

STATE EMPLOYMENT
RELATIONS BOARD
Aug 17 11 07 AM '00

Before Louis V. Imundo, Jr., Conciliator

In the matter of conciliation between

GALLIA COUNTY SHERIFF'S OFFICE

and the

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

SERB Case Nos. 99-MED-10-0970⁹, 99-MED-10-0980

This matter was heard before Louis V. Imundo, Jr., Conciliator, in Gallipolis, Ohio on August 9, 2000.

1.0 Introduction

1.1 Appearing For Management

- Eugene "Pete" Nevada, Director of Research & Development, Clemans-Nelson Associates, Inc.

1.2 Appearing For The Union

- Mark Drum, Second Vice President FOP/OLC
- Eric Werry, Chairman & Deputy Sheriff
- Julie Pfeiffer, Attorney, FOP/OLC
- Donald G. Bowen, Investigator
- Joe Browning, Sergeant
- Andrea H. Johan, Staff Representative

2.0 Unresolved Issues

Article 16 - Wages

Article 16.3 - Vacation

Article 23 - Work Out of Rank

Article 27 - Promotions

Article 27.2 Promotions (new language)

Article 28 - Longevity Pay

Article 28.2 - Longevity Pay Scale (Alternative)

Article 32 - Duration

New Article - Drug And Alcohol Testing

New Article - Advisory Opinions/Ethics

3.0 Findings

After a thorough review of all the written information provided to the Conciliator before and during the Hearing, and the Parties oral arguments, the Conciliator has made the following determinations:

Article 16 - Wages. The Union's proposal is accepted. The language to be memorialized in the successor Agreement will read as follows:

ARTICLE 16 WAGES

Section 16.1

- A. Effective January 1, 2000, all Bargaining Unit members shall receive a base salary as follows:

	Step 1 Probation	Step 2 1 year	Step 3 2 years	Step 4 3 years
Correction Officer				
Hourly	\$ 9.57	\$ 10.47	\$ 10.91	\$ 11.23
Annual	19,906	21,778	22,693	23,358
Road Deputy				
Hourly	\$ 10.28	\$ 11.29	\$ 11.78	\$ 12.43
Annual	21,590	23,483	24,502	25,854
Sergeants & Investigators				
Hourly	\$ 10.76	\$ 11.68	\$ 12.17	\$ 12.66
Annual	22,381	24,294	25,314	26,333

- B. Effective January 1, 2001, all Corrections Officers shall receive an additional four percent (4%) increase over the year 2000 rate and all Road Deputies, Sergeants and Investigators shall receive an additional five percent (5%) increase over the 2000 rate:
- C. Effective January 1, 2002, all Bargaining Unit members shall receive an additional four percent (4%) increase over the year 2001 rate:

Article 16, Section 16.3 "Me-Too". The Union's proposal is rejected.

Article 18 - Vacation. The previously tentatively agreed upon language is to be memorialized in the successor Agreement.

Article 23, Section 1 - Work Out Of Rank. The Union's proposal is accepted. The language to be memorialized in the successor Agreement will read as follows:

ARTICLE 23
WORK OUT OF CLASSIFICATION

Section 23.1 Higher Classification Work

Any employee who is temporarily required to perform at a higher classification position and performs the responsibilities of the higher classification position for more than two (2) consecutive hours shall be paid at a rate of compensation equal to that normally paid for the higher classification position of all hours worked in the higher classification position during that work day.

Article 27 - Promotions. The Union's proposal is accepted. The language to be memorialized in the successor Agreement will read as follows:

Section 27.1 - Vacancies. Whenever the employer determines that a vacancy exists, a notice of such vacancy shall be posted on the employer's bulletin board for a period of fourteen (14) consecutive workdays, not including the date of posting.

During the posting period, anyone wishing to apply for the vacant position shall do so by submitting a written application to the employer. The employer shall not be obligated to consider any applications submitted after the fourteen (14) day period has expired or who do not meet the minimum qualifications for the job. Postings shall contain the classification title, rate of pay, a brief summary of job duties, and the minimum qualifications.

Section 27.2 - Promotions. For promotional appointments, the employer shall consider only applications of employees that have been employed by Gallia County Sheriff's Department in the next lower classification with the dispatcher and jailer classifications being equal. For the purposes of this section, a vacancy in the rank of sergeant shall be open to investigators and road personnel equally. If there are less than three (3) employees in the next lower classification, applications shall be opened for an additional seven (7) days to all current bargaining unit members below the rank of which the vacancy exists. If there are still fewer than three (3) qualified employees applying for the promotional position, the employer maintains the right to take applications from outside the department. Every qualified applicant for the vacant position will be considered based upon the following criteria:

- A. Having a passing score of at least seventy percent (70%) or more on the Gallia County Sheriff's Department promotional examination for the vacant position. All promotional examinations shall be supplied by an independent outside agency. (All

promotional examinations must be job-related and in writing.) Disputes concerning the appropriateness of a particular examination shall first be referred to the Labor Management Committee and, if not resolved in that forum, may be the subject of a grievance initiated at Step 2 of the grievance procedure.

- B. Job performance based on work record within the Sheriff's Department. The said job performance grade shall be obtained from the employee's written annual performance evaluation. A maximum of ten percent (10%) of the total grade attainable on the written examination may be awarded by the Sheriff, based on such work record.
- C. Seniority Points. Credit for seniority shall equal, for each of the first four (4) years of service, one percent (1%) (prorated per month) of the total grade attainable in the written examination, and for each of the fifth (5th) through fourteenth (14th) years of service, six-tenths of one percent (0.6%) of the total grade attainable.

Points for efficiency (job performance) and seniority shall be added to the score of the written examination; However, no credit for seniority, efficiency, or any other reason shall be added to an examination grade unless the applicant achieves at least the minimum passing score on the examination without counting such extra credit. For the purposes of this article the word "attainable" shall mean one hundred (100).

Section 27.3 The employer shall select the employee who achieves the highest grade. The FOP shall be notified of the individual selected within five (5) working days of appointment. The eligibility list from the promotional exam shall be good for a period of two years from the date of the test.

Section 27.4. An employee selected shall be considered to have qualified for the position when he has completed the probationary period.

Section 27.5. Should an employee fail to satisfactorily complete his probationary period, he shall be returned to his former position.

Section 27.6. An employee or new hire who is awarded a position as a result of a successful application may not apply for another vacant position for a period of one (1) year from the date he assumes the new position.

Section 27.7. "Promotional Position" is defined as any position that carries a higher rate of pay than the position the employee currently holds.

Article 27, Section 2. Management's proposal is rejected.

Article 28 - Longevity Pay. The Union's proposal is accepted. The language to be memorialized in the successor Agreement will read as follows:

Article 28
Longevity Pay

Section 28.1 Longevity Pay

Bargaining Unit members shall receive longevity compensation for full-time service with the Gallia County Sheriff's Department, as follows:

<u>Years of Service</u>	<u>Hourly Adjustment</u>
Five Years	.10 cents
Ten Years	.20 cents
Fifteen Years	.30 cents
Twenty Years	.40 cents

These amounts are not cumulative, but are the total that will be added upon completion of five (5) ten (10), fifteen (15), or twenty (20) years service.

Article 32 - Duration. The Union's proposal is accepted. The language to be memorialized in the successor Agreement will read as follows:

Article 32
Duration of Agreement

Section 32.1 Duration

- A. This Agreement shall be effective as of January 1, 2000 and shall remain in full force and effect until December 31, 2002.
- B. If either party desires to modify or amend this Agreement, it shall give written notice of such intent no earlier than ninety (90) calendar days prior to the expiration date, nor later than forty-five (45) calendar days prior to the expiration date of this Agreement. Such notice shall be by certified mail with return receipt. The parties shall commence negotiations and shall meet to establish the bargaining guidelines within two (2) calendar weeks upon receipt notice of intent.

New Article - Drug And Alcohol Testing. The Union's proposal is accepted. The language to be memorialized in the successor Agreement will read as follows:

ARTICLE
DRUG AND ALCOHOL TESTING

Section 1 Drug/alcohol testing may be conducted on employees if there is probable cause to believe that an employee used or is using a controlled substance or alcohol in an unlawful or abusive manner and may be based upon, but not limited to:

- A. Observable phenomena, such as direct observation of drug or alcohol use or possession and/or physical symptoms of being under the influence of a drug or alcohol;
- B. A pattern or abnormal conduct or erratic behavior, including abnormal leave patterns;
- C. Arrest or conviction for a drug or alcohol-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug or alcohol possession, use or trafficking;
- D. Information provided either by reliable and credible sources which is independently corroborated;
- E. Evidence that an employee has tampered with a previous drug test

Such probable cause shall be recorded and reduced to writing as soon as practicable and a copy thereof given to the member.

Section 2 Drug Testing Procedures. All drug screening tests shall be conducted by laboratories certified by the Department of Health and Human Service (DHHS) or certified by DHHS-recognized certification program. No test shall be considered positive until it has been confirmed by a gas chromatography/mass spectrometry full scan test. The procedures utilized by the Employer and testing laboratory shall include an evidentiary chain of custody control. All samples collected shall be contained in three (3) separate containers for use in the prescribed testing procedures. All procedures shall be outlined in writing and this outline shall be followed in all situations arising under this article.

Section 3 Alcohol Testing Procedures. Alcohol testing shall be done in accordance with the law of the State of Ohio to detect drivers operating a motor vehicle under the influence. A positive result, above .03% by either of alcohol per two hundred ten liters of his breath, shall entitle the Employer to proceed with sanctions as set forth in this article. This allowance recognizes that certain substances (e.g., medicines, mouth washes) may contain alcohol.

Section 4 Test results/Refusal to Submit to Testing. Prior to any testing, the member shall be given the opportunity to request the presence, or seek the advice, of an FOP/OLC representative. Any test shall be given immediately after discussion with the bargaining unit member and the FOP/OLC representative, but no more than one hundred twenty (120) minutes after the probable cause determination was made, whichever is sooner. The results of the testing shall be delivered to the Employer and the employee tested. An employee whose confirmatory test result is positive shall have the right to request a certified copy of the testing results in which the vendor shall affirm that the test results were obtained using the approved protocol methods. The employee shall provide a signed release for disclosure of the testing results. A representative for the bargaining unit shall have a right to access to the results upon request of the Employer, with the employee's consent. Refusal to submit to the testing provided for under this Agreement may be grounds for discipline.

Section 5 Confirmatory Testing.

- A. If a drug screening test is positive, a confirmatory test shall be conducted utilizing the fluid from no more than two (2) of the three (3) containers collected in the manner prescribed above.
- B. In the event the second test confirms the results of the first test, the Employer may proceed with the sanctions as set forth in this article.
- C. In the event that the second test contradicts the results of the first test, or the results are negative, the employee shall be given the benefit of the doubt and no sanctions shall be imposed.
- D. In the event the two (2) test results are positive, the employee is entitled to have the sample in the second container, which has remained intact, tested in the manner prescribed above at the employee's expense. The result of the test, whether positive or negative, shall be determinative.

Section 6 Positive Test Results

- A. In all cases of drug and alcohol use and abuse, the Employer will give strong consideration to the use of rehabilitation instead of discipline. However, if circumstances warrant, the Employer reserves the right to impose appropriate discipline.
- B. The Employer may require the employee to participate in any rehabilitation or detoxification program that is covered by the employee's health insurance. Discipline allowed by the positive findings shall be deferred pending rehabilitation of the employee within a reasonable period. An employee who participates in a rehabilitation or detoxification program shall be allowed to use sick leave, compensatory days, vacation leave, and personal days for the period of the rehabilitation or detoxification program. If no such leave credits are available, the employee shall be placed on medical leave of absence without pay for the period of

the rehabilitation or detoxification program. Upon completion of such program, and upon receiving results from a retest demonstrating that the employee is no longer abusing a controlled substance, the employee shall be returned to his former position. Such employee may be subject to periodic retesting upon his return to his position for a period of one (1) year from the date of his return to work. Any employee in a rehabilitation or detoxification program in accordance with this article will not lose any seniority or benefits, should it be necessary for the employee to be placed on medical leave of absence without pay, for a period not to exceed ninety (90) days.

If the employee refuses to undergo rehabilitation or detoxification, or if he tests positive during a retesting within one (1) year after his return to work from such a program, the employee shall be subject to disciplinary action, including removal from his position and termination of his employment.

Section 7 Payment of Testing Costs. Costs of all drug screening tests and confirmatory tests shall be born by the Employer except that any test initiated at the request of the employee shall be at the employee's expense.

New Article - Advisory Opinion/Ethics. Management's proposal is rejected.

August 12, 2000
Date

Louis V. Imundo, Jr.
Louis V. Imundo, Jr.
Conciliator