

**STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

FACT-FINDING PROCEEDING

Case No. 09-MED-03-0376

Columbus State Community College, Employer

and

**Fraternal Order of Police Ohio Labor Council, Inc., Capital City Lodge #9,
Employee Organization**

REPORT AND RECOMMENDATIONS OF THE FACT FINDER

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ISSUED: September 23, 2009

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STATE EMPLOYMENT
RELATIONS BOARD

REPORT AND RECOMMENDATIONS

I. Background

The employer in this case is the Columbus State Community College, which is a two-year institution created under the auspices of Ohio Revised Code Chapter 3358. CSCC serves a diverse population on several campuses throughout central Ohio.

The school employs 924 full-time and 1,413 part-time employees. The total number of represented individuals serving on the full-time faculty is 292. They are represented by the Columbus State Education Association (CSEA). Teamsters Local 284 represents forty (40) grounds, building service, and maintenance workers. By way of comparison, the FOP Ohio Labor Council Inc., Capital City Lodge #9, represents the Public Safety Department of the CSCC and is comprised of approximately forty-three (43) employees, thirteen (13) of whom are non-union. The record indicates that on May 19, 1983, security personnel were granted police authority by the Board of Trustees, but were prohibited from being armed. On or about November 17, 2007, the Board approved arming campus police. On July 24, 2008, after successfully completing training in necessary physical and psychological evaluation, officers were provided with weapons.

The bargaining unit is comprised of all full-time Dispatchers (Technicians), Security Specialists, Police Officers, and Sergeants (Coordinators) and excludes all other appointment types employed by CSCC. As presently constituted, the unit is made up of eleven (11) Police Officers, two (2) Sergeants, seven (7) Technicians I's, one (1) Technician II, and four (4) Safety and Security Officers for a current total of twenty-five (25) bargaining unit members. There are at least four (4) vacancies; three (3) Police Officer positions and one (1) Dispatcher position.

CSCC's safety personnel were first organized by the International Brotherhood of Teamsters Local 284. A contract was negotiated which became effective July 1, 2002 and expired on June 30, 2005. The employees of that bargaining unit decertified the Teamsters and negotiated their first contract with the FOP, which became effective July 1, 2006. May 8, 2009 marked the initial bargaining session between the parties to secure a successor agreement. The parties met ten (10) times and agreed upon forty-two (42) Articles. The agreed upon Articles are incorporated into this report as if fully rewritten herein in their entirety. On August 5, 2009, employees met with the undersigned in an effort to mediate the remaining outstanding issues. The mediation was unsuccessful and the fact-finding hearing was scheduled for September 9, 2009.

There were seven (7) open issues at the outset of the fact-finding hearing. One, Duration (Article 49) was agreed to during the course of the fact-finding hearing and is incorporated herein as if fully rewritten.

The remaining issues covered by this Report and Recommendations include the following: Article 24 – Court Service; Article 28 – Hours of Work and Overtime; Article 31 – Uniforms; Article 36 – Performance Appraisal; Article 40 – Wages, Temporary Work Assignments; Article 42 – Vacancies and Promotions. This Report will begin with an analysis of Article 40 because the resolution of those issues is pivotal to the resolution of the other open issues.

It must be noted that during the course of the fact-finding hearing conducted on September 9, 2009, both parties were given a full opportunity to submit evidence in support of their respective positions on the remaining unresolved issues and they availed themselves of those opportunities. Set forth below are the undersigned's recommendations on the remaining unresolved issues.

II. Criteria

In compliance with Ohio Revised Code, Section 4117.14(G)(7), and the Ohio Administrative Code, Section 4117-95-05(J), the Fact-Finder considered the following criteria in making the recommendations contained in this Report:

- 1) Past collectively bargained agreements between the parties;
- 2) Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employers performing comparable work, given consideration to factors peculiar to that area or in the classifications 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 on the normal standards of public service;
- 4) The lawful authority of the public employer;
- 5) Stipulations of the parties; and,
- 6) Such factors as not confined to those above which are normally and traditionally taken into consideration.

III. Findings and Recommendations

As previously stated, the resolution of the issues arising from the competing proposals concerning Article 40 – Wages and Temporary Assignment are crucial to the resolution of the other issues that arose during fact-finding. Therefore, Article 40 will be addressed first in this Report.

Article 40 – Wages and Temporary Assignment

FOP's Position

The pre-hearing statement submitted by the FOP Ohio Labor Council Inc. Capital City Lodge #9 and the evidence provided at the fact-finding hearing represents a thorough and exhaustive presentation of the reasons offered to support the Union's proposal on wages. The most effective way to articulate the Union's position is to set forth the proposed wage structure followed by illustrations of its application. Then, the undersigned will provide a summary of the reasons offered to support the FOP Ohio Labor Council Inc.'s position.

A. The following wages will be paid to the bargaining unit employees, effective July 1, 2009:

Pay Step - 1 2 3 4

Safety & Security Specialists and Technician I (Dispatchers):

<u>Hourly</u>	<u>\$14.79</u>	<u>\$16.42</u>	<u>\$18.23</u>
<u>Annually</u>	<u>30,763.20</u>	<u>34,153.60</u>	<u>37,918.40</u>

Technician II (Dispatchers):

<u>Hourly</u>	<u>\$20.39</u>
<u>Annually</u>	<u>42,411.20</u>

Police Officer:

<u>Hourly</u>	<u>\$18.44</u>	<u>\$19.51</u>	<u>\$20.63</u>	<u>\$25.22</u>
<u>Annually</u>	<u>38,355.20</u>	<u>40,580.80</u>	<u>42,910.40</u>	<u>52,457.60</u>

Coordinator (i.e., "Sergeant"):

<u>Hourly</u>	<u>\$28.25</u>
<u>Annually</u>	<u>58,760.00</u>

B. The following wages will be paid to bargaining unit employees, effective July 1, 2010:

Pay Step - 1 2 3 4

Safety & Security Specialists and Technician I (Dispatchers):

<u>Hourly</u>	<u>\$15.38</u>	<u>\$17.08</u>	<u>\$18.96</u>
<u>Annually</u>	<u>31,990.40</u>	<u>35,526.40</u>	<u>39,436.80</u>

Technician II (Dispatchers):

<u>Hourly</u>	<u>\$21.21</u>
<u>Annually</u>	<u>44,116.80</u>

Police Officer:

<u>Hourly</u>	<u>\$19.17</u>	<u>\$20.29</u>	<u>\$21.46</u>	<u>\$26.23</u>
<u>Annually</u>	<u>39,873.60</u>	<u>42,203.20</u>	<u>44,636.80</u>	<u>54,558.40</u>

Coordinator (i.e., "Sergeant"):

<u>Hourly</u>	<u>\$29.38</u>
<u>Annually</u>	<u>61,110.40</u>

C. The following wages will be paid to the bargaining unit members effective July 1, 2011:

<u>Pay Step -</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>
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Safety & Security Specialists and Technician I (Dispatchers):

<u>Hourly</u>	<u>\$16.00</u>	<u>\$17.76</u>	<u>\$19.72</u>
<u>Annually</u>	<u>33,280.00</u>	<u>36,940.80</u>	<u>41,017.60</u>

Technician II (Dispatchers):

<u>Hourly</u>	<u>\$22.06</u>
<u>Annually</u>	<u>45,884.80</u>

Police Officer:

<u>Hourly</u>	<u>\$19.94</u>	<u>\$21.10</u>	<u>\$22.32</u>	<u>\$27.29</u>
<u>Annually</u>	<u>41,475.20</u>	<u>43,888.00</u>	<u>46,425.60</u>	<u>56,763.20</u>

Coordinator (i.e., "Sergeant"):

<u>Hourly</u>	<u>\$30.56</u>
<u>Annually</u>	<u>63,564.80</u>

D. Rank Differential. The wage rates set forth in this Section represent a twelve percent (12%) rank differential percentage between Police Officer and Sergeant.

E. The annual rate is based upon 2080 hours in active pay status.

Section 3.2 Instructional Duty Pay

When an employee is required to perform instructional duties in the following areas, the employee will be paid at a rate of ~~\$25~~ **\$35** per hour or their regular rate, whichever is greater, while teaching the class or seminar during regular work hours. Outside regular

work hours the employee will be paid ~~\$25 per hour or will be paid~~ at the overtime rate, if applicable, whichever is greater. To be eligible for this designation and rate of pay the employee must:

1. Complete and successfully pass the instructional skills certification offered by OPOTA or an OPOTA accepted equivalent.
2. Maintain a current instructional skill certification as well as any changes in the certification requirements that may occur in the future.
3. Become certified in any one of the following:
 - First Aid
 - C.P.R.
 - Baton
 - Unarmed self defense

EXAMPLE -- APPLICATION OF FOP WAGE PROPOSAL

- If the FOP's wage proposal is implemented, all bargaining unit members initially will be placed on the wage table according to their current years of service. Thereafter, members will advance to the next step of the wage table on their anniversary date (if they are below top step).
- The FOP also proposes 4% increases for Years 2 and 3 of the contract. On July 1, 2010 and July 1, 2011, members receive this 4% increase for their current step.

By way of specific example, the following members' wages would change as follows:

Kelly Brown – (Date of Hire: 1/2/2009 – 0 years of service)

-- In Year 1 of the contract (effective 7/1/09), Brown would be placed at Step 1 of the "Police Officer" wage table, with an annual salary of \$38,355. (Brown's current salary is \$30,696.)

-- On January 2, 2010 (Brown's anniversary date), he would advance to Step 2 of the salary schedule (i.e., \$40,580).

-- On July 1, 2010 (Year 2 of the contract), Brown's pay would increase by 4% to \$42,203 (but he would remain at Step 2 of the wage table until his next anniversary date).

Thomas Lewis – (Date of Hire: 11/1/2007 – 1 year of service)

-- In Year 1 of the contract (effective 7/1/09), Lewis would be placed at Step 2 of the "Police Officer" wage table, with an annual salary of \$40,580. (Lewis' current salary is \$32,366.)

-- On November 1, 2009 (Lewis' anniversary date), he would advance to Step 3 of the salary schedule (i.e., \$42,910).

-- On July 1, 2010 (Year 2 of the contract), Lewis' pay would increase by 4% to \$44,636 (but he would remain at Step 3 of the wage table until his next anniversary date).

Clark Bryant – (Date of Hire: 11/16/2001 – 7 years of service)

- In Year 1 of the contract (effective 7/1/09), Bryant would be placed at Step 4 of the "Police Officer" wage table, with an annual salary of \$52,457. (Bryant's current salary is \$41,009.)
- On November 16, 2009 (Bryant's anniversary date), he would remain at Step 4 of the wage table and would not advance further (i.e., no wage increase at that time).
- On July 1, 2010 (Year 2 of the contract), Bryant's pay would increase by 4% to \$54,558 (and he would remain at Step 4 of the wage table).

G. Thomas – (Date of Hire: 5/15/95 – 14 years of service)

- In Year 1 of the contract (effective 7/1/09), Thomas would be placed at Step 4 of the "Police Officer" wage table, with an annual salary of \$52,457. (Thomas' current salary is \$44,842.)
- On May 15, 2009 (Thomas' anniversary date), he would remain at Step 4 of the wage table and would not advance further (i.e., no wage increase at that time).
- On July 1, 2010 (Year 2 of the contract), Thomas' pay would increase by 4% to \$54,558 (and he would remain at Step 4 of the wage table).

The Union respectfully submits that there is a compelling need to implement a wage structure rather than use pay grades to determine compensation. The Columbus State Community College bargaining unit ranks last among any of the twenty-two (22) units represented by Lodge #9 in terms of compensation. Not only does the CSCC unit rank last among the twenty-two (22) units represented by Lodge #9, but the disparity in compensation is a substantial margin. In fact, adopting the Union proposal will not advance the CSCC unit. It will remain last in a line of twenty-two (22) bargaining units represented by Lodge #9. It is significant to note at this point that every other bargaining unit represented by Lodge #9 and geographically located within central Ohio utilizes a step system to provide uniformity in compensation.

While the economy is in a state of flux to say the least, and other organizations have been impacted negatively, CSCC has the ability to finance the Union's proposal. One need only look at the operating budget projected for Fiscal Year 2010 and the operating budget for Fiscal Year 2009 to draw the conclusion that the College has the ability to finance the proposal. There is a \$5,000,000 surplus in unencumbered cash reserves

identified in the 2009 budget. Moreover, enrollment growth equaled 15% in the winter quarter followed by an 11% increase in the spring quarter in enrollment and an 18% enrollment increase for the summer quarter.

In addition, the State Share of Instructional revenue was expected to rise from \$52,000,000 to \$64,000,000 in 2010.

CSCC's Position

In starkest terms, the College has proposed across the board wage increases of 3.75% in Year 1 of the contract, 3.75% in Year 2 of the contract, and 3.6% in Year 3 of the contract. According to the College this proposal will cost approximately \$275,000.00 in new money. In the alternative, the College offers reduced across the board wage increases and a system of seniority pay, as well as career tracks for all classifications. The competing wage proposals of the parties to this fact-finding proceeding mandate that the College's wage proposal be considered in juxtaposition to the position to the FOP Ohio Labor Council Inc.

The first area of consideration for the fact-finder, according to the College, is the general economic climate and the precarious nature of the funding or revenue streams. Stated differently, CSCC cannot allow itself to be caught up in the moment of success in enrollment growth. It must be fiscally responsible. Moreover, it is the position of the CSCC that the FOP Ohio Labor Council Inc. Capital City Lodge #9 has not demonstrated a compelling reason for altering the pay grade wage scale.

In addition, it is the College's position that the comparables offered by the Union to support its position are irrelevant to this proceeding. Comparables must allow the comparison of bargaining units of similar characteristics in both actual work performed and expectations. The College asserts that the comparison between the CSCC bargaining

unit and the twenty-two (22) other bargaining units represented by FOP Ohio Labor Council Inc. Capital City Lodge #9 in central Ohio is inappropriate. It is inappropriate because the Union does not take into account the differences in the makeup of the work actually performed.

In short the College's position is that the Union has failed to make a case for the implementation of a wage scale based upon steps. Furthermore, the Union cannot justify its expensively exorbitant proposal in economic times where uncertainty prevails. It is true notwithstanding the State Share of Instructional income as a contribution to the budget and the excess reserve of unencumbered cash.

RECOMMENDATION

The undersigned is faced with a very difficult and unique situation in this case. The parties have presented competing wage proposals, each of which holds the promise for significant economic gains for the bargaining unit members if realized.

However, the parties' approaches to providing wage increases are dramatically different and the cost of funding the proposals significantly different. The Union's design is to restructure the compensation provision of the Collective Bargaining Agreement to reflect the "step" system. The College, on the other hand, offers across the board wage increases of 3.75% in Year 1 of the contract, a 3.75% wage increase across the board in Year 2 of the contract, and a 3.6% wage increase in the third year of the contract. Alternatively, the College offers a lesser percentage base rate increase (2.0%, 2.4% and 2.6%) coupled with promotional opportunities and a "retention" pay system (3.0%, 3.0%, and 5.0% for accumulating 5, 10, and 15 years of service.) The alternative received very little traction in negotiations.

Throughout the fact-finding proceedings the FOP, OLC Inc. asserted that its wage proposal was supported by compelling reasons. Through its wage proposal, the FOP, OLC Inc. is seeking to address the unfairness perpetrated by continued application of a wage scale that lacks uniformity. In addition, the Union is seeking to raise the wages sufficiently so as to compensate CSCC Police Officers in a manner comparable to other law enforcement units in central Ohio who are represented by the Capital City Lodge #9.

As set forth in the Union's pre-hearing statement and the record compiled at the fact-finding hearing, the Union asserts the pay grade system utilized by the College to compensate bargaining unit employees, more specifically Police Officers, produces inequitable results, which, in turn, effect morale and have a negative impact on the employee interaction. While CSCC does not have a major retention problem with Police Officers, morale certainly can be affected negatively by such circumstances.

To demonstrate the disparity which develops utilizing pay ranges to provide compensation a review of the illustrations set forth below is appropriate. Police Officer R.O. makes \$39,386 annually and has nine (9) years of seniority with CSCC. Officer C. B., with eight (8) years of seniority, and J.C., also with eight (8) years of seniority, are paid an annual salary of \$41,009. G.C. and J.M. have both accumulated seven (7) years of seniority, but are compensated at a higher level than Police Officer R.O.

The implementation of a step system for wages will eliminate any lack of uniformity and provide a healthier environment for employee interaction. It will also eliminate the corrosive effect of such an unbalanced compensation scale.

Given the circumstances and the arguments presented, the undersigned is constrained to find that compelling reasons exist for advancing the FOP's wage proposal. However, the inquiry cannot stop there. The appropriate comparables must be considered. Gaining

a full appreciation of comparables demands close scrutiny. Comparables may be instructive or, in some cases determinative. They can be used to demonstrate the fairness or unfairness of a proposal and used to identify the nature of one's position. Among other things, Ohio Revised Code, Section 4117.14(G)(7) and the Ohio Administrative Code, Section 4117-95-05(J) indicate that the fact-finder shall consider unresolved issues in the bargaining unit as they relate to other public and private employers engaged in comparable work, giving consideration to factors peculiar to that area or in the classifications involved. The College asserts that the type of work done in twenty-one (21) other bargaining units represented by Lodge #9 is different than the work performed by Police Officers on campus. The College cites the lack of violent offenses dealt with by CSCC Police Officers. The school contends that smaller community Police forces and other campus Police forces are more comparable to the bargaining unit.

The FOP OLC Inc. Capital City Lodge #9 asserts the proper comparison is central Ohio geographically and the twenty-one (21) bargaining units represented by the Lodge. The record demonstrates that among the Lodge #9 bargaining units, CSCC is dead last in compensation and will not be displaced from the bottom even with the implementation of the Union's proposal.

In order to be instructive comparables should be in close proximity, provide a favorable comparison in size and make up, and performing work similar to the bargaining unit. For comparables to be determinative the bargaining unit being compared must be virtually identical. The FOP's comparables meet the geographic test for an appropriate comparable, but given the diversity of work performed by those various bargaining units and their varying size, the persuasiveness of those comparables is minimized. The Union's comparables are instructive and provide a clear picture that the CSCC bargaining

unit has languished near the rear of the pack of units represented by Lodge # 9 with regard to compensation. The College's comparables are instructive at best in regard to support for the wage proposals.

As noted above, it is a very difficult and unique situation for a number of reasons, not the least of which is the economy. Wage proposals are being advanced by the parties are asserted with the backdrop of a national economy which just months ago was teetering on the brink of disaster and a period of economic growth of the College. Enrollment exploded in 2009, with a growth level of an 11% increase in the spring quarter and an 18% increase in the summer quarter of 2009. Increased enrollment does not produce total unencumbered income, with increased enrollment comes increased expenditures.

Under these circumstances one must ask, does the employer have the ability to finance the proposal? The Union proposal to restructure the compensation provision of the contract will cost approximately \$1.3 million dollars; where as the CSCC's proposal will cost \$275,000. Given the revenue streams, the growth in enrollment, and the anticipated future successes of the College, the numbers would suggest the employer has the financial wherewithal to absorb the Union's proposal. Given the cost associated with the Union's proposal, is it a prudent expenditure? In other words, can the undersigned recommend the adoption of the Union's proposal as a fiscally sound expenditure?

As with any decision involving the expenditure of money, a healthy bit of caution is dictated. Simply because there is a \$5,000,000 excess in operating revenues for fiscal year 2009, there is no compelling reason to simply spend as much of that money as possible. There must be a fiscally responsible approach to the wage increases being recommended by the fact-finder.

As noted previously in this Report the undersigned is convinced that compelling reasons exist which warrant the adoption of step scale similar to the one proposed by the FOP. It serves to provide uniformity in the wage structure and minimized the corrosive impact of an inequitable system. Morale would be enhanced. The step scale system would also foster retention. I would recommend a step system which opens the door for future growth and development and was not as expensive as the Union's proposal presented at fact-finding.

Therefore, the undersigned recommends base wage increase of 4.5% in Year 1 of the contract; 4.0% in Year 2; and 4.0% in Year 3. This recommendation addresses the need to improve the standing of the bargaining unit viz-a-vi other to whom it has been compared. Moreover, the College has the ability to finance the recommendation.

Article 40, Section 40.2 – Instructional Duty Pay

FOP's Position

“Under the current contract, CSCC may order a member to teach CPR, baton courses, unarmed self defense classes, etc. By ordering a member to perform this training, CSCC is able to save the cost of retaining these services from private contractors.

The Lodge seeks to increase the hourly rate from \$25 to \$35, or the regular hourly rate whichever is greater, for members who are required to perform instructional duty during regular work hours and the overtime rate of pay for performing such duties outside their regular duty hours. After all, the members required to perform these services do so at a great service to the College.”

CSCC's Position

“There is no demonstrated reason or need for increasing the Instructional Duty pay by \$10 per hour. For simplification purposes, CSCC seeks to change the rate to one

additional hour at the overtime rate for teaching during an assigned shift or overtime for all hours exceeding eighty (80) in a work period. CSCC seeks this amendment because it is a payroll nightmare. CSCC's system is not designed to automatically calculate the higher rate, so the calculations must be manually done each time. CSCC's proposal will take the guess work and human error out of the mix and ensure consistency in the process. This proposal is similar to other FOP contracts, specifically Ohio State (1 ½ per 8 hours) and Grandview Heights (\$1.25 per hour), even Columbus which offers extra vacation time for training is a better alternative. CSCC seeks an amendment to simplify Instructional Duty Pay calculations. In addition, CSCC seeks to simplify certifications needed to qualify for instructional duty by striking the enumerated area of certification and instead eliminating the language to become certified in a topic approved by the director/designee. This only stands to benefit the members because the certifications to qualify for pay would be unlimited.”

RECOMMENDATION

Notwithstanding the fact that the CSCC proposal bears a similarity to other FOP contract provisions and, more specifically, Ohio State and Grandview Heights, it is significant to keep in perspective a proper days pay for a proper days work. CSCC realizes a benefit from the use of in-house instructors and the Lodge's proposal represents a modest increase in an hourly rate payable to a member who is required to perform instructional duties. CSCC can finance the proposal, therefore, it is recommended that the hourly rate for members who are required to perform instructional duties be increased from \$25 per hour to \$30 per hour.

Article 40, Section 40.5 – Shift Differential

FOP's Position

“The Lodge proposes a \$1.00 per hour shift differential for members who are scheduled to work between the hours of 3:00 p.m. and 7:00 a.m., or are scheduled to work at least half their regular schedule between the hours of 3:00 p.m. and 7:00 a.m. A shift differential is a standard in Lodge contracts and the \$1.00 per hour shift differential is on the low end of the amount specified in other Lodge collective bargaining agreements....The differential is designed to provide compensation to members for working what traditionally is considered less than desirable schedules and hours of work.”

CSCC's Position

The FOP OLC Inc. position on shift differential is costly (\$1.00 per hour x 2080 hours x 16 employees x 3 years, or \$100,000). It is excessive. Comparable colleges who have union employee shift differentials do so at a much lower rate, typically \$0.20 to \$0.50 per hour range. Even municipal FOP units have differentials less than \$1.00.

RECOMMENDATION

Off hour shifts, such as the shifts between 3:00 p.m. to 7:00 a.m., are traditionally held to be the less desirable work schedules in eight hours of work. However, simply because the hours are less desirable, it is recommended that a fair adjustment be made to compensate employees for working those hours identified by the FOP OLC Inc. A shift differential of \$0.50 per hour is recommended.

Article 24 – Court Services

FOP's Position

“In the current Collective Bargaining Agreement, there is no provision for payment of members who appear in court outside their normal work schedule, other than for court service performed by a member as part of their regular civic duty.

The Lodge proposal is to retain those provisions of Article 24 dealing with pay to members during service on regular grand juries, but to include provisions dealing with pay rates and services associated with court appearances occurring in connection with or arising out of employment with CSCC.”

“The proposal is to add court time provision to Article 24. It will provide payment for members who are required to report to court outside their normal work schedule in association with their duties. Members who are required to report to court outside their normal schedule will be credited with a minimum of four (4) hours service at a regular rate or at an overtime rate if it places them in an overtime status. Any additional time beyond the four (4) hour minimum will be paid at the member’s straight time or overtime rate, whichever is applicable.”

The comparable Lodge contracts currently support four (4) hours. One only need to review the Franklin County contract, the Dublin contract, the Gahanna contract, the Grove City contract and others to reach this conclusion.

“The purpose of this provision is to compensate members for their inconvenience of having to report to court and consequent disruption of their lives when they have a required court appearance outside their normal work day. The Lodge proposal is reasonable and supported by market comparables and is designed to adequately compensate the members.”

CSCC's Position

CSCC proposes current language. "First, FOP members have lived without court pay since the inception and therefore a change, particularly in the grim economic climate, is not warranted. For rare court appearances, members are compensated accordingly.

Second, due to the nature of campus policing, most officers do not go to court. A perusal of police reports over the year's time demonstrates their work is unique to that of other units FOP #9 typically represents. Community policing involves parking violations, student misconduct, occasional harassment or disorderly conduct, minor thefts. When called to testify, it is usually a student conduct hearing held on campus.

Third, the department has a court liaison, a supervisor, who handles the bulk of the court work such as making appearances at pre-trial conferences. Though trained, most officers do not have experience in court duties, so the liaison works with the court to determine if the officer's presence is necessary. Last year CSCC officers made about fifteen (15) court appearances, therefore standby time is not essential.

Finally, assuming arguendo that members should receive some compensation for court time, FOP's proposal is excessive. Comparison of other FOP contracts including FOP's contract with the State illustrates that two (2) hours of court time is sufficient along with contingency that to qualify the court time does not abut to the regular schedule by one hour.

RECOMMENDATION

The undersigned recommends the CSCC's position be adopted. There is no compelling need demonstrated to compensate the members for a court appearance. It is an infrequent occurrence.

Article 28 – Hours of Work and Overtime

Section 28.1 – Work Week

FOP's Position

The FOP states that CSCC has advanced a proposal to change the work week from a standard forty (40) hour work week to an eighty (80) hour week. Under the CSCC's proposal, members would go from a standard eight (8) hour work day to twelve (12) hour shifts.

Every other bargaining unit represented by the Lodge performs work duties on an eight (8) hour shift and a forty (40) hour work week, although, some contracts offer four (4) ten (10) hour days. None of the other comparables provide for a twelve (12) hour shift and an eighty (80) hour work period.

“A poll of the bargaining unit in question was overwhelmingly against the CSCC's proposal. In fact, there are members in the unit who have no idea how they could possibly make the adjustment to twelve (12) hour shifts. Some of the bargaining unit members have child care issues, parental care issues, and other issues that would result in their inability to make the adjustment.”

Contrary to what CSCC maintains, morale would be negatively affected by the twelve hour shift change. Moreover, it would not have the desired effect of matching attendance to shifts. There simply is no need to change the work day to twelve (12) hour shifts and the work week to an eighty (80) hour period.

CSCC's Position

“Throughout negotiations, CSCC agreed to give FOP members many new concessions, offered a substantial creative wage package, and in return said only a few simple things, primarily in Article 28. CSCC needs to change the language of the forty

(40) hour work week to an eighty (80) hour work period so management simply has the right to pilot a twelve (12) hour four (4) platoon shift system without incurring overtime the first week. Additionally, management needs the ability to bid shifts by classification.”

“Management has been struggling with poor attendance, mark offs, and mandatory overtime. Seeking ways to reduce this problem, Police Chief Sean Asbury polled various departments throughout the country and all in all, those departments implementing twelve (12) hour shifts, report it is working well. Other union contracts have provisions for alternative work schedules, including twelve (12) hour shifts, so the proposal the CSCC is seeking is reasonable, much needed, and not groundbreaking or burdensome.”

“In summary, an eighty (80) hour work period, bidding by classification, and standardizing staffing coverage are simple but critical changes needed.”

RECOMMENDATION

It is the recommendation of the undersigned that status quo be maintained with respect to shifts and work periods. While flexibility in scheduling is essential to proper maintenance of the work production, the burden of the 12 hour shift coupled with the shortage of the bargaining unit members militates against the college’s proposal. It does not appear a compelling argument can be made for implementing a shift system based on twelve (12) hours. Once negotiated into a contract, it would be difficult for the bargaining unit members to extract themselves from the system. This is the type of matter usually addressed in a memorandum of understanding that has an expiration date or trigger date. Moreover, there are other ways to address poor attendance.

Section 28.2 – Posting of Work Schedules

FOP’s Position

“The Lodge proposes current language for the reasons stated *supra*.”

CSCC's Position

The College is proposing to allow the Director of Public Safety to establish “alternative work schedules”, presumably, with full discretion. The Lodge opposes the proposed language for the reasons it objected to the work week discussion. Those reasons are incorporated herein and fully re-written. The CSCC’s proposal is not groundbreaking or earth shattering. Alternative work schedules are recognized in other contracts. CSCC management surveyed the ranks and the troops were in favor of alternative shifts. It is critically important that CSCC through the Director of Public Safety receive the authority to implement alternative shifts at his discretion.

RECOMMENDATION

Employees take comfort in knowing they work a set schedule. Their body clocks and lifestyles adjust to those schedules and disruption creates havoc. Granting the Director of Public Safety the contractual right to establish alternative work schedules, presumably a twelve (12) hour work day, is abandonment of the employees’ right to bargain for their hours of work and other terms of employment. Employee rights and privileges emanate from the Collective Bargaining Agreement itself and should not be waived without a compelling reason. No such reason has been advanced by the CSCC; therefore the recommendation is to remain status quo.

Section 28.5 – Eligibility for Overtime

FOP's Position

The Union recognizes the CSCC proposal is one which seeks to remove paid sick leave from the calculus for purposes of determining when an employee is eligible for overtime. The inclusion of paid sick leave in the calculus of overtime eligibility was bargained into the recently expired contract just a few short years ago. Now, CSCC wants

CSCC's Position

It is necessary to run an efficient operation that the College with the safety force to standardize staffing coverage. The proposed changes add to staffing flexibility without placing the burden on any of the bargaining unit employees.

RECOMMENDATION

It is recommended that the status quo be maintained. The inclusion of Security Specialist in the short staffing process is not critical to the efficient function of the Department.

Section 28.9 – Scheduled Overtime

FOP's Position

The Lodge proposes current language for this section. The application of current language has not been a problem in the past and ensures reasonable, fair and consistent procedure for covering staffing shortages.

CSCC's Position

Management seeks the ability to bid shifts by classification so all of the Sergeants do not end up on the same shift and it is seeking the right to split overtime between two (2) shifts so that mandated employees are not overburdened with working sixteen (16) or more hours in a day.

RECOMMENDATION

Recommending that the overtime be split between two shifts so that mandated employees are not overburdened with working sixteen (16) or more hours in a day seems both logical and desirable. Such a change is designed to relieve the burden of an employee working an excessive amount of overtime. Therefore, given the circumstances,

the recommendation is to adopt the College's proposal with regard to splitting overtime otherwise it is recommended that the status quo be maintained.

Section 28.10 – Training (Mandatory, Elective and In-Service)

FOP's Position

“The Lodge proposal for Section 10 is to provide adequate notice to members of required training and staffing meetings. Presently, bargaining unit members are ordered to stay after their shifts, etc. to attend mandatory staff meetings they are never told about, or are ordered to attend the training sessions at a moment's notice that they never knew about. The training sessions and meetings that could easily be planned for in advance, and, in many cases, meetings have been planned in advance but nobody from management bothers to tell the membership.

Under the Lodge proposal, absent an emergency, members are not required to attend training or staff meetings with less than seven (7) days notice. Employees who attend such training or meeting with less than seven (7) days notice will be paid double time for hours of attendance. The Lodge proposal is reasonable and the payment of double time rate can be avoided simply by the College informing members more than seven (7) days in advance of the need for them to attend scheduled meetings and trainings.”

CSCC's Position

“Training is a priority at the CSCC. Chief Asbury therefore implemented an internal policy that all employees will undergo at least eight (8) hours of training per month. On June 30, President Moeller sent an email to all Departments outlining the fiscal uncertainty that lies in the next biennium budget. She emphasized the need for all Departments to cut their budgets by 2% to satisfy a contingency cost fund. As a further cost savings measure, she placed a heavy emphasis on reducing the amount of overtime

incurred. As a result, Chief Asbury has had to cancel some in-service training and is forced to revisit the training initiatives.

To address this dilemma, another small token the College sought during negotiations was the ability to adjust schedules to accommodate the training needs. The FOP also rejected the proposal entirely without compromise....”

Some FOP contracts afford management the right to adjust schedules for training. Similarly the State of Ohio permits agencies to flex schedules to avoid overtime or comp time.

“In 2008, CSCC members incurred 4800 hours of overtime. Certainly, overtime is not avoidable in a 24/7 operation, but can be managed. Giving management the ability to flex schedules for training purposes is a necessary means of fulfilling President Moeller’s directive on minimizing overtime, while promoting a prepared, professional force. This small concession causes no hardship on the members and is one of the few initiatives the College pushed in these lopsided negotiations. “

RECOMMENDATION

It is the recommendation of the undersigned that the CSCC’s position with regard to flex schedules to avoid overtime or comp time be adopted. A need has been demonstrated by the evidence presented, the arguments advanced, and the inconvenience to the bargaining unit member is minimal given the circumstances.

Section 28.11 – Holiday Coverage

“Both parties agreed the current language of Section 11 dealing with holiday coverage should be deleted, as the language is a throwback to the predecessor Collective Bargaining Agreement and is no longer necessary.” This agreement is incorporated by reference into this Report.

Section 28.12 – Compensatory Time

FOP's Position

“The Lodge’s proposal is to add a provision in Article 28 for compensatory time off in lieu of overtime pay. Members, at their option, would receive compensatory time off for overtime work. Requests by members to use compensatory time off made with less than 48 hours of advance notice could be approved at the discretion of the supervisor; requests for compensatory time off with greater than 48 hours notice could not be denied. No member could accrue more than 240 hours of compensatory time. Twice a year, a member could cash out all or part of his compensatory time bank. Under separation from service or death of the member, the compensatory time bank would be paid to the member or his/her estate, as the case may be. This provision will aid CSCC in its quest to avoid overtime in a variety of circumstances where the members elect to use compensatory time off, as opposed to overtime compensation at time and one half.”

CSCC's Position

“For the six years they’ve been unionized, FOP members have not had compensatory time in their contract. Similarly, the physical plant’s contract with Teamsters does not contain a provision on compensatory time, nor does the faculty contract with CSEA. CSCC simply does not have a compensatory time policy for any employee. The College’s payroll system is not designed to capture compensatory time and therefore, carving out an exception for thirty employees would be complicated so say the least.

In the past years the Board of Trustees has rejected the addition of compensatory time and will do so again. This is primarily because employees have ample leave time. FOP members are entitled to vacation leave (10 to 25 days), sick leave (15 days), personal business (4 days), 24/7 leave (14 to 18 days), and emergency closing leave (1 day). So in

total employees receive anywhere from 44 to 63 days off per year. Therefore, in a 2080 year, FOP members may take 16.92% to 24.34% of time away from work. FOP members readily use the leave afforded and they do not need additional leave banks enabling more time off.

In addition, CSCC offers ample cash outs. During the last round of contract negotiations, the College conceded to giving FOP a bank of 110 24/7 leave hours, which is used like a comp time bank and which may be cashed out at years end. In addition to two (2) personal days that may be cashed out. This round, the College increased the amount of sick leave hours for cash out from forty (40) to forty five (45); therefore they should not be entitled to an additional 240 hours.”

RECOMMENDATION

The CSCC’s position on the compensatory time and the cash out issues associated with it are extremely compelling. It is a struggle to reduce or minimize absenteeism. Moreover, CSCC offers ample cash outs and days off. The undersigned is persuaded that the recommendation should include the adoption of the CSCC’s position on comp time and reject the FOP’s approach.

Section 28.13 – Officer in Charge

FOP’s Position

“The Lodge’s proposal is to memorialize in the contract what is already current practice. That is, whenever a member is working as an Officer in Charge, the member is to be paid one additional hour of pay per shift at the member’s overtime rate. CSCC has not opposed this proposal and is consistent with what currently occurs.

Accordingly, for the foregoing reasons, the Lodge’s proposal for Article 28 embodies current contract language in all but a few particulars...Conversely, CSCC’s proposal re-

writes Article 28 so as to mandate unprecedented twelve hour shifts in an attempt to reduce overtime, all at the tremendous expense of the members and their personal lives and with very realistic costs and potential job losses. CSCC can reduce the need for overtime simply by hiring people to fill vacancies that already exist. The Lodge proposal is far more reasonable and compatible with what occurs everywhere else in the law enforcement community in central Ohio.”

CSCC's Position

“There is no need to provide for a contractual right to Officer in Charge pay of one hour of overtime. The CSCC has a Director, Chief, four (4) Lieutenants, and a Safety Supervisor. Sergeants serve as Officers in Charge back ups and are paid accordingly. There simply is no compelling reason for the addition of language which would call for the payment of Officers in Charge.”

RECOMMENDATION

With regard to the present issue, there are two diametrically opposed positions adopted by the parties. The FOP claims it is simply trying to memorialize current practice. The College argues the Officer in Charge pay provision is not necessary given the fact that Sergeants provide back up and the OIC situations for bargaining unit members would be rare.

Given the structure and the number of people in the supervisory ranks, the undersigned is persuaded to adopt the Officer in Charge pay provision articulated by the College.

Article 31 – Uniforms, Equipment and Allowances

The Lodge and CSCC both have proposals with respect to Article 31. However, the parties are in agreement that Officers shall be issued duty weapons and ammunition and

that these items ought to be specifically set out in this Article. Given that agreement of the parties, it is recommended that reference to duty weapons and ammunition be specifically set forth in Article 31.

FOP's Position

”The Lodge’s proposal is to add the items of weapons and ammunition, as well as the required magazines necessary for the Officer’s primary duty weapon to the existing list of uniforms, equipment and allowances contained in the current version of Section 6, Article 31. This is the easiest and clearest way to spell out the additional items that shall be supplied to Officers by the College. The CSCC’s proposal states that the same requirements for the issuance of weapons and ammunitions are in three (3) separate locations of Article 31, which is obviously repetitive and unnecessary.”

The real difference between proposals comes with CSCC’s suggestion that the entire list of uniform parts be stricken from the contract.

The Lodge’s proposal is consistent with current language in other contracts. It also contains a provision for a uniform committee to be established and it provides level playing field with respect to the issuance of required uniform parts and items of equipment.

CSCC's Position

“Recognizing the futility of amending the contract every three (3) years to update uniforms issued for each classification, CSCC seeks to delete the superfluous laundry list of items and simply reinforce CSCC’s commitment to provide uniforms, parts, boots/shoes and duty gear to all new employees with a change of issuance. This is common practice.”

RECOMMENDATION

It is the recommendation of the undersigned that the Lodge's proposal should be adopted in this situation. The parties have already established setting forth a specific itemized list of uniforms, equipment and allowances. The encouraging aspect of setting forth such items with specificity is it takes away from the opportunity or temptation to challenge the issuance of such materials. The undersigned recognizes that the khaki pant dispute occurred, however, when engaged in collective bargaining, negotiations is at the essence of disputing and the parties must, through the give and take of collective bargaining, provide the opportunity to voice opinions.

Article 36 – Personnel Files

Section 36.3 – Review of Documents

“There is a typographical error in the spelling of the word Resources in the current language of Article 36.3. Both parties' proposals include the corrected spelling of the word and said agreement is incorporated herein.”

Section 36.4 – Disciplinary Record Removal and Limited Access File

FOP's Position

”The Lodge's proposal is to add language to the existing provision in Section 36.4....The current language of Section 36.4 provides that verbal and written reprimands cannot be utilized by CSCC beyond a twelve (12) month period if no other disciplinary occurred during the period; whereas records of suspension and demotion cannot be utilized beyond a twenty four (24) month period. The Lodge's proposal is that such records not be used administratively as long as no longer legal aided (i.e., “same or similar”) discipline occurs within the period already delineated by the current language....Under current language CSCC uses disciplinary action records against

members and progresses them if discipline, any discipline (even completely unrelated discipline) occurs in the stated period. Under the Lodge's proposal, the second disciplinary action will be the same or similar and the first in order to be utilized against the member."

"The Lodge's proposal is based upon relevant comparable contracts and is eminently reasonable. CSCC's proposals would have the effect of extending life of disciplinary action of the record for no discernable reason under circumstances which make no sense."

CSCC's Position

"CSCC rejected the FOP's language in its entirety, but sought to clarify the College practice that reprimands remain in personnel files for twelve (12) months following the date of issuance and to add language to clarify disciplinary records will be removed from personnel files upon request of the employee. The CSCC's final proposal is current language with the exception of mending 'director' to 'director/designee' and changes 'resoruces' to 'resources'."

First, from a comparative standpoint, adding a provision that records of discipline must be related to be progressive is internally inconsistent with all other unit contracts and college policy. "The word 'related' would carve out an unfair exception to the College's disciplinary process for thirty (30) individuals." Second, there is no necessity for change.

RECOMMENDATION

The FOP has not demonstrated sufficient reason for change of the provision concerning personnel files. Moreover, adding the word 'related' to the provision of the contract would not only carve out an unfair exception to the College's disciplinary

process for thirty (30) employees, but it would be extremely restrictive in applying the progressive discipline policy. Moreover, internal comparisons support adopting the CSCC's position with regard to personnel files. It is the undersigned's recommendation that the final proposal of the CSCC incorporating current language into the language to be supplied in the contract and amending the word "director" to reflect "director/designee", as well as correcting the misspelling of the word "resources".

Article 42 – Vacancies and Promotions

Section 42.1 – Definitions

FOP's Position

The Lodge is proposing to strike the outdated pay ban classifications for each position consistent with the Lodge's proposal in Article 40. The CSCC's position reflects an attempt to define the role of Coordinators which is contrary to the fact that position descriptions already exist. The CSCC also seeks language to the effect that Sergeants do not receive Officer in Charge pay.

CSCC's Position

"CSCC seeks minor changes to clarify the title Dispatcher I and II and to define the role of Coordinators (Sergeants)." This will eliminate any confusion concerning the classification. CSCC also seeks to amend Section 3 "to provide conformity with College process." The College's proposal with regard to Section 3 seeks to update the relevance of the provision as it is antiquated.

CSCC also seeks to also better define probationary periods for employees promoted or transferred within the bargaining unit and to include the words "designee" and "Public Safety Department" in Section 6....The amendment clarifies that not only those promoted but those that transfer must serve a probation; that their performance must be satisfactory;

and if it is not, that they may return to the previous position if one is available. This language clarifies that the College does not have to displace newly hired persons or hold positions open when workers promote or transfer.

“Most importantly, CSCC’s final proposal includes creating a career track for all classifications by creating the positions of Police Officer II and Safety Specialist II. In conjunction with the wage proposal option, CSCC proposes to move Officers from pay range 28 to 29 and promote the II’s to pay range 30 (base pay of \$36,000 to \$41,000 with corresponding pay range increases for Sergeant from \$29,000 to \$31,000.) Similarly Security Specialist and Technicians, overlooked during bargaining, would have similar promotional opportunities.”

“The proposal outlines specifications for a promotion by satisfactory performance in five key areas: 1. Minimum of three years of service in public safety; 2. Technical skills and competencies; 3. Effective communication skills; 4. Professionalism; and 5. Engagement and service. The process closely mirrors the continued process of the faculty. Candidates would be required to maintain portfolios demonstrating performance in the enumerated areas. Supervisors play a key role in sponsoring direct reports, mentoring and coaching them, promoting their candidacy, and equipping them with tools they need for success. CSCC invites the FOP’s involvement into the process and has designed a selection committee as one FOP member, one HR rep and a Director/Designee. Unsuccessful applicants would receive an action plan, which can be used as a road map for future success. Finally, the proposal clarifies that those promoted receive a greater of 5% or the minimum of the base of the promotional pay range.”

“The promotional program is a better alternative. Pay for performance is a 21st century trend, unlike the step system which promotes getting paid for showing up. Therefore, this process should be adopted.”

RECOMMENDATION

Given the fact that I have already recommended across the board increases and entering into a form of performance based advancement and compensation is only successful in implementation when it is embraced through the collective bargaining process, I cannot adopt the CSCC proposal. The recommendation is to maintain the status quo.

Section 42.3

FOP's Position

The FOP proposes current language for this section of the contract.

CSCC's Position

Employees shall follow the College's online application process.

RECOMMENDATION

Based upon the evidence compiled and the recommendations made in connection with the issues arising under Article 42 the status quo is recommended.

Section 42.4-Selection Criteria for Promotions

FOP Position

It is the FOP's position to maintain the status quo.

CSCC Position

The CSCC proposal is designed as an integral part of an overall promotional system that recognizes performance based advancement and introduces pay for

performance. It is a system that sets eligibility, establishes mentors, provides financial incentives and should be seen as an opportunity by the bargaining unit.

RECOMMENDATION

Given the fact that I have already recommended across the board increases and entering into a form of performance based advancement and compensation is only successful in implementation when it is embraced through the collective bargaining process, I cannot adopt the CSCC proposal. The recommendation is to maintain the status quo.

Section 42.5-Promotional Probationary Periods

FOP's Position

FOP asserts the adoption of the status quo.

CSCC's Position

As part and parcel of the performance based promotional opportunities the College seeks to alter the probationary periods.

RECOMMENDATION

For the reasons set forth above (Article 42.4), it is recommended that the status quo be maintained.

Section 42.6 – Specialty Assignments

FOP's Position

“Current language authorizes the creation of specialty assignments within the Public Safety Department, such as assignments involving matters such as investigations, public outreach, and property room control. Whenever such specialty assignment is created, the contract requires that the announcement be posted to solicit interested individuals. The

Director of Public Safety may then assign duties based on certain criteria such as education, knowledge, skills and abilities.

The Lodge's proposal is to add a provision to the current language for certain circumstances when multiple members express interest in the same assignment. In such cases under the Lodge's proposal, preference would be give to members whose qualifications more closely match the needs for the assignment. Additionally, in the Lodge's proposal in cases where multiple members express interest in the same assignment and have substantially similar qualifications, the Director of Public Safety could at this discretion either create more than one position for the posted assignment, or award the assignment to the applicant with the greatest departmental seniority." The Lodge's proposal is reasonable and leaves appropriate discretion in the hands of CSCC.

CSCC's Position

"This additional language will completely desecrate management's discretion in determining who to assign in specialty assignments. Imagine having to create a second specialty assignment each time one of more member expresses an interest. A thorough examination of FOP contracts statewide reveals no similar language. In fact, the current language is in line with the FOP contracts that address the issue. For example, OSU's contract with FOP 9 states that when specialty assignment is available, a written announcement will be posted for seven (7) days, and the Chief shall make the sole selection. The CSCC suspects the current proposal is personal and does not serve the overall membership desires. Simply, the current language is manageable and creates no real issues. This proposal should be rejected.

RECOMMENDATION

It is the recommendation of the undersigned that it is unnecessary to alter the specialty assignment language of the Collective Bargaining Agreement. Review of the FOP contracts which are comparable suggest the recommendation is appropriate. Moreover, the FOP's proposal appears to provide for gratuitous assignments at a cost to the CSCC.

IV. Certification

The fact-finding report and recommendations are based upon the evidence and testimony presented to me as at a fact-finding hearing conducted on September 9, 2009. Recommendations contained herein are developed in conformity with the criteria set forth for a fact-finding in accordance with the Ohio Revised Code 4717(7)(a-f) and the associated administration of rules developed by SERB.



Daniel N. Kosanovich
Fact-Finder

V. Proof of Service

This fact-finding report was mailed to Tim Wagner, Vice President, Human Resources, and Stephanie Demers, Human Resources Advisor, Columbus State Community College, 550 E. Spring St., PO Box 1609, Columbus OH 43216 and Russell E. Carnahan and Robert Byard, Hunter, Carnahan, Shoub & Byard, 3360 Tremont Rd., 2nd Floor, Columbus OH 43221. This report was also emailed to the parties on September 23, 2009.



Daniel N. Kosanovich
Fact-Finder