



FACT FINDERS REPORT

STATE EMPLOYMENT
RELATIONS BOARD

2006 JAN 27 A 11: 26

IN THE MATTER OF:

Hamilton County Deputy Sheriff's Supervisor Association
And
The Hamilton County Sheriff

Case Numbers:
2005-MED-07-0735

Before Fact Finder
N. Eugene Brundige

PRESENTED TO:

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

And

Stephen S. Lazarus, Attorney and Advocate
For HCDSSA
915 Cincinnati Club Bldg.
30 Garfield Place
Cincinnati, Ohio 45202-4322

And

Mark J. Lucas, Attorney and Advocate
For Hamilton County Sheriff
6500 Parkcenter Avenue, Suite 100
Dublin, Ohio 43016-6235

Fact Finder N. Eugene Brundige was selected by the parties who notified The State Employment Relations Board of the selection on September 23, 2005. SERB subsequently appointed Mr. Brundige in compliance with Ohio Revised Code Section 4117.14 ©(3).

The parties agreed upon a hearing date of December 13, 2005 at the Hamilton County Courthouse. The parties timely filed the required pre-hearing briefs.

The Fact Finder invited the parties to attempt to mediate the remaining issues. The parties noted that they had made significant progress through previous negotiations but felt that they were too far apart on economic issues to benefit from further mediation.

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

- Article 18 Hours of Work & Overtime**
 - 18.03 Operational need and financial impact
- Article 19 Wages**
- Article 21 Insurance**
 - 21.5 (proposed new) Insurance while on Leave
 - 21.6 (proposed new) Proposed Cap
- Article 22 Holidays**
- Article 24 Sick Leave**
- Article 27 Uniforms**
 - 27.8 Amount
 - 27.8 Date
- Article 28 Expenses**
 - 28.4 (Proposed New) Free Parking

Article 30 Leave of Absence

Article 34 Residency

Article 37 Duration

Article 38 (new) Voluntary Overtime

This fact finding matter deals with one bargaining unit. It is composed of All Hamilton County Corrections Supervisors (Corrections Sergeants, Corrections Lieutenants and Corrections Captains) employed by the Hamilton County Sheriff.

The Association was represented by Stephen S. Lazarus, Spokesperson; Theodore Sampson, Chairman; Michael H. Holte, Assistant to Attorney Lazarus; John S. Murray, Vice Chairman; and Stephen J. Toelke, Secretary.

The County was represented by Mark J. Lucas, Spokesperson for the Sheriff. Also appearing for the County and Sheriff were Gail Wright, Sheriff's Office Legal Counsel; Joe Schmitz, Sheriff's Office – Director of Corrections; Kim Serra, HR Manager

The respective cases were presented in an organized and helpful manner.

The issues presented to the Fact Finder are almost all financial in nature. The parties have been able to resolve most of the non-economic issues.

One issue that was raised repeatedly throughout the hearing was the position of the parties on whether a specific proposal should be

consistent with other collective bargaining agreements under the Sheriff's jurisdiction or whether they should be different.

The association asserted that the County was not consistent on their approach. On some issues the County would argue consistency between contracts and on others they would argue uniqueness.

While this is a true observation it is merely a part of the nature of collective bargaining. The Association also desired to have some parts of their contract the same and others different.

The comparability with other collective bargaining agreements and other employees of the same employer is one of the factors Fact Finders must consider when deciding recommendations regarding various provisions of different contracts.

In this report the Fact Finder will consider each of the issues present, the positions of each of the parties and then will offer a recommendation based upon the various criteria enumerated in the Ohio Revised Code. In those areas where a change in Contract language is proposed, the implementing language will also be recommended.

Article 18 Hours of Work & Overtime

18.04 Operational need and financial impact

Management proposed changes to section 18.04 which governs compensatory time usage. Currently the language reads: "Requests for compensatory leave time off shall be honored subject to the operational needs of the department."

The Sheriff proposes adding some examples that further define "operational needs."

The Employer believes this change is needed as a result of a court decision in the City of Cleveland (Beck v City of Cleveland) in which the court found the lack of a definition of "operational need" to be problematic.

The Association notes that use of compensatory time has not been a problem in this unit. Further the maximum accumulation of compensatory time in this unit is much less than in the other units.

DISCUSSION AND RECOMMENDATION:

Some further definition of the phrase "operational need" would seem to be a good thing. I do agree with the Association that the standard of the overtime budget, when it also applies to others units with different language and different usage patterns does not seem to be a good standard to note in the language.

I recommend the Article 18.04 read as follows: "Requests for compensatory leave 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 time does not cause forced overtime.

Article 19 Wages

The parties are far apart on the issue of wages. The Association requests a 7% increase in each of the three years of the collective bargaining agreement.

The employer proposes a 2% increase in each of the three years.

The Association bases its proposal on comparable data from the top ten counties in the state.

According to the data gathered by the Association, in order for Hamilton County Sheriff's Correction Supervisors (Sergeants) to catch up with the average wage paid in those externally comparable counties where corrections supervisors do not need OPOTA certification, would be 9.82%. For Lieutenants the percent would be 15.33% and Captains 15.87%.

The Association cites SERB data which would indicate annual settlements near 4% in police units. They see this as the minimum but argue there must also be an equity adjustment in addition to this 4% floor.

The Sheriff's representatives, not surprisingly, saw the financial picture facing the county quite differently. They note that this group happens to be the first to negotiate in this bargaining cycle.

The county acknowledges that there are areas of the contract where these employees can be treated differently but wages are viewed by all county employees and each group argues they should receive at least as much of an increase as each of the other units.

The employer notes that this unit has very little turnover and that entry into the unit is achieved through the promotion process.

The County Budget Director presented data noting that the General Fund in 2005 was budgeted for a total of \$251.9 million. At the time of the hearing the projections showed \$246.1 and that amount included a one time \$3 million payment.

The revenue outlook presented for 2005 stated several factors regarding current income.

The sales tax revenue for 2005 was approximately a half million under projections.

The sales tax increases were much lower than anticipated. The actual increase was only 1.6%.

There has not been an increase in the income from fines and forfeitures.

The Local Government Fund (money reimbursed to local governments from the State) has been frozen.

There has been minimal growth in interest earnings.

There has been a decrease in reimbursements to the Sheriff from services provided and billed to other funds.

The Sheriff presented a document tracking increases in the consumer price index for the period between 2000 and 2006 and compared that the General Fund. The documentation shows a widening gap between General Fund Revenue which is actually less in 2006 than it was in 2000. (250.7 million in 2000 and 246.3 million in 2006.)

In addition the County provided a summary of base wage increases for the years 2003 through 2006 for all employees units within Hamilton County.

The Association cites an award in which Fact Finder Frank Keenan quotes from Fact Finder Alan Miles Ruben wherein he said: "[It is] clear that there has been no internal linkage of Patrol Officer's compensation to that of any other Unit

or to that [of] Non-Bargaining Unit employees. Indeed, there does not appear to be any linkage between the wages established for any one Unit and another.”

DISCUSSION AND RECOMMENDATION:

If one examines only external comparables, the employees in the bargaining unit do not fare well compared to other large urban departments. This is a valid consideration but cannot be examined in a vacuum.

We have no way to compare the total economic packages present in each of these jurisdictions or differences in the nature of the job as they compare between departments.

Even though I am aware of the conclusion that there is “no linkage” between units” (and I agree with that conclusion), that does not preclude this Fact Finder from looking at internal comparables and equity as an additional factor in arriving at a fair recommendation.

Let me comment on the financial situation in Hamilton County. This county appears to be a very well managed operation and it certainly is not broke. But like almost every governmental jurisdiction this county is operating in a very difficult economy.

The revenue picture is verifiable. Hamilton County’s General Fund has been static for a number of years. The County can celebrate the very solid industrial and corporate base that is committed to continuing in the area, but the economy has not recovered to a level where there is solid sustainable growth in income.

Fact Finder Marmo in his February 5, 2003 report stated: "...based on appropriate external comparisons, bargaining unit members are relatively underpaid". I would agree with Fact Finder Marmo if one were to only examine external comparisons, but Fact Finding recommendations are not based on any one single factor.

Conciliator Goulet also made an observation with which I agree when she states: "*The Fact-finder succinctly stated that the basis for wages increases needs to consider both internal equity and external equity.*" (May 8, 2003 Conciliator's Report)

Likewise there are other factors which the Fact Finder must consider including the bargaining history between the parties, the lawful authority of the public employer and such other factors...."

This Fact Finder has always considered one of those factors to be the relative position of employees. In examining the bargaining history it is clear that, due to the conciliation award, this unit fared better than other units.

The position of the County (2% per year) would cause these employees to lose ground and fall farther behind in external comparables and this Fact Finder believes the County has the ability to do somewhat better without putting an undue burden on the budget.

The position of the association would work an unreasonable hardship on the County and would raise expectations of other County employees to an entirely unreasonable level.

Based upon these considerations and the evidence presented, I recommend the salaries of persons in this bargaining unit be increased by 3.5% in the first year, 3 % in the second year and 3% in the third year. This amount, especially in the first year, should allow this unit to remain slightly ahead of other County units without establishing an unreasonable pattern.

I recommend the introductory language of 19.1 read: *Effective the first pay of 2006 the annualized pay levels for all bargaining unit employees shall be as follows:*

I recommend the introductory language of 19.2 read: *Effective the first pay of 2007 the annualized pay levels for all bargaining unit employees shall be as follows:*

I recommend the introductory language of 19.3 read: *Effective the first pay of 2006 the annualized pay levels for all bargaining unit employees shall be as follows:* This language is as proposed by management.

Article 21 Insurance

- 21.7 (proposed new) Insurance while on Leave
- 21.8 (proposed new) Proposed Cap

Management proposes no changes to the Insurance Article.

The Association proposes two changes. The first is to add the ability for bargaining unit members on unpaid leave to maintain their health insurance by paying the total cost of the premium.

This was explained as a need for persons who are on leave to have an ability to maintain health insurance.

The cap is needed to control the increasing cost of health insurance being passed on to employees.

To support the need the Association has submitted the premiums paid for various health insurance plans in the ten largest counties of Ohio. Each comparison shows Hamilton County as the highest.

The County Personnel Director testified regarding the philosophy of the commissioners. He stated that the County had attempted to maintain benefits at a very high level for employees.

He offered a through explanation of the various plans and the efforts of the County to minimize costs while maintaining the benefit levels.

DISCUSSION AND RECOMMENDATION:

It appears that the health care plans offered by Hamilton County are carefully studied and well managed. As noted in the hearing, health care is a serious issue for employees and employers in all jurisdictions.

The employee contribution is significant but the plans appear to provide very good benefits.

It appears that the cost distribution of approximately 85% paid by the employer and 15% by the employees is about average among collective bargaining agreements.

I am sympathetic to the bargaining unit members regarding their desire to have a cap to assure that an increasing amount of their take home pay not be diverted to health care. I am also sympathetic to the County regarding the impact of health costs increases on the General Fund budget.

Health care is the one bargaining issue that requires as much uniformity as possible and it is clear most County units do not have a cap of any type.

In light of the current financial situation I cannot justify the addition of a cap.

The proposal to allow persons to pay for their own insurance premiums in a jurisdiction that is not self insured is problematic. Adding such variables and restrictions on insurance carriers bidding to provide coverage will work as a detriment not only to the County but also to the employees.

I recommend no change to the current insurance article.

Article 22 Holidays

The Association proposes several changes in this article. The first is an additional holiday. The second is the addition of a holiday bank of compensatory time. The third is a provision for cashing the unused portion of that bank of compensatory time annually. The final proposal is that non-continuous operation employees would not normally be scheduled on a holiday.

It was noted that most other County units receive a 1 ½ rate plus the holiday pay when the bargaining unit member is required to work the holiday and that members of the Corrections Officer unit get an additional holiday (the day after Thanksgiving.)

The Sheriff notes the expense of these proposals and argues that the cost of them would be prohibitive. Equally important they are concerned about the operational problems this would create for the operation of the jail.

DISCUSSION AND RECOMMENDATION:

Clearly the number and payment for holidays is one of the areas that employees across bargaining units view closely and covet the more generous arrangements that others might have.

I am not prepared to recommend the major surgery on this article as proposed by the Association. I am prepared to attempt to create some internal equity.

I recommend that Section 22.1 be amended by addition to add after "Thanksgiving" this language: **The Day after Thanksgiving**

I recommend Section 22.3 read as follows: Employees who work on any of the holidays provided for in this Article shall receive, in addition to their regular wages for all hours actually worked within the twenty-four (24) hour period of the holiday, an amount equal to one **and one half** (1 1/2) paid for each one (1) hour worked up to a maximum of eight (8) hours pay (**at the 1 ½ rate**), provided that a majority of the assigned work schedule was worked within the twenty-four (24) hour period of the holiday.

I recommend the rest of Article 22 remain at current language.

Article 24 Sick Leave

The Union proposes two changes in Article 24. The first is the addition of an extra personal day.

The second proposal is to provide 100% Cash-in of sick leave for an employee who dies in office.

Management does not believe the Association has provided any rationale that would support an additional personal leave day. They also noted that the comparables do not support the addition and this is a significant economic issue.

Management does not have a philosophical disagreement with the 100% cash out for employees who die in office.

DISCUSSION AND RECOMMENDATION:

The addition of days off in any 24 hour operation must be supported with hard data. Staffing is difficult enough without adding more time away. I do not see any evidence that would justify a recommendation to add another personal day. I recommend status quo.

The 100% cash out upon the death of a bargaining unit member in the line of duty is another matter. There seems to be no real disagreement regarding this provision.

I recommend the inclusion of this provision in the collective bargaining agreement. Because the parties have language in other agreements I have not recommend specific language.

Article 27 Uniforms

27.8 Amount

27.8 Date

The Association proposes an increase in the uniform allowance from \$600 to \$800. They noted the Patrol units are currently at \$800.

In a discussion at the hearing the parties agreed upon changing the date in 27.8 from February 1, to May 1. I recommend this agreed to change.

For the County this is an economic issue. They noted that the concern is that if the money is granted, it should be used for cleaning uniforms. There was general agreement that the members of this unit do look sharp but that the employees they supervise in the other unit do not at all times.

DISCUSSION AND RECOMMENDATION:

If a bargaining unit member properly maintains his or her uniform the increased amount can be easily justified.

If they do not then management has ways in which to deal with that situation. This fact finder is tempted to recommend some of those ways. But since everyone agrees the concern is not with members of this bargaining unit, but rather with members of the unit these folks supervise, then it is not appropriate to do so.

I find the suggested increase in warranted and recommend that section 27.8 read as follows: On the first regularly schedule pay period following **May 1 of each calendar year**, all bargaining unit employees shall receive a uniform allowance of **eight hundred dollars (\$800.)**

Article 28 Expenses

28.4 (Proposed New) Free Parking

The Association requests that the twelve members of the bargaining unit who are not currently provided parking, and work first or second shift, be provided free parking in the County owned downtown garage.

They would accomplish this by the addition of a new section 28.4.

The County notes that the Sheriff does not have authority over the garage in question. If a new jail is built many of those currently provided free parking will no longer have it available.

The County notes that downtown parking costs about \$80 per month. They note that no contract has negotiated parking.

DISCUSSION AND RECOMMENDATION:

Negotiating parking is a very difficult area for any employer to enter into. It appears that some supervisors are provided parking but that is not as a result of a collective bargaining provision.

The Sheriff does not have control over the assignment of parking in this garage.

I cannot recommend this benefit be included.

I recommend Article 28 remain unchanged.

Article 30 Leave of Absence

This is a management proposal which would provide a methodology to get a person on recuperative duty status back to full duty.

The Association has very few problems with this proposal. They have merely questioned how the third Doctor would be selected.

After some discussion at the hearing, the parties agreed that they could accept the language proposed in the Sheriff's last proposal.

Therefore I recommend the addition of the new language contained in the final proposal of the Sheriff which would add the words: **or to determine an employee's ability to return to full service from a recuperative duty status.**

For purposes of recuperative duty status, if the Employer's doctor and the employee's doctor agree upon a return to full duty status, then the employee shall return to full duty. If the Employer's doctor and the employee's doctor do not agree, then they shall select a third doctor whose determination shall resolve the conflict. The first and third examination shall.... (The rest of the Article would remain unchanged.)

Article 34 Residency

A new residency requirement was inserted in the last agreement through the conciliation process. The employer wishes to remove this provision that was added. The process currently in the collective bargaining agreement has established a maximum geographic distance from the Sheriff's Office rather than adhering to County boundaries.

The Sheriff argues that members of the bargaining unit should live in the County and thus aid the County by participating and paying taxes.

The Employer also argues that anyone who wished to move had an opportunity to do so under the last contract.

The Association argues that once the provision was ordered by the conciliator, the Sheriff appealed it to the Common Pleas Court and then to the Court of Appeals. The provision was upheld. As a result the actual time for a bargaining unit member to move was very limited.

DISCUSSION AND RECOMMENDATION:

I understand the logic and the strong views of the Sheriff on this subject but labor relations are more stable when the principle is observed that once an issue is resolved, it is accepted and implemented.

This provision is reasonable compared to many I have seen in other contracts.

There is no major problem to be fixed here.

I recommend no change in this article.

Article 37 Duration

All parties want a three year agreement. The Sheriff wants to keep current language. The Association wishes to change to a twenty-six pay period year.

DISCUSSION AND RECOMMENDATION:

Collective bargaining agreements and pay dates almost never align completely. That is not really problematic.

I recommend current language except Article 37.1 be changed from 2005 to **2008**.

Article 38 (new) Voluntary Overtime

The Association has proposed a new creative way to deal with mandatory overtime in the corrections officer unit.

In essence, before a correction officer is forced to work overtime the opportunity would be offered to a supervisor on a voluntary basis.

The Association reported that the corrections officer unit representatives were consulted and they had no objection to this proposal.

The Employer objects to the proposal due to the increased costs that would be involved in paying overtime to higher paid employees.

DISCUSSION AND RECOMMENDATION:

While the proposal is creative and might in some small way assist with the overtime problem in the corrections officers unit, this is the type of proposal that most Fact Finders hesitate to recommend. The unknown effects are such that such concepts need to be agreed to at the bargaining table. This is a concept the parties may wish to continue to discuss and perhaps attempt on a pilot basis, but I do not feel it is appropriate to recommend its inclusion in this collective bargaining agreement.

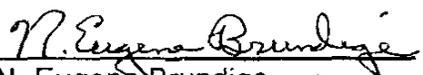
Summary:

These recommendations are offered in the hope they will allow the parties to finalize their next agreement. If the parties can mutually improve upon any of the language I have suggest I invite them to do so.

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 enumerated 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 26th day of January,
2006.


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 electronic mail or facsimile upon Mark Lucas, Clemans, Nelson & Associates (614.923.7707) 6500 Emerald Parkway, Suite 100, Dublin, OH 43016-6235; and Stephen S. Lazarus, Attorney for the Hamilton County Deputy Sheriffs Supervisors Association, (513.721.7008), 915 Cincinnati Club Building, 30 Garfield Place, Cincinnati, Ohio, 45202-4322, (pursuant to a waiver of Overnight Delivery – executed December 13, 2005) and by regular U.S. Mail upon both parties and The Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th floor, Columbus, Ohio 43215-4213, this 26th day of January, 2006.


N. Eugene Brundige,
Fact Finder



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