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STATE EMPLOYMENT
RELATIONS BOARD

OCT 27 10 30 AM '98

**IN THE MATTER
OF
FACT FINDING
OPINION AND RECOMMENDATION**

BETWEEN	
The	CASE NO. : 98-MED-03-0218
FRATERNAL ORDER OF POLICE OHIO LABOR COUNCIL, INC.	FACT FINDER: JOHN S. WEISHEIT
and the	DATE OF HEARING: Sept. 23, 1998
ALLEN COUNTY, OHIO, SHERIFF	DATE OF REPORT: October 23, 1998

REPRESENTATION

by

<u>Employer Representatives</u> Jonathan Downes, Esq. Downes & Hurst	<u>Union Representatives</u> Ross Rader, FOP, OLC, Inc. Rep
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AUTHORITY

This matter was brought before Fact Finder John S. Weisheit, in keeping with applicable provisions of ORC 4117 and related rules and regulations of the Ohio State Employment Relations Board. The parties have complied in a timely manner with all procedural filings. The matter before the Fact Finder is for consideration and recommendation based on merit and fact according to the provisions of ORC 4117, in particular those that apply to safety forces.

BACKGROUND

The Allen County Sheriff, hereinafter called the "Sheriff" and/or the "Employer", has recognized the Fraternal Order of Police, Ohio Labor Council, Inc., hereinafter called the "FOP" and/or the "Union", as the bargaining representative of certain employees for purposes of collective bargaining since, at least 1985. These employees are in two bargaining units covered under a single collective bargaining agreement. Unit "A" includes Patrol Officers, Corporal, Dispatcher, Detective, Correction Officers, Civil/Court Service Officer, and Transportation Officers. Unit "B" includes Head Cook, Cook, Clerk, Typist, Mechanic, Commissary Officer, and Assistant Mechanic. These positions reflect about 90 employees in Unit "A" and 18 employees in Unit "B".

The most current round of bargaining was for the purpose of obtaining a successor Agreement to expiring Agreement of July 1, 1995 through June 30, 1998. The parties engaged in collective bargaining on several dates between June and August, 1998. They have extended the statutory bargaining period by mutual agreement and engaged in mediation prior to submitting the unresolved issues to Fact Finding. All transmittals of documents to the Fact Finder were submitted in a timely manner. The Fact Finding Hearing was held on September 28, 1998.

In compliance with ORC 4117.14(C)(4)(e), and related rules and regulations of the State Employment Relations Board, the following criteria were given consideration in making this Award:

1. Past collectively bargained agreements between the parties;
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, 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;
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 public service or in private employment.

ISSUES OF TENTATIVE AGREEMENT

The parties reached tentative agreement on the following Articles prior to the Fact Finding Hearing:

Article 1 - Agreement	Article 12 - Seniority
Article 2 - Union Recognition	Article 13 - Layoff and Recall
Article 4 - Union Representation	Article 14 - Probationary Period
Article 5- Pledge Against Discrimination & Coercion	Article 16- Labor/Management Meetings
Article 6 - Management Rights	Article 23 - Leaves of Absence
Article 7 - No Strike/No Lockout	Article 24 - Injury Leave
Article 8 - Grievance Procedure	Article 26 - Substance Testing
Article 9 - Personnel Files	Article 27 - Duration
Article 10 - Work Rules - General Orders	

**ISSUES OF TENTATIVE AGREEMENT
AT FACT FINDING**

The parties reached tentative agreement on the following Articles at the Fact Finding Hearing:

Article 11 - Discipline	Article 20 - Vacation
Article 15 - Filing of Positions	Article 22 - Sick Leave
Article 17 - Hours of Work and Overtime	Article 25 - Uniforms/Equipment

ISSUES AT IMPASSE

The following issues remain unresolved and are at impasse:

Article 3 - Union Security	Article 21 - Holidays
Article 18 - Wages	Appendix A - Wage Scales
Article 19 - Insurance	

**SUMMARY OF THE PARTIES RESPECTIVE POSITION
ON ISSUES AT IMPASSE**

Employer	Issue	Union
Current Language	Article 3 Union Security	"Fair Share Fees" provision to be included.
18.1 - Change effective date to implement wage and other economic increases of Agreement. 18.2 - \$10.00/hr OIC pay per pay week, min of 8 hrs/wk. 18.4 - Current Language. 18.5 - Current Language.	Article 18 Wages 18.2, .4, .5	18.1 - Current Language 18.2 - Add Correction Officers \$6.00/hr... remainder, current lang. 18.4 - Inc Longevity Hrly Rates 5 yrs = \$.30 10 yrs = \$0.40 15 yrs = \$0.50 add 20 yrs = \$0.60 18.5 - Shift Differential - new.
19.3 - Current Language.	Article 19 Insurance	19.3 - Cap monthly contribution rate of bargaining unit members.
21.2 Current Language.	Article 21 Holidays	21.2 - increase rate of Holiday pay.
Inc 2.5% each year of Agreement. Delete "Detective" from the wage scale	Appendix A Wage Scales	Inc 5% each year of Agreement. Retain "Detective" on the wage scale.

DISCUSSION & FINDINGS

General

Four of the five issues at impasse are considered economic items. The issue of agency fees, in Article 3, Union Security concern is not normally considered an Employer cost item. It is considered primarily on its own merits in relationship to the documentation and testimony presented.

The economic issues are considered in context of appropriateness and the cost factor as a whole. These issues are reviewed in general context and recommendations are item by item, as required under ORC 4117.

Ability to Pay

Ability to pay is not an issue raised by the parties. Availability and appropriateness in the amount of wage and economic benefits is in dispute. Matters regarding Wages, Insurance, Holiday Pay, premium pay and overtime are considered in total perspective, though recommendations are item by item, as required under ORC 4117.

Comparables

All comparables are given due consideration and weight as deemed appropriate. In presentation and documentation, comparables to other employers and other agency employees and comparisons of other Allen County employee units offers an overview of points being noted by the respective party. The relationship of totality of economic benefits, take-home pay, etc. effect the determination and recommendation of the Fact Finder.

Economic Climate

Documents and testimony indicate the overall financial condition of the Employer is stable. As noted previously, the issue of inability to pay is not in question. The appropriateness of an increase in wage and economic benefits of the employees is the primary issue. Documents and testimony provided the Fact Finder with a comprehensive picture of its financial conditions. Basic issues were not refuted. Fiscal responsibility is considered in relationship to services unit employees provide the citizens served.

Bargaining History

The parties have a long established collective bargaining history pre-dating the Ohio Collective Bargaining law of 1984. The evolution of contractual terms are found significant. On some issues, this factor is more significant than others in the framing of the recommendations in this Fact Finder's Report.

**ITEM BY ITEM
DISCUSSION**

Issue

Discussion

**Article 3
Union Security**

The FOP seeks the adding of a "Fair Share" Provision to the Agreement. It argues that such a provision is found in the majority of labor agreements in the State of Ohio. It also contends that all employees in the bargaining unit receive benefits, while some do not pay their share of the cost of representation. The Employer argues retaining of current language. It notes that this a common practice with other bargaining units of the County inclusive of the "Gold" Unit in the Sheriff's department. It further raises the question regarding whether the subject is a "permissive" vs. "mandatory" issue of bargaining under ORC 4117.

The Fact Finder is more persuaded by the historic pattern of the parties' labor agreements than the comparables to other employers-employee representatives provisions on this matter. This issue has been the subject of impasse and Fact Finding in prior contract negotiations. The evidence provided indicates the parties historically reached agreement absent a "Fair Share" provision. The Union is not persuasive that conditions are significantly changed to support a recommendation to include such a provision at this time.

**Article 18
Wages
18.2
Officer-in-Charge**

The FOP proposal would effect two aspects of this provision: 1) include corrections employees under the terms of this provision and; 2) increase the hourly rate for OIC service from \$4.00/hr/shift to \$6.00/hr/shift. The Sheriff rejects the inclusion of corrections employees and proposes changing the OIC pay provision to \$10.00/hr pay per week and requires an employee to serve in such capacity for a minimum of 8 hours within a week to qualify for OIC pay.

After consideration of the total additional cost implications of this provision with other economic matters, and a review of evidence submitted on the issue it is determined and recommended the parties retain current language of Section 18.2 - Officer-In-Charge.

Issue

Discussion

**Article 18
Wages
18.4
Longevity**

The Union seeks a longevity hourly rate of: \$.30 at 5 years; \$.40 at 10 years; \$.50 at 15 years; and the addition of \$.60 at 20 years. The Employer recommends retaining current language.

Adjustment of this issue is considered in relationship to the wage increase. The parties have established this concept in prior labor agreements. A review of area county sheriff departments indicate that this is a common benefit and in this unit such pay is at a comparatively lower rate. Review of the bargaining unit members service to the Sheriff's department averages under 10 years service. Such a provision provides an incentive to retain the more seasoned, better trained, and experienced employees. Some adjustment is considered appropriate. This provision is considered part of the total wage and benefit recommendation. The following recommendation takes into consideration the disparate application of such a provision among bargaining unit members.

It is recommended that the schedule in Section 18.4 Longevity include the following:

5 YEARS	10 YEARS	15 YEARS	20 YEARS
\$0.25 Per Hr.	\$0.30 Per Hour	\$0.35 Per Hour	\$0.40 Per Hour

**Article 18
Wages
18.5
Shift Differential**

The FOP proposes to add Shift Differential as a new provision. The Employer rejects inclusion of such a provision.

While this is not an unusual term in a labor agreement, the evidence to support addition of this provision to the Agreement is not persuasive.

It is determined and recommended that this provision not be included in the Agreement.

Issue

Discussion

**Article 19
Insurance**

The FOP proposes a cap on employee contribution amounts of \$100.00/Family; \$80.00/2-Party; \$40.00/Single. The Employer proposes to retain current language. Current total rate and participating employee 25% of the total rate contribution are:

Family	2-Party	Individual
Total/Employee	Total/Employee	Total/Employee
\$583.60/\$145.90	\$389.04/\$97.26	\$145.90/\$48.64

The Union agreed, through the collective bargaining process, to participate in the County self-insured health program six (6) years ago. The computed cost per employee and employee contribution rate has not changed in that period of time. Yet, compared to other similar employee unit/employer groups, these bargaining unit employees contribution rate are found significantly higher. It is also noted that there is a relatively low participation level of bargaining unit members. It has been this Fact Finder's experience that the larger the employee unit and greater the employee participation, the more cost effective the program.

Under tentatively agreed to provisions in this Article, the Employer retains control of benefit level, deductibles, selection of secondary providers and the right to change benefit levels. Adjustments in benefits and coverage have been made within current structure. It is also noted that flexibility exists allowing different departments/units within the County to adjust contribution levels between the Employer and employee rate. Such rate differences result in benefits provided.

A lower, employee competitive contribution rate, may encourage more employees in this bargaining unit to participate and add increased stability to the County's program. It is rare that employee insurance contribution rates exceed 20%. It is recognized that, on the surface, the Fact Finder's recommendation appears to provide a greater benefit than that sought by the Union. This recommendation does not incorporate any dollar limit on contribution rates and the adjustment is one part of the total economic package.

Issue

Discussion

**Article 19
Insurance
cont'd**

After a review of the supporting information submitted by the parties and consideration of its total economic impact, it is recommended that the following be included in the Agreement:

“Section 19.3 Premium Sharing - Employees electing coverage shall pay twenty percent (20%) of the established premium for the category selected, and the Employer shall pay the balance. For purposes of administering this Section, the in-category premium is the COBRA rate established by the third party administrator or actuary. Employees are responsible for paying their portion of the co-payment on premium through payroll deduction. Employee electing not accept coverage must sign a waiver.”

**Article 21
Holidays**

The FOP proposes to increase overtime pay to time and one-half (1½). The Sheriff proposes to retain the current rate.

A review of the documentation and testimony is not persuasive to change current language.

It is recommended that Article 21 - Holidays be included in the Agreement in its current language.

Issue**Discussion****Appendix A
Wage Scales**

The FOP proposes a 5% increase for each step of the wage schedule each year of the Agreement. The Sheriff proposes 2.5% increase for each step of the wage schedule each year of the Agreement.

A review of the supporting data indicate that current wage rates do support argument for a wage increase. The financial condition of the County, while solvent and stable, do not reflect significant growth. No major revenue increases have occurred in recent years, nor are anticipated during the life of the Agreement. Cost of living, a traditional wage consideration factor, is currently about 2%.

A further issue was revealed in dispute in the course of the Hearing. The status of whether to retain the position of "Detective" on the wage schedule and, if so, its appropriate pay rate. The position is specifically included under Unit A of the bargaining unit. This is not considered the appropriate arena to recommend changes in the bargaining unit structure. However, the evidence is not persuasive to change the established practice used in determining the pay rate for the position.

The following recommendation takes into consideration a review of evidence provided on this subject and other economic recommendations set forth in this Report.

It is recommended that the wage amounts currently in effect in Appendix A, be increased 3.0% effective July 1, 1998, 3.0% effective July 1, 1999, and 3.0% effective July 1, 2000.

FACT FINDER'S RECOMMENDATIONS

General: Items of Tentative Agreement - It is recommended that all items of tentative agreement be included in the Agreement. It is recommended the following issues at impasse be included in the Agreement, or otherwise resolved in the following manner:

Article 3 - Union Security should be included in the Agreement in context of its current language.

Article 18 Wages

18.2 Officer-In-Charge should be included in the Agreement in context of its current language.

18.4 Longevity be changed to reflect the inclusion of the following:

5 YEARS	10 YEARS	15 YEARS	20 YEARS
\$0.25 Per Hr.	\$0.30 Per Hour	\$0.35 Per Hour	\$0.40 Per Hour

18.5 Shift Differential should not be included in the Agreement.

Article 19 - Insurance

Section 19.3 should be included in the Agreement as follows:

“Premium Sharing Employees electing coverage shall pay twenty percent (20%) of the established premium for the category selected, and the Employer shall pay the balance. For purposes of administering this Section, the in-category premium is the COBRA rate established by the third party administrator or actuary. Employees are responsible for paying their portion of the co-payment on premium through payroll deduction. Employee electing not accept coverage must sign a waiver.”

Article 21 - Holidays should be included in the Agreement in its current language.

Appendix A - be included in the Agreement with a wage schedule that provides an increase of 3.0% effective July 1, 1998, 3.0% effective July 1, 1999, and 3% effective July 1, 2000.

TOTALITY OF AGREEMENT

This will affirm the foregoing report, consisting of **12 pages**, inclusive of this page, and **recommendations** contained herein, are made in this matter of **Fact Finding** by the below signed **Fact Finder**. All matters presented before the Fact Finder and not specifically addressed were given consideration but are not recommended for inclusion in the Agreement. If there is found conflict in the Report between the Fact Finder's Discussion and his Recommendations, that language in the Recommendations shall prevail. All matters of tentative agreement are **recommended**, to be included in the Agreement.

To the best of my knowledge, said Report and **its included recommendations** complies with applicable provisions of **ORC 4117 and related Rules and Regulations adopted by the State Employment Relations Board.**

I therefore affix my signature at the City of Galion, in the County of Crawford, in the State of Ohio, this **October 23, 1998**,



John S. Weisheit, Fact Finder

CERTIFICATE OF SERVICE

COPY

This will affirm that the Fact finding Report in the Matter of Fact finding between
Fraternal Order of Police
Ohio Labor Council, Inc.

v

Allen County, Ohio,
Sheriff

Case No.

98-MED-03-0218

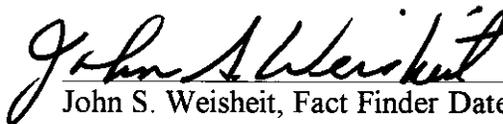
was served to the below named parties at the stated addresses

Ross Radar, Representative
FOP, OLC, Inc.
222 E. Town St.
Columbus, OH 43215

Jonathan J. Downes, Esq.
Downes & Hurst
300 S. Second Street, 2nd Floor
Columbus, OH 43215-5095

*by 1st Class U.S. Postal Service Mail, on **October 23, 1998.***

I affirm, to the best of my knowledge that the foregoing is true and accurate.

 October 23, 1998
John S. Weisheit, Fact Finder Date