

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of the Fact-Finding Between:

Fraternal Order of Police/Ohio Labor Council, Inc.)	
)	
Employee Organization)	
)	
and)	Case Nos. 2013-MED-08-0877
)	2013-MED-09-1085
Union County Sheriff's Office,)	2013-MED-08-0915
)	
Employer)	

APPEARANCES:

For the Union:

Ross Rader, Union Representative
Michael Burton, Sergeant
Danielle Vigar, Dispatcher
Lyle Herman, Sergeant
Jim Inskeep, Deputy Sheriff
Brittany Stoops, Dispatcher
Jon Kleiber, Deputy Sheriff

For Union County Sheriff's Office:

Edward S. Kim, Employer Representative
Barb Sattler, Director of Administration
Tom Morgan, Chief Deputy

Before Sarah Rudolph Cole, Fact-finder

The Ohio State University, Moritz College of Law
55 West 12th Avenue
Columbus, OH 43221
Tele: (614) 688-4918
Fax: (614) 292-2035
E-mail: cole.228@osu.edu

Introduction

The FOP/OLC Inc. (“Union”) represents the three bargaining units at issue in this case. The three bargaining units consist of the Union County Deputy Sheriffs/Blue Unit with 26 members, Sergeants/Gold Unit, with 4 members, and Dispatchers/Red Unit, with 11 members. The parties negotiated a three year collective bargaining agreement for each of the bargaining units. The Gold Unit agreement expired on November 30, 2013; the Blue Unit agreement expired on December 31, 2013; and the Red Unit agreement expired on December 15, 2013. The parties reached tentative agreements on many items and those items are incorporated and recommended as part of this fact-finding report. The parties were unable to reach agreement on several issues: Hours of Work and Overtime (all units); Wages (all units); Holidays (all units), Training and Education (Blue and Gold units); and Mandatory Physical Abilities Testing (Blue and Gold units). The parties submitted these remaining unresolved issues for fact-finding. The parties met on April 10, 2014 at the Union County Sheriff’s Office in Marysville, Ohio. After mediation proved unsuccessful, the parties proceeded to a fact-finding hearing.

Criteria

Ohio Revised Code § 4117.14(C)(7) specifies the criteria the Fact-finder is to consider when making a decision:

- (a) past collectively bargained agreements, if any, between the parties;
- (b) comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (c) the interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

- (d) the lawful authority of the public employer;
- (e) the stipulations of the parties;
- (f) such other facts, not confined to those listed in this section, 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 proceedings in the public service or private employment.

Hours of Work and Overtime

Gold, Red and Blue Units seek a change to the amount of compensatory time that can be accumulated in each employee's compensatory time bank from the current 24 hours to 32 hours. The Employer proposes that the current language in the contract, which permits an employee to maintain only 24 hours in the bank at any one time, be retained.

The Union contends that appropriate entities to which Union County practices on this front should be compared are the cities of Marysville and Dublin since the Marysville Police operate in Union County and Dublin is partially in Union County. Both Dublin and Marysville permit employees to maintain up to 240 hours in their compensatory time banks. The Union did not introduce evidence regarding the ability of employees in those areas to carry time over from year to year. Based on these comparables, the Union contends that employees' compensatory time be increased 8 hours from the current 24 hours.

The Employer counters that it originally intended to eliminate compensatory time but now is willing to leave the article at current contract language. The Employer did not

provide comparable information regarding compensatory time banking and carry-over from other jurisdictions.

Recommendation: Increase the amount of time employees may maintain in the bank from 24 to 32 hours.

The Union's proposed increase in the amount of time employees may maintain in their compensatory time bank is modest and well below what the Union's comparable evidence would justify. The Employer argued that having too much compensatory time in the bank can make it difficult for the Employer to plan because it must find employees to cover for the employees who utilize compensatory time. While administrative difficulties are relevant, the modest increase the Union proposes should not have a major impact on the administration of leave time.

Wages (including OIC pay and shift differential)

The Union proposes that dispatchers and deputy sheriffs receive wage increases beginning in 2014 of 2% for 2014, 2.5% in 2015 and 3.0% in 2016. For the sergeants, the Union proposes that sergeants at step A receive 11.5% above Deputy E (currently earning \$26.80 per hour) and at step B, an increase of 5% over Step A. For the dispatchers, wages appear in Article 23, section 23.1; for deputy sheriffs, Article 24, section 24.1 and for sergeants, Article 24, section 24.1. The Union also proposes an increase in shift differential from \$.25 to \$.50 for each unit (sergeants, section 24.7; deputy sheriffs, section 24.12 and dispatchers, section 24.12). Finally, the Union argues that when an employee performs the job duties in a higher classification on a temporary basis, the employee should receive additional monies. Dispatchers would receive \$.75 (up from \$.50 per hour) and deputy sheriffs would receive an additional \$.30 per hour

(from \$.50 to \$.80). For dispatchers, this language appears in Section 23.7; for deputy sheriffs, this language appears in section 24.7. The sergeants' agreement does not contain this language.

The Gold, Red and Blue Units all seek an increase in the shift differential as well. Beginning in January 2015, the Union proposes that dispatchers (23.6), deputies (24.12) and sergeants (24.7) all receive an increase in shift differential of \$.25 per hour (from \$.25 to \$.50).

The Employer proposes that the shift differential and OIC pay remain current contract language and for wages, proposes that in lieu of wage increase, the Employer will make lump sum payment in the amount of \$520.00 per year for each of the years 2014, 2015 and 2016 for all of the units.

Rationale for Union Position

The Union contends that increases to wages, shift differential and OIC pay are justifiable given increases paid by the County to non-union employees in 2013, together with improvements in the economic picture for Union County.

In 2013, six members of the Union County Sheriff's Office Administration received pay increases ranging from 1.8% to 6.3%. The average wage increase was 4.42%.

Union County, the Union contends, is the third fastest growing region in Ohio and is home to many businesses and research facilities. The growth in Union County is 27.34%. In addition, the Union presented evidence that the median value of homes in Union County is \$172,800 and the average family income is \$77,618. Not only is Union County wealthy, but the Union emphasizes that the Union County Sheriff's Office

employees have a great deal of responsibility that is unusual for employees in a sheriff's office. For example, employees participate in a multi-county crash investigation team that was created to handle major injury or fatal accidents. Employees also participate in the Union County Multi-Agency Drug Enforcement entity to respond to ongoing activities of drug dealers. Several deputies are cross-trained as EMTs and firefighters as well. The Union also notes that because of the large businesses in the area, sheriff's office employees handle a large volume of traffic. Dispatchers also handle 911 calls not just within Union County but also from half of Dublin and all of the calls from Marysville.

The Union also points to the improving economy in Union County to justify their economic demands. The Union cites a news report in which one of the County Commissioners acknowledged an interest in providing raises to the County's employees and another report on October 10, 2013, indicating that Union County revenue for 2013 was likely to be higher than during any of the last 15 years. The Union also cited the amount of money the Sheriff's office returned to the County during each of the last four years as evidence that the office has the funds to support the Union's proposed raises. In 2010, the office returned \$491,899; in 2011, \$315,592; in 2012, \$46,754; and in 2013, \$100,682.

In further support of its position, the Union points to other jurisdictions, Delaware county, and the cities of Dublin, Delaware and Marysville, as comparable to Union County for purposes of determining employee salaries. According to the Union, Dublin dispatchers received increases of 8% in 2014, 1.5% in 2015 and 2% in 2016. Dublin's starting salary for dispatchers in 2014 is \$24.21, considerably higher than dispatchers in

Union County, who currently start at \$21.81. Marysville and Dublin also provide higher shift differentials to dispatchers (\$.25 and \$.60) and higher FTO pay (\$.75 in Marysville, \$1.05 in Dublin. Delaware and Delaware County are not included because they do not have dispatchers.

For deputy sheriffs, the Union presented evidence that Marysville, Dublin, and Delaware police officers, and Delaware county deputy sheriffs, make considerably more than Union County deputy sheriffs and that they all received significant raises in the past (or future three years). So, for example, Marysville police officers received an 8.8% raise in 2014 resulting in an entry level salary of \$31.44 per hour. Union County deputy sheriffs begin at \$26.80 per hour. Dublin received 3% wage increases for 2011-2013 and, in 2013, earned \$40.72 per hour. Delaware received 2% raises between 2011 and 2013 and currently earn \$34.52 per hour. Finally, Delaware County deputy sheriffs received 2.75%/2.5%/2.25% in 2011-13 and, in 2013, earn \$30.52 per hour. Shift differentials are the same in Marysville and Dublin for deputy sheriffs as they are for dispatchers. With respect to FTO pay, Marysville police earn \$.75 per hour and Dublin police receive two hours of compensatory time for every eight hours they work as a FTO.

For sergeants, the story is the same. The raises in Marysville, Dublin, Delaware City and Delaware County were all at the same percentages as raises for the deputy sheriffs in those jurisdictions. Obviously, their pay is higher. In 2014, Marysville police sergeants earn \$38.17; Dublin police earn \$47.44; in 2013, Delaware police earned \$39.70 and Delaware county sergeants earned \$33.27. By contrast, in 2013, Union County sergeants earned only \$31.26 per hour. Shift differential and FTO pay are the same for sergeants in these other jurisdictions as they are for deputy sheriffs.

Ultimately, the Union County unionized employees believe they are underpaid compared to others in comparable jurisdictions performing the same job and they believe that the county is in a strong financial position and fully capable of funding the raises that they have requested.

Employer Position

The Employer does not believe that it can afford to grant the wage increases the Union demands. First, while acknowledging a slight improvement in the revenue picture, the Employer emphasizes that the County continues to spend more than it is able to generate in revenue. Except in 2010, the County has outspent its revenue every year, going back to 2008. In 2014, the County expects both that its revenue and its carryover balance will decline. The County must also allocate funds to capital improvement, an area that was largely ignored during the recession. In addition, the Employer feels obligated to provide raises to its non-unionized employees, who have been in a wage freeze for five years. The Employer also emphasizes that the sheriff's office budget, as well as the other County general fund offices, have experienced repeated cuts to their budget and that the sheriff's office, which once had 70 employees, now only has 53. The Employer would like to hire additional employees in order to ensure the proper level of service to the community. Raises like those the Union requests would make employing additional law enforcement personnel quite difficult. The Employer notes, too, that between 2008 and 2010, the bargaining unit members received significant wage increases.

The Employer contends that the Union's proposed comparables are inapposite. The Employer argues that appropriate jurisdictions for comparison purposes are other

counties' sheriff departments, not cities within the jurisdiction. In addition, the Employer contends that neither Franklin County nor Delaware County are appropriate comparisons for fact-finding purposes because of significant differences in population and average per-capita income. The Employer cites a previous fact-finding decision from 2011, *In re Delaware County Sheriff and OPBA*, in support of this argument. The fact-finder in that case, Alan Miles Ruben, stated that Union County, with its population of 41,000 and average per capita income of \$34,500, is not an appropriate comparison with Delaware County, whose population is 169,000 and average per capita income of \$57,000.

More appropriate comparables, according to the Employer, are counties of the same or similar population size and/or counties contiguous to Union County. In Exhibits 23-25, the Employer identifies these counties' wage rates for dispatchers, deputy sheriffs and sergeants. Leaving out Franklin and Delaware counties, the Employer establishes that, on average, Union County dispatchers, deputy sheriffs and sergeants all make more than similarly situated employees in contiguous counties and in counties throughout Ohio that have the same or similar size population. The Employer also submitted the SERB Annual Wage Settlement Report as evidence supporting its proposal. This Report, which reports information only up to 2012, shows that the average wage increase for police in 2012 was 1.2% and that the average wage increase of public employees in the Columbus area was 1.11%.

As fact-finder Howard Silver emphasized in his report and recommendation regarding Union County dispatchers, deputy sheriffs and sergeants issued a little over one year ago, the parties applied different metrics to determine which political subdivisions should be compared to Union County's dispatchers, deputies and sergeants. The Union

emphasizes proximity to Union County while the Employer emphasizes both proximity and population size. Both proximity and population size are important factors in determining appropriate comparables. Thus, neither the Union's nor the Employer's comparables are completely convincing.

The economic picture is improving in Union County. The Union emphasized that tax revenue in 2013 is ahead of projections, a new administrator was hired in July 2013, and the Sheriff's Office returned extra resources to the general fund at the end of the year. The Union also noted that the sheriff's office administrators received significant raises in 2013. The Employer agrees that the economic picture in Union County is improving but explains that resources need to be conserved because the economy may not continue to improve. In addition, the Employer emphasized the need to use some resources for long-delayed capital improvements within Union County. The Employer also emphasized that expenses are still rising within the County and that expenditures are exceeding resources. The Employer noted that the money returned by the Sheriff's office to the general fund was related to jail housing and thus is irrelevant to the overall budget picture. Finally, the Employer emphasizes that the non-union employees who received raises in 2013 had been subject to a wage freeze for several years (during that period, bargaining unit members received raises) and that some of them make less than lower-ranking unionized employees.

The economic outlook in Union County is better than it was in 2013 and years previous. Yet the Employer makes a strong case that the future is uncertain and that the County does not have many resources at its disposal. Expenditures on delayed capital projects, raises for non-unionized employees who had been subject to a wage freeze and

expenditures exceeding resources are relevant issues for this Employer. Yet a wage increase for the three units that are the subject of this fact-finding is appropriate as well, as they have participated actively in the County's belt-tightening and should receive some benefit when the economy improves. In light of the comparable evidence presented, including the SERB wage settlement report, this Fact-finder recommends the following wage increases for each unit:

January 1, 2014: 1.25%

January 1, 2015: 1.5%

January 1, 2016: 1.75%

To avoid compromising the County's finances, however, the Fact-finder recommends leaving the shift differential and OIC pay at the rate established in the current, now expired, contract. To be clear, the sergeants' pay for step A will be 11.5% above Deputy E after Deputy E receives the percentage increase described above and, for step B, 4.5% over revised step A.

Holiday Pay

Historically, members of the bargaining unit in Union County did not receive holiday pay but, instead, received a lump sum check for all holidays late in the calendar year. The County Auditor's office can no longer process a separate check. The Employer offered two alternatives to the separate check payment – employees could create a separate checking account into which holiday pay could be deposited **or** holiday pay can be paid once during the year and be put into the employee's regular pay check.

Based on this administrative change, the Fact-finder recommends the Employer's

approach, which is to eliminate all references in Article 27 regarding payment for holidays by separate check.

Training and Education (Deputy Sheriffs and Sergeants Only)

Currently, the Employer pays travel time to educational or training activities in a manner consistent with the Fair Labor Standards Act. Under the Act, only the driver of the vehicle is entitled to be paid actual travel time. Passengers do not receive pay for the time in the vehicle. The Union proposes that employees who travel for training and educational purposes be paid their actual travel time regardless of whether they are driving the vehicle or riding as a passenger. The Union believes the arbitrary distinction between passenger and driver harms morale and is unjustifiable on the basis of fairness. While the Employer's policy is consistent with the FLSA, it does seem inequitable to treat the passenger(s) and driver so differently. **The Fact-finder recommends that the Union's proposal be adopted and that an employee, whether passenger or driver, is entitled to payment for actual travel to educational or training programs.**

Mandatory Physical Abilities Testing (Deputy Sheriffs and Sergeants Only)

The Union proposes that the current mandatory physical abilities testing provision be changed so that employees who refuse to participate in the testing program cannot be subject to disciplinary action. The Employer emphasizes that deputy sheriffs and sergeants need to be in very good physical health or they cannot execute their job duties and that the physical testing is necessary to determine who is able to go out on the job and who cannot. **The Fact-finder recommends leaving Article 38, the Mandatory Physical Abilities Testing provision, at current language.** The Fact-finder agrees that

it is important to know who is physically capable of doing the demanding job of deputy sheriff and sergeant. The Employer's approach to this issue is appropriate.

Sarah Rudolph Cole, Fact-finder

Columbus, Ohio
May 12, 2014

CERTIFICATE OF SERVICE

The foregoing document has been served by email to Edward Kim, ekim@fishelhass.com, Ross Rader at rossrader@columbus.rr.com, and the State Employment Relations Board, Mary.Laurent@serb.state.oh.us, on the 12th day of May, 2014.

Sarah Rudolph Cole