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STATE EMPLOYMENT
RELATIONS BOARD

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

2002 JUN 21 A 10:24

In the Matter of Fact Finding	*	
Between	*	
	*	FINDINGS
OHIO PATROLMEN'S BENEVOLENT	*	AND
ASSOCIATION	*	RECOMMENDATIONS
	*	
	*	
	*	
and	*	Anna DuVal Smith
	*	Fact Finder
TRUMBULL COUNTY SHERIFF	*	
	*	

Appearances

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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 three of those units, Commissioned Road Deputies, of which there are approximately 35, Sergeants (10) and Lieutenants (5). 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 October 26, 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 28 issues brought to mediation to eleven (11). The status of each issue at the time the case came for hearing is set forth Table 1, below.

A fact-finding hearing was convened at 10:00 a.m. on November 29, 2001, at the offices of the Trumbull County Sheriff in Warren, Ohio. Pre-hearing statements were timely filed as mutually agreed by the parties on November 29. Present for the OPBA in addition to Counsel were Peter J. Praulo, Gary L. Galida and Jeffrey R. Orr. Present for the Sheriff were Chief Deputy Ernest G. Cook, Major Bob Davis, Sr., Captain Gary Bacon, Human Resources Director James Keating and Chief Deputy Auditor Adrian S. Viviano. Both parties were afforded a complete opportunity to examine witnesses, to present documentary evidence, and to argue their respective positions on the eleven outstanding issues identified above. The oral hearing concluded at 4:20 p.m. on November 29, 2001, whereupon the record was closed. Thereafter the Fact-Finder was granted extensions in rendering her report.

Table 1. Status of Bargaining Issues

<u>Article</u>	<u>Title</u>	<u>Status</u>
III	Management Rights	Current provision
X	Probationary Periods	Settlement pending
XI	Discipline	Unresolved
XIV	Grievance Procedure	Current provision
XVI	Hours of Work/Overtime	16.07 unresolved; all else current language
XVII	Work Schedules	Unresolved
XVIII	Court Time	Current provision
XIX	Call-In Pay	Current provision
XXI	Holidays	Current provision
XXII	Vacation	Unresolved
XXIII	Personal Days	Current provision
XXIV	Sick Leave	Settlement pending
	Sick Leave Bonus	Settlement pending
XXVII	Military Leave	Current provision
XXVIII	Hospitalization & Ins.	Unresolved
XXXI	Clothing Allowance	Unresolved
XXXII	Compensation (incl. Detective Differential)	Unresolved
XXXIV	Special Schooling	Current provision
XXXV	Pension	Unresolved
XXXVI	Injury Leave	Unresolved
XXXVII	Vacancies & Promotions	Settled
XLI	Duration	Unresolved
XLII	Overtime Distribution	Settlement pending
XLIII	Shift Differential	Current provision
XLIV	Longevity	Unresolved
XLVI	Discipline Procedure	Current provision
XLVII	Drug Testing	Current provision
	Tuition Reimbursement	Settlement pending

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. ISSUES WITH COST IMPLICATIONS

Most of the issues at impasse have cost implications. The parties are not significantly separated in terms of appropriate counties of comparison.¹ They do, however, differ widely in their views of the employer's ability to pay. 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 it attributes to lower revenues, \$2 million to higher disbursements, principally from health care costs. The County traces 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 is projected to fall to \$9.5 million for 2001. The County admits it has funds left from its sale of Hillside Hospital, but has 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 in interest rates and two plant closings since the budget was formulated. It admits 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 admits 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 points out that the jail does not earn a profit for the County.

The OPBA submits that the County can afford to meet the OPBA's compensation demands. In support it offers a list of County investments totaling \$106.4 million which it claims are hidden resources not shown in the general fund ending balances. However, even if the County does lack the ability to pay what the OPBA seeks, that does not necessarily translate into wage freezes because law enforcement is a commodity like gasoline that must be purchased at the going rate, which data from SERB show to have risen year after year. Even East Cleveland,

¹Both select the contiguous counties of Ashtabula, Geauga, Mahoning and Portage. The OPBA adds Lake for some of its calculations and subtracts Geauga for some.

which has been in fiscal emergency for years, granted its police force a contract this year with 4 percent wage increases. If the County lacks the wherewithal to pay, it can always buy less of nonessential services. However, the OPBA believes the check from Warren alone would cover all its demands with cost implications.

Article XXII - Vacation

Positions of the Parties

The OPBA proposes to improve the vacation benefit in two 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 a provision allowing vacation time to be taken in increments of one hour or more. It chokes in its craw that the Teamsters' contract with Trumbull County Children Services Board has a better benefit than the more deserving Sheriff's units, especially since the County picks up 8.5 percent of their pension contribution. It also points to the Sheriff's secretaries/cooks/custodians unit which allows vacation in one-hour increments.

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 one-hour increments. Data from Ashtabula, Geauga, Mahoning and Portage counties show Trumbull is close to norm as all four earn 120 hours at seven years of service. The Teamster's unit is not an appropriate unit of comparison because it is separately funded. More time off generates more overtime, which the Sheriff can ill afford. As for taking vacation in one-hour increments, while it is true other units have it, 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 deputies to be at the average for earning 80 and 120 hours of vacation per year, but below average for 160 and 200 hours.² 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, there are at least two units—neither one in law enforcement—earning longer vacations earlier in their careers than do the deputies, but evidently no County unit earns more than five weeks of vacation. A sixth week may be in the law enforcement units’ future, but today the thrust must be on accelerating movement through the existing steps. Taking vacation in one-hour increments is not warranted for the reasons stated by the Sheriff.

Recommendation:

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

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.

²Four-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.

Positions of the Parties

The Sheriff proposes an extensive revision of the article to match the agreement reached with the County Child Support Enforcement Agency AFSCME 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 amount of \$82.25/\$87.25/\$92.25 per month in calendar years 2002/2003/2004 respectively, of which \$75/\$80/\$85 would be for prescription drug coverage. 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. 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 for several improvements: doubling life insurance to \$50,000, adding double indemnity for line-of-duty death, adding a \$175/month opt-out option, dental benefit enhancements including orthodontia, vision benefit enhancements including free corrective eye surgery, and first-day coverage for new employees. It contends the County has mishandled insurance for years. The County's plan has hampered its ability to get bids with the

result that its cost is high relative to the regional average in 2000 of \$594/month (medical only, family coverage). It also points that the County has not sought union assistance and there has been no real collective bargaining on this issue with this Union in particular. The Fact-Finder should give no weight to the AFSCME settlement, which the OPBA says is greedy and will save the County tons of money but not address usage which is at the heart of the County's insurance problems. If the Fact-Finder does recommend cost sharing, the OPBA implores her to recommend the minimum and make the County look at managed care. Premium-sharing and co-pays are so detrimental to families in the deputies' financial position that they will never be able to catch up. As public employees, they accept that their wages are not the same as in the private sector, but they do count on fringe benefits and retirement to be there for themselves and their families.

Findings and Recommendation

The fact of rising health insurance costs cannot be denied. SERB data for responding public sector employers³ 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. 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 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-

³Only about 50% of those receiving questionnaires responded.

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 6.4 percent increase in wages for the top-step deputy.⁴ 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 deputies are relatively poorly paid suggests this has, in fact, been the trade-off here.⁵ And yet, to demand that 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 2.1 percent (for the top-step deputy) before the co-pays the County also demands.⁶ 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. 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

⁴ $(\$185.02 * 12) / \$34,715 = 6.4\%$

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

⁶ $(\$60 * 12) / \$34,715 = 2.1\%$

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), 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 plus a \$50 (single), \$100 (family) opt-out provision.

XXXI - Clothing Allowance

Positions of the Parties

The OPBA seeks some language changes in the clothing allowance provision as well as using the allowance as a way to increase compensation without the roll-ups associated with wages. In 31.01 it would define in precise terms "sufficient amount of clothing." It would delete 31.02, which applies to corrections officers and assistant wardens. In 31.04 it would add that the clothing allowance may be used to purchase any equipment that an employee uses on the job. In terms of money, it seeks an increase of \$100 in each year of the Agreement: \$900 in 2001, \$1,000 in 2002, and \$1,100 in 2003. It also wants an annual allowance of \$300 for members of any specialty unit such as SWAT, Dive Team, K-9 and the Detective Bureau, the latter of whom wear street clothes as well as having to maintain a Class A duty uniform. Some, but not all equipment is issued, but not all. Those who are on multiple teams get hit hard. The OPBA points out that this benefit is really a reimbursement, not money in the pockets of officers to spend as they like. If the Sheriff wants to purchase items for the officers, that would be acceptable. For comparison the OPBA looks to Geauga (\$1000), Lake (all provided by the employer), Ashtabula (\$700), Portage (\$775) and Mahoning (\$900). This puts Trumbull at 94.8

percent of the average of \$844, or 101 percent of \$792 when Geauga (which has a maintenance allowance) is excluded.

The Sheriff wants to continue the existing allowance of \$800, but prefers to disburse directly to the vendor rather than to the employee. It argues the inclusion of Geauga is inappropriate as its benefit is an aberration. Without Geauga, Trumbull's allowance is in line with other sheriffs in the area. The reason it wants to disburse directly to the vendor 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.

Findings and Recommendation

Trumbull County's clothing allowance is not out of line with its neighbors' except for Geauga whose includes a maintenance allowance. Available dollars are thus better spent on other areas of compensation where Trumbull County is appreciably below the norm. The Sheriff's request for direct pay rather than reimbursement is a reasonable administrative improvement and is therefore recommended. Correction officers and assistant wardens will be dealt with in upcoming separate fact-finding and will be addressed in that report should the parties be unable to reconcile their differences.

Recommendation: Maintain current \$800 annual benefit, but direct-pay vendor as proposed by the Sheriff.

XXXII - Compensation and XLI - Duration

Positions of the Parties

The OPBA proposes 6 percent wage increases effective October 1, 2001, October 1, 2002, and October 1, 2003. It also seeks hazardous duty pay for all employees in the amount of 2 percent of base, rolled into the base on October 1, 2001, an additional step to the deputy wage scale in the amount of 4 percent, an increase in the rank differentials to 13½ percent, and a new section providing a detective differential of \$100 per month, all effective October 1, 2001. The OPBA argues these increases are justified because deputies in Trumbull County are dead last in

compensation when compared to deputies in neighboring counties, receiving 87.8 percent of the average for a 10-year employee in five other counties.⁷ They are also paid less than Warren patrol officers with whose employer the Sheriff must compete for law enforcement talent. Statewide police wages increased 3.95 percent in 2000, so the Sheriff will have to do that just to keep up. 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.

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 opposes hazardous duty pay as just another attempt to raise wages. These employees are already compensated for their duties and working conditions, which includes hazardous duty. It also opposes detective differential and for two reasons. First, these employees enjoy the benefit of a normal Monday-through-Friday, day-shift schedule with all holidays off. Second, they have available significant overtime from investigations. Finally, it rejects the OPBA's rank differential proposal on the grounds that its present differential of 11 percent is already the highest of its neighbors.

Findings and Recommendation

Trumbull County deputies are the lowest paid deputies 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 health insurance benefits in neighboring counties, but as discussed above, Trumbull County's relative low wage and relative high cost of employer-paid health insurance suggests Trumbull County deputies have been paying for their 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,

⁷Geauga compensation of a 10-year deputy in 2001 totaled \$49,912 (including wages, uniform allowance, shift differential, longevity and other), Lake's was \$45,857, Ashtabula's was \$44,236, Portage's was \$39,211, Mahoning's was \$38,932, Trumbull's was \$38,305.

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 the 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 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 deputies up to their counterparts in Portage and Mahoning counties (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 general wage increases of 5%-3%-3%. She recognizes that this departs from the CSEA settlement, but points out that the Sheriff generates revenue from the jail operation and that his deputies are already about 11 percent behind their counterparts in Geauga, Ashtabula, Portage and Mahoning counties (in terms of total compensation) even before these departments' 2002 general wage increases.

As for the other improvements sought by the OPBA, only the detective differential can be justified. Neither the comparables nor the finances of the County support the other demands.

Recommendation:

General wage increase:	5% effective 10/1/01 3% effective 10/1/02 3% effective 10/1/03
Detective differential:	\$100/month effective 10/1/01
Duration:	3 year contract expiring September 30, 2004.

XXXV - Pension

Positions of the Parties

Another way the OPBA seeks to improve compensation is through employer payment of the employee's mandated contribution to the appropriate state pension system. Currently the Sheriff picks up 6 percent of the employee's gross wage. The OPBA would have the Sheriff pick up the employee's entire mandated contribution. The Sheriff rejects this proposal, saying in the first place that the vast majority of County employees, including CSEA, have the 6 percent benefit. In the second place, the County does not have the financial resources for such a costly increase.

Findings and Recommendation

Inasmuch as most other County employees have a 6 percent pension pickup and no other sheriff employees in the region have a similar benefit, no change is recommended here.

Recommendation: Current language.

XXXVI - Injury Leave

Positions of the Parties

The Sheriff submits that injury leave pay was supposed to carry the injured officer until workers' compensation benefits kicked in, not to replace it. However, the Bureau of Workers' Compensation refuses to pay temporary total benefits because the injured officer is on the payroll. Thus, the officer is unnecessarily on the Sheriff's payroll for a year, but the Sheriff still has to pay workers' compensation premiums. The Sheriff proposes language to limit this. Claiming the Bureau has significantly improved processing time, the Sheriff proposes to cap injury leave at 30 calendar days, which it says will allow ample time for workers' compensation benefits to come through.

The OPBA agrees with the Sheriff in principle, but points out that there is a big difference between the current language and the 30 days proposed by the Sheriff with no comparables submitted to support the limit proposed. Police, it says, typically have three months to a year.

This is a hazardous job and the Sheriff's proposal is unfair because of the impact on the injured officer's service credit. The OPBA thinks a limit of one year with a requirement to file for workers' compensation and reimburse the Sheriff would be more reasonable, but it adheres to its preference for current language.

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. It would benefit the unit as a whole inasmuch as it would tend to free up dollars which could then be used for other purposes. However, the OPBA rightly points out the injured officer's service credit would be adversely affected. No data were submitted to show how much injury leave for safety forces is usual in Ohio or the region, but the Fact-Finder has no reason to dispute the OPBA's claim of three months to a year. The safety force units with which the Fact-Finder has worked in northeast Ohio in recent years provide 90-120 days of pay. The Fact-Finder recommends the higher of these (120 days) with a requirement to file and reimburse the Sheriff.

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.

XLIV - Longevity

Positions of the Parties

The OPBA requests \$100 per complete year of service, beginning after the third year of employment. Whether using the 3, 4 or 5-county comparison group, 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/month. In light of the County's financial position, the status quo should be maintained.

Findings and Recommendation

There is 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, Portage and Lake cluster at under \$500. It is questionable to what extent longevity can serve the purpose of binding experienced employees to the lower 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 among the low cluster, Trumbull County stands out as the only one under \$4/month. 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.

III. OPERATIONAL ISSUES

Article XI - Discipline

Positions of the Parties

The Sheriff proposes three changes to this article. 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, which is an essential part of job duties for commissioned officers. Moreover, the officer would receive due process as provided in any criminal proceeding at a standard higher than just cause. Thus, 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. 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. The reckoning periods were agreed to by the parties themselves without the intervention of a fact-finder and should, therefore, remain intact. The other two changes are not needed. What worries the OPBA about adding domestic violence to the just cause exceptions is that an officer could plead no contest, complete treatment, and have his record washed clean, yet automatically lose his job. As for increasing the statute of limitations, the Sheriff has had no problem meeting the sixty day deadline in these bargaining units, so change is not warranted for them.

Findings and Recommendations

The Sheriff is looking for drastic lengthening of the reckoning periods, but except for asserting six months as being too short to effect long-term change for a few recidivists, it brings nothing to persuade the Fact-Finder that doubling, tripling and quadrupling these periods is warranted. I accordingly recommend lengthening the period for verbal reprimands from 6 months to a year but leaving the others as is.

The Sheriff's proposal regarding domestic violence has merit, but does not take into consideration the situation raised by the OPBA. No addition to 11.04 is recommended.

Regarding the statute of limitations, the need to conduct thorough investigations is not a unit-specific issue. Nevertheless, the Sheriff did not explain why an additional 300 days are necessary if it takes only 30 days to get telephone records and it has never had a problem meeting the 60-day deadline in this unit. To allow for the evidently occasional case in which outside documents must be obtained before the case can be fairly evaluated, some more time may be warranted, but not a year. The Fact-Finder recommends an additional 30 days to allow for document requests.

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 XVI - Hours of Work/Overtime

Positions of the Parties

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. Moreover, these employees enjoy the benefit of a normal week others do not have.

The OPBA not only opposes these changes, but proposes to delete the Detective Bureau and Civil or Court Security Divisions from the affected employees. It argues that not allowing these employees to work on holidays deprives them of compensation other employees get. However, if the Fact-Finder recommends the Sheriff's position on this issue, she should use bidding and shift differential to make the system fair.

Findings and Recommendation

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 proposal, on the other hand, amounts to featherbedding and cannot be recommended as a responsible use of public funds. Bidding and shift differential are treated in other sections of this report.

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.

Article XVII - Work Schedules

Positions of the Parties

Both parties propose changes to Section 17.03. The Sheriff complains that the current 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 by 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 off at one time. The Sheriff proposes to remedy this by having shift bidding occur only once a year, in December, effective January 1.

The OPBA opposes this change. Not until mediation did the Sheriff reveal coordination with vacations was the real issue behind its initial proposal to make drastic revisions to the bidding system. It suggests that there are other solutions to the issue such as reconsidering a vacation request when an officer's shift changes.

The OPBA's proposal for 17.03 is to extend bidding rights to lieutenants and to permit bidding for days off as part of the shift bid. Secondly, it would modify 17.03(h) to allow bidding for certain job assignments. With respect to lieutenants, it says all are interchangeable as are

deputies. If deputies can be permitted to bid to shifts, why not lieutenants? The Sheriff presently exercises his discretion for political retaliation. The OPBA's proposal would prevent such abuse. With respect to assignment bidding by deputies, the OPBA says it is hard to advance without service as a Road Deputy and that the Civil and Court Divisions require no special training. A uniformed deputy is a uniformed deputy. With assignment bidding rights, deputies could bid off the road to the Civil Division, or onto it for advancement opportunities. With such rights there would be no complaint about being scheduled off on holidays since it would be the officer's choice.

The Sheriff is adamantly opposed to lieutenant and assignment bidding. This is an inherent management right which the Sheriff needs to retain. Not everyone is the same. People possess different skills and abilities. The Sheriff needs to match those to the job. Some excel in the Civil Division, some do not. The courts are customers who could staff in other ways. The Sheriff has a potential liability so needs to retain the right to make job assignments. With respect to lieutenant shift bidding, the Sheriff points out that deputy and sergeant shift bidding allows work groups to form. If one of these groups becomes problematic, the only way the Sheriff can deal with it is to change the lieutenant.

Findings and Recommendation

The Sheriff's request to do shift bidding once a year in December would solve a vexing vacation scheduling problem. It also has the advantage to employees in that they would know their schedule when they bid for vacation. However, it comes at the price of semiannual opportunities for officers to change shifts. The OPBA's suggestion is a reasonable alternative that better preserves existing rights of employees. The Fact-Finder therefore adopts it as her recommendation.

The OPBA's own proposals are also not recommended. The Fact-Finder lacks sufficient information regarding the impact of days off bidding to recommend it. Further, she rejects the claim that all lieutenants are alike and that all uniformed deputies are alike. Specialized law

enforcement assignments and leadership are not assembly line production where tasks are so fragmented that they can be performed by the unskilled or semi-skilled with a narrow range, if any, of discretion. The employer needs the discretion to match individual differences to specialized assignments and to make turn commander assignments. The Fact-Finder is not naive. She recognizes that this management right is subject to abuse, but points out that the OPBA is not totally without recourse as it has a grievance procedure for dealing with claims of abuse of managerial discretion.

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.”

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
XVI.	Hours of Work/Overtime 16.07	As proposed by the Employer
XVII.	Work Schedules	Current language except add that vacation requests may be reconsidered for employees voluntarily changing shifts
XXII.	Vacation	1/7/13/19 years = 80/120/160/200 hours
XXVIII.	Hospitalization & Insurance	As proposed by the Employer plus \$50/\$100 opt-out.
XXXI.	Clothing Allowance	Current benefit (\$800) but direct-pay vendor
XXXII.	Compensation	5%/3%/3% effective 10/1/01, 10/1/02, 10/1/03 Detective differential: \$100/month
XXXV.	Pension	Current language
XXXVI.	Injury Leave	120 days
XLI.	Duration	3 year contract expiring 9/30/04
XLIV.	Longevity	\$4/month

Respectfully submitted,



Anna DuVal Smith, Ph.D.
Fact Finder

Cuyahoga County, Ohio
January 29, 2002

ADS:sss
serb775

CERTIFICATE OF SERVICE

I certify that on the 29th day of January 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:

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I further certify that on the 29th day of January, 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