

STATE OF OHIO
PUBLIC SAFETY

NOV 30 9 17 AM '99

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
FACT FINDER'S REPORT AND RECOMMENDATIONS
HAMILTON COUNTY SHERIFF
AND
HAMILTON COUNTY
DEPUTY SHERIFF'S SUPERVISORS ASSOCIATION
SERB Case No. 99-MED-07-0644

MICHAEL MARMO

FACTFINDER

NOVEMBER 29, 1999

HEARING

The fact-finding hearing took place on Tuesday, November 16, 1999 at the Hamilton County Administration Building, 138 E. Court Street, in Cincinnati, and lasted from 9:00 a.m. until 3:10 p.m. Representing the Sheriff were its chief spokesman, Charles A. King, Director of Labor Relations for Clemans, Nelson & Associates, Inc.; Mark J. Lucas, President of Clemans, Nelson; Lynn Preuth, Hamilton County Human Resource Manager; Robin Jarvis, Hamilton County Employee Relations Specialist; Gail Wright, Administrative Assistant to the Sheriff; Joseph Schmitz, Director of Corrections; and Mark Lillis, the Sheriff's Corrections Personnel Officer. Representing the Deputy Sheriff's Supervisors Association were Stephen Lazarus, their Attorney and principal representative; Theodore Sampson, Chairman of the HCDSSA; John Murray, Vice-Chairman of the HCDSSA; Ernie Grote, Secretary of the HCDSSA; and George Wilburn, a Corrections Captain.

ISSUES REMAINING AT IMPASSE

At the time the Factfinder entered the dispute, the following issues remained at impasse:

- Article 2 Association Security
- Article 3 Association Representation
- Article 7 The Grievance Procedure
- Article 8 Discipline
- Article 9 Personnel Files
- Article 10 Probationary Periods
- Article 12 Vacancies and Promotions
- Article 18 Hours of Work and Overtime
- Article 19 Wages
- Article 20 Court Time/Call In Time
- Article 22 Holidays
- Article 24 Sick Leave
- Article 27 Uniforms and Equipment
- Article 30 Leaves of Absence
- Article 35 Education
- Article 36 Residency
- Article 37 Shift Differential

MEDIATION

Mediation was attempted and was successful in resolving two issues: Article 2, Association Security; and Article 20, Court Time/Call In Time.

CRITERIA FOR DECISION

As provided by the procedures of the State Employment Relations Board, the Factfinder based his recommendations on the following:

--past collectively bargained contracts between the parties;

- a comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- the interest and welfare of the public, and the ability of the public employer to finance the issues proposed, and the effect of the adjustments on the normal standard of public service;
- the lawful authority of the public employer; and
- such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute settlement procedures in the public service or in private employment.

PROCEDURAL ISSUE

At the outset of the hearing, the Union indicated that they had not received the Sheriff's pre-hearing submission. The Sheriff's representatives produced documented evidence showing that the pre-hearing statement was sent. So that the Union would not be disadvantaged, the hearing was recessed to give the Union time to read the Sheriff's pre-hearing statement. At the conclusion of the hearing, the Union agreed that they were not disadvantaged by not receiving the Sheriff's pre-hearing submission prior to the hearing.

UNRESOLVED ISSUES

ARTICLE 3 ASSOCIATION REPRESENTATION POSITIONS OF THE PARTIES

The only section in dispute in this Article is 3.4. Each party proposed one change in this section. The Sheriff proposed that the investigation and writing of grievances only be allowed on non-work time. Because of the small size of the unit, the Sheriff argued, there could be logistical problems in granting the Union the right to process grievances during work time. The Union, in turn, argued that because unit members work at five different locations it might be very difficult to investigate grievances adequately within the contractual time constraints, if not allowed during on-duty time.

The Association proposed a clause requiring that Union negotiators be paid when they are negotiating a new agreement. The Employer argued that the issue of whether negotiators should be paid for their attendance at negotiations is properly addressed in pre-negotiation ground rules. The Association said that contractual guarantees of compensation for attendance at negotiations "is commonplace".

FINDING OF FACT

The old contract covering Corrections Supervisors grants the Union the right to investigate grievances during work hours. Although the Sheriff alluded to potential problems with this arrangement, no significant problems with this current arrangement was indicated. For this reason, no changes in the current arrangement are warranted.

The old contract is silent with respect to paying union negotiators for their attendance at bargaining sessions. Although the Union argued that such contractual guarantees were commonplace, no comprehensive data was presented to support this statement. Because the old contract is silent on this issue, because the current policy is to pay for participation

at such negotiations, and because no persuasive evidence was presented to support a change in this area, no change in this area is warranted.

RECOMMENDATION

Section 3.4 should read as follows:

Section 3.4 When it is necessary for an Association representative to conduct authorized Association representational activities, he/she shall first request permission from the Operations Commander, which shall be granted for a reasonable period of time to conduct such activities, unless the release of the Association's representative would duly disrupt the operation of the department, in which case the Association's representative will be released as soon as it becomes feasible. Recognized Association activities include, but are not limited to the following:

- A. Investigation and processing of grievances including taking statements from the grievant or any witnesses, review all pertinent documents(copies of which shall be provided by the Employer upon the Associations representative's written request), completion of all necessary forms, and preparation for and attendance at all grievance hearings.
- B. Investigation of any written complaint involving a work related health or safety hazard, injury or death of any member of the bargaining unit.
- C. Investigation of any proposed or actual disciplinary action including taking statements from the affected employee and any witnesses, review of all pertinent documents(copies of which shall be provided by the Employer upon the Association's representative's written request), and preparation for and attendance at all disciplinary hearings as provided for in n Article 8 of this Agreement. Investigatory interviews prior to the notification of the intent to take disciplinary action as provided for in Section 8.4 of this Agreement are not subject to this paragraph.
- D. Any other representational activity specifically authorized by this Agreement, or specifically authorized in writing by the Employer or designee.

If Association activities, including grievance hearings as provided for in this Article, are scheduled during any Association representative's or other employee's regular duty hours, such representatives or employees whose attendance is required by the nature of such designated activities shall not suffer any loss of pay while attending such activity. When the Employer or designee requires the attendance of any employee at such hearings and the hearings are scheduled outside of such employee's regular duty hours, the employee shall receive straight time compensatory time for all hours at the hearing that are outside the employee's regular duty hours.

ARTICLE 7 GRIEVANCE PROCEDURE POSITIONS OF THE PARTIES

In this Article, three sections remained in dispute; 7.3, 7.4, and 7.8.

In Section 7.3, both parties agree that only "lost pay" discipline matters should be appealed to arbitration. The current Agreement states; "Grievances involving lost pay discipline(suspension, reduction in pay, removal or discharge) shall be initiated at step 3 of the grievance procedure. Grievances involving discipline that do not involve loss of pay shall not be subject to arbitration(Step 4).

The Association proposed the deletion of "(suspension, reduction in pay, removal or discharge)" from the first sentence quoted above. This deletion would allow all disciplinary actions that involve a loss of pay to be grievable to arbitration. The Association argued that the current Agreement's listing of lost pay situations was intended to be illustrative, and not exhaustive. Thus, it is the Association's contention that the current contract intended to make ALL lost pay disciplinary action appealable to arbitration. The Association cited the arbitrator's decision in the Schulte case, in which a bargaining unit member was put on Administrative Sick Leave Watch because of excessive absenteeism. The Sheriff argued, in Schulte, that this action could not be appealed to arbitration because it did not result in a loss of pay. The Union argued that by placing Lt. Schulte on Administrative Sick Leave, he was being deprived of the opportunity to work off-duty assignments, resulting in a loss of pay.

The Arbitrator agreed with the Union, holding that placing an employee on Administrative Sick Leave Watch included a "disciplinary component which subjects the employee to potential loss of pay". The arbitrator continued, "while on AAW the employee is ineligible for certain activities for which he would otherwise be eligible, including overtime, promotion and off duty assignment. This ineligibility clearly can have a financial impact on the employee's earnings". The arbitrator's decision was upheld in the Court of Appeals First Appellate District of Ohio.

The Sheriff argued that the contractual provision in dispute should remain unchanged. He argued that off-duty assignments fall outside the parameters of the contract and the employees scope of employment. Such assignments, it was argued, are based on a special commission granted by the Sheriff and by law are within his sole discretion. As a result, it was contended, failure to schedule an employee for an off-duty assignment is not discipline and is not grievable.

The dispute with respect to Section 7.4, concerns the Association proposal to delete the last sentence; "In no case will a grievance be considered which is submitted later than forty five (45) calendar days following the date of the facts".

The Sheriff argued that this language should be retained because forty five days allows sufficient time to discover and investigate potential grievances. The lack of a definite time limit, it was argued, would create considerable administrative problems for the Employer.

The Association contended that the forty five day limitation on filing a grievance is unnecessarily restrictive, because in some instances a contractual violation may not become known until considerably later than the forty five day requirement. It cited a change in a disciplinary policy that might be instituted at one time, but not implemented until a considerably later period.

With respect to Section 7.8 (F) the Association proposed the deletion of the language, "or request a copy of any transcript prepared by such reporter". This deletion would allow either party to request a transcript of an arbitration hearing at a later date, without having to split the full cost of preparing the transcript. Thus, if one party decided a year after an arbitrator's decision was rendered, that they wanted a transcript (that was fully paid for by the other party), they could receive it by only paying the court reporter's charge for producing the additional copy. The Association also suggested a number of other changes to the language in Section 7.8, particularly with regard to conduct at the pre-arbitration meeting. The Sheriff argued that the current language should remain. If a party desires a

copy of the transcript at any point, they maintained, they should pay half the total cost of producing the initial transcript.

FINDING OF FACT

With respect to Section 7.3, the Sheriff argued for the retention of contractual language that has resulted in the loss of an arbitration case, and a loss on appeal of the arbitrator's decision to the Court of Appeals First Appellate District of Ohio. It is not clear to the factfinder why the Sheriff would wish to retain contractual language that has uniformly been interpreted contrary to the Sheriff's understanding. The Association, in turn, suggests a change in language that is consistent with the arbitrator's decision. Finally, the factfinder believes that there is clearly a nexus between the loss of eligibility for off-duty assignments and being placed on Administrative Sick Leave Watch. Because the loss of an off-duty assignment is the direct result of being placed on AAW, this is an appropriate area to consider in the collective bargaining Agreement.

With respect to Section 7.4, both parties presented very credible arguments. It is, of course, possible to be unaware of a contractual violation until longer than forty five days from its occurrence. This is the reason many collective bargaining agreements stipulate that the timeliness of a grievance is determined by either when the incident takes place, or when the employee knows, or should have known, the facts giving rise to the grievance. It is equally true, however, that many collective bargaining agreements do not consider a grievance to be filed in a timely manner after a stipulated period of time, regardless of when the grievant becomes aware of the alleged contractual violation. When such absolute time limitations on the filing of grievances is contractually required, it is unusual to allow as long a period as forty five days to file the grievance.

The current Agreement contains the forty five day limit. The factfinder does not believe that sufficient evidence was presented to warrant a change.

The current contract does not allow either party the right to obtain a copy of the transcript at a later date, by simply paying the fee the court reporter charges for producing this additional copy. Regarding the transcript issue and the other changes in language suggested by the Association, the factfinder does not believe it is proper to take a de novo consideration of all unresolved issues without regard to what is provided in the existing contract. If the Association is to receive these desired changes, it should be through the negotiation process, and perhaps by making concessions in other areas.

RECOMMENDATION

SECTION 7.3 should read as follows;

All grievances must be presented at the proper step and time in progression in order to be considered at the next step.

Grievances involving lost pay discipline shall be initiated at Step 3 of the grievance procedure. Grievances involving discipline that do not involve loss of pay shall not be subject to arbitration (step 4).

(The remainder of this Section is not in dispute)

SECTION 7.4

The language in the current contract should be retained.

SECTION 7.8

The language in the current contract should be retained.

ARTICLE 8 DISCIPLINE POSITIONS OF THE PARTIES

The Association proposed numerous changes to this Article; some involved significant substantive changes, others involved mainly changes in language. In each instance, the Association said, it was guided by a desire to achieve consistency in the disciplinary policy. In particular, the Association wanted to incorporate physical fitness standards into the Agreement. The Sheriff wanted to retain most of the language in the current contract.

FINDING OF FACT

As indicated, there are numerous substantive and language differences between the parties concerning this Article. The factfinder believes that because the differences between the parties on this issue are so great, and because so little progress was made in narrowing those differences during negotiations, he has little choice but to revert to the language in the previous Agreement.

RECOMMENDATION

The factfinder recommends no changes in the existing Agreement, except those that have been mutually agreed to by the parties during negotiations.

ARTICLE 9 PERSONNEL FILES POSITIONS OF THE PARTIES

The parties did not reach agreement on Sections 9.3 and 9.5. In Section 9.3, current contractual language provides that "records of all discipline shall cease to have force and effect two(2) years from the date of issuance, provided no intervening discipline has occurred." The Association proposed that this language be retained in the new Agreement. It is language, they pointed out, that was recommended by factfinder Ferree, and subsequently included in the Agreement. The Employer proposed that no changes be made for "minor" infractions. However, for "major" infractions, those involving a Level 4 Warning, the Sheriff proposed that a record of the disciplinary infraction remain in force and effect for the duration of the employee's tenure. The Employer argued that serious offenses should not be removed from an Employee's record, just because a period of time has elapsed.

Current contract language in Section 9.5 grants bargaining unit members the right to review their promotional exams within fifteen days of receiving the results of the exam. The Sheriff proposed that this time period be extended from fifteen to thirty days.

FINDING OF FACT

As indicated previously, there is a considerable burden of proof on a party that wants to change the existing terms of a collective bargaining agreement. That burden has not been met on this issue. It is the norm in collective bargaining agreements for disciplinary actions to be discounted after a given period of time. This fact was recognized by factfinder Ferree when he made his recommendations in 1996, and it is equally applicable today.

With regard to granting the Employer an additional fifteen days to allow promotional candidates to examine their tests, no persuasive evidence was presented to warrant such a change.

RECOMMENDATION

The factfinder believes that with the exception of changes that have already been mutually agreed to, the current contract language should be retained.

ARTICLE 10 PROBATIONARY PERIOD POSITIONS OF THE PARTIES

The Employer argued that the probationary period for initial appointments and promotions within the bargaining unit should be increased from 180 to 365 days. They said that because of the critical nature of supervisors positions in the organization, additional time is required to observe their behavior in critical situations. The Association believes that a probationary period of 180 days is adequate to judge performance in a supervisory capacity. The Association further contends that if the promotional process was less subjective, the Employer would be assured that those promoted are fully qualified.

The Association sought the deletion of contractual language that grants the Employer the right to hire outside candidates as Sergeants, if there are no qualified candidates currently in the ranks of Corrections Officers. The Association said that it is hard to believe that among 422 Corrections Officers, none would be qualified to be promoted to Sergeant.

FINDING OF FACT

Once again, each of the parties has made a credible argument regarding why the changes it proposed should be incorporated in the new Agreement. However, because the factfinder is required to base his recommendations(in part) on the provisions of the existing Agreement, none of these arguments meets the threshold of justifying a change in the current Agreement.

RECOMMENDATION

The factfinder recommends that with the exception of changes that have already been mutually agreed to, the current contract language should be retained.

ARTICLE 12 VACANCIES POSITIONS OF THE PARTIES AND PROMOTIONS

In essence, the Association proposed a complete revamping of the promotional process. It argued that promotions should proceed in a rank order, without the ability to skip ranks in the organizational hierarchy. They argued that it is not appropriate, for example, for a Sergeant to be promoted to Captain, without first having served as a Lieutenant. In addition, the Association believes that the Employer retains too much discretion in the promotional process. At present, it said, the written promotional examination only serves to disqualify candidates; the actual decision depends almost solely on the opinion of management personnel. The result, the Association concluded, is a system that is arbitrary

and based on political considerations, rather than competency. Although the Association concedes that the exam should have an oral component, it believes that it should be administered by an independent service.

The Employer believes that the current contract language should be retained, with one exception; it proposed that there be a rule of ten, rather than the current, rule of three. That is, the Sheriff would be able to select from among the top ten candidates, rather than the top three.

FINDING OF FACT

Current contract language grants the Sheriff an extremely large degree of freedom in making promotional decisions. To add to this freedom, by allowing the Employer to select from the top ten candidates, rather than the top three, is certainly not justified.

Although the factfinder is required to consider the current collective bargaining Agreement when making recommendations, he is also required to base his recommendations on how similarly situated employees are treated. In addition to Corrections employees, the Sheriff also employs individuals in the Patrol Section and the Criminal Investigation Section. Clearly, there are considerable differences between jobs in the Corrections Division and other areas under the authority of the Sheriff. To the extent that such differences exist, it is appropriate to treat these groups in a different manner. Differential treatment, however, is only appropriate when circumstances are different. The factfinder does not understand why the Employer considers it appropriate to use an independent testing service to develop promotional examinations for the Patrol and Criminal Investigation Divisions, but to consider this inappropriate in the Corrections Division. Because of this internal comparison, which does not reflect any factors peculiar to Corrections Supervisors, the use of an independently constructed promotional examination should be extended to Corrections Supervisors.

RECOMMENDATION

The factfinder recommends that the terms of the existing collective bargaining contract be retained, except for Section 12.4, which should read:

Section 12.4 All promotions in rank which result in an increase in pay, or assignment to a higher pay range, shall be based upon merit and fitness as determined by promotional examination. It shall be the sole right and responsibility of the Employer to administer and evaluate all promotional examinations, assessments and testing procedures, and to cause to be developed all promotional examinations, assessments and testing procedures. Examinations shall be developed by an independent testing service. Prior to the administration of any examination, the Employer shall post on department bulletin boards, with a copy to the Association, the structure of the examination with the weight to be granted for each factor or part of the examinations. Upon request from the Association, the Employer agrees to meet and discuss the structure and weight factors of an examination prior to the examination being administered.

ARTICLE 18 HOURS OF WORK AND OVERTIME POSITIONS OF THE PARTIES

The Employer proposed that bargaining unit members no longer be permitted to trade shifts. They stated that this current practice creates "an administrative nightmare".

The Association proposed a number of changes, as well. It requested that a definite work schedule be defined in the Agreement, specifically four days of work, followed by two days off. This certainty of when they had to work, they argued, would result in less stress on the employees and their families. In addition, they proposed that work shifts be selected on the basis of seniority. Finally, the Association argued for the retention of shift trading. It was necessary, they said, to allow bargaining unit members to attend functions held during their regular work shifts, without having to take vacation days.

FINDING OF FACT

Establishing a schedule for regular work hours, and overtime, is an extremely involved, and technical task, particularly when a small unit of employees is involved. Collectively, the parties proposed numerous substantive, and language, changes. To be perfectly frank, it is impossible for the factfinder, based on the testimony and evidence presented, to construct a schedule of work and overtime, that would be superior to the system currently in place. Changes in the current system can only be made by parties that fully appreciate the problems, and nuances, of the Hamilton County Corrections System.

RECOMMENDATION

The factfinder recommends that with the exception of changes that have already been agreed to, the current contract language should be retained.

ARTICLE 19 WAGES POSITIONS OF THE PARTIES

The Employer proposed a three percent increase in wages, for each year of a three year agreement. The Association proposed that bargaining unit members should receive parity with other supervisors within the Sheriff's Office.

The Employer argued that its offer was fair because it was larger than recent increases in the Consumer Price Index. They also argued that it was the same increase as that awarded recently by a Conciliator for Corrections Officers. Finally, the Employer indicated that its proposal was sufficient to maintain a reasonable differential between the members of the bargaining unit and the employees they supervise.

The Association argued that the Employer has the ability to pay for the proposed increase. They pointed out that Corrections Sergeants receive \$9,209 less than Civil Division Sergeants and \$12,220 less than Patrol Division Sergeants. Similar disparities, they suggested, exist for Lieutenants and Captains. Comparisons with these other Sheriff's Department supervisors is appropriate, the Association said, because the jobs are comparable. The Association indicated that compared to supervisors in the other areas of the Sheriff's Office, Corrections Division supervisors have larger numbers of employees to supervise, more employees to train, and a worse working environment. Finally, the Association argued that bargaining unit members receive lower pay than supervisors in comparable correction facilities.

The parties also disagreed on when any wage increases should take effect. The association believes they should be retroactive to May 22, 1999. The Employer believes that retroactivity is not appropriate, because there is a new bargaining agent.

FINDING OF FACT

Although the Association devoted considerable attention in their presentation to the ability of the Employer to pay, this is really not a relevant consideration. The Employer never argued that it was unable to pay the increases proposed.

The Association also spent considerable time arguing that the jobs of bargaining unit members are comparable to the jobs of other supervisors in the Sheriff's Division. Regardless of the theoretical merit of the Association's arguments, this is not how wages are set. Over the years, particular relationships develop between the wages of different groups of employees; some of these relationships or comparisons are rational, many are not. Justified, or not, Corrections Officers and their Supervisors traditionally receive considerably lower pay than Road Patrol Officers, and their Supervisors.

On the other hand, a comparison of the wages of Hamilton County Corrections Supervisors with similar employees in other counties is extremely significant. And by this comparison, bargaining unit employees are underpaid.

Most significant, however, is how the wages of bargaining unit members compare with the wages of the employees they supervise. Both sides discussed this issue, and it is the most usual way of establishing the wages of law enforcement supervisors. The traditional practice in law enforcement is for Sergeants to make 16% more than "regular" officers, for Lieutenants to make 16% more than Sergeants, and for Captains to make 16% more than Lieutenants. In fact, this is clearly the relationship the Sheriff believes is appropriate; because between 1996 and 1998 it is the exact relationship that existed between the wages in these four job categories (Corrections Officer, Sergeant, Lieutenant, Captain).

However, in 1999 Corrections Officers received a wage increase of 3.85% and Corrections Supervisors received no increase. As a result, Corrections Sergeants only received 11.5% more than Corrections Officers in that year. This deviation from the 16% differential must be viewed as an exception from the "normal" practice, however, because the Sheriff maintained the 16% differential between the pay of Corrections Lieutenants and Sergeants, and between Captains and Lieutenants.

In sum, this 16% differential appears to be both the norm among police units, and the intended practice of the Hamilton County Sheriff.

There is one problem, however, in recommending wage increases that re-establish the traditional 16% differential; an apparent "error" or "miscalculation" during the recent Conciliation involving Corrections Officers, will result in them receiving no wage increases between 1999 and 2000. Based on the evidence presented (See memo from Lynn Preuth to the Hamilton County Commissioners, November 3, 1999) it appears that the County neither intended, nor anticipated, that Corrections Officers would receive no wage increases between 1999 and 2000.

It would not be appropriate to deny Corrections Supervisors a wage increase, as a result of an error or miscalculation that took place during the Correction Officers Conciliation. They would be penalized, however, if the 16% differential was applied without making a "correction". The factfinder believes that the appropriate remedy for this error (which did

not involve Supervisors) is to factor in a 3% wage increase for Corrections Officers between 1999 and 2000. Although the Corrections Officers will not actually receive this increase, it should serve as the basis for applying the 16% differential between the other ranks. Thus, if this error had not been made in establishing the wages of Corrections Officers, their wages in 2000 would be \$33,698 (assuming a 3% increase); \$34,709 in 2001 (3% increase awarded by Conciliator); and \$35,750 in 2002 (3% increase awarded by Conciliator). The factfinder believes that the use of these "adjusted" wages for Corrections Officers is the appropriate way to fashion a "make whole" solution to the problem of determining appropriate wages for Corrections Supervisors. The wage rates recommended below were calculated by establishing a 16% differential on these "adjusted" wages for Corrections Officers.

Because a new bargaining agent represents unit members, and because the wage increases recommended are significant, retroactivity is not appropriate.

RECOMMENDATIONS

The factfinder recommends the following changes in Article 19:

Section 19.1 Effective the first pay period following the ratification of this Agreement, the annualized pay levels for all bargaining unit employees shall be as follows:

Corrections Sergeant	\$39,090
Corrections Lieutenant	\$45,344
Corrections Captain	\$52,600

Section 19.2 Effective the first pay period following the first anniversary of this Agreement, the annualized pay levels for all bargaining unit employees shall be as follows:

Corrections Sergeant	\$40,262
Corrections Lieutenant	\$46,704
Corrections Captain	\$54,177

Section 19.3 Effective the first pay period following the second anniversary of this Agreement, the annualized pay levels for all bargaining unit employees shall be as follows:

Corrections Sergeant	\$41,470
Corrections Lieutenant	\$48,105
Corrections Captain	\$55,802

ARTICLE 22 HOLIDAYS POSITIONS OF THE PARTIES

The Association proposed identical language to that currently included in the Patrol and Criminal Investigation Divisions. They argued that the Employer had consistently advocated having the same language in all of the Sheriff's agreements, and that this was precisely what they were requesting.

The Employer proposed that current contract language be retained. They indicated that in a small unit, it might be difficult to maintain adequate staffing levels for Supervisors, under the Association proposal. The Association, responded by saying this could not occur, because all requests for holiday compensatory time off would have to be approved in advance.

Finally, the Employer indicated that this is an expensive proposal, and that other units had only been able to achieve it by making concessions in other areas.

FINDING OF FACT

As previously indicated, the factfinder is unwilling to make sweeping changes in operational procedures, based on the evidence he has received.

The factfinder is mindful of the fact that the Association's proposal is expensive. He also must keep in mind his recommendations in the wage area, which he believes to be quite generous. If proposals in different areas have relatively equal cost implications, but one of the proposals could have operational ramifications, a factfinder would be ill advised to choose the proposal that could negatively impact the level of service provided.

RECOMMENDATION

The factfinder recommends that with the exception of changes that have already been mutually agreed to, the current contract language should be retained.

ARTICLE 24 SICK LEAVE POSITIONS OF THE PARTIES

As in a number of previous issues, the Association proposed numerous changes in this article. Although the Employer wishes to retain most of the current contractual language, it also proposed many changes.

FINDING OF FACT

The factfinder's reasoning on this issue is essentially identical as for the previous Article. He is unwilling, on the basis of approximately ten minutes of testimony, to make recommendations that clearly have operational implications. The submissions of the parties identified numerous changes that were sought, without identifying the priorities attached to each of these proposals. Faced with such uncertainty, the factfinder has no choice but to recommend that current contract language be retained.

RECOMMENDATION

The factfinder recommends that with the exception of changes that have already been mutually agreed to, the current contract language should be retained.

ARTICLE 27 UNIFORMS AND EQUIPMENT POSITIONS OF THE PARTIES

The only disagreements between the parties on this issue concern the amount of the payment, and the date the payment is to be made.

The Association proposed annual payments of \$400, \$450, and \$500. The first payment would be made upon ratification, the second payment on the first anniversary date, the third payment on the second anniversary date. They argued that the actual cost of cleaning uniforms is in excess of \$650 per year. They also argued that other employees of the Sheriff receive higher amounts.

The Sheriff proposed annual payments of \$300, \$350, and \$400; with payments made on February 1, 2000, February 1, 2001, and February 1, 2002. They argued that their offer was the same as that in the contract recently negotiated with the Corrections Officers.

FINDING OF FACT

The question of when these payments are made, does not appear to be a significant issue. At most, there could be a two month difference between the two proposals with respect to when the payment are made.

The increase the Employer proposed is both significant, and consistent, with the amount received by Corrections Officers. Because this is a straight money issue, and because of the factfinder's recommendations regarding wages, the Employer's proposal is reasonable.

RECOMMENDATION

The last section in this article(Section 27.8 in the Employer proposal) should read:
Section 27.8 On the first regularly scheduled pay period following February 1, 2000, all bargaining unit employees shall receive a uniform allowance of three hundred dollars(\$300); three hundred fifty dollars (\$350) in the pay period following February 1, 2001; and four hundred dollars (\$400) in the pay period following February 1, 2002.

ARTICLE 30 LEAVES OF ABSENCE POSITIONS OF THE PARTIES

The Employer proposed significant changes in this article, most of which involved incorporating statutory language into the Agreement.

The Association rejected most of these proposed changes, because they did not want to be put in the position of having to arbitrate, statutory rights.

FINDING OF FACT

The Employer proposed extensive changes in an article that runs more than ten pages. As discussed previously, the factfinder is not willing to recommend changes in existing contractual language that have serious operational ramifications, when the documentation presented does not adequately address these potential implications.

RECOMMENDATIONS

The factfinder recommends that with the exception of changes that have already been mutually agreed to, the existing contract language be retained.

ARTICLE 35 EDUCATION POSITIONS OF THE PARTIES

The Association proposed that bargaining unit members be reimbursed for tuition payments at an institution of higher learning or training courses certified by O.P.O.T.A. The Association does not believe that their in-service training adequately prepares them for all of the situations they encounter on the job. They believe that by helping Employees improve themselves, they are also benefiting the Employer.

The Employer does not believe that such a proposal has value for the Sheriff. It also stated that other employees of the Sheriff do not receive this benefit.

FINDING OF FACT

Because this benefit is not granted to other employees of the Sheriff, and because of the wage increases recommended, the factfinder does not believe this Article should be included in the new Agreement.

RECOMMENDATION

The Agreement should not contain this Article.

ARTICLE 36 RESIDENCY POSITIONS OF THE PARTIES

The Association argued for the inclusion of such a provision in the Agreement. They believe that if the average traveling time to work is limited to one hour, the Employer's interests would be protected. Current practice is unduly restrictive, the Association maintained, because it prohibits Employees from residing in adjoining counties, where real estate is significantly cheaper.

The Employer's argument is exclusively procedural; they believe that residency is a permissive issue of bargaining, and that they therefore have the right to refuse to bargain over the issue. Each of the parties cites the St. Bernard decision by the State Employment Relations Board. The Association claims it requires bargaining over residency, the Employer, that it affirms that residency is a permissive issue.

FINDING OF FACT

It is clearly not within the authority of the factfinder to decide whether residency is a permissive or mandatory issue of bargaining. Because the legal status of this issue is ambiguous, and because a factfinder cannot make a recommendation that violates the law, he does not believe it is appropriate to make a recommendation on this issue. The Association clearly has legal recourse available to them if they believe the Employer is legally required to bargain over this issue.

RECOMMENDATION

The factfinder does not believe the Agreement should contain a residency provision.

ARTICLE 37 SHIFT DIFFERENTIAL

POSITIONS OF THE PARTIES

The Association argued that bargaining unit members who begin their tours of duty from 13:00 to 05:30 hours receive a shift differential. This shift differential would initially be twenty five cents an hour, and in yearly increments of ten cents an hour, would eventually reach forty five cents per hour. They argued that this is an appropriate way to compensate employees who are required to miss time with their friends and family.

The Employer argued that this is a wage issue and should be dealt with by paying Employees an appropriate wage.

FINDING OF FACT

Bargaining over a shift differential is virtually always linked to negotiations over wages. Because the factfinder recommended a generous wage increase, it is not appropriate to also recommend that payment of a shift differential also be initiated in this Agreement.

RECOMMENDATION

The factfinder recommends that the Agreement not contain a shift differential provision.

ISSUES NOT ADDRESSED

There were many issues that were resolved by the parties during their negotiations, and many provisions in the current agreement remained unopened.

RECOMMENDATION

It is the recommendation of the factfinder that all issues resolved by the parties in their negotiations, and all provisions in the current agreement that remained unopened, be included in this report in addition to the issues addressed here directly.

This concludes the factfinder's recommendations.

Michael Marmo

Michael Marmo
Factfinder

Cincinnati, Ohio
November 29, 1999

PROOF OF SERVICE

This is to certify proof of service by Federal Express, overnight delivery, on November 29, 1999 to Charles A. King, Clemans, Nelson & Associates, 8520 E. Kemper Road, Suite 4, Cincinnati, Ohio 45249; and to Stephen S. Lazarus, Hardin, Lefton, Lazarus, and Marks, 915 Cincinnati Club Building, 30 Garfield Place, Cincinnati, Ohio 45202; and by regular U.S. mail to George Albu, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213.

Michael Marmo

Michael Marmo
Factfinder

Cincinnati, Ohio
November 29, 1999