

STATE EMPLOYMENT
RELATIONS BOARD
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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact Finding)
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Between)
)
The Fraternal Order of Police,)
Ohio Labor Council, Inc.,)
Employee Organization,)
)
and)
)
The Hamilton County Sheriff,)
Public Employer)

SERB Case Nos. 2002-MED-07-0660,
2002-MED-09-0835

FACT FINDING REPORT

Mitchell B. Goldberg,
Appointed Fact Finder

Date: April 16, 2003

APPEARANCES

For the FOP:

- Paul L. Cox, Esq., Chief Counsel
- David Stanley, Staff Representative
- Tara Crawford, Paralegal
- Richard Morman, Deputy Sheriff
- Donald E. Maher, Deputy Sheriff
- Rick Paquette, Deputy Sheriff
- James R. Young, Deputy Sheriff
- Dave Hoinke, Deputy Sheriff
- Tony Glasor, Deputy Sheriff

For the Employer:

- Charles A. King, Esq., Chief Spokesperson
- Gail Wright, Administrative Assistant
- Don Rabold, Captain, Sheriff's Patrol
- Kim Serra, Human Resources Manager, County Personnel Dept.
- Mike Ritter, Lieutenant, Court Service
- Mark Lucas, Representative

I. INTRODUCTION

The undersigned, Mitchell B. Goldberg, was appointed Fact Finder on November 29, 2002. Hearings were scheduled on February 14, 2003 and March 10, 2003 at the Sheriff's Headquarters on Hamilton Ave. in Hamilton County, Ohio. The parties agreed that the report is to be issued on April 16, 2003.

Each of the parties appeared with representatives and witnesses at the hearing. The FOP's principal representative was Paul L. Cox, Esq., and the principal representative for the Sheriff was Charles A. King, Esq.

Prior to the hearing, each of the parties submitted Pre-Hearing Statements pursuant to §4117-9-05 of the Rules of the State Employment Relations Board. Included in the Statements was a general description of the employees in the bargaining unit. There are two SERB certified units; one unit consists of approximately 255 employees in the ranks of Patrol Clerks, Patrol Officers, Evidence Technicians, Court Service Officers I and II, and Corporals. The other unit consists of approximately 35 employees in the ranks of Sergeant and Lieutenant in the Patrol Division.

II. MEDIATION

There were 16 articles in the previous contract which were not addressed by the parties and which carry forward unchanged into a new Agreement. Articles 8, 11, 12, 18, 27, 39, 41 and 42 were tentatively agreed upon by the parties during negotiations. There remained approximately 21 issues or sub-issues which remained unresolved during negotiations and which form the basis of this Fact Finding Report. The Fact Finder's attempts to mediate some of these issues for the most part were unsuccessful. The hearings proceeded with the presentation of

testimony and the submission of documentary exhibits. Negotiations and discussions between the parties during the presentation of the issues was minimal and suggestions for negotiated compromises from the Fact Finder did not result in progress toward reducing most of the issues which are in dispute.

III. RECOMMENDATIONS

All issues which have been tentatively agreed upon between the parties are hereby included as recommendations for purposes of this Fact Finding Report. The unopened articles or issues which were not addressed by the parties shall also be included as part of the new collective bargaining agreements.

Accordingly, all temporary agreements and unopened or unchanged articles from the prior agreements shall be incorporated herein and shall become part of this Report or Award.

Consideration is this Report was given to all of the criteria listed in Rule 4117-9-05(J) of SERB.

Issue A – Article 4

The FOP proposes language in §4.6 which further embellishes language in §6.2 prohibiting the Employer from engaging in acts of discrimination against employees for exercising their contractual rights or the rights which have accrued to them as a result of being represented by the FOP. The Union wants to insert contractual language specifying that the Bargaining Committee and all members of the FOP Wage Committee shall be free from acts of discrimination, coercion, intimidation and other detrimental actions including improper transfers. The FOP states that acrimonious relations in the past require the inclusion of this language in the CBA.

The Employer believes that the inclusion of the proposed language is not justified because there has not been a history of retaliation against the FOP committee members. Moreover, the prohibited activities stated in the FOP proposal are already sanctioned by law and remedies are provided under the State's collective bargaining statute through SERB. The Employer further believes that the inclusion of the word "transfer" will unreasonably restrict the management activities of the Employer and prevent the reassignment of negotiating team members for legitimate operational reasons.

I find that the proposed language merely restates the existing law which prohibits retaliatory transfers based upon Union affiliation or for anti-union purposes. I further believe that the existing contract language provides relief through the grievance procedure for employees who allege that they have been improperly transferred based upon their Union activities. Accordingly, the proposed language merely clarifies the rights of committee members to contest transfers which are alleged to be illegally motivated. Because employees may already pursue their claims through the arbitration process and grievance procedure as well as filing charges with SERB, the inclusion of the proposed language does not harm the Employer in any material respect.

Recommendation

It is recommended that the Union's proposed language in §4.6 be included in the CBA in amended form as follows:

FOP Bargaining Committee. The wage demands have been submitted in good faith. All members of the Fraternal Order of Police Wage Committee shall be free from coercion, intimidation, discrimination, transfer (in retaliation for engaging the collective activities), threats or other detrimental actions.

The FOP's proposed language in §4.9 has been agreed upon between the parties and shall be incorporated into the CBA.

Issue B – Article 7

The FOP proposes language in §7.1 which provides for paid time for bargaining unit members participating in labor relations meetings. The Employer objects to this proposal because of its inability to control how many Union related meetings will take place and how many bargaining unit members will be in attendance.

The Union is attempting to provide relief for employees who are willing to attend labor/management meetings with the Employer in order to promote a more harmonious relationship. The FOP does not have a representative on the second or third shifts. If it is necessary for employees to attend the meeting on their off time, they should receive pay for doing so. This does not happen on a regular basis, but it is sometimes necessary to bring an employee to a meeting who is off duty. The Employer believes that the FOP proposal could have serious cost implications and would require overtime pay under certain circumstances.

The ramifications of the FOP proposal should be further negotiated between the parties to permit pay under certain circumstances, but protect the Employer from unforeseen additional labor costs. The parties should discuss on a case by case basis the need for the attendance of an off duty employee and if the parties believe that attendance is necessary, arrangements could be made to pay the employee. Until the parties further negotiate the details of the FOP proposal, no change shall be made in the existing language.

Recommendation

No change.

The parties agreed to add the FOP's proposed language in §7.1G. This language shall be incorporated into the CBA.

Issue C – Article 9

The Employer proposes changes in §9.7 which would prevent employees who are charged with or indicted for a felony, or crimes which result in a weapons disability, from being restored for lost time or used leave or compensatory time which was taken during the time the charges were prosecuted. Under the present language, if an employee is found innocent of the charges or if the charges are reduced to a misdemeanor (other than a crime which results in a weapons disability) the lost time and leave time is restored. The Employer requests language which eliminates the restoration of vacation, holiday, personal and/or compensatory time when the charges are reduced to a misdemeanor. The Employer was able to negotiate its proposed language in the CBA for the Corrections Unit.

The FOP believes that the changes are unnecessary because there have been no significant disciplinary problems within these units. The employees should not be exposed to a loss of their wages and benefits when they accept the imposition of misdemeanors which involve minor offenses.

The parties engaged in some negotiations which could lead to a possible resolution of this issue. The Employer should be willing to compromise on this issue or offer the FOP something which the FOP wants on another issue in order to obtain the proposed language change. Absent further negotiations between the parties on this issue, there is no compelling reason to withdraw a benefit which now exists for certain employees who are found innocent or who plead misdemeanors. The fact that the language was obtained in negotiations with the Corrections Unit, in and of itself, does not provide justification for the change.

Recommendation

No change.

Issue D – Article 14

The FOP proposes language which affects the long standing separation between the Patrol Division and the Court Service Division. There is presently separate testing for promotions within each division. The FOP's proposal would permit members in each division to apply for vacancies in any division without the necessary for passing a test. The members of one division, based upon seniority and qualifications, could fill a vacancy in another division and prevent a member of that division from being promoted into the vacancy. Presently, if one member chooses to switch divisions, the member would have to start at the bottom pay level.

The FOP's proposal is further related to another proposal for combining the classifications of Court Service Officer I and Court Service Officer II. The members of both divisions received equal training and should be able to cross divisions without the necessity for a test.

The Employer is not interested in changing the long standing separation between the two divisions. There has been an 18 year bargaining history for this separation. Historically, Court Service Officers were paid less because of a more favorable work schedule. The Employer is not interested in combining the two classifications of Court Service Officers because of the expense which is involved.

The evidence suggests that permitting transfers between divisions and bumping rights based on seniority could present problems for employees seeking promotions within their respective divisions. For example, Senior Patrol Officers who prefer the regular work schedule of Court Service Officers could apply for vacancies in the Court Service Division, thereby preventing the upward mobility of less senior Court Service Officers. The same is true for Patrol Officers who are prevented from filling vacancies in the Patrol Division because of being

bumped by more senior Court Service Officers. Court Service Officer II is presently a tested position.

The evidence suggests that the duties of Court Service Officers have been expanded to include patrol related duties. These duties are not restricted to the courthouse property as in the past, but now include periodic patrols in the neighborhood surrounding the courthouse. Moreover, the FOP argues that the duties performed by Court Service Officer I and Court Service Officer II are nearly identical and that there is no justification for the difference in pay.

The FOP's arguments merit consideration for increasing the pay of Court Service Officers based upon their increased duties. This subject is discussed further in the wage issues under Article 20. Nevertheless, the problems which could result from the free transfer rights between divisions based upon seniority and qualifications without separate testing do not support the FOP's proposition. The parties must negotiate all of the possible ramifications of this proposal before it is implemented. The issue could be revisited once the pay issue is addressed considering the duties now performed by Court Service Officers. The imposition of the change in transfer rights requested by the FOP upon the Employer at this time seems unwarranted in light of the Employer's objection.

Recommendation

No change.

Issue E – Article 19

The FOP has proposed a change in §19.1 regarding the circumstances under which an employee receives four hours of compensatory time or overtime pay as the result of changes in the employee's work schedule. The language presently provides that an employee will receive

four hours of compensatory time or overtime pay if they are called back to work within 20 hours of their previous start time when they are off duty.

The FOP contends that the Employer has been avoiding the payment of these additional monies by refusing to call off duty employees back to work when there is a need. Instead, the Employer will wait for an employee to be on his/her last scheduled work day and will change the work schedule. These actions effectively reduce the amount of off duty time for employees and prevents the employees from planning their off duty schedules. The FOP recognizes the need for call backs on occasions, but it believes that employees should be compensated for having their off duty time reduced.

The current provision for overtime pay for schedule changes does not apply at the beginning of an employee's scheduled days off or vacation. The proposed language requires premium pay at twice the regularly hourly rate for all hours worked on the consecutive off days, with a minimum of eight hours. Any additional hours worked beyond eight hours will be paid at the overtime rate.

The Employer opposes the FOP's proposal because it is too costly. The last day of the work schedule is the only day the Employer can hold an employee over and avoid "double back" pay. The Employer contends that they will have to bring in someone from off duty in any event when there is a need. The Employer should be able to change the schedule for someone on the first day of a shift by requiring an early start or a later end time in order to prevent another employee from being called in on off duty time. This prevents inconvenience for the off duty employees and avoids the payment of considerable amounts of overtime pay.

Based upon the economic circumstances which are discussed in more detail below, the increase in overtime costs caused by the FOP's proposal would provide too much of an impact

upon the department's budget. Under the present economic circumstances, prudent government management requires that overtime pay, bonus pay and premium pay should be kept to reasonable levels.

Recommendation

No change.

Issue F – Article 20, Wages and Compensation

1. Wages

The FOP is proposing across the board wage increases during a three year contract term of 8%, 4% and 4%. The Employer is proposing a three year contract with across the board increases of 1.3%, 1.5% and 1.5%.

The Employer alleges an inability to pay based upon county budget problems. The county is not receiving its projected sales tax growth of 2%.

The CPI published by the U.S. Bureau of Labor Statistics calculates the cost of living increase at 1.3%. County officials, including the Sheriff and the Auditor, only received cost of living increases in their salaries of 1.3%.

The step increases already provided for in the contract result in substantial increase costs without any pay raise. Step increases for both units will cost a total of \$299,266 over three years. Health care costs are projected to increase dramatically. The total increased labor costs without any pay increases considering existing step increases, overtime, holiday pay, longevity pay, uniform pay, retirement, workers' compensation and health care amounts to \$55,362,362. The Union's proposal including roll-ups and fringes will add \$6,687,197 to the budget and the Employer's proposal will add \$1,412,945. The Employer's proposal increases the labor cost by 8.66% over three years, but the FOP proposal amounts to a 40.99% increase.

The County's budget problems were reflected in the recent contracts negotiated with other units. The Corrections unit received 3.5% for 2002, 2.5% for 2003 and 2.5% for 2004. The Supervisors received 3.5%, 3% and 3%. The Operating Engineers received 3%, 3% and 3%.

A substantial portion of the sales tax received are dedicated collections which are earmarked for the payment of bonds and cannot be used to fund labor costs. The diminished receipts has caused the county to begin spending its strategic reserve funds.

The FOP paints a different picture with respect to the County's budget and the Employer's ability to pay. The Clerk of Courts has offered the County 2.1 million dollars in excess funds which have been accumulated in the Clerks Office to apply toward the increase in health care costs faced by county employees. The County Administrator has suggested that this surplus can be added to the general fund.

The Commissioners approved a lucrative contract for the County Administrator which includes, in addition to a high six figure salary, many fringe benefits including an expense account, automobile expenses, contributions to two retirement funds and a generous severance agreement. In addition, the Commissioners approved 5 million dollars for social programs, emergency warning sirens, economic development and other items in their 2003 budget. At least one Commissioner has remarked that the County's budget is in better shape than most of the counties in the state. The new Administrator's contract, which provides for salary and benefits higher than that of county administrators in Cuyahoga and Franklin counties, is presumably a reward for the Administrator's past services in maintaining the County's budget. The County Auditor has issued public statements to the effect that the Administrator is over paid at a time when the budget is being cut and all other employees are expected to receive lower pay increases.

The Administrator received a 4% pay raise for his job performance in 2000 which was described as an “average” pay raise, notwithstanding 51 million dollars in construction cost overruns for the Bengals Stadium. Notwithstanding the stated necessity for budget cutting, the Commissioners have found room in the budget for pet projects such as an increase in jury duty pay, children’s welfare programs, arts-related programs and economic development, including money for a Cincinnati Convention Center. Further, the County has hired an Assistant County Administrator at an annual salary of \$110,000.

In terms of comparables, the Employer focuses on compensation paid to officers in counties of similar size to Hamilton County. The Employer also cites wages and benefits paid to other employee bargaining units within the county. The FOP, on the other hand, cites comparisons with wages and benefits paid to the police in municipalities and townships within the county. The top salary figures for each of the 36 municipalities and townships within Hamilton County show 20 with top salaries over \$55,000 per year; twelve with top salaries between \$40,000 and \$50,000 per year; one between \$30,000 and \$40,000; and, three between \$25,000 and \$30,000. The average ending salary for township officers is nearly \$51,000 per year. The FOP believes that their work mirrors the work of the township police forces in terms of duties and responsibilities. The Sheriffs Department works closely with the township police forces in Colerain Township and Green Township. The average ending salary for officers in those forces is \$50,268.97. The ending salary for the City of Cincinnati police officers is \$50,299.00. The Sheriffs Department works closely with city officers as well. Accordingly, the Union’s proposal of 8% for year one would bring the top ending salary to \$50,647, \$52,673 for year two (4%), and \$54,780 for year three (4%). The Employer’s proposal would continue the large disparity between the Sheriffs Department officers and their municipal and township

counterparts. Currently the top salary is \$46,896. A 1.3% increase in year one would bring it to \$47,505, 1.5% in year two would equal \$48,218 and 1.5% in year three would be \$48,941.

Insofar as other county departments are concerned, the high salary for Hamilton County after the Employer's proposed increase of 1.3% will remain far below the figures for other counties. Montgomery County will be at \$51,750 and Franklin County will be at \$53,747 with a shift differential and better benefits. However, in neighboring Butler County the high salary is at \$44,075, Warren County is at \$47,112 and Clermont County is at \$46,092. The Employer argues that Hamilton County ranks in third place among the nine counties with high populations in Ohio and that compensation to Hamilton County officers is 5.16% above the average of the nine counties for the highest wage rate.

There is substantial fact finding history in these bargaining units. Fact Finder Alan Miles Ruben has determined on two occasions that the wages of officers in the county sheriff departments are not linked to the compensation of officers in municipalities or townships. This is because the resources available to counties are not similar with the resources available in municipalities and townships, notwithstanding that the departments are of similar size. Mr. Ruben further did not find that the duties undertaken by municipal police officers and their respective qualifications are not necessarily similar to the sheriff department officers. However, the evidence presented in this proceeding indicates that the duties of the Hamilton County Sheriffs officers are similar to those performed by township officers, particularly those in Colerain Township and Green Township.

Mr. Ruben further determined that there is no internal linkage between patrol officers' compensation that of other bargaining units within Hamilton County, or to the wages paid to non-bargaining unit employees. Similarly, the evidence in this proceeding indicates that the

Sheriff's Department officers have historically received higher increases than those paid to other units.

Recommendation

Considering all of the evidence presented, the following across the board increases are recommended for a three year contract: Year 1 --3%; Year 2 -- 3% and Year 3 -- 6%.

2. Classifications of CSO I and CSO II

The FOP proposes that the classifications of CSO I and CSO II be combined into a classification designated as Court Service Officer with six pay grade increments and with \$100 added to the base rate of the new classification.

The FOP's objective, based upon its contract proposals over the years, is to obtain parity in compensation between the Patrol Officers and the Court Service Officers. In the 1996-1997 negotiations, the Union proposed to add an additional step in the wage structure for Court Service Officers after five years of service. The FOP argued that the work environment in the court houses was more hazardous in terms of providing security for the public. Since the duties of Court Service Officers were becoming similar to the work performed by Patrol Officers, it was argued that the pay differential for officers in the two divisions with more than four years of service was too great. The FOP further argued that the supervisors for Court Service Officers were paid at the same rate as supervisors for the Patrol Officers. It was argued that the rank in file in the two divisions should also be compensated at the same rate. Fact Finder Ruben found that the increased risks to Court Service Officers was no more than that incurred by other types of security personnel. He found that adding another compensation step is not warranted and that the supervisory duties for the two divisions were similar, but the duties of the rank and file in the two divisions were not similar.

The issue was brought before Fact Finder Ruben again in 1999. The Union proposed increases for the wages of Court Service Officers to bring compensation closer to the levels of Patrol Officers. The FOP proposed that compensation be set at a rate which is 5% below the corresponding Patrol Officer rate at entry level and in each of the four subsequent annual steps. It proposed to add an additional step to the pay scale of Court Service Officer II. Fact Finder Ruben was not persuaded that the wages for Court Service Officers should be automatically linked to those of Patrol Officers “whose qualifications, duties and experience are significantly different.” Nevertheless, he recommended a small additional adjustment based upon his finding that:

There is apparently an apprehension on the part of Hamilton’s Court Service Officers that they are the “step children” of the Sheriffs Department in that little significance has been attached to the increase in volume of their activities over the past several years and the increase in risk of harm attendant to the performance of their duties in Court, in serving process and in the transportation of prisoners.

Fact Finder Ruben recommended a one time increase of \$100 in the base pay of Court Service Officers I and II before the recommended across the board increases were applied.

The FOP believes that the two classifications of CSO-I and CSO-II should be combined because they perform the same duties and have the same responsibilities. Moreover, the long standing disparity between the compensation of Patrol Officers and Court Service Officers should be rectified because of the increased duties and responsibilities placed upon Court Service Officers.

Court Service Officers are now required to engage in foot patrols around court house property to assist City Patrol Officers in crime investigations and in apprehending suspects. This is clearly the work of Patrol Officers, although Court Service Officers receive less pay.

Court Service Officers provide other duties for the benefit of the County which saves the county considerable resources and the Court Service Officers should be recognized for performing this additional work. For example, Court Service Officers operate the Win-Pak-Pro Proxy Card Security System and the Vicon Digital Recording Monitoring System at the courthouse buildings. The Court Service Officers are responsible for all aspects of the Win-Pak-Pro System with little or no oversight supervision. "They are responsible for issuing proxy cards to employees, deactivating cards, maintaining the computer operating system and insuring that all integrated security doors are functioning properly at all times. [They] are responsible for data base and computer maintenance on a regularly scheduled basis. They are responsible for contacting the system contractor when problems arise and scheduling subsequent field technician appointments. [They] work directly with all County Department Heads on a regular basis to review departmental employee lists and access levels. [They] work directly with all county employees who are assigned cards when individual problems arise with these cards or when an access level change is needed. [They] are also directly responsible for coordinating maintenance issues with both the Hamilton County Facilities Department and the system contractor." Approximately 1,800 county employees are assigned a proxy access card by the Sheriff's Office and this system is integrated into dozens of entry points in numerous county buildings.

Similar duties are involved with the Vicon Monitoring System. Court Service Officers maintain the system, review the camera data bases and supply still photographs of persons or activities.

One Court Service Officer I engages in extra duties maintaining the x-ray machines and metal detectors and three Court Service Officer I's maintain and control the panic alarm system which includes 1200 panic alarms, 36 dispatchers and 30 Repeaters.

Another Court Service Officer I engages in covert operations for the investigations of crimes in the courthouse or involving courthouse personnel. The FOP believes that the work of these Court Service Officers save the county as much as \$60,000.

The Employer sees some logic in merging the two Court Service Officer classifications and acknowledges that the merger would provide for increased flexibility for work assignments. However, the Employer presently opposes the merger because that the FOP's proposal is too costly. According to the Employer, the cost of the CSO restructuring over a three year contract would be \$255,076 which includes the computation for overtime pay and all roll ups. The FOP contends that this figure contains an inflated amount for overtime and that the Employer's figure should be reduced by approximately \$15,000. The FOP computed the cost of the restructuring at approximately \$153,000 without accounting for overtime or other benefits.

Recommendation

The interests of the Employer and the FOP are best served with the merger of the two Court Service Officer classifications because of increased flexibility, productivity and efficiency. The parties, therefore, should continue to negotiate to arrive at a result which is less costly to the County. Until this occurs, the Court Service Officers who are required to perform patrol work should be compensated for the time they work on patrol duties. It is recommended that each Court Service Officer be paid at the patrol rate for all time in which the officer is engaged in patrol duties. Section 20.10 should be added to Article 20 as follows:

Court Service Officers who are assigned patrol duties outside the boundaries of courthouse properties shall be paid at the Patrol Officer hourly rate paid to Patrol Officers with similar grades and length of service. The increased rate shall begin once the Court Service Officer engages in patrol duties for more than fifteen minutes and the Court Service Officer shall be paid for all hours engaged in patrol activities in which the Court Service Officer has worked at least fifteen minutes. Patrol duties include the work of assisting Sheriff patrol officers, or the patrol officers of other jurisdictions in the patrol officer duties.

3. The FOP proposed removing the paragraph in §20.4 regarding the rate of pay for Patrol Recruits. The Employer agreed to the FOP's proposal.

Recommendation

The third paragraph in §20.4 shall be removed pursuant to the Agreement of the parties.

4. The FOP proposed any language in §20.5 requiring extra pay for Court Service Officers who are assigned to perform duties of a Corporal. This issue was either not discussed at the hearing or discussed with minimum detail. I find that this proposal is reasonable in light of the previous recommendation requiring extra pay for Court Service Officers who perform the duties of Patrol Officers.

Recommendation

Article 20.5 shall read as follows:

Any employee (excluding Corporals) who, in the absence of a supervisor, is designated by the division commander or his designee as officer-in-charge, shall receive an additional four dollars (\$4.00) for each shift as assigned. A Court Service Officer I classified employee who is assigned to perform duties of a Court Service Officer II classified employee shall be paid at the Court Service Officer II rate corresponding as close as may be, to the wage scale step of the Court Service Officer I for all hours spent in performing such duties. Any Court Service Officer who is assigned to perform duties of a Corporal shall be paid at the Corporal rate for all hours spent in performing such duties.

5. The FOP's proposal to add language in §20.6 has been agreed to by the Employer.

Section 20.6 shall read as follows:

Any employee assigned to OCD, DIS, Evidence Technician or Traffic Investigation shall, for the duration of the assignment, be compensated at the Corporal rate of pay. Upon conclusion of the assignment, the employee shall return to the pay grade assigned to his/her permanent classification, and shall be placed in the step he/she would otherwise be entitled to.

6. The FOP proposes a shift differential (Section 20.8) for employees who are scheduled to work a shift which begins after 11:59 a.m. or ends before 4:00 a.m. The Employer objects to this proposal for economic reasons.

This proposal was not discussed in detail at the hearing. Because of the economic circumstances facing the County, this proposal, which involves extra costs, will not be recommended.

Recommendation

No change.

7. The parties agreed that the following shall be included in the CBA under Section 20:

There is hereby established a Performance Review Committee consisting of three (3) members designated by the Sheriff and three (3) members designated by the President of the Union to meet and confer with respect to the improvement of the present performance evaluation system and the appropriate scope of its utilization in matters affecting Bargaining Unit employees.

Issue F – Article 21

The existing contract provides for three hours pay at time and one-half for employees who are required to attend court while off duty. The FOP is proposing five (5) hours pay in order to obtain parity with the court pay received by the City of Cincinnati Police Officers. Since both groups are required to be at the same courthouses, the FOP believes that their pay should be the same. The Employer opposes this proposal because court appearances are to be treated as a regular part of the job.

Recommendation

No change. This proposal is rejected for the economic reasons stated in the proceeding discussions.

Issue G – Insurance

The FOP proposes language which requires the Employer to pay less than four dollars (\$4.00) per month into a defense insurance fund for attorneys' fees incurred by employees who are charged with crimes from activities that arise as a result of their job performance. The Employer is opposed to paying for criminal defense insurance. To do so would cause the county to be paying for an employee's defense when it is also paying for the prosecution of the employee.

The evidence does not warrant the institution of this Employer obligation. Any movement on this issue should be the result of negotiations.

Recommendation

No change.

The FOP opposes the restoration of a co-payment insurance cap for Bargaining Unit employees to insure that the employees are not devastated by an actual reduction of their earnings due to high increases in health insurance. The Employer obtained a removal of this cap in the last negotiations. Re-instituting the cap will cause budget problems due to increases in health insurance beyond the Employer's control. All county employees are subject to the same health insurance.

The problem of raising health insurance premiums is a problem common to all county employees and to all other employees. Prudence and realism require that ownership of the problem belongs to employees and employers alike.

Recommendation

No change.

Issue H – Article 23 – Holidays

The FOP proposes that employees who work overtime on a holiday be paid 2 ½ times the employees regular rate of pay. Presently the Employer receives holiday pay at 2 ½ times the regular rate but if overtime is worked on a holiday the pay decreases to 1 ½ times. The employees believe that the extra pay is justified because the overtime is part of the holiday work.

The Employer relies on §325.19 of the Ohio Revised Code which defines a holiday as an eight hour day. Working beyond eight hours does not extend the holiday.

The Employer states that it is unable to cost out this proposal. In any event, because this proposal involves significant costs, it should be further negotiated between the parties. The present economic circumstances do not justify the insertion of this provision by a Fact Finder at this time.

Recommendation

No change.

Issue I – Vacations

All of the language proposals by the FOP in §24.4 have been agreed upon by the Employer. Section 24.4 shall read as follows:

The Employer shall post a vacation calendar in each unit (Patrol, Court Services, CIS) by the first Monday of November of each year. Employees may request, prior to March 1 the dates for that vacation year (January 1 through December 31 of that year) on which they prefer to use their accumulated vacation. Such requests shall be honored on the basis of the employee's seniority with the Employer as established in Article 12.2, subject to the following limitations and exceptions:

- A. The first round of vacation selection shall begin by the first Monday of November of the prior year and the first round of vacation selection shall be completed by December 31st. Each employee shall be given the opportunity to select

vacation in this round. Failure to select vacation in this round will waive the right to a first round pick.

- B. Vacation requests submitted before January 1st shall be honored only to the extent that the employee has selected up to seventeen (17) consecutive working days from vacation (which may be combined with his/her regularly scheduled off days). After making his/her initial selection the employee may not make any additional selections for the use of vacation time until all other members of his/her shift have had the opportunity to make their seniority vacation selections. After this first round of vacation picks, the second round of vacation picks by seniority will be allowed with no limits on the amount of vacation time or period of time which may be selected. Vacation requests submitted by March 1st shall be honored in accordance with this section.
- C. Vacations are scheduled and approved in accordance with the workload requirements of the Employer.
- D. An employee who has received approval of his/her vacation request, and is subsequently reassigned, shall not lose his/her right to that approved vacation period.
- E. An employee who has received approval of his/her vacation request shall not lose his/her right to that approved vacation period to a more senior employee who transfers into his/her unit or location.

The FOP proposes additional language to §24.6 which permits an employee once a year to cash out any or all unused vacation time to be paid the first pay period of the next calendar year. The FOP is willing to cap this payment at ten (10) days per year. They are seeking the same benefit available to management.

The Employer opposes this proposal for economic reasons. Other units do not have this benefit. This will involve a cost increase which has not been provided for in the budget.

Considering the economic circumstances stated above, it is unreasonable to recommend this proposal on an unnegotiated basis between the parties.

Recommendation

No change.

Issue J – Article 25 – Sick Leave

1. The parties agreed to the Union’s proposed change in §25.2F which provides that “[f]or the purpose of this Section, the definition of immediately family shall be: mother, father, son, daughter, brother, sister, spouse, grandparent, grandchild, mother / father / daughter / son / sister / brother-in-law, step-mother / father / brother / sister / children or a legal guardian or other person who stands in the place of a parent (loco parentis).”
2. The FOP proposes to change the one hour notice to two hours notice when an employee is unable to work for the reasons specified in §25.2. The FOP states that this proposal is tied to its §19.10 for a one hour notice for working mandatory overtime.

Recommendation

Section 19.10 shall be added to the CBA and shall read as follows:

The Employer shall have a written procedure governing the assignment of mandatory overtime. The written procedure shall be made available to employees. The Employer shall make every reasonable effort to give any employee required to work mandatory overtime at least one (1) hour’s notice before the start of the mandatory overtime.

Accordingly, the language in §25.3 shall be revised as follows:

When an employee is unable to report to work due to reasons specified in §25.2 above, he/she shall notify his/her immediate supervisor or other designated person, prior to the time he/she is scheduled to report to work (at least two (2) hours prior for continuous operations employees), unless extenuating circumstances prohibit, on each day of absence, unless other arrangements are made with the employee’s supervisor.

3. The FOP proposes to change the language in §25.6 to eliminate earned personal days for the non-use of sick leave to permit personal days to be automatically granted every four months.

The Employer objects to this proposal because the purpose of the provision was to grant personal days as a bonus for not using sick leave. However, the usage of bereavement leave does not affect the accrual of non-use sick leave time.

The FOP proposes adding another exception for the non-usage of sick leave to acquire extra personal days. The FOP proposes that the use of sick leave in conjunction with accrued occupational injury leave or any work related injury will not interfere with the accrual of personal days.

The Employer is not interested in permitting the employees to have more time off.

The parties should continue to negotiate this economic issue because the granting of additional time off has an impact on the Employer's budget and staffing.

Recommendation

No change.

4. The FOP proposes a change in §25.7 which permits any employee who has accumulated any time above 1600 hours to cash in the difference between his/her accumulation and 1600 hours of once per year.

The Employer objects to this proposal because this unit has a much higher level of cash-in on retirement than other bargaining units and employees.

This is another economic item that should be negotiated between the parties. There is no compelling reason for a change at this time.

Recommendation

No change.

5. The FOP proposes a language to §25.10 which defines the immediate family for purposes of a bereavement leave. The FOP proposes to expand the category of deceased persons for

whom a bereavement leave is granted. The FOP wants to include the same definition as contained in §25.2 for purposes of sick leave usage.

The Employer objects to this proposed expansion because it believes that it will lead to more absences from work.

This is another issue which involves economic considerations and should be negotiated between the parties. There is no compelling reason for a change at this time.

Recommendation

No change.

6. The Employer proposes to add a new clause which requires a verified certificate from the physician after an employee has used 24 hours of sick leave in a rolling 12 month period. The first eight (8) hours of sick leave will be unpaid unless the employee (or family) is hospitalized or unless a physician's certificate is obtained.

The FOP objects to this proposal because this unit has not been singled out as abusing the use of sick leave. Moreover, this proposal was not approved by the Corrections Unit in their contract.

The Employer should continue to negotiate for this proposal by compromising its positions on some of the FOP proposals. There is no compelling reason for instituting the Employer's proposal at this time.

Recommendation

No change.

Issue K – Article 28 – Uniforms and Equipment

The Employer proposes to delete language which permits an employee to select shoes from an approved list. The evidence at the hearing verifies that the FOP has complied with the

Sheriff's directive for using a particular type of shoe, notwithstanding the choice granted to the FOP members under the present language. The FOP, however, would prefer to use more practical shoes instead of complying with the present directive which calls for the use of high gloss patent leather shoes.

The Employer has indicated its willingness to permit the language to state "standard issue shoes."

The present language which permits the use of "the standard issue shoe or a leather shoe" seems to permit some choice for employees to select a shoe other than the high gloss patent leather shoe now required under a directive. The Employer did not present a compelling reason to further restrict the employees in their shoe selection.

Recommendation

No change.

The Union proposed to increase the uniform allowance from \$600 to \$800. Employer objects to this increase for economic reasons. The Corrections Officers and supervisors just received an increase from \$400 to \$600.

The FOP did not present convincing evidence that an increase in the uniform allowance is necessary at this time.

Recommendation

No change.

Issue L – Article 29 – Expenses

1. The FOP proposes a change in §29.1 removing limitations for business travel expenses. The Employer objects to this proposal because limitations apply to all employees including the County Commissioner.

The Union did not present convincing evidence that its members are suffering losses as the result of not being fully compensated for travel expenses.

Recommendation

No change.

2. The FOP proposes language in §29.4 which provides for travel time pay in addition to all overtime earned when travel is required outside the state of Ohio. It requests additional compensation when traveling requires overnight lodging outside of Hamilton County. Further, all travel/separation time will be paid as overtime.

The Employer objects to this proposal for obvious economic reasons.

The FOP did not make its case that this additional compensation is necessary and occasional business travel is a requirement of the job.

Recommendation

No change.

3. The FOP proposes §29.5 requiring that flights involving the escorting of prisoners must originate and terminate from the Northern Kentucky/Greater Cincinnati International Airport. Further, it proposes a requirement that the most direct flight will be used at all times when available.

The Employer did not discuss its objection to this proposal other than to state that the travel reimbursement regulations apply to all county employees.

The Employer should be able to retain flexibility in order to lower its travel costs by permitting flights from airports other than Cincinnati/Northern Kentucky. Further flexibility requires the use of flights other than direct flights. It depends upon the circumstances.

Recommendation

No change.

Issue M – Article 31 – Leaves of Absence

The Employer proposes to remove §31.3K & L from the CBA. The Employer objects to the present benefit extended to the employees which permits them to not have paid leave time apply during periods when FMLA leaves are taken. The Employer wants to prevent employees from taking an unpaid leave under FMLA and then taking an additional paid leave. The FOP wants to retain the right to have unpaid leave in addition to paid leave.

The County presently requires all other bargaining unit employees to apply their paid leave time while on an FMLA leave. Notwithstanding this fact, the Employer did not offer to negotiate over this issue by granting the FOP certain of its proposals in exchange for giving up this benefit.

Recommendation

No change.

Issue N – Article 32 – Outside Employment

The FOP proposes language in Article 32.5 which would require employees to receive fixed pay from private employers, for outside employment related to law enforcement, at the same rate that other law enforcement officers earn for similar employment. It argues that the Employer has the ability to require equal pay.

The Sheriff has indicated through his directive that Sheriff Department employees shall receive the same rate paid to other police officers and that the Sheriff's employees will not work for less money. Notwithstanding this directive, which accomplishes the FOP's objective, flexibility might be appropriate under particular circumstances. The Employer should not be

unreasonably restricted in its contracts with outside employers. At present, the Sheriff's directive seems satisfactory.

Recommendation

No change.

Issue O – Article 35 – Application of the State Civil Service Law

The Employer proposes language which eliminates the present language stating that the State Personnel Board of Review shall have no authority or jurisdiction as it relates to the matters covered by the CBA. Instead, the Employer proposes that specifically designated articles shall be specifically superceded by the CBA.

The FOP objects to this proposal because it is concerned that it will lose existing rights under the civil service laws.

The present language, which appears clear on its face, states that the matters covered by the CBA take precedence over similar subjects covered by the state civil service laws. Nevertheless, the Ohio Supreme Court has arguably created an issue over this language in the CBA as to whether the language is specific enough to “explicitly demonstrate that the intent of the parties [is] to preempt statutory rights.” (Syllabus). In light of the strong dissenting opinions in OAPSE v Batavia Local School Dist. Bd. of Edn., 89 Ohio St. 3d 191 (2000), it appears that the degree of “specificity” in terms of CBA language will be further defined by the courts. Judge Lundberg Stratton stated in her dissent that “I am equally distressed at the depth of explicit detail that will now be required of drafters of collective bargaining agreements because of the majority’s syllabus. I believe that the majority’s mandate that collective bargaining must be extremely specific in order to bring an issue within its coverage will ultimately do the collective bargaining process a disservice.” 89 Ohio St. 3d at 201.

Accordingly, I believe that the majority opinion of the Supreme Court will be further explained and clarified by further court decisions. In this case, it is the clear intent of the parties to have the CBA trump any similar issue in the state's civil service laws. The parties should wait until this legal issue is further clarified before agreeing to a language change.

Recommendation

No change.

Issue P – Article 37 – Severability

The Employer proposes further language under this Section based upon the Supreme Court Ruling in the Batavia case. The same rationale applies as above.

Recommendation

No change.

Issue Q – Article 40 – Parking

The FOP proposes language which grants employees free parking in downtown Cincinnati at places convenient to their work sites.

The Employer objects to this proposal because parking spaces are not available to employees at this time. The Correction Officers do not receive free parking.

Fact Finder Ruben discussed this issue during the last negotiations. A Parking Committee was created but it did not make progress in minimizing parking expenses for employees or promoting the availability of parking spaces. Fact Finder Ruben found that all bargaining unit members do not work in downtown Cincinnati and those who do not may also have to pay for parking without reimbursement. Nevertheless, he was not persuaded that there is special justification for providing free parking to bargaining unit members who are assigned to

the downtown area of Cincinnati. In light of the economic circumstances affecting the county budget, there is no compelling reason to alter the findings of Fact Finder Ruben.

Recommendation

No change.

Issue R – Article 43 – Residency

The Employer wants to maintain the residency requirement which requires employees to remain residents of Hamilton County. This was awarded by the conciliator in the Corrections Officers case and the Fact Finder in the CO Supervisors Unit.

The Sheriff believes there are advantages to maintaining the residency requirement. He believes that the presence and visibility of uniformed officers helps to deter crime. Living and working in the County also makes for solidarity and greater empathy with the County's citizenry.

Fact Finder Toberman in the Correction Officers' case sided with the FOP on the residency issue. She discounted the deterrent argument and found that the response time argument was not applicable to Correction Officers. She further found that expanding the residency area would expand the employment applicant pool and would address the turnover and recruiting problem in the Corrections Division.

Conciliator Keenan, however, did not accept Fact Finder Toberman's recommendations. He found that "the statutory factor of past collectively bargained agreements supports the continued existence of the Residents Policy" (p.42). More importantly, he concluded that the Patrol Division better serves the "visibility" and "crime deterrent" rationale for requiring Hamilton County residents, more so than the Corrections Officers Unit. He upheld the residency requirement for the Corrections Officers.

The response time argument is also questionable. Certainly, one might respond sooner living in an adjoining county than another who must travel within the county. It depends where one lives within the county. On the other hand, there is no evidence of a recruitment or staffing problem within the Patrol Division.

This Fact Finder proposed to the parties at the hearing that the residency requirement be used as a negotiating point. The FOP should be willing to concede some of its economic issues in exchange for gaining its desired residency expansion. Likewise, the Employer could gain some economic advantages in exchange for giving up its insistence on residency within the county. Further proposals should be made between the parties on this subject. It is therefore not appropriate at this time to recommend any change in the existing policy.

Recommendation

No change.

Issue S – Article 44 – Dispute Resolution Procedure

The FOP proposes language consistent with the recommendations of SERB for settling interim disputes so that the filing of unfair labor practices can be avoided. The Employer opposes this language. The FOP justifies its proposal based upon the recent Toledo City Schools SERB decision. The Employer points out that this decision is presently on appeal. The Employer wants to maintain the present zipper clause contained in §40.3.

In SERB v Toledo City School District Board of Education, SERB 2001-005(10-1-01), the Board stated that when the parties had not adopted procedures in their collective bargaining agreement to deal with mid-term bargaining disputes, SERB will apply its standard to determine whether an unfair labor practice has been committed when a party unilaterally modifies a provision in an existing CBA after bargaining the subject to impasse. A party may not modify

the Agreement without negotiating with the other party and without reaching an agreement on the issue unless immediate action is required due to “(1) exigent circumstances that were unforeseen at the time of negotiations or (2) legislative action taken by a higher-level legislative body after the Agreement became effective that requires a change to conform to the statute.” The Board found in the Toledo case that this standard was not met; and, therefore, the Employer committed an unfair labor practice charge which required a cease and desist order to be issued.

Once more, it seems that the law is in flux as to what constitutes meeting the standards set forth by SERB. The FOP prefers to deal with the issue by providing for fact finding and conciliation to finally determine the issue. The Employer, on the other hand, prefers to act under the state of the existing law as defined by SERB and ultimately by the courts.

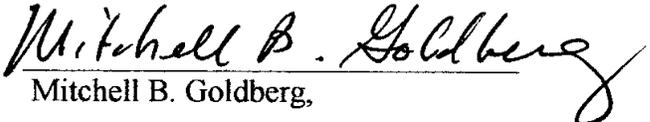
At this time, until law becomes more clarified, it does not seem to be appropriate to force upon the Employer a binding conciliation procedure for interim bargaining issues which were unforeseen by the parties during their negotiations.

Recommendation

No change.

Issue T – Article 45 – Duration

Both parties agree to a three year contract.



Mitchell B. Goldberg,

Dated: April 16, 2003