

FEB 19 10 27 AM '97

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

In Regard to the Matter of the Fact-Finding Between:

THE HAMILTON COUNTY SHERIFF	)	96-MED-09-0695
	)	
-AND-	)	(ENFORCEMENT SUPERVISORS)
	)	
FRATERNAL ORDER OF POLICE	)	
OHIO LABOR COUNCIL, INC.	)	

APPEARANCES

For The County

Charles A. King	Chief Spokesman
Jerome Schimpf	Sheriff's Counsel
Captain L. Nielsen	Hamilton County Deputy Sheriff
Captain D. Coyle	Hamilton County Deputy Sheriff
Paul Kattelman	Assistant County Administrator (Retired)

For The Union

Deborah McCormick	FOP/OLC Staff Representative
Paul Cox, Esq.,	Chief Counsel
Stan Wellbrock	Lieutenant, Bargaining Committee
Mike Patterson	Sergeant/Bargaining Committee

-----  
BEFORE ALAN MILES RUBEN, FACT-FINDER  
-----

Cleveland-Marshall College of Law  
Cleveland State University  
1801 Euclid Avenue  
Cleveland, Ohio 44115  
Tele: (216) 687-2310  
Fax: (216) 687-6881

## BACKGROUND

This is a companion proceeding to 96-MED-09-0700 in which a Fact-Finding Report for the Hamilton County Sheriff's non-supervisory Road Patrol Division Unit has been concurrently issued.

The Enforcement Supervisors in the ranks of Sergeant and Lieutenant in the Sheriff's Patrol and Criminal Investigation Divisions form a separate bargaining unit which is also exclusively represented for collective bargaining purposes by the Fraternal Order of Police/Ohio Labor Council, Inc., pursuant to certification of the State Employment Relations Board.

The parties were signatories to a Collective Bargaining Agreement entered into as of January 1, 1994, for an initial term which expired on December 31, 1996.

Pursuant to the Contractual requirement, timely notice was given of intent to modify or amend the Agreement and negotiations proceeded looking towards the execution of a successor Agreement.

After four (4) bargaining sessions, the parties declared impasse and the undersigned was appointed Fact-Finder by the State Employment Relations Board on November 29, 1996.

The parties agreed to deviate from the time-lines and procedures of the statutory dispute settlement process as set forth in Ohio Revised Code Section 4117.14, and, therefore, chose an alternative dispute settlement procedure pursuant to Ohio Administrative Code Rule 4117-9-03(F).

The parties requested the undersigned to continue to serve as Fact-Finder for their mutually agreed upon alternative dispute settlement procedure.

At the direction of the parties, a Fact-Finding hearing was scheduled for January 15, 1997 at Sharonville, Ohio.

Timely in advance of the hearing, the parties provided the Fact-Finder with the statements required by Ohio Administrative Code 4117-9-05(F) and Ohio Revised Code Section 4117.14(C)(3)(a).

By the date of the Fact-Finding proceedings, the parties had tentatively agreed to carry forward and incorporate into the new Agreement, mutatis mutandis, the following Articles of the 1994 Contract:

<u>ARTICLE NUMBER</u>	<u>TITLE</u>
1	Agreement/Purpose
2	FOP Recognition
3	FOP Security
4	FOP Recognition
5	Management Rights
6	Non-Discrimination
7	Labor/Management Meetings
8	Grievance Procedure
9	Discipline
10	Personnel Files
11	Probationary Period
12	Seniority
13	Layoff and Recall
14	Vacancies (Add Section 14.4, paragraph 2 from Patrol Unit Agreement)
15	Bulletin Boards
16	Work Rules/General Orders
17	Hours of Work/Overtime
19	Court/Call-In/Stand-By
20	Insurance
21	Holidays (Trade Columbus Day for Day after Thanksgiving)
22	Vacations
23	Sick Leave

24	Occupational Injury Leave
25	Uniforms and Equipment
26	Expenses
27	Training
28	Leaves of Absence
29	Drug/Alcohol Testing
30	Copies of The Agreement
32	No Strike/No Lockout
33	Severability
34	Waiver In Emergency

The parties also tentatively agreed upon amendments to the following Articles of the 1994 Agreement which, as revised, are to be carried forward and incorporated into the successor Agreement.

<u>ARTICLE NUMBER</u>	<u>TITLE</u>
31	Civil Service Compliance
35	Duration (Through 11:59 p.m. on 12/31/99)
36	Performance Evaluation
37	Physical Fitness
38	Donated Time
40	Outside Employment
41	Health & Safety

In addition, the parties agreed that Section 18.3 of Article 18, as set forth below, had been inadvertently omitted from the predecessor Agreement:

"Section 18.3 Beginning on 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 (1.5%)

"Twenty (20) years of service - Two percent (2.0%)"

The parties acknowledged that despite the absence from the Contract of this provision, its terms have been honored during the course of the predecessor Agreement.

Accordingly, the Fact-Finder finds appropriate and recommends the inclusion of Section 18.3 as set forth above into the successor Agreement.

The Fact-Finder also finds appropriate and recommends the adoption of the above-referenced Tentative Agreements and the carrying forward and incorporation into the new Contract, mutatis mutandis, of the above referenced unopened Articles from the predecessor Agreement.

There remained unresolved proposals to amend the following Articles of the predecessor Agreement:

SHERIFF'S PROPOSALS:

Article 18 - Compensation

UNION'S PROPOSALS:

Article 18 - Compensation  
Article 39 - Service Allowance

In making his recommendations on these proposals the Fact-Finder has been guided by the factors set forth in O.R.C. Section 4117.14(C)(4)(e), and Ohio Administrative Code, 4117-9-05(K), namely:

"(a) Past collectively bargained agreements, if any, between the parties;

"(b) Comparison of the unresolved issues relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to

factors peculiar to the area and classification involved;

"(c) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

"(d) The lawful authority of the public employer;

"(e) The stipulations of the parties; and

"(f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment."

#### FINDINGS AND RECOMMENDATIONS

Article 18 of the immediately expired Collective Bargaining Agreement provides as follows:

"Article 18.1: Effective the beginning of the pay period which includes January 1, 1994, and for the life of this Agreement, employees in the rank of Sergeant shall be paid an annual salary equal to 16% more than the top annual salary step in the pay grade for Patrol Officer.

"Section 18.2: Effective the beginning of the pay period which includes January 1, 1994, and for the life of this Agreement, employees in the rank of Lieutenant shall be paid an annual salary equal to an amount that is sixteen percent (16%) more than the annual salary of Patrol Sergeant."

The Union seeks to have the Sergeant's base annual salary linked to the Corporal's pay grade instead of that of Patrol Officer. The present percentage differential would then be

adjusted downwards from sixteen (16%) percent to fourteen (14%) percent.

Correspondingly, the Union proposes to reduce the percentage differential paid employees in the rank of Lieutenant over the annual salary paid to employees in the rank of Sergeant from sixteen (16%) percent to fourteen (14%) percent.

"Section 18.1 Effective the beginning of the pay period which includes January 1, 1997, and for the life of this Agreement, employees in the rank of Sergeant shall be paid an annual salary equal to 14% more than the top annual salary step in the pay grade for Corporal.

"Section 18.2 Effective the beginning of the pay period which includes January 1, 1997, and for the life of this Agreement, employees in the rank of Lieutenant shall be paid an annual salary equal to an amount that is fourteen percent (14%) more than the annual salary of Patrol Sergeant.

....."

The top step pay rate for Patrol Officers in 1996 was \$37,693.00, and generated, at the existing sixteen (16%) percent differential, a salary of \$43,724.00 for Sergeants. The Corporal rate for the same year was \$40,331.00. If the Union's proposal had been in effect, Sergeants would have received \$45,977.00, or a 5.2% increase of \$2,253.00.

The Lieutenants in 1996 were earning \$50,720.00. Had the Union's proposal been operative they would have been entitled to a base rate 14% higher than that given to Sergeants or

\$52,414.00. They would have thus gained an additional 3.3% or \$1,694.00.

These increases would have had to have been effectively reduced by \$500.00, however, since the Union offers to give up its present annual Service Allowance in that amount under Article 39 in exchange for adoption of its proposal.

In support of its proposal the Union represents that the Sergeant's pay was initially linked to the Patrol Officer's compensation because there was no Corporal rank. With the 1987 introduction of the rank of "Corporal" between the ranks of Patrol Officer and Sergeant, the Union suggests that the Sergeant's differential should be based upon the higher grade. The Corporals enjoy an annual salary differential of 7% over Patrol Officers, and presently Sergeants receive only approximately 8.4% more than Corporals. This differential is inadequate, the Union argues, because at least the Corporals assigned to the Patrol Section have no supervisory responsibilities at all, but have overtime opportunities which are not available to Sergeants. It is possible for Corporals to actually earn more than Sergeants by accepting overtime opportunities, and thus there is "a disincentive to become a Sergeant."

The Union further suggests that a Sergeant's responsibilities in terms of his "span of control" - (i.e., number of Officers assigned for supervision) - is greater than that of any counterpart supervisor employed by municipal Police Departments in Hamilton County. On the other hand,

twelve (12) of these twenty-seven (27) municipalities provide higher base compensation to their Sergeants.

In particular, the Union points out that the Cincinnati Police Department, whose size is comparable to that of the Sheriff's Department, pays its Sergeants some thirty-five hundred (\$3500.00) dollars more than the Sheriff does.

Whatever the duties of Corporal and the reasons for the creation of that rank, the mere fact that an intermediate supervisory classification has been interposed between the Patrol Officer and the Sergeant ranks does not, by itself, warrant an adjustment in the pay of the Sergeants. The evidence does not disclose that the Sergeants' responsibilities, duties, risks or other conditions of employment have materially changed since the last Contract. Indeed, their "span of control" and the number of Officers whom they supervise have not been shown to have changed significantly over the years since the sixteen (16%) percent differential premium was introduced.

Similarly, the work load and working conditions of the Lieutenant classification have not demonstratively changed.

The Sergeants receive \$3,393.00 more in base pay than Corporals.

The Fact-Finder cannot conclude that the differential is inadequate.

There is no evidence that Sergeants seek demotion to the rank of Corporal, or that there is a dearth of candidates to fill vacancies in the Sergeant classification.

Moreover, as the annual salaries of Patrol Officers rise, even though the Sergeant's percentage differential remains constant, the dollar differential between the Sergeant and Corporal ranks will increase.

For the reasons set forth in the Fact-Finder's Report in the companion proceeding, S.E.R.B. 96-MED-09-0700 (Road Patrol Unit), the Fact-Finder does not believe municipal police departments represent comparable units for purposes of wage determination. Rather, as reported in the companion proceeding, the Fact-Finder finds the more appropriate comparisons are to be made with the Sheriff Departments of the five (5) other most populous counties in Ohio, (excluding Cuyahoga County whose Deputy Sheriffs do not provide road patrol services).

Enforcement Sergeants in Hamilton County are paid more than their counterparts in Stark, Summit and Lucas Counties, but less than those attached to the Franklin and Montgomery County Departments. Franklin County pays its Sergeants an annual base salary of forty-eight thousand, four hundred twenty-two (\$48,422.00) dollars while Montgomery County pays a base rate of forty-seven thousand, four hundred sixty-six (\$47,466.00) dollars.

Since Sergeants wages are linked to the wages of the Patrol Officers and the Fact-Finder has recommended significant increases for that classification over the three (3) years of the Contract, the actual number of dollars received by the Sergeants for 1997, 1998 and 1999 will be

commensurably increased, should the recommendation be adopted, and tend to close the compensation gap at least with their higher paid counterparts in the Montgomery County Sheriff Department.

More specifically, the Fact-Finder has recommended increases of three and one half (3.5%) percent in the wages of the Patrol Officers in 1997 and 1998, and an increase of four (4%) percent in 1999.

The 1996 top step compensation for Patrol Officers in the Department was thirty seven thousand, six ninety three (\$37,693.00) dollars. With the three and one half (3.5%) percent increase recommended for 1997 their base pay would rise to thirty-nine thousand, twelve (\$39,012.00) dollars. The sixteen (16%) percent mark-up to which Sergeants are entitled would result in a base pay for Sergeant of forty-five thousand, two hundred fifty-four (\$45,254.00) dollars, or an increase in the Sergeant's annual salary of seventeen hundred, eighty-nine (\$1789.00) dollars.

For calendar year 1998, assuming the recommendations of the Fact-Finder are adopted, the base pay of Patrol Officers would rise to forty thousand, three hundred and seventy-seven (\$40,377.00) dollars and the Sergeant's pay, based upon that amount, would increase to forty-six thousand, eight hundred thirty-eight (\$46,838.00) dollars or an additional increase of one thousand, five hundred and eighty-four (\$1,584.00) dollars.

For calendar year 1999, the base pay of Patrol Officers would increase to forty-one thousand, nine hundred ninety-two (\$41,992.00) dollars, and the Sergeant's pay would climb to forty-eight thousand, seven hundred ten (\$48,710.00) dollars, or an additional one thousand, eight hundred, seventy-three (\$1,873.00) dollars.

Thus, over the three (3) year period the Sergeants' base rate would rise by five thousand, two hundred and forty-six (\$5,246.00) dollars.

The 1996 compensation for Lieutenants in the Hamilton County Sheriff Department was fifty thousand, seven hundred twenty (\$50,720.00) dollars.

They received more than their counterparts in the Summit, Stark and Lucas County Sheriff Departments, but less than the Lieutenants in Franklin and Montgomery Counties whose annual base rates were fifty four thousand, seven hundred and twenty-five (\$54,725.00) dollars and fifty-three thousand, seven hundred twenty four (\$53,724.00) dollars respectively.

As in the case of the Sergeants, the increase proposed for Patrol Officers by the Fact-Finder, if adopted, would significantly increase the compensation paid to Lieutenants.

Lieutenants would receive an additional seventeen hundred and seventy-five (\$1,775.00) dollars in 1997, a further increase of eighteen hundred and thirty-seven (\$1,837.00) dollars in 1998 and another increase of two thousand, one hundred, seventy-three (\$2,173.00) dollars for an accumulative increase of five thousand, seven hundred eighty five

(\$5,785.00) dollars. The resulting base salary of fifty-six thousand, five hundred and five (\$56,505.00) dollars would, based upon present information, move them towards parity with the Lieutenants in the Franklin and Montgomery County Sheriff Departments.

Therefore, the Fact-Finder finds appropriate and recommends the adoption of Sections 18.1 and 18.2 of Article 18 as follows:

"Section 18.1 Effective the beginning of the pay period which includes January 1, 1997, and for the life of this Agreement, employees in the rank of Sergeant shall be paid an annual salary equal to sixteen (16%) percent more than the top annual salary step in the pay grade for Patrol Officer.

"Section 18.2 Effective the beginning of the pay period which includes January 1, 1997, and for the life of this Agreement, employees in the rank of Lieutenant shall be paid an annual salary equal to an amount that is sixteen (16%) percent more than the annual salary of Patrol Sergeant."

The Employer proposes to add a new Section 18.4 to the Agreement which would limit retroactive distribution of wages to employees who were on the payroll as of the date of distribution:

"Section 18.4. Any retroactive distribution of wages and/or other benefits provided for in this Agreement shall only be paid to bargaining unit employees who are employed on the day of distribution."

The Fact-Finder has rejected a similar proposal of the Employer in the companion Fact-Finding proceeding for the Patrol Unit. There is no reason why a different result should

follow in the present proceeding. As the Fact-Finder observed in his Report on the same subject for the Patrol Unit:

"As to the Sheriff's further proposal that retroactive distribution of wages be paid only to those employees who are on the payroll as of the day of distribution, the Fact-Finder believes that this would unfairly deprive bargaining unit members who have retired or left the Department from receiving the same compensation for services previously rendered that their colleagues who remain at the Department will receive. The enhanced compensation has been earned and accrued during their period of employment and hence they are entitled to the benefit."

The Fact-Finder accordingly does not find appropriate and does not recommend the adoption of the Sheriff's proposal to add a new Section 18.4 to Article 18.

Sergeants and Lieutenants presently receive an annual Service Allowance in the amount of five hundred (\$500.00) dollars. The Union was willing to forego this allowance if its proposal for linking the Sergeant's base pay to the rate for Corporals rather than to that of Patrol Officers was adopted. Since the Fact-Finder has not recommended the adoption of this proposal, the Union seeks to retain the annual Service Allowance.

In the companion Patrol Unit proceeding, the Fact-Finder has recommended an increase in the service allowance from five hundred (\$500.00) dollars to six hundred (\$600.00) dollars. For the reasons there expressed, the Fact-Finder finds it appropriate and recommends that the Sergeants and Lieutenants also receive the one hundred (\$100.00) dollar increase so as

to equilibrate their allowances, and maintain the present differential between total compensation received by the Patrol Officers, on the one hand, and by the Sergeants and Lieutenants, on the other.

Accordingly, the Fact-Finder finds appropriate and recommends the adoption of Article 39 to read as follows:

"Section 39.1 As soon as practical following the effective date of this Agreement, or on the first regularly scheduled pay day following May 1, 1997, whichever date is later, and on the first regularly scheduled pay day following May 1, 1998, and on the first regularly scheduled pay day following May 1, 1999, employees who have completed more than one (1) year of service in the bargaining unit as of the date of distribution shall receive a service allowance in the amount of six hundred (\$600.00) dollars.

"Section 39.2 Service allowances shall be paid by separate check and shall not be subject to deductions. The service allowance shall, however, be reported as income on the employee's annual earnings statement (Form W-2) and it shall be the employee's responsibility to demonstrate that the allowance was utilized for job-related items.

"Section 39.3 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 service allowance based upon the number of months of service completed since the previous May 1."

This Report and Recommendations issued this 13th day of  
February, 1997, at Cleveland, Ohio.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alan Miles Ruben". The signature is stylized with a large initial "A" and "M".

Alan Miles Ruben  
Fact-Finder

AMR:ljg