

IN THE MATTER
OF
CONCILIATION

Jul 23 10 11 AM '97

DECISION & AWARD

BETWEEN The Fraternal Order of Police, OLC, Inc. and the Erie County, OH Sheriff	CASE NO. : 96-MED-10-0869 & 70 (Deputies, Sergeants, & Lieutenants) CONCILIATOR: John S. Weisheit DATE OF HEARING: June 16, 1997 DATE OF REPORT: July 26, 1997
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REPRESENTATION

by

<u>Employer Representatives</u> Terry R. Griffith, Esq, Ass't Pros. Attorney Eric Humphrey, H. R. Dir. Wayne Majoy, Chief Dep. Terry Lyons, Capt. Captain Hovey, Sheriff's Dept.	<u>Union Representatives</u> Phil Hatch, FOP Representative Kay Cremeans Esq. FOP, Gen. Con. Robt. J. Werner, Sergeant Jeffrey S. Hippely, Deputy Sheriff John E. Longbrake, Deputy Sheriff Joseph P. McPeek, Lieutenant
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AUTHORITY

This matter was brought before Arbitrator John S. Weisheit, 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 before the Conciliator is 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 Erie County Sheriff, hereinafter called the "Sheriff" and/or "Employer", recognizes the Fraternal Order of Police, OLC, Inc., hereinafter called the "FOP" and/or "Union", for purposes of collective bargaining regarding the wages, hours, and other terms and conditions of employment affecting Deputies, Sergeants, and Lieutenants. This unit includes command and non-command officers. There are about 27 members in this bargaining unit.

The parties engaged in negotiations on a successor collective bargaining agreement to the one expiring December 31, 1996. Upon reaching impasse, the parties submitted the unresolved issues to Fact Finding. This process did not attain final agreement. The parties did modify or withdrew positions based on the Fact Finding Report and submitted the remaining unresolved issues to Conciliation in keeping with ORC 4117. The Conciliation Hearing was held in the Erie County Office Building, Sandusky, OH 10:00 a.m. on June 16, 1997. Prior to the formal Conciliation Hearing, the parties mutually agreed to attempt mediation on the unresolved issues. This exercise did not produce resolution of the remaining issues. At this stage, the Hearing was formally called to order and the parties presented their respective last offer on each unresolved issue. This Conciliation Award reflects the "final best offer", issue by issue presented by the respective parties on the 32 issues remaining at impasse.

In compliance with ORC 4117.14(C)(4)(e), and related rules and regulations of the State Employment Relations Board, the following criteria was taken into consideration in making this Award:

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.

**SUMMARY OF LAST BEST OFFER
ITEM BY ITEM**

The following listed issues remain unresolved. The summary reflects key provisions of each party's final position. Each subsection of an unresolved Article is understood to be a separate item. As such, each is treated separately in the final determination and finding.

The following position summaries of the respective party positions are that of the Conciliator and are intended to reflect basic content and not necessarily the totality of each issue. Most issues not yet resolved are a section or subsection of an article. The issues at impasse are identified in the Discussion and Determination section that follows.

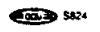
Employer Position	Issue	FOP Position
Status Quo	10. Sec. 2 (7)- Promotions/Seniority	Include provision requiring 5 yrs. exp. in dept. to attain rank of Sgt. and 4 yrs. as Sgt. for rank of Lt.
Status Quo	15 - Vacation	Status Quo
Add the day after Thanks'ing	16.1 Holidays "Days" Defined	Add the day after Thank'ing.
Status Quo	16.4 Holiday Pay	O T pay at 2.0 X if not worked, 2.5 X if worked.
Status Quo	17.1 Personal Days	+ 2 days
4.6 hrs accrual per 80 hr. pay per.	Sick Lv. 18.01 Accrual calc.	Status Quo
2 hr. Advance notice	Sick Lv. 18.06 Advance Notice of intent to use	Status Quo
Add prognosis, diagnoses, etc.	Sick Lv. 18.08 Physician Statement	Status Quo
Medical Exam lang. added	Sick Lv. 18.09 Physician Exam.	Status Quo
Include discipline. provision for abuse	Sick Lv. 18.12 Abuse & Discipline	Status Quo

Employer Position	Issue	FOP Position
Withdraw	19.01 Family Leave	Status Quo
Status Quo	Hrs of Work/O T 20.11 Shift Bidding	Annual Permanent Shifts- Road Officers & Bidding
Status Quo	21 - Bulletin Boards	Status Quo
Status Quo	24.5 Contracting Out	Insert "person" with the term agency to current lang.
Delete "beneficial to employee" for clarity.	24.6 Maintenance of Current Practice	Status Quo
Use of P T employees to cover absence.	24.7 Scheduling. Part Time Employees	Status Quo
Employer may schedule extradition assignments in excess of 325 air miles by non-BU Emp. o	24. [new] Extraditions	Barg. unit members handle extraditions in states contiguous to OH, & the Province of Ont.
Status Quo	24. ? [new] — Weather Closings	Double pay for work when agency &/or courthouse closed.
Status Quo	24. ? [new] Comp. Time	Comp. Time accrual 1 ½ to 40 hrs./yr. Rt. to convert at straight pay annually.
Replace Appendix C with lang. To include & cont. of benefits	27.1 App. C	Agree with Employer's last position.
Status Quo	27. ? [new] Prescription Drug	Add a \$5.00 deductible plan, premiums paid b the Employer.

Employer Position	Issue	FOP Position
Inc. rate 2.5% ea. yr. of Cont	28.1, App. B - Wages	Inc rate 15%, 5%, 5% increase in each respective yr.
Status Quo	28.1 Sgt. & Lt. Pay Deferential	Status Quo
Status Quo	28.2 Shift Prem.	Inc. to \$0.30 & \$0.45/ 2 nd & 3 rd shift respectively.
Status Quo	28.3 Longevity	6 yrs. - \$300 13 yrs. - 500 20 yrs. - 700
Status Quo	28.4 Call In Pay	3 hour minimum
Status Quo	28.5 Court Pay	3 hour minimum
Status Quo	29.2 Severance Pay	50% rate of all applicable accrued days
Status Quo	App. B Officer in Charge	Deputies paid at Sgt. rate of pay
Status Quo	[new] PERS Pick up	Withdraw
Status Quo	Article 30 - Uniform Maintenance	Dry Clean 3 uniforms/wk Plain clothes
3 year Contract	36.1(A) Duration of Agreement	3 year Contract

DISCUSSION and DETERMINATION

<p>General</p>	<p>The following findings are based on a comprehensive review of issues and respective positions of the parties. They are also controlled by statutory provisions and direction of the party as previously stated. A determination is restricted to the "last final offer" of the parties without modification by the Conciliator. Topics are considered as a total of the parts of the Contract and add weight in final determination on an issue by issue basis. When finding a proposal lacking language necessary to breach other terms and conditions of the Contract, a determination is made on a "best offer".</p> <p>The review and findings take into consideration the uniqueness of the bargaining unit, prior bargaining history, comparables, and particularly comparables to other Employer bargaining units represented by the FOP, and other considerations required under ORC 4117.</p> <p>The parties have <u>modified</u> a number of their final positions since fact finding. This Conciliator may agree or disagree, in part or total, to recommendations made by the Fact Finder on other issues not acted on by the parties. Fact finding, under ORC 4117, is conducted in a distinctly different arena than conciliation. While the Fact Finding Report is given consideration, it is not necessarily controlling in Conciliation, unless specifically so stated in this Award. The statutory process provides the parties the opportunity to continue traditional bargaining and/or use mediation after fact finding but prior to submitting unresolved to final and binding conciliation.</p> <p>The following reflects the application of controlling factors in making determination on an issue by issue basis.</p>
<p>10. Sec. 2 (7)- Promotions/Seniority</p> <p>✓</p>	<p>Current language requires first consideration of promotions to current employees. The Union proposal requires advancement only after 4 and 5 years of service to the Employer. No exception is provided in the Union proposal for unforeseen circumstances or conflict with continuing related provisions. Lack of such a provision is found controlling in finding for the Employer position.</p> <p>It is directed that the Employer's position be included in the Agreement.</p>



<p>15 - Vacation</p> <p>✓</p>	<p>The final position of each party is to retain current language on this issue.</p> <p>It is directed to include current language on this issue in the Agreement.</p>
<p>16.1 Holidays "Days" Defined</p> <p>✓</p>	<p>The Union proposes to add the day after Thanksgiving as a Holiday. This benefit has been extended to other bargaining units of the Sheriff. It is also determined that adding an additional Holiday is not excessive in total number offered similar bargaining units.</p> <p>It is directed to include the day after Thanksgiving as a Holiday as proposed by the FOP and the Employer in the Agreement..</p>
<p>16.4 Holiday Pay</p> <p>✓</p>	<p>Currently, unit employees receive 2.0 X their pay on Holidays not worked. The FOP proposal gives employees 2.5 X pay on Holidays actually worked. It is a reasonable proposal that a higher rate of premium pay should be made to those that work a Holiday than to employees that don't. Economic impact is taken into consideration to totality of other financial issues under consideration.</p> <p>It is directed to include the language as proposed by the FOP in the Agreement.</p>
<p>17.1 Personal Days</p> <p>✓</p>	<p>Current language provides for 3 personal days per year. The Union proposes increasing that number by another 2 days. Comparable date and past experience has been that personal leave, not tied to other approved leave, does not normally exceed 3 days.</p> <p>It is directed to include the current language, as proposed by the Employer on this issue in the Agreement.</p>
<p>Sick Lv. 18.01 Accrual calc.</p> <p>✓</p>	<p>The Employer proposed modification of current language regarding accrual based 4.6 hours per each bi-weekly pay period rather than a percent of actual hours worked. This formula has been agreed to in other Employer bargaining units represented by the FOP.</p> <p>It is directed to include the language as proposed by the Employer on this issue.</p>

<p>Sick Lv. 18.06 Adv. Notice: intent to use</p> <p>✓</p>	<p>Increasing normal advance notice from 1 to 2 hours does not impact "except in case of emergency" language from this provision. Similar recent change has occurred in other Contracts between the Employer and FOP. This is not found to be an unreasonable proposal.</p> <p>It is directed to include the language as proposed by the Employer on this issue.</p>
<p>Sick Lv. 18.08 Physician Statement</p> <p>✓</p>	<p>The Employer proposes additional medical information on the prognosis and diagnoses of an employee prior to return to work from sick leave when receiving medical care. Other contracts between the parties do not include such a provision. Further, such a provision could cause problems of enforcement since attending physicians are not a party to the Contract. It is determined current language is sufficient on this matter.</p> <p>It is directed that the FOP proposal of retaining current language on this issue be included in the Agreement.</p>
<p>Sick Lv. 18.09 Physician Exam.</p> <p>✓</p>	<p>Current language appears to provide adequate means to encourage healthy employees to report to work. No documentation was introduced that a change in language is the result of personnel problems involving members of this bargaining unit. Further, the pattern in other Employer/FOP Agreements more closely reflects current language.</p> <p>It is directed that the FOP proposal of retaining current language on this issue be included in the Agreement.</p>
<p>Sick Lv. 18.12 Abuse & Discipline</p> <p>✓</p>	<p>The parties have agreed to a discipline procedure (Article 5). Inclusion of a separate procedure can cause confusion. No other Contract between the parties is found to include language reflecting this provision.</p> <p>It is directed that the FOP proposal of retaining current language on this issue be included in the Agreement.</p>
<p>19.01 Family Leave</p> <p>✓</p>	<p>The Employer withdrew its proposal on this issue.</p> <p>It is directed that the FOP proposal to retain current language on this issue be included in the Agreement.</p>

<p>Hrs of Work/O T 20.11 Shift Bidding</p>	<p>The fact that the Union has proposed inclusion of this provision in the last 3 contracts negotiations clearly indicates a degree of dissatisfaction on this issue. Testimony and evidence show that shift assignments have not necessarily been uniform. "Fair" and "equal" are greatly influenced by the eyes of the beholder.</p> <p>While the Union argument and rationale is found persuasive in supporting a need to include shift bidding rights, the language proposed is found too restrictive. It does not include the flexible and less restrictive provisions cited in the Union testimony and documentation. The Conciliator is without authority to modify the language in the "last offer". Each FOP exhibit of other bargaining unit terms governing shift bidding include such provisions absent in this proposal.</p> <p>It is directed the Employer proposal to retain status quo on this issue be included in the Agreement.</p>
<p>21 - Bulletin Boards</p>	<p>Each party proposes the retention of current language in the Agreement. It was indicated that no formal tentative agreement was entered into on this matter and therefore is before the Conciliator to resolve.</p> <p>It is directed the Employer and FOP proposals to retain current language on this issue be included in the Agreement.</p>
<p>24.5 Contracting Out</p>	<p>As acknowledged by the Employer, the primary concern on this section is covered under the FOP proposed new section addressing Extraditions. A review of the total context of this issue and its relationship to the issue of Extradition and Part Time employees brings the Conciliator to the conclusion that the best offer presented is to retain this section in current form.</p> <p>It is directed the FOP proposal to retain current language on this issue be included in the Agreement.</p>



<p>24.6 Maintenance of Current Practice</p> <p>✓</p>	<p>The Employer proposes to delete the phrase "...beneficial to employees" from this section. The FOP does not indicate a strong opposition to this proposal. This is supported by the fact that a similar change was agreed to by the parties in the correction officers Contract. The Conciliator finds the proposed modification will make the section less likely to future challenge on the basis of ambiguity.</p> <p>It is directed the Employer proposal to delete the phrase "...beneficial to employees ..." from this section be included in the Agreement.</p>
<p>24.7 Scheduling. Part Time Employees</p> <p>✓</p>	<p>The Employer proposal is broad in its stated terms. It could result in erosion of other Contract terms through future interpretation and/or application. The limited scope the Employer raised on this matter is determined better addressed in other issues at impasse.</p> <p>It is directed the FOP proposal to retain current language on this issue be included in the Agreement.</p>
<p>24. [new] Extraditions</p> <p>✓</p>	<p>Neither position regarding the area of primary extradition transport by unit members is found "clean". However, the pendulum swings more to the FOP proposal. It defines the geographical area more concisely by including Ohio and contiguous states for use of unit employees, even though Ontario is referred to as a "State" instead of a "Province".</p> <p>It is directed the FOP proposal on this issue be included in the Agreement.</p>
<p>24. ? [new] Weather Closings</p> <p>✓</p>	<p>It is an established practice that unit members are paid a premium amount for days worked. It is further unrebutted that at least certain other employees in other departments receive such pay under like conditions. The issue raised is not the fact that the nature of work requires full time coverage, but rather is there good and persuasive reason to include the premium pay provision in the Agreement. The Conciliator is persuaded that such inclusion in the Agreement is beneficial to each party and can add stability to future operations. It is also found that, since this incorporates an existing practice, there is found no additional cost incurred by the Employer.</p> <p>It is directed the FOP proposal on this issue be included in the Agreement.</p>

<p>24.? [new] Comp. Time</p> <p>✓</p>	<p>The Conciliator is not persuaded by the Union to modify this provision. The Employer argument is found more convincing. In reviewing the Agreement, there are contract terms that need to be addressed if such a term were included to avoid conflict. It is the Conciliator's opinion that inclusion of such a provision can best be achieved with greater direct talks between the parties.</p> <p>It is directed to accept the Employer proposal on this issue and to not include this provision in the Agreement.</p>
<p>Insurance 27.1 App. C</p> <p>✓</p>	<p>The FOP and Employer proposals are found to be the same regarding replacing Appendix C by a statement of practice regarding the benefit level of insurance coverage.</p> <p>It is directed the Employer and FOP proposals on this issue be included in the Agreement.</p>
<p>27.? [new] Prescription Drug</p> <p>✓</p>	<p>The Union proposal is found philosophically different from current negotiated provisions. Section 27.4, commonly called a "me too" provision" gives automatic benefit increase attained by any other employee unit on insurance benefits. It reduces the priority and bargaining intensity on the bargaining unit having attained such a provision. It is a generally accepted bargaining practice to replace additional defined benefit(s) as a replacement for the "me too" provision. It has been this Conciliator's experience that inclusion of specific insurance benefits in addition with a "me too" clause is the exception to the rule. It is also noted that other bargaining units of the FOP include "me too" language on this issue sought but did not attain this benefit. The Employer position is more appropriate.</p> <p>It is directed that the Employer proposal to retain status quo on this issue be included in the Agreement.</p>

<p>28.1, App. B - Wages</p> <p>✓</p>	<p>The Union argument is heavily weighted on the relative rate of pay for members of this bargaining unit with that of Dispatchers. Supporting data from the Employer and FOP demonstrate that dispatchers received a significant increase in wages in that unit's previous contract. While the Conciliator for the last Dispatcher's contract ruled in favor of the Union proposal calling for significant wage increase, he did not direct increase in other major economic issues.</p> <p>The determination on this issue includes consideration of all economic issues at impasse. The FOP argument regarding relative rate between dispatchers and sworn officers in this unit, while persuasive, is not controlling. While the annual increase proposed by the Employer is considered low, it is found the best of the two choices. The FOP proposal is determined too aggressive in an attempt to attain parity with Dispatchers and does not give adequate weight to other comparables.</p> <p>SERB "Benchmark" Reports dated September & October, 1996, were submitted by each party to the Conciliator. A review of employee classifications in this unit are found competitive with other employees in similar classifications. What is not found is a comparison of timely and like economic benefits that impact gross dollar take home pay. At best, such comparisons provided give a general basis for consideration. Further, the bargaining history including gains and concessions made in the resulting noted disparity between employees in this unit and the dispatcher unit is not addressed. Thus, determination is made on the data and information considered relevant and controlling.</p> <p>It is directed that the Employer proposal be included in the Agreement. This includes making the 1/1/97 wage retroactive and such retroactive pay granted under this determination is due and payable in the pay period it is issued.</p>
<p>28.1 Sgt. & Lt. Pay Deferential</p> <p>✓</p>	<p>Each party proposes retaining the current 10% differential between deputy - sergeant and sergeant - lieutenant classifications respectively.</p> <p>It is directed that the Employer and FOP proposal to retain current language on this matter be included in the Agreement..</p>

<p>28.1 App. B Officer in Charge (OIC)</p>	<p>The current language provides for pay differential for deputies assigned supervisor responsibilities. However, the FOP argues persuasively that such current provision is flawed. Again, comparables are one factor for consideration in reaching a determination on an issue at impasse, but not necessarily controlling. Appropriateness and sense of equity are also appropriate for consideration. In this situation the later is found relevant but controlling. The Employer has total right to determine when to use Deputies as OIC's.</p> <p>This determination also takes into consideration the totality of the economic concerns before the Conciliator.</p>
<p>✓</p>	<p>It is directed the FOP proposal on this issue be included in the Agreement.</p>
<p>28.2 Shift Prem.</p>	<p>The Union's proposal on this issue has been modified to include the Fact Finder's recommendation. The FOP proposes an increase to \$0.30 per hour for the afternoon shift and \$0.45 per hour for the evening shift. These rates are not found excessive when compared to other similar units who receive such differential pay. This finding takes into consideration the concern raised regarding shift bidding and totality of an economic proposal. These amounts are the same set forth in Agreements between other bargaining units represented by the FOP with the Employer.</p>
<p>✓</p>	<p>It is directed to include the FOP proposal on this issue be included in the Agreement.</p>
<p>28.03 Longevity</p>	<p>The FOP proposal, reflects the changes granted other Employer/FOP units. Its determination results from similar consideration as stated in the previous issue.</p>
<p>✓</p>	<p>It is directed to include the FOP proposal on this issue be included in the Agreement.</p>
<p>28.04 Call in Pay</p>	<p>The Conciliator concurs with the Fact Finder's rationale on this issue. Her recommendation has been adopted and proposed by the FOP.</p>
<p>✓</p>	<p>It is directed to include the FOP proposal on this issue be included in the Agreement.</p>

<p>28.05 Court Time Compensation</p> <p>✓</p>	<p>The Conciliator concurs with the Fact Finder's rationale on this issue. Her recommendation has been adopted and proposed by the FOP.</p> <p>It is directed to include the FOP proposal on this issue be included in the Agreement.</p>
<p>29.2 Severance Pay</p> <p>✓</p>	<p>This issue is addressed as a pattern provision with other Employer units. However, such a provision can be adjusted for each bargaining unit as a separate entity under unique controlling circumstances. This is the basis for determination. The Union is persuasive in arguing parity of accrued and unused sick leave in this issue. Cost factors are considered as a part of the total economic matters.</p> <p>It is directed to include the FOP proposal on this issue be included in the Agreement.</p>
<p>36.1(A) Duration</p> <p>✓</p>	<p>Each party proposes the Agreement be for a term of three (3) years, starting January 1, 1997 through December 31, 1999.</p> <p>It is directed that the Employer and FOP position on this issue be included in the Agreement. Retroactive pay issued, as a result of this determination, is due and payable in the pay period received.</p>
<p>[new] PERS Pick up</p> <p>✓</p>	<p>The FOP withdrew its proposal.</p> <p>It is directed to accept the Employer proposal on this issue and to not include this provision in the Agreement.</p>

TOTALITY OF AGREEMENT

This will affirm that the foregoing report, consisting of -15- pages, inclusive of this page, contains the findings and determination of the Conciliator.

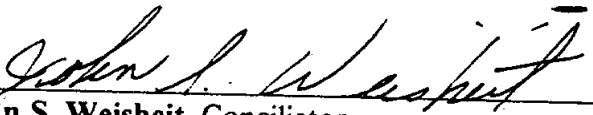
All issues at impasse presented to the Concilator and not specifically addressed were given consideration but are not recommended for inclusion in the Agreement.

If there is found conflict in the Report between the Concilator's Discussion and his Determinations, that language in the Determination shall prevail.

All matters of tentative agreement prior to and at the time of the Conciliation Hearing are to be included in the Agreement.

To the best of my knowledge, said Report and its included recommendations complies with applicable provisions of ORC 4117 and related Rules and Regulations adopted by the State Employment Relations Board.

I therefore affix my signature at the City of Galion, in the County of Crawford, in the State of Ohio, this July 26, 1997.



John S. Weisheit, Conciliator

TOTALITY OF AGREEMENT

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John S. Weisheit, Conciliator

JUL 29 10 11 AM '97

CERTIFICATE OF SERVICE

This will affirm that the Fact finding Report in the Matter of Fact finding between

ERIE COUNTY SHERIFF, OH

v

FOP, OLC, Inc.

Case No.

96-MED-10-0869 & 70

(Deputies, Sergeants, Lieutenants)

was served to the below named parties at the stated addresses by 1st Class U.S. Postal Service Mail, on July 26, 1997.

Terry Griffith, Esq. Erie County Sheriff 247 Columbus Ave. Sandusky, OH 44870	Phil Hatch, Representative FOP, OLC, Inc. 607 Lee St. Marion, OH 43302	G. Thomas Worley Admin., Bureau of Med. SERB 65 East State Street Columbus, OH 43215-4213
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I affirm, to the best of my knowledge that the foregoing is true and accurate.

John S. Weisheit July 26, 1997
John S. Weisheit, Fact Finder Date