

HAND DELIVERED

STATE EMPLOYMENT
RELATIONS BOARD

IN THE MATTER
OF
CONCILIATION

JUN 30 1 11 PM '97

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DECISION & AWARD

BETWEEN	
The Fraternal Order of Police, OLC, Inc.	CASE NO. : 96-MED-10-0872 (Dispatchers)
and the	CONCILIATOR: JOHN S. WEISHEIT
Erie County, OH Sheriff	DATE OF HEARING: June 17, 1997 DATE OF REPORT: June 26, 1997

REPRESENTATION
by

<u>Employer Representatives</u>	<u>Union Representatives</u>
Terry R. Griffith, Esq, Ass't Pros. Attorney Eric Humphrey, H. R. Dir. Wayne Majoy, Chief Dep. Terry Lyons, Capt.	Phil Hatch, FOP Representative Kay Cremeans Esq. FOP, Gen. Con. Beth Beatty, Communications Officer David Wagner, Communications Officer

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 effecting a number of the employees in the Sheriff's Department as Dispatchers.

A Conciliation Hearing was scheduled for 10:00 a.m. on June 17, 1997. Prior to the formal Conciliation Hearing, the parties mutually agreed to attempt mediation on the unresolved issues. This exercise resulted in the withdrawal of a number of issues and modification of others. This Conciliation Award reflects the "final best" position, issue by issue introduced by the parties following the mediation session.

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 the public service or in private employment.

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

The following listed issues remain unresolved. The summary reflects noted key provisions of each party's final position. Said positions do not necessarily reflect the full context of the respective position. Full text of the prevailing provision of the parties is found in the Conciliator's Award and Determination.

Employer Position	Issue	FOP Position
Status Quo	Article 6 Sec. 6.03 Grievance Procedure	Eliminate any appeal step that is not to a fiduciary.
Status Quo	Article 16 Sec. 1 Holidays	Add the day after Thanksgiving.
Revise sick lv. accrual to 4.6 hrs. per each bi-weekly pay period.	Article 17 Sec. 17.01 Sick Lv.	Revise sick lv. accrual to 4.6 hrs. per each bi-weekly pay period.
Add a required physician's statement when sk lv time absence is used for OT calculation.	Article 20 Sec. 20.01 Hours of Work/Overtime	Status Quo
Status Quo	Article 26 Sec. 26.01 Wages: Rate of Pay	2.5% annual inc. each yr. of the Agreement. Eff. 1/1/97
Status Quo	Article 26. Sec. 26.02 Shift Differential	Propose a \$ 0.20 pay on 2 nd shift and \$ 0.35 pay on 3 rd shift.
Status Quo	Article 26 Sec. 26.03 Longevity	Increase to: \$200 at 6 yrs \$350 at 13 yrs \$550 at 20 yrs
Status Quo (2 hrs min)	Article 26 Sec. 26.04 Call-in	Status Quo (2 hrs min)
3 yr agreement	Article 37 Sec. 1.A Duration of Agreement	3 yr agreement

DISCUSSION

General

Full consideration is given the unresolved issues in keeping with ORC 4117 and applicable SERB rules and regulations. All unresolved matters before the Conciliator are considered in relationship to the total Agreement, though recommendation is made on a "last best offer" item by item basis, as required under ORC 4117.

It is also noted that the positions of the parties are significantly altered from those presented at Fact Finding. This includes withdrawal and concessions prior to the convening of the Conciliation Hearing.

ISSUE	CONCILIATOR'S DISCUSSION, ITEM BY ITEM
#1 Sec. 6.03 Grievance Procedure	<p>Under the current Grievance Procedure terms, the initial step of a Grievance filing by a bargaining unit member is to the immediate supervisor. In some cases, particularly at the initial step, the supervisor is also a member of another bargaining unit represented by the Union. The expressed intent of the Union proposal is to initiate the procedure at the first level management.</p> <p>The Employer argues that the immediate supervisor should be aware of grievances filed and have the opportunity to resolve the matter, if possible, at the earliest level.</p> <p>In operation, within a department of this size, the immediate officer in charge will be made aware of any grievance filed. It is also viewed that the Union proposed change will define the role and authority of management in this matter more clearly.</p>
Award	<p>It is determined that the Union proposal be accepted on this issue.</p>
#2 Sec. 16.1 Holidays	<p>It is noted that the bargaining unit currently has 10 paid holidays. 11 or 12 days is not uncommon in comparable units. Further, the most recent settlement for Correction Officers by the Employer included the addition of the Friday after Thanksgiving</p>
Award	<p>It is determined that the Union proposal be accepted on this issue.</p>

#3 Sec. 17.01 Sick Lv. The Employer proposes to change the percentage factor applied in sick leave accrual. It cites that the current computation is on an hourly basis and is overly burdensome. The Union, while maintaining a position of status quo, concedes the Employer proposal apparently will not adversely affect accrual rate for unit members.

It is noted that the principal that the 4.6 factor is in place in the Contract between the Employer and FOP covering the Correction Officers. It is also thought that applying a larger factor for computation could benefit both parties by reducing the chance of error in the computation process.

Award It is determined that the Employer proposal be accepted on this issue.

#4 Sec. 20.01 Hours of Work/Overtime The Employer proposes adding, as the last sentence: "Sick Leave shall not be counted towards hours worked for purposes of overtime payment unless the employee provides a signed physician statement for the period of sick leave." The Employer contends this language is pattern language found in other agency labor agreements and is appropriate to control payroll cost for overtime.

Award The Union, while proposing not including this sentence, does not consider it a threat to this bargaining unit at this time.

It is determined that the Employer proposal be accepted on this issue.

#5 Sec. 26.01 Wages: Rate of Pay The Employer proposal of Status Quo is based on the fact that the Unit is the highest paid comparable unit in Ohio and received a substantial increase during the life of the expiring contract. It argues any increase is out of line at this time. The Union's final position on wages to an increase of 2.5% at each step, each year the Agreement is in effect. It is the position of each party that wage increase be effective January 1, 1997, January 1, 1998, and January 1, 1999. It is recognized that, while the employees may have received a significant increase 3 years ago, the Union proposal for the next 3 years is below average for comparable units at this time. As part of a total economic package, the FOP's proposal of a 2.5% increase each year of the Contract is determined more appropriate.

Award It is determined that the proposal of the Employer and Union be accepted on this issue.

#6 Sec. 26.02
Shift
Differential

The Union proposes that shift differential pay be increased to \$ 0.20/hr. for 2nd shift and \$ 0.35/hr. for 3rd shift. It contends this is in line with rates paid under the correction officer's Agreement and parity is appropriate in this situation.

The Employer proposes status quo on this issue. It argues that this unit is already receiving the highest comparable pay in the State and any increase cost issue escalates overall operation costs of the Employer.

Past bargaining agreements indicate that shift differential has been included. The rate proposed is found in keeping with rates paid by other similar employers and reflects the rates included in the most recent Employer/Union correction officers' Agreement, as part of a total financial package.

Award

It is determined that the Union proposal be accepted on this issue.

#7 Sec. 26.03
Longevity

The Union position is a significant reduction from that proposed at the time of Fact Finding. It includes a modest increase of the existing scale. It is understandable that the Employer proposes a status quo on this issue. The bargaining unit base wage rate is compares high to others in similar job classification. Yet, in relationship to the total economic package and internal comparison, the Union proposal is not found excessive in this case.

Award

It is determined that the Union proposal be accepted on this issue.

8 26 Sec.
26.04
Call-in

The Union proposes a minimum Call-in pay period of 2 hours. Current agreement language provides for actual hours worked. The Employer maintains status quo since it is another cost item and employees in this unit rarely are called in but rather substitution of shift work is used to cover in case of emergency.

The Union is persuasive regarding the fact that, if an employee is called-in there is a disruption of time off that can appropriately be compensated with a minimum pay provision. 2 hours is not considered excessive. Further, if, as the Employer argues that it is more common to use staff substitution than call-in, it seems logical that this provision will be rarely, if ever applicable.

Award

It is determined that the Union proposal be accepted on this issue.

#9 Sec. 1.A The parties each propose a three (3) year duration of the Agreement, Duration of Agreement effective January 1, 1997 through December 31, 1999.

Issue Finding It is determined that the Employer & Union proposal be accepted on this issue.

DECISION AND AWARD

- A. All Articles, Sections, and Sub Sections of the expiring agreement not addressed or otherwise modified by tentative agreement or directive of the Conciliator, is to be a part of this Agreement.
- B. Any proposed added term or modification to the Agreement not mutually agreed by the parties, or specifically directed to be included by the Conciliator, is not to be included in the Agreement.
- C. The following terms are directed to be included in the Agreement by the Conciliator:
- #1. Article 6 - Grievance Procedure
6.03
Step 1. Oral Step The action which caused the alleged grievance must be identified and reported to the Captain, or his designee, and the Union within ten (10) days of the event that gave rise to the grievance. The grievant, the Captain, or his designee, and a Union Representative, if the grievant so desires, shall discuss the issue and the Captain, or his designee, shall have seven (7) days to make any investigation necessary and respond to the grievant.
- Step 2. Written Step If the grievance is not settled to the satisfaction of the grievant, the grievance must be reduced to writing and, within seven (7) days of the grievance, must be submitted to the Captain, or his designee, who shall answer the grievance, in writing, within five (5) days of the filing of the grievance.
- #2. Article 16 - Holidays
Section 1. Add "The day after Thanksgiving".
- #3 Article 17 - Sick Leave
17.01 Crediting of Sick Leave. Sick leave credit shall be earned at the rate of 4.6 hours for each bi-weekly pay period in active pay status, including paid vacation, and sick leave, but not during a leave of absence or layoff. Unused sick leave shall accumulate without limit.

- #4 Article 20 - Hours of Work/Overtime
Section 1. The last sentence shall read: "Sick leave shall not be counted towards hours worked for purposes of overtime payment unless the employee provides a signed physician's statement for the period of sick leave."
- #5 Article 26 - Wages
Section 1. (Re: Appendix B)
Each step of the wage schedule of Appendix B shall be increased 2.5%, January 1, 1997, of the rate in effect December 31, 1997. The rate shall be increased by 2.5%, effective January 1, 1998, and 2.5% effective January 1999.
- #6 Article 26 - Wages

Section 2. Shift Premium. Bargaining unit members working the afternoon shift will be paid a shift premium of twenty cents (\$0.20) per hour. Bargaining unit members working the midnight shift will be paid a shift premium of thirty-five cents (\$ 0.35) per hour.
- #7 Article 26 - Wages
Section 3. Longevity Pay. Each employee shall be paid longevity compensation by separate check, which also includes holiday pay, in accordance with Article 16, issued annually on the first pay period in December, based on the following schedule:
- | <u>Service</u> | Annually |
|----------------|-----------|
| 6 Years | \$ 200.00 |
| 13 Years | \$ 350.00 |
| 20 Years | \$ 550.00 |
- #8 Article 26 - Wages
Section 4. Call-in. "Call In Pay" is for work performed by an Employee of the bargaining unit for the Employer outside the employee's regularly scheduled work period. Compensation for work performed on such call in status shall be compensated at no less than two (2) hours. If the payment of such time results in the employee working more than 80 hours in a fourteen (14) day period, said hours exceeding 80 will be paid at the rate of time and one-half.
- #9 Article 37 - Duration of Agreement
Section 1.
A. This Agreement shall be effective as of January 1, 1997, and shall remain in full force and effect until December 31, 1999, unless otherwise terminated as provided herein.

Retroactive Pay

Any retroactive pay due and owed employees as a result of the Conciliation Award in this case, is due and payable in the pay period it is actually paid.

TOTALITY OF AGREEMENT

This will affirm the foregoing report, consisting of -9- pages, inclusive of this page, contain the findings and determination of the Conciliator.

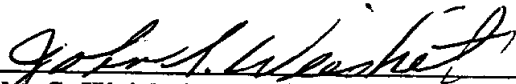
All issues at impasse presented to the Concilator and not specifically addressed were given consideration but are not recommended for inclusion in the Agreement.

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 June 26, 1997.



John S. Weisheit, Conciliator