

HAND DELIVERED

STATE OF OHIO
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF FACT-FINDING : SERB Case Number:
 : 08-MED-06-0661
BETWEEN THE :
 :
HAMILTON COUNTY SHERIFF, :
 :
EMPLOYER : Date of Fact-Finding Hearing:
 : May 20, 2009
AND THE :
 :
FRATERNAL ORDER OF POLICE, :
OHIO LABOR COUNCIL, INC., :
 :
UNION : Howard D. Silver
 : Fact Finder

REPORT AND RECOMMENDED LANGUAGE OF THE FACT FINDER

APPEARANCES

For: Hamilton County Sheriff, Employer

Brett A. Geary
Regional Manager
CLEMANS, NELSON & ASSOCIATES, INC.
420 W. Loveland Avenue, Suite 101
Loveland, Ohio 45140

For: Fraternal Order of Police, Ohio Labor Council, Inc.,
Union

Gwen Callender, Esquire
General Counsel
Fraternal Order of Police,
Ohio Labor Council, Inc.
222 East Town Street
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This matter came on for fact-finding hearing at 10:00 a.m. on
May 20, 2009 within a conference room on the seventh floor of the

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Hamilton County Administration Building, 138 East Court Street, Cincinnati, Ohio 45202. Both parties were afforded a full and fair opportunity to present evidence and arguments in support of their positions. This fact-finding process proceeds under the authority of Ohio Revised Code section 4117.14 and in accordance with rules adopted by the Ohio State Employment Relations Board, including Ohio Administrative Code section 4117-9-05. Both parties have carried out their respective obligations in filing with the fact finder the pre-hearing information required by Ohio laws and regulations.

RECOMMENDATION THAT ALL UNOPENED ARTICLES AND ALL TENTATIVELY AGREED ARTICLES BE INCLUDED IN THE PARTIES' SUCCESSOR COLLECTIVE BARGAINING AGREEMENT

The fact finder recommends that the parties include in their successor collective bargaining agreement all of the Articles in the parties' latest collective bargaining agreement that were unopened during negotiations between the parties in pursuit of a successor agreement. The fact finder recommends that the language of these unopened Articles be included in the parties' successor agreement unchanged. These Articles include:

- Article 1 - Agreement/Purpose
- Article 2 - FOP Recognition
- Article 5 - Management Rights
- Article 14 - Vacancies

- Article 17 - Performance Evaluation
- Article 18 - Physical Fitness
- Article 27 - Occupational Injury Leave
- Article 35 - Health and Safety
- Article 36 - Civil Service Compliance
- Article 37 - No Strike/No Lockout
- Article 38 - Tuition Reimbursement
- Article 39 - Sub-Contracting
- Article 40 - Severability
- Article 41 - Copies of the Agreement

The fact finder incorporates by reference as if fully rewritten herein the above specified Articles in his recommendation of language to be included in the parties' successor collective bargaining agreement.

The fact finder recommends that all of the Articles tentatively agreed by the parties through the bargaining of their successor Agreement be included in the parties' successor collective bargaining agreement. The fact finder includes by reference as if fully rewritten herein the language tentatively agreed by the parties and recommends this language be included in the parties' successor Agreement, including the language tentatively agreed in the following Articles:

- Article 3 - FOP Security
- Article 4 - FOP Representation
- Article 6 - Non-Discrimination

Article 7 - Labor/Management Meetings
Article 8 - Grievance Procedure
Article 9 - Discipline
Article 10 - Personnel Files
Article 11 - Probationary Periods
Article 13 - Layoff and Recall
Article 15 - Bulletin Boards
Article 16 - Work Rules - General Orders
Article 23 - Holidays
Article 26 - Bereavement Leave
Article 28 - Donated Time
Article 29 - Uniforms and Equipment
Article 30 - Expenses
Article 31 - Training
Article 32 - Leave of Absence
Article 33 - Outside Employment
Article 34 - Drug/Alcohol Testing
Article 42 - Duration

UNRESOLVED ARTICLES

The Articles that have been bargained by the parties but remain unresolved are Article 12, Seniority; Article 19, Hours of Work and Overtime; Article 20, Wages and Compensation; Article 21, Court Time/Call-In Time; Article 22, Insurance; Article 24, Vacation; and Article 25, Sick Leave.

FINDINGS OF FACT

1. The parties to this fact-finding procedure, the Hamilton County Sheriff, hereinafter the Employer, and the Fraternal Order of Police, Ohio Labor Council, Inc., hereinafter the Union, are engaged in a bargaining process intended to culminate in a successor collective bargaining agreement ratified by both parties.
2. The latest collective bargaining agreement between the Employer and the Union was effective through November 30, 2008.
3. The bargaining unit is comprised of Corrections Officers, including Corrections Cadets, employed by the Hamilton County Sheriff to maintain the security of incarcerated individuals in Hamilton County jail facilities.
4. When the bargaining unit has a full complement of bargaining unit members, the bargaining unit is comprised of 418 members.
5. In recent months eighty-seven bargaining unit members have been laid off due to lack of funds; no cadets are now employed within the bargaining unit.
6. At the time of the fact-finding on May 20, 2009, the bargaining unit was comprised of 285 members.

DISCUSSION AND RECOMMENDED LANGUAGE

Article 12 - Seniority

The parties agree that there is an error in Article 12, Section 12.1 wherein Section 13.2 is referenced, when the reference should be to Section 12.2. The fact finder recommends that the

parties' successor Agreement contain the corrected reference in Section 12.1 of Article 12: "Section 12.2", replacing the mistaken reference to "Section 13.2".

The parties have also agreed that substantial changes shall be made to Article 12, Section 12.8. It is agreed that with the exception of paragraph (B) of Section 12.8, all of the rest of this section is to be deleted and in the parties' successor Agreement the first sentence of Section 12.8 shall read as follows:

" Employees shall select their shift assignment within their work assignment area, according to their seniority, subject to the operational needs of the Department."

RECOMMENDED LANGUAGE - Article 12 - Seniority

Section 12.1 - Seniority shall accrue to all employees in accordance with the provisions of this Article. Seniority, as defined in Section 12.2 of this Article, will apply wherever seniority rights are established in the terms and conditions of this Agreement.

Sections 12.2 through 12.7 - Maintain current language.

Section 12.8 - Employees shall select their shift assignment within their work assignment area, according to their seniority, subject to the operational needs of the Department. Shift preferences shall be awarded on the basis of Departmental seniority within specific assignment areas (e.g. internal security, intake, transportation, recreation, etc.). No employee shall change assignment through the exercising of shift preference.

Article 19 - Hours of Work and Overtime

The parties have agreed to maintain current language within Article 19 in the parties' successor Agreement except that the Employer proposes a change within Article 19, Section 19.3(B), which would add language that would explicitly empower the Employer

to deny a request for compensatory time in the event such a request would cause overtime. The particular language proposed by the Employer for inclusion within Article 19, Section 19.3(B) reads: "...and provided the granting of compensatory time does not cause overtime."

The Union opposes the change proposed by the Employer for Article 19, Section 19.3(B).

The fact finder does not recommend the addition of the language proposed by the Employer. There is language within Article 19 that refers to the work schedule of each bargaining unit employee being determined by the Employer and also refers to compensatory time requests being honored unless to do so would be unduly disruptive based on a good faith expectation that the time off would impose an unreasonable burden on the Department's ability to have adequate staff on duty. The fact finder recommends the maintenance of current contract language within Article 19, and declines to recommend the additional language proposed by the Employer.

RECOMMENDED LANGUAGE - Article 19 - Hours of Work and Overtime
Sections 19.1 through 19.8 - Maintain current contract language.

Article 20 - Wages and Compensation

Both parties are realistic about Hamilton County's present economic circumstances. Both parties have exhibited admirable restraint in seeking changes to the status quo while the Employer

faces extreme economic pressures at this time. The parties have agreed to reopen wage negotiations in the second and third years of the parties' successor Agreement so as to be better informed about the economic condition of the County in those years. The fact finder recommends the inclusion of wage reopener language for the second and third years of the parties' successor Agreement.

The Employer proposes no wage increase for the first year of the parties' successor Agreement; the Union seeks "me too" language that would link the bargaining unit wage increase to any wage increase secured by Corrections Supervisors, retroactive to December 1, 2008.

The fact finder recommends no wage increase for the bargaining unit during the first year of the successor Agreement based on the declining revenues supporting the operations of Hamilton County, revenues that have been in free fall during the past nine months. The contraction in those areas of commerce and governmental functions that are relied upon to generate the revenues needed to operate Hamilton County is only too real, and frightening in its severity. The fact finder understands the desire of bargaining unit members to do no worse than the bargaining unit containing their supervisors, but the fact finder is persuaded that these are unusually tough times economically, and to tie a wage increase to another bargaining unit that is not a party to this fact-finding procedure appears to this fact finder to serve no one's interest. Any wage increase at this time, for whatever reason, simply produces a smaller bargaining unit.

The fact finder recommends no wage increase for the first year of the parties' successor Agreement; the Contract's benefits are otherwise recommended to be retroactive to December 1, 2008.

RECOMMENDED LANGUAGE - Article 20 - Wages and Compensation

Section 20.1. Effective with the beginning of the pay period that includes December 1, 2008, the annualized wage levels for all bargaining unit employees shall be as follows, and all current employees will be assigned to steps as follows:

<u>Grade</u>	<u>Annual</u>
Corrections Officer First (0-36 months)	\$28,529.00
Corrections Officer Second (37-60 months)	\$32,621.00
Corrections Officer Third (61 months and above)	\$41,846.00

Section 20.2. For the beginning of the pay period that includes December 1, 2009 the parties agree to a wage re-opener negotiated pursuant to the statutory procedures set forth in Chapter 4117 of the Revised Code. Any language agreed upon in the re-opener shall be included as an Addendum to this Agreement.

Section 20.3. For the beginning of the pay period that includes December 1, 2010 the parties agree to a wage re-opener negotiated pursuant to the statutory procedures set forth in Chapter 4117 of the Revised Code. Any language agreed upon in the re-opener shall be included as an Addendum to this Agreement.

Sections 20.4 through 20.7 - Maintain current contract language.

Article 21 - Court Time/Call-In-Time

The parties agreed to maintain current contract language for this Article.

RECOMMENDED LANGUAGE - Article 21 - Court Time/Call-In-Time

Sections 21.1 through 21.3 - Maintain current contract language.

Article 22 - Insurance

Both parties agree that Article 22, Section 22.5 that refers to life insurance benefits continuing throughout the term of the Agreement requires a change to ensure the continuation of this language. The parties suggest slightly different language but their aims are the same. The fact finder recommends the language proposed by the Employer which simply states that: "The life insurance benefits currently in effect shall continue throughout the term of this Agreement." The language proposed by the Union which includes the date December 1, 2008 accomplishes the same result but would require a change of the date in each succeeding contract. The fact finder proposes the Employer's language as it requires fewer modifications in the future.

The remaining changes proposed by the parties have very different aims. The Employer wishes to make specific within Article 22, Section 22.1 that all insurance coverage is the same for everyone employed by the County, whether bargaining unit member or non-bargaining unit employee. The Employer intends that the major medical/hospital care insurance plans, life insurance plans, and dental plans be the same as to benefits and availability for non-bargaining unit employees and bargaining unit members.

The Employer also recommends new language that describes how employees on unpaid leaves of absence may retain hospitalization coverage by paying for coverage under the Hamilton County Board of Commissioners policy.

The Union proposes that Article 22, Section 22.6 contain new language specifying that the co-payment paid by bargaining unit employees for any insurance plan provided for in Section 22.1 of this Article shall not increase from year to year by more than the percentage of wage increase received by the employees' classification group. The Union points out that this language is already contained in the FOP Enforcement Officers' contract and the FOP Enforcement Supervisors' contract. The Union notes that the cap proposed by the Union offers a significant monetary benefit that is already enjoyed by two other bargaining units of the Hamilton County Sheriff's Office. The Union argues that to deny this benefit to the bargaining unit members addressed by this proceeding would broaden the economic disparity between corrections officers' wages and the wages of enforcement officers.

The fact finder acknowledges the potential benefit offered to bargaining unit members by the cap proposed by the Union for inclusion within Article 22, Section 22.6. The fact finder feels constrained however to decline to recommend the inclusion of this language in the parties' successor Agreement for two reasons. First, insurance works best and most efficiently when risks and costs are spread uniformly and as widely as possible. To extend to subgroups of a larger coverage pool special protections leaves the uniformity of coverage diminished. With the costs of health care so high and the costs of coverage so expensive the fact finder remains persuaded that carving out special niches of advantage within the larger pool of insurance coverage does not serve the

interests of the coverage pool and ultimately does not serve the long-range interests of those seeking the special treatment.

If other bargaining units have secured for themselves these caps such a circumstance is regrettable but such a circumstance does not persuade the fact finder that the further Balkanization of health care coverage in Hamilton County is a good thing.

The second reason the fact finder is not persuaded to recommend the Union's proposed language is that the fact finder fails to see a connection between the amount of a co-payment required for coverage and the amount of a wage increase for employees in a classification group. The fact finder presumes that in a well run insurance plan co-payments are determined based on the costs of providing coverage to the coverage pool under the plan and are not determined on the basis of wage increases, if any, secured by those who receive the benefits of the insurance coverage. The fact finder does understand that the proposed language attempts to shield employees with lower wage increases from higher increases in insurance co-pays, but the fact finder finds no real protection in such a system. If the co-pays are insufficient to support the coverage the coverage will simply not be available.

The fact finder is not unsympathetic to the hardships that have been imposed upon the members of the bargaining unit as a result of the hard economic circumstances faced by Hamilton County and its Sheriff's Department. The fact finder remains persuaded, however, that at least in securing health insurance coverage, life

insurance coverage, and dental care coverage in the best way, the most efficient way, treating everyone the same in as large a coverage pool as can be created spreads the risks and costs of this coverage and as a result provides better coverage to those who choose to participate in the coverage.

The fact finder recommends the language proposed by the Employer for inclusion in Article 22; the fact finder does not recommend the cap language proposed by the Union for inclusion in Article 22.

RECOMMENDED LANGUAGE - Article 22 - Insurance

Section 22.1 - The Employer shall make available to all bargaining unit employees the same major medical/hospital care insurance plans, life insurance plans, and dental plans that are available to non-bargaining unit Hamilton County Board of Commissioners' employees in classified civil service positions. If such non-bargaining unit Hamilton County Board of Commissioners' employees are required to pay a portion of insurance premiums, the same premium contribution levels shall also apply to bargaining unit employees. All insurance requirements (e.g., fees, contributions, co-payments, etc.) specified for such non-bargaining unit Hamilton County Board of Commissioners' employees shall also be applicable to bargaining unit employees.

Section 22.2 - Maintain current contract language.

Section 22.3 - Maintain current contract language.

Section 22.4 - If the Hamilton County Personnel Department determines that it is desirable to establish a committee or procedure for the purposes of seeking employee input on any insurance benefit provided to bargaining unit employees, such committee or procedure shall include the participation of one (1) bargaining unit employee. The bargaining unit employee who participates in such committee or procedure shall be selected by the Union. The formulation of any committee or procedure as described in this Section shall be at the sole discretion of the Director of the Hamilton County Personnel Department or the Director's designee.

Section 22.5 - The life insurance benefits currently in effect shall continue throughout the term of this Agreement.

Section 22.6 - Employees on unpaid leaves of absence shall be able to retain their hospitalization coverage by paying for coverage pursuant to Hamilton County Board of Commissioners policy.

Article 24 - Vacation

The Union points to an acceleration in vacation accrual that was granted to non-bargaining unit employees in December, 2006. The Union points out that there are other bargaining units in Hamilton County who also receive this accelerated vacation accrual benefit, and proposes that the bargaining unit addressed by this proceeding also be granted this acceleration in vacation accrual.

The Union also proposes changes to Article 24, Section 24.2 to prevent any bargaining unit member from being adversely affected by a change in the benefit accrual.

The Employer points out that the Board of Hamilton County Commissioners extended the accelerated vacation accrual to non-bargaining unit employees to compensate them in the past for wage increases that were less. The Employer points out that no other conciliation unit under the Hamilton County Sheriff's Office has this benefit.

The fact finder recommends the language proposed by the Union for Article 24, Vacation, both as to the accelerated accrual and the language in Section 24.2 intended to assure that no bargaining unit member is adversely affected by the change. The fact finder sees the accelerated vacation accrual as a trend within the County and considering the forbearance shown by the Union in other areas,

the fact finder finds this proposal to be an affordable increase in vacation accrual, in recognition of the restraint shown by the bargaining unit in matters of wages and other benefits.

RECOMMENDED LANGUAGE - Article 24 - Vacation

Section 24.1. Bargaining unit employees initially employed prior to July 5, 1987 shall earn vacation leave according to their number of years of service with the Employer and any political subdivision of the State of Ohio as follows, and bargaining unit employees initially employed on or after July 5, 1987 shall earn vacation leave according to their number of years of service with the Employer and any prior county service in the State of Ohio, as follows:

- A. Less than six (6) years completed; rate of accumulation is 3.1 hours per pay period.
- B. Six (6) years of service but less than twelve (12) years of service completed; rate of accumulation is 4.6 hours per pay period.
- C. Twelve (12) years of service but less than eighteen (18) years of service completed; rate of accumulation is 6.2 hours per pay period.
- D. Eighteen (18) years of service but less than twenty-five (25) years of service completed; rate of accumulation is 7.7 hours per pay period.
- E. Twenty-five (25) years or more of service completed; rate of accumulation is 9.2 hours per pay period.

Section 24.2. Vacation credit accrues while in any Employer paid leave status. No vacation credit is earned while an employee is in no-pay status including lay-off, leave of absence, and unpaid disciplinary suspension. Prorated vacation credit is given for any part of a pay period. Eighty (80) hours of vacation credit is granted at the completion of one (1) year of employment. The following additional vacation credit will continue to be added up to and including the date of December 31, 2009 at which time such additions will cease to exist: Forty (40) hours vacation credit is added at the completion of eight (8), fifteen (15), twenty (20), and twenty-five (25) years of employment in addition to the increased rate of accrual.

Sections 24.3 through 24.9 - Maintain current contract language.

Article 25 - Sick Leave

The Employer recommends the maintenance of current contract language in Article 25, Sick Leave, while the Union proposes changes in language to Section 25.1 and Section 25.4. The Union's proposed changes would simplify who is to provide a written signed certification, a physician or other licensed practitioner, and in both Section 25.1 and Section 25.4 the Union proposes eliminating references to "prognosis/diagnosis/treatment" and instead simply use the phrase "nature of illness".

The fact finder recommends the changes proposed by the Union for Section 25.1 and Section 25.4. The fact finder views these changes as causing minimal disruption to the procedures already in place and finds these changes to be consistent with other language intended for inclusion in the parties' successor Agreement.

RECOMMENDED LANGUAGE - Article 25 - Sick Leave

Section 25.1 - Employees shall accrue sick leave credit at the rate of four and six-tenths (4.6) hours for each eighty (80) hours of service, or while in active paid status (i.e., during paid vacation and sick leave). Sick leave credit shall not accrue during any unpaid sick leave, layoff, unpaid leave of absence, disciplinary suspension, or while the employee is in overtime status. Advance use of sick leave shall not be granted. Sick leave is cumulative without limit. For any absence when an employee provides written signed certification from a physician or other licensed practitioner indicating the nature of the illness or injury the Employer will not unreasonably infer abuse of the officer's contractual and statutory sick leave entitlement nor any improper neglect of duty.

Sections 25.2 through 25.3 - Maintain current contract language.

Section 25.4 - Upon return to work an employee shall complete an application for sick leave form to justify the use of sick leave. The Employer may, when an employee utilizes sick leave for medical appointments or where an absence is four (4) consecutive days or

more, or for each instance of absence in excess of five (5) occurrences within any calendar year, require the employee to furnish a certificate from a physician, dentist, or other licensed practitioner stating the nature of the illness or injury.

Sections 25.5 through 25.9 - Maintain current contract language.

In addition to the language recommended by the fact finder, the fact finder recommends by reference, as if fully rewritten herein, all other Articles that were either unopened by the parties or tentatively agreed by the parties for inclusion in the parties' successor Agreement.

In making the recommendations presented in this report, the fact finder has considered the criteria required by Ohio Revised Code Chapter 4117., and sections 4117-9-05(K)(1)-(6) of the Ohio Administrative Code.


Howard D. Silver
Fact Finder

Columbus, Ohio
July 8, 2009

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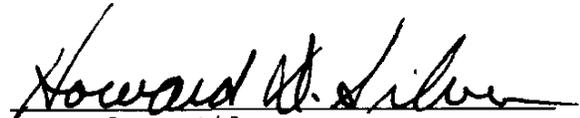
CERTIFICATE OF SERVICE AND FILING

I hereby certify that the foregoing Report and Recommended Language of the Fact Finder in the Matter of the Hamilton County Sheriff and the Fraternal Order of Police, Ohio Labor Council, Inc., SERB case number 2008-MED-06-0661, was filed, via hand-delivery, with the State Employment Relations Board, and faxed and mailed, postage prepaid, to the following, this 8th day of July, 2009:

Brett A. Geary
Regional Manager
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420 W. Loveland Avenue, Suite 101
Loveland, Ohio 45140

and

Gwen Callender, Esquire
General Counsel
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