

HAND DELIVERED
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD
2002 APR 22 A 9 06

In the Matter of Fact-Finding :
Between : SERB Case Number: 01-MED-10-0944
DELAWARE COUNTY SHERIFF, :
Employer : Date of Fact-finding Hearing:
and : March 6, 2002
OHIO PATROLMEN'S :
BENEVOLENT ASSOCIATION, : Howard D. Silver
Union : Fact-Finder

REPORT AND RECOMMENDATION OF FACT-FINDER

APPEARANCES

For: Delaware County Sheriff, Employer

Christopher C. Russell, Esquire
PORTER WRIGHT MORRIS & ARTHUR LLP
41 South High Street
Columbus, Ohio 43215-6194

For: Ohio Patrolmen's Benevolent Association, Union

Joseph M. Hegedus, Esquire
Climaco, Lefkowitz, Peca, Wilcox &
Garofoli, Co., LPA
175 South Third Street-Suite 820
Columbus, Ohio 43215-5134

This matter came on for fact-finding conference at 10:00 a.m., on March 6, 2002, at 110 North Sandusky Street, Delaware, Ohio, within the Delaware County Commissioners' meeting room. At the fact-finding conference both parties were afforded a full and fair opportunity to present evidence and arguments in support of their positions. The record in this matter was closed at 2:40 p.m., at the conclusion of the fact-finding conference on March 6, 2002.

ISSUE

What language shall be recommended by the fact-finder for Articles not agreed by the parties to be included in the parties' successor collective bargaining agreement?

BACKGROUND

The Delaware County Sheriff and the Ohio Patrolmen's Benevolent Association are parties to a collective bargaining agreement that was in effect from January 1, 1999 through December 31, 2001, hereinafter referred to as the predecessor agreement. The predecessor agreement, and the collective bargaining agreement which is to succeed the predecessor agreement, hereinafter referred to as the successor agreement, apply to a bargaining unit comprised of deputy sheriffs and detectives below the rank of sergeant, a unit which excludes the Sheriff, chief deputy, majors, captains,

lieutenants, sergeants, and all personnel not sworn in accordance with Ohio Revised Code section 311.04. The present Sheriff of Delaware County, Sheriff Al Myers, has, during his tenure as Delaware County Sheriff, been party to three separate collective bargaining agreements negotiated with the Ohio Patrolmen's Benevolent Association.

By agreement of the parties, the fact-finder's report is to be filed with the State Employment Relations Board and served upon the parties on April 22, 2002.

This fact-finding proceeding was conducted in accordance with Ohio Revised Code section 4117.14 and Ohio Administrative Code section 4117-9-05.

DISCUSSION AND RECOMMENDED LANGUAGE

Article 2 - Recognition

The union has recommended three changes to language in the parties' predecessor agreement to be included in the parties' successor agreement. Two of these changes have been agreed by the employer; one change has not been agreed.

The changes proposed by the union which have been agreed by the employer for inclusion within Article 2 of the parties' successor agreement are the installation of a bulletin board in each substation in addition to the squad room, to be expressed within section C of Article 2; and a change to language within Article 2, section H which refers to providing release time for

OPBA bargaining team members for bargaining occurring during their shift or time off from their shift. The parties' predecessor agreement, within section H, limited this language to a maximum of one per shift; the language proposed by the union and agreed by the employer would change this language to a maximum of one per division. The change proposed by the union and agreed by the employer for language in section H of Article 2 would delete the language: "...Sheriff or his designee determines that their absence will not underman his staff."

The change to Article 2 proposed by the union which has not been agreed by the employer involves the deletion of the word "not" as it appears in the parties' predecessor agreement indicating that grievance handling or disciplinary investigations outside a grievance representative's scheduled shift shall not be counted as time worked or paid status. The change proposed by the union would reverse the meaning of this provision by deleting the word "not", thereby providing that grievance handling or disciplinary investigations outside a grievance representative's scheduled shift would be counted as time worked or paid status.

In support of the change proposed by the union, the union notes that the department is bigger now, with new multiple locations. Procedures which used to be handled more informally have been required to be tightened up procedurally because of a higher volume of grievances. The union only has three representatives, each with a different schedule.

The employer is opposed to paying union directors to attend grievance meetings outside of their regularly scheduled shifts.

The fact-finder does not recommend the change proposed by the union for Article 2, section F. This is a 180-degree change in how a grievance representative's time is to be handled outside of that representative's scheduled shift. The fact-finder finds the change proposed by the union to loosen considerably the administrative control exercised by the employer over time worked or paid status outside of a representative's scheduled shift. The fact-finder is unclear as to the number of hours and increased expense which could occur among grievance representatives working outside of scheduled shifts and is unclear as to what impact these non-scheduled shift hours would have upon the hours needed from that representative during scheduled duty time. The effect on the availability of grievance representatives who are on time worked or paid status during non-scheduled work hours and upon overtime status and costs can only be guessed at by the fact-finder and therefore the fact-finder is reluctant to recommend a change which would open the employer to consequences which cannot be known by the fact-finder at this time with any precision or confidence. Accordingly, the fact-finder recommends the changes proposed by the union and agreed by the employer within sections C and H, but declines the change proposed by the union for section F.

Article 2 - RECOGNITION

A. The Sheriff hereby recognizes the Ohio Patrolmen's Benevolent Association as the sole and exclusive representative for all employees included within the Bargaining Unit described in Section B of this Article on matters related to wages, hours, and other terms and conditions of employment, and the continuation, modification or deletion of an existing provision in this Agreement, and the solution of questions arising under this Agreement.

B. Bargaining Unit. The Bargaining Unit shall include all Deputy Sheriffs and Detectives (hereinafter referred to as Deputies) who are below the rank of Sergeant, and excludes the Sheriff, Chief Deputies, Majors, Captains, Lieutenants, Sergeants and all personnel not sworn in accordance with Ohio Revised Code, section 311.04.

C. Bulletin Boards. The Sheriff will provide an OPBA bulletin board in the following locations: one in the squad room and one in each substation. Only OPBA bulletins will be permitted to be posted on the bulletin boards.

D. Ballot Boxes. The OPBA shall be permitted, upon prior notification to the Sheriff, to place a ballot box in the squad room for the purpose of collecting members' ballots on all OPBA issues subject to ballot. Such box shall be the property of the OPBA and neither the ballot box nor its contents shall be subject to the Department's review.

E. Use of Intra-Department Mails. The OPBA shall be permitted to utilize the intra-departmental mail system (pigeon-holes) for the purpose of providing information pertaining to OPBA business or Bargaining Unit representation to Bargaining Unit Members. The OPBA agrees that the use of the mail system will be reasonable and limited to providing information that is necessary for the normal conduct of OPBA business or Bargaining Unit representation. All mail placed into the mail system by the OPBA shall be the property of the Bargaining Unit member to whom it is addressed, and such mail shall not be subject to the Department's review.

F. Grievance/Liaison Representatives.

The OPBA shall designate not more than two (2) Grievance/Liaison Representatives, who shall be Bargaining Unit Members. There will be two representatives voted into the positions, with the Director serving as the Chairperson and the third representative. The Sheriff will be notified in writing of the OPBA's designees.

On any shift one Grievance/Liaison Representative, i.e. Grievance Committee member or Chairman, may be allowed necessary time off the job, in paid status, to attend a Grievance Committee meeting, related to the processing of grievances or disciplinary investigations, upon prior approval of the Sheriff or his designated representative. Grievance handling or disciplinary investigations outside a grievance representative's scheduled shift is not time worked or paid status.

G. Grievance/Liaison Chairman.

1. The parties recognize the position of Grievance/Liaison Chairman, that position being held by the OPBA Director for the Sheriff's office. The Grievance/Liaison Chairman, and a named alternate who shall serve in the absence or unavailability of the Chairman, shall perform the following authorized functions:

(a) serve as an at-large grievance coordinator with responsibility for general supervision and coordination of the grievances;

(b) represent the OPBA in investigating and in processing grievances;

(c) replace a Grievance Representative who is absent or unavailable;

(d) maintain the integrity and timeliness of the grievance procedure by such activities as providing advice and counsel to grievants and/or Grievance Representatives;

(e) attend, as necessary, joint meetings of the parties relating to employer relations matters and/or grievances which come within the scope of this Agreement;

(f) act as Liaison between the OPBA, the Sheriff's office and/or County relative to employee relations matters under this Agreement and/or grievances under this Agreement.

H. Negotiating Committee. Deputies on the OPBA bargaining team may be given release time for bargaining occurring during their shift or time off from their shift because of their participation in bargaining outside their shift, with a maximum of one per division.

Article 3 - Dues Deduction

The union proposes a change to Article 3 in the form of a new section, designated section F. The language proposed by the union for Article 3, section F would require a so-called "fair share fee" from those bargaining unit members who choose not to enroll as members of the union representing the bargaining unit.

The union points out that fair share contributions are permitted by statute, Ohio Revised Code section 4117.09. The union points to Union Exhibit 2, a compilation of what the union considers county sheriffs' offices comparable to the Delaware County Sheriff's Office, presenting the benefits among twenty-nine sheriffs' offices. This benefits report, dated February 26, 2002, issued by the State Employment Relations Board Clearinghouse, shows that twenty-seven of the twenty-nine sheriffs' offices listed provide for fair share fees. The union emphasizes that the union is required as a matter of law to represent all members of the bargaining unit and this obligation of fair representation extends to members of the bargaining unit who are not union members. The

union emphasizes that the costs of representing bargaining unit members through negotiation of collective bargaining agreements, through grievance processing and arbitration, and through other activities performed on behalf of the bargaining unit remain the same whether these energies and resources are expended on behalf of bargaining unit members who are members of the union and therefore supporting these activities through their dues, or on behalf of bargaining unit members who are not members of the union and do not financially support activities performed by the union on behalf of the bargaining unit.

The employer opposes the fair share fee provisions proposed by the union. The employer notes that no such provision has been included in past collective bargaining agreements with this employer; the employer is opposed to the inclusion of a fair share fee in the parties' successor agreement; there are no other public employers in Delaware County who have agreed to a fair share fee.

The fact-finder finds the issue of a fair share fee to be one of fairness. The exclusive representative of the bargaining unit is required as a matter of law to extend fair and equal representation to all bargaining unit members and the costs of this representation are intended to be shared among the bargaining unit members. Those bargaining unit members who choose not to join the union and therefore choose not to pay union dues, remain, as bargaining unit members, the beneficiaries of the guarantees, obligations, terms, and conditions of employment negotiated on behalf of the entire bargaining unit. The fact-finder can find no logical basis upon

which a bargaining unit member may avail himself of these protections and benefits and refuse to share in the costs of securing them. A fair share fee is intended to spread the costs of the administration of the bargaining unit in its relationship with the employer among all bargaining unit members, and is intended to require those bargaining unit members who do not wish to join the union to pay only for those expenses associated with the administration of the bargaining unit. The fact-finder believes this to be a fair and equitable way to finance the activities of the bargaining unit carried out to secure improved benefits, wages, and terms and conditions of employment. As all bargaining unit members benefit from these advances, the fact-finder finds that all bargaining unit members should share in the costs necessary to securing these gains. The fact-finder also notes that the cost to the employer under a fair share fee arrangement is minimal. Accordingly, the fact-finder proposes the change sought by the union through a new section F within Article 3.

Article 3 - DUES DEDUCTION

A. During the term of this Agreement, the Employer shall deduct initiation fees, assessments levied by the OPBA and the regular monthly OPBA dues from the wages of those employees who have voluntarily signed written dues deduction authorization forms permitting said deductions. No new written authorization forms will be required from any employees in the bargaining unit for whom the Employer is currently deducting dues. Written authorizations shall remain in effect until revoked in writing by the employee.

B. The initiation fees, dues or assessments so deducted shall be in the amounts established by the OPBA from time to time in accordance with its Constitution and Bylaws. The OPBA Executive Director or designee shall certify in writing to the County Auditor the amounts due and owing from the employees involved.

C. The Employer shall deduct dues in approximately equal amounts once per month from the second pay of the month in accordance with the union's written direction, to the extent there are wages owing to the employee to cover the deduction. If an employee is on medical leave, layoff or other extended unpaid absence, dues shall only be deducted for a period when wages are earned. If dues are owing for pay periods when the employee has no earnings or insufficient earnings to cover the deduction, the Employer shall deduct such dues out of future paychecks only upon the express written direction of the OPBA Executive Director or designee.

D. A check in the amount of the total dues withheld under this Article shall be tendered to the treasurer of the OPBA within thirty (30) days from the date of making said deductions.

E. The OPBA hereby agrees to defend and hold the Employer, its officials and employees, harmless from any and all liabilities or damages which may arise from the performance of its obligations under this Article and the OPBA shall indemnify the Employer, its officials or employees from any such liabilities or damages that may arise.

F. It is agreed that all employees who do not join the Union or remain members in good standing shall be required to pay a fair share fee to the Union. This obligation shall commence upon the successful completion of sixty (60) days of employment.

This provision shall not require any employee to become a member of the Union, nor shall the fair share fee exceed that percentage of the normal dues used by the Union in administration of the Collective Bargaining Agreement. The deduction of a fair share fee by the Employer from the payroll check of the employee and its payment to the Union is automatic and does not require the written authorization of the employee.

Employees who are not members of the employee organization shall have all rights prescribed in Section 4117.09(C) of the Ohio Revised Code.

Article 6 - Corrective Action and Records

The union has proposed creating a corrective action step prior to a warning known as an A.V.O., with the first step being a verbal counseling. The union proposes that after a verbal counseling, a verbal warning be provided, and this verbal warning is to replace the A.V.O. These proposed changes to section A of Article 6 are minimal in their impact and are not opposed by the employer. The fact-finder therefore adopts the changes proposed by the union for section A within Article 6.

The union also proposes new language for section A of Article 6 which would describe how progressive discipline is to be imposed, that is, through consideration of the employee's prior history of discipline and the employee's record of performance and conduct. The language proposed by the union would require a progressive disciplinary chronology of steps, to be followed in all respects, requiring a verbal counseling, then a verbal warning, then a written reprimand, and then suspensions of one day, three days, five days, fifteen days, and thirty days, prior to termination of employment.

The union claims that its proposed language delineating the disciplinary procedure to be followed within the Delaware County Sheriff's Office is intended to ensure that corrective action is carried out to correct conduct which does not comply with the employer's rules, and is intended to be progressive in nature, beginning with an emphasis on counseling, imposing more severe discipline only in instances of continuing noncompliance.

The employer opposes the new language proposed by the union for section A on progressive discipline and the disciplinary program to be imposed, as the employer views this proposed language to be an imposition upon management rights reserved to the employer. The employer emphasizes its prerogatives under management rights to determine disciplinary action, and the language proposed by the union for section A limits the employer's discretion in exercising this authority, is a limitation that has never existed between the parties, and the employer believes there is no necessity for this proposed new language.

The union agrees that the proposed language intends to limit the discretion of the employer in imposing discipline by ensuring that similar misconduct results in similar discipline.

The fact-finder does not adopt the language proposed by the union which defines a progressive disciplinary approach and presents a ten-step disciplinary procedure which must be followed in all cases. While there is nothing illogical or unlawful about the system expressed within the union's proposed language for section A of Article 6, the system has been expressly refused by the employer and the fact-finder is reluctant to impose such a significant change unilaterally.

The union's disciplinary schedule, as proposed, makes no differentiation between minor instances of noncompliance and instances of serious misconduct. While the proposed language refers to allegations of similar misconduct by employees, there is no provision for more severe disciplinary action for more serious,

egregious misconduct. The fact-finder finds insufficient need to impose the more rigid disciplinary schedule proposed by the union and finds the language of section A in Article 6, paragraphs one through five, to be sufficient to obligate the employer to follow the principles of progressive discipline. The employer, in the case of disciplinary action, must bear the burden of proving just cause, and a bargaining unit member disciplined under the parties' collective bargaining agreement retains the right to file a grievance and contest the action imposed.

The union proposed and the employer agreed to add the words "or designee" to section C concerning to whom a written memorandum may be directed in the event a bargaining unit member has reason to believe that an inaccuracy exists in documents contained in the bargaining unit member's employment file. The fact-finder recommends this change.

Article 6 - CORRECTIVE ACTION AND RECORDS

The Sheriff or his designee may file charges and administer discipline.

A. The Sheriff (or staff officers) will not discipline a non-probationary Deputy without just cause. The principles of progressive discipline below will be followed. The Sheriff may determine that higher levels of discipline are required at times. However, any discipline issued is subject to review in the Grievance Procedure.

1. Verbal counseling will be defined as an exchange between the supervisor and an employee where the intent is to give adequate notice to any employee whose actions are improper and/or inadequate so that the employee may improve his or her performance to acceptable standards.

2. A verbal warning is a written order stating a deputy's behavior or job performance is unacceptable or unsatisfactory and that continued unacceptable or unsatisfactory behavior or performance may result in corrective action being taken. Verbal warnings will be removed from the deputy's file one (1) year from the date of receipt.

3. A reprimand is a written statement to a Deputy outlining his unacceptable or unsatisfactory behavior or job performance and noting that as a matter of discipline his activity is being documented for future employer evaluations of him. Reprimands will be removed from the Deputy's file after one (1) year providing that a second reprimand of the same nature is not received within that year. Should this occur, reprimands may remain for two (2) years.

4. A suspension is a written statement to a Deputy outlining his unacceptable or unsatisfactory behavior or job performance and ordering him to suspend his work performance for a specified number of work days without pay. A suspended deputy may use comp time, holiday time, vacation or personal days in lieu of suspension time being taken without pay. Suspensions shall be removed from the Deputy's file after two (2) years.

5. A discharge is a written notification to a Deputy outlining his unacceptable or unsatisfactory behavior or job performance and terminating the existing employment relationship. A discharged Deputy must return all property issued to him. Discharges remain in a Deputy's file indefinitely.

B. Review of Personnel Files - Any member shall be allowed, upon request to review his personnel file between 8:30 a.m. and 4:30 p.m., Monday through Friday. Such request shall be made to the Sheriff directly and review shall be made in the presence of the Sheriff or his designated representative at a time of mutual convenience. Release of personnel information to the public shall be in accordance with State and Federal laws. Any member may copy documents in his file. The Administration may levy a charge for such copying, which charge shall bear a reasonable relationship to actual cost.

C. Inaccurate Documents - Should any member have reason to believe that there are inaccuracies in documents contained in his file, he may write a memorandum to the Sheriff or designee explaining the alleged inaccuracy. The Sheriff or designee shall either remove the inaccurate document or attach the member's memorandum to the document in this file.

D. The Sheriff/Board of County Commissioners will keep only (1) set of personnel files on any bargaining unit member. This will not include records kept on matters of payroll. This set of files will be kept at the office of the Delaware County Sheriff.

Article 7 - Discipline Meetings

The parties agreed to add language to paragraph (F) of Article 7 which refers to providing written results of an official investigation to a deputy in accordance with "paragraph (H) below." Paragraph (H) is language to be brought forward from the predecessor agreement unchanged.

Within paragraph (G) of Article 7 the union proposes a ten-day time limit from the conclusion of an investigation for a deputy to be informed by the Sheriff or the Sheriff's designee of a complaint having been filed against the deputy.

The employer opposes the addition of the ten-day time limit to paragraph (G), pointing out that the language in the parties' predecessor agreement refers to providing this information "within a reasonable period of time." The employer reminds the fact-finder that complaints against deputies may involve exposure of the employer to liability claims and it is important that the employer retain the freedom and discretion to conduct the investigation and

to inform the subject of the investigation within a reasonable period of time.

The union reminds the fact-finder that there have been occasions where as many as seven weeks had elapsed between the filing of a complaint and notice of the filing of the complaint provided to the deputy who was the subject of the complaint.

The union also proposes that certain language within section G of Article 7 be deleted, namely that language at the end of this paragraph which allows a person who receives a complaint to sign the complaint against a deputy. The union's proposed language would require the complaint to be reduced to writing and signed by the complainant. The union points out that the problem with the present language is that it allows anonymity to exist in a complaint against a deputy, a circumstance which can lead to manipulation and false statements which become that much more difficult to disprove because of their anonymous nature.

The employer again cites its exposure to liability in refusing complaints received over the telephone and opposes this proposed change as an unneeded and unwanted limitation upon the employer's right and need to investigate alleged misconduct by employees.

The union also proposes the deletion of language referring to "other deputies" and "another deputy" within paragraph (I) of Article 7. This deletion is unopposed by the employer and recommended by the fact-finder.

The fact-finder does not recommend the other changes proposed by the union for Article 7, including the ten-day limitation on

notice to a deputy who is the subject of an investigation or the deletion of language allowing a complaint to be received about a deputy without the complainant signing the complaint form. These proposals are straightforward and would provide greater protections to deputies accused of wrongdoing, but they would also limit how allegations of misconduct are received and affect how investigations are to be disclosed. The fact-finder is reluctant to impose upon the employer the more stringent requirements of the union's proposed changes without being able to offer the employer some increased protection from the liability these strictures could expose the employer to. Accordingly, the fact-finder adopts the proposed deletion of language within paragraph (I) of Article 7 which limits answering questions by a deputy to the deputy's own activities, but the fact-finder does not recommend the other changes proposed by the union for Article 7.

Article 7 - DISCIPLINE MEETINGS

A. A Deputy has the right to be accompanied by an OPBA representative (or designated alternate) when the Sheriff or his designate wants to meet with the Deputy to discipline him or conduct investigations where discipline is being considered.

B. A Deputy is entitled to union representation at investigatory interviews which the deputy reasonably believes could lead to discipline (the Weingarten standard) and at grievance meetings. There is no entitlement to union representation at other employer-employee meetings that are relevant to the employment relationship.

C. Disciplinary meetings will be held on work time except when the matter concerns third shift. Disciplinary meetings involving third shift personnel will be scheduled between 8:30 a.m. and 4:30 p.m., unless mutually agreed to the contrary by all concerned parties. If reasonable accommodations cannot be made to have a discipline meeting for a third shift employee during the regular hours of employment of said employee, other reasonable accommodations will be made. Disciplinary meetings will be held between 8:30 a.m. and 4:30 p.m., unless mutually agreed to the contrary by all concerned parties. Reasonable efforts will be made to accommodate the scheduling of disciplinary meetings for third shift employees.

D. Polygraph, computerized voice stress analysis (CVSA), mechanical or chemical means to investigate Deputies shall first be checked for their accuracy before being used or administered. These methods will not be used unless the Sheriff has reasonable suspicion that a violation of policy, procedures, or unlawful activity has occurred. Questions asked during the course of any test administered pursuant to this article shall be narrowly tailored to the specific allegations of misconduct by the deputy. When the CVSA is administered to a deputy, it will be administered by a non-bargaining unit member. Also, the Sheriff acknowledges that the results of any of the testing under this section will not serve as the sole basis of any disciplinary action taken against the deputy.

E. Deputies will be given notice and basis of charges and an opportunity to be heard prior to any disciplinary action being taken. A Deputy may use an OPBA representative to assist in addressing the charges against him.

F. Written results of an official investigation shall be provided to the Deputy, in accordance with paragraph H below.

G. The Sheriff shall inform a Deputy that a complaint has been filed against him, the nature of the complaint, and the outcome of the complaint within a reasonable period of time. Written notification must be given. If after investigating the complaint, the Sheriff decides not to make a formal investigation of a Deputy, the information gathered about the complaint shall not be placed in a Deputy's personnel file. Nothing in this section prevents the Sheriff from compiling information on a Deputy accused of engaging in, or aiding and abetting any unlawful activity. Anonymous oral complaints

may not be utilized as a basis for commencing an investigation unless the complaint is reduced to writing and signed by either the complainant or the person who receives the complaint.

H. For the purposes of this Agreement, an official investigation will be defined as any time management compiles written information about the alleged activities of an officer whether it relates to conduct allegedly occurring on or off-duty. To the extent practicable, all investigations and notifications of discipline resulting therefrom will be completed within 45 days of the time that the employer receives notice of the conduct in dispute.

I. Refusing to answer questions about the Deputy's activities is grounds for insubordination. The Deputy shall be warned that he could be disciplined if he continues to refuse to answer questions about himself. However, Garrity warnings shall be rendered when appropriate.

J. A Deputy who is questioned in the disciplinary process may tape record any such meeting, provided that everyone present is informed that the meeting is being recorded. Individuals other than the subject of a disciplinary meeting or the Sheriff or the Sheriff's designee may not tape record a meeting without the consent of the Sheriff or his designee.

K. All disciplinary action shall be conducted in a private and businesslike manner.

L. A deputy may choose to waive all steps in the disciplinary process after being informed of the charges against him or her. This waiver must be voluntary and in writing.

Article 8 - Transfers and Assignments

The union proposes and the employer agrees to changes in the language of section B(1) of Article 8 requiring a posting of vacancy notices at all locations where employees report on a daily basis.

As to section B(2) of Article 8, the union proposes changes to language within the parties' predecessor agreement which the

employer opposes. The language proposed by the union for section B(2) of Article 8 would require the selection of the most qualified candidate for a position and would remove language found in the parties' predecessor agreement which permits the Sheriff to select a candidate the Sheriff deems most qualified based on job related experience, training, and educational background needed to perform the duties as described in the posted vacancy.

The fact-finder does not adopt the changes proposed by the union. While the fact-finder recommends that the language in the parties' predecessor agreement be retained, allowing the Sheriff to select the candidate he deems most qualified, the selection still must be based on job related experience, training, and educational background needed for the duties as described in the posted vacancy, and must be a selection made in good faith. Using seniority to break a tie between qualified bargaining unit members with comparable qualifications is also retained.

The parties reached agreement as to changes in paragraph (C) of Article 8, the deletion of words from the language of this section in the parties' predecessor agreement and the addition of words as agreed by the parties will be reflected in the language set out at the end of this section.

Changes proposed by the union for paragraph (D) were also agreed by the parties, as was language proposed by the union for inclusion within section F.

The parties also agreed at the fact-finding hearing to retain the language in section H of Article 8 as it appears in the parties' predecessor agreement.

All of the changes agreed by the parties for Article 8 are recommended by the fact-finder.

Article 8 - TRANSFERS AND ASSIGNMENTS

A. A vacancy occurs when the Sheriff intends to fill an existing bargaining unit position which has become available on an indefinite basis, or when the Sheriff intends to create a new full-time bargaining unit position or add one to an existing classification. The Sheriff is required to fill any position posted pursuant to this article provided that there are qualified applicants (See B(2)below) Any time a position is posted which the Sheriff intends to fill, the posted position shall be filled according to the listed criteria in Section (B)(2) below. However, each position filled pursuant to this section will be subject to a one-hundred twenty (120) day probationary period. The Sheriff shall have the sole discretion to evaluate the performance of the employee during the probationary period. Any employee remaining in a position subsequent to the one-hundred twenty (120) day period will be deemed to be qualified for the position and may only be removed for just cause.

B. The Sheriff will fill vacancies as follows:

1. Posting - The Sheriff shall post the vacancy notice, naming the available job, duty hours, days off, and a detailed job description at all locations where employees report on a daily basis. The posting shall be for three (3) working days ("work day" being defined as Monday through Friday). Interested candidates have two (2) work days from the last day of posting to submit a written resume/qualifications of their interest to the Sheriff.

2. Selection - The Sheriff shall select the candidate he deems most qualified based on their job related experience, training, educational background needed to perform the duties as described in the posted vacancy. His selection must be made in good faith. If two bargaining unit members with comparable qualifications apply for the job posted, the bargaining unit member with the most seniority will prevail.

C. All shift schedules and days off, as established by management at any location shall be bid by seniority as mutually agreed by the parties, with the exception of the days off set forth for the persons in the classifications of Sergeant, Corporal, and/or Canine Officer. Deputies shall submit their requests for shift schedules and days off at a time during the month of November/December. Shift schedules and days off will be assigned by the beginning of day shift on the first day of the first full pay period in January. The Sheriff may change a Deputy's shift schedule or days off during the year only for just cause.

D. In the event a senior member of a shift is permanently moved from his present shift or days off for any reason, the next senior member of the shift shall be given an opportunity to bid for the days off previously occupied by the previous senior member and so on down the seniority list for two additional times by seniority.

E. The Sheriff determines all transfers and assignments. A transfer occurs when the Sheriff moves a Deputy from one shift schedule to another, from one division to another, or changes his days off. Assignments are those duties required of a Deputy in the position in which he has been placed to work. The Sheriff shall exercise ordinary and reasonable discretion in making transfers and assignments. The Sheriff shall not transfer or assign any Deputy without just cause.

F. A promotion occurs when the Sheriff increases a bargaining unit member's rank in the Sheriff's Office. The Sheriff determines the promotions. He shall establish standards for promotions and provide them to the OPBA. Promotions shall be made in good faith.

G. Vacancies, transfers, assignments, promotions, or changes in shift schedules are subject to the Grievance/Arbitration Procedure.

H. Deputies assigned to divisions other than patrol may request reassignment back to the patrol division if there is a forthcoming vacancy or a vacancy currently exists. This request must be submitted in writing to the Sheriff who may either grant or deny the request based on department needs. Should the Sheriff approve the request, the requesting Deputy shall fill the vacancy as it exists (including the shift and days off) until the next normal shift and days off selection procedure. Should this transfer cause a Deputy to work more than forty (40) hours in a work more than forty (40) hours in a work week, the Deputy will use accrued compensatory time or vacation to insure that he will not work more than forty (40) hours in the week of reassignment. If the transfer causes a Deputy to work less than forty (40) hours in the week of reassignment, he shall not be required to work additional hours and shall be paid his regular salary.

Article 13 - Seniority

The union proposes the addition of "he retires" in the fourth line of this Article after the words "twelve (12) months." The employer agreed to this and the inclusion of "he retires" is recommended by the fact-finder. The fact-finder does not recommend notice only by certified U.S. Mail, return receipt requested, as proposed by the union, finding this restriction unnecessary to the language retained for this Article.

Article 13 - SENIORITY

A probationary employee shall have no seniority until he or she satisfactorily completes the probationary period. An employee's seniority shall be terminated when one or more of the following occurs: he resigns, he is discharged for just cause, he is laid off for a period exceeding twelve (12) months, he retires, he refuses a recall or fails to report to work within five (5) days from the date the employer mails the recall notice. Seniority means the length of continuous regular employment by the Sheriff as a deputy.

Article 14 - Layoff and Seniority

The union proposes a change to section A of Article 14 which would provide that layoffs may only be for lack of work or lack of funds. The union also proposes that language be included specifying that the Sheriff may not lay off employees for disciplinary reasons or for arbitrary and/or capricious reasons.

The employer opposes the changes proposed by the union and recommends that the language in the parties' predecessor agreement be retained.

The fact-finder does not find a need for the changes proposed by the union for Article 14, section A. The actions of the employer are subject to the grievance procedure under the language of the parties' predecessor agreement, and any purported lay off for something other than lack of work or lack of funds would become part of the burden of proof which would have to be carried by the employer in a grievance/arbitration procedure. The fact-finder finds sufficient protections within Article 14 in the language of the parties' predecessor agreement and does not recommend the changes proposed by the union for this Article.

Article 14 - LAYOFF AND SENIORITY

A. Layoffs, or recalls after layoffs, will be determined by seniority. The least senior Deputy shall be laid off first and the most senior Deputy shall be recalled first. However, if the Sheriff, using ordinary and reasonable discretion, determines that an employee whose seniority entitles him or her to be retained or recalled does not have the ability to perform the available work in the Sheriff's Department, the Sheriff need not retain or recall the employee. The Sheriff's determination is subject to the Grievance/Arbitration

Procedure. If such determination were challenged in the Grievance/Arbitration Procedure, the Sheriff would have the burden of showing that he had exercised ordinary and reasonable discretion in determining that the Deputy could not perform the available work.

B. Sheriff's office Seniority is continuous service as a deputy since the employee's first employment or re-employment following a break in continuous service.

C. For purposes of this Agreement, Sheriff's office seniority shall govern for layoffs, the accumulation of benefits, selection of paid leave, and shift bidding, etc.

D. Recall rights shall exist for one year from the effective date of the layoff.

Article 15 - Miscellaneous

The employer recommends that section C of Article 15, entitled "Trading Shifts and Assignments," be deleted from the parties' successor agreement. The language of this section as it appears in the parties' predecessor agreement provides that an employee may trade regular scheduled work hours with another employee but may not trade days off with another employee. In the event problems arise with these trades, the employee initiating the trade shall be held accountable. All proposed trades are to be approved, in writing, by the Sheriff or his designee.

The union recommends that the language within the parties' predecessor agreement be retained in the parties' successor agreement.

The fact-finder does not recommend the deletion of section C from Article 15. While the fact-finder understands the employer would like to avoid the bookkeeping responsibilities associated with this section, it is not clear to the fact-finder whether, with

the deletion of this language, the opportunity to trade regular scheduled hours would remain. Rather than remove a benefit to bargaining unit members which allows some flexibility in scheduled hours when appropriate coverage can be secured, the fact-finder retains the language of section C of Article 15 and recommends its inclusion in the parties' successor agreement.

Article 15 - MISCELLANEOUS

A. Safe Equipment - The Sheriff intends to furnish and maintain in satisfactory working condition, the necessary tools, facilities, vehicles, supplies and equipment required for members to safely carry out their duties. Members are responsible for reporting unsafe conditions or practices, or avoiding negligence, and for properly using and caring for tools, facilities, vehicles, supplies, and equipment provided by the Sheriff.

B. Off-Duty Contract Employment. Although all special duty work must be approved by the Sheriff or his designee, the Sheriff is not the employer for purposes of the special duty service. All aspects of a deputy's special duty service shall be considered not to arise out of and/or be in the course of employment by the Sheriff unless the deputy is effecting an arrest, apprehending a suspect, or preventing a criminal offense which is in progress. The employees participating in special duty work agree that he/she will exhaust his/her Workers' Compensation remedies against the person or organization for whom the service is being provided (with the exception noted above when a deputy is effecting an arrest, apprehending a suspect, or preventing a criminal offense which is in progress) prior to making a claim against the County and/or the Sheriff for injury occurring during special duty service.

For purposes of the professional image and standing of deputies, all of the Sheriff's standard operating procedures shall be adhered to when a deputy is performing special duty service and any discipline arising out of special duty will be subject to the grievance and arbitration procedure of the collective bargaining agreement.

The Sheriff will not contract with officers from any other office for off duty employment within Delaware County so as not to withhold off duty employment from Delaware County Deputies. However, when there are more Deputies needed than the bargaining unit can provide, other officers from other departments will be used.

C. Trading Shifts and Assignments. An employee may trade regular scheduled work hours with another employee and he may not trade days off with another employee. In the event of any problems associated with the trade, the employee initiating the trade shall be held accountable. All proposed trades must be approved in writing by the Sheriff or his designee.

D. Agreement Copies. As soon as possible following the signing of this Agreement, the County shall have the copies of this Agreement printed, number of copies to be determined by need. Copies will be provided to the County, the OPBA, and the Bargaining Unit Members. Actual cost of printing this Agreement, and any further printing beyond the needed copies, in an amount the parties may later agree is necessary, shall be paid by the County. The OPBA shall be responsible for distributing copies to its members. Copies for any new Deputies who are hired during the life of this Agreement will be provided by the County.

E. Residency. Deputies must live within one hour's driving time of the office.

Article 16 - Officers-in-Charge

The union proposes a change to the second paragraph of Article 16 in the parties' predecessor agreement which provides that any deputy acting in the capacity of an officer-in-charge shall be compensated an additional \$.60 per hour. The union proposes to change this compensation to the maximum rate of pay for the higher rank for which the deputy is performing, include language that any deputy may refuse to act in the capacity of officer-in-charge, and include language prohibiting probationary employees from serving as an officer-in-charge.

The employer opposes the changes proposed by the union for Article 16.

The fact-finder is unclear as to the regularity with which lower ranking officers are required to serve as officers-in-charge, does not know the relative frequency with which corporals and sergeants are replaced through an officer-in-charge assignment, and is unclear as to the amount of money which would be required to pay for the benefit proposed by the union in changing this language. The fact-finder therefore declines to order the language proposed by the union within Article 16 and recommends retaining the language in the parties' predecessor agreement.

Article 16 - OFFICERS-IN-CHARGE

Officers-in-Charge will assist the Sergeant of the watch, and assist other Deputies as requested on crime scenes.

Any Deputy acting in the capacity of an Officer-in-Charge shall be compensated an additional 60 cents per hour.

Article 17 - Uniform Allowance

Both parties agreed to add "or boots" after "shoes" in section A. This change is recommended by the fact-finder.

Both parties have proposed changes to how uniform allowances are to be handled under the parties' successor agreement. The employer proposes that the system be completely overhauled, changed to a quartermaster system through which the employer would be

responsible for coordinating the purchase, maintenance, and replacement of uniforms and equipment for all deputies.

The union suggests that rather than allot a \$750 per year account for each deputy for the purchase, maintenance, and/or replacement of new, damaged, or worn equipment required by the Sheriff, each deputy receive a check for \$500 per year for the purchase, maintenance, and/or replacement of uniform and equipment items other than uniform shirts and pants. The union proposes that this check be issued during the first pay period of January of each year, and in addition, the Sheriff provide each deputy with three uniform shirts and three pairs of uniform pants in each year of the agreement. The union proposes the Sheriff provide dry cleaning services as is currently the practice.

The fact-finder adopts neither of the proposals of the parties as to Article 17. The fact-finder finds the language within the parties' predecessor agreement as to uniform allowance to be a better system than those proposed by the parties. The \$750 per year account for each deputy for the purchase, maintenance, and/or replacement of new, damaged, or worn uniforms or equipment required by the Sheriff appears to the fact-finder to be a sufficient amount for this purpose on a yearly basis, and allows the employer to maintain knowledge and control of how this money is expended. The fact-finder also recommends that the \$750 amount within section C of Article 17 be retained rather than the \$1,200 amount proposed by the union.

In summary, the fact-finder recommends that the language within Article 17 as to uniform allowances within the parties' predecessor agreement be retained, unchanged, in the parties' successor agreement, with the exception of adding "or boots" to Section A.

Article 17 - UNIFORM ALLOWANCE

A. The Sheriff agrees to provide each Deputy, upon initial employment, clothing which makes up the appropriate uniform required for duty by the Sheriff. Socks, underwear, undershirts, and firearms are not included in the uniform provided by the Sheriff. One pair of shoes or boots will be provided at the time of initial hire.

B. Each deputy will receive up to \$750 per year for the purchase, maintenance and/or replacement of new, damaged or worn equipment required by the Sheriff. An account in the amount of \$750 will be established at a facility to be identified by the Sheriff in the name of each deputy. When a deputy is in need of equipment, he shall contact the facility, and the price of the equipment needed will be deducted from the deputy's account. All purchased replacements must comply with Buckeye Sheriff Association Standards. The uniform and equipment remains the property of the Sheriff's Office, and must be turned in at the time of separation of employment. The Sheriff also agrees to provide dry cleaning services, as is currently the practice.

C. Each deputy shall receive \$750.00 per year for the purchase and maintenance of plain clothes and maintaining and purchasing any new or replacement equipment or uniforms for his/her service as a deputy. This payment shall be made in one lump sum in, January of each year, and represents the detective's total uniform allowance for the year, and the detective shall not be entitled to two \$750.00 allotments for services as both a deputy and detective. The Sheriff also agrees to provide dry cleaning services for dress clothes.

D. The Sheriff agrees to provide body armor and carrier of a style and type mutually agreed to by the parties to all deputies without deduction from the uniform allowance and to replace said body armor and carrier in accordance with the manufacturer's specifications, at no cost to the deputies. The Sheriff's compliance with this provision is contingent upon the OPBA preparing for submission a grant for the body armor, and the Sheriff will match any grants awarded for the body armor. This agreement is contingent upon the deputies actually wearing the body armor any time that they are in uniform. The Sheriff agrees to sign and submit the grant application after it is completed by the OPBA.

Article 20 - Standard Work Week and Overtime

The union proposes changes to sections B and D of Article 20. Within section B, the union proposes that a second day of overtime in any work week that was not scheduled in accordance with a regular shift assignment be paid at double time rather than the time and one-half required by the parties' predecessor agreement.

As to paragraph (D) of Article 20, the union proposes that the 160 hours of compensatory time permitted to be accrued by this section in the parties' predecessor agreement be increased to 200 hours of compensatory time; that language be included stating that compensatory time may not be denied any time minimum staffing requirements are met; and language be added which states that all compensatory time requests shall be answered as soon as possible but no later than twenty-four hours after the request is submitted.

The employer opposes the changes proposed by the union for Article 20; the employer proposes that the language in the parties' predecessor agreement be retained.

As to the proposal to increase compensatory hours from 160 to 200 in terms of what may be accrued, as to compensatory time not being denied any time minimum staffing requirements are met, and as to requiring all compensatory time requests to be responded to no later than twenty-four hours after a request is submitted, the fact-finder does not recommend these changes. 160 hours of compensatory time is four work weeks and any overtime accrued above that level is paid. The fact-finder finds no reason to increase this accrual by twenty-five percent and declines to place the strictures proposed by the union on the employer in terms of when compensatory time may be denied and requiring a response within twenty-four hours of the request. The fact-finder recommends that the language in the parties' predecessor agreement within Article 20 be retained within the parties' successor agreement.

Article 20 - STANDARD WORK WEEK AND OVERTIME

A. Definition - The work week shall normally consist of forty (40) hours based on five (5) consecutive eight (8) hour workdays and two (2) consecutive days off. The hourly rate of a Deputy is based on a work week of forty (40) hours and a work year of two thousand eighty (2,080) hours.

B. Overtime - Deputies shall be compensated time and one-half for hours actually worked which exceed forty (40) in a work week. The Sheriff will not change a Deputy's schedule to avoid paying overtime. For purposes of this section, all paid leave shall count as hours worked.

C. Overtime Scheduling - To the extent practical, good faith efforts will be made consistent with efficient and effective operation of the department to rotate pre-scheduled overtime assignments among qualified Deputies.

D. Compensatory Time in Lieu of Overtime Pay - Deputies shall be entitled to elect to receive compensatory time in lieu of overtime pay. Compensatory time shall accrue at one and one-half hours for each hour of overtime worked. Deputies shall be allowed to accrue up to 160 hours of compensatory time. The Sheriff may deny a compensatory time request for a certain time if he determines that operations of the Sheriff's office will be unduly disrupted. Compensatory time may be requested not less than three (3) days nor more than ninety (90) days in advance. The parties may mutually waive the time restrictions set forth in this Section.

Article 21 - Call-In Pay

The union proposes changing from three hours to four hours the minimum number of hours to be paid when a deputy is called in from home to report to an unscheduled shift. The union also proposes new language which would provide that a deputy who is scheduled for mandatory training shall receive at least twenty-four hours' notice and shall be paid a minimum of three hours' pay at the appropriate rate of pay.

The employer opposes the union's proposed changes and has proposed the payment of time and one-half for only actual time worked.

The fact-finder finds a minimum payment of three hours for call-in pay to be sufficient and notes that any hours actually worked beyond three hours are compensated at the appropriate rate. The fact-finder does not recommend the language proposed by the union for Article 21. The fact-finder recommends that the language in the parties' predecessor agreement be retained.

Article 21 -CALL-IN-PAY

Deputies who are called from home and who report on an unscheduled shift shall be paid for all hours worked, but no less than a minimum of three (3) hours call-in-pay at the appropriate rate of pay. Deputies asked to report early to their regular shift, or to stay after their regular shift, do not receive call-in pay. Deputies required to make court appearances on behalf of the Sheriff or the County on their off-duty time will also be paid for all hours worked, but not less than three (3) hours minimum call-in-pay at the appropriate rate.

Article 22 - Training

The union proposes two changes to Article 22 which would affect overtime calculation based on training hours. The language in the parties' predecessor agreement provides that anyone participating in work related training shall receive his regular rate of pay while in the training class and these training hours are to be counted as hours worked but are not to count as overtime. The union proposes language which would count training hours as worked "in the calculation of the appropriate rate of pay for purposes of Article 20 of this Agreement."

The second change proposed by the union for Article 22 would count travel time as time worked for the purpose of calculating the appropriate rate of pay under Article 20 of the parties' successor agreement. Under the parties' predecessor agreement travel time did not count as time worked and the predecessor agreement provided that while in training a deputy would only be paid for a forty-hour week.

The third change proposed by the union for Article 22 proposes the following language:

The Sheriff will provide each Deputy with forty (40) hours of Law Enforcement Training outside of the required State of Ohio & OPOTA requirements per year during the term of this Agreement.

The employer opposes the changes proposed by the union for Article 22, urging that the language of the parties' predecessor agreement be retained for the parties' successor agreement and that the calculation of appropriate pay in reference to training be guided by the directions provided by the Sixth Circuit Court of Appeals in Farmer v. Ottawa County, 2000 U.S. App. LEXIS 7224 (6th Cir. 2000).

The fact-finder recommends the retention of language within Article 22 of the parties' predecessor agreement for the parties' successor agreement. The fact-finder is not persuaded to order the extra training proposed by the union as a matter of contractual obligation between the parties, and the inclusion of travel time and training time in the calculation of overtime thresholds presents a significant change in the costs of providing training to bargaining unit members. The parties' predecessor agreement provides for thirty cents per mile in compensation for use of a personal vehicle which is within the range of mileage compensation provided by the state of Ohio and the federal government, and the fact-finder prefers to recommend a continuation of the provisions within Article 22 rather than order the significant changes proposed by the union.

Article 22 - TRAINING

Anyone taking any work related training shall receive his regular rate of pay while in the training class. This will count as hours worked but will not count as overtime.

All training shall be approved by the Sheriff. The Sheriff will pay all costs of the training course, and mileage at 30 cents per mile if the Deputy drives his personal vehicle to and from class. If more than one Deputy is going to the same class, every effort shall be made to car pool so that only one Deputy will be paid mileage. However, in the event that this is not geographically feasible, this requirement may be waived upon prior approval of the Sheriff in writing.

Travel time will not count as time worked, and while in training the Deputy will only be paid for a forty (40) hour week.

A Deputy may waive any or all above provisions in accordance with law.

Deputies attending training at the request of the Sheriff which results in a loss of all or a portion of their scheduled days off shall be given an amount of time off equal to the portion lost. This time off may be given either prior to or immediately following the training.

Article 23 - Paid Leaves

The parties agreed to change the word "watch" to the word "shift" within section 5 of Article 23 and the fact-finder recommends this change.

The union proposes a change to section A(8) of Article 23, increasing from one-fourth to one-half the accumulated sick leave for which payment will be made to deputies who separate from the employ of the employer who have at least ten years of service with the employer.

The union proposes new language for section A(10) of Article 23 which would create two possibilities among bargaining unit members, based on their sick leave accrual at the end of each calendar year. Those bargaining unit members with less than 400 hours of sick leave accrual in their "bank" would not receive payment for unused sick leave; those bargaining unit members at the end of the calendar year with 400 hours or more of accrued sick leave could elect to be paid for up to 160 hours of the accrued sick leave.

The employer opposes the changes proposed by the union for sections A(8) and (A)(10) which would change sick leave cash-out procedures expressed in the parties' predecessor agreement.

Both parties agreed to change the word "light" to "transitional" within section D(3) of Article 23 and this change is recommended by the fact-finder.

The fact-finder does not recommend the changes to sick leave cash-out amounts and procedures proposed by the union because they present potential increased costs to the employer which at this point are difficult to quantify. The fact-finder is unsure of the precise, potential, or inchoate costs which would result from the language proposed by the union for Article 23 and therefore the fact-finder is reluctant to include it in the fact-finder's recommendations.

Article 23 - PAID LEAVES

A. Sick Leave.

Sick Leave - Each Deputy shall earn 4.6 hours paid sick leave upon completing each 80 hours of regular service. No sick leave hours are accumulated for hours worked on overtime. Unused sick leave shall be accumulated without limit. Sick leave shall be used in good faith. A violation of this article is subject to Article VI of this agreement (Corrective Action).

1. A Deputy who transfers from one county office to another or who transferred or is hired from another public employer in Ohio to county employment within ten (10) years of service, shall be credited with the unused balance of his sick leave accumulated in his prior service. The Deputy is responsible for obtaining certification of his previously accumulated sick leave.

2. Deputies may use sick leave for absence due to personal illness, pregnancy, injury, exposure to contagious disease which could be communicated to other Deputies, and for absence due to illness, injury or death in the Deputy's immediate family.

3. Abuse or patterned use of sick leave may be grounds for disciplinary action.

4. "Immediate family" for purposes of this policy include: grandparents, grandparents-in-law, brothers, sisters, brothers-in-law, sisters-in-law, sons-in-law, daughters-in-law, parents, father-in-law, mother-in-law, spouse, children, grandchildren, and legal guardian or other persons who stand in the place of a parent to the Deputy.

5. A Deputy who is absent due to one of the above reasons must report his absence to the Sheriff's Office before his shift begins or prior to reporting off sick while on duty.

6. When sick leave is used it shall be deducted from the Deputy's sick leave credit on the basis of one hour of sick leave for every hour of absence from previously scheduled work.

7. Upon death of a Deputy, unused accumulated sick leave shall be paid to his spouse, children or parents, if any, in that order, or to his estate. Payment for accumulated sick leave at the time of death shall be based on the Deputy's regular rate of pay at the time of his death, with one such hour of pay for every three (3) hours of accumulated sick leave.

8. Upon separation from employment, the Sheriff will pay Deputies who have ten (10) years of service with the department one-fourth (1/4) of their accumulated sick leave.

9. If a Deputy's illness or disability continues beyond the time covered by his earned sick leave, he may request an unpaid disability leave or other unpaid leave of absence. Deputies may also use earned vacation time or compensatory time after exhausting sick leave, but before applying for an unpaid leave.

B. Funeral Leave.

A Deputy may be absent with pay for up to three (3) consecutive work days to attend the funeral of an immediate family member (as defined in (A)(4) above) within the State of Ohio. In the event that the Deputy must travel outside the State of Ohio to attend the funeral of an immediate family member, a Deputy may be absent with pay for up to five (5) consecutive work days. It is specifically agreed that funeral leave will be deducted from sick leave; however, any sick leave utilized pursuant to this Section will not be used against the employee in the disciplinary process.

C. Jury Duty Leave.

1. Deputies may be excused from work for jury duty.

2. Deputies called to and reporting for panel and/or jury duty during their scheduled work day shall be compensated by the Sheriff at the regular rate of pay for the normal workday. Time on jury duty is not hours worked to compute overtime. The Deputy must give his immediate supervisor prior notice and proof of his jury duty call, and pay his jury fee to the County Treasurer in order to receive his regular pay.

D. Injury Leave.

All full-time Deputies shall be entitled to time off without wage deduction from their salary, except that any Workers' Compensation weekly salary benefits which he/she may be awarded by the Ohio Industrial Commission (OIC) will be deducted for a period not to exceed 90 consecutive working days for Deputies working a forty (40) hour work week. This leave shall be used to recover from a medically verified disabling condition which prevents Deputies from performing their normally assigned duties. An "injury" includes one or more physical impairments resulting from the same accident. The Sheriff agrees that he will not require any members to exhaust sick leave prior to receiving injury leave. Deputies will continue to receive insurance benefits while on injury leave. They shall continue to accrue seniority, sick leave, and vacation time credit. As a condition of this benefit, the Deputy must pursue a Workers' Compensation claim for the injury.

The following procedures must be followed to receive injury leave:

(1) Injury leave only applies to personal injury of a Deputy occurring in the line of duty. The Deputy shall complete an accident/injury investigation form and in conjunction with the Sheriff (or his designee) shall report such injury to the Sheriff immediately and insure that a claim is filed with the OIC. Documentation will include, but is not limited to, a statement from the Deputy's physician, an agreement covering Compensation Reimbursement, any necessary OIC forms and other documents as may be required by the Sheriff.

(2) In all cases where a Deputy needs more than ninety (90) consecutive working days, the Sheriff will extend such leave by an additional ninety (90) consecutive working days, if determined by him to be necessary. Each Deputy requesting such an extension under this policy may be required to furnish a current affidavit from the licensed physician setting forth the need for the extension. Any decision rendered by the Sheriff regarding extension under this policy may be appealed through the Grievance/Arbitration Procedure.

(3) The Sheriff will attempt to provide transitional duty work for Deputies who have received an injury on or off duty.

Article 24 - Vacations

The employer proposes that the vacation provided for in the parties' predecessor agreement be retained in the parties' successor agreement.

The union proposes substantial changes to the years of service required for differing amounts of vacation accrual, speeding up vacation accrual in comparison to the rates of vacation accrual specified in the parties' predecessor agreement.

The union also proposes language which would make vacation leave, once granted, immune from cancellation by the employer; make it the responsibility of the Sheriff's designee to fill any staffing shortage created by the granting of vacation; limit to the time of the request all decisions as to approval or denial of vacation based upon staffing levels; and convert any hours of vacation leave carried over to compensatory time for utilization under Article 20 of the parties' successor agreement.

The union's proposal would have two weeks of vacation per year for those bargaining unit members with less than five years of service; three weeks of annual vacation accrual for those with five to ten years of service; four weeks for ten years but less than fifteen years of service; five weeks for fifteen years but less than twenty years of service; and with those with more than twenty years of service, six weeks of annual vacation accrual. The language of the parties' predecessor agreement provides for two weeks of vacation per year for less than eight years of service; three weeks of vacation per year for eight to fifteen years of

service; four weeks of vacation per year for fifteen years but less than twenty-five years of service; and five weeks of vacation per year for those with twenty-five years of service or more.

The fact-finder proposes a change to the vacation accrual rates in Article 24 within the parties' successor agreement, to be applied in increments of seven years. The fact-finder recommends that less than eight years of service accrue two weeks of annual vacation leave, an amount which is common in the public sector. The fact-finder suggests that for eight years but less than fifteen years of service, three weeks of annual vacation be accrued; for fifteen years but less than twenty-two years, four weeks of annual vacation accrual; and those with twenty-two years of service or more accrue five weeks of vacation per year. The fact-finder believes that employees who have provided more than twenty-two years of service to the employer merit the extra (fifth) week of annual vacation, commencing at the twenty-two year level. This is an acceleration of vacation accrual but one which is weighted to twenty-two years of service or more, a change which rewards lengthy service to the employer.

The fact-finder does not recommend the non-cancellation policy proposed by the union, nor the time period restriction proposed for section E, nor the conversion of vacation carry-over proposed for section G. Vacation is a benefit which is either used or compensated through payment. The fact-finder sees no need for a conversion to compensatory time of what is a pure credit to the benefit of a bargaining unit member. The fact-finder is also

reluctant to impose new limitations upon the employer in granting and scheduling vacations amidst the concomitant obligation of maintaining adequate and appropriate staffing levels. The language of the parties' predecessor agreement in section C provides that vacation leave, once granted, will not be cancelled by the employer except in cases of emergency. This language appears to provide as great a guarantee as can be expected from the employer while the employer carries out its obligations to the public.

The fact-finder recommends an acceleration of vacation leave for the bargaining unit among more senior members but recommends the retention of the remainder of the language within Article 24 in the parties' predecessor agreement.

Article 24 - VACATIONS

A. A full-time Deputy (after completion of one full year of service) shall have earned eighty (80) hours of vacation leave with full pay. Thereafter, a full-time Deputy shall earn and accrue vacation leave pro rata over 26 bi-weekly pays at the following annual rates:

1 but less than 8 years service.....	2 weeks
8 but less than 15 years service.....	3 weeks
15 but less than 22 years service.....	4 weeks
22 and over years of service.....	5 weeks

B. Service with the State of Ohio or any of its political subdivisions counts toward the number of years in service in determining the amount of vacation to which a Deputy is entitled. Time spent on authorized leaves of absence (including military leave) also counts. No vacation is earned while a Deputy is on layoff or unpaid leave.

C. Vacation schedules shall be mutually arranged and recommended by each supervisor of the shift or supervisor of the division, subject to the Sheriff's approval. In the event that two Deputies submit a vacation request on the same day which presents a conflict because each Deputy's request includes days off in common, then the senior Deputy shall be given first choice. Otherwise, vacation requests will be granted based on which request was made first. Vacation time cannot be taken for less than one day increments. The supervisor of the shift and supervisor of the division may grant more than one vacation request, subject to the Sheriff's approval. Once vacation leave is granted, it will not be cancelled by the employer except in cases of emergency.

D. A Deputy may request any amount of vacation leave not more than ninety (90) days in advance, nor less than three (3) days in advance. Any Deputy who informs the Employer in writing at the time of the vacation request that he requires notice by a time certain of the approval or denial of his vacation request, will be given said notice as soon as reasonably practicable. The time restrictions herein may be waived by mutual agreement of the parties.

E. Deputies are entitled to payment for any earned unused vacation to their credit at the time they are separated from the Sheriff's Department, at their hourly rate of pay.

F. In the case of a Deputy's death, earned but unused vacation leave shall be paid to his spouse, children or parents, in that order, or to his estate, at his then hourly rate of pay.

G. A Deputy may indefinitely carry over earned vacation leave up to five hundred hours with the annual approval of the Sheriff. Such approval must be obtained prior to the Deputy's anniversary date.

Article 25 - Education

The employer proposes the elimination of language within the parties' predecessor agreement within Article 25 pertaining to education reimbursement, proposing that the bargaining unit use Delaware County's tuition/education policy.

The union proposes retention of the language in the parties' predecessor agreement.

The fact-finder recommends a retention of the language of Article 25 in the parties' predecessor agreement for the parties' successor agreement. The retention of this language includes section 6 which provides that the parties incorporate by reference the Delaware County Educational Reimbursement Policy as if it were fully set forth therein. This appears to be the very policy which the employer proposes to use in the fulfillment of the obligations of Article 25, and therefore the fact-finder finds that the retention of the language of the predecessor agreement comports with the wishes of both parties.

Article 25 - EDUCATION

1. A Deputy shall be paid a lump sum salary payment of \$250.00 for an Associate Degree or for completion of half of a Bachelor's Degree (with the full Bachelor's Degree to be completed within the next five (5) years).

2. A Deputy shall be paid another lump sum salary payment of \$250 after completing a Bachelor's Degree.

3. In order to qualify, the Associate or Bachelor's Degree can only be in law enforcement or the criminal justice field.

4. The stipend is to be paid annually in a lump sum in the first pay in December.

5. An employee shall not be entitled to this educational stipend during his initial probationary year.

6. The parties incorporate the Delaware County Educational reimbursement policy as if it were fully set forth herein.

Article 27 - Health Insurance

The language of Article 27 in the parties' predecessor agreement obligates the employer to maintain a group health benefits plan for the bargaining unit, with the plan and its benefits equal to or better than the plan in effect for the employees of the county generally (management and non-management employees alike). Under the language of the parties' predecessor agreement, the employer may implement reasonable changes to the health benefits plan so long as the changes are implemented for county employees generally and so long as the employer continues to fund the plan with at least its immediately preceding monthly contribution to the costs of health benefits. The employer's implemented plan must be reasonable, and the union or employees may file a grievance to challenge the employer's compliance with this Article, including the reasonableness standard. This language in the predecessor agreement obligates the employer to meet and confer with representatives of the union before implementing any changes.

The employer proposes that the language of the predecessor agreement in Article 27 be retained in the parties' successor agreement.

The union proposes the employer provide and pay for term life insurance in an amount of \$25,000 for each employee in the bargaining unit. The union proposes that the employer provide fully paid dental insurance with benefits which include at least two cleanings per year, x-rays, and fluoride treatment for the employee, the employee's spouse, and the employee's children. The

union notes that the cost of term life insurance would, on average, be \$5.50 per month per bargaining unit member. The union estimates the dental plan it proposes would cost the employer \$55.52 per month per bargaining unit member for family coverage.

The employer points out that it offers life insurance on a voluntary basis to bargaining unit members, but notes that age, smoking, and other factors affect risks and therefore the rates for term life insurance. The employer noted its attempts to secure an affordable dental plan, but does not agree to the proposal of the union.

The fact-finder finds no co-payment language within the predecessor agreement nor in the language proposed by the union. It appears that health insurance under this Article is a benefit shouldered solely by the employer, as would the dental plan proposed by the union. While the fact-finder favors the kind of dental treatment proposed by the union under its proposal, the fact-finder is not prepared to place this increased burden upon the employer in addition to the 100% premium payments for the provision of health insurance now paid by the employer.

The fact-finder does recommend the provision and payment for term life insurance in the amount proposed by the union, \$25,000, for each employee in the bargaining unit. At an average cost of \$5.50 per month, the cost of providing term life insurance to bargaining unit members would be less than \$100.00 per member per year, and would provide some financial assistance in the event a bargaining unit member should die in the employ of the Delaware

County Sheriff's Office. Term life insurance is a benefit often found in collective bargaining agreements between parties responsible for public safety, and the expense of this new benefit compared to the relief it could provide to a grieving family seems a cost/benefit ratio which can be afforded by the employer and which would be of great benefit to a bargaining unit member's family suffering the death of a loved one and breadwinner.

Article 27 - HEALTH INSURANCE

1. The Employer shall maintain a group health benefits plan for the bargaining unit. The plan and its benefits shall be equal to or better than the plan in effect for the employees of the County generally (management and non-management employees alike).

2. The Employer may implement reasonable changes in the health benefits plan so long as the changes are implemented for county employees generally and so long as the Employer continues to fund the plan with at least its immediately preceding monthly contribution to the cost of health benefits. The Employer's implemented plan must be reasonable, the Union or employees may file a grievance to challenge the Employer's compliance with this Article, including the reasonableness standard.

3. The Employer will provide and pay for term life insurance in an amount of \$25,000 for each employee in the bargaining unit.

4. The Employer shall meet and confer with representatives of the Union before implementing any changes.

Article 28 - Wages and Pay Steps

The parties each propose a wage increase for the bargaining unit, with the employer proposing a three percent per year across the board wage increase and the union proposing ten to fourteen percent wage increase in the first year, a five percent across the

board wage increase in years two and three of the successor agreement, an increase for Corporals' pay, the institution of longevity pay, and additional compensation for bargaining unit members who serve in the role of Training Officer.

In support of its more substantial wage package proposal, the union presented to the fact-finder data from counties with square mileage comparable to the square mileage of Delaware County, and counties with comparable per capita incomes.

Union Exhibit 6 presents an Ohio County profile of Delaware County prepared by the Ohio Department of Development's Office of Strategic Research. This profile locates Delaware County in the central portion of the state of Ohio, with a 2000 population of 109,989; a land area of 442.5 square miles; and the county seat being the city of Delaware. Average weekly earnings for all industrial groups in Delaware County are reported as \$635.98. This profile reports that Delaware County is the fastest growing county in the state of Ohio and has increased in population by 64.3% since the 1990 census. The city of Delaware is reported to have a 2000 census of 25,243.

The union presented Union Exhibit 7, a listing of ten counties, including Delaware County, showing 2001 top wage rates for deputies in each county and the population of each county. These counties include Montgomery, Franklin, Lake, Hamilton, Greene, Geauga, Clermont, Clark, Delaware, and Ashtabula Counties. Populations among these counties range from 1,068,978 (Franklin County) to 90,895 (Gauga County). Delaware County, with a

population of 109,989, presents the third lowest population among these counties. The lowest population, Geauga County, has a top wage rate of \$43,389. Delaware County's top wage rate is \$42,307. Delaware County's top wage rate ranks ninth on this listing of ten counties, with only Ashtabula County offering less, at \$42,268. The average top wage rate for these ten counties is \$44,441.60, with Delaware County five percent below this average at \$42,307. The union points out that while Delaware County ranks ninth on the listing of ten counties on Union Exhibit 7 in terms of top wage rate for deputies, Delaware County enjoys the highest per capita income of any county in Ohio.

The union compares Delaware County to Marion County in terms of wages and longevity pay. An Ohio County profile for Marion County appears within Union Exhibit 6, reporting a 2000 population of 66,217, and a land area of 403.9 square miles. Average weekly earnings for all industrial groups in Marion County are reported as \$537.69. The county seat of Marion County, the city of Marion, reports a 2000 census of 37,523. Marion County is ranked fifty-sixth in unemployment among Ohio's eighty-eight counties. Marion County is located in the central part of the state of Ohio.

Union Exhibit 8 compares the wages and longevity pay paid to Marion County deputy sheriffs from date of hire through twenty-five years of service, to the wages and longevity pay paid to Delaware County deputy sheriffs, from hire through twenty-five years of service. The union notes that the pay for Delaware County deputy sheriffs is slightly above the pay for Marion County deputy

sheriffs up to fifteen years of service, but at fifteen years through twenty-five years of service the Delaware County pay for deputy sheriffs falls below that paid to Marion County deputy sheriffs. Union Exhibit 8 shows that in the first year, Marion County pays \$30,492.80, while Delaware County pays \$31,096.00; but by year fifteen, a Marion County deputy sheriff makes \$40,601.60 per year, while a Delaware County deputy sheriff is paid only \$36,836.80 per year. According to this exhibit, for years one through five, Marion County deputy sheriffs would earn \$177,902.40, while Delaware County deputy sheriffs would earn \$171,620.80.

The union presented Union Exhibit 9, comprised of two pages from the collective bargaining agreement between the Marion County Sheriff and the Marion County Board of County Commissioners, and the Fraternal Order of Police, Ohio Labor Council, Inc., an agreement in effect through June 30, 2002. Section 23.2 of this agreement provides for longevity pay beginning at the fifth year and increasing in the tenth year, the fifteenth year, and the twentieth year. Included within Union Exhibit 9 is attachment A, presenting wages for deputy sheriffs for 2000, 2001, and 2002, from new hire through six years.

Union Exhibit 10 is a copy of the Delaware County Sheriff's website, and at page four the union notes that the following appears: "Delaware County has become for all the practical purposes, a part of the metropolitan Columbus area. As more and more people relocate here in search of the suburban lifestyle, crime follows. This is a fact..."

Union Exhibit 11 is a comparison of municipal police departments for the cities of Columbus, Delaware, Dublin, and Westerville. This exhibit presents entry and top wages and shows that entry wages for Delaware County Deputy Sheriffs are 17% below the average of these cities' entry wages, and 22.5% below the average top wage rate among these cities.

Union Exhibit 12 is a wage comparison for municipal police departments in the cities of Bexley, Columbus, Delaware, Dublin, Gahanna, Grandview Heights, Grove City, Hilliard, Reynoldsburg, Upper Arlington, Westerville, Arlington, Whitehall, and Worthington. Compared to the average entry wage level and average top wage level paid among these municipalities, Delaware County Sheriffs are paid 7.5% below the average entry wage level and 23.4% below the average top wage level.

Union Exhibit 13 is comprised of pages from the collective bargaining agreement between the Geauga County Sheriff's Office and the Ohio Patrolmen's Benevolent Association, in effect through December 31, 2003. The Union notes that the wage scale is similar to that of Delaware County but the agreement with the Geauga County Sheriff's Office also includes a longevity schedule similar to that which is proposed by the union for the parties' successor agreement.

Union Exhibit 14 presents the top wages for Delaware County Deputy Sheriffs paid in January 1, 1991 and paid in December 31, 2001, showing that the top wage went from \$12.29 to \$20.34, a 66% increase over these ten years, an average increase per year of 6.6%.

Union Exhibit 15 is a benchmark report from SERB's Clearinghouse showing entry level and top level pay among eleven county sheriffs' offices; Union Exhibit 16 is a benchmark report from SERB's Clearinghouse for thirteen municipal police departments; Union Exhibit 17 presents the top wage for deputy sheriff and top wage for corporal in thirteen counties, showing the difference between top pay for deputy sheriffs and top pay for corporals, on average, to be 8.6%. The union notes that the difference between the top wage for deputy sheriffs and the top wage for corporals in Delaware County is 2.9%.

Union Exhibit 18 is a State Employment Relations Board benchmark report from its Clearinghouse showing twenty-one county sheriffs' offices and what each paid its corporals at both entry and top levels. Among these twenty-one county sheriffs' offices the average entry level corporal pay is \$33,600.14; the average top level corporal pay is \$35,646.81.

Union Exhibit 19 is a State Employment Relations Board Clearinghouse benchmark report issued October 10, 2000, presenting average entry and top pay levels for deputy sheriffs among sixty-two Ohio County Sheriffs' Offices. The average entry pay is \$26,434; the average top pay is \$33,669.71.

Union Exhibit 20 compares the differences in wages between deputy sheriff, corporal, and road sergeant. The difference between a deputy sheriff's 2001 hourly wages and a corporal's is 3.0%, and from the level of road sergeant is 10.3%.

Union Exhibit 21 presents figures related to the compensation paid to the Delaware County Sheriff and to the Delaware County Sheriff's Chief Deputy.

Union Exhibit 22 is a listing of eighty-eight Ohio Counties and their respective estimated taxable sales by county for calendar years 1987 through 2000, revised in November, 2001, based on monthly permissive and use tax collections. This exhibit shows, for 1987, for Delaware County, a figure for estimated taxable sales of \$264,272,100, but by the year 2000, was reporting a figure of \$1,477,712,143, showing an increase by the year 2000 of \$1,213,440,043, an increase of 459%. As a comparison, Marion County's estimated taxable sales in 1987 are reported as \$305,836,600, and by 2000 the number is \$599,181,754, an increase of \$293,345,154, an increase of 91%. Franklin County went from \$7,367,573,000 in 1987, to \$16,367,050,396, an increase of \$8,752,643,673, an increase of 118%. Thus, Union Exhibit 22 shows an increase in economic activity from 1987 to 2000 in Marion County presenting a 91% increase, an increase in economic activity in Franklin County amounting to 118%, and an increase in economic activity in Delaware County amounting to 459%.

Union Exhibit 23 is a two-page exhibit presenting a map of Ohio's counties and the total state and local sales tax rates by

county, effective February 8, 2002, showing Delaware with a total state and local sales tax rate of 6.25%, a rate found in nine other counties. Fifty-two of Ohio's eighty-eight counties have a total rate of 6% or less. Of the 6.25% total state and local rate taxation in Delaware County, 1.25% (twenty percent) of this amount is a county tax rate.

Union Exhibit 24 is the comprehensive annual financial report of Delaware County, Ohio for the year ending December 31, 1999, issued by David A. Yost, Delaware County auditor. Union Exhibit 25 presents a similar report for the year ending December 31, 1998. These reports show an increase in revenues from 1997, when total revenues were reported as \$45,659,842, to \$51,895,793 in 1998, and to \$60,863,101 in 1999.

Union Exhibit 26 is a letter dated June 20, 2001, from the Auditor of Delaware County to the citizens of Delaware County, Ohio. This multi-page letter from the Delaware County Auditor presents the County's comprehensive Annual Financial Report for the year ending December 31, 2000.

Union Exhibit 27 is a certificate of the Delaware County Auditor certifying the total appropriations from each Delaware County fund and reporting that all outstanding appropriations do not exceed the First Amended Estimate of Resources for the fiscal year beginning January 1, 1998 as determined by the budget commission of said county. This First Amended Certificate shows a cash balance, as of December 31, 1997, of \$3,064,397.83, and an unencumbered cash balance on that date of \$2,744,468.97.

Union Exhibit 28 is the First Amended Official Estimate of Resources for the fiscal year beginning January 1, 1999, showing an unencumbered cash balance, as of December 31, 1998, to be \$2,471,243.47.

Union Exhibit 29 is the First Amended Official Estimate of Resources for the fiscal year beginning January 1, 2000, and reports an unencumbered cash balance of \$4,934,830.50.

Union Exhibit 30 is the First Amended Official Estimate of Resources for the fiscal year beginning January 1, 2001, reporting an unencumbered cash balance, effective December 31, 2000, of \$7,823,635.20.

Union Exhibit 31 is a Second Amended Official Estimate of Resources for the fiscal year beginning January 1, 2001, and it presents an unencumbered cash balance, as of December 31, 2001, of \$8,428,822.36.

Union Exhibits 32 and 33 are newspaper articles from The Columbus Dispatch, dated January 16, 2002, and from the Delaware Gazette, dated December 8, 2001, respectively. The Delaware Gazette article, entitled "County Spending Up 6.5% Next Year," refers to a 19% budget increase for the Delaware County Sheriff's Office, meaning the Sheriff's budget would reach 7.8 million dollars for the coming fiscal year. The January 16, 2002 Columbus Dispatch article presents information concerning the revenues received by Delaware County, referring to 1.9 million dollars in sales tax collected during November, 2001, the first full month the Polaris Fashion Place Mall was open for business, a 22% increase over the

1.6 million dollars collected in November, 2000. This article refers to the Board of County Commissioners' President contemplating proposing a tax cut of 0.25% because of the increased revenues.

Union Exhibit 34 is an article from The Columbus Dispatch newspaper dated February 6, 2002, reporting that central Ohio's hourly wages are up, on average, 7.6%. This article reports that the metropolitan areas of Delaware, Fairfield, Franklin, Licking, Madison, and Pickaway Counties had the lowest unemployment of any metropolitan areas in the state last year, which helped drive up wages as businesses competed for workers, this according to economists.

In response to the union's wage proposal, the employer presents Employer Exhibit 1, a February 25, 2002 benchmark report from the State Employment Relations Board's Clearinghouse for all Ohio counties. The Delaware County Sheriff reports \$29,598.00 as an entry wage level, with a top wage level of \$40,290.00 for deputies. This report shows four steps in five years for Delaware County Deputy Sheriffs. The average entry level among seventy-four Ohio Sheriff employers is \$27,145.43, and an average top wage level is \$34,798.69.

Employer Exhibit 2 is a schedule of deputy pay from 1993 through January 1, 2001, providing new hire, one year, three-year, and five-year steps for deputies, effective January 1, 1993; January 1, 1994; January 1, 1995; January 1, 1996; January 1, 1997; January 1, 1998; January 1, 1999; January 1, 2000; September 16,

2000; and January 1, 2001. This chart shows that over the eight years described, deputy pay for new hires went from \$7.45 to \$14.95; the one year step went from \$8.32 to \$16.07; the third year step went from \$8.32 to \$17.71; and the fifth year step went from \$8.32 to \$20.34.

Employer Exhibit 3 presents the increases in wages over the eight years from January 1, 1993 through January 1, 2001. Pay rates for bargaining unit members increased, for new hires, from 1993 to 2001, by 200.7%; for one to three year employees, by 193%; for three to five year employees, by 212.8%; and for those employees with five years or more of service, the pay from January 1, 1993 to January 1, 2001 increased by 244.5%.

Employer Exhibit 3 reflects that on January 1, 1999, entry level wage rates were increased by 4%, while one year, three year, and five year or more employees received wage increases of 11%. Wage increases for January 1, 2000 were 3% across the board; on September 16, 2000, wages of bargaining unit members were increased by 5% across the board; effective January 1, 2001, an additional 3% was paid across the board. Entry level pay on January 1, 1993 was \$7.45, and by January 1, 2001, new hire pay was \$14.95. One year pay moved from 1993 to 2001 from \$8.32 to \$16.07; three year pay moved from \$8.32 in 1993 to \$17.71 in 2001; and for those employees with five years or more of service, the pay went from \$8.32 in 1993 to \$20.34 in 2001. The most substantial wage increases occurred on January 1, 1994 when increases of 34%, 26%, 26%, and 58% occurred for new hires, one year, three year, and five year employees,

respectively. Effective January 1, 1996, bargaining unit member wages increased by 10.7%, 13.4%, 25%, and 14.5%, among new hires, one year, three year, and five year employees, respectively. One year, three years, and five or more year employees received 11% wage increases effective January 1, 1999.

Employer Exhibit 4, two multi-colored bar graphs, presents the increase of deputy pay for new hires, one year, three year, and five year employees, from January 1, 1993 through January 1, 2001. Page two of Employer Exhibit 4 is a multi-colored bar graph showing increases of deputy pay, by step, since January 1, 1993. These bar graphs present through a visual medium the statistics as to deputy pay rates from 1993 through 2001 presented in Employer Exhibits 2 and 3.

Employer Exhibit 5 presents thirteen Ohio counties, namely Madison, Miami, Muskingum, Clark, Fulton, Guernsey, Hocking, Huron, Montgomery, Putnam, Ross, Shelby, and Stark Counties, presenting wage increases agreed for 2001, 2002, 2003, and/or 2004. The highest increases are found in Madison County, 5% effective January 1, 2002 and 5% effective January 1, 2003, and the lowest increase, 3%, is found in Hocking, Ross, Shelby, Guernsey, Putnam, Montgomery, and Stark Counties, with Montgomery and Stark Counties offering slightly higher increases among the three years of their contracts between January 1, 2001 and January 1, 2004. The average among the increases presented by these thirteen counties within Employer Exhibit 5 is 3.5%.

The employer acknowledges that pay rates within the bargaining unit were well under state averages in 1993, but by 2002 these pay numbers are up. The employer stresses that Delaware County has a smaller population in comparison to most other Ohio counties.

The employer notes that Clark County's pay increases were 3.5% and 3.5%, and involved no longevity pay.

The employer proposes a 3% across the board increase; the union proposes increases of 10.4%, 10.5%, 14%, and 10.5% for new hires, one year, three year, and five or more year employees, respectively, with 5% increases across the board for the second and third years of the parties' successor agreement. The union proposes a separate longevity schedule for inclusion in the wages article and proposes that corporals receive pay that is 5.25% higher than the top wages paid to non-corporal bargaining unit members.

In analyzing the wage proposals from the parties, the fact-finder keeps in mind the employer's ability to pay the recommended wage and benefit increases and also keeps in mind the bargaining unit members' desire to be paid at a level commensurate with those performing similar work under similar economic and demographic circumstances.

As to ability to fund wage and benefit increases, the fact-finder acknowledges that the increases proposed by the union are substantial, especially in the first year of the parties' successor agreement, and include, in addition, a separate longevity schedule which does not appear in the parties' predecessor agreement. The union's wage and benefit proposal is increased by the additional

number of steps proposed by the union. The fact-finder keeps in mind the additional benefits already recommended in this report, including a \$25,000 term life insurance policy for each bargaining unit member, the retention of no copayment required of bargaining unit members for health insurance coverage, a benefit which is likely to increase substantially in cost in the near future, and also keeps in mind that with the recommendation of a fair-share fee, if accepted, this new language would increase the funds available for administration of the bargaining unit, lessening financial pressures upon bargaining unit members in that area.

The fact-finder also keeps in mind that Delaware County enjoys population and economic growth that is unmatched by any other county in the state. Delaware County, with a population in 2000 of 109,989, enjoyed an increase in economic activity and county revenues amounting to 459% in the decade of the 1990s. With the recent addition of the Polaris Fashion Place Mall, and a population that continues to expand, the employer appears to be able to fund more than minimal wage increases. It also appears that with the economic and population growth enjoyed by Delaware County, less desirable changes also may occur, namely increases in crime and work required from the Delaware County Sheriff's Office, and thus an increase in the volume of work required among members of the bargaining unit.

The fact-finder recognizes that while the economic growth of Delaware County has been stunning during the 1990s, the pay of bargaining unit members by the employer after 1993 also presents

increases, by percentage, which are very impressive. Entry level pay from January, 1994 through January, 2001 increased by 201%; for one year employees the increase was 193%; for employees with three to five years of experience the increase amounted to 213%; and for those with five years of service or more, pay increased from January 1, 1993 through January 1, 2000 by 245%. The average yearly increase for employees with five or more years of service, from 1994 through 2001, is about 30% per year.

The fact-finder notes that bargaining unit members enjoyed three wage increases from January 1, 2000 through January 1, 2001. On January 1, 2000, bargaining unit members received a wage increase of 3%; on September 16, 2000, bargaining unit members received a 5% wage increase; and on January 1, 2001, the bargaining unit members received another 3% wage increase. The average wage increase for the 2000 calendar year for bargaining unit members was 4.2% (nine months at 3%, three months at 8.2%).

The fact-finder recommends a wage increase of 5%, 4%, and 4%, across the board, for the bargaining unit, to be effective January 1, 2002; January 1, 2003; and January 1, 2004; respectively. The 5% increase in the first year of the parties' successor agreement is based on the robust economic health of the county and the continuing popularity among citizens to reside in Delaware County. The fact-finder finds that the increases in population and economic activity have been helped in no small way by the quality of life available in the county, including factors of safety and security. The fact-finder finds that the members of the bargaining unit have

played a direct and substantial role in making Delaware County an attractive place to live, to work, and to do business. The success enjoyed by Delaware County in these areas, and the resulting increases in revenues which have arisen from increased population and economic activity, should be shared with all of those who have made it possible. The 5% wage increase recommended by the fact-finder for the first year of the parties' successor agreement would keep bargaining unit members around the middle of pay rates among similarly situated county employees.

The 4% across the board wage increases recommended by the fact-finder for calendar years 2003 and 2004, beginning January 1 of each year, is in acknowledgement that no one can predict how an economy as complex as that of Delaware County will perform in future years. The fact-finder makes no claim of foresight in this area and therefore believes a more conservative approach for future years is indicated. The 4% across the board wage increases recommended for 2003 and 2004 appear to the fact-finder to be affordable by the employer and are intended to maintain the salary level of the bargaining unit without counting on rosy economic times. The fact-finder believes these wage increases to be fair to the bargaining unit and to the employer.

The fact-finder recommends an increase in pay for Corporals as these positions are obligated in areas beyond those of non-Corporals within the bargaining unit. Corporals provide lead worker or functional supervisory oversight of bargaining unit members and appear to the fact-finder to deserve a 5% increase in wages above

the top pay provided for the wage step among employees with five years or more of service.

The fact-finder does not recommend the extra steps proposed by the union; the fact-finder prefers to recommend changes in the wages article within the structure and format presented in the parties' predecessor agreement.

The fact-finder does not recommend the separate longevity schedule proposed by the union, finding that the increases in pay from new hire to one year, from one year to three years, from three years to five years, and five years or more provide increased compensation to those bargaining unit members who have provided more years of service to the employer.

The fact-finder also does not recommend the on-call pay proposed by the union nor the language involving the assignment of a vehicle by the Sheriff. The fact-finder finds no similar language within the parties' predecessor agreement and is unsure about the necessity for these new provisions.

Article 28 - WAGES AND PAY STEPS

The Steps of the salary schedule are defined as follows:

1. Step (A) applies to new employees during their one-year probationary period.
2. Step (B) applies to employees after completion of the one-year probationary period.
3. Step (C) applies to employees after three years' continuous service as a deputy.

4. Step (D) applies to employees after five (5) years' continuous service.

The following wage schedule shall become effective on January 1, 2002:

(A)	(B)	(C)	(D)
\$15.70	\$16.87	\$18.60	\$21.36 per Hr.

The following wage schedule shall become effective on January 1, 2003:

(A)	(B)	(C)	(D)
\$16.33	\$17.54	\$19.34	\$22.21 per Hr.

The following wage schedule shall become effective on January 1, 2004:

(A)	(B)	(C)	(D)
\$16.98	\$18.24	\$20.11	\$23.10 per Hr.

Corporals shall be paid a rate of pay that is five percent (5%) greater than the rate of pay paid to Deputies at Step D.

Article 32 - Duration

The parties agree that the successor agreement shall be effective from January 1, 2002 through December 31, 2004.

Article 32 - DURATION

This Agreement shall become effective on January 1, 2002 and remain in effect through December 31, 2004.

New Article - Use of Special Deputies and/or Part-Time Deputies

The union proposes a new article for the parties' successor agreement which would address the use of special deputies and/or part-time deputies. The union explained to the fact-finder that this new language is intended to protect work within the bargaining

unit and to limit how the work of the bargaining unit is to be performed in terms of who may perform it.

The employer opposes this new article proposed by the union.

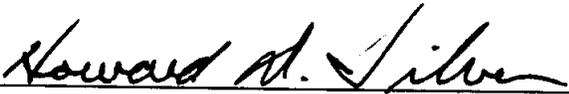
The fact-finder is unclear as to when or whether any problems have arisen in the areas addressed by the union's proposed new language or whether this is an anticipatory article intended to avoid potential problems in the future. The fact-finder is also unclear as to the effect of these limitations upon the discretion of the Sheriff and his ability to utilize resources appropriately, from within and without the bargaining unit. The fact-finder prefers to retain the status quo in the absence of more definitive evidence of the need for a substantial change in how part-time and special deputies are to be utilized by the employer. Accordingly, the fact-finder declines to recommend the new language proposed by the union for the use of special deputies and/or part-time deputies.

The fact-finding procedure in this case was conducted in accordance with Ohio Revised Code sections 4117.14(C)(4) and (C)(5), and Ohio Administrative Code rule 4117-9-05. In making the recommendations presented in this report, the fact-finder considered all reliable information relevant to the issues before the fact-finder; considered past collectively bargained agreements between the parties; compared 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 classifications involved; considered the interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustment on the normal standard of public service; considered the lawful authority of the public employer; considered any stipulations of the parties; and considered such other factors normally taken into consideration in the determination of the issues submitted to mutually agreed-upon settlement procedures in the public service or in private employment.

RECOMMENDATION

Based on the facts found in this proceeding, the fact-finder recommends that the language presented by the fact-finder in this report for those articles not agreed by the parties, along with all articles tentatively agreed by the parties, be included in the parties' successor collective bargaining agreement to be in effect from January 1, 2002 through December 31, 2004.


Howard D. Silver
Fact-Finder

April 22, 2002
Columbus, Ohio

CERTIFICATE OF FILING AND SERVICE

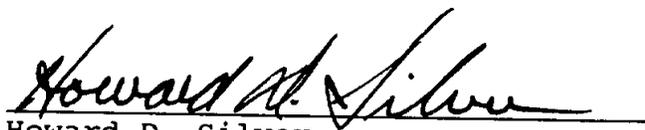
I hereby certify that duplicate originals of the foregoing Report and Recommendation of Fact-Finder in the Matter of Fact-Finding between the Delaware County Sheriff's Office and the Ohio Patrolmen's Benevolent Association, were filed with the State of Employment Relations Board and hand-delivered, this 22nd day of April, 2002, to the following:

Christopher C. Russell, Esquire
PORTER WRIGHT MORRIS & ARTHUR LLP
41 South High Street
Columbus, Ohio 43215-6194

Legal Counsel to Delaware County Sheriff
and

Joseph M. Hegedus, Esquire
Climaco, Lefkowitz, Peca, Wilcox &
Garofoli, Co., LPA
175 South Third Street-Suite 820
Columbus, Ohio 43215-5134

Legal Counsel to the Ohio Patrolmen's Benevolent
Association


Howard D. Silver
Fact-Finder

April 22, 2002
Columbus, Ohio