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STATE EMPLOYMENT  
RELATIONS BOARD

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

May 11 9 20 AM '98

**IN THE MATTER OF CONCILIATION  
PROCEEDINGS BETWEEN:**

**CONCILIATION AWARD**

**FRATERNAL ORDER OF POLICE,  
OHIO LABOR COUNCIL, INC.  
Employee Organization,  
and**

**CASE NUMBERS:  
97-MED-09-0886  
97-MED-09-0887**

**CHAMPAIGN COUNTY SHERIFF,  
Employer.**

DATE OF HEARING: April 21, 1998

PLACE OF HEARING: Urbana, Ohio

CONCILIATOR: Charles W. Kohler

**APPEARANCES:**

**FOR THE EMPLOYEE ORGANIZATION:**

**FOR THE EMPLOYER:**

Phil Hatch, FOP Staff Representative  
Brent Emmons, Negotiator, Road Patrol  
Eric Harnish, Negotiator, Dispatch  
Kelly Chrisman, Negotiator, Correction Officers  
Matt Melvin, Negotiator, Corrections Officers  
Mark Randall, Negotiator, Command Unit  
Timothy Champ, Negotiator, Sergeants & Lieutenants

Marc Fishel, Attorney  
David L. Deskins, Sheriff

## **PROCEDURAL BACKGROUND**

On February 24, 1998, 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 April 21, 1998, at the Champaign County Courthouse in Urbana, Ohio.

This matter involves the negotiation of three successor collective bargaining agreements between the Champaign County Sheriff ("Employer") and the Fraternal Order of Police, Ohio Labor Council, Inc. ("FOP"). The parties have engaged in multi-unit bargaining for the following bargaining units: road deputies, corrections officers, dispatchers, sergeants, and lieutenants. The prior agreements became effective on January 1, 1995, and expired on December 31, 1997.

The parties engaged in five formal negotiation sessions, beginning on October 16, 1997. A fact-finding hearing was held on January 23, 1998. On January 29, 1998, the fact finder, Marcus Hart Sandver, issued his report and recommendations. The fact finder's report was accepted by the Employer, but was rejected by the FOP.

At the April 21, 1998, conciliation hearing, the following matters, which were at issue in fact-finding, were resolved: education and training, overtime call-in procedure, sick leave conversion, and health insurance. The matters remaining at impasse and presented to the Conciliator are:

1. Hours of Work and Overtime
2. Holidays
3. Wages

Section 4117.14 of the Ohio Revised Code provides that the Conciliator must resolve the dispute by selecting, on an issue-by-issue basis, from each of the party's final settlement offers, taking into consideration the following:

- (a) Past collectively bargained agreements, if any, between the parties;

**(b) Comparison of the issues submitted to final offer settlement 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;**

**(c) 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;**

**(d) The lawful authority of the public employer;**

**(e) The stipulations of the parties;**

**(f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.**

**The Conciliator has considered all reliable evidence presented to him with respect to the issues at impasse. The Conciliator, after carefully reviewing all of the relevant evidence, together with the arguments of the parties, hereby submits his findings of fact, opinion, and award with respect to each of the outstanding issues submitted for resolution.**

## **ISSUES**

### **HOURS OF WORK AND OVERTIME**

#### **Position of the FOP**

The FOP proposes to add language which would require the payment of overtime whenever an employee works more than 8 hours per day. Currently, employees are paid overtime only if they work more than 80 hours during a 14 day pay period. The FOP also proposes a change from the current practice of counting only hours actually worked in determining eligibility for overtime. The FOP proposal is to include all hours in pay status (including compensatory time, sick time, and vacation time) in calculating eligibility for overtime.

#### **Position of the Employer**

The Employer proposes the retention of the current language, except that an employee would be eligible for overtime for any work outside of the employee's normally scheduled hours, regardless of whether the employee works more than 80 hours during the pay period. The Employer asserts that its proposal will give bargaining unit employees a more favorable overtime provision than employees in many comparable jurisdictions, who do not receive overtime until they have worked 160 to 171 hours in a 28 day period.

#### **Discussion**

Most employees in the bargaining units work a continuous cycle of 4 consecutive days of work, followed by 2 days off. These employees are scheduled for 8 hours of work per day, which results in 1928 hours of scheduled work per year. During some pay periods, employees are only scheduled for 72 hours of work. Employees are not paid overtime until after they have worked 80 hours in a pay period. Thus, if an employee is given an assignment to work on a day off during a pay period in which the employee has been scheduled to work 72 hours, the work performed on the day off will not be paid at the overtime rate.

One of the reasons for the payment of overtime wages is to provide some additional compensation to an employee whose personal life is disrupted by working unscheduled hours. Under the present procedure, an employee could work unscheduled hours without being paid at the overtime rate. The fact finder recommended that this possibility be eliminated by requiring that the Employer pay overtime whenever an employee works outside of his or her normally scheduled work hours. The Employer has offered the recommendation of the fact finder as its proposal for this conciliation proceeding.

The FOP has proposed that employees be paid overtime for any work over 8 hours per day, and has also proposed that hours paid, but not actually worked, such as sick leave, be counted toward the 80 hours needed for overtime pay. It appears that the current practice of counting only hours actually worked in computing eligibility for overtime has been in place for a long time. It is the product of negotiations of previous collective bargaining agreements. The evidence offered by the FOP does not show that the prevailing practice in comparable jurisdictions is to compute overtime by counting hours paid but not actually worked, in computing overtime eligibility.

The change proposed by the Employer and recommended by the fact finder will benefit the employees. It addresses some of the concerns expressed by the FOP by requiring overtime compensation whenever an employee is required to work outside of scheduled work hours. It eliminates the situation whereby an employee can work on a day off without receiving overtime. For the reasons stated, this Conciliator has determined that the Employer's final offer regarding overtime should be adopted and included in the parties' collective bargaining agreement.

## Award

The Conciliator directs the adoption of the following for the first section of the Hours of Work and Overtime Article:

Section 23.1 [Section 22.1 in the Sergeant's agreement]  
Overtime. For all other bargaining unit employees, the work period shall be eighty (80) hours in a fourteen (14) days period. For purposes of computing overtime, the regular work period shall be those hours scheduled to be worked by an employee during a 14 day period. Hours actually worked in excess of the normally scheduled work hours during the 14 day period shall be compensated at the rate of one and one-half (1½) times the regular hours of pay. The daily meal period for employees shall not exceed thirty (30) minutes.

## **HOLIDAYS**

### Position of the FOP

The FOP proposes to add one holiday, Easter, to the 10 holidays included in the current agreement. The FOP asserts that there is a need for an additional holiday during the long period between President's Day and Memorial Day. The FOP points out that employees of the City of Urbana receive Easter as the eleventh holiday.

### Position of the Employer

The Employer proposes that the number of holidays remain at 10, as recommended by the fact finder. The Employer argues that all other Champaign County employees receive 10 paid holidays per year and the employees in these units should not be treated differently. The Employer notes that employees in the bargaining units receive 12 hours of pay so long as they work at least 4 hours on a holiday. This holiday pay is paid in addition to the regular pay that employees receive for working on a holiday. The Employer maintains that this holiday compensation arrangement is superior to comparable counties.

## Discussion

In the first pay period following Thanksgiving, employees receive a lump sum payment for all holidays occurring during the previous 12 months. As most operations of the sheriff's department must be staffed at all times, the addition of a holiday would not result in an additional day off for most employees. However, the addition of a holiday would result in additional compensation and would increase costs to the Employer. The evidence reflects that employees in the bargaining units currently receive a more generous holiday payment than those in comparable counties.

The addition of a holiday would result in the employees in the bargaining units having more holidays than other employees of Champaign County. The evidence does not show that the prevailing practice in comparable counties is to provide 11 holidays to employees. The fact that employees in the City of Urbana are provided with the Easter holiday is not a sufficient reason to require Champaign County to provide the same benefit to its employees. City and county governments in Ohio are funded differently and each is governed by different state statutes. The fact finder recommended that the number of holidays remain at 10. I see no reason not to concur with the decision of the fact finder.

## Award

With respect to holidays, the Conciliator directs the adoption of the Employer's proposal. The current holiday provision shall be retained in the new contract.

## **WAGES**

### Position of the FOP

The FOP has proposed that bargaining unit employees receive a wage increase of 5 percent, effective January 1, 1998, and additional wage increases of 4 percent on January 1, 1999, and January 1, 2000. The FOP has presented evidence showing that Champaign County is currently spending in excess of two million dollars for new county offices and that the Ohio Legislature authorized a \$6,000 wage increase for county commissioners. The FOP also presented evidence that many employees of the City of

Urbana will receive 3.5 percent wage increases, with Urbana police dispatchers receiving a 16 percent increase for one year followed by 3.5 percent in the next 2 years. Further, the FOP presented evidence showing that the average wage and benefit increase in the U.S. was 3.3 percent for 1997. One deputy sheriff testified that his current wage level is within the food stamp eligibility requirements for a family with four dependants.

### Position of the Employer

The Employer proposes a 3 percent wage increase, effective January 1, 1998, and increases of 3 per cent for 1999 and 2000. The Employer points out that these wage increases exceed the 1997 inflation rate of 1.7 percent. Employees received a wage increase of 4 percent in 1997, so there is no need for a catch-up for bargaining unit employees. The Employer notes that other Champaign County employees have received only a 2 percent increase for 1998.

The Employer contends that the county has a limited ability to pay for a wage increase, as is evidenced by the fact that general fund revenues increased by 10.3 percent between 1994 and 1998 while appropriations increased by 52.3 percent during the same period. The Employer also notes that the county anticipates many other expenditures during the next 3 years, including new county offices, courthouse renovations, computer updates for the year 2000, and a new jail. The jail alone will cost seven million dollars.

The Employer maintains that wage levels are similar to those paid in comparable jurisdictions. The average salary paid to deputies by Darke, Madison, Marion, Miami, Shelby, Union and Wyandot counties is \$23,935 for entry level and \$31,081 at the top level. For Champaign County deputies, the entry level annual wage with the 3 percent increase proposed by the Employer would be \$24,126 and the top level would be \$32,284. . Sergeants and correction officers in Champaign County are also paid wages which are somewhat above the average of comparable jurisdictions. The Employer points out that deputies in the other counties work 2080 hours per year, while Champaign County deputies work 1928 hours.



## Discussion

The 3 percent per year wage increases proposed by the Employer are the same as those recommended by the fact finder. The Employer's proposal represents a change from its position in the fact-finding hearing, when it proposed increases of 2 percent per year. The FOP proposed wage increases of 6 percent per year at fact-finding, and is now proposing an increase of 5 percent in the first year and 4 percent in both the second and third years of the contract. After considering all of the evidence and arguments of the parties, the Conciliator finds that the proposal of the Employer is the more reasonable.

The wage increase of 5 percent requested by the FOP for 1998 would be far in excess of the 1997 inflation rate of 1.7 percent. While the 1998 inflation rate is yet to be determined, there is not presently any indication that the rate will significantly exceed the 2.5 percent average annual increase for the last three years. A 3 percent increase per year should increase wages at a rate greater than the inflation rate.

The evidence does not show that bargaining unit employees, as a whole, are underpaid when compared with employees working in similar jurisdictions. Thus, there is not a need for a large increase in wages to put the bargaining unit employees on a par with comparable jurisdictions. While some individual employees might be able to justify a larger wage increase based on their particular circumstances, the Conciliator has no authority to change individual wage rates. The data presented to the Conciliator shows that a wage increase of 3 percent will keep the wage rate of most bargaining unit employees above the average wage in comparable counties.

The parties have mutually agreed that pay raises may be retroactive to January 1, 1998, notwithstanding the provisions of Section 4117.14(G)(11) of the Ohio Revised Code.

**Award**

The Conciliator directs the adoption of the Employer's proposal on wages, as follows:

**Section 25.1 [24.1 in the Sergeant's agreement] Effective January 1, 1998, the salaries for bargaining unit members shall be increased by three percent (3%). Effective January 1, 1999, the salaries for all bargaining unit members shall be increased by three percent (3%). Effective January 1, 2000, the salaries for all bargaining unit members shall be increased by three percent (3%).**

**CONCLUSION**

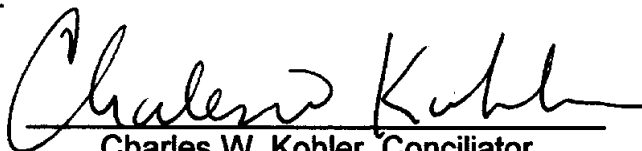
In conclusion, the Conciliator submits his decision with respect to the outstanding issues and orders that the awards be incorporated into the collective bargaining agreements of the parties.



Charles W. Kohler, Conciliator

**CERTIFICATE OF SERVICE**

I do hereby certify that on this 8<sup>th</sup> day of May 1998, a copy of the foregoing Conciliation Award was served upon Phil Hatch, Staff Representative, Fraternal Order of Police, Ohio Labor Council, Inc., 222 East Town Street, Columbus, Ohio 43215-4611; Marc A. Fishel, Downes & Hurst, 300 South Second, Second Floor, Columbus, Ohio 43215-5095; and G. Thomas Worley, 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