

FACT FINDERS REPORT STATE EMPLOYMENT
RELATIONS BOARD

IN THE MATTER OF:

2003 APR 11 A 10: 21

Fraternal Order of Police, Ohio Labor Council Inc.
And
The Greene County Sheriff

Case Numbers:
02-MED-08-0719
02-MED-08-0720
02-MED-08-0721

Before Fact Finder
N. Eugene Brundige

PRESENTED TO:

Dale A. Zimmer, Administrator
Bureau of Mediation
State Employment Relations Board
65 East State Street, 12th. Floor
Columbus, Ohio 43215-4213

And

Tom Fehr, Representative
Fraternal Order of Police/OLC Inc.
5752 Chevoit Road, Suite D
Cincinnati, OH 45247-7008

And

Johnathan J. Downes
Downes, Hurst & Fishel
Counsel for the Sheriff
400 S. Fifth Street, Suite 200
Columbus, Ohio 43215

And

Marsha Jordon-Smart, H.R. Director
Greene County Commissioners
105 E. Market Street
Xenia, Ohio 45385

N. Eugene Brundige was selected by the parties to serve as Fact Finder in the above referenced cases and duly appointed by the State Employment Relations Board in compliance with Ohio Revised Code Section 4117.14 ©(3).

The parties informed the Fact Finder that time extensions would be filed. Hearing dates of January 22 and January 30, 2003 were subsequently established and utilized for mediation. A good faith effort was made to resolve all outstanding issues. While the parties were unable to reach a mediated settlement, they were able to clarify and dispose of some issues.

March 10, 2003 was established as the hearing date and the parties timely filed the required pre-hearing briefs.

In their pre-hearing filings one or more of the parties identified the following issues, and/or contract provisions as being unresolved:

ARTICLE 20 HOURS OF WORK AND OVERTIME

ARTICLE 26 UNIFORMS

ARTICLE 28 SICK LEAVE

ARTICLE 36 DURATION

WAGE SCALES

BACKGROUND:

This case involves three units of employees who work for the Greene County Sheriff. The first is composed of Deputies below the rank of Sergeant. The second unit is composed of non-deputies including Paramedics, Nurses,

Cooks and Custodians. The third is a Supervisors Unit which includes Sergeants and Lieutenants.

There are approximately 120 deputies, 9 non-deputies and 17 supervisors.

The parties met on seven occasions prior to mediation on January 22.

The format of this report will be to list an article and the sub issues within that article. A brief review of the position of each party will follow and then a discussion of that issue. My recommendation will be listed and, if new contract language is required to effectuate that recommendation, that language will be provided.

ARTICLE 20:

Both parties have proposed changes to this article.

Management proposes to reduce the maximum number of comp time hours from ninety six (96) per year, to eighty (80) per year.

The FOP proposes to (1) remove the absolute maximum and replace it with the ability to re-accrue comp time. In order to remove the absolute cap, the FOP would be willing to reduce the maximum hours to forty (40).

The second FOP request is to remove the advance notice from a request for the use of compensatory time.

Finally, the FOP would propose replacing the current language regarding "usage" from a "hardship" standard to denying compensatory time usage only when it would put a shift below minimum staffing.

Management's Position:

Management argues that comp time is a very expensive proposition. The use of comp time combined with other leaves accounts for a large part of the Sheriff's budget. The Sheriff would reduce the maximum hours from 96 to 80 per year.

Management is very opposed to what they call "on demand" comp time and note that allowing the comp time bank to be replenished would be counter to management's goal to reduce comp time expenses. Management objects to the inclusion of City Police Departments in the list of comparables.

FOP position:

The FOP notes that compensatory time maximums are lower in Greene County than in many surrounding jurisdictions. Madison County allows the accumulation of 480 hours, Beavercreek 240 hours and Kettering 210 hours.

Discussion:

It is instructive to look to the bargaining history between the parties. On the subject of compensatory time it should be noted that the parties negotiated the 96 hour cap for the first time, in the last contract. It appears that the result was successful for management.

Based upon the recent inclusion of this maximum, I fail to be convinced that there is a need to reduce it again so soon.

Likewise, I fail to see the need to remove the absolute cap on compensatory time accumulation. There is adequate leave time available for bargaining unit employees.

The language regarding hardship” also seems adequate.

Recommendation:

I recommend current contract language for Article 20.

ARTICLE 26:

Management offered no proposals regarding Article 26.

The FOP proposes two changes. The first is found in Article 26.3 in the Deputy’s Contract wherein detectives would receive day cleaning. The second proposal is to pay a uniform allowance to detectives.

FOP position:

The comparables offered showed three jurisdictions that do not offer an allowance and five counties offer from \$400 to \$780 per year. The FOP believes detectives should receive an allowance the same as uniformed deputies do.

Management Position:

Management has no problem with providing dry cleaning under the same circumstances as it is offered to uniformed deputies. They object to the inclusion of a uniform allowance for detectives. It is noted that while they are classified as deputies, detectives are provided a pay supplement. It is management’s position that this differential was provided to buy plain clothes.

Discussion:

This fact finder agrees that detectives should have access to dry cleaning of their clothes. This is simply a matter of equity.

The question of a clothing allowance is a more complex one. The pay differential does help with the purchase of plain clothes.

Recommendation:

I recommend Article 26 be amended to reflect dry cleaning for detectives. I do not recommend the addition of a clothing allowance.

Article 26.3 of the deputies contract should be amended to read:

Cleaning and Maintenance. The Employer will be responsible for the cleaning and maintenance of uniforms **and the plain clothes required to be worn by detectives.**

ARTICLE 28 – SICK LEAVE

Management proposes a radically new and different sick leave article. Their proposal would reduce sick leave to 80 hours annually and implement an occurrence policy for misuse of sick leave.

Their proposal would include incentives of three days pay or three days wellness leave.

Management would agree to add step-child as a member of the immediate family.

They propose current language for payment of sick leave at retirement but would also add language to cover pay at death.

The FOP has attempted to meet some of management's concerns about sick leave by proposing their own occurrence policy which would allow any loss of pay to be offset by the use of other paid leave. They would also allow that an emergency would be an exception to the 24 hour notice.

They also propose that sick leave can be used in one hour increments.

Both parties agree that they would like to eliminate the short term, long term approach to sick leave.

Management Position:

Management point out that average use of sick leave is 110 hours per year. The fiscal impact on the Sheriff's operation is directly linked to excessive leave usage.

Overtime costs due to unscheduled sick leave are increasing significantly each year.

Management notes 15% of the Sheriff's budget is spent on paid leaves and 25% is consumed in overtime, compensatory time and paid leave costs.

Union Position:

The Union agrees with management that the current system could be approved upon. They disagree that there is a need to decrease the total hours of sick leave earned

The Union comparables show that all cited jurisdictions offer 120 hours of sick leave per year.

Discussion:

As Fact Finder Harry Graham noted in the Licking County decision, "The expense to the employer of the present system of sick leave is high. No outside observer can dispute that fact." ¹

¹ Report of the Fact Finder in SERB Case Numbers 90-Med-11-140, 1, 2, 3, by Harry Graham, July 29, 1991.

Some action needs to be taken to allow management to control these costs. The proposed approach seems like a reasonable one with a few modifications.

The reduction to 80 hours per year is a necessary modification.

This new program will take effect July 1, 2003.

Article 28.1 should read:

Full-time employees of the bargaining units covered by this Agreement shall have credited to their sick leave balance 80 (eighty) hours of sick leave the first full pay period each July beginning July 2003. Employees who are originally employed after July 1 of each calendar year shall receive a credit of 3.1 hours times the number of complete pay periods prior to the first full pay period the following July.

Employees who separate during the calendar year, for whatever reason~ shall have their sick leave balance reduced at separation by the number of complete pay periods between the date of separation and the first full pay period the following June times 3.1 hours. If the reduction results in a number of hours less than zero, the cash equivalent value of hours shall be deducted from any compensation that remains payable to the employee or from any other cash conversion that is available to the employee.

When sick leave is used, it shall be deducted from the employee's sick leave credit on the basis of one hour for every one hour of absence from previously scheduled work. Sick leave used at the beginning of a shift shall be no less than two (2) hours unless used for a doctor's appointment. Employees shall not use sick leave to cover tardiness.

After six (6) uses (occurrences) in the one year period to begin each July first, the next sick leave use up to eight (8) hours use in any 12 (twelve) consecutive month period will be without pay. Exempt from sick leave "use" shall be previously scheduled medical appointments when the employee has notified his/her supervisor prior to the requested use. Sick leave used for bereavement shall not count toward occurrences for sick leave use.

This program is patterned on the Licking County program and it apparently has been successful utilizing six occurrences per year. Thus I recommend six in Greene County as well.²

I have suggested a July 1 starting date in the belief that there must be a period of time to permit employees to adjust to such a new program. As with everything else in this report, the parties may agree to a different implementation date.

I recommend Article 28.2 be renamed **Sick Leave Use** and that sections A through E remain current contract language.

F. should read: Death of a member of the immediate family as defined in Section 28.9. Such usage shall be limited to a reasonably necessary period of time, not to exceed five (5) days. Sick leave used for death in the immediate family will not count as an occurrence or affect any attendance incentive benefit.

G. Leave that meets the criteria of the Family and Medical Leave Act. Accrued sick leave time must be utilized and shall count toward the 12-week FMLA leave. Many of the reasons for use of sick leave also qualify as FMLA leave. The period for determining whether the 12-week entitlement has been exhausted is defined by the Employer as a uniform rolling 12 month period measured backward from the first date of the approved FMLA leave; and

H. Donation of leave to a co-worker pursuant to Section 28.13 of this Article..

Employee should make every effort to preserve their sick time benefits and schedule regular medical or dental appointments during time off. If they are scheduled during work hours~ the approval of the immediate supervisor is necessary. Whenever possible, make appointments near the end of the work day to minimize sick time

² Agreement between the Licking County Sheriff's Office and Teamsters Local 637, included in the Sheriff's office Brief.

use. Scheduled dental or medical appointments will not count as an occasion unless they exceed the time necessary for the appointment plus travel and any recovery time as required by the Medical Professional.

Two hours does not appear reasonable to this Fact Finder. Many times the waiting period in a Doctor's office may utilize that amount of time.

Occasionally pre-scheduled medical appointments will require an employee not to return to work. This language should protect the interest of the employer while allowing a more reasonable approach for employees.

I recommend the employers language regarding sections 28.3 and 28.4

Section 28.5 should read:

Payment: During the first day following an employee's return to work, the employee shall formally request sick leave by completing his/her portion of the employer's request for leave form and submit it to the supervisor. If the request for leave is denied and as a result the employee has been overpaid, such overpayment shall be deducted from the employee's next pay.

28.3. Waiver. The Employer may, at its discretion, waive the short term limits for an illness or injury requiring an extended and regularly scheduled series of doctor's visits or rehabilitation visits.

28.4. Notification and Medical Verification. An employee who is unable to report for work must notify, by telephone or other means of communication the immediate supervisor or other designated person in accordance with the Employer's policy as soon as possible.

If the Employer has reasonable grounds it may request the employee verify the report of illness or disability with the employee's medical care provider. At any time the Employer may require an employee to submit to an examination to determine if the employee is fit for duty"

If an employee is absent for three (3) or more consecutive work days, a physician's statement adequately setting forth the reasons to justify the use of sick leave, that the employee was unable to work and the employee is able to return to work, is required before the employee may return to work. In cases of the immediate family member's medical incapacity, a physician's statement indicating the employee's presence was necessary

for the health and welfare of the family member is required when such absence is for three (3) or more consecutive work days.

This new program is based upon the use of limited available sick leave and economic incentives to control sick leave usage. In the opinion of the Fact Finder it is too much to also greatly expand the disciplinary language regarding the abuse of sick leave. An inherent management right exists within the statutes to discipline for sick leave abuse. It is un-necessary to expand it in this article. I recommend current contract language be maintained in section 28.6.

28.7 Current language

28.8 Current language except it should read "upon Death or Retirement."

28.9 Definition of Immediate Family. Add "step-child." Otherwise maintain current language.

28.10 Prior Sick Leave Credit: Current language

28.11 I recommend managements language: It should read:

28.11 Perfect Attendance Incentive Pay (a) Full-time employees who use the following amount of sick leave and have no unpaid absence during the period of December 1 through November 30 will be entitled to a lump sum payment payable in the regular paycheck on or prior to December 20 in accordance with this schedule:

LEAVE USED

INCENTIVE PAY

0

24 Hours or the equivalent of three (3) days pay,

From .1 to 8.0 Hours

16 hours or the equivalent of two (2) days of pay,

From 8.1 to 16.0 Hours

8 hours, or the equivalent of one (1) day of pay.

Or the equivalent of (1) work day

Or the equivalent of (2) work days

Part-time employees will be entitled to lump sum payments on a pro-rata basis. Lump sum payments will not reflect any loss of sick leave.

(B) An employee eligible for incentive for any period may opt at the end of that period for one (1) day of wellness leave or for one (1) day of pay to be payable in a lump sum payable on or prior to December 20. Lump sum payments and wellness leave will not be deducted from sick leave balances.

28.12 Wellness Leave: I recommend management's language

28.13,14,15,16,17,18,19 20 all relate to catastrophic leave. While the parties have different proposals on the table they provided me with very little testimony or discussion on the subject.

Based upon the limited information I have available I am recommending management's language except that I did note the parties had agreed that the Sheriff would make the decision to approve leave requests rather than a joint committee.

Consequently I recommend Section 28.16 read: **Requests for catastrophic sick leave donations will be subject to approval by the Sheriff whose decision will be final and not subject to the grievance or arbitration procedure.**

If the parties had a different intent regarding this section I urge them to modify my recommendation to reflect it.

ARTICLE 36 DURATION

At the beginning of the hearing the parties discussed this issue and noted that they were in agreement. Therefore there is no recommendation regarding this article beyond what has been agreed to by the parties.

WAGES:

The parties have already agreed to retroactivity for wages only.

The FOP proposes 4.5% each year of the three year agreement. For Deputies, Sergeants and Lieutenants. Non-deputized bargaining unit members would receive the same percentage increases except that Licensed Practical Nurses would receive an additional \$3.00 market supplement and Registered Nurses would received an additional \$4.00 market supplement.

In addition to these across the board raises FOP would increase the Rank Differential by placing Detectives 10% above deputies, Sergeants 10% above the first year rate of pay of a Detective and 16% above the first year rate of pay of a Detective after six months, and Lieutenants 10% above the entry level of a Sergeant and 16% above the Sergeants rate after six months.

The County offers 3% across the board raises in each of the three years of the agreement plus an additional 1% in the first year as additional compensation for the proposed sick leave program.

They offer a \$2.00 market supplement for LPN's and a \$3.00 market supplement for Rn's. They make no proposal regarding rank differential.

FOP Position:

FOP offers data from the SERB Quarterly noting that police units in 2001 had an average increase of 3.9% They point to the history of bargaining in Greene County and note that they have received 5% increases in recent history.

They note that the County does not put forth an ability to pay argument and believe the money is available to fund their requests.

Management's Position:

The County argues that revenues are declining in Greene County and point to the state of the economy all across the State of Ohio and the nation. They point to the State Contract with AFSCME which yielded no increases in the first two years plus various freezes in areas like longevity.

They point to settlements with other County Employees and note that settlements have been in the 3 – 3.5% range with no certainty for raises for exempt employees in the near future.

The County believes 3% is a reasonable offer in the current environment. They do believe that enough savings will be generated by the proposed sick leave program to permit the payment of an additional 1% in the first year.

Discussion:

Employees of the Greene County Sheriff's Department have been treated well by the Sheriff and the County in the financial arena. The chart provided by the County tracing raises and inflation show that employees have made significant gains since 1994 in real dollars. And while Greene County does not appear to have been hit as badly by the economy as other jurisdictions, the money simply does not exist to meet the expectations of employees regarding raises.

The material from the SERB quarterly shows that police units in the Dayton area averaged 3.65% in 2001 and trends would indicate that number will be going down in 2002.

Thus, it would be my conclusion that under normal circumstances, the right increase would be around 3.25 – 3.5 %.

The fact that the County is attempting to address a significant cost issue in the Sick Leave Policy changes the dynamic considerably.

Referring again to the Licking County case, Fact Finder Harry Graham stated: "If the employer sought to alter the sick leave provisions of the Agreement, there is an associated cost." ³

In that I recommend the inclusion of the major parts of the employer's Sick Leave Program, I must also increase the salary recommendation accordingly.

In that the Sick Leave Program is not recommended to begin until July and savings will not likely be visible until some time later, I recommend the following salary increases:

January 2003	3.5%
January 2004	4.0%
January 2005	4.0%

Further I recommend a \$2.00 Market adjustment for Licensed Practical Nurses, a \$3.00 Market adjustment for Registered Nurses, and that Paramedics be compensated at the rate of a non-certified deputy.

I have considered the concerns raised about rank differential. I am not convinced that an increase is warranted between a regular deputy and a detective due to the fact the detective still holds the rank of Deputy and additional compensation is currently provided.

³ Licking County Fact Finders Report

I am concerned about the differential between Deputies and Sergeants and Sergeants and Lieutenants, but based upon the tight economic situation and the size of the across the board raises I have recommended, I am not recommending an increase at this time.

I urge the parties to consider this subject in subsequent negotiations in consideration of the significant responsibility that attaches to these middle management positions.

SUMMARY:

After giving due consideration to the positions and arguments of the parties and to the criteria enumerated on SERB Rule 4117-9-05(J) the Fact Finder recommends the provisions as enumerate herein.

In addition, all agreements previously reached by and between the parties and tentative agreed to, along with any sections of the current agreement not negotiated and/or changed, are hereby incorporated by reference into this Fact Finding Report, and should be included in the resulting Collective Bargaining Agreement.

Respectfully submitted and issued at London, Ohio this 9th. Day of April, 2003.


N. Eugene Brundige,
Fact Finder

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing **Fact Finders Report** was served by Express Mail upon Johnathan J. Downes, Downes, Hurst & Fishel, 400 Soute Fifth Street suite 200, Columbus, Ohio 43215, Attorney for the Employer, and Russell E. Carnahan, Attorney for FOP Lodge No. 9, 199 South Fifth Street – Suite 304 Columbus, Ohio 43215, and by regular U.S. Mail upon Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th. Floor, Columbus, Ohio 43215-4213, this ~~6th~~^{9th} Day of ~~March, 2002~~.

April 2003

N. Eugene Brundige
 N. Eugene Brundige,
 Fact Finder

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**N. Eugene Brundige, Arbitrator
1870 Shoshone Drive
London, Ohio 43140-9020**

TO:

**Dale A. Zimmer, Administrator
Bureau of Mediation - State Employment Relations Bd.
65 East State Street. 12th Floor
Columbus, Ohio 43215-4213**