

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the matter of:	:	
	:	
Ohio Patrolmen’s Benevolent Association and Wayne County Sheriff, Employer	:	Case Nos. 2016-MED-01-0017 Corrections Officers
	:	

FACT-FINDING REPORT AND RECOMMENDATION

The undersigned, Steven L. Ball, appointed as State Employee Relations Board Fact-Finder, makes the following report and recommendation:

I. HEARING

The Fact-finding was heard at the offices of the Wayne County Justice Center on June 14, 2016 at 10:00 a.m. The Union was represented by Attorney Joseph Hegedus, Ohio Patrolmen’s Benevolent Association, and the Sheriff was represented by Attorney Mike Esposito, Clemons Nelson. Spencer Hale, a member of the bargaining unit attended. Chief Deputy Doug Johnson and Captain Jamie Richards attended for the Sheriff.

II. CRITERIA

Consideration was given to the criteria listed in §4117.14 O.R.C. and Rule 4117.9-05(K) of the State Employee Relations Board, as follows:

1. Past collectively bargained agreements, if any, between the parties;
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, 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;
4. The lawful authority of the public employer;
5. Any stipulations of the parties; and

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 in private employment.

III. ISSUES AND RECOMMENDATIONS

Introduction

This is the first agreement for this bargaining unit of corrections officers. The Sheriff's deputies agreed in 2014 to permit their agreement to be amended to create the corrections officer classification which would save the Sheriff's department substantial monies by employing corrections officers who do not need to be qualified as peace officers. The parties resolved a number of issues remaining after negotiations immediately prior to conducting the fact finding hearing, as follows:

- Sick leave
- Conversion of unused sick leave
- Benefits
- Personal Leave
- Overtime compensation
- Side agreement OPOTA Training
- Side agreement Roll Call

The professional presenters were well prepared and submitted detailed documentation supporting their positions, which expedited hearing and consideration of the remaining issues.

Wages

Findings of Fact

The Sheriff proposes to increase wages by 9% commencing 1/1/17 and 5% commencing in 2018 (the effective date is not clearly stated in the proposal) with the agreement terminating June 30, 2018. The increases are largely attributable to new steps. He acknowledges shortcomings in the current wage scale. The cost of the Sheriff's proposed increases to the County is \$53,974.53. The Sheriff raised the corrections officers wages by 2.5% in 2016. The

Sheriff argues that the Union's proposal would result in employee's increases in wages over two years ranging from 22% to 37%. Those percentages include step increases. The Sheriff concedes, however, that its proposal will not result in parity with the external comparables it offers, but argues that "incremental strides" in future agreements is preferable to immediate percentage increases. The Sheriff believes that "within time this bargaining unit will fall in line with its competitors." The Sheriff proposes a five tiered payment system, maximizing wages at the four year step to \$16.11/hr., with starting wages going from \$13.84 in 2017 to \$14.11 in 2018. The increases are detailed via "equity adjustments" in a "Side letter" listing all current employees.

The Union's proposal would, on January 1, 2017 increase the rate of current employees with one year service to \$15.08 from \$13.84 per hour, a 9% increase. The most senior employees now at two plus years would receive a 24% increase in 2017, and an additional increase in 2018. Should the contract extend two years under the Union proposal, the most senior employees would ultimately receive \$19.36/hour, a total 37% increase over two years. Much of the increases, however, would be due to the addition of step increases.

The four common comparable wages offered by the parties are Ashland, Holmes, Medina and Tuscarawas counties. The Union (Ex. 4), apparently uses current average pay rates of \$19.65, Ashland; \$18.39, Holmes; \$24.38 Medina; and \$19.82 Tuscarawas. The Sheriff lists those county wages in ranges as follows:

Ashland	\$16.18-\$19.65
Holmes	\$12.97-\$17.33
Medina	\$18.21-\$24.38
Tuscarawas	\$17.78-\$19.82

which matches the Serb Benchmark Report (Union Ex. 5) of current wages when divided by 2080 hours.

The Sheriff's proposed future wage rates when compared with the current wage rates for those four comparables still would place the pay for Wayne County corrections officers substantially subpar: 2017, \$15.07-\$15.41, and for 2018 \$15.75-\$16.11. The Union's proposal would result in ranges of \$15.08-\$17.56 for 2017, and \$16.81-\$19.36 for 2018, which would place them slightly above the current medium wages for Holmes County, but still behind Ashland, Medina and Tuscarawas counties. This fact finder notes that Tuscarawas County appears very similar in population and tax revenue to Wayne County. Holmes County has a population less than half of that of Wayne County, and a third less tax revenue.

Though much fiscal evidence was presented at hearing, the Sheriff did not contend that the county was unable to make the wage increases and associated costs proposed by the Union over the next two years. The fiscal information provided by both parties support that conclusion. The Sheriff did emphasize the County's desire to act with fiscal restraint and its past history of doing so. He states that he has had no problem in employing officers at the current rates. The Sheriff also emphasized the desire to proceed incrementally in achieving parity with other comparable salaries. However, the "incremental process of bargaining" urged by the Sheriff cannot trump the statutorily mandated factors. The fact is indisputable that the current wages established by the Sheriff outside of the collective bargaining process fall well short of the wages offered in comparable communities for comparable services.

The Sheriff also urges the fact finder to consider the spread between the deputy's wages and the corrections officers as a rationale to limit the increases urged by the Union. He shows average 21% and 17% differences between deputy and corrections officers between the

minimum and maximum wage rates of its comparables. The Union's proposed wages for 2017 would create a difference from those averages based upon the 2016 deputy wages. However, the deputies have a wage reopener effective September 1, 2016, so comparisons are not possible for 2017 and 2018. In any event, even at the 2017 rates urged by the Union, the Sheriff is still saving substantial monies from when he used deputies.

This fact finder concludes that the Union's proposed wages for 2017 should be adopted, (less the five year step) for both 2017 and six months of 2018. The five year step will not come into play during the term of this agreement. However, the fact finder also concludes that the agreement should terminate June 30, 2018 (see Section on "Duration of Agreement") at which time future wages can be negotiated when the deputies' wages are known and more current comparable wages may be evaluated. This will result in large percentage increases commencing in January, 2017, and new step increases, as well. However, the conclusion is inescapable that the increases are reasonable.

The Union's proposal for longevity pay, commencing after 10 years is premature, with no employees anywhere near such longevity.

Recommendation:

The following Wages Section should be implemented:

"Effective the beginning of the first full pay period after January 1, 2017, the hourly rates of pay for bargaining unit employees shall be as follows:

0 years	13.84
1 year	15.08
2 years	16.32
3 years	17.56
4 years	18.80

Injury Leave

Findings of Fact

The Union's proposal for injury leave is identical to the current language used in the deputy's agreement. The Sheriff proposes a more complicated process which reduces potential leave for an injury received on the job to 30 days from the 120 days eligibility for corrections officers to that now available to deputies. The Sheriff argues that the Ohio Bureau of Workers Compensation had such provisions as exist in the current deputy agreement with offers of reduced premiums for employees offering injury leave. The Sheriff argues that because those rate reductions no longer exist, the injury leave process should be modified.

The current process for the deputies involves up to 120 days leave, which can be extended past 120 days by the employer on a case-by-case basis. The employee submits an application which includes a certification by a physician that the employee is unable to work and that the disability is caused by an on the job injury. The employer may require the employee to submit to an examination by a physician selected by the employer. The employee must also make application to the BWC for workers compensation benefits and agree to pay to the employer any benefits received from BWC as a condition of receiving injury leave. If the employee's BWC application is denied, he must repay to the employer any injury leave benefits he received with the options of using sick leave, vacation, or compensatory time.

The Sheriff's proposal limits such leave to 30 days and requires certification of the covered injury from a list of employer approved physicians. The employee must lose at least seven days from work. He must submit an internal incident report within twenty-four hours of the incident, and must participate in a "light duty" or "transitional program" to be charged against the maximum 30 day leave. If a BWC claim is denied, repayment must be made without

the option of the use of sick leave, vacation, or compensatory time, and the employer has the right to reimbursement through payroll deduction. The proposal also contains an extensive list of circumstances discontinuing the leave.

The Sheriff was unable to point to any instance wherein the current process for obtaining injury leave has been abused by a deputy, or resulted in an inequitable use of county funds. It appeared upon inquiry by the fact finder that such leave has been rarely used. The Union argues that the adoption of the Sheriff's proposal could result in a situation wherein a deputy and a corrections officer would suffer similar injuries in the same altercation with a prisoner, but would receive far different treatment. Some deputies do work at the jail.

The fact finder is persuaded that the Sheriff's proposal is a complicated solution to a non-existent problem and could result in inequitable treatment of the bargaining units.

Recommendation

The Union's proposal, attached hereto, should be adopted.

Fair Share Fee

Findings of Fact

The Union proposes a fair share fee upon members of the bargaining unit who are not members of the Union. The Sheriff opposes such a provision as unnecessary and that it should be denied by the fact finder because it is not a condition of employment required to be bargained. The Sheriff offers two fact finding precedents for the proposition that such a provision is merely permissive under 4117.09(c), Ohio Rev. Code. The current collective bargaining agreements for the deputies and the sergeants and lieutenants contain fair share provisions, but the agreement for other civilians does not. There was no testimony of any significant refusals by the civilians to join the Union. Nor was there any testimony as to the numbers of non-union members, if any

that may exist in the deputy, sergeant and lieutenant unit. The fact finder believes that the lack of a fair share provision could well lead to unnecessary friction among members of the bargaining unit, should a member choose not to join the Union and participate by paying his fair share. To that extent, such provisions surely benefit both the employer and the Union, and are equitable. However, as the unit is new, with no history to prove the necessity for such a provision, and the provision is not a mandatory condition for bargaining, this fact finder believes that it should not be imposed.

Recommendation

The fact finder recommends that no fair share provision shall be included in the agreement.

Duration of the Agreement

The employer proposes a two year agreement, effective July 1, 2016 expiring June 30, 2018. The Union proposes a three year agreement, terminating three years from execution with a built-in retroactivity provision for wages imposed by a conciliator upon the succeeding agreement. The Union proposes a wage reopener effective January 1, 2019. Neither side proposes pay increases prior to January 1, 2017, making the commencement date of limited effect. Moreover, the commencement date will have to come after July 1, 2016, given the date of the hearing. It makes sense that the effective date shall be upon execution of the agreement when adopted, either by execution of the agreement or by operation of law. As this is an original agreement, both parties would be well served by the shorter agreement proposed by the Sheriff. That will provide some experience under an original agreement, but will afford sufficient time for the Sheriff to make the necessary budget adjustments that may be necessary to being the

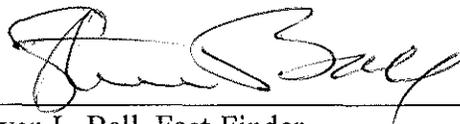
corrections officers' pay into parity with external comparables, yet it does not further increase wages after 2017, except for step increases.

Recommendation

The following language shall be adopted as to the duration of the agreement:

"Duration of Agreement Section 1. Except as otherwise specifically set forth herein, this agreement shall be effective upon its adoption and shall remain in full force and effect until June 30, 2018.

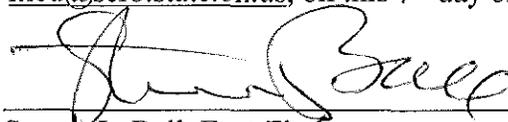
Section 2. If either party desires to modify, amend, or terminate this agreement, it shall give written notice of such intent no earlier than ninety (90) calendar days nor later than sixty (60) calendar days prior to the expiration date of this agreement. Such notice shall be by e-mail or other reasonable means. The parties shall commence negotiations within two (2) calendar weeks upon receiving notice of intent."



Steven L. Ball, Fact-Finder
July 7, 2016

CERTIFICATE OF MAILING

I hereby certify that a copy of the Fact-Finding Report was sent via e-mail to: Joseph M. Hegedus, jmhege@sbcglobal.net and Mike Esposito, mesposito@clemansnelson.com, and to Donald M. Collins, General Counsel, SERB, med@serb.state.oh.us, on this 7th day of July, 2016.



Steven L. Ball, Fact-Finder

ARTICLE
INJURY LEAVE

Section 1. In the event of a service-connected injury incurred in the active discharge of duty, the employee shall receive full pay for a period not to exceed one hundred twenty (120) calendar days from the date of injury. The Employer may grant additional injury leave on a case-by-case basis for such additional periods of time as the injury may warrant. The granting of additional injury leave shall not be unreasonably denied. Upon approval of the injury claim by Workers' Compensation, the employee shall pay to the Employer all income benefits paid by Workers' Compensation for the period during which the employee received full pay.

Section 2. To apply for benefits under Section 1 above, written application shall be made to the Employer accompanied by a certificate from a registered physician stating that such employee is unable to work and that such disability is the result of or is connected with the duties of such employee. It shall be the duty of the Employer to approve or reject the application, and in doing so, he may require examination by a registered physician of his selection.

Before any employee who has made application to the Employer for benefits under this article is entitled to receive any benefits under this article, he shall first make application for Workers' Compensation benefits. He must also complete an Injury-On-Duty report and reimbursement agreement with the Employer as soon as possible following the injury.

Section 3. In the event such Injury-On-Duty is disallowed by the Bureau of Workers' Compensation or the Industrial Commission of Ohio, the employee shall be charged with all time lost from work against his accumulated sick leave time, or at the employee's option, the benefits shall be repaid in cash, accumulated vacation, and/or compensatory time. If the employee does not have accumulated sick leave, vacation, and/or compensatory time to cover either all or part of the time off up to and including the date the claim is disallowed, then any monies paid to the employee by the Employer under this article shall be repaid by the employee to the Employer.