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STATE EMPLOYMENT
RELATIONS BOARD
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**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

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

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

MARION COUNTY SHERIFF,
Employer.

CONCILIATION AWARD

**CASE NUMBERS:
99-MED-10-1071
99-MED-10-1072
99-MED-10-1073**

DATE OF HEARING: May 24, 2000

PLACE OF HEARING: Marion, Ohio

CONCILIATOR: Charles W. Kohler

APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:

Lawrence Deck, FOP Staff Representative
Gwen Callender, FOP General Counsel
Tara May, FOP Paralegal
Matt Dendinger, Detective
Jeff Cline, Deputy Sheriff
Charles Black, Sergeant

FOR THE EMPLOYER:

Jim Slagle, Prosecuting Attorney
John Butterworth, Sheriff
Larry Babich, Assistant Prosecuting Attorney
Tim Bailey, Chief Deputy
Dean Millhone, Human Resources Director
Kim Taylor, Deputy Auditor

PROCEDURAL BACKGROUND

On March 28, 2000, 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 May 24, 2000, in Marion, Ohio.

This matter involves the negotiation of three collective bargaining agreements between the Marion County Sheriff ("Employer" or "Sheriff") and the Fraternal Order of Police, Ohio Labor Council, Inc. ("FOP") for the following bargaining units: dispatchers, deputy sheriffs, and sergeants. The prior agreements covering the employees in these bargaining units expired on June 30, 1999. After the expiration of the agreements, the employees voted to change representatives, and selected the FOP as the collective bargaining representative.

The parties engaged in seven formal negotiation sessions, beginning on November 19, 1999. The start of negotiations was delayed because of the change in representation. The parties agreed that all matters regarding compensation, or with other cost implications, would be retroactive to January 1, 2000.

A fact-finding hearing was held on March 4, 2000. On March 6, 2000, the fact finder, Louis Imundo, issued his report and recommendations. The fact finder's report was accepted by all of the FOP bargaining units, but was rejected by the Marion County Commissioners.

At the conciliation hearing on May 24, 2000, the following issues remained at impasse and were presented to the Conciliator:

1. Sick Leave
2. Hours of Work and Overtime - Overtime for Deviation in Work Schedule
3. Hours of Work and Overtime - Innovative Scheduling
4. Wages
5. Education and Training

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 opinion and award with respect to each of the outstanding issues submitted for resolution.

ARTICLE 17.1 - SICK LEAVE

Position of the FOP

The FOP proposes that the number of hours of annual sick leave be increased from 80 to 104. It points out that 120 hours of sick leave is provided by state statute for employees not covered by a collective bargaining agreement. It presented evidence that most comparable counties in Ohio provide 120 hours of sick leave. It asserts that the additional sick leave would allow employees to accumulate sick leave so that they would be protected in the event of a serious injury or illness. The FOP notes that it is not proposing any increase in the amount of sick leave which can be paid to an employee upon retirement, and therefore the Employer's liability would not be increased. The FOP also contends that employees on sick leave are not always replaced, so the Employer does not always incur a cost when an employee is out on sick leave.

The FOP argues that there is no evidence of sick leave abuse. It acknowledges that employees do receive other types of leave, but argues that funeral leave and injury leave are not comparable to sick leave. It points out that funeral leave is not carried over from year to year, and that injury leave may only be used for injuries which occur while on duty.

Position of the Employer

The Employer opposes any increase in the number of hours of sick leave. The employees currently receive 80 hours of sick leave per year. The Employer points out that the employees previously received 120 hours of sick leave, but agreed, during prior contract negotiations, to a reduction in the number of hours of sick leave in order to obtain personal leave and funeral leave. Currently, the employees receive 3 days of personal leave, up to 5 days of funeral leave, and up to 90 days of injury leave. The Employer states that sick leave is a cost item because employees on sick leave have to be replaced. The Employer contends that the cost of an additional 16 hours of sick leave is equivalent to a one percent increase in wages.

Discussion and Findings

The Employer is correct in its assertion that all types of leave must be considered in determining the proper amount of each type of leave. While bargaining unit employees are entitled to 5 days of funeral leave and 90 days of injury leave per year, these benefits are rarely used, as they must be triggered by a death in the family, or an injury on the job. In addition, they cannot be accumulated from year to year. Sick leave can be accumulated indefinitely, and thus can provide financial stability to an employee in the event of a serious illness or injury.

The Employer's assertion that an additional 16 hours of sick leave are equivalent to a one percent wage increase is based on the assumption that all sick leave is used each year. Based on the unchallenged contention of the FOP that sick leave abuse is not a problem, the additional sick leave will not necessarily result in a significant cost increase to the Employer.

The evidence presented by the FOP shows that 17 of 20 comparable counties provide annual sick leave of 120 hours. Of the 17 counties, 8 also provide some personal leave. The FOP proposal to increase the amount of sick leave to 104 hours, when added to the 24 hours of personal leave currently received, would result in bargaining unit employees receiving a total of 128 hours of combined personal leave and sick leave. The Employer proposal to retain the current amount of personal leave and sick leave provides 104 hours of combined leave. Of the 20 comparable counties, 19 provide more than 104 hours of combined leave. Thus, the FOP proposal to increase the sick leave to 104 hours per year is reasonable, even when the current level of personal leave is considered. The resulting 128 hours of leave is consistent with the amount of combined leave provided by comparable counties.

Award

Article 17.1 of the new agreement shall provide for 104 hours of sick leave per year.

ARTICLE 25.2 - HOURS OF WORK AND OVERTIME

A. Overtime for Deviation in Work Schedule

Position of the FOP

The FOP proposes that language be added to Article 25.2 which would require the payment of overtime if the schedule of an employee is changed more than one time in a pay period. The FOP explains that this language is important because employees plan their personal lives around their work schedule, and any change in the schedule causes a disruption in their personal lives. In order to limit the number of schedule changes, the proposal provides a disincentive for the Sheriff to make changes in schedules.

The FOP asserts that dispatchers, in particular, have been subjected to frequent changes in their schedule. The FOP points out that overtime would not be required unless the Sheriff makes more than one schedule change in a pay period. In addition, only changes which result in a different day off, or cause a deviation in excess of one hour, would require the payment of overtime. The FOP argues that, if the Sheriff corrects the practice of frequently changing schedules, the proposed language will not be triggered, and no overtime will have to be paid.

Position of the Employer

The Employer opposes the language proposed by the FOP regarding schedule changes. It acknowledges that the schedules of the dispatchers have been frequently changed. However, it contends that the recent hiring of three additional dispatchers will correct this problem. The Employer asserts that the language proposed by the FOP is unclear, and will require arbitration to determine the effect of the language. Further, the Employer contends that the current overtime provisions adequately compensate the employee if a schedule change results in additional work. The current contract provides for overtime after 85 hours per pay period for law enforcement personnel, which is more generous than the requirement contained in the Fair Labor Standards Act.

Discussion and Findings

Certainly, schedule changes can disrupt the personal lives of employees, especially when changes are made with little advance notice. The payment of overtime would make schedule changes more palatable to employees. While the proposal of the FOP addresses the problem, it may also result in disagreements over the question of whether a particular change constitutes a "deviation" within the meaning of the proposal.

To effectively discharge its law enforcement mission, the Sheriff's Office must insure that adequate staff is on duty to respond to all foreseeable emergency situations. Unfortunately, this responsibility sometimes results in last minute changes in schedules. The factors which necessitate a schedule change are often beyond the control of the Sheriff. The proposal does not provide any relief for such factors, and thus would unduly penalize the Sheriff in such situations.

Most of the problems with frequent schedule changes occurred within the dispatcher bargaining unit. The evidence indicates that the number of dispatchers has been increased by fifty percent, from six to nine. The increase in staffing should significantly reduce the number of schedule changes. Consequently, the need for the proposed language will also be reduced.

Award

The additional language proposed by the FOP for Article 25.2 will not be included in Article 25 of the collective bargaining agreement.

B. Innovative Scheduling

Position of the Employer

The Employer proposes that language be added to Article 25.2 which will allow the Sheriff to implement new types of work schedules, such as ten hour work days, or a schedule of six days on, followed by three days off. The proposal requires the Sheriff to consult with the FOP at a labor-management meeting prior to implementing any change. The Employer points out that the FOP has tentatively agreed to the language in Article 13 (Shift Schedules). The Employer desires to include the same language in

Article 25.2, since any innovative schedule change would affect both hours of work and overtime.

Position of the FOP

The FOP opposes the inclusion of the innovative scheduling language in Article 25.2. It asserts that the language is inconsistent with the schedule deviation language which it proposes for Article 25.2. The FOP argues that, when it tentatively agreed to the language in Article 13, it thought that the deviation issue had been resolved. The FOP agrees with the right of the Sheriff to make schedule changes, but it wants to protect the rights of bargaining unit members to receive overtime.

Discussion and Findings

The Employer proposes that language already included in Article 13 should also be included in Article 25.2. The Employer is correct in its assertion that the implementation of new types of schedules may raise issues concerning the application of Article 25. However, the proposed language will not necessarily provide a resolution to this problem. Since the language does not provide for any specific type of work schedule, the repetition of the language in Article 25.2 would not resolve issues concerning overtime compensation. The language tentatively agreed to for Article 13.4 requires that the Sheriff consult with the FOP prior to the implementation of any innovative change in scheduling. The consultation is to take place at a labor-management conference. Issues concerning scheduling and compensation, including overtime, should be discussed and resolved in that forum.

Award

The additional language proposed by the Employer for Article 25.2 will not be included in Article 25 of the collective bargaining agreement.

ARTICLE 26.1 - WAGES AND OTHER COMPENSATION

Position of the FOP

The FOP proposes that wages be increased by 3.25 percent effective January 1, 2000. It proposes an increase of 3.25 percent effective January 1, 2001, and an additional 3.25 percent effective January 1, 2002. The FOP asserts that this wage increase will allow members of the bargaining unit to maintain a leadership position in comparison to wages in other counties in Ohio. The FOP asserts that it is important to the Sheriff that his employees be among the highest paid in the state. The FOP points out that the wage increase it proposes is identical to the recommendation of the fact finder.

The FOP asserts that there has been a significant increase in the work of bargaining unit members because of increased commercial and retail development. The FOP notes that many of the new businesses in the county are outside of the City of Marion, and are in the area served by the Sheriff. These businesses are provided with police services by members of the bargaining unit. Because of the concentration of businesses in areas served by the Sheriff's Office, the duties of bargaining unit members are now more similar to the duties of police officers in the City of Marion. The FOP points out that the number of calls for service has increased during the term of the contract. There were 17,482 calls for service received in 1999, compared with 15,187 in 1996.

The FOP notes that, since Marion County now uses a multi-county corrections facility, and employees of the Sheriff's Office no longer serve as corrections officers, the function of the office is limited to law enforcement duties. The FOP presented information showing that a police officer in the City of Marion with six years of service currently earns \$18.85 per hour, and will be paid \$19.32 per hour effective July 1, 2000. Even with the wage increase proposed by the FOP, a deputy sheriff at the top rate (six years service) would earn \$18.78 per hour, effective January 1, 2000, which is less than the wage paid to a City of Marion police officer with the same amount of service.

Position of the Employer

The Employer is proposing a wage increase of 3 percent effective January 1, 2000, with additional 3 percent increases on January 1, 2001, and January 1, 2002. The proposal also makes adjustments in wage rates to equalize the amount of the wage difference between the steps. The Employer points out that the proposed increase is equal to the increase in the Consumer Price Index in the North Central Region, which includes Ohio, as reported by the United States Bureau of Labor Statistics in January of 2000. It also argues that its proposal is reasonable because it is equal to the wage increase provided to other county employees for this year.

The Employer asserts that it would not be fiscally sound to give bargaining unit members an increase greater than other employees because the county does not have a sufficient amount of revenue. In 1999, expenses for the county exceeded revenue, which forced the county to use some funds which had been carried over from prior years. Further, the amount of property tax revenue earmarked for the general fund is expected to decrease during the 2000 collection year.

The Employer contends that there is no reason to increase wages by more than the rate of inflation as the bargaining unit members are already among the most highly paid in the State of Ohio. The Employer asserts that deputy sheriffs, sergeants, and dispatchers are currently paid an amount in excess of the statewide average. In comparison with 21 counties located in the same geographical area of Ohio, or which have a similar population, Marion county deputy sheriffs are the second most highly compensated at both the starting and maximum salary. The Employer points out that those Ohio counties which have either a higher starting or maximum salary for deputy sheriffs have a higher assessed valuation per resident, except for Clark county, which has a population twice as large as Marion County.

Discussion and Findings

The Employer's proposal is equal to the inflation rate of 3 percent. The proposal also includes adjustments to the pay schedule to equalize the differences between pay steps. While the goal of equalizing the difference is sensible and logical, the changes

will result in some temporary inequities for individual employees, as wages are reduced for some step levels. For example, the 1999 wage rate for a deputy with two years of service is \$15.73 per hour, while the proposed 2000 wage rate is \$15.22 per hour. The 1999 rate for a deputy with three years of service is \$16.41, and the proposed 2000 rate is \$16.04. The proposal would also reduce the rate for a dispatcher with two years of service from a 1999 rate of \$14.27 to a 2000 rate of \$14.24. The Employer's proposal does not address these pay reductions.

The amount of the wage increase proposal of the FOP is 3.25 percent per year for each year of the agreement, which is the same wage increase recommended by the fact finder. While current wages are among the highest in comparison with similar counties, the evidence shows that it is important to the Sheriff that his employees are among the most highly compensated. The evidence establishes that the workload of the employees has increased since the last contract was negotiated. The increasing movement of business establishments to the jurisdiction means that the work of the Sheriff's Office is becoming more similar to that of a city police department.

The Employer does face some budgetary challenges, particularly with expenses related to a new administration building and cost increases associated with the operation of the county nursing home. However, the evidence does not show that funding a wage increase of 3.25 percent per year will cause a financial hardship on the Employer. Given the increased responsibility of bargaining unit members, a wage increase slightly above the inflation rate is justifiable. Additionally, the Conciliator is reluctant to direct the adoption of the Employer's proposal because it would result in wage reductions for some employees. Therefore, the proposal of the FOP will be selected.

Award

Wages shall be increased for all bargaining unit members in the amount of 3.25 percent, retroactive to January 1, 2000. Additional wage increases of 3.25 percent will be implemented on January 1, 2001, and on January 1, 2002.

NEW ARTICLE - EDUCATION/TRAINING

Position of the FOP

The FOP proposes a new article providing for compensation based upon educational level and special assignments. The proposal also requires the Employer to provide continuing education to all employees. An employee with an Associate Degree would receive \$1,000.00, an employee with a Bachelor's Degree would receive \$2000.00, and an employee with a Master's Degree would receive \$3000.00. Employees with specialized assignments such as Senior Evidence Technician, Pilot, or Canine Officer would be entitled to \$85.00 per month. The FOP asserts that this proposal would reward employees who have taken additional training, or obtained additional education. The FOP states that the proposal will also insure that all bargaining unit members receive appropriate professional training.

Position of the Employer

The Employer opposes the proposal for educational and special assignment compensation. It asserts that the FOP has not demonstrated any need for such compensation. It also argues that the proposal is not clear as to whether the educational compensation is a one-time or annual payment. If the proposal requires an annual payment, the Employer estimates that the cost would be about \$6000.00 per year.

Discussion and Findings

This proposal seeks to encourage employees to obtain additional education and specialized training. While these are meritorious goals, the proposal contains several ambiguities. The proposal does not state whether the educational incentive is to be a one-time or annual payment. The proposal lacks detail regarding both specialized pay and professional training. It does not identify all of the specialized positions which would qualify for the monthly payment, and it does not clearly state how frequently the professional training must be provided. Further, there is no evidence showing that these

types of benefits are customarily provided to employees in comparable jurisdictions. Therefore, the proposal of the FOP must be rejected.

Award

The proposal of the FOP for education and training compensation will not be included in the new collective bargaining agreement.

CONCLUSION

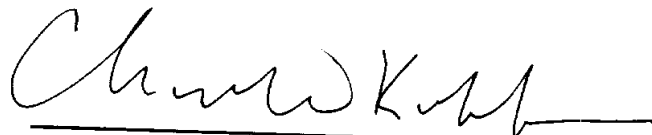
In conclusion, the Conciliator submits his decision with respect to the outstanding issues and orders that the awards be incorporated into the collective bargaining agreements of the parties.



Charles W. Kohler, Conciliator

CERTIFICATE OF SERVICE

I do hereby certify that on June 23, 2000, a copy of the foregoing Conciliation Award was served upon Lawrence Deck, Staff Representative, Fraternal Order of Police, Ohio Labor Council, Inc., 222 East Town Street, Columbus, Ohio 43215; Jim Slagle, Marion County Prosecuting Attorney, 133½ East Center Street, Marion, Ohio 43302-3801; and George Albu, 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