

**STATE EMPLOYMENT RELATIONS BOARD
State of Ohio**

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| In the matter of Fact Finding between: |) | SERB No.2013-MED-11-1555 |
| |) | |
| TEAMSTERS LOCAL UNION NO. 284, |) | Hearing: April 21, 2015 |
| Employee Organization, |) | at Columbus, Ohio |
| and |) | |
| |) | Date of Report: May 13, 2015 |
| FRANKLIN COUNTY SHERIFF'S |) | |
| OFFICE, COUNTY COMMISSIONERS, |) | Before Mitchell B. Goldberg |
| Public Employer. |) | SERB Appointed FactFinder |

FACT FINDING REPORT

Appearances: For the Union: John R. Doll, Attorney, Doll, Jansen & Ford
For the Employer: Robert D. Weisman, ICE MILLER LLP

I. Introduction and Background.

The Ohio State Employment Relations Board (“SERB”) appointed the undersigned as the Fact Finder of this public employment labor dispute on March 5, 2015. The parties agreed to the issuance date of this Report of May 13, 2015. The hearing in this matter occurred on April 21, 2015. The parties submitted timely pre-hearing statements setting forth their respective positions on the unresolved issues in accordance with SERB Rules and Guidelines. They offered oral evidence, arguments and supplied documentary exhibits.

The Union was certified to represent all Court Security Officers (“CSOs”) employed by the Franklin County Commissioners in the Public Facilities Management Agency (“PFM”). It was also certified to represent all Control Room Operators (“CROs”) in the PFM. The CSOs were previously represented by the FOP-OLC and were parties to a CBA effective from 2008 through 2010. The CROs were unrepresented prior to being certified in SERB Case No. 2014-REP-03-0045. The CSOs, now referred to as Facility Security Officers (“FSOs”), provide screening and other security services at Court facilities. CROs monitor closed circuit television and radio traffic, alarms, elevators and other public areas from the control centers. There are about 16 CROs and 62 FSOs.

Before bargaining began, the Commissioners decided to transfer the CSOs (now FSOs) and the CROs from the PFM to the Sheriff's Office. Negotiations began with the Sheriff's Office in March 2014, and continued through January 2015. There were 15 sessions in that period, 3 of which engaged the assistance of a Mediator. The parties reached tentative agreements on 19 articles, but 8 articles remained unresolved, and are presented here for fact finding.

The bargaining history of this unit involves representative changes for both the employer and the unit. The CWA represented the unit when the employees were in the PFM. The FOP-OLC replaced the CWA for the CBA that expired in 2010. They could not reach an agreement and went to Fact Finding. The unit rejected the Fact Finder's recommendations and resumed bargaining in 2013. Tentative agreements may have been entered into, but if they were, they were rejected by the unit, who by then was undergoing proceedings to change representation to the Teamsters. The employer was also being changed from the PFM to the Sheriff's Office. The County has a number of CBAs with different employee representatives, including a CBA with the Sheriff's deputies, who are represented by FOP, Lodge 9. The parties' positions in this matter are derived both from internal comparables from the other County and Sheriff Office CBAs, and in some instances from external comparables involving CBAs of employees performing the same types of services as performed by the FSOs and CROs for the Sheriff's Office.

This Report includes the following recommendations on the unresolved issues and all tentative agreements reached between the parties during their negotiations. The recommendations are made in accordance with the statutory factors and standards set forth in the SERB Rules and Guidelines. They are: (A) past CBAs between the parties and their predecessors; (B) consideration of 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; (E) the stipulations of the parties; and (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 final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

II. Economic and Financial Evidence.

The County and the Sheriff's Office, that is primarily dependent upon County funding, want to operate in a conservative manner after having experienced the great recession, and reduced funding from the State. It has managed to operate with leaner budgets without laying off employees, while at the same time sustaining its "AAA" bond rating. It has continued to provide the services required by its citizens by operating prudently and efficiently.

The Union believes that the Employer should recognize and correct the existing financial disparities between these employees, and other County and Sheriff's Office employees that have developed over these past years. They do not want more compensation and financial benefits than the others, but they do not want less. They view this dispute as one of pay and benefit equity as between this unit's employees, and the other Sheriff and County employees. They agree that the County has operated conservatively, but this has produced a very healthy financial condition, notwithstanding the ups and downs of the national and state economy, and the persistent past and present efforts of the State legislature to reduce taxes and cut spending. The Employer has the ability to pay the requested economic proposals; this is not contested. The County's ending 2014 cash balance was nearly \$140 million. The proposed budget for 2015 projects the ending cash balance of \$141,646,439.

III. Unresolved Issues.

1. Article 20 – Wages/Pay Plan

The Union proposes a 3-year CBA that begins January 1, 2015 and expires December

31, 2017. It proposed during mediation conducted by this Fact Finder at the hearing, a 3% across-the-board increase in each contract year. The Employer revised its position and offered a 1.25% across-the-board wage increase each contract year, retroactive to January 1, 2015.

The Union proposal is based upon the reality that the FSOs have not received a pay increase since their FOP-OLC contract expired at the end of 2010. The CROs were not represented and have been regarded as non-bargaining unit employees. They, unlike the FSOs, have been subject to higher employee insurance contribution rates, the same as the unrepresented employees. The FSOs, however, and the Employer have been operating under the expired CBA, and their insurance contribution rates have remained the same.

The starting pay rates for FSOs appears comparable or higher than the CSO starting wages in counties such as Cuyahoga and Montgomery, but the FSO pay after 4 years of service is much below the rates in those counties, for employees doing the same type of work. Moreover, the FSOs and CROs receive lower wages than the non-union City of Columbus security employees who perform the same services. Their pay range starts at \$17.11/hour and tops out at \$23.96/hour. The FSOs start at \$15.70/hour and are much less at the top range. The Columbus CROs start at \$20.82/hour; the CROs in Franklin County start at \$14.62.

The comparisons for the Deputies is much different. They are paid much higher wages than deputies in Montgomery County or Cuyahoga County. This recognizes the reality that Franklin County and the Columbus area has the best economy in Ohio. It is the fastest growing area with the second largest population and tax base. Franklin County received a permanent .25% permanent sales tax increase and another .25% temporary sales tax increase that will expire at the end of 2018, if not extended.

The Union maintains that its employees have more in common with the deputies than any other Sheriff group of employees. They wear uniforms and work in close contact with the deputies. They

are security personnel and like the deputies they are exposed to violence and mayhem. The Employer has recognized these similarities in its contract proposals relating to operations. It proposes identical provisions for non-economic operational articles, but it wants to treat the unit members as non-security personnel when it comes to pay and benefits.

The Employer believes that the Union's deputies comparison is misplaced. This is not a conciliation unit as found by SERB. The FSOs do not engage in law enforcement. They do not possess a valid Peace Officer Certificate of Training; they have no law enforcement experience; and they cannot make arrests. Moreover, they do not carry weapons. As such, it is more appropriate to focus their economic packages on what is paid to the other County and Sheriff employee groups. The Sheriff's Office Civilian employees represented by the Teamsters Local 413 received a CBA paying 1.5% in 2012, 1.5% in 2013, and 2% in 2014. The Sheriff's Office Professionals received a CBA paying 2% in each year from 2015-2017. The umbrella unit of the Commissioners represented by AFSCME received the same increases. The County Jobs and Family Services Unit CBA pays 2% in each year from 2014-2016. The Veteran Service Commission CBA pays 1.8% in 2014, 2% in 2015 and 2% in 2016. The Clerk of Courts pays 2% in each year from 2014-2016. The Employer emphasizes the higher starting pay of the FSOs and the CSOs compared to the wages performed by others doing comparable work. The FSOs start at \$15.70/hour compared with the State of Ohio SOs at \$14.53, Cuyahoga County Sheriff SOs at \$13.91, and Montgomery County SOs at \$13.30.

Moreover, any pay decision must recognize the savings that have been received by the FSOs by not agreeing to a new CBA. While their wages remain at 2010 levels they have paid the same insurance contributions while working under the expired CBA. Other Sheriff and County employees have experienced substantial increases in their insurance contributions, \$110/month for Tier 1 and \$225/month for Tier 2 compared with \$55/month for Tier 1 and \$135/month for Tier 2. The parties have estimated that the unit employees have lost about 5.4% in wage increases amounting to about

\$2,000 (on their base pay) since the expiration of the last CBA in 2010, but they have saved about \$1,000 from not having to pay the insurance contribution increases.

Recommendation:

After considering all of the economic evidence submitted by the parties, their positions and their arguments, I recommend the following: The Employer shall pay the unit members an across-the-board wage increase of 2% retroactive to January 1, 2015 for year 1 of the CBA; 2% for year 2, beginning January 1, 2016, and 2% for year 3 beginning January 1, 2017. In addition, the Employer shall pay each bargaining unit member a lump sum payment or bonus of \$500.00, not added to the base pay, payable within a reasonable time after the execution of this CBA. The Employer shall pay another lump sum payment of \$300 to each bargaining unit member, which payment shall be added to the base pay of each employee. These payments totaling \$800 shall be paid at the execution of this CBA.

The rationale for this proposal is to place the members of this unit back in line with the compensation levels paid by the Sheriff and County to its other represented bargaining units, other than its law enforcement personnel. The lump sum payments are intended to reimburse the unit members for net lost pay increases since 2010, regardless of whether either or both of the bargaining parties were responsible for not agreeing to a CBA that followed the one that expired in 2010. A portion of the lump sum payments are allocated for additions to the base so that these unit members may eventually recover some of their lost ground compared with the other County employees who have had the benefit of percentage increases on their bases during the interim period.

Pay Steps

The Union proposes additional pay steps, similar to those provided to security officers by other governmental units. Also, internally, the deputies and the Comm. Tech employees have pay steps. The Employer objects to the insertion of pay steps, that if accepted, would provide immediate pay increases of 10% to 61%. It contends that the impact of such pay raises would be economically

unreasonable. It believes, based upon the different job duties and qualifications as between law enforcement personnel and the security personnel, there is a legitimate basis for having the security personnel compensation levels more in line with the other non-conciliation units.

Recommendation: I do not recommend the Union's proposal for step payments.

Shift Differential

The Union proposes a shift differential of \$.95/hour for year 1, and \$1.00/hour for years 2 and 3. The Employer proposes increasing the shift differential by \$.15/hour to \$.55/hour. The differential for the other units is presently \$.65/hour.

Recommendation: I propose that the shift differential be increased to \$.65/hour for the duration of the CBA, beginning January 1, 2015.

Service Credit

The Employer proposes to pay a service credit consistent with that paid to all other non-deputies units. The amount of \$300 is paid based upon 5 years of service, and \$50 is paid for each additional year. While this is less than that paid to the other non-deputies units, the Employer believes that its proposal is justified because of its agreement to modify the standard service credit eligibility language to include this unit's employees. The language requires 5 years of service with the Sheriff's office. None of the unit's employees would qualify due to the transfer of their services to the Sheriff's department. It is willing to grandfather their prior service with the Commissioners for their job classifications.

Recommendation: Notwithstanding the Employers willingness to treat prior county service towards the 5-year requirement, I recommend that this unit's employees receive the same service credit amounts that are paid to the other non-deputies units within the Sheriff's department, and that their prior continuous county service be counted towards the 5-year qualification for payment.

2. Article 25 – Health Insurance

The Employer proposes fixed contributions of \$125/month for Tier I coverage and \$250/month for Tier II coverage through March 31, 2016. This is the same amount paid by all other County employees. However, thereafter, contributions would be shared 88%-Employer and 12% employee, which is the same contribution level contained in the contracts that have been negotiated since the summer of 2014. The Union does not necessarily oppose the percentage contribution formula, so long as the Employer does not demand catch-up payments from the FSOs, for coverage since 2010, and so long as its wage payments are reasonable so that they are able to bear the possible cost increases that may result from the percentage based formula.

Recommendation: The standard of percentage sharing is becoming the norm throughout the county and municipal governments in Ohio. The Employer's proposal of 88%-12% beginning in April 2016 provides for a reasonable break-in period for the change from fixed payments to percentage payments. While it is impossible to predict medical costs and insurance costs over the contract term, recent history is showing a decline in the rate of increases compared with past years. The Employer's proposal is in line with the norm throughout the state, and should be accepted by the Union.

3. Article 22 – Holidays (Paid Leave Time)

The Union's proposal contains the addition of 4 personal days for all unit members. The Employer's proposal contains 16 hours of personal leaves with certain restrictions. The Union's package relates to the deputies CBA that contains 40 hours/year personal leave. If it is unused, it can be paid out up to a maximum of 16 hours. The Comm. Tech. CBA contains 24 hours/year. The Local 413 CBA also contains 24 hours/year. Recently, the Facility Security Specialist classification, a new position, was provided with 40 hours/ year sick leave with a 2% wage increase. They will be represented by Local 284. Based upon these facts, the Union proposes 32 hours/year of paid sick leave. The Union further proposes language changes regarding the scheduling of work on holidays.

The Employer proposes the same holiday schedule as provided to all other Sheriff department

bargaining unit employees. It proposes 16 hours of personal leave as a new benefit not previously provided to FSOs when they were in the PFM.

Recommendation: I propose that the parties continue to negotiate over the Union's language changes related to the scheduling of holiday work; work that must be performed under the 24-hour/ 7-day week operation. I recommend the Employer's proposal that all other facets of the holiday provisions mirror that provided to the other represented non-deputies within the department. For example, the Employer shall provide 24/hours of personal leave, as contained in Article 23 of the Local 413 CBA.

4. Article 26 – Sick Leave

The Union proposes adding a provision that provides payment for all accrued but unused sick leave credit. All of the other Sheriff department units contain these provisions. The deputies contract and the 413 contract also contain additional payouts for 20+ years of service, a benefit that would only be applicable to a small number of unit employees. The Union also proposes modified language that would broaden the definition of “immediate family members.”

The Employer proposes a modified sick leave cash out program as a counter to the Union's incentive proposal, together with its offer of 16 hours of personal leave. The only cash out payments for unused sick leave are in the deputies CBA. Likewise, only the deputies have the 20+ years payment.

Recommendation: I recommend that the Employer pay the same benefits under the sick leave provisions as that paid to the highest level of such benefits paid to the non-deputies units. The Union's proposed sick leave incentive language should be adopted, to the extent that it is the same as the Employer provides to its other Sheriff Department non-deputies units. I respect the Employer's belief that the incentive program has not worked out to its satisfaction, but I believe that it needs to increase the value of its replacement proposal by increasing the number of personal leave hours. The elements of a successful negotiated arrangement over these issues needs to be worked out to the satisfaction of

both parties, and more work needs to be done.

5. Article 23 – Vacation

The Union proposes an annual cash-out of a portion of unused vacation time for employees with 5+ years of service. The vacation incentive is contained in all of the Sheriff's Office CBAs. The Employer opposes a vacation incentive for the non-use of sick leave. It, however, is willing to structure the vacation leave articles as found in the other non-deputies CBAs. It is willing to consider all prior county service for computation of the vacation benefits.

Recommendation: The vacation benefit article should mirror that of the highest level among the non-deputies CBAs, all of which contain the Union's proposed vacation incentive language. The incentive should remain in tact until a successful replacement program is negotiated. Until then, the status quo should remain.

6. Article 15 – Vacancies

The parties appear to be at impasse over the filling of a vacancy when no bargaining unit employee within the same classification fills the job. The Union wants the bid opportunity to next go to the most senior unit member bidder outside the job classification. The Employer would only be able to fill the vacancy by going outside the unit when no unit member wants the job. The Employer describes this process as being “arduous,” but I cannot find that this would be the case. The posting would be made and all classification and non-classification employees could bid. Once the selection process is exhausted among all unit members, the Employer may look beyond the unit to fill the vacancy. This process operates in a reasonable manner in many CBAs. Moreover, it is unclear as to what the Employer means by filling the job with “the right candidate.” Obtaining experienced qualified bidders based upon the wages and benefits paid and the job duties performed does not appear to be a difficult undertaking compared to selections involving higher paid-more qualified positions.

The parties disagree over the length of the probationary period after the selection to fill a

vacancy. The Employer wants a 120-day probationary period; the Union proposes a 60-day period. If the employee does not meet the performance requirements in this period, he or she may be returned to their former position with no loss of seniority. The parties disagree, however, as to what occurs when the successful bidder voluntarily decides to return to his/her former position during the probationary period. The Employer in this instance wants to only permit the employee's return if there is an open vacancy. The Union wants the same rights of return as an employee who is rejected by the Employer during his/her probationary period.

Recommendation: I recommend a 90-day probationary period with the same rights of return if the Employer disqualifies the selected bidder or if the employee voluntarily decides during the period that he/she is unsuited to perform the job. The Employer is free to determine its staffing levels under each scenario.

7. Hours of Work and Overtime

The Union proposes that all paid time off be counted for calculating overtime. The Employer proposes to count only time actually worked and paid time off for holidays. It contends that this is consistent with the other non-deputies CBA, other county CBAs and the county policy.

The Union proposed a maximum of 120 hours of compensatory time that may be accrued at any time. This is consistent with the other CBAs within the Sheriff's Office. The Comp. Tech., CBA and Local 413 contracts contain the 120 maximum number of compensatory time hours. The Employer proposes a cap of 60 hours, which amounts to an increase of 12 hours over what was in the FOP-OLC and PFM CBA.

The Union proposes the right to cash-out compensatory time. The Employer states that no other non-deputies unit receives a cash-out right.

In terms of scheduling overtime, the Employer proposes that overtime be administered on a first come-first served basis using an email notice and response system. Mandatory overtime would be

filled by reverse seniority on a rotating basis as contained in other Sheriff's department units. The Union wants the same process as existed in the FOP-OLC -PFM contract, which is inconsistent with the Employer's first come-first serve system.

The Union proposes an increase in the minimum payment for court time attendance from 3 hours to 4 hours.

Recommendation: Overtime should be calculated as done in practice under the Local 413 CBA that provides for overtime pay “for hours in excess of forty (40) hours in paid status in a pay period.” This should include paid holiday time-off.

Compensatory time shall be the same as Section 19.3 of the Local 413 CBA.

Scheduling for overtime work shall be under the same process and procedures used by the Employer for all other employees in the Sheriff's Office at this point in time.

Court time minimum pay shall remain at 3 hours.

8. Duration

The parties agree to a 3-year contract term effective from January 1, 2015 – December 31, 2017.

Date of Report: May 13, 2015

/s/ _____
Mitchell B. Goldberg, Fact Finder

CERTIFICATE OF SERVICE

This Report was served upon the following persons and agency by electronic mail this 13th day of May, 2015:

SERB Email: med@serb.state.oh.us

John R. Doll: jdoll@djflawfirm.com

Robert Weisman: RobertWeisman@icemiller.com

/s/ _____
Mitchell B. Goldberg

