

HEARING BACKGROUND

The above matter came on for hearing on September 19, 2003 and was continued on November 19 and 25, 2003, pursuant to the undersigned's selection by the parties. The intent of this Report and Recommendation is to provide an acceptable resolution for the terms of the parties' collective bargaining agreement to both sides so that Conciliation procedures need not be invoked for this non-right to strike bargaining unit comprising forty-six (46) law enforcement employees. These officers comprise a certified bargaining unit of Road Deputies, Detectives, Investigators and Shift Commanders within the rank of Lieutenant, Sergeant and Deputy.

The public employer, Portage County Sheriff Duane W. Kaley, is a duly elected public official located in Portage County in Northeast Ohio and shall hereafter be referred to as the "Employer", "Management" or the "Sheriff".

The labor union certified by the Ohio SERB to represent this bargaining unit is the Ohio Patrolmen's Benevolent Association, an Employee Association pursuant to ORC Ch. 4117. These parties have had an ongoing collective bargaining relationship as evidenced by past negotiated agreements (as well as this set of contract negotiations) between the Sheriff and the Ohio Patrolmen's Benevolent Association, hereinafter referred to as the "Union" or "OPBA".

The hearings were held at the Employer's complex in Ravenna, Ohio. Prior to the start of the initial hearing both sides timely presented to the Fact-Finder their pre-hearing position statements setting forth their respective positions on the thus designated open issues and proposed contract terms.

The parties requested no further mediation be attempted since resolution of the issues through contract negotiations had been delayed for approximately four and one-half (4.5) months due to the processing of a Decertification Petition by the SERB. That matter, once resolved, saw the continuation of the OPBA as this bargaining unit's certified representative for purposes of collective bargaining and a resumption of the parties' stalled contract negotiations.

It is this history which forms the central theme upon which this Report and Recommendation is predicated. The Employer cogently demonstrated that the delay brought about by the decertification attempt gave Management greater insight into its financial resources than it had when negotiations were suspended in January of 2003. This public employer, as many often do, had bargained with this (and other) unions during the last quarter of 2002 and on into the current year based upon its early financial forecast for 2003. However, the hiatus which occurred enabled a more accurate assessment of Portage County's revenue stream and

that realization of a downward trend in tax revenue prompted the Employer's economic position relative to bargaining over the terms of this cba, to change. What transpired was that Management backed away from the wage and other economic increases agreed to with other unions in Portage County as well as what had been indicated for this bargaining unit during the incipient stage of negotiations.

This anomaly has been met on this record by the OPBA with claims of the County's continued ability to grant pay raises and increase (or add) fringe benefits based upon Portage County's housing market and level of personal affluence. These good faith differences have been closely scrutinized and evaluated in reaching the ensuing recommendations.

A transcript of some 464 pages was compiled and furnished to the undersigned along with twenty-nine (29) Union exhibits and eight (8) Employer exhibits.

The respective committees were comprised of Colleen M. Bonk, Esquire, counsel for the OPBA who had in attendance Sergeants Phil Faddis, David Harvey and James M. Carrozzi with Deputy "Buck" Copen during all three sessions. For the Employer, labor counsel Ronald Habowski, Esquire chaired and was attended by Asst. Prosecutor Jennifer E. Redmond, Esq., Sheriff Kaley, Chief Deputy David Doak, H.R. Director Lynn Leslie and John Lehman, Dir. of Financial Management on day one. Asst. Prosecutor Denise L. Smith replaced Ms. Redmond on the last session.

The prepared and testimonial evidence was professionally presented by each side which enabled the proceedings to be dispositive of both sides' position on the open issues.

After preliminary background discussions the parties proceeded on the record in order to formally hear the evidence and render this Report and Recommendation for the enumerated open terms.

The exclusion of witnesses from the hearing room was not deemed necessary by the advocates, therefore all persons in attendance remained throughout the hearing, free to leave for business purposes if required to do so.

I might add that the advocates and their clients extended their full cooperation and assistance to the Fact-Finder in concluding the hearing on the extensive list of open items in three days of sessions.

RESOLUTION CRITERIA

The following recommendations take into consideration the factors enumerated in Section 4117.14 (C) (4) (e) of the Ohio Revised

Code. These are:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of the unresolved issues relative to the employees in the bargaining units with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interest and welfare of the public, the ability of the public employer to administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the parties;
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues mutually submitted to agreed upon dispute settlement procedures in the public service or in private employment.

My intent is to deal be as direct as possible, given the parties' desire to finalize their labor agreement. The relative positions have been amply demonstrated, argued and studied by the undersigned. The parties fully understand each others' positions by now. Thus, there is no need to expand this Report and Recommendation by attempting to "pad" by repeating each argument in detail. It is clear to both sides that opting to proceed to the conciliation phase beyond this stage has the potential for obtaining completely different but binding results.

While I do not profess to have any special knowledge or powers beyond the parties' own, I have weighed the respective presentations and have obtained a sense of what best fits both parties' needs within the framework of the current economy. I feel this is sufficient to undertake rendering an equitable result. It must be noted that the following recommendations, if accepted, shall be enumerated and incorporated into the parties' collective bargaining agreement. The parties have agreed that wage settlements shall be retroactive to January 1, 2003.

They also agreed to proceed with each Article wherein a change or changes are sought as a single open item and to do so in numerical order. (See Tr. pg.11-12).

The Employer agreed to items 1 and 2 at the opening of the hearing. These are found at Art. 4.01 and 5.01, respectively. Thus, the initial open item is number 3, as follows;

ITEMS FOR RESOLUTION

As a result of the above enumerated procedures the parties presented the following unresolved issues to the Fact-Finder:

3. EMPLOYEE RIGHTS 7.08 (VOLUNTARY POLYGRAPH EXAMINATIONS)

EMPLOYER POSITION

The Sheriff's position is closely rooted in the fact that polygraph exams are a means to help get to the truth. He stressed that no deputy has ever been disciplined based solely upon the results of such an examination.

UNION POSITION

The OPBA wants to switch polygraph use to voluntary status. This has been a demand in the previous two negotiations. The use is a cost factor; some \$500.00 per application. Its an issue with the deputies because their being believed is at stake.

RECOMMENDATION

I suggest not adopting the OPBA's position because it has not been abused in internal disciplinary matters. As a management "tool", polygraph exams , which only show an intent to deceive the questioner, nevertheless serve as an aid in searching for veracity. This tool has not been used to harass or belittle employees so its investigative utility warrants keeping it.

4. RESIDENCY ARTICLE 8.01

EMPLOYER'S POSITION

Maintain the status quo for this unit and require deputies to reside in the County.

The Sheriff says response time is the key issue behind residency.

UNION POSITION

The Union seeks to allow deputies to reside in adjoining counties due to lower housing costs. The COs have such a broader

residency scope in their cba.

RECOMMENDATION

Of the non-economic changes sought, this one makes the most sense from both an economic point of view and, I found it compelling that responder times could be longer from some parts of Portage County than from the adjoining corners of Summit and Trumbull counties, for example. The housing affordability aspect thus becomes a major issue for deputies who commit to make their careers in this department. These two factors override the use of department cars in different counties in my view.

I recommend this demand be adopted.

5.

WORK ASSIGNMENT ARTICLE 11

UNION POSITION

The thrust of the OPBA's position is that bidding on assignments such as the Courthouse post would be advantageous to the bargaining unit's members. Shifts are bid per seniority, so why not posts? Preferences for assignments in Windham or Atwater would derive from where the bidder might reside in the County. One witness testified that the Courthouse assignment is not preferred because a deputy cannot work a holiday there and receive premium pay since the Courthouse is closed on holidays.

EMPLOYER POSITION

The Sheriff has assigned deputies based upon certain skills they may have in order to better serve the public. Also, moving their assignments broadens their knowledge of the entire County.

RECOMMENDATION

I recommend the Employer's position in keeping the status quo. A deputy becomes more valuable if he or she gains experience throughout the jurisdiction of the county. This is innate to any county sheriff department's operation. The idea of bidding on a post which is close to one's residence makes little weight in light of what I feel is a more important issue; securing affordable housing within the ambit of departmental wage structures

I make no recommendation limiting the management right to assign and direct the work force. Law enforcement agencies typically move peace officers around various units and locations.

In this way, deputies in this unit are able to experience the "growth" from doing so which Chief Deputy Doak referred to. I feel his acumen, gained over thirty-three (33) years in law enforcement, is a desirable outcome. Besides, Deputies may bid on shifts and thus can determine their hours of work. However, the "plant" where these deputies perform their duties is the entire county in the geographical sense. Therefore, their "classifications", although not deployed within the four walls of a building, still require a management determination as to what the classifications shall be and how many employees shall perform in each one.

6. GRIEVANCE (ART.17)/ARBITRATION (ART.18) PROCEDURE

The Employer and the Union provided evidence of tentatively agreed-upon language in these Articles for purposes of reintroducing these changes, making both processes akin to the other cbas referenced by the parties.

RECOMMENDATION

I recommend the terms agreed upon by the parties in these areas as set forth in UX-4.

7. WAGES

This topic forms the crux of all the economic demands and offers between the parties. As noted, supra, my conclusion in this area is that the Employer has shown a verifiable inability to pay. However, the Union has demonstrated that this County resides at or near the top of its adjacent comparable counties in most economic respects. But as this analysis is projected forward with the intent of balancing the 2004 budget, as the Public Employer must legally do, the critical statistic regarding sales tax revenue, indicates a definite flattening trend, which, when coupled with similarly flat response in investment income mechanisms, makes belt-tightening the order of the day. This is needed so that the upscale aspects of Portage County, as portrayed by the Union, might continue in future years. What this means for this cba is that fiscal prudence must be employed. The path to this result is, I feel, to put monetary increments where they will have the most immediate impact and address the Union's concern over this unit's ranking. The place to do this is in the area of wages.

Having determined this, the remainder of the economic demands need to be strictly considered. My proposal is to place the bulk of the increases in the wage component. Portage County deputies should be elevated towards the top of comparable sheriff departments. However, the total cost of the OPBA's demands makes it prohibitive to treat much more than the wage piece.

POSITION OF THE UNION

Although it maintains 10% would make a modest, supportable wage raise and had opened with a demand for 7%, 3% and another 3% in year three, the Union, in acknowledgement of the County's financial situation, has restructured its compensation demands at 3% for each of the three years of duration sought.

POSITION OF THE EMPLOYER

Compensation is usually the most costly proposal and the Sheriff does not wish to exceed the limitations imposed by the County's financial picture. Therefore his offer, on a three year agreement, is at 2.5%; 2.75% and 3.0% respectively.

The Employer's rationale is that anything front-end loaded poses additional costs for this Employer.

RECOMMENDATION

I have pondered the impact of recommending the Union's position and note their assertion that ability to pay is only one of the six criteria the law requires be considered.

I believe it is more important to keep Portage County's deputies from falling within its group of comparable sheriff departments. The OPBA's wage demand is not excessive if other economic demands are put on hold.

One cannot be absolutely certain that lay-offs will be averted but the budget for the department can be addressed by emphasizing wages instead of fringe benefit increments with hopes of keeping pay ranges competitive yet not forcing personnel moves.

To this end, I also recommend the Union's demand relative to 19.03 and 19.04 on the compensation for Deputy Sergeant and Lieutenant, respectively. Deputy Sergeant pay rates shall be set at ten per cent (10%) above the top rate for Deputies. The Lieutenant pay schedule shall also be a ten per cent (10%) differential but from the top rate for the rank of Sergeant.

Thus having attempted to bridge the needs for both this financially challenged Employer and the Union seeking to keep pace with its comparable departments, the following economic demands shall be perfunctorily reported on:

8. ARTICLE 22 OVERTIME PAY & COURT TIME

UNION POSITION

22.03: increase minimum court time pay from 2 hrs. to 3 hours;
22.05-06: double comp time off accrual to eighty (80) hours;
22.07: equalize overtime opportunities within divisions among
all deputies;

EMPLOYER POSITION

The Sheriff proposes no changes in this terms.

RECOMMENDATION

I propose no further changes from the current language/terms
due to the cost factor.

9.

ARTICLE 23: LONGEVITY

UNION POSITION

Increase the current \$4 per year, per month to \$6, \$7 and then
\$8 per year, per month over the three (3) year duration of the cba.

EMPLOYER'S POSITION

The Sheriff seeks to retain the \$4 level on this benefit.

RECOMMENDATION

Retain the current \$4 per year per month level. I reject the
Union's proposed increases due to the cost factor.

10.

ARTICLE 24: CLOTHING/EQUIPMENT ALLOWANCE

UNION POSITION

Increase the current allotment of \$825 by \$25 per year to
\$850, then \$875, then on to \$900 in the last year.

Plus, there is a need to correct errors in the cba by deleting
"Bargaining Unit C-Deputy Sheriffs, Sergeants and Lieutenants" in

both 24.07 and 24.08.

EMPLOYER'S POSITION

The Sheriff seeks to retain current levels on this benefit.

RECOMMENDATION

Given the fact that uniform and related supplies for law enforcement officers are not inexpensive and prices for same have risen routinely in each year, the demand herein is recommended so as to keep the deputies properly outfitted and maintain public image and morale amongst the bargaining unit members.

The language deletions are also recommended if not previously agreed to be deleted by the advocates.

11.

ARTICLE 25: INSURANCE

UNION POSITION

The OPBA seeks language on insurance coverages the same as other County units have. Prior to the SERB's stay of negotiations the parties had discussed language changes to reflect network changes. The Union claims all that needs be done is incorporate the agreed language into their cba. This would give the deputies the same coverages as the other four County bargaining units.

EMPLOYER'S POSITION

The Sheriff claims the Union is mistaken as to having reached agreement. There was only one meeting and there was no agreement, tentative or otherwise, on insurance. Based upon recent factfinding experience the County now seeks to obtain co-pays. These would run \$16 for single coverage, \$45 for family in a HMO and \$35/\$75 for employees in a PPO. Another option is to elect a higher deductible and not have a co-pay on premium.

RECOMMENDATION

Health care insurance is the single most problematical topic today. The Employer's proposed co-pay move is not over-reaching or punitively derived. Naturally, the timing on this issue is

particularly difficult for the Union to countenance since initially co-pays were not put on the table. But since the stay of negotiations, two other cbas have been bargained in the County and they both have the same co-pay features.

It is a sign of the times and a definite economic drain but the co-pay rates are modest enough and fiscally necessary. I recommend the Employer's position on Insurance, instituting the co-pays (or higher deductible option) as a means to keep the Department on budget and in the interest of internal consistency.

12.

ARTICLE 26: VACATIONS

UNION POSITION

Increase (26.04) the VACATION allotment, by up to one (1) week for prior service with another political subdivision in Ohio. Also, in 26.08, allow one (1) week of vacation to be cashed out annually.

EMPLOYER'S POSITION

The Sheriff opposes both changes.

RECOMMENDATION

My recommendation is to split these two separate demands. There shall not be a prior service vacation credit (26.04) but one week of vacation pay may be taken in cash annually. (26.08)

13.

ARTICLE 27: HOLIDAYS

UNION POSITION

Increase the current allotment of Holiday per year by one, adding the day after Thanksgiving.

EMPLOYER'S POSITION

The Sheriff wishes to retain the current number of holidays.

RECOMMENDATION

I recommend rejection of the Union's proposal for adding 27.02 and increasing the holidays by one. The cost factor requires denying adding a paid holiday to the comprehensive scope already in the cba.

14.

ARTICLE 29: SICK LEAVE

UNION POSITION

Add to this Article's definition of "immediate family", "grandchildren" to be utilized for purposes of granting bereavement leave.

EMPLOYER'S POSITION

The Sheriff opposes this demand because it believes it seeks to add two days to funeral leave for travel purposes.

RECOMMENDATION

I recommend adding this demand to the definition of immediate family so it can apply to bereavement situations. This is a de minimis cost item and it is not clear that the Sheriff objects to its inclusion in the cba due to the belief that two days were added for travel in bereavement situations, which is not the case.

15.

ARTICLE 36: HEALTH & SAFETY/COMMUNICATION

UNION POSITION

Increase the complement of deputies escorting prisoners to jails by vehicle to two (2) at a minimum. Also, include at least one (1) female when escorting female prisoners.

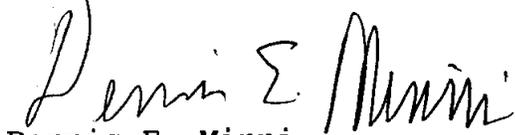
EMPLOYER'S POSITION

The Sheriff opposes this demand as being a cost item and not necessary for the safety of the deputy moving the prisoners.

RECOMMENDATION

I recommend not granting this proposal due to its cost and the unproven record of a hazard or danger to deputies doing this assignment alone.

Respectfully submitted this 22nd day of December, 2003 at Strongsville, Ohio.

A handwritten signature in cursive script that reads "Dennis E. Minni". The signature is written in dark ink and is positioned above the typed name.

Dennis E. Minni
Fact Finder

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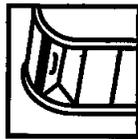
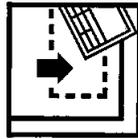
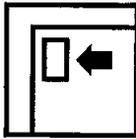
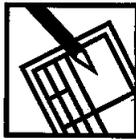
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