

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
FACT-FINDING PROCEEDINGS**

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REPORT & RECOMMENDATIONS

AS ISSUED

GREGORY JAMES VAN PELT

April 20, 2012

IN THE MATTER OF:

Hamilton County Sheriff's Office)

(Employer))

-and-)

Fraternal Order of Police)

Ohio Labor Council)

(Union))

) SERB Case Nos.:

) 11-MED-07 -0973/0974

APPEARANCES:

On Behalf of the Employer:

Brett A. Geary
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On Behalf of the Union:

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FOP/OLC
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SUBMISSION

The Fraternal Order of Police, Ohio Labor Council is the exclusive representative for two bargaining units comprising approximately 248 Enforcement Officers (Enforcement Unit) and 28 Sergeants and Lieutenants (Sergeants & Lieutenants Unit) employed by the Hamilton County Sheriff's Office (Sheriff or Employer). The Parties in the present negotiation have had an ongoing collective bargaining relationship culminating in an Agreement that obtained through December 31, 2011. Mutually agreeing to an extension of the statutory deadlines, the Parties met in negotiations toward a successor contract on a number of occasions prior to reaching impasse on the issues enumerated below.

Having reached impasse, the Parties requested that the Fact-finder undertake mediation of the unresolved issues, and accordingly mediation was attempted between the Parties on March 30, 2012. However, mediation failed to resolve all issues at impasse, and an evidentiary hearing was convened immediately following attempts at mediation. At hearing, the Parties were afforded an opportunity to present evidence and testimony, and to cross examine witnesses. The matter was declared closed as of the date of hearing.

ISSUES AT IMPASSE

The Parties identified and presented the following issues as unresolved:

In Case No. 11-MED-07-0974 - Enforcement Officers:

1. Article 9 - Discipline
2. Article 20 - Wages and Compensation
3. Article 32 - Outside Employment

In Case No. 11-MED-07-0973 - Sergeants & Lieutenants:

1. Article 9 - Discipline
2. Article 18 - Wages and Compensation
3. Article 34 - Outside Employment

In addition to the issues enumerated above, the Parties reached tentative agreement as to a number of issues, included here by reference but not limited to:

1. Article 8 – Grievance Procedure
2. Article 10 – Personnel Files
3. Article 19 – Hours of Work
4. Article 24 – Vacation
5. Article 43 – Duration

Note: Articles enumerated above reference Enforcement Unit Agreement; corresponding Articles in the Sergeant's and Lieutenant's Agreement, as well as any and all other tentative agreements of the Parties not listed above are incorporated by reference herein.

STATUTORY CONSIDERATIONS

In weighing the positions presented by the Parties, the Fact-finder was guided by the considerations enumerated in OAC 4117-9-05(K), *et seq*, specifically:

- 4117-9-05(K)(1) Past Collectively bargained agreements, if any, between the parties;
- 4117-9-05(K)(2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- 4117-9-05(K)(3) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- 4117-9-05(K)(4) The lawful authority of the public employer;
- 4117-9-05(K)(5) Any stipulations of the parties;
- 4117-9-05(K)(6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

FINDINGS AND RECOMMENDATIONS

Articles 9/9 - Discipline

Current Contract Language - Enforcement Officers:

Section 9.7. Any employee charged with or under indictment for a felony, or any crime which results in a weapons disability, who is not disciplined or discharged by the Employer, may be placed on a leave of absence without pay until resolution of the court proceedings. An employee may use accrued but unused vacation, holiday, or compensatory time during the leave. An employee found guilty by the trial court of a felony, or any crime which results in a weapons disability, shall be summarily discharged. Where the charges are reduced to a misdemeanor (other than a crime which results in a weapons disability) or the employee is found innocent of the charges, the employee may be subject to discipline pursuant to the terms of this Article, but he/she shall be paid for all lost straight time hours and shall have

any vacation, holiday, and/or compensatory time used restored to his/her credit. The Employer shall continue to pay the employee's insurance premiums during the unpaid leave of absence.

Current Contract Language – Sergeants and Lieutenants:

Section 9.7. Any employee charged with or under indictment for a felony, or any crime which results in a weapons disability, who is not disciplined or discharged by the Employer, may be placed on a leave of absence without pay until resolution of the court proceedings. An employee may use accrued but unused vacation, holiday, or compensatory time during the leave. An employee found guilty by the trial court of a felony, or any crime which results in a weapons disability, shall be summarily discharged. Where the charges are reduced to a misdemeanor (other than a crime which results in a weapons disability) or the employee is found innocent of the charges, the employee may be subject to discipline pursuant to the terms of this Article, but he/she shall be paid for all lost straight time hours and shall have any vacation, holiday, and/or compensatory time used restored to his/her credit. The Employer shall continue to pay the employee's insurance premiums during the unpaid leave of absence.

Sheriff's Proposal:

The Employer proposes deletion of language providing for the automatic restoration of all lost straight time hours and any vacation, holiday or compensatory time used by employees placed on administrative leave pending resolution of court proceedings for felonies subsequently reduced to misdemeanors or of which the employee is found not guilty.

The Sheriff argues that there may be circumstances in which the use of paid leave is a disciplinary outcome of administrative misconduct. In such cases, the Employer contends, the Sheriff's Office should not be required to provide paid leave for employees who are arrested, charged with crimes and ultimately convicted, whether of felonies or misdemeanors. Law enforcement officers are, and should be, held to a higher standard than the general public.

FOP/OLC Position:

The Union opposes the changes to Article 9 proposed by the Sheriff, and urges retention of the current contract provision. Particularly with regard to employment related offenses, the FOP/OLC contends that it is increasingly common for employers to levy felony charges against employees for actions which the Union asserts do not warrant such charges. Moreover, the FOP/OLC maintains that it is not uncommon for people charged with felonies to plead to misdemeanor charges in order to avoid the cost of a criminal defense. The

Sheriff's proposal would add additional penalties to employees charged with felonies

Recommendation:

While it is appropriate that law enforcement officers be held to higher standards of conduct than the general public, §9.7 clearly contemplates felonies or crimes that result in “a weapons disability”; i.e., criminal convictions that might impair an FOP/OLC member’s ability to perform his or her law enforcement duties.

The Sheriff’s position that in certain cases loss of paid time might be the disciplinary result of misdemeanor convictions or other behavior on the part of bargaining unit members is less than persuasive. In such circumstances the Sheriff can – and should – take disciplinary action under the just cause provisions of the Agreement, subject to industrial due process.

Moreover, the Employer presents no evidence that misdemeanor or any other criminal convictions are sufficiently problematic as to warrant modification of Article 9. Accordingly, it is recommended that the current contract provision be retained.

Articles 20/24 - Wages and Compensation

Current Contract Language - Enforcement Officers:

Section 20.1. Effective the first pay of 2009, the hourly pay for all bargaining unit employees shall be as follows:

<u>POSITION</u>	<u>GRADE</u>	<u>HOURLY</u>	<u>BIWEEKLY</u>	<u>ANNUAL</u>
<i>Patrol Clerk</i>	<i>Entry</i>	<i>18.8799</i>	<i>1,510.39</i>	<i>39,270.23</i>
	<i>1 yr.</i>	<i>19.6352</i>	<i>1,570.82</i>	<i>40,841.24</i>
	<i>2 yr.</i>	<i>20.4204</i>	<i>1,633.64</i>	<i>42,474.53</i>
	<i>3 yr.</i>	<i>20.9165</i>	<i>1,673.32</i>	<i>43,506.41</i>
	<i>4 yr.</i>	<i>22.4094</i>	<i>1,792.75</i>	<i>46,611.61</i>
<i>Court Service Officer</i>	<i>Entry</i>	<i>19.9827</i>	<i>1,598.62</i>	<i>41,564.01</i>
	<i>Step 1</i>	<i>21.2640</i>	<i>1,701.12</i>	<i>44,229.18</i>
	<i>Step 2</i>	<i>22.3283</i>	<i>1,786.27</i>	<i>46,442.96</i>
	<i>Step 3</i>	<i>24.1170</i>	<i>1,929.36</i>	<i>50,163.43</i>
	<i>Step 4</i>	<i>25.3209</i>	<i>2,025.67</i>	<i>52,667.45</i>
<i>Patrol Officer</i>	<i>Entry</i>	<i>20.6758</i>	<i>1,654.07</i>	<i>43,005.70</i>
	<i>1 yr.</i>	<i>21.7649</i>	<i>1,741.19</i>	<i>45,271.07</i>
	<i>2 yr.</i>	<i>22.8511</i>	<i>1,828.09</i>	<i>47,530.30</i>

	3 yr.	24.0059	1,920.47	49,932.27
	4 yr.	26.9214	2,153.71	55,996.52
Corporal/ Evidence Technician	Entry	28.8058	2,304.47	59,916.09

Section 20.2. *There shall be no increases in wages for calendar years 2009 and 2010. If the parties do not agree to the wage rates for 2011, the Union or the Employer must notify SERB in the appropriate manner for a re-opener on the contract for wages only. Any language agreed upon in the re-opener shall be included as an Appendix to this Agreement.*

* * *

Section 20.5. *Any employee assigned to OCD, CIS, K-9 or Traffic Investigation shall, for the duration of the assignment, be compensated at the Corporal rate of pay. Upon conclusion of the assignment, the employee shall return to the pay grade assigned to his/her permanent classification, and shall be placed in the step he/she would otherwise be entitled to.*

Current Contract Language – Sergeants and Lieutenants:

Section 18.1. *Employees in the rank of Sergeant shall be paid an annual salary equal to sixteen percent (16%) more than the top annual salary step in the pay grade for Patrol Officer.*

Section 18.2. *Employees in the rank of Lieutenant shall be paid an annual salary equal to an amount that is sixteen percent (16%) more than the annual salary of Patrol Sergeant.*

Section 18.3. *Beginning the first day of the pay period within which an employee completes the required number of years of total service with the Employer, he/she will receive an automatic adjustment in his/her rate of pay equal to and in accordance with the following:*

<i>Ten (10) years of service:</i>	<i>One percent (1.0%)</i>
<i>Fifteen (15) years of service:</i>	<i>One and one-half percent (1½%)</i>
<i>Twenty (20) years of service:</i>	<i>Two percent (2%)</i>

FOP/OLC Proposal:

The Union seeks three percent (3%) wage increases in each of the successor Agreement’s three contract years; i.e., annual 3% increases effective in January of 2012, 2013 and 2014 respectively. The FOP also proposes inclusion of Officers assigned to Probate duty in the list of those compensated at the Corporal rate of pay. The Union seeks no change in the compensation provisions of Article 18 of the Sergeants and Lieutenants Agreement.

The FOP/OLC maintains that bargaining unit members have not had wage increases

in three years. In 2010 the Union asserts that the previous County Administrator recommended a 3% increase in Enforcement Officer compensation, which the FOP/OLC contends it relied on during reopened wage negotiations for 2011. The County chose to ignore the former Administrator's recommendation, and rather proposed an additional year of wage freezes. While a Fact-finder recommended a 2.9% wage increase in 2010, that recommendation was overturned by a Conciliator. Now, the FOP/OLC argues, the County is again proposing no wage increases for 2012, with wage reopeners for both 2013 and 2014.

The Union argues that external comparables indicate that Hamilton County Deputies receive less than their counterparts in peer counties in the region. At top levels, the FOP asserts, bargaining unit members receive less than sheriff's deputies in Warren County, Clermont County and Butler County, and are paid less than both Warren County and Butler County deputies at entry level. Indeed, the FOP contends that Hamilton County Deputies were the only employees in those comparable counties not to receive any pay increase in 2009.

Of colleagues in Franklin, Montgomery and Summit Counties, only Summit County deputies receive less pay than bargaining unit members at top level, according to the Union, who were again the only cohort to receive no increase in compensation for 2009. By contrast, the FOP/OLC maintains that Franklin County Sheriff's Deputies received a 4% wage increase, Montgomery County Deputies received 3.5% and Union counterparts in Summit County received an increase of 3% in 2009.

Hamilton County Deputies make less at both entry level and top rate than their counterparts in neighboring communities, including the City of Cincinnati, and Colerain and Green Townships, and were again the only officers in those political subdivisions not to receive wage increases in 2009. Officers in Colerain and Green Townships, alongside whom Hamilton County Deputies patrol, received wage increases in 2010 as well.

The FOP/OLC contends that the wage increases it seeks are supported by internal comparables, as well. Hamilton County Correction Supervisors received a 2% wage increase in 2010 and a 3% increase in 2011. Corrections Officers received a 2.9% increase based on the Fact-finder's Recommendation in the Deputies' reopener. However, the Union points out that the Deputies' unit never enjoyed that increase, as it was overturned by a Conciliator. The County's clerical unit received a 3% increase, effective on December 23, 2011 and an

additional 4% that will become effective on December 22, 2012.

Other employees have also been awarded wage increases. According to the *Cincinnati Enquirer* in an article titled *Wages Abound in County Agencies* cited by the Union, the Conciliator's Award overturning the Fact-finder recommending a 2.9% wage increase for the present bargaining units also contained "me-too" language affording increases to other County employees.

There is no inability to pay on the part of the Employer, the FOP maintains; the County can finance the wage increases sought by the Union, but simply choose not to do so. Neither can the Employer continue to rely on "economic uncertainty" to avoid wage increases to FOP members. It is simply a matter of the County prioritizing its spending in order to maintain a dedicated workforce essential to the operations of the Hamilton County Sheriff's Office, according to the FOP/OLC.

Inclusion of Officers assigned to Probate duty among those receiving Corporal's pay is appropriate, according to the Union, as those Officers presently carry out duties generally performed by Corporals.

For these reasons, the Union urges the Fact-finder to reject the County's proposal in order to avoid widening a gap between bargaining unit members and their counterparts and co-workers created by three years of wage freezes.

Sheriff's Proposal:

The County maintains that it is not in a position to "continue business as usual" in light of revenue shortfalls. More than half of the County's dozen bargaining units are currently or will soon be engaged in contract negotiations or wage re-openers in 2012. Accordingly, the Sheriff proposes a wage freeze for 2012, and the re-opening of wage negotiations in both 2013 and 2014 for the Enforcement bargaining unit, and retention of the current differentials for the Sergeants and Lieutenants.

The Employer asserts that members of the present bargaining units have done better than the County's non-represented employees. As an example, the Employer points out that FOP/OLC members benefitted from a 2009 Conciliation Award limiting employee health insurance premium contribution increases to the percentage increase of bargaining unit wages. As a result, the County argues, FOP members' insurance contributions have remained flat since 2009 and are significantly lower than those of other County workers.

According to the County, the operations of the Sheriff's Office are funded primarily through the General Fund. In 2011 the Sheriff's Office had difficulty maintaining services at the budgeted level and additional appropriations from the General Fund were necessary. In 2012 the Sheriff contends the Office is faced with some \$1.1 million in additional expenditures as the result of increased Employer health care costs and wage increases imposed through a Conciliation Award. Consequently, the 2012 budget was increased over 2011 levels, but no additional funds were allocated for wage increases for other bargaining units.

The Employer states that five revenue sources comprise 66% of General Fund revenues. In total, the County maintains that its 2012 projection represents a decrease of some \$42.2 million from 2007 revenue levels. Among the five sources, the County estimates that sales taxes – the largest source of General Fund revenues – will be approximately \$65 million, a slight increase over 2011, but 3.5% below 2007 levels. Property taxes are projected to decrease by \$6.3 million from 2011, based on lower property values resulting from the six-year reappraisal, and phase-out of the state personal property and public utility tax reimbursements. The Employer also projects that income from the state's Local Government Fund – budgeted at \$14.7 million – will decrease by 17% in the first six months of 2012 and 50% thereafter, a revenue reduction of some \$5.9 million over 2011. In 2011, the County reports, revenue from real estate recording fees, conveyance fees and transfer taxes decreased by 5% over 2010 levels due to the phase out of the new homeowner tax credit, and is expected to further decrease by 6.9% or \$678,000 in 2012, generating \$9.2 million in revenue. Likewise, the County's interest earnings – estimated at \$5.6 million – are expected to decrease by 11.1% or approximately \$700,000 over 2011 levels, based on expectations of continued low interest rates.

The Employer argues that the seriousness of its financial situation is reflected in the County Reserve Fund balance. It projects that the 2012 fund balance will decrease from the 2011 ending balance by some \$5.8 million resulting in a reserve equal to only 10.2% of operating expenses. The County points out that the Government Finance Officer's Association (GFOA) recommends a minimum reserve of two months of regular general fund operating revenues or general fund operating expenditures. Hamilton County's Reserve

Fund balance at the close of 2012, the Employer states, is projected to be approximately \$20.8 million, or barely over one month of General Fund expenditures.

The Sheriff's Office provides patrol services to Townships within the County. While the County acknowledges that the Townships share the cost, the Employer asserts that it is being asked to bear substantial administrative costs. Accordingly, the County Commission approved an additional \$2 million appropriation to cover service to the Townships, even against what the Employer contends was the recommendation of the County Administrator that the appropriation be decreased by some \$4 million. The additional appropriation will be credited against the County's Reserve Fund.

Moreover, the County projects long-term multi-million dollar deficiencies in sales tax revenues to service debt obligations incurred in the building of professional stadiums in the City. No long-term solution has been arrived at, and as a result the County expects the General Fund will be obligated to make up shortfalls.

Based on these projections, the County Administrator expects the budget deficit for 2013 to be an additional \$13.6 million.

Thus, due to funding constraints, the Employer maintains that its 2012 budget does not include wage increases for employees beyond those already mandated as a result of the collective bargaining process; any additional wage obligations will require identification of an additional funding source. While there is a slight increase in the 2012 budget of the Sheriff's Office, the Employer asserts that the increase reflects what it characterizes as "the reality that the Office could not provide necessary services with the amount allocated in 2011" and additional expenses resulting from staff transfers and increases ordered through Conciliation. Those increases are to be funded from the County's Reserve Fund, a non-renewable source of revenue.

The Employer maintains that the two instant bargaining units are among the highest paid employees in the County. The average Hamilton County employee, the Employer contends, is \$44,900; 45% of employees in the County make less than \$40,000; 69% less than \$50,000; and 84% make less than \$60,000. By contrast, the Employer argues that the base salary of an Enforcement Officer with four years of service is \$56,000; senior Officers and Corporals make approximately \$61,000 in base wages. However, the Sheriff points out that additional compensation such as longevity (1-2%), uniform allowances (\$800 per year)

and overtime are not available to other County employees.

Additionally, the Sheriff argues that only these two FOP/OLC bargaining units were awarded a cap on employee health insurance premium contributions. As a result of the cap imposed through interest arbitration, in 2010 and 2011 bargaining unit members were paying as much as \$200 less per bi-weekly pay period – or some \$5,200 per year – than other County employees for the top insurance plan offered by the County. The County's HMO plan was eliminated in 2012, but the Employer contends that all other benefits and contribution rates remained the same, resulting in a savings to FOP/OLC members of \$150 per pay period over rates paid by other County employees for the top family coverage.

Therefore, based on the relative salaries and benefits, these bargaining members enjoy, the Employer asserts that its wage proposal is reasonable and justified in consideration of Hamilton County's financial condition.

The Sheriff rejects what it speculates might be Union suggestions as to other revenue sources:

The County is not in a position to raise sales tax rates, which, at the current 6.5% rate is equal to Clermont and Warren Counties, higher than Kentucky at 6% and Butler County at 6.25%, and slightly higher than Indiana's 7%. A County Tax Levy Review Commission, considering the issue in 2010, found that a .5% tax increase would result in a negative effect on the County General Fund and could downgrade the County's bond rating. More, any such proposed increase would be subject to voter referendum.

Neither does the Sheriff's Office accept what it speculates may be the FOP/OLC's suggestion that it sell property to increase revenues. As the Employer contends was seen in discussions regarding the sale of Drake Hospital, such options are not necessarily readily available. And even if, *arguendo*, the option to sell real estate is available, it is a non-recurring, non-renewable revenue source. As with utilizing the County Reserve Fund to finance wage increases, the Union's suggestion fails to account for the effects of long-term depletion of reserves, according to the County.

Further, the Employer agrees with FOP/OLC suggestions that it discontinue the shared funding of township patrols in favor of billing for the services; in fact, it is a priority for 2012. The Sheriff has been charged with transitioning costs to the townships, but the County argues that it cannot happen overnight. Moreover, the Employer points out that it is

not known whether the townships, themselves experiencing revenue cuts, can afford to assume the cost of current patrol levels without some assistance from the County.

The Employer also rejects any potential Union citation of wage increases for Corrections Division employees awarded through interest arbitration. While members of the Enforcement and Sergeants and Lieutenants bargaining units are among the most highly compensated County employees, Corrections and other employees are not. More, the County asserts that it did not choose to give wage increases to other units, but was forced to do so under Ohio's collective bargaining law.

For these reasons, the County concludes that it has "taken initiatives to explore all possible avenues for generating additional resources to provide the levels of service the public expects and it should not be incumbent on this Fact Finder to judge or impose such considerations on the elected officials of Hamilton County."

Recommendation:

Notwithstanding the Employer's objection, the Parties having failed to reach agreement as to the terms of a successor Agreement, this Fact-finder has a statutory obligation under Ohio's - now well-vetted - public sector collective bargaining act. That obligation requires a full and objective gathering of facts, and recommendations made in consideration of the factors enumerated in OAC 4117-9-05(K).

In that endeavor, bargaining history, referenced in 4117-9-05(K)(1); comparability of benefits provided in peer communities as enumerated in 4117-9-05(K)(2) ; and, at 4117-9-05(K)(3), a public employer's ability to finance and administer the issues proposed have constituted the essential metric by which fact-finding recommendations have historically been made.

However, as economic conditions increasingly constrain public sector labor relations, "the interests and welfare of the public . . . and the effect of the adjustments on the normal standard of public service", also set forth in 4117-9-05(K)(3), gain weight. It is in consideration of all these factors that the Fact-finder respectfully submits his Report & Recommendations.

Traditionally, an employer's claim of "inability to pay" union proposals having economic consequences has been interpreted by neutrals to be credible only in cases of extreme hardship. That is, only jurisdictions under fiscal watch or fiscal emergency, or

bordering thereon, were deemed unable to finance reasonable wage and benefit increases.

As economic conditions continue to lag, and public employers increasingly see revenues from taxes and state programs drop while expenditures increase, the inevitable result is a decline in general fund reserves. Faced with this situation, neutrals have begun to evaluate a public sector employer's ability to finance wage increases more broadly on the basis of whether such increases are prudent, in consideration of the other statutory criteria, rather than whether the entity can do so and merely remain solvent.

In the present case, there is no doubt that Hamilton County is experiencing such declines in revenue and increases in expenses. As against 2008 levels, the County projects a 2012 decrease in all major revenue categories, ranging from a moderate 2.1% drop in sales tax revenue to a 61.8% decrease in interest earnings. A 50% annual reduction in the state Local Government Fund revenues, including TPP & SB 3 and estate tax phase-outs will effect a reduction of 38.1% in that revenue source since 2008. Real estate service fees in 2012 are projected to be down some 22%. Hamilton County's Reserve Fund, i.e., its general fund carry-over, is \$20.8 million or 10.2%, less than the GFOA recommended reserve, and considerably less than more conservative suggestions.

However, the County's budget indicates that it is not totally unable to finance the Union's wage proposal. In its January 1, 2012 General Fund expenditure resolution, authorizing \$2 million as part of the township patrol negotiations, the Board of County Commissioners authorized, *inter alia*, \$110,000 to the Chamber of Commerce and \$75,000 to the Hamilton County Development Company to fund block grants.

The Sheriff's Office employs approximately one-third of the County's 2,200-some employees, with a budget approximately equivalent in total. Of those, only slightly more than 10% comprise the instant bargaining units. Most members of both units provide patrol services to the County's townships, which the County Administrator's recommended budget characterizes as "an effective, efficient method of shared service delivery". However, many of the larger urban townships are currently provided with uncompensated patrol services; the Sheriff's Office receives \$10.9 million in reimbursements from the Townships which it patrols, with uncompensated personnel costs totaling almost \$5.4 million according to the County Administrator's 2012 Recommended General Fund Budget. The result is a \$4 million appropriation for 2012 to offset uncompensated township patrol costs. The County's

efforts to either receive compensation for patrol services provided the townships, or to adjust the level of those services is well-taken, and will hopefully result in revenues to fund patrol activities in the future.

In most negotiations in which a public employer's economic circumstances are uncertain, reliance on internal parity is often a more accurate indicator of appropriate wage adjustments than are external comparatives. The more tenuous a community's financial situation, the less likely that another jurisdiction is in a reliably analogous circumstance. However, it is less reliable to compare the compensation afforded clerks and administrators who perform their duties in relative safety with that of patrol officers required to place themselves in indeterminate and frequently dangerous situations. In such cases, external comparables are often more realistic.

In the present case, both internal and external comparables would seem to militate for some wage adjustment, though not to the level of 9% over the course of the Agreement as proposed by the FOP/OLC.

SERB Benchmark Reports, submitted by the FOP/OLC, indicate that Hamilton County Enforcement Officers receive an entry-level wage of \$43,005.70 and a top level wage of \$55,996.52. The entry-level wages paid Hamilton County deputies are consistent with the \$43,011 average for major metropolitan counties in Ohio submitted by the Union.¹ However, Hamilton County top level wages are considerably below those paid deputies in peer jurisdictions, with the exception of Summit County at a top level rate some \$3,000 less than Hamilton County.

Perhaps more reliable is comparison of wages paid Hamilton County Enforcement Officers, and consequently its Sergeants and Lieutenants, with those provided the Township and other local officers with whom bargaining unit members work shoulder-to-shoulder. In that regard, Hamilton County's \$43,005.70 entry level wages, and \$55,996.52 top level are well below the City of Cincinnati's officers - \$52,994.00 and \$63,383.00 respectively, those of Colerain Township - \$47,520.28/\$65,590.45 – and Green Township's patrol officers' wages at \$52,364.00/\$63,308.00.

The record indicates that members of these two bargaining units have not had wage adjustments since 2008. Such extended wage freezes serve to erode living standards,

¹ Significantly, the FOP/OLC chose not to submit Cuyahoga County.

effectively reducing compensation levels.¹ In that time, the record indicates that other County bargaining units received wage increases ranging from 2%-4% and many non-represented employees have received adjustments since 2008.

In consideration of these factors, a wage freeze for 2012 is recommended. As it is reasonable to believe that the County's 2013 budget will fund appropriate wage adjustments at least sufficiently to hold some marginal line against inflation, a 3% wage adjustment is recommended for 2013. And, as more equitable sharing of township patrol costs might be expected to have been accomplished by the final year of the Agreement, thus providing funds for additional adjustments, a re-opening of negotiations limited to wages is recommended for 2014.

Articles 32/34 - Outside Employment

Current Contract Language - Enforcement Officers:

Section 32.2. Any employee accepting non-law enforcement related off-duty employment must notify the Employer or designee of the nature of the work, and the hours he/she will be working, prior to beginning the work. The Employer or designee with either approve the work or notify the employee of the reason for denial. Such determination shall be made within a reasonable period of time. Approval for non-law enforcement related off-duty employment will be at the discretion of the Hamilton County Sheriff or designee but such approval shall not be unreasonably withheld.

Current Contract Language – Sergeants and Lieutenants:

Section 34.2. Any employee accepting non-law enforcement related off-duty employment must notify the Employer or designee of the nature of the work, and the hours he/she will be working, prior to beginning the work. The Employer or designee will either approve the work or notify the employee of the reason for denial. Such determination shall be made within a reasonable period of time. Approval for non-law enforcement related off-duty employment will be at the discretion of the Hamilton County Sheriff or designee but such approval shall not be unreasonably withheld.

FOP/OLC Proposal:

The Union proposes modification of §32.2-3 (34.2-3) to limit the Sheriff's ability to deny non-law enforcement off-duty outside employment except in cases in which declines in

¹ The Fact-finder takes notice that the CPI-U for the period March 2011-March 2012 was 2.7%. www.bls.gov/cpi, accessed April 19, 2012.

performance or attendance can be directly attributed to an employee's non-law enforcement off duty outside employment.

The FOP argues that bargaining unit members have not received a wage increase in three years, and as the cost of living continues to increase are often forced to seek off-duty employment to maintain a stable standard of living; the Employer should not restrict that effort.

Sheriff's Position:

The Employer contends that the FOP has failed to identify any problem with regard to the present non-law enforcement outside employment provisions, and accordingly proposes that the current language be retained.

Decisions as to the suitability of non-law enforcement employment are properly within the purview of the Sheriff, according to the Employer. The Union has provided no justification for its proposed change, and the Employer accordingly urges retention of the current contract language.

Recommendation:

As with disciplinary action or any other contract provision vesting discretionary powers in management, it is conceivable that abuses might occur. However, in such cases, it is the Union's right to grieve alleged violations of the Agreement through the contractual grievance procedure. Here, the FOP has failed to cite any instance in which bargaining unit members have been arbitrarily denied reasonable non-law enforcement off-duty employment requests. There having been no compelling reason presented for the modifications sought by the Union, its proposal to modify Articles 32/34 cannot be recommended.

SUMMARY OF RECOMMENDATIONS

1. **Article 9 - Discipline**
Retention of Current Language Recommended

2. **Article 20 - Wages and Compensation**
0%-3%-RO

3. **Article 32 - Outside Employment**
Retention of Current Language Recommended

During the course of negotiations the Parties reached a number of tentative agreements not at impasse in these proceedings, but incorporated herein as part of this Report & Recommendations, together with all existing contract provisions not at issue.

/s/ Gregory James Van Pelt

Gregory James Van Pelt

Respectfully submitted this 20th day of April, 2012
At Shaker Heights, Cuyahoga County, Ohio