State of Ohio

State Employment Relations Board

In the Matter of Fact Finding	:	SERB Case Number: 2016-MED-10-1137
Between:	:	
Montgomery County Sheriff, Dayton, Ohio Employer	:	Date of Hearing: March 29, 2017 Date of Report: April 20, 2017
And:	:	
Ohio Patrolmen's Benevolent Association Union	:	Felicia Bernardini, Fact Finder

Fact Finder Report and Recommendation

Appearances:

For Montgomery County Sheriff, Employer

Julie Droessler, Esq., Personnel Director, Fact Finding Spokesperson

For Ohio Patrolmen's Benevolent Association, Union

Joseph Hegedus, Esq., Fact Finding Spokesperson

Introduction

Case Background

Felicia Bernardini was selected by the parties to serve as fact finder in the above referenced case and duly appointed by the State Employment Relations Board (SERB) on January 3, 2017 in compliance with Ohio Revised Code (ORC) Section 4117.14C(3). The case concerns a fact finding proceeding between the Montgomery County Sheriff (hereafter referred to as the "Employer" or the "MCSO") and the Ohio Patrolmen's Benevolent Association (hereafter referred to as the "Union" or "Unit" or "OPBA").

Prior to the hearing, the parties engaged in contract negotiations on multiple dates between October 3, 2016 and January 30, 2017. Many issues were settled through negotiation, however the parties reached impasse at the end of January with eight outstanding issues. The fact finding hearing was scheduled for March 29, 2017. Both parties timely filed the required pre-hearing statement. On the day of the hearing two open issues were settled. The parties proceeded to hearing with six issues remaining unresolved.

Julie Droessler, Esq., represented the Employer.

Joseph M. Hegedus, Esq., represented the Union.

Issues

The remaining open issues addressed by both parties at the hearing are as follows:

Article 19: Uniforms and Equipment

Article 26: Wages

Article 29: Vacation

Article 30: Insurance

New Article: Alcohol and Drug Testing

New Article: Tattoos

General Background Information

The Montgomery County Sheriff's Office provides countywide law enforcement, custody services, and emergency communication services for the fifth most populous county in Ohio, which encompasses the major metropolitan area of Dayton. The personnel that comprise the bargaining unit under this OPBA collective bargaining agreement are civilian employees that staff the Jail

Division and Administrative Services, including the Regional Dispatch Center. The relevant classifications are: Corrections Officer, Security Officer, Clerk-Typist, Execution Clerk, Recreation Specialist, Communication Technician II & III, Inmate Program Coordinator, Victim Advocate, Dispatcher and Accreditation Clerk/Typist. There are approximately 228 positions in the Unit. Corrections Officers make up the largest cadre of unit members at approximately 143 positions; Dispatchers are the second largest cadre at approximately 85 positions. The Jail Division personnel are funded out of the County's General Fund, whereas the personnel of the Regional Dispatch Center are funded by revenue collected under service contracts with those area jurisdictions participating in the regional 911 center.

Positions, Discussion and Recommendations

At the hearing the parties presented their respective arguments on the major economic issues of wages and health insurance first, followed by brief presentations on the remaining proposals concerning Vacations, Uniforms, Tattoos and Alcohol & Drug Testing. Therefore, the format of this report follows this same order. Below, the position of each party is briefly summarized. Position summaries are followed by a brief analysis and discussion, which is followed by the fact finder's recommendation.

In analyzing the positions of the parties and making recommendations the fact finder is guided by available, relevant evidence and the criteria set forth in ORC 4117.14(G)(7)(a) to (f):

(a). Past collective bargaining agreements, if any between the parties;

(b). 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;

(c). The interests 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;

(d). The lawful authority of the public employer;

(e). Any stipulations of the parties;

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

1. Article 26: Wages

Employer Position

The Employer proposes to continue the current pattern of cost of living increases and step advancement. The Employer offers a series of wage increases and step movement as follows:

- 1.25% January 1, 2017 and 1.25% July 1, 2017 and movement of one step on the employee's anniversary date and longevity for those employees out of steps.
- 1.25% January 1, 2018 and 1.25% July 1, 2018 and movement of one step on the employee's anniversary date and longevity for those employees out of steps.
- 1.25% January 1, 2019 and 1.25% July 1, 2019 and movement of one step on the employee's anniversary date and longevity for those employees out of steps.

The Employer opposes the Union's proposal to calculate step movement on the basis of all hours worked and seeks to maintain the current understanding regarding step movement which is based on calendar months and years.

In Section 26.2 Field Training Officers, the Employer rejects the Union's proposal to increase the pay supplement from $0.35/hr. to $1.00/hr.

In Section 26.3 Longevity, the Employer seeks to maintain current language in paragraph B pertaining to forfeiture of the longevity benefit for any employee who is 'off payroll' at any time during the year. However, the Employer agrees to adopt the Union's proposed language change in paragraph C of this section pertaining to the payment of longevity attributable to overtime before the end of the first quarter in the subsequent year.

60% of the MCSO personnel are funded by the County's General Fund and 40% of the MCSO personnel are funded by a separate revenue fund. For this reason the condition of the General Fund has a direct bearing on the MCSO budget and the feasibility of funding various economic proposals for the bargaining unit. General Fund revenues are expected to be $150.2M in 2017. This is a 1.5% or $2.2M increase in revenue over the 2016 Adopted Budget. Sales tax is approximately 55% of General Fund Revenue. Sales tax has been increasing over the past 4-5 years due largely to the Medicaid Managed Care Sales Tax, which is associated with the State's expansion of Medicaid. There is currently a State budget commitment to hold counties harmless until 2019 vis-à-vis loss of the Medicaid Managed Care Sales Tax, but this tax is uncertain beyond that point. It is possible that the County will lose $8M in Medicaid Managed Care Sales Tax in 2019. Overall, General Fund revenues are projected to be basically flat in 2017 (e.g. property tax receipts, local government receipts, service fees and casinos). As for budgeted expenses from the General Fund, salaries are expected to grow by 2.5%. Healthcare expenses, after being stable for several years, increased significantly in 2016. The General Fund Unencumbered Cash Reserves have been stable at about 18-20% of the following year's budget, which represents about two months of expenses. These reserves are consistent with GASB recommended best practices. For 2017 the General Fund Cash Reserve is $30.3M. The County's finances, vis-à-vis the General Fund are stable, however it takes diligent management to ensure that expenditures do not exceed revenues; there are constant tradeoffs. Prudent management requires that the County expect, and plan for, future reductions in Sales Tax Revenue due to the loss of Medicaid Managed Care Sales Tax as of 2019.

The MCSO budget allocated by the County Board of Commissioners is expected to include a salary line item that increases from year-to-year at 2.5% during the term of the contract. This is the standard rate of inflation applied across all departments and elected office holders. This being the case, the MCSO salary proposal of two 1.25% raises in each calendar year is in keeping with the planned inflation rate. Step increases for eligible bargaining unit members and longevity for unit members at the top step of the pay scale add further salary expenses not fully funded in the MCSO budget. As a result, the Employer's wage proposal causes a salary line-item budget deficit year-after-year as follows: -$202,260 in 2017, -$270,015 in 2018, and -$336,430 in 2019. This deficit salary budget is manageable by virtue of the fact that the bargaining unit is never fully staffed and vacant budgeted positions create a cushion.

For comparison purposes the Employer selects four counties with general population figures reasonably close to that of Montgomery County. These comparable counties are Butler, Lucas, Stark and Summit. Using these four data points, Montgomery County's current top step hourly rate for Dispatchers at $23.26/hr. is slightly above the average of the top rates, which is calculated to be $22.43. For Corrections Officers, Montgomery County's current top step hourly rate is $23.16/hr. whereas the calculated average is $23.34. The top step hourly rate at MCSO for clerical staff is $20.53/hr. and the calculated average is $16.67. This data suggests that MCSO's wage rates are competitive when compared to similarly sized counties, which presumably have similarly sized jail and dispatch operations.

Union Position

The Union is seeking to modify the existing step structure of the pay scales. The proposal is to reduce the number of steps in each pay scale, increase the step rates, and clarify the intervals at which unit members move through the steps. The Union's proposed pay scales increase the entry step by approximately 5% and each successive step in the ranges increase by 3% over the previous. This configuration maintains the existing standard 3% differential from step-to-step. These proposed pay scale changes in 2017 would amount to pay increases for each unit member of anywhere from approximately 5% to 11% depending on which new step each member moves to on the revised pay scale. In the remaining two years of the CBA the Union proposes the following wage increases:

- 3% January 1, 2018
- 3% January 1, 2019

Furthermore, in this section, the Union seeks to add new language that would provide for step movement at a half year and a whole year based on all hours worked (i.e. 1040 and 2080 hours respectively), rather than on calendar months.

In Section 26.2 Field Training Officers, the Union proposes to increase the pay supplement from $0.35/hr. to $1.00/hr. This supplement would continue to be paid only on hours when the unit member is assigned as a Field Training Officer.

In Section 26.3 Longevity, the Union seeks to delete paragraph B which renders an employee ineligible for longevity by being in a no-pay status at any time in the calendar year. In addition, the Union seeks to add language in paragraph C establishing that overtime payments attributable to longevity pay be paid before the end of the first quarter of the subsequent year.

The Union has enlisted the consulting services of Mary Schultz, CPA, and CFE, to study, analyze and report on the financial condition of the Montgomery County General Fund. Ms. Schultz's findings are consistent with the financial data presented by the Employer. In summary, Montgomery County has weathered the economic downturn and has been experiencing financial recovery. Sales Tax revenue has consistently grown over the past six years, and cuts in Local Government Funds have been offset by these Sales Tax increases and Casino revenue. The Counties year-end cash balance in the General Fund has been growing and now sits at a healthy 28%, which is higher than the GFOA minimum carryover reserve recommendation, which is two months of expenditures, or 16%. The County has built into its 2017 budget a 2.5% wage increase. The health of the General Fund indicates that additional wage and benefit increases for the Sheriff's Office are in fact affordable. As for Sheriff's Office positions funded by the Sheriff's Revenue Fund, wage increases for these positions would not impact the County's General Fund. Over the past four years the Sheriff's Revenue Fund has had a year-end cash balance that has grown from $1,031,470 in 2013 to $1,369,537 in 2016. This is a substantial cash reserve and makes the Union's wage proposal affordable for 2017 and beyond.

For wage comparisons the Union has gathered data on the large most populous counties across the state, as well as a cluster of counties in the southwestern corner of the state geographically close to Montgomery County. The counties included in the Union's data are: Butler, Clark, Clermont, Cuyahoga, Delaware, Franklin, Geauga, Greene, Hamilton, Lake, Lorain, Lucas, Summit, and Warren. Comparing the top step wage rates for this group of counties with the top step wage rates for MCSO, the data reveals that corrections officers in Montgomery County are earning 90.8% of the calculated average which is $25.29 and Dispatchers are earning 98.5% of the calculated average which is $23.58. For Dispatchers, perhaps of greater relevance is a wage comparison with nearby municipal 911 Dispatchers. There is significant turnover in the MCSO dispatcher position and some of that turnover may be directly rated to the higher wages paid in the immediate area for the same job. In comparing neighboring cities such as Kettering, Huber Heights, Centerville Moraine, Oakwood, and Vandalia the calculated average top step rate for Dispatchers is $27.53/hr. whereas the MCSO top hourly rate is only $23.26.

The Union is also proposing to reduce the number of steps in the pay scales for bargaining unit members. In Montgomery County it takes thirteen years for a Corrections Officer to move from the entry step to the top step of the pay scale, and at that, the top step is slightly below the average pay for others doing comparable work. In the case of Dispatchers the pay scale has ten steps and incumbents move through the steps at one per year taking ten years to achieve the top pay rate. Statewide data available from SERB shows that the average number of steps, for all reporting counties for Corrections Officers, is five. The same is true for Dispatchers; the average number of steps for all reporting counties is five. For the group of fourteen counties that the Union has selected as comparables for wage data, the average number of steps in the pay scales for both Corrections Officers and Dispatchers is approximately 5.5. For the group of municipalities included as wage comparables for Dispatchers, the average number of steps in the pay scales is approximately 6.5. Without question, this data shows that MCSO pay scales are outliers when it comes to the number of years it takes to rise to the top level of pay. Clearly the Union's proposal to reduce the number of steps in the pay scales is supported by the data.

Discussion and Recommendation

The Employer has not actually argued that they have an inability to pay for wage increases. The Employer's financial presentation primarily sets the stage to support the MCSO's wage proposal of 1.25% increases every six months through the term of the contract. The MCSO's General Fund salary line item has been increased by 2.5% for 2017 and is projected to increase by this same rate of inflation in 2018 and 2019. There is no dispute among the parties that the County's General Fund is healthy and stable, and that sales tax revenues have steadily increased over the past four years and are projected to remain stable throughout the term of this collective bargaining agreement. The Employer has noted that the Medicaid Managed Care Sales Tax is going away and that the loss will equate to approximately $8M, however that change is uncertain and would not occur until 2019, if then. Even though this loss may occur in the future, there has been consistent growth in motor vehicle sales tax and other retail sales tax, which is likely to continue. The General Fund year-end cash carry-over balance has grown steadily over the past several years. The General Operating Fund cash reserve is $30.3M, which represents approximately 20% of the Fund. The cash reserve for the General Operating Fund and all sub-funds in the General Fund is $43.4M, which represents approximately 28% of the total General Fund. The year-after-year growth in the cash reserve has occurred in large part due to conservative budgeting – underestimating revenues and matching planned expenditures to these conservative estimates. In 2017 the General Fund is projected at $150.2M, $2.2M or 1.5% above the 2016 adopted budget. In addition to the General Fund, for purposes of this collective bargaining agreement, the MCSO is funded by a Revenue Fund that pays for the personnel that staff the Regional Dispatch Center. Evidence presented at the hearing shows that this fund too has experienced year-after-year growth in the year-end cash balance. In 2016 the fund had a year-end cash balance of $1.37M. These figures, which are undisputed between the parties certainly suggest that the County can afford to fund a wage increase for bargaining unit members. The question is – can the Employer only afford its own proposal of 2.5% annual increases, and nothing more?

Charted below, from the Employer's budget exhibits, is the projected 2017-2019 MCSO General Fund salary budget, the additional cost impact to that budget of the Employer's own wage proposal, and for comparison, the additional cost impact to that budget of the Union's wage proposal. Those figures are followed by the additional cost impact of both the Employer's and the Union's wage proposal on the MCSO's Revenue Fund.

	2016	2017	2018	2019
GF Salary Budget	$6,114,668	$6,114,668	$6,267,535	$6,424,223
2.5% Increase		$152,867	$156,688	$160,606
Total GF Salary Funds Available	$6,114,668	$6,267,535	$6,424,223	$6,584,829
Employer Proposal GF Budget Impact		$138,330	$224,443	$227,021
Union Proposal GF Budget Impact		$585,751	$306,020	$306,362
Employer Proposal Revenue Fund Budget Impact		$99,262	$153,049	$161,000
Union Proposal Revenue Fund Budget Impact		$347,970	$207,269	$214,047

These charted figures show that the difference between the Employer's proposal and the Union's proposal on wages is significant in the first year of the contract due to the Union's proposal to revamp the pay scales. In the second and third years of the contract the difference between the Employer's 2.5% cost of living increase and the Union's 3% cost of living increase is less dramatic.

In addition to the question of whether the Employer can afford a wage increase greater than the one it has offered, is the question of whether a higher wage proposal is warranted given comparisons in the labor market and the cost of living. Here we turn to the comparable data provided by both parties. There are several classifications and associated pay scales in this bargaining unit, however the largest groups of employees in the Unit are Corrections Officers (143 budgeted positions of which 132 are currently filled) and Dispatchers (85 budgeted positions of which 79 are currently filled). These two classifications received the most attention in the hearing and in the supporting documents. Other than a single chart referencing wages for Clerical staff none of the other positions in the bargaining unit were addressed in the discussion of comparable wages.

The Employer's comparable data is extremely limited and made up of only 3-4 data points representing counties with similar population figures. Trends and averages are unreliable when working with such limited data, and population is only one characteristic of many (e.g., program/department size, per capita income, revenue sources and amounts) that should be considered when selecting comparable jurisdictions. The entry-level data in the Employer's exhibit often dates back to the pay scales at the start of the cited CBA (in some cases this is back to 2014) rather than the most recent entry-level wage from 2016. This renders the entry-level data unhelpful. As it is, the Employer's data for current top-step rates shows that the Dispatchers and Correction Officers are close to the calculated average wage for these few comparison counties, and the Clerical wages are significantly above the calculated average.

The Union's comparable wage data is more comprehensive, but here too there are some outliers and counties that are difficult to consider comparable. Like the Employer, the Union has focused in part on countywide population as a basis for comparison. The Union has gathered wage data for Correction Officers and Dispatchers for all large, populous counties, as well as a group of contiguous counties in Southwest Ohio. No other classifications in the bargaining unit are included in the comparable wage analysis. The Union's data shows that the Correction Officers are at approximately 90% of the average top wage and Dispatchers are essentially at the calculated average of these comparison counties. Of particular relevance is the Union's additional comparison data for area municipalities that have 911 Dispatchers. Even though municipalities have a different funding structure from the MCSO, this data does in fact show a more representative labor market salary comparison for Dispatchers. The data reveals that MCSO Dispatchers earning $23.26/hr. at their top step are paid significantly below Dispatchers in the surrounding area earning, on average, $27.53 at their top step.

The most compelling comparable data and the most persuasive aspect of the wage proposals is the Union's focus on the number of steps in the wage scales for these bargaining unit members. At 10-13 steps, MCSO is clearly an outlier in what is considered a reasonable step progression for these jobs. All of the data presented by the Union, which includes SERB's report for all reporting county sheriffs in Ohio, shows the standard to be 5-6 steps in a pay scale. For a pay scale to have 10-13 steps and after that long haul only be at, or somewhat below, an average wage rate creates a genuine deficit. The workforce principle for including step increases in the development of a pay scale is to increase wages early in an individual's career (or tenure) in order to account for, and compensate for, the exponential growth in competency that occurs over the first years in a job (or profession). In the early years of tenure the Employer's investment in a worker is recouped as on-the-job training and experience add depth and breadth to the worker's skills and competency. In most jobs, as tenure increases the annual growth in competency diminishes as the worker achieves full mastery. Only the most highly complex and technical jobs can reasonably support 10-13 years of step increases.

Another factor that seems reasonable to consider in this recommendation of a wage proposal is the high rate of turnover experienced in this bargaining unit. Among the Employer's exhibits is a seniority roster of unit employees; it reveals that between January 2014 and December 2016 (the term of the last collective bargaining agreement) 68 positions were filled (32 Dispatchers, 30 Correction Officers, and five jobs in other classifications). 62 positions in the classifications of

Dispatcher and Correctional Officer represent 27% of the budgeted positons for those two job types. That is a remarkable amount of workforce churn, and as such takes a toll on the bargaining unit members as well as on the Employer. The loss of productivity and the cost of overtime to fill vacant positions make it worth considering increasing wages to a more competitive level in an effort to keep employees on the job.

An additional point of reference often used in fact finding is the CPI, which serves as a convenient surrogate for inflation and offers a perspective on the relative standard of living experienced by workers. In recent years the CPI-U has increased as follows: 3.2% in 2011, 2.1% in 2012, 1.5% in 2013, 1.6% in 2014, 0.7% in 2015, and 2.5% in 2016.[1] This is an average of 1.93% per year over the last six years. Over the past ten years the average annual CPI trend has been 2.3% and over the past 20 years the trend has been 2.5%.[2] These CPI-U figures are seen reflected in much of the wage settlement data presented by the parties. The data shows current wage settlements ranging from a low of 1.5% to a high of 3.25% with an average of approximately 2.5%

In consideration of all of these factors I am inclined to agree, in part, with the Union's wage proposal to revamp the pay scales for this bargaining unit. However, I acknowledge that it is a costly proposal and I am unwilling to place the full burden of the revamp on the MCSO without acknowledging the budgetary strain that it could create given that 2017 budget allocations have already been made. For this reason I recommend making the new pay scales, from the Union's proposal, effective prospectively on July 1, 2017, rather than retroactive to the first of the year. In so doing, the cost of the 2017 wage increase will only be half of what the Employer has calculated, while at the same time establishing increased scales that place the key jobs of Dispatcher and Correction Officer in a more competitive position vis-à-vis base salary, and setting forth standard predictable intervals for step advancement for all bargaining unit classifications. It is important to note that this fact finding recommendation makes notable changes to the proposed pay scales for the classifications of Accreditation Clerk & Program Coordinator; Clerk Typist, Bookkeeper & Execution Clerk; Communications Technician II; Communication Technician III; Recreation Officer; and Victim Advocate. Whereas there exists sufficient data to support moving the Correction Officer and Dispatch pay scales up 9% and 9.6% respectively at the new top step over the existing top step, there is no such data in the record to support moving the top steps of the other pay ranges anywhere from 8.7% to 11.5% above the existing top step as the Union's proposed

[1] US Bureau of Labor Statistics, Consumer Price Index,12-month percent change data tables

[2] Ibid

pay scales do. This being the case, I recommend eliminating the 84-month step in all but the Correction Officer pay scale, thereby topping-out the other pay scales at 72 months (6 years). Even with this edit to the Union's revised pay scales, they will provide a top step increase ranging between 2% - 8% above the current top step.

In the following years of 2018 and 2019 the recommendation is to adopt the Employer's proposed cost of living increase which is 1.25% at 6-month intervals, along with appropriate step movement for those eligible, and longevity for those who do not have further step movement. A 2.5% annual increase is consistent with the current rate of inflation and consistent with average pay raises in comparable public jurisdictions.

With respect to the Union's further proposed language changes in Article 26, I reject the proposal to calculate step movement on hours worked rather than calendar intervals. By adopting the new pay scales as proposed by the Union, the time intervals for movement from one step to the next are clearly established and should be allowed to work for all bargaining unit members in the same manner, rather than adopting a system that advantages those members who work the most overtime.

In Section 26.2 Field Training Officers, the recommendation is to maintain current contract language. There is inadequate evidence in the record addressing this proposal. The existing contract language references a wide variety of classifications eligible for this pay supplement and the only comparison data available in the exhibits refers to Dispatchers. Furthermore, there is no case made that the existing supplement is inadequate in comparison to the additional responsibility that the assignment entails.

In Section 26.3 Longevity, Paragraph B, the recommendation is to retain the current language and simply add a statement to clarify that FMLA situations are exempt from the operation of this language. The Union's proposal in Paragraph C is adopted.

Recommendation

The statutory criteria require that the fact finder consider comparable public jurisdictions, and the Employer's ability to pay and administer the recommended provisions. In light of these criteria the fact finder recommends the following wage settlement:

- July 1, 2017 the pay scales will be adjusted as proposed by the Union, and edited by the fact finder to eliminate the 84-month step for all but the Correction Officer pay scale.

- In 2018 wages will increase by 1.25% on January 1, and on July 1.
- In 2019 wages will increase by 1.25% on January 1, and on July 1.

Relevant contract language shall read in part as follows:

Article 26: Wages

Section 26.1 – Wages

A. Wages during the term of this Agreement are as follows:

Effective July 1, 2017 revised pay scales will be adopted. Employees will be moved to the new step corresponding to their cumulated months of service on July 1, 2017. Future step movement will be on the employee's anniversary date in accordance with the step progression established by the pay scales. *(Note: Adopted pay scales are those in the Union's fact finding wage proposal, eliminating the 84-month step in the pay scales other than the Correction Officer scale. This means that Accreditation Clerk and Program Coordinator can have the same scale as Correction Officer without the 84-month step.)*

Effective January 1, 2018 wages will increase one and one quarter percent (1.25%).

Effective July 1, 2018 wages will increase one and one quarter percent (1.25%).

Effective January 1, 2019 wages will increase one and one quarter percent (1.25%).

Effective July 1, 2019 wages will increase one and one quarter percent (1.25%).

Section 26.2 – Field Training Officers: Current Language

Section 26.3 – Longevity

A. Current Language

B. Employees not in active pay status (off payroll) at any time during the pay schedule of each calendar year will not be eligible to receive longevity pay. Disciplinary suspensions do not apply. FMLA qualifying events do not apply.

C. The above payments will be paid in a lump sum on the second payday of November in each calendar year, except that all overtime payments attributable to longevity pay will be paid on or before the end of the first quarter of the subsequent year.

2. Article 30: Insurance

Union Position

The Union seeks to maintain the current language in the Section 30.1 Eligibility and Coverage. In Section 30.2 Premiums, the Union seeks to maintain the current language and contribution rates; and update the effective dates in order to extend these provisions through the term of the new contract – December 31, 2019. In Section 30.3 Waiver, the Union seeks to maintain current language and increase all monthly contribution figures by $50.00 with the corresponding increases in the Annual Contribution column of the chart. The Union proposes to maintain the current language in Section 30.4 Life Insurance.

The Union seeks to retain existing language and freeze the employee contribution at 2017 rates because the current employee contributions for this Unit are considerably higher than those being paid, on average, statewide. Based on SERB's 2016 Health Insurance Report, the monthly statewide average employee contribution for single coverage is $72; for counties with population over 150K the average is $79; and for the Dayton region the average is $78.76. This Unit is paying $195 per month for single coverage in the County's PPO plan. The monthly statewide average for family coverage is $202; for counties with population over 150K the average is $214; and for the Dayton region the average is $224. This Unit is paying $330 per month for family coverage in the County's PPO plan. Montgomery County employees are already paying significantly higher premiums than their counterparts across the State. Holding these contribution rates steady for the term of this collective bargaining agreement would be a first step toward parity.

Employer Position

The Employer opposes making changes to the Insurance Article at this time and seeks to incorporate an 'Insurance Reopener' for years 2018-2019 of the new contract. The health insurance benefit for Montgomery County employees runs on a benefit year from July 1 to June 30. The Board of County Commissioners is responsible for managing the healthcare insurance program for all county employees. The Board's practice in this matter is to bid its health insurance provider contract on the insurance market triennially. The County will have a new health insurance program effective July 1, 2018. To accommodate the County's cycle and the potential of a new provider, new benefit programs and new premiums, the MCSO proposes to use the vehicle of an insurance reopener in 2018 in order for the parties to have a clear understanding of the benefit details being negotiated.

Discussion and Recommendation

Upon close examination of the exhibits and facts pertaining to the cost of healthcare coverage for this Unit, it does appear that these employees are paying somewhat above average in monthly premium contributions for the County's PPO plan. The biggest difference occurs in the premium contribution paid for single coverage in the PPO. The family coverage for the County's PPO plan is higher than that in other counties, but the percentage of the total premium paid by employees for family coverage is not that much higher than that paid by other public employees in the Dayton region.

This Unit is paying $195 for single coverage on the PPO plan, which is 39% of the total premium. According to the SERB Healthcare Report the Dayton regional average for single coverage is 14% for all plan types. This Unit is paying $330 for family coverage on the PPO plan, which is 19% of the total premium. The Dayton regional average for family coverage is 15% for all plan types. It is important to note that the SERB Report does not separate premium costs and employee contribution rates by healthcare plan type. Again, according to the SERB Report, 60% of the statewide plans are PPOs, however a full 35% are HDHP-type plans, which will have lower premium costs and lower employee contribution rates than do PPOs. Therefore it is reasonable to assume that the SERB Report numbers, for comparison purposes, are somewhat lower than they would be if the comparison was strictly apples-to-apples, or PPOs-to-PPOs as it were. This suggests that the difference between MCSO single coverage costs and Dayton area single coverage costs are significant, but that the same may not be said for family coverage.

From hearing testimony I understand that the County's PPO has been closed off to new enrollees. It is likely that the PPO will be fazed-out in the new plan year, or perhaps not available at all after July 1, 2018. The PPO employee contribution rates set three years ago (especially for single coverage) seem designed to drive employees out of the PPO and into the more cost effective HDHP plan options. Employee premium contribution rates for the County Plan and the Advantage Plan are significantly lower than those for the PPO, just as one would expect. Employees in this Unit are paying anywhere from 8.5% - 3% of the total premium for either of the two HDHPs (The County Plan and The Advantage Plan). The higher percentages are associated with single coverage and the lower percentages are associated with family coverage. Even with the higher out-of-pocket maximum on the HDHP options, a full utilizer of the healthcare benefit could experience lower annual costs on these plans than on the PPO, given the high premium for single coverage on the PPO. Overall, I can agree that employees in this Unit are somewhat disadvantaged by the cost of their PPO healthcare benefit. The specific case of premium costs for the PPO is above average, but beyond that more specific analysis and comparison is not possible.

Healthcare benefits are terribly difficult to compare across Employers. There are multiple cost elements involved with any given plan, and any number of benefit tradeoffs that can result in the dollar amounts paid by employees. Even though healthcare is a mandatory subject of bargaining, Employers must have the latitude and management right to negotiate the overall plan design and benefit cost-structure, for the greatest number of covered employees in order to achieve the best possible rates on the healthcare market. The cost-share paid by employees, whether that be in dollar amounts or percentages, must be negotiated by each bargaining unit based on the current plan costs. As much as employees would like to be able to set their healthcare costs in stone with each contract negotiation, when a CBA term crosses the benefit program term, as it does in this case, it seems best to wait until the new plan information and costs are available before negotiating. The same is true for setting healthcare waiver amounts. Waivers must be designed within the context of other plan costs in order to incentivize the desired behaviors. Waivers are not simply designed to encourage eligible employees to go elsewhere for their insurance. Waivers that are too high could drive healthy low-cost employees out of the plan and have an adverse effect on overall plan costs for those remaining in the pool of covered employees. All of that said, on the matter of healthcare I am persuaded to recommend that the parties adopt a reopener in order to address this issue when the new plan design and cost-structure information is available after July 1, 2018.

Recommendation

The statutory criteria require the fact finder to consider the Employer's ability to pay for and administer the provisions of the contract. In light of these factors the Employer's proposal for a reopener in 2018 is recommended.

Relevant contract language shall read in part as follows:

Article 30: Insurance

Section 30.1 – Eligibility and Coverage: Current Language

Section 30.2 – Premiums: Current Language

Section 30.3 – Waiver: Current Language

Section 30.4 – Life Insurance Current Language

Section 30.5 – Reopener

Either Party may reopen the Agreement solely for the purpose of negotiating health insurance for the years 2018-2019. The right shall exist for each year unless the Parties are able to successfully negotiate a two (2) year agreement on health insurance related issues, which cover the bargaining unit member until December 31, 2019, which must be contained in any final agreement in 2018 to prohibit the reopening in 2019. The reopener may be commenced by filing a Notice to Negotiate with the State Employment Relations Board and shall be conducted in accordance with the dispute resolution procedures contained in Chapter 4117 of the Ohio Revised Code.

3. Article 29: Vacation

Union Position

The Union seeks to add a fifth tier of vacation accrual to the existing benefit. At 24 years of service, the Union proposes an additional week of vacation. The accrual rate at 24 years would be 9.2 hours on a biweekly basis, providing for an annual benefit of 240 hours of vacation. The proposal to increase the benefit with an additional week of accrual is reasonable given the data from comparable employers. Many employers offer a sixth week of vacation, and many employers top-out their vacation benefit with a final accrual tier at 25 years of service. The average for all employers listed in the comparable data is a final accrual tier at 22 years of service and 5.4 weeks of vacation leave. If MCSO were to accept the Union's proposal, the Unit would not be an outlier, but remain within the typical parameters for vacation leave. In addition, the Union proposes language changes in paragraphs C and E that would change the annual vacation bidding process and eliminate the concept of a 'Prime Vacation' period.

Employer Position

The Employer rejects the Union's proposal to increase the vacation benefit at 24 years of service. The immediate cost of the Union's proposal for the dozen employee's eligible would be over $10K. Over the term of the 3-year contract, five more bargaining unit members would become eligible increasing costs by approximately another $4500 annually. These costs are significant, but they alone do not account for the full cost of the proposal. In a 24/7 operation the costs of a leave benefit are compounded by the replacement cost of staff – typically at overtime rates. The cost of the benefit along with the associated cost of overtime that results from the additional vacation leave is a more accurate picture of what the Union's proposal would cost. As for the Union's proposed language changes in paragraphs C and E of this Article, they are accepted by the Employer.

Discussion and Recommendation

Upon careful consideration of the Union's proposal to increase the vacation benefit, I do not find that there is a compelling reason to do so. The current benefit provides for five weeks of vacation leave at 18 years of service. As is, this is a reasonable benefit. A top tier of five weeks of vacation leave is common among public sector employers. It is true that among the counties that the Union uses as comparables, there are some that offer a top tier at six weeks of vacation, but the most frequently observed top tier is five weeks. MCSO employees achieve this top tier of the benefit after 18 years of services, whereas most of the counties cited in the comparable data associate five weeks of vacation with 20+ years of service. The Employer makes a good point that the costs of leave benefits in a 24/7 operation are compounded by staff replacement costs. For this reason it makes more sense for the parties to negotiate a change in the benefit and allow the full value of the benefit for employees to be properly vetted against the full cost of the benefit to the Employer. This is especially true when there is no compelling need or disadvantage driving the proposal for the fact finder to rely upon.

Recommendation

The statutory criteria require that the fact finder consider the bargaining history of the parties, comparability with other public employers and the interests of the public. Given the facts of the proposal and these statutory criteria the fact finder recommends current contract language regarding the accrual tiers of the vacation leave benefit.

4. Article 19: Uniforms and Equipment

Union Position

In Section A, the Union seeks to increase the shoe/boot allowance by $25 to $150. Furthermore, the Union proposes new language that would allow unit members to use the $150 for a uniform sweater or jacket in lieu of shoes/boots. The room temperature in the jail is difficult to regulate it can vary dramatically from location to location and from day to day. Furthermore, the experience of each unit member with respect to room temperature is highly individualized – what is comfortable to one employee may be uncomfortable to another. A simple solution is to allow for an approved sweater and/or jacket for a member to wear, at his/her discretion within the jail as part of the approved uniform.

Additionally, the Union proposes a new Section H with language that would provide Dispatchers with an annual $150 for clothing purchase and maintenance, and allow Dispatchers to dress in business casual street clothes rather than a BSSA style uniform. Dispatchers work in a secure work environment away from the eye of the public and news media so there is no particular reason for Dispatchers to be set apart by their dress and readily recognizable to the public or other Sheriff Office employees. There is no accrediting standard that requires uniforms for Dispatchers. Many employees of 911 call centers across the country dress in street clothes rather than uniforms. An informal survey was conducted by a bargaining unit member using Facebook and SurveyMonkey concerning the use of uniforms in 911 Dispatch centers and the impact of uniform policies on employee morale. The survey revealed that very few organizations require Class A uniforms, most allow business casual street clothes, and several provide polo shirts and allow employees to provide their own slacks or denim jeans and shoes. Survey responses indicate that in organizations that switched from a uniform to business casual street clothes saw an improvement in employee morale. The survey materials also include general cost figures for the purchase of uniform items per employee. Eliminating the purchase of uniform items for the MCSO Dispatchers and substituting a flat $150 allowance annually per employee could save the Employer thousands of dollars.

Employer Position

The Employer does not oppose the Union's proposal to increase the shoe/boot allowance. However the Employer does not agree to the proposed language that would allow unit members to purchase a sweater or jacket with the allowance. There currently exists the option to wear an approved pull-over wool uniform sweater. Jackets create an additional safety concern in a custody setting. Furthermore, the Employer rejects the Union's proposal regarding Dispatchers and seeks to maintain current practice which requires Dispatchers to wear an approved uniform. The MCSO is a paramilitary employer and has achieved the distinction of accreditation for the communication center; uniforms are part of the ethos of a professional, well-disciplined unit.

Discussion and Recommendation

Despite the great initiative shown by members of the bargaining unit in providing background information on the use of uniforms in 911 dispatch centers, this is not an issue that should be settled by a third party with the stroke of a pen. Requiring or not requiring a uniform is generally understood to be a matter of management right. In this case the decision has been made that uniforms are required and to change that is best left to the give and take of negotiations. The Employer has accepted the Union's proposal to raise the shoe/boot allowance, but has rejected the other proposed changes in this Article. This recommendation accepts the Employer's position on the Article.

Recommendation

In deference to the bargaining history of the parties, it is recommended that the shoe/boot allowance be increased to $150. The remainder of the Article shall be retained as current language.

5. New Article: Tattoos

Union Position

The Union seeks to add language to the contract that would allow unit members to have and/or obtain tattoos on any part of the body except for the hands, head, face and neck. Current employees with tattoos on the hand, head, face or neck would be exempted from this exclusion. For the Union this is a fairness issue. The current policy prohibits tattoos on any part of the body that is visible when in uniform or approved street clothes for those not required to wear a uniform. Tattoos that predate 2009 are exempted. In current practice, the Employer is hiring new employees who have full arm tattoos and yet unit members who have worked for the MCSO since the policy was established are not permitted to get tattoos on their arms. The Union's proposal would ensure that all employees are treated equally.

Employer Position

The Employer opposes the Union's proposal to add language to the collective bargaining agreement regarding tattoos. The Employer's opposition is based on the belief that this is a permissive, rather than mandatory, subject of bargaining and therefore is not a proper subject for the impasse procedure.

Discussion and Recommendation

I agree with the Employer. This is a permissive subject of bargaining and while the Employer has the option to bargain over this issue, the Union cannot insist on bargaining to the point of causing an impasse. On the subject of tattoos, the Employer has made it clear that it wishes to retain its policy position rather than include a reference to the topic in the contract. For what it's worth, at hearing the Union pointed out an inconsistency in the current practice regarding the tattoo policy that seems to create an unnecessary disadvantage for current bargaining unit members. This matter should be given a fair hearing in the labor/management committee and perhaps a better, fairer practice developed.

Recommendation

The Union's proposal for a new contract article on tattoos is denied.

6. New Article: Alcohol and Drug Testing

Employer Position

The Employer seeks to include, by reference, its Drug-Free and Alcohol-Free Workplace Policy (GOM 3.5.1) into this collective bargaining agreement. Further, the Employer seeks to include contract language that would limit an arbitrator's authority to change or modify the Sheriff's policy. The Employer bases its proposal on three key factors. First, drug testing is currently used in the hiring process and data reveals that approximately 98% of all applicants test positive. The most prevalent substance used is marijuana, however testing confirms that applicants have used a variety of illegal drugs. This rate of substance use in the general population suggests it is an issue to monitor in the workforce. Second, the Sheriff's operations are nationally accredited and employee drug testing is in keeping with the high standards of accreditation. Third, currently the Employer's policy applies to all non-bargaining unit personnel in the Sheriff's Office as well as the deputy bargaining unit. In order to ensure that all Sheriff's Office employees are treated the same and subject to the same conditions of employment, this policy must be adopted by this bargaining unit as well as the supervisor unit where it is currently proposed in bargaining.

Union Position

The Union opposes this proposal. Random drug testing of bargaining unit members is a mandatory subject of bargaining and as such must be subject to the give and take of negotiations. To-date, there has been no genuine bargaining over this proposal, no thought or suggestion of packaging the proposal with any *quid pro quo* that would incentivize the Unit to embrace a policy and practice that is deeply intrusive in the personal lives of employees. As a mandatory subject of bargaining, this proposal may be properly before the third party neutral, but it is wholly inappropriate for the fact finder to impose the policy on the Unit with the stroke of a pen.

Discussion and Recommendation

In this matter I agree with the Union. There is no doubt that a drug testing policies for bargaining unit employees is a term or condition of employment that requires the give and take of negotiations. Despite the fact that the Employer already has a policy that applies to a portion of its workforce, there may be aspects of how such a policy is operationalized with this bargaining unit that can be worked out in labor/management discussions and/or negotiations. The Employer has the burden of proof to show that there is an existing problem that must be remedied or the potential for a problem that could be averted; in this instance that burden was not met.

Recommendation

In deference to the bargaining history of the parties, the Employer's proposal for a new contract article on workplace drug and alcohol testing is denied.

Conclusion

In this report I have attempted to make reasonable recommendations that both parties will find acceptable. If errors are discovered or if the parties believe they can improve upon the recommendations, the parties by mutual agreement may adopt alternative language.

After giving due consideration to the positions and arguments of the parties and to the criteria enumerated in ORC 4117.14(G)(7)(a) to (f) the fact finder recommends the provisions as enumerated herein. In addition, all tentative agreements (TAs) previously reached by the parties along with all sections of the current Agreement not negotiated and/or changed, are incorporated by reference into this Fact Finding Report and should be included in the resulting collective bargaining agreement.

Respectfully submitted and issued at Columbus, Ohio this 20th day of April, 2017.

Felicia Bernardini,
Fact Finder

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of this Fact Finder Report was sent by e-mail on April 20, 2017 to:

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