

IN THE MATTER OF FACT FINDING

BETWEEN

**FRATERNAL ORDER OF POLICE, OLC, INC.
(2 Units: FT Deputy Sheriffs and Lieutenants)**

AND

KNOX COUNTY SHERIFF

SERB CASE # 14-MED-09-1243, 1245

Robert G. Stein, Fact-finder

LEAD ADVOCATE FOR THE FOP:

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INTRODUCTION

The parties to this matter are the Fraternal Order of Police, OLC, Inc. (hereinafter "Union") and the Knox County Sheriff's Department (hereinafter "Employer," or "Department."). The Employer is located in central Ohio. The parties engaged in multi-unit bargaining and the two (2) bargaining units are comprised of approximately fifty (50) employees who are mainly deputy sheriffs, sergeants, and as identified in the Collective Bargaining Agreement. The effective dates of the current Agreement are January 1, 2012 through December 31, 2014. One issue was brought to fact finding. Following a brief period of mediation that one issue, insurance benefits, remained unresolved.

General/State/Local Economic Overview: It can finally be said with reasonable certainty that the economy is improving on the national, state, and local levels. Certainly if you use the measure of the Stock Market, in spite of its recent day to day up and down performance, things are very much improved for those relatively few who depend upon it for their income. But for the majority of Americans a better metaphor is "the bleeding has stopped and the patient's (a.k.a. economy) condition is stable with signs of sustained improvement." The one issue in contention here is health insurance, which for most employers in both the private and public sectors, is a major challenge to manage and maintain. The national economy is still plagued by the fatigue and frustration of politics that for the moment appears to be in a state of remission, but given what the nation has endured over the past several years regarding gridlock, only time will determine whether the nation's concerns and future will take precedent over partisan politics. The sobering reality is that conditions post 2008 are unlikely to be the same as they were prior to the recessionary crash and its aftermath that have caused local governmental operations to be substantially impacted.

One difference is one of economic structure and the considerable loss of the manufacturing base in Ohio, along with the loss of good paying jobs. It was this very vigorous manufacturing base that led Ohio out of past recessions, but it has been eviscerated by the movement of manufacturing outside of Ohio and the United States. Another major difference post-2008 factor is how the state legislature in Ohio has through funding cuts challenged local governments in Ohio to do be more efficient.

Prior to the past year it appeared Ohio, which then was near the top in states creating jobs was in the forefront of recovering state economies. There are also positive signs, the housing market continues showing signs of recovery and the auto industry has had record sales in recent years. Yet, uneasiness persists among the millions of people remaining unemployed, and many others underemployed. The long road to recovery has been uneven, with some government entities recovering faster than others. The latest job creation report from the Department of Labor for March indicates far fewer jobs (126,000) were created than has been the trend over the past year during which the monthly job growth averaged 269,000 new jobs. While the March figures could have been weather related, it is noted that the monthly job creation average for 2015 has been around 200,000 new jobs. (NY Times, 4/3/15) Only time will tell whether March was an aberration or the beginning of a trend signaling a slowing economy.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C) (4) (E) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

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 itemized above, which are normally or traditionally used in disputes of this nature.

The recommendations contained in this report are guided by the above statutory criteria and are intended to be in accordance with them.

For the sake of brevity the specific rationale proffered by the parties was provided in mediation/fact-finding. In order to expedite the issuance of decision as requested by the parties and to accommodate the schedules of the advocates in this matter the parties further agreed to have the fact-finder render his decision based upon the parties' arguments and evidence during accompanied by limited rationale.

EMPLOYER'S PROPOSAL ON THE OPEN ISSUE including rationale:

ARTICLE 48

INSURANCE BENEFITS

48.1 ~~The County shall provide paid medical and hospitalization coverage for bargaining unit members in accordance with the carrier's policy and procedures. The County shall choose the insurance carrier. Insurance benefits under a new insurance carrier will be equivalent to those presently provided by the County. Benefits are equivalent even though deductibles, co-pays, coinsurance or the cost of prescription drugs for the employee may be increased.~~ **The Employer shall provide the same paid medical and hospitalization plan for bargaining unit members as the County Commissioners provide for their non-bargaining unit General Fund employees. The Board shall choose the insurance carrier.**

48.2 Employee contributions for medical and hospitalization coverage during the life of this Agreement are as follows:

	<u>Single Plan</u>	<u>Family Plan</u>
2012-2014	\$79.50 or \$39.75 per pay	\$162.50 or \$81.25 per pay
Employees Share	July, 2015	
Single Premium	15%	
Family Premium	15%	

The Employer will pay the remainder of the premium for single and family coverage. The County Commissioners determine the insurance carrier (including the County self-insured plan).

~~The Employer and bargaining unit employees, including their spouses covered under the County health plan, agree to participate in the County Wellness program (ihealth) as identified in January, 2012. Such exams and tests will be 100% paid for by the County health plan with no co-pay or out-of-pocket costs to employees if the services are rendered at a participating provider. If an employee, including their spouse covered under the County's health plan, choose not to participate in the County's Wellness program as identified above, the employee will have their contribution (as listed above), increased by twelve percent (12%) in accordance with the County's health plan. Employees are encouraged to schedule such tests and exams on their non-work time, and if so scheduled on their non-work time, employees will have two (2) hours of compensatory time added to their bank for each required visit. Employees unable to schedule such required visits on non-work time will be able to use sick leave for scheduled hours missed.~~

If the County changes insurance carriers, or if the current levels of benefits ~~outlined in Section 48.1 above~~ increase, the County shall ~~first meet and confer~~ with the Union over the proposed changes.

48.3 The County shall continue to provide ~~the current~~ vision, dental and life insurance plans for bargaining unit members, ~~in accordance with the terms and conditions outlined in Section 48.1 above.~~ The County shall pay the full amount of the ~~first ten percent (10%) increase in~~ vision and dental insurance premiums. ~~Any increase over ten percent (10%) shall be split equally by the parties.~~

48.4 The Employer shall have the right to self-insure, or to provide coverage through a combination of self-insurance and commercially purchased insurance, or to use commercially purchased insurance exclusively. To the extent commercial insurance is purchased, the Employer shall have the right to select the insurance carrier and, at its discretion, to change carriers. ~~It is understood that certain benefits may become unavailable or cost prohibitive, and thus the Employer may need to substitute another benefit in its place.~~

48.5 Members not taking County Health Insurance, Major Medical and Hospitalization. Members electing not to take such County insurance coverage for the entire calendar year shall receive the following payment in December for that year;

- A. Members eligible for family coverage but taking no coverage \$900.00;
- B. Members eligible for family coverage but taking single coverage \$450.00;
- C. Members eligible for single coverage but taking no coverage \$450.00.

The County may require members to provide proof that they have insurance coverage other than the County's Insurance prior to opting out of County's provided coverage.

RATIONALE

ARTICLE 48, INSURANCE BENEFITS

In January, 2015 the parties reached tentative agreement on all outstanding issues. The Union ratified the tentative agreement and when it was presented to the County Commissioners for ratification they asked if the bargaining unit employees understood that the wellness program currently in effect will continue under this three-year agreement. They were told by the Sheriff's bargaining team that there was no discussion at the table concerning the wellness program, other than the Commissioners would determine the insurance plan and bargaining unit employees would be treated the same as all other County employees. However, the chief negotiator told the Commissioners he would call the Union Representative and ask her what the bargaining unit employees understanding of the tentative agreement was, so there would be no misunderstanding between the parties. When contacted, the Union Representative said the bargaining unit ratified the contract with the understanding that employees would not be required to pay additional premium if

they chose not to participate in the wellness program. The Sheriff's chief negotiator then went back to the Commissioners and informed them of the Union's understanding. Since all other County employees are required to pay an additional premium if they choose not to participate in the County's wellness program the Commissioners felt they needed to reject the tentative agreement.

The Employer did not feel it was necessary to discuss the continuation of the wellness program since it was currently provided for in the current agreement and the Union's initial proposal was for current language. Even though the Employer's proposal deleted the section concerning the wellness program it was clearly the intent of the Union to continue the program since they did not propose to delete the language from the current agreement. There are currently six (6) other collective bargaining agreements in the County and all of those bargaining unit employees are required to pay an additional premium if they choose not to participate in the wellness program, and none of those collective bargaining agreements have specific language providing for such. Two (2) of those collective bargaining agreements are with the Fraternal Order of Police, Ohio Labor Council.

Of the six (6) other collective bargaining agreements within Knox County, one agreement requires employees to pay 20% of the premium while four (4) of the agreements require employees to pay 15% of the premium, only one requires less than 15%, however, by 2017 even that agreement will require employees to pay 15% of the premium.

The Employer requests the fact-finder adopt the Employer's proposal.

UNION'S PROPOSAL ON THE OPEN ISSUE including rationale:

The Parties negotiated and TA'd all opened articles. The FOP/OLC Bargaining Unit held a vote and accepted the TA's. The Knox County Commissioners rejected the TA.

The parties have agreed that all unopened articles and all TA'd articles are accepted by both parties.

Article Open:

Only Article 48 Insurance is still at issue and before the Fact Finder.

The parties TA'd the employees contributions would be 11.5%, 13%, and 15% of the premium. The parties further TA'd the removal of the employees participation in the County Wellness program. An employee must pay an additional 12% insurance cost if he fails to participate. The FOP/OLC membership had made this a high ranked issue for this set of negotiations and made that clear to the Employer. Indeed it was the Employer's proposal that removed this requirement from the Article. If the Arbitrator should find for the Employer he should reduce the employee's contribution equal to the 12% increase that an employee must pay if he does not participate in the wellness program.

The Fact Finder should uphold the FOP/OLC's position and strike the Wellness program from the contract and return Article 48 to the TA'd language.

DISCUSSION:

From the facts and arguments presented it is apparent that the parties reached more of a misunderstanding than an understanding regarding the intent of the changes to Article 48. The fact-finder having served for many years as a chief spokesman at the bargaining table for both management and unions prior to being a neutral, finds misunderstandings of this nature to be a hazard of dealing with complex issues in which neither one party is at fault. Fact-finding being an extension of the negotiations process renders misunderstandings of this nature moot and resulting in no harm to either party.

The facts in this case and the trends prominent in health care do not support the discontinuation of the wellness program as argued by the Union. Whether the programs are effective may be debatable and may depend on a number of factors including testing protocols, acceptance by employee, and whether people adopt healthier habits. However, when the Employer's proposal is viewed in the context of what 400 plus employees in the County have already agreed upon, the continuation of the Wellness Plan is both reasonable and is strongly supported by internal comparable data. Dropping the compliance requirement for bargaining units that comprise 50 employees simply does not pass the logic test. External comparable data in the public and private sectors also supports the common existence of wellness programs as a way to manage costs.

The facts reveal that from last year to this year there was no increase in the cost of health care for the Employer which should also benefit employees. However, for the bargaining unit employee who had a fixed dollar cap in the previous contract and now is faced with a proposed shared percentage of the premium, his/her health care costs could rise assuming costs again begin to increase. The gradual percentage increases over 3 years agreed upon by the parties in the first tentative agreement are consistent with the collective bargaining agreement in existence at the Knox County Engineer's office, which is lower than what all other County employees are currently paying. (See Employer Ex. 7) Ironically an employee now having a greater stake (i.e. risk for incurring greater costs) in the cost of health care argues in favor of a continuation of maintaining a disincentive to not participate in wellness testing.

The central focus of the parties' disagreement at fact-finding was elimination of the penalty or disincentive for not participating in the Wellness Plan. A wellness plan that includes annual blood testing (present in the instant plan with the County) is not present in all wellness plans, many of which confine their emphasis to smoking cessation, BMI levels, and eating healthy foods. However, blood testing is common for employees who have physicals and it is a well-recognized component in assessing the health of people noting critical changes in your body before they manifest as heart disease, cancer, diabetes, etc. This

information provides employees and their physicians with information necessary to enact a science-based disease-prevention program that could add decades of healthy life. During fact-finding the Union raised issues of inadequate notice and other hardships regarding screening.

One of the important factors in assuring the accuracy of blood testing is the requirement of a lengthy period (e.g. 12 hours) of fasting that must precede blood testing, which according to the facts is a part of the testing required of employees under the wellness plan in Knox County. The Union stressed the difficulty of meeting this test requirement, particularly for employees who work 2nd and 3rd shift. Of the twelve bargaining unit employees who failed to take the testing in the prior calendar year, eight worked the second or third shift. It is unclear how many of the employees deliberately decided not to be tested, yet the fact that 75% of those who did not get tested worked on second and third shift should raise a red flag.

A significant difference between the bargaining unit and many other employees in the County is the fact that a law enforcement work is unlike most other work. It's a 24/7 hour operation with law enforcement officers having to be alert, immediately responsive, and continually flexibility in terms of what they may encounter. Further distinguishing a law enforcement operation from other 24/7 operations (e.g. dispatch) is the need for law enforcement officers to have to constantly deal with unpredictable situations requiring the exercise of critical judgment at any time, along with the every present potential of having to use deadly force with little notice, a very hot issue in contemporary society. It's a far greater problem for employees who must work during all of the fasting hours and then have to be tested during daytime working hours than it is for typical day workers. Not being able to eat anything and being restricted to only drinking water for 12 hours or more, depending on when blood testing is scheduled is an issue raised by the Union. For example, take an employee, who is scheduled to work 11:00 p.m. to 7:00 a.m. beginning the night of April 16 and because his blood screening is only available to him on one day, April 17 (during day shift hours); he then is scheduled at 11:00 a.m. for testing. He would have to start fasting prior to his shift, and then wait an additional four additional hours following his shift (which probably impacts his sleeping pattern), surviving only on water for at least twelve (12) hours. Meanwhile, a day shift employee with the same 11:00 a.m. appointment on April 17, goes home on the 16th can eat a late dinner, and can sleep during most of his fasting hours prior to testing.

Additional hardships raised by the Union dealt with travel and spousal screening for secondary coverage. The Union stated that spouses of employees as of 2015 are prohibited from primary County coverage because they have primary insurance coverage elsewhere. The facts indicate there are currently six (6) spouses of employees in the bargaining unit who have chosen to have the County's plan as secondary insurance. The Union objected to any testing for these spouses and also raised the point that if these spouses of employees are already under a wellness plan requirement/testing at their place of employment, and they undergo screening similar to that which is required under the County's wellness plan why should they have to undergo a second round of duplicate tests and other screening. Additionally, why can't this screening for employees and spouses be performed by their own physicians? The internal comparable data supports the Employer's position, but it is noted that only one day of testing remains scheduled for the bargaining unit, April 17, 2015. This could place a hardship on spouses who would have to take a day off from their employer with such short notice.

RECOMMENDATIONS:

ARTICLE 48

Insurance Benefits

48.1 The Employer shall provide the same paid medical and hospitalization plan for bargaining unit members as the County Commissioners provide for their non-bargaining unit General Fund employees. The Board shall choose the insurance carrier.

48.2 Employee contributions for medical and hospitalization coverage during the life of this Agreement are as follows:

Employee share	Jan. 2015	Jan. 2016	Jan. 2017
Single Plan	11.5%	13%	15%
Family Plan	11.5%	13%	15%

The Employer will pay the remainder of the premium for single and family coverage. The County Commissioners determine the insurance carrier (including the County self-insurance plan).

The Employer and bargaining unit employees, including their spouses covered under the County health plan, agree to participate in the County Wellness program.* Such exams and tests will be 100% paid for by the County health plan with no co-pay or out-of-pocket costs to employees. If an employee, including their spouse covered under the County’s health plan, choose not to participate in the County’s Wellness program as identified above, the employee will have their contribution (as listed above), increased by twelve percent (12%) in accordance with the County’s health plan. Employees are encouraged to schedule such tests and exams on their non-work time, and if so scheduled on their non-work time, employees will have two (2) hours of compensatory time added to their bank for each required visit. Employees unable to schedule such required visits on non-work time will be able to use sick leave for scheduled hours missed.

**Beginning immediately and for the life of the Agreement, the County shall provide a minimum of one (1) additional make-up screening day per year in addition to the regular annual screening dates. In addition, the Employer shall extend the hours of the wellness screening in order to better accommodate employees who work 2nd and 3rd shift. Employees shall receive at least 60 calendar days’ notice of a screening date(s) and make-up date(s), including hours of operation and locations.*

Spouses who have elected to have the County plan as secondary coverage and have in part or in full, the same wellness testing requirements under their primary plan as currently exists under the County's wellness plan, may, with the approval of the County, have their results forwarded to the County's wellness plan in lieu of having to undergo duplicate testing. In case the County does not recognize the validity of the spouse's testing regime in part or in full and the spouse needs to take additional tests with the County, the County shall provide a minimum of one (1) additional make-up screening day in 2015 and each year of the Agreement thereafter in addition to the regular annual screening dates in order to accommodate spouses who wish to maintain secondary coverage. Employees shall receive at least 60 calendar days' notice of a screening date(s) and make-up date(s), including hours of operation and locations.

If the County changes insurance carriers, or if the current levels of benefits increase, the County shall meet with the Union over the proposed changes.

48.3 The County shall continue to provide vision, dental and life insurance plans for bargaining unit members. The County shall pay the full amount of the vision and dental insurance premiums.

48.4 The Employer shall have the right to self-insure, or to provide coverage through a combination of self-insurance and commercially purchased insurance, or to use commercially purchased insurance exclusively. To the extent commercial insurance is purchased, the Employer shall have the right to select the insurance carrier and, at its discretion, to change carriers.

48.5 Members not taking County Health Insurance, Major Medical and Hospitalization.

Members electing not to take such County insurance coverage for the entire calendar year shall receive the following payment in December for that year;

- A. Members eligible for family coverage but taking no coverage \$1200.
- B. Members eligible for family coverage but taking single coverage \$600.
- C. Members eligible for single coverage but taking no coverage \$600.

The County may require members to provide proof that they have insurance coverage other than the County's Insurance prior to opting out of County's provided coverage.

TENTATIVE AGREEMENT

Any tentative agreements reached by the parties as well as any current language that is not changed or not addressed by the parties in their negotiations leading to this report shall be considered to be recommended in the successor Collective Bargaining Agreement.

The fact finder respectfully submits the above recommendations to the parties this ____ day of April 2015 in Portage County, Ohio.

Robert G. Stein, Fact finder