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STATE EMPLOYMENT RELATIONS BOARD
01-MED-12-1153

OHIO PATROLMEN'S)	FACT-FINDING REPORT
BENEVOLENT ASSOCIATION)	
(CORRECTION OFFICERS))	
)	
and)	STANLEY B. WIENER
)	FACT-FINDER
LAKE COUNTY SHERIFF)	JULY 12, 2002

A fact-finding hearing was held on May 22, 2002 at the Lake County Sheriff's Office, 104 East Erie, Painesville, Ohio 44077.

Representing the Ohio Patrolmen's Benevolent Association ("Union") was COLLEEN M. BONK, ATTORNEY. Appearing and testifying on behalf of the Union were ELISA SMITH, CHRISTOPHER CIMPERMAN, FRANK KURNOT, PAUL KIMBERLY AND ROBERT GUTHLEBEN; CORRECTION OFFICERS AND UNION DIRECTORS.

Representing the Lake County Sheriff, ("EMPLOYER") was TOM GRABARCZYK, CONSULTANT, Labor Relations Management, Inc. Appearing and testifying on behalf of the Employer were, LISA COLLING, Lake County Commissioners' Budget Director and WILLIAM CROSIER, Chief Deputy, Lake County Sheriff's Office.

I. PAST NEGOTIATIONS - MEDIATION

Commencing January 29, 2002, the parties met approximately five times. The last contract expired March 31, 2002. There are currently ninety-four members of this unit.

Mediation was attempted prior to the hearing, but to no avail.

II. ISSUES AT IMPASSE

- A. WAGES, INCLUDING SHIFT DIFFERENTIAL
- B. HOLIDAYS
- C. LONGEVITY
- D. BEREAVEMENT
- E. HOSPITALIZATION
- F. SPECIALIZED TRAINING AND SKILLS PAYMENT
- G. SICK LEAVE

- H. OVERTIME
- I. TERM OF AGREEMENT
- J. HOLIDAYS (Employer proposal)
- K. VACATION (Employer proposal)

III. POSITION, FINDINGS AND RECOMMENDATIONS

As a Fact-Finder I am required to take into consideration the factors set forth in Ohio Revised Code, Section 4117.14 (G)(7)(a) through (7)(f). I have done this for all of the issues discussed below. I wish to compliment both sides on their excellent presentation of the issues, and on the numerous exhibits which were extremely helpful.

A. WAGES – SHIFT DIFFERENTIAL

UNION: The Union requests a 5% increase in wages for each year of the Agreement; and a shift differential of Twenty-Five Cents per hour on the second shift and Fifty Cents per hour for work on the third shift.

Based upon the current “Amended Certificate of Estimated Resource” (2002) Lake County is in good financial condition.

As to the Sheriff’s department, money received for the housing of federal and out-of-county prisoners, and funds received from inmate telephone calls has increased dramatically, billings for the first four months of 2002 were \$809,500 as compared to \$570,000. for the first four months of 2001.

From 1993 to 2001 this jail has collected and given to the County general fund .15 Million Dollars for the rental of jail space and more than 1 Million Dollars from inmate phone service.

The Lake County jail became the first jail in Ohio to be re-certified as being in full compliance with all of the 313 minimum jail standards of Ohio. Correction officers from other jurisdictions come to Lake County to be trained. The Employer can afford the increase requested. Currently Lake County by average is behind the contiguous counties of Cuyahoga, Geauga, and Ashtabula

The second and third shifts historically have been hard on family relationships. The Employees deserve a premium for working those shifts.

EMPLOYER: Lake County is experiencing difficult economic times. Interest income budgeted for 2002 has decreased to 4 Million Dollars. In the year 2001 the actual interest income was in excess of 7 Million Dollars. There also will be a decrease in real property tax revenue. The budget director testified that there will be a further decrease in interest income for the current year.

In 2001 several million dollars were transferred from the health insurance stabilization fund. An additional 2.5 Million Dollars may be transferred in 2002. All money received from operating the jail goes into the general fund, not to the Sheriff.

In November 2001, the County Commissioners placed a hiring freeze on general fund agencies, and requested each elected officer to cut their 2002 budget by 8%.

The Sheriff's salary account was increased by \$157,692.00 (excluding dispatchers). This reflects three per cent for the period 4/01/02 through 12/31/02. This three per cent, however, includes PERS, Medicare costs, and all fringe increases.

According to SERB report, January 31, 2002 for counties with populations in excess of 80,000, Lake County with its proposed rate increase for 2002 would be 22.66% above the average entry level and 10.34% above the average top level. With respect to the local Northeast Ohio area, Lake County with its proposed rate increase would be 19.4% above the average entry level, and 2% above the average top level.

Employer proposes that the current wage scales be increased on a cents per hour basis of 2% of Step 5, or 33 cents added to each step and that wage schedules from the second and third years shall be increased on a cents per hour basis of 3% of Step 5.

• The Employer is opposed to any shift differential. Only a couple of counties have shift differentials. Also, shifts are rotated every 28 days.

FINDINGS: The current wages paid by the Employee compare favorably with comparable jurisdictions.

The interest income and real property tax income will decrease substantially from 2001 to 2002. I believe, however, that the Employer can meet the following increases for this award winning unit.

RECOMMENDATIONS: For the first year of the contract increase the current wage scale on a cents per hour basis of 3% of Step 5 or 50 cents to be added to each step. Effective March 30, 2003 increase the wage scale on a cents per hour basis of 3.25% of Step 5 or 56 cents per hour; and effective March 28, 2004 increase the wage scale on a cents per hour basis of 3.5% of Step 5 or 62 cents per hour.

See amended Section 4 of Article 17, together with amended Appendix B, attached hereto.

FINDING: I find that shift differentials are not shown for most comparable jurisdictions.

RECOMMENDATION: I would not provide for shift differentials.

“Section 4, Article 17

For all Employees employed in the classification of Corrections Officers effective upon ratification by the Sheriff and Board of County Commissioners, shall be compensated at the applicable rate established as set out in Appendix B.

Corrections Officers employed upon effective date, shall receive back pay which excludes overtime based on 50 cents x 40 x number of weeks to and including April 1, 2002.

Employees employed or transferred to this Unit after April 1st or on extended unpaid leaves during the period shall receive back pay in the same manner pro-rata to their respective date of hire, transfer, or working time provided they continue to be employed upon the effective date of wages.

Effective March 30, 2003 and March 28, 2004, rates of compensation shall be established and set out in Appendix B.”

APPENDIX B

LAKE COUNTY

NON-COMMISSIONED CORRECTIONS OFFICERS

EFFECTIVE UPON EXECUTION – 2002 (BACK PAY APRIL 1, 2002)

Start	- 14.74
1	- 15.22
2	- 15.70
3	- 16.18
4	- 16.66
5	- 17.14

RATE SCHEDULE EFFECTIVE MARCH 30, 2003

Start	- 15.30
1	- 15.78
2	- 16.26
3	- 16.74
4	- 17.22
5	- 17.70

RATE SCHEDULE EFFECTIVE MARCH 28, 2004

Start	- 15.92
1	- 16.40
2	- 16.88
3	- 17.36
4	- 17.84
5	- 18.32

B. HOLIDAYS

UNION: Requests that time-and one-half be paid for work on any of the ten contractually designated holidays. The Employees receive time-and one-half only for working on five of the holidays; Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

Comparable jurisdictions generally provide for the payment of over-time for each holiday worked.

EMPLOYER: All seven units under contract with the Sheriff have the same holiday provision. During negotiations for the last contract over-time payments for work on holidays was increased from three to five. Due to the cost and tight budget, the Employer is opposed.

FINDINGS: All units under contract with the Sheriff have the same holiday provision. Although some comparable jurisdictions do pay over-time for each holiday worked, I find that the money available can be put to better use.

RECOMMENDATIONS: I would not change Article 14.

C. LONGEVITY

UNION: Payment to begin at five years and pay each Employee \$100.00 for each year of service worked, up to twenty-one years. The Employer's schedule of longevity payments is not comparable to various jurisdictions in the area. Employees do not receive their first payment until their eighth year of service.

EMPLOYER: The Union proposal reflects an 113% number to the top step of the longevity schedule and a 68% increase at the first step now at eight years. The amount of longevity is comparable to neighboring jurisdictions.

FINDINGS: I find that most longevity schedules do start earlier, however, the amount is comparable except for a couple of counties whose wage rates are lower.

RECOMMENDATIONS: I would amend the longevity schedule as follows:

1. Effective April 2002, pay longevity in the sum of \$475.00 to Employees after seven years of service.
2. Effective April 1, 2003 add \$50.00 per year to all employees receiving longevity; and effective April 1, 2004 add an additional \$50.00 per year to all Employees receiving longevity.
3. The first paragraph of Section 1 of Article 16 remain; Section 2 should be eliminated, and Section 3 shall remain.

D. BEREAVEMENT DAYS

UNION: Increase the days granted for loss of an immediate family member to a total of five (5) days from the current three (3) days.

Three days is not sufficient in most instances. Comparable units have contracts that grant bereavement days with no deduction of accumulated paid sick leave.

EMPLOYER: The three day bereavement day is standard.

FINDINGS: Three days is fairly standard. However, unlike this contract, most units are granted bereavement pay without deduction from accumulated paid sick leave.

RECOMMENDATIONS: Amend the first sentence of Section 1, Article 18 to read as follows:

“In the event of the death in the immediate family, a Bargaining Unit employee will be granted a four (4) day leave of absence with pay to be charged against his accumulated paid sick leave, or without pay if no accumulated sick leave is available.”

E. HOSPITALIZATION INSURANCE

UNION: Requests that an employee's contribution shall not increase above those of the average State Employee as documented by SERB.

Employees contribute to the cost of insurance. According to the SERB report for the year 2000 the monthly contributions average \$23.49 for single coverage and \$66.68 for family coverage or 10.8% for single and 12.1% for family. At the present time the Union contribution is less than the average. However, it fears that during this next contract the Employees' contributions will rise and that the employees' contribution will exceed the average.

EMPLOYER: Lake County, for many years, has had a county-wide insurance plan covering approximately 1,047 Employees which, including dependants, covers over 2,000 people. To maintain a reasonable cost it is important that the County negotiate for as many as possible. Separate units requesting special terms would make such negotiations extremely difficult.

FINDINGS: Health insurance costs constitute a serious problem for all Employers, especially in the public sector. The health costs for Lake County have increased from \$3,140,000.00 in 1995 to \$8,550,000.00 for 2002. Yet the County Commissioners have managed to obtain excellent coverage at a reasonable price to the Employees. The Employees admitted that the current plans are fine.

RECOMMENDATIONS: I recommend no change in Article 22, (HOSPITALIZATION).

F. SPECIALIZED TRAINING AND SKILLS PAYMENT

UNION: (a) Increase the annual payment for Employees who have Bachelor of Arts or Bachelor of Science degrees from \$650.00 to \$800.00; and (b) provide an additional \$1.00 per hour for time spent in training a new employee.

An Employee with a Bachelors degree should be entitled to at least twice the payment of one with an Associate degree (\$400.00).

There is a specific training program. The officer doing the training works for three months on a one-to-one basis. This is in addition to carrying out his own duties.

EMPLOYER: (a) Based on comparable contracts this increase is not warranted. Any additional funds should be included in the base rates for all; and (b) training is a part of all jobs in the Sheriff's office.

FINDINGS: (a) Amazingly 25% of this unit have Bachelor degrees. Both parties should be proud of this statistic. The amount requested is minimal, and would be well spent; and (b) the Employers' contention does have considerable merit.

RECOMMENDATIONS: (a) Increase the annual payment for those with Bachelor degrees from \$650.00 to \$800.00, effective April 1, 2002; (b) do not provide for training pay.

G. SICK LEAVE

UNION: Proposes to amend Section 3 of Article 13, (Abuse of Sick Leave). This section presently reads as follows:

“Section 3. – ABUSE OF SICK LEAVE

When the Employer has a reasonable belief that the Employee is feigning illness or injury, they shall have the right to investigate during reasonable hours by visiting the employee's home. If the Employee is not home, he/she must be at a doctor's office or pharmacy or other excused location.

When the Employer can substantiate the abuse of sick time, either on an individual case or by virtue of a demonstration pattern, they shall have the right to challenge the use of this sick time under Abuse of Sick Time. Employees failing to comply with the sick leave rules and regulations shall not be paid. Applications for sick leave with intent to defraud shall be grounds for disciplinary action which may include dismissal.

After four (4) continuous working days of illness, a physician's statement will be required. After four (4) undocumented occurrences in a rotating year, a physician's certificate may be required. An occurrence shall be defined as the period of time an Employee is off from the start to the return."

The proposed changes are as follows:

"Section 3. Change the first paragraph to the following:

If an Employee cannot substantiate an illness with a physician's certificate, and the Employer has probable cause to believe that an Employee is feigning illness, the Employer has a right to investigate during reasonable hours by visiting the Employee's home. If upon investigation, the Employee is not at home, the Employee may overcome the presumption that the Employee was feigning illness by proffering a physician's certificate or showing that the Employee was at a pharmacy or other location for care or treatment.

Add the following definition:

"Probable cause is demonstrated by substantiated reports of the Employee performing an activity inconsistent with the reported sick leave use; or after five, upon the sixth individual day, undocumented sick leave occurrences within a rotating year, or after five, upon the sixth undocumented sick leave occurrences within the rotating year which are adjoined to the individual's days off."

Change the third paragraph by adding the language so that the requirement is clear:

"After four undocumented occurrences in a rotating year, **and upon the fifth occurrence**, a physician's certificate may be required. An occurrence is defined as the period of time an Employee is off from start to return, except no more than one occurrence accrues within a twenty-four hour period."

A recent grievance has gone to arbitration. The Union objects to the requirement that the Employee must obtain permission to be anywhere other than home, doctor's office or pharmacy.

EMPLOYER: There is no need to change. A recent arbitration decision has interpreted the current provision.

FINDINGS: Dr. Benjamin Wolkinson, in an arbitration dated May 13, 2002, meticulously interpreted Section 3. Whether the Employer has a reasonable belief that an Employee is feigning illness must be made on a case-by-case basis, and that "excused location" is carefully analyzed.

RECOMMENDATIONS: I would make no changes to the first and second paragraphs of Section 3. I would, however, amend the third paragraph to read in its entirety as follows:

“After four undocumented occurrences in a rotating year, and upon the fifth occurrence, a physician’s certificate may be required. An occurrence is defined as that period of time an Employee is off from start to return, except no more than one occurrence accrues within a single day.”

(This provision is a combination of the Union and Employer proposals).

The Employer proposed a new paragraph to the Sick Leave Article:

“Section 5.

Such time as reasonably necessary shall be charged to sick leave for doctor or dental appointments that cannot be scheduled outside working hours, based on the time of the appointment and location of the service provider.”

The present Section 5 reads as follows:

“Time off for doctor or dental appointments shall be charged to Sick Leave.”

EMPLOYER: The new provision is to prevent an Employee from using a short visit to the doctor or dentist as an excuse to take the entire day off.

UNION: This proposal would give rise to countless debates and questioning.

FINDINGS: The Sick Leave Article does not require more provisions subject to interpretation.

RECOMMENDATIONS: I would not add the Employer’s proposal to the contract.

H. OVERTIME

UNION: Add the work “undocumented” to the current sick occurrence scheme.

EMPLOYER: All of the Sheriff’s units have the identical clause. To accept the Union proposal would increase sick leave dramatically. The Employer needs the present language to decrease sick leave.

FINDING: I find considerable merit in the Employer’s contention.

RECOMMENDATIONS: I would not change Article 25.

I. TERM OF AGREEMENT

UNION: The following clause to be added: "The parties agree that the March 31, 2005 expiration date shall not prohibit the bargaining unit from receiving any retroactive wage or economic increase to March 31, 2005, and hereby waive the limitations to the conciliator's powers in O.R.C. 4117.14(G)(11)."

Also provide for negotiation period to begin as early as 120 days before the expiration of the contract but notice to be given no later than 60 days before expiration.

The Union is concerned that by having the contract expire on March 31st, it could be denied any financial benefits for the entire year, 2005. Other than changing the termination date to December 31, 2004, this proposed language is the only way to protect the unit.

EMPLOYER: The Union's fear is groundless. For many years all contracts with the Sheriff, County Prosecutor and Job and Family Services have had the same expiration date. There have been no problems as to retroactivity.

FINDINGS: The Union, for many years, has attempted to resolve this issue by having the contracts expire on December 31 of the last year. Several fact-finders have recommended against this. Meanwhile over the years, the parties have had a fine working relationship. I would not recommend that any party to a contract waive its rights three years into the future.

RECOMMENDATIONS: For Article 35, the first paragraph to read as follows:

"The agreement shall become effective April 1, 2002 and continue in force until March 31, 2005 and thereafter, unless modified or changed by mutual agreement."

The second paragraph of Article 35 shall be modified as follows:

"Either party desiring to amend or modify this Agreement shall give the other party written notice of such intention at least ninety (90) days prior to the initial termination date of this Agreement."

No other change requested by the Union is recommended.

J. HOLIDAY

The Employer proposed the following paragraph to Article 14 (Holidays).

“In the year of termination, for any reason, the employee shall have been eligible for one (1) personal day for each full four (4) month period completed prior to termination. Such Employee shall either be compensated for such eligible unused days, or a deduction shall be made from the employee’s final compensation for days utilized in excess of the allowance.”

There appeared to be no objection to this proposal.

RECOMMENDATIONS: Add the above paragraph to Section 4, Article 14.

K. ANNUAL LEAVE (VACATION)

EMPLOYER: Proposed the following amended, Section 2:

Section 2

“Generally, vacation shall be accrued in one (1) year and used in the next year, based on the Employee’s anniversary date of hire. An Employee may be allowed to carry over vacation leave to the following year for meritorious reasons as determined by the Employer. Vacation leave will not be carried over for more than one (1) year. General provisions of scheduling of holidays, vacations, and personal days shall be set out in policy and procedure number 201D on a calendar year basis.”

Employees should take their vacations as they are earned, annually. The proposal sets forth what has been past practice.

UNION: It is their opinion that all vacation issues had been settled.

FINDINGS: I am in no position to judge what has previously been agreed upon.

RECOMMENDATIONS: I recommend the amendments of Section 2 as proposed by the Employer.

Respectfully submitted,


STANLEY B. WIENER
Fact-Finder

Dated: July 12, 2002

SERVICE

True copies of the foregoing Report were sent this 17th day of July, 2002, to each of the following by Federal Express:

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