



STATE EMPLOYMENT
RELATIONS BOARD

IN THE MATTER OF FACT-FINDING 2006 MAR -6 A 11: 35

BETWEEN

HAMILTON COUNTY SHERIFF

AND

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

BEFORE: E. William Lewis

2006 MAR -6 A 11: 35
STATE EMPLOYMENT
RELATIONS BOARD

SERB CASE #'s: 2005-MED-07-0725, Enforcement Officers ✓
2005-MED-07-0726, Supervisors

PRINCIPAL ADVOCATE FOR THE SHERIFF

Mr. Charles A. King, Director of Labor Relations
Clemans, Nelson & Associates, Inc.
411 Loveland Avenue, Suite 101
Loveland, Ohio 45140

AND

PRINCIPAL ADVOCATE FOR THE UNION

Mr. Paul Cox, Chief Counsel
Fraternal Order Of Police, Ohio Labor Council Inc.
222 East Town Street
Columbus, Ohio 43215

E. William Lewis was selected by the parties to serve as the Fact Finder in the above referenced case, and duly appointed by the State Employment Relations Board in compliance with the Ohio Revised Code, Section 4117.14, C (3).

January 12, 2006 was established as the initial hearing date and the parties timely filed the required pre-hearing statements. The initial hearing date was used for mediation, and a number of unresolved issues were settled. The parties and the Fact Finder selected January 26, 2006 as the date for the evidentiary hearing.

After the January 12, 2006 mediation session the following issues and/or contract provisions remained as being unresolved:

ENFORCEMENT OFFICERS

SERGEANTS & LIEUTENANTS

ARTICLE 18: PHYSICAL FITNESS

ARTICLE 32: PHYSICAL FITNESS

ARTICLE 19: HOURS OF WORK
AND OVERTIME

ARTICLE 17: HOURS OF WORK
AND OVERTIME

ARTICLE 20: WAGES AND
COMPENSATION

ARTICLE 18: WAGES AND
COMPENSATION

ARTICLE 22: INSURANCE

ARTICLE 20: INSURANCE

ARTICLE 25: SICK LEAVE

ARTICLE 23: SICK LEAVE

ARTICLE 43: (NEW) DISPUTE
RESOLUTION PROCEDURE

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RESOLUTION PROCEDURE

BACKGROUND:

This case evolves out of a collective bargaining dispute between the Hamilton County Sheriff, hereinafter known as the Employer, and the Fraternal Order of Police, Ohio Labor Council, hereinafter known as the Union. There are two bargaining units being represented by the Union in these negotiations. The larger unit, Enforcement Officers, is composed of 245 represented employees in the classifications of; Court Service Officer (CSO), Patrol Clerk, Patrol Officer, Patrol Corporal, and Evidence Technician. The smaller unit is composed of 35 represented employees in the classifications of Lieutenant and Sergeant.

The Agreements expired on December 31, 2005, and the parties agreed that modifications to the Enforcement Officers Agreement shall be incorporated into the Enforcement Supervisors Agreement(Attachment A). The parties have timely filed the appropriate extensions and waivers to ORC 4117-9-05 (G) and ORC 4117.14 (G)(11).

The parties began bargaining on a renewal Agreement on August 26 and had five bargaining sessions prior to January 12, 2006. As encouraged by ORC 4117, the parties entered into mediation on January 12, 2006. During that mediation session five Articles were resolved.

The format of this report will be to list an Article followed by a brief review of the position of each party and a Fact Finder discussion regarding the unresolved issue(s). My recommendation will be accompanied by the Agreement language, when appropriate, reflecting the recommended changes.

When addressing the unresolved issues, as required by ORC 4117.14 pursuant to division (C)(4)(e), the Fact-Finder will consider the following criteria:

- (1) Past collective bargaining agreements, if any, between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interest and welfare of the public, the ability of the public employer to

- finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
 - (5) Any stipulations of the parties;
 - (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

UNRESOLVED ISSUES:

ARTICLE 18 (32) PHYSICAL FITNESS

Employer Position:

Current language

Union Position:

Add the following Section to the PHYSICAL FITNESS, Article:

“Any employee who meets the physical fitness standards on the annual weigh-in and is found in compliance shall receive one (1) additional Personal Day per year.”

Discussion:

According to testimony this provision has been part of these units' Agreement since 1987. The Employer's Fitness Policy has three components: (1) Weight Policy, (2) Cardio-Vascular test (run/walk), and (3) Agility test. According to testimony, few changes have been made to the Employer's Fitness Policy or this provision over the years. Those changes to the Policy have been generated through the Labor Management Committee (Article 7), according to the Employer. Testimony showed, that in order to enhance physical fitness, the Employer has made three facilities throughout the County available to employees, on a 24-7 basis. Employer testimony indicated that there was over a 93% success rate for first time “takers”, and there have been no disciplines issued to these bargaining

unit employees.

Few proposals have been made on this provision over the years, according to Union testimony. Union evidence (Tabs 1-11) show some other law enforcement units having similar provisions with cash bonuses, however, it is not a regular or necessary component of law enforcement contracts.

Little dialogue or discussion has been had between the parties, with the Union implying an Employer lack of interest in the proposal, or discussion thereof. There is no evidence of any major employee problems caused by this provision, and if it were so, changes would have been proposed by the Union periodically since 1987.

Recommendation:

Current language

ARTICLE 19 (17) HOURS OF WORK AND OVERTIME

Employer Position:

Change Section 19.5, B & I as follows:

19.5 B. Requests for compensatory time off shall be honored subject to the operational needs of the Department; **operational needs includes staffing patterns and needs, contractual requirements, and financial impact.**

I. Any employee may elect to convert all or part of his/her accrued compensatory balance existing as of (October) **August 31** of each year to cash, payable by separate check no later than (December 31) **September 30** of each year. Cash-in requirements must be made in whole hour increments, except where the employee is converting his/her entire balance. Payment shall be made at the rate of pay existing at the time of cash-in. **An employee may carry over no more than forty (40) hours of compensatory time to the next accrual year.**

Union Position:

Change Section 19.5, 1st paragraph, to read as follows: Employees may elect, in lieu of overtime pay, to accept compensatory time. Compensatory time shall be credited at the rate of one and one-half (1 ½) hours off for each one (1) hour of overtime worked. Compensatory time may be accumulated by an employee, but only to a maximum of (two hundred forty 240) **FOUR HUNDRED EIGHTY (480)** hours at any given time. In the event an employee accumulates (two hundred forty 240) **FOUR HUNDRED EIGHTY (480)** hours of compensatory time, then any future overtime hours of work and overtime hours shall be compensated with overtime pay. The following rights and conditions shall exist as they pertain to compensatory time:

Discussion:

It is unfortunate that the parties did not spend more time discussing (bargaining) this issue, because there are some mutual interests on the compensatory time use policy and accumulation, that could have been addressed.

There are a number of ways bargaining unit employees get paid time-off in this Agreement, compensatory time being only one of them. Some of these paid absences can be taken in as small of increments as one hour. In the fact finder's opinion, the accumulation of compensatory time is discretionary in nature. When the employee chooses to use the accumulated time it should not create an inordinate hardship on another employee. There are other ways for employees to address emergency and urgent time-off needs other than compensatory time. Furthermore, testimony convinced the fact-finder that the Employer is making a reasonable effort of accommodation for comp-time usage, in its present practice.

The Employer's proposal to restrict comp-time carry-over to forty (40) hours is not substantiated with real world comparable evidence. Comp-time banks or accumulation limits vary widely, but a forty (40) hour limit is rare. There are other ways to control costs, and the fact finder questions the effectiveness of such a proposal (40 hr. limit) when there are so many in these bargaining units who "cash-in" annually, or don't accumulate much comp-time (CT exhibits as of 11/05 & 1/26/06).

On the other hand, the Union argues that its comparables show that their proposal of allowing 480 hours of comp-time accumulation, is appropriate. According to

comp-time accumulation evidence as of 11/05, approximately 79 bargaining unit employees were at the 240 hour maximum. However, when the fact finder considers other SERB supplied data of eight large county Sheriff Office's, the 240 hour accumulation limit, does not appear out of line. The 240 hour limit does, in practice, tend to limit the Employer's alleged "overtime" accumulation liability. When you consider the 240 hour accumulation of comp-time, plus the three year accumulation of vacation time, a retiring employee can leave with nearly 1000 hours of pay, exclusive of the 800 hour sick leave "cash-out" bonus.

Recommendation:

ARTICLE 19—Current language, except Section 19.05 (B) to read as follows:

- B. Requests for compensatory time off shall be honored subject to the operational needs of the department (e.g. having the proper number and type of staff on duty) and provided the grant of compensatory does not cause forced overtime.

ARTICLE 20 (18) WAGES AND COMPENSATION

Employer Position:

The Employer has proposed an across the board increase of two percent (2%) for each year of the three Agreement. The increases are to be effective the first pay of January 2006, 2007 and 2008. (Sections 20.1, 20.2 & 20.3)(Sections 18.1 & 18.2)

The Employer has proposed to delete the last paragraph of Section 20.4, regarding the combination of CSO's 1 & 2, which occurred in the expired Agreement (12/31/05). However, the Employer proposed to replace the deleted language with the following sentence: **"Court Service Officers who were Court Service Officer 1's, prior to the merger with Court Services Officers 2's in January 2004, shall advance through the CSO pay steps based upon their time in the combined class.**

Section 20.6—add K-9 to current language.

Section 20.8—Delete (Performance Review Committee)

Union Position:

The Union has proposed across the board increases of three and one-half percent (3.5%) effective the pay period which includes January 1, 2006, three and one-half percent (3.5%) effective the pay period which includes January 1, 2007, and four percent (4%) effective the pay period which includes January 1, 2008. (Sections 20.1, 20.2, and 20.3) (Sections 18.1 and 18.2)

In addition to the across the board increases proposed to Section 20.1, 20.2, and 20.3, the Union proposed a new Step 5 to the classification of Patrol Officer. This new Step 5 represents a 3.3 % increase over Step 4.

The Union also proposed to compensate the Classification of Corporal and Evidence Technician at an annual salary equal to eight percent (8%) more than the top salary step of the Patrol Officer Classification. (Section 20.5)

Section 20.4—Delete the last paragraph referencing the 2003-2005 Agreement’s combination of Court Service Officers’ 1 & 2.

Section 20.5 (B)—Change current language to provide that an employee assigned to a higher pay grade shall be compensated at the higher pay rate for the duration of the assignment.

Section 20.6—Add K-9 to the current language.

Section 20.7—Longevity—delete the following from the last sentence: “beginning the first pay period after the effective date of this Agreement.” Unnecessary language according to the Union’s testimony.

Discussion:

Section 20.4----Both parties have proposed to delete the reference to the combined classifications of CSO 1 and 2's, agreed to in the 2003-2005 Agreement. However the Employer has proposed language defining the date of step advancement for those bargaining unit employees moving from CSO 1's. The Employer claims that

the move-up date should be the date the CSO 1's moved into the combined classification. The Union, in its presentation, claimed that the combination was a merger, not a promotion. Union testimony indicated that CSO 1's had been doing the work of 2's for quite a while. The existing language in the Agreement does not identify the combination as a merger, and the CSO 1's are moved to new steps, not promoted, even though all cases represent an increase in pay. Furthermore, the language, "No current CSO 1 will advance to step 4 during the life of this Agreement", implies, in the fact finder's opinion, that the original advancement dates were not intended to be modified, except as delayed by this transition.

Section 20.5 (B)----The Union is seeking to expand and increase the amount an employee is compensated for temporary time in a higher pay grade. No comparables were brought forward, nor could the fact finder find similar language to the proposed in other bargaining units of this Employer, represented by this Union. The fact finder did not hear testimony that there was a major problem concerning employees being assigned to higher rated work. Furthermore, administration of such a provision could have some difficulties, as claimed by the Employer.

Section 20.6----Both parties proposed to add K-9 Officers to the group of employees compensated at the Corporal rate of pay.

Section 20.7 (last paragraph)---The Union is proposing to delete unnecessary language, which reads as follows: "This Section shall be effective immediately and each employee shall have his/her pay adjusted in accordance herewith beginning the first pay period after the effective date of this Agreement."

The Employer did not raise an objection and the Sergeants and Lieutenants Agreement does not contain the proposed deleted language.

Section 20.8----The Employer proposed to delete this Section, which addresses a Performance Review Committee. According to the Employer, it has been inoperable. The Union raised no objections.

Sections 20.1, 20.2, and 20.3----With regards to increases to wage rates, the Employer has proposed across the board increases of two percent (2%) per year, for three years. The two percents(2%) are to be effective with the first pay in January

of each year, beginning with January 2006. The Employer argues limited ability to pay.

The Union has proposed increases to wages in the form of across the board's of three and one-half percent (3.5%) effective the beginning of the pay period which includes January 1, 2006; a three and one-half percent (3.5%) effective the beginning of the pay period which includes January 1, 2007; and a four percent (4%) increase effective the beginning of the pay period which includes January 1, 2008. In addition to the across the board increases the Union has proposed to add an additional step (5) to the Patrol Officer classification. They further proposed to pay Corporals at a rate of pay eight percent (8%) above the top step of Patrol Officer. The Union argues that Hamilton County employees, with emphasis on Patrol Officers, are not paid comparable to wage rates of surrounding Departments.

At the January 12 hearing, prior to our mediation session, the County's Deputy Director of Administrative Services presented data regarding County receipts and expenditures for the Sheriff's Office. In reviewing the Employer's contract costing data during the January 26 hearing, the Union challenged the accuracy of their costs. The Employer's costing numbers did not include turnover, and after some discussion with the parties, the Employer agreed to revise the analysis to include turn over estimates and health care projected increased costs. The supplemental data was received by the fact finder on February 7, 2006. The revised supplemental data did not substantively change the costing projections.

The Employer argues that comparables are irrelevant when there is inability to pay. Furthermore, the Union's comparables include villages and townships which, according to the Employer, have never been considered comparable. The County, claims the Employer Representative, has always been fiscally sound until the last two years. There has been a significant variance between the projected sales tax revenue increases and the actual increase in receipts. This County has a two billion dollar plus annual budget, however, most of the funds are restricted. The Sheriff's Office is funded out of the General Revenue Fund with a projected revenue receipts of two hundred and forty six million. The Sheriff's portion of the 2006 projected General Fund is 66.2 million, which represents a \$600,000 increase over 2005. According to Employer submitted data the General Fund revenue is not increasing. Although the Sheriff's allotted 2006 budget shows a projected increase of \$600,000, they have proposed an increased wage cost of \$1, 300,000, more than twice the

revenue increase.

The Union argues that comparably the Patrol Officers' wages are below the area. Their submitted data of approximately 26 entities, verifies their claim. However, their comparables are primarily cities, townships and villages, not normally considered comparable, according to the unrefuted claim of the Employer. The Employer raised suspicion regarding the Union's comparables, however, they produced no comparable data of their own, they simply claimed inability to pay more. No counties were detected by the fact finder as being included in the submittels, not even area county Sheriff Offices. The funding sources do differ among counties, cities, villages and townships. A lack of other Sheriff's Office wage data was perplexing to the fact finder, so a request was made to SERB to provide large populous counties wage and benefit data. The SERB requested data of the eight large county Sheriff Offices' wage data, shows these bargaining units as being above the average at entry and top levels.

These bargaining units are entitled to a competitive wage increase. The Employer has already offered 2% per year, however, considering the bargaining history over the past six years, of not less than 3% per year, I do not find the Employer's offer sufficient. However, the proposed additional step for Patrol Officers of 3.3% would provide approximately 50% of the Patrol Officers, all Corporals, Sergeants and Lieutenants with a first year increase of more than six percent. These proposed increase are not compatible with applicable comparable data, nor commensurate with the Sheriff's projected revenues, in the fact finder's opinion.

Recommendation:

Section 20.1—Effective the beginning of the pay period which includes January 1, 2006 all bargaining unit employees are to receive a three percent (3%) across the board increase, and the listed pay schedules are to be adjusted accordingly.

Section 20.2—Effective the beginning of the pay period which includes January 1, 2007, all bargaining unit employees are to receive a three percent (3%) wage increase, and the listed pay schedules are to be adjusted accordingly.

Section 20.3—Effective the beginning of the pay period which includes January 1, 2008, all bargaining unit employees are to receive a three percent (3%) across the

board wage increase, and the listed pay schedules are to be adjusted accordingly.

Sections 18.1 and 18.2 (Sergeants and Lieutenants)—Change January 1, 2003 to January 1, 2006.

Sections 20.1, 20.2 and 20.3—Patrol Officers

----no change in the number of steps.

—Corporals to remain at current pay differential.

Section 20.4—Delete the last paragraph, referencing CSO 1& 2 merger. The Employer proposal to add new language is rejected.

Section 20.5—Retain current first sentence. Delete the remaining language of the paragraph.

Section 20.6—Current language, except add K-9 Officers.

Section 20.7—Delete last paragraph. Union proposal is recommended.

Section 20.8—Delete. The Employer's position is recommended.

ARTICLE 22 (20) INSURANCE

Employer Position:

Current language except delete Section 22.7, which reads as follows:

“The co-payment paid by the bargaining unit employees for any specific insurance plan provided for in Section 22.1 shall not increase from year to year by more than the percentage wage increase received by the employee's classification group.”

Union Position:

Current language.

Discussion:

Although the fact finder seriously questions the bifurcation of single employer multiple bargaining units, regarding health insurance, it is so, here. To eliminate the bifurcation at this time would, in the fact finder's opinion, require me to create some imagined "quid pro quo", without meaningful input from the parties, a definite labor relations taboo. This issue is not a "sleeping dog", and the parties need to address it to bring stabilization to their labor/management relationship. However, to consider further change to Section 22.7, without negotiations, would be inappropriate.

Recommendation:

ARTICLE 22 (20), Section 22.7 (20.7): current language.

ARTICLE 25 (23) SICK LEAVE

Employer Position:

Current language, except as follows:

Section 25.6—On 1/26/06, at the Fact Finding Hearing, the parties tentatively agreed to add "on duty" to the second paragraph of Section 25.6.

Union Position:

Section 25.7—to read as follows: "An employee with ten (10) or more years of service with the Employer, or ten (10) or more years of public service with political subdivisions of the State of Ohio, who retires from active service with the Employer, shall be paid for fifty percent (50%) of the value of his/her accrued but unused sick leave, up to a maximum payment of eight hundred (800) hours. Payment shall be based upon the employee's rate of pay at the time of retirement. **Any employee who has accumulated more than sixteen hundred (1600) hours of sick leave shall have the opportunity to sell back one day for each two accumulated days. This sell back of sick leave shall be paid for the first pay period in July with a maximum of eight days pay per year**".

Discussion:

Section 25.7—The Union submitted numerous examples of sick leave conversion, and upon examination, they varied extensively. Some conversions provided for one half and some provide for one third of the total hours. Some conversions had maximum accumulation hours ranging from 1200 to 2000 hours. The Employer's testimony declared that these bargaining units can receive a maximum retirement pay of eighty (80) hours more than all other County employees. Internal comparable are very important to this fact finder, and I do not find the current provision to be substandard.

Recommendation:

Section 25.6---Add **on duty** to the second paragraph.

Section 25.7---Current language.

ARTICLE 43 (43) NEW-DISPUTE RESOLUTION PROCEDURE

Employer Position:

Rejects the Union's proposal to add a new ADR Article.

Union Position:

Add new Article 43 (see attachment B).

Discussion:

The Union is proposing an interim bargaining provision as encouraged by SERB, which can be useful, if used properly. However, the parties can, at any time, mutually agree to bargain on an issue. A Joint Labor/Management Committee, as provide in this Agreement (Article 7), is an alternate tool for resolving problems during the life of an Agreement. No evidence was brought forward to convince the

fact finder that the Employer has been abusive to the collective bargaining process or has a practice of committing unfair labor practices.

Recommendation:

The Employer's position is recommended.

SUMMARY

This will affirm the foregoing report consisting of 15 pages, plus attachments, and recommendations contained herein, are made in this matter of Fact Finding by the below signed Fact-Finder. If there is found conflict in the Report between the Fact Finder's Discussion and his Recommendations, the Recommendations shall prevail. All matters of tentative agreement are recommended to be included in the Agreement. All provisions of the Collective Bargaining Agreements that neither party proposed revisions to, are to be carried forward into the new Collective Bargaining Agreements unchanged.

To the best of my knowledge, said Report and its included recommendations complies with applicable provisions of ORC 4117 and related Rules and Regulations adopted by the State Employment Relations Board.

I therefore affix my signature at the city of Sun City Center, in the County of Hillsborough, in the State of Florida this 27th day of February 2006.



E. William Lewis
Fact Finder

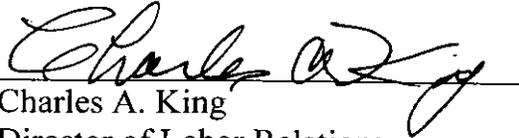
ATTACHMENT A

**LETTER OF UNDERSTANDING BETWEEN
HAMILTON COUNTY SHERIFF AND FOP/OLC, INC.
SERB CASE NOS. 05-MED-07-0725 & 05-MED-07-0725**

The representatives of the parties agree that modifications to the Enforcement Officers agreement for 2005-2008 shall be incorporated in the Enforcement Supervisors agreement for 2005-2008.

Hamilton County Sheriff

FOP/OLC, Inc.



Charles A. King
Director of Labor Relations
Clemans, Nelson & Associates, Inc.



Paul L. Cox
Chief Counsel

Date: 26 Aug 05

