

FACT-FINDING BETWEEN:

HAMILTON COUNTY SHERIFF'S DEPARTMENT

and

**TRUCK DRIVERS, CHAUFFEURS & HELPERS
Local Union No. 100**

Decision Issuing April 15, 1999

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) **SERB Case No.**
) **98-MED-08-0746**
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) **Before Fact-finder**
) **Cynthia Stanley**
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)
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I. Hearing

The undersigned fact-finder, Cynthia Stanley, conducted a fact-finding hearing between the Truck Drivers, Chauffeurs & Helpers Local 100 ("Local 100" or "the Union") and the Hamilton County Sheriff's Department ("the Department") on March 31, 1999, at Teamsters Local 100 offices at 2100 Oak Road, Sharonville, Ohio. Hearing commenced at 10 a.m., broke briefly for lunch, and concluded at approximately 4:30 p.m. The fact-finder's opinion is due to issue by April 15, 1999, the date to which the parties have by mutual agreement extended fact-finding.

The Union was represented by Susan D. Jansen of Logothetis, Pence & Doll. Also participating for the Union were Local 100 Business Agent Troy Stapleton; Ronald Walton, Corrections Officer; Robert Eckstein, Corrections Officer and Union Steward; Kevin Walker, Corrections Officer and Union Steward; and Robert Hampton, Corrections Officer. The Department was represented by Charles A. King, Director of Labor Relations for Clemans-Nelson & Associates, Inc.. Also participating for the Department were Mark Lucas, President of Clemans-Nelson; Lynn Preuth, Human Resources Manager, Hamilton County Personnel Department; Gail Gaier, Attorney, Hamilton County Sheriff's Department; Robin Jarvis, Employment Relations Specialist; Mark Lillis, Personnel Officer; and Joseph Schmitz, Director of Corrections.

Timely filed pre-fact-finding submissions were reviewed and considered in this process. The fact-finder wishes to thank the representatives and the bargaining teams for their organized and comprehensive presentations.

The bargaining unit consisted on the date of hearing of 422 employees in the classification of Corrections Officer. Their duties involve the safety and security of prisoners in detention facilities.

II. Mediation

The parties indicated prior to the hearing that they preferred to proceed to fact-finding first, rather than mediation. After the hearing, the parties were agreeable to submitting the case to the fact-finder, rather than extending the day's proceedings for mediation.

III. Criteria

The fact-finder has given consideration to the criteria set forth in Rule 4117-9-05(J) of the State Employee Relations Board.

IV. Issues and Recommendations

Each party's fact-finding proposal is incorporated herein by reference. The fact-finder recommends that all portions of the just-expired contract not specifically amended by the parties' own agreements or by this report should continue as they were, through the term of the collective bargaining agreement.

The fact-finder will not attempt to summarize every line of reasoning offered by the parties in a day-long hearing. The reader will find the arguments cogently set out in the pre-fact-finding statements. Proposed language is in bold-face.

a. Article 9, Discipline

Local 100 proposes language changes to Sections 9.7, 9.10 and 9.12, and the addition of a new Section 9.15. The Section 9.7 changes propose to increase the time between when an employee is notified of the charges prior to the disciplinary conference and the time of such conference; to require notification to both the employee and the Union, with the notification to the Union to be by facsimile and include the employee's telephone number.

The proposed Section 9.10 changes would require the Department to send a copy of the neutral administrator's report to both the employee and the Union, with the Union's copy sent by facsimile.

In Section 9.12, the Union sought to increase the time limits for a continuance in order to allow the parties to better prepare for a pre-disciplinary hearing. In Section 9.15, the Union sought to incorporate language which had appeared as a memorandum of understanding in the predecessor agreement into the body of the contract.

The Department proposes a lengthy rewrite of the Article. An important element of the rewrite is the use of paper suspensions where the Department deems it appropriate, a real

advantage in a Department with problems covering leaves and overtime. Another major change would be the addition of penalties involving the loss of privileges, a system that is now used only in the physical fitness and weight policies.

The Department's language incorporates most of the changes proposed by the Union. The Union has serious problems only with the Department's attempt to add loss of privileges to the list of potential penalties.

The fact-finder recommends the parties adopt the Department's rewrite of the Discipline article, with the exception of the loss of privileges language. She does not believe the proposal could achieve acceptance with that language. The recommended language of Article 9 would read as the Department has proposed, except Section 9.1, which would read:

Section 9.1. The tenure of every employee subject to the terms and conditions of this Agreement shall be during good behavior and efficient service. The Employer may take disciplinary action against any employee in the bargaining unit only for just cause. The Employer may take such disciplinary action for actions occurring while the employee is on duty, while working off-duty details, while wearing the uniform of the Employer, or in instances where the employee's conduct violates his/her oath of office.

Progressive discipline shall take into account the nature of the violation, the employee's record of discipline, and the employee's record of performance and conduct. As such, an employee may receive more than one (1) warning at any level before progressing to the next level.

Forms of disciplinary action, but not necessarily the order of progression, are as follows:

- A. LEVEL 1 Warning (equivalent to a counseling letter);
- B. LEVEL 2 Warning (equivalent to a Written Reprimand);
- C. LEVEL 3 Warning (equivalent to an Official Reprimand);
- D. LEVEL 4 Warning (equivalent to a suspension);
- E. Discharge

Level 4 Warnings are considered "paper" suspensions. However, where previous warnings have been ineffective in altering the employee's behavior, the Employer may impose a time off suspension. With permission of the Sheriff, a suspended employee may forfeit paid vacation leave for all or part of the suspension.

b. Article 13, Seniority

The Department proposes to delete a clause in the current (just-expired) contract that by mutual assent has not been implemented. The clause the Department proposes to delete reads: "Shift preferences shall be awarded on the basis of Departmental seniority within specific assignment areas (e.g., internal security, intake, transportation, recreation, etc.) No employee shall change assignment through the exercising of shift preference." The Department cites to the complexity of implementing the clause, especially with the work cohort so low.

The Union proposes current language, arguing that there have not been problems with the language as it is (i.e., the Union is not grieving the lack of implementation), the numbers of employees might increase and the clause could then be enforced, and that the clause is part of a balance the fact-finder should not disturb.

The fact-finder recommends current language. More bargaining must occur before resolution of this issue.

c. Article 15, Vacancies

In Section 15.1, the Union proposes that the amount of time that notice of vacancies in permanent posts must be posted before they may be filled be increased from seven to ten days, to provide more time for bargaining unit members to submit bids. The Union also proposes language which would significantly increase the impact of seniority on selection in filling vacancies.

The Department vehemently opposes the proposed change in the weight of seniority. Employer proposes a change in terminology in Article 15 from "permanent posts" to "preferred" and to have decisions on retention of those posts made using the same standards as those for the original decision.

The Union resists the Department's proposed changes.

The fact-finder recommends Union's proposed increase in posting time from seven to ten days. Otherwise, the fact-finder recommends current language. For changes so politically sensitive within the bargaining teams to be accepted, the parties must bargain them.

d. Article 17, Work Rules/General Orders

The Union proposes adding the following language [in bold type] to Section 17.4:

Section 17.4: Grievances alleging a violation, misinterpretation or improper application of the Sheriff's Weight Standards Policy or the Physical Fitness Policy, or grievances

challenging the reasonableness of either the weight policy or the physical fitness policy, shall be processed under Article 8 of this Agreement.

The Department vigorously resists any attempt to make these policies grievable.

The fact-finder does not believe agreement can be reached on this language through the fact-finder's report. She recommends no change to Article 17 in this contract.

e. Article 21, Hours of Work and Overtime

The Union proposes to increase the maximum accumulation of compensatory time from 240 hours to 360 hours, in Section 21.3, and to change the personal day currently provided in Section 21.7 in exchange for the employees' obligation to attend a weekly fifteen-minute roll call to twelve hours of compensatory time.

In Section 21.8, the union proposes a system for both pre-scheduled overtime and non-scheduled, emergency overtime in an attempt to equalize overtime distribution on the basis of seniority, among those desiring to work it.

The Department resists the first two proposals, citing to their financial implications and the difficulty the Department is already experiencing with overtime, which would be worsened by additional compensatory hours. The Department brought to the fact-finding a language counterproposal regarding Section 21.8, which reads as follows:

All officers assigned to normal shifts, i.e. 0700-1500, 1500-2300, 2300-0700 hours will be subjected to mandatory overtime. Each shift will generate a list of officers based on seniority, from least to most. From that list, a master overtime list for each shift will be generated. The master list will designate the next 10% of officers subject to mandatory overtime. The master list will be updated at least once a week to maintain a minimum of fifteen officers' names.

When the officers' names are posted on the master list, the officer can then volunteer for overtime and have it fulfill the obligation of mandatory overtime. If an officer volunteers to fill an overtime post on a future date and is requested to work a mandatory post prior to the date of the voluntary post, the officer must work the forced mandatory post.

An officer must work a mandatory overtime post or volunteer for an overtime post when the officer's name appears on the master overtime list to be credited and have the officer's name moved to the bottom of the seniority list. Officers cannot trade or sell their mandatory overtime requirement. Officers assigned to a temporary post will also appear on the master overtime list. However, a temporary post must be available for them to work an overtime post. Officers currently assigned to the Sheriff's OPOTA academy will not be subjected to mandatory overtime.

When the employer can project mandatory overtime 48 hours ahead of time, the overtime will be posted in 4 hour increments. Officers who are on the mandatory overtime list who volunteer to fill these posts, will have their mandatory overtime obligation fulfilled for that round. Officers who are not currently on the mandatory overtime list can volunteer to fill these posts but will not receive mandatory overtime credit. If the 4 hour increment is required to be filled with forced overtime, the officer next on the list will receive 24 hours notice.

The master overtime list will be posted on bulletin boards in all facilities.

Of the Article 21 proposals, the fact-finder recommends the Department counterproposal language be adopted in this bargaining. It is clear the parties are in agreement that the system of overtime assignment needs reworking. It appears to this fact-finder that the Department language will make assignment of mandatory overtime fairer and as such is movement in the right direction concerning a very cumbersome staffing problem.

f. Article 22, Wages and Compensation

The Union proposes to reduce the number of pay steps from Entry Level through Step 7 to Entry Level through Step 4, and a wage increase of 8% retroactive to December 22, 1998, and 8% tied to the first and second anniversary of the effective date of the parties' agreement. The Union is not seeking an increase in the existing longevity pay. IBT 100 pointed out that money is very important to its members in this bargaining cycle.

Citing the need to eliminate the hidden cost of the step system now in place, the need to increase the starting salary, and the desire to introduce the concept of merit pay to this bargaining unit, the Department proposes a merit-based system in which steps and longevity pay would be replaced. Under the proposal, an average merit increase of 3% per employee would be added to the level of pay of a given employee as of the first full pay period after January 1, 1999. Then a bonus averaging 1% would be awarded as a lump sum, not added to the base, again on a merit basis, for January 1999 and another bonus averaging 1% would be effective July 1, 1999. Under this proposal, steps and longevity pay would be eliminated. Starting salary would be approximately \$22,000. In the second and third years of the contract, the bargaining unit would receive the same merit base increase average and bonus amount as the Commissioners grant under this system to their non-bargaining unit employees. Starting rate would increase by the same percentage as the general increase to the base.

The parties have provided extensive comparables from neighboring and comparable size counties and substantial testimony in support of their positions. The Union is concerned that the appraisal system, which would determine the individual employee's merit raise in a given year, is ineffective. And the Union is adamantly opposed to the second and third year raises being unknown, to be determined entirely by what the Board of Commissioners

votes for non-bargaining unit employees. The Department stated more money could be put on the table, as long as it resulted in the elimination of steps and longevity. The fact-finder notes that the step system is already out of alignment, with a \$4000 leap between Steps 6 and 7 because of the earlier elimination of one step. Eliminating another step would only exacerbate the misalignment.

The purpose of this fact-finding is solely to assist the parties in finding settlement. Despite the apparent distance between the parties, there is much to be said in favor of a merit-based system. Straight off, those at the top would be rewarded by participating fully in raises, as they do not under the step system. And individuals come into this system bringing their current salary level. There is no discomfort to individual members from a fact-finder trying to equalize steps.

The parties should be aware that the fact-finder cannot generate the data for what individual employees would experience under this proposal, as she does not have the necessary underlying data. To make the proposal work, the parties would have to determine exact numbers and language. The fact-finder recommends adoption of this language (or other language the parties may mutually develop) to replace old language and pay scales based on longevity and steps:

In each contract year, effective the beginning of the first full pay period which includes January 1, average merit increase of 4% per employee (actual increase for an individual employee will be determined by the Employer) added to the base (defined as the individual employee's wage at last pay period). Bonuses of average of 1% (actual increase for an individual employee will be determined by the Employer) will be payable in a lump sum, not added to the base, effective January 1 and July 1 of each contract year.

g. Article 23, Assignment Pay for Field Training Officer

The parties agreed during negotiations to add a classification designated as "cadets". Between acceptance into the cadet program and the beginning of training academy, which may be as long as three months, cadets accompany bargaining unit members who are called Field Training Officers ("FTOs"). The Union proposes pay for the hours the Corrections Officers actually function as FTOs, at 50 cents per hour. The Union argues the duties of an FTO with the cadets are significantly greater than the role played by bargaining unit members with new Correction Officers fresh out of the academy, the other function of FTOs.

The Department does not support the idea, arguing the duties fall within the current job description for Correction Officers.

The fact-finder does not recommend this proposal be adopted in this contract, in order to keep a clear focus on wages.

h. Article 24, Court Time/Call-In Time

The Department proposes language that would modify Article 24. Currently, an employee who makes a court appearance or who reports to work at a time that does not abut the employee's shift receives three hours pay at the overtime rate. The Department proposes changes that would allow the employer to assure at least three hours of work for the pay, if the court appearance or call-in occurs within three hours of the beginning or end of the employee's shift.

The Union proposes current language and points out that the three hour minimum for court time or call-in was intended to recompense employees for the inconvenience and not simply for the actual hours.

The fact-finder recommends current language, because she believes recommending this proposal could thwart acceptance.

i. Article 26, Holidays

The Union proposes a change to this article to bring it in line with the Hamilton County Sheriff's Department Patrol Officers unit. Under that change, each bargaining unit member would be credited with 120 hours of holiday compensatory time, upon the signing of the agreement and on December 1st of each year of the agreement. Currently, the employees are paid eight hours holiday pay regardless of whether they work the holiday. An employee who does not work the holiday gets paid eight hours at a straight time rate, while the employee who works the holiday gets his regular pay for time worked plus an additional eight hours holiday pay. Since there are ten holidays, an employee is entitled to 80 hours holiday pay in a calendar year.

The Department resists this change, citing to the existing problems in coverage which would be exacerbated by granting more compensatory time.

The fact-finder does not recommend this change in this contract, again to keep financial focus on wages.

j. Article 27, Vacation

The Union proposes adding a new section as follows:

Section 27.9: If an employee cancels a pre-approved vacation, the vacation times will be posted in a conspicuous place and announced at roll call for re-bid by seniority.

The Department resists the new requirement, with concern that it would complicate vacation scheduling further, and concern that the provision would have to have a time limit. Discussion during fact-finding settled on a five day minimum period, so that reassignment of vacation dates cancelled within five days of the scheduled dates would not be subject to the provision.

The fact-finder recommends that the parties adopt this provision, as rewritten (or other language as the parties may agree): "If an employee cancels a pre-approved vacation five or more days prior to the beginning of that vacation, the vacation times will be posted in a conspicuous place and announced at roll call for re-bid by seniority."

k. Article 28, Sick Leave

In Section 28.6, the Union proposes an increase in the maximum pay out on accrued sick leave at retirement, from 50% of 800 hours to 50% of 1200 hours. The actual payout would increase from 400 to 600 hours.

In Section 28.8, the Union proposes an enhancement of the sick leave incentive provision to trigger accrual of a personal day once every three months rather than the current four months, for an employee who uses no sick leave.

Also in 28.8, the Union proposes adding new language to the sick leave incentive provision such that when sick leave is approved for the death of a member of an employee's immediate family or when an employee is admitted to the hospital as a result of an on-duty injury, such absence shall not constitute a disruption of the employee's ability to earn a personal day as provided for in the sick leave incentive program. The Union cites to the Patrol Officers contract which contains such a provision.

The Union proposes adding Section 28.10, providing for access to bereavement leave in lieu of sick leave upon the death of an employee's spouse, child, mother, father, sister or brother, and Section 28.11, providing for payment of a lump sum, based upon conversion of 100% of an active employee's accumulated sick leave, to a designated beneficiary, upon the death of the employee.

The Department resists these proposals, citing to real economic impact in a department which already has serious trouble covering leaves. In order to keep the focus on the wage recommendation, the fact-finder recommends only the proposed language addition to Section 28.8, which would bring the unit into parity with the patrol officers in this way:

"When sick leave is approved for death of a member of the employee's immediate family as provided for in Section 28.2(D), or when bereavement leave is granted as provided for in Section 28.10, or when an employee is admitted to the hospital as a

result of a duty-related injury, such absence shall not constitute a disruption of the employee's ability to earn a personal day as provided for in this Section."

I. Article 31, Uniforms and Equipment and Article 32, Service Allowance

The Department proposes to modify Section 31.6 as follows: "An employee who retires from service with the Employer shall be presented his/her badge. The badge shall be presented in such a manner as to make it unuseable. 'Retire' means age and service retirement under PERS (or the City of Cincinnati retirement fund for those affected employees)."

The Department wants the badge presentation to be used as a reward for an employee who has completed the number of years necessary for regular retirement. The Department is also concerned about rewarding employees who apply for PERS disability in order to avoid legitimate performance standards or disciplinary action.

The Department proposes to move current Section 32. to new Section 31.7, with no increase in the uniform allowance figure, so that moved section would continue to read: "Employees with more than one year of service as of October 15 of each agreement year shall receive an annual uniform maintenance allowance of two hundred fifty dollars (\$250.00). The allowance shall be paid in the second pay of November each year."

The Union expressed no strong reaction against the Department's badge language. The Union does not resist the Department's proposed move of the service allowance to Article 31; however, the Union argues the uniform maintenance allowance by whatever name needs to increase, as it does not cover the actual cost of uniform maintenance. Union's proposal would increase the allowance from \$250 to \$600 per year.

The Department indicated responsively that it is not opposed to a modest increase in the allowance, which is actually a dry cleaning allowance for uniforms.

The fact-finder recommends that the Department's proposed addition to 31.6 be adopted (see language above), that the service allowance language be moved to form new Section 31.7, and that the uniform allowance be increased from \$250 to \$300 in the first year of this contract; to \$350 in the second year of the contract; and to \$400 in the third year of the contract.

The language would read: "Section 31.7. Employees with more than one year of service as of October 15 of each agreement year shall receive a uniform allowance of three hundred dollars (\$300) payable in the second pay of November 1999; three hundred fifty dollars (\$350) payable in the second pay of November 2000, and four hundred dollars (\$400) payable in the second pay of November 2001."

m. Article 34, Training

The Department proposes adding language to Article 34 to require retraining for employees returning from extended leave, as follows: "Section 34.3. An employee who returns to work following an extended leave may be subject to re-training."

IBT 100 did not raise specific concerns other than that the provision could be used punitively.

The fact-finder acknowledges the real potential for abuse, but recommends that the parties include the Department's language.

n. Article 35, Leave of Absence

The parties agreed during hearing to the language the Department proposes which adds the FMLA to the Agreement and applies more stringent medical examination requirements, once an employee has exhausted FMLA leave, with the addition of language to deal with the effect of Section 35.4 on employees currently on leave.

o. Article 41, Duration

Both parties propose a three-year agreement. The Union prefers effective date of December 22, 1998, for all provisions, including wages. The Department prefers the Agreement be effective on the date of signing.

The fact-finder recommends the effective date of the three-year Agreement be the date of execution, except wage increases to be effective as specified in Article 22 above.

Section 41.1 would be modified to read:

This Agreement shall be effective as of the date of execution, except effectiveness of the wage provisions shall be governed by that article, and shall remain in full force and effect for a period of three (3) years from that date.

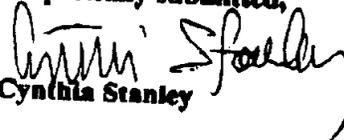
p. Article . Work Preservation

The Union proposes language to preserve work and job opportunities for bargaining unit members. The language would obligate the County not to subcontract, transfer, lease, avert, or assign duties, operations, work or services of the kind, nature or type performed by the bargaining unit members. Local 100 points to continued erosion of bargaining unit work as the reason for the proposal.

The Department resists the language.

The fact-finder recognizes the seriousness of this issue for the Union; however, she does not recommend the language for this Agreement, as she does not believe agreement can be reached with a recommendation for this language.

Respectfully submitted,


Cynthia Stanley

Certificate of Service

The undersigned hereby certifies that a true copy of the foregoing Fact-Finder's Report and Recommendations was served on the following by overnight delivery this 15th day of April, 1999:

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