

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

2002 JUL 29 A 8:59

IN THE MATTER OF CONCILIATION
PROCEEDINGS BETWEEN:

INTERNATIONAL UNION OF POLICE
ASSOCIATIONS, AFL-CIO, LOCAL 150
Employee Organization,
and

ALLEN COUNTY SHERIFF,
Employer.

CONCILIATION AWARD

CASE NUMBER: 01-MED-09-0749

CONCILIATOR: Charles W. Kohler

DATE OF HEARING: JULY 22, 2002

PLACE OF HEARING: Lima, Ohio

APPEARANCES:

For the Employee Organization:

William A. Dunn
IUPA AFL-CIO
P.O. Box 252
Oak Harbor, Ohio 43449

For the Employer:

Jonathan J. Downes
Jeffrey L. Appel
Downes, Hurst & Fishel
400 S. Fifth Street, Suite 200
Columbus, Ohio 43215-5492

PROCEDURAL BACKGROUND

On June 11, 2002, the State Employment Relations Board ("SERB") appointed the undersigned as Conciliator upon selection by the parties pursuant to Ohio Revised Code Section 4117.14(D)(1). A hearing was held on July 22, 2002, in Lima, Ohio.

This matter involves the negotiation of a collective bargaining agreement between the Allen County Sheriff ("Employer") and the International Union of Police Associations, AFL-CIO, Local 150 ("Union") for a bargaining unit of approximately 110 members consisting of: Civil/Court Service Officer, Corrections Officer, Corporal, Detective, Dispatcher, Patrol Officer, Transportation Officer, and Assistant Transportation Officer. This bargaining unit is known as the "Blue Unit." The prior agreement covering the employees in the bargaining unit expired on June 30, 2001. After the expiration of the prior agreement, the employees voted to change representatives, and selected the Union as the collective bargaining representative. Other employees who were included with the Blue Unit in the prior agreement retained the previous union as their representative and negotiated a separate collective bargaining agreement.

The parties engaged in six formal negotiation sessions, and engaged in mediation with both a SERB mediator and the fact finder. The fact finder did not resolve all of the issues and a fact-finding hearing was held on March 21, 2002. On May 14, 2002, the fact finder, Stanley Dobry, issued his report and recommendations. The fact finder's report was rejected by the Employer.

At the conciliation hearing on July 22, 2002, the following issues remained at impasse:

1. ARTICLE 3 - UNION SECURITY

3.7 - Maintenance of Membership

2. ARTICLE 17 - HOURS OF WORK AND OVERTIME

17.1 - Work Period

17.2 - Overtime, Compensatory Time

3. ARTICLE 18 - WAGES

18.1 - Wage Rates

18.4 - Longevity

4. ARTICLE 20 - VACATION

20.1 - Accrual

5. ARTICLE 21 - HOLIDAYS

21.1 - Accrual

6. ARTICLE 22 - SICK LEAVE

22.6 - Retirement

22.9 - Injury / Death of Employee

7. ARTICLE 27 - DURATION

All other matters which were subject to collective bargaining have been resolved by agreement between the Employer and the Union. The tentative agreements of the parties on these matters are incorporated by reference as part of this Award.

PROCEDURAL MOTION

At the commencement of the conciliation hearing on July 22, 2002, the Employer made a motion that the final offer position statement of the Union not be considered by the Conciliator, and that the Union not be permitted to introduce evidence in support of its position on the issues pursuant to OAC 4117-9-06(E). The motion was based on the Employer's contention that the position statement of the Union was not submitted to the Conciliator, the employer, and the SERB in a timely fashion as required by ORC Section 4117.14 (G) (3).

ORC Section 4117.14(G) (3) provides as follows:

(3) The conciliator shall conduct the hearing pursuant to rules developed by the board. He shall establish the hearing time and place, but it shall be, where feasible, within the jurisdiction of the state. Not later than five calendar days before the hearing, each of the parties shall submit to the conciliator, to the opposing party, and to the board a written report summarizing the unresolved issues, the party's final offer as to the issues, and rationale for that position.

OAC 4117-9-06(E) provides as follows:

(E) Upon notice of the conciliator's appointment, each party shall submit to the conciliator and serve on the other party a written statement. A failure to submit such a written statement to the conciliator and the other party prior to the day of the hearing shall require the conciliator to take evidence only in support of matters raised in the written statement that was submitted prior to the hearing.

The position statement of the Union was received by the Conciliator via facsimile, on July 18, 2002, four calendar days prior to the hearing date of July 22, 2002. Apparently, the Union also transmitted its statement to the Employer on July 18, 2002. The Employer submitted its statement to the Conciliator, the SERB, and the Union on July 17, 2002, five days prior to the hearing date.

The Union offered no evidence to show that it attempted to submit its statement to either the Employer or the Conciliator at least five days prior to the hearing. The Union offered no evidence concerning the submission of its statement to the SERB. Thus, the Conciliator concludes that the Union did not submit its final offer position statement to the Conciliator, the Employer, and the SERB within the time requirement set forth in ORC Section 4117.14 (G) (3).

The Union presented evidence of a prior conciliation in which the City of Upper Sandusky submitted its final offer position statement one day prior to the conciliation hearing. In that case, the conciliator allowed the employer's statement to be considered and he allowed the employer to

present evidence in support of its positions. However, there is no evidence that the union objected to the untimely submission. Further, there is no evidence that the union took any action with either the SERB or in court. Therefore, no legal conclusion can be inferred from these facts.

On June 13, 2000, the SERB issued a decision in the case of In re Greenville Patrol Officers Association, SERB 2000-005. In Greenville, the union submitted its position statement one day prior to a conciliation hearing. The SERB found that ORC Section 4117.14(G)(3) clearly and unambiguously requires that the parties submit their position statements no later than five days prior to the conciliation hearing.

The conciliator in Greenville permitted the union to present its position statement and to present evidence in support of its positions, in spite of the fact that it had not timely submitted its position statement. The SERB concluded that the conciliator had committed a procedural error by allowing the union to submit its statement and to present evidence. The SERB found that OAC 4117-9-06(E) requires that a conciliator only take evidence in support of matters raised in a written statement which was timely submitted.

The rationale for the requirement of filing final offer position statements was explained by the SERB in In re FOP Ohio Valley Lodge No. 112, SERB 2000-011 (11-22-00) as follows:

The filing of the position statements is a critical step in the conciliation process. In re Greenville Patrol Officers Assn, supra. O.R.C. §4117.14(G) requires nearly simultaneous filings by the parties. The conciliator must choose from either the employer's proposal or the employee organization's proposal on each of the outstanding issues. By the very design of this process, each party has an incentive to issue a final proposal that it believes the conciliator will select as the more reasonable position. If a party amends its position after receiving the other party's

statement, the amending party might gain an unfair advantage over the other party: the amending party could modify its position based upon its knowledge of the other party's final position

In accordance with the holding of the SERB in Greenville, the Conciliator will grant the Motion of the Employer. The Conciliator will only consider the final offer position statement of the Employer and evidence in support of the statement.

DISCUSSION AND CONCLUSIONS

1. ARTICLE 3 - UNION SECURITY

3.7 - Maintenance of Membership

Findings

The Employer has proposed that there be no change made to the Maintenance of Membership provision in the previous collective bargaining agreement.

Award

The language in Section 3.7 of the previous collective bargaining agreement will be retained in the new agreement.

2. ARTICLE 17 - HOURS OF WORK AND OVERTIME

17.1 - Work Period

Findings

The Employer has proposed that language be added to Section 17.1 providing that the Employer must consult with the Union prior to making any changes in the work day or the work schedule.

Award

The following language shall be added as the second sentence of Section 17.1:

The Sheriff may make changes to the established workday/work schedule only after first consulting with the Union.

17.2 - Overtime, Compensatory Time

Findings

The Employer has proposed that language be added to this section providing for a seven day notice period when employees are required to take compensatory time off, and giving employees the opportunity to request days off for compensatory time.

Award

The following sentence shall be added to the end of Paragraph D of Section 17.2:

Before employees are scheduled for compensatory time off, they will be given seven day notice and have an opportunity to request dates for compensatory time.

3. ARTICLE 18 - WAGES

18.1 - Wage Rates

Findings

The Employer has proposed a wage increase of three percent effective on January 1, 2002, and an additional three percent wage increase effective on January 1, 2003. The Employer has also proposed a wage re-opener for the final year of the collective bargaining agreement.

Award

The following wage schedule will be included as Appendix A of the new agreement:

<u>January 1, 2002 (3% Increase)</u>	<u>Step A</u>	<u>Step B</u>	<u>Step C</u>	<u>Step D</u>
Dispatcher	11.04	11.51	11.96	12.43
Corrections Officer	12.43	12.93	13.45	13.99
Corporal - Head Mechanic	14.53	15.10	15.71	16.35
Patrol Officer, Civil/Court, Transpor	14.90	15.50	16.12	16.76

<u>January 1, 2003 (3% Increase)</u>	<u>Step A</u>	<u>Step B</u>	<u>Step C</u>	<u>Step D</u>
Dispatcher	11.37	11.85	12.32	12.81
Corrections Officer	12.81	13.31	13.86	14.41
Corporal - Head Mechanic	14.97	15.55	16.18	16.84
Patrol Officer, Civil/Court, Transpor	15.35	15.97	16.60	17.26

The following language shall be included as the final paragraph of Section 18.1:

There shall be a re-opener for wages only for the third year of the Agreement. Said re-opener will occur on November 1, 2003 with any mutually agreed wage increase to take effect on January 1, 2004.

18.4 - Longevity

Findings

The Employer has proposed increases in longevity payment amounts to be effective upon execution of the agreement. It has proposed additional increases to be effective on January 1, 2003.

Award

The following longevity rates shall be included in the new collective bargaining agreement:

	5 Years up to 10	10 Years up to 15	15 Years up to 20	20 Years and Over
Date of Execution	.25	.30	.40	.45
January 1, 2003	.25	.30	.50	.50

4. ARTICLE 20 - VACATION

20.1 - Accrual

Findings

The Employer has proposed that there be no changes made to this section.

Award

The language in Section 20.1 of the previous collective bargaining agreement will be retained in the new agreement.

5. ARTICLE 21 - HOLIDAYS

21.1 - Accrual

Findings

The Employer has proposed that there be no changes made to this section.

Award

The language in Section 21.1 of the previous collective bargaining agreement will be retained in the new agreement.

6. ARTICLE 22 - SICK LEAVE

22.6 - Retirement

Findings

The Employer has proposed that there be no changes made to this section.

Award

The language in Section 22.6 of the previous collective bargaining agreement will be retained in the new agreement.

22.9 - Injury / Death of Employee

Findings

The Employer has proposed that there be no changes made to this section.

Award

The language in Section 22.9 of the previous collective bargaining agreement will be retained in the new agreement.

7. ARTICLE 27 - DURATION

Findings

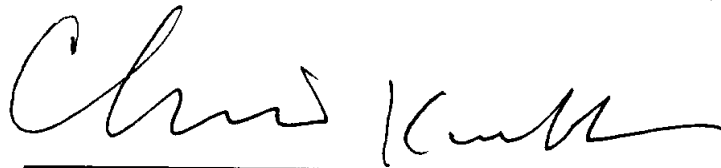
The Employer has proposed that the new collective bargaining agreement become effective upon execution and that it expire on December 31, 2004.

Award

The new collective bargaining agreement will become effective upon execution and will expire on December 31, 2004.

CONCLUSION

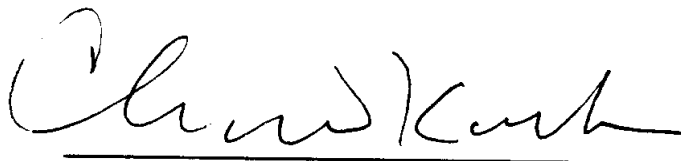
In conclusion, the Conciliator submits his decision with respect to the outstanding issues, and orders that the awards be incorporated into the collective bargaining agreement of the parties.



Charles W. Kohler, Conciliator

CERTIFICATE OF SERVICE

I do hereby certify that on this 26th day of July 2002, a copy of the foregoing Conciliation Award was served upon the representatives of the parties at the addresses shown on the title page of this Award; and upon Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213 by regular U.S. Mail, postage prepaid.



Charles W. Kohler, Conciliator

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3.7 - Maintenance of Membership

2. ARTICLE 17 - HOURS OF WORK AND OVERTIME

17.1 - Work Period

17.2 - Overtime, Compensatory Time

3. ARTICLE 18 - WAGES

18.1 - Wage Rates

18.4 - Longevity

4. ARTICLE 20 - VACATION

20.1 - Accrual

5. ARTICLE 21 - HOLIDAYS

21.1 - Accrual

6. ARTICLE 22 - SICK LEAVE

22.6 - Retirement

22.9 - Injury / Death of Employee

7. ARTICLE 27 - DURATION

All other matters which were subject to collective bargaining have been resolved by agreement between the Employer and the Union. The tentative agreements of the parties on these matters are incorporated by reference as part of this Award.

PROCEDURAL MOTION

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The Union offered no evidence to show that it attempted to submit its statement to either the Employer or the Conciliator at least five days prior to the hearing. The Union offered no evidence concerning the submission of its statement to the SERB. Thus, the Conciliator concludes that the Union did not submit its final offer position statement to the Conciliator, the Employer, and the SERB within the time requirement set forth in ORC Section 4117.14 (G) (3).

The Union presented evidence of a prior conciliation in which the City of Upper Sandusky submitted its final offer position statement one day prior to the conciliation hearing. In that case, the conciliator allowed the employer's statement to be considered and he allowed the employer to

present evidence in support of its positions. However, there is no evidence that the union objected to the untimely submission. Further, there is no evidence that the union took any action with either the SERB or in court. Therefore, no legal conclusion can be inferred from these facts.

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The conciliator in Greenville permitted the union to present its position statement and to present evidence in support of its positions, in spite of the fact that it had not timely submitted its position statement. The SERB concluded that the conciliator had committed a procedural error by allowing the union to submit its statement and to present evidence. The SERB found that OAC 4117-9-06(E) requires that a conciliator only take evidence in support of matters raised in a written statement which was timely submitted.

The rationale for the requirement of filing final offer position statements was explained by the SERB in In re FOP Ohio Valley Lodge No. 112, SERB 2000-011 (11-22-00) as follows:

The filing of the position statements is a critical step in the conciliation process. In re Greenville Patrol Officers Assn, supra. O.R.C. §4117.14(G) requires nearly simultaneous filings by the parties. The conciliator must choose from either the employer's proposal or the employee organization's proposal on each of the outstanding issues. By the very design of this process, each party has an incentive to issue a final proposal that it believes the conciliator will select as the more reasonable position. If a party amends its position after receiving the other party's

statement, the amending party might gain an unfair advantage over the other party: the amending party could modify its position based upon its knowledge of the other party's final position

In accordance with the holding of the SERB in Greenville, the Conciliator will grant the Motion of the Employer. The Conciliator will only consider the final offer position statement of the Employer and evidence in support of the statement.

DISCUSSION AND CONCLUSIONS

1. ARTICLE 3 - UNION SECURITY

3.7 - Maintenance of Membership

Findings

The Employer has proposed that there be no change made to the Maintenance of Membership provision in the previous collective bargaining agreement.

Award

The language in Section 3.7 of the previous collective bargaining agreement will be retained in the new agreement.

2. ARTICLE 17 - HOURS OF WORK AND OVERTIME

17.1 - Work Period

Findings

The Employer has proposed that language be added to Section 17.1 providing that the Employer must consult with the Union prior to making any changes in the work day or the work schedule.

Award

The following language shall be added as the second sentence of Section 17.1:

The Sheriff may make changes to the established workday/work schedule only after first consulting with the Union.

17.2 - Overtime, Compensatory Time

Findings

The Employer has proposed that language be added to this section providing for a seven day notice period when employees are required to take compensatory time off, and giving employees the opportunity to request days off for compensatory time.

Award

The following sentence shall be added to the end of Paragraph D of Section 17.2:

Before employees are scheduled for compensatory time off, they will be given seven day notice and have an opportunity to request dates for compensatory time.

3. ARTICLE 18 - WAGES

18.1 - Wage Rates

Findings

The Employer has proposed a wage increase of three percent effective on January 1, 2002, and an additional three percent wage increase effective on January 1, 2003. The Employer has also proposed a wage re-opener for the final year of the collective bargaining agreement.

Award

The following wage schedule will be included as Appendix A of the new agreement:

<u>January 1, 2002 (3% Increase)</u>	<u>Step A</u>	<u>Step B</u>	<u>Step C</u>	<u>Step D</u>
Dispatcher	11.04	11.51	11.96	12.43
Corrections Officer	12.43	12.93	13.45	13.99
Corporal - Head Mechanic	14.53	15.10	15.71	16.35
Patrol Officer, Civil/Court, Transpor	14.90	15.50	16.12	16.76

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Dispatcher	11.37	11.85	12.32	12.81
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Corporal - Head Mechanic	14.97	15.55	16.18	16.84
Patrol Officer, Civil/Court, Transpor	15.35	15.97	16.60	17.26

The following language shall be included as the final paragraph of Section 18.1:

There shall be a re-opener for wages only for the third year of the Agreement. Said re-opener will occur on November 1, 2003 with any mutually agreed wage increase to take effect on January 1, 2004.

18.4 - Longevity

Findings

The Employer has proposed increases in longevity payment amounts to be effective upon execution of the agreement. It has proposed additional increases to be effective on January 1, 2003.

Award

The following longevity rates shall be included in the new collective bargaining agreement:

	5 Years up to 10	10 Years up to 15	15 Years up to 20	20 Years and Over
Date of Execution	.25	.30	.40	.45
January 1, 2003	.25	.30	.50	.50

4. ARTICLE 20 - VACATION

20.1 - Accrual

Findings

The Employer has proposed that there be no changes made to this section.

Award

The language in Section 20.1 of the previous collective bargaining agreement will be retained in the new agreement.

5. ARTICLE 21 - HOLIDAYS

21.1 - Accrual

Findings

The Employer has proposed that there be no changes made to this section.

Award

The language in Section 21.1 of the previous collective bargaining agreement will be retained in the new agreement.

6. ARTICLE 22 - SICK LEAVE

22.6 - Retirement

Findings

The Employer has proposed that there be no changes made to this section.

Award

The language in Section 22.6 of the previous collective bargaining agreement will be retained in the new agreement.

22.9 - Injury / Death of Employee

Findings

The Employer has proposed that there be no changes made to this section.

Award

The language in Section 22.9 of the previous collective bargaining agreement will be retained in the new agreement.

7. ARTICLE 27 - DURATION

Findings

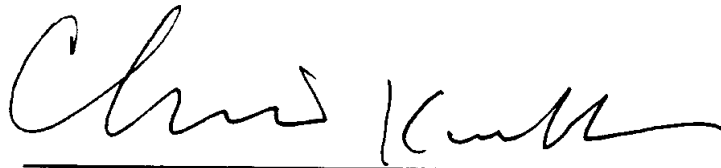
The Employer has proposed that the new collective bargaining agreement become effective upon execution and that it expire on December 31, 2004.

Award

The new collective bargaining agreement will become effective upon execution and will expire on December 31, 2004.

CONCLUSION

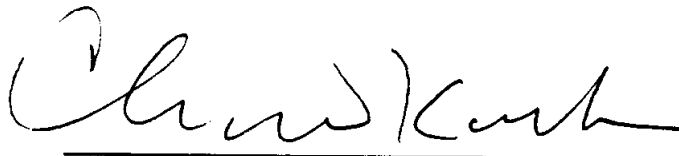
In conclusion, the Conciliator submits his decision with respect to the outstanding issues, and orders that the awards be incorporated into the collective bargaining agreement of the parties.



Charles W. Kohler, Conciliator

CERTIFICATE OF SERVICE

I do hereby certify that on this 26th day of July 2002, a copy of the foregoing Conciliation Award was served upon the representatives of the parties at the addresses shown on the title page of this Award; and upon Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213 by regular U.S. Mail, postage prepaid.



Charles W. Kohler, Conciliator