
ARTICLE 7 – Seniority and Probationary Periods  
ARTICLE 8 – Layoff & Recall

ARTICLE 9 – Grievance Procedure  
ARTICLE 11 – Personnel Records  
ARTICLE 12 – Labor Management Committee  
ARTICLE 14 – Immunizations  
ARTICLE 15 – Blood Donors  
ARTICLE 16 – Safety  
ARTICLE 17 – In-Service Training  
ARTICLE 20 – Mileage and Parking  
ARTICLE 21 – Classification  
ARTICLE 22 – Employee Wellness  
ARTICLE 23 – Employee Performance Evaluations  
ARTICLE 24 – Promotional Process  
ARTICLE 31 – Savings Clause

Where this Fact-Finder recommends changes, it may be sufficient to indicate the change only without quoting the exact language of the party's proposals.

The following four (4) issues are the issues that were considered during the Fact-Finding Hearing on March 21, 2104.

ARTICLE 26 – Wages  
ARTICLE 30 – Insurance  
ARTICLE 32 – Duration  
ARTICLE New -Random Drug Testing

### **RECOMMENDATIONS**

The following recommendations are a good faith attempt to have both sides accept this Report and end the bargaining for now. The testimony presented and the evidence produced at the Hearing support the conclusions and recommendations below.

ISSUE NO. 1,           ARTICLE 26 – WAGES

The Employer has proposed a 1.5% increase plus step movement in each year of a three (3) year agreement.

The Union has proposed a 3.5% increase plus step movement in each year of a three (3) year agreement.

The Employer argues that the County has appropriated a 2.5% wage increase for the Sheriff's Office and that the Sheriff's Office must work within those confines. A 1.5% plus step will equal

out close enough to the 2.5% allotted by the County.

The Union argues that in the past several years this bargaining unit has lagged behind other similarly situated bargaining units in the State. The Union further argues that a look at the County's finances show that they are well funded and are able to fund the proposed amounts. Additionally, other bargaining units for the County have received a 2.5% with step movement.

The intent or rationale used for not only this proposal but for the insurance proposal is that the employees of the County all be treated equally when it comes to a wage increase if they are treated the same for sharing health insurance premium contributions.

Taking into consideration the availability of funds within the County's General Fund and the fact that the Unencumbered Funds of the County is the highest since 2009, beginning at 2014 with \$26,196,154.00. Taking into consideration other internal comparables are receiving 2.5 with step while this bargaining unit is lagging behind other similarly situated units. Taking into consideration the cost associated to the insurance proposal. This Fact-Finder, based on the testimony given and the documents in support of the testimony, asserts that the County's funds are sufficient to be able to fund the following wage increase, for the term of this Agreement, for this bargaining unit.

This Fact-Finder's recommendation is;

#### Section 26.1 – Pay Increases

Effective January 1, 2014, wages will increase 2.5%. During this calendar year, employees not currently at the top of the wage scale shall be permitted to move one (1) step.

Effective January 1, 2015, wages will increase 2.5%. During this calendar year, employees not currently at the top of the wage scale shall be permitted to move one (1) step.

Effective January 1, 2016, wages will increase 2.5%. During this calendar year, employees not currently at the top of the wage scale shall be permitted to move one (1) step.

The parties have negotiated to changes to their Longevity section and as there is no apparent disagreement as the parties have articulated practically the same changes. The Fact-Finder's recommendation is as follows.

#### Section 26.3 Longevity

A. Employees with continuous service with the Montgomery County Sheriff's Office will be eligible for annual longevity payment according to the following schedule:

Employees who have completed five (5) years, but less than ten (10) years of continuous

service, on or before November 1, of each of each calendar year will receive a payment of one and one half percent (1.5%) of their base hourly rate.

Employees who have completed ten (10) years, but less than fifteen (15) years of continuous service, on or before November 1, of each calendar year will receive a payment of one and three quarter percent (1.75%) of their base hourly rate.

Employees who have completed fifteen (15) years, but less than twenty (20) years of continuous service, on or before November 1, of each calendar year 2011 will receive a payment of two (2%) of their base hourly rate.

Employees who have completed twenty (20) years, but less than twenty-five (25) years of continuous service on or before November 1, of each calendar year will receive a payment of two and two quarter percent (2.25%) of their base hourly rate.

Employees who have completed twenty-five (25) years or more of continuous service on or before November 1, of each calendar year will receive a payment of two and a half percent (2.5 %) of their base hourly rate.

- B. The above payments will be paid in a lump sum on the second pay day of November in each calendar year

ISSUE NO. 2, ARTICLE 30 -- INSURANCE

The Sheriff's Office proposal in this area is the County's group health program. The basic proposal is to continue current employee contributions for health coverage though the plan year of June 30, 2015. The contributions are increased over the last Agreement by \$15.00 per coverage level while the waiver amounts include new category with a higher buy back. (Employee +Spouse). The proposal continues with reopener language for the 2015-2016 plan years for negotiating the contributions for that plan year and likewise for the 2016-2017 plan year. The proposal offers a "Wellness Program, Healthy Rewards Points and Incentives Program" whereby employees can earn incentives for a benefit plan year.

The Union's proposal is to change from a set number cost of the premium contribution to a percentage cost and add language for a partially Employer funded HSA.

The County in an attempt to set the rate for all employees of the County offer this unit the County group health program. Having all employees on the same program is much easier to manage and more cost efficient. It's the old adage in negotiations that the tail does not wag the dog. Or in other words a smaller group has a harder time in negotiating something different than

other groups, who then comprise a much larger group, who are in the same program. The Employer's proposal does give the Union an out by having the reopener language whereby giving them time to come up with a better approach to the premium contributions for the remainder years of this Agreement.

Based on the same reasoning given for the wage increases, this Fact-Finder recommends the Employer's insurance proposal in its entirety.

ISSUE NO. 3,           ARTICLE 32 – DURATION

The proposals by both the Employer and the Union are similar with a couple wording issues. The Fact-Finder's recommendation for Duration is as follows:

Except as more specifically set forth in individual Articles of this Agreement, this Agreement will be effective beginning January 1, 2014, and will remain in effect through December 31, 2016.

If either party desires to modify or amend this Agreement, it shall give written notice of such intent no earlier than one hundred and twenty (120) calendar days prior to the expiration date, and no later than ninety (90) calendar days prior to the expiration date of this Agreement. Such notice shall be certified by mail with return receipt requested or electronically.

In addition, either Party may re-open the Agreement solely for the purpose of negotiating health insurance for the year 2015-2016. The right shall exist for each year unless the Parties are able to successfully negotiate a two (2) year agreement on health insurance related issues, which must be contained in any final agreement in 2015 to prohibit the re-opening in 2016.

The reopener may be commenced by filing a Notice to Negotiate with the State Employment Relations Board and shall be conducted in accordance with the dispute resolution procedures contained in Chapter 4117 of the Ohio Revised Code.

ISSUE NO. 4,           NEW ARTICLE       RANDOM DRUG TESTING

The Union has proposed a Random Drug Policy to be placed in the Agreement. The Employer has opposed placing such a policy in the Agreement.

Testimony was that the Sheriff has unilaterally implemented his own policy. Testimony was that the Sheriff's policy did not cover all employees in the Sheriff's Office. When challenged by this Union and the policy was suspended till bargaining in negotiations has taken place. The Union has proposed language similar to many other Sheriff Offices within the State of Ohio only to have the Employer reject the Union's proposal and not offer any other alternative for bargaining.

At the Hearing the Employer's position is that the Sheriff prefers not to put language into the Agreement.

Drug and alcohol policies are common in many law enforcement collective bargaining agreements. More common than not. These policies work best when both sides buy into the concept and put in their contracts for all employees and union members to see. This kind of labor cooperation is a must for the parties to accomplish.

Here in this case 74.1% of the adjoining counties or 5 out of the 7 have drug testing policies in their contracts while 71% out of the 23 counties used as external comparables for this bargaining group have such language in their Agreements. Based on the overwhelming evidence that the vast majority of Sheriff Offices in the State have negotiated policies such as this. And, based on the fact that this Employer refused to even bargain with the Union over this matter. This Fact-Finder recommends the Union's proposal as follows:

**ARTICLE New 1**  
**DRUG/ALCOHOL TESTING**

The following Article will be applicable to all bargaining unit members covered by this agreement once it is made mandatory for all other employees of the Sheriff's Office regardless of classification or rank.

**Section New 1.1.** Drug testing may be conducted on employees during their duty hours upon reasonable suspicion or randomly by computer selection or otherwise as provided in this Article. Alcohol testing will be conducted only upon reasonable suspicion.

Reasonable suspicion that an employee used or is using a controlled substance or alcohol in an unlawful or abusive manner may be based upon, but not limited to:

- A. Observable phenomena, such as direct observation of drug or alcohol use or possession and/or the physical symptoms of being under the influence of a drug or alcohol;
- B. A pattern or abnormal conduct or erratic behavior, including abnormal leave patterns;
- C. Arrest or conviction for a drug or alcohol-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug or alcohol possession, use, or trafficking;
- D. Information provided either by reliable and credible sources or independently corroborated;
- E. Evidence that an employee has tampered with a previous drug test;
- F. Facts or circumstances developed in the course of an authorized investigation of an accident or unsafe working practices.

**Section New 1.2.** Drug/alcohol testing shall be conducted solely for administrative purposes and the results obtained shall not be used in criminal proceedings. Under no circumstances may the results of drug/alcohol screening or testing be released to a third party for use in a criminal prosecution against the affected employee. The following procedure shall not preclude the Employer from other administrative action but such actions shall not be based solely upon the initial reagent testing results alone.

**Section New 1.3.** All drug screening tests shall be conducted by laboratories meeting the standards of the Substance Abuse and Mental Health Service Administration. No test shall be considered positive until it has been confirmed by a Gas Chromatography/Mass Spectrometry. The procedures utilized by the Employer and testing laboratory shall include an evidentiary chain of custody control and split sample testing. All procedures shall be outlined in writing and this outline shall be followed in all situations arising under this article.

**Section New 1.4.** Alcohol testing shall be done in accordance with the law of the State of Ohio to detect drivers operating a motor vehicle under the influence. A positive result shall entitle the Employer to proceed with sanctions as set forth in this Article.

**Section New 1.5.** The results of the testing shall be delivered to a specified employee of the Employer with command responsibility and the employee tested. An employee whose confirmatory test result is positive shall have the right to request a certified copy of the testing results in which the vendor shall affirm that the test results were obtained using the approved protocol methods. The employee shall provide a signed release for disclosure of the testing results to the Employer. A representative for the bargaining unit shall have a right of access to the results upon request to the Employer, with the employee's written consent. Refusal to submit to the testing provided for under this Agreement may be grounds for discipline.

**Section New 1.6.**

- A. If a drug screening test is positive, a confirmatory test shall be conducted utilizing the fluid from the primary sample.
- B. In the event that any confirmation drug test results are positive, the employee is entitled to have the split sample tested by another DHHS-certified lab in the manner prescribed above at the employer's expense. The employee must request the split sample test within seventy-two (72) hours of being notified of a positive result. The results of this test, whether positive or negative, shall be determinative.

**Section New 1.7.** A list of three (3) testing laboratories shall be maintained by the Employer. These laboratories shall conduct any testing directed by the Employer. The Employer shall obtain the approval of the bargaining unit representative as to any laboratories put on this list, which approval shall not be unreasonably withheld.

**Section New 1.8.** If after the testing required above has produced a positive result the Employer may require the employee to participate in any rehabilitation or detoxification program that is

covered by the employee's health insurance. Discipline allowed by the positive findings provided for above shall be deferred pending rehabilitation of the employee within a reasonable period. An employee who participates in a rehabilitation or detoxification program shall be allowed to use sick time, compensatory days, vacation leave, and personal days for the period of the rehabilitation or detoxification program. If no such leave credits are available, the employee shall be placed on medical leave of absence without pay for the period of the rehabilitation or detoxification program. Upon completion of such program and upon receiving results from a retest demonstrating that the employee is no longer abusing a controlled substance/alcohol, the employee shall be returned to his/her former position. Such employee may be subject to periodic retesting upon his/her return to his/her position for a period of one (1) year from the date of his/her return to work. Any employee in a rehabilitation or detoxification program in accordance with this Article will not lose any seniority or benefits, should it be necessary for the employee to be placed on medical leave of absence without pay, for a period not to exceed ninety (90) days.

**Section New 1.9.** If the employee refuses to undergo rehabilitation or detoxification, or if he/she tests positive during a retesting within one (1) year after his/her return to work from such a program, the employee shall be subject to disciplinary action, including removal from his/her position and termination of his/her employment.

**Section New 1.10.** Costs of all drug screening tests and confirmatory tests shall be borne by the Employer except that any test initiated at the request of the employee shall be at the employee's expense.

**Section New 1.11.** The Employer may conduct four (4) tests of an employee during the one (1) year period after the employee has completed a rehabilitation or detoxification program as provided above.

**Section New 1.12.** The provisions of this Article shall not require the Employer to offer a rehabilitation/detoxification program to any employee more than once.



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Marc A. Winters