

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding	:	SERB Case Number: 2014-MED-02-0145
Between the	:	
	:	
UNIVERSITY OF CINCINNATI,	:	
	:	
Employer	:	
	:	Date of Fact Finding Hearing:
and the	:	June 13, 2014
	:	
	:	
FRATERNAL ORDER OF POLICE,	:	
OHIO LABOR COUNCIL, INC.,	:	
	:	
Union	:	Howard D. Silver, Esquire
	:	Fact Finder

REPORT AND RECOMMENDED LANGUAGE OF THE FACT FINDER

APPEARANCES

For: University of Cincinnati, Employer

William T. Johnson
Senior Director, Labor Relations
University of Cincinnati
51 Goodman Drive, Suite 360
Cincinnati, Ohio 45221
william.johnson2@uc.edu

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

Mark Scranton
Staff Representative
Fraternal Order of Police, Ohio Labor Council, Inc.
4230 Pekin Court
Batavia, Ohio 45103
markscranton.fopolci@yahoo.com

PROCEDURAL BACKGROUND

This matter came on for a fact-finding hearing at 10:00 a.m. on June 13, 2014 in a conference room within the offices of the University of Cincinnati Police Department at 51 West Corry Street, Cincinnati, Ohio 45219. At the hearing both parties were afforded a full and fair opportunity to present evidence and arguments in support of their positions. Following the presentation of evidence and arguments, the hearing record was closed at 12:15 p.m. on June 13, 2014.

This matter proceeds under the authority of Ohio Revised Code section 4117.14(C) and in accordance with Ohio Administrative Code section 4117-9-05. Prior to the day of the fact-finding hearing each party delivered to the fact finder and the other party the party's position on each unresolved issue.

This matter is properly before the fact finder for review, for the preparation of a fact-finding report, and to recommend language to be included in the parties' initial collective bargaining agreement.

FINDINGS OF FACT

1. The parties to this fact-finding procedure, the University of Cincinnati, the Employer, and the Fraternal Order of Police, Ohio Labor Council, Inc., the Union, have no prior collective bargaining agreement between them about the bargaining unit addressed by this fact finding, a new unit comprised of Lieutenants employed in the University of Cincinnati Police Department.
2. The parties engaged in bargaining their initial collective bargaining agreement for the Lieutenants' bargaining unit on September 19, 2013;

November 4, 2013; November 18, 2013; and November 25, 2013, and during this bargaining the parties reached tentative agreement on all Articles to be included in the parties' Agreement except for three Articles – Article 18 – Hours of Work and Overtime, Article 19 – Wages, and Article 21 – Insurance Benefits.

3. The bargaining unit to be covered by the parties' Agreement is comprised of seven full-time Lieutenants employed in the University of Cincinnati Police Department.

TENTATIVELY AGREED ARTICLES

The parties reached tentative agreement on the following Articles, all of which are recommended by the fact finder for inclusion in the parties' Agreement:

- Article 1 Preamble
- Article 2 Recognition
- Article 3 Union Security and Dues Deduction
- Article 4 FOP Representation
- Article 5 Management Rights
- Article 6 Non-Discrimination
- Article 7 Labor/Management Meetings
- Article 8 Grievance Procedure
- Article 9 Discipline
- Article 10 Personnel Files
- Article 11 Probationary Period
- Article 12 Seniority
- Article 13 Layoff and Recall
- Article 14 Supervisory Vacancies
- Article 15 Bulletin Boards
- Article 16 Work Rules – General Orders

Article 17 Performance Evaluation
Article 20 Court Time/Call-in Time/Stand-by
Article 22 Holidays
Article 23 Vacation
Article 24 Sick Leave
Article 25 Occupational Injury Leave
Article 26 Uniforms and Equipment
Article 27 Expenses
Article 28 Training
Article 29 Leaves of Absence
Article 30 Outside Employment
Article 31 Health and Safety
Article 32 Civil Service Compliance
Article 33 No Strike/No Lockout
Article 34 Severability
Article 35 Waiver in Case of Emergency
Article 36 Copies of the Agreement
Article 37 Tuition Remission
Article 38 Sub-Contracting
Article 39 Mid Term Bargaining
Article 40 Specialty Assignments
Article 41 Auxiliary Officers
Article 42 Miscellaneous

UNRESOLVED ARTICLES

The following Articles are unresolved between the parties:

Article 18 – Hours of Work and Overtime

Article 19 – Wages

Article 21 – Insurance Benefits

DISCUSSION OF UNRESOLVED ARTICLES AND RECOMMENDED LANGUAGE

Article 18 – Hours of Work and Overtime

The parties bargained the language of Article 18, Hours of Work and Overtime, and agreed on most of the language to be included in the Article in the parties' Agreement. What was not agreed by the parties was how special duty assignments are to be handled under the language of Article 18, section 18.10 among police officers, auxiliary officers, and lieutenants. The fact finder recommends language that would allow lieutenants to participate in special event assignments but on a limited basis – no more than ten (10) special duty assignments originally posted for officers may be assigned to lieutenants and only until December 31, 2014.

The fact finder recommends that all of the language in Article 18 agreed by the parties be included in the parties' Agreement, and recommends the additional language set out below in Article 18, section 18.10 about special duty assignments and in Article 18, section 18.12 about the procedure to be followed for seasonal closure.

RECOMMENDED LANGUAGE – Article 18, Hours of Work and Overtime

Section 18.1. Lieutenants work schedule assigned to the Uptown Campus patrol duties shall be ten (10) hour days with a rotation of five (5) ten (10) hour days followed by three (3) consecutive off days for a five (5) week period, four (4) ten (10) hour days followed by 4 consecutive days off to include Saturday and Sunday for one (1) week, four (4) ten (10) hour days followed by 3 consecutive days off to include Saturday and Sunday for one week, four (4) ten (10) hour days followed by 4 consecutive days off to include Saturday and Sunday for one (1) week, four (4) ten (10) hour days followed by 3 consecutive days off to include Saturday and Sunday for one week and four (4) ten (10) hour days followed by 4 consecutive days off to include Saturday and Sunday for one (1) week. These rotations shall repeat themselves every eleven (11) weeks.

Lieutenants assigned to Investigations or as the Administrative Lieutenant shall generally work eight (8) hour days on a Monday – Friday schedule with Saturdays and Sundays off.

If the Employer decides that a change in the above listed work schedule is necessary for the efficient running of the Police Department, a Labor Management meeting shall be convened to explore alternative work schedules that are agreeable to the parties. If a consensus is unable to be reached the Employer may implement the change(s) subject to the grievance procedure.

The Employer may temporarily adjust an Employee's work schedule based on legitimate operational needs. Whenever practicable, the Employer will give the Employee seven (7) days prior notice. The Employer shall ask for volunteers before an Employee is mandated to a different schedule.

No Employee shall be required to work in excess of sixteen (16) hours in a twenty-four (24) hour period. Unscheduled overtime and court time shall not be considered part of these calculations.

Section 18.2. The standard work period for all bargaining unit employees, shall consist of no more than forty (40) hours, inclusive of any roll call time, within a seven calendar day period described as Sunday through Saturday.

Section 18.3. Shift assignments shall be made based on the operational needs of the department. Consideration shall be given to an employee's seniority, disciplinary record and sick time usage. Shift preferences are to be submitted during the month in which Spring commencement occurs in every even-numbered year. Shift assignments shall be announced forty-five (45) days prior to the beginning of the academic year, and shift changes shall be effective no later than the first Sunday prior to the start of the Autumn school schedule. When an officer is transferred from one work assignment to another, one of two possibilities will occur. If the officer was transferred due to administrative reasons, he/she can be assigned any position by the Department. For other reasons, the officer will be given the opportunity to select his/her assignment in accordance with his/her seniority. Such assignment must be made within seven (7) days. Special assignments are excluded from this Section.

Section 18.4. Hours worked in excess of an employee's standard work period shall be considered overtime and shall be compensated at the rate of one and one-half (1½) times his/her regular straight time hourly rate of pay. There shall be no pyramiding of overtime for the same hours worked or for premium hours paid (i.e. court time, call-out, etc.) Overtime shall be calculated in one-tenth (0.1) hour (six [6] minutes) increments. Active pay status includes paid time off for sick leave, vacation leave, automatic holiday pay, occupational injury leave pursuant to Article 25 and compensatory time. It does not include hours worked on a holiday for purposes of calculating hours in overtime status. The on duty Supervisor or OIC shall verify overtime slips and approve or deny time-off requests given to them by the end of the shift. Employees may, at their sole discretion, choose to flex their hours in lieu of overtime or compensatory time so long as approved by their manager.

Section 18.5. Employees may elect, in lieu of overtime pay, to accept compensatory time. Compensatory time shall be credited at the rate of one and one-half (1½) hours off for each one (1) hour of overtime worked. Compensatory time may be accumulated by an employee. Compensatory time may not accumulate more than two hundred forty (240) hours. Compensatory time more than twelve (12) months on the books will be converted into pay. The following rights and conditions shall exist as they pertain to compensatory time:

A. The election of overtime pay or compensatory time is solely the right of the employee, and he/she shall so indicate his/her election when reporting the overtime worked;

B. Compensatory time off requested by an employee which has been approved and scheduled, shall not be canceled except when the University is under emergency status as declared by the Board of Trustees and/or the President of the University or except under exceptional circumstances as determined by the Chief of Police:

C. Requests for compensatory time off in conjunction with vacation shall be honored as long as the request for compensatory time off was submitted at the same time as the request for vacation and the request for vacation has been approved:

D. Any employee may elect to convert all or part of his/her accrued compensatory time balance at any time. Cash-in requirements must be made in whole hour increments, except where the employee is converting his/her entire balance. Payment shall be made at the rate of pay existing at the time of cash-in.

E. Compensatory time may be taken in one-tenth (.10) hour increments. Requests for compensatory time shall be made in writing by the employee to the employee's supervisor at least one (1) day in advance for requests of one (1) day or less and at least three (3) days in advance for requests of more than one (1) day. Only the Employee's shift supervisor or the officer in charge of the Employee's shift may waive this provision based on departmental needs. Compensatory time may not be used to cover a tardiness.

F. When a request for compensatory time requires that the slot be filled the following procedure shall be used. ULEO's shall be asked to work the slot first, then it may be offered to auxiliary officers. If no one wishes to work the slot, the request shall be denied. No officer shall be ordered/mandated to work the slot.

Section 18.6. With the prior approval of the Employer or designee, an employee may exchange days off or work shift assignments with another employee. Upon request of an employee, and with prior approval of the Employer or designee, an employee may work a scheduled day off in exchange for another day off to be scheduled in the work period, without receiving any additional compensation.

Section 18.7. If the bargaining unit designated representative develops an alternate work schedule, such schedule shall be the subject of a special Labor/Management Meeting pursuant to the provisions of Article 7 of this Agreement.

Section 18.8. Pay for overtime shall be paid no later than the pay period following the work period during which the overtime was properly submitted by the Employee.

Section 18.9. Management will not require overtime for anything over minimum staffing levels. If the level falls below the minimum, it is a safety issue and Management can mandate overtime.

Section 18.10. Overtime

Once overtime is assigned to an Employee, it shall be considered part of an Employee's regular work assignment. An Employee who cannot work an overtime assignment must find a replacement, however, an employee who cannot work due to illness is not required to find a replacement. The Chief or Assistant Chief may require proof of illness if abuse is suspected.

Special Event Overtime

Some officers desire to work overtime Special Event Details, some officers prefer not to work overtime Special Event Details, and other officers prefer to work only some overtime Special Event Details. The following method of assigning these details shall be used in an effort to meet these differing preferences:

Overtime Special Event Details will be offered on a first come, first served basis first to officers who want to work them. If sufficient officers do not volunteer, the Special Event Detail will be offered to Lieutenants who may work no more than ten details originally posted for officers and only through December 31, 2014. If sufficient officers or lieutenants do not volunteer, the Special Event Detail will be offered to Auxiliary Officers. If there are still not sufficient officers to provide adequate safety for an event, mandated overtime may be invoked; based on inverse seniority with the least senior employee being assigned first, and then rotating through the entire list of officers. A lieutenant will not be mandated to overtime that was originally an Officer detail. Lieutenants shall be placed at the top of the list either by voluntarily working a detail or by being mandated.

The Union shall maintain the list by using the release time provided in section 4.4 of this Agreement.

The Union shall provide an updated list on a weekly basis to the chief or his/her designee.

Disputes regarding the overtime assignments list pursuant to this section shall not be grievable.

A listing of Special Events requiring overtime coverage will be posted electronically no more than thirty (30) days in advance of the event. The parties recognize that the specific details of the event may not be available at the time of the posting. If overtime for the event must be mandated, the employer will notify affected employees five (5) days in

advance of the event. Officers who wish to work a detail shall so indicate on the detail listing. The parties agree that there may be occasions in which the special events are provided to the department on such short notice so that the notice requirements listed above will not be possible, however, these occasions should not be common. If problems occur with the process, a Labor-Management Committee will be convened to remedy the issue.

Absent extenuating circumstances, the only details in which casual time may not be granted or off days may be cancelled are commencement and homecoming. If an employee's shift ends two (2) hours or less before a detail starts that he/she is assigned to, the employee shall be offered the opportunity to work that period.

Seniority is applied only to those officers who would not be precluded from working the detail due to other assignments.

An employee who reports for a special event and is sent home due to cancellation shall receive two (2) hours pay.

Shift overtime shall be handled by SOP-PO-16.2.102 dated 10/3/03 titled Overtime for Shift Coverage.

Section 18.11. In the event that the University closes due to inclement weather or other emergencies, members of the FOP bargaining unit who are required to work because they are designated as essential shall be compensated at a rate of two (2) times the regular hourly rate.

Section 18.12. The parties agree to meet and discuss in a Labor-Management Committee meeting the procedure for the seasonal closure.

Article 19 – Wages

The parties shared some common goals as to wages but were unable to reach agreement on the amount of the wage increase.

The shared goals include putting the Lieutenants' Agreement on the same time line as other collective bargaining agreements the Employer has with other bargaining units, and making the probationary straight time hourly wage rate uniform within the bargaining unit, and making the non-probationary straight time hourly wage rate uniform within the bargaining unit.

The fact finder recommends that the duration of the parties' Agreement as expressed in Article 43 be from July 1, 2014 through June 30, 2017 so as to align the Lieutenants' Agreement with other collective bargaining agreements entered into by the University of Cincinnati and the Fraternal Order of Police, Ohio Labor Council, Inc.

The fact finder recommends that the straight time hourly wage rate for a probationary lieutenant be \$30.63 effective July 1, 2014.

The fact finder recommends that the straight time hourly wage rate for a non-probationary lieutenant be \$32.24 effective July 1, 2014.

The fact finder recommends annual two percent (2%) wage increases for all bargaining unit members effective July 1, 2015 and July 1, 2016.

RECOMMENDED LANGUAGE – Article 19 – Wages

Section 19.1. This Agreement is the sole source of rights and obligations of the parties to this Agreement on the subject of wages. Further, the following language is intended to supersede all provisions applicable to public employees in the Ohio Revised Code and/or the Rules of the Ohio Department of Administrative Services relative to wages. Employees will be paid in accordance with the classification and pay plan set forth in this Agreement.

Section 19.2.

A. Effective July 1, 2014, all probationary Lieutenants shall be paid an hourly wage of \$30.63.

B. Effective July 1, 2014, all non-probationary Lieutenants shall be paid an hourly wage of \$32.24.

C. All bargaining unit members shall receive a two percent (2%) wage increase effective July 1, 2015.

D. All bargaining unit members shall receive a two percent (2%) wage increase effective July 1, 2016.

Section 19.3. There shall be a differential of sixty-five cents (\$.65) for all officers assigned to the second shift and sixty cents (\$.60) for all officers assigned to the third

shift. The hours for second shift are 1800 – 2300 and the hours for third shift shall be 2300 – 0600.

Section 19.4. All adjustments to the salary shall be included when calculating the overtime rate of pay for an officer as required by the Fair Labor Standards Act.

Section 19.5. An employee currently eligible and receiving longevity pay shall continue to do so for the length of his/her employment, however, an employee who leaves the University and whose leave constitutes a break-in-service shall not be permitted to receive longevity pay if re-employed.

Article 21 – Insurance Benefits

The fact finder recommends the Employer’s proposal about insurance, along with the Union’s proposed language guaranteeing that any changes in health care coverage received by another University of Cincinnati Police Department bargaining unit shall be offered to the Lieutenants’ bargaining unit as well.

RECOMMENDED LANGUAGE: Article 21 – Insurance Benefits

Insurance Plans The University will continue to provide benefit-eligible employees in the bargaining unit the group insurance plan (hospitalization, major medical, prescription drug, dental, basic life insurance coverage and long-term disability) as approved by the Board of Trustees. The group insurance plans will be the same plans provided to the unrepresented employee group.

If any other University Police Department bargaining unit receives something other than what unrepresented employees receive in healthcare coverage, the lieutenants’ bargaining unit will have the option of receiving the other coverage.

The surcharge for coverage of a spouse or domestic partner of employees who are eligible for health insurance coverage through an employer other than the University of Cincinnati but choose to enroll in a University of Cincinnati health insurance plan shall be the same as for unrepresented employees.

Employees have the option of waiving health or dental coverage provided by the University. For waiving coverage a monthly credit may be received as cash in the paycheck by the employee or applied to the cost of other benefits. The waivers shall be the same as those provided to the unrepresented employees. If an employee and his/her spouse/domestic partner both work for the University in benefit eligible positions and

elect to enroll under one medical plan, the spouse/domestic partner waiving coverage is not eligible for the credit.

Optional Insurance

Optional employee life insurance, family life insurance, accidental death and dismemberment coverage, and long-term care coverage will continue to be made available for employee purchase.

Health Care Account

An eligible employee may elect to have a specified amount withheld on a pre-tax basis from each pay, up to the annual maximum, to be used for reimbursement of medical expenses which are not covered by insurance. Eligible expenses are those currently recognized as deductible for Federal Tax purposes, except mileage and parking.

Funds which are withheld must be reimbursed for expenses incurred in the Plan year in which they are withheld or, the grace period, or under current IRS rules, the unused funds will be forfeited.

Dependent Care Account

An eligible employee may elect to have a specified amount withheld on a pre-tax basis from each pay, up to the annual maximum allowed by law to be used for reimbursement of dependent care expenses which are specified by IRS rules but which are not claimed under the federal tax credit.

Funds which are withheld must be reimbursed for expenses incurred in the Plan year in which they are withheld, or the grace period, or under current IRS rules, the unused funds will be forfeited.

Wellness Program

During the term of this Agreement, the University may implement a wellness or healthy life-style program. Such a program may include a combination of activities that are designed to increase awareness, assess risks, educate and promote voluntary behavior changes to improve the health of an individual, encourage modifications of his/her health status and enhance his/her personal well-being and productivity, with a goal of preventing illness and injury.

Article 43 – Duration

For the reasons expressed in the wages portion of this report, the fact finder recommends the parties' Agreement have a contractual term of July 1, 2014 through June 30, 2017.

RECOMMENDED LANGUAGE: Article 43 – Duration

Section 43.1. This Agreement shall be effective July 1, 2014 and shall remain in full force and effect through 11:59 p.m., June 30, 2017.

Section 43.2. If either party desires to modify or amend this Agreement, it shall give written notice of such intent no earlier than one hundred eighty (180) calendar days prior to the expiration date, nor later than ninety (90) calendar days prior to the expiration date of this Agreement. Such notice shall be by certified mail with return receipt requested. The parties shall commence negotiations within two (2) calendar weeks upon receiving notice of intent.

Section 43.3. The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right to make demands and proposals on any subject matter not removed by law from the area of collective bargaining, and that the entire understandings and agreement arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement.

In making the recommendations presented in this report, the fact finder has considered the factors listed in Ohio Revised Code section 4117.14(G)(7)(a) - (f) as required by Ohio Revised Code section 4117.14(C)(4)(e) and Ohio Administrative Code section 4117-9-05(K).

Finally, the fact finder reminds the parties that any mistakes made by the fact finder are correctable by agreement of the parties pursuant to Ohio Revised Code section 4117.14(C)(6)(a).

Howard D. Silver

Howard D. Silver, Esquire
Fact Finder

Columbus, Ohio
June 20, 2014

CERTIFICATE OF FILING AND SERVICE

I hereby certify that the foregoing Report and Recommended Language of the Fact Finder in the Matter of Fact-Finding Between the University of Cincinnati, the Employer, and the Fraternal Order of Police, Ohio Labor Council, Inc., the Union, SERB case number 2014-MED-02-0145, was filed electronically with the Ohio State Employment Relations Board at MED@serb.state.oh.us and served electronically upon the following this 20th day of June, 2014:

William T. Johnson
Senior Director, Labor Relations
University of Cincinnati
51 Goodman Drive, Suite 360
Cincinnati, Ohio 45221
William.johnson2@uc.edu

and

Mark Scranton
Staff Representative
Fraternal order of Police, Ohio Labor Council, Inc.
4230 Pekin Court
Batavia, Ohio 45103
Markscranton.fopolci@yahoo.com

Howard D. Silver

Howard D. Silver, Esquire
Fact Finder

Columbus, Ohio
June 20, 2014