

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

Report and Recommendation of the Fact-Finder

May 26, 2017

In the Matter of:

Ohio Patrolmen's Benevolent)	
Association)	
Union)	
)	
and)	Case No. 16-MED-10-1112
)	
Trumbull County Sheriff's Office)	
Employer)	

APPEARANCES

For the Employer:

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For the Employee Organization:

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OPBA
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Factfinder:

Richard P. Gortz
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Introduction

The Trumbull County Sheriff's Office ("Employer") and the Ohio Patrolmen's Benevolent Association ("Union", "OPBA" or "Employee Organization"), on behalf of Corrections Officers ("CO's") and Corrections Sergeants ("CO Sergeants"), are parties to a Collective Bargaining Agreement ("CBA"), effective January 1, 2014 through December 31, 2016. The bargaining unit consists of approximately 62 members, including 55 CO's and 7 CO Sergeants.

Negotiations for follow-on agreement commenced on January 17, 2017 and ended in impasse on February 17, 2017 after three sessions. The parties entered into a Memorandum of Understanding to waive the statutory restrictions of Conciliation in ORC 4117.14(G)(11). The parties further waived time restrictions of the Factfinding process. The parties made no other stipulations.

The undersigned was selected by the parties and appointed by SERB as Factfinder. The parties submitted pre-hearing statements within the statutory time limits. The Factfinding hearing took place on April 6, 2017 at 10:00 a.m. in the Trumbull County Law Library. Following the hearing, the parties requested and were granted until April 25 to submit post-hearing briefs. Those briefs were received by this Factfinder in a timely manner.

Each party was ably represented; the Employee Organization by Max Rieker, Esq., OPBA attorney, and the Office of the Sheriff by Curt Ambrosy, Esq., labor relations counsel.

Also present at the hearing were:

For the Employer:

Paul Monroe, Trumbull County Sheriff

Richard Jackson, County HR Director

Debra Santangelo, Chief Accountant

For the OPBA:

Mary Schultz, Financial Consultant

Yale Watkins, OPBA Rep.

Bev Bowker, OPBA Rep.

Dustin Casvin, OPBA Rep.

This unit is the first of four in the Sheriff's Office to negotiate terms for agreements for 2017 and beyond. The other three units are now in negotiations.

The parties have a history of proceeding to Factfinding and Conciliation in negotiations. The principal issue in past has been wages, and is the major contention in the current negotiations. The Employer's ability to pay for OPBA economic proposals is an ongoing issue between the parties.

The parties agree that open issues are as follows:

Article 19, Wages.

Article 25, Continuation of Benefits

Article 29, Sick Leave

Article 34 – Abuse of Sick Leave

SERB encourages Fact-Finders to attempt to mediate a settlement prior to hearing evidence. The offer to mediate was not mutually accepted, and hearing on the facts proceeded. No transcript was taken.

The recommendation of the Fact-Finder is based upon the criteria set forth in Section 4117-9-05(k) of the Ohio Administrative Rules. They are:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) 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;
- (c) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effects of the adjustments on the normal standard of public service;
- (d) The lawful authority of the public employer;
- (e) The stipulations of the parties;
- (f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed upon dispute procedures in the public service or in private employment.

POSITION OF THE PARTIES

Article 19, Wages

Union:

- 1) 3.5% increase in base wages in each year of the three-year agreement, retroactive to January 1, 2017.
- 2) Add an additional step to the wage schedule at the 15-year service mark, fifty cents per hour above the current top ten-year step.
- 3) Increase in the CO Sergeant's rank differential from the highest CO rate from 10% to 12%.
- 4) Eliminate the "two-tier" PERS pick-up for CO's hired after 2010, which was negotiated in a previous agreement when the unit was represented by the U.A.W. The "new hires" now have 4% of their PERS picked up by the employer while more senior CO's have the entire 8.5% employee portion paid by the employer.

Employer:

- 1) Twenty-five cents per hour across the board for all steps of the CO's and CO Sergeants retroactive to January 1, 2017 with a reopener on wage rates only for contract years 2018 and 2019 commencing no earlier than May 1, 2018.

The Employer proposes no other changes to the Wage article.

Article 25, Continuation of Benefits

Union: Unchanged

Employer:

- 1) Limit employer paid health coverage to 6 months while on on-the-job injury leave for total and temporary disability.
- 2) Decrease the time in which the employee must notify the Employer that they wish to continue coverage beyond the 6-month time period (or other time when coverage would cease) from 60 days to 30 days.
- 3) An employee who sustains an on-the-job injury must file a report with the employer as required by the employer and file for Worker's Compensation within ten days.

Article 29 – Sick Leave

Union:

Remove the requirement that an employee submit a physician's certificate that the employee's presence was necessary when the employee takes leave to care for a member of the immediate family.

Employer:

Require a "return to work" note from a physician when absent due to personal illness for two days rather than the current three days.

Article 34, Abuse of Sick Leave

Union: Unchanged

Employer:

Reduce the number of occurrences of absence within a year for caution and time-off discipline by one occurrence: Written warning from 4 to 3, one day suspension from 5 to 4, ten-day suspension from six to 5 and more severe discipline from seven to 6. The Employer further proposes to limit counting as an “occasion” when leaving work due to illness to those instances when it does not cause the shift to go below minimum.

Arguments, Discussion and Recommendation

The proposals of the parties fall unto two broad categories, namely hard economics (wages) and soft economics (sick leave, continuation of benefits). Most hearing time was taken by testimony of the Union’s financial expert and the County’s Chief Accountant regarding current and future financial health of county coffers.

Article 19, Wages

Mary Schultz, Financial Consultant, testified for the OPBA. She reviewed five years of County finances in preparation for her testimony. Her analysis indicates that Trumbull County has experienced a steady gain of sales tax revenue, and she sees no evidence as to why such revenue should decrease in future. Cuts of Local Government Funds by the State have been offset by increase in Casino revenue.

She calculates that the County has a General Fund balance ending 2016 of \$8,703,000 which represents a 19.5% carryover reserve. She stated that this is in excess of the 16% carryover recommended by the Government Finance Officers Association, and therefore the County has sufficient funds to continue current services while funding the requested wage increases.

The OPBA seeks an additional step in the schedule for CO's at 15 years, at \$.50 higher than the existing 10-year mark. It argues that only 10 CO's and the 7 sergeants would be affected. It further seeks a CO sergeants rank differential from 10% above the top CO to 12%, arguing that lieutenants make 23% more than CO sergeants, which is a considerable gap. Road deputy sergeants earn 12.5% more than deputy sheriffs.

An OPBA wage proposal, which it claims is a "must", is to eliminate what it claims is an inequity in pay for those hired after January 1, 2010. Under a previous agreement negotiated by the UAW six years ago, a two-tier system was established wherein wages were lower, and pension pick-up enjoyed by incumbents was eliminated. Those hired under prior agreements had the entire 8.5% of the PERS pension paid by the Employer, while those hired on or after that date paid their entire PERS. Under the current agreement negotiated by the OPBA, those recently hired CO's had their wages placed on the same scale as the more senior employees, and 4% of their PERS "picked up" by the employer, leaving employees to pay 4.5%. The OPBA argues that this is an inequity which must be addressed in this agreement since it is cause for considerable displeasure in the bargaining unit.

OPBA comparable charts show that bargaining unit employees were paid 9% below the average rate of surrounding counties, falling to 10.5% currently. The trend is down, and now below any comparable unit in the area. Considering the Employer's demonstrated ability to pay, and the gross internal and external inequity in wages and benefits, the OPBA argues that its wage proposal should be recommended.

On behalf of the Employer, County Chief Accountant Debra Santangelo, testified that while the County has large balances in its worker's compensation and health insurance funds, those balances have been and are being worked down by the County not making current contributions to these funds, and higher than anticipated utilization of health and worker's compensation claims. She testified that \$2.7 million is anticipated in loss of sales tax revenue in 2018 part of which is due to the loss of Medicaid Insurance sales tax revenue, which has been eliminated by the state. Casino revenue is decreasing due to a shift to "racino" gaming, in which the County does not share as much.

She also stated that while other county departments have seen cuts in their current budgets, the Sheriff's budget has remained uncut, mainly due to mandated costs of running the jail. Typically, the Sheriff's budget must be increased during the term of the fiscal year due to unanticipated costs and overtime. While the County is not in fiscal watch, it is frugal and conservative in its budgeting to avoid such designation, so as to maintain local control of expenditures.

The Employer argues that Trumbull County is depressed economically with considerable loss of jobs due to closing of steel and automotive plants locally. There is no anticipated development which will provide revenue for an optimistic near term. The County is asking for freezes or small wage increases in all units. The City of Warren has frozen wages for all units this year.

With regard to comparable data, the County argues that employees receive \$.30 hazardous duty pay and "pension pick-up" of 8.5%, as well as 90% of health insurance premiums paid by the Employer, benefits which are not generally available to CO's in other counties. It argues that such benefits must be factored in

when making compensation comparisons to surrounding counties. When these benefits are factored in, CO's in Trumbull County are paid fairly.

The Union's proposal for PERS pick-up increase for those hired after January 1, 2010 runs counter to the County Commissioners desire to eliminate "pick-up" in all other agreements, and is not prevalent in comparable counties.

The Employer's offer of \$.25/hour across the board this year, with a wage reopener for the next two years of the agreement is fair under the circumstances.

Discussion

It is clear that Trumbull County, along with contiguous counties of Ashtabula and Mahoning Counties have suffered greatly over the past several decades due to closing of heavy industry and automotive plants. Nothing on the visible horizon indicates that the situation will turn around soon. While the County is not in fiscal emergency or watch, the County finance staff and County Commissioners ensure conservative budgeting so as to avoid being placed under State of Ohio control. No county departments or units are receiving wage increases anywhere near the 3.5% per year sought by the OPBA, and granting of such increases to this unit would pave the way for extremely difficult negotiations with the three outstanding units in the Sheriff's Office, as well as impacting upon other departments. Nothing in the County's financial future indicates a positive outlook. To the contrary, loss of sales tax revenue, casino revenue and increasing costs for necessities such as cruisers, food, utilities will tighten County budgets.

Article 19, Wages

While employees face similar costs at home and deserve some increase in compensation to keep up with rising costs, 10.5% over three years and a major bump in the Sergeant's differential, as well as an additional 15-year step would be imprudent at this time.

The other outstanding wage issue is PERS differential for those hired on or after January 1, 2010. The UAW and County negotiated a "two-tier" wage and benefit provision six years ago. In this Factfinder's opinion, two-tier solutions are always gross errors. It can be an easy fix since the parties are negotiating wages and benefits for those who have yet to be hired and who don't have a vote, but eventually the "chickens come home to roost" when those affected employees gain in numbers and perceive that they get less pay for the same work. In the last agreement, the wage inequity was resolved. I propose to resolve the PERS inequity in this agreement.

The Employer argues that the County wishes to eliminate PERS pick-up for all units, and granting this benefit would be contrary to that trend. If the County wishes to negotiate out the pick-up, it must do so equitably, and not keep one group at a disadvantage until, and if they do so.

The County wishes to reopen negotiations for the final two years of the agreement no earlier than May 2018. This Factfinder is an opponent of reopeners, except in the most unusual of circumstances, since it keeps the parties in constant negotiations and uncertainty. There is little evidence that the financial circumstances of the County will change substantially between now and May, 2018.

With regard to wage increases, “cents across the board” adjustments for several consecutive agreements tend to cause “wage compression”, that is, decreases the percentage differential between the lowest and highest steps and ranks.

Eventually, the compression must be corrected when higher rank employees complain that their differential has been eroded. However, in this case, the County has used flat “cents across the board” in many of its settlements, and I am reluctant to recommend a change in that pattern.

Accordingly, my recommendation for wages is an across-the-board wage increase of thirty-five cents per hour (\$0.35) in the first year, and thirty cents per hour (\$0.30) in the second and third years. Neither party submitted a weighted average hourly rate, however it appears that this increase is approximately 1.8% in the first year and 1.5% in each of the second and third years. I believe that such a wage increase is sustainable based upon evidence provided by the financial expert witnesses. The Factfinder is aware that this agreement is the “leading edge” of the Sheriff’s contract negotiations, and may provide a pattern for other settlements.

With regard to the PERS differential, I agree with the OPBA representative who stated that correcting this inequity is a “must”. Accordingly, I recommend that affected employees pay 2.25% of their PERS in contract year 2018 and the Employer pick up the entire employee share of PERS in contract year 2019. While the employee contribution will remain the same in 2017, delaying the implementation until 2018 will avoid retroactivity, which could have a negative budget impact.

I recommend that the Sergeant's differential remain unchanged. This rank has been in existence for only one contract term, and can be addressed at another time when county finances permit. With similar reason, I further recommend no additional steps in the wage schedule. Any available funds must be used to grant general wage increases and help to eliminate the PERS inequity.

Article 25, Continuation of Benefits

The Employer argues that the overwhelming number of Ohio CO contracts limit Continuation of Benefits to 120 days, where they exist at all. Neighboring Mahoning County limits employees to 90 days for health insurance.

The objective of the Employer is to eliminate a "loophole" under which some employees have taken advantage of on-the-job injury leave for years, while the County must continue expensive health coverage.

This Factfinder agrees that the employer must have a limitation on continuation of benefits, and a six-month limit seems reasonable. Accordingly, I recommend the Employer's proposal for a six month limitation. I further recommend lowering the deadline to apply for continuation of coverage from 60 days to 30 days prior to the date the employee would otherwise lose coverage. This shorter time period is in the employee's favor.

Further, the Employer's proposal that employees who are injured on the job file a report, and that the Employer initiate Worker's Compensation claims is not unreasonable. By this proposal, the Employer is attempting to eliminate a situation where the employee claims injury or illness, but delays filing, and thereby delays and extends the time benefits are continued. There is no foreseeable adverse

impact on employees by including this clause in the agreement. I therefore recommend that the Employer's proposal be adopted.

Article 29 – Sick Leave

Both the OPBA and Employer have proposals to modify this article. The OPBA wishes to eliminate the requirement that an employee who takes time off to care for an ill member of the immediate family submit a note from the family member's doctor. The Employer proposes to reduce the number of consecutive scheduled working days off in which an employee is required to present a "return to work" slip from a doctor from 3 to 2.

The OPBA argues that it is unseemly to require an employee to ask a physician of a family member for a note that the employee's presence was necessary. While I agree with the OPBA that some limitation on this benefit is desirable, it is a benefit ripe for abuse. I recommend that the same time limits be placed on this leave as on consecutive personal sick leave, and that an employee be required to submit such proof when the employee is off for 3 or more days due to taking care of an ill family member.

On the other hand, the Employer's proposal to reduce the time for a "return to work" note from 3 to 2 consecutive days is not recommended. In this Factfinder's experience, three days is the norm under such policies.

Article 34, Abuse of Sick Leave

The Employer proposes to reduce all thresholds for discipline for abuse of sick leave by one day. Discipline would be triggered at three or more occasions of

absence, while written caution letters would be decreased from 4 to 3, one day suspension from 5 to 4 days, etc.

An employee is now not be charged with an “occasion” when the employee leaves work ill up to 2 times per year. The Employer proposes to count as an occasion should the employee leave when it causes the shift to fall below minimum.

I recommend that the Abuse of Sick Leave remain unchanged for this contract. It would be unfair, in my opinion, to limit a perceived benefit while severely restricting wages. Further, I see no logic in charging an employee with an “occasion” when it causes the shift to go below minimum, but not charge on the first two incidents when the shift will continue to be at full strength. Employees are not in control of when they become ill, and shift strength has little or nothing to do with the issue.

Recommendation Summary

Article 19, Wages

- 1) \$.35/hr. to each step retroactive to January 1, 2017, \$.30/hr. for each step in 2018 and 2019.
- 2) PERS “pick-up” for those employees hired on or after January 1, 2010 increased to 6.25% in 2018 and 8.5% in 2019.

Article 25, Continuation of Benefits

- 1) Limit employer paid health coverage for Worker’s Compensation leave to 6 months.
- 2) Reduce deadline to apply for COB from 60 to 30 days prior to expiration of coverage.

- 3) An employee who sustains an on-the-job injury must file a report with the employer as required by the employer and file for Worker's Compensation within ten days.

Article 29 – Sick Leave

- 1) Employee who is absent 3 or more consecutive work days due to illness in the immediate family must submit a statement from the family member's physician that the employee's presence was necessary.

Article 34, Abuse of Sick Leave

Current Contract Language

The above recommendations in contract language are attached hereto and made part hereof. All tentative agreements of the parties initialed prior to the hearing in the above case are also incorporated herein by reference.

Issued this 26th day of May, 2017 in Pepper Pike, Ohio:

A handwritten signature in blue ink, appearing to read "Richard P. Gortz". The signature is fluid and cursive, with a large initial "R" and "G".

Richard P. Gortz

Fact Finder

Proof of Service

I certify that an exact copy of this report has been sent by email this 26thth day of May, 2017 to the following:

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Richard P. Gortz

Fact Finder

ARTICLE 19 - COMPENSATION/WAGE - CORRECTIONS OFFICERS

“Length of Service” means time commencing with the first day that an Employee is on active pay status with the Bargaining Unit. Commencing and retroactive back to January 1, ~~2014~~ **2017**, all Employees shall be compensated at the rates of pay articulated in this Article based on their length of service with the Bargaining Unit.

All Corrections Officers, regardless of their hire date:

Commencing and retroactive back to January 1, ~~2014~~ 2017:

Length of Service:	Hourly Rate:
Start	\$14.96 \$16.01
After one (1) year	\$15.66 \$16.71
After two (2) years	\$16.61 \$17.66
After three (3) years	\$17.79 \$18.79
After four (4) years	\$18.47 \$19.52
After five (5) years	\$19.695
After seven (7) years	\$18.72 \$19.945
After ten (10) years	\$18.97 \$20.195

Commencing ~~and retroactive back to January 1, 2015~~ 2018:

Length of Service:	Hourly Rate:
Start	\$15.41 \$16.31
After one (1) year	\$16.11 \$17.01
After two (2) years	\$17.06 \$17.96
After three (3) years	\$18.19 \$19.09
After four (4) years	\$18.92 \$19.82
After five (5) years	\$19.995
After seven (7) years	\$19.17 \$20.245
After ten (10) years	\$19.42 \$20.495

Commencing on January 1, ~~2016~~ 2019:

Length of Service:	Hourly Rate:
Start	\$15.66 \$16.61
After one (1) year	\$16.36 \$17.31

After two (2) years	\$17.31	\$18.26
After three (3) years	\$18.44	\$19.39
After four (4) years	\$19.17	\$20.12
After five (5) years	\$19.345	\$20.295
After seven (7) years	\$19.595	\$20.545
After ten (10) years	\$19.845	\$20.795

~~Retroactively from January 1, 2014 through December 31, 2014, Corrections Sergeants shall be paid a base hourly rate of \$19.97.~~

~~Commencing and retroactive back to January 1, 2015, Corrections Sergeants shall be compensated at are rate of pay which is ten percent (10%) higher that the rate of pay of the highest paid Corrections Officer. This rank differential shall continue from January 1, 2015 onward.~~

PERS

The Employer shall continue to make pension contributions as may be required by the appropriate state pension system:

For employees hired before the execution of the 2010 collective bargaining agreement between the Sheriff and the U.A.W., the Employer shall pay an amount equal to eight and one-half percent (8.5%) of the employee's gross wage, each pay period to the appropriate state pension system (i.e., eight and one-half percent [8.5%]) of the employee's mandated total contribution.

For employees hired after the execution of the 2010 collective bargaining agreement between the Sheriff and the U.A.W., the Employer shall pay a portion of the employee's mandated total contribution to the appropriate state pension system as follows:

Commencing on and retroactive back to January 1, 2015 **2017: two percent (2%) four percent (4.0%)**

Commencing on January 1, 2016: **2018: an additional two percent (2%) two and one quarter percent (2.25%)**

Commencing on January 1, 2019: an additional two and one quarter percent (2.25%)

~~(i.e., four percent (4%) of the employee's mandated total contribution by January 1, 2016.)~~

(i.e., 8.5% starting January 1, 2019)

(All other provisions of this article remain unchanged)

ARTICLE 25 - CONTINUATION OF BENEFITS

Eligible employees shall retain coverage under all County Employer paid medical and life insurance programs in accordance with the following provisions:

a. The employee must have previously been enrolled in such programs in accordance with the requirements of the County Employer and the provider, prior to going on an approved leave of absence; and

b. When an employee is granted an approved leave of absence without pay, and the period of the absence does not exceed thirty (30) calendar days; or

c. When an employee sustains an on-the-job injury and is approved for total temporary disability benefits through Ohio Worker's Compensation. This retention of coverage shall terminate upon an employee being approved for disability through the Public Employees Retirement System, upon being removed from Total Temporary Disability Benefits and/or status, or upon obtaining other employment **or after six (6) months of coverage under this provision, whichever occurs first.**

An employee who remains on an approved leave of absence beyond the time limitations expressed above may elect to continue their health care coverage at their cost for a period not to exceed eighteen (18) months in accordance with the following provisions:

a. The continuation of coverage shall be the equivalent of the same coverage being provided to all other eligible employees;

b. The employee must notify the County/Employer and the plan administrator of their intent to continue coverage within ~~sixty (60)~~ **thirty (30)** days of the date of the event which would cause them to lose paid coverage;

c. The employee must provide timely payment of the required premiums in accordance with the requirements of the County/Employer and plan administrator.

Employee paid continuation of benefits shall not continue should any of the following occur:

a. The time period extends beyond the maximum time limitations provided herein;

b. The group health care plan is terminated;

c. The employee becomes covered under other group health care plan;

d. The employee becomes eligible for Medicare benefits.

An employee who sustains an on-the-job injury shall complete an injury report as required by the Employer and may apply for worker's compensation. Within ten (10) days of the employee's submission to the Employer of the injury report, required medical documentation and the application for worker's compensation, the Employer or designee

shall initiate the required forms for processing. The provision shall not negate the Employer's right to challenge any application for worker's compensation benefits.

ARTICLE 29 - SICK LEAVE

Where sick leave is requested to care for a member of the immediate family **and where the employee is absent for three (3) or more consecutive days**, the Employer may require a physician's certificate to the effect that the presence of the employee is necessary to care for the ill family member.

(All other provisions of this article remain unchanged)