

STATE OF OHIO
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding	:	SERB Case Number: 2014-MED-08-1052
Between the	:	
	:	
ALLEN COUNTY, OHIO	:	
SHERIFF'S OFFICE,	:	
	:	
Employer	:	Date of Fact Finding Hearing:
	:	February 25, 2015
and the	:	
	:	
FRATERNAL ORDER OF POLICE,	:	
OHIO LABOR COUNCIL, INC.,	:	
	:	Howard D. Silver, Esquire
Union	:	Fact Finder

REPORT AND RECOMMENDED LANGUAGE OF THE FACT FINDER

APPEARANCES

For: Allen County, Ohio Sheriff's Office, Employer

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PROCEDURAL BACKGROUND

This matter came on for a fact-finding hearing at 10:00 a.m. on February 25, 2015 in a conference room within the offices of the Allen County, Ohio Sheriff's Office at 330 N. Main Street, Lima, Ohio 45801. At the hearing both parties were afforded a full and fair opportunity to present evidence and arguments in support of their positions. Following the presentation of evidence and arguments, the hearing record was closed at 12:15 p.m. on February 25, 2015.

This matter proceeds under the authority of Ohio Revised Code section 4117.14(C) and in accordance with Ohio Administrative Code section 4117-9-05. Prior to the day of the fact-finding hearing each party delivered to the fact finder and the other party the party's position on each unresolved issue.

This matter is properly before the fact finder for review, for the preparation of a fact-finding report, and to recommend language to be included in the parties' successor collective bargaining agreement.

FINDINGS OF FACT

1. The parties to this fact-finding procedure, the Allen County, Ohio Sheriff's Office, the Employer, and the Fraternal Order of Police, Ohio Labor Council, Inc., the Union, have been engaged in negotiating a successor collective bargaining agreement between them for a bargaining unit, the Gold Unit, comprised of full-time Lieutenants, full-time Sergeants, and full-time Corporals employed at the Allen County, Ohio Sheriff's Office.

2. The parties began bargaining their successor collective bargaining agreement for the Gold Unit in October, 2014.
3. At the time of the fact-finding hearing the Gold Unit was comprised of three full-time Lieutenants, eleven full-time Sergeants, six full-time Corrections Corporals, and four full-time Road Patrol Corporals employed by the Allen County, Ohio Sheriff's Office.
4. The Gold Unit was formerly comprised of full-time Lieutenants and full-time Sergeants as certified by the Ohio State Employment Relations Board on April 25, 1994 in case number 93-REP-08-0156.
5. On October 15, 2014 the Ohio State Employment Relations Board added to the Gold Unit full-time Corporals in case number 14-REP-09-0103.
6. The latest collective bargaining agreement between the parties for the Gold Unit expired on December 15, 2014.

UNOPENED ARTICLES

The parties did not open the following Articles for bargaining. The fact finder recommends that all of the unopened Articles enumerated below be included, unchanged, in the parties' successor Agreement:

- Article 1 - Agreement
- Article 3 - Union Security
- Article 5 - Pledge Against Discrimination
- Article 6 - Management Rights
- Article 7 - No Strike/No Lockout
- Article 9 - Personnel Files

Article 10 - Work Rules – General Orders – Safety Policy

Article 12 - Seniority

Article 13 - Layoff and Recall

Article 14 - Probationary Periods

Article 15 - Filling of Positions

Article 16 - Labor/Management Meetings

Article 17 - Hours of Work and Overtime

Article 21 - Holidays

Article 23 - Leaves of Absence

Article 24 - Injury Leave

Article 26 - Substance Testing

UNRESOLVED ARTICLES

The following Articles were unresolved between the parties at the hearing:

Article 2 – Union Recognition

Article 4 – Union Representation

Article 8 – Grievance Procedure

Article 11 – Internal Review and Discipline

Article 18 - Wages

Article 19 – Insurances

Article 20 – Vacation

Article 22 – Sick Leave

Article 25 – Uniforms/Equipment

Article 27 – Duration

DISCUSSION OF UNRESOLVED ARTICLES AND RECOMMENDED LANGUAGE

Article 2 – Union Recognition

On April 25, 1994, the bargaining unit addressed by this fact-finding procedure was certified by the Ohio State Employment Relations Board to be comprised of full-time Lieutenants and full-time Sergeants, employed by the Allen County, Ohio Sheriff's Office, in case number 93-REP-08-0156. On October 15, 2014, the Ohio State Employment Relations Board amended the certification of the bargaining unit to include full-time Lieutenants, full-time Sergeants, and full-time Corporals, in case number 14-REP-09-0103.

The parties have agreed to modify the language of Article 2, section 2.1 to reflect the changed composition of the Gold bargaining unit due to the addition of full-time Corporals. To this end the fact finder recommends that the following language be included in the parties' successor Agreement. The remainder of Article 2, sections 2.2, 2.3, and 2.4 are recommended included in the parties' successor Agreement unchanged.

RECOMMENDED LANGUAGE: Article 2 – Union Recognition

Section 2.1 – The Employer recognizes the Union as sole and exclusive representative for the purpose of negotiating wages, hours, terms and conditions of employment for those employees of the Employer in the bargaining unit. Wherever used in this Agreement, the term "bargaining unit" shall be deemed to include those individuals employed full time by the Employer in the classifications of Sergeant, Lieutenant, and Corporal as certified by the Ohio State Employment Relations Board on April 25, 1994 (case number 93-REP-08-0156), and on October 15, 2014 (case number 14-REP-09-0103).

Sections 2.2, 2.3, and 2.4 – Retain current language.

Article 4 – Union Representation

The Union proposes a change to the language of Article 4, section 4.1 that would have the Employer recognize five employee representatives for the purpose of conducting Union business on behalf of the Gold unit rather than the three employee representatives expressed in the parties' most recent Agreement.

The Employer acknowledges that the bargaining unit has increased with the addition of full-time Corporals and the Employer has offered to increase the number of recognized employee representatives from three to four. The Employer does not find a need for a fifth employee representative, the increased size of the bargaining unit notwithstanding.

The Union notes that it has internal policies that favor an odd number of employee representatives in case a vote is required among the employee representatives, but there is nothing in effect between the parties that would require the higher number proposed by the Union.

The fact finder understands a fifth position would be beneficial to the bargaining unit. The fact finder nevertheless finds that four employee representatives are adequate at this time to insure that Union business conducted on behalf of the Gold unit is carried out efficiently. The fact finder therefore recommends the four recognized employee representatives proposed by the Employer.

RECOMMENDED LANGUAGE: Article 4 – Union Representation

Section 4.1 – The Employer agrees to recognize four (4) employee representatives for the purpose of conducting Union business as such business relates to this Agreement. The Chairman of the bargaining committee is the highest-ranking official in the bargaining unit. The Chairman will be permitted time off during the workweek to attend to Union and Agreement matters within the Chairman's capacity. During such service in this post,

the Union official shall continue the employee's entitlement to wages, fringe benefits, seniority accrual and all other benefits allowed a bargaining unit member as though the Chairman were at all times performing job-related duties.

Sections 4.2, 4.3, 4.4, 4.5, and 4.6 – Retain current language.

Article 8 – Grievance Procedure

The Union proposes a change to the title of section 8.4 of Article 8, a section titled: “Time Limits Grievance Steps.” The Union proposes adding the conjunction “and” in the title of section 8.4, between the words “Limits” and “Grievance,” thereby retitling this section: “Time Limits and Grievance Steps.” The Employer does not oppose this change.

The Union also proposes the deletion of language in the body of section 8.4 that reads: “...In no case will a grievance be considered which is submitted later than thirty (30) calendar days following the date of the facts.”

The Employer opposes the deletion of the language cited above, claiming that thirty calendar days are sufficient to allow a determination of whether to move forward with a grievance.

The Union argues that the Employer's argument, to be reasonable, must include knowing or having reason to know that the activity that could be grieved occurred within the thirty days following the grievable event. If such knowledge is not held by a bargaining unit member within those thirty days, argues the Union, the bargaining unit member, under the language defended by the Employer, would be forever barred from bringing a grievance to complain of the purported violation about which the bargaining unit member had no knowledge during those thirty days.

The fact finder notes that section 8.4 in the parties' most recent Agreement includes agreed language that a grievance must be submitted to the grievance procedure "... within ten calendar days after an employee knows or should have known the facts giving rise to the grievance..." This language presumes knowledge on the part of a bargaining unit member for the purpose of determining the deadline to file a grievance, a window of opportunity comprised of the ten calendar days following knowledge of the grievable event or when a bargaining unit member had reason to know of the grievable event. The fact finder does not believe it fair, and finds it arbitrary, to exclude grievances that are beyond the thirty days following the grievable event if the event was not known to a bargaining unit member during those thirty days and if the bargaining unit member had no reason to know of the grievable event within the thirty days following the grievable event. Such a system favors one party over the other through a lack of knowledge on the part of bargaining unit members, a circumstance not favored by the fact finder.

The Employer is credible and reasonable in its assertion of its need for certainty, after some definitive, reasonable time period, that an event that could have been grieved at some point in the past that had not been moved forward under the grievance procedure, can with finality be relegated to the past. Both parties prefer certainty in their dealings with each other, and the ten calendar-day time limit, based on knowledge of the events giving rise to a grievance appears to the fact finder to provide the certainty sought by both parties, a certainty grounded in fair notice of the grievable circumstance to a bargaining unit member. The fact finder therefore recommends a deletion of what the fact finder finds to be an arbitrary cut off, at thirty calendar days following the date of a

grievable event, of the right of a bargaining unit member to file a grievance even if the bargaining unit member was without knowledge of the grievable event within those thirty days and had had no reason to know of the grievable event in those thirty days.

RECOMMENDED LANGUAGE: Article 8 – Grievance Procedure

Sections 8.1, 8.2, and 8.3 – Retain current language.

Section 8.4 – Time Limits and Grievance Steps - A grievance must be submitted to the grievance procedure within ten (10) calendar days after an employee knows or should have known the facts giving rise to the grievance, otherwise it will be considered not to have existed.

The following are the implementation steps and procedures for handling grievances:

[Remainder of language in section 8.4 recommended retained unchanged.]

Sections 8.5, 8.6, and 8.7 – Retain current language.

Article 11 – Internal Review and Discipline

Article 11, section 11.3(G) extends to a bargaining unit member who faces a suspension of ten days or less the right to request a forfeiture of accrued leave time (excluding sick leave) in lieu of facing a suspension without pay. Such a request under current language is approved or not approved by the Allen County Sheriff. Any approved forfeiture under this language is recorded as a corrective action, and the forfeiting employee waives all opposition to the discipline imposed.

The Union proposes that the language of Article 11, section 11.3(G) be modified so as to eliminate the discretion of the Sheriff in determining whether to approve or disapprove a forfeiture offer.

The Employer opposes the change proposed by the Union for section 11.3(G) and proposes the retention of the language of Article 11, section 11.3(G) unchanged.

The offer of a forfeiture under Article 11, section 11.3(G) originates with a bargaining unit member who stands accused of misconduct that has given rise to disciplinary action in the form of a suspension of ten days or less. If a bargaining unit member does not wish to offer a forfeiture to be accepted by the Sheriff, the offer is not made and there is no discretion wielded by the Sheriff under section 11.3(G). In such a case the bargaining unit member, under appropriate, qualifying circumstances, would have access to the parties' contractual grievance procedure and an opportunity to oppose the disciplinary action through that process.

If, however, an offer of forfeiture is made by a bargaining unit member, the fact finder finds that the Sheriff must have the discretion to approve or disapprove the forfeiture offer as the Employer is to determine discipline and decide how corrective action is to be imposed. By removing the discretion of the Sheriff now found in the language of Article 11, section 11.3(G), the Employer's managerial prerogatives in regard to offers of forfeiture would be diminished. Such a new limitation would, in the opinion of the fact finder, conflict with other language found in the Management Rights Article that describes the authority of the Employer to impose discipline under the parties' Agreement.

Accordingly, the fact finder does not recommend an alteration to the language of Article 11, section 11.3(G). The fact finder recommends the retention of this language unchanged.

RECOMMENDED LANGUAGE: Article 11 – Internal Review and Discipline

Sections 11.1, 11.2, and 11.3 – Retain current language.

Article 18 – Wages

The Union has proposed annual wage increases for each of the years of the parties' successor Agreement. The Employer has proposed no wage increase during the term of the successor Agreement.

The Employer presented financial data presenting the Allen County, Ohio Sheriff's Office General Fund revenues received from 2009 through 2015, the major source of funds used to operate the Allen County, Ohio Sheriff's Office. The amount of the annual appropriation from the Allen County General Fund to operate the Allen County Sheriff's Office is determined by the Board of Commissioners of Allen County, Ohio. Total Allen County Sheriff General Fund revenues in 2009 were \$4,866,537. The 2015 projected General Fund appropriation for the Allen County Sheriff's Office is \$4,861, 599. The 2013 figure for the General Fund revenues assigned to the Allen County Sheriff's Office was \$ 4,958,754. Allen County General Fund revenues appropriated to operate the Allen County, Ohio Sheriff's Office have remained flat over the past six years while expenditures during this time period rose dramatically.

The fact finder recommends modest wage increases for the bargaining unit members in the Gold unit, excluding Corrections Corporals who are entitled to wage agreements bargained from within their former bargaining unit, the Blue unit, that produced a Blue unit collective bargaining agreement that remains in effect until December 31, 2016.

The fact finder will be recommending in this fact finding report a contract duration of two years, retroactive to December 16, 2014. The fact finder recommends a wage increase of one percent (1%) retroactive to December 16, 2014, and a wage

increase of two percent (2%) effective December 16, 2015. Such wage increases are in proportion to wage increases approved for the Blue bargaining unit comprised of Deputies, Dispatchers, and (formerly) Corrections Corporals employed by the Allen County Sheriff's Office.

The fact finder does not recommend wage increases through this fact finding process for Corrections Corporals because Corrections Corporals negotiated wages as part of the Blue bargaining unit through an Agreement that remains in effect through December 31, 2016. Corrections Corporals who were formerly under the Blue unit Agreement should have their wages determined by the Blue unit Agreement until the expiration of that contract on December 31, 2016. The Gold unit's contract should not interfere with what has been bargained and agreed between the Corrections Corporals and the Employer in a separate negotiation and ensuing Agreement.

The fact finder recommends that Road Patrol Corporals receive the wage increases recommended for the Gold unit by the fact finder because the Road Patrol Corporals do not appear to have been under a prior collective bargaining that remains in effect.

RECOMMENDED LANGUAGE: Article 18 – Wages

Section 18.1 – Effective the dates listed below, the hourly wage rates for bargaining unit employees (excluding Corrections Corporals) shall be as follows: effective December 16, 2014 – a one percent (1%) wage increase, and effective December 16, 2015 – a two percent (2%) wage increase.

Sections 18.2, 18.3, and 18.4 – Retain current language.

Section 18.5 - Delete current language (refers to wage reopener in 2012 by the Blue unit, this language is considered out of date and not needed.)

Article 19 – Insurances

The language of Article 19, Insurances, in section 19.3, Premium Sharing, refers to premium contributions that may be demanded of bargaining unit employees for health care coverage. Under this language such a contribution is not to exceed twenty percent (20%) of the established premium for the category selected. The Employer has suggested the deletion of language in section 19.3 that refers to a twenty percent (20%) cap on premium contributions that may be demanded of bargaining unit employees.

The Union opposes the deletion of this limitation on the amount of the premium contributions that may be demanded from bargaining unit employees and notes that other bargaining units that have collective bargaining agreements with the Allen County, Ohio Sheriff's Office have retained the twenty percent (20%) cap on premium contributions from bargaining unit members.

The parties intend that general insurance and hospitalization plans be available to bargaining unit employees on the same basis as provided to all non-bargaining unit employees. The intention of the parties is to maintain a single coverage pool, spreading the risks and benefits of such a coverage pool among the largest group of participants.

The fact finder recommends the retention of language within Article 19, section 19.3 that would continue the twenty percent (20%) cap on premium contributions in the Gold bargaining unit. This recommendation is made with the knowledge that even in the case of a cap, other ancillary charges (deductibles, co-pays, out of pocket expenses) directly affect the demand upon bargaining unit members to assist in paying for their healthcare coverage. The fact finder can do nothing about that circumstance but,

considering that the cap is continued in another bargaining unit, the fact finder is persuaded that the cap, in the short term (two years), should remain.

RECOMMENDED LANGUAGE: Article 19 – Insurances

Sections 19.1, 19.2, 19.3, 19.4, 19.5, 19.6, 19.7, and 19.8 – Retain current language.

Article 20 – Vacation

The Union has proposed a change to the language of Article 20, Vacation, in section 20.1 that would increase the amount of vacation accrued by bargaining unit members who have provided more than twenty (20) years of service to the Allen County, Ohio Sheriff's Office.

The fact finder understands the Union's proposal as to Article 20 is intended to compensate very lengthy careers with the Allen County, Ohio Sheriff's Office and the vacation accrual as proposed by the Union is proportional to lesser amounts of accrued vacation that correspond to lesser amounts of service. The fact finder remains persuaded, however, that monies available to pay for additional benefits for bargaining unit employees are at this time better directed to other aspects of the parties' successor Agreement. The fact finder recommends the retention of the vacation language contained in Article 20.

RECOMMENDED LANGUAGE: Article 20 – Vacation

Sections 20.1, 20.2, 20.3, 20.4, and 20.5 – Retain current language.

Article 22 – Sick Leave

The Employer has proposed a change to the language of Article 22, Sick Leave, section 22.7, Donated Time, that would exclude sick leave from being donated.

The Union opposes the limitation proposed by the Employer for section 22.7, pointing to language within the Blue bargaining unit's collective bargaining agreement that presents language identical to the language in the Gold unit's most recent Agreement.

The fact finder recommends the retention of current language in Article 22, section 22.7. The fact finder does not dismiss the concerns raised by the Employer about donating sick leave and later finding that such leave is needed, but the precedent of the Gold unit's most recent Agreement and the identical language found in the Blue unit's Agreement persuade the fact finder to recommend no change to this language at this time.

Article 22, section 22.9, Bonus Plan, provides that when an employee has accumulated one thousand (1,000) or more hours of accrued, unused sick leave in the last pay period in December, the employee may elect to convert a maximum of eighty (80) hours of accrued, unused sick leave at a conversion rate of two (2) hours of accrued, unused sick leave for each hour of sick leave converted to cash.

The Union proposes that rather than requiring two hours of accrued, unused sick leave for each hour converted to cash, the conversion ratio be changed to one for one under the eighty (80) hour maximum.

The Employer opposes the language proposed by the Union for section 22.9.

The fact finder recommends the retention of current language in section 22.9. The fact finder finds an insufficient basis upon which to recommend an increase to the bonus plan as currently structured.

RECOMMENDED LANGUAGE: Article 22 – Sick Leave

Sections 22.1, 22.2, 22.3, 22.4, 22.5, 22.6, 22.7, 22.8, and 22.9 – Retain current language.

Article 25 – Uniforms/Equipment

The fact finder recommends that the \$575.00 that appear for Sergeants and Lieutenants under Article 25, Uniforms/Equipment, section 25.2, Allowance, as annual uniform allowances, be retained, and that those Corporals serving as Road Patrol Corporals receive similar uniform allowances annually under the same circumstances as Sergeants and Lieutenants under section 25.2. The fact finder recommends that Corrections Corporals receive annual uniform allowances of \$375.00 as negotiated by the Corrections Corporals when part of the Blue bargaining unit prior to October 15, 2014, leading to an Agreement in effect from January 1, 2014 through December 31, 2016.

RECOMMENDED LANGUAGE: Article 25

Section 25.1 – Retain current language.

Section 25.2 – Allowance – Any employee in a classification listed below, who has completed one (1) year of services, shall be entitled to a purchase and/or maintenance allowance in the stated amounts.

	<u>1st Agreement Year</u>	<u>2nd Agreement Year</u>
Sergeant	\$ 575.00	\$ 575.00
Lieutenant	\$ 575.00	\$ 575.00
Patrol Corporal	\$ 575.00	\$ 575.00

Howard D. Silver

Howard D. Silver, Esquire
Fact Finder
500 City Park Avenue
Columbus, Ohio 43215

Columbus, Ohio
March 25, 2015

CERTIFICATE OF FILING AND SERVICE

I hereby certify that the foregoing Report and Recommended Language of the Fact Finder in the Matter of Fact-Finding Between the Allen County, Ohio Sheriff's Office, the Employer, and the Fraternal Order of Police, Ohio Labor Council, Inc., the Union, SERB case number 2014-MED-08-1052, was filed electronically with the Ohio State Employment Relations Board at MED@serb.state.oh.us and served electronically upon the following this 25th day of March, 2015:

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