

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF FACT FINDING BETWEEN: Case No. 16-MED-02-0087

HAMILTON COUNTY SHERIFF
Employer

Date of Hearing: September 16, 2016
Date of Report: October 14, 2016

And

FRATERNAL ORDER OF POLICE,
OHIO LABOR COUNCIL, INC.
Employee Organization

Meeta A. Bass, Fact Finder

FACT FINDER'S REPORT AND RECOMMENDATIONS

Appearances For:

Employer:

Hamilton County Sheriff

Representative:

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INTRODUCTION

Case Background

This case is a fact-finding proceeding between the Hamilton County Sheriff, hereinafter referred to as Employer or County, and the Fraternal Order of Police, Ohio Labor Council, Inc., hereinafter referred to as the FOP or Union. On May 11, 2016, the State Employment Relations Board (SERB) appointed Meeta A. Bass as the Fact Finder.

By agreement of the parties, a fact-finding hearing was held on September 16, 2016 at 9:30a.m., at the Hamilton County Sheriff's District 3 Building, located at 8871 Weekly Lane, Cincinnati, OH 45249. Both parties submitted the required pre-hearing statements in a timely manner. At the hearing, the Employer was represented by Brett Geary, along with Jerry Voss and Keith Clepper. Union was represented by Mark Scranton, along with Tara Crawford, Jeff Carroll and Richard Neville. At the conclusion of the hearing, the parties agreed that the Fact Finder would issue her report on October 14, 2016.

On the day of the hearing, a good faith effort was made to resolve the remaining issues through mediation as mandated by the Ohio Revised Code, and the parties were successful in reaching tentative mediated agreements on Articles. The parties were not able to execute tentative agreements on the remaining open issues, Articles 17, 18, 19, 21 and 25, and the fact-finding hearing was commenced to consider said issue. The parties presented documentary evidence and arguments in support of their positions on the open issues.

Description of Employer

Employer is the Hamilton County Sheriff, a Law Enforcement Agency. Hamilton County is located in southwest Ohio, and the land area is approximately 407.4 square miles. As of the 2010 Census, the County had a population of 802,374, and the 2015 population estimate is 807,598. The median value for specified owner occupied housing units is \$143,000. The per capita personal income is \$51,229 in 2014, and the median household income is \$48,927. The civilian labor force is comprised of 402,700 employees. Ohio income tax liability is \$764,130,560 with an average per return of \$1,997.14. The taxable value of real property is \$17,357,886,980. Sixty-four and nine-tenths (64.9%) percent of the population has income above the 200% of poverty level or more. The Private Sector Average weekly wage is \$1,092. The Federal Government Average weekly wage is \$1,455, the State Government Average weekly wage is \$977, and the Local Government Average weekly wage is \$904. As of 2015, Hamilton County has an unemployment rate of 4.5 %.

Description of the Bargaining Unit

Fraternal Order of Police, Ohio Labor Council, Inc. represents the bargaining unit. The bargaining unit consists of two (2) full time members, an Enforcement Captain and a Court Services Captain. They are charged with the supervision of employees in the enforcement and court services divisions of the Hamilton County Sheriff's Office.

History of Bargaining

This Bargaining Unit was certified by SERB on January 7, 2016 in SERB Case No. 14-REP-10-0129. This is an initial agreement between the parties, and no collective bargaining agreement exists. The parties entered into negotiations and met on the following six (6) occasions, February 29, 2016, April 21, 2016, May 3, 2016, June 8, 2016, July 28, 2016 and August 16, 2016. The parties were successful in resolving certain issues of the initial agreement, and those

agreements are incorporated herein. The following Articles were signed off on as Tentative Agreements in the course of negotiations. A tentative agreement has been reached on the following issues and are incorporated herein, except the unresolved issues identified above and addressed below:

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| ARTICLE 1 – AGREEMENT/PURPOSE | ARTICLE 29 – DRUG/ALCOHOL TESTING |
| ARTICLE 2 – FOP RECOGNITION | ARTICLE 30 – CIVIL SERVICE COMPLIANCE |
| ARTICLE 4 – FOP REPRESENTATION | ARTICLE 31 – PERFORMANCE EVALUATION |
| ARTICLE 6 – NON-DISCRIMINATION | ARTICLE 32 – PHYSICAL FITNESS |
| ARTICLE 7 – LABOR MANAGEMENT MEETINGS | ARTICLE 33 – DONATED TIME |
| ARTICLE 10 – PERSONNEL FILES | ARTICLE 34 – OUTSIDE EMPLOYMENT |
| ARTICLE 11 – PROBATIONARY PERIOD | ARTICLE 35 – HEALTH AND SAFETY |
| ARTICLE 12 – SENIORITY | ARTICLE 36 – COPIES OF THE AGREEMENT |
| ARTICLE 13 – LAYOFF AND RECALL | ARTICLE 37 – NO STRIKE/NO LOCKOUTS |
| ARTICLE 15 – BULLETIN BOARDS | ARTICLE 38 – SEVERABILITY |
| ARTICLE 16 – WORK RULES-GENERAL ORDERS | ARTICLE 39 – WAIVER IN CASE OF EMERGENCY |
| ARTICLE 20 – INSURANCE | ARTICLE 40- TUITION REIMBURSEMENT |
| ARTICLE 22 – VACATION | ARTICLE 42-RESIDENCY |
| ARTICLE 23 – SICK LEAVE | ARTICLE 44-MILITARY RESERVE |
| ARTICLE 24 – OCCUPATIONAL INJURY LEAVE | |
| ARTICLE 26 – EXPENSES | |
| ARTICLE 27 – TRAINING | |

The parties were unable to come to tentative agreements on the following articles prior to the fact-finding hearing. The parties continued their bargaining through mediation at the fact-finding hearing, and were able to successfully resolve Article 3-FOP Security, 5-Management Rights, 8-Grievance Procedure, 9-Discipline, 14-Vacancies, 17- Hours of Work (TDY Section only), 28-Leaves of Absences, 41-Subcontracting and 43-Duration; those tentative agreements are incorporated herein. The parties reached an agreement on TDY's and subcontracting because both parties acknowledged that the use of TDY's did not amount to subcontracting.

The only remaining unresolved issues that the parties were unable to execute tentative agreements were Article 17-Hours of Work and Overtime, with the exception of the tentatively agreed to TDY Section, Article 18-Compensation, Article 19- Court Time/Call-In/Stand By, Article 21-Holidays and Article 25-Uniforms and Equipment. The parties proceeded to the fact-finding process.

OPEN ISSUE

The remaining unresolved issue is listed herein and a brief summary of the positions of the parties is provided followed along with a discussion and the recommendation of the Fact Finder. In making these recommendations, consideration was given to the factors set forth in Ohio Revised Code Section 4117.14 (G) (7) (a) to (f):

- Past collectively bargained agreements between the parties;
- Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employers doing comparable work, giving consideration to factors peculiar to the area and the classification involved;
- Interests and welfare of the public, the ability of the public to finance and administer the issues proposed, and the effect on the normal standards of public service;
- Lawful authority of the public employer;
- Stipulations of the parties; and
- Such other factors, not limited to those above, which are normally or traditionally taken into consideration.

ARTICLE 17: HOURS OF WORK AND OVERTIME

Employer proposes language that codifies the current process for establishing work hours for exempt salaried employees. According to the Employer, the bargaining unit members promoted into these positions knowing that the positions were exempt salaried, and the certification as a bargaining unit did not affect said status. Employer opines that management has the right

to make temporary duty assignments and to cross train employees to maintain efficiency in its operation.

Union seeks to have these members treated in the same manner as their closest comparable, the Correction Captains who are likewise represented in a collective bargaining agreement. This is an appropriate consideration of the Ohio Revised Code Section 4117.14(G)(7)(f) analysis. Union further seeks to establish an allotment for Management to change work schedules to a cap of 160 hours in a twenty eight (28) day period consistent with the Sergeants and Lieutenants' Agreement. Union seeks to limit cross training only to the members of the bargaining unit in its efforts to protect bargaining unit work.

After considering the arguments and documents submitted, it is the Recommendation of the Fact Finder that Article 17 read as follows:

ARTICLE 17 **HOURS OF WORK**

Section 17.1. Each employee's work schedule shall be determined by the Employer. Permanent work schedule changes shall be posted seven (7) calendar days in advance of their effective date.

Upon report in to work, affected employees shall be given seventy-two (72) hours prior notice of any non-emergency, temporary schedule change. No employee shall be pre-scheduled to work more than one (1) shift in a twenty-four (24) hour period.

Section 17.2. 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 an additional day off to be scheduled in the work period, without receiving any additional compensation.

Section 17.3. Changing work schedules will be determined by the Employer on an "as needed" basis. Absent extenuating circumstances, the Employer shall not TDY an employee from one shift to another shift or to an off-duty day. Extenuating circumstances shall be determined by the Major or his or her superior. TDY assignments will not be arbitrary, capricious or disciplinary in nature.

ARTICLE 18: COMPENSATION

Employer opines that the Captains are appropriately paid and no additional compensation is warranted in consideration of the statutory factors for analysis. Employer proposes maintaining current wages for 2016. Thereafter, the bargaining unit members would be subject to the same general increase as non-bargaining unit employees of the Sheriff's Office. These bargaining unit members voluntarily relinquished the right to longevity pay when they were promoted to the Captain positions, and they should not be rewarded this benefit just because they organized. This is a new contract and benefits awarded to other bargaining unit are a result of a history of bargaining.

Union requests that the bargaining unit employees be paid at a rate of 16% higher than the Lieutenants who they supervise as well as longevity benefit as of January 1, 2016. Said compensation would be comparable to the Corrections Captains.

After considering the arguments and documents submitted, it is the Recommendation of the Fact Finder that Article 18 read as follows:

ARTICLE 18
COMPENSATION

Section 18.1. Retroactive to the first pay period which includes January 1, 2016, employees in the rank of Captain shall be paid an annual salary equal to ten percent (10%) more than the top annual salary step in the pay grade for Lieutenant certified in SERB Case Number 2014-REP-03-0036. Effective the first pay period which includes January 1, 2017, employees in the rank of Captain shall be paid an annual salary equal to eleven percent (11%) more than the top annual salary step in the pay grade for Lieutenant. Employees in the rank of Captain shall be paid an annual salary equal to eleven percent (11%) more than the top annual salary step in the pay grade for Lieutenant in each successive year.

Section 18.2. Effective January 1, 2017, 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:

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

ARTICLE 19: COURT TIME/CALL-IN/STAND BY

Employer maintains its position that these bargaining unit members are overtime-exempt and therefore, a discussion regarding minimum hours and overtime payments are inapplicable to these bargaining unit members. The Employer proposes no language for this article.

Union seeks compensation for those times when a bargaining unit member must appear for an official court appearance while off duty, or when a bargaining unit member is called into work or when a bargaining unit member is on on-call status. Said compensation would be comparable to the Corrections Captains and/or the Enforcement Divisions Agreements.

After considering the arguments and documents submitted, it is the Recommendation of the Fact Finder that Article 19 is deleted in its entirety.

ARTICLE 21: HOLIDAYS

Employer proposes language that maintains the status quo, a day off with pay for the established holidays.

Union seeks language and benefits with the other unionized employees. Specifically Union is requesting that the bargaining unit members be credited with one hundred (120) hours of holiday compensatory time to be compensated separately from overtime pay and paid by separate check for the balance of holiday compensatory time to their credit on the first pay period in December of each Agreement year.

After considering the arguments and documents submitted, it is the Recommendation of the Fact Finder that the Article 21 should read as follows:

**ARTICLE 21
HOLIDAYS**

Section 21.1. Designated holidays shall be as follows:

New Year's Day	January 1st
Martin Luther King Day	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4th
Labor Day	First Monday in September
Columbus Day	Second Monday in October
Veteran's Day	November 11th
Thanksgiving	Fourth Thursday in November
Day after Thanksgiving	Friday Following Thanksgiving
Christmas	December 25th

Section 21.2. The length of each holiday listed above shall be equal to the length of an employee's scheduled work day. Bargaining unit members will normally be scheduled off on all listed holidays. If an employee is required to work on a holiday, he or she shall be given a floating holiday to be scheduled and used in the same manner as vacation leave. Floating holidays must be used within one (1) calendar year of its creation. Floating holidays cannot be cashed out upon separation from employment. Requests for floating holiday time off must be submitted in advance of the time requested, and shall be honored subject to the operational needs of the Department.

Section 21.3. Bargaining unit employees will receive two (2) personal days in 2016; such personal days shall be increased to a total of four (4) personal days in 2017 and in each successive year. Personal days not used in the calendar year granted, may be cashed out. Personal days shall be scheduled and used in the same manner as vacation leave.

ARTICLE 25: UNIFORMS AND EQUIPMENT

Employer contends that the uniform allowance is merely a hidden bonus, and should be addressed as a wage in Article 18 Compensation. The Captains are appropriately paid. In addition these bargaining unit members obtain and replace their uniforms or uniform items on a no-cost basis through the Employer.

Union is seeking a uniform allowance in the sum of \$1,000.00 for these bargaining unit members as of January 1, 2016. Union states that the uniform allowance is enjoyed by the other uniform employees of the Sheriff's office for maintenance of their uniforms.

After considering the arguments and documents submitted, it is the

Recommendation of the Fact Finder that Article 25 read as follows:

ARTICLE 25
UNIFORMS AND EQUIPMENT

Section 25.1. The Employer shall supply at no cost to the employee all uniforms and equipment required by the Employer, excluding socks and underwear, in quantities specified by the Employer. Employees shall have leather goods replaced by the Employer on an as needed basis as determined by the Employer. The Employer shall furnish all required footwear.

Section 25.2. All uniforms and equipment issued by the Employer are the property of the Employer and shall, upon termination of employment, be returned to the Employer in condition issued, allowing for reasonable wear and tear, prior to the issuance of any final compensation to the employee. Any issued item which is lost by an employee shall either be replaced or paid for at current market value by the employee, at the option of the employee.

Section 25.3. Equipment and other items not issued or required by the Employer may be utilized or worn only with the permission of the Employer or his designee.

Section 25.4. Where an employee supplies evidence that he sustained damage to personal property while performing the duties of his/her assigned work, provided such damage was not the result of "horseplay", willful misuse, or negligence on the part of the employee, the Employer shall reimburse the employee for the cost of necessary repairs or replacement up to a maximum of two hundred dollars (\$200.00) per year, but no more than fifty dollars (\$50.00) for jewelry items. The employee shall present the damaged property for the Employer's inspection prior to the repair or replacement of said property. Repair or replacement of said property shall be at the Employer's option. Any court ordered restitution received by an employee as compensation for damage to his personal property shall be remitted to the Employer up to the amount the Employer has paid hereunder.

Section 25.5. In the event of damage to prescription eye glasses (including frames), contact lenses, dentures and other oral prostheses, which damage occurs in the active discharge of the employee's duties, the Employer shall pay the difference, if any between the amount of reimbursement from Worker's Compensation and the actual cost of repair or replacement.

Section 25.6. An employee who retires from service with the Employer shall be presented his or her badge. The badge shall be presented in such a manner as to make it unusable. The retiring employee shall also be presented with an identification card that identifies him or her as a retired deputy sheriff. In order

to qualify for the provisions of this Section, the retiring employee must have completed ten (10) years of service with the Employer, and must apply for and be granted full retirement (age and service) benefits by the Public Employees Retirement System (PERS).

Section 25.7. Effective January 1, 2017, on the first regularly scheduled pay day following May 1, of each calendar year, employees who have completed more than one (1) years of service in the bargaining unit shall receive a uniform allowance of one thousand dollars (\$1000.00). Payment shall be made by separate check. An employee who completes one (1) year of service in the bargaining unit after May 1 shall upon completion of the one (1) year service requirement receive a pro-rated uniform allowance of eighty-three dollars and thirty-three cents (\$83.33) per full calendar month of service from date of entry into the unit to May 1. An eligible employee who separates from service prior to May 1 of any year shall be entitled upon separation to a pro-rated share of the allowance based upon the number of months of service completed since the previous May 1.

CONCLUSION

In this report, I have attempted to make reasonable recommendations that both parties will find acceptable. If errors are discovered or if the parties believe they can improve upon the recommendations, the parties may adopt alternative language by mutual agreement.

After giving due consideration to the positions and arguments of the parties and to the criteria enumerated in Ohio Revised Code Section 4117.14, the Fact finder recommends the provisions herein.

In addition, all tentative agreements reached by the parties are hereby incorporated by reference into this Fact Finding Report, and they should be included in the resulting Collective Bargaining Agreement.

October 14, 2016

/s/ Meeta A. Bass

Meeta A. Bass, Fact Finder
Dublin, Ohio

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of this Fact Finder Report was sent by e-mail on October 14, 2016.

State Employment Relations Board

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/s/ Meeta A. Bass

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