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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
BEFORE THE FACT FINDER

2002 MAY 28 A 10:23
STATE EMPLOYMENT
RELATIONS BOARD

In the Matter of the Fact Finding between:

ALLEN COUNTY SHERIFF and
ALLEN COUNTY BOARD OF COMMISSIONERS

SERB Case No. 01-MED-09-0749

Employer,

- and -

INTERNATIONAL UNION OF POLICE ASSOCIATIONS
and its LOCAL UNION NO. 150 AFL-CIO

Fact-finder Stanley T. Dobry

Union.

REPORT AND RECOMMENDATION
OF THE FACT FINDER

Hearings convened on the 13th and 21st days of March, 2002, before Fact Finder Stanley T. Dobry at the Allen County Courthouse, in the City of Lima, County of Allen, and State of Ohio.

I. APPEARANCES:

FOR ALLEN COUNTY
SHERIFF'S OFFICE

FOR IUPA, LOCAL 150

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Date of Report: May 16TH, 2002

II. BACKGROUND

This case grows out of a dispute between the Sheriff of Allen County ("The Sheriff"), the Board of Commissioners of Allen County ("The Board"), and the International Union of Police Associations, and its Local 150, AFL-CIO.

This case is before the Fact Finder on a multiple issues.

Negotiations were arduous. The employees chose a new Union and leadership. Bargaining went for many months in numerous sessions. Sadly, personalities clashed.; positions hardened. The parties selected Stanley T. Dobry as Fact Finder through the State Employment Relations Board. The parties timely filed position statements in accordance with the Fact Finder's directions and Ohio Admin. Code 4117-9-05.

III. MEDIATION EFFORTS

Prior to a formal Fact Finding hearing, the parties participated in mediation with a mediator from the State Employment Relations Board, which did not produce any movement from either party on the unresolved issue. Subsequently, the parties participated in mediation with Fact Finder Dobry on March 13, 2002 for 14 hours.. The mediation resulted in both parties changing many of their originally-presented Position Statement proposals.¹ And many tentative agreements were made.

I incorporate the numerous tentative agreements by reference as part of my recommendation.

These settlements included many critical changes. In particular, the parties were able to resolve serious issues and proposals on containment of health care costs. The parties agreed to share the burdens in a principled way. Likewise, a lot of ground was given on proposed changes in departmental operations, which will benefit the public. Those settlements are the larger context in which the fact finders recommendations are made.

¹In passing, the participants will note that some of the recommendations in this report differ from earlier "mediator proposals" put forth by the fact finder during the mediation phase. I refer to them as "arbitreticals." The change is because the fact finder had a longer time to reflect upon the total record, which was in some material ways different from the initial session. Also, the tentative agreements reached changed the context in which the proposals exist. In any event, the professional negotiators all knew the mediator proposals were made without prejudice to the fact finder changing his mind.

The Fact Finder's mediation efforts also allowed him to become familiar with the issues and interests. The parties were not able to reach final agreement through mediation on some remaining issues. The parties proceeded to formal hearing on those matters on March 21, 2002 for an extended hearing that ran well into the night. Post hearing briefs were exchanged.

IV. THE HEARING

I recognize the effort to prepare and present positions at the hearing was expensive, labor intensive, and time-consuming. I appreciate the parties' work in that regard. I write this opinion with the hope that the parties will avoid the effort, losses, risks and consequences of further proceedings. However, that decision is for the parties themselves to make after they review this recommendation.

V. FACT-FINDER'S AUTHORITY AND STATUTORY CRITERIA.

The following findings and recommendations are offered for the parties' consideration and are the result of careful deliberation of the mutual interests and concerns of the parties and the statutory criteria as applied to the record before me. The applicable statute, Ohio Revised Code Section 4117.14(c), and SERB regulation, Ohio Administrative Code Section 4117-9-05, governs this proceeding. It requires that the fact-finder in making his recommendations consider:

1. Past collectively bargained agreements, if any, 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 the public service;
4. The lawful authority of the public employer;
5. Any stipulation(s) of the parties; and
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determinations of the issues submitted to mutually agree upon dispute settlement procedures in the public service or in private employment.

VI. LIST OF OPEN ARTICLES

Several of the issues in this Contract were settled at the table prior to fact-finding. The following is a list of open articles which were presented to the Fact-finder for decision following the March 21, 2002, Fact-Finding Hearing. This list is broken down by article and section as well as by Union issue. Union issues were previously numbered and many resolved in mediation. For clarity, the issues are numbered as the Union originally presented.

1. **Article 3 – Union Security**
 - **3.7 Maintenance of Membership (Union issue 2)**
2. **Article 17 – Hours of Work and Overtime**
 - **17.1 Work Period (Union Issues 3 & 4)**
 - **17.2 Overtime, Compensatory Time (Union Issues 5, 6, 7 & 8)**
3. **Article 18 – Wages**
 - **18.1 Wage Rates (Union Issue 11)**
 - **18.4 Longevity (Union Issue 14)**
5. **Article 20 – Vacation**
 - **20.1 Accrual (Union Issue 20)**
6. **Article 21 – Holidays**
 - **21.1 Holidays (Union Issue 21)**
7. **Article 22 – Sick Leave**
 - **22.6 Retirement (Union Issue 22)**
 - **22.9 Injury / Death of Employee (Union Issue 24)**
8. **Article 27 – Duration**
 - **27.1 Duration (Union Issue 26)**

Following are my findings of fact, supporting rationale and recommendations regarding the open issues.

VII. DISCUSSION, ANALYSIS AND RECOMMENDATIONS

ISSUE 1: ARTICLE 3, Section 3.7 "UNION SECURITY"

Discussion:

This issue is about the Union's request to modify existing contract language to mandate a so-called fair share deduction. **The predecessor collective bargaining agreement currently explicitly states that those who join and then quit the Union must pay fair share, and exempts those who have never been a part of the Union.**

The Employer has strenuously argued against the change. It argues that the decision to bargain a fair share fee is a permissive subject of bargaining under Ohio law, so submission to the Fact-finder would be a violation of R.C. 4117.14. It is improper to demand negotiations on a permissive topic of bargaining and therefore, it is outside the authority of the Fact-finder to issue a recommendation on this topic. See *Cincinnati v. Ohio Council 8, AFSCME*, et al. 61 Ohio St. 3d 658, 576 N.E.2d 745, 1991 Ohio LEXIS 2123 (1991), which indicates that submission for a permissive topic to the impasse process violates 4117.11 in that it is failure to negotiate in good faith. It submits, therefore, that the fact finder is prohibited from deciding the issue, as this is an impasse proceeding and it would be an unfair labor practice for the Union to bargain to impasse on a non-mandatory subject of collective bargaining.

I disagree with the conclusion. The employer's reliance on the cited cases is misplaced. Hypothetically, it may have been an unfair labor practice if there was no provision in the contract regulating fair share payments. However, the fact is that this contract has precisely such a provision.

I determine that it is most probable that the fact finder (and a statutory conciliator) has authority to decide the issue. The County surrendered its new and belated legal position long ago, when it first negotiated this provision. They negotiated dues deduction (which is mandatory) and partial dues deduction, and fair share fees which were permissive. It is there in the current contract for all to see.

Indeed, if the employer's position on this were to prevail, then the current language is to be etched in stone forevermore.

It is evident that the legislature has anticipated this very argument, as provided in 4117.08(A),

Subjects of Bargaining:

All matters pertaining to wages, hours or terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement are subject to collective bargaining between the public employer and the exclusive representative, except as otherwise specified in this section. (1)

Consequently, I presume that I have jurisdiction to decide the matter on the merits, unless and until the State Employment Relations Board indicates to the contrary. I **DENY** the employer's motion to dismiss the issue.

On its merits, fair share payments is a serious issue for the employer. As the Sheriff himself stated: "Most [of the nonpayers] were adamant that they work for their money, it's their dollar, and they should be able to choose to spend it for the union or not. There have been only three or four arbitrations in the last ten years. Normally the union does not incur a lot of cost. We have not incurred a lot of costs that they have to pay for. It is their money. We don't buck the union, and we get around pretty well. They feel strongly that it is their dollar and their right to choose to spend it."

It is a fact that 30% of the blue unit are not members, and consequently are getting a 'free ride' from the Union.

I hold that the Union, to be fairly compensated for its obligation to equally represent all members of the bargaining unit as the exclusive bargaining representative, must be permitted to assess a "fair share fee" on all bargaining unit members as provided in 4117.09(C)(2).

As provided in 4117.09(C), the bargaining unit members have recourse through a rebate procedure to obtain relief for expenditures in support of partisan politics or ideological causes not germane to the work of the employee organizations in the realm of collective bargaining.

None of the current collective bargaining agreements in Allen County negotiated by the Board of County Commissioners contain fair share fee provisions. The only contract in the entire County containing such an agreement is the Allen County Board of Mental Retardation and Developmental Disabilities

("MRDD").

Nevertheless, this internal county government is not the only basis for comparison. As the Union's representative argues, the claim for internal consistency is somewhat "incestuous." These organizations are part of a much larger public sector law enforcement industry. It is proper to look at the norms, both state-wide and in northwest Ohio law enforcement for comparison.

A requested SERB January 28, 2002 Benchmark Benefits Report for all eighty-eight (88) counties shows that seventy-seven counties reported. Six did not report, or SERB did not reveal, whether they had a fair share provision or not. Eleven reported no such provision and sixty-one indicated they did. This clearly shows that of those county sheriff departments reporting, an overwhelming 83.6% have negotiated a fair share fee provision. It is reasonable to assume that of the eleven that did not report at all, and the six that had no indication, the percentages would remain constant.

Enlightened employers in Ohio know the value of good Labor-Management relations. To attempt to block the Union's internal method of funding itself strikes an immediate and antagonistic blow against the harmony required for there to be the dialogue necessary for a future productive relationship

This is an issue of policy, human resources and good labor relations. Peaceful coexistence is imperative for the public good. In order for the climate of negotiation and contract administration to change for the better, there needs to be a covenant of good faith and fair dealing, that is, an implicit promise to not deny the other party the benefit of their bargain. The recognition clause itself must be understood as a acknowledgment of the other's right to exist and prosper for their common good.

Metaphorically speaking, both parties are in the same lifeboat, and it ill behooves either of them to drill holes in the hull.

Recommendation:

The fact finder denies the Employer's motion to dismiss the Union's request. The fact finder recommends that the Union's proposal be adopted.

ISSUE 2: ARTICLE 17 “HOURS OF WORK AND OVERTIME”

This is a series of interrelated proposed contract changes.

OFFERS OF THE PARTIES:

A. Section 17.1 Work Period (Union Issues 3 and 4)

Union Proposal:

The Union proposes- new language, defining the “work-day” as eight and one quarter (8.25) hours for all law enforcement employees within the Bargaining Unit and eight (8) hours for dispatchers. The Union additionally proposes eliminating the 165-hour, 28-day work cycle, which is currently used for all Sheriff’s Office employees.

Employer Position:

The Employer proposes maintaining current contract language.

B. Section 17.2 Overtime, Compensatory Time (Union Issues 5, 6, 7, 8 & 9)

Union Proposal:

The Union is proposing numerous changes to this section of the Article and those proposed changes are as follows:

1. Add language that would trigger overtime/compensatory time eligibility for any time worked in excess of eight (8) hours in a day.
2. Eliminate the Employer’s right to have an input as to when an employee may use accrued compensation time in cases where the employee has opted for compensatory time instead of overtime compensation.
3. Add contractual language that would include compensatory time as “active pay status” for purposes of calculating overtime.
4. Elimination of subpart “D” which enables the employer to schedule compensatory time for employees who are reaching their maximum accumulation limits.

Employer Position:

The Employer proposes maintaining the current contract language with the addition of language providing “before employees are scheduled for compensatory time off, they will be given seven day notice and

have an opportunity to request dates for compensatory time.”

Findings of Fact:

At the outset, it is well to note that the proponent of any change in existing contractual language has the burden of proof.

The Sheriff's Office is a 24/7/365 operation. The jail is full time, too.

Law enforcement is not a nine-to-five occupation.

This is reflected by the §207(k) exemption of the Fair Labor Standards Act (“FLSA”), which allows for overtime calculations for law enforcement based upon a maximum of 171 hours in a 28-day work period. As indicated hereafter, the work period currently used by Allen County Sheriff's Office is shorter than that required by the FLSA.

Allen County requires only law enforcement employees to work 165 hours before overtime begins. All other county employees work a standard 40 hour week. The Union asserts “this has a negative financial impact on these singled-out employees. All employees should either work an eight hour day or be properly compensated for the additional hours.”

And so it does.

However, this method of accounting is the status quo. It is the assumption upon which the distributing of work and the entire wage structure is based.

Deputies work a standard day of 8 hours and fifteen minutes. Deputies are expected to report for a fifteen minute roll call, and then to work 8 hours. It has been that way for years.

While this is seemingly unfair – in comparison to other county employees -- it is fair when considered as part of a larger picture and the departmental operational calendar. It is the status quo.

The current bargaining agreement utilizes the 28-day work period. In practice, however, in Allen County, only 165 hours are needed before becoming overtime eligible. In fact, the Allen County Sheriff's Office utilizes a complicated three-tiered rotating schedule, which results in employees working less than 2080 regularly scheduled hours in a year.

As the employer concedes, the language of the Agreement already provides that employees be paid overtime for hours in excess of their scheduled workday. Additionally, this modification will assure that employees will be paid overtime after the regular hours of the employee. The employer also admits that the contract already requires that, which it claims renders the Union's proposal redundant.

Therefore, the proposed language change on the hours of work is reasonable. It merely confirms in the contract the existing practice.

Article 17 and other issues affecting it are the result of prior negotiations dating back four (4) contracts. The prior contract language and tentative agreements demonstrate the trade-offs made by the parties for the current language.

The current language as seen in Article 17 is the result of extensive negotiations between the previous union and the Sheriff. In 1993 and again in 1996, the Sheriff's Office incurred payouts in excess of \$400,000.00 to employees to compensate them for their large amounts of accrued unused compensatory time. In order to avoid such recurring future payouts, the Parties negotiated the current language of Section 17.2 into the contract. By not allowing the Employees' overtime and compensatory time banks from accruing over eighty (80) hours, the Employer can avoid the drastic affects a large payout can have on the Employer's payroll, not to mention the County Budget. The current eighty (80) hour ceiling keeps any potential payouts more manageable from a budgetary perspective and the Employees are not losing any of the benefit. This is a fair and workable ceiling.

From a law enforcement perspective, it is imperative that the Sheriff maintains flexibility in scheduling. Public safety forces are regularly engaged in functions that require that they stay on the job for more than eight hours a day. The fact finder declines to add restraints, except as recommended below.

The current method of scheduling compensatory time allows for cooperation between the Employer and employees in scheduling compensatory time. The additional language proposed by the Employer (and adopted below) will ensure that the Employees are given even more notice and have a greater opportunity for input than they currently have under the existing agreement.

The Union additionally proposes to change the manner in which the Employer calculates “active pay status.” I agree with part of the requested change. Because I have left largely intact the employer’s existing contractual rights regarding compensatory time, I have recommended that compensatory time be included for purposes of active pay status for calculating overtime. This provides balance to the equation, and protects the employees from protracted consequences when involuntary compensatory time is forced on them.

Recommendation:

The fact finder makes the following recommendations for changes in the contract.

The administrative issue, notice for use of compensatory time, was extensively discussed in mediation and as such is reasonable. Language to address this was drafted and the Parties should incorporate this language. The language is included in the proposal submitted by the Employer with its final submission, and is adopted as indicated above.

Issue 4 Work day

The “work day” shall be defined as 8.25 hours. Work schedule and practices shall remain “as is” for the life of the contract. Work day for dispatcher is 8 hours per day.

Issue 6 Compensatory time. Add to Section 17.2(D) the following language:

“Before employees are scheduled for compensatory time off, they will be given seven (7) days notice and have an opportunity to request dates for compensatory time. The employer shall exercise its best good faith efforts to accommodate such request on the dates requested.”

Issue 8 Hours of Work and Overtime, Section 17.2C

Add a provision permitting “The employer or employee may reduce to the allowed allowance of thirty two (32) hours of compensatory time by cashing out the compensatory time at the employee’s current rate.” Otherwise, present contract language.

Issue 9. Compensatory time.

Add contractual language that would include compensatory time as “active pay status” for purposes of calculating overtime.

Section 17.8 Method of Filling Overtime (Union Issue 10)

Union Proposal:

The Union did not propose any specific language for this item.

Employer Position:

The Employer proposes maintaining the current contract language.

Findings of Fact:

The Employer discussed at length during the course of negotiations, the concerns of the employees regarding filling of overtime opportunities. This is an issue which obviously needs further development. The parties have agreed to a provision for labor-management meetings and this issue would be ideal for submission for review, discussion and the development of a resolution.

At the advice of the Fact-finder, the Parties will work together in labor-management meetings to draft a "side letter of agreement" to address perceived problems with the present system for filling of overtime. The Employer has agreed to continue to discuss these concerns in labor-management meetings. It is believed that the parties would be better off addressing these issues on their own rather than having this Fact-finder recommend a course of action which would undoubtedly leave one or both parties dissatisfied.

RECOMMENDATION:

Issue 10. Equalization of Overtime – Side Letter of Agreement on Overtime:

"To address the concerns regarding the method of filling overtime, the parties agree to meet, discuss and agree to the issue in weekly meetings of the joint labor-management committee. Therein they shall identify and specify the procedure and/or practice for filling overtime, including equalization of overtime on a fair and equitable basis. The Sheriff and the President of the Union shall be part of the Joint Labor Management committee, and they shall meet and confer on a weekly basis until an agreement is reached."

Except as indicated above, the balance of the Union's requested changes are DENIED, and the language shall remain as it presently is.

ISSUE 3: ARTICLE 18 "WAGES"

Section 18.1 Wage Rates (Union Issue 11)

Union's Proposal:

The Union is proposing a 4% wage increase for each year of the contract. Additionally, they are requesting the 4% increase to be retroactive to July 1, 2001.

Employer Position:

The Employer is proposing a wage freeze for the first year of the Contract, with a wage re-opener after the first year.

Findings of Fact:

By way of introduction, I note that the parties had not seriously negotiated on the issue of wages.

According to the County Administrator's testimony, it would be fiscally irresponsible for the County to attempt to shoulder a wage increase at this time. The Union proposal of a 4% increase, retroactive to June of 2001, would require a large infusion of cash, currently unavailable to the County. The employer seeks a wage freeze for the first year of the Contract with a wage re-opener provision after the first year.

I note that the county has changed its economic projections several times. It claims to have been blind-sided by the economic downturn following September 11. It now disavows the projections it made and the actions it took when it settled the contract of the Sheriff's Department's Gold Unit..

The Union cites as its main rationale for its proposed 12% wage increase, the cumulative statewide increase of 10.71% from 1998 through 2000 and an increase of 10.31% in northwest Ohio. The Union states that this bargaining unit over the same period only received a 9% increase. While the Union is correct in its statements, it is important to remember that the Union (actually its predecessor) agreed to all of these increases. The Union also received a previous reduction in total health insurance contributions, a direct economic benefit. As a result of prior negotiations, the Bargaining Unit has ranked themselves with regard to salary.

The Fact-finder also considers the fact that the cost of living, of cities in Ohio, is lowest in the

City of Lima. It is unrealistic for this Bargaining Unit to expect to suddenly be paid at a much higher level than they have been historically.

As indicated by the wage comparison charts submitted by the County at Fact-finding, this Bargaining Unit has been treated favorably when compared to Sheriff's Offices of similar size in the *same* area of the State. This is really a labor market analysis -- where are employees recruited or might likely go to work -- and it has considerable validity. Of those similarly situated Sheriff's Offices within the narrowly-defined geographical area for recruitment, Allen County has the highest starting salary for deputies. The turnover rate for employees of Allen County Sheriff's Office is low. However, pay lags for the more senior employees.

The Union's wage increase proposal, as based on statewide figures is also unreasonable and considering the current economic state of the County and the bargaining history. The Bargaining Unit has ranked itself as a result of past negotiations. They compare favorably to other bargaining units of comparable size and location. The magic for the fact finder is in trying to maintain those relative rankings.

The Union's proposal of annual 4% increases, with retroactivity, are clearly warranted when comparisons are made with other counties in northwest Ohio.

The Allen County Administrator prepared a financial statement that attempted to show the county was not financially sound. However, other county employees received wage increases recently, and the employer has never claimed an inability to pay the proposed increases.

Exhibit 11 also shows the historical relationship of the five components of county government: Sheriff's Office Blue Unit, Sheriff's Office Gold Unit, Sanitary Engineer, Human Services, and Child Support Enforcement Agency. The exhibit relates back to 1995, and is so eloquent it is inserted following this page. This document clearly establishes the comparative historical treatment of the units. It also establishes the baseline for internal comparability.

It is significant that with the exception of 1995, The Sheriff's Office Blue and Told Units have gotten identical percentage wage increases. That anomaly was due to an award by Arbitrator Anna Duval-Smith, who took into account the six month delay in the raise.

Allen County Sheriff's Office
 Internal Wage Increase Comparison
 Fact Finding - February 23, 2002

Employer	Union	1995	1996	1997	1998	1999	2000	2001	2002	2003
Sheriff's Office Blue Unit	FOP	3.00%	3.00%	3.00%	4.00%	3.00%	3.00%	4.00%		
Sheriff's Office Gold Unit	FOP	4.00%*	3.00%	3.00%	3.00%	3.00%	3.00%	4.00%	3.25%	2.75%
Sanitary Engineer	AFSCME	4.00%**	3.00%	3.50%	4.00%	3.00%	2.00%			
Human Services	CWA	3.00%	4.00%	3.00%	3.00%	3.00%	3.00%	3.00%		
Child Support Enforcement Agency	CWA	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	

* Additional 1% awarded due to six month delay in raise awarded by Arbitrator Anna Duval-Smith

**AFSCME relinquished a portion of their "Care Plan" at a value of 1% wage.

Data obtained from Allen County Contracts

Updated 02-12-02

Allen/Sheriff2-02IntWgIncCmp

In November, 2000, the County voluntarily agreed to Sheriff's Department Gold Unit wage

increases as follows:

2001	2002	2003
4.0%	3.25%	2.25%

Both parties have chosen to deny comparability to any unit. The employer has also totally ignored the pattern of settlements in the area, including their own settlements with similarly situated units. The Union wants to start with a 'fresh slate,' free of the chains of history.

This case involves an old and basic principle of negotiation: "Three percent of an elephant is not the same as three percent of a mouse." And despite that, the employer argues that it is in the position to give more favorable settlements to the command and administration unit, while denying similar treatment to those who are lesser paid. It attempts to pass this off as fair. The command unit members are paid more, and in a labor economics sense have less need for a raise than those on the bottom of the food chain. Those who are paid less inevitably must use more of their money for necessities. Increased health care costs -- by way of higher levels of copayment, higher deductibles and premium contributions -- are a regressive tax² which most disadvantages the bottom of the middle class.

9/11 was in existence at the time the Gold contract was negotiated, and its effects were already noticeable, if not precisely understood. The county was similarly aware of its health care problems. Because it is essentially self insured, the recent occurrence of adverse claims experience (some employees have had catastrophic illnesses) is said to have created a budgetary shortfall. The quick answer is that the health care articles were renegotiated, and the problems have been directly addressed. Moreover, the decision of the county and the bargaining unit to "take the hit" for these costs belatedly, instead of banking money to cover foreseeable eventual losses over a period of time, is not by itself a ground to deny increased wage increases. It is especially no justification for discriminating between the Gold and Blue Units, or to break with their historical parity.

²To a large extent, income levels have only a marginal relationship to actual health needs.

I note, further, that assuming that this fact finder's recommendation is ratified, the Blue Unit will have gotten its wage increases six months later than the Gold Unit, and the employer has had the use of the money in the meantime. This is a legitimate ground for redress and I have taken it into account.

If there is in fact a budgetary crisis, the county may have to take steps to cut staffing and services, just like they do in the private sector. But at this point, there is no overriding reason to defer wage increases, given that the work is being performed now and has a well established value.

In conclusion, internal and external pay parity and comparability all militate against adopting either party's position on wages.

RECOMMENDATION:

It is recognized, that for purposes of any future wage increases, the parties have agreed that the detective position shall be deleted as a separate entry from the pay scale and no reference shall be made to that position as a separate classification.

I recommend wage increases be as follows:

2001	2002	2003
4.0%	3.75%	2.00%

For the reasons indicated in the duration section of this discussion, these wage rates shall be retroactive to the date of the expiration of the last collective bargaining agreement.

ISSUE 4: ARTICLE 18 , SECTION 18.4, LONGEVITY (Union Issue 14)

Union Position:

The Union is proposing that longevity incentives, currently paid out by the Sheriff, be calculated based on the following scale:

	<u>5yrs.</u>	<u>10yrs.</u>	<u>15.yrs</u>	<u>20yrs</u>	<u>22yrs.</u>
<i>Year 2002</i>	\$.25	\$.35	\$.45	\$.50	\$.75
<i>Year 2003</i>	\$.30	\$.40	\$.55	\$.60	\$.80

Employer Position:

The Employer proposes the following scale:

	<u>5yrs.</u>	<u>10yrs.</u>	<u>15yrs.</u>	<u>20yrs.</u>
<i>6/1/02</i>	\$.25	\$.30	\$.40	\$.45
<i>1/1/03</i>	\$.25	\$.30	\$.50	\$.55

Findings of Fact:

The other two bargaining units in the Sheriff's Office have exactly the same longevity provisions -- formulas and amounts -- as that proposed by the Employer here. The Employer proposal represents an increase in the amount of longevity received. The Employer has an avowed desire for uniformity among the separate bargaining units. As with wages, considerations of internal comparability and parity support the Employer's position

Nevertheless, career employees should be rewarded with longevity increases as their knowledge and resultant productivity increases. This will redress some of the imbalance in the basic wage schedule.

RECOMMENDATION:

The fact finder recommends the longevity provision be modified as follows:

	<u>5yrs.</u>	<u>10yrs.</u>	<u>15yrs.</u>	<u>20yrs.</u>	<u>22ys.</u>
<i>6/1/02</i>	\$.25	\$.30	\$.40	\$.45	\$.50
<i>1/1/03</i>	\$.25	\$.35	\$.45	\$.50	\$.60

ISSUE 5: ARTICLE 20 "VACATION"

Section 20.1 Accrual (Union Issue 20)

Union Proposal:

The Union proposes to decrease the length of service required to accrue the current amounts of vacation time.

Employer Position:

The Employer proposes maintaining current contract language.

Findings of Fact:

The Union failed in its burden to state any compelling reasons or comparative data in support of these proposed changes in the Contract. The current rate of vacation time accrual by the employees of this bargaining unit is at or above current levels for all other employees in the County. Further, as illustrated by the Employer's Exhibits, the current vacation accrual realized for this bargaining unit is at or above levels enjoyed by other comparable jurisdictions.

The employees of this unit also enjoy personal leave time and compensatory time off from work. The Union did not present any cost impact calculations for its proposal. No substantial justification for the proposed change has been cited by the Union. In light of the foregoing, the Fact-finder sees no justification for changing the current language of the Contract.

RECOMMENDATION:

Therefore, the Employer's proposal is affirmed and the Fact-finder adopts the current language of the Contract.

ISSUE 6: ARTICLE 21 “HOLIDAYS Section 21.1 Accrual (Union Issue 21)

Union Proosal:

The Union proposes that the Employer add two (2) new holidays, Easter and New Years Eve, to its current list of observed holidays.

Employer Position:

The Employer proposes maintaining current contract language.

Findings of Fact:

The Union failed to present any reasons for its proposal and additionally, failed to present any cost impact calculations. Further, the Union did not produce any comparable data to support its proposal for a twelfth holiday. This Bargaining Unit currently receives eleven paid holidays and one personal day. As illustrated by the Exhibits presented by the Employer at fact-finding, this number is greater or equal to comparable jurisdictions.

The paid holidays observed by this bargaining unit are greater or equal to the number provided by the other collective bargaining agreements in the County. The current list of observed holidays is the same as the other two bargaining units within the Sheriff's Office. No other bargaining units in the County observe Easter or New Years Eve as holidays for the purposes of leave or overtime.

RECOMMENDATION:

The Fact-finder adopts the Employer's proposal and maintains the current language of the Section.

ISSUE 7: ARTICLE 22 “SICK LEAVE”, 22.6 RETIREMENT (Union Issue 22)

Union Proposal:

The Union proposes a change in the language to allow all members of the unit with ten (10) or more years of experience to be paid twenty-five percent (25%) of the value of their unused sick leave up to forty-five (45) days.

Employer Position:

The Employer proposes maintaining current contract language.

Findings of Fact:

The Union has not presented the Fact-finder any compelling reasons for their proposed changes, nor have they submitted a cost analysis for the proposal. The current language in the contract with regard to sick leave was created in prior negotiations and was agreed to by the Union in exchange for other incentives. The Civilian and Gold Unit Contracts contain the same language that currently exists in the Blue Unit contract. In fact, as illustrated by the Employer’s Exhibits, the sick leave retirement benefit applicable to this bargaining unit is the same benefit received by every other employee in the County.

As the proponent of change, the Union had the laboring oar. It failed to move the boat on this issue.

RECOMMENDATION:

The Fact-finder recommends that the Employer’s position be sustained, and that the current language remain unchanged.

ISSUE 8: ARTICLE 22, Section 22.9 INJURY/DEATH OF EMPLOYEE (Union Issue 24)

Union Proposal:

The union proposes modification of the current language to allow for payment of all unused sick time to employees fatally injured or qualifying for full disability retirement due to incidents in the line of duty.

Employer Position:

The Employer proposes maintaining the current contract language.

Proposed Findings of Fact

There are no other County employees, including other units in the Sheriff's office, who have a "sick leave conversion upon death provision" in their contract. However, these employees are the footsoldiers in the war on crime, so their situation is different.

Recommendation of the proposed changes effectively creates an additional life or disability insurance policy for the Employees of this bargaining unit. As background, the Employer, in these negotiations, tentatively agreed to an increase in the current life insurance benefit by \$5,000 in 2003 and an additional \$5,000 in 2004. Nevertheless, costs of this proposal should be minimal.

The most serious problem facing any law enforcement agency is motivating employees to become involved, actively and contrary to the instinctive reaction to flee from or avoid danger. It is easier for police officers to become ostrich-like and look the other way. A Sheriff's Deputy or Correction Officer should not have to unduly weigh personal and family economic self interest when deciding whether to do their duty.

One of the enduring lessons from 9/11 must be that police officers are expected to put life and limb on the line every day. My recommendation takes this vivid reality into account. This is a morale issue.

RECOMMENDATION:

The Fact-finder recommends that the Union's position be adopted and the current language of the contract be amended to read:

Section 22.9 Injury/Death of Employee An employee fatally injured in the line of duty, or who becomes qualified for full disability retirement under the applicable retirement plan will be eligible for payment of all unused sick leave days. Disability retirement for purposes of this section must result from an injury which occurred in the line of duty.

ARTICLE 27 "DURATION" (Union Issue 26)

Union Proposal:

The Union is proposing a three (3) year contract with expiration on June 30, 2004, with all provisions retroactive to July 1, 2001.

Employer Position:

The Employer also proposes a three (3) year contract to expire on the third year anniversary of the date of execution. The Employer further proposes a re-opener for wages only after the first year of the Contract.

Findings of Fact

I have always been a proponent of the pragmatic solution. Usually, more duration is better. It is a bad thing for the parties to be in constant negotiation. Moreover, it is a good thing to see how language changes work out in practice over a period of time.

Adopting the Employer's proposals on salary and duration would allow the County the opportunity to re-examine its finances after the contract's first year, and give them a chance to negotiate a fair result when their crystal ball becomes clearer. However, for the reasons cited in the wage discussion, there are countervailing considerations. I believe that the wage proposals are integral to the duration result.

Adopting the Union's proposal on duration will require the parties to return to the table for another full set of negotiations in just over a year and a half. Considering the time invested by both sides on negotiations for the current contract, it is a waste of resources to require the parties to return to the table in such a short amount of time.

Nevertheless, my general principles must give way to the specifics of the record, and to the felt needs of the parties. They will be back at negotiation sooner than I personally would have hoped; but hopefully they will use the brief hiatus to repair their damaged bargaining climate in the meantime.

RECOMMENDATION:

The Union's proposal on duration is adopted.

VIII: CONCLUSION AND CERTIFICATION

Fact finders, just like other hearing officers and finders of fact (including judges), are required to determine issues of weight of evidence and credibility of testimony. Experience teaches that truth telling is a personal trait.³

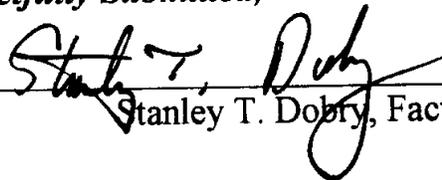
The fact finder made these findings based upon the preponderance of the more credible evidence. My decisions are based upon an analysis of the entire record, including the quantity, quality and absence of the evidence.

I carefully considered and analyzed all of the record, even though I found it inappropriate to mention each item specifically. I considered witness demeanor, the content and plausibility of testimony, and their motivations. I gave weight to the total fabric of the testimony, in light of the entire record.

Additionally, I weighed all of the statutory criteria as they might apply to each of the issues and the record before me, even if I did specifically refer to them. My recommendations are meant to fix the problem, not fix the blame. It is time for the parties to move on and work together for their common interests.

This Report and Recommendations of the Fact Finder is based upon all of the foregoing considerations as set forth above. It is based upon the evidence and testimony presented to me at the fact finding hearing. This award is made and entered this 16TH day of May, 2002..

Respectfully Submitted,



Stanley T. Dobry, Fact Finder

Dated: May 16TH, 2002

³Some witnesses would not tell anything less than the whole truth and nothing but the truth. Other witnesses may deliberately shade their testimony to put themselves or something in the most favorable light. Compounding this difficulty is the fact that human memories are fallible and malleable, especially when putting the witness or their friends, fellow employees, union or agency in the most flattering light. Sometimes this happens unconsciously, without a purpose to mislead. Sometimes facts are confused with wishes. A wrong but honest witness can convince himself that he is being truthful. Mere genuineness of belief is not equivalent to a certification of accuracy.

