

Background

This Fact Finding concerns the Belmont County Sheriff (Commissioners) and the Belmont County Sheriff's Department employees, who are represented by the Fraternal Order of Police/Ohio Labor Council. The parties engaged in numerous negotiating sessions but were unable to reach agreement. (See the Introduction of this report.) There was no mediation effort prior to the Fact Finding Hearing because the parties indicated that they had strong disagreements on the open issues. The disagreement centers on three issues; 1) bargaining unit work, 2) off duty employment, and 3) corrective action. The Fact Finding was conducted on November 26, 1996 in the Belmont County Sheriff's Department. The Hearing started at 1:00 P.M. and adjourned at approximately 2:30 P.M.

The Fact Finder wishes to state that he appreciates the courtesy with which he was treated. Additionally, the conduct of the parties toward the Fact Finder and each other was exemplary. The Hearing was conducted with the greatest professionalism by both parties.

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

- (1) Past collectively bargained agreements, if any.
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved.
- (3) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards of public service.
- (4) The lawful authority of the public employer.
- (5) Any stipulations of the parties.
- (6) Such other factors, not confined to those listed above which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agree-upon dispute settlement procedures in the public service or private employment.

The Report is attached and the Fact Finder hopes the discussion of the issues is sufficiently clear to be understandable. If either or both of the parties require a further discussion, however, the Fact Finder would be glad to meet with the parties and discuss any questions that remain.

INTRODUCTION:

The dispute between the Sheriff and his employees centers on the work performed by the bargaining unit and the place of polygraph tests in the day to day operation of the Sheriff's department. It must be noted at the outset that the parties reached tentative agreement on these issues, as well as all other items and signed off on a tentative agreement. That agreement was ratified by the union membership but turned down by the County Commissioners. The main reason for the rejection is that the Sheriff was not fully informed of the contents/language of the proposed agreement and he strongly objected to certain articles of the proposed agreement. In other words, there appears to have been some internal miscommunication among the County's negotiating committee. However, there is no evidence of bad faith negotiations by either side.

Of the three issues at impasse, the most contentious is the proposed language on bargaining unit work. Over the last few years the County was forced to build and staff a new jail. Consequently, the County has seen its expenditure for the Sheriff's department almost double. In order to maintain services to the citizens of the County, the Sheriff has been forced to rely on part time employees. The bargaining unit objects to the use of part timers doing work that could be done by the full time employees. However, the Sheriff is adamant that he cannot increase his full time staff because of the fiscal implications for the County. It is clear that if the amount of service provided stays the same, the Union's demand would inevitably lead to a need for more full time deputies. Instead of creating more work for the full time deputies, the Sheriff believes that the Union's position would lead to less services for the County residents. It is the fiscal implications of the Union's demand that separate the parties. In a perfect world with enough resources, the Sheriff would use full time employees for all police work i.e., increase his full time staff. However, in a less than perfect world, the Sheriff is glad to have part time employees available to perform necessary duties. While a full discussion of the issues will follow, the Fact Finder is aware of the fiscal position of the County and how this financial reality affects the parties.

Issue: New Article: Bargaining Unit Work

Union Position: The Union demands that language be added to the contract stating that bargaining unit work will be done by bargaining unit employees.

Sheriff Department Position: The Sheriff strongly objects to this language and wants the current practice in Belmont County to continue. That is, the Sheriff wants to continue to use part time employees as needed.

Discussion: The language that the Union proposes is found in many police contracts. It ensures that the union membership will continue to do the work that is normally performed by bargaining unit members. As such the proposed language is unobjectionable. However, in this particular instance the facts of the situation are

somewhat different than the standard case. In this situation, the Sheriff is not trying to take away work that is done by the bargaining unit. Rather, the manpower situation in Belmont County is such that the work in question has always been performed by part time manpower.

The Sheriff testified that the work in question concerned the investigation of alcohol and drug cases. Historically, this work has not been performed by bargaining unit members. The bargaining unit membership consists of road deputies, corrections officers, matrons, dispatchers, sergeants and lieutenants. These officers have been involved in road patrol and corrections activities. Consequently, investigation of drug and alcohol related matters has fallen on part time employees. The Sheriff testified that if the work in question was reserved for full time employees the result would be that the work done by the part time employees would not be performed. This result would occur because the full time employees are working full time on their current duties. In addition, the Sheriff is adamant that the fiscal situation of the County precludes him from increasing full time manpower. Therefore, the only way to meet the union's demand is to reduce the work done by the department. The Sheriff believes that this is a disservice to the citizens of Belmont County. This testimony was essentially uncontroverted.

The record indicates that bargaining unit work that has historically been performed by full time employees continues to be performed by full time employees. An unintended effect of the Union's insistence on placing the proposed language in the contract may be that the bargaining unit will do no more work and the overall effort of the department will decrease. This is not the desired impact of a contract clause concerning bargaining unit work. Without any testimony to show that the Sheriff is attempting to replace full time employees with part timers, the Fact Finder does not believe that the Union proved a need for the proposed language. If, at some time in the future, the Sheriff attempts to replace full time employees with part time employees, or if the manpower situation is such that full time employees have the time to perform the work in question, then the need for a clause concerning bargaining unit work will become more pressing.

Finding of Fact: Given the fiscal position of the Sheriff's Department and the County, and the facts of this situation, the Union did not prove that the suggested language belongs in the contract.

Suggested Language: None.

Issue: Article New: Off Duty Employment.

Union Position: The Union demands that the creation of a labor management committee which would develop procedures to regulate off duty employment. This will lead to the formulation of policy regulating such work. These policies will replace the ad-hoc system currently in place.

Sheriff's Department Position: The Sheriff agrees that full time employees should get off duty assignments.

Discussion: There is no real dispute between the parties on this issue. The union demand is based on the idea that full time employees be given the right of first refusal on any off duty assignments. The Sheriff agrees that full time employees should get the off duty work. Consequently, the language proposed by the management negotiator should be added to the contract. The seeming differences in the parties' positions relate to semantics.

The proposed language relates to the formation of a committee to recommend policies. This committee is the place to develop policies that meet the needs of both parties. Again, it must be reiterated, that the parties agree that full time employees get the right of first refusal for off duty assignments.

The discussion on this issue also elucidated that the Commissioners have some concerns about the concept of off duty assignments. The Commissioners understand the need for off duty work and they also believe that it benefits the County to have uniformed officers in sight as a deterrent to potential criminals. At the same time, the Commissioners believe that off duty assignments need further discussion. The plain fact is that police departments are often asked to provide security, etc., for special events. Given this reality the Fact Finder believes a labor management committee is a useful forum to develop guidelines for these activities.

Finding of Fact: There is agreement that off duty assignments should be handled by full time employees.

Suggested Language: (The following language is only suggestive. It is up to the parties to develop their own policies and procedures governing off duty assignments.)

The Labor Management Committee shall the responsibility to develop a call out procedure for filling requests for off duty employment. The Committee shall. (The following list is illustrative and not exhaustive.)

1. Develop a list of bargaining unit members interested in off duty assignments.
2. Develop a list of non-bargaining unit members interested in off duty assignments.
3. Bargaining Unit members are called before non-bargaining unit persons
4. Placement of persons on the list is governed by seniority
5. Who, what and where the bulletin board will be placed, who is responsible to call out workers, to keep records of acceptance or rejection of such work and who is the contact person within the department that potential employers are referred to will be determined by the committee.
6. It is understood by the parties that bargaining unit members shall have the right of first refusal for all off duty employment.

7. Develop all other policies regulating off duty assignments including but not limited to, developing policies regarding employees who refuse off duty assignment or who fail to perform in a satisfactory manner.

Issue: Article 8 Corrective Action

Union Position: The Union objects to the addition of language allowing polygraph tests to be administered to bargaining unit employees.

Sheriff Department Position: The Sheriff demands that language governing the use of polygraph tests be added to the contract.

Discussion: This is an area where the Sheriff wishes to have increased authority. The Sheriff testified that the Department is only as good as its reputation, i.e., the citizens of Belmont County have the right to expect an honest and professional department. The Sheriff believes that the polygraph is one way to build public trust. In addition, the Sheriff believes that the polygraph is a valid investigative tool in some situations. Finally, the Sheriff testified that historically the department had the right to use a polygraph but the use of the machine had been negotiated out of the contract. To buttress its position, the management team presented evidence on the legality of, and procedures needed to use the polygraph.

The Union objects to the introduction of language allowing polygraph testing into the contract. The Union believes that there is 1) no need for the language, 2) a polygraph can be used in a coercive way, 3) a polygraph will never replace good investigative technique.

The Fact Finder listened to the discussion, but found no evidence that there is any need for language allowing polygraph testing in Belmont County at the present time. Instead most of the discussion centered on the needs of police departments in Los Angeles and New York City. The Fact Finder believes that the needs of a big city department might necessitate policies that are not required in a different setting. This is not meant to trivialize the dangers and problems that face the Belmont County Sheriff's Department. But it does imply that contract clauses must be conditioned by the circumstances that exist between the parties to the contract. There was no testimony indicating that polygraph testing is needed at the present time. In fact the record shows that polygraph testing was (almost) never used even when the Sheriff has the authority to order tests.

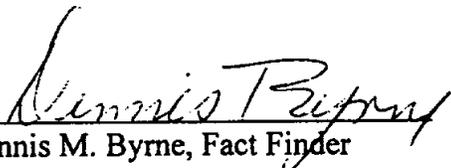
The Fact Finder is sympathetic to the Sheriff's position, and if the need for testing can be demonstrated in the future, then future negotiations are the time to reintroduce the topic. However, the Sheriff failed to prove a need for testing at the current time and the Fact Finder will not recommend inclusion of language governing tests over the Union's objections.

Finding of Fact: The Sheriff failed to prove a need for polygraph testing at the present time.

Suggested Language: None

The Fact Finder also recommends inclusion into the contract all clauses that have been agreed to and signed off by the parties. These clauses cover:

1. Article 1, Section 2 Purpose
2. Article 14, Vacancy and Promotions
3. Article 16, Leaves and Leaves of Absence
4. Article 17, Sick Leave
5. Article 18, Hours of Work
6. Article 23, Vacation
7. Article 24, Holidays
8. Article 25, Health and Safety
9. Article 26, Uniforms
10. Article 28, Hospitalization and Major Medical (including life insurance) and the renewal of the letter of understanding on dental and vision care.
11. Article 29, Wages
12. Article 38, Duration of Agreement


Dennis M. Byrne, Fact Finder