

**STATE OF OHIO**

**STATE EMPLOYMENT RELATIONS BOARD**

<b>IN THE MATTER OF FACT FINDING</b>	)	<b>CASE NO: 16-MED-10-1191</b>
	)	
<b>Between</b>	)	
	)	
<b>THE MIAMI COUNTY COMMISSIONERS</b>	)	
<b>(Miami County Communication Center)</b>	)	
	)	
<b>And</b>	)	
	)	
<b>THE FRATERNAL ORDER OF POLICE/</b>	)	
<b>OHIO LABOR COUNCIL, INC.</b>	)	

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**REPORT AND RECOMMENDATIONS OF THE FACT FINDER**

Jane Desimone, Esq., Fact Finder  
Report Dated: April 19, 2017

**APPEARANCES**

For the Miami County Commissioners (Miami County Communication Center):

Jonathan Downes, Esq.  
Zashin & Rich Co., L.P.A.  
17 South High Street, Suite 900  
Columbus, OH 43215

For the Fraternal Order of Police/OLC:

Barry L. Gray  
Fraternal Order of Police/OLC  
222 E. Town Street  
Columbus, OH 43215

## **INTRODUCTION**

In compliance with Ohio Revised Code Section 4117.14(C)(3), the State Employment Relations Board (SERB) appointed the undersigned to serve as Fact Finder in this dispute between the Miami County Commissioners (Miami County Communication Center) (hereafter referred to as the "Employer" or the "County") and the Fraternal Order of Police/Ohio Labor Council (hereafter referred to as the "Union"). This appointment was by notice dated November 21, 2016. The parties are currently working under an expired Collective Bargaining Agreement (hereafter referred to as the "Agreement"), effective January 1, 2014 through December 31, 2016.

The Employer operates the Miami County Communications Center as the primary answering point for all 911 calls and the sole dispatch agency for all Police, Fire, and Emergency Medical Services in Miami County, Ohio. The Center serves approximately 104,000 citizens and is responsible for providing emergency and non-emergency communications to public safety agencies throughout the County, covering 407 square miles and the cities of Troy, Piqua and Tipp City and the villages of West Milton and Covington.

The Union represents the bargaining unit consisting of all full-time and part-time Dispatchers (Telecommunicators) of the Miami County Communication Center, excluding all management level, confidential and supervisory employees. The bargaining unit is currently comprised of seventeen (17) employees.

## **BARGAINING AND FACT FINDING HISTORY**

The parties' most recent collective bargaining agreement had a term of January 1, 2014 through December 31, 2016. Negotiations for a successor contract began in November of 2016, with the parties meeting on five (5) occasions from November 3, 2016 through January 10, 2017. During these negotiations, the parties resolved many of their outstanding issues. Prior to the Fact-Finding hearing, the undersigned was provided with the parties' respective positions on the unresolved issues, along with a copy of the expired collective bargaining agreement.

On March 2, 2017, a formal Fact Finding hearing was held in Troy, Ohio. At that time, the parties were provided with a full opportunity to present testimony, introduce documentary evidence, and argue in support of their respective positions on the unresolved issues. The parties agreed to extend the time periods to and including the issuance of the Report and Recommendations of the Fact Finder as provided under Ohio Administrative Code Rule 4117.260. The parties further agreed to waive overnight delivery of this Report and delivery by electronic mail.

By Memorandum of Agreement attached hereto as "Attachment A", the parties mutually agreed to extend the date of the Fact Finding hearing until March 2, 2017.

## **UNRESOLVED ISSUES**

The following issues were presented as unresolved at the time of the Fact-Finding hearing:

1. Article 24 – Holidays
2. Article 31 – Personal Leave
3. Article 35 – Wages
4. Article 41 – Duration

## **DISCUSSION AND RECOMMENDATIONS**

In analyzing the information provided by the parties, the unresolved issues are addressed in the following recommendations. These recommendations have been made after a careful consideration of all the documentary and testimony evidence presented, including the following:

- Current and past contractual language;
- Testimony and supportive evidence presented at the Fact Finding hearing;
- Comparisons with contractual provisions utilized in comparables;
- The interest and welfare of the taxpayer and the County's ability to finance and administer the proposals;
- The lawful authority of the County as a public employer;
- Stipulations of the parties;
- Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues presented in mutually agreed upon dispute settlement procedures in public service or private employment.

This Fact Finder Report will constitute the settlement proposal upon which the parties are now required to act as directed by the applicable statutes. A vote to accept this report does not constitute an agreement with or an endorsement of any rationale expressed by the Fact Finder with regard to any particular issue, but rather represents only an agreement to resolve the issues by adopting the recommendations.

## **ISSUES, POSITIONS OF THE PARTIES, AND RECOMMENDATIONS**

### **Issue 1. Article 24 – Holidays**

#### The Union's Position

The Union proposes an increase in the value of the ten (10) listed holidays for full-time employees from a current value equivalent of eight (8) work hours per holiday to a value equivalent of twelve (12) work hours per holiday. It further proposes an elimination of language in Section 24.5, giving discretion to the County Commissioners to designate the day after Thanksgiving as a holiday. It proposes replacing this language with language in Section 24.1, designating the "day after Thanksgiving" as a guaranteed holiday "if the day after Thanksgiving is actually worked". The Union proposes language to be added Section 24.5, providing that the day after Thanksgiving holiday is to be paid at the rate of time and one half (1½).

#### The County's Position

The County does not propose substantial changes to this Article, but rather, seeks a grammatical correction and new language that either incorporates current practice or implements an administrative change. It proposes listing the ten (10) holidays as a numbered list from (1) to (10), and correcting a typographical error in Section 24.2, such that "one and one-half (1 2) time" is correctly written as "one and one half (1½) time". The County further proposes the issuance of the "lump sum holiday pay" as provided in Section 24.4 in the form of a "27<sup>th</sup> pay" payable in the month of November each year.

The County rejects the Union's proposal of an increase to the work hour value of each holiday, arguing that the proposed increase constitutes a significant departure from the status quo as well as a substantial expansion of the economic value of the current holiday pay benefit package. Likewise, the County rejects the Union's proposal to make the day after Thanksgiving a guaranteed holiday, not subject to the Commissioner's discretion.

#### Recommendation of the Fact-Finder

It is recommended that Article 24.1 be amended to reflect the changes proposed by the County, with the ten (10) holidays for full-time employees listed from (1) to (10); and the typographical error as contained in Section 24.2 be corrected to state "one and one half (1½) time". It is further recommended that Section 24.4 be amended to provide for the issuance of a "lump sum holiday pay" in the form of a "27<sup>th</sup> pay" during the month of November. The corrected typographical error provides clarity, while the change to the payment of the lump sum holiday pay is consistent with the County's accounting practices with other bargaining units.

The Union's proposal for an increase in the value equivalent of each of the ten (10) holidays from eight (8) to twelve (12) work hours is not recommended. While it is asserted that this change is necessary to reflect the change in work schedule to a twelve (12) hour shift, holidays are normally paid in a lump sum and not actually taken. The change proposed by the Union would be at a significant increase in cost to the County and not consistent with what is paid to other County employees.

It is not recommended that the day after Thanksgiving be made a guaranteed holiday, as it would place the bargaining unit out of sync with all other County employees.

#### **Issue 2. Article 31 – Personal Leave**

##### The Union's Position

The Union proposes an increase in the annual allotment of personal leave for full-time employees from thirty-two (32) to thirty-six (36) hours, with corresponding increases in the pro rata personal leave for new employees. For employees hired on or after May 1 but prior to September 1, it proposes an increase from the current sixteen (16) hours to twenty-four (24) hours of personal leave. For employees hired after September 1, it proposes an increase from eight (8) to twelve (12) hours of personal leave. It is the Union's position that these changes are necessary in order to keep personal leave in line with the change to twelve (12) hour shifts that was implemented during the term of the expired collective bargaining agreement.

The Union further proposes language allowing personal leave to be used in one (1) hour increments, a change from the current requirement that it be used in a minimum of four (4) hour increments. It offered documentary evidence that this proposed change in contract language would be consistent with what is already permitted by the County.

##### The County's Position

The County proposes to maintain the current contract language. It rejects the Union's proposal in all respects, arguing that it would provide for personal leave benefits in excess of what other County employees receive as well as what other public employees earn in other Counties.

Recommendation of the Fact Finder

It is recommended that Article 31 be amended to provide full-time employees with thirty-six (36) hours of personal leave. This change is consistent with the change in work schedule from an eight (8) hour to a twelve (12) hour shift, allowing employees to have three (3) full shifts of personal leave if so desired. It is recommended that employees hired during the year receive a pro-rata amount of personal leave, with employees receiving three (3) hours of personal leave for each month worked beginning with the month that they are hired.

Consistent with the practice permitted by the County over the past few years, it is recommended that employees be permitted to take personal leave in one (1) hour increments if so desired.

**Issue 3. Article 35 - Wages**

The Union's Position

The Union proposes an increase of 4% for each year of a three-year collective bargaining agreement; i.e. 4% for 2017, 4% for 2018, and 4% for 2019. The Union further proposes the addition of a new Section 35.6, creating a shift differential of \$1.00 per hour for bargaining unit members whose work schedule and shift consist of a majority of work hours between the times of 9:00 p.m. and 7:00 a.m.

The County's Position

The County proposes an increase of 2.0% in each year of a three-year collective bargaining agreement, i.e., 2.0% effective the first full period of 2017; 2.0% effective the first full pay period in 2018; and 2.0% effective the first full pay period of 2019. The County further proposes a modification of Section 35.5 to replace the job title of "Dispatcher" with the corrected title of "Telecommunicator". The County rejects the Union's proposal as being a wage increase in excess of what has been awarded and paid to employees in other similar counties, other employees within the County, as well as non-bargaining unit employees of the County. The County believes that its economic package maintains competitive compensation levels consistent with bargaining unit members' counterparts across the region and state.

Recommendation of the Fact Finder

It is recommended that the job title of "Dispatcher" as it appears throughout the Agreement be replaced with the job title of "Telecommunicator".

It is further recommended that Article 35 be amended to reflect a wage increase of 2.5% effective January 1, 2017; 2.5% effective January 1, 2018; and 2.5% effective January 1, 2019, thereby encompassing the duration of a three-year collective bargaining agreement. This wage increase is generally consistent with external comparators, as reflected by SERB data from the past few years. It is also generally consistent with what has been provided to another bargaining unit in the County as well as non-bargaining unit employees. At the same time, this wage increase compensates employees for making the significant change from an eight (8) hour to a twelve (12) hour shift, with the consequential effect on employees' personal lives.

It is not recommended that the shift differential as proposed by the Union be added to this provision.

**Issue 4. Article 41 – Duration**

The Union's Position

The Union proposes a three (3) year collective bargaining agreement, extending from January 1, 2017 through December 31, 2019. It further proposes the elimination of the requirement that the notice to negotiate be provided by "certified mail with return receipt requested".

The County Position

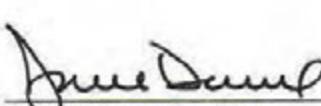
The County proposes a three (3) year collective bargaining agreement effective upon execution and continuing through midnight 12:00 midnight on December 31, 2017. It further proposes the elimination of language in Section 41.2 that provides for the renewal of the collective bargaining agreement for an automatic one (1) year period if neither party gives notice to negotiate. In lieu of this language it proposes that the expiring collective bargaining agreement "be deemed expired and not enforceable" if neither party gives timely notice to negotiate. Finally, the County proposes a change to the earliest date of notice to negotiate from ninety (90) days to one-hundred-twenty (120) days prior to the expiration of the collective bargaining agreement, as consistent with collective bargaining agreements from external comparators and internally within the County.

Recommendation

It is recommended that Article 41 be amended to reflect a three (3) year collective bargaining agreement, extending from January 1, 2017 through December 31, 2019. The Union's proposal for the elimination of the requirement that the notice of removal be provided by "certified mail with return receipt requested" is further recommended.

The County's proposals for the elimination of the automatic renewal language of Section 41.2 and the extension of the earliest date of notice to negotiation from ninety (90) to one-hundred-twenty (120) days are not recommended. There is no evidence that either change is necessary for efficiency or to correct any perceived or actual problems experienced by the parties.

With these recommendations, the Fact Finder Report is complete. All Tentative Agreements reached by the parties are hereby incorporated by reference into this Report. All other language in the previous contract not subject to either the parties' Tentative Agreements or the Fact Finder's Recommendations it to remain as is, without change. The parties are reminded that any mistakes in language recommended by the Fact Finder are correctable by mutual agreement of the parties pursuant to Ohio Revised Code Section 4117.14(C)(6)(a).



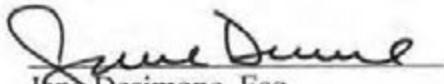
Jane Desimone, Esq.  
Fact Finder, State Employment Relations Board  
April 19, 2017

**CERTIFICATE OF SERVICE**

It is hereby certified that an electronic copy of the foregoing Fact Finding Report was e-mailed this 19<sup>th</sup> day of April, 2017 to Barry Gray, Staff Representative at [bgfopole@hotmail.com](mailto:bgfopole@hotmail.com) and Jonathan J. Downes, Esq. at [jjd@zrlaw.com](mailto:jjd@zrlaw.com). It is further certified that on this same day, the Fact-Finding Report has been sent by Regular U.S. mail to the following:

Barry Gray, Staff Representative  
Fraternal Order of Police/OLC  
P.O. Box 6006  
Oxford, OH 45056

Jonathan J. Downes, Esq.  
Zashin & Rich  
17 South High Street, Suite 900  
Columbus, OH 43215

  
Jane Desimone, Esq.  
Fact-Finder

Miami County Commissioners 911 Center and FOP/OLC  
Agreement to Extend Timelines for Conciliation  
November 21, 2016

**MEMORANDUM OF AGREEMENT (MOA) BETWEEN**  
**THE FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL AND**  
**BOARD OF MIAMI COUNTY COMMISSIONERS, 911 CENTER**  
**SERB CASE NUMBER: 2016-MED-10-1191 DISPATCHERS**

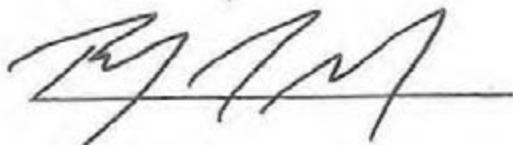
It is agreed between the Board of Miami County Commissioners (hereinafter "Employer") and the FOP/OLC (hereinafter "Union") to extend the date for a Fact Finder to conduct a hearing until February 28, 2017. The timeline provisions of Ohio Revised Code §4117.14(G)(11) are agreed to be extended until February 28, 2017.

The parties agree that if the Fact-finding hearing is conducted on or before February 28, 2017, the effective date of the rates of compensation and other matters with cost implications may be awarded by a Conciliator retroactively to January 1, 2017, or another date in fiscal year 2017. The parties further agree and understand that alternate effective dates after January 1, 2017, may be proposed by either party for items with cost implications and may be awarded by the Conciliator. The parties agree and understand that the Conciliator may fashion a lump sum award for the retroactive portion of a wage award.

The parties agree and understand that the Conciliator has the authority to award other issues in the collective bargaining agreement that are not matters with cost implications or rates of compensation and that the Conciliator will consider the issues tentatively agreed and other traditional elements in conciliation.

This Extension Agreement expires on February 28, 2017, unless the Fact-finding hearing is conducted prior to that date or if mutually agreed in writing to be extended.

FOR THE UNION:



Date: 11-22-16

*11/22/16*

FOR THE EMPLOYER:



Date: 11-29-2016