

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

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STATE EMPLOYMENT  
RELATIONS BOARD  
2002 APR 15 A 10: 22

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In the Matter of Fact Finding	*	
Between	*	
	*	FINDINGS
OHIO PATROLMEN'S BENEVOLENT	*	AND
ASSOCIATION	*	RECOMMENDATIONS
	*	
	*	Case No. 01-MED-07-649 / 0602
	*	
and	*	Anna DuVal Smith
	*	Fact Finder
TRUMBULL COUNTY SHERIFF	*	
	*	

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Appearances

For the Ohio Patrolmen's Benevolent Association:

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## I. BACKGROUND AND SUBMISSION

The Ohio Patrolmen's Benevolent Association ("OPBA") represents certain full-time employees of the Trumbull County Sheriff. This case concerns the Correction Officers (of which there are approximately 65) who comprise bargaining unit 3 and the Assistant Wardens, of which there are approximately six (6). The previous collective bargaining agreement between the parties expired on September 30, 2001. Negotiations for a successor agreement resulted in settlement of many issues, but differences remained. Therefore, the undersigned was appointed fact-finder pursuant to Chapter 4117 O.R.C. on August 31, 2001. On February 20, the Fact-Finder met with the parties for the purpose of mediation. This effort and subsequent bargaining without the Fact-Finder's assistance narrowed the 23 issues brought to mediation to seventeen (17): XI. Discipline, XIV. Grievance Procedure, XV. Seniority, XVI. Hours of Work/Overtime, XVII. Work Schedules, XXII. Vacation, XXIV. Sick Leave, XXVI. Family Medical Leave, XXVIII. Hospitalization and Insurance, XXXI. Clothing Allowance, XXXII. Compensation, XXXVI. Injury Leave, XLI. Duration, XLIII. Shift Differential, XLIV. Longevity, New Article. Tuition Reimbursement/Continuing Education, and New Article. Specialized Training and Skills.

Following a final attempt to narrow the issues by mediation on March 13, a fact-finding hearing was convened at 1 p.m. on that date at the offices of the Trumbull County Sheriff in Warren, Ohio. Pre-hearing statements had been previously filed as mutually agreed by the parties on February 19. Present for the OPBA in addition to Counsel were Assistant Warden John O'Brien and Correction Officers John Buch, John Spelich and Ron Bosca. Present for the Sheriff in addition to Counsel were Chief Deputy Ernest G. Cook and Jail Administrator Mathew Ecker. The parties stipulated that had Human Resources Director James Keating and Chief Deputy Auditor Adrian S. Viviano testified, they would have testified as they did on November 29 at the deputies' November 29, 2001, fact-finding hearing before the undersigned, who was fact-finder in that dispute as well. Both parties were afforded a complete opportunity to examine witnesses, to present documentary evidence, and to argue their respective positions on each of the

seventeen outstanding issues identified above. One of these, Tuition Reimbursement/Continuing Education was settled during the hearing. The oral hearing concluded at 4:45 p.m. whereupon the record was closed.

In rendering these Findings and Recommendations, the Fact-Finder has given full consideration to all reliable information relevant to the issues and to all criteria specified in §4117.14(C)(4)(e) and Rule 4117-9-05 (J) and (K) O.A.C., to wit:

- (1) Past collectively bargained agreements between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) 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;
- (4) The lawful authority of the public employer;
- (5) Stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

## II. COMPENSATION ISSUES

Most of the issues at impasse have cost implications. The parties are not significantly separated in terms of appropriate counties of comparison.<sup>1</sup> They do, however, differ widely in their views of the employer's ability to pay. At the November 29, 2001, hearing on the deputies' contract, the Sheriff presented evidence showing both rising disbursements and declining revenues such that the County's general fund balance is expected to fall by \$3 million in 2001 to \$265,966. \$1 million of this is attributed to lower revenues, \$2 million to higher disbursements, principally from health care costs. The County traced the decline in revenues to the 1999 roll-back in the piggyback sales tax. Revenue from sales tax topped out at nearly \$14 million in 1998, but was projected to fall to \$9.5 million for 2001. The County admitted it had funds left from its sale of Hillside Hospital, but said it had to supplement the general fund from this source for the last two years. At the current rate of depletion, the remaining \$7 million in this rainy day fund will be liquidated in two more years. Contributing to the County's concerns are the decline

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<sup>1</sup>Both select the contiguous counties of Ashtabula, Geauga, Mahoning and Portage. The OPBA subtracts Mahoning for some calculations because deputies in that county perform correction officer duties.

in interest rates and two plant closings since the budget was formulated. It admitted it has retired some debt and that its bond rating was raised to A-1 recently, probably because of the Hillside rainy day fund, but it is to its advantage to retain this rating as it lowers the cost of debt. It also admitted it houses prisoners for the City of Warren and that the City recently paid its debt of \$764,000 after a two year dispute, but pointed out that the jail does not earn a profit for the County. The Sheriff contends the financial condition of the County has not changed since the deputies' hearing.

The OPBA submits that the County cannot show an inability to pay. After all, it approved the Fact-Finder's recommendation for the deputies, namely 5%-3%-3%. But even so, it still should pay the going rate for correction officers and assistant wardens.

## XXVII - Hospitalization and Insurance

### Current Benefit

The Sheriff presently pays 100 percent of health insurance premium costs. There are annual deductibles of \$200 single/\$400 family. Prescription drug deductibles are \$2 generic/\$5 (non-generic) per prescription. There is fully-paid \$25,000 life insurance for each employee. New employees are not entitled to insurance benefits until completion of 90 days of probationary service.

### Positions of the Parties

The Sheriff proposes an extensive revision of the article to match the agreement reached with the lower-paid County Child Support Enforcement Agency (CSEA) AFSCME unit after a protracted strike and that was recently agreed to by the County's Job and Family Services unit. It contends it needs all these changes because of exploding insurance cost which will grow by 30 percent to \$2.052 million more in 2002 than in 2001. First, the Sheriff would no longer pay 100 percent of the premium. A 90%/10% premium sharing would be phased in over the life of the Agreement as follows:

June 1, 2002 90%/10% to an employee maximum of \$30 single/\$60 family per month  
June 1, 2003 90%/10% to an employee maximum of \$40 single/\$80 family per month  
June 1, 2004 90%/10% (no employee maximum).

Second, while annual deductibles would remain at \$200/\$400, there would be a maximum out-of-pocket expense to the employee of \$600 single/\$1200 family and certain costs would not be applied to these. There would be a \$15 office visit co-pay not applied to the annual deductible but applied to the maximum out-of-pocket. The Sheriff would contribute to the AFSCME Care Plan for vision, hearing and prescription benefits in the same amount agreed to with the CSEA employees. Prescription drug co-pays would be \$5/\$15/\$30 per prescription, and these would not be applied either to the annual deductible or the maximum out-of-pocket. The Sheriff would continue to offer an alternative HMO plan not subject to the foregoing restrictions except for premium sharing. Finally, there would be a health care cost containment and advisory committee.<sup>2</sup> The Sheriff doubts this will make up the full \$2 million-plus growth in insurance costs, but estimates it will save 20-25 percent of the total cost.

The OPBA is looking to double life insurance to \$50,000 and to eliminate language on the HMO, which it says is useless. It contends the County has mishandled insurance for years and that the Sheriff has neither adequately identified a crisis nor sought collective solutions. It offers data from the surrounding counties, the City of Warren, and other Trumbull County units which it says were not considered in this Fact-Finder's report for the deputies, urging her to take this window of opportunity to recommend something different than she did for the deputies. The OPBA also points out that the correction officers make less than the deputies do, so the lack of a cap on the premium share in the third year would hit them hard, eating up all their wage increases.

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<sup>2</sup>The full text of the proposal is set forth in Appendix A.

## Findings and Recommendation

The fact of rising health insurance costs cannot be denied. SERB data for responding public sector employers<sup>3</sup> shows a double-digit increase for the first time since 1992. 2000 and 2001 contract negotiations in which this Fact-Finder has participated have been plagued by thorny insurance issues, and the news media have been reporting skyrocketing costs. Trumbull County cannot be immune from generally rising costs, but some local conditions appear to have exacerbated the problem. When he testified at the deputies' hearing, the Director of Human Resources could not say why the HMO premiums increased 30 percent, but speculated that the richness of the plan may have been a contributing factor. The parties should investigate this further and consider less rich coverage as a means to moderate growth in premiums. Looking at the traditional, self-funded plan, it is evident the County had an unusually large number of large claims in the year ending May 31, 2001. Data submitted by the Sheriff at the deputies' hearing shows there were 35 percent more of these that year than the previous year, that the dollar amount of large claims grew by more than \$800,000 (a 38 percent increase) and contributed nearly 60 percent of the growth in paid claims. Whether this is a one-year spike or a new permanent level remains to be seen, but it seems likely at least some portion is nonrecurring. Nevertheless, in an era of generally rising health costs where revenues are not growing as fast or faster, employees cannot expect their employers to continue to provide fully-paid medical care and also keep pace with market wage increases. The \$185.02 HMO family monthly premium increase, if fully paid by the employer, is by itself equivalent to a 7.4 percent increase in wages for the top-step correction officer.<sup>4</sup> Thus, as insurance consumes an increasing share of the employer's resources, there is less and less available for wage increases. The fact that medical insurance has been relatively costly in Trumbull County and that correction officers are relatively poorly paid suggests this has, in fact, been the trade-off here.<sup>5</sup> And yet, to demand that

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<sup>3</sup>Only about 50% of those receiving questionnaires responded.

<sup>4</sup> $(\$185.02 * 12) / \$29,931 = 7.4\%$

<sup>5</sup>State-wide, SERB reports an average of \$549 for 2000.

employees who for years have accepted lower wages in exchange for fully paid, “rich” insurance suddenly shoulder 10 percent of the premium cost, new and higher co-pays and also accept a wage freeze is to slap them with a decrease in compensation. In this case, that decrease amounts to 2.4 percent (for the top-step correction officer) before the co-pays the County also demands.<sup>6</sup> The OPBA is right in that the Employer is now asking its employees to bear this burden without having adequately investigated other alternatives or involved them in analyzing the problem and formulating solutions.

However, there are things the OPBA overlooks, too. One is that sharing in the cost of insurance creates incentives for all parties to spend wisely, choosing cost-effective plans and moderating utilization. In fact, the SERB data submitted by the OPBA shows both that insurance cost in the Warren/Youngstown area is high and that employees in the area share very little of that cost.<sup>7</sup> Another is that public employers picking up all health insurance costs are increasingly in the minority. SERB data for 2000 show 65 percent of reporting public employers require family premium sharing and that 70 percent of public employees contribute to the cost of their insurance. The Fact-Finder recommends that Trumbull County join their rank and adopt an insurance plan that is mutually participatory in that the parties ultimately share both in its design and in its cost, but that the County use the rainy day fund and jail receipts to bring base wages up in order to blunt the impact on paycheck earning power in the first year. Then the parties should use the health care labor-management committee to investigate and develop cost-control solutions for the future. The County’s proposal is fair, provided it is accompanied by the same opt-out option afforded other units (which should reduce utilization and save the County money),

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<sup>6</sup> $(\$60 \times 12) / \$29,931 = 2.4\%$

<sup>7</sup>The fact that I made this exact same point in my report for the deputies shows I was, indeed, cognizant of employee contribution rates in the Warren/Youngstown area (though I did not have the breakdown by county or the internal comparables in the record here) and that I took the low regional insurance premium sharing (including other Trumbull County units) into account when I made my recommendation. Regarding the internal comparisons, the execution dates of three of the contracts predated the County’s discovery of the recent explosion in insurance costs. The date of execution of the Engineer’s contract is not known, but even if it post-dated the insurance crisis, his budget is separately funded.

and sufficient dollars on base wages to rebalance the insurance/wages trade-off. The Fact-Finder's recommendation on base wages is given below in XXXII. Compensation.

*Recommendation:* The Sheriff's proposal as outlined above (including contributions to the AFSCME Care Plan) and set forth in Appendix A plus a \$50 (single), \$100 (family) opt-out provision.

### XXXI - Clothing Allowance

#### Positions of the Parties

The OPBA seeks an increase of \$25 per year in each year of a three-year agreement (\$650-\$675-\$700). It claims this is justified because Trumbull County's correction officers suffer in comparison to those in surrounding counties: Geauga's is \$750, Portage's is \$675 and Ashtabula provides all necessary clothing. It opposes the Sheriff's proposal to direct-pay the vendor because some officers shop where they can get good value and these establishments might not have a relationship with the County.

The Sheriff wants to continue the existing allowance of \$625, but prefers to disburse directly to the vendor rather than to the employee. The reason it wants to do this is that such a practice would avoid placing the Sheriff between an employee, who has received the clothing and reimbursement, and the vendor, who has not been paid by the employee. It says it will be able to negotiate prices favorable for the employees and can set up master accounts with a number of vendors for ease of administration.

#### Findings and Recommendation

Unlike the deputies, the correction officers' clothing allowance is appreciably below the norm. What the OPBA requests is modest and will help rebalance the compensation-insurance trade-off. The Sheriff's request for direct pay is recommended for these employees as it was for the deputies, sergeants and lieutenants. The parties should cooperate to assure employees may shop at their preferred vendors.

*Recommendation:* Increase allowance to \$650 in 2001, \$675 in 2002, and \$700 in 2003.

Direct-pay vendor as proposed by the Sheriff.

## XXXII - Compensation

### Positions of the Parties

For correction officers, the OPBA seeks an equity adjustment of 70¢ per hour plus an additional 4 percent in each year of a three-year agreement retroactive to October 1, 2001. An increase of this magnitude is justified because correction officers in Trumbull County are dead last in compensation when compared to correction officers in neighboring counties, receiving 89.5 percent of the average for a 10-year correction officer in three other counties.<sup>8</sup> For assistant wardens, the OPBA proposes doubling the rank differential from 11 percent to 22 percent to match the lieutenants' differential over the top deputy's wage. It argues this increase is justified for several reasons. First, Trumbull County assistant wardens' total compensation is only 84.6 percent of the average 10-year ranking correction officer in the three comparison counties (\$36,549 v. \$43,214). This difference reflects the fact that these counties have greater differentials than does Trumbull County. Second, the assistant wardens are at the top of the career ladder and so have reached their peak salary, unlike sergeants who can advance to lieutenant. The OPBA concludes that there is no basis to deny its requests based on comparability and that the Sheriff has not shown an inability to finance what the OPBA seeks.

As it did with the deputies, the Sheriff proposes a wage freeze for the first two years and a 3 percent increase effective October 1, 2003, the same as it claims the CSEA unit agreed to. The Sheriff seeks internal comparability in light of its dire financial straits. It also rejects the OPBA's rank differential proposal.

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<sup>8</sup>Geauga compensation of a 10-year correction officer in 2001 totaled \$41,249 (including wages, uniform allowance, shift differential, longevity and other), Ashtabula's was \$34,902, Portage's was \$34,634, and Trumbull's was \$33,066. The OPBA did not include Mahoning County because deputies there perform correction officer duties.

## Findings and Recommendation

As is the case with the deputies, Trumbull County correction officers are the lowest paid correction officers in the region. They would be in an even worse position were it not for the County picking up a large share of their pension contribution. The Fact-Finder lacks information about the cost of health insurance benefits in neighboring counties but, as discussed above, Trumbull County's low relative wage and comparatively high cost of employer-paid health insurance suggests Trumbull County correction officers have been paying for their "rich" insurance with lower wages. Now the County wants them to shoulder some of the costs and share the risk of future cost increases without rebalancing the wages-insurance tradeoff. This simply cannot be justified since the County felt flush enough to roll back its piggyback sales tax, still has several million dollars in the Hillside account, and has recently collected another three quarters of a million dollars owed it for its jail operation. The County may be rapidly depleting the proceeds from the hospital sale, but it has yet to find out whether its taxpayers prefer fewer services or lower taxes. It also remains to be seen whether the County will need to continue to fund its self-insurance at the higher level required for 2002. Moreover, it is not true that CSEA employees took a pay freeze, for they were put on the "County plan" in mid-2001 and then awarded a signing bonus when they accepted the insurance provision the County now seeks from the Sheriff's employees. Testimony at the November 29 hearing estimated these to be worth 4½-4¾ percent, which is close to the 5 percent the Fact-Finder calculates is needed to pull the correction officers up to their counterparts in Portage County (when all forms of compensation are taken into account) and rebalance the insurance-wages tradeoff. To do the latter, it needs to be on the base, not a lump sum, otherwise the insurance hit is just delayed a year, not offset. In addition, a wage freeze in the second year would simply regress the deputies' relative wage position even though they would continue to share insurance costs and the risk of rising premiums. Accordingly, the Fact-Finder recommends the same general wage increases of 5%-3%-3% she recommended for the deputies. She recognizes that this departs from the CSEA

settlement, but points out that the Sheriff generates revenue from the jail operation and that his correction officers are already about 11 percent behind their counterparts in Geauga, Ashtabula and Portage counties (in terms of total compensation when Ashtabula's uniform benefit is estimated as the average of the other three counties) even before these departments' 2002 general wage increases.

As for the rank differential sought by the OPBA, the assistant wardens are in an even worse wage position than the correction officers relative to their counterparts in surrounding counties, standing 16 percent below the three-county average (14% if Portage corporals are used instead of correctional sergeants). This low relative wage position is explained by the comparatively low percentage differential as well as Trumbull County's low correction officer wage, for Trumbull County's assistant wardens are in last place at 11 percent compared to the average of the other three, which the Fact-Finder calculates to be 18 percent (15.7% if Portage corporals are used instead of correctional sergeants).<sup>9</sup> No explanation for this disparity in terms of job duties, responsibilities, skills or the like was offered, only the defense that the County lacks the financial wherewithal to meet the market wage. However, there are only six assistant wardens and so a modest improvement in the differential to bring them to approximately 90 percent of their counterparts would cost only about \$4,000 (including PERS pick-up but before other roll-ups) in the first year. The Fact-Finder accordingly recommends the differential be increased to 13 percent. More than this cannot be recommended because of the County's financial condition, but the County needs to find a way to pay its ranking correction officers closer to the market.

*Recommendation:*

General wage increase:	5% effective 10/1/01 3% effective 10/1/02 3% effective 10/1/03
Rank differential:	13% effective 10/1/01

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<sup>9</sup>Ashtabula=12%, Geauga=15%, Portage=27% (sergeants), 20% (corporals)

### XLIII - Shift Differential

#### Positions of the Parties

The current differential is 20¢ per hour for the afternoon shift, 30¢ for the midnight shift. The Sheriff proposes to retain these amounts, consistent with the deputies' agreement. The OPBA acknowledges that only one other of the comparison counties has a shift differential, but that one is nearly twice what Trumbull's is. It therefore proposes a 50¢ per hour differential for each of the two back shifts.

#### Findings and Recommendation

Trumbull County is already above average in this form of compensation and officers do have shift bidding rights (which the Fact-Finder recommends preserving). Available funds are better spent on forms of compensation that affect all members of the bargaining unit.

*Recommendation:* Current language.

### XLIV - Longevity

#### Positions of the Parties

The OPBA requests \$100 per complete year of service, beginning after the fifth year of employment. Comparing itself to Ashtabula, Geauga and Portage counties, the OPBA comes up dead last at less than 45 percent of average for a 10-year employee. The Sheriff does not quarrel with Trumbull's standing vis-à-vis other counties in the area, but argues that internal comparison should rule. Three years ago longevity was raised through factfinding from \$2 to \$3 per month. Everyone except the 911 unit is now at \$3 per month. In light of the County's financial position, the status quo should be maintained.

#### Findings and Recommendation

The facts here are the same as they were for the deputies in November. They show a bimodal pattern of longevity benefits in the northeast Ohio sheriff departments. Geauga, Ashtabula and Mahoning cluster at the higher mode around \$1,000 for a 10-year employee. Trumbull and Portage cluster at under \$500. It is questionable to what extent longevity can serve

the purpose of binding experienced employees to the lower-paying group of employers. Perhaps retention is not an issue for these sheriffs. If and when it becomes so, they may be more interested in putting available dollars into longevity. Nevertheless, even when compared to the other under-\$1000 county, Trumbull County stands out and should increase its benefit to match Portage County's. More than that cannot be recommended because of the need to direct funds to forms of compensation affecting the entire unit.

*Recommendation:* Effective October 1, 2001, all employees shall receive a longevity payment after five (5) full years of service at the rate of four dollars (\$4.00) per month for each full year of service.

#### New Article - Specialized Training and Skills

##### Positions of the Parties

The OPBA proposes a new article providing stipends for special training and skills: Spanish Translator (\$100), EMT/EMTA/Paramedic (\$200), AA degree (\$400), BA or BS degree (\$650), and Police Officer Academy (\$200). The full proposal, which is modeled on a similar program in Lake County, contains some protections for the employer. The OPBA says these stipends would be limited to those who possess the qualifications when they are hired, so the Sheriff would not be paying for tuition (under the newly agreed-upon tuition reimbursement program) and the stipend, too.

The Sheriff is opposed to this new benefit, saying it has made a start, despite its financial condition, with the new tuition reimbursement benefit. Employees who already possess these skills and training knew when they were hired that there was no special payment for these qualities.

##### Findings and Recommendation

The OPBA's proposal is a good idea for an employer needing knowledge and skills of this type who is also having difficult attracting and retaining employees who possess them. This employer evidently has a preference for developing existing employees, since it has agreed to a

tuition reimbursement program. Because the OPBA’s proposal does not address a mutual need or an area in which Trumbull County is lacking vis-à-vis its neighbors and would consume funds that are better spent in areas such as wages and clothing allowance that affect the entire bargaining unit, it cannot be recommended at this time.

*Recommendation:* No provision.

### III. OTHER ISSUES

#### Article XI - Discipline

##### Positions of the Parties

The Sheriff proposes the same three changes to this article that it did for the deputies. First, arguing that discipline currently remains active for too short a period of time to correct behavior, it proposes to increase reckoning periods as follows:

	<u>Current</u>	<u>Proposed</u>
Verbal reprimands	6 months	2 years
Written reprimands	1 year	3 years
All others	2 years	5 years

It says the impact of this proposal will be felt by only a few employees, but it is always the same ones who relapse shortly after their record has been cleansed of active discipline.

The Sheriff’s second proposal is to add conviction for domestic violence as just cause for immediate discharge without recourse to the grievance procedure. It points out that current law prohibits an individual convicted of domestic violence from carrying a firearm. It admits that correction officers do not carry firearms but they can commit acts of violence against inmates. Since an officer convicted of domestic violence would have received due process as provided in any criminal proceeding at a standard higher than just cause, the grievance procedure would be redundant and a waste of resources.

Third, the Sheriff complains sixty days is too short a time frame in which to thoroughly investigate and decide whether to bring disciplinary charges. Medical evaluations in particular

take time, so the Sheriff's desire to learn whether there is a medical or psychological explanation for an officer's misconduct can cause the Sheriff to miss the contractual deadline. It therefore proposes to increase the statute of limitations to one year from the date the incident is reported to the Sheriff.

The OPBA opposes all these changes. Geauga and Ashtabula correction officers have even shorter reckoning periods for reprimands and short suspensions and both max out at two years. The other two changes are not needed. Unlike deputies, correction officers do not carry firearms and would be covered anyway if convicted of felony domestic violence. As for increasing the statute of limitations, the Mahoning County Sheriff currently limits internal investigations to 60 days.

### Findings and Recommendations

The Fact-Finder sees no good reason to recommend differently than she did for the deputies. No additional evidence of significant numbers of recidivists at the two-year mark was brought, nor did the argument with respect to medical evaluations persuade the Fact-Finder that lengthening internal investigations is warranted. The OPBA needs a reasonably expeditious investigation in order to provide an adequate defense. Moreover, discipline imposed close to misconduct is likely to be more effective in changing behavior than discipline imposed months later. If the Sheriff has reason to believe the disciplinary decision may be affected by a medical evaluation, there is nothing to prevent him from seeking a waiver of the deadline or instituting the disciplinary procedure and then later modifying the discipline if the evaluation supports mitigation. Finally, there is even less reason for the proposed change to 11.04 with the correction officers than with the deputies.

#### *Recommendation:*

- 11.02 Reckoning period for verbal reprimands: one (1) year
- 11.04 Current language
- 11.05 Statute of limitations: "...within ninety (90) days from the date that the incident giving rise to the disciplinary action is reported to the Employer..."

## Article XIV - Grievance Procedure

### Positions of the Parties

Changes to three sections are proposed. For 14.03 the OPBA wants all grievances answered at each step to avoid being deprived of the right to further process the grievance because of inattention to the expiration of time. The Sheriff opposes this change, saying that the current language has been in effect for a long time without a problem. Moreover, the deputies already agreed to retain current language.

Both parties seek changes to 14.06. The OPBA wants a Step 2 answer to grievances from the sheriff, himself, not a designee. Especially in discipline cases it wants an opportunity to discuss the case with the sheriff and Step 2 may be the only time. The Sheriff wants no changes to Step 2, saying that the OPBA has not provided any evidence of a problem in the years this provision has been in effect. The jail division has about seventy employees now and the Sheriff needs the ability to delegate grievance handling.

The Sheriff's own proposal for 14.06 is to replace FMCS arbitrators with a permanent panel and to restrict the arbitrator's authority to award monetary damages retroactive to the date the grievance was presented to the Employer at Step 2. It says it takes too long to get a panel from the FMCS and when it does arrive it contains arbitrators from Kentucky and Pennsylvania. The Sheriff prefers a permanent panel of five names from northeast Ohio. The OPBA objects to the Sheriff's hand-picked names and suggests that the parties use the FMCS Metro lists to get arbitrators from the immediate area. The OPBA also opposes restricting arbitral authority on monetary remedies, saying there has been no discussion of this issue or evidence that a problem exists.

Finally, the OPBA wants a new section 14.09 requiring the Sheriff to pay grievants for attending arbitration hearings during off-duty hours when their grievances are sustained. It submits that this provision is warranted because third shift grievants have to attend hearings during the day and still work their usual shift. The Sheriff rejects this proposal saying it already

covers grievants whose hearings occur during their shift and OPBA representatives who are on duty. Anything more is not the Employer's responsibility and puts an unreasonable burden on the Sheriff.

### Findings and Recommendations

The Fact-Finder recommends no change to this article at this time. There is no evidence that grievances are not being discussed at the lower steps or that the OPBA has been deprived of its right to advance grievances because the Sheriff ignores them. There is also no evidence that settlements are frustrated by the Sheriff's delegation of authority, but prohibiting such delegation has the potential to create delay and to clog the system. With respect to arbitrators, the unit is getting to a size which may warrant use of a permanent panel, depending on grievance volume, but the Sheriff can only point to one recent instance of a problem with the current system and it proposes a panel of its own favorites. There is an alternative yet to try if the problem is deemed onerous enough and that is to request lists from the FMCS more narrowly tailored to the parties' needs. The Sheriff's other proposal for Step 3 is also a solution without a problem and suffers from lack of discussion at the table. Finally, while I sympathize with third shift grievants who must use uncompensated personal time to attend their own arbitrations while first shift grievants use paid on-duty time, the fact remains that the Employer already incurs the costs of relieving those first shift grievants and OPBA representatives, whether the grievance is won or lost. More would be unfair without some consideration from the Union.

*Recommendation:* Current language with addition of "using the Metro list operation or equivalent: to the first sentence of Step 3.

### Article XV - Seniority

#### Positions of the Parties

The Sheriff proposes to modify sections 15.01-15.04 and to add a section to 15.05 to be consistent with what was agreed to with the deputies. The OPBA does not object to the proposed sections 15.04 and 15.05. However, it sees no point to the rest of the proposal (which addresses

the situation of an employee separated due to PERS disability and approved unpaid leaves of absence), because the scenario of an employee coming back from such an extended absence has never arisen in this unit. The Sheriff admits that it has not yet had to grant years of seniority to an employee reinstated from PERS disability, but the situation did come up last summer and the Sheriff would like to be proactive.

### Findings and Recommendations

The Fact-Finder thinks this unit of the OPBA is short-sighted in not recognizing the internal dissension which can occur when one employee holds as much seniority as a co-worker with four or five years more actual experience on the job. Moreover, to the extent that seniority plays a role in promotions and job assignments, this is not just a union issue. If seniority is to serve as a proxy for experience in these kinds of decisions, it needs to reasonably approximate actual time on the job. Finally, there is the inconvenience of having different seniority provisions for different but related bargaining units.

*Recommendation: As proposed by the Sheriff.*

15.01 "Seniority" shall in all applications be computed on the basis of uninterrupted length of continuous service with the Trumbull County Sheriff's Department, except where specifically limited to in-grade seniority as recited in other terms of this Agreement. Once continuous service is broken, unless the employee is reinstated, the employee loses all previously accumulated seniority.

15.02 A break in continuous service shall occur when an employee:

- a. quits or resigns;
- b. is discharged;
- c. retires; or is separated from employment due to PERS disability;
- d. is laid off for a period in excess of thirty (30) months;
- e. is absent without leave for three (3) consecutive work days or more;
- f. fails to return from leave of absence upon expiration or cancellation;
- g. fails to report to work within ten (10) calendar days of the date of recall.

15.03 An approved paid leave of absence does not constitute a break in continuous service providing the employee follows the proper procedure from such leave and returns to active service immediately following the expiration of the approved leave. An approved unpaid leave does not constitute a break of continuous service but an employee shall not earn seniority during said break.

15.04 The Employer agrees to post a bargaining unit seniority list once a year; a copy of the seniority list shall be furnished to one representative designated by the OPBA. The seniority list shall be updated as necessary.

15.05 Seniority shall commence with the first date the employee appears for work. Any ties in seniority shall be broken by alphabetical order of the employee's last name at the time seniority commences.

## Article XVI - Hours of Work/Overtime

### Positions of the Parties

Two sections remain in dispute, Section 16.07 and Section 16.09. Section 16.07 presently grants the Sheriff the right to schedule certain employees off on holidays. The Sheriff proposes to incorporate the existing practice scheduling these employees off on the days observed as holidays by other County offices, which it says has existed for a number of years without a grievance. It also wants to add the position of Program Coordinator as one of those subject to being scheduled off under this section. These changes are justified because when the courts are closed there is no work available for these employees. The Sheriff believes that the Program Coordinator prefers this arrangement. The OPBA does not object to adding “or on the days observed...” as this is the existing practice, but it does object to including the Program Coordinator as one who could be scheduled off on these days. It believes there are duties he could perform on these days and having him do so would provide relief and existing staffing issues. It also points out that despite the Program Coordinator’s preferences, he is a member of the bargaining unit and the OPBA has the exclusive right to bargain for him.

Section 16.09 currently gives the Sheriff the right to deny requests for use of compensatory time if additional employees must be called out to cover a shift. The OPBA would restrict this right, permitting such denial only “if such would be unduly disruptive to the Sheriff’s operations.” Further, it would add a sentence to make it clear that payment of overtime could not be deemed an unduly disruptive event. The OPBA says this change is necessary to bring the Sheriff into compliance with the Fair Labor Standards Act. The Sheriff does not dispute the OPBA’s claim about what the FLSA requires, but points out that the OPBA presently enjoys 24-hour notice, something not guaranteed by FLSA. It says the right to deny such requests if overtime is required was a quid pro quo for the 24-hour advance notice rule. The Sheriff could go along with deleting the entire section, including the 24-hour rule, but believes the present provision has served both parties well over several contracts and should be continued.

## Findings and Recommendation

With respect to 16.07, the Fact-Finder has no reason to depart from her Findings and Recommendations for the deputies. The Sheriff's request to incorporate the long-standing practice and to extend it to a position with similar work flow pattern is reasonable. The OPBA's objection to the inclusion of the Program Coordinator, on the other hand, amounts to featherbedding and cannot be recommended as a responsible use of public funds. With respect to Section 16.09, the OPBA's proposal ignores the history of bargaining, which recognized legitimate needs of both parties. It offers nothing to make the 24-hour rule workable for the Sheriff, who is strapped for funds even without having to pay the overtime the change would require.

### *Recommendation:*

16.07 The Employer retains the right to schedule off on holidays or on the day observed by other county offices those employees assigned to the Detective Bureau, Civil or Court Security Divisions, Secretaries, Custodians and the Program Coordinator. Rotating scheduled (shift) changes shall not be subject to the overtime provisions in this agreement.

16.09 Current language.

## Article XVII - Work Schedules

### Positions of the Parties

The Sheriff wants to delete the existing article in its entirety for three reasons. First, Section 17.03's schedule of shift bidding conflicts with vacation bidding in a way that creates scheduling and manpower issues. Vacation requests come in during January and February of each year and are awarded in mid-March. Since shift bids are entertained twice a year in May (for June-November) and November (for December-May), the Sheriff has to schedule vacations without knowing what turn an employee will be working when the vacation would be taken. This can result in too many officers being off at one time.

A second problem of shift bidding is the dissension it has created in the bargaining unit. Because of minimum standards for jails in Ohio and a federal consent decree entered into more than ten years ago, the Sheriff segregates male and female correction officers for the purpose of

shift bidding. The Sheriff has had to defend this practice in arbitration when female correction officers grieved losing desirable shifts to less senior male officers. The practice was upheld in arbitration but female officers next turned to the EEOC, charging discrimination based on sex. In view of the Sheriff, this shows the current provision is not working for the OPBA either. Therefore, it should be eliminated from the Contract and the Employer permitted complete discretion. The Sheriff could then rotate schedules to give everyone an opportunity to work each shift. Finally, eliminating the provision and granting the Sheriff total discretion would allow the Employer to take steps to reduce the inordinate amount of overtime in the jail.

The OPBA is opposed to obliterating bidding rights that have been in existence for ten years. First, since only seven or eight of 70 correction officers filed with the EEOC, it doubts there is major internal dissension. But even if there were, the Sheriff has not tried alternative solutions, such as ending segregated bid sheets. Three of the neighboring counties have shift bidding and two of these—Portage and Ashtabula—have not seen fit to reserve slots for females. What is more, putting shift assignments into the unfettered hands of the Sheriff would be disruptive for officers with family responsibilities. The OPBA asks that the Fact-Finder recommend maintenance of existing long-established rights, and follow the deputies.

#### Findings and Recommendation

The Sheriff's proposal represents a repudiation of long-standing and important collectively bargained employee rights without the Sheriff having tried (and perhaps not even seriously considered) other solutions within its present range of discretion. Nor has it considered the impact of rotating shifts on officers with children, but who would have no vehicle for expressing their objectives except to leave for other work places with stable shift assignments. The Fact-Finder cannot recommend a proposal that would create such disruption and deny such important long-standing rights. However, she can and does recommend the same relief on the vacation-shift bidding conflict she did for the deputies.

*Recommendation:* All as previously agreed or current language except add the following to 17.03: “Employees voluntarily changing shifts after their vacation request has been approved may have their vacation request reconsidered by the Employer.”

## Article XXII - Vacation

### Positions of the Parties

The OPBA proposes to improve the vacation benefit in three ways. First, it would increase the maximum from 200 to 240 hours and accelerate movement through the steps, adding 40 hours every five years instead of every seven. Second, it would add to Section 22.03b that requests not submitted in accordance with the time schedule would be approved so long as staffing permits. It says this reflects current practice. Third, it would add a provision allowing vacation time to be taken in increments of one, two, four or eight hours. The OPBA believes data from other Trumbull County units and from Geauga, Mahoning, Portage and Ashtabula sheriff departments support its demands.

The Sheriff wants to maintain the status quo of four steps maxing out at 200 hours for 21 years of service and rejects the proposal to grant vacation in increments of less than eight hours. Data from Ashtabula, Geauga, Mahoning and Portage counties show Trumbull is close to the norm as all four earn 120 hours at seven years of service. The Engineer and Childrens Services units are not appropriate units of comparison because they are separately funded. More time off generates more overtime, which the Sheriff can ill afford. As for taking vacation in shorter increments, while it is true other units have this right, they do not have the same ability to earn compensatory time that this unit does. Moreover, using vacation in this way defeats the purpose of vacation, which is to provide respite from stress. In the Sheriff’s opinion, the OPBA’s demand shows this unit either has too much vacation already or is not using its compensatory time.

## Findings and Recommendation

Data from the four counties contiguous to Trumbull show Trumbull's correction officers to be at the average for earning 80 and 120 hours of vacation per year, but below average for 160 and 200 hours.<sup>10</sup> Moreover, three of the contiguous counties provide 240 hours of vacation for their longest-term employees. External comparables thus support the OPBA's demand for improvement at the higher steps, though not at the lower ones. External comparables must be given greater weight than internal ones on certain issues such as paid time off because of the greater similarity of working conditions and job duties, but internal units cannot be totally ignored. Here, a number of units—but none in law enforcement—earn longer vacations earlier in their careers than do the correction officers. Some earn more than five weeks of vacation and some of these are paid out of the general fund or have budgets requiring the commissioner's approval. A sixth week seems likely to be in the law enforcement units' future, but today the thrust must be on accelerating movement through the existing steps. Taking vacation in increments less than eight hours is not warranted for the reasons stated by the Sheriff. The Fact-Finder therefore recommends the same improvement she did for the deputies. In addition, the OPBA's request that current practice on vacation approval be incorporated into the Agreement.

### *Recommendation:*

- |       |                           |           |
|-------|---------------------------|-----------|
| 22.01 | 1 but less than 7 years   | 80 hours  |
|       | 7 but less than 13 years  | 120 hours |
|       | 13 but less than 19 years | 160 hours |
|       | 19 or more years          | 200 hours |
- 22.03b Add "Requests not submitted in accordance with the time schedule herein shall be approved so long as staffing permits."

## Article XXIV - Sick Leave

### Positions of the Parties

The Sheriff compares sick leave use in the jail (13.5 days per year per employee) with the road deputies' use (6-7 days) and with the state average for correctional facilities of the same size

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<sup>10</sup>Four-county average for 80 hours = 1 year, 120 = 7 years, 160 = 12.25 years, 200 = 19.5 years. Three-county average for 240 is 24.3 years.

(5-7 days). The overtime costs resulting from such usage is astronomical, it says, and justifies strong measures. To address the issue it proposes the following changes:

- 24.01 Reduce earned sick leave from 120 hours/year to 2 hours/80 hours actually worked.
- 24.10 Permit discipline for “abuse or patterned use” “notwithstanding any other provision of this Agreement” (to correct what the Sheriff believes was an erroneous arbitral reading of Sections 24.10 and 24.11).
- 24.11A Accelerate schedule of discipline for sick leave occasions in a calendar year to:
  - 3 occasions Written caution
  - 4 1 day suspension
  - 5 10 day suspension
  - 6 30 day suspension
  - 7 Termination

To address difficulty in getting documentation, it proposes to count an absence after failing to bring in the required form on the first day back to work as a separate occasion, adding “The employee shall provide any forms required by the Employer upon the first day of return to work. Failure to provide the required form on the first day of return to work shall result in subsequent absences as being treated as a separate occasion” to 24.11E. In addition, since the Agreement has no provision for disability leave, the Sheriff would replace the reference to it in Section 14.08 with “Family Medical Leave pursuant to Article XXVI.”

The OPBA opposes these changes and proposes some of its own. With respect to 24.01, it asserts this is a dramatic reduction in sick leave and goes below the state requirements for civil service employees (4.6/80 hours). The existing provision has been in effect for a long time and the Sheriff has not tried to change it for the deputies. It will not cure the sick leave problem and should be left alone. With respect to 24.10, the OPBA claims the Sheriff is to blame for the arbitration outcome because it could not decide whether the case was one of abuse or pattern use. In addition, the sole reason the Sheriff claimed the employee was terminated was because he violated a last chance agreement. An adverse arbitration decision should not be the basis for changing this section. Should Section 24.11, which does exist, not be looked at? With respect to Section 24.11A, the OPBA concedes that the 1996 date is obviously no longer relevant, but it wants to maintain the June–May occasion year. It also resists changing the discipline schedule as such a drastic reduction in occurrences and increase in penalties is not warranted. The principle of gradualism is negated by this proposal. In the OPBA’s view, the occasion system, which was

the Sheriff's idea, is working for both parties as demonstrated by the experience of last year. The OPBA contends the Sheriff's numbers for corrections do not reflect actual sick leave usage because they include personal days.

Regarding the proposed addition to 24.11E, the OPBA cannot agree without greater specification as to what "forms" must be provided. Finally, it disagrees that there is no disability leave in the Contract. In its view, disability leave is defined by 24.11E. Otherwise that particular section has no meaning. Therefore, the term should not be replaced. If it were to be changed as proposed by the Sheriff, there would be two family medical leaves in the Contract.

For itself, the OPBA makes three proposals. It wants language added to Section 24.11B exempting absences covered by a doctor's excuse from being counted as an occasion. It wants a new section patterned on the County program permitting employees to donate leave to other employees. (This proposal is set forth at length below at Appendix B.) If the Sheriff's position regarding disability leave is awarded, the donation plan would fill that gap. The OPBA also seeks a new section like that contained in the AFSCME contract that would count occurrences of tardiness separate from sick leave occurrences and make them subject to their own discipline schedule. This provision is justified, it says, because correction officers have to actually clock in on site unlike the deputies who call in from home.

#### Findings and Recommendation

Jail usage of 13.5 days/year per employee is high relative to other correctional facilities even when adjusted to 10.5 days to take three personal days into account. It is also high compared to that of the road deputies who were subject to the same provision during the life of the expiring agreement. While it is true the rate of growth was reduced from 7.8 percent to 5.3 percent between 1999 and 2001, it cannot be said that the problem has been solved. The Sheriff needs some relief, but changes to the article must be crafted to address abusers and excessive users without punishing those who use their sick leave appropriately. Consequently, the Sheriff's proposal to reduce the rate at which sick leave is earned must be rejected because it would punish

the innocent. His proposal for Section 24.10, on the other hand, is justified to clarify that “abuse or patterned use” is different from frequent use and thus may be subject to a different schedule of discipline.<sup>11</sup> The Sheriff’s proposal to accelerate discipline for frequent use of sick leave would penalize frequent users, but it would also hit those keeping wellness appointments, to the detriment of all. The OPBA has a proposal to exempt all medical appointments and excused illnesses, but this goes too far and could exacerbate the problem. The Fact-Finder recommends language proposed in mediation that would exempt up to five pre-scheduled appointments. With this protection, some acceleration of the discipline schedule can be recommended to address frequent use of sick leave, but at a slower rate than proposed by the Sheriff. A rolling twelve-month reckoning period is also recommended to prevent end-of-term spikes.

The Sheriff’s request that medical documentation be supplied upon the first day of return to work is reasonable and the OPBA’s only objection is that the phrase “any forms required by the Employer” is overly broad. The Fact-Finder therefore recommends that the Sheriff’s proposal be adopted with the phrase “the Employer’s physician verification form” replacing “any forms required by the Employer.”

Regarding the OPBA’s proposal that incidents of tardiness not be counted as sick leave occasions, the Sheriff does not presently count them as such unless the employee claims sick leave. Therefore, tardiness is presently subject to normal absenteeism/tardiness discipline unless the employee, him/herself, chooses to use sick leave. No amendment along these lines is called for. On the other hand, the OPBA’s request to join the County’s leave donation program is reasonable and is recommended (as proposed by the OPBA), as is the Sheriff’s proposal to substitute “Family Medical Leave pursuant to Article XXVI” for “disability leave” in Section 24.08.

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<sup>11</sup>In making this recommendation, the Fact-Finder specifically makes no finding with respect to the correctness of the arbitration decision referenced by the parties, but merely recognizes that clarifying this provision will better place employees on notice than the existing language does.

*Recommendation:*

24.01 No change

24.08 If the Employer determines, based upon all available medical evidence, that the employee is not qualified, the employee may be placed on Family Medical Leave pursuant to Article XXVI. Such determination, however, shall not be arbitrary or capricious.

24.10 Any abuse or patterned use of sick leave shall be just and sufficient cause for disciplinary action, notwithstanding any other provision of this Agreement.

24.11 A. Use of sick leave, other than injury leave or leave utilized pursuant to FMLA, on three (3) or more occasions in any 12 month period, shall subject the employee to disciplinary action according to the following schedule:

Three (3) times	written caution letter
Four (4) times	one (1) day suspension
Five (5) times	five (5) day suspension
Six (6) times	ten (10) day suspension
Seven (7) times	fifteen (15) day suspension
Eight (8) times	termination

B. An "occasion" for purposes of this Section shall mean an individual utilization of sick leave regardless of the number of hours involved (e.g., one (1) hour, one (1) day or five (5) consecutive work days would all be one (1) occasion of sick leave). Any time an employee reports back to work and begins working ends an occasion of sick leave. However, the first five (5) utilizations of sick leave for doctors appointments, scheduled at least seventy-two (72) hours in advance and provided the employee takes no other sick days in conjunction with the doctors appointment, in any twelve (12) month period shall not be deemed an occasion, provided the employee returns to work with a physician signed form prepared by the Employer.

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E. Discipline may be waived upon a showing of error in the application of this provision or satisfactory evidence that the occasion was a result of a bona fide, unpredictable or recurring medical condition necessitating the employee's absence and the employee submits medical documentation substantiating the same. The employee shall provide the Employer's physician verification form upon the first day of return to work. Failure to provide the required form on the first day of return to work shall result in subsequent absences being treated as a separate occasion.

24.12 Donation of Paid Leave as set forth in Appendix B.

## Article XXVI - Family Medical Leave

### Positions of the Parties

The Sheriff requests that family medical leave begin with the employee starts taking time off from employment rather than when first approved as is presently done. The problem with the current practice is that the Sheriff is sometimes not advised of the nature of the condition until well into the leave. The deputies agreed to this proposal, so it should be adopted here, too, for consistency and ease of administration.

The OPBA rejects this proposal believing that it could create more problems than it is worth as employees may have to take additional time off to secure needed documentation. It thinks family medical leave should begin when the Act says it should, so suggests, "shall be

computed in accordance with the FMLA.” The OPBA also has its own proposal for this article, namely adding, “The employee may choose to use under forty (40) hours in each bank” to Section 26.02. The Sheriff does not object to this addition because it is existing practice.

### Findings and Recommendation

The Contract and Act give employees the right to family medical leave. With this right comes the responsibility to timely supply supporting documentation. The deputies, sergeants and lieutenants accepted this responsibility. The correction officers should, too. The Fact-Finder recommends both the Sheriff’s and OPBA’s proposals for this article.

#### *Recommendation:*

26.01 Employees may request and be granted time off without pay pursuant to the Family Medical Leave Act of 1993. Such time off without pay shall not exceed twelve (12) weeks in any twelve (12) month period. Leave under this provision shall be computed when the employee starts taking time off from employment. During such leave the employee shall continue to receive health care insurance as contained in this Agreement.

26.02 The Employer may require an employee to use accrued vacation or accumulated sick leave which shall be inclusive of the twelve weeks of Family Medical Leave. The Employer shall not require an employee who has forty (40) hours or less of vacation and accumulated sick leave to exhaust such time which are separate banks of accumulated time under this article. The employee may choose to use under forty (40) hours in each bank.

## XXXVI - Injury Leave

### Positions of the Parties

Formerly it took a great deal of time for workers’ compensation claims to be processed. Hence, injury leave was supposed to be a bridge for injured officers until their workers’ compensation benefits began. Now, however, claims are processed much more quickly and recently two employees never filed claims with the result that the Sheriff not only had to pay overtime to replace these employees during their absences, but also had to cover their salaries and pay workers’ compensation premiums. The Sheriff wants to change the injury leave article to make it the bridge it was always intended to be, not a substitute for workers’ compensation. It would do this by limiting injury leave to thirty days and penalize employees who do not file a claim.

The OPBA opposes these changes, saying in the first place that both employees who failed to file were deputies, not members of this unit. In the second place, thirty days is far too short for processing claims, the time for which is beyond the employee's control.

### Findings and Recommendation

The Sheriff's request to limit this form of leave so as to make it the bridge it is typically intended to be is reasonable. As with the deputies, it would benefit this unit as a whole inasmuch as it would tend to free up dollars which could then be used for other purposes. Even though this unit has not yet had the problem the deputies unit had, if and when it does occur, it will be too late to prevent the unnecessary expenditure. The Fact-Finder recommends the Sheriff's proposal but with the same 120 days she recommended for the deputies.

#### *Recommendation:*

36.01 In the event an employee suffers a service connected injury while in the active discharge of duty, the employee shall receive his full pay not to exceed one hundred twenty (120) days from the injury date provided the employee files for workers' compensation benefits. If an employee's claim is not filed or is disallowed by the Bureau of Workers' Compensation and/or the Ohio Industrial Commission, then the employer is entitled to reimbursement by that employee.

The time an employee is required to be absent from active duty due to a work incurred injury shall not be deducted from his or her accumulated sick leave time, unless the claim is disallowed or the employee fails to file a claim for temporary total disability payments. If the application for benefits is approved by the Bureau of Workers' Compensation, the dollar amount of Workers' Compensation benefits received during such period of disability in compensation for loss of wages shall be turned over to the Trumbull County Sheriff's Department Payroll Account as a reimbursement.

## Article XLI - Duration

### Positions of the Parties

The parties agree that the Agreement should expire on September 30, 2004. They disagree as to effective date, however. The OPBA seeks a three-year agreement beginning October 1, 2001. Although it recognizes in principle that operational issues cannot realistically be applied retroactively, it believes its wording of the duration article would save the parties from having to go through the Agreement article-by-article to determine whether each should be retroactive. The Sheriff wishes to maintain the "effective upon execution" phrase, and address retroactivity in specific articles.

## Findings and Recommendation

The Fact-Finder may bear some responsibility for the parties' continued disagreement on this issue by virtue of an inartfully written recommendation for the deputies. Operational issues, such as sick leave and discipline, should not be effective October 1, 2001, but upon execution. Wages, longevity, clothing allowance and other such financial issues for which retroactivity is appropriate, should have their effective date stated in their respective articles.

*Recommendation:* Effective upon execution, remaining in full force until September 30, 2004.

## IV. SUMMARY OF RECOMMENDATIONS

	<u>Item</u>	<u>Recommendation</u>
XI.	Discipline 11.02 11.04 11.05	Verbal reprimands active 1 year Current language 90-day statute of limitations
XIV.	Grievance Procedure	Current language with arbitrator selection from FMCS Metro list.
XV.	Seniority	As proposed by the Employer
XVI.	Hours of Work/Overtime 16.07 16.09	As proposed by the Employer Current language
XVII.	Work Schedules	Current language except add that vacation requests may be reconsidered for employees voluntarily changing shifts
XXII.	Vacation 22.01 22.02b 22.02c	1/7/13/19 years = 80/120/160/200 hours As proposed by the Union No provision
XXIV.	Sick Leave 24.01 24.08 24.11A  24.11B 24.11E 24.12 (New) New (Tardiness)	Current language As proposed by the Employer Written/1/5/10/15/termination for 3/4/5/6/7/8 occasions in a 12-month period 5 exemptions Physician's verification form required first day back Donation of Paid Leave (as proposed by Union) No provision
XXVI.	Family Medical Leave 26.01 26.02	As proposed by the Employer As proposed by the Union
XXVIII.	Hospitalization & Insurance	As proposed by the Employer plus \$50/\$100 opt-out
XXXI.	Clothing Allowance	\$650/\$675/\$700 and direct-pay vendor

	<u>Item</u>	<u>Recommendation</u>
XXXII.	Compensation Rank differential	5%/3%/3% effective 10/1/01, 10/1/02, 10/1/03 18% effective 10/1/01
XXXVI.	Injury Leave	120 days
XLI.	Duration	Effective upon execution, expiring 9/30/04
XLIII.	Shift Differential	Current language
XLIV.	Longevity	\$4/month, effective 10/1/01
New	Specialized Training & Skills	No provision

Respectfully submitted,



Anna DuVal Smith, Ph.D.  
Fact Finder

Cuyahoga County, Ohio  
April 12, 2002

ADS:sss  
serb779

## APPENDIX A

### Health Insurance/Hospitalization

#### **Section 1. Health Insurance Fringes**

The Employer shall provide a Hospitalization Plan, Prescription Drug Plan, Dental Care Plan, Vision Care, and Hearing program within the constraints of Ohio Revised Code Chapter 307.86 (F) and affected Collective Bargaining Agreements. The Plan Structure shall include the following:

- A. Annual up-front deduction of \$200.00 for single subscribers and \$400.00 for family coverage.
- B. Hospital and Physician network (Preferred Provider Plan) to include 80/20 coinsurance with annual out-of-pocket maximum of \$600.00 single and \$1,200.00 family for services within the network.
- C. Prescription Drug co-pay of \$5.00 per prescription if generic purchase, \$15.00 per non-generic prescription within formulary and \$30.00 for any prescription purchased outside of the formulary. Prescription co-pays shall not be applied to annual out-of-pocket maximums or deductibles. Union's Plan (see attached addendum) shall be primary until maximum out-of-pocket is reached.
- D. \$15.00 office visit co-pay including Wellness and Preventive Care Programs (e.g., physical examination, smoking cessation, etc.), office co-pays will not be applied to annual deductibles, but will count toward annual out-of-pocket maximums.
- E. Schedule of Benefits (Maintenance of Standards). To as great an extent as possible, the level of benefits shall remain as per the current plan design. The Employer shall maintain the schedule of benefits at the same or substantially the same level for the duration of this Agreement. No substantial change in benefit levels shall occur without first meeting with the Union.

#### **Section 2. Employee Premium Share**

Effective no earlier than 6/1/02 the employee share of health care premiums shall be ten per cent (10%) of the total premium not to exceed sixty dollars (\$60.00) per month for family coverage and thirty dollars (\$30.00) per month for single coverage. Effective 6/1/03 the employee share of health care premiums shall be ten per cent (10%) of the total premium not to exceed eighty dollars (\$80.00) per month for family coverage and forty dollars (\$40.00) per month for single coverage. Effective 6/1/04 the employee share of health care premiums shall be ten per cent (10%) of the total premium. The premiums shall be deducted at one half the amount per each biweekly pay period until the total monthly obligation is met.

#### **Section 3. Health Maintenance Organization (HMO)**

The Employer shall offer an HMO, which shall be considered an alternate plan not subject to any restrictions listed in this Agreement, with the exception of the Employee's premium share, if applicable.

#### **Section 4. Cost Containment and Advisory Committee**

There shall be formed a Cost Containment and Advisory Committee (CCAC), whose function shall be to serve in an advisory capacity to the Employer on all matters pertaining to the Health Care and Wellness, of employees including, but not limited to:

- A. Reviewing and forwarding comment to the Employer on all competitive bids received for Health Care prior to the Employer's formal acceptance of such bids.
- B. Suggesting changes in coverages and plan design, but adhering to the language below
- C. Reviewing Health Care costs and forwarding advice and ideas on containing same.

This Committee shall be composed of one (1) representative from each Trumbull County Union having members who are subscribers to any of the Health Plans and two (2) representatives selected by the Employer. No change in plan design (e.g., Co-Pays, Premium Share, Deductibles, Coverages, etc.) may be proposed by either the Union(s) or Employer unless renewal costs for all coverages change by at least 30%, plus or minus. Further, the Employer will be obligated to re-bid the Hospitalization Plans, even in the midst of the normal three (3) year Health Plan Contract, if total costs for the plans escalate by 20% or more from current costs. This shall not prohibit the Employer from soliciting bids at any time the Employer deems as appropriate.

Any dispute between the parties relative to this section shall be resolved in the following manner:

- A. Each party shall select one (1) representative to mediate the proposed plan design change, or other issues under this section.
- B. The two (2) representatives will mutually agree on a neutral third representative.
- C. The mediators will be given wide latitude in resolving issues under this section, and may.
  - 1. Meet solely among themselves.
  - 2. Hold a formal hearing.
  - 3. Solicit exhibits and evidentiary materials.
  - 4. Direct any witnesses to appear.
- D. The decision of the mediators shall be rendered within thirty (30) days from the appointment of the three-member panel with the decision binding on all subscribers under the plans.
- E. Any mandated change shall be implemented by the Employer and incorporated into the Plan or Plans on the first day of the next Plan Year or via solicitation of competitive bids if more feasible.

## Appendix B

### Donation of Paid Leave

Employees may donate paid leave to a fellow employee who is otherwise eligible to accrue and use sick leave. The intent of this leave donation program is to allow employees to voluntarily provide assistance to their co-workers who are in critical need of leave due to serious health conditions.

1. An employee may receive donated leave up to the number of hours the employee is normally scheduled to work in each pay period provided that the employee who is to receive the donated leave:
  - a. (Or a member of the employee's immediate family) has a serious health condition as defined by the Family Medical Leave Act.
  - b. Has no accrued leave or has not been approved to receive other state or federal government paid benefits; and
  - c. Has applied for any paid leave, workers' compensation or benefits program for which the employee is eligible. Employees who have applied for these benefits may use donated leave to satisfy any waiting period for such benefits where applicable and donate leave may be used following a waiting period, if one exists, in an amount equal to the benefit provided by the program. (e.g. fifty-six hours per pay period may be used by an employee who has satisfied the disability waiting period and is pending approval; this amount is equal to the seventy percent (70%) provided by disability).
2. Employees may donate leave if the donating employee:
  - a. Voluntarily elects to donate leave and does so with the understanding that donated leave will not be returned;
  - b. Donates a minimum of eight (8) hours of sick leave or eight (8) hours of vacation.
  - c. Retains a combined leave balance of at least one hundred and twenty (120) hours. Leave shall be donated in the same manner in which it would otherwise be used.
3. The Leave donation program shall be administered on a pay period by pay period basis. Employees using donated leave shall be considered in active pay status and shall accrue leave and be entitled any benefits that they would otherwise be entitled. Leave accrued by an employee while using donated leave shall be used if necessary, in the following pay period before any additional donated leave may be received. Donated leave shall be considered sick leave but shall never be converted to cash benefit.
4. Employees who wish to donate leave shall certify:
  - a. The name of the employee for whom the donated leave is intended;
  - b. The type of leave and the number of hours to be donated;
  - c. That the employee will have a minimum combined leave balance of one hundred twenty (120) hours; and
  - d. That the leave is donated voluntarily and the employee understands that the donated leave will not be returned.
5. The Employer and the Union shall ensure that no employees are forced or coerced to donate leave. The Employer shall respect an employee's right to privacy, however the Employer may, with the permission of the affected employee or a member of the employee's immediate family, inform employees of their co-workers' critical need for leave. The Employer shall not directly solicit leave donations from employees and the donation of leave shall occur on a strictly volunteer basis.
6. Except in the case of determining eligibility to participate, and other applicable sections of this Article, disputes of claims of bias or prejudice between or among employees in donating leave shall be the sole province [sic] of the Union and it's [sic] members. The Employee(s) shall have no appeal under the Grievance Procedure or civil remedies that involve the Employer.
7. Except as outlined in 6 above, no employee shall have any claim of bias, discrimination or prejudice against the Union, its members or agent. It is understood that the donation of paid leave is a personal, voluntary and individual choice of the donor and the Employer requesting such leave shall have no course of action against any employee or their representatives for the denial of donation.
8. Employees selling of sick leave and/or vacation leave shall be considered a serious offense warranting disciplinary action of termination of employment.

CERTIFICATE OF SERVICE

I certify that on the 17<sup>th</sup> day of April 2002, I served the foregoing Report of Fact Finder upon each of the parties to this matter by express mailing a true copy to them at their respective addresses as shown below:

Mark J. Volcheck, Esq.  
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1001 Lakeside Avenue  
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I further certify that on the 17<sup>th</sup> day of April 2002, I submitted this Report by mailing a true copy to the State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-5213.

  
Anna DuVal Smith, Ph.D.  
Fact Finder