

**STATE EMPLOYMENT RELATIONS BOARD**

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RELATIONS BOARD  
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**In the Matter of:** :  
 :  
 **The Lake County** : **03-MED-12-1434**  
 **Narcotics Agency** :  
 :  
 **and** : **FACT FINDING REPORT**  
 : **FINDINGS AND RECOMMENDATIONS**  
 :  
 **Ohio Patrolmen's** :  
 **Benevolent Association** : **July 9, 2004**

**APPEARANCES**

**For the Agency:**

Tom Grabarczyk                      Labor Relations Management, Inc.  
John Germ                                Director

**For the Union:**

Colleen M. Bonk                      Attorney  
Chris Begley                            OPBA Director  
Thomas Sherwood                      OPBA Director

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## **I. BACKGROUND**

The Fact Finder was appointed by the State Employment Relations Board (SERB) on February 26, 2004 pursuant to Ohio Revised Code Section 4117.14. The parties mutually agreed to extend the fact-finding period as provided in Ohio Administrative Code Rule 4117-9-05(G). The parties are the Ohio Patrolmen's Benevolent Association (Union) and the Lake County Narcotics Agency (Agency). The Agency is unique in Ohio. It is the only countywide narcotics agency known to exist in the state. The Agency is generally funded through resources received from a countywide levy. It also receives federal and state grants and forfeitures. It receives its law enforcement powers through the Lake County Sheriff, who has sworn the Narcotics Agents as Peace Officers. The Agency is governed by a seven (7) member Board of Directors.

The fact-finding involves the Agency and its Narcotics Agents and Pharmacy Investigators. Narcotics Agents detect and prevent illegal drug use and sales, including performing undercover and covert operations. Pharmacy Investigators investigate the illegal dispensing and use of prescription drugs. The bargaining unit is comprised of seven (7) Agents and two (2) Investigators. The unit is represented by the Ohio Patrolmen's Benevolent Association. The Agents have been organized since 1985 and were represented by the Fraternal Order of Police until March of 1998. The Union has been the exclusive representative since April, 1998. On May 1, 2003, SERB approved a petition for amendment of certification adding the Investigators.

## **II. THE HEARING**

The fact-finding hearing was held on June 15, 2004 at the offices of the Union's attorney. The parties provided their position statements by June 14, 2004. The hearing

began at 10:00 a.m and adjourned at 5:15 p.m. The parties attended, introduced evidence, and presented their positions regarding the issues at impasse. The parties introduced the following exhibits into evidence:

Union Exhibits

1. Agreement between the City of Eastlake and the Fraternal Order of Police, Ohio Labor Council, Incorporated (Patrolmen), January 1, 2001 to December 31, 2003.
2. Agreement between the City of Mentor and the Ohio Patrolmen's Benevolent Association (Police Officers), Upon Execution through April 3, 2005.
3. Agreement between the City of Mentor-On-The-Lake and the Ohio Patrolmen's Benevolent Association (Patrol Officers), January 1, 2003 to December 31, 2005.
4. Collective Bargaining Agreement between the City of Painesville and the Fraternal Order of Police and Lodge #90 (Patrolmen), April 1, 2002 to March 31, 2005.
5. Agreement between the City of Willoughby, Ohio and the Ohio Patrolmen's Benevolent Association, Police Officers below the rank of Sergeant, April 1, 2001 to March 31, 2004.
6. Agreement between the City of Willoughby Hills and Ohio Patrolmen's Benevolent Association (Patrol Officers), January 1, 2001 to December 31, 2003.
7. Agreement between the City of Willowick and Fraternal Order of Police, Willowick Lodge No. 116, Police Officers, January 1, 2001 to December 31, 2003.
8. SERB Clearinghouse Benefits Report, Lake County Cities, February 10, 2004.
9. Bargaining Unit Employee Information.
10. SERB Clearinghouse Benchmark Report, Police Officer, February 10, 2004.
11. SERB Clearinghouse Wage Increase Report, Lake County Cities,

February 10, 2004.

12. SERB Clearinghouse Benchmark Report, Deputy, February 10, 2004.
13. SERB Clearinghouse Wage Increase Report, County Sheriff, February 10, 2004.
14. SERB Clearinghouse Benefits Report, County Sheriff, February 10, 2004.

#### Agency Exhibits

1. Selected provisions of Agreement between the Lake County Sheriff's Department and the Ohio Patrolmen's Benevolent Association, Deputized Deputy Sheriffs and Court Officers, April 1, 2002 to March 31, 2005.
2. Costing - Call Out
3. Collective Effect of Economic Proposals
4. Selected provisions of Agreement between the Lake County Sheriff's Department and the Ohio Patrolmen's Benevolent Association, Deputized Deputy Sheriffs and Court Officers, April 1, 2002 to March 31, 2005; Agreement between the Board of Lake County Commissioners and Communications Workers of America, AFL-CIO, April 1, 2002 to March 31, 2005; Agreement between Lake County Prosecutor and Commissioners of Lake County with Communications Workers of America, AFL-CIO, April 1, 2002 to March 31, 2005; Agreement between the Lake County Commissioners on behalf of the Lake County Department of Jobs and Family Services with the Communications Workers of America Local 4340, AFL-CIO, July 1, 2001 to June 30, 2004.
5. Northeast Ohio Vacation Sheriff's Department Entitlements.
6. 3/1/04 Lake County Narcotics Agency Current Employee Status.
7. SERB Clearinghouse Benchmark Report, Police Officer and Deputy, September 23, 2003.
8. Amended Certificates of Estimated Resources, Lake County Cities, and financial information.
9. Selected provisions of Conciliation Opinion and Award of James M.

Mancini in SERB Cases Nos. 91-MED-02-118, 119, and 120.

10. Lake County Narcotics Agency - Costing Union's Wage Proposal.
11. Schedule A - Estimate of Property Tax Revenue, Lake County Taxing Districts, Tax Year 2003.
12. Lake County Narcotics Agency - Costing Employer's Proposal.
13. Newspaper articles.

The issues remaining at impasse for fact-finding included:

1. Union Representation
2. Disciplinary Action and Personnel Files
3. Hours of Work and Overtime, sick leave.
4. Hours of Work and Overtime, cash out.
5. Hours of Work and Overtime, call in.
6. Hours of Work and Overtime, court duty.
7. Vacation
8. Wages
9. Longevity
10. Clothing Allowance
11. Duration

The Ohio public employee bargaining statute provides that SERB shall establish criteria the Fact Finder is to consider in making recommendations. The criteria are set forth in Rule 4117-9-05(K) and are:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on

the normal standard of 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 the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

The Fact Finder hopes the discussion of the issues is sufficiently clear to the parties. Should either or both parties have any questions regarding this Report, the Fact Finder would be glad to meet with the parties to discuss any remaining questions.

#### **14. ISSUES AND RECOMMENDATIONS**

##### Issues Resolved During the Hearing

During the hearing, the Union withdrew its proposal regarding Union Representation. The parties also agreed to several issues. The Fact Finder recommends that the following changes be made to the collective bargaining agreement.

1. Article 11, Disciplinary Action, and Article 27, Personnel Files and Policy. Delete Section 3 of Article 27 and renumber Sections 4 and 5 as Sections 3 and 4, respectively.

Add a new Section 3 to Article 11 as follows:

Records of verbal reprimands shall cease to have force and effect after six (6) months from the date of issuance. Records of written reprimands shall cease to have force and effect after one (1) year from the date of issuance. Records of suspensions of three (3) days or less shall cease to have force and effect after five (5) years from the date of issuance. Records of suspensions of more than three (3) days shall cease to have force and effect after ten (10) years from the date of issuance.

Renumber the remaining sections of Article 11.

2. Article 14, Hours of Work and Overtime. In Section 7, the maximum hours that employees may accumulate compensatory time is to be increased from sixty (60) to eighty (80). Replace the language of Section 8 with the following:

Upon termination for any reason, an employee or the estate in the case of death, shall be paid for any accrued, unused compensatory time to the employee's credit.

3. Article 33, Duration. The language of Section 1 is to be amended as follows:

This Agreement shall be effective April 1, 2004 and continue in force and effect until March 31, 2007 and thereafter, unless modified or changed by mutual agreement.

#### Unresolved Issues

As a preliminary matter, the Fact Finder must address the issue of comparables. The Union argues that the employees here are best compared to police units. In cities, the police departments dedicate officers as narcotics agents. Lake County has chosen to use a separate agency to perform this function. The employees here began as Police Officers. They are required to be certified Police Officers. They are given badges, handcuffs, and weapons and are authorized to use deadly force. The Agency works with other law enforcement personnel and enforces the same Ohio Revised Code provisions as do Police Officers. Employees have arrest power, and are most comparable to City and Sheriff detectives, those who do investigations under the Ohio Revised Code. The Narcotics Agents, especially, are required to handle the same problems that a patrol officer would.

The Agency contends that, financially and administratively, it operates most closely to other Lake County agencies. Finances through levy taxes generally are flat in nature. The Agency must finance its own capital outlays for buildings and equipment in addition

to salaries. Unlike counties, cities operate under levy sources and income taxes that have growth potential. Bargaining history shows that Agency employees' wages and benefits closely mirror other Lake County departments and there are differences between police departments and county agencies. Differences in pay are based on the type of entity that employs the individual. Additionally, employees are authorized to make arrests through the Sheriff's Department. They carry their commissions through the Sheriff's Department. While the Agency does have some similarities to a police department, there are also differences.

This issue can be boiled down to a rather simple disagreement. The Union contends that the bargaining unit should be compared to those employees who perform similar duties. The Agency claims that wages are controlled foremost by the type of entity that employs the individual. The Fact Finder concludes that the Agency's position is the more reasonable. Given the significant differences between county and city government functions and their ability to finance those functions, it makes more sense to compare the Agency to other county agencies. Since the Agency is unique in Ohio, this presents some challenges. However, the better comparisons are with county Sheriff's departments. Since the Agency employees carry their commissions through the Lake County Sheriff and are authorized to make arrests through that agency, that agency is the most relevant comparison.

***Issue: Article 14, Hours of Work and Overtime, Section 6***

**Agency Position:** Delete the phrase "sick leave" as part of the normal work week for the calculation of overtime.

**Union Position:** Keep the current language.

**Findings:** The Agency argues that other Lake County Sheriff's Department bargaining units do not count sick leave for overtime purposes. Given that this is counted as part of the regular rate under the Fair Labor Standards Act, employees receive a premium on a premium. The Agency is seeking the ability to control costs. The Union counters that the Agency must show some chronic problem as to sick leave or that employees are abusing sick days. It has not done so. Further, if sick days are not counted for overtime purposes, employees may lose out on overtime when they work extra hours on another day.

Contrary to the Agency's contention, other Lake County Sheriff's Department bargaining units do count sick leave for overtime, at least to some extent. All three (3) units count the first four (4) days of sick leave for overtime and two (2) include sick leave when used for on the job injuries. The Fact Finder agrees with the Union that this language is designed to deal with abusers of sick leave. Since the Agency seeks to change the language it must substantiate the need for the change. Given the evidence presented, it has not done so.

**Recommendation:** The Fact Finder recommends that the current language be kept.

***Issue: Article 14, Section 10, Call-In Pay***

**Union Position:** Call in pay should be increased to four (4) hours.

**Agency Position:** Keep the current language.

**Findings:** The Union contends that its comparables support an increase to four (4) hours of call-in pay. The Agency claims that the Union's demand, when taken with its total package, is unreasonable. The Union introduced evidence of a need for an increase.

When an employee is called in to work, it takes some time to get ready and arrive. As noted above, the Union's comparables are not the most relevant. However, even using them, they do not justify an increase to four (4) hours. Two (2) units receive four (4) hours of call-in pay, two (2) receive three (3) hours, and one (1) receives a two (2) hour minimum. Additionally, the Union introduced comparables of other Sheriff's Departments. These show that the Cuyahoga County Sheriff grants three (3) hours of call-in pay and the Geauga County Sheriff four (4) hours. This does not justify an increase to four (4) hours.

During the hearing, the Agency noted that the Union had previously demanded three (3) hours of call-in pay. It introduced evidence that an increase to three (3) hours would cost an estimated one thousand two hundred eighty-nine dollars and forty cents (\$1,289.40) per year. The Agency is most concerned with the overall costs of the total package. The call-in provision is a small part of the overall costs. The Agency noted that an increase to three (3) hours was not unreasonable.

**Recommendation:** The Fact Finder recommends that the language of Article 12, Section be amended to reflect an increase to three (3) hours of call-in pay.

***Issue: Article 14, Section 11, Court Time***

**Union Position:** The Union seeks an increase to a four (4) hour minimum for court appearances.

**Agency Position:** The Agency is opposed to an increase.

**Findings:** The Union asserts that there is a need for the increase. This affects the Narcotics Agents the most, who typically work evenings. Pharmacy Investigators work days, when courts are in session. When required to appear in court, the Agents must

review the file, meet with the prosecutor, and prepare their testimony. There is much waiting time for court appearances and often the Agents are not needed. The Agents are required to dress appropriately for court, so it takes a little while longer to get ready before leaving to appear. Finally, the Union believes that the increase does not add much expense to the Agency.

The Agency did not cost out the added expense for court time. It argues it is one more cost to be added to the total. Since its funding is flat in reliance mainly on the levy, it must control costs as much as possible. Given that the current levy was voted in about ten (10) years ago, and other sources, such as the Byrne grant, remain fixed, the Agency cannot afford significant increases in costs.

Again, the Union points to its comparables as support. The comparables provide some support. Two (2) cities provide a three (3) hours minimum, while two (2) call for a four (4) hour minimum. Using other county Sheriffs gives some support. Cuyahoga County allows three (3) hours of court time, while Geauga County provides four (4) hours. However, appearing in court is unique. The employee must review the case and meet with the prosecutor. Then comes the inevitable waiting time until called as a witness. Since many cases are resolved by plea bargaining, the appearance may not even be necessary. Particularly with Narcotics Agents, who must appear during their time off, the Union has established a reasonable basis for the increase. It would be inequitable, though, to apply the increase only to the Agents.

**Recommendation:** The Fact Finder recommends that the language of Article 14, Section 11 be amended to reflect a four (4) hour minimum for court time.

**Issue: Article 19, Vacation**

**Union Position:** The Union seeks an increase in vacation as follows:

<u>Years of Service</u>	<u>Annual Entitlement</u>
Less than 1	1.55 hours per 80 hour pay period (1 week)
1 year, but less than 4 years	3.1 hours per 80 hour pay period (2 weeks)
4 years, but less than 10 years	4.62 hours per 80 hour pay period (3 weeks)
10 years, but less than 21 years	6.2 hours per 80 hour pay period (4 weeks)
21 years or more	7.7 hours per 80 hour pay period (5 weeks)

**Agency Position:** The Agency proposes the following schedule of vacation:

<u>Years of Service</u>	<u>Annual Entitlement</u>
Less than 1 year	0
1 year, but less than 7 years	3.1 hours per 80 hour pay period (2 weeks)
7 years, but less than 12 years	4.6 hours per 80 hour pay period (3 weeks)
13 years, but less than 20 years	6.2 hours per 80 hour pay period (4 weeks)
20 years or more	7.7 hours per 80 hour pay period (5 weeks)

**Findings:** The Union asserts that the standard is to begin increasing vacation at five (5) years of service. Here, however, the employee population is fairly young, but with many years of service elsewhere. An employee would lose vacation entitlement if hired by the Agency with significant service elsewhere. Since there are no minimum staffing requirements, there is no added expense to the Agency.

The Agency responds that its proposal is the same as that given to the various units of the Lake County Sheriff's Department. It seeks parity. Additionally, it argues that vacation time is time and service with the current employer, not other employers. Looking to the Union comparables, no credit is given for prior service with previous employers in three (3) contracts and two (2) other contracts call for a maximum credit. Here, the Agency recognizes prior service credit. Finally, the Agency's proposal is consistent with other county Sheriff's Departments.

Once again, the above discussion as to comparables is relevant here. County agencies are a better comparison than city police departments. Additionally, the most comparable units, those of the Lake County Sheriff's Department, receive what the Agency has proposed. Parity is an important factor. Looking to the more relevant comparables, the Agency's proposal is more in line with what other Deputy Sheriffs receive. Cuyahoga County Deputy Sheriffs receive two (2) weeks of vacation after one (1) year, three (3) weeks after eight (8) years, four (4) weeks after fifteen (15) years, and five (5) weeks after twenty-five (25) years. Geauga County Deputy Sheriffs are entitled to two (2) weeks after one (1) year, three (3) weeks after seven (7) years, four (4) weeks after ten (10) years, five (5) weeks after fifteen (15) years, and six (6) weeks after twenty (20) years. The Agency's proposal fits squarely between these, while the Union's proposal is more generous, particularly in the early years of an employee's tenure. It would increase costs in a relatively few years. The Union has presented insufficient evidence to justify its proposal. The Agency's proposal is the more reasonable one.

**Recommendation:** The Fact Finder recommends amending Article 19 to provide for vacation as follows:

<u>Years of Service</u>	<u>Annual Entitlement</u>
Less than 1 year	0
1 year, but less than 7 years	3.1 hours per 80 hour pay period (2 weeks)
7 years, but less than 12 years	4.6 hours per 80 hour pay period (3 weeks)
13 years, but less than 20 years	6.2 hours per 80 hour pay period (4 weeks)
20 years or more	7.7 hours per 80 hour pay period (5 weeks)

***Issue: Article 21, Wages***

**Union Position:** Eliminate the pay scale for Pharmacy Investigators and pay all employees per the scale for Narcotics Agents. Effective April 1, 2004, four thousand dollars

(\$4,000.00) is to be added to the wage scale and an additional five percent (5%) increase would be granted across the board. Effective April 1, 2005, all employees would receive a five percent (5%) increase. Effective April 1, 2006, all employees would receive another five percent (5%) increase.

**Agency Position:** The Agency is opposed to eliminating the wage scale for Pharmacy Investigators. It proposes increasing the wage scales for both Narcotics Agents and Pharmacy Investigators by two percent (2%) based on the current top step of the wage scale and increases of two percent (2%) in years two (2) and three (3) of the contract. The wage scales would then be as follows:

Addendum A  
Special Agent Wage Scale

<u>Effective 2004</u>	<u>Effective 2005</u>	<u>Effective 2006</u>
1 - 18.76	1 - 19.23	1 - 19.70
2 - 19.86	2 - 20.33	2 - 20.80
3 - 20.96	3 - 21.43	3 - 21.90
4 - 22.06	4 - 22.53	4 - 23.00
5 - 23.26	5 - 23.73	5 - 24.20

Pharmacy Investigator Wage Scale

<u>Effective 2004</u>	<u>Effective 2005</u>	<u>Effective 2006</u>
1 - 17.63	1 - 18.07	1 - 18.52
2 - 18.73	2 - 19.17	2 - 19.62
3 - 19.83	3 - 20.27	3 - 20.72
4 - 20.93	4 - 21.37	4 - 21.82
5 - 22.13	5 - 22.57	5 - 23.02

**Findings:** The Union argues that the unit is comprised of highly qualified, specialized, and trained employees similar to police detectives. They should be paid accordingly. When compared to police detectives, the Agency employees are underpaid. Therefore, the unit needs an immediate increase of four thousand dollars (\$4,000.00) to catch up. After that,

five percent (5%) increases are required to keep the unit at the appropriate salary levels. Further, the employees perform similar duties. They are required to have the same background and training. Pharmacy Investigators should be paid at the same level as Narcotics Agents.

The Agency opposes paying the Pharmacy Investigators and Narcotics Agents the same wages. Pharmacy Investigators were added to the unit in 2003. Substantial increases were given last year to establish the current wage scale. Granting another four thousand dollars (\$4,000.00) and then a five percent (5%) increase results in an inordinate raise. The job duties are not similar. Pharmacy cases are typically brought to the investigators; Narcotics Agents seek out drug cases. Pharmacy Investigators typically work in the Agency facility; Narcotics Agents go out into the field. Pharmacy Investigators enjoy a fairly regular five (5) day work week on days; Narcotics Agents work evenings and work irregular hours.

The current top wage scale is forty seven thousand four hundred twenty-four dollars (\$47,424.00) for Narcotics Agents and forty five thousand one hundred thirty-six dollars (\$45,136.00) for Pharmacy Investigators. The Union's proposal would raise that to fifty three thousand nine hundred ninety-five dollars (\$53,995.00) in the first year for all employees and fifty six thousand six hundred ninety-five dollars (\$56,695.00) in the third year. This would result in increases of over sixteen percent (16%) for Pharmacy Investigators and almost fourteen percent (14%) for Narcotics Agents in the first year, and over twenty-five percent (25%) for Pharmacy Investigators and over nineteen percent (19%) for Narcotics Agents over the life of the contract. According to the Agency's calculations, the Union's proposal would cost over sixty thousand dollars (\$60,000.00) in

the first year, giving employees an increase of over fifteen percent (15%) on average. These are substantial increases that must be justified by substantial need.

The Fact Finder notes that his discussion as to the appropriate comparables is relevant here. The Union points to police detectives as the appropriate comparison. The Fact Finder believes that county agencies are more representative of the employees at issue. The Agency provided comparables including the county Sheriff's departments for Ashtabula, Cuyahoga, Erie, Huron, Lake, and Lorain counties. The average entry level wage is thirty six thousand three hundred twenty-four dollars and eight cents (\$36,324.08), while the average top level pay is forty three thousand three hundred seventy-eight dollars and sixty-eight cents (\$43,378.68). The entry level pay for the Pharmacy Investigators is currently thirty five thousand seven hundred seventy-six dollars (\$35,776.00) and thirty eight thousand sixty-four dollars (\$38,064.00) for Narcotics Agents. The current top salary for Pharmacy Investigators is forty five thousand one hundred thirty-six dollars (\$45,136.00) and forty seven thousand four hundred twenty-four dollars (\$47,424.00) for Narcotics Agents. These pay levels are right around the average. Nor do they reflect any increase the employees will receive in 2004.

The Union included Geauga County Deputy Sheriffs in its evidence. Their current entry level pay is just under forty thousand dollars (\$40,000.00) and their top level pay is just under fifty thousand dollars (\$50,000.00). Even including this evidence, the Agency's pay levels are comparable. The best evidence in favor of the Union is that the Lake County Sheriff's Department is the highest paying county agency in the comparables. Deputy Sheriffs in Lake County receive an entry level pay of forty four thousand eight hundred forty-five dollars (\$44,845.00) and a top level salary of forty nine thousand eight

hundred thirty-seven dollars (\$49,837.00) in 2004. Comparing them to the Pharmacy Investigators and Narcotics Agents, the latter are somewhat underpaid. According to the Union's calculations, the difference is slightly more than five percent (5%). This does not take into account any increase the Agency employees would receive this year. Using the Agency's two percent (2%) increase, for example, lowers the difference to three percent (3%). However, the Union's proposal would give Pharmacy Investigators and Narcotics Agents a top salary more than five thousand dollars (\$5,000.00) greater than the top salary of Lake County Deputy Sheriffs. This evidence does not support the increase the Union seeks.

The Union also introduced evidence of the annual increases given to various bargaining units. These range from a low of two percent (2%) to four percent (4%) for various city police departments over the last several years. In the various county Sheriff's departments, the increases ranged from one percent (1%) to eleven and eight-tenths percent (11.8%).<sup>1</sup> (The latter was a make up percentage given to the Geauga County Deputy Sheriffs in 2001.) The Agency contended that these increases were granted several years ago when the economy was better than it is currently. It pointed to several recent negotiations that resulted in small increases. For instance, Eastlake recently negotiated no increase in pay for Police Officers, Mentor-On-The-Lake negotiated a two and one-half percent (2.5%) increase in 2004, while Painesville agreed to a two percent (2%) increase in 2004.

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<sup>1</sup> SERB's Wage Increase Report showed a three and one-half percent (3.5%) increase in 2003 and a four percent (4%) increase in 2004 for the Lake County Sheriff. The Agency's representative also represents the Lake County Sheriff. He contended that these figures were incorrect, that the increases were three and one quarter percent (3.25%) in 2003 and three and one-half percent (3.5%) in 2004.

The Fact Finder notes that the Agency is not in the same financial position as are cities. Cities can deficit spend, something the Agency cannot do. Cities have more resources from which to draw to pay for their police departments. Income taxes, which typically increase, are usually their largest source of revenue. Here, the Agency depends on the tax levy, which is a flat source of revenue. While it does receive a Byrne grant and money from forfeitures, these sources are small and do not cover the expenses they once did. For example, the Byrne grant, which can only be used to pay for pharmacy side expenses, used to pay for all of the Pharmacy Investigator salaries. It now only covers one-half of those expenses.

Using all of the comparables, even city police departments, increases in the last several years generally range between nothing and four percent (4%). While Geauga County Deputy Sheriffs received an eleven and eight-tenths percent (11.8%) increase in 2001, this was a make up increase. The Pharmacy Investigators received a make up increase in 2003 when added to the bargaining unit. The most recent increases have been in the lower end of the range. All in all, the evidence does not support the need for the increases sought by the Union. Its proposal would increase wages by approximately fifteen percent (15%), which is far greater than increases given to comparable units. Since the employee salaries at issue here are close to comparable units, the Union has not established a need for the substantial increase it seeks. The Agency's two percent (2%) increase is reasonable, given the evidence.

**Recommendation:** The Fact Finder recommends that Addendum A of the Agreement be amended as follows:

Addendum A  
Special Agent Wage Scale

<u>Effective 2004</u>	<u>Effective 2005</u>	<u>Effective 2006</u>
1 - 18.76	1 - 19.23	1 - 19.70
2 - 19.86	2 - 20.33	2 - 20.80
3 - 20.96	3 - 21.43	3 - 21.90
4 - 22.06	4 - 22.53	4 - 23.00
5 - 23.26	5 - 23.73	5 - 24.20

Pharmacy Investigator Wage Scale

<u>Effective 2004</u>	<u>Effective 2005</u>	<u>Effective 2006</u>
1 - 17.63	1 - 18.07	1 - 18.52
2 - 18.73	2 - 19.17	2 - 19.62
3 - 19.83	3 - 20.27	3 - 20.72
4 - 20.93	4 - 21.37	4 - 21.82
5 - 22.13	5 - 22.57	5 - 23.02

***Issue: Article 21, New Section 4, Longevity***

**Union Position:** Add a new section that will pay employees an additional amount based on their longevity as follows:

Beginning an employee's fifth year of employment, the Employer shall pay the employee an additional twenty-five cents (\$0.25) per hour.

Beginning an employee's tenth year of employment, the Employer shall pay the employee an additional fifty cents (\$.50) per hour.

Beginning an employee's fifteenth year of employment, the Employer shall pay the employee an additional seventy-five cents (\$.75) per hour.

Beginning an employee's twentieth year of employment, the Employer shall pay the employee an additional one dollar (\$1.00) per hour.

**Agency Position:** The Agency opposes longevity pay.

**Findings:** The Union contends that longevity pay should be given to the employees. It

adds to employees' income for remaining with the Agency. Based on the Union's comparables, most longevity pay provisions begin to pay with an employee's fifth year of service with the employer. This is due to most contracts having the top step in pay at five (5) years, so employees do not get step increases after that year. Longevity pay helps to offset no longer receiving step increases. The current collective bargaining agreement has a five (5) step wage scale, so employees do not receive step increases after their fifth year. Adding longevity pay will help offset this. Finally, longevity pay is standard in the law enforcement field. Even looking to county Sheriff's departments, most, including Lake County, receive some form of longevity pay.

The Agency claims that adding longevity pay adds to the total cost of the contract. While Lake County Sheriffs do receive longevity pay, this was negotiated years ago before the FLSA had been ruled to apply in the public sector. It was used to give employees additional money without increasing base pay. Now, however, it is considered to be base pay under the FLSA. Therefore, the reason it was bargained no longer exists. Longevity is typically granted in years when employee receive no wage increase. Here, the Union is requesting a large increase and longevity is on top of that increase. Finally, in general the Agency and Lake County do not give longevity. The Sheriff's Department is the only agency that does. Here, in the third year of the contract, eight (8) of nine (9) employees would receive it, adding four thousand dollars (\$4,000.00) to five thousand dollars (\$5,000.00) to the cost.

The evidence shows that longevity pay is common in law enforcement. Of all the comparables introduced, only two (2) did not have a longevity pay provision. Those two (2) essentially gave longevity in another form. The Mentor-On-The-Lake Police

Department gave employees extra pay based on education and the Willoughby Police Department has it rolled into the wage scale. Using other county Sheriff's departments as comparables, Cuyahoga, Geauga, and Lake County grant longevity pay to the Sheriffs. Of particular note, the most relevant comparable here, the Lake County Sheriff's Department, grants it.

The Agency's argument that longevity pay was bargained into the contract prior to the FLSA becoming applicable in the public sector is without merit. There have been several contracts bargained since then and the provision remains. Additionally, the contract at issue here contains a five (5) step wage scale. After five (5) years, employees reach the top step and no longer receive step increases. Longevity pay would offset that somewhat. Further, parity is an issue here. The Union's proposal would provide greater longevity pay than granted to the Lake County Sheriff's Department. If longevity pay is to be granted here, it should be on par with the most comparable agency.

The Agency calculated the Union's proposal would cost one thousand five hundred twenty-six dollars and forty cents (\$1,526.40) in the first year, three thousand four hundred eighty-nine dollars and sixty cents (\$3,489.60) in the second year, and three thousand seven hundred thirty-four dollars and forty cents (\$3,734.40) in the third year. Following the Lake County Sheriff's Department provision would cost even less. This is not unreasonable given the evidence.

**Recommendation:** The Fact Finder recommends that a new Section 4 be added to Article 21 as follows:

Section 4 - LONGEVITY

Beginning an employee's seventh year of employment, the Employer shall

pay the employee an additional five hundred twenty-five dollars (\$525.00) per year.

Beginning an employee's eleventh year of employment, the Employer shall pay the employee an additional seven hundred fifty dollars (\$750.00) per year.

Beginning an employee's sixteenth year of employment, the Employer shall pay the employee an additional nine hundred fifty dollars (\$950.00) per year.

Beginning an employee's twenty first year of employment, the Employer shall pay the employee an additional one thousand seventy-five dollars (\$1,075.00) per year.

Beginning an employee's twenty sixth year of employment, the Employer shall pay the employee an additional one thousand two hundred twenty-five dollars (1,225.00) per year.

***Issue: Article 30, Clothing Allowance***

**Union Position:** Replace the existing language of Section 1 of Article 30 with the following language:

Each employee shall be paid the first pay period of each year one thousand two hundred and fifty dollars (\$1,250.00) annually.

**Agency Position:** The Agency is opposed to any change in the language.

**Findings:** The Union seeks to change to a lump sum payout rather than reimbursement. There are employee concerns as to being reimbursed at a later day. Employees are reimbursed twice a year, at the beginning of June and December. Depending on when the clothing is purchased, employees may have to wait months to be reimbursed. If they put purchases on their credit cards, they would have interest charges if they wait for the reimbursement. It would be more convenient and less costly to have a lump sum payment. Additionally, there is no replacement for damaged clothing.

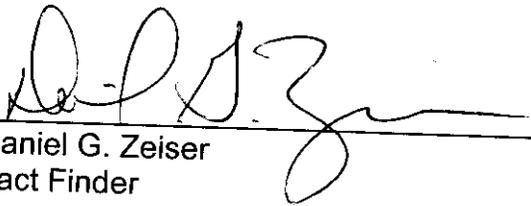
The Agency argues that it provides clothing when employees perform search

warrants. This is the most likely time when employees would damage clothing. If employees wear their own clothes, it is by choice. Employees are not required to wear uniforms. The purpose of the provision was to reimburse employees when they purchased suits or other clothing to wear in court. It is not intended to reimburse for wearing suits and ties on a daily basis. Employees are only required to wear suits or jackets in court or when representing the Agency at functions or meetings. Otherwise, on a daily basis the Narcotics Agents can wear jeans in the field. The current fashion for casual work clothes applies in the office. Finally, the Union is seeking an increase of seven hundred dollars (\$700.00) over double the current amount. The total cost would be six thousand three hundred dollars (\$6,300.00) each year.

The Union has failed to substantiate the need for an additional amount or to change the current system of reimbursement. The provision was added to the contract to reimburse employees for purchasing suits or jackets when needed. Employees need to wear suits only when appearing in court or, for the Pharmacy Investigators, a shirt and tie when out of the office. Five hundred dollars (\$500.00) per year is adequate for this. The Agency provides clothing to perform search warrant duties. As this is the most likely time when clothing would be damaged, it adequately covers this potentiality. Although reimbursement may not be the most convenient for the employees, the evidence did not establish a need to change the system. Employees can manage their finances to prevent or minimize interest charges. Additionally, a clothing allowance has become another form of compensation, allowing the parties to provide employees more money without increasing base pay. Here, the Fact Finder has awarded longevity pay, which did not exist before. Adding the cost of increasing the clothing allowance would be unreasonable on the whole.

**Recommendation:** The Fact Finder recommends no change in Article 30.

Dated: July 9, 2004



Daniel G. Zeiser  
Fact Finder