OHIO STATE EMPLOYMENT RELATIONS BOARD

In the matter of Fact Finding between:

FRATERNAL ORDER OF POLICE,
OHIO LABOR COUNCIL, Inc.

and

HAMILTON COUNTY COMMISSIONERS

No. 03-MED-09-0919
Communications Officers

FACT FINDING REPORT

Date of Award:
March 3, 2004

Appearances:

Mitchell B. Goldberg, Appointed Fact Finder

For the Union:

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I. Introduction and Background.

SERB appointed the undersigned, Mitchell B. Goldberg, as the Fact Finder of this public employment dispute on November 28, 2003. The parties entered into extension agreements for the fact-finding period and agreed to extend the date for the fact-finding hearing until February 11, 2004. They further agreed to extend the time for issuing this Fact Finding Report until March 3, 2004.

The bargaining unit consists of all communications officers and excludes clerical employees, confidential employees, professional employees, management level employees, guards, and supervisors, including Director, Communications Supervisors 1, 2, 3, and Secretary 2. There are approximately 65 employees in the bargaining unit. SERB certified the unit on August 31, 2000. The parties engaged in seven negotiating session throughout November, December, and January.

The following articles under the expired contract were unopened or unchanged for purposes of negotiating this agreement: 1 Union Recognition; 2 Dues Deduction; 3 Union Activity; 5 Non-Discrimination; 9 Personnel Files/Documentation; 10 Classification; 12 Seniority; 13 Layoff and Recall; 15 Transferring Employees; 16 Bulletin Boards; 21 Call-In-Pay; 22 Court Appearances; 30 Trade Days; 31 Donated Time; 33 Locker Security; 34 Injury Report; 35 Leave Accrual Balance; 36 Outside Employment; 39 No Strike, No Lockout; 40 Severability; and, 42 Maintenance of Standard.

The following articles have been tentatively agreed upon or withdrawn from discussion during negotiations: 4 Management Rights; 8 DISCIPLINE; 14 PROMOTIONS; 6 Labor/Management/Safety/Health, and Security/Meetings; 11 Probationary Employees; 17 Hours of Work and Overtime; 18 Break Periods; 23 Insurance; 25 Vacations; 26 Sick Leave; 27 Sick Leave Conversion; 28 Leaves of Absence; 29 Personal Leave Without Pay; 38 Copies of Agreement; 41 Waiver In Case of Emergency; 43 Tuition Reimbursement; and, 44 Duration.

For purposes of this Report, all unchanged or unopened articles and all articles tentatively agreed upon between the parties are adopted, included, and incorporated into this Report and made a part hereof. The following issues remain in dispute between the parties and are subject to the recommendations set forth below: Article 7 – Grievance Procedure; Article 20 - Shift Differential; Article 24 – Holidays; Article 32 – Uniforms; and, Article 19 – Wages. The parties submitted the required pre-hearing statements in a timely manner, as required by SERB rules, and the matter proceeded to hearing on February 11, 2004 at the offices of the Employer in Hamilton County, Ohio. The following recommendations take into consideration all of the criteria set forth in SERB Rule 4117-9-05 (J).

II. Unresolved Issues.

A. Article 7 – Grievance Procedure.

The expired contract contains a "loser pay all clause" requiring the "losing party" to pay the entire fees and costs of the arbitrator. The Union states that most of the other contracts between unions and the county contain cost sharing provisions and that this contract is an anomaly. The Union desires to bring this contract into the fold.

The County states that the history of the language dates back to 1985 when all of its union contracts contained "loser pay all language" because it felt that this clause operated to discourage the filing of numerous and unmeritorious grievances, particularly when disputes and negotiations become contentious.

Both parties, however, agreed at the hearing that this particular unit has not filed many grievances and that the original underlying purpose for the County's insistence on the language has not manifested itself during negotiations and disputes involving members of this unit. Accordingly, the evidence warrants a finding that there is no particular need for this provision and the costs and fees of the arbitrator should be shared between the parties as they are in the other union contracts with the county.

Recommendation.

Article 7, Section 7.3, Step 4, D. shall be changed to read as follows:

Both parties shall share the costs and fees of the arbitrator equally. The expenses of any non-employee witnesses shall be borne, if any, by the party calling them. The fees of the court reporter shall be paid by the party asking for one. Such fees shall be split equally if both parties desire a reporter or request a copy of any transcripts. Any bargaining unit employee whose attendance is required for such hearings shall not lose pay or benefits to the extent such hearing hours are during normally scheduled working hours on the day of the hearing.

B. Article 20 – Shift differential.

The Union proposes an increase of $.10 per hour on the second and third shift to reward employees who choose those shifts, which are less desirable because of the time. These shifts are also the busiest shifts, they receive the most calls, and, they have more personnel allocated to the assignments. Using '03 numbers, Hamilton County is below other comparable dispatch units in terms of shift pay differential. Hamilton County pays $.30 per hour for the second shift and $.45 per hour for the third shift. Cincinnati pays $.35/$.50; Cheviot pays $.45/$.45; Airport pays $.60/$1.10; Fairfield pays $.45/$.55; and, NECC pays $.50/$.75. The Union proposes$.40/$.55 to bring this unit in line. This will encourage more senior employees to choose these shifts and cause the shifts to be filled with more experienced dispatchers to handle the high volume more difficult work.

The County agrees that it is better to have more diversity among the second and third shifts by including more senior employees, and that an increase in the differential will help, but not to any significant degree. Only certain senior employees will make the choice. The choice depends more on lifestyle than on increased compensation.

The only legitimate comparable is Cincinnati, notwithstanding that it is a city and operates on a different tax base. When Hamilton County is compared with other counties, it is presently in the middle in terms of shift compensation. The Union's proposal would raise Hamilton County to the top. The cost of the Union's proposal would be approximately $33,000 over three years, which equal about 1.5% on the base pay schedule. This is too expensive of a proposition considering the budget circumstances, which are explained in more detail below (see Wages).

Bases upon the economic evidence presented, an increase of $.05 per hour is warranted.

Recommendation.

Section 20.1 shall be amended to provide for "an additional thirty-five cents ($0.35) per hour." Section 20.2 shall be amended to provide for " an additional fifty cents ($0.50) per hour.

C. Article 24 - Holidays.

The Union believes that the employees are underpaid for working on holidays compared to other similar dispatch units. Presently, the employees receive straight time pay for working twenty holidays set forth in the CBA. It believes that at least for certain family type holidays, employees should receive an additional payment of time and one-half the hourly rate, or a total of 2.5 times the hourly rate for five specified family holidays. This would bring the County more in line with other comparable units such as Warren County (double pay for 10 holidays); Fairfield (2.5); UNTC (double pay for all prime holidays); Blue Ash (double pay for 3 holidays); NECC (regular pay + 2 comp days); Springfield (1.5 for regular holidays and 2.5 for super holidays; and Dearborn (2.5 for working holidays).

The County believes that the Union's proposal is much too expensive considering its budget constraints and circumstances. The proposal would cost the County approximately $138,000 over the life of the contract. The comparables show that units are at varying amounts with no uniformity. Moreover, this unit's existing work schedule is different than other dispatch units. The employees receive an additional 17 days off per year because of 4 – 2 on-off schedule. Now, every employee gets holiday pay whether they actually work or not. In other jurisdictions, employees must work to receive any holiday pay.

The Union believes that the County should not raise the work schedule as a justification for not paying extra for holidays. The schedule has always been 4-2 and has no relationship to the holiday pay issue.

Recommendation.

Based upon the economic evidence presented and considering the other economic items provided for herein, including the wage increases, it is recommended that no change be made to Article 24.

D. Article 32 Uniforms.

The Union proposes to increase the uniform allowance from $375. per year to

$425. The allowance for the dispatchers is understood to be less than that for patrol and corrections officers because dispatchers have less wear and tear. Nevertheless, they still have to pay increased costs for cleaning and maintenance. Under the expired contract, the allowance for dispatchers was 62.5% of the amount allowed to patrol officers. Under the proposal, however, the percentage is reduced to 50% of the patrol's allowance. This shows that the Union is attempting to recover only reasonable cleaning and maintenance expenses.

The County points out that most comparable units pay either nothing for uniform allowances or they issue vouchers for actual cleaning and maintenance costs. The County computes the Union proposal at an estimated cost of $11,000 over the contract. It is a relatively small item, but it is a component of the entire economic package.

Recommendation:

It is recommended that the County pay the unit members 50% of the uniform allowance it pays for patrol officers in order to avoid the recurrence of this issue at every bargaining session. Section 32.4 should read as follows:

> Effective January 1, 2004 and each year thereafter, the Employer shall pay a uniform maintenance allowance for each bargaining unit employee in an amount equal to fifty per cent (50%) of the amount then being paid to patrol officers for their uniform maintenance allowance under their collective bargaining agreement. Uniform maintenance allowance shall be paid by separate check to each bargaining unit employee during the first pay period in January beginning in 2004. Uniform maintenance allowance shall be reported as income on the employee's annual earning statement (Form W-2) and it shall be the employee's responsibility to demonstrate the allowance

was utilized for job-related reasons.

E. Article 19 –Wages.

The expired contract contained language reflects the intention of the county commissioners to establish an incentive pay program, or a pay for performance program for its entire workforce. Section 19 states that the "particular version of the system . . . is implemented on a trial basis, and shall be in effect for the life of this agreement." An evaluation committee was established with management and employee representatives. The committee was scheduled to meet after each January evaluation period in order to "study, evaluate, and discuss the effectiveness of this version of the salary system and evaluation procedures." The committee can recommend changes to the system and procedures, but the parties can only make changes to the CBA.

Minimum and maximum rates were set for each officer for each year of the three-year term. The following rating system was established: Exceeded (performance) – 100%; achieved – 85%; partially achieved – 70%; and, did not achieve – 60%. If an employee did not achieve a score that merited more than the base increase he/she could appeal the decision to the Department Head (or Operations Director), but the final decision of management was not subject to the grievance procedure. A pay increase of 1.5% was added to the base increase for a score of 87 –97.9 for employees who received at least a "partially achieved" rating in every category; and, 3.0% was paid for a score of 98+ and at least an "achieved" in every category. The performance payments totaled 5.5% over the base for employees who received the highest evaluations. An additional

1% bonus was paid in July to all employees who received at least an "achieved" and a score of 87 or above for mid-year evaluations, but this bonus was not added to the base.

The Employer was satisfied with the pay for performance program and proposes to keep the program in place, making adjustments to the percentages based upon its existing budget constraints. It proposes a base of 2% for this contract with performance payments of 1% with an 87+ score and partially achieved in each category; and, 1.5% with a 98+ score and an achieved in every category. An additional 1% is paid at mid-year under the same conditions as the old agreement.

The Employer supports its proposal with economic evidence and statistics. Its proposal exceeds the rate of inflation, which has been low. Its existing wages are more than other counties with comparable tax bases, and its rates are comparable to Cincinnati. Certain economic factors place restraints upon the amount of raises that reasonably can be paid. It operates under a restricted fund budget where the collected revenues of the communications center are supposed to cover all of its expenses. Periodic shortfalls must come from the county's general fund until the revenues and expenses are balanced.

The center serves numerous surrounding communities and governmental units. It can serve an increasing number of customers who pay rates for services to the center. Rates can be quoted to customers at lower amounts with increased customers because of the economies of scale and the spreading of the center's fixed costs among the users. However, the reverse phenomenon also applies when, as has recently happened, users leave the fold because they believe they can provide services to citizens at a lower rate than charged by the center. Loveland/Symmes Township withdrew from the user group to start their own center because they believe that they can provide the services to their citizens at a lower cost than the amount charged by the center. The lost revenue from this customer required the center to make up for the shortfall by obtaining operating funds from the general fund. Moreover, the general fund has remained at about the same level because sales tax receipts have remained constant due to the growth of neighboring suburban counties. This has caused the revenue obtained with county distribution money to remain constant, but without significant growth.

The Union and the members are not satisfied with the trial pay for performance program and believe that it has incurable flaws. The rating system in the final analysis is based upon evaluations that contain subjective judgments of managers. This has produced inconsistent and unexplainable results. Employees consistently receive higher or lower scores depending upon the proclivities of particular supervisors or managers. For example, employees on one particular shift are consistently graded lower by a particular supervisor causing employees to receive lower scores and incentive pay. Employees understandably want to avoid working on this shift to avoid receiving lower pay. Moreover, the Union believes that the appeal process is deficient. Employees who wish to challenge their scores to obtain higher pay are not permitted to grieve their case and must ultimately rely upon the final decision of management. One particular employee challenged her score and wound up receiving a much higher score and evaluation. This demonstrates the subjective nature of the system. The supervisors have not received sufficient training to conduct objective evaluations.

Recommendation

The Union believes that the major flaw in the pay system is the lack of recognition for longevity and seniority. Employees after long years of service should have the security of knowing what their pay will be without the uncertainty of variances depending upon evaluations. There should be a fixed component of base pay that recognizes longevity and years of service with an incentive component as an additional layer. The Union proposes a system at economic levels similar to the total amounts proposed by the Employer; their differences are in the distribution of pay and not the total amounts committed in the budget.

The Union wants to restore a step system that previously existed in their contracts which pays additional money for years of service. It now proposes ten pay steps with 2.12% increases at levels between the minimum and maximum levels. The Union further proposes a bonus that recognizes and rewards performance.

The Employer, however, fundamentally opposes pay for longevity. It was able to negotiate the removal of pay steps that rewarded employees solely for longevity and it has no intention of returning to that system. If it is found that the trial period for the performance program should be ended because of problems raised by the Union, the result should not be a pay system that returns steps for seniority. The Employer would prefer an across the board increase in place of the performance program instead of a return to pay steps. Other units have variations of pay for performance that should be considered before the entire concept is rejected. Eventually, all county employees will be paid based upon performance; at least, that is the stated goal of the commissioners.

Recommendation:

A seniority or longevity based step system, based upon the evidence, should not be restored between the parties because the parties negotiated the removal of the steps and instituted the present compensation system on a trial basis. There has been considerable time and effort invested in the new system, and although there have been some problems, it does not seem reasonable to scrap the entire system. The parties should continue to adjust the system to meet their needs and to accomplish the stated goals of rewarding performance, but also recognizing experienced employees who have rendered satisfactory services over an extended career.

ARTICLE 19
WAGES

Section 19.1. The parties shall continue with the committee to review the evaluation process. The committee shall be comprised of one union representative from each of the three shifts, the Department Head, the Operations Manager and the Senior Supervisor. The FOP/OLC Staff Representative and a representative designated by the County Personnel Department also may sit in on committee meetings. The committee shall meet within two (2) weeks after each completed January evaluation period. The committee shall study, evaluate, and discuss the effectiveness of this version of the salary system and evaluation procedures. The committee may recommend changes to the current evaluation policy, but changes may only be made by mutual agreement of the actual parties to this Agreement in accordance with applicable provisions of the collective bargaining law. All supervisors involved in evaluating employees shall receive a minimum of four (4) hours of additional evaluation training before the January 1, 2005. The committee shall determine the type and substance of the training. Employees shall not be entitled to file grievances over their evaluation scores as determined herein.

Effective January 1 of each of the years 2004, 2005, and 2006, the minimum (entry level) rate for Communications Officers will be $31,673, $32,307, and $32,953, respectively. The maximum rate during the contract shall be $45,500. No Communications Officer (hereinafter "employee") shall be paid a base rate of less than the applicable minimum, nor a base rate of more than the maximum. Subject to the other provisions of this Agreement, effective in calendar years 2004, 2005, 2006, employees shall receive the following wage increases:

Effective with the beginning of the pay period that includes January 1 of each such calendar year: 2.5% added to the base rate of each employee; plus, for those who qualify:

a) 0.5% added to the base rate for a score of 87 – 97.9 and at least "partially achieved" in every category of the employee's most recent year-end evaluation (equaling 3.0% total for all base increases for such an employee that January); or 1.0% added to the base rate for a score of 98+ and at least an "achieved" in every category of the employee's most recent year end evaluation (equaling 3.5% total for all base increases for such an employee that January).

b) July 1: 1.0% supplement not added to the base for a score of at least 87 and at least "achieved" in every category of the employee's most recent mid-year evaluation.

All base increases or supplements will be based on the previous year's pay rates – not compounded upon the new January rates for that year. If a base rate increase would not put an employee above the maximum rate, any percentage that the employee would have received over the maximum will be paid as a supplement on the date due, rather than added to the base.

Section 19.2. [no change]

Section 19.3. [no change]

Section 19.4. If an employee has not achieved a score that merits more than the 2.5% minimum safe-harbor base increase . . . [rest of language unchanged].

Section 19.5. [only change is 2.5% instead of 2.0%].

Section 19.6. When the Employer determines that a bargaining unit employee is to be assigned as a training/retraining other employees, the training officer shall be paid an additional one-dollar ($1.00) per hour for each hour he or she is actually engaged in training/retraining. Selection of Training Officers is the exclusive right of the Employer and not subject to the grievance procedure. [rest of paragraph unchanged].

Date: March 3, 2004

Mitchell B. Goldberg

Mitchell B. Goldberg, Fact Finder