

**FACT-FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
NOVEMBER 10, 2017**

IN THE MATTER OF:)	
FRATERNAL ORDER OF POLICE,)	SERB CASE NUMBER
OHIO LABOR COUNCIL, INC.)	2017-MED-04-0553
(EMPLOYEE ORGANIZATION))	
)	
-AND-)	
)	
STARK COUNTY SHERIFF'S OFFICE)	FACT-FINDER
(EMPLOYER))	RICHARD F. NOVAK

APPEARANCES

For the FOP/OLC

Brenda Goheen
Staff Representative

George Macris
Staff Representative

Pat Arnold
Staff Representative

Jason Skelley
Staff Representative

For Stark County Sheriff

Leslie Kuntz Esq.
Employer Attorney

John E. Oliver
Chief Deputy

C. J. Stantz
Major-Operations

Thersa Wilson
Chief Financial Officer

ADMINISTRATION

By correspondence dated September 21, 2017 from the State Employment Relations Board, Columbus, Ohio, the undersigned was notified of his appointment to serve as Fact-Finder in compliance with Ohio Revised Code Section 4117.14(C) (3) to hear arguments and issue recommendations relative thereto, pursuant to Ohio Administrative Code Rule 4117-9-05(J) and (K), in an effort to facilitate resolution of those issues that remained at impasse between the Parties. The impasse resulted after three negotiation sessions and several breakout sessions between the parties to resolve the terms related to a successor labor contract. The current labor contract expired on July 1, 2017.

The Fact-Finding hearing occurred on October 31, 2017. During the course of the fact-finding proceedings, each party was afforded a full and adequate opportunity to present testimonial and/or comprehensive documentary evidence supportive of positions advanced. In accordance with 4117.14(C) (4) (F), the Fact-Finder attempted a mediation session, which was not successful.

In all, extensive exhibits and information regarding the pattern bargaining history of Stark County Sheriff's Department over the past several years and SERB Health Care Survey Data were received in evidence and evaluated by this Fact-Finder. Data on the settlements (CBA) of three other Bargaining Units within Sheriff's Department was also submitted in evidence. Without question, a comprehensive record was developed.

The Bargaining Unit to which this hearing applies is the Stark County Sheriff's Department and the classifications of: Automotive Mechanic, Clerk, Maintenance Repair Worker, Corrections Officer and Communication Technician who are represented by the Fraternal Order of Police (FOP), Ohio Labor Council, Inc.

There are approximately 106 employees in the Bargaining Unit. The Bargaining Unit is described in Article 3. Union Recognition of the Collective Bargaining Agreement as follows:

ARTICLE 3.
UNION RECOGNITION

Section 1. The Employer recognized the Fraternal Order of Police/Ohio Labor Council as the sole and exclusive representative for those employees of the Employer in the Bargaining Unit. Wherever used in this Agreement, the term “Bargaining Unit” shall be deemed to include those individuals employed full-time in and holding a position in one of the following classifications:

Automotive Mechanic
Clerk
Maintenance Repair Worker
Communication Technician
Corrections Officer

TENTATIVE AGREEMENTS (T/A's)

Tentative Agreements (T/A's) reached by the parties were also submitted, taken into evidence; and by reference in this Section of this report are adopted and made a part of this Fact-Finders' report. The text of each tentative agreement is located in the three (3) ring binder of Exhibits titled “Bargaining History” provided by Ms. Kuntz at the hearing on October 31, 2017 and incorporated herein this report by reference.

Article 15	Transfers
Article 20	Section 3 and Section 6 Hours of Work and Overtime
Article 21	Holidays
Article 24	Vacation
Article 28	Sick Leave
Article 30	Bereavement Leave
Article 33	Quartermaster
Article 39	Probationary Period
Article 47	Duration
New Article	Time Donation
New Article	Public Employee Retirement System (PERS) Contribution

In further clarification of the successor Collective Bargaining Agreement (CBA) between the parties, to the extent that the current CBA is not modified by these Fact-Findings or modified by the Tentative Agreements as incorporated herein, all provisions of the (2014-2017) CBA are successor in the new CBA and remain status quo. This includes all memoranda of understandings and side letters to the CBA, subject to housekeeping on dates that will correspond to the contract term.

The Issues at Impasse
The Issues before the Fact-Finder

The following four (4) issues were at impasse and presented at the Fact-Finding hearing on October 31, 2017:

- 1) Employee Contributions to Insurance,
- 2) 207(K) FLSA Exemption for Correction Officers,
- 3) Wages/General Wage Increases (GWI), and
- 4) Longevity Increases.

In the following sections of this Report, the Fact-Finder on each of the above issues, where appropriate, will:

- Provide a description of the Parties' position on the issues,
- Summarize the evidence submitted in support of the respective position,
- Make a findings as to the recommended resolution of the impasse issue, and
- Provided "contract language" which is noted in "italic" type which is to be incorporated in the Successor Collective Agreement.

Factors and Statutory Criteria Considered By the Fact-Finder

The Fact-Finder is required by Ohio law to consider the following statutory criteria in applying the facts to a determination of what resolutions are most appropriate to the issues at impasse.

Statutory Criteria that is set forth in Section 4117-9-05(K) (1) through (K) (6) are listed below:

- | | |
|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4117-9-05(K)(1) | Past collectively bargained agreements, if any, between the parties; |
| 4117-9-05(K)(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; |
| 4117-9-05(K)(3) | The interests 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; |
| 4117-9-05(K)(4) | The lawful authority of the public employer; |
| 4117-9-05(K)(5) | Any stipulations of the parties; |
| 4117-9-05(K)(6) | Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment. |

It is clear that the factors of “**Bargaining History**” and “**Bargaining Pattern**” are very determinative in this instance. The Employer has submitted extensive exhibits (Sheriff’s Exhibit 14) on the last collective bargaining cycles since 2008 through the current bargaining cycle of 2017.

The Sheriff's Department asserts that the bargaining history support the insistence that a Wage and Benefit Pattern exists in this current bargaining cycle and is applicable to these impasse issues.

However, when making such assertion, everyone must understand that **“Parity and Pattern Bargaining” is both a “Sword and Shield”** to “each party” in the collectively bargained process. It can be used equally persuasive by either party to support or defend their respective proposed position. **This Fact-Finder believes the aforementioned to be a guiding principle in this case.**

The Fact-Finder gives great weight to the concept of “Pattern Settlements” and deference to the statutory guidelines of ORC 4117-9-05(K) (1) through 4117-9-05(K) (6) cited on page 5 herein.

The Review of the Impasse Issues

Issue #1 – Employee Contributions to Insurance

Description of the Proposal

The Sheriff proposes to raise the current employee share of premiums from ten percent (10%) with a monthly cap of \$137.50 to:

- Eleven percent (11%) with a cap of \$155.00 p/mo. effective upon signing of the agreement, and
- Twelve percent (12%) with a cap of \$170.00 p/mo. effective January 1, 2018, and
- Thirteen percent (13%) with a cap of \$190.00 p/mo. effective January 1, 2019.

The Union proposes the status quo of the current employee premium of ten (10%) and the current monthly cap of \$137.50 be maintained with no increases during the term of the Successor Agreement.

Summary of the Evidence Presented Re: Insurance

In support of its proposal, the Sheriff offers the following evidence:

- 1) The State Employment Relations Board (SERB) annual (2017) Health Insurance Survey – “The Cost of Health Insurance in the Public Section”. In summary, the relevant section of the survey regarding employee monthly premiums for 2017 are:
 - a. The state wide average monthly premium for medical and prescription coverage for 2017 for employees are \$82.00 for single and \$228.00 for family coverage.

These premiums represent a state wide average employee contribution percentage of 13.6% for singles and 14.4% for families in 2017.

For counties of a population of greater than 150,000 the average monthly employee premium for 2017 is \$81.00 or 13.3% for single and \$213.00 or 12.6% for family coverage in 2017.
- 2) The pattern increase in employee premium contributions within the Sheriff's Department for the contracts settled for the Deputy's, Captains/Lieutenants and Sergeants/Correction Supervisors have all increased employee contribution premiums to the same percentages as proposed for this Bargaining Unit.
- 3) A 13% employee premium contribution has been in effect for all County non bargaining unit employees. Additionally there is no successor labor agreement within Stark County that has not increased employee premium contributions to the 13% level sought for this Unit.

In support of its proposal, the Union offers the following:

- 1) The proposed increases in employee premium contribution erode the general wage increases by approximately an average of 1/3 of one percent (1%) (.033) and thus further reduces inadequate general wage increases for

the Bargaining Unit. Thus the status quo of the 10% employee premium contribution should be maintained.

- 2) The Union does not refute the SERB Health Insurance Survey data and comparison employee premium contribution numbers. The Union also does not disagree with the accuracy of the other Successor Agreement settlements that have increased employee premiums to 13%.

The findings of the Fact-Finder Regarding the Issue of: Employee Contributions to Insurance

- In the opinion of this Fact-Finder, the SERB Health Insurance Survey is the most accurate and comprehensive survey of what is going on in the health insurance area for public sector employees. Data of the survey is compiled from 1,233 public employer responses. The survey is comprehensive and provides trends, data, and comparisons from which “Proposals” by the parties can be evaluated and deemed reasonable or unreasonable.
- There is no doubt that “Health Insurance” is a major issue in collective bargaining today. If health care costs are not controlled, the only alternative become health benefit coverage cuts. The survey data clearly shows two things:
 - 1) An employee premium contribution of 13% (particularly in the year 2019) is not unreasonable based upon over 1,200 public employer health insurance plans.
 - 2) The “caps” offered for monthly premiums significantly insure that the employee will “PAY LESS” than state wide average premiums.
- The premium increases proposed are supported by both internal and external patterns (SERB survey data) of contract settlements. Such trend in premium increase cannot be ignored within the statutory factors of 4117 that this Fact-Finder is required to operate within.

Specifically 4111-9-05(K) (2) which states in part: **“Comparison of unresolved issues”** (The Insurance Premium Increase) **“to those issues**

related to other public employees doing comparable work” (The Deputy’s of Stark County).

- The Union pro offered a rationale for the maintaining the status quo of the current 10% employee premium contribution which is duly noted and previously described herein.

The Fact-Finder does not consider such union rationale significant enough to override the mountain on evidence and statutory factors of 4117 which supports the Sheriff’s proposal regarding “Employee Contributions to Insurance”.

Accordingly, this Fact-Finder finds that the following language be a part of the Successor Labor Agreement for this Bargaining Unit.

Article 19 Section 1

The Employer agrees to continue, for the life of this Agreement, the same insurance coverage as provided to all other County employees under the County’s Group Insurance Plan.

Effective the signing of this Agreement, employees covered by the group health insurance plan shall pay eleven percent (11%) of the premium costs in twenty four (24) increments per year deducted twice per month. A monthly cap of \$155.00 shall be in effect on said premium. Effective January 1, 2018, employees covered by the group health insurance plan shall pay twelve percent (12%) of the premium costs in twenty four (24) increments per year deducted twice per month. A monthly cap of \$170.00 shall be in effect on said premium. Effective January 1, 2019, employees covered by the group health insurance plan shall pay thirteen percent (13%) of the premium costs in twenty four (24) increments per year deducted twice per month. A monthly cap of \$190.00 shall be in effect on said premium. All employees must pay a monthly premium to cover the cost of a life insurance policy up to a maximum of two dollars (\$2.00) per month.

Employee contributions for the group health insurance plan will be deducted pre-tax under the County’s Section 125 Plan if permitted by plan regulations. With proof of other coverage, (through an Employer other than

Stark County), an employee may elect to receive \$100.00 per month (\$50 payment twice per month) electronic deposit in lieu of participation in the Health Insurance Plan if permitted by plan regulations.

Issue #2 – 207(K) FSLA Exemption for Corrections Officers

Description of the Proposal

The stated purpose by the County of the proposed changes to Article 20 Section 2 regarding defining the work period as 80 hours (fourteen (14) consecutive days) for purposes of the Fair Labor Standards Act (FLSA) within federal law is two-fold:

- 1) To insure that the current language in the Correction Officers contract which permits mutual exchange of shifts and related hours worked comply with the FLSA, and
- 2) Is consistent with the new language requested and negotiated by the deputy's in their Successor Agreement.

The Union is legitimately concerned that such new language, Article 20 Section 2 could be misused or applied to the detriment of Correction Officers in ways open to imagination. While these concerns may not materialize, they are none the less legitimate in the eyes of some Corrections Officer's and deserve reasonable resolution.

Findings of the Fact-Finder

- 1) Compliance with Federal Labor Laws is not optional to employers or this Fact-Finder and therefore the adoption of the proposed Article 20 Section 2 as set forth below is reasonable and adopted in this report and a part of the Successor Collective Agreement.

Article 20 Section 7

Section 2. *Bargaining Unit employees in the classification of Clerk, Mechanic, Maintenance, Repair Worker and Communication Technician*

shall be entitled to overtime compensation at one and one-half (1½) times his or her regular rate of pay for the time worked in excess of forty (40) hours per week.

All Bargaining Unit employees in the classification of Correction Officer shall be entitled to overtime compensation at one and one-half (1½) times his or her regular rate of pay for the time worked in excess of eighty (80) hours in any fourteen (14) day work period as defined by the Fair Labor Standards Act (FLSA).

For the purposes of this Article, time worked shall include holidays, vacations, paid personal leave days, jury duty, bonus time and bereavement leave.

However, in addition to the above language adopted, the Fact-Finder rejects the Sheriff's proposed Section 7 below:

Section 7. This article will not be used to alter normal staffing except in unforeseen emergencies or in case of mutual consent.

Instead of the above Section 7, and to address the real concerns of the Correction Officer which were expressed at this hearing and described here in this report; the following revised Section 7 of Article 20 is drafted by this Fact-Finder and included in the Successor Collective Agreement.

Revised Section 7 of Article 20, Section 2

Section 7. The language of Section 2 of Article 20, shall not be used by management to modify a Corrections Officer's normal work schedule (such as a 5 consecutive workday, 2 consecutive day-off schedule or such other normal work schedule in effect) unless such change in work schedule is:

- a) Agreed to by the affected employee and a division commander; or
- b) Due to an event of an "Emergency" which is defined as: an event(s) which does not happen on a normal day to day basis.

Issue #3 – Wages/General Wage Increase (GWI)

Description of the Proposal

The Union Proposes:

- 3% GWI for 2017
- 3% GWI for 2018
- 3.5% GWI for 2019

The Sheriff's Department Proposes:

- 2% GWI for 2017
- 2% GWI for 2018
- 2% GWI for 2019

Plus a limited "Me Too" provision to the contract reopener in the Deputy contract as set forth:

Memorandum of Understanding

In the event that the deputy/patrol Bargaining Unit receives a wage increase as a result of the wage reopener in Article 38 Section 1 of the deputy contract, the Bargaining Unit herein shall also receive the same wage increase,

Summary of the Evidence Presented Regarding Wages/General Wage Increase

Union's submits SERB data on comparable wages to support their demand for higher wage adjustments of 3.0 %, 3.0% & 3.5%.

The comparative SERB data submitted by the Union is the range of base wages (lowest to highest) for Corrections Officers in various Ohio counties. The Union specifically cites the entry and top level base rate for Correction Officers of Stark County compared to similar base rates for Lorain County Corrections Officers. Lorain County

was selected due to its comparable population size (301,356) to Stark County of (375,586).

However, as noted by the Fact-Finder in the hearing, several other counties or entities of similar size in the SERB Survey were not raised for comparative purposes.

In the opinion of this Fact-Finder, base wage is “but only one element” of analysis used to support a non pattern adjustment to the general wage increase, as sought by the Union.

The more compelling analysis to support such Union’s GWI Proposal, in the opinion of this Fact-Finder, must be a “Total Compensation Analysis” which would include and value all compensation elements such as: Base pay, longevity allowances, health care premium payments, differentials and any other element of cash allowances and benefit values so that a comprehensive value of total compensation for Correction Officers of Stark County is compared with the “total compensation” of Correction Officers from “truly comparable” counties within the state of Ohio.

Further complicating the position of the Union on its GWI Proposal is that Correction Officers only make up approximately 60% of the Bargaining Unit classifications. Accordingly, such Correction Officer’s comparative data has no relevance to the pay adequacy of this other 40% of the Bargaining Unit positions.

The Sheriff’s Department submits evidence of a “Pattern General Wage Increase” internally within the Sheriff’s Department and within Stark County’s other Bargaining Units that have settled Successor Agreement as well as GWI’s applicable to non bargaining employees.

Evidence of a “Pattern General Wage Increase” of 2% for each year of this three year Agreement is overwhelmingly compelling based upon the agreed to settlements of the:

- (1) Deputy Sheriff's
- (2) Sergeants/Correction Supervisors
- (3) Captains/Lieutenants, and
- (4) Other county bargaining and non bargaining units

which have preceded the final resolution of the Successors Collective Agreement covered by this Fact-Finding Report.

Furthermore, testimony at the hearing was clear that the parties have historically viewed the settlements with the "Deputy Sheriff's" to be the lead and pattern settlement. This is further reinforced by the inclusion of the "Limited Me Too" provision for this Unit to the "Reopener on Wages" in the current Deputy Sheriff's Collective Agreement.

Such action of offering the "Me Too" to this Unit reinforces a desire to continue pay adjustment equity in this cycle of collective bargaining.

There is SERB settlement data which can support slightly higher general wage increases than this two percent (2%) per year pattern with Stark County. However, consideration must be given to the unexpected dilemma faced by this County due to the loss of 2.3 million dollars in tax revenue by the discontinuance of the previous Medicare sales tax. It is note worthy that this loss of tax revenue proportionately represent approximately a (7.0%) decline in revenue of the Sheriff's budget of 2017 and the 2.3 million dollar revenue loss also represents approximately a (65.0%) decline in Stark County's end of year budget surplus based upon the 2016 actual surplus of \$3,549,000.

Findings of the Fact-Finder Regarding Wages/General Wage Increase

In the opinion of this Fact-Finder, the most compelling factors in determining the reasonableness of the proposed GWI's are:

- 1) The Sheriff's Department has demonstrated a "Pattern GWI" not only within its department with respect to the other settled Successor Agreements but also with the other settled Collective Agreements within the County.
- 2) While there was no formal stipulation by the parties at the hearing, there was acknowledgement that the Deputy's settlements have historically taken the lead and set the pattern to follow.
- 3) The unexpected loss of approximately 2.3 million dollars in tax revenue or 7% of the Sheriff's total budget is significant and the impact must be factored into any determination of a reasonable GWI that can be sustained.
- 4) The Fact-Finder commends the County Commissioners for approving a wage reopener in the Deputy's Agreement and insuring wage equity for this Bargaining Unit by offering the limited "Me Too" provision to the Deputy's reopener. This "Me Too" leaves open the possibility of future wage adjustments for this Bargaining Unit if a solution to the loss of tax revenue is achieved.
- 5) While the Union's position regarding the comparative pay range of Correction Officers is not without relevance to Correction Officers and may have merit with a comprehensive "Total Compensation" analysis as described by this Fact-Finder. The comparative wage data submitted at the hearing is not compelling enough to overturn these findings that:

"The Sheriff's Department proposed general wage increases and limited "Me Too" memorandum of understanding is the most reasonable; and are based upon the forgoing and are hereby made a part of the Successor Labor Agreement for this Bargaining Unit.

Accordingly, the following is the GWI language to be inserted into the Successor Agreement:

Therefore, the language with regard to Article 38 Wages is as follows:

Section 1. *The base hourly rate of each employee shall be increased as follows:*

2% - 2% - 2%

CORRECTIONS OFFICERS

MAINTENANCE REPAIR WORKERS

CLERKS

COMMUNICATION TECHNICIANS

AUTOMOTIVE MECHANICS

MEMORANDUM OF UNDERSTANDING

In the event that the deputy/patrol Bargaining Unit receives a wage increase as a result of the wage reopener in Article 38 Section 1 of the deputy contract, the Bargaining Unit herein shall also receive the same wage increase.

Issue #4 – Longevity Increase Article 38.4

Description of the Proposal

The Union proposes that an additional step of longevity be created for employees of 25 years or more at 8% of the employees' gross pay. The FOP/OLC submits that the additional step rewards long term employee's and creates an incentive for experience Officers to remain in service.

The Sheriff's Department proposes: Employees who have completed four (4) but less than ten (10) years of service shall be paid longevity pay of two and one half percent (2½%) of the employee's gross pay. Employees who have completed ten (10) but less than fifteen (15) years or more of service shall be paid longevity pay of three percent (3%) of the employee's gross pay. Employees who have completed (15) years but less than twenty shall be paid longevity pay of four and one half percent (4½%) of the employee's gross pay. Employees who have completed twenty (20) years or more of service shall be paid longevity pay of six (6%) percent of the employees gross pay.

Such payment shall be made in the last pay of December in the year in which longevity is earned and shall be done through electronic deposit.

Accordingly, the Sheriff's Department proposes no increase in the longevity bonus and it remains status quo in the Successor Agreement.

Findings of the Fact-Finder Regarding the Issue of Longevity Increase Article 38.4

As stated on page 5 in the "Factors and Statutory Criteria Considered by the Fact-Finder", Patter Bargaining and the Statutory Criteria of 4117 (G) provide a two way street to the parties in collective bargaining. It is both a "Sword and Shield" to each party in the bargaining process. The concept and criteria discourages "Cherry Picking" agreements by demanding the "best of all" or offering the "least of all" other relevant settlements. The concepts are checks and balances for achieving equitable settlements.

On this issue of Longevity Increase Article 38.4, the Union's proposed increase is more reasonable and consistent with these principles than the status quo or no increase as proposed by the Sheriff. This is due to the Successor Agreements in Stark County that have preceded this Fact-Finding hearing.

Accordingly, this Fact-Finder adopts and includes in this Successor Agreement the addition longevity step that employees with 25 or more years of service shall receive an 8% award of gross pay in accordance with the provisions of Article 38 Wages, Section 4.

Added language to Section 4 shall be:

... "Employees who have completed (25) twenty-five years of service or more shall be paid a longevity pay of eight percent (8%) of the employees gross pay" ... This provision shall be effective beginning in 2017.

End of Changes to the Successor Collective Bargaining Agreement (CBA)

Concluding Remarks

The Fact-Finder retains jurisdiction over any issue in this report which provides changes to the successor labor agreement, if the parties are unable to agree upon the application of such changes(s).

Respectfully Submitted,

ss//: Richard F. Novak
Fact-Finder
rfnovak.metalstrategies@yahoo.com
216-440-0684

Dated: November 10, 2017
Geauga County, Chagrin Falls, Ohio

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2017 a copy of the foregoing Fact-Finder Report for Case No. 2017-MED-04-0553 was electronically transmitted to Brenda Goheen, Staff Representative FOP/OLC bbbgh@live.com and to Leslie Kuntz, Attorney for the Sheriff of Stark County, likuntz@kwgd.com and SERB, MED@serb.state.oh.us.

ss//: Richard F. Novak
Fact-Finder