
In the Matter of Conciliation

Between

SERB Case No. 2014-MED-08-1044

Hamilton County Correction
Officers Association

Before: Harry Graham

and

Hamilton County Sheriff's Office

APPEARANCES: For Hamilton County Correction Officers Association:

Stephen S. Lazarus
Hardin, Lazarus & Lewis, LLC
915 Cincinnati Club Building
30 Garfield Place
Cincinnati, OH. 45202

For Hamilton County Sheriff's Office:

Brett A. Geary
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INTRODUCTION: Pursuant to the procedures of the Ohio State Employment Relations Board and the parties a hearing was held in this matter on January 19, 2016 before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. Prior to the oral hearing the parties mutually waived the presence of a court reporter. The record was closed on January 26, 2016 with the acknowledgement of receipt of a post-hearing submission from the Employer.

During the negotiations for the Agreement commencing in 2015 the parties had recourse to Fact-finding. A Factfinding hearing was held before Factfinder David

Stanton. His report was issued on October 1, 2015. It was accepted by the Union. It was rejected by the Employer. Hence this proceeding.

In the course of the hearing the parties agreed to alter the State-mandated methodology guiding the deliberations of Conciliators. Chapter 4117 of the Ohio Revised Code provides that a Conciliator is to select the position of the Union or the Employer on each disputed issue. The Union and the Employer in this situation have permitted me to fashion an award based upon my judgment. That is, I may deviate from the final offer of the Union or the Employer.¹ To expedite resolution of this long-running dispute this award will be brief.

There are four issues in dispute between the parties. These are:

- 1 Article 14, Vacancies
- 2 Article 20, Wages and Compensation
- 3 Article 22, Insurance
- 4 Article 42, Duration

Issue 1, Article 14, Vacancies

Position of the Union: The Union is proposing an expansion in what the parties define as “preferred posts.” The Factfinder recommended such an expansion occur. Little change in the current Contract language is proposed by the Union. It notes that under its proposal the Sheriff will continue to be able to fill or not to fill vacant positions. Further, the Agreement sets forth criteria the Employer is to utilize when filling positions. These are: ability to perform the work, physical fitness, records of attendance and discipline and finally, seniority. If an employee grieves nonselection the employee must “clearly and convincingly demonstrate” he or she “was the most qualified applicant for

¹ This is known as “conventional” interest arbitration.

the posted vacancy.”That is a heavy burden on a grievant. In fact, never have grievances been filed over nonselection of a candidate for a position. Nor is there any requirement the Employer fill a vacancy. It can adapt its preferred post staffing to circumstances as it views them. As the Factfinder recommended an expansion of the number of preferred posts and the Employer continues to retain great discretion over them the Union contends its position must be awarded.

Position of the Employer: Per its prehearing statement the Sheriff proposes to maintain the current contract language. The Union proposal contemplates an expansion of the number of preferred posts. That is not warranted according to the Sheriff. An expansion of the preferred posts represents a challenge to the manner in which the Sheriff has conducted business for many years. No difficulties with the preferred post system have arisen to justify an expansion of their numbers. As that is the case no change is justified according to the Sheriff.

Discussion: As noted above, the Factfinder recommended an expansion of the number of preferred posts. He felt that such an expansion would boost morale and efficiency. He also believed turnover would be reduced via an expansion of the roster of preferred posts. His rationale was cogent and is persuasive in this proceeding. The proposal of the Union is awarded as set forth below:

Article 14
Vacancies

Section 14.1. Any vacancy in a preferred post within the Corrections Division which the Employer intends to fill shall be posted for bid pursuant to this Article

The following positions shall be considered preferred posts and shall be posted for bid pursuant to this Article upon any future vacancy in the position:

1st Shift

Transportation Officers
Court Holding Officers
Admissions Officers
George 11 [Visiting]
George 12 [Kitchen]
George 12A [Kitchen]
George 55 [Rover]
Lincoln 65 A
Over-the-Rhine Detail Officers
JCA Court Officers

2nd Shift

Transportation Officers
George 11
9k38

3rd Shift

Transportation Officers
9k35

Notices of vacancies shall be posted on one (1) bulletin board in each facility where employee notices are usually posted for ten (10) calendar days prior to filling the vacancy. The posting shall contain a description of the position to be filled, special qualifications required or desired, and location and shift for reporting and working. Interested employees must submit their bid, in writing, within the posting period to the Employer or designee as listed on the posting. In the selection of a successful applicant for a vacancy or retention of an individual for a preferred post the following factors shall be considered:

- A Ability to perform the work;
- B Physical fitness;
- C Records of attendance and discipline; and
- D Seniority

Only where factors A, B, and C are relatively equal shall seniority be the determining factor. It is the intent of the Employer that the most qualified applicant will be selected. Upon inquiry, the Employer or designee will notify any applicants with equal or greater seniority than the selected applicant who were passed over as to the reason for being passed over. In the event an employee or the Union grieves the Employer's selection,

the grievant must clearly and convincingly demonstrate that the grievant who was passed over was the most qualified applicant for the posted vacancy.

If there are no qualified non-probationary applicants for a position assignment, the position assignment may be filled by a probationary employee. The Employer reserves the right to make temporary assignments pending the posting process and to make temporary reassignments due to staffing needs. Temporary position holders shall receive no additional credit in the application process.

Issue 2, Article 20, Wages and Compensation

Position of the Union: The disputed section of Article 20 centers on the proposed wage increase for Corrections Officers at the top step of the wage progression. The Union proposes the following:

Effective for the pay period including January 1, 2015

Corrections Officer Fourth (85+ months)	\$48,342.83
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Effective December 17, 2015

Corrections Officer Fourth (85+ months)	\$50,034.83
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Effective December 15, 2016

Corrections Officer Fourth (85+ months)	Reopener
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The Union points out that the Factfinder recommended creation of a Retention Incentive to reduce turnover among Corrections Officers. As noted above, the report of the Factfinder was accepted by the Union. In this proceeding the Union has dropped its desire for the Retention Incentive as proposed by the Factfinder. Hence, the proposed cost to the Employer has been reduced.

Without belaboring the point, the Union asserts its proposal is justified for several reasons. The County itself is mindful of the need to properly compensate Corrections Officers. It has recognized Officers are underpaid in its fiscal documents. Further, compared to nearby counties or other large counties in Ohio (Franklin and Cuyahoga)

the comparison data favors an award on behalf of the Union it asserts. It is also the case that Officers in Hamilton County take longer to reach the top step of the pay plan than their counterparts elsewhere and that the Hamilton County Jail has a poor officer to inmate staffing ratio. For instance, the inmate/officer ratio in Franklin County is 60:1. In Hamilton County it is 90:1. There is a sizeable discrepancy between the pay of the Court Services Officer in Hamilton County and that of a Corrections Officer. At the ten year of service mark the CO is earning approximately 20% less than the Court Services Officer. No good reason for this difference exists. In fact, a large proportion of members of this bargaining unit are at the top step. Their pay lags well behind their counterparts elsewhere in Ohio. As that is the case its proposal should be awarded the Union urges.

Position of the Employer: In its prehearing statement the Employer voiced concern with the concept of “Retention Pay” as proposed by the Factfinder. It developed that he was concerned with turnover among Corrections Officers. It was his view that to alleviate that phenomenon there should be a yearly special pay as follows:

Corrections Officer First	\$300.00
Corrections Officer Second	\$300.00
Corrections Officer Third	\$500.00
Corrections Officer Fourth	\$500.00

Those payments would be made semiannually for the duration of the Agreement that commenced in 2015 under the recommendation of the Factfinder. Rather than incorporate Retention Pay into the Corrections Officer Agreement, the Employer proposes the initiation of an OPOTA certification bonus. This pay is found in the Agreement covering the Corrections Supervisors. Having OPOTA certification pay in the Corrections Officer Agreement will prevent the never ending efforts of each bargaining unit to leapfrog the other, known as whipsawing. Further, there is retention pay at the

top step of the Corrections Officer pay scale. In the past round of negotiations the parties agreed upon a two percent (2.0%) supplement for officers on the top step. The Sheriff has recognized the issue of retention for top step officers. He has addressed it. The sort of pay sought by the Union should not be awarded the County asserts. It proposes the following wage scale for the life of the Agreement:²

Effective the pay period that begins January 1, 2015:

Corrections Officer Fourth (85+ months)	\$47,993.37
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Effective with the beginning of the first pay period for the contract year 2016 (3%):

Corrections Officer Fourth (85+ months)	\$49,433.17
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Effective with the beginning of the first pay period for contract year 2017, the annualized wage levels for all bargaining unit employees shall be as follows, and all current employees will be assigned to steps as follows (3%):

Corrections Officer Fourth (85+ months)	\$50,916.17
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Discussion: The Factfinder was concerned about turnover and morale among Correction Officers. He identified both as problems within the Sheriff's Office. He recommended a supplemental pay, the Retention Incentive. The Factfinder is an experienced neutral who has dealt with these parties before. His conclusions are due weight. That said, the concept of a Retention Incentive or the OPOTA supplement as proposed by the Employer is cumbersome. A straightforward increase in the Agreement is preferable to a situation in which the Agreement is laden with special pays. The following wage is awarded for Corrections Officers Fourth (85+ months):

² Examination of the materials submitted by the parties indicates they propose identical wages for Corrections Rec. through Corrections 3rd. The dispute centers upon Corrections 4th.

Beginning with the pay period that includes January 1, 2015	\$48,226.34 ³
Effective December 17, 2015	\$49,793.70
Effective December 15, 2016	\$51,412.00

Issue 3, Article 22, Insurance

Position of the Union: The Union proposes there be a single change to the health insurance provision of the Agreement. At Section 22.3 it would add language that would provide if any other group of County employees has a health insurance plan providing for lesser copayments and/or premium contributions than those paid by CO's such a program would be extended to members of this bargaining unit. The proposal of the Union would take effect January 1, 2017. The Union points out that within the Sheriff's Office Patrol Officers and Supervisors have contract language capping any potential increase in health insurance premiums to the percentage wage increase they received. Such language is absent from the Corrections Officers contract. Further, the cost of premium payments made by employees is different. Correction Officers pay more than Patrol Officers and Supervisors.

Position of the Employer: The County proposes no change in the current language of Article 22 dealing with insurance. It points out that in September, 2015 a Factfinder recommended elimination of the health insurance premium cap for patrol and supervisor bargaining units represented by the FOP-OLC. Further, all County employees but for Patrol Officers and Supervisors in the Sheriff's Office have the same health insurance plans. All bargaining units but for those two have the same premium payments as nonbargaining unit employees. In essence, there is a pattern for health insurance in

³ This pay is retroactive to the pay period that includes January 1, 2015

County service with only one exception. As that is the case, no exception for this bargaining unit should be made the County asserts. The Factfinder recommended the proposal of the Employer. Consequently, it should be awarded in this proceeding as well the Employer asserts.

Discussion: There is a pattern in County service with respect to health insurance. Neutrals are loath to disturb patterns. The position of the Employer is awarded.

Issue 4, Article 42 Duration

Position of the Union: The Union is proposing that the Agreement take effect on January 1, 2015 and remain in effect to December 13, 2017. This issue was considered by the Factfinder. He recommended the proposal before me. No reason exists to alter it according to the Union.

Corrections Officers are paid bi-weekly. Proposed wage increases will take effect after twenty-six (26) pay periods. Were the proposal of the Employer (below) awarded a January 1 successor date for a new agreement would be implemented. This would result in a 2018 wage increase being made in the midst of a pay period. Such a situation should not occur. Thus, the Union urges its position be awarded.

Position of the Employer: The County proposes that the Agreement remain in effect to December 31, 2017. The existing Agreement expired on December 31, 2014. No reason to alter the expiration date exists in the opinion of the County.

Discussion: The Factfinder recommended the proposal of the Union.⁴ It was his opinion that adoption of the Union proposal did not present an administrative burden to the County. Further, he noted that the proposal of the Union in this situation had been

⁴ Stanton, p. 33

adopted by the Supervisors bargaining unit. Consequently, the proposal of the Union is well supported. It is awarded.

All tentative agreements of the parties are included in this award by reference.

Signed and dated this 12th day of February, 2016 at Solon, OH.

Harry Graham, Conciliator