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IN THE MATTER

OF

CONCILIATION

BETWEEN

THE FRATERNAL ORDER OF POLICE/  
OHIO LABOR COUNCIL, INC.

AND

THE ADAMS COUNTY, OHIO SHERIFF

Hearing: February 26, 1998  
SERB Case Nos.: 97-MED-10-1077 and 97-MED-10-1078  
Date of Report: March 16, 1998  
Issue: Conciliation

Union Representative:

Frank T. Lambros  
FOP/OLC  
548 Gennie Lane  
Cincinnati, Ohio 45244

Sheriff Representative:

Robert W. Cross  
Cross Management Consulting Services, Inc.  
8593 Ohio River Road  
Wheelersburg, Ohio 45694

REPORT AND FINDINGS

Michael Paolucci  
Conciliator

### Administration

By letter dated January 6, 1998, from the Ohio State Employment Relations Board, the undersigned was informed of his designation to serve as conciliator for the Parties. On February 26, 1998, a hearing went forward in which the Parties presented arguments and documentary evidence in support of positions taken. The record was closed at the end of the hearing on February 26, 1998, and is now ready for a conciliation report.

### Factual Background

The County is located in southwestern Ohio, approximately seventy (70) miles east of Cincinnati; the Union represents one (1) Cook, four (4) Dispatchers, four (4) Corrections Officers, and eleven (11) Patrol Officers. Preceding this conciliation hearing the Parties received a factfinding report from Frank A. Keenan dated December 15, 1997, incorporated here by reference and attached as Exhibit "A." Although that factfinding report was written with the idea that the Parties had tentatively agreed to much of its content, it was based on a factual element that turned out to be in error.

The fact involved a claim by the Sheriff that the employees in this bargaining unit had not had a sufficient amount deducted from their pay for health insurance and thus, back pay was owed. Although it now appears that the Sheriff will not pursue said back pay, at some point following the issuance of the Factfinder's report, the accuracy of the Sheriff's claim was called into doubt and, as a direct result, the Union members unanimously rejected the Factfinder's Report.

Before the conciliation hearing was held, there were between eight (8) and nine (9) issues at impasse - depending on how the issues were counted. During the hearing, the Parties were either

able to come to an Agreement or had changed their positions sufficiently that only four (4) issues remained for this conciliator to decide.

The Articles presented at the hearing are as follows:

1. Article 13 - Discipline;
2. Article 32 - Holidays;
3. Article 37 - Wages;
4. Article 38 - Effect of Agreement ("Zipper Clause").

Each issue will be handled below.

Section 4117-9-06 of SERB's administrative rules addresses the issues that a conciliator must consider when making recommendations. That section, in pertinent part, reads as follows:

(H) The conciliator shall take the following into consideration in resolving the dispute between the parties:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employers doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interests 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) The stipulations of the parties; and
- (6) Such other factors, not confined to those listed in this rule, which are normally or traditionally taken into consideration in the determination of 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 issues will be addressed separately giving consideration to all of the required factors.

Before addressing each issue, it is necessary to address certain modifications of each Parties'

positions that are adopted here. During the hearing the Sheriff's representative moved to modify the Sheriff's position on Article 33 - Hours of Work and Overtime, such that the position was modified to be consistent with that recommended by the Factfinder. Based on that modification, it is ordered that the Factfinder's Report, as it pertains to Article 33 - Hours of Work and Overtime, be adopted here. Similarly, the Sheriff modified its Health Insurance proposal to be consistent with the Factfinding Report, and that proposal is ordered to be made part of the new contract.

What remains are the aforementioned four (4) issues that must be determined by the undersigned choosing between the Last Best Offers of each Party and ordering that the best of the two (2) choices be made part of the new contract.

A general statement of the influence of the Factfinder's Report may be helpful before addressing each issue. In general a great deal of weight must be placed on a Factfinder's report. Unless clearly in error, it is necessary and proper to pay particular attention to the findings of a Factfinder. In this case, the power of that document is even more influential since much was achieved through mutual agreement. The only factor that impeded the use of the report in reaching final agreement here was the question of whether certain employees would owe the Sheriff money for health insurance. Since, at this hearing, it was agreed that such could not affect these two Parties in their negotiations, then the factor that justified the unanimous rejection of the Factfinder's Report appears to be without merit. Thus, although the Union had good reason to reject the Factfinder's Report when they did in order to protect their interest, now, upon reflection, it appears that their fears were not justified and as a result, the Factfinder's Report must be given due consideration.

The four (4) issues are thus addressed.

## **ARTICLE 13 - DISCIPLINE**

### **UNION POSITION**

The Union proposes the inclusion of a due process hearing; discovery; and a hearing prior to disciplining an employee, with the exception that if a felony indictment is obtained, the pre-disciplinary procedure is not necessary.

### **SHERIFF POSITION**

The Sheriff proposes using the Factfinder's award.

### **FINDING**

Although the Union's proposal would protect the members constitutional rights if they were the subject of a criminal prosecution, it is overkill in the employment setting. The Employer's proposal provides adequate protection, has reasonable time lines, and includes a reasonable progressive discipline policy. Consequently, it is in line with what is commonly understood to be a fair disciplinary procedure and must be adopted. Indeed, as discussed above, this finding is in keeping with the Factfinder's report and consequently, is supported by the Factfinder, and, by reference, by the Parties.

## **ARTICLE 32 - HOLIDAYS**

### **UNION POSITION**

The Union proposes modifying Presidents' Day so that it is floating and adding two (2) holidays - Christmas Eve and New Years Eve, second shift on each only.

## SHERIFF POSITION

The Sheriff proposes current language that has ten (10) holidays.

## FINDING

Although the Union indicated that the floating President's Day was agreed to, and although such seems to be part of the factfinding report, the Sheriff's proposal doesn't include it and thus it must be considered as not agreed to. A review of the status quo reveals that the employees currently receive an adequate number of holidays. Moreover, the comparables do not support an inclusion of both Christmas and New Year's Eve. Although New Year's Eve must be recognized to be as widely celebrated as many other holidays, and even though it is likely the busiest day of the year for Police Officers, thus otherwise justifying overtime pay, the inclusion of Christmas Eve and the conversion of Presidents' Day to a floating holiday in the Union's proposal weakens the whole. More specifically, even if New Year's Eve were justified, Christmas Eve is not. Collective Bargaining Agreements that officially include Christmas Eve as a holiday are rare and thus, even if New Year's Eve or a floating Presidents' Day were justified, they are not all justified as a new addition to the Agreement.

Indeed, even though the Factfinder's Report recommends a modified Presidents' Day, since the Sheriff did not make that part of its Last Best Offer, and since the Union's proposal would be too far reaching, then the County's proposal is ordered. This must be ordered even though the floating Presidents' Day would otherwise be justified. Since the issue of holidays is more logical to consider as a whole, then the choice to be made is between each Parties' Last Best Offer on the whole provision. Thus, the status quo is more reasonable and must be ordered.

## ARTICLE 37 - WAGES

### UNION POSITION

The Union proposal would add a longevity pay increase for ten (10) and fifteen (15) years of service. It contends that this will only cost the Sheriff \$3,774.00 over the life of the Agreement. It contends that this will allow the employees to get ahead of the consumer price index. It argues that longevity pay is common among police forces and is justified as a reward for long time service. It contends that although these employees are highest among comparables, they want to stay there and this benefit allows them to do so.

### SHERIFF POSITION

The Sheriff proposes that the status quo be maintained. It points out that this same issue was rejected during the 1992 negotiations by another Factfinder and indeed, has been rejected by the Sheriff during every negotiations. It contends that the hourly wage for these employees is the highest in the area and that the external comparables do not justify including this essential wage increase. Since these employees are already the highest paid in the area, then it argues that another hourly wage increase is not supported.

### FINDING

It must be found that the status quo be maintained with regard to longevity pay. Although the Union correctly argued that such pay is common among police agencies, it is not common in the comparable counties used in this conciliation. Indeed, even if the longevity pay were otherwise justified, the fact that this unit is the highest paid among the comparable counties would necessitate

a finding that longevity pay is not required. If this unit were not currently and historically the highest paid among comparables, longevity pay and other such methods of compensating outside the hourly wage might be logical. However when no one in the area receives longevity pay and where these employees are already compensated better than their regional counterparts, there is no reason to grant longevity pay as requested. Therefore, the status quo is ordered.

### **ARTICLE 38 - EFFECT OF AGREEMENT**

#### **UNION POSITION**

The Union proposes the deletion of a "zipper clause" contained in the Duration provision of the Agreement.

#### **SHERIFF POSITION**

The Sheriff proposes maintaining the status quo. As support it points out the fact that the language has been in the Agreement since the first Contract.

#### **FINDING**

It is ordered that the status quo be maintained. The basis for this finding is that although the Union persuasively argued that a potential exists to prevent the consideration of unwritten practices of the Parties, it did not claim that a problem has ever arisen. Since no examples of the language preventing a grievance from being considered were produced, then there is no basis for removing the language. Lacking evidence that the language has caused a problem, there can be no justification for its removal based on the Union's perceived potential problems. Further, the fact that the




language has been included in the Agreement from the beginning of the Parties relationship further supports a finding that it be maintained. Thus, the status quo is ordered.

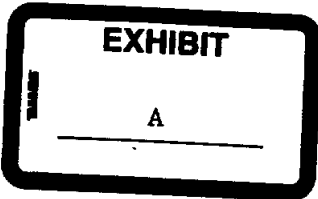
This finding must stand even though the Union raised legitimate concerns regarding the new management of the Sheriff's office. Potential problems will not typically justify a change in a historically stable provision. If it were proven that the provision prevented the Union from obtaining relief that would otherwise be justified, then changing the language would have evidentiary support. Lacking such evidence, modification is not justified. Thus the status quo is ordered.

It is so ordered.

March 16, 1998  
Cincinnati, Ohio



Michael Paolucci



BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:

THE ADAMS COUNTY SHERIFF  
EMPLOYER

AND S.E.R.B. CASES NOS. 97-MED-10-1077 &  
97-MED-10-1078

THE FRATERNAL ORDER OF POLICE,  
OHIO LABOR COUNCIL, INC.  
EMPLOYEE ORGANIZATION

STATE EMPLOYMENT  
RELATIONS BOARD  
Dec 16 10 43 AM '97

APPEARANCES:

For The Sheriff: Robert W. Cross  
Cross Management Consulting Services, Inc.  
Wheelersburg, Ohio

For The Union: Frank T. Lambros  
Ohio Labor Council, Inc.  
Columbus, Ohio

REPORT AND RECOMMENDATIONS OF THE FACT FINDER

Frank A. Keenan  
Fact Finder

Statement of the Case and Recommendations:

This case came on for hearing in West Union, Ohio on December 12, 1997. The parties were at impasse over several issues.

Each party submitted evidence on each issue at impasse. The evidence was in the form of past collectively-bargained agreements; and/or comparable jurisdictions data on the issue; and/or S.E.R.B. furnished benchmark data; and/or other data contemplated by the Statute. In this regard, in reaching the Recommendations made herein, the undersigned has given consideration to the criteria listed in Rule 4117-9-05 (J) of the State Employment Relations Board. The parties reached understandings resolving the issues at impasse which they have memorialized.

The Fact Finder has reviewed the parties' evidentiary submissions in light of the statutory criteria referenced in S.E.R.B. Rule 4117-9-05 (J), and finds that said evidentiary submissions fully support the understandings the parties have reached. Thus, the undersigned shall recommend that the parties' Contract comport with these understandings.

References to the parties' "Current Contract" more accurately are a reference to the parties' 1-1-96 through 12-30-97 Contract, the latter being too long a phrase to be continually repeated. Accordingly:

It is RECOMMENDED that the parties retain the language of the Current Contract at Article 13-Discipline, except that same shall be modified as per the Memo of Understanding set forth in Appendix I.

It is RECOMMENDED that the parties retain the language of the Current Contract at Article 32-Holidays, except that same shall be modified as per the writing set forth in Appendix II.

It is RECOMMENDED that the parties retain the language of the Current Contract at Article 33-Hours of Work And Overtime, except that same shall be modified as per the writing set forth in Appendix III and Appendix IV.

It is RECOMMENDED that the parties retain the language of the Current Contract at Article 35-Insurance, except that same shall be modified as per the writing set forth in Appendix V.

It is RECOMMENDED that Article 37-Wages of the Current Contract be modified as per the writing set forth in Appendix VI.

It is RECOMMENDED that the parties retain the language of the Current Contract at Article 36-Uniforms, Clothing And Equipment, except that same shall be modified as per the writing set forth in Appendix VII, pages 1 through 3 inclusive.

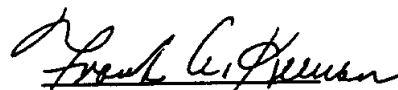
It is RECOMMENDED that the parties retain the language of Article 38-Effect of Agreement (see Appendix VIII).

It is RECOMMENDED that the parties' Agreement at Article 47-Duration, read as per Appendix IX.

It is further RECOMMENDED that all other articles previously agreed to by the parties also be incorporated into the parties' Agreement.

This concludes the Fact Finder's Report and Recommendations.

December 15, 1997

  
Frank A. Keenan  
Fact Finder

Memo of Understanding  
Re: Article 13 Discipline

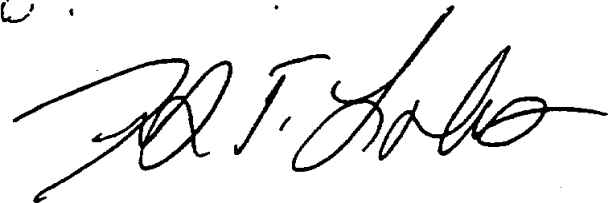
To: Frank Lombros  
From: Bob Cross  
Re: Pre-Disciplinary Hearings

The County agrees that any bargaining unit member will receive a pre-disciplinary hearing prior to being suspended without pay unless the bargaining unit member has been arrested or indicted for a felony charge. The Pre-disciplinary hearing will allow the bargaining unit members to retain their due process rights.

For the County

Robert W. Cross

Ray A. Bendall



Norman E. Winton

APPENDIX II

The County agrees that the bargaining unit members may use the President's Day Holiday in Article 32 as a floating holiday. The Bargaining member may take the day off at any time with the Sheriff's prior approval. Any Bargaining unit member who takes this ~~day~~ will receive his regular rate of pay and must take it within the calendar year.

12/12/97

For the County

For the F.O.P.

Robert W. Cross  
Ray A. Bendall

J. T. Ladd

Morrison E. Watson

Article 33 Hours of Work and  
Overtime.

The County and the F.O.P. agree to  
Current Contract Language on Article 33  
with the additional of a new paragraph I,  
which shall read as follows:

The bargaining unit members  
can accumulate up to forty hours of overtime  
as comp time. The ~~also~~ bargaining unit member  
can take the comp time off with prior  
approval of the sheriff. The Bargaining unit  
members may not carryover from one calendar  
year to the next more than 40 hours of  
comp time.

12/12/97

R.T. Laible

Thomas E. Watson

For the County

Robert W. Cross

Ray A. Bondell

APPENDIX IV

Memo of Understanding  
Re: Permanent or Regular  
Shifting Patterns

To: Frank Lambros

From: Bob Cross

Re: Negotiations 1997 Article 33 Hours of Work.

The County agrees that if the present shifting pattern is significantly changed or altered that this issue will reopen the negotiating the economic effects of these changes.

12/12/97

Forth County

M. J. Lino

Robert W. Cross

Thomas E. Watson

Ray A. Conolly



APPENDIX IV

Article 35 Insurance shall be maintained as current contract language and add dental and vision to article 35.

12/12/97

For the County

J. T. Golo

Thomas E. Watson

Robert W. Cox  
Ray A. Bentley

## Wages Article 35

The County and the F.O.P. agree to the following:

The wage increase for 1998 will be 25¢ per hr. with 13¢ additional being delayed until the end of the two year contract. The wage increase for 1999 will be 25¢ per hr. with an additional 13¢ being delayed until the end of the two year contract. For this consideration the county will forgive all <sup>over</sup> payments owed the county due to incorrect deductions for past years. This settles all amounts owed the county for hospitalization deductions.

Dec. 31, 1999 all rates of the Appendix will increase by 26¢ per hour

R. J. Dale

12/12/97

For the County  
Robert W. Cross

APPENDIX VII

The Adams County Sheriff  
-and  
The Fraternal Order of Police, Ohio Labor Council

12/12/97  
fsl

Management Proposal #2  
Presented 11/18/97

ARTICLE 36: UNIFORMS, CLOTHING AND EQUIPMENT

A. The Employer shall continue the current practice of providing all required equipment, clothing and insignia for new employees. The initial issue shall include the following:

- Two (2) winter shirts
- Two (2) summer shirts - short sleeve
- Four (4) trousers
- Two (2) badges (1 hat and 1 breast)
- Two (2) ties
- Collar brass
- Whistle chain and whistle
- Summer hat - winter hat
- Rain coat
- Rubber for hat
- Buttons
- Acorns for hat
- Hat strap
- Name plate
- Winter coat
- Chill chaser (lightweight coat)
- Gun belts
- Trouser belt

1. Employees who are employed between October and April shall receive a winter issue that will not include the following: two (2) summer shirts; summer hat; lightweight coat; two (2) pair trousers.
2. Employees who are employed between April and September shall receive a summer issue that will not include the following: winter hat; two (2) winter shirts; winter coat; two (2) pair trousers.

B. The Employer shall provide an appropriate uniform for dispatchers which include three (3) shirts or blouses, three (3) pants, name plate, buttons, trouser belt.

APPENDIX VII

C. Replacement Policy.

*see attached*

Effective January 1, 1998, the Employer will provide each employee a three hundred sixty dollars (\$360.00) per year uniform allowance for replacements.

D. The Employer shall maintain the practice of cleaning uniforms.

Date Signed 12/17/97

FOR THE EMPLOYER: *Robert W. Cross*

FOR THE UNION: *D. T. [Signature]*  
*[Signature]*

APPENDIX VII

Article 36 Uniforms, the County agrees to raise the amounts in paragraph C. of Article 36 to \$360 in 1998 and \$370 in 1999 in Management proposal # 2 of 11/18/97

12/12/97  
D. J. Salvo

Thomas E. Waters

For the County

Robert W. Bass  
Ray A. Benders

APPENDIX VIII

The Adams County Sheriff  
-and  
The Fraternal Order of Police, Ohio Labor Council

Management Proposal #1  
Presented 11/5/97

ARTICLE 38: EFFECT OF AGREEMENT

A. This Agreement supersedes any and all practices, ordinances and previous agreements between the parties hereto and is a final and complete agreement. No verbal statements shall supersede any provisions of this Agreement.

Date Signed 12/2/97

FOR THE EMPLOYER: [Signature]

FOR THE UNION: [Signature]

APPENDIX IX

The Adams County Sheriff  
-and  
The Fraternal Order of Police, Ohio Labor Council

Management Proposal #1.  
Presented 11/5/97

ARTICLE 47: DURATION

- A. This Agreement constitutes the entire contract between Management and the Union and settles all demands and issues with respect to all matters subject to collective bargaining. Therefore, Management and the Union, for the duration of this Agreement, waive the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter which is subject to collective bargaining whether or not such subject or matter is specifically referred to herein. All past practices are specifically deleted unless addressed herein, and further, shall have no impact upon the terms and interpretation of this Agreement.
- B. This Agreement shall become effective as of January 1, 1998, except as otherwise indicated herein, and shall remain in effect up to and including December 31, 1999, and shall automatically renew itself from year to year thereafter, unless written notice to terminate or amend this Agreement is given by either party to the other at least sixty (60) days prior to December 31, 1999, or prior to the date of expiration of any annual renewal hereof.
- C. If notice of termination shall be given, negotiations for a new Agreement shall take place during the sixty (60) days prior to the expiration of this Agreement.

Date Signed

12/12/97

FOR THE EMPLOYER:

Robert W. Gross

FOR THE UNION:

[Signature]