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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In The Matter of Fact-Finding Between:

LORAIN COUNTY SHERIFF)	CASE NO: 00-MED-04-0465
)	DEPUTY SHERIFFS UNIT
-AND-)	CASE NO: 00-MED-0466
)	COMMUNICATION UNIT
LORAIN COUNTY)	
DEPUTY ASSOCIATION)	

APPEARANCES

For The County

Howard Heffelfinger, Esq.,	Consultant
Robin L. Bell	Consultant
Barbara Curley	Sergeant

For The Union (Deputy Sheriffs Unit)

Robert M. Phillips	Attorney
John Steenstra	Deputy - President
Heath Tester	Deputy - Vice President
Gerald G. Stanko	Deputy - Representative

For The Union (Communication Officers Unit)

Robert M. Phillips	Attorney
Raymond Anderson	Communications Officer
Joe Perichak	Communications Officer
David Ferry	Communications Officer

BEFORE ALAN MILES RUBEN, FACT-FINDER

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BACKGROUND

The Employer, Lorain County, occupies an area of some 493 square miles in Northern Ohio with a population of 287,000. Lorain's median household income in 1995, the latest date for which data is available, was \$38,512.00, but some 10.4% of Lorain's population in that year were living below the poverty level. Among the contiguous and nearby Counties - Ashland, Butler, Cuyahoga, Erie, Huron, Lake, Lucas, Mahoning, Medina, Stark, Summit and Trumbull - Lorain ranks fifth in population, but ninth in per capita income as of 1997 with an unemployment rate of 5%, the fifth highest among these twelve Counties. It ranks sixth out of the twelve in per capita real property tax collections. Nevertheless, Lorain has retained a general fund budget surplus which is within the recommended range of five to ten percent of annual expenditures. Its Ohio general obligation bonds were upgraded in 1995 from Baa1 to A by Moody's Investors Service.

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The Lorain County Sheriff, exercises statutory authority and responsibility inter alia, for the provision of correctional facilities, law enforcement, and court service functions.

The Department is comprised of 190 law enforcement employees including nine Communications Officers, fifty Deputy Sheriffs, twelve Promoted Deputy Sheriffs, and 120 Corrections Officers.

The Sheriff's nine classified Communications Officers together with a Vehicle Maintenance Coordinator and a Vehicle Maintenance Worker yet to be appointed, form a unit exclusively represented for collective bargaining purposes by the independent Lorain County Deputy Association, pursuant to certification of the State Employment Relations Board.

The Association also represents a separate Unit consisting of some forty-nine classified Deputy Sheriffs and one classified Evidence Officer. Twenty-seven of the Deputies are assigned to the Road Patrol. The remainder are distributed among the Community Police unit, the Warrant Service unit, the Prisoner Work Furlough Review staff, the Service of Summons cadre, the Prisoner Transport unit, the Detective Bureau, the Drug Task Force and the D.A.R.E. office.

The Sheriff's classified Correction Officers and Promoted Officers form separate bargaining units whose Contracts are not before the Fact-Finder.

The Sheriff and the Union are signatories to a single Collective Bargaining Agreement covering both the Communication Officers Unit and the Deputy Sheriffs Unit. The Contract was entered into as July 10, 1997, for an initial term which expired on December 31, 1999.

Pursuant to the Contractual requirement, timely notices were given of intent to modify or amend the Agreement and negotiations proceeded looking towards the execution of a successor Agreement.

After several bargaining sessions the parties declared impasse in both sets of negotiations, and the undersigned was appointed Fact-Finder by the State Employment Relations Board on May 12, 2000.

At the direction of the parties, a Mediation session was held on June 7, 2000.

The mediation efforts proved successful in resolving some, but not all, of the unresolved issues.

Accordingly, Fact-Finding hearings were scheduled on July 14, 2000 for the Deputies Unit and on July 27, 2000 for the Communication Officers Unit.

Timely in advance of the hearing, the parties provided the Fact-Finder with the statements required by Ohio Administrative Code Section 4117-9-05(F) and Ohio Revised Code Section 4117.14(C)(3)(a).

The parties agreed that each Unit would henceforth enter into separate Contracts, and that the following Articles and Sections from the 1997 Contract would be carried forward into each successor Agreement, mutatis mutandis, and appropriately renumbered.¹

Article 5 - Management Rights
Article 7 - No Strike/No Lockout
Article 9 - Layoff and Recall
Article 10 - Probationary Periods
Article 11 - Lateral Assignments and
Transfers
Article 12 - Job Vacancies

1. In the case of the Communication Officers' Contract, Section 11 was to be deleted as not germane to their classification.

- Article 13 - Health And Safety
- Article 14 - Prior Rules And Regulations
- Article 16 - Union Bulletin Boards
- Article 19 - Leaves Of Absence
- Article 23 - Severability
- Article 24 - Waiver In Case Of Emergency
- Article 39 - Nondiscrimination

With respect to the Communication Officers Unit only, the parties agreed that the term of the successor Contract, to be set forth in Article 40, "Duration of Agreement," was to commence as of January 1, 2000 and remain in full force and effect for a term of three years, ending on December 31, 2002. The parties further agreed that all economic terms were to be given retroactively effect to January 1, 2000. (The term of the successor Contract for the Deputies Unit remained at issue in the negotiations between the Deputies Unit and the Sheriff).

Six "Letters of Understanding" or "Side Agreements" appended to the 1997 Agreement were also to be retained and, as applicable to each Unit, were to remain in effect during the term of the successor Contracts.

Tentative agreements were reached with respect to proposals to amend the following provisions of the expired Agreement:

- "Preamble
- Article 1 - Union Recognition
- Article 3 - Union Security And Dues Check-Off
- Article 4 - Fair Share Fee
- Article 8 - Seniority
- Article 15 - Labor/Management Meetings
- Article 17 - Corrective Action
- Article 18 - Grievance Procedure
- Article 21 - Military Leave"

The Fact-Finder finds appropriate and recommends the adoption of all of these Tentative Agreements.

A series of proposals to add new provisions and to amend other Articles and Sections of Articles of the existing Contract were withdrawn during mediation. Consequently, all proposals for Contractual amendments and the addition of Sections or Articles that have not been specifically referred to above, and which are not discussed below, are to be deemed as having been withdrawn and abandoned.

Remaining unresolved were proposals submitted by the parties for amendments to the following Articles of the 1997 Agreement, and additional Articles to that Agreement:

- Article 22 - Union Leave
- Article 25 - Sick Leave (Section 25.10)
- Article 27 - Bereavement Leave
- Article 30 - Longevity
- Article 31 - Hours Of Work And Overtime
(Section 31.4)
- Article 34 - Vacation Leave
- Article 36 - Wages
- Article 40 - Duration (Deputies Unit Only)
- New Article - Specific Waiver Of Statutory Remedies
- New Article - Field Training Officer
- New Article - Shift Differential

In making his recommendations upon all of these issues the Fact-finder has been guided by the factors set forth in O.R.C. Section 4117.14(C)(4)(e), and Ohio Administrative Code, 4117-9-05(K) namely:

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

"(b) Comparison of the unresolved issues relative to the employees in the bargaining

unit involved 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 stipulation 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."

At the arbitral hearing the parties submitted data on the compensation of employees in other Departments of Lorain County and of Communication Officers and Deputy Sheriffs in other Sheriff Departments; Collective Bargaining Agreements between the Sheriffs and Deputies and Correction Officers in other Counties; work activity reports for Lorain's Communication Officers and Deputies; financial reports on Lorain's financial condition and General Fund status and data on consumer price index changes over the most recent twenty-five years.

THE COMMUNICATION OFFICERS UNIT

CONTRACT PROVISIONS AT ISSUE

I. Article 22, Section 22.1 - Union Leave

The 1997 Contract:

Article 22 of the expired Agreement provided:

"Article 22 - Union Leave

"Section 22.1. Union officers may be granted paid leave to attend annual conventions of the Union or other authorized Union activities at the discretion of the Sheriff. Not more than two (2) Union officers shall be granted such leave at any one time. Requests for leave shall be submitted at least two (2) weeks in advance. The Sheriff, at his discretion, may authorize such Union leave to be with pay; however, paid Union leave shall not exceed [an] accumulative total of forty (40) hours per contract year, and shall be distributed between the two (2) members."

THE UNION'S PROPOSAL

In view of the Agreement that each Unit will have its own Collective Bargaining Agreement, the Union proposes that representatives of the Communication Officers Bargaining Unit share a total of forty hours of leave time for Union business each year. Thus, they would adopt verbatim the present text of Article 22 for incorporation into the Contract for Communication Officers.

THE SHERIFF'S PROPOSAL

The Sheriff insists that the forty (40) hours of Union leave time available under the present Contract be divided between the two Units, and that no additional time-off is warranted.

DISCUSSION AND FINDINGS

The Sheriff has designated as comparable to Lorain contiguous and nearby Counties whose Sheriff Departments maintain staffs of Dispatchers, or Communication Officers or

both classifications. The Counties are Ashland, Butler, Cuyahoga, Erie, Huron, Lake, Mahoning, Lucas, Medina, Stark, Summit and Trumbull.² None of these comparable Counties provide for paid Union leave for their Dispatchers or Communication Officers.

Further, the Sheriff provides in addition to "Union Leave" for "reasonable time off with pay to conduct appropriate union representative business" under Article 2 of the Contract.

Nevertheless, giving consideration to the fact that the Communication Officers Unit will have a separate Contract, and that its members may well have interests different from those of the members of the Deputies Unit, the Fact-Finder finds that it is appropriate to accord representatives of the Communications Officers Unit separate leave time to attend to authorized Union activities even though, at present, there are no annual conventions of this independent Union.

However, in view of the relatively small size of the Communications Unit - some ten members - the Fact-Finder does not find that the Union has established the need for forty hours of such leave time. Instead, the Fact-Finder finds appropriate, and recommends, that the Communication Unit representatives be given up to a total of twenty hours annually to be used to attend to Contractually identified

2. The relevant demographic and financial characteristics of Lorain and ten of these Counties are portrayed in the table shown on page eleven.

Union activities. The hours may be used entirely by one representative or divided among two representatives, at the option of the Union.

RECOMMENDATIONS

The Fact-Finder recommends that the parties adopt the following text as Article 22, Section 22.1 of the Communication Officers separate Contract:

"Article 22 - Union Leave

"Section 22.1. Union officers representing the Communication Officers Unit may be granted paid leave to attend annual conventions of the Union or other authorized Union activities at the discretion of the Sheriff. Not more than (2) Union Officers shall be granted such leave at any one time. The request for leave shall be submitted at least two (2) weeks in advance. The Sheriff, at his discretion, may authorized such Union leave to be with pay; However, paid Union leave shall not exceed an accumulative total of twenty (20) hours per Contract year, and if such leave is to be granted to two Union Officers, accumulative total of twenty (20) hours per Contract year shall be distributed between the two (2) Officers."

<u>County</u>	<u>Projected 2000 Population</u>	<u>1997 Per Capita Income</u>	<u>1997 Taxable Value of Real Property</u>	<u>1997 Per Capita Real Property Tax</u>	<u>1998 Unemployment Rate</u>
Lake	7 220,300	2 \$ 26,250.00	6 \$ 3,749,997,580.00	1 \$ 17,022.23	3 3.6%
Medina	8 143,230	4 \$ 25,366.00	8 \$ 2,272,507,810.00	2 \$ 15,866.14	1 3.3%
Cuyahoga	1 1,373,000	1 \$ 29,008.00	1 \$ 20,832,186,920.00	3 \$ 15,172.75	7 4.5%
Erie	9 78,200	5 \$ 24,755.00	9 \$ 1,149,073,870.00	4 \$ 14,694.04	8 4.9%
Summit	2 532,700	3 \$ 25,794.00	2 \$ 7,616,473,570.00	5 \$ 14,297.87	4 4.0%
Butler	5 335,560	7 \$ 23,309.00	5 \$ 4,064,906,180.00	6 \$ 12,113.80	1 3.3%
Lorain	6 287,440	9 \$ 22,795.00	7 \$ 3,434,178,940.00	7 \$ 11,947.46	9 5%
Stark	4 374,700	8 \$ 22,984.00	4 \$ 4,274,248,180.00	8 \$ 11,407.12	5 4.1%
Lucas	3 459,100	6 \$ 24,630.00	3 \$ 5,006,199,680.00	9 \$ 10,904.38	10 5.5%
Huron	10 59,700	10 \$ 20,749.00	10 \$ 587,220,890.00	10 \$ 9,836.20	11 8.2%
Ashland	11 51,520	11 \$ 18,585.00	11 \$ 484,393,750.00	11 \$ 9,402.05	5 4.1%

II. Article 25, Section 25.10 - Sick Leave Conversions

The 1997 Contract

Article 25, Section 25.10 of the expired Agreement provided as follows:

"Section 25.10. Sick Leave Conversion.

"Upon formal retirement under the Public Employees Retirement System (PERS), bargaining unit employees with ten (10) years or more service with the Employer shall be eligible to convert fifty percent (50%) of their accumulated sick leave. Such payment in no event shall exceed four hundred eighty (480) hours.

"Payments shall be made as soon as practicable upon receipt of a formal written application by the retiring employee."

THE UNION'S PROPOSAL

The Union seeks to increase the amount of sick leave eligible for conversion upon retirement from four hundred and eighty (480) hours to nine hundred and sixty (960) hours. The Union also seeks to allow such pay-out upon the death or resignation of a Bargaining Unit employee.

THE SHERIFF'S PROPOSAL

The Sheriff is willing to cash-out accumulated sick leave upon the death of employees who have completed ten or more years of service, but seeks to maintain the existing "cap" of four hundred and eighty (480) hours.

DISCUSSION AND FINDINGS

The Fact-Finder notes that the Promoted Law Enforcement Division Unit Contract whose initial term expired on December

31, 1999, provided that members of that Unit were eligible to convert accumulated sick leave into cash in accordance with the following table:

<u>"Years Of Service</u>	<u>Percent Received</u>	<u>Not To Exceed</u>
Twenty (20 to twenty-five (25)	50%	960 hours
Twenty-six (26) to indefinite	50%	1440 hours"

The Fact-Finder has not been presented with any persuasive reason why the Union's request to raise the maximum cash-out to 960 hours should not be granted on the same terms as are available to Promoted Officers. Although this will result in an increase in the unfunded, contingent liability of the Sheriff to employees with twenty or more years of seniority, the attendance incentive thus created is likely to result in offsetting savings by reducing the need to fill-in for absent employees on a costly overtime basis.

The sick leave conversion program is designed to encourage retention of employees, and reward longevity with the Department. The Sheriff seeks to minimize turn-over and the cost associated with the training of new recruits, and encourages employees to spend their careers with the Department. This purpose would not be served by allowing employees to cash-out their sick leave upon resignation.

A survey of the ten adjacent and nearby Counties deemed comparable - Ashland, Butler, Cuyahoga, Erie, Huron, Lake, Lucas, Medina, Stark and Summit - reveals that none provide

for the pay-out of accrued sick leave upon resignation of their Dispatchers.

The Fact-Finder, therefore, does not recommend adoption of the Union's proposal to extend sick leave conversion privileges to employees who resign their positions with the Sheriff.

RECOMMENDATIONS

The Fact-Finder recommends that the parties adopt the following text for Article 25, Section '25.10 of the Communication Officers Agreement:

"Upon formal retirement under the Public Employees Retirement Systems (PERS), or death, Bargaining Unit employees with ten (10) years of service with the Employer shall be eligible to convert fifty (50%) percent of their accumulated sick leave up to a maximum total of four hundred and eighty (480) hours. Bargaining Unit employees with twenty (20) or more years of service with the Employer shall be eligible to convert fifty (50%) percent of their accumulated sick leave up to a maximum total of nine hundred sixty (960) hours.

"Payments shall be made as soon as practicable upon receipt of a formal written application by the retiring employee, or the deceased employee's surviving spouse or estate."

III. Article 27, Section 27.1-27.3 - Bereavement Leave

The 1997 Contract.

Article 27, Section 27.1-27.3 of the expired Agreement provided as follows:

"Article 27 - Bereavement Leave

"Section 27.1 In the event of a death in the immediate family of an employee, the employee shall be granted paid leave up to three (3) days (twenty-four (24) hours) to attend the funeral, make funeral arrangements, and carry out other responsibilities relative to the funeral. Said leave shall not be chargeable to sick leave.

"Section 27.2 For purposes of this article, immediate family shall be defined as mother, father, sister, brother, spouse, child, father-in-law, mother-in-law and grandparents.

"Section 27.3 Upon approval of the Sheriff, an additional two (2) days chargeable to sick leave may be granted to employees to attend funerals, make funeral arrangements, and carry out other responsibilities relative to the funeral. Additionally, a maximum of three (3) days chargeable to sick leave may be granted to employees to attend funerals of other relatives not identified in Section 2 of this article, but included in Article 25, Section 5 "B."

THE UNION'S PROPOSAL

The Union seeks to include among the relatives upon whose death bereavement leave is available "employees' grandchildren and less immediate family members". As defined at the hearing, the Union's "less immediate family members" addition referred to "surrogate mothers and fathers".

THE SHERIFF'S PROPOSAL

The Sheriff is willing to expand the list of those relatives upon whose death bereavement leave is available to include "grandchildren residing in the employee's household", but is unwilling to encompass a vague and potentially "open ended" category as "less immediate family members", or "surrogate mothers and fathers". The latter term has been

used to refer to women who agree to carry to term the fertilized egg of a female who is unable to bear a child. Presumably the Union did not intend that meaning.

While the "extended family" seems to be a casualty of the nuclear age, there are still many households who have adopted children or have custody of minors. The bond of affection between non-biological parents and the children whom they have adopted or of whom they have custody can be equally as strong as the bond between biological parents and their off-spring. There is no reason to expect any significant incidence of death of such children, and therefore, no significant economic cost to the Sheriff of the Union's proposal.

These considerations leads the Fact-Finder to find that the Union's proposal is appropriate and ought to be adopted.

RECOMMENDATIONS

Accordingly, the Fact-Finder recommends that the parties adopt the following as the text of Article 27, Section 27.2:

"Section 27.2 For purposes of this Article, immediate family shall be defined as mother, father, sister, brother, spouse, child, father-in-law, mother-in-law, grandparents, grandchildren residing in the employee's household, adopted children and children for whom the employee stands in loco parentis."

IV. Article 34 - Vacation Leave

The 1997 Contract.

The recently expired Contract provided in Article 34, Section 34.7 and 34.8 as follows:

"Section 34.7 Generally, vacation leave shall be taken by an employee between the year in which it was accrued and the next anniversary date of employment. The Employer may, in special circumstances, permit an employee to accumulate vacation from year to year. This accumulation of vacation time must be approved in advance and must be in response to special circumstances as outlined in a written request submitted by the employee.

"Section 34.8 Employees shall forfeit their right to take or to be paid for any vacation leave to their credit which is in excess of the accrual of two (2) years. Such excess leave shall be eliminated from the employee's leave balance; the employee shall be notified in writing of the number of hours of leave eliminated."

THE UNION'S PROPOSAL

The Union seeks to delete Section 34.8's provision for forfeiture of accrued vacation leave in excess of two years. The Union contends that from time-to-time circumstances beyond the control of an employee may prevent the employee from utilizing accrued vacation within a two year period. As an example, the Union cites the case of an employee who was unable to utilize accrued vacation entitlements because the employee was on Workers' Compensation leave.

THE SHERIFF'S PROPOSAL

The Sheriff seeks to retain the existing text without change. The Sheriff is concerned about scheduling problems and overtime utilization costs which may be occasioned if employees are allowed to accumulate vacation time beyond two years.

DISCUSSION AND FINDINGS

Vacations serve as periods of refreshment and renewal. Permitting the accumulation of accrued but unused vacation time for a period longer than two years tends to defeat this purpose. Moreover, as the Sheriff points out, deferring vacation entitlements creates unfunded contingent liabilities, disrupts the scheduling process and impairs the Sheriff's ability to control overtime costs.

However, the Fact-Finder recognizes the validity of the Union's position that in unusual circumstances the inability to utilize all of accrued vacation time may be beyond the control of the employee.

The Fact-Finder believes that an accommodation can be reached that would obviate the Sheriff's legitimate concern and, at the same time, prevent an unfair forfeiture of vacation time.

The Fact-Finder finds that the right to accumulate accrued vacation time beyond two years should be left to the discretion of the Sheriff to be exercised on a case-by-case basis upon a showing of "good cause" by the applying employee. Presumably, the holding over of vacation entitlements for more than two years will not be a common occurrence, and the Sheriff would retain the authority to reject applications for an extension of vacation leave carry-over beyond two years where the employee is unable to present a good reason for the extension, or where the such extension would work an undue hardship upon the operations of the Department.

RECOMMENDATIONS

The Fact-Finder recommends the parties adopt the following as the text of Article 34, Section 34.8:

"Article 34.8 Unless an extension is granted by the Sheriff in the Sheriff's sole discretion upon application by an employee for good cause shown, an employee shall forfeit the right to take or to be paid for any vacation leave to the employee as credit which is in excess of the accrual of two (2) years. Such excess leave shall be eliminated from the employee's leave balance; the employee shall be notified in writing of the number of hours of leave eliminated."

V. Article 31, Section 31.4 - Hours of Work and Overtime

- Call-In Pay

The 1997 Contract.

Article 31, Section 31.4 of the expired Contract provided:

"Section 31.4 An employee, other than those who are furnished a support car, shall receive overtime pay at the base rate of one and one-half (1 1/2) times the base pay when called in from off-duty status for departmental business, court appearances, emergencies, special events, and required schooling, in a minimum amount of three (3) hours. Any amount of time in excess of three (3) hours shall be paid to the nearest tenth (1/10) of an hour."

THE UNION'S PROPOSAL

The Union seeks to increase the minimum amount of time for which an off-duty employee must be paid when called-in by the Sheriff for three hours to four hours.

The Union notes that virtually all compensatory time accumulated by Communication Officers derives from holidays

worked because Communication Officers are seldom required to appear as witnesses in court. As a matter of past practice, Communication Officers called-in to work on a holiday are paid for eight hours and receive twelve hours of compensatory time. As of July 1st of each year, compensatory time accumulations in excess of forty hours are cashed-out.

THE SHERIFF'S PROPOSAL

The Sheriff seeks to maintain the current text of Article 31, Section 31.4. The Sheriff contends that in light of the small size of the Unit, providing for additional compensatory time would burden scheduling and increase overtime costs. The Sheriff suggests that if an increase in call-in pay is given to the Communication Officers Unit, the other Bargaining Units will seek the same enhancement.

DISCUSSION AND FINDINGS

Call-ins under Article 31, Section 31.4 are relatively rare occurrences for the Communications Officers, and the Fact-Finder does not see any persuasive reason for increasing the minimum hours for which these Officers would be paid if called-in when they are on an off-duty status, particularly when they receive overtime premium compensation for the call-in hours.

Of the ten contiguous and nearby comparable Counties, only four - Butler, Lucas, Stark and Summit - provide for a minimum of four hours. However, in Butler, if the Communications Officer is on "stand-by status", the minimum call-in time is reduced to two hours. In Stark County, if the

call-in is to attend court, the minimum shrinks to two hours and is payable at base rate. Lucas County also diminishes the minimum call-in time to two hours for Court appearances, but pays time and one-half the applicable base rate.

Erie, along with Lorain, provides for a minimum of three hours, but only at the base rate. Ashland provides a minimum of two hours only if the employee is called-in for court. The remaining three Counties - Erie, Huron and Lake - do not provide a minimum number of paid hours' for call-in assignments.

Consideration of the practice in comparable Counties, and the lack of evidence of any hardship visited upon Lorain's Communication Officers by reason of the frequency of call-ins, leads the Fact-Finder to find no justification for recommending the adoption of the Union's proposal.

RECOMMENDATIONS

The Fact-Finder recommends that the parties adopt the present text of Article 31, Section 31.4 without change.

VI. New Article - Field Training Officer

THE UNION'S PROPOSAL

Communication Officers receive some one hundred and twenty hours of instruction and between twenty and forty hours of on-the-job training. The Union seeks to have one or more Communication Officers designated as a Field Training Officer. The Union contends that the training of Communication Officers is presently, "haphazard", and not according to any detailed training regimen. Training is the responsibility of whichever

Dispatcher happens to be on duty, and since Dispatchers' days-off will vary from those of the Trainee, it is likely that several Dispatchers will share the responsibility. Since no records are maintained to show the particular aspects of the job that have been explained to the recruit, it is possible that significant aspects of the job may not have been covered.

The Union proposes that Communication Officers who instruct new recruits be designated as Field Training Officers and receive a one dollar an hour premium while 'serving in this status.

THE SHERIFF'S PROPOSAL

The Sheriff rejects the Union's proposal on the ground that it is unnecessary in view of the fact that no new Communication Officers have been hired during the past four years, and there are no plans to hire additions to the staff.

DISCUSSIONS AND FINDINGS

The Fact-Finder notes that the Sheriff had agreed in the 1997 Agreement to explore the creation of a Training Officer development program for the Deputies Unit, and since then has implemented such a program. The Fact-Finder sees no reason why a training policy for Communication Officers should not be put in place in preparation for the day when a new Dispatcher is hired. However, the precise program created for the Deputies Unit is not necessarily the most suitable for the Communication Officers Unit and therefore the Fact-Finder finds that the development of the appropriate program should be left to the Sheriff in consultation with the Union.

RECOMMENDATIONS

Accordingly, the Fact-Finder recommends that the parties adopt a Side Letter Agreement for the creation of a Training Officer program to read as follows:

"The Employer agrees to adopt a Training Officer development program for Communication Officers. The Employer agrees that such program shall be implemented no later than six (6) months from the date of execution of this agreement."

VI. New Article - Shift Differentials

THE UNION'S PROPOSAL

The Union seeks to provide a shift differential of \$.30 per hour for employees assigned to the first shift (11:00 p.m. to 7:00 a.m.), and \$.25 per hour for an employees on the third shift (3:00 p.m. to 11:00 p.m.).

THE SHERIFF'S PROPOSAL

The Employer opposes the introduction of shift differentials into the County's wage structure.

DISCUSSION AND FINDINGS

Traditionally, such premiums are paid because of the fact that evening and night shifts tend to interfere with family and social life because these work schedules are out of step with those of other family members and the timing of cultural and social events.

Every four months Communication Officers may choose their shifts in accordance with their seniority. However, it appears that some of the more senior Communication Officers do

not automatically seek assignment to the day (second) shift (7:00 a.m. to 3:00 p.m.).

The record does not establish that there is any undue hardship visited upon employees who are assigned to the first or third shifts as would support a recommendation for the introduction of a shift differential for this Unit.

Of the ten County Sheriff Departments used for Communication Officers comparability analyses, only three, Ashland, Erie and Huron, provide for shift differentials. Ashland gives an additional \$.40 an hour for the afternoon shift, and \$.50 an hour for the midnight shift. Erie provides \$.20 afternoon differential and a \$.35 midnight shift differential. Huron offers only a \$.15 supplement for afternoon shift hours, and \$.20 for midnight shift hours. However, none of these three Counties allow for shift bidding.

RECOMMENDATIONS

The Fact-Finder does not recommend that the parties adopt the Union's proposal for a shift differential premium.

VII. New Provision - Preemption and Waiver of Statutory Rights

THE SHERIFF'S PROPOSAL

In State ex rel OAPSE vs. Batavia Local School District Board of Education, 89 Ohio St. 3d 191 (2000), the Ohio Supreme Court held that "in order to negate the statutory rights of public employees, a collective bargaining agreement must use language with such specificity as to explicitly

demonstrate that the intent of the parties was to pre-empt the statutory rights".

In that case the School Board had contracted-out all student transportation services, abolished the positions of bus driver and mechanic and layed-off the employees who held those positions. Although the Collective Bargaining Agreement between the employees and the School District authorized the Board to abolish positions and layoff the incumbent employees, the Court concluded that the Contract did not specifically deal with the subject of contracting-out. The relevant public employee statutory provisions did not authorize lay-offs of non-teaching local school district personnel, and the Court therefore interpreted the statute as prohibiting a Board of Education from abolishing positions and laying-off non-teaching personnel.

In order to avoid the application of statutory remedies, therefore, the Court concluded that a Collective Bargaining Agreement must specifically exclude the statutory rights.

The Sheriff seeks to add to the Contract appropriate language in keeping with the Batavia decision to negate statutory rights.

THE UNION'S PROPOSAL

The Union does not oppose adding a provision to the Agreement which would indicate the parties' intent that the Agreement pre-empts statutory rights.

DISCUSSION AND FINDINGS

The Batavia decision of the Ohio Supreme Court introduced an element of uncertainty into the collective bargaining process and called into question the finality of arbitration awards on a subject that is also covered by a public employment statutory provision. As a result, employers as well as Unions may have an opportunity to negate an unfavorable arbitration award, or bypass the Contractual dispute resolution process altogether, in favor of a court proceeding to resolve the dispute under the statute.

Accordingly, the Fact-Finder finds the Sheriff's proposal appropriate and recommends its adoption.

RECOMMENDATIONS

The Fact-Finder recommends that the parties agree to formulate and adopt language in their a successor Collective Bargaining Agreement specifically and explicitly evidencing their intent to pre-empt and negate statutory rights and remedies as to any matter which is within the permissible scope of collective bargaining.

VIII. Article 30 - Longevity

The 1997 Contract

The expired Collective Bargaining Agreement provided for annual longevity payments of \$86.00 per year for employees who have completed three years of service and not more than fifteen years of service, \$88.00 per year for employees having completed at least sixteen years of service and not more than twenty years of service and \$92.00 per year for employees who have completed at least twenty-one years of service up to a

maximum of thirty years of service. The annual amounts beginning with the third year and ending with the thirtieth of service are shown in the schedule below:

<u>"Yrs. of Serv</u>	<u>Amount</u>	<u>Yrs. of Serv.</u>	<u>Amount</u>
3	\$258	17	\$1,496
4	\$344	18	\$1,584
5	\$430	19	\$1,672
6	\$516	20	\$1,760
7	\$602	21	\$1,932
8	\$688	22	\$2,024
9	\$774	23	\$2,116
10	\$860	24	\$2,208
11	\$946	25	\$2,300
12	\$1,032	26	\$2,392
13	\$1,118	27	\$2,484
14	\$1,204	28	\$2,576
15	\$1,290	29	\$2,668
16	\$1,408	30	\$2,760

THE UNION'S PROPOSAL

The Union seeks to increase the annual amounts from \$86.00 to \$100.00 for members of the Unit who have completed three years through fifteen years of service, from \$88.00 to \$120.00 for employees have completed sixteen through twenty years of service and from \$92.00 to \$130.00 for employees who have completed twenty-one years through thirty years of service.

THE SHERIFF'S PROPOSAL

The Sheriff opposes any increase in longevity pay on the ground that current annual payments are significantly higher than those offered to other Lorain County employees and to Dispatchers in comparable Sheriff Departments.

DISCUSSION AND FINDINGS

Out of the thirteen Lorain County Departments surveyed, employees in seven Departments or Units - Auditor, Clerk of

Courts, Commissioners, Commissioner/Eng. Commissioner/9-1-1, MRDD and Treasurer - provide an initial lump sum longevity payment of \$520.00 or \$526.00 for employees. The employees in the Clerk and Communication Offices receive the supplement after three years, those in the Auditor, Commissioner/Eng., 9-1-1- and Treasurer Units are entitled to the benefit after five years. Personnel in MRDD begin their entitlements after one year at the top step.

The Communications Officers receive only \$258.00 after three years of service. However, the Communication Officers longevity schedule is heavily weighted in favor of Dispatchers with more than five years of service. At six years, Communication Officers receive \$602.00 per year which is higher than employees in any other Department or Unit with the exception of MRDD staff. The longevity payment disparity increases in favor of Communication Officers each year thereafter. Thus, in each of these seven named Departments, longevity payments top out at \$832.00.

Compared to the Correction Officer's Unit with which the Communications Officers wish to compare themselves, the Dispatcher's longevity payment is larger at every seniority level.

Turning to external comparisons, the Lorain Communication Officers' longevity payments are significantly higher than that received by the Dispatchers in all of the ten contiguous and otherwise comparable Counties, excepting Ashland County which offers its Dispatchers \$500.00 beginning on their fifth

anniversary of service and increases the amount annually thereafter by \$100.00 until the twenty-fifth year of service when the Ashland Dispatchers receive a maximum of \$2500.00.

All ten members of the Lorain Communication Officers Bargaining Unit are eligible for longevity pay, and, during the first year of the successor Agreement, only one will have less than five years of service while four will have completed between ten and thirteen years of service and the remaining three will have finished between nineteen and twenty-four years of service.

At the ten year anniversary level, Lorain offers \$860.00. The average longevity payment to Dispatchers in the eight other Sheriff Departments that offer this benefit to Communication Officers is \$501.00.

The comparison of Lorain's Communication Officers longevity pay with that of other employees of Lorain County and that of Dispatchers in the Sheriff Departments of other Counties demonstrates that the Communications Officers Unit are at the head of the pack with respect to longevity pay. The Union has failed to make out a case for significantly increasing the schedule of annual payments.

The Fact-Finder notes, however, that a static schedule is subject to the erosive effects of inflation. But, since the cost of living has been held well in check, there is need for only a small adjustment. Accordingly, the Fact-Finder finds appropriate a two dollar increase in each of the three steps of the longevity schedule.

RECOMMENDATIONS

The Fact-Finder recommends that the parties adopt the following text of Article 30, Section 30.1:

Contract Year 1

<u>Years Of Completed Service</u>	<u>Amount Per Year</u>
Three (3) through fifteen (15)	\$88.00
Sixteen (16) through twenty (20)	\$90.00
Twenty-one (21) through thirty (30)	\$94.00

Contract Year 2

<u>Years Of Completed Service</u>	<u>Amount Per Year</u>
Three (3) through fifteen (15)	\$88.00
Sixteen (16) through twenty (20)	\$90.00
Twenty-one (21) through thirty (30)	\$94.00

Contract Year 3

<u>Years Of Completed Service</u>	<u>Amount Per Year</u>
Three (3) through fifteen (15)	\$88.00
Sixteen (16) through twenty (20)	\$90.00
Twenty-one (21) through thirty (30)	\$94.00

VIX. Article 36 - Wages

The 1997 Contract

Article 36, Section 36.3 of the expired Contract provided for the following schedule of wages:

"Section 36.3 Effective the first full pay period following January 1, 1999, the hourly rates of pay for the bargaining unit employees shall be as follows:

<u>"Classification</u>	<u>Probationary Rate</u>	<u>1st Yr. Rate</u>	<u>2nd Yr. Rate</u>	<u>Maximum Rate</u>
			
Communications Officer*	\$ 11.79	\$ 12.84	\$ 13.90	\$ 14.95
BONUS	\$735.70	\$801.22	\$867.36	\$932.88
Vehicle Maintenance Coordinator **	\$ 14.19	\$ 14.98	\$ 15.76	\$ 16.54
Vehicle Maintenance				

Worker *** \$ 12.14 \$ 12.52 \$ 12.93 \$ 13.30

<u>Annual Base Compensation (Maximum Pay)</u>	<u>Amount</u>
Communications Officer (Plus Bonus) *	\$32,028.88
Vehicle Maintenance Coordinator **	\$34,403.20
Vehicle Maintenance Worker ***	\$27,664.00

THE UNION'S PROPOSAL

The Union proposes a one time increase in base pay of \$1750.00 plus annual increases of 7% in each of the three years of the Contract.

THE SHERIFF'S PROPOSAL

The Sheriff offers wage increases of 3% in the first year of the Contract and 2% in each of the last two years of the Agreement.

DISCUSSION AND FINDINGS

The Communications Officers are a skilled, dedicated and effective cadre.

The volume of their work has not only increased over the years, it has also become more diversified.

As the Union's able Counsel puts it:

"... This unit is a highly skilled, trained and motivated group of employees within the Sheriff's department who literally serve as the "Nerve Center" of the entire department. It is their constant state of ready communication that permit the effective deployment of all law enforcement assets in any given tactical situation.

"The level of required skills and training are one of the highest throughout the countywide employee base. There is a blend of abilities and education geared specifically to react to any major crisis. Whether it be an in-home birth of a child, residential fire, medical emergency, hostage situation or routine traffic enforcement, it is the lines of communication which allow

efficient decision making that permit successful end results."

Presently, Communication Officers must have received 120 hours of training, and from twenty to forty hours of in-service training in order to perform their functions properly.

Over twelve regular phone lines and two special "9-1-1" lines, the Communication Officers receive requests for assistance or information, and make dispatches.

They track the Deputies who take prisoners to Court.

They maintain stolen vehicle files, and, when the record room is closed, they confirm the status of the vehicles on inquiry from other law enforcement departments.

So also they keep current an active warrant file of approximately 1600 documents issued by Common Pleas and Municipal Courts which provide information on the background, prior criminal history and vehicle registration of the suspects, and they enter the data into the State Access Center.

Their duties with respect to the towed vehicle file involve determining whether or not there has been a "hold" placed on a car, and verifying whether the owner of the automobile has been notified of the impoundment.

Added to these compendiums is the domestic violence protective order file. In connection with this file the Officers run background checks on the subjects and enter the information into the computer.

Although the County does operate a separate 9-1-1 Dispatch Center,³ there are occasions when calls for ambulances and firefighters come into Communication Officers switchboard and appropriate dispatches must be made.

The Dispatchers are responsible for notifying the Police cruisers and the jail of bad weather warnings, and, in the evening they maintain the security of the front gate.

Communication Officers are also involved in the "booking" of the 6,000 or so prisoners who are incarcerated in the jail each year.

Normally, two Dispatchers are on duty on each shift, but there are no replacements if one is off duty for illness or other reason since the Department does not maintain minimum manpower levels. While a Supervisor can take over the dispatch function if needed, a Supervisor is only scheduled on the day shift.

For the first six months of 2000 the Communication Officers handled a total of 63,793 combined L.E.A.D. and N.C.I.C. transactions, more than twice the number processed by Dispatchers in Medina and Erie Counties and four times the number processed by the Dispatchers in Huron County.

The volume and diversity of their assignments warrant above average compensation.

3. Lorain's 9-1-1 Dispatchers receive \$29,619.00.

In comparing the Lorain Communication Officers average hourly wage rate⁴ with those of counterpart Communication Officers in the comparable communities, Lorain Dispatchers in 1999 ranked squarely in the middle. Communication personnel in Erie (\$17.15), Stark (\$16.29), Lake (\$16.00), Summit (\$15.95), Lucas (\$15.09) all received higher hourly base wage rates.

When longevity is factored into the equation, at the ten year completed service level, Lorain's Dispatchers earned \$31,956.00 per year, an amount exceeded only in four Counties - Erie (\$34,952.00), Lake (\$32,632.00), Summit (\$32,377.00) and Lucas (\$32,344.00).

To at least maintain their position, if not improve upon it, the Lorain Dispatchers must receive wage increases over the life of the successor Contract that minimally match those given Dispatchers in the comparable Counties.

Salary increase percentages for 2000 are available for nine of the ten comparable Counties. Cuyahoga County, which has one of the lowest salaries, has agreed to pay 5% more, while Ashland and Stark have concluded contracts offering 4% increases. Medina has settled on a 3.5% wage hike. Lake and Summit have entered into 3.5% base rate additions. Huron has given 3.25%. Finally, Butler and Erie Counties have agreed on 3% wage improvements for 2000.

4. In the first year of the successor Agreement, all members of the Unit will receive the "top rate".

The average wage increase for the year 2000 among the nine reporting Counties was 3.67%.

Only five counties have agreed upon wages for 2001. Cuyahoga County again leads with a 5% increase, Lake offers 4%, Medina has concluded a 3.7% package, Communication Officers in Erie will receive 3% more. Those in Summit will get only a 2.5% raise.

In light of these percentage increases, it is clear that the Sheriff's proposal of 3%, 2% and 2% over the three years of the successor Contract is too low.

Lorain County does not argue inability to pay higher wage rates increases. It maintains a substantial General Fund balance and year end carry-over despite a lower than average family income and a higher unemployment rate than its neighbors.

Nonetheless, County resources are finite while the demands upon them are infinite. Every dollar spent on compensation for Communication Officers means one dollar less available for other services to residents.

Judged in this light, the Union's request for an "equity adjustment" of \$1,750.00 followed by annual 7% increases is excessive.

A 4% will not only allow Lorain's Communication Officers to keep pace with the compensation received by their colleagues in other Departments, but actually improve their relative standing. Such an increase together with longevity payments at the ten year level will enable Lorain Dispatchers

to earn \$33,204.00 an amount exceeded only by Summit County with \$33,500.00 and Erie County with \$35,972.00.

While not all returns are in yet, it appears that three percent increases in the next two years will suffice to maintain their above average compensation status average.

For the year 2000 and 2001 since inflation is expected to run at less than 3%, the recommended increases will result in real income gains for members of this Unit.

The Communications Officer seek parity with the Correction Officers whose top rate is \$1.69 higher. However, the Correction Officers' qualifications, training and responsibilities different markedly from the Communications Officers. Since their job contents are not equivalent, there is no reason to assume that their pay rates ought to be the same.

The Sheriff also makes a claim for "parity", not of wage rates, but rather of percentage increases since the County is offering three percent increases for other Units. The notion is that the rates established here will set a "pattern" for the other Bargaining Units. Review of the bargaining history in recent years, however, fails to disclose any "pattern". Thus, in 1999, percentage wage increases ranged from zero through 2% and 3% to 4%. The same lack of uniformity is found in the wage increases provided in the three year period 1996-1998.

RECOMMENDATIONS

The Fact-Finder recommends that the parties adopt the following text as Article 36, Section 36.1 and 36.2 and 36.3:

"Section 36.1 Effective the first full pay period following January 1, 2000, the hourly rates of pay for bargaining unit employees shall be as follows:

<u>"Classification</u>	<u>Probationary Rate</u>	<u>1st Yr. Rate</u>	<u>2nd Yr. Rate</u>	<u>Maximum Rate</u>
			
Communications Officer	\$ 12.26	\$ 13.35	\$ 14.46	\$ 15.55
Vehicle Maintenance Coordinator	\$ 14.76	\$ 15.58	\$ 16.39	\$ 17.20
Vehicle Maintenance Worker	\$ 12.63	\$ 13.02	\$ 13.45	\$ 13.83

"Section 36.2 Effective the first full pay period following January 1, 2001, the hourly rates of pay for the bargaining unit employees shall be as follows:

<u>"Classification</u>	<u>Probationary Rate</u>	<u>1st Yr. Rate</u>	<u>2nd Yr. Rate</u>	<u>Maximum Rate</u>
			
Communications Officer	\$ 12.63	\$ 13.75	\$ 14.89	\$ 16.02
Vehicle Maintenance Coordinator	\$ 15.20	\$ 16.05	\$ 16.88	\$ 17.72
Vehicle Maintenance Worker	\$ 13.01	\$ 13.41	\$ 13.85	\$ 14.24

"Section 36.3 Effective the first full pay period following January 1, 2002, the hourly rates for pay for bargaining unit employees shall be as follows:

<u>"Classification</u>	<u>Probationary Rate</u>	<u>1st Yr. Rate</u>	<u>2nd Yr. Rate</u>	<u>Maximum Rate</u>
			
Communications Officer	\$ 13.00	\$ 14.16	\$ 15.34	\$ 16.50
Vehicle Maintenance Coordinator	\$ 15.66	\$ 16.53	\$ 17.39	\$ 18.25
Vehicle Maintenance Worker	\$ 13.40	\$ 13.81	\$ 14.27	\$ 14.67

Report of Fact-Finding and Recommendations issued at
Cleveland, Ohio this 8th day of September, 2000.



Alan Miles Ruben
Fact-Finder

AMR:ljpg

THE DEPUTY SHERIFFS UNIT

CONTRACT PROVISIONS AT ISSUE

I. Article 22 - Union Leave

The 1997 Contract

Article 22, Section 22.1 of the expired Agreement provided:

"Article 22 - Union Leave

"Section 22.1. Union officers may be granted paid leave to attend annual conventions of the Union or other authorized Union activities at the discretion of the Sheriff. Not more than two (2) Union officers shall be granted such leave at any one time. Requests for leave shall be submitted at least two (2) weeks in advance. The Sheriff, at his discretion, may authorize such Union leave to be with pay; however, paid Union leave shall not exceed accumulative total of forty (40) hours per contract year, and shall be distributed between the two (2) members."

THE UNION'S PROPOSAL

The Union seeks to increase the number of hours available for Union leave from forty to eighty, and share the leave with representatives of the Communication Officers Unit.

THE SHERIFF'S PROPOSAL

The Sheriff argues that the allotted leave time is more than adequate sufficient in view of the facts that the Association is a local independent Union without "annual conventions", and that a separate Article of the Contract allows for time-off for regular representational services. It therefore insists that the forty hours Union leave available

under the present Contract should be divided between the two Units.

DISCUSSION AND FINDINGS

Only Cuyahoga and Summit provide their Deputies with Union leave. Cuyahoga limits such leave to grievance and discipline meeting representation and negotiations. Summit provides leave only for its President to attend the annual Union Conference. In contrast, in addition to the forty hour Union leave provision, Lorain also allows Union representatives reasonable time-off with pay to attend grievance meetings and other conferences.

Giving consideration to the fact that the Communication Officers Unit will have a separate Contract and may well have interests different from those of the members of the Deputies Unit. The Fact-Finder found it appropriate to accord representatives of the Communications Officers Unit independent leave time to attend to authorized Union activities.

However, in view of the relatively small size of the Communications Unit - some ten members - the Fact-Finder did not find that the Union had established the need for forty hours of leave. Instead, the Fact-Finder found appropriate, and recommended, that the Communication Officers Unit be given an annual total of twenty hours of leave time for Union activities.

None of the other eleven contiguous and nearby comparable Counties whose Sheriff Departments provide Road Patrol

services grant paid Union leave for other than representation in grievance arbitrations, disciplinary meetings and negotiations functions that are separately considered for time-off with pay under Article II of the Lorain Contract.

In view of the Fact-Finder's Recommendation for a separate provision of paid Union leave in the amount of twenty hours for the Communications Officers Unit, the Fact-Finder finds no reason to increase the maximum number of paid Union leave hours for the Deputies Unit.

II. Article 25, Section 25.10 - Sick Leave Conversion
The 1997 Contract.

Article 25, Section 25.10 of the expired Agreement provided as follows:

"Section 25.10. Sick Leave Conversion.

"Upon formal retirement under the Public Employees Retirement System (PERS), bargaining unit employees with ten (10) years or more service with the Employer shall be eligible to convert fifty percent (50%) of their accumulated sick leave. Such payment in no event shall exceed four hundred eighty (480) hours.

"Payments shall be made as soon as practicable upon receipt of a formal written application by the retiring employee."

THE UNION'S PROPOSAL

The Union seeks to increase the maximum amount of unused sick leave eligible for conversion upon retirement from four hundred and eighty hours to nine hundred and sixty hours. The Union also seeks such pay-out upon the death of a Bargaining Unit employee.

THE SHERIFF'S PROPOSAL

The Sheriff is willing to cash out accumulated sick leave upon the death of employees with ten or more years of service, but seeks to maintain the existing cap of four hundred and eighty hours.

DISCUSSION AND FINDINGS

The Fact-Finder notes that the Promoted Law Enforcement Division Unit Contract whose initial term expired on December 31, 1999 provided that members of this Unit were eligible to convert accumulated sick leave into a cash pay-out in accordance with the following table:

<u>"Years Of Service</u>	<u>Percent Received</u>	<u>Not To Exceed</u>
Twenty (20 to twenty-five (25)	50%	960 hours
Twenty-six (26) to indefinite	50%	1440 hours"

While the Fact-Finder is presented with no evidence justifying an increase in the maximum amount of accrued sick leave eligible for conversion by Bargaining Unit members who have completed ten years of service, the Fact-Finder does not find any persuasive reason to deny the Union's request for parity with the Promoted Officers Unit who may convert up to 960 hours of accumulated sick leave after twenty years of service. Although this may represent an increase in the unfunded contingent liability of the Sheriff to employees with twenty or more years of service, the possibility of a cash pay-out provides an attendance incentive likely to reduce

absenteeism and the need to fill-in for absent employees on a costly overtime basis, and thereby result in off-setting savings.

Of the eleven contiguous and nearby comparable Counties only Lake provides for sick leave pay-out upon retirement of Deputies, although Stark permits conversion upon "termination". Three counties, Cuyahoga, Erie and Huron have no provision whatever for the buy-out of accumulated sick leave, and the remainder have provisions for the cash-out of unused sick leave upon retirement or retirement and death.

Lorain's sick leave conversion program is designed not only to encourage the attendance of employees, but also to reward longevity of service with the Department. The Sheriff encourages employees to spend their careers with the Department and thereby minimize turn-over and the costs associated with training new recruits. This objective would not be served by allowing employees to cash-out their unused sick leave upon resignation.

The Fact-Finder, therefore, does not recommend adoption of the Union's proposal to extend sick leave conversion privileges to employees who resign their positions with the Sheriff.

The Sheriff does not object to cashing-out the unused sick leave of a deceased Officer, and the Fact-Finder finds such modification of the Contract to be appropriate.

RECOMMENDATIONS

The Fact-Finder recommends the parties adopt the following text for Article 25, Section 25.10 of the Sheriff Deputies Agreement:

"Upon formal retirement under the Public Employees Retirement Systems (PERS), or death, Bargaining Unit employees with ten (10) years of service with the Employer shall be eligible to convert fifty (50%) percent of their accumulated sick leave up to a maximum total of four hundred and eighty (480) hours. Bargaining Unit employees with twenty (20) or more years of service with the Employer shall be eligible to convert fifty (50%) percent of their accumulated sick leave up to a maximum total of nine hundred sixty (960) hours.

"Payments shall be made as soon as practicable upon receipt of a formal written application by the retiring employee, or the deceased employee's surviving spouse or estate."

III. Article 27 - Bereavement Leave

The 1997 Contract

Article 27 of the 1997 Agreement provides as follows:

"Article 27 - Bereavement Leave

"Section 27.1 In the event of a death in the immediate family of an employee, the employee shall be granted paid leave up to three (3) days (twenty-four (24) hours) to attend the funeral, make funeral arrangements, and carry out other responsibilities relative to the funeral. Said leave shall not be chargeable to sick leave.

"Section 27.2 For purposes of this article, immediate family shall be defined as mother, father, sister, brother, spouse, child, father-in-law, mother-in-law and grandparents.

"Section 27.3 Upon approval of the Sheriff, an additional two (2) days chargeable to sick leave may be granted to employees to attend funerals, make funeral arrangements, and carry out other responsibilities relative to the funeral. Additionally, a maximum of three (3) days chargeable to sick leave may be granted to employees to attend funerals of other relatives not identified in Section 2 of this article, but included in Article 25, Section 5 "B."

THE UNION'S PROPOSAL

The Union seeks to add to the list of relatives upon whose death bereavement leave is available employees' grandchildren and their "less immediate family members". As defined at the fact-finding hearing, this term would include "surrogate mothers and fathers".

THE SHERIFF'S PROPOSAL

The Sheriff is willing to expand the list of those relatives upon whose death bereavement leave is available to include "grandchildren residing in the employee's household", but is unwilling to encompass a vague and potentially "open ended" category as "less immediate family members", or "surrogate mothers and fathers". The latter term has been used to refer to women who agree to carry to term the fertilized egg of a female who is unable to bear a child. Presumably the Union did not intend that meaning.

While the "extended family" seems to be a casualty of the nuclear age, there are still many households who have adopted children or have custody of minors. The bond of affection between non-biological parents and the children whom they have adopted or of whom they have custody can be equally as strong

as the bond between biological parents and their off-spring. There is no reason to expect any significant incidence of death of such children, and therefore, no significant economic cost of the Sheriff if the Union's proposal.

These considerations leads the Fact-Finder to find that the Union's proposal is appropriate and ought to be adopted.

RECOMMENDATIONS

Accordingly, the Fact-Finder recommends that the parties adopt the following as the text of Article 27, Section 27.2:

"Section 27.2 For purposes of this Article, immediate family shall be defined as mother, father, sister, brother, spouse, child, father-in-law, mother-in-law, grandparents, grandchildren residing with the employee's household, adopted children and children for whom the employee stands in loco parentis."

IV. Article 31 - Hours of Work and Overtime Section 31.4

Call-In Pay

The 1997 Contract.

Article 31, Section 31.4 of the recently expired Contract provides:

"Section 31.4 An employee, other than those who are furnished a support car, shall receive overtime pay at the base rate of one and one-half (1 1/2) times the base pay when called in from off duty status for departmental business, court appearances, emergencies, special events, and required schooling, in a minimum amount of three (3) hours. Any amount of time in excess of three (3) hours shall be paid to the nearest tenth (1/10) of an hour."

THE UNION'S PROPOSAL

The Union seeks to increase the minimum amount of time for which an off-duty employee must be paid when called-in by the Sheriff from three hours to four hours.

THE SHERIFF'S PROPOSAL

The Sheriff seeks to maintain the current text of Article 31, Section 31.4. The Sheriff contends that providing for additional compensatory time would burden scheduling and increase overtime costs. The Sheriff suggests that if an increase in call-in pay is given to the Deputy Sheriffs, the other Units would seek the same enhancement.

DISCUSSION AND FINDINGS

Of the eleven contiguous and nearby comparable Counties only two provide for a minimum of four hours - Lucas and Stark. However, in Stark County if the call-in is to attend court, the minimum shrinks to two hours and the time is paid at base rate. Lucas County also diminishes the minimum call-in time to two hours for court appearances, but compensates at time and one-half the base rate.

Three of the other Counties - Cuyahoga, Huron and Lake - do not provide a minimum number of hours for call-in assignments, while Ashland provides a minimum of two hours only if the employee is called-in for court. Erie, along with Mahoning, Medina, Summit and Trumbull provide for a minimum of three hours call-in-pay.

The Fact-Finder does not see any persuasive reason for increasing the minimum hours for which Officers would be paid if called-in while on off-duty status, particularly when they

receive overtime premium compensation for at least three hours.

RECOMMENDATIONS

The Fact-Finder recommends that the text of Article 31, Section 31.4 be carried forward and incorporated into the successor Agreement without change.

VI. Article 34 - Vacation Leave

The 1997 Contract.

The recently expired Contract provides in Article 34, Section 34.7 and 34.8 as follows:

"Section 34.7 Generally, vacation leave shall be taken by an employee between the year in which it was accrued and the next anniversary date of employment. The Employer may, in special circumstances, permit an employee to accumulate vacation from year to year. This accumulation of vacation time must be approved in advance and must be in response to special circumstances as outlined in a written request submitted by the employee.

"Section 34.8 Employees shall forfeit their right to take or to be paid for any vacation leave to their credit which is in excess of the accrual of two (2) years. Such excess leave shall be eliminated from the employee's leave balance; the employee shall be notified in writing of the number of hours of leave eliminated."

THE UNION'S PROPOSAL

The Union seeks to delete Section 34.8's provision for forfeiture of accrued vacation leave in excess of two years. The Union contends that from time-to-time circumstances beyond the control of an employee may prevent the employee from utilizing accrued vacation within a two year period. As an

example, the Union cites the case of an employee who was unable to utilize accrued vacation entitlements because the employee was on Workers' Compensation leave.

THE SHERIFF'S PROPOSAL

The Sheriff seeks to retain the existing text without change. The Sheriff is concerned about scheduling problems and overtime utilization costs which may be occasioned if employees are allowed to accumulate vacation time beyond two years.

DISCUSSION AND FINDINGS

Vacations serve as periods of refreshment and renewal. Permitting the accumulation of accrued but unused vacation time for a period longer than two years tends to defeat this purpose. Moreover, as the Sheriff points out, deferring vacation entitlements creates unfunded contingent liabilities, tends to disrupt the scheduling process and impair the Sheriff's ability to control overtime costs.

However, the Fact-Finder recognizes the validity of the Union's position that in unusual circumstances the inability to utilize all of accrued vacation time may be beyond the control of the employee.

The Fact-Finder believes that an accommodation can be reached which would obviate the Sheriff's legitimate concern and, at the same time, prevent an unfair forfeiture of vacation time.

The Fact-Finder finds the right to accumulate accrued vacation time beyond two years should be left to the

discretion of the Sheriff to be exercised on a case-by-case basis upon a showing of "good cause" by the applying employee. Presumably, the holding over of vacation entitlements for more than two years will not be a common occurrence, and the Sheriff would retain the authority to reject applications for an extension of vacation leave carry-over beyond two years where the employee is unable to present a good reason for the extension, or where the such extension would work an undue hardship upon the operations of the Department. .

RECOMMENDATIONS

The Fact-Finder recommends the parties adopt the following as the text of Article 34, Section 34.8:

"Article 34.8 Unless an extension is granted by the Sheriff in the Sheriff's sole discretion upon application by an employee for good cause shown, an employee shall forfeit the right to take or to be paid for any vacation leave to the employee as credit which is in excess of the accrual of two (2) years. Such excess leave shall be eliminated from the employee's leave balance; the employee shall be notified in writing of the number of hours of leave eliminated."

VII. New Article - Shift Differential

THE UNION'S PROPOSAL

The Union seeks to provide a shift differential premium of \$.30 per hour for employees assigned to the first shift (11:00 p.m. to 7:00 a.m.), and \$.25 per hour for an employees on the third shift (3:00 p.m. to 11:00 p.m.).

THE SHERIFF'S PROPOSAL

The Employer opposes the introduction of shift differentials into the County's wage structure.

DISCUSSIONS AND FINDINGS

Traditionally, shift differential premiums are paid because of the fact that "night shifts" tend to interfere with family functions and social life because the work schedules conflict with those of other family members and the timing of cultural and social events.

Deputy Sheriffs may exercise shift preference, in accordance with their seniority, every four months. It appears that some of the more senior employees do not automatically seek assignment to the second or day shifts (7:00 a.m. to 3:00 p.m.).

The record does not establish that there is any undue hardship visited upon employees who are assigned to the first or third shifts as would support a recommendation for the introduction of a shift differential for this Unit.

No is there any evidence that a majority of the eleven Counties utilized for comparability analyses provide shift differential premiums.

Accordingly, the Fact-Finder finds insufficient justification to recommend the adoption of the Union's proposal.

RECOMMENDATIONS

The Fact-Finder does not recommend that the parties adopt the Union's proposal for a shift differential premium.

VIII. Article 30 - Longevity Pay

The 1997 Contract

The expired Collective Bargaining Agreement provided for annual longevity payments of \$86.00 per year for employees having completed three years of service and not more than fifteen years of service, \$88.00 per year for employees having completed at least sixteen years of service and not more than twenty years of service and \$92.00 per year for employees having completed at least twenty-one years of service up to a maximum of thirty years of service. The annual amounts are shown in the schedule below:

<u>"Yrs. of Serv</u>	<u>Amount</u>	<u>Yrs. of Serv.</u>	<u>Amount</u>
3	\$258	17	\$1,496
4	\$344	18	\$1,584
5	\$430	19	\$1,672
6	\$516	20	\$1,760
7	\$602	21	\$1,932
8	\$688	22	\$2,024
9	\$774	23	\$2,116
10	\$860	24	\$2,208
11	\$946	25	\$2,300
12	\$1,032	26	\$2,392
13	\$1,118	27	\$2,484
14	\$1,204	28	\$2,576
15	\$1,290	29	\$2,668
16	\$1,408	30	\$2,760

THE UNION'S PROPOSAL

The Union seeks to increase the annual amounts from \$86.00 to \$100.00 for members of the Unit who have completed three years through fifteen years of service, from \$88.00 to \$120.00 for employees who have completed sixteen through twenty years of service and from \$92.00 to \$130.00 for employees who have completed twenty-one years through thirty years of service.

THE SHERIFF'S PROPOSAL

The Sheriff opposes any increase in longevity pay on the ground that current annual payments are significantly higher than those offered to other Lorain County employees and to Dispatchers in comparable Sheriff Departments.

DISCUSSION AND FINDINGS

Out of the thirteen Lorain County Departments surveyed, employees in seven Departments or Units - Auditor, Clerk of Courts, Commissioners, Commissioner/Eng. Commissioner/9-1-1, MRDD, Treasurer provide an initial lump sum longevity payment of \$520.00 or \$526.00 for employees. The employees in the Clerk and Communication offices receive the supplement after three years, those in the Auditor, Commissioner/Eng., 9-1-1- and Treasurer offices are entitled to the benefit after five years. Personnel in MRDD begin their entitlements after one year at the top step.

The Deputy Sheriffs receive only \$258.00 after three years of service. However, the Communication Officers longevity schedule is heavily weighted in favor of Deputies with more than five years of service. At six years, Deputies receive \$602.00 per year which is higher than employees in any other Department or Unit with the exception of MRDD staff. The longevity payment disparity increases in favor of the Deputies each year thereafter. Thus, in each of these seven named Departments, longevity payments top out at \$832.00, while the Department's longevity pay continues to increase to a maximum of \$2,760.00.

Ten of the eleven contiguous and nearby Counties deemed comparable to Lorain provide longevity pay for their Deputies.⁵ With the exception of Lake and Summit Counties which offer longevity pay after eight years of service, and Stark County which provides longevity pay after only four years of service, the other Counties commence longevity pay after five years of service. In contrast, Lorain offers longevity pay after three years of employment.

At the fifth year of eligibility, Lorain County Deputies receive more longevity pay than their colleagues in all other County Sheriff Departments except the Department in Ashland and Erie and Stark. But, after ten years of service Lorain Deputies are entitled to \$860.00, a larger pay-out than is available in all other Departments except Ashland and Erie. These two Counties offer Deputies \$1,000.00 lump sum longevity payments - \$140.00 more than earned by the Lorain Deputies. However, Lorain's longevity pay at the ten year level is some \$234.00 more than the next highest longevity amount paid by a Sheriff Department - that of Stark County. Indeed, the average longevity pay after ten years of service in the other seven County Departments is only \$482.00.

The maximum longevity pay offered by Lorain at thirty years, \$2,760.00, is higher than offered by any of the other Counties. Thus, Ashland reaches the maximum limit of \$2,500.00 after twenty-five years while Erie's maximum of \$2,000.00 is reached after twenty years.

5. The data for Lucas County was not available.

These comparative data do not indicate that any significant adjustment in the longevity pay of Lorain County Deputy Sheriffs is warranted.

The Fact-Finder notes, however, that a static schedule is subject to the erosive effects of inflation. But, since the cost of living has been held well in check, only a small adjustment is warranted. Accordingly, the Fact-Finder finds appropriate a two dollar increase in each of the three steps.

RECOMMENDATIONS

The Fact-Finder recommends the parties adopt the following text for Article 30, Section 30.1.

Section 30.1 All full-time regular employees shall be eligible for an annual longevity payment in accordance with the following schedule:

Contract Year 1

<u>Years Of Completed Service</u>	<u>Amount Per Year</u>
Three (3) through fifteen (15)	\$88.00
Sixteen (16) through twenty (20)	\$90.00
Twenty-one (21) through thirty (30)	\$94.00

Contract Year 2

<u>Years Of Completed Service</u>	<u>Amount Per Year</u>
Three (3) through fifteen (15)	\$88.00
Sixteen (16) through twenty (20)	\$90.00
Twenty-one (21) through thirty (30)	\$94.00

IX. Article 36 - Wages

The 1997 Contract

Article 36, Section 36.3 of the expired Agreement provided in relevant part:

"Section 36.3 Effective the first full pay period following January 1, 1999, the hourly rates of pay for the bargaining unit employees shall be as follows:

<u>"Classification</u>	<u>Probationary Rate</u>	<u>1st Yr. Rate</u>	<u>2nd Yr. Rate</u>	<u>Maximum Rate</u>
Evidence Officer	\$12.97	\$13.85	\$14.73	\$15.61
Patrol Officer	\$14.96	\$15.92	\$16.88	\$17.85

...."

THE UNION'S PROPOSAL

The Union seeks a one time increase of base pay in the amount of \$1,750.00 to which annual increases of 5% in each Contract year are to be applied.

THE SHERIFF'S PROPOSAL

The Sheriff proposes to increase wages by 3% in the first year and 2% in the second year of the Contract.

DISCUSSION AND FINDINGS

Lorain County Deputy Sheriffs patrol highways and roads and provide law enforcement services for 60,000 residents of eighteen townships in the County. The Deputies also guard and transport prisoners in the County's Jail system.

The Union argues that although Lorain County ranks eighth in population in the State of Ohio, the Sheriff's Department ranks twentieth in the number of Deputies employed. From this "imbalance", the Union suggests that the Deputies work load is significantly greater than that imposed upon Deputies in other Departments.

The approximately twenty-four Deputies assigned to the Road Patrol, for example, are responsible for a patrol area of some 360 square miles with a population of 58,755. They cover

193 miles of State highway and 583 miles of Township and County roads. In 1999 they were responsible for answering 43,112 calls for service, responding to some 1,100 violent felony crimes and for serving some 1,772 warrants.

As recent events have confirmed, they are exposed to physical danger when engaged in the apprehension of suspects.

Further, sixteen Counties in Ohio rank ahead of Lorain Deputies in base compensation. The highest paid Deputies are employed by Montgomery County at \$46,904.00 per year whereas the base compensation of Lorain Deputies is only \$37,128.00 per year, almost \$10,000.00 less.

While the Lorain Deputy Sheriffs rank seventeenth in the State in the amount of base pay, the Communications Officers enjoy the fifth highest base pay rate among Dispatcher Units in the State, and Correction Officers rank sixth in base pay compared to their peers in other Departments.

The Sheriff, on the other hand, insists that the proposed wage increases of 3% in the first year of the successor Contract and 2% in the second year are "equitable" because they would allow Lorain Deputies to retain their relative position vis a vis the other Departments.

Further, the Sheriff expresses concern that the increases given the dispatchers may set the wage "pattern" that would have to be offered to all of the sixteen other Bargaining Units.

When longevity is considered along with base wages, Lorain County ranks near the head of the list of comparable

jurisdictions and falls below only those Counties that enjoy a significantly higher revenue base.

Thus, among the eleven contiguous and nearby Counties referred to for comparability analysis, Lorain ranks third in the total compensation paid Deputies at the ten year service level.

Lorain's Deputies earn \$37,988.00, an amount which is exceeded only by the \$42,741.00 earned by comparable Lake County Deputies, the \$39,380.00 available to Medina County Deputies and the \$38,220.00 paid to Summit County Deputies.

On the other hand, the Lorain Deputies are paid \$7,000.00 more than earned by their counterparts in Ashland and Stark County, some \$3,600.00 more than received by the Trumbull County Deputies and \$4,000.00 more than obtained by Mahoning Deputies. Taking the eleven Counties as a whole, the average Deputy compensation is \$35,632.00, or some \$2,350.00 less than that enjoyed by the Lorain Deputies.

The following schedule portrays the comparative rankings of Lorain County Deputies 1999 compensation, (base wages and longevity at the ten years service level) and the eleven other contiguous and comparable Counties:

LORAIN COUNTY SHERIFF'S OFFICE
WAGE AND BENEFIT SURVEY

Deputies

1999 Wages + 10 Years Service

<u>County</u>	<u>Annual</u>	<u>Difference from Lorain</u>
Ashland	\$30,062	- \$7,136
Cuyahoga	\$37,638	- \$350
Erie	\$37,511	- \$477
Huron	\$30,824	- \$7,164
Lake	\$42,741	+ \$4,753
<i>LORAIN</i>	\$37,988	
Lucas	\$34,154	- \$3,834
Mahoning	\$33,955	- \$4,033
Medina	\$39,380	+ \$1,392
Stark	\$30,721	- \$7,267
Summit	\$38,220	+ \$232
Trumbull	\$34,389	- \$3,599

Average \$35,632
Lorain \$37,988

Variance = + \$2,356

What must be considered, however, are the wage increases negotiated in these other Counties for 2000 and 2001.

The proposal of the Sheriff for a first year wage increase of 3%, and a 2% increase in the second year of the successor Agreement in light of what has been negotiated elsewhere, would not even maintain the Lorain Deputy Sheriffs in their relative position. Percentage wage increases have already been negotiated in nine of the eleven comparable Counties. One County, Cuyahoga offered a 5% increase, two, Ashland and Stark provided 4% increases, Medina gave a 3.75% increase; Summit agreed to a 3.5% raise; Huron negotiated a 3.25% hike; Erie limited its wage increases to 3%, and Trumbull, completing the inventory came in at 2%.

Four of the Counties have also negotiated wage rate increases for 2001, Medina offered 3.75%, Summit and Huron provided 3.5% and Erie has agreed to provide 3%.

These developments suggest that the Sheriff's offer of wage increases of 3% and a 2% are inadequate.

Indeed, were the 3% increase as proposed by the Sheriff to become effective, Lorain Deputies would move from fourth position behind Lake, Medina and Erie Counties to fifth position behind Lake, Medina, Summit and Cuyahoga in the array.

The Fact-Finder believes that the Union's point is well taken that, in comparison to the services rendered, the Deputies in Lorain County are underpaid in comparison with

many of their counterparts among eleven comparable Counties and indeed throughout the State.

The Fact-Finder has taken account of the financial condition of the County. No presentation is made on behalf of the Sheriff that the County is financially unable to pay the Union's demands.

The median income household in Lorain in 1995 was \$38,512.00 and the taxable value of its real property was set at \$3.4 billion dollars, not insubstantial tax bases for the generation of revenue. In fact, Lorain's ability to meet its obligations caused Moody's Investors Services to increase Lorain's bond rating to "A" from "Baa1".

In comparison with the other eleven contiguous or otherwise comparable Counties, Lorain's residents had per capita income of \$22,795.00, slightly more than the average of \$22,093.00. Lorain's per capita real property tax receipts of \$11,947.00 were also higher compared to the eleven County average of \$10,442.00. Its unemployment rate of 5% was still less than that of Mahoning, Trumbull, Huron and Lucas Counties.

Nonetheless, the Sheriff expresses concern over the impact of higher wage offers upon prospective "pattern bargaining". Here, the Sheriff claims "parity", not for wage rates, but rather for percentage increases. The contention is that the increases agreed to with the Deputies will set a "pattern" for the settlement of negotiations with other Bargaining Units. Review of Lorain's bargaining history in

recent years, however, fails to disclose any "pattern". Thus, in 1999, percentage wage increases ranged from zero, through 2% and 3% to a maximum of 4%. The same lack of uniformity is found in the wage increases the various Bargaining Units received during the three year period 1996 through 1998.

The Fact-Finder is well aware that the County's resources are finite, but the demands upon them from residents and other constituents are infinite. Every dollar spent on salaries for the Deputies means one less dollar available for other community services. The Fact-Finder is also cognizant of the fact that unlike some of the other Counties there is no special tax set-aside the proceeds from which are earmarked exclusively for law enforcement.

Taking these factors into consideration the Fact-Finder finds a 4% increase in base wages for the Contract year commencing January 1, 2000, followed by a 3.75% increase in the second year of the Contract to be appropriate.

Further, instead of the excessive \$1,750.00 "equity adjustment" also sought by the Union, the Fact-Finder suggests a more "equitable" way for employees to earn additional compensation. He recommends the adoption of a physical fitness program similar to those programs now being offered by many law enforcement agencies. Under such programs employees who pass appropriate fitness tests earn increased compensation. The "Physical Fitness Incentive Supplement" formulated in the "Model Law Enforcement Contract" developed

and used in Tallahassee, Florida, for example, offers one such model.

Assuring physical fitness will not only improve the performance of Deputies, particularly in their ability to apprehend suspects, but also promote good health and regular attendance thereby reducing the need for overtime and utilization of health insurance and sickness and accident benefits, with consequent cost savings to the Sheriff.

Accordingly, the Fact-Finder recommends that Deputies who take and pass the qualifying physical fitness test recommended below, receive a \$750.00 base wage adjustment.

The Sheriff should, within a reasonable time, arrange for such testing, and offer it with reasonable frequency. Employees should have the opportunity to prepare for the test and to retake it, without limitation, should they be unsuccessful in their initial attempt.

Taken all together the amount of compensation recommended in this Report will assure that the Deputies not only maintain or improve their relative compensation position vis a vis the other Departments, but also achieve gains in real income since the prospective inflation rate through 2001 is projected to be less than 3%.

RECOMMENDATIONS

The Fact-Finder finds appropriate and recommends the parties adopt the following text of Article 36, Sections 36.1, 36.2 and 36.3:

"Section 36.1 Effective the first full pay period following January 1, 2000 the hourly base rates of pay for bargaining unit employees shall be as follows:

<u>"Classification</u>	<u>Probationary Rate</u>	<u>1st Yr. Rate</u>	<u>2nd Yr. Rate</u>	<u>Maximum Rate</u>
Evidence Officer	\$13.49	\$14.40	\$15.32	\$16.23
Patrol Officer	\$15.56	\$16.56	\$17.56	\$18.56

"Section 36.2 Effective the first full pay period following January 1, 2001 the hourly rates of pay for bargaining unit employees shall be as follows:

<u>"Classification</u>	<u>Probationary Rate</u>	<u>1st Yr. Rate</u>	<u>2nd Yr. Rate</u>	<u>Maximum Rate</u>
Evidence Officer	\$14.00	\$14.94	\$15.89	\$16.84
Patrol Officer	\$16.14	\$17.18	\$18.22	\$19.26

...."

Section 36.3 Effective the first full pay period following January 1, 2001 the hourly base rates of pay for Bargaining Unit employees shall be subject to adjustment as follows:

"Employees in the bargaining unit may, on a voluntary basis, seek to become eligible for a physical fitness base rate pay adjustment in the amount of \$750.00. In order to become eligible for such adjustment, the employee must sign a waiver which shall indemnify, defend and hold the Employer, its officers, officials, agents and employees harmless against any claim, demand, suit or liability (monetary or otherwise) in connection with his efforts to qualify for such adjustment.

"An employee may qualify for the physical fitness base rate pay adjustment during the term of this Contract by passing a 1.5 mile running test or a 3 mile walk test in accordance with the following applicable standards. An employee who passes such a test shall receive the physical fitness base wage rate adjustment in the amount of \$750.00:

MAXIMUM 1.5 MILE RUNNING TIME IN MINUTES

<u>Age</u>			
<u>Under 30</u>	<u>30-39</u>	<u>40-49</u>	<u>50+</u>
16:30	17:30	18:30	19:00

MAXIMUM THREE-MILE WALK TIME IN MINUTES

<u>Age</u>			
<u>Under 30</u>	<u>30-39</u>	<u>40-49</u>	<u>50+</u>
44:00	46:30	49:00	52:00

The Sheriff's Department or its designee shall be responsible for administering the qualifying test provided for in this section.

XI. New Article - Training Officer Supplement

The 1997 Contract

The expired Contract provided in a "Side Letter Agreement" as follows:

"The Employer agrees to explore the creation of a Training Officer development program. The Employer agrees that such program shall be implemented no later than six (6) months from the date of execution of this agreement."

This provision was implemented by the Sheriff by the adoption of a Field Training Officer program which allowed Bargaining Unit members to apply to be trained as a Field Training Officer. Those who qualified received an additional \$.60 per hour for each hour that they served in the capacity of a Field Training Officer, and one hour of compensatory time for each complete eight hour day that the Deputies served as a Field Training Officer.

THE UNION'S PROPOSAL

The Union seeks to increase the \$.60 per hour Training Officer supplement to \$1.00.

THE SHERIFF'S PROPOSAL

The Sheriff is willing to increase the Training Officer supplement to \$1.00 per hour provided the additional compensatory time provision is eliminated.

DISCUSSION AND FINDINGS

The Fact-Finder believes that the increase in supplemental pay for serving as a Field Training Officer provides ample compensation, and it is not necessary to continue the additional one hour of compensatory time that is awarded for each eight hour day that a Deputy serves as a Field Training Officer.

RECOMMENDATIONS

The Fact-Finder recommends that the parties adopt the following text of the Side Letter of Agreement Training Officer:

"SIDE LETTER OF AGREEMENT - TRAINING OFFICER

"The parties agree that the existing field training officer program as issued on March 27, 1998 be continued for the duration of the Contract provided that sub-paragraph A of paragraph number three of the published programs shall read as follows:

"a. Those officers selected to as field training officers shall receive an additional one dollar (\$1.00) per hour for each hour they actually serve in the capacity of a field training officer."

The Fact-Finder further recommends that paragraph b of Section 3 of the Field Officer Training Program be deleted in its entirety.

The Sheriff seeks to add to the Contract appropriate language under the Batavia decision to exclude the application of statutory rights and remedies.

THE UNION'S PROPOSAL

The Union does not oppose adding a provision to the Agreement which would indicate the parties' intent that the Agreement pre-empts statutory rights and remedies.

DISCUSSION AND FINDINGS

DISCUSSION AND FINDINGS

The Batavia decision of the Ohio Supreme Court introduced an element of uncertainty into the collective bargaining process and called into question the finality of arbitration awards on a subject that is also covered by a public employment statutory provision. As a result, employers as well as Unions may have an opportunity to negate an unfavorable arbitration award, or bypass the Contractual dispute resolution process altogether, in favor of a court proceeding to resolve the dispute under the statute.

Accordingly, the Fact-Finder finds the Sheriff's proposal appropriate and recommends its adoption.

RECOMMENDATIONS

The Fact-Finder recommends that the parties agree to formulate and adopt language in their a successor Collective Bargaining Agreement specifically and explicitly evidencing their intent to pre-empt and negate statutory rights and remedies as to any matter which is within the permissible scope of collective bargaining.

XIII. Article 40, Section 40.1(A) - Duration of Agreement

The 1997 Contract

The present Contract provides:

"a. This agreement shall be effective as of July 10, 1997, and shall remain in full force and effect until December 31, 1999.

THE UNION'S PROPOSAL

The Union prefers a three year Agreement but is not adverse to an Agreement which expires after two calendar years.

THE SHERIFF'S PROPOSAL

Because of the uncertainty as to future financial conditions and the wage increases that will be provided in comparable communities for calendar year 2002, the Sheriff proposes that the term of the successor Agreement be limited to two calendar years.

DISCUSSION AND FINDINGS

Since the Sheriff would prefer a two year Agreement and the Union has no objection to it, the Fact-Finder finds appropriate that the term of the successor Agreement be limited to two calendar years.

RECOMMENDATIONS

The Fact-Finder recommends that Article 40, Section 40.1 paragraph A be revised to read as follows:

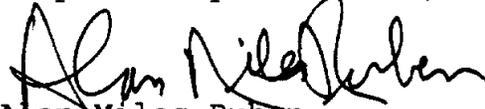
"Section 40.1

"A. This agreement shall be effective as of January 1, 2000, and shall remain in full force and effect until December 31, 2001."

The Fact-Finder further recommends that Section 40.1, paragraph B be carried forward without change and incorporated into the successor Agreement.

Report of Fact-Finding and Recommendations issued at Cleveland, Ohio this 8th day of September, 2000.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alan Miles Ruben". The signature is written in a cursive style with a large initial "A".

Alan Miles Ruben
Fact-Finder

AMR:ljg