STATE OF OHIO STATE EMPLOYMENT RELATIONS BOARD

In the Matter of the Fact-Finding	(	Case No:	2017-MED-07-0810
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Between	(	Heard:	December 20, 2017
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	(	Issued:	January 4, 2018
Hamilton County Sheriff	(		
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	(		
And	(		
	(		
The Fraternal Order of Police,	(		
Ohio Labor Council, Inc.	(		
(Enforcement Officers,	(		
(Enforcement Corporals,	(		
Court Service Officers, et al)	(		

Michelle Miller Kotula
Fact-Finder

For the Employer: Brett A. Geary
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INTRODUCTION

Michelle Miller-Kotula was appointed to serve as Fact-Finder in Case No. 2017-MED-07-0810 by the State Employment Relations Board on November 1, 2017 in accordance with Ohio Revised Code Section 4117.14 (C) (3). A hearing was conducted on December 20, 2017 in Cincinnati, Ohio. The parties to this fact-finding have an ongoing bargaining relationship and are parties to a collective bargaining agreement (hereafter referred to as the "CBA"), effective by its terms through December 31, 2017. The parties to this CBA include the Hamilton County Sheriff (hereafter referred to as the "Employer") and The Fraternal Order of Police, Ohio Labor Council, Inc., (hereafter referred to as the "FOP") which represents a bargaining unit of approximately 300 regular full time employees of the Sheriff's Department in the classifications of: Enforcement Officer, Enforcement Corporal, Court Service Officer, Court Service Corporal, Enforcement Clerk, Evidence Technician, Range Officer, Law Enforcement Investigator, Execution Officer, Enforcement Officers and Corporals in the Electronic Monitoring Section. The bargaining unit employees are charged with providing primary police service, criminal investigations, investigations into organized crime, and tactical enforcement response to critical and high risk incidents in Hamilton County.

The parties began formal negotiations and met numerous times. A number of tentative agreements were reached by the parties, but they were unable to reach agreement on all issues raised during bargaining. As a result, a request for fact-finding was initiated.

The parties were required to submit their respective position statements including a list of unresolved issues prior to the hearing which were timely made. The parties convened for a hearing on this matter in Cincinnati, Ohio on December 20, 2017.

In accordance with the SERB's order the parties filed written statements of the issues in dispute with the Fact-Finder involving the following:

Article 20	Wages and Compensation

At the hearing, before the undersigned, both parties were afforded a full opportunity to present testimony, examine and cross-examine witnesses and introduce oral explanations of documentary evidence in support of their respective positions. Through these discussions this Fact-Finder was given a thorough understanding of each party's position on the outstanding issues. The parties also informed the Fact-Finder of tentative agreements that were reached.

To arrive at the following recommendations this Fact-Finder relied upon, among other things, the following criteria as contained in SERB provisions:

- The reliable and credible testimony provided, the evidence presented at the hearing and further clarifications given to the questions of the Fact-Finder during discussions.

- The expired collective bargaining agreement between the parties.
- Comparisons of unresolved issues relative to the employees in this bargaining unit and how those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classifications involved.
- The interest, welfare of taxpayer and the ability of the public Employer to finance and administer the issues proposed and the affect of the adjustments on the normal standard of public service.
- The lawful authority of the public Employer.
- The stipulations of the parties.
- Other factors, not confined to those listed above, which are normally or traditionally taken into consideration in determination of the issue submitted to the Fact-Finder.
- The understanding that each individual issue has been reviewed for its relative individual merit; at the same time, each individual issue has also been reviewed with consideration given to whether or not it appropriately fits into the CBA created through this process.

ISSUES IN DISPUTE AND RECOMMENDATIONS

ARTICLE 20
WAGES AND COMPENSATION

FOP Position

In 2009, 2010, 2011 and 2012 the Enforcement Officers bargaining unit did not receive a wage increase. It was not until 2013 that they received a wage increase. The last four years the bargaining unit members have been trying to "catch up." The bargaining unit members secured a modest annual cost of living increase in the last CBA, but gave up the insurance cap that had been in place since 2003. The monthly insurance premiums skyrocketed for the bargaining unit members without a cap, commencing in 2016. Although the bargaining unit members received a lump sum payment as a quid pro quo for losing the cap, this payment did not alleviate the out of pocket loss to the employees due to the increase in health insurance premiums. Furthermore, this one time lump sum payment was not added to the base wage rate and had no long term efficacy for purposes of overtime and retirement contributions. The FOP states the 2016 and 2017 cost of living increases of 3% did not alleviate the financial burden of the members. Their monthly insurance premiums increased from 210% to 537% and the bargaining unit members lost income over the three years.

The FOP is proposing a 5% cost of living increase for each year of the CBA. The FOP proposes adding another step to the wage scale 2% above the current 4th year step. The FOP finds this additional step to be necessary to narrow the gap that exits between employees in this bargaining unit and other public employees in similar peer groups doing comparable work. The FOP contends this bargaining unit is approximately 12% below its counterparts on average at the top step. The extra step would reduce the current deviation in comparable data and offer an incentive for current employees to remain with the Sheriff's office instead of seeking employment elsewhere.

The FOP is adjusting the 3 year step of the Patrol Officer to be equal, instead of below that of a Court Service Officer at the 3 year step. The FOP points out this adjustment is consistent with the higher pay range of a patrol officer as compared to a court service officer. The inequity in the wage scale occurred as a result of a clerical error from the consolidation of Court Service Officers I and II in a prior CBA.

The FOP proposes for the Corporal rate of pay to be adjusted to a straight 8% rank differential as opposed to the current 7%. The purpose of this adjustment would be half of the 16% rank differential between sergeants and patrol officers. It would be more consistent with the supervisors current rank differential.

The FOP proposes to double the longevity rate. This rate has not been adjusted since its inception in 1993. The FOP argues this proposal would compensate the bargaining unit employees who remain with this Employer.

It is the position of the FOP the dire projections the Employer made in the Conciliation process in the past have not come true. The FOP presented a comprehensive annual financial report to establish none of these projections came to fruition. This Employer is currently experiencing an economic upswing. The Greater Cincinnati area is now the fastest growing major city in the Midwest. Growth and population increases call for a greater need for a larger law enforcement presence. The FOP notes the Employer has not been able to attract and retain deputies due to the negative deviation in wages between the Sheriff's Office and the law enforcement agencies in and around this County. The Employer must provide a compensation package that is competitive and commensurate with the job of law enforcement officer.

The FOP states the Employer must commit to fund this three year CBA. The Employer's proposal as presented in negotiations is unacceptable. The FOP requests for the Fact-Finder to include in the Award a recommendation that all unopened and tentatively agreed to Articles be included in the CBA. The FOP further requests the Fact-Finder award and recommend the FOP's wage proposal in its entirety.

Employer Position:

The Employer proposes wage increases of 2% in wages, effective January 1, 2018 and re-openers for 2019 and 2020. This proposal is in line with statewide wage trends. The FOP states the FOP's proposal should be dismissed.

The Employer submits the 2018 Recommended General Fund Budget for Hamilton County is $241.7 million. This budget figure represents an increase of 5.1% from 2017. The budget provides for the County wide basic and mandated services and maintains the policy direction established by the Board of County Commissioners through its 2017-2018 policy agenda in areas such as public safety, economic development, and capital infrastructure as well as responding to societal issues such as the heroin crisis.

The budget contains reductions in revenues from a variety of sources, including the loss of $6 million in Medicaid Managed Care sales tax. The Employer points out the jail capacity, human and physical capital needs, and various departmental spending in response to the opioid epidemic has applied increased expenditure pressures.

The Employer points to significant financial issues. In 2017, the Employer experienced the slowest sales tax growth since 2009. The sales tax growth has weakened and is on the decline. State revenue sharing continues at an all-time low. These issues along with the direct loss of Medicaid Managed Care sales tax revenues, coupled with the general stagnation of other major revenue sources, such as court fees and fines, are financially challenging to the already straining budget. To respond to these issues, the Employer adjusted its mid-year sales tax revenue projections from 4% to 1% to adapt to the drop in revenue. The Employer implemented mid-year reductions to planned non-personnel expenditures to balance anticipated sales tax revenues with expenditures.

The Employer notes the offices with responsibilities for providing services directly to the public have been severely stressed by the heroin crisis. The Justice Center is overcrowded, and the Sheriff contracted for the housing of inmates to Butler County. More demands have been placed on Social Services, the Public Defender, and Prosecutor.

The deferred maintenance needs places a burden on the its operating budget. The large capital needs at 800 Broadway, the Justice Center, the Courthouse as well as to their electronic management systems is estimated to cost between $100-$300 million.

A large amount of the workforce, particularly those under the Board of County Commissioners, is undercompensated relative to market by approximately 11%. Approximately 15% have outside employment to help supplement their income.

The Employer states for a number of years its Administration has warned about a basic structural imbalance in general fund operations. In the years following the Great Recession, the Employer continued to press down on expense levels to maintain them within projected revenues, and gave only sporadic salary increases. In the immediate aftermath of the Great Recession, that approach to finances was feasible. As the rest of the regional economy recovered, and as revenues continued to stagnate, the Employer's budget became out of step. With the recovering economy, the bargaining units pressed for and received consistent, annual salary adjustments. The Employer's building stock continued to deteriorate, necessitating emergency repairs to roofs, HVAC equipment, and fire alert systems. Independent elected offices, unable to compete for employees in the job market, gave broad market-based adjustments to bring their staffs in line with the salaries they had to offer to new hires. Many of these increases hit in 2016, when employee compensation in the general fund rose by over nine percent (9%).

The structural imbalance of the heroin epidemic has driven substantial increased costs in the Justice Center and the Public Defender; grown caseloads in the Juvenile Court and created issues with the loss of the Medicaid sales tax. The result is a slightly imbalanced year-end 2016, a widening imbalance in 2017, and a 2018 budget with a $19 million operating deficit without the use of one-time resources and revised revenues.

According to the Employer it will become difficult in future years to continue to balance budgets with declining and stagnating revenue sources. While some of the spending associated with the provision of County government can be effectively modulated, the same flexibility does not exist for all areas of expenditures. Key expenditure drivers associated with the 2018 recommended budget include: personnel costs within the Sheriff's office, transfer of inmate medical expenditures from the Indigent Care levy, costs associated with jail congestion, lack of compensation for Sheriff Patrols. Other considerations include an increased subsidies to the County's Communications Center, Juvenile Court/Hillcrest, the growth in Public Defender costs associated with dependency cases, and ongoing funding for economic development partnerships. The Employer must balance these expenditures in its general fund budget.

The Employer contends the Administrator's 2018 recommended budget relies upon both reductions to departmental requests and revenue enhancements as a means to bridge to a more sustainable financial future. A reduction of $31.91 million in departmental expenditure requests is recommended. The 2018 Recommended Budget utilizes $10.1 million in revenues anticipated to be allocated by the State to accommodate for the reduction in sales tax associated with the Medicaid Managed Care dynamic. There must be a long term structural balance to remain fiscally sustainable in the future.

It is noted the budget of the Sheriff's Office represents approximately thirty percent of the Employer's general fund budget. The office provides mandated and non-mandated services to the public. Patrols provided via contract to political subdivisions in the County are a non-mandated function of the Sheriff's Office, but are of importance to the community. The Employer subsidizes a significant allocation of funds to individual communities for police patrol services. The Administration continues to work cooperatively with the Sheriff's Office and impacted communities to ensure that the goals of cost recovery, shared service provisions and public safety are effectively balanced.

The Sheriff declared a state of emergency related to jail capacity in June, 2017 and, in response, began sending inmates to Butler County to alleviate pressure on the Hamilton County Justice Center. The Employer has been trying to diagnose the dynamics of this issue and provide remedies to alleviate the problem of the jail capacity.

The Employer takes the position its medical expenditures continue to rise in a manner consistent with industry trends. It seeks a solution to help curb these increasing costs.

The Employer is reviewing possible revenue options to achieve balance in the budget. There is a structural imbalance for future budgets of at least $10 million. The 2018 budget represents a crossroads for it to meet the future needs of its citizens.

The Employer states the Board's goal is to maintain a general fund reserve of 15% of ongoing expenses. The projected reserve balance for 2017 is at 12.8% as of September projections, but the recommended reserve for 2018 falls to 11.6%. The reserve level is drawn down by $1.5 million to provide a jail treatment bed pilot program and the ongoing expense level raises the reserve requirement by $1.7 million.

A true look at the comparables shows its employees are paid more than fairly, compared to true counterparts. Any comparisons made by the FOP that other cities and townships pay more for their law enforcement officers are faulty. It is improper to compare the Employer's law enforcement officers to those in cities and townships, as those jurisdictions have funding sources and streams that are different than the county funding sources. The Sheriff's Office has no retention problems with members of the bargaining unit. The 2016 Annual Wage Settlement Report shows that the norm in wage increases is closer to the Employer's proposal of 2%, not the FOP's proposal of 5%.

Any assertion made by the FOP the bargaining unit has taken on more responsibility, is untrue. While the Sheriff has assumed patrol of more jurisdictions in Hamilton County, the basic duties of an Enforcement Officer have remained unchanged.

The Employer points out under the elimination of the health insurance cap, the difference in contributions between non-Enforcement employees and Enforcement Division employees for the plan year amounted to $5,484 per year prior to the cap being removed. It was necessary for this difference to be corrected. The parties settled the issue by granting a one-time lump sum of $2500 to each bargaining unit employee to put each employee in the same position as all other employees. The Employer should no longer have to pay more for the settlement of that issue.

The FOP cannot argue that Enforcement Officers are underpaid compared to similar ranks in other bargaining units. The Employer contends comparing wages of corresponding ranks in other bargaining units is a meaningless exercise. The Enforcement Officers are not doing the same job duties as those in other bargaining units. It must be emphasized that this unit has fared very well over the past years and had the insurance cap for over a decade, while others did not.

The Employer submits this bargaining unit has longevity pay, which only occurs at the Sheriff's Office. No other Appointing Authority has longevity pay. There is no justification for the doubling of such amounts.

It is the Employer's position its current sales tax rate of 7.00% is higher than Clermont, Kentucky, and Butler Counties, and the same as Warren County, and the State of Indiana. Of Ohio's 88 counties, 54 have sales tax rates of 7.25% or higher (in 2018). An increased sales tax rate would be detrimental to the General Fund. In late 2010, the County's Tax Levy Review Commission found a one-year 0.5% tax increase would have a negative assessment on the General Fund as it would eliminate this Employer's ability to make emergency adjustments to address situations. The Employer notes an increased sales tax rate could downgrade the bond rating. Even if an additional increase could be implemented, it is subject to a voter referendum.

The Employer concludes it is focused on economic stabilization as economic recovery efforts are slow. Growth in compensation in the Sheriff's Office should mirror the growth of the County as a whole. It is imperative that the Sheriff operate within the departmental budget and not have excessive expenditures.

The Employer proposes a wage structure to assist in recruitment and retention. This proposal is as generous as that offered to the non-bargaining unit employees, who may only receive 2% in 2018 (although that is not guaranteed). The County Commissioners have 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 upon this Fact Finder to judge or impose such considerations on the elected officials of Hamilton County.

FACT-FINDER RECOMMENDATIONS

Wage Increase Proposal

The FOP proposes a 5% increase for each of the three years of the CBA, commencing on January 1, 2018. The FOP provided support of this proposal in the extensive presentation made during the Fact-Finding hearing. It is the position of the FOP its proposal is affordable to the Employer, falls within the comparables provided, and is necessary to attract and retain employees in this bargaining unit.

The position of the Employer is that a 2% increase in 2018 should be awarded with wage reopeners in years 2019 and 2020. The Employer argues there are many budgetary and financial constraints that must be considered. The evidence provided by the FOP fails to support a true comparable study establishes the Employer pays the employees in this bargaining unit less than their counterparts.

Fact-Finder Recommendation:

Based upon careful review of the facts and positions of the parties and considering all of the economic evidence submitted by the parties, this Fact-Finder recommends the following wage increases:

Commencing the first pay of January, 2018: 2.75 % general increase.

Commencing the first pay of January, 2019: 3.0 % general increase

Commencing the first pay of January, 2020: 3.25% % general increase

(FOP's proposal)
Add additional step to the wage scale, 2% above current 4 year step

The FOP proposes to add an additional step to the wage scale, which would be 2% above the current 4 year step. This additional step is necessary to narrow the gap that exists between employees in this bargaining unit and other public employees in similar peer groups doing comparable work. The extra step would reduce the current deviation in comparable data and offer an incentive for current employees to remain with the Sheriff's office instead of seeking employment elsewhere.

The Employer states the evidence does not justify adding an additional step to the wage scale. The bargaining unit is already compensated fairly according to the comparables data. There is no evidence of a retention problem in the Sheriff's department that needs to be addressed by adding an additional step to the wage scale.

Fact-Finder Recommendation:

This Fact-Finder rejects the FOP's proposal to add an additional step to the wage scale.

(FOP's proposal)
Adjust the 3 year step of the patrol officer to be equal instead of below that of a Court Service Officer at the three year step.

The FOP proposes to adjust the 3 year step of the Patrol Officer to be equal, instead of below that of a Court Service Officer at the 3 year step. The FOP points out this adjustment is consistent with the higher pay range of a patrol officer as compared to a court service officer. The inequity in the wage scale occurred as a result of a clerical error from the consolidation of Court Service Officers I and II in a prior CBA.

The Employer does not support this proposal. The evidence shows the Enforcement Officers are not underpaid compared to similar ranks in other bargaining units. The FOP's proposal must be rejected.

Fact-Finder Recommendation:

This Fact-Finder finds no basis to address this proposal.

(FOP's proposal)
Adjust the Corporal rate to 8% of the rank differential as opposed to the 7% rank differential

The FOP proposes for the Corporal rate of pay to be adjusted to a straight 8% rank differential as opposed to the current 7%. The purpose of this adjustment would be half of the 16% rank differential between sergeants and patrol officers. It would be more consistent with the supervisors current rank differential.

The Employer contends this proposal should be rejected by the Fact-Finder.

Fact-Finder Recommendation:

This Fact-Finder recommends for the Corporals rate to remain the same.

(FOP's Proposal)
Increase the Longevity rate

The FOP proposes to double the longevity rate. This rate has not been adjusted since its inception in 1993. The FOP argues this proposal would compensate the bargaining unit employees who remain with this Employer.

The Employer submits this bargaining unit has longevity pay, which only occurs in the Sheriff's Office. No other Appointing Authority has longevity pay. There is no justification for the doubling of such amounts.

Fact-Finder Recommendation:

It is the recommendation of this Fact-Finder to reject the FOP's proposal related to longevity. The current benefit in place is exclusive to the Sheriff's office and at this time it is not necessary to increase the longevity rate.

Tentative Agreements

The parties have notified the Fact-Finder that several tentative agreements have been reached. The Fact-Finder recommends for the following tentative agreements to be made part of the CBA.

Article 8	Grievance Procedure
Article 9	Discipline
Article 10	Personnel Files
Article 14	Vacancies
Article 19	Hours of Work and Overtime
Article 23	Holidays
Article 25	Sick Leave
Article 27	Donated Time
Article 28	Uniforms and Equipment
Article 43	Duration
New Article	Preferred Assignments
Appendix A	Shift Assignments Per District
Side Letter	Post Retirement Employment ("P.R.E.") Program

The Fact Finder also recommends for the unopened articles to remain in the CBA.

CONCLUSION

After review of the pre-hearing statements of the parties, all facts presented at the hearing and all exhibits and testimony presented at the hearing the Fact-Finder has developed the award as contained in this report. In addition, the Fact-Finder has given consideration to the positions taken by each party regarding the impact into the criteria regarding the impasse into the criteria innumerate in the Ohio Revised Code.

Respectfully submitted and issued on this 4th day of January, 2018.

Michelle Miller-Kotula
Fact-Finder

CERTIFICATE OF SERVICE

I herby certify that on this 4th day of January, 2018, a copy of the foregoing Award of the Fact-Finder was served by way of electronic mail and regular mail upon Brett a. Geary, Regional Manager, Clemens Nelson & Associates, representing the Hamilton County Sheriff and Gwen Callender, Esq. and Mark Scranton, Staff Representative, representing the Fraternal Order of Police, Ohio Labor Council, Inc. and the State Employment Relations Board.

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