

**STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO**

**IN THE MATTER OF FACT-FINDING BETWEEN
HAMILTON COUNTY SHERIFF**

AND

FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL, INC.

(Enforcement Sergeants and Lieutenants; Court Services Sergeants and Lieutenants; Internal Affairs Sergeants and Lieutenants and Electronic Monitoring Division Sergeants)

FINDINGS AND RECOMMENDATIONS

CASE NO: 2017-MED-07-0811

William C. Binning Ph.D.

Fact-finder

For Hamilton County Sheriff

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The undersigned was appointed Fact-finder by the State Employment Relations Board (SERB) on November 22, 2017, pursuant to Section 4117.14 (C) (3) of the Ohio Revised Code.

The hearing was scheduled for March 13, 2018 at 8871 Weekly Lane, Cincinnati, Ohio. The FOP sent the Fact-finder a copy of the extension of the Factfinding hearing until May 1, 2018. This waived the provisions of 4117.14 (G) (11).

The parties complied with the Fact-finder's request that their pre-hearing statement on the outstanding issues be sent electronically by noon on March 12, 2018.

HEARING ON MARCH 13, 2018

Prior to the opening of the hearing, the parties engaged in mediation. The parties acted in good faith. None of the four outstanding issues were resolved.

The Fact-finder then opened the formal hearing.

The parties were well represented by Brett A. Geary for the Hamilton County Sheriff and Gwen Callender for the FOP.

HEARING

A formal hearing was opened by the Fact-finder at approximately 11:00 a.m. Both parties were afforded a full opportunity to present testimony, examine and cross examine witnesses, and introduce oral explanations of the extensive evidence offered in support of their positions on the outstanding issues. The four outstanding issues are:

1. ARTICLE 17 HOURS OF WORK AND OVERTIME
2. ARTICLE 18 COMPENSATION
3. ARTICLE 21 HOLIDAYS
4. ARTICLE 22 VACATION

CRITERIA

In compliance with the Ohio Revised Code, Section 4117:14 and Ohio Administrative Code, the Fact-finder considered the following criteria in making the findings and recommendations contained in this report.

1. Past Collective Bargaining Agreements between the parties
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.
3. The interests and welfare of the public, the ability of employer to finance and administer the issues proposed, the effect of the adjustments on the normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the parties
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in determination of the issues submitted to mutually agreed upon dispute settlement procedures in the public service or in private employment.

ISSUES IN DISPUTE AND RECOMMENDATIONS

ARTICLE 17

HOURS OF WORK AND OVERTIME

FOP Position

The FOP is proposing an increase in the maximum hours of Comp time accrual from 240 hours to 280 hours. The justification for this increase offered by the Union was that this language was given to the Enforcement Officers' (Deputies) bargaining unit.

The FOP also proposes language obtained by the Enforcement Officers' bargaining unit "...which would insure that compensatory time requests were either approved denied within a reasonable time of submission." (Position Statement of FOP, 3)

Employer Position

The Employer proposes no change to this article. The Employer argues that this proposal to increase compensatory time is not justified. Furthermore, the Employer argues that the request for additional compensatory time conflicts with the Union's proposals in Article 22 to "...receive cash pay outs for too much accrued vacation leave. The Union is proposing to increase one bank of leave while saying another leave bank is

too high and should be cashed out.” (Employer Submission to Fact Finder).

The Employer argues there is no reason this bargaining unit should increase their maximum accumulation of compensatory leave.

FACT FINDER RECOMMENDATION

The principle argument of the Union, for this proposed increase in Comp time, is that it was recently given to the Enforcement Officers’ (Deputies) bargaining unit.

In matters such as this, pattern bargaining is given weight, however this unit of supervisors is also requesting an increase in rank differential, and as it was pointed out in the hearing, Hamilton County does face fiscal challenges in the future.

The increase in the maximum amount of Compensatory time accrual from two hundred forty hours (240) to two hundred and eighty (280) is not recommended.

There was a second request for a change in Article 17 that “...would ensure that compensatory time requests were either approved or denied within a reasonable time of submission.” (Position Statement FOP).

This proposed language does not restrain management rights and has minimal or no costs to the employer. The following is recommended for this Contract:

Article 17

J. All requests for compensatory time will be approved or denied in writing within a reasonable amount of time of submission.

ARTICLE 18
COMPENSATION

FOP Position

The FOP is proposing that “All Sergeants who have completed four (4) years of service in the rank of Sergeant shall become Senior Sergeants and shall be paid an annual salary equal to nineteen percent (19%) more than the top annual step in the pay grade for Enforcement Officer. The pay increase shall take effect the first pay period following the completion of four years of service in the rank of Sergeant.” (FOP Position Statement).

The Union argues that the bargaining unit did not receive a wage increase in 2009, 2010, 2011, and 2012. The bargaining unit did receive an increase in 2013 but paid a significant price for that increase by giving up an insurance cap that had been in place since 2003. The Union argues that without that cap the employee monthly insurance premium share has “skyrocketed”. The one-time lump sum payment given in exchange for eliminating the cap did not come close to alleviating the cost of health insurance.

The FOP was able to secure a cost of living increase for this bargaining unit through Fact-Finding with the Enforcement Officers, which was agreed to this past January. The bargaining unit will receive 2.75% in 2018; 3% in 2019 and 3.25% in 2020.

According to the Union, while these above- mentioned increases help, they do not go far enough in bringing the Sergeants into parity with comparable bargaining units.

To address this comparable disadvantage, the FOP is proposing that a new step be added to the sergeants' rank for those sergeants who have completed at least 4 years in the rank of sergeant. The new step is a senior sergeant step and would give those sergeants a 3% increase upon beginning the 5th year in the rank of Sergeant.

The Union argues this step is necessary for several reasons. First, it will raise the salary of Sergeant to levels on parity with comparable bargaining units. The Union argues it will narrow the gap that exists between employees in this bargaining unit and other public employees in similar peer groups doing comparable work. These sergeants are almost 14.2% below their comparable counterparts on average at the top step.

Second, in the past six years the Employer has expanded to patrols in Lincoln Heights, Arlington Heights, and Silverton. This required that more deputies be supervised by the sergeants. This additional work also added more radio frequencies to track.

The above three political subdivisions are all villages, under O.R.C. Arlington Heights has 923 residents with a population density of 3,447 per square mile. Silverton with a population of 4,766 has a population density of 4,287 inhabitants per square mile and Lincoln Heights has a population of 3,360 and a population density of 4,477 population per square mile. For the sake of comparison, Cincinnati has a population density of 3,810. Hamilton County has a population density of 2,075. In 2010 it was reported in the *Cincinnati Inquirer*, Lincoln Heights had a history of violent crime, one that "plagues" Lincoln Heights.¹ In 2014, according to the *Cincinnati Inquirer* the

¹ Trueng, Quan and Jennifer Baker, "Gunmen attack Officer in Lincoln Heights" *The Cincinnati Inquirer* September 18, 2010. Retrieved March 24, 2018.

Lincoln Heights Police Chief at the time said: “we police the way big city polices”.²

In all three of the above cases the contract between the Village and the County Sheriff provided for “police protection services”. (Union Article 18 Tab 21). The Hamilton County Sheriff Department transitioned from policing of unincorporated areas to dense, urban and in some cases high crime areas. This supports the Union’s argument that the duties of this supervision unit are increasing and are in fact changing. This verifies the selection of many of the urban police department comparables offered by the Union.

Data on the increased span of control was offered by the Union.

The Union also argued that the additional step will compensate sergeants when they are designated as Watch Commanders. In the absence of a Lieutenant, the Employer designates the senior sergeant as the shift Watch Commander. With those duties, the senior Sergeants have the entire County under their command. As Watch Commander the senior Sergeant is responsible for all specialty unit activations (SWAT, CIS, Traffic, Aviation, Dive team, Bomb Squad, RENU and RENI.

In concluding that part of their presentation, the Union wrote, “The fact is that the top step for Sergeants is on average 14.2% lower than external comparables.” (Id.)

The FOP argues that “The County is currently experiencing an economic upswing with no end in sight. The local economy in the greater Cincinnati metro area has now pushed past Columbus and Cleveland metro areas in terms of gross national

² Marotti, Ally “Violence vexes Lincoln Heights, police patrols boosted” *The Cincinnati Inquirer* June 11, 2014. Accessed March 24, 2018.

product. Greater Cincinnati is now the fastest- growing major city in the Midwest. “(FOP Position Statement 8)

The FOP offered its financial analysis of Hamilton County. They stated it was based on the County’s Comprehensive Annual Financial Reports. (Id. 8)

The FOP offered financial data showing a December 31, 2016 general fund balance for the county of \$78,283,000, cite source of Comprehensive Annual Financial Reports 2012-2016. (Union Article 18 Tab 1 p. 14).

The FOP data shows the general fund balance as a percentage of expenditures 39.14%. December 31, 2016. (Id. 15.).

The Union display of Hamilton County finances shows an increase in General Fund revenues from 2015 to 2016. (Id. 19).

The Union display of Hamilton County finances shows a significant increase in Total General Fund Expenditures. (Id. 20).

Total General Fund Revenue exceeded expenditures from 2013-2016. The Union cites 2012-2016 Comprehensive Annual Financial Reports (Id. 21).

The above materials were prepared by Wade Stein CPA. His bio was offered by the Union. (Article 18 Tab 1).

The Union offered Hamilton County Moody Bond rating Aa2. (Tab 16). For Moody’s that is “High Quality”.

The Union's financial presentation gave an overall positive view of Hamilton County. The Union cited unemployment figures, home values, CPI data and GDP.

The Employer Position

The Employer proposes no change to this article "...because this Union's wages are tied to the wages of the Enforcement Officers bargaining unit who accepted a fact-finding award that granted wage increases of 2.75% in 2018, 3% in 2019, and 3.25% in 2020. This union will benefit from that increase." (Employer Submission Rational Statement Article 18).

The Employer states that the "Senior Sergeant" would be 19% above the Patrol Officer pay rate, a 3% increase without any justification. The Union argues that this Union is already receiving a wage increase above the statewide average. Their proposal for further increases is "preposterous" and should be dismissed. (Hamilton County Sheriff Fact Finding Proposal March 13, 2018 FOP/OLC. Rational Statement Article 18 (Compensation)).

The Employer asserted that this unit should not be compared to the equivalent rank in townships and cities. (Hearing testimony)

The Employer presented Hamilton County financial data from the 2018 Recommended General Fund Budget for

Hamilton County as prepared by the County Administrator dated October 16, 2017. (Employer presentation Tab 6 D)

The Administrator recommended a General Fund Budget for 2018 of \$241.7 million, a 5.1% increase from the approved 2017 budget, a 1.7% increase from projected end of year 2017 spend. (Id.).

The Employer representative highlighted the constraints on Hamilton County's general revenue, which is very sales tax dependent. The County sales tax revenues have been adversely impacted by the Medicaid driven sales tax collection.

The Employer offered that "The Center for Medicare and Medicaid Services (CMS) in 2014 sent a letter asserting that the Medicaid sales tax violated federal rules, and Ohio must cease collections by July 2017. The 2018-19 state budget included a health insuring corporation tax which fully offset lost state revenue but provided temporary and incomplete reimbursement to local jurisdictions." (under Tab 6 D page 2). The state solution to the loss of Medicaid Managed Care Sales Tax Revenue was not long term for Ohio counties. (Id. 6). The federal rule will result in "...the loss of approximately \$ 6 million in Medicaid Managed care tax." (Id.2). The impact on the County's projected revenue is displayed in graph MMS Sales Tax Impact. (Id. 14). The Administrator wrote "...the State transitional offsets do provide the County with a period of time, albeit brief, to make deliberative policy choices associated with balancing future revenues and expenditures." (Id. 2).

The Employer representative pointed to a graph, "General Fund Expenses and Revenues, 2010-2022." (Id. 6) That shows "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 outlined later in this transmittal.” (Id.)

The County argues that “In total, when comparing departmental requests to available resources, the recommended strategy for achieving balance in the 2018 budget relies upon \$31.95 million in expenditure reductions and \$15.1 million in revenue revisions...” (Hamilton County Sheriff, Fact Finding Proposal March 13, 2018 FOP/OLC).

The Employer cautions that “The above framework provides a prudent approach for balancing the 2018 budget given the need for a more sustained dialogue on the issue of long term structural balance. It is not, however, a sustained and structurally balanced budget as it relies on one-time, state allocated resources to provide a bridge to a fiscally sustainable future in 2019.” (Id.).

The Employer emphasizes in italics that *“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%.”* (Employer Submission to Fact finder) Also displayed, in a different format, under Tab 6 E 3.

In addressing the County’s presentation of reserves, balances, the Employer emphasized that Hamilton County followed the Government Finance Officers Association “Fund Balance Guidelines for the General Fund” Best Practice. (Offered under Tab 6 W).

The Employer presented the State Employment Relations Board Annual Wage Settlement Report that showed the

average 2017 Police wage increase at 2.20 and the average County wage increase for 2017 at 2.26. (Tab 0).

The Employer in prepared remarks to the Union's anticipated argument on comparables: "The Union will likely argue that other cities and townships pay more for their law enforcement supervisors, but such a comparison is faulty. It is improper to compare County law enforcement supervisors to those in cities and townships, as those jurisdictions have funding sources and streams that are vastly different than county funding sources and streams." (Hamilton County Sheriff Fact Finding Proposal March 13, 2018 FOP/OLC). A similar argument was made at the hearing about comparables.

Discussion and Recommendation

The Fact finder considered all the arguments, evidence and facts presented by the Employer and the Union. The Fact finder gives weight to the fact that the Hamilton County Sheriff's Department has assumed policing responsibility for incorporated, densely populated municipalities. The Fact Finder also gives weight to the fiscal challenges facing the County, particularly the loss of the sales tax on Medicaid.

Fact-Finder Recommendation

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 in the pay grade for ~~Enforcement Patrol~~ Officer. **All Sergeants who have completed four (4) years of service in the rank of Sergeant and shall become Senior Sergeants and shall be paid an annual salary equal to eighteen**

percent (18%) more than the top annual salary step in the pay grade for Enforcement Officer. The pay increase shall take effect the first pay period following the completion of four years of service in the rank of Sergeant.

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 **top** annual salary of **Senior** Patrol Sergeant.

ARTICLE 21 HOLIDAYS

FOP Position

The FOP agrees with the Employer's proposal to move the crediting of holiday compensation time to November 1 of each year from December 1.

The FOP is also proposing to add language which was obtained by the Enforcement Officers' bargaining unit that would allow (4) hours of holiday flex time to be carried over if it was requested and denied by the Employer based upon operational needs.

Employer Position

The Employer proposed crediting bargaining unit members with compensatory time a month earlier in November, rather than in December.

The Employer stated that the Union proposed an option to bank and carry over unused Holiday Flex Time. The Employer is opposed to changing this language to its opposite meaning and proposes to maintain current language for this section.

Recommendations

ARTICLE 21 HOLIDAYS

Section 21.2- On ~~November 1~~ ~~December 1~~, of each year of this Agreement, each employee shall be credited with one hundred twenty (120) hours of holiday compensatory time. Holiday compensatory time shall be considered separately from overtime compensatory time. Requests for holiday compensatory time off must be submitted in advance of the time requested, and shall be honored subject to the operational needs of the Department.

Section 21.5. A bargaining unit employee with a normal work schedule exceeding eight (8) hours a day (e.g., 8 1/2-hour shift, 12-hour shift, etc.) shall be compensated for those hours normally scheduled over eight (8) hours and actually worked in Holiday Flex Time (HFT). HFT has no cash value, and bargaining unit employees cannot cash in HFT at any time for any value. **If unused HFT hours have been requested by an employee at least sixteen (16) hours in advance and were denied by the Employer based upon operational concerns up to four (4) hours of HFT cannot be “banked” and carried over shall be forfeited, if unused,** at the end of the HFT year. Such HFT year shall run from September 1 to August 31. HFT can be used as leave with pay, provided that the use does not cause operational concerns, and provided the use of the leave does not create overtime. A bargaining unit employee may substitute HFT for any other approved leave which has been approved prior to the date of the leave (e.g., sick leave, bereavement leave, but excluding leave approved in Section 28.2 [Childbirth/Adoption Leave]).

ARTICLE 22 VACATION

FOP Position

The FOP is proposing to add language permitting a bargaining unit employee to cash in up to forty (40) hours of vacation each year. They argue this is an economic benefit to the employee, and that it also benefits the Employer twofold. First, it means less of a need to cover overtime vacancies due to employees taking vacation. Two, if the bargaining unit members are permitted to cash out a week of vacation on an annual basis, it will reduce the cost the Employer will incur, when the employee retires and cashes out vacation.

If the cash out begins in 2018, it will be at a lower cost to the Employer than in the future, when it is presumed wages are higher. The union maintains this is not a unique proposal, since many comparable units have this benefit in their collective bargaining agreement.

Employer Position

The Employer is opposed to this proposal. The Employer points out this is an option available to no other bargaining unit.

The Employer points out that employees can accrue up to three years' worth of vacation, which for many of these members is in excess of 60 days.

The Employer asserts this is just an attempt to get more money from the Employer, in a way no other bargaining unit does.

The "...Employer is opposed to this proposal not only for its conflict with the Union's wants in Article 17, but to keep consistency among the many union contracts in Hamilton County. "(Employer submission to Fact Finder Article 22).

Fact- finder Recommendation

The Fact finder does *not* recommend the FOP proposal to cash in a week of vacation.

There is a cost to the recommended addition of the senior step, and the County faces fiscal challenges.

The Fact finder recommends the above.

The Fact finder recommends all tentative agreements reached by the parties be made part of the Collective Bargaining Agreement.

Respectfully submitted
April 12, 2018

William C. Binning
William C Binning Ph.D.
SERB Fact-Finder

