

STATE EMPLOYMENT RELATIONS BOARD  
01-MED-12-1155

STATE EMPLOYMENT  
RELATIONS BOARD

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

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A Fact-finding hearing was held on May 29, 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 DONALD R. DURST, Union President and KEVIN M. COLEMAN, Union Vice-president.

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

The parties met several times prior to the expiration of the current contract (March 31, 2002). There are 29 Deputies and 11 Court Officers in the Unit.

Mediation was attempted but no impasse issues were resolved. Most of the issues at impasse were identical to the issues raised at the hearing between the Employer and the Correction Officers held on May 22, 2002.

II. ISSUES AT IMPASSE

- A. ANNUAL LEAVE (VACATION)
- B. WAGES
- C. BEREAVEMENT
- D. HOSPITALIZATION INSURANCE
- E. COURT TIME
- F. SPECIALIZED TRAINING – SKILLS PAYMENT
- G. TERM OF AGREEMENT
- H. HOLIDAYS
- I. SENIORITY PAYMENT

- J. SICK LEAVE
- K. OVERTIME
- L. UNIFORM MAINTENANCE ALLOWANCE
- M. HOLIDAY (EMPLOYER PROPOSAL)
- N. VACATION (EMPLOYER PROPOSAL)

III. POSITIONS 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. The assistance received from both parties is greatly appreciated.

A. ANNUAL LEAVE (VACATION)

UNION: The current vacation schedule is as follows:

Less Than 1 Year	-0-	
1 year but less than 8 years	3.1 hour @ 80 hour pay period	2 weeks
8 years but less than 15 years	4.6 hour @ 80 hour pay period	3 weeks
15 years but less than 25 years	6.2 hour @ 80 hour pay period	4 weeks
25 years or more	7.7 hour @ 80 hour pay period	5 weeks

The Union proposes accruing vacation at an earlier date and extending vacation to six weeks:

<u>YEARS OF SERVICE</u>	<u>YEARLY ENTITLEMENT</u>	
1 – 5	(3.1 X 80) 10 days of 8 hours or 8 days of 10 hours	2 weeks
5- 10	(4.6 x 80) 15 days of 8 hours or 12 days of 10 hours	3 weeks
10-15	(6.2 x 80) 20 days of 8 hours or 16 days of 10 hours	4 weeks
15-20	(7.7 x 80) 25 days of 8 hours or 20 days of 10 hours	5 weeks
20+	(9.2 x 80) 30 days of 8 hours or 24 days of 10 hours	6 weeks

Lake County is behind the cities of Eastlake, Mentor, Wickliff, Willoughby, Willowick and Painesville.

EMPLOYER: Current vacation schedule is comparable to Northeast Ohio Counties. Cities should not be compared to counties. County Sheriffs have many more expenses and responsibilities than city police departments.

The Employers propose the following:

1 year but less than 7 years	3.1 hour @ 80 hour pay period	2 weeks
7 years but less than 14 years	4.6 hour @ 80 hour pay period	3 weeks
14 years but less than 22 years	6.2 hour @ 80 hour pay period	4 weeks
22 years or more	7.7 hour @ 80 hour pay period	5 weeks

FINDINGS: I find that the Employer's vacation schedule is slightly behind comparable jurisdictions.

RECOMMENDATIONS: Effective April 1, 2002

<u>YEARS OF SERVICE</u>		<u>YEARLY ENTITLEMENT</u>
Less than 1 year	-0-	-0-
1 year but less than 7 years	3.1 x 80	2 weeks
7 years but less than 12 years	4.6 x 80	3 weeks
12 years but less than 20 years	6.2 x 80	4 weeks
20 years or more	7.7 x 80	5 weeks

### B. WAGES

UNION: Increases of 5% for each year of a three year contract. Lake County is in good financial condition and could well afford to increase the wages to at least meet the police scale for the cities of Painesville, Eastlake, Mentor, Wickliff, Willoughby and Willowick.

Lake County Deputies are often called upon to assist local police.

As shown in the previous hearing Deputies for the Correction Unit, the Sheriff receives substantial funds from housing federal and out-of-county prisoners.

EMPLOYER: Lake County is not in good financial condition. There has been a dramatic drop in interest earnings over the past two years. Millions of dollars were transferred from the health insurance stabilization fund. As shown in the May 22<sup>nd</sup> hearing, the Sheriff's salary account was increased by only \$157,692 for the period 4/1/02 through 12/31/02. This includes PERS, Medicare costs, and fringes. The Employer tries to maintain its fleet of cars by replacing eight per year. In 2000 it replaced six and in 2001, four.

Employer proposes that the current wage schedule be increased on a cents-per-hour basis of 2% of Step 5 or 39 cents for Court Officers and 44 for Deputies to be added to each step. Also that wages be increased on a cents-per-hour basis of 3% for Step 5 beginning April 1, 2003 and again by 3% for Step 5 rate on April 1, 2004.

Cities are not comparable. Employer must be compared to counties in this area.

According to SERB data report, January 31, 2002 for Local Northeast Ohio Area Counties of 80,000 population or more, the proposed entry level of Lake County Deputies would be 31.82% above the average; and 15.3% above the average top level.

The proposed wage increase would place its Court Officers on a par with those of Cuyahoga and Geauga Counties.

FINDINGS: The wages presently paid compare favorably with comparable jurisdictions. Although it is expected that income will decrease in 2002, I believe the Employer can afford the following increases:

RECOMMENDATIONS: For Deputies in the first year, increase the current wage scale on a cents-per-hour basis of 3% of Step 5 or 65 cents-per-hour 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 73 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 81 cents per hour.

For Court Officers the first year increase the current wage scale on a cents-per-hour basis of 3% of Step 5 or 59 cents per hour. Effective March 30, 2003 increase the wage scale on a cents-per-hour basis of 3.25% of Step 5 or 66 cents per hour; effective March 28, 2004 increase the wage scale on a cents-per-hour basis of 3.5% of Step 5 or 73 cents per hour.

See amended Section 4 of Article 18 together with amended Appendix B, attached hereto.

### C. BEREAVEMENT

UNION: Increase the days granted for grieving the loss of an immediate family member to a total of five (5) days per each immediate family member.

The current three (3) days is not sufficient. Most comparable units grant bereavement days with no deduction from accumulated paid sick leave.

EMPLOYER: Standard leave is three (3) days for bereavement.

FINDINGS: Most units are granted bereavement pay without deduction from accumulated paid sick leave.

RECOMMENDATIONS: Amend the first sentence of Section 1, Article 19 to read as follows:

ARTICLE 18

WAGES

Section 4

For all Employees employed in the classification of Deputy or Court Officer, 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.

Deputies employed upon the execution date shall receive back pay which excludes overtime based on .65 cents x 40 x the number of weeks to and including April 1, 2002.

Court Officers employed upon the effective date, shall receive back pay which excludes overtime based on .59 cents x 40 x the number of weeks to and including April 1, 2002.

Employees employed or transferred to this Unit after April 1<sup>st</sup> 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 continued to be employed upon execution date for wages.

APPENDIX B

LAKE COUNTY

DEPUTIZED DEPUTY SHERIFFS AND COURT OFFICERS

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

DEPUTY

Start - 20.02  
1 - 20.50  
2 - 20.98  
3 - 21.46  
4 - 21.94  
5 - 22.42

COURT OFFICER

Start - 17.78  
1 - 18.26  
2 - 18.74  
3 - 19.22  
4 - 19.70  
5 - 20.18

RATE SCHEDULE EFFECTIVE MARCH 30, 2003

DEPUTY

Start - 20.75  
1 - 21.23  
2 - 21.71  
3 - 22.19  
4 - 22.67  
5 - 23.15

COURT OFFICER

Start - 18.44  
1 - 18.92  
2 - 19.40  
3 - 19.88  
4 - 20.36  
5 - 20.84

RATE SCHEDULE EFFECTIVE MARCH 28, 2004

DEPUTY

Start - 21.56  
1 - 22.04  
2 - 22.52  
3 - 23.00  
4 - 23.48  
5 - 23.96

COURT OFFICER

Start - 19.17  
1 - 19.65  
2 - 20.13  
3 - 20.61  
4 - 21.09  
5 - 21.57

“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.”

#### D. HOSPITALIZATION INSURANCE

UNION: Employees contribute to the cost of insurance. It requests that their contribution shall not increase above those of the average State Employees as documented by SERB. Currently the Union contribution is less than average, but of course there is no guarantee that the contributions will not exceed the average.

EMPLOYER: The Lake County Commissioners have a county-wide insurance program that covers over 2,000 employees and dependents. It is important that the County be able to negotiate for as many people as possible in order to obtain the best price and coverage. To have separate policies for each labor unit would make its task extremely difficult.

FINDINGS: Everyone is aware of the rising costs of health insurance and the serious problems this causes for employers, both in the private and public sectors. To maintain adequate insurance at a reasonable cost is difficult. Lake County has managed to obtain excellent coverage at a reasonable price for many years despite increases in cost from \$3,140,000 in 1995 to \$8,550,000 for 2002.

RECOMMENDATIONS: I recommend no change in Article 23.

#### E. COURT TIME

UNION: Increase minimum charge for from two (2) to four (4) hours for reporting to court on off duty time.

Comparable contracts call for a minimum of three (3) and even four (4) hours at one and one-half times their normal rate of pay for appearing in court on off-duty time.

EMPLOYER: Opposed to increasing overtime when rarely is the officer used for more than two (2) hours.

FINDINGS: Comparable jurisdictions have three (3) to four (4) hours call in time.

RECOMMENDATION: Amend Section 1, Article 22 as follows:

“Employees required to appear in court on off-duty time as a result of their employment with Lake County Sheriff’s Office to testify or appear in an official capacity shall be entitled to overtime compensation at one and one-half (1-1/2) times their normal rate of pay for the time spent in court, with a minimum charge of three (3) hours.”

#### F. SPECIALIZED TRAINING AND SKILLS PAYMENT

UNION: Increase annual payment for a Bachelor’s degree from \$650.00 to \$800.00. An Employee with a Bachelor’s degree should receive at least twice the payment that an Employee with an Associate Degree receives.

EMPLOYER: Comparable contracts do not justify this increase.

FINDINGS: An increase to \$800.00 per year for an Employee with a Bachelor’s degree is a minimal amount for such recognition.

RECOMMENDATIONS: Increase the annual payment for those with Bachelor degrees from \$650.00 to \$800.00 effective April 1, 2002.

#### G. TERM OF AGREEMENT

UNION: Revise the language of Article 35. Agreement to become effective April 1, 2002 and continuing through March 31, 2005.

Add the following: “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.

For many years the Union has been concerned that the contract did not terminate on December 31<sup>st</sup>. By expiring on March 31<sup>st</sup>, it is possible that the Union could be denied any financial benefits for the entire year. The proposed language would protect them.

EMPLOYER: All contracts with the seven Sheriff units have the same termination dates. This has been the case for many years. There have been no problems as to retroactivity.

FINDINGS: Based upon the fine working relationship between the parties for many years I believe the Union’s fears are unfounded. As mentioned in my report for the

Corrections Officers, I am reluctant to recommend that any party to a contract waive its rights three years in advance.

RECOMMENDATIONS: Article 35, the first paragraph to read:

“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 the Agreement.”

No other change requested by the Union is recommended.

#### H. HOLIDAYS

UNION: Change Section 2 of Article 15 to provide for the payment of the applicable overtime rate for each Employee who works on any contractually designated holiday. Also add a provision for holidays for Court Officers scheduled to work ten (10) hour shifts so that the day scheduled off by the Employer is a paid holiday for ten (10) hours with no deduction from the Employees’ personal time. (In the alternative, increase personal time of 10-hour Court Officers to 30 hours).

Most comparable jurisdictions provide for the payment of overtime for each holiday worked. An Employee who works 10 hour shifts, 4 days per week is entitled to receive 10 hours of paid holiday.

EMPLOYER: All seven units under contract with the Employer have identical provisions relating to holidays. There are 10 paid holidays. An Employee who works on five of the holidays is compensated at time-and-one-half. These holidays are Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

During negotiations for the last contract overtime payments for holiday work was increased from three to five. Because of the tight budget the Employer is opposed to the Union request. All Employees receive 80 hours of holiday pay. If the Union request was granted Court Officers would receive 100 hours of holiday pay.

FINDINGS: Some comparable jurisdictions do pay overtime for each holiday worked. However, in this case, because of the Employer’s tight budget I would utilize the available funds for wages. Employees working 40 hours per week on 4 day, 10 hour

shifts should not be entitled to receive more than Employees working 40 hours per week on 5 day eight hour shifts.

RECOMMENDATIONS: No change to Article 15.

### I. SENIORITY PAYMENT

UNION: Change payment schedule to start at five (5) years and pay each Employee \$100.00 for each year of service worked, up to 25 years. The Employers schedule is behind comparable jurisdictions. Payment does not start until the eighth (8<sup>th</sup>) year of service.

EMPLOYER: The longevity schedule is comparable.

FINDINGS: Most longevity payments do start earlier. I find however, that the overall schedule is comparable. It is difficult to compare contracts by focusing on one economic item.

RECOMMENDATIONS: Amend the longevity schedule (Article 17) as follows:

1. Effective April 1, 2002, pay longevity in the sum of \$475.00 to Employees after seven (7) years 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.

### J. SICK LEAVE

UNION: Proposes to amend Section 3 of Article 14. (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 of 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 reasonably 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 to time an Employee is off from start to return, except no more than one occurrence accrues within a twenty-four hour period."

The Union strenuously objects to the requirement that an Employee must first obtain permission from the Employer to be anywhere other than home, the doctor's office or pharmacy.

EMPLOYER: There is no need to change. These provisions have been the subject of a recent arbitration.

FINDINGS: Discussion of this issue took up substantial portions of the hearings held on May 22, and May 29. The Union's proposal arose from a single grievance which eventually went to arbitration. Dr. Benjamin Wolkinson rendered his decision on May 18, 2002. He carefully analyzed this section.

Actually both sides can take some comfort from his decision.

Whether the Employer has a reasonable belief that an Employee is feigning illness must be made on a case-by-case basis and that an "excused location" is fully interpreted. It appears that only one grievance has been brought under this provision.

RECOMMENDATIONS: No change to the first and second paragraphs of Section 3. 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 the period of time an Employee is off from start to return, except no more than one occurrence accrues within a single day."

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 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 discourage an Employee from using a short visit to the doctor or dentist as an excuse to take the entire day off.

UNION: The proposal would give rise to debate and the questioning of every doctor or dental visit.

FINDINGS: This Article 14 does not require another provision subject to investigations and interpretation.

RECOMMENDATION:

I would not change Section 5.

K. OVERTIME Article 26

UNION:

1. Add the word “undocumented” to the current sick occurrence scheme. (Section 3).
2. Increase the compensatory time-off, bank to forty-eight (48) hours or sixty (60) hours for Court Officers scheduled on ten (10) hour shifts. (Section 4).
3. Add a provision to grant compensatory time payment for hours worked during which other non-essential Employees are granted time-off without pay.
4. Incorporate the Side Letter Agreement pertaining to Court Officers scheduled for ten (10) hour shifts.
5. Add a provision to grant overtime opportunities within the Court Officers classification, first to Court Officers in the bargaining unit on a seniority rotating basis, and only thereafter to part-time Employees.

EMPLOYER: As to request number one, all of the Sheriff’s units have the same clause. The Union proposal would increase sick leave. The present language is a tool to decrease sick leave.

Requests two, three, four and five are for Court Officers. These Employees, for the most part are on ten (10) hour shifts, four (4) days per week. There is no reason to treat these Employees differently. They already have the benefit of working only four (4) days per week.

As to request number five, many part-time Court Employees have recently been added for security purposes. A part-time Court Officer on duty may be required to work overtime. Trying to replace him by locating a unit member could prove to be impractical.

There is no need to incorporate the Side Letter Agreement.

FINDINGS: As to request number one all of Sheriff’s units have the present language. The Union proposal to add the word “undocumented” would increase sick leave. As to requests number two, three and five, I find no reason to increase benefits for Employees working four (4) days per week.

RECOMMENDATIONS: No changes to Sections 3 and 4 of Article 26. I would not add the other provisions requested by the Union; nor would I incorporate the Side Letter Agreement into the contract.

L. UNIFORM MAINTENANCE ALLOWANCE

UNION: Include a payment of \$350.00 per year for clothing maintenance.

EMPLOYER: Sheriff's office provides, maintains and replaces uniforms.

FINDINGS AND RECOMMENDATION: Since the Employer furnishes and maintains the uniforms, the Union proposal is not recommended.

M. HOLIDAY (EMPLOYER PROPOSAL)

EMPLOYER: Add a new last paragraph to Section 4, Article 15:

“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.”

UNION: There appeared to be no serious objection.

FINDINGS AND RECOMMENDATION: The Employer's proposal is reasonable. I recommend that Section 4 of Article 15 be amended to include the Employer's proposal.

N. VACATION (EMPLOYER PROPOSAL)

EMPLOYER: Amend Section 2, Article 16 as follows:

Generally vacation shall be accrued in one (1) calendar year and used in the next. 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.

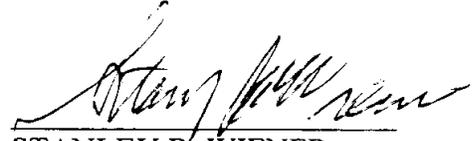
The above proposal sets forth past practice.

UNION: Current vacation leave can be carried over up to three (3) years. This provides sufficient flexibility.

FINDING: The proposal does set forth past practice.

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

Respectfully submitted



STANLEY B. WIENER  
Fact-finder

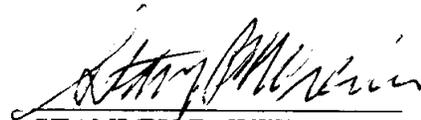
DATED: July 12, 2002

SERVICE

True copies of the foregoing Report were sent this 12<sup>th</sup> day of July, 2002, to each of the following by Federal Express:

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