

IN THE MATTER OF FACT-FINDING BETWEEN

THE MIAMI COUNTY SHERIFF

SERB Case No. 2016-MED-0906

AND

THE FRATERNAL ORDER OF POLICE,
OHIO LABOR COUNCIL, INC

BEFORE FACT-FINDER JACK E. McCORMICK

HEARING DATE – JANUARY 17, 2017

DATE OF REPORT – JANUARY 23, 2017

Pursuant to the Rules and Regulations of the State Employment Relations Board a Fact-Finding hearing was convened at 10:30 a.m., January 17, 2017, at the Miami County Offices 510 W. Water St. Troy, 45373

Present at the fact-finding were the following:

For the Union

Barry L. Gray, Senior Staff Representative Fraternal Order of Police, Ohio Labor Council, Inc.

Roger Davidson, Miami County Deputy Sheriff

Andy Leinger, “ “ “ “ “ “ “ “

Jeremy Adams, “ “ “ “ “ “ “ “

For the Employer

Aaron K. Ware, Management Consultant, Clemans-Nelson & Associates, Inc.,

Steve Lord, Chief Deputy, Miami County Sheriff's Office

Miami County, Ohio is in the Western part of the state just north of Dayton. In 2015 its population was 102,506. The Miami County Sheriff's Office is full service law enforcement agency for the County.

The bargaining unit is 38 deputies represented by the Fraternal Order of Police.

The parties held negotiation talks on:

November 28, 2016

December 5, 2016

December 16, 2016

The current contract expired on December 31, 2016. The proposed contract is to be in force for three years to expire on December 31, 2019.

The following articles remain unresolved. However during the hearing some were either withdrawn, or successfully agreed upon (see below).

ARTICLE 6 GRIEVANCE PROCEDURE (RESOLVED – CURENT LANGUAGE

ARTICLE 7 DISCIPLINE

ARTICLE 11 PROBATIONARY PERIOD

ARTICLE 16 HOURS OF WORK AND OVERTIME

ARTICLE 17 WAGES AND COMPENSATION

ARTICLE 20 INSURANCE

ARTICLE 21 SICK LEAVE

ARTICLE 26 EQUIPMENT AND CLOTHING

ARTICLE 27 COURT TIME/CALLOUT TIME

ARTICLE 35 DURATION

ARTICLE 6 GRIEVANCE PROCEDURE

It must be noted that this is a mature contract. The parties have operating under contract dating back ten years, comprising four prior contracts over that period. Any proposed change(s) must be compelling in nature. Here, the County's proposal to have a different neutral decide the issue of arbitrability than the neutral assigned to the hearing is not compelling and the employer withdrew the proposal at the hearing.

ARTICLE 7 DISCIPLINE

The Employer proposes new language regarding drug arrests and the process of discipline in such circumstances. This would be in the form of Section 7.10 (attached hereto as Employer's Exhibit 1). The Union is in agreement and it is so adopted and shall be made part of this contract verbatim.

ARTICLE 11 PROBATIONARY PERIODS

The Employer has proposed new language at Section 11.2 (attached hereto as Employer's Exhibit 2) clarifying the issues surrounding discipline of probationary deputies. In its prehearing statement the Union agrees. Accordingly the Employer's language is adopted verbatim.

-

ARTICLE 16 HOURS OF WORK AND OVERTIME

The Employer proposes changes to Sections 16.1, 16.2, and 16.3 (attached hereto as Employer's Exhibit 3)

Among other things it proposes that the normal work schedule be changed from the current 161.5 hours in a 28 day pay to 171 hours and any time worked after the 171 hours would be considered as overtime. It also proposes a hard cap on compensatory time.

DICUSSION

The Employer's rationale for these changes is that it takes no money from the Employees; that "overtime costs are excessive, and it is seeking costs savings" in anticipation of the wage awards that may come out of this Fact-Finding, or Conciliation.

The Employer's rationale is lacking in facts. First, it provided no facts to support its assertion that "overtime costs are excessive". They do not define what is "excessive".

Secondly it asserts that while this "will not take anything out of the Employee's pocket" it at the same time asserts it is needed to achieve "cost savings" Query: Where then does the costs savings come? They can only come from the Employee's pockets.

Thirdly, the Employer asserts that these savings must be made in the event that if any wage raises that may be awarded here, or at conciliation, that exceed the County's budgeted appropriations must be anticipated. That is not a valid factual assertion, rather pure speculation. Most damaging to the Employer's argument is the fact that no other bargaining unit in the county operates under the same regime. Furthermore, this is a mature contract, which requires a compelling reason for such a major change.

FINDING OF FACT

The Fact-Finder can find no facts that support the Employer's assertions, nor any genuine rationale for its proposal to modify the language contained in the current Article 16 of the CBA.

ARTICLE 17 WAGES

The parties are far apart on this issue and all attempts by the Fact-Finder to mediate this issue failed. The Union proposes wage increase of 4% in each year of the new contract. The County proposes 1% each year of the contract. Neither proposals are within SERB's latest benchmarks.

The County is not asserting an inability to pay albeit, it notes that the recent ruling that they may no longer will be allowed to tax Medicare services may result in a loss of \$800,000.

DISCUSSION

The Union points out that during the nationwide economic downturn it accepted wage freezes in 2010 and 2011. In addition it points to comparable jurisdictions asserting that they are falling behind their peers. They point to three jurisdictions in particular: Tipp City, Troy, and Piqua police departments.

In these comparable jurisdictions the wage increases for Topped Out police officers for the years 2009 to 2016 were:

Tipp City 18.59%

Troy 13.4%

Piqua 9.3%

Miami County 10.46%

In 2016 Miami County Deputies were \$11,002 behind the average of the above jurisdictions.

It is noted that the Union did not include any sheriff's offices in its comparables, nor did they compare the wage levels of this unit to Ohio, or national income averages.

In 2015 median household income in Ohio was \$49,429 and nationwide it was \$53,889. Meanwhile, a Miami County deputy in step F earned \$55,973.

The Employer points to internal comparisons over the years 2014-2016: Miami County Communication employees wage increases for those periods: 3%, 2% and 1%.

Miami County Corrections officers: 2%, 2%, and 2%

Non-bargaining employees: 2%, 2% and 2%

Costs - Notwithstanding the fact that the Employer is not asserting the ability to pay the Fact-Finder must take into account the fiscal impact of any proposal that might have an effect on the governmental unit. In addition this Fact-Finder gives internal comparables more weight than outside comparables

The Union's proposed 4% wage increases over the three year period would cost , without fringe benefits, \$272,051 and with fringe benefits of 33% \$361,827, a 12.93% increase.

The County's proposal of a 1% increase would result in an increase of 3.06% over three year period.

Neither of these proposals approach the latest SERB benchmarks.

Could the County fund the Union's wage proposals? Yes, but this Unit would be an outlier when compared to the wage increases granted other union and non-union county employees.

The Fact-Finder finds that the County's fiscal position is fairly solid, although it is more than likely it will lose perhaps \$800,000 in sales tax revenue in 2017 and beyond. This constitutes 3% of the County's projected 2017 revenue.

FINDING OF FACT

The Union's proposed wage increases are not factually supported.

The County's proposed wage increases are not factually supported.

The Fact-Finder finds that wage increases for this bargaining unit should be, based on a factual analysis, as follows :

2.5% for 2017, 2.0% for 2018 and 2.0% for 2019.

The Union's proposal to increase the current Officer-in Charge pay from \$10 to \$20 is likewise not supported by any facts presented to the Fact-Finder.

ARTICLE 20 INSURANCE

DISCUSSION

As stated herein above, this is a mature contract and these parties have negotiated three and one-third CBAs over the last ten years. Accordingly any, and all, material changes must be compelling in nature. Further, such proposals must be compared to internal comparables in the same jurisdiction. There are times when circumstances may have changed since the past contracts and new language, or provisions need to added or, deleted to accommodate those changes. However, if there are no material changes, the party proposing any, and all changes, or modifications bears the burden to present facts that support those changes, and modifications.

After all, this is a fact-finding. There is some value in consistency. (Although some critic once said: "Consistency is the hobgoblin of small minds"). With that in mind we examine the respective parties insurance proposals.

The County proposes that Article 20 Section 20.2 increasing the bargaining unit members contribution to their health care coverage from the current 15% to 20%. They presented no salient facts as to why this needed to be changed (other than cost savings), nor did they provide any facts that would justify this unit being treated different than all other employees in the county.

The Union proposes for its part that "...a forced funding of employees health savings accounts."

In addition, the Union proposes the County to pay employees \$1,000.00 to opt out of the county insurance plans.

In opposition the County asserts that that the Union's proposal regarding the "forced contribution to the HSA are not supported by any internal, nor external comparables, including Miami County employees.

The Union's proposal for a stipend of \$1,000.00 if they opt out of the County's health plan would only benefit those who have already opted out.

None of the proposed changes meet the criteria set forth in the first two paragraphs of this Discussion (see above).

FINDING OF FACT

NEITHER PARTY HEREIN HAVE PRESENTED SALIENT FACTS SUFFICIENT TO JUSTIFY THEIR RESPECTIVE PROPOSALS AND ARTICLE 20 SHOULD BE MAINTAINED AS CURRENT LANGUAGE.

ARTICLE 21 SICK LEAVE

The Union proposes a material change of Section 21.10. Currently upon retirement of an employee with ten or more years of service is paid in cash for ¼ of the employee's accrued, but unused sick leave, with a cap at 1120 hours. The Union's proposal is that employees be paid, in cash for unused accrued sick leave and ¼ the value of anything above 500 hours. .

The County asserts that the Union's proposal would increase costs by one and one-half the current costs. As an example, they note that a retiring employee being paid \$\$27.45 per hour would receive \$7,686. While under the Union's proposal he/she would receive \$17, 979.75 and with no maximum.

This is a material change. An increase of \$10,000 per employee, with no cap has the potential to cause a major increase in current and future costs. It is noted that this bargaining unit, under the current CBA receives more than other County employees.

FINDING OF FACT

THE UNION'S PROPOSED CHANGE TO ARTICLE 21 SECTION 21.10 IS NOT SUPPORTED BY SALIENT FACTS.

The County proposes that this article be amended to not allow an employee to accrue sick leave while on sick leave. Their rationale for this is that under the current system that the employee can, for an extended time, utilize his/her sick leave for a greater time, thus requiring additional personal, or overtime. However, the County provided no facts, nor statistics to demonstrate this is an operational problem. (as stated above this is a Fact-Finding).

FINDING OF FACT

THE COUNTY'S PROPOSAL TO DISALLOW THE ACCUMULATION OF SICK LEAVE BY AN EMPLOYEE WHILE ON SICK LEAVE IS NOT SUPPORTED BY DEMONSTRABLE FACTS.

[Note: At the conclusion of the County's written statement it states "Failure to approve the Employer's position on this article [above] may result in rejection of the Fact-finder's report". This statement is totally unnecessary and inappropriate. Neither this neutral, nor any other professional neutral, can give this any consideration whatsoever]

ARTICLE 26 EQUIPMENT AND CLOTHING*

Currently the County operates on a quartermaster system, that is, upon request any member of the bargaining unit needing replacement of any part of their uniform simply goes to the Employer who issues the same. The Union propose a stipend of \$250.00 for "other" clothing. When asked what they were referring to, the Union representative stated such things as underwear, sock, etc.. They provided no facts to evidence that members were paying \$250 for such items, and to be frank this neutral has never seen such a proposal, nor provision in any CBA in his three decades as a neutral.

FINDING OF FACT

THE UNION'S REQUEST FOR A STIPEND OF \$250.00 PER YEAR FOR UNMENTIONABLES IS NOT SUPPORTED BY ANY FACTS.

ARTICLE 27 COURT TIME/ CALL OUT TIME\

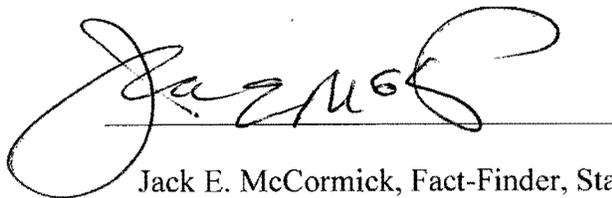
Currently the Union proposes that the current provision in the CBA granting a three hour minimum pay for time in court be increased to four hours. The Union failed to provide any facts that would necessitate this increase.

FINDING OF FACT

THE UNION'S PROPOSAL TO INCREASE BARGAINING UNITS MINIMUM COURT PAY FROM THE CURRENT AMOUNT OF THREE HOURS TO FOUR HOURS IS NOT SUPPORTED BY ANY FACTS PRESENTED TO THE FACT-FINDER.

ARTICLE 35 DURATION

By mutual agreement by the parties the County's proposal is hereby adopted.



Jack E. McCormick, Fact-Finder, State Employment Relations Board

500 City Park Avenue

614-221-2718

jack.mccormick@att.net

Columbus, OH 43215-5707

Section 7.10 Any employee that is arrested for the possession, use, distribution, or manufacture of illegal drugs or any controlled substance not prescribed by a licensed physician and taken in accordance with such prescription shall be placed on paid administrative leave which shall commence upon the employee's exhaustion of his vacation time, compensatory time, and personal leave. If the employee is convicted, enters into a treatment in lieu of conviction, or pleads guilty regarding the possession, use, distribution, or manufacture of illegal drugs or any controlled substance not prescribed by a licensed physician and taken in accordance with such prescription shall be terminated. If the employee is found to be not guilty of the criminal charges described in this section, the employee shall be reimbursed all vacation, personal, and compensatory time exhausted per the above. However, the Employer may discipline the employee for any other policy and/or work rule violations that may have occurred. Nothing within this section shall be construed as a waiver of any rights to appeal in accordance with Article 6 herein; however, an arbitrator shall be limited to determining whether the conviction, guilty plea, or entrance into treatment in lieu of conviction occurred and if so, shall be without any power to modify the termination.

.....

EMPLOYER'S EX - 1

Section 11.2. Employees promoted to a position outside the bargaining unit shall retain the right to return to their former position at their previous rate of pay, in the event they do not successfully complete the probationary period for the promoted position. However, nothing in this Article prohibits the Employer from removing such an employee from employment with the Sheriff's Office during a probationary period pursuant to Article 7 of this Agreement.

~~Union will provide information to the Employer...~~

EMPLOYERS EX-2

Miami County Sheriff
Fact-finding Submission Statement
FOP/OLC (Deputies' Unit)

ARTICLE 16
HOURS OF WORK AND OVERTIME

Section 16.1. Each bargaining unit employee's work schedule shall be determined by the Employer. The normal work schedule shall consist of no more than one hundred and ~~sixty-seventy-one and one-half (161½)~~ **171** hours in a twenty-eight (28) day work period. Any time worked in excess of ~~eight and one-half (8½) hours per day or one hundred and sixty-seventy-one and one-half (161½)~~ **171** hours during a twenty-eight (28) day work period shall be considered overtime, however, there shall be no pyramiding of overtime payments for the same hours worked. ~~In the event that a change from the current daily or weekly schedule occurs, the employee will receive overtime for time worked in excess of eight (8) hours per day or one hundred sixty (160) hours during a twenty-eight (28) day work period.~~ The parties agree that in cases of Department of Labor complaints, Title 29 USC Section 207 (k) shall be utilized for the purpose of determining the Employer's compliance with the Fair Labor Standards Act (FLSA).

Section 16.2. ~~All~~ **Only** hours **actually worked** ~~in active pay status~~ shall be considered ~~hours worked~~ for the purpose of determining overtime eligibility. For the purposes of this Article active pay status shall include vacation, compensatory time, and sick leave.

Section 16.3. Employees shall be compensated at the rate of one and one-half (1½) times the employee's regular hourly rate of pay for any overtime actually worked. The Employer may elect to grant compensatory time in lieu of payment for overtime as described above. The Employer intends to utilize the process described in the preceding sentence for the training, implementation, and working of specialized assignments, e.g. bike patrol, SRT, etc., as well as during times in which there are budgetary constraints that prevent the payment of overtime. Compensatory time, if authorized, will be accumulated on a time and one-half (1½) basis for each hour of overtime worked. Employees shall not be permitted to, **in a calendar year**, accumulate **or utilize** more than forty-eight (48) hours of compensatory time, unless approved by the Sheriff. Any compensatory time in excess of ~~forty-eight (48) hours shall be paid to the employee, unless approved as described above.~~ **Any accumulated but unused or unscheduled compensatory time shall be paid to the employee in the first full pay period in December.**

Employees shall request the use of compensatory time in writing no later than forty-eight (48) hours prior to the requested commencement of such leave. The Employer may determine the need for an employee(s) to use compensatory time accumulated or direct the payment of said compensatory time to the employee.

Section 16.4. Current Language.

EMPLOYER'S EX-3

Section 16.5. Current Language.

Section 16.6. Current Language.

Section 16.7. Current Language.

CERTIFICATE OF SERVICE

The foregoing Fact-finding was transmitted by email in pdf form to the following

On the 23rd of January 2017:

Barry L. Sullivan, Senior Staff Representative

Fraternal Order of Police

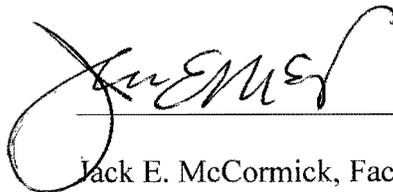
Aaron Weare,

Clemans Nelson Inc.

And

Donald M. Collins, General Counsel

State Employment Relations Board

A handwritten signature in black ink, appearing to read "J. McCormick", is written over a horizontal line. The signature is stylized and cursive.

Jack E. McCormick, Fact-finder

Ten or more years of servi

IN THE MATTER OF FACT-FINDING BETWEEN
THE MIAMI COUNTY SHERIFF
AND
THE FRATERNAL ORDER OF POLICE
OHIO LABOR COUNCIL, INC.

FACT FINDER'S FEE STATEMENT-

Scheduling and review pre-hearing statement - *	\$117.00
Travel and conduct hearing -	\$950.00
Study and write report -	\$950.00
Mileage 170 miles @ \$.55 -	<u>\$ 93.50</u>
Total -	\$2,110.50 W-9 attached

Employer share - \$1,055.25

Union share - \$1,055.25

A handwritten signature in black ink, appearing to read "John E. [unclear]", is written over the bottom right portion of the document.

Request for Taxpayer Identification Number and Certification

Give Form to the
requester. Do not
send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)

JACK E. MCCORMICK, Attorney

Business name/disregarded entity name, if different from above

Check appropriate box for federal tax classification:

- Individual/sole proprietor
- C Corporation
- S Corporation
- Partnership
- Trust/estate
- Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶
- Other (see instructions) ▶

Exemptions (see instructions):

Exempt payee code (if any) _____
Exemption from FATCA reporting code (if any) _____

Address (number, street, and apt. or suite no.)

500 City Park Ave

City, state, and ZIP code

Columbus OH 43215-5707

Requester's name and address (optional)

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number

				-						
--	--	--	--	---	--	--	--	--	--	--

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Employer identification number

3	1	-	1	4	1	0	9	5	0
---	---	---	---	---	---	---	---	---	---

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below), and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here

Signature of U.S. person

Date

1/23/17

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. The IRS has created a page on www.irs.gov/w9 for information about Form W-9, at www.irs.gov/w9. Information about any future developments affecting Form W-9 (such as legislation enacted after we release it) will be posted on that page.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, payments made to you in settlement of payment card and third party network transactions, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued).
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the

withholding tax on foreign partners' share of effectively connected income, and

4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct.

Note. If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.