

IN THE MATTER  
OF  
CONCILIATION

STATE EMPLOYMENT  
RELATIONS BOARD  
**COPY**  
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FINDINGS & AWARD

<b>BETWEEN</b>	<b>Case No(s) :</b>
<b>International Brotherhood of Teamsters</b>	<b>01-MED-10-1013 (Dispatchers Communications)</b>
<b>Local No. 637</b>	<b>01-MED-10-1014 (Deputies)</b>
v	<b>01-MED-10-1015 (Sergeants)</b>
<b>The Licking County, Ohio</b>	<b>01-MED-10-1016 (Nurses, Social Workers)</b>
<b>Sheriff</b>	<b>Conciliator: John S. Weisheit</b>
	<b>Hearing Date: May 11, 2002</b>
	<b>Award Issue Date: June 3, 2002</b>

REPRESENTATION  
by

<u>Employer Representatives</u>	<u>Union Representatives</u>
Jonathan J. Downes, Esq. Ben Albrecht, Esq. <b><u>DOWNES, HURST, &amp; FISHEL</u></b> Gerry D. Billy, Sheriff Randy Thorp, Chief Deputy Gary Blalford, Captain/Jail Administrator Donna Roland, HR Dir.	Susan D. Jansen, Esq. <b><u>LOGOTHETIS, PENCE &amp; DOLL</u></b> Jim Romine, Local 637 President Dana Godfrey, Dep. Sheriff Howard Stoneking, Dep. Sheriff Gregory E. Ritterbeck, Dep. Sheriff Jeff Savage, Dep. Sheriff Rob Bame, Dep. Sheriff-Sgt. Joel Cailles, Social Worker

AUTHORITY

This matter was brought before John S. Weisheit, Conciliator, in keeping with applicable provisions of ORC 4117 and related rules and regulations of the Ohio State Employment Relations Board. . The parties have complied in a timely manner with all procedural filings. The matter is determined properly before the Conciliator for consideration and directive based on merit and fact according to the provisions of ORC 4117, in particular those that apply to safety forces.

## **BACKGROUND**

The Licking County Sheriff Office, hereinafter called the "LCSO" and/or the "Employer", recognizes the International Brotherhood of Teamsters, Local No. 637, hereinafter referred to as the "Union" and/or the "IBT", for the purpose of collective bargaining with certain employees in the LCSO consisting of five (5) separate bargaining units. These units consist of 1) all deputy sheriffs sworn in accordance with Ohio Revised Code 311.04; 2) all clerks, clerks/typists, maintenance personnel, clerical specialists, cook/custodian, head cook, maintenance worker, records clerk/typist; 3) all radio dispatchers and communications personnel; 4) all full-time sworn deputy personnel in the rank of sergeant; and 5) all full-time nurses and licensed social workers. While the parties engage in multi-unit bargaining, each bargaining unit has a separate collective bargaining agreement, except for the deputies and sergeants who share a common agreement. There is a total of about 150 employees in all five bargaining units.

The IBT was certified as the exclusive bargaining agent for the above mentioned employees in February, 1998. Prior to that time, the Fraternal Order of Police, Lodge 127 was the exclusive representative previously from 1986, and attained certification as the exclusive bargaining representative of the full-time nurses unit in 1991. Such representation was held until replaced by the IBT in 1998. The respective four (4) most recent expiring collective bargaining agreements for the respective bargaining units were in effect from January 1, 1999, through December 31, 2001.

In the course of providing police protection within the County, the LCSO is divided into the following divisions: a) Jail Division, under the direction of a shift supervisor and operating 3 shifts on a twenty-four day, seven day week basis; b) Civil Division; c) Patrol Division under the direction of a shift sergeants and operating 3 shifts on a twenty-four hour day, seven day week basis; and d) a Detective Division.

LCSO is “Triple Crown Accredited”, one of three Ohio county sheriff offices so nationally accredited by the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA). The National Commission on Correctional Health Care (NCCHC) has accredited the LCSO health care component of the jail operation while the jail operation is accredited by the American Correctional Association (ACA).

The parties engaged in a period of good faith bargaining for a successor Agreement during the months of October and November, 1999. In the most recent round of bargaining between the IBT and the LCSO, impasse was reached in all five bargaining units. Fact Finding was used and a Factfinder’s Report was issued regarding all IBT bargaining agreements. The “Civilian Unit” (cook/custodian, maintenance worker, records, clerk/typist) and the Employer did not reject the Report. The other four IBT bargaining units rejected their applicable Factfinder’s Reports. The LCSO rejected the Factfinder’s Report as it applied to the Deputies and Sergeants bargaining units <sup>1</sup>.

This Conciliator was appointed by the State Employment Relations Board (SERB) in keeping with applicable provisions in ORC 4117 and SERB Rules and Regulations. A Conciliation Hearing was conducted May 9, 2002, at the LCSO in Newark, Ohio.

Two procedural matters were initially raised at the opening of the Hearing;

- 1) The question was raised regarding the appropriate bargaining unit contracts duly before the Conciliator for consideration and determination and;
- 2) Identification of specific unresolved issues before the Conciliator for consideration and ruling.

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<sup>1</sup> The two bargaining units share a common collective bargaining agreement.

The first matter was raised regarding which bargaining unit contracts were properly before the Conciliator for consideration and determination. The Conciliator indicated that his letter of appointment from SERB identified three bargaining units by case number and job titles. These were: (A) SERB Case No. 01-MED-10-1013 (Dispatchers & Communication employees); (B) SERB Case No. 01-MED-10-1014 (Deputies); and (C) SERB Case No. 01-MED-10-1015 (Sergeants). It was determined by the Conciliator his authority was applicable to the three bargaining units identified .

The second issue was to identify any issues resolved by parties identified as being at impasse in the Conciliation pre-hearing statements of the parties. The parties indicated, all provisions in Article 20, Lay Off; Article 31 Hours of Work and Overtime, Article 35-Vacation, are resolved, and Article \_\_ Minimum Manning has been withdrawn.

The Hearing then was held on the three issues at impasse, namely certain sections of Article 17-Shift Assignments; Article 22-Wages & Miscellaneous and; Article 26-Medical Insurance. The parties then introduced such documents and testimony considered relevant to their respective position, issue, by issue. When the parties indicated they had no additional facts or evidence to introduce, and indicated, in the affirmative, to the Conciliator that they had a fair and adequate opportunity to present information considered supportive of the respective positions, the Hearing was adjourned.

The determination in this Conciliation Award incorporates issue by issue, granting the Conciliator the discretion to frame the award in a manner considered most appropriate. Compliance with ORC 4117.14(C)(4)(e), and related rules and regulations of the State Employment Relations Board were taken into consideration in making this Award including:

1. Past collectively bargained agreements between the parties;
2. Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

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

**COLLECTIVE BARGAINING UNIT(S) BEFORE THE CONCILIATOR**  
**FOR DETERMINATION AND AWARD**

In the matter of Conciliation, it is determined by the Conciliator that matters in dispute and such determination and Award for a successor collective bargaining agreement shall apply to those bargaining units specifically identified in his appointment by the State Employment Relations Board and identified by the following SERB Case Numbers:

01-MED-10-1013 - Dispatchers & Communication Employees

01-MED-10-1014 - Deputy Sheriffs

01-MED-10-1015 - Deputy Sheriffs, Sergeants

**ISSUES OF TENTATIVE AGREEMENT**  
**PRIOR TO CONCILIATION**

All matters to be included in the respective collective bargaining agreement have been tentatively agreed to, or otherwise resolved, between the parties except for the specific issues set forth in the following section.

The following Articles at impasse at Fact Finding were tentatively agreed to, or otherwise resolved by the parties following Fact Finding and prior to Conciliation:

Article 20 Layoff & Recall

Article 35 Vacations

Article 31 Hours of Work and Overtime

Article \_\_ Minimum Manning

**ISSUES AT IMPASSE AT CONCILIATION**

The following issues are at impasse following Fact Finding and properly before the Conciliator for inclusion in the respective agreement on an issue by issue, last best offer determination:

Article 17 Shift Assignments

Article 22 Wages & Miscellaneous

Article 26 Medical Insurance

**SUMMARY OF RESPECTIVE POSITIONS  
BEFORE THE CONCILIATOR**

The following sets forth the summary position of the City and Union on each issue at impasse, after mediation.

<b>Employer's Last Position</b>	<b>Issue</b>	<b>Union's Last Position</b>
Retain current language.	<b>Article 17 Shift Assignment</b>	Delete certain quantifiable performance provisions
1 <sup>st</sup> yr. + 4% 2 <sup>nd</sup> yr. + 4% 3 <sup>rd</sup> yr. + 4%	<b>Article 22 Wages &amp; Misc.</b>	1 <sup>st</sup> yr. + 6% 2 <sup>nd</sup> yr. + 4% 3 <sup>rd</sup> yr. + 4%
Retain current language.	<b>Article 26 Medical Insurance</b>	Employee to pay 20% of premium cost 1 <sup>st</sup> yr. ; 2 <sup>nd</sup> & 3 <sup>rd</sup> yr. Inc. not to exceed 10% of the increase in the total premium amounts.

**TOPIC****DISCUSSION & DETERMINATION****General**

The following findings are based on a review of issues and respective positions of the parties as presented in oral and written form at the Conciliation Hearing. Consideration is given to applicable statutory provisions, generally accepted practices in the field of interest arbitration/conciliation, and direction of the party as previously stated.

**Comparables**

Comparables are given greatest weight when the data used includes like or similar basis. It is understood each bargaining process will have a variety of different priorities and terms involved. It is rare that all such factors are reflected in comparables data presented. Normally, comparables will have greatest influence when all other factors are equal or other basis for making a determination are lacking.

**Financial Situation**

Inability to pay is not raised in any matter before the Conciliator. The parties argue economic issues from a position of appropriateness as determined from their respective assessment of the facts and evidence introduced in support of their respective position.

**Bargaining History**

The parties introduced extensive documentation and testimony regarding the bargaining history regarding the unresolved issues. There is not found any significant difference in what was introduced to the Conciliator from that presented the Factfinder.

Each party expressed satisfaction with the overall findings and recommendations of the Factfinder, except for the specific unresolved issue they argue should be altered from his recommendation and included as each proposes in the collective bargaining agreement.

**General**      **Findings and Recommendation of the Factfinder**

**cont'd**

Where the Factfinder has demonstrated a reasonable and rational assessment of comparables, it is generally accepted that such should be cause for a Conciliator to sustain the Factfinder recommendation. It is further an established practice that the Conciliator will normally reach a finding different from that reached by the Factfinder if facts and evidence introduced at Conciliation clearly demonstrate the Factfinder's determinations were made as a result of a serious error in reaching his/her conclusion and recommendations, or there is an introduction of fact that significantly alters the basic premise for reaching the Factfinder's recommendation.

**Article 17**  
**Shift**  
**Assignment**  
**cont'd**

The historical facts presented identify the basis of this disputed language in Section 17.2. The Union seeks to reduce or negate subjective factors used by management in the employee shift selection process. While not attempting to attain language that would retain "seniority" as the controlling selection factor on this issue, it does seek to limit Management's subjective criteria used in shift appointments. The prior changes applied to this issue have not resulted in a basic mutual meeting of minds between the parties. The respective parties' position before the Conciliator is the same as those put before Factfinder Santa Emma. His conclusion parallels that of this Conciliator. To the point, selecting the position of one party is going to be unacceptable to the other party. To select the Employer's position continues the same language with the noted Union objections. To select the Union position, in the Conciliator's position, replaces established language acceptable to the Union with language that appears to present new subjective terms that will result in continued controversy.



**Article 17**  
**Shift**  
**Assignment**  
**cont'd**

Provisions of the ORC 4117 clearly give management the right to assign staff, except as expressly altered by terms of the collective bargaining agreement. Obviously, over the years the practice of employee use of seniority in shift bidding has changed. The Union does not challenge this fact, yet it continues to attain a more employee acceptable provision regarding this matter.

The language in question is the same in the Contracts applicable to three bargaining units before the Conciliator.

In essence, the Union seeks to strike language it considers subjective and ambiguous and replace it with language that includes language that is also ambiguous but unacceptable to the Employer. To make such a determination does not provide justice to either party. More importantly, it does not appear to resolve the threshold problem.

**Determination** **It is determined that Section 17.2 - Annual Shift Selection, is to be included in the Agreement as proposed by the Employer for the following bargaining units:**

**01-MED-10-1013 - Dispatchers & Communication Employees**

**01-MED-10-1014 - Deputy Sheriffs**

**01-MED-10-1015 - Sergeants.**

**Article 22**      The difference in positions regarding the rate of wages is limited to the  
**Wages &**      first year of the Agreement. The Union seeks a six percent (6%) increase  
**Miscellaneous**      for the three (3) bargaining unit , while the Employer proposes a four  
**Section 22.2**      percent (4%) increase. The Fact Finder recommended a 4% increase in  
the first year for each of the bargaining units in question. The Factfinder  
further recommended as an “inequity adjustment” an additional (2%)  
increase in the first year for deputy sheriffs and Sergeants. The (6%)  
first year wage increase was not recommended by the Factfinder for any  
other bargaining unit.

A careful review of the comparables and data submitted by the parties to the Factfinder is found very similar to that provided the Conciliator. As noted by the Employer, data used in comparables may reflect inappropriate findings or be improperly applied if not given appropriate consideration . This issue was clearly recognized and addressed by the Factfinder in his discussion and finding of fact. The manner in which he framed his recommendation for deputy sheriffs and sergeants is determined fair, reasonable, and considered appropriate.

The argument raised by the Employer that the pay rate comparison should include a “blended” cost factor to reflect the traditional lower rate of pay for correction officers in other jurisdictions, is not found persuasive.

**Article 22**  
**Wages &**  
**Miscellaneous**  
**Section 22.2**  
**Cont'd**

In testimony both parties indicate pride in the quality and high standard of recognition conferred upon its overall operation and performance. A significant ingredient in this equation is the noted higher standard of training and certification required of deputy sheriffs. Testimony by both parties acknowledged that because all deputies were sworn officers they provided for greater flexibility in emergency situations as well as in scheduled assignments. Such an initial hiring qualification carries a greater cost factor. These employees are hired as sworn officers in the position of deputy sheriff at a deputy sheriff rate of pay. Work assignments are therefore secondary. The secondary factor does not appropriately determine the wage rate of a primary condition of employment. A deputy sheriff is a sworn officer and is properly compared to other sworn officers similarly employed. Other law enforcement agencies have established their operations in a different manner. That difference must be recognized and accepted in considering comparables and rationale attained from said data.

It is also recognized that the facts and rationale introduced by the Union does not support the initial six percent (6%) increase for any other bargaining unit, other than deputy sheriff and sergeant. Such was the finding of the Factfinder as well as the Conciliator. The four percent (4%) increase in the initial year of the Agreement proposed by the Employer is in keeping with the Factfinder's recommendation for all other bargaining units.

**Article 22**      **It is determined that Section 22.2 - Wage Scales, is to be included in**  
**Wages &**            **the Agreement as proposed by the Employer for the following**  
**Miscellaneous**   **bargaining unit(s):**  
**Section 22.2**            **01-MED-10-1013 - Dispatchers & Communication Employees**  
**Concluded**

**Determination**   **It is determined that Section 22.2 - Wage Scales, is to be included in**  
**the Agreement as proposed by the Union for the following**  
**bargaining unit(s):**  
**01-MED-10-1014 - Deputy Sheriffs**  
**01-MED-10-1015 - Sergeants.**

**Article 26**      The sole disputed issue in this provision is the proposed Union change in  
**Medical**            Section 26.2 Premiums, which seeks a cap on the employees' share of  
**Insurance**        any increase in premiums after the year 2002. The Factfinder again, has  
addressed this issue in a fair and appropriate manner. There is  
determined that there is no need or reason to repeat what has been put  
forth nor restate the same facts and conclusions as appropriately  
expressed by the Fact Finder.

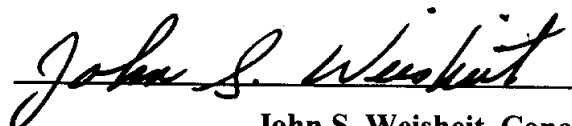
**Determination**   **It is determined that Section 26.2 - Premiums, is to be included in**  
**the Agreement as proposed by the Employer for the following**  
**bargaining unit(s):**  
**01-MED-10-1013 -Dispatchers & Communication Employees**  
**01-MED-10-1014 - Deputy Sheriffs**  
**01-MED-10-1015 - Sergeants.**

## TOTALITY OF AGREEMENT

This will affirm this Award, consisting of **13 pages**, inclusive of this page, contain the findings, determination, and Award of the Conciliator. All terms in the respective Agreements between the Union and the Employer covering those employees in the classification of Dispatchers and Communications Worker, Deputy Sheriff and Sergeant shall include terms in keeping with the Conciliator's Determination as set forth in this Award. In addition, the respective Agreements shall include such additions and/or modifications reflected in tentative agreement by the parties.

To the best of my knowledge, this Report complies with applicable provisions of ORC 4117 and related Rules and Regulations adopted by the State Employment Relations Board and expressed authority of the parties.

I hereby affix my signature at Galion, in the County of Crawford, in the State of Ohio, this day of June 3, 2002.

  
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John S. Weisheit, Conciliator