

FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
September 7, 2015

In the Matter of:)	
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Teamsters Local No. 413)	
)	
)	SERB Case No.
)	14-MED-10-1519
vs.)	
)	
)	
The Franklin County Sheriff's Office)	
)	

APPEARANCES

For the Union:

Sorrell Logothesis, Attorney for Local 413
Claire Bushorn, Attorney for Local 413

For the Franklin County Sheriff's Office:

Robert Weisman, Attorney for the Sheriff
Jennifer McDaniel, Attorney for the Sheriff

Fact Finder: Dennis M. Byrne

Background

The fact-finding involves the Correction Records Officers, the Corrections Service Coordinators and all other classifications included within the bargaining unit as represented by the Teamsters Local 413 (Union) and the Franklin County Sheriff's Office (Sheriff/Employer). The parties have negotiated more or less continually since November 2014 for a successor agreement to their contract that expired on December 31, 2014. In an attempt to reach an agreement, the parties contacted the State Employment Relations Board (SERB) and enlisted the help of a mediator. During negotiations and mediation, the parties were able to reach agreement on over thirty (30) issues. All prior tentative agreements including those exchanged between the parties shortly before the fact finding are incorporated herein by reference. However, they were unable to find agreement on two (2) other issues; and those issues are before the Fact Finder. The outstanding issues are: 1) wages, and 2) probationary periods.

The parties scheduled a Fact Finding Hearing at 10:00 A.M. on September 11, 2015 at the Hall of Justice Building in downtown Columbus, Ohio. Before the hearing commenced, the Fact Finder attempted to mediate the dispute. That process was successful, and the parties were able to come to an agreement. The mediation started at approximately 10:00 A. M. and concluded at noon.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations in Rule 4117-9-05. The criteria are:

- (1) Past collectively bargained agreements, if any.
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved.

- (3) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards of public service.
- (4) The lawful authority of the public employer.
- (5) Any stipulations of the parties.
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or private employment.

Introduction:

The wage portion of the dispute presents a unique issue because the Corrections Records Officers and Corrections Service Coordinator classifications opted into the bargaining unit while the contract negotiations were in progress. That is, the Union believes that the Employer's financial condition allows it to meet the Union's wage demands, but the Employer believes that its finances do not allow it to pay more than it has put on the table. The second issue is the length of the probationary period for the Corrections Records Officers and the Correction Service Coordinators. The length of a probationary period is not usually an issue that is so divisive that it must be opined upon by a Neutral. However, in this instance the issue arises because of an unusual feature of the contract between the Sheriff and the Fraternal Order of Police unit.

In the contract between the FOP and the Sheriff signed in October 2013, the parties agreed that two positions held by deputy sheriffs would be "civilianized." That is, the Sheriff would hire new employees to perform jobs that had historically been performed by sworn deputy sheriffs. These jobs would be located in the jail and would involve duties dealing with prisoners and interfacing with the court system. The probationary period for a new deputy sheriff is one year. Therefore, the Sheriff believed

that given the nature of the work that the new civilian employees should also have a one-year probationary period.

The Sheriff's rationale for this decision was based on the fact that the new hires would work closely with the jail population and needed to be trained and evaluated on procedures that affected their safety, the safety of the public at large, and the well being of the jail population. Given the danger inherent of working in a jail and the need for the new employees to be trained and evaluated, the Sheriff believes that a one-year probationary period is reasonable.

The Union disagrees. The Union argued that many of the jobs that were in question were somewhat clerical in nature and required no special training. Consequently, the Union contends that the necessary training and evaluation can be attained in less than a year. The Union pointed out that a probationary employee has no union protection from termination during a probationary period, and the Union believes that one year is too long for any employee to face the possibility of losing his/her job without some means of recourse.

The Union agrees that the deputies who previously performed the jobs had a one-year probationary period. But, the Union believes that the specific positions occupied by its members do not require the same probationary period required for sworn deputy sheriffs. That is, the Union stated that the employees in question were in positions that did not encompass all of the duties performed by a sworn peace officer. The Union argued that a lesser probationary period is justified by the facts of this particular situation.

Therefore, this issue represents a true disagreement between the parties based on deeply held beliefs. The disagreement does not, however, mean that there is any difference between the parties' desire to have a safe working environment for the employees and the jail population. The difference is based on differing opinions on the length of the necessary training/probationary period for civilians working in the jail.

Issue: Article 16 - Probationary Periods

Sheriff's Position: The Sheriff demands a one-year probationary period for employees in the Corrections Records Officers and the Corrections Service Coordinators positions, and one hundred and twenty (120) days for all other classifications.

Union Position: The Union's demand is for a probationary period of one hundred and twenty (120) days for new hires, and a ninety (90) day probationary period for employees promoted into either the Corrections Records or Corrections Service Coordinators positions.

Discussion: The Union pointed out that it was demanding language found in other contracts between the Teamsters and the Sheriff. The Union believes that a one (1) year probationary period is excessive. On the other hand, the Sheriff pointed out that these are new positions within Local 413 that used to be staffed by sworn deputies. The Sheriff does not believe that a civilian can be adequately trained and evaluated in either one hundred and twenty (120) or ninety (90) days.

The Fact Finder notes that both parties stressed that they were interested in the safety of the public and the employees in all of their discussions on this issue. The question is what is the best length probationary period that insures the employees are adequately trained for close contact with the jail population, and also offers the employees the protections afforded by a union contract.

The Fact Finder believes that this is an empirical question. That is, what length probationary period ensures that the employees are properly trained and evaluated? Ultimately, neither party can answer that question because there are few (no) situations throughout Ohio that are similar to this one due to the fact there are almost no cases where civilians have replaced sworn deputies in positions in a jail. Therefore, neither party knows how long the probationary period should be.

The Sheriff's position possibly errs on the side of being overly cautious because a sworn deputy does perform many duties that are not included in the job descriptions of the classifications in question. Likewise, the Union's position probably errs on the side of less caution because no other Union employee works in close proximity to inmates as a condition of employment. Therefore, the same probationary period that is applicable for an office job probably is not sufficient for a position in a jail.

The Fact Finder believes that there is no rational way to answer the question of what the proper probationary period should be. Therefore, the Fact Finder is recommending that the term of this agreement be used as a trial period to determine how long the probationary period should be. During the trial period, the Fact Finder believes that the probationary period should be two hundred and seventy (270) days. That is over

twice as long as the probationary periods found in other contracts between the parties, but is less than the probationary period for sworn deputies. After there is some experience with the employees working at their new positions, the parties can more intelligently discuss the issue.

Furthermore, the Fact Finder recommends that the parties meet during the term of the agreement to discuss the issue, *if necessary* (emphasis added), in a Labor/Management meeting. If there are no salient issues with the trial period but if one or both parties wish to recommend changes to the two hundred and seventy (270) day duration, then either party can raise the issue during the next round of negotiations.

Finding of Fact: The probationary period for the new job classifications Corrections Records Officers and Corrections Service Coordinators shall be two hundred and seventy (270) days for the duration of the current contract. At the end of one (1) year the parties shall meet and discuss any salient problems with the probationary period. The two hundred and seventy (270) day probation period trial period will end at the expiration of the contract. Either party can suggest changes based on the parties' experience with the two hundred and seventy (270) day probationary period during negotiations for the next contract. If the probationary period meets the parties' needs, they can retain the two hundred and seventy (270) day probationary period for the term of the next contract.

Suggested Language: Article 16: Probationary Periods

16.5: Probationary Periods for the new job classifications of Corrections Service Coordinators and Corrections Record Officers will be two hundred and seventy (270) days for the duration of this agreement.

A. After the first anniversary date of the contract, the parties shall conduct a labor/management meeting to discuss any problems that have arisen with the probationary period, if necessary.

B. Unless one party to this agreement submits a demand for a change in the probationary period during the next round of negotiations, the two hundred and seventy day (270) probationary period shall become the contractual probationary period for the Corrections Service Coordinators and the Corrections Records Officers.

Issue: Article 18: Wages

Sheriff's Position: The Sheriff is offering 1.35% for each year of the prospective contract and \$.25 per hour retention bonus for the Com Tech job classification. In addition the Employer is offering a one hundred and fifty (\$150.00) bonus payment to the employees when the contract is signed.

Union Position: The Union demands 2.25% for all employees for the first contract year, 2.5% for the second contract year, and 2.75% for the third contract year, plus a \$.50 per hour retention adjustment for the Com Tech job position.

Discussion: The Sheriff's original position is an offer of 4.05% wage adjustment over the life of the contract, plus a one hundred and fifty (\$150.00) bonus payment, and a \$.25 per hour retention bonus for the Com Techs. The Union demand is for a 7.5% wage adjustment over the life of the contract, and a \$.50 per hour retention bonus for Com Techs. This is a significant difference. However, during the discussions on the issue, the Employer presented evidence that every other County bargaining unit had agreed on a 2.0% per year raise. The Employer indicated that it was willing to raise its offer to 2.0%

per year to the members of Local 413. Therefore, the parties' positions are an Employer offer of a 6.0% wage adjustment v. a 7.5% wage adjustment by the Union. In addition, the Employer raised its retention adjustment to \$.50 for the Com Techs and offered \$150.00 as a signing bonus. Therefore, the parties' positions are less than 1.0% apart.

The Union objected to the Employer's position that internal comparability required that its membership receive a 2.0% per year wage increase. The Union argued that the bonus payment would not go into the base rate and, consequently, would not be computed in the membership's pension calculations. The Union also strongly contended that it should not be bound by a pattern that it had no say in negotiating. However, the Union did recognize that the Employer's wage offer was similar to its demand.

During the mediation the Employer agreed to increase its bonus offer to help offset the differences in the parties' positions. After prolonged discussions, the Employer agreed to a three hundred and seventy-five (\$375.00) dollar bonus payment. The Fact Finder believes that this wage offer is fair and reasonable.¹ The difference between the Union's demand and the Employer's offer is minimal compared to the difference in their initial positions and is in line with the agreements signed by all other County bargaining units.

Finding of Fact: The parties were able to negotiate a wage agreement that significantly closed the gap between their original offers.

Suggested Language: The wages listed in Appendix A of the parties contract shall be amended to show a 2.0% increase per year of the proposed contract. In addition, upon

¹ It should be noted that the parties presented voluminous data on the County's financial condition and that information was discussed at length.

the ratification and signing of the agreement, the members of Local 413 shall receive a lump-sum bonus payment of three hundred and seventy-five (\$375.00) dollars. The Com Tech job classification shall also receive a \$.50 per hour retention bonus increase payment in their base rate upon ratification and signing of the agreement.

Signed this 5th day of September 2015, at Munroe Falls, Ohio.

/Dennis Byrne/

Dennis M. Byrne, Fact Finder