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Factfinding Report and Recommendations

in the Matter of Factfinding Between:

International Brotherhood of Teamsters Local 637

and

The Licking County Sheriff

SERB Case No: 98-MED-03-0209
98-MED-03-0210
98-MED-03-0211
98-MED-03-0212
98-MED-03-0213

MARCUS HART SANDVER, Ph.D.
Factfinder

Representing the Employer:

**Jonathan J. Downes
Attorney at Law
Downes and Hurst
Columbus, Ohio**

Representing the Union:

**Susan D. Jansen
Attorney at Law
Logothetis, Pence and Doll
Dayton, Ohio**

Hearing Date: October 22, 1998

Report Issued: November 20, 1998

I. Introduction

This case grows out of a collective bargaining dispute between the Licking County Sheriff (the employer) and International Brotherhood of Teamsters Local 637 (the union). The parties met eleven times between April 21 and August 24 to negotiate a resolution of the dispute. Despite all attempts, however, the parties were unable to resolve the dispute. By mutual agreement of the parties, Marcus Hart Sandver was chosen as the factfinder to the dispute. By mutual agreement of the parties, October 22, 1998 was chosen as the date for the factfinding hearing.

II. The Hearing

A. Attendees and Exhibits

In attendance at the hearing for the employer were:

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|----|-----------------|--------------------------------|
| 1. | Jonathan Downes | Attorney at Law, Labor Counsel |
| 2. | Randy Thorpe | LCSD - Chief Deputy |
| 3. | Cheri Hass | Attorney at Law, Labor Counsel |
| 4. | Gerry D. Billy | Licking County Sheriff |

In attendance at the hearing for the union were:

- | | | |
|----|------------------|----------------------|
| 1. | Maralee Pattan | Labor Representative |
| 2. | Tom Morrison | Deputy Sheriff |
| 3. | Howard Stoneking | Labor Representative |
| 4. | Illegible | Deputy Sheriff |
| 5. | Joel Carter | Labor Representative |
| 6. | Dana Godfrey | Deputy Sheriff |

7. Jim Romine Teamsters Local 637
8. Susan Jansen Attorney
9. Keith Shrider Deputy Patrol Division

There were 6 joint exhibits, 24 employer exhibits and an equal number of union exhibits. By mutual agreement of the parties all tentative agreements (joint exhibit #6) were to be included as part of the factfinder's recommendations. By mutual agreement of the parties the unresolved issues were to be addressed in ascending numerical order as found in the most recently expired collective agreement. The factfinder notified the parties that the hearing would be conducted in conformity with the rules and procedures for factfinding as found in O.R.C. 4117 and associated administrative rulings of the State Employment Relations Board. Finally, the factfinder notified the parties that the rationale for his recommendations would be drawn from the criteria for factfinding as found in O.R.C. 4117.14 (G)(7)(a-f).

III. The Issues

1. Article 7 - Dues Deduction and Fair Share Fee
 - A. Employer Position

The employer's position on this issue is that because the union does not specifically detail its rebate procedure for the fair share fee in its Article 7 language that the article should be deleted from the proposed agreement.

- B. Union Position

The union position on this article is that the fair share language in the most recent collective agreement has been in effect since 1988. The union requests that the language of Article 7 in the most recent collective agreement (now expired) be incorporated in the agreement.

C. My thinking on this issue is that as long as the union incurs a duty of fair representation for each member of the bargaining unit, each member should pay his or her fair share of these representation costs.

D. Recommendation

The factfinder recommends that the language of Article 7 in the recently expired collective agreement be incorporated in the new agreement. Mechanical changes to the language will be necessary to remove the words "F.O.P." and "Lodge" and to replace them with "Teamsters Local 637".

2. Article 10.2. The grievance procedure

A. Union Position

The union proposal would include written reprimands as subject to the grievance and arbitration procedure.

B. Employer Position

The employer proposes that written reprimands be excluded from the grievance and arbitration procedure. This is the procedure in the most recently expired collective agreement.

C. Discussion

I see no reason to submit written reprimands to the grievance and arbitration procedure. In my opinion minor disciplinary actions should be excluded from the grievance procedure.

D. Recommendations

That Article 10.2 be unchanged from the most recently expired collective agreement.

3. Article 12. Corrective Action

Article 14. Internal Review Procedure

A. Union Position

The union's proposal on Article 12 and 14 were joined due to the fact that the proposals were similar in intent. The union proposal essentially is to expand the definition of the term discipline to include written reprimands in Article 12.1 and to increase the time limits from 7 to 14 days. The union proposes no change in Article 12.2 "Department Hearing." The union proposal would change 12.3 to define a format for formal charges. The union proposal would change 12.4 to add a discovery process. The union proposal would be to amend section 12.6 to add non-discriminatory application language.

In Article 14, the union proposal would change Article 14.1 to provide for a 120 day notice period for discipline. The union proposal would rewrite section 14.2 to require notice to an employee when an investigation is being conducted concerning an officer. The union proposal would rewrite section 14.3 to specifically acknowledge the Garrity Rule. The union proposal would rewrite section 14.4 to allow overtime payment if applicable. The union proposal would rewrite Article 14.5 to provide a transcript to members at no cost.

B. Employer Position

The employer position is essentially to maintain status quo language in Articles 12 and 14 with some proposed changes (e.g., change hearing to meeting in 12.2 and to add permissive polygraph language in Article 14).

C. Discussion

There was extensive discussion of these articles. The union produced witnesses that identified some difficulties in the application of Article 12 language to some specific cases. The employer produced a witness (Officer Thorpe) who testified that the language in Articles 12 and

14 works well in most cases and has been applied since 1991.

D. Recommendation

I recommend that the language in Articles 12 and 14 be largely unchanged from the most recently expired agreement. I see no reason to make any of the proposed changes to Article 12 and would only recommend that 14.3 be written to include reference to the "Garrity Rule." As with all sections, the language in articles 12 and 14 need to be rewritten to reflect the representation status of Teamsters 637 and to delete references to the F.O.P.

4. Article 16 - Performance Evaluations

A. Employer Position

The employer position on this issue is to delete Article 16. The employer believes that Article 16 is outmoded given the fact that the LCSD does not perform formal performance evaluations.

B. Union Position

The union position is to maintain current language in Article 16.

C. Recommendations

That Article 16 from the most recently expired collective bargaining agreement remain unchanged.

5. Article 17 - Filing of Positions

A. Union Position

The union position on this issue is that article 17.2 should be amended to provide for a complete job description of the vacant position along with a specification of the shift, days off and minimum qualifications for the position. The union would further add a new section 17.5,

Promotions and Assignments, which would provide for discussions between the union and the employer through the Labor-Management Committee of the criteria to be used for promotions and for special duty assignments.

B. Employer Position

The employer position on this issue is to maintain current contract language.

C. Discussion

There was a considerable amount of discussion about this issue. The union had 3 witnesses testify about the current promotion process; the employer had Sheriff Billy testify about the procedure. In listening to the discussion, I had a feeling that there was a good deal of common interests that the parties shared over this matter. The more I listened to both sides, the more convinced I became that this dialogue should be conducted in a more structured manner and be given time to produce concrete results. As a result, I find that the union's proposal to discuss the promotion policy and procedure in a Labor-Management Committee is an excellent idea.

D. Recommendation

The current collective agreement should be changed to incorporate the union's changes to 17.2 and the addition of the new section 17.5. The agreements for deputies, sergeants and civilians will each need to be changed to reflect the unique job titles that promotions provide for each work group.

6. Article 18 - Work Assignment

A. Union Position

The union position on this issue is that section 18.1 should be amended to provide for

annual bidding on shift preference and days off. The new language added to 18.1 in the union's proposal would award shifts and days off based on seniority.

B. Employer Position

The employer position on this issue is to retain current contract language. The employer position is that annual shift bidding is not currently in the collective bargaining agreement and that shift assignment is a management right.

C. Discussion

There was extensive discussion of this article. The Sheriff testified, the Chief Deputy testified, and three union witnesses testified. As I listened to the Sheriff and the Chief Deputy testify I began to realize the need to change the shift assignment system at Licking County Sheriff's Department. The procedure, as outlined by Chief Deputy Thorpe, takes into consideration four factors; seniority, disciplinary infractions, sick leave usage and recommendations from line staff. For a police officer (as with any employee who works shift work with variable days off) shift assignment and days off are critical factors in their job satisfaction. The Sheriff and the Chief Deputy know this too. If the Sheriff wants to reduce sick leave use he knows that he can do this by letting this play a role in shift assignment. The problem is that shift assignment is being used as part of the discipline process. The Sheriff does not consider (apparently) job performance or organizational needs in making shift assignments: he considers discipline and sick leave use instead. The motive being to reduce sick leave use and to reward those who don't use their sick leave with favorable shift assignments. Conversely, those with adverse sick leave use are punished with less favorable shift assignments until the behavior is corrected. This seems unfair to me.

I find that the matter of shift preference and shift assignment are proper matters for factfinding in that these have an effect on the terms and conditions of employment of the employees of the LCSD. In addition, the union's proposed amendment to article 18 could be considered a mandatory subject for bargaining as found in O.R.C. 4117.08(c)(9).

D. Recommendation

The union's proposal dated October 19, 1998 is recommended.

7. Article 19 - Days Off Assignment

A. Union Position

The union position on this issue is that the bidding process for days off assignments should be expanded to allow employees of the LCSD to bid across divisions within the department.

B. Employer Position

The employer proposes current contract language. That is, bidding for days off assignments would be within divisions.

C. Discussion

There was little discussion of this issue as a separate issue at the hearing. Because the days off issue and the shift preference issue were so closely linked the testimony tended to treat them as one issue.

D. Recommendation

The union proposal dated May 26, 1998 is recommended. Because there is so much interchange of personnel between the jail and the road patrol division anyway, I don't see the reason for limiting the days off bidding process to the employees of a particular division.

8. Article 23 - Wages

A. Union Position

The union position on this issue is to propose a 7% annual raise for 1998, 7% for 1999, 7% for 2000 and 7% for 2001.

B. Employer Position

The employer position on this issue is to propose a 3% increase upon the effective date of the agreement and an additional 3% each year thereafter.

C. Discussion

As might be expected, there was a good deal of discussion of this issue at the hearing. The parties disagree on the list of comparable counties. Luckily, there is a good bit of overlap between the comparison counties proposed by the employer and the union. The following counties are on both lists of comparables: Wood, Wayne, Fairfield, Richland, Portage, and Columbiana. In looking over the data for these counties (including Licking) the entry wage for deputy sheriffs in Licking County would rank 3rd from the top, behind Portage and Fairfield. At the top step for deputies, however, Licking County is last in the group of 7. Even assuming an immediate 3% raise to make up for the loss of a raise in 1998, the top step deputy's salary would still be 6th on the list of 7. To boost the top step deputy's salary to the third ranking on the list of 7 would require a 7.6% increase.

The employer argues that the "real" wage rate for Licking County deputies should be a blended wage rate which is the average of corrections officers wages and deputies wages due to the fact that in Licking County deputies may perform jail duties as well as road patrol duties. Interestingly, among our group of 6 comparable counties, 3 counties have no distinction between

jail deputies and road patrol deputies (Columbiana, Fairfield, and Wayne) and three do have a distinction between the two groups (Wood, Richland and Portage). Interestingly, in Wood County while corrections officers are a separate classification from road patrol officers, the wage rates are the same. For wage comparison purposes, then, 5 of the 7 counties pay corrections officers and road patrol officers the same rate of pay. My experience with county sheriff's departments in the State of Ohio over the past 10 or so years has been that it is not uncommon to have the same wage rate paid to both groups, especially if there is a need to have an interchange of personnel from one division to another. This seems to be the practice in Licking County as well. In looking over the wage data one is also reminded that the employees of the LCSD have not had a raise since January 1, 1997. This is almost two years of foregone earnings. The wage raises need to be retroactive to January 1, 1998 as a result.

A 5% raise effective January 1, 1998 would put Licking County behind Portage and roughly equal to Fairfield County for entry level deputies. For the top step deputies a 5% raise would put Licking County behind Portage, Fairfield, and Wood Counties, ahead of Columbiana and Wayne Counties and roughly equal to Richland County.

D. Recommendation

A 5% wage raise retroactive to January 1, 1998. A 3% raise January 1, 1999, a 3% raise January 1, 2000 and a 3% raise January 1, 2001.

9. Article 25 - Longevity

A. Union Position

The union position on this issue is that longevity pay should be increased to \$300 after 5 years and \$75 for every year thereafter to a maximum of \$1500 per year. Presently the longevity

pay is \$200 after 5 years, \$50 per year for each additional year to a maximum of \$1000.

B. Employer Position

The employer position on this issue is to maintain the current longevity pay.

C. Discussion

When we venture into the topic of wage supplements we start down a slippery slope. Two of our comparison counties have no longevity benefits (Wood and Fairfield). Two of the counties have longevity benefits that are not as generous as those found in Licking County (Wayne and Portage), and two have longevity benefits that are more generous than those provided in Licking County (Columbiana and Richland). Based on these data I have a hard time justifying any change in the longevity benefits.

D. Recommendation

No change is recommended in the current longevity benefits.

10. Article 26 - Shift Differential

A. Union Position

The union position on this issue is that the shift differential be increased from 35¢ per hour to 40¢ per hour. The union proposal would also expand the shift differential to include all hours in paid status such as overtime, vacation, holidays and sick leave.

B. Employer Position

The employer position on this issue is to retain current contract language.

C. Discussion

The data for the six comparison counties show that only Portage county has a shift differential and that it is less than that provided in Licking County. The comparison data do not

justify a change in the shift differential.

D. Recommendation

No change is recommended in this article.

11. Article 27 - Insurance

A. Agreed.

12. Article 31 - Uniform Allowance

A. Union Position

The union position on this issue is that the uniform language should be amended to require the replacement of bulletproof vests. The union would also expand the uniform allowance to social workers, dispatchers and clerk typists. The union proposal would increase the uniform allowance \$50 in 1998, \$25 in 1999 and \$50 in the year 2000. The union proposal would include 150 rounds of practice ammunition plus 50 rounds of ammunition for qualification purposes. The union proposal would expand the cleaning allowance to include cooks, social workers, custodians, nurses and maintenance employees.

B. Employer Position

The employer position on this issue is to maintain the present contract language.

C. Discussion

The comparability data show that only Columbiana, Portage and Wood Counties have a uniform allowance. In Columbiana and Portage it is more per year than it is in Licking County. In Wood County the uniform allowance is the same as in Licking County. In Portage and Columbiana there is no separate cleaning allowance. In Wood County dry cleaning is provided by the county. In Licking County there is a \$325 per year cleaning allowance.

There was very little discussion concerning the expansion of the uniform allowance to include the social workers, dispatchers and clerk typists. There was little conversation about including ammunition as an item to be listed in Article 31. There was a good bit of discussion about the bulletproof vests, but the issue seemed to relate more to the initial fit of the vests rather than to the replacement of the vests due to obsolescence or deterioration. The issue of fit is one that needs to be addressed on an individual basis either when the vest is issued or when it becomes too small (or too large) as employees change in size over time.

D. Recommendation

No change is recommended to this article.

13. Article 32 - Hours of Work and Overtime

A. Union Position

The union position on this issue is that Article 32.3 should be changed to provide for a one hour paid lunch break for the nurses and social workers. The union proposal would change Article 32.5 to provide for a minimum call in time of 4 hours at 2 times the regular rate of pay. The union proposal would amend Article 32.6 to provide for equalization of overtime among those who volunteer for the overtime.

B. Employer Position

The employer position is to maintain current contract language.

C. Discussion

The only comparability data produced by the union was for Portage County. The Portage County agreement provides for a minimum of 2 hours call in pay at 1½ the regular rate of pay. Comparability data were not provided for the social workers' and nurses' lunch breaks or for the

other overtime issues.

D. Recommendation

No change to this article.

14. Article 33 - Sick Leave

A. Union Position

The union position on this issue is that unused sick leave that is not used or converted should be allowed to accumulate from year to year (section 33.1). The union also proposes that the required written statement for sick leave use not be required until after the 6th occurrence of sick leave (Article 33.4).

B. Employer Position

The employer position on this issue is that the proposed changes in 33.1 and 33.4 must be considered in light of the fact that employees of the LCSD currently have a total leave package that is equal to or better than employees in other jurisdictions. The employer's position is to maintain the status quo on this issue.

C. Discussion

There was little direct discussion on either 33.1 or 33.4. No comparability data was produced on either of these items.

D. Recommendation

No changes be made to this section.

15. Article 34 - Sick Leave Conversion

A. Union Position

The union position on this issue is that article 34.1 be changed to allow conversion of sick

leave at a ratio of 4:1 for all accumulated sick leave.

B. Employer Position

The employer position on this issue is that there be no change to the 30 day maximum pay out for sick leave.

C. Discussion

In looking over the comparability data provided by the union for Greene County, Wood County, Wayne County, Richland County and Columbiana County I note that no county has a sick leave conversion at retirement as generous as that proposed. The annual conversion in Article 33.5 seems to me an adequate (and immediate) "cash out" benefit that would be of great value to the employees of LCSD. I see no reason to move to an unlimited total "cash out" of sick leave at retirement.

D. Recommendation

No change to this article.

16. Article 35 - Funeral Leave

A. Union Proposal

The union proposal on this article is to add grandchild to Article 35.1, and to add step grandchild, aunt and uncle to Article 35.2. In addition, the union proposal would remove the 2 day "cap" on the use of sick leave for bereavement for immediate family beyond the 3 days provided.

B. Employer Proposal

The employer proposal on this issue is that there be no change to Article 35.

C. Discussion

I don't see a compelling need for the change proposed by the union. No documentation or data was provided to substantiate this proposal.

D. Recommendation

No change is recommended for this Article.

17. Article 36 - Vacation

A. Union Proposal

The union proposal on this issue is to "accelerate" the vacation schedule (Article 36.1) such that employees will reach each vacation plateau at a faster rate. In addition, the union proposal would add a 240 hour vacation plateau for those over 20 years of service. Finally, the union proposal would allow employees to make requests for unused vacation time at any time with 24 hour notice to the employer.

B. Employer Position

The employer position on this issue is that no change be made to this article.

C. Discussion

I can well understand the employer's operational need to staff the department adequately when employees take vacation. I can also understand the employees' need to have some freedom over scheduling their vacation after April 30. The "use it or lose it" language in section 36.4 seems inflexible and harsh to me. The union proposal for requesting vacation scheduling after the January 31 priority scheduling date recognizes the employer's right to deny these requests for operational needs. The language which requires a rationale by the Sheriff for canceling a scheduled vacation seems reasonable and fair to me.

D. Recommendation

Article 36.4 shall be changed to reflect the union proposal of June 29, 1998. All other provisions of Article 36 are to remain unchanged.

18. Article 37 - Holidays

A. Union Position

The union proposal on this issue is to require payment of 2½ times the regular rate of pay plus the regular 8 hour rate for these who work on Christmas, New Years, and Thanksgiving.

The union proposal would require 1½ times the regular rate of pay plus the regular 8 hour rate for these employees who work all other holidays.

B. Employee Position

The employer proposes no change to this article.

C. Discussion

The change proposed by the union seems a sharp departure from past practice and is not justified by any evidence or testimony. In a continuous operation work setting there will be three shifts worked on every holiday; just like there are three shifts which work every other day of the year. This is the nature of public safety employment. I see no reason for the proposed change.

D. Recommendation

No change is recommended for this article.

19. Article 41 - Educational Courses

A. Union Position

The union proposal on this issue would be to change Article 41.2 such that the Department would pay employees for time spent in educational programs necessary to receive or

to retain certification. The union proposal would increase the annual educational monetary incentive in Article 41.3 to \$500 annually for an associate degree and \$750 annually for a bachelor's degree. The union proposal would also provide for an 80% payment of tuition costs by the employer.

B. Employer Position

The employer proposes no change in this article.

C. Discussion

In looking over the comparability data provided by the union I notice that Columbiana County has a monetary educational incentive. Richland and Greene Counties have reimbursement of educational costs but no monetary incentive. The norm seems to be to provide for one or the other (reimbursement or incentive) but not both. The union proposal would require the payment of both reimbursement and a monetary incentive. It seems to me that the payment of a monetary incentive for educational enhancement in the current agreement is sufficient.

D. Recommendation

No change to this article is recommended.

20 Article 42 - Teamsters Local 637 Time

Agreed

21. Article 46 - Waiver of Negotiation

Agreed

22. Article 47 - Medical Examination

Agreed

23. Article 48 - Injury Leave Supplement

A. Union Position

The union proposal on this issue is to delete the last sentence of Article 48.4. The effect of this deletion would be to allow employees to accumulate vacation benefits, sick leave and vacation while on injury leave.

B. Employer Position

The employer position on this issue is to maintain current contract language.

C. Discussion

I can see the merits of both points of view on this issue. The burden, however, is on the union to demonstrate convincingly that a change needs to be made to allow those on injury leave to accumulate rights to other time off benefits. I did not see or hear the justification for this proposed change at the factfinding hearing.

D. Recommendation

No change is recommended for this article.

24. Article 49 - Negotiation Leave

Agreed

25. Article 50 - Duration

A. Union Position

The union position on this issue is that the agreement should be in effect from November 1, 1998 to October 31, 2001.

B. Employer Position

The employer position on this issue is that the agreement should be in effect from the date

of signing until December 31, 2001.

C. Discussion

There was little discussion of this issue at the hearing. The employer position seems more reasonable to me, given the fact that some time will be necessary from the present date (November 20, 1998) for a vote on this report and certification of the result to S.E.R.B. A December 31 expiration date will come very close to providing for a 3 year duration.

D. Recommendation

The effective date of the agreement shall be from the date of signing until December 31, 2001.

26. New Article - Reporting for Work

A. Union Position

The union position on this issue is that a 5 step progressive discipline policy be established for tardiness. The union proposal would "empty" an employees late file each year on December 31.

B. Employer Position

The employer position on this issue is that the issue not be adopted.

C. Discussion

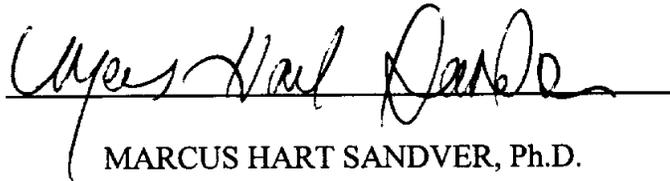
The union proposal seems like a good idea to me, but I am hesitant to recommend it without a more thorough discussion of the implications of this proposal for the employees of LCSD. I would recommend that this matter be referred to the labor-management committee for thorough and careful consideration.

D. Recommendation

This article not be included in the present agreement but referred to the labor-management committee for further discussion.

IV. Certification

This Factfinding Report and Recommendation was based upon evidence and testimony presented to me at a factfinding hearing I conducted in Newark, Ohio on October 23, 1998. This Report was developed in conformity with the Rules for Factfinding found in O.R.C. 4117 and associated administrative rules.



MARCUS HART SANDVER, Ph.D.

November 20, 1998

Dublin, Ohio