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STATE EMPLOYMENT
RELATIONS BOARD

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FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
July 18, 2000

In the Matter of:)
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The Mahoning County)
Sheriff)
)
and)
)
The Fraternal Order of Police)
Ohio Labor Council)
)

99-MED-10-0954 ✓
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0956

APPEARANCES

For the Union:

- Pat Daugherty: FOP/OLC Staff Representative
- Joseph Hood: Bargaining Unit Representative
- Glenn Kountz: Bargaining Unit Representative
- Jerome Williams: Bargaining Unit Representative

For The Mahoning County Sheriff:

- J. Kevin Sellards: Employer Representative
- James Lewandowski: Major, Mahoning County Sheriff Department

Fact Finder: Dennis M. Byrne

Background

The parties to this Fact Finding are the Mahoning County Sheriff (Commissioners) and the Mahoning County Sheriff's Department deputies, who are represented by the Fraternal Order of Police/Ohio Labor Council. The parties engaged in numerous negotiating sessions however thirteen issues remained open. The issues included vacancies, shift bidding, random drug testing, injury on duty, fitness for duty, hazardous duty pay, vacations, longevity pay, uniform allowance, insurances, promotions, and wages. Prior to the Fact Finding Hearing the parties scheduled a day of mediation with the Fact Finder. Moreover, there was another mediation session prior to the Hearing and the parties were able to agree on issues except the size of the wage increase. Consequently, the only issue discussed at the formal Hearing was the wage issue. The Fact Finding was conducted on June 28, 2000 at the Mahoning County Jail. The Hearing started at 10:00 A.M. and adjourned at approximately 1:00 P.M.

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

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

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

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

Introduction:

The contract expired on December 31, 1999, and the parties have negotiated more or less continuously since November 1999. There were two major issues that separated the two sides. The first and perhaps the most contentious was "Daily Post Bidding", the second was the size of the wage settlement. In order to understand the parties' respective positions some background discussion is necessary.

Prior to the signing of the just expired contract, the parties, especially the corrections division, had a history of disagreements over their job assignments. The corrections officers believed that favoritism played a role in their assignments, with the best jobs going to friends of the supervisors. The corrections staff resented this situation, and the overall relationship between the parties suffered as a consequence. At this time management took the position that job scheduling was a management right.

Ultimately, these problems caused the parties to negotiate a daily bidding procedure for the jail. The clause that they inserted into the contract allows the corrections staff to bid for positions on a daily basis. In return for this concession, the corrections staff agreed to a one-year wage freeze. At the same time, the parties also agreed to change the title of the corrections officers to Deputy I. That is the "corrections officer" designation disappeared and was replaced with the title Deputy I. Currently, the Sheriff's office has no corrections officer classification; the only job titles are Deputy I and Deputy II.

During the current round of negotiations the Sheriff demanded a change in the shift bidding language. The Sheriff's representatives argued that the daily bidding language was creating a number of problems for the County. They believe that the current procedure can lead to dangerous situations in the jail. According to Major Lewandowski, the procedure of bidding for positions based on seniority can lead to situations where junior employees, in some cases just hired employees, must work the most dangerous jobs. The Major argued that the Sheriff often did not have the ability to properly train the new employees given the fact that seniority determines job assignments. Previously, the Sheriff would assign the most senior employees to the most dangerous positions; now the most junior employees often work these jobs. Additionally, the Major contended that some employees possess unique skills that can be used to enhance the workings of the department. He contended that daily job bidding limits management's ability to optimally deploy the labor force and affects the efficient operations of the department.

For their part, the employees argued that daily bidding was an incredibly important issue. The officers claimed that the current procedure cured the problems that had plagued the jail assignments in the past. Moreover, they

claimed that morale and employee performance had increased and that a return to the past scheduling practices was not a workable solution to any potential problems raised by the Sheriff. In effect, both parties claimed that this issue was central to the smooth running of the jail.

In this case collective bargaining worked the way it should. During the mediation effort, the parties had a long discussion about this issue. The result was that the parties continued to discuss the issue and came up with a workable compromise that meets the needs of both. Therefore, the parties were able to find a solution to the issue the caused the most friction between them.

The remaining issue is the size of the wage package. During the course of the last few years, Mahoning County has suffered financial problems. As a consequence of these financial troubles the County was forced to lay off some employees and institute a wage freeze. Unfortunately, the wage freeze severely affected the former corrections officers (Deputy I), and these individuals saw the one-year wage freeze they agreed to stretch to over two years. As a result, both the Union and the County both agree that the affected officers are the worst paid jail employees in the entire Northeast Ohio region. The difference between the parties' positions centers on the exact size of the wage increase, but both agree that it should be substantial.

This situation is somewhat complicated by the fact that the other Deputies, the Deputy II classification, are not in the same position. This group has agreed on a 4% across the board increase for each year of the proposed contract. Therefore, the dispute concerns the raise for approximately 46 officers. In addition, the County has proposed deleting the title Deputy I. The County believes that there should be one classification and a pay scale that relates to all non-civilian employees. The Union does not disagree with this position; rather the Union wants all deputies to be paid the same wage, depending on years of service, at the end of the current contract.

Therefore, the sole remaining issue is the size of the wage settlement. Again it must be stressed that both sides agree that there is a need for a significant settlement for the former corrections officers. The disagreement is over the exact size of the settlement.

Issue: Article 34 Wages

Union Position: The Union demands that the affected deputies move to \$28,400.00 from \$22,681.00 effective January 1, 2000. Furthermore, the Union demands that the affected deputies be placed on a scale graduated by longevity that would pay an officer who has completed his/her third year of service

\$37,632.00 in the last year of the contract. In other words, the Union demand is for a raise from \$22,681.00 to \$37,632.00 over the contract duration.

Management Position: The County position is that a wage scale be instituted that would increase the starting rate for a new hire to \$25,500.00. Next, the wages for current employees would be raised in steps to \$25,500.00 on January 1, 2000; \$27,000.00 on July 1, 2000; \$28,500.00 on January 1, 2001; \$30,000.00 on January 1, 2002; \$31,500.00 on January 1, 2003; and \$33,000.00 on January 1, 2004.

Discussion: The difference between the parties' positions is significant; however it is a matter of degree, not philosophy. The underlying premise of both positions is that the deputies deserve a significant increase in pay. The Union's position is based on the idea of "equal pay for equal work." That is the Union wants all deputies to be at the top of the pay scale \$37,632.00, at the end of the contract assuming that the employee has three or more years of service.

To support its position, the Union presented data from other surrounding jurisdictions and the SERB benchmark reports that show the Mahoning County deputies are the worst paid regardless of the comparison group. In effect this presentation was "gilding the lily." The data are overwhelming and prove the Union's contention. Of course it must also be noted that the Sheriff also agrees that the officers are grossly underpaid.

The Sheriff's offer is designed to achieve two goals. First, Major Lewandowski testified that the current pay is so low that the County cannot find qualified applicants to fill vacancies in the department. Therefore, the Sheriff wishes to raise the starting salary immediately to \$25,550.00 for all employees. This is comparable to wages paid by other employers in Mahoning County and the Sheriff believes this wage will allow him to fill vacancies in the department with qualified applicants. The Sheriff believes that the Union's proposal does not adequately address the issues surrounding the current starting wage and the problems it causes.

The second part of the County's proposal deals with the pay of existing employees. The plan presented by the County is a pay scale. The concept is to devise a scale that will cover all the employees in the department. In addition, the proposal significantly raises the pay of the current deputies. In effect the County agrees with the Union's contention that the deputies are woefully under paid. However, the County did present evidence that the deputies who work in the jail will be paid comparably to other corrections officers if its position is accepted.

There are two differences in the parties' positions. First is the size of the adjustment. The Union's demand is for more than the Sheriff is offering. The

second difference is that the County's plan does not move everyone to the top of the scale at the end of the contract. In other words, it is possible to have the same job being performed by individuals who are both long-term employees, but who earn different amounts. In other words, unequal pay for equal work is still a possibility (certainty) under the County's plan.

The County bases its offer on 1) the total cost of the plan, and 2) the size of the proposed increase. While there was no inability to pay argument put forth by the County, it did present information that the total cost of the plan would amount to \$1,450,900.00 for all members of the department and \$732,180.00 for the affected group including new hires. The County also presented data showing that the Union's plan would cost \$2,071,976.00 over the life of the contract. The County believes that the plan it put forth is reasonable, meets the needs of the employees, and is affordable. On the other hand, the County believes that the Union's demand is fiscally unreasonable.

The Union argues that the County can afford its demands. While the Union agrees that the cost of its proposal is high, it made the point that much of the cost was to move current employees to an acceptable wage. That is, the Union believes that the County has underpaid the deputies for years and now should accept the cost of increasing the wages of the employees.

The Fact Finder recommends that the County's offer be placed into the contract as the new wage scale. There are two reasons for this recommendation. First, the County's offer is reasonable. The County did present data showing that its offer raises the wages of the employees to a level comparable to other individuals who work in corrections. That is, the County presented data showing that other individuals who do the same work are paid similarly to the wage scale the County is offering. Second, the County has undertaken a significant financial burden. The County's offer increases the Sheriff's budget substantially. The cost of the Union's demand is approximately 43% greater than the County's offer. It is true that the County is in reasonable financial condition at this time; but even considering that fact, the Union's demand is excessive.

The fact that the Fact Finder is recommending acceptance of the County's offer does not mean that the Union's positions are without merit. The affected employees have been grossly underpaid for years. The discussion on equal pay for equal work is also powerful. However, the problems affecting these officers were not created overnight and they cannot be totally solved in the short run. This contract is making steps in the direction of curing whatever problems exist. Future negotiations are the place to continue the forward momentum generated by this contract.

Finding of Fact: The deputies are underpaid for the work performed. The County's offer is a good faith attempt to raise the employees' wages to a reasonable level. In addition, the County's offer is fiscally reasonable.

Suggested Language: The County's wage scale be entered into Article 34 of the proposed contract.

Dennis Reynolds