

ALAN M. WOLK
ARBITRATOR

STATE EMPLOYMENT
RELATIONS BOARD

MAR 16 8 50 AM '98

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March 11, 1998

Mr. David M. Gall
Director of Human Services
Stark County Board of Commissioners
200 West Tuscarawas Street
Canton, Ohio 44702

Greg Van Dress
Business Representative
Teamsters Local #92
1127 9th Street
Canton, Ohio 44706

1-330-438-0371
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RE: 97-MED-04-0526 Fact Finder's Recommendations
STARK COUNTY COMMISSIONERS - Dog Warden
and TEAMSTERS Local #92

Gentlemen:

I am responding to your mutual inquiry as to my intent regarding the clothing allowance recommendation in Article 21.

I had erroneously assumed that the Clothing Allowance had been previously paid in cash to enable the employees to locate and purchase their own uniforms. Based on my perception that changing the uniforms would result in a direct out of pocket loss, I stated in my recommendation (regarding Article 21 at the top of page 10):

“ ... if it also paid to redeem all presently owned shirts, trousers, caps and identifying accessories. This should be to fairly and adequately compensate the employees for the investment each has in existing uniforms, which will become improper to wear in public and, therefore, useless.”

Management's position is that the Clothing Allowance was historically implemented whereby the *Employer* purchased the uniforms. If there were a savings, it benefited Management. If the costs exceeded the allowance, Management was responsible.

The Union takes the position that the Clothing Allowance historically was part of the total compensation package and could have been allocated towards other benefits for bargaining unit members.

I find that bargaining unit members will sustain no out of pocket loss by reason of new uniform designs.

Recommendation:

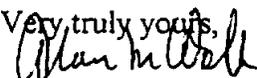
Upon further review of the Collective Bargaining Agreement and, considering the respective positions of the parties, I adopt Management's position on this issue, and I reject the Union's position.

Because the allowance was for uniforms and uniforms were and continue to be provided by Management, the recommendation at the top of page 10 should read:

Management's proposal to provide and pay for new uniforms and accessories, with a clothing allowance of \$375.00 annually for the second and third year is fair and reasonable.

The balance of that paragraph should be deleted.

Any fee that may be due for this supplemental review is waived.

Very truly yours,


Alan M. Wolk

Fact Finder

AMW:bb

cc:SERB

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STATE EMPLOYMENT
RELATIONS BOARD

ALAN M. WOLK

JAN 20 10 20 AM '98

IMPARTIAL ARBITRATOR

STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER BETWEEN:

TEAMSTERS Local #92)

General Truck Drivers & Helpers)

Employee Organization)

and)

STARK COUNTY)

COMMISSIONERS)

DOG WARDEN)

Employer Organization)

NO. 97-MED-04-0526

FACT-FINDERS
RECOMMENDATIONS

APPEARANCES:

FOR THE UNION:

Greg Van Dress, Business Agent; Philip Sedlalko, Deputy Dog Warden; Mike Evans, Deputy Dog Warden.

FOR THE EMPLOYER:

David Gall, Director; Carl F. Vogley, Dog Warden.

The undersigned was selected by the parties through the State Employment Relations Board of Ohio [SERB] to serve as impartial neutral Fact-finder to hear and decide issues presented pursuant to Ohio law.

By agreement of the parties, a hearing was held October 29, 1997 at 1127 9th Street, Canton, (STARK County) Ohio, at which time the parties were afforded a full opportunity to present opening statements; to submit, object to, and cross-examine evidence; as well as to offer exhibits and documents, and to argue the respective merits of their respective positions orally and/or by briefs. A court reporter was NOT present. Briefs were submitted by 12/15/97 and exchanged by the Fact-finder.

All evidence such as stipulations, exhibits, affidavits, testimony, and all arguments, citations and briefs (if any) have been duly received and given such weight as deemed appropriate by the Fact-finder.

The Award may be published by SERB.

(NOTE: Management submitted statement in advance of the hearing as mandated by 4117-9-05(F); the Union did not until 11/25/97, asserting that they only received the County Budget the day before the hearing. The Employer was permitted to review the Union's post-hearing summary statement before submitting its brief).

FINDINGS OF FACT

The following are the facts upon which these recommendations are based:

1.(A) *Parties:*

Stark County Board of Commissioners
200 West Tuscarawas Street
Canton, Ohio 44702

Teamsters Local #92
1127 9th Street
Canton, Ohio

1.(B) *Principal Representatives:*

Mr. David M. Gall
Director of Human Services

Greg Van Dress
Business Representative

2.(A) *Bargaining Unit*

- 5 Deputy Dog Wardens
- 1 Pound Keeper
- 1 Road Sergeant
- $\frac{1}{8}$ dispatcher

* Radio Dispatcher tentatively added effective 7/1/97.

2. (B) There are a total of eight (8) employees in the bargaining unit, (including the Radio Dispatcher, if this position is added to the bargaining unit..

3. A copy of the current collective bargaining agreement attached.

4. *Unresolved issues:*

(A) Article 16 - Section 1 Pay

	Current	Union Proposal	County Proposal
Deputy Dog Warden	11.07/hr	\$0 .55 for each of 3 years**	3%-3%-3%
Road Sergeant	11.63/hr	\$0 .55 for each of 3 years	3%-3%-3%
Pound Keeper	11.82/hr	\$0 .55 for each of 3 years	3%-3%-3%
Radio Dispatcher*	9.73/hr	\$0 .55 for each of 3 years	3%-3%-3%

** over three (3) years: 16% and 13.36% 9%

(B) Article 16, Section 2 - Standby Pay

The Union seeks a \$50.00 increase from \$150/week to \$200/week. The County has offered a \$25.00 increase from \$150.00 to \$175.00/week.

(C) Article 21 - Clothing Allowance

The Employer proposes to supply uniforms of a color and design approved by management and to eliminate the clothing allowance.

Statutory Criteria

The FACT-FINDER, in making recommendations, shall take into consideration all reliable information relevant to the issues, including, but not limited to:

- (1) Past collective bargaining agreements, if any, between the parties;
- (2) Comparison of unresolved 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 standard of public service;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties; and

(6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon a dispute settlement procedures in the public service or in private employment.

CONTENTIONS AND RECOMMENDATIONS

Article 16, Section 1 - Pay - CONTENTIONS - UNION

The Union seeks wage increases retroactive to 7/1/97 of \$0.55 hourly for each year of the Agreement, except the radio dispatcher for whom the Union seeks an hourly rate of \$10.50 plus increases of \$0.55 hourly in the second and third contract year.

Current Agreement

The employees argue that members of the bargaining unit are substantially underpaid and are not being reasonably compensated in light of (a) the qualifications and training they are required to have, (b) the hazards they face, (c) the training necessary to requalify in handling of side arms, shot gun, and dart rifle, and euthanasia. They are routinely at risk protecting the public from rabid or vicious dogs and dogs trained to fight. They sell 2200 licenses a year and issue citations.

It is argued that between 1991 and 1997 wages were stagnant because increases merely met inflation. It is submitted that the interests and welfare of the public are being a compromised. Previous collective bargaining agreements have not rectified these factors The Union argues that better compensation is paid other dog warden employees in similarly situated Ohio counties

Budget savings from Auditor's Office

The Union contends that the Dog Warden's Department is not in the poor financial condition as presented by management. Certain reserves and certain expenditures may be unnecessary. Certain charges allocated by the Commissioners to the Dog Warden's Department should be charged to other departments. The Union questions the appropriateness of some of the encumbered funds.

It is argued that increases in license fees might not be necessary if these funds were not being used to subsidize the Auditor's Department, i.e. \$100,000 for services and supplies. \$40,874; (UX-1), including office machines at the Auditor's office were charged to the Dog Warden. This also includes all wages and fringes for two clerks in the Auditor's Office. It is contended that there is no justification for two clerks at a cost to the Dog Warden of \$56,760 (UX-1) to serve the Dog Warden's Department primarily in December and January each year. The Union suggests that the Dog Warden is supplementing the Auditor. It is alleged that the available funds are being used for other purposes and/or costs are improperly allocated to the Dog Warden.

In addition, one clerk received a 7% wage increase out of the same fund for 1997 compared to the bargaining unit which seeks a 5% increase. Thus, the senior audit clerk receives more than a deputy dog warden, and the junior audit clerk, hired in 1996, earns more that the radio dispatcher with 19 years seniority.

Of 51,951 licenses sold in 1996, less than 4000 tags were sold over the counter by the Auditor. The Auditor does the data entry for all tags sold and delivers the tags to the 24 dog license agencies.

The Union notes that O.R.C. 955.20 limits the auditor's costs for registration tags, blanks, records, and clerk hire to 15%, which amounts to a maximum of \$83,218.80, and which must be justified. By statute the Dog & Kennel Fund is separate from the General Fund, and, without a public vote, Commissioners have authority to increase the license fees. These are currently equal to or less than comparable counties.

Resources Available

Furthermore, the Union contends that money is available or could be made available. Operational funds are derived from the sale of licenses and fines, not taxpayer dollars. The licensing fees can and are routinely increased by commissioners in all 88 counties under the authority of O.R.C. 955.14. Therefore, total descretion to raise license fees higher than the \$1.00 increase now contemplated rests with the Stark County Commissioners. The 1997 Stark County license fee was \$8.00 The 1998 rate is \$9.00.

Based on a telephone poll conducted by the Union, Ohio license fees range from \$4 to \$12. Lucas County increased its license fee from \$10 to \$15, a 50% increase.

Comparables

It is argued that comparisons with contiguous counties are not truly comparable because different departments operate differently from the Stark County department. For example, Cuyahoga County has a kennel where most employees feed and clean the dogs. (Apparently there is limited direct service to respond to calls.).

According to the Union, it is necessary to determine the functions performed in order to determine comparability. The points of comparison suggested include: (a) in-house euthanasia; (b) on call 24 hour a day, seven (7) days a week; (c) serve as a kennel and for direct services in all the municipalities in the county as occurs in Franklin County; and (d) population density. For example, Cuyahoga County operates as a kennel and 30 of its cities have local dog ordinances.

The employees also suggest that there is a high turnover in Stark County because of lower wages, but very little turnover among non-union dog wardens in Mahoning County pay the highest wage.

The following counties are comparable hourly rates, according to the Union:

Mahoning	\$13.38
Summit	\$12.34 start at 10.55
Lucas	\$13.60
Franklin	\$13.00

In Stark County, the Union seeks \$11.62 immediately.

Article 16, Section 1 - Pay - CONTENTIONS - MANAGEMENT

Management has offered 3%-3%-3% or a total of 9%. The Unions wages demand represents an overall increase of 14.30% over three years with a range of increases between 13.36% and 16%.

The Commissioners view the Union demand as too high in light of (1) the departments current financial condition; (2) past collective bargaining history; (3) percentage of increases negotiated with other bargaining units; (4) comparable wages of Dog Warden employees in surrounding counties; and (5) the rate of inflation.

It is contended that the current financial condition of the Dog Warden Department is approximately \$50,000 in the red based on current expenditures to date, without including wages increases that will be retroactive to 7/1/97. The Dog Warden has borrowed the \$50,000 from the General Fund in anticipation of collecting equivalent revenues by raising individual dog license fees from \$8.00 to \$9.00 and kennel license fees from \$40.00 to \$45.00.

The history of past collective bargaining agreements between the parties is that the most recent average for the three years ending 6/30/97 was 9% or 3% a year. Under the previous three year contract ending 6/30/94 the average was 3.35% per year or a total of 10.15%.

Other public sector unions representing employees within the Commissioners hiring authority reflect that seven other currently bargained contracts with the Stark County Commissioners are 3%-3%-

3%. Another is tentatively settled on the same basis. This is indicative that the wage increases are not only agreeable, but fair and equitable. The offer is reasonable and justifiable.

The average increase from 7/1/94 through 6/30/97 was 9% or also 3% per year.

A comparison of wages paid to surrounding county Dog Warden employees shows all to be 3%-3%-3%. Furthermore, the Stark County MRDD settled with the Stark County Educators And Professional Trainers Association (affiliated with the O.E.A.) for 2% -2% -2.3% (9-1-97 to 8-31-00).

The average wage for Dog Wardens in contiguous surrounding counties is \$9.41/hr. Each deducts 8.5% for P.E.R.S. i.e.

Carroll County	9.63
Columbiana County	7.20
Holmes County	8.25
Mahoning County	13.93
Portage County	9.31
Summit County	10.15
Tuscarwas County	7.98
Wayne County	8.83

It is argued that, because in Stark County, only 4.25% is deducted for P.E.R.S., the true comparable salary of the Stark County dog warden employees is currently \$11.54/hr compared to the average of the others at \$9.41/hr, and is much closer to the effective wages in Mahoning and Summit counties. The employees who left Stark County employed, left for reasons totally unrelated to compensation rates.

The Commissioners contend that the Union argument that comparisons should be limited to counties which operate a "full service department" where there is a kennel and "in-house" euthanasia applies only to the poundkeeper. When he is off or ill, these duties fall on the road sergeant. Management notes that the only kennel function which falls on deputy dog wardens is to feed the dogs while on weekend duty for which they are already compensated an extra \$0.15 hourly addition.

The current inflation rate is between 2% and 3% and most economists predict it will remain low.

Management rejects the Union argument that license fees should be raised more than the 12.5% recently imposed. The County denies the contention that the Dog and Kennel Funds are being used to subsidize the operations of the Stark County Auditor.

The County submitted an Affidavit by the County Auditor (attached) which refutes all of the Union's claims, and attests that, on the contrary, the General Fund Tax Revenue is being used to subsidize the operations of the Dog and Kennel Fund. Specifically, the County Auditor, who is not employed by the Commissioners, provided over \$57,000 worth of in-kind services e.g. 12 employees paid by the General Fund who assisted with the distribution of dog tags and registration forms to local merchants, previously registered dog owners. Furthermore, the Auditor must process

employed by the Commissioners, provided over \$57,000 worth of in-kind services e.g. 12 employees paid by the General Fund who assisted with the distribution of dog tags and registration forms to local merchants, previously registered dog owners. Furthermore, the Auditor must process the "mass of registration applications and fee payments" made to the Auditor between 12/1 and 1/20 each year in accordance with O.R.C. 955.01(A)(1) and the penalties assessed under 955.01(B) which must be collected [1935 OAG 4604]. This requires more time than the two assigned clerks can provide

The Commissioners provided details of the expenditure of \$40,874 spent from the Dog and Kennel Fund and contends all of these disbursements are legal or appropriate, nor do they supplement the Auditor's non-Dog and Kennel Fund operations. The encumbrances are a means of assuring that undisbursed 1997 collections, e.g. December, will be first used to pay remaining 1997 obligations.

The Dog Warden's Department borrowed \$50,000.00 in 1997 to continue operations and cover a shortfall in anticipation of collections in December 1997 and in 1998. The same approach occurred at the end of 1996 when the Department borrowed an advance of \$20,000.00.

Article 16, Section 1 - Pay - RECOMMENDATION:

Three (3%) percent annual increases in recent years is historically correct and this is the increase that has been accepted by the other unions in the county.

Most of the claims on behalf of the Union were undocumented. At this stage they are, at the most, perceptions. It may well be that Stark County is one of the few where there is a kennel *and* round the clock direct service available to all of the municipalities in the County. However, the Union's unscientific telephone survey, of some of the rates for dog licenses charged in other counties, is unreliable and inadequate to support its position that the Stark County operation differs from all of the other counties except the counties relied on by the Union. Nor was there evidence of any reason connecting differences in the amounts charged for licenses to the extent of services provided or budgeted in the other counties. The number of tags issued in a county was not shown to be relevant to increased enforcement efforts by dog wardens.

No supporting evidence was identified by the Union to reflect that the members of the bargaining unit are underpaid or treated disparately. Nor was the evidence supporting its demand for a general 5%-5%-5% raise which would increase their scale to near the top of all counties.

The Auditor and the County Commissioners are separately elected officials and separate appointing authorities. Neither has legal control or influence over the other relevant to the compensation of the other's employees. The Auditor cannot be told who to hire, or how to accomplish his duties and responsibilities. Under O.R.C. 955.20, the Commissioners are required to adopt a resolution appropriating funds for the Dog Warden, not more than 15% of the appropriated funds are to be expended by the County Auditor. However, the statute has language to the effect that, if the appropriation is insufficient, the Commissioners may adopt another resolution. Given that background, the evidence presented here was insufficient to establish the Union's claim of excessive allocations for the Auditor. Other than a possible conflict between the Auditor and the Commissioners, such a matter is properly a matter for the State Auditor or a taxpayers suit.

Clearly the fiscal needs of the Dog Warden are not limited to December and January and the Auditor's entire staff has to be sufficiently knowledgeable to process any inquiry in the Auditor's Office, including the Dog Warden's Department.

The expenses allocated to the Dog and Kennel fund appear to be proper. In the future, the Union may wish to retain someone knowledgeable in public finance to analyze and evaluate compliance with law and to suggest possible remedies.

The County may be precluded from expending more than allowed by statute. However, any alleged violation of a statutory limit on the percentage of receipts that Auditor's charges the dog and kennel fund is outside the jurisdiction of these proceedings. Perhaps a taxpayers action would focus on this issue.

Art 16, Section 2 - Standby Pay - CONTENTIONS - UNION

Under standby, one deputy per week serves on a rotating basis, i.e. he is on duty seven days for that week straight time 8-4 PM. Because he is on call 24 hours a day seven days a week he now gets standby pay of \$150 per week. The Union seeks an increase in standby pay of \$50.00 per week, or, alternatively, eliminate standby pay and pay overtime at 1 1/2 over 40 hours.

The Union rejects the County proposal increasing standby pay from \$150 to \$175 as insufficient and the employees need \$200 per week.

Article 16, Section 2 - Standby Pay - CONTENTIONS - MANAGEMENT

The Commissioners believe an increase of \$25 per week to \$175 per week, approximately 16-17%, is fair and equitable. MX-B reflects typical activity for Deputy Dog Wardens on Standby of up to six dog incidents on any given weekend. Although there are some calls as early as 8 a.m. and later than 6:00 p.m., most of the calls are between those hours.

Article 16, Section 2 - Standby Pay - RECOMMENDATION:

Although the Employer's position is reasonable, given the small number of employees in the department, the total cost to the county for complying with this request and the tediousness of a 24 hour-7 day rotating schedule sufficiently justifies a one-contract-only increase from \$150 to \$200 per week for each of the three years.

Article 21 - Clothing Allowance - CONTENTIONS - UNION

The Union rejects management's proposal to eliminate the uniform allowance and vehemently objects to a proposed change in the uniform color to brown to differentiate dog wardens from police or other law enforcement officers. Dog wardens have the same police powers as Sheriffs and police officers (O.R.C. 955.12), without which they would not be as respected or effective or safe. This will create a security problem for the wardens as they gain more cooperation from the public because of the present police-like uniforms.

It is argued that less than 1/3rd, i.e. 28 county departments statewide, have accepted a proposed new standardized design, most of whom already have brown uniforms and are departments that are smaller than the Stark County department. Employees would lose the amounts invested in existing uniforms. The total budget for the department for uniforms is \$450.00.

Furthermore, even if this is not a mandatory subject of bargaining, the Employer has negotiated this issue and, therefore, it has become obliged to negotiate.

Article 21 - Clothing Allowance - CONTENTIONS - MANAGEMENT

Uniform design is not a mandatory subject of bargaining (See SERB 96-006 (5/31/96) and is authorized under O.R.C. 955.12. The county denies having negotiated the color or design of uniforms. Management wishes to have uniforms for all Dog Wardens that are standardized among a large number of counties (MX-A). This decision is partly out of concern that a statewide survey six years ago reflected public confusion of dog wardens and local law enforcement officers. In Stark County the uniformed dog wardens look just like Canton police officers.

The current Agreement allows a \$375 clothing allowance having been increased 15.38% from \$325 in the previous Agreement. Management proposes to supply all uniforms and eliminate the clothing allowance. In addition, in the exercise of management rights reserved in Article 23, in order to minimize public confusion with local law enforcement officers, the Commissioners have explored uniforms which would differ in color and design and possibly in fabric.

The Employer recognizes that change in design is costly to employees. Therefore, during the first year of the Contract, the Employer proposes to outfit, at Employer's sole expense, each bargaining unit member with a complete set of uniforms in accordance with the Employer's specs (5 shirts, 5 pants, 2 caps, 1 all season coat with removable lining Footwear, belts and accessories at E's discretion as needed). Color same as in 28 other counties --- dark brown pants, khaki shirt with brown epaulets and pocket flaps with an identifying patch on the shirt sleeve. Dark brown ball cap with the Dog Warden insignia. Also included will be a badge, gun belt, holster and side arm. See photo

Management offers to pay a clothing allowance during the 2nd & 3rd at \$375.00 each year for replacement of worn or damaged clothing.

Article 21 - Clothing Allowance - RECOMMENDATION:

The rights reserved to management generally allows the Employer to designate the design, features, accessories and color of uniforms. However, the subject may be a proper subject of good faith bargaining, whether it was or was not negotiated before, given the testimony of the present uniform features for over 20 years. Management reserved its right to assert the uniform issue as a matter solely within management's rights, and the Union is unwilling to allow any change. While Dog wardens have the same police powers as Sheriffs and police officers (O.R.C. 955.12), this is such powers are somewhat limited by many of the provisions in O.R.C. 955. This issue cannot be resolved in Fact-finding, but should be properly raised before SERB.

Management's proposal to provide and pay for new uniforms and accessories, with a clothing allowance of \$375.00 annually for the second and third year would be more fair and reasonable, if it also paid to redeem all presently owned shirts, trousers, caps and identifying accessories. This should be to fairly and adequately compensate the employees for the investment each has in existing uniforms, which will become improper to wear in public and, therefore, useless.

Radio Dispatcher - Contentions

Management does not waive its right to assert before SERB that the radio dispatcher is an exempt as a confidential employee. In order to compromise, it has been tentatively agreed by management that the Radio Dispatcher will be added to the bargaining unit, based on the expectation that the base rate of \$9.73 would increase as of 7/1/97 3-3-3%. Management rejects the idea that the rate should be first increased enough to cover the union dues that the radio dispatcher will have to pay.

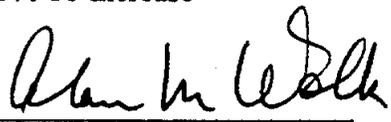
The Union seeks a new base of \$10.50 per hour plus a raise.

Never-the-less, the parties have tentatively agreed to allow the radio dispatcher position to become part of this bargaining unit even though management believes this is a management position.

The dispute is what rate to pay for this position, which is currently \$9.73 per hour.

Radio Dispatcher - RECOMMENDATION:

The Union demand would provide an initial raise of \$0.77 per hour or 7.9%. There was no evidence supporting a reason for such an increase. I reject the concept that such a raise is necessary to enable the radio dispatcher to pay union dues. The Radio Dispatcher may be included in the bargaining unit starting with the present rate structure and the same 3%-3%-35 increase recommended for all other bargaining unit members.


ALAN M. WOLK, Fact-finder
File # 274-97

Made effective in
STARK County, Ohio
this 16th day of June, 1998