

**FACT-FINDING TRIBUNAL OF THE
STATE EMPLOYMENT RELATIONS BOARD**

STATE EMPLOYMENT
RELATIONS BOARD

2001 JUN 21 AM 10:28

Tom

IN THE MATTER OF:

**FRATERNAL ORDER OF POLICE,
OHIO LABOR COUNCIL, INC.**

**Employee Organization,
and**

**OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF OHIO,
Employer.**

REPORT OF FACT FINDER

CASE NO.: 00-MED-04-0435

DATE OF HEARING: December 15, 2000

PLACE OF HEARING: Columbus, Ohio

FACT FINDER: Charles W. Kohler

APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:

Joel R. Barden, Staff Representative

FOR THE EMPLOYER:

Mary Beth Foley, Assistant Attorney General
and Labor Counsel

INTRODUCTION

On May 31, 2000, the State Employment Relations Board ("SERB") appointed the undersigned as fact finder pursuant to Ohio Revised Code Rule Section 4117.14(C)(3). This matter involves the negotiation of an successor collective bargaining agreement between the Office of Ohio Attorney General Betty D. Montgomery ("Employer" or "Attorney General") and the Fraternal Order of Police, Ohio Labor Council, Inc. ("Union"). A fact-finding hearing was held on December 15, 2000, in Columbus, Ohio. The report and recommendations of the fact finder are to be served upon the parties no later than January 22, 2001, pursuant to the mutual agreement of the parties.

The following findings and recommendations are offered for consideration by the parties; were arrived at pursuant to their mutual interests and concerns; are made in accordance with the data submitted; and in consideration of the following statutory criteria as set forth in Rule 4117-9-05 of the Ohio Administrative Code:

1. Past collectively bargained agreements, if any, 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 the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

FACTUAL BACKGROUND

The bargaining unit consists of approximately 122 employees, all of whom are engaged in law enforcement, investigation, or training activities. A collective bargaining agreement between the parties expired on June 30, 2000.

The bargaining unit consists of employees from various units within the Attorney General's office. Members include BCI Special Agents, who are sworn personnel employed by the Bureau of Criminal Identification and Investigation (BCI), which provides assistance to local law enforcement personnel in the investigation of crimes; Medicaid Special Agents employed by the Health Care Fraud Section; instructors at the Ohio Peace Officers' Training Academy (OPOTA); and Environmental Background Investigators, employed by the Environmental Protection Section.

Prior to the fact-finding hearing, the parties engaged in 13 formal negotiation sessions. Most of the disputed issues were resolved and have been tentatively approved by the negotiators. Prior to the beginning of the fact-finding hearing, the fact finder attempted to mediate the unresolved issues. However, the mediation effort was unsuccessful, and a formal hearing was conducted by the fact finder.

The fact finder recommends that the tentative agreements previously reached by the parties be incorporated by reference into this report as recommendations. In addition, unless the fact finder has recommended a change in the language of the expired agreement, or the parties have tentatively agreed to a change, the fact finder recommends that the language of the expired agreement be retained.

RESOLVED ISSUES

A number of issues which were in dispute prior to fact finding, were resolved during the fact-finding process. The fact finder recommends the adoption of the language which has been agreed to by the parties. These issues include :

Article 46, Section 4, Removal of Dispatcher Classification
Article 46, Section 4, Upgrade of Medicaid Fraud Intake Officer
Article 46, Section 4, Upgrade of Environmental Background Investigator
Article 47, Section 2, Removal of Dispatcher Classification
Article 56, Duration of Agreement

UNRESOLVED ISSUES

At the conclusion of the fact-finding hearing, the following issues remained unresolved:

1. Article 23, Section 1, Step Advancement
Article 23, Section 1, Productivity Comparisons
Article 23, Section 1, Evaluation Appeal
2. Article 34, Section 1, Vacation Rate of Pay
Article 35, Section 2, Sick Leave Rate of Pay
3. Article 34, Section 3, Rate of Pay During Recall Status
4. Article 34, Section 6, Superceding Ohio Revised Code Provisions
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5. Article 46, Section 1, Percentage Increase in Rate of Pay
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6. Article 46, Section 1, Additional Step in Pay Range 32
Article 46, Section 1, Additional Step in Pay Range 31
7. Article 47, Section 1, Hazardous Duty Pay for Medicaid Special Agents
8. Article 47, New Section 3, Ohio Peace Officer Training Academy Pay Supplement
9. Article 47, Section 3, Clothing Allowance Increase

ISSUE 1

Article 23, Section 1, Step Advancement
Article 23, Section 1, Productivity Comparisons
Article 23, Section 1, Evaluation Appeal

Position of the Employer

The Employer proposes new language which would deny a step increase if the employee is rated "below" in four or more categories on his or her performance evaluation. Currently, a step increase is automatic whenever an employee attains the required length of service. The proposal includes a provision that no step increase could be denied if an evaluation was not timely performed. The Employer asserts that this

proposal would make the performance evaluations more meaningful and would make the evaluations more useful to supervisors. The Employer notes that a similar proposal was accepted by State of Ohio employees represented by AFSCME/OCSEA.

In order to insure that the evaluation process is fair, the Employer also proposes that ratings in performance evaluations be subject to the arbitration provisions of the collective bargaining agreement. This is a change from the current contract, which allows grievances to be filed, but prohibits an appeal to arbitration.

The Employer also proposes that new language be added to allow it to compare production between similarly situated peers. The Employer desires to clarify the current language, which prohibits the establishment of a quota system, by providing that the use of these comparisons would not be considered to be a quota system. The Employer argues that it is fair and reasonable to use appropriate comparisons to evaluate productivity. The Employer maintains that its proposal allowing evaluations to be arbitrated will prevent inappropriate use of the comparisons.

Position of the Union

The Union opposes the proposal which would keep an employee with a low evaluation from receiving a step increase. It also opposes the language which would specifically allow the Employer to make productivity comparisons among similarly situated employees. The Union agrees with the proposal which would permit grievances concerning performance evaluations to proceed to arbitration.

The Union argues that the proposal to allow the withholding of step increases constitutes a radical change in an established procedure, and the Employer has not provided adequate evidence to show that any change is needed. The Union asserts that the subjective nature of evaluations makes them subject to supervisory biases. In addition, the Union states that supervisors are not adequately trained to evaluate employees.

The Union argues that the productivity comparison language would effectively establish a quota system. The Union notes that eighty percent of the bargaining unit members are agents whose work involves the investigation and prosecution of criminal

offenses. The Union asserts that it is difficult to make meaningful productivity comparisons for this type of work.

Discussion

The first three issues are related as they are all part of a new system for employee evaluation which the Employer desires to implement. The Employer argues that there are many safeguards for employees in the evaluation process. The Employer notes that performance evaluations are reviewed by three levels of supervision. In addition, the Employer emphasizes that its proposal allows the opportunity for arbitration in the case of an employee who is dissatisfied with a evaluation. Further, the Employer's proposal specifies that a step increase will not be denied in the event of a late performance evaluation. The Employer states that its proposal will allow performance evaluations to become more of a tool for improving performance by giving more meaning to the evaluation.

The Union essentially argues that the current system of automatic step increases has worked successfully and the Employer has not presented any evidence to justify a change in the system. It asserts that there are many problems with performance evaluations which make them an unsuitable vehicle for determining whether an employee receives a step increase. The Union has presented evidence that some management consultants think that performance evaluations should not be used to determine pay increases. The Union also introduced a fact-finding report from Hamilton County in which fact finder Professor Alan Rubin rejected a proposal similar to that presented by the Employer in the instant case.

The fact finder notes that various types of merit pay systems are becoming more prevalent in the public sector. There is logic in the Employer's argument that an employee whose performance is barely satisfactory should not be granted a pay increase. However, the fact finder is aware of the long history in the public sector of tying step increases to the length of service. Thus, the Union makes a valid argument that these proposals represent a significant change in the method of compensation. In general, this fact finder agrees with the opinion of Professor Rubin that radical changes in compensation should not be imposed by a neutral.

Recommendation and Rationale

Although the Employer's proposal has some merit, the fact finder does not believe that the Employer has shown that there is a compelling need for a significant change in the method of determining eligibility for pay increases. There is no evidence that a problem exists with respect to bargaining unit employees performing satisfactorily. The Employer has other methods, including discipline, to deal with the problem of unsatisfactory work performance. Changes of this type are more likely to be successfully implemented if accepted by both parties. Although the Employer correctly states that at least one bargaining unit represented by another union has agreed to this condition for receiving a step increase, it is apparent that this concept is not yet widely accepted in the public sector. Therefore, the fact finder recommends that the three proposals of the Employer be rejected and that the current contract language be retained.

ISSUE 2

Article 34, Section 1, Vacation Rate of Pay

Article 35, Section 2, Sick Leave Rate of Pay

Position of the Employer

The Employer has proposed that the hazardous pay supplement not be included when an employee is paid for sick or vacation leave. BCI Special Agents currently receive ten percent of the Step 2 pay rate as compensation for hazardous duty. The Employer asserts that the purpose of the supplement is to provide additional compensation in recognition of the fact that the work of BCI Special Agents is sometimes hazardous. The Employer maintains that there is no justification for paying hazardous duty pay while employees are on vacation or sick leave, and the paying of this supplement to employees on leave would reflect negatively on the Employer if the public became aware of the situation. The Employer maintains that the supplement was originally included in all paid hours because of the difficulty in calculating two different rates of pay. This problem no longer exists because of the computerization of the payroll function.



State
Employment
Relations
Board



65 East State Street, 12th Floor
Columbus, Ohio 43215-4213
(614) 644-8573

February 27, 2001

Ms. Catherine A. Brockman
222 East Town Street
Columbus, OH 43215

Ms. Mary Beth Foley
30 East Broad Street - 16th Floor
Columbus, OH 43215

RE: Case No(s). 00-MED-04-0435
Fraternal Order of Police, Ohio Labor
Council, Inc. and State of Ohio (Attorney
General)

Dear Mses. Brockman and Foley:

The fact-finding report in the referenced case was issued on January 22, 2001.

On January 29, 2001, the Fraternal Order of Police, Ohio Labor Council, Inc. sent to the SERB certification of the results of its vote on the fact-finding report. The Fraternal Order of Police, Ohio Labor Council, Inc. voted to accept the report.

The fact-finding report is deemed accepted by the State of Ohio (Attorney General) in that it has not voted upon the report or has failed to communicate the vote to the SERB in accordance with Ohio Administrative Code Rule 4117-9-05(N).

I provide this notice as an administrative function of the Bureau of Mediation. The notice does not represent a Board determination. That decision may be sought through the unfair labor practice proceedings of Section 4117.11 of the Ohio Revised Code or the motion procedures outlined in Ohio Administrative Code Rule 4117-1-04.

Sincerely,

Dale A. Zimmer
Administrator, Bureau of Mediation

DAZ:dym
00-0435j/106j

cc: G. Thomas Worley
Charles W. Kohler

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STATE EMPLOYMENT RELATIONS BOARD**

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The fact finder notes that various types of merit pay systems are becoming more prevalent in the public sector. There is logic in the Employer's argument that an employee whose performance is barely satisfactory should not be granted a pay increase. However, the fact finder is aware of the long history in the public sector of tying step increases to the length of service. Thus, the Union makes a valid argument that these proposals represent a significant change in the method of compensation. In general, this fact finder agrees with the opinion of Professor Rubin that radical changes in compensation should not be imposed by a neutral.

Recommendation and Rationale

Although the Employer's proposal has some merit, the fact finder does not believe that the Employer has shown that there is a compelling need for a significant change in the method of determining eligibility for pay increases. There is no evidence that a problem exists with respect to bargaining unit employees performing satisfactorily. The Employer has other methods, including discipline, to deal with the problem of unsatisfactory work performance. Changes of this type are more likely to be successfully implemented if accepted by both parties. Although the Employer correctly states that at least one bargaining unit represented by another union has agreed to this condition for receiving a step increase, it is apparent that this concept is not yet widely accepted in the public sector. Therefore, the fact finder recommends that the three proposals of the Employer be rejected and that the current contract language be retained.

ISSUE 2

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Article 35, Section 2, Sick Leave Rate of Pay

Position of the Employer

The Employer has proposed that the hazardous pay supplement not be included when an employee is paid for sick or vacation leave. BCI Special Agents currently receive ten percent of the Step 2 pay rate as compensation for hazardous duty. The Employer asserts that the purpose of the supplement is to provide additional compensation in recognition of the fact that the work of BCI Special Agents is sometimes hazardous. The Employer maintains that there is no justification for paying hazardous duty pay while employees are on vacation or sick leave, and the paying of this supplement to employees on leave would reflect negatively on the Employer if the public became aware of the situation. The Employer maintains that the supplement was originally included in all paid hours because of the difficulty in calculating two different rates of pay. This problem no longer exists because of the computerization of the payroll function.

Position of the Union

The Union opposes the proposal of the Employer. It asserts that the elimination of the supplement for sick leave and vacation leave would have a significant impact on the compensation of BCI Special Agents, as it would reduce compensation by \$146.40 to \$439.20 per agent per year. The Union also states that the value of accumulated leave would be reduced, which would not be equitable because the employees accumulated the hours based on the assumption that the leave would eventually be paid out with the supplement included. The Union agrees that the original concept of the hazardous pay supplement was to pay the BCI Special Agents a fixed sum, which was to be spread out over all pay periods. The Union maintains that the supplement was not meant to be tied to the activity performed by the employee during each individual pay period. Thus, according to the Union, the elimination of the supplement from sick leave and vacation leave would actually reduce the compensation which the Employer originally agreed to pay.

Discussion

The fact finder notes that the current language in Article 17, Section 1, provides that:

Special Agents at BCI shall receive a hazardous duty salary adjustment. Hazardous Duty Pay shall be 10% of Step 2. The hazardous duty pay supplement shall be computed at an hourly rate and shall be paid to covered employees for all hours worked.

The language used in the section gives support to the Union's argument that the supplement is actually an annual payment spread out over 26 pay periods. The practice of the parties has been to add the pay supplement to the hourly rate for all paid hours, except for personal leave which is paid at the employee's base rate.

The fact finder recognizes the potential public relations problem which could be caused by the perception that employees are being paid hazardous duty pay while on vacation or on sick leave. However, a reading of the contract demonstrates that hazardous duty pay is arguably an annual supplement which is paid out over the entire

year. The Employer's proposal to eliminate the supplement on sick leave and vacation hours would reduce the amount of the annual supplement to less than 10 percent of the Step 2 annual wage.

Recommendation and Rationale

The public relations concern could be addressed by paying the supplement in a lump sum, but a problem would remain with respect to accumulated leave. If this accumulated leave problem was not present, the fact finder would be inclined to recommend that the supplement be paid annually in lump sum. However, under the circumstances herein, with many employees having a substantial balance of accumulated vacation leave and sick leave, the fact finder believes that the best course is to retain the current language in both Article 34, Section 1, and Article 35, Section 2.

ISSUE 3

Article 34, Section 3, Rate of Pay During Recall Status

This section provides for time and one-half pay for employees who are required to work during a scheduled vacation. During negotiations, the Employer proposed a change the wording of the first sentence, substituting the word "recall" for "call in." This proposal was not discussed at the hearing, nor was it included in either the pre-hearing or post-hearing statement of the Employer. Thus, the fact finder has no basis on which to conclude that the current language should be changed. The fact finder will recommend that the proposal not be adopted, and that the current language be retained in Article 34, Section 3.

ISSUE 4

Article 34, Section 6, Superceding Ohio Revised Code Provisions Article 35, Section 8, Superceding Ohio Revised Code Provisions

Position of the Employer

The Employer has proposed a change in the wording of these two sections. Essentially, these sections provide that contract language supercedes provisions of the

Ohio Revised Code with regard to vacation leave and sick leave. The Employer argues that the change is needed to provide clearer language as a result of a decision of the Ohio Supreme Court.

Position of the Union

The Union opposes the proposals, stating that the current language is clear and sufficient, and supported by existing case law. It requests that the current language be retained.

Discussion

The Employer has asserted that the proposed change in language is necessary due to a recent decision of the Ohio Supreme Court. However, the Employer has not provided evidence to support this proposal.

Recommendation and Rationale

In the absence of any substantial evidence supporting these proposals, the fact finder recommends that the current language be retained in both Article 34, Section 6, and Article 35, Section 8.

ISSUE 5

Article 46, Section 1, Percentage Increase in Rate of Pay

Position of the Union

The Union has proposed a pay increase of 4 percent, retroactive to July 1, 2000, with additional increases of 4 percent on July 1, 2001, and July 1, 2002. In its post-hearing statement, the Union made the following arguments with respect to the proposed wage increases:

Testimony before the Fact Finder clearly established that agents of the Attorney General's Office are expected to be subject matter experts (e.g. narcotics, crime scene, computer crimes, and financial crimes), that they might thereby assist local law enforcement agencies and fulfill the primary function of the BCI. Agents of this bargaining unit should make more (on average) than state agents in predominantly rural states, and we

need only consult a recognized cost of living index to see why. And agents of this bargaining unit should make more than other investigators in the employ of the Ohio Attorney General as none hold positions which are even remotely similar in form or function.

The Union contends that a comparative analysis of salaries can be valid only when the subjects of the analysis are truly in "similarly situated" positions. As suggested in oral arguments before the Fact Finder, the duties of those agents assigned to this bargaining unit are most closely aligned with those of agents in the employ of federal law enforcement agencies and state law enforcement agencies in predominantly urban or industrial states. Testimony before the Fact Finder clearly established that the salaries of agents in the employ of the Ohio Attorney General do not fare well in this comparison.

The Union presented evidence as to the wages of "accredited agents" employed in law enforcement agencies in Florida, Georgia, North Carolina, South Carolina, and Tennessee. The maximum wage in these states ranges from \$52,651 to \$65,785. The Union maintains that BCI Special Agents commonly work with federal employees, such as FBI Special Agents, who have an annual salary of about \$90,000.

The Union argues that the employees in this bargaining unit should not be limited by the percentage wage increase which was negotiated with the AFSCME/OCSEA bargaining unit in the Attorney General's Office, which is primarily composed of clerical employees. That unit received wage increases of 4 percent, effective July 1, 2000, and will receive increases of 3.5 percent on July 1, 2001, and July 1, 2002. The Union contends that this is unfair, because, unlike the AFSCME/OCSEA bargaining unit, this unit is comprised of law enforcement personnel with the requisite level of education and experience to qualify them as professionals. The Union asserts that the Employer recently gave a 5 percent wage increase to attorneys working in the office. The Union also argues that the salaries of administrative and management personnel are significantly greater than the wages of professional bargaining unit members.

Position of the Employer

The Employer has proposed pay increases of 3 percent per year for each year of a three year contract. The Employer's position is that the fiscal outlook for the office is bleak, and that employees in this bargaining unit are already well compensated. The Employer's position is set forth in its pre-hearing statement as follows:

There are several considerations which make the Employer believe that this wage increase is fair. First, the fiscal outlook for the office has been drastically affected since April of 2000. Instead of receiving the usual reimbursements for fiscal year 2001 from the Office of Budget and Management as is customary, the OAG is receiving only 2 % for fiscal year 2001 through PERS reimbursement. In addition, OBM has indicated that there will be a cut in January of 2001 due to the loss of tax revenue since the economy has slowed. That allows the office only six months to absorb the loss in fiscal year 2001. Any increase above three percent in this fiscal year of the contract would require budget cuts.

The outlook for 2002, and 2003 is not much better, based on current indications from OBM. Employers have been told to expect *less than a continuation budget* for fiscal years 2002 and 2003. That budget has not yet been finalized.

In analyzing the budget of the Office, Special Agents at BCI&I are in the best position to assist the Office in absorbing the cuts with minimal impact to covered employees. The rate increases in this bargaining unit are magnified in comparison to the Employer's OCSEA/AFSCME Unit. Bargaining Unit 46 employees receive longevity based upon the step they are in, as opposed to the base rate of pay, which AFSCME receives. In addition, comparisons to employees within the Office of the Attorney General, comparisons to other state units performing similar work, comparisons to law-enforcement agencies throughout the State of Ohio, as well as comparisons to law-enforcement personnel in other states of the United States, demonstrate that Special Agents far exceed the averages. At the present time, Special Agents are arguably overpaid. The Employer obviously would like to be able to give all employees of the Office of the Attorney General, the highest possible percentage raised each and every year. That is not practical for a public employer.

The Employer has presented a document showing a projected budget deficit of approximately 1.5 million dollars for its operations during the fiscal year ending June 30, 2001. The Employer states that, with a 3 percent wage increase, effective July 1, 2000, the total wage for a top level Special Agent including hazardous duty pay, uniform allowance, and 10 percent longevity would be \$61,552. The Employer notes that the following wages for other law enforcement personnel in the State of Ohio are significantly lower:

Ohio State Patrol Trooper	\$52,728
Large City Police Officer	\$47,137
Liquor Enforcement Agent 2	\$44,844
Tax Enforcement Agent 3	\$56,376

The Employer also asserts that many bargaining unit employees receive overtime. It states that the average amount of overtime is approximately 1200 hours per payroll period. The Employer notes that, for the first 15 years of service, attorneys employed in the position of Assistant Attorney General earn less than BCI Special Agents with the same length of service.

With regard to instructors at the OPOTA, the Employer states that an instructor at the top rate would receive a wage of \$57,491, with longevity, based on a 3 percent wage increase effective July 1, 2000. The Employer points out that a top rate instructor for the Ohio Department of Natural Resources (ODNR) earns \$44,744 annually. The Employer presented a summary of the wages paid to instructors in 15 states, which shows the Ohio maximum wage at \$50,753, which is the third highest.

The Employer points out that the parties have tentatively agreed to a physical fitness program. It contends that its ability to provide for a wage increase should take into consideration the Employer's desire to have sufficient funds available to provide financial incentives for complying with standards established by the program.

Discussion

The fact finder has carefully reviewed the wage information submitted by the parties. Due to the unique positions held by the members of this bargaining unit, it is difficult to make apt comparisons. Although both parties have provided the fact finder with data for various job titles, there is little evidence showing that the work done by employees with similar titles actually perform work comparable to bargaining unit employees. For example, the work of the instructors at the OPOTA includes teaching a multitude of courses, including crime investigation, legal concepts and tactical operations. Such work would seem to bear little relation to watercraft and wildlife instructors employed by ODNR. Similarly, the work of a State Trooper whose primary function is to enforce traffic laws differs greatly from a BCI Special Agent who provides expert assistance to local law enforcement agencies in the investigation and resolution of homicides and other serious crimes. Although BCI Special Agents have some of the same responsibilities as FBI Special Agents, there is insufficient evidence to show that

the two jobs are equivalent with regard to qualifications, education, training and overall job responsibilities.

While comparisons are difficult, the evidence available, including evidence of wages in other states, supports the conclusion that employees in the bargaining unit are compensated reasonably well. Further, many of the bargaining unit employees have opportunities for extensive amounts of overtime. There is no inherent inequity in any classification which would demand a wage increase significantly above the inflation rate. In fact, the parties seem to recognize this fact as is evidenced by the closeness of the wage increase proposals of both parties.

The Employer has submitted evidence of the fiscal pressures which the office is experiencing. For FY 2001, the State of Ohio temporarily reduced, by 20 percent, the amount of the contribution of state agencies to the Public Employees Retirement System (PERS). The Office of Management and Budget (OMB) advised that any wage and benefit increases must be funded with the savings from this reduction in contributions. A memorandum from OMB, dated April 11, 2000 advised that "agencies should not expect to receive any additional GRF [General Revenue Fund] in FY 2001 to cover the cost of wage and benefit increases."

The Employer has used the fiscal pressure to argue that the members of this bargaining unit should not necessarily receive the same wage increases received by the AFSCME/OCSEA unit (11 percent over three years) because the negotiations for that agreement were concluded before the Employer had notice of the fiscal situation.

Recommendation and Rationale

In recognition of the financial difficulty which is occurring in this fiscal period, the fact finder is persuaded that any wage increase should be modest. Considering that the Employer has limited ability to make financial adjustments for the current fiscal year, an increase of three percent (3%), retroactive to July 1, 2000, is appropriate. However, greater increases should be implemented in the second and third years of the agreement, as the Employer will have more time to make any necessary adjustments to the budget. The fact finder will recommend a wage increase of three and one-half percent (3.5%) in the second year of the agreement, and four percent (4%) in the third year.

The Employer has suggested that any wage increase be effective from July 1, 2000, to September 18, 2000, and reimplemented on January 30, 2001. The rationale of the Employer is that the Union unreasonably rejected the Employer's last best offer of the statewide pattern on September 18, 2000. The fact finder believes, however, that in the absence of evidence of bad faith bargaining by the Union, the wage increase should be retroactive to the date following the expiration of the old contract. Therefore, the fact finder recommends that wage increases be fully retroactive to July 1, 2000.

ISSUE 6

Article 46, Section 1, Additional Step in Pay Range 32 Article 46, Section 1, Additional Step in Pay Range 31

Position of the Union

The Union proposes that one additional step be added to pay range 31 and 32. This proposal would add an eighth step to pay range 31 and a ninth step to pay range 32. The Union advances these proposals on the basis that Bargaining Unit 48, consisting of BCI laboratory employees, had an additional step added during negotiations last summer. The Union argues that an additional step should be added to pay ranges 31 and 32 to realign them with the other bargaining unit. The Union states that the additional steps are necessary to remedy the inequity created when the additional step was added for Bargaining Unit 48.

Position of the Employer

The Employer asserts that the additional pay steps are unwarranted and opposes the proposals of the Union. It argues that there is no evidence to demonstrate that the classifications covered by these pay ranges are underpaid. Further, the Employer states that the fitness standards, which have been tentatively agreed to, were established to allow the employees an opportunity for additional compensation. Therefore, the Employer argues that there is no need for an additional step to further increase compensation.

Discussion

The underlying basis for the Union's proposal is that the additional steps are needed to realign the pay ranges to maintain parity with Bargaining Unit 48. The fact finder observes that the Union is focusing on only one provision of the collective bargaining agreement between the Employer and Bargaining Unit 48. While that bargaining unit may have gained an additional pay step in the last set of negotiations, the contents of the remainder of the agreement are unknown, and comparisons cannot be based on only one contractual provision. The allegation that the additional step for Bargaining Unit 48 created inequities between the two bargaining units is not supported by the evidence.

Recommendation and Rationale

The evidence does not support a finding that an additional pay step is warranted in either of the pay ranges. As pay range 32 includes BCI Special Agents, who generally have lengthy periods of service, the additional step would result in significant additional cost to the Employer. Therefore, the fact finder will recommend that these proposals not be included in the new agreement.

ISSUE 7

Article 47, Section 1 Hazardous Duty Pay for Medicaid Special Agents

Position of the Union

The Union proposes that Medicaid Special Agents receive a hazardous duty pay supplement. These employees investigate allegations of Medicaid fraud, patient abuse, patient neglect, and related matters. The Union maintains that the investigations sometimes involve organized crime, and rape, and much of the work requires agents to enter low income neighborhoods. It asserts that these employees perform many of the same duties as BCI Special Agents, such as interviewing felony suspects, interviewing witnesses, serving subpoenas, participating in the execution of search warrants, working undercover, and testifying in court. As such, the Union contends that they are exposed to numerous hazards.

The Union presented testimony from several Medicaid Special Agents who became involved in potentially dangerous situations in carrying out their duties. The Union also asserts that the Employer recognizes the hazards which the agents are exposed to, as the agents are provided with batons and Oleoresin Capsicum spray by the Employer.

The Union points out that, even though Medicaid Special Agents in Ohio are not sworn officers, agents who enforce Medicaid laws are sworn officers in 34 of 48 states which employ agents. The Union also maintains that 75 percent of the cost of the wages of these employees is paid by the federal government, which means that this proposal will only cost the Employer \$24,500 per year.

Position of the Employer

The Employer opposes this proposal. It argues that Medicaid Special Agents do not place themselves in hazardous situations on a routine basis. It notes that proposals for hazardous duty pay for these agents have been made in each contract negotiated since 1986. The Employer states that the Medicaid Special Agents typically spend only 15 percent of their time in the field and work in an office the remainder of the time. Only a portion of the time in the field is spent in potentially dangerous areas. The Employer states that two-thirds of the agents' time is spent reviewing documents to detect suspicious billing patterns.

The Employer maintains that the agents can always request that a police officer accompany them in dangerous situations. Agents can also request assistance from BCI Special Agents. The Employer also asserts that Medicaid Special Agents do not carry firearms, not do they have arrest authority. Further, the Employer notes that no Medicaid Special Agent has ever been assaulted while on duty.

The Employer contends that the Medicaid Special Agents have a higher wage than agents in many other states who are sworn officers. They also have higher wages than sworn law enforcement officers in many parts of Ohio. The Employer also asserts that there is no evidence that the federal government would approve the payment of 75 percent of the cost of the supplement.

Discussion

The fact finder acknowledges that the work of the Medicaid Special Agents sometimes exposes them to hazards. The issue here is not, however, whether they are exposed to hazards, but whether there is strong evidence that a pay supplement is required to keep their wages equitable. From a review of the evidence, it is clear that, statewide, there is a large variation in the compensation of law enforcement personnel. To a certain extent, the hazard of the job is considered when the wage rates are set, as is evidenced by the generally higher wages in the more urban areas.

The Union has presented anecdotal evidence which shows that situations do occur which expose agents to risks. However, it is undisputed that no agent has ever been assaulted while on duty. Further, agents spend 85 percent of their time inside of an office. The evidence shows that agents have the right to request assistance from police officers and BCI Special Agents whenever they believe that they must engage in a potentially dangerous activity.

Recommendation and Rationale

In its proposal, the Union is requesting that the fact finder impose a new element of compensation for Medicaid Special Agents. Generally, the basic components of compensation should be decided by the parties during collective bargaining. Of course, if there is significant data showing that employees are not being fairly compensated, a fact finder might be inclined to recommend a new type of compensation to provide the employees with fair compensation.

The fact finder notes that this type of proposal has been the subject of many sets of negotiations, but the parties have failed to include it in the final agreement. This factor causes the fact finder to hesitate to recommend its adoption.

In this case, the evidence does not show that the compensation of Medicaid Special Agents is out of line with employees performing similar work. The fact finder is not convinced that any additional compensation should be included in the new collective bargaining agreement. Therefore, the fact finder recommends that this proposal of the Union not be included in the new agreement.

ISSUE 8
Article 47, New Section 3,
Ohio Peace Officer Training Academy Pay Supplement

Position of the Union

The Union proposes that instructors at the OPOTA receive an annual pay supplement equal to 10 percent of the Step 2 wage rate. The Union states that the supplement would “recognize the special skills and talents unique to these employees.” The Union asserts that the supplement is justified because of the extensive education and training of these employees. The Union notes that most of the instructors have a bachelor’s degree and many have a master’s degree. The supplement would also equalize compensation among members of the bargaining unit with equivalent skills and qualifications.

The Union presented evidence that one instructor is also employed as an adjunct professor at Northwestern University in Evanston, Illinois. Her rate of pay at Northwestern is \$55.00 per hour.

Position of the Employer

The Employer asserts that this proposal is not supported by any relevant evidence showing that persons in equivalent positions receive greater compensation. The Employer notes that work as an adjunct professor does not provide any fringe benefits, such as insurance, tuition reimbursement, and retirement, which bargaining unit employees receive. The Employer states that the witness testifying for the Union on this issue admitted that the reason for the proposal was to allow the instructors to earn as much as BCI Special Agents.

Discussion

The intent of the Union is to obtain some recognition of the importance of the instructors to the overall goal of law enforcement. These employees make a significant contribution to law enforcement by training police officers, deputy sheriffs, bailiffs and corrections officers. However, evidence of the hourly rate of an adjunct professor at a major university is not directly relevant to the wages of bargaining unit employees. There are significant advantages in terms of fringe benefits and job security that bargaining unit employees receive.

Recommendation and Rationale

Certainly the educational requirements for a particular positions are a factor in determining the proper salary for employees. The concept of a "supplement" based on this training is unusual, but, in the final analysis, the total wage is the only relevant consideration. In reviewing the wages paid to OPOTA instructors, there is insufficient evidence to support a wage increase larger than that received by other members of the bargaining unit. Therefore, the fact finder will recommend that this proposal not be included in the successor agreement.

ISSUE 9

Article 47, Section 3, Clothing Allowance Increase

Position of the Union

The Union proposes increasing the annual clothing allowance from \$250.00 to \$300.00. It argues that employees are required to dress in a professional and businesslike manner. The Union states that employees often have to meet with the public and with other law enforcement officials. Many bargaining unit members have to appear and testify in court. The Union asserts that employees in similar positions in other agencies generally receive a larger clothing allowance, up to as high as \$900.00 per year.

Position of the Employer

The Employer initially proposed eliminating the clothing allowance. It has altered its position and now proposes that the allowance be continued, but at the current level.

Discussion

It is common for law enforcement employees to receive a uniform allowance. A review of the statewide data shows that most jurisdictions provide an allowance in excess of \$300.00 per year. Many jurisdictions provide a substantially higher allowance. Members of the bargaining unit must interact with the public and appear in court. In addition, dressing in a professional manner is a job requirement. The proposal to

increase the allowance to \$300.00 per year represents a reasonable increase from the current level of \$250.00.

Recommendation and Rationale

The fact finder agrees with the Union that a \$50.00 increase in the annual clothing allowance is appropriate. Therefore, the fact finder will recommend the following language for Article 47, Section 3:

Employees shall receive a clothing allowance of \$300.00, payable in the first pay period of January of each year of this agreement.

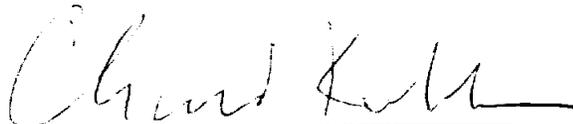
The above recommendations are respectfully submitted to the parties for their consideration.



Charles W. Kohler
Fact Finder

CERTIFICATE OF SERVICE

I do hereby certify that on this 22nd day of January 2001, a copy of the foregoing Report and Recommendations of the Fact Finder was served upon Catherine A. Brockman, Assistant Executive Director, Fraternal Order of Police, Ohio Labor Council, Inc., 222 East Town Street, Columbus, Ohio 43215; and upon Mary Beth Foley, Office of the Attorney General, Labor Counsel, 140 East Town Street, 14th Floor, Columbus, Ohio 43215; each by Airborne Express overnight delivery; and upon George M. Albu, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213 by regular U.S. Mail, postage prepaid.



Charles W. Kohler, Fact Finder