

STATE EMPLOYMENT
RELATIONS BOARD

IN THE MATTER OF FACT-FINDING
BETWEEN

2006 DEC 13 P 12: 06

LORAIN COUNTY SHERIFF)

CASE NO. 05-MED-10-1164

AND)

FINDINGS
AND
RECOMENDATIONS

FRATERNAL ORDER OF POLICE)

JAMES M. MANCINI, ARBITRATOR

APPEARANCES:

FOR THE UNION

Lucy DiNardo
Staff Representative
FOP/OLC, Inc.

FOR THE COUNTY

Robin L. Bell
Regional Manager/Employer Advocate
Clemens, Nelson & Associates, Inc.

SUBMISSION

This matter concerns fact-finding proceedings between the Lorain County Sheriff (hereinafter referred to as the Employer or Sheriff) and the Fraternal Order of Police, Ohio Labor Council, Inc. (hereinafter referred to as the Union or the FOP). The State Employment Relations Board (SERB) duly appointed the undersigned as fact-finder in this matter. The fact-finding hearing was held on November 29, 2006 in Lorain, Ohio.

The fact-finding proceedings were conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of SERB. During the fact-finding proceeding, this fact-finder attempted mediation of the issues at impasse. The issues remaining for this fact-finder's consideration are more fully set forth in this report.

The bargaining unit is comprised of the classifications of patrol sergeant and patrol lieutenant. There are ten employees in the bargaining unit at the present time.

This fact-finder in rendering the following findings of fact and recommendations on the issues at impasse has taken into consideration the criteria set forth in Ohio Revised Code Section 4117-14(G)(6)(7). Therefore the following recommendations on issues at impasse are hereby submitted.

1. RANK DIFFERENTIAL

The Union proposes that the rank differential for sergeants be increased to 17% from the current 16%, calculated from the highest existing deputy rate. In addition, sergeants would receive \$1.00 per hour for being OPOTA certified. The FOP further proposes that the rank differential for lieutenants be increased to 17%, calculated from the highest existing sergeant rate. Under the Union's proposal, lieutenants would receive an additional \$1.50 per hour for being OPOTA certified. The Union also proposes to increase the physical fitness bonus from \$250 to \$750.

The Employer proposes no change in the current rank differential of 16% for the sergeants and lieutenants. The Sheriff further opposes the Union's proposal that sergeants receive an additional \$1.00 per hour and lieutenants \$1.50 per hour for being OPOTA certified. The Employer is also opposed to the Union's proposal to increase the physical fitness bonus.

The Union contends that an increase in the rank differential is warranted because it is unfair to pay the law enforcement sergeants and lieutenants the same as corrections sergeants and lieutenants. The Union submits that law enforcement sergeants and lieutenants deserve to be paid more because their road patrol work is more dangerous and physically demanding than those who work in the jail. Road patrol sergeants and lieutenants have contact with potentially violent or emotionally distraught individuals and have much greater exposure to life threatening situations. For that reason, the road patrol

sergeants and lieutenants should receive a higher rank differential than the promoted corrections division unit. The Union submitted SERB data in support of its position.

The Employer argues that there is no basis for distinguishing the rank differential provided to road patrol sergeants and lieutenants from that of the promoted corrections division unit. According to the Sheriff, the sergeants and lieutenants who work in the jail are as equally valuable to the department as are the road patrol sergeants and lieutenants. The Employer points out that the sergeants and lieutenants who work in the jail are constantly exposed to potentially violent inmates. Like the road patrol sergeants and lieutenants, the promoted corrections division unit also has hazardous or physically demanding working conditions.

The Union further maintains that an increase in the physical fitness bonus is warranted. The Union cites the Sheriff's contract with the promoted corrections division unit which includes a payment of \$750 for passing the physical fitness test. In that the sergeants and lieutenants must also pass the same physical fitness test, they too should receive a \$750 bonus.

The Employer submits that there was insufficient basis established for any change in the physical fitness bonus for the law enforcement sergeants and lieutenants. The current amount of \$250 is reasonable and should be retained. However, the Employer in its proposal would modify the provision to indicate that the employees must pass the same physical fitness standard test offered to deputy sheriffs within the Sheriff's Office.

ANALYSIS – This fact-finder does not recommend any change in the current rank differentials for road patrol sergeants and lieutenants. Likewise there was no basis established to support the Union’s proposal that sergeants and lieutenants receive additional hourly compensation for being OPOTA certified. There was however justification for the Union’s proposal to increase the physical fitness bonus from \$250 to \$750.

The evidence shows that at least since 1999, the rank differentials for the law enforcement sergeants and lieutenants have been the same as that for the corrections supervisors. As a result, the bargaining unit here has received the same percentage wage increases as that provided to others in the Sheriff’s Department. For 2005 and 2006, the deputies as well as corrections supervisors received increases of 1.25% and 1.5%, respectfully. There simply was no justification established for members of this bargaining unit to receive any additional wage increases beyond those provided to others in the Sheriff’s Department.

Moreover, it was established that the bargaining unit members’ wages compare quite well to that provided to wages of supervisors in comparable jurisdictions. Indeed, the evidence shows that the wages paid to law enforcement sergeants and lieutenants in Lorain County ranks among the highest paid to comparably situated employees in the region. For example, the top pay for road patrol sergeants in Lorain County of \$58,004 ranks third among the wages of sergeants in comparable jurisdictions. Such evidence

provides further support for the conclusion that there should be no increase in rank differential for the bargaining unit members here.

The Union's main argument presented herein for an increase in the rank differential for road patrol sergeants and lieutenants is that they have inherently hazardous working conditions. It is true that the road supervisors come in contact with potentially violent individuals. However as the Sheriff indicated, the corrections supervisors also have hazardous conditions in that they are constantly exposed to violent inmates at the Lorain County Correctional Facility. As the Employer stated, the corrections supervisors are just as valuable to the Sheriff as the law enforcement supervisors in Lorain County. As a result, this fact-finder cannot find any clear justification for increasing the rank differential for the road patrol sergeants and lieutenants. Likewise, the evidence was insufficient to support the Union's request that the bargaining unit be provided with additional compensation for OPOTA certification.

This fact-finder would recommend that there be an increase in the amount of the physical fitness bonus as proposed by the Union. However, the increase would be applicable only under the same mandatory conditions as currently imposed upon the corrections supervisors and the patrol deputies. That is, in order to be eligible for the \$750 bonus, the bargaining unit employees would have to successfully complete the Physical Abilities Test. This fact-finder would recommend the adoption of a new article to be placed in the parties' Agreement which would set forth the exact same contractual

language for physical fitness testing as that found in the promoted corrections division unit agreement.

RECOMMENDATION

This fact-finder does not recommend any increase in the rank differential for OPOTA certification pay as proposed by the Union. However, it is recommended that the physical fitness bonus be increased to \$750 based upon the passing of the same physical fitness test as that offered to others in the Sheriff's Department.

ARTICLE 38, RANK DIFFERENTIAL

Current sixteen percent (16%) – No change.

No OPOTA certification pay.

Increase physical fitness bonus to \$750 based upon passing of a physical fitness test under a new provision as more fully set forth in Attachment A.

ATTACHMENT A

New Article to be placed in Agreement Physical Ability testing to be deleted from Article 38 Rank Differential

ARTICLE ____ PHYSICAL ABILITIES TESTING

Section 1. All employees shall participate in a Physical Abilities Testing program. The Physical Abilities Test shall measure whether employees are physically able to perform the essential functions of their position. The program may be subject to change for valid reasons following official notification to the FOP/OLC. Employees who refuse to participate in any part of the Physical Abilities Testing program (other than due to a medical exemption) may be subject to disciplinary action.

Section 2. The Employer shall comply with the Americans With Disabilities Act (ADA), and shall defend, indemnify, and hold harmless the FOP/OLC, and its agents, officers, representatives, and members against any and all claims and/or costs arising from or in any way related to the implementation and enforcement of Physical Abilities Testing, specifically including, but not limited to, any cost arising from an action in any court or administrative agency. This section shall not apply to any action brought by the FOP/OLC.

Section 3. Employees shall be notified in writing of their Physical Abilities Test score upon completion of the test or as soon thereafter as is practical. Employees who successfully complete the Physical Abilities Test shall receive an incentive bonus in the amount of \$750.00.

Section 4. An employee who is exempt under Section 7 below, or for any other reason set forth in this article, shall be required to engage in a fitness program, provided such program is approved by the employee's physician.

Section 5. All employees shall be tested once each year. This does not include any retests that an employee shall be required to complete in accordance with this article.

Section 6. Physical Abilities Test performance scores shall not be used as a criteria for promotions or special assignments, except in cases where it is reasonably determined that the candidate must possess a unique physical standard that is germane to that position.

Section 7. An employee may provide the Employer with a written statement from a licensed physician stating that participation in all or any part of the Physical Abilities Test will be detrimental to the employee's health. In such cases, the employee shall not be required to participate in the prohibited part(s) of the Physical Abilities Testing procedures except as hereinafter provided.

Section 8. An employee requesting an exemption from all or any part of the Physical Abilities Test, by providing a written statement from a licensed physician, may at the sole discretion of the Employer, be required to submit to a physical examination by a licensed physician selected by the Employer, at the Employer's expense. In the event that there is disagreement between the physician selected by the employee and the physician selected by the Employer as to whether participation by the employee in all or any part of the Physical Abilities Test will be detrimental to the employee's health, at the option of the Employer, another licensed physician shall be selected by agreement of the Employer and the employee to make a determination as to whether participation by the employee in all or any part of the Physical Abilities Test will be detrimental to the employee's health. The cost of this determination shall be shared by the Employer and the employee. The decision of the physician so selected by the Employer and the employee shall be binding upon the parties as to whether the employee shall be required to participate in the Physical Abilities Test.

Section 9. An employee who is temporarily unable to perform the essential functions of the position with a reasonable accommodation may be placed on leave.

Section 10. An employee who is exempted from all or any part of the Physical Abilities Test shall, upon request from the Employer, give the Employer a medical information release authorization which will allow the Employer to obtain information from the licensed physician issuing the written statement describing the medical or physical condition of the employee, and how such condition relates to the Physical Abilities Test, or any particular part of the test, in such a way as to make participation in the test, or any part thereof, detrimental

to the employee's health. All information received by the Employer shall be confidential and maintained separately from the employee's personnel file.

Section 11. Employees shall provide the Employer a medical clearance from the employee's physician on a form provided by the Employer. The form shall be updated not less than every two (2) years. The form shall describe the tests the employee will be required to undergo.

Section 12. During the testing process, any employee who exhibits or complains of any condition which suggests that further participation in the testing process may be detrimental to the employee's health shall not be required or permitted to continue in the testing process. The Employer, at the Employer's sole discretion, or at the request of the employee, may transport the employee to a licensed physician or emergency care facility for immediate attention, or if immediate attention is not deemed necessary, the Employer may require the employee to provide a new medical clearance. The cost of any emergency or immediate medical attention shall be paid by the Employer.

Section 13. An employee who fails to achieve a satisfactory level of physical fitness may be subject to administrative action. An employee shall be deemed physically fit for his position if the employee achieves the minimum passing score on the test adopted by the Employer as part of the Physical Abilities Testing program. The Employer may deem an employee unfit for duty for physical reasons if the employee does not achieve the minimum passing score on the test at the conclusion of the retest periods set forth below.

Section 14. After the first failure to achieve a minimum passing score on the Physical Abilities Test, an employee shall be retested again after ninety (90) days. However, an employee may, fifteen (15) or more days after the first failure, submit to the Employer a written request to be retested. An employee who makes such request shall be retested within fourteen (14) days after the written request is submitted to the Employer. An employee passing a mandatory or requested retest shall not be tested again until the next regularly scheduled test for that employee. An employee who fails a retest which the employee requested shall not be subject to administrative action because of such failure.

Section 15. An employee who fails the first required retest shall be issued a counseling letter suggesting how the employee could improve test performance, and shall be retested again after sixty (60) days. An employee failing a second

retest shall be issued a warning letter advising the employee that, should the employee fail the next scheduled retest, the employee may be deemed unfit for duty for physical reasons and may be separated from service.

Section 16. Counseling letters and written warnings received for a failed Physical Abilities Test shall not be recorded as disciplinary action. These entries shall be recorded only as notices to the employee and shall not be used as part of any future progressive discipline.

Section 17. An employee receiving a written warning after failing the second retest shall be retested not less than thirty (30) days later. If the employee fails to pass the Physical Abilities Test after the thirty (30) day period, the employee may be deemed by the Employer to be physically unfit to perform the duties of his position and may be separated from service for physical ability reasons.

Section 18. Notwithstanding any other provision of this article, nothing shall restrict the right of the Employer to remove an employee from employment if the employee is unable to perform the essential functions of the position, with or without reasonable accommodation. The separation of any employee for physical ability reasons shall be subject to the grievance and arbitration procedure set forth in this agreement.

2. HEALTH CARE

The Union proposes that the premium contributions for employees be reduced to \$35 per month for family coverage, and \$5.00 per month for single coverage. The Employer proposes to modify the current provision to provide for an 80%-20% premium split with the Union.

The Union maintains that its proposal merely seeks parity with the deputies unit as well as the promoted corrections unit with respect to healthcare premium employee contributions. Currently, promoted law enforcement pay approximately \$200 per month for family coverage and \$20 per month for single coverage. Recently, the promoted corrections officers unit as part of the settlement of their agreement started to pay \$35 per month for family coverage and \$5.00 for single coverage. The Union believes that internal comparisons support its position for a reduction in the premium contribution for bargaining unit employees here.

The Employer argues that due to an increase in health insurance costs its proposal for an 80%-20% premium split with the bargaining unit is appropriate. It points out that the reduction in premium contributions for the promoted corrections unit was part of an overall economic package which resulted from their most recent negotiations. In this case, the Union's attempt to seek an increase in rank differential precludes any consideration by the Employer to reduce premium contributions.

ANALYSIS – This fact-finder would recommend a reduction in employee premium contribution for healthcare to \$35 per month for family coverage and \$5.00 per

month for single coverage. Internal comparisons support the recommended change in employee premium contribution. The promoted corrections division unit was recently provided with a reduction in healthcare premium contributions like those which the Union has proposed here. Similarly, the deputies unit has also seen its employee contribution reduced to \$35 per month for family and \$5.00 per month for single coverage. It would be appropriate therefore in order to achieve parity with the deputies unit as well as the promoted corrections unit to likewise reduce the employees' premium contributions for the road patrol supervisors.

This fact-finder would further recommend that the change in premium contributions for bargaining unit employees be made retroactive to March 1, 2006. The evidence shows that for the current year, the road patrol supervisors have been contributing considerably more towards healthcare premiums than others in the Sheriff's Department. Considering such evidence as well as the recommendation that there be no further wage increase for this bargaining unit beyond that provided to others in the Sheriff's Department, it would be reasonable to provide that the reduction in the employee contribution for road supervisors be made retroactive to March 1, 2006.

RECOMMENDATION

It is the recommendation of this fact-finder that premium contributions for employees be reduced to \$35 per month for family coverage and \$5 per month for single coverage made retroactive to March 1, 2006 as more fully set forth in Attachment B.

ATTACHMENT B

ARTICLE 27 **HEALTH CARE BENEFITS**

Section 27.1. The Employer will provide health care benefits under the Lorain County Health Care Plan except as otherwise provided for in this article, including basic surgical, hospitalization, major medical, dental, vision, and prescription drug coverage, and shall pay the premium cost for said insurance in accordance with Sections 3 of this article.

Section 27.2. The Employer retains the right to select carriers and/or to otherwise determine the manner by which coverage is provided. Initial eligibility and maintenance of eligibility for coverage shall be subject to the terms and conditions identified in the Plan Document.

Section 27.3. Effective March 1, 2006, the employee will be required to contribute, through payroll deduction, an amount not to exceed thirty-five dollars (\$35.00) a month for family coverage or an amount not to exceed five dollars (\$5.00) a month for single coverage.

Section 27.4. Notwithstanding the provisions of Sections 1 above, which provide for health care coverage, the Union agrees that the Employer may offer alternative health care coverage programs during the term of the agreement. Each employee's participation in any such alternative program shall be at the election of the employee. Upon the request of the employee, any potential loss in benefits as the result of preexisting conditions shall be explained to employee prior to election.

The terms and conditions of such alternative programs, including the right to continue any alternative programs, shall be determined by the Board of Commissioners. The cost and/or the terms and conditions of said programs shall be at the discretion of the Board of Commissioners and may be subject to change.

In the event of changes in the cost and/or terms and conditions of such alternative programs, affected employees may withdraw from said program and shall be entitled to the benefits described in Section 1 above. However, once an employee elects to withdraw from the alternative program, he may not elect to change health care coverage programs again until the next open enrollment period.

3. SICK LEAVE CONVERSION

The Union proposes an increase of sick leave conversion not to exceed 960 hours after 20 years of service and 100% not to exceed 1,500 hours after 26 years of service. The Employer proposes a two-tier system for the payment of sick leave upon retirement. Under the Sheriff's proposal, employees hired after January 1, 2007 would be permitted to convert 100% of up to 250 hours of sick leave. The Employer proposes current language for those employees employed as of January 1, 2007. The current provision provides 50% of sick leave not to exceed 1,440 hours after 26 years of service, and 50% not to exceed 960 hours after 20 years of service.

The Union maintains that its proposal to increase the sick leave conversion upon retirement is reasonable. It is similar as that provided to the promoted corrections supervisors unit.

The Employer argues that its two-tier system is reasonable in that employees will not have to wait for retirement to convert sick leave to payment upon leaving service with the County. They would be eligible to do so after ten years of service. Current employees will also benefit if they have 500 hours or less of accrued sick leave upon retirement.

ANALYSIS – This fact-finder would recommend a modification to the current Sick Leave Conversion Provision to provide for a payment of 75% not to exceed 960 hours for employees with 20 to 25 years of service. For those with 26 years or more of service, 100% would be paid not to exceed 1,000 hours. This would be the same sick

leave conversion provision as provided to the promoted corrections division unit. In all respects, the provision appears to be reasonable and should be adopted by the parties. There was insufficient basis established for the two-tier system for payment of sick leave upon retirement as proposed by the Employer.

RECOMMENDATION

It is the recommendation of this fact-finder that the Sick Leave Conversion Provision be modified as follows:

ARTICLE 25, SICK LEAVE

Section 25.09 Sick Leave Conversion

Upon formal retirement under the Public Employees Retirement System (PERS) or death, bargaining unit employees shall be eligible to convert accumulated sick leave into pay in accordance with the following table:

<u>Years of Service</u>	<u>Percent Increase</u>	<u>Not To Exceed</u>
20 - 25	75%	960 hours
26 or more	100%	1000 hours

Payments shall be made as soon as practicable upon receipt of a formal written application by the retiring employee or the deceased employee's surviving spouse or estate.

4. HOLIDAYS

The Union proposes that two additional holidays be provided to the bargaining unit members. The Sheriff is opposed to the addition of two holidays for patrol supervisors.

The Union maintains that it is merely seeking parity with the civil division of the Lorain County Sheriff's Department. It notes that others in the department receive more holidays and personal days than does the road patrol supervisors unit.

The Employer argues that there should be no change in the current ten holidays and two personal days provided to the road patrol supervisors. The Sheriff notes that the number of holidays is comparable to that provided to other similarly situated bargaining units.

ANALYSIS – This fact-finder would recommend that two additional personal days be provided to the bargaining unit. The evidence showed that the corrections supervisors currently receive four personal holidays in addition to ten paid holidays set forth in their agreement. Internal comparisons therefore support the granting of two additional personal days to the road patrol supervisors. In that regard, it should be noted that the corrections supervisors are required to schedule two personal holidays during the first six calendar months of each year and two personal holidays during the second six months of the year. There was no justification shown as to why two additional personal holidays should not likewise be granted to the law enforcement sergeants and lieutenants.

RECOMMENDATION

It is the recommendation of this fact-finder that two additional personal holidays be provided to the bargaining unit as more fully set forth below:

ARTICLE 30, HOLIDAYS

Section 3. In addition to the above-mentioned holidays, each employee in the bargaining unit shall be entitled to four (4) personal holidays as additional days off with pay. Employees who are eligible for both personal holidays shall be required to schedule two (2) personal holidays during the first six (6) calendar months of each year and the two (2) personal holidays during the second six (6) months of the year. The parties agree that said additional days off with pay shall be scheduled by the Employer upon receiving a written request from the employee fourteen (14) days prior to the beginning of a new schedule period. Scheduling of the employee's personal days off will be based upon the operational needs of the department. If more employees request the same day off than what the schedule permits, determination of who receives the day off will be made on the basis of classification seniority. Compensation for additional days off (personal holidays) shall be at straight time and the employee shall be scheduled off for that day(s).

Employees who fail to schedule personal days in accordance with this article shall forfeit said personal holidays for that year.

In the event of a bona fide emergency, an employee may request of the OIC his personal days off without the above-mentioned prior notice. The OIC shall make every effort to accommodate the employee's request.

5. LONGEVITY

The Union proposes an increase to the current longevity scale. The Employer proposes current language and is opposed to the Union's proposal.

ANALYSIS - This fact-finder would not recommend any increase in longevity payments as proposed by the Union. The current annual Longevity Payment Provision found in the law enforcement sergeant and lieutenant Contract is identical to that contained in other Sheriff Department agreements. The recently completed contract for the promoted corrections division unit did not provide for any increase in the longevity benefit. Moreover, the Lorain County Sheriff already has a more generous combined wage and longevity compensation package than comparable sheriff offices in the region. There simply was insufficient basis for any increase in the current Longevity Pay Provision.

RECOMMENDATION

It is the recommendation of this fact-finder that there be no increase in Longevity Pay.

ARTICLE 31, LONGEVITY PAY

Current language, no change.

6. HOURS OF WORK AND OVERTIME

The Union proposes language which would preclude schedule changes solely to avoid the payment of overtime. The Sheriff is opposed to the Union's proposal regarding Hours of Work and Overtime.

ANALYSIS - This fact-finder does not recommend the new language proposed by the Union which would prevent the adjustment of schedules for the law enforcement sergeants and lieutenants in order to avoid overtime. It was shown that the adjustment of the schedules for road patrol sergeants and lieutenants in order to provide supervisory coverage has been a longstanding practice in the department. It should be noted that the patrol division is relatively small with only ten officers. There was insufficient basis established for the Union's proposed language in the Hours of Work and Overtime Provision.

RECOMMENDATION

It is the recommendation of this fact-finder that there be no change in the Hours of Work and Overtime Provision as proposed by the Union.

ARTICLE 32, HOURS OF WORK AND OVERTIME

Current language, no change.

7. VACATION LEAVE

The Union proposes that bargaining unit members be permitted to carryover three years of vacation rather than the current two years. The Sheriff is opposed to the Union's proposal to increase the amount of vacation carryover.

ANALYSIS – This fact-finder has determined that there was insufficient basis established for the Union's proposal pertaining to vacation carryover. The current provision which provides that bargaining unit members are allowed to carryover vacation time for a two year period is identical to that provided to other Sheriff Department employees. The recently completed promoted corrections division unit agreement continues to allow those employees to carryover vacation time for up to two years.

RECOMMENDATION

It is the recommendation of this fact-finder that there be no change in the Vacation Leave Carryover Provision.

ARTICLE 34, VACATION LEAVE

Current language, no change.

8. SENIORITY

The Union proposes new language which would state that corrections sergeants and lieutenants would not be permitted to have seniority or authority over law enforcement sergeants or lieutenants. The Employer opposes this new seniority provision.

ANALYSIS – There was insufficient basis established for the Union’s proposal. As such, this fact-finder cannot recommend the language proposed by the Union.

RECOMMENDATION

It is the recommendation of this fact-finder that there be no new language added to the Seniority Provision as proposed by the Union.

ARTICLE 8, SENIORITY

Current language, no change.

CONCLUSION

In conclusion, this fact-finder hereby submits the above referred to recommendations on the outstanding issues presented to him for his consideration. Further, this fact-finder incorporates all tentative agreements previously reached by the parties and recommends that they be included in the final Agreement.

DECEMBER 14, 2006


JAMES M. MANCINI, FACT-FINDER