

FACT-FINDING REPORT

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

July 2, 1998

In the Matter of)	
)	
Sandusky County Sheriff)	
)	Case No. 98-MED-02-0088
and)	
)	
Fraternal Order of Police, Ohio)	
Labor Council, Inc.)	
)	

APPEARANCES

For the Sheriff:

Donald Binkley, Consultant
 E. P. Nevada, Consultant
 Scott Ickes, Jail Administrator

For the Union:

Hugh Bennett, Staff Representative
 James J. Bogner, Road Sergeant
 William J. Kaiser, Detective Sergeant
 Michelle A. Kindred, Corrections Captain

Fact-finder:

James M. Klein

BACKGROUND

The instant dispute involves the Sandusky County Office of Sheriff and the Fraternal Order of Police/Ohio Labor Council, Incorporated ("FOP"). The FOP represents a bargaining unit consisting of all "full-time Sergeants and above." Excluded are the Sheriff, Deputies, Dispatchers, Jail Administrator, Civil Officers, and all other employees. Currently the bargaining unit includes eight Captains and five Sergeants.

The dispute relates to a successor collective bargaining agreement to the agreement expiring June 1, 1998. The parties met to negotiate on several occasions but were unable to reach an agreement. As a result, the Fact-finder was appointed May 1, 1998.

The fact-finding hearing was held on June 19, 1998. After the parties attempted to resolve some of the unresolved issues, a hearing was held. On June 23, 1998, the parties mutually agreed to extend the fact-finding until August 1, 1998.

The recommendations of the Fact-finder are based upon the criteria set forth in section 4117-9-05(K) of the Ohio Administrative Code. They are:

- (1) Past collectively bargained agreements, if any between the parties;
- (2) Comparison of 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 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 dispute settlement procedures in the public service or in private employment.

ISSUES

Eleven issues were presented to the fact-finder. For each issue the fact-finder will present the position of the parties, summarize the arguments presented, offer a brief analysis of the issue, and where appropriate, provide recommended contract language.

1) Article VI - Hours of Work/Overtime, Section 6.4 - The current contract language includes actual work hours, compensatory time off, and scheduled vacation leave in the definition of "hours required to work" for purposes of determining an employee's eligibility for overtime.

Union Position - The union proposes inclusion of "sick leave" within the definition of "hours worked." The union contends that the bargaining unit members are penalized financially at a rate of seven dollars or more per hour for using sick time during the weeks of the pay period; it further argues that illness is beyond the control of the employee.

Employer Position - The employer contends that no other employee in the Sheriff's office has sick time counted toward hours worked. The employer also proposes deletion of the language in this section that credits vacation leave as hours of work.

Analysis - The fact-finder recommends that union's proposal for inclusion of sick leave to be included in hours worked be rejected. The other employees in the Sheriff's office and a number of other comparable county sheriff department's do not include sick leave. The fact-finder further recommends that the employer's proposal to eliminate vacation leave from the definition of hours worked also be rejected. The 1995 contract language including vacation leave was proposed by employer in negotiations.

Recommendation - The fact-finder recommends no change to the current contract language.

2) Article VI, New Language - Presently, the Sheriff's policy is to utilize members of another bargaining unit to work overtime in the Dispatch Unit when Dispatchers are not available for the overtime.

Union Position - The union proposes a new section that would provide overtime first to Dispatchers and then to members of the bargaining unit of full-time Sergeants and above. The union argues that bargaining unit members are more familiar with the current dispatch procedures than the other bargaining unit employees who are offered the overtime.

Employer Position - The employer contends that the work of "dispatcher" falls outside of the definition of this bargaining unit. It further maintains that dispatcher work is not a mandatory topic for bargaining and that assignment of work is a "management right."

Analysis - The fact-finder recommends that the union proposal be adopted. Members of the bargaining are familiar with the current dispatch procedures and should be entitled to overtime when full-time Dispatchers are unavailable for overtime.

Recommendation - The fact-finder recommends that a new contract section be added to Article VI which establishes an overtime call-in procedure granting overtime first to full-time Dispatchers, then to employees in the bargaining unit of Sergeants and above that fill in at the Dispatcher's position as part of their normal duty routine.

3) Article X - Grievance Procedure

Union Position - The union proposes to bypass the first step of the grievance procedure for Captains. The union contends that this proposal is consistent with current policy.

Employer Position - The employer would not oppose this proposal if the union would accept the employer's proposal that only Region 15 (Ohio) FMCS arbitrators who

are members of the National Academy of Arbitrators would be appointed and that the union pay the entire cost of securing an FMCS list of arbitrators.

Analysis - The fact-finder recommends that the union's proposal to bypass step 1 for Captains' grievances be adopted. He further recommends that Region 15 FMCS arbitrators be requested, but that the requested list not be limited to National Academy members. Finally, the fact-finder recommends that the cost of requesting an FMCS panel be shared equally by the parties.

Recommendations - The fact-finder recommends the following contract language be added to Section 10.7, Step 1

if the grievant is the rank of Captain, the grievance shall be initiated at Step 2 of this procedure.

The fact-finder recommends the following contract language be added to Section 10.7, Step 4.

...to request a list of seven (7) impartial arbitrators from the Federal Mediation and Conciliation Service, Region 15 (Ohio).

The fact-finder recommends that the employer proposals to (1) require that the union pay the entire cost of requesting a FMCS panel and (2) change the word "Either" to "Each" in paragraph two, line 12 of the 1995-98 agreement be rejected.

4) Article XII Drug/Alcohol Testing, Section 12.6 - Current contract language provides that a list of three testing laboratories shall be maintained by the employer. The employer proposes one laboratory instead of three laboratories.

Employer Position - The employer states that certified laboratories are difficult to find and that they are unable to locate three in proximity to Sandusky County.

Union Position - The union contends that there should be three certified laboratories on the list.

Analysis - The fact-finder recommends that the current contract language be retained. The laboratory testing is performed in various sites and there is no logical reason to depart from the contract requirement that a list of three testing laboratories be maintained by the employer.

Recommendation - The fact-finder recommends the current contract language.

5) Article XV - Holidays, Section 15.1 - Current contract language does not include Good Friday and the day after Thanksgiving on the list of holidays. The union proposes to add these holidays to the list.

Union Position - The union contends that 11 of the 15 comparable counties have more holidays or a combination of more holidays and personal days than this bargaining unit. The union further states that there is precedent in Sandusky County (the Department of Human Services) for including the day after Thanksgiving as a holiday.

Employer Position - The employer contends that the addition of two holidays is a cost and staffing issue -- there would be an additional loss of approximately \$3000 for each additional "worked" holiday. No other Sandusky Sheriff contract includes these two days as holidays.

Analysis - The fact-finder recommends no change in the current contract language. The comparables do not support the addition of these two days to the list of holidays.

Recommendation - The fact-finder recommends the current contract language.

6) Article XX - Attendance Leave Bonus, Section 20.2 - Current contract language provides that employees with at least one year of continuous service who do not utilize any sick leave for the calendar four-month period beginning January 1, May 1, and September 1 of each calendar year shall be entitled to one paid personal leave day. The union proposes to increase this benefit by having four three-month periods instead of the current three four-month reporting periods. In addition, the union proposes to include an approved doctor's appointment as an exception to missed work due to sick leave.

Union Position - The union contends that the proposed language rewards employees for perfect attendance.

Employer Position - The employer contends that this is a cost issue with no perceived benefit. The employer further cites that in the two-year period following implementation of the current contract language, there was an increase in sick leave by employees. Finally, the employer contends that the use of doctor's statements to corroborate illness is fraught with potential problems.

Analysis - The fact-finder recommends that the current contract language be retained. It does not appear that the intended purpose of the attendance leave bonus -- i.e. reducing sick leave -- has been realized. The fact-finder also agrees that the "doctor's excuse" exception will be difficult to implement.

Recommendation - The fact-finder recommends the current contract language.

7) Article XXIII Group Insurance, Section 23.1 and 23.2 - During the term of the current agreement, the Sandusky County Commissioners changed the group insurance plan for all county employees including bargaining unit members. The union filed a grievance regarding this change, and the employer responded by agreeing to continue the old insurance plan until the 1995-98 agreement expired. The union proposes to continue the old coverage; it opposes the new plan, primarily because it eliminates two hospitals which were on the list of the five hospitals most utilized by county employees.

Union Position - Section 23.1 - The union contends that the new county group insurance plan that includes elimination of two popular hospitals will result in employee

contributions increasing from 90/10 (in-network) to 70/30 (non-network), a loss of a 10 percent discount, and the possibility of a far different "reasonable and customary" fee and balance billing for any amount in excess of the reasonable and customary fee. The bargaining unit members' doctors may not have privileges at the hospitals included in the county's new plan and this would result in higher costs to the members who decide to stay with their non-network doctors.

Section 23.2 - The union proposes that the employer agree to contribute up to \$300 per month for single employee insurance coverage, and up to \$600 per month for family insurance coverage. Currently, the employer pays \$183.57 per month and \$468.30 per month for single and family insurance coverage, respectively. The union further proposes that if the premium costs exceed the \$300/\$600 levels, the excess shall be borne by the employee by payroll deduction up to \$30 per month for single coverage and \$60 per month for family coverage; the employee's contribution cannot exceed these levels.

Employer Position - Section 23.1 - The employer states that the group insurance is controlled by the County Commissioners and that the employer does not control the selection of the group insurance plan. The employer contends that if the union's proposal to continue the old coverage is adopted, the 13 bargaining unit employees would have to become their own "risk pool" and separately contract for insurance. The employees would lack bargaining leverage, and would not benefit from "economies of scale." Thus, the employer proposes that the bargaining unit have the same plan as the rest of the county.

Section 23.2 - The employer states that it currently pays \$183.57 per month (\$2204.84/year) and \$468.30 per month (5619.60/year) for family coverage; it further states that employees pay \$26.17 per month and \$66.65 per month for single and family coverage respectively. The employer contends that the bargaining unit employees pay less per month than county employees statewide (\$35.52/month and \$105.63/month). The employer proposes a cap of its current contribution at \$183.57/month (single) and \$468.30/month (family). It cites potential increased costs and favorable comparable statistics in support of its position.

Analysis - (1) Section 23.1 - The employer is essentially bound by the County Commissioners' determination of the group insurance plan. Recent increases in insurance costs led to the changes in the County's insurance plan. It is logical (and also beneficial to the bargaining unit members) to have a county-wide health insurance plan. Thus, the fact-finder recommends that the bargaining unit has the same plan as the rest of the county.

(2) Section 23.2 - Currently, the employer pays \$183.57/month and \$468.30/month for single and family coverage, respectively. The represents approximately 87.5 percent of the premium costs. The bargaining unit members contribute approximately 12.5 percent of the health insurance premiums. The union is justifiably concerned that if there is no cap on the employee contribution, any increase in wages would be eroded by increased employee contributions in health insurance

premiums. The employer proposed a cap based on these current levels of benefits. The employer submitted evidence that bargaining unit employees pay less per month than county employees statewide (\$35.52/month for single coverage and \$105.63/month for family coverage). The fact-finder agrees that a cap is essential to protect the bargaining unit employees against increased premiums. The cap based upon current premiums is fair and consistent with the criteria set out in Section 4117-9-05(K).

Recommendation - The fact-finder recommends that the union's proposal for Section 23.1 not be adopted. The fact-finder recommends the following language for Section 23.2:

Upon execution of this Agreement, the Employer agrees to contribute an amount of money equal to 87.5 percent of the health insurance premium for all employees, and the employees shall contribute an amount equal to 12.5 percent of the applicable health insurance premium.

8) Article XXIV - Compensation and PERS Pickup - The Union proposes a five percent increase in wage rates for 1998, 1999, and 2000. The employer proposes a 1.4 percent increase for the each of the same years.

Union Position - The union contends that the Sergeants in Sandusky County rank eight out of twelve in base wages in comparable counties, and that the Captains rank last out of the four comparable counties.

Employer Position - The employer states that Sandusky County is projecting a net loss in 1998, and the Sheriff's Department received only \$59,000 in new monies from the

County Commissioners for 1998. The \$59,000 must cover expenses for both bargaining units and the inmates at the County Jail. In addition, in 1998 there will be a 27th pay period. Of the 88 Ohio counties, Sandusky County ranks 54th average income. The employer further argues that its proposal is more in sync with the Consumer Price Index.

Analysis - The fact-finder recommends that the wages should be increased by 3.0 percent for 1998 (retroactive to June 1, 1998), for 1999 and 2000. This recommendation is supported by data submitted by the union. The wage comparables for Sergeants and Captains and the statistics reported in the SERB Quarterly for First Quarter 1998 support this recommendation.

The fact-finder recognizes that the County is not in good financial condition and that the Sheriff's Department increase in funding for 1998 (\$59,000) is extremely low. However, the wage rates for both Sergeants and Captains also are extremely low, especially when they are compared with those employees doing comparable work in similar counties.

Recommendation - The fact-finder recommends the following language for Sections 24.1, 24.2, and 24.3.

Section 24.1. Effective June 1, 1998, the wage rates for bargaining unit employees will be increased by 3.0 percent.

Section 24.2. Effective June 1, 1999, the wage rates for bargaining unit employees will be increased by 3.0 percent.

Section 24.3. Effective June 1, 2000, the wage rates for bargaining unit employees will be increased by 3.0 percent.

9) Article XXV Longevity Compensation - The union proposes an additional \$10 for each year of service beyond six years; it also proposes no cap on compensation.

Union Position - The union contends that the comparables support its position.

Employer Position - The employer contends that the union proposal would add an additional \$3000 in cost and it is not supported by the comparables.

Analysis - The fact-finder finds that the comparables do not support the union's proposal.

Recommendation The fact-finder recommends no change in the current contract language.

10) Article XXVII Uniforms - The union proposes an additional \$100 in uniform allowances for detectives, bringing the allowance up to a total of \$500.

Union Position - The union states that the proposed allowance applies to detectives working in "plain clothes". The proposal applies only to non-uniform clothing because uniform clothing is provided to bargaining unit members through a commissary system. The increase is due to the need for providing a good public image in the County.

Employer Position - The employer contends that the union's proposal is not supported by the comparables.

Analysis - The fact-finder recommends that the union's proposal be adopted. The proposed increase is modest and is necessary to keep up with the increase in costs since the last uniform allowance increase.

Recommendation - The fact-finder recommends that the first sentence of Section 27.3 be changed by substituting the figure "\$500.00" in place of the figure "\$400.00."

11) Article XXXI Miscellaneous - The union proposed two new sections to Article XXXI: (1) "Minimum staffing for each shift shall be three road officers including the shift supervisor." This reflects current policy and practice, and the union is proposing to add it to the contract. The employer opposes the proposal. (2) "Each employee will receive hazardous duty pay. Each employee will receive an additional two and one-half percent (2.5%) of their base salary per year as hazardous duty pay." The employer opposes this proposal.

Union Position - (1) The union proposal seeks to incorporate the current minimum staffing practice into the new contract. (2) The union contends that members of the bargaining unit (except Dispatchers) are constantly exposed to danger. As such, they should be entitled to extra compensation for this duty.

Employer Position - (1) The employer contends that staffing is a management right and should not be governed by the contract. The employer further contends that the County's poor financial condition could not support the concept of permanent minimum staffing. (2) The employer contends that the bargaining unit members were aware of the risks associated with law enforcement work when they decided to work in the field. The employer further contends that the comparables do not support the union's position.

Analysis - (1) Staffing is a management right and should be subject to the Sheriff's reasonable judgment. (2) The risks inherent in the work of law enforcement professions were, or should have been known by the bargaining unit members when they hired on with the employer.

Recommendation - The fact-finder recommends that both proposals of the union under Article XXXI not be adopted.

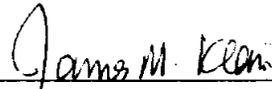
12) Article XIX Sick Leave - Section 19.6 - The current contract language in Section 19.6(2) provides for sick leave in the event of serious illness or injury to a member of the employee's immediate family. Grandchildren of the employee are not included in the definition of immediate family.

Union Position - The union proposes an amendment to Section 19.6 that would add grandchildren to the definition of immediate family of the employee.

Employer Position - The employer did not oppose this position.

Analysis - The fact-finder recommends that the union's demand be granted. The grandchild of the employee can be considered a member of the employee's immediate family.

Recommendation - The fact-finder recommends addition of the term "grandchild" to Section 19.6(2) of the agreement.



James M. Klein
Fact-finder

July 7, 1998
Toledo, Ohio