



**I. PROCEDURAL BACKGROUND**

This matter came on for hearing on February 4, 2005, before Jonathan I. Klein, appointed as fact-finder pursuant to Ohio Revised Code Section 4117.14, and Ohio Administrative Code Section 4117-9-05, on November 23, 2004. The hearing was conducted between the Lorain County Sheriff (“Employer”), and the Lorain County Deputy Association - Deputy Unit (“Union”), at the Lorain County Sheriff’s Department located at 9896 Murray Ridge Road, Elyria, Ohio 44035. The bargaining unit represented by the Union which is involved in the fact-finding process is comprised of approximately 56 sworn deputy sheriffs who are classified as either patrol or evidence officers.<sup>1</sup>

After further negotiations and mediation proved unsuccessful, the fact-finder commenced the evidentiary portion of the fact-finding hearing. The following issues were submitted by each party based on the proposals as contained in the Union’s pre-hearing briefs dated December 14, 2004 and February 4, 2005, and the Employer’s pre-hearing briefs dated December 10, 2004 and February 3, 2005:

1. Article 25 - Sick Leave
2. Article 26 - Health Care Benefits
3. Article 30 - Longevity
4. Article 31 - Hours of Work and Overtime
5. Article 32 - Uniforms
6. Article 36 - Wages
7. Article 37 - Injury Leave

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1. The parties’ position statements differed on the precise number of employees within the bargaining unit. However, at hearing the Union conceded the Employer’s figure was more accurate.

8. Article 39 - Physical Abilities Testing
9. New Article - Minimum Manpower
10. New Article - Service Weapon

The fact-finder incorporates by reference into this Report and Recommendations all tentative agreements between the parties relative to the current negotiations and any provisions of the current collective bargaining agreement not otherwise modified during negotiations and fact-finding. In making the recommendations which follow, the fact-finder has reviewed the arguments and evidence presented by the parties at hearing, and in their respective position statements.

## **II. FACT-FINDING CRITERIA**

In the determination of the facts and recommendation contained herein, the fact-finder considered the applicable criteria required by Ohio Rev. Code Section 4117.14(C)(4)(e), as listed in 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-05(K)(1)-(6). These fact-finding criteria are enumerated in Ohio Admin. Code Section 4117-9-05(K), as follows:

- (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 interest 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 issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

### **III. FINDINGS OF FACT AND FINAL RECOMMENDATIONS**

#### **Introduction**

The record establishes that approximately 270,000 citizens reside in Lorain County, the 8<sup>th</sup> most populated county in the State of Ohio. The Lorain County Sheriff's Department has an approximate total complement of 190 employees. As noted above, the bargaining unit involved in this fact-finding process consists of approximately 56 deputy sheriffs. Unlike deputies employed by many other county sheriff departments, the bargaining unit members are responsible for road and traffic patrol, in addition to performing transport/guard duties and maintaining order in the Lorain County jail system.

Upon review of the comparable jurisdictions offered by both parties, the fact-finder utilized the following jurisdictions for comparability purposes throughout this report: Lake County Sheriff Department; Mahoning County Sheriff Department; Trumbull County Sheriff

Department; Summit County Sheriff Department; and Stark County Sheriff Department. The fact-finder also considered other, internal bargaining units when evaluating the statutory criteria.

**Issue 1: Article 25 - Sick Leave**

The parties reached agreement at the fact-finding hearing that the issue of charging sick leave by six (6) minute intervals could be properly addressed in a Sheriff's Department policy, rather than in the collective bargaining agreement. The parties further agreed to the following:

Sections 25.1 through 25.9 shall retain their current language.

Section 25.10, entitled "Sick Leave Conversion," shall be modified to read:

Section 25.10. Sick Leave Conversion. Upon formal retirement under the Public Employees Retirement System (PERS) or death, bargaining unit employees shall be eligible to convert accumulated sick leave into pay, in accordance with the following table:

<u>Years of Service</u>	<u>Percent Received</u>	<u>Not to Exceed</u>
Twenty (20) to twenty-five (25)	50%	960 hours
Twenty-six (26) to indefinite	100%	1,000 hours

Payments shall be made as soon as practicable upon receipt of a formal written application by the retiring employee, or the deceased employee's surviving spouse or estate.

**Issue 2: Article 26 - Health Care Benefits**

The record establishes that the parties consider the issue of health care benefits to be inextricably intertwined with wages and the total compensation package. At the fact-finding

hearing, the parties discussed their positions pertaining to health care benefits, wages, longevity and physical abilities testing in one presentation.

The Union asserts that the Employer has made no proposal regarding health care benefits, but rather a conditional offer that monthly contributions will be lowered if the Union accepts the Employer's other economic proposals. In the event that the Union does not accept the Employer's wage and compensation proposals, the Employer has threatened to nearly double the deputies' health care contributions. Thus, the Employer has presented the Union with the foregone conclusion that it must make a significant sacrifice in either its health care contributions or its compensation. However, the Union contends that recent upgrades in Lorain County's bond rating by Moody's Investors Service and the County's cash surplus in the general fund indicates that such a sacrifice is not only unnecessary, but unfair to the bargaining unit members.

The Union points out that health care contributions are uniform across every department in Lorain County with the exception of the County Home, District Health and Sheriff's Departments. The record reveals that the Employer has ten different contribution levels within the Sheriff's Department. Currently, the bargaining unit members' health care contributions are \$39.70 per pay period for family coverage and \$13.62 per pay period for single coverage. The Union has proposed that health care contributions by bargaining unit members be equivalent to that of the lowest contribution of the units within the Sheriff's Department (\$39.70/family per pay period and \$13.63/single per pay period).

The Employer has provided no rationale for raising the deputies' health care contributions in the opposite direction of the contributions paid by all other employees throughout Lorain County. The Employer “. . . hangs its hat upon the fact that a handful of other bargaining units, none of which can be compared to the Deputies' occupation, accepted a wage and insurance package proposal similar to that proposed by the Sheriff.” (Union's Position Statement dated February 4, 2005, at 3). The Union asserts that the Employer has attempted to argue pattern bargaining where no pattern exists in either the Sheriff's Department or Lorain County at large. Furthermore, the Union argues that there is no financial crisis or desired uniformity that requires a breach of the status quo as to health care contributions. Finally, the Union has agreed that “. . . in the event that another unit in the Department has their contributions raised, the LCDA will raise theirs as well for the sake of promoting uniformity.” (Union's Position Statement dated February 5, 2005, at 4).

The Employer has proposed to modify the language contained in Article 26 of the collective bargaining agreement to conform to reality. Specifically, the Lorain County Board of Commissioners (“Commissioners”) is the body with the authority to procure, provide, and/or change health care coverage for all county employees. In recognition of this fact, the Employer proposes language to establish that alternative health care coverage may be offered to bargaining unit employees, and the terms and conditions of such alternative coverage shall be at the discretion of the Commissioners. The Employer is willing to cap the bargaining unit employees' monthly contribution to the cost of health care coverage at \$35.00 per month for

family coverage and \$5.00 per month for single coverage provided that the Union accepts the Employer's wage rate proposal and there are no other modifications in compensation.

The Employer points out that bargaining unit members currently contribute approximately \$86.00 per month (\$39.70 per pay period) for family health care coverage, and \$29.50 per month for single health care coverage. Additionally, the current contract language provides for up to a \$25.00 increase in an employee's share of the health care costs each calendar year. The record establishes that the monthly cost for family health care coverage in 2005 will be \$1,033.00. Therefore, under continuation of the current contract language, an employee's share for family health care coverage would increase to \$111.00 per month. By capping an employee's share of the health care costs at \$35.00 per month for family coverage, he or she would realize a cost savings of \$76.00 per month in 2005.

Based upon the Employer's past experience, it is likely that the cost of health care insurance will increase in 2006 and 2007, resulting in an additional \$25.00 in cost savings for the bargaining unit employees in each of those years. Specifically, employees will realize a cost savings of \$101.00 per month in 2006 and \$126.00 per month in 2007.

The Employer's combined wage and health care insurance package is the same package that has been offered to and accepted by the bargaining units for all other Lorain County general fund agencies. Furthermore, the same combined wage and health care insurance package has been passed by resolution of the Commissioners for all non-bargaining unit employees.

At the fact-finding hearing, Jim Cordes, the Lorain County Administrator, testified that the health care plan offered to the bargaining unit employees is self-funded with a third-party administrator. According to Cordes, the health care costs for Lorain County have “increased 13.5% over prior years,” representing a “middle of the road increase.” However, the Employer is “still below the curve on costs.” Cordes asserted that the Employer examined the “economics in aggregate” in determining the cost of health care insurance to be paid by the bargaining unit employees. He indicated that the Commissioners have sought stability in regard to the “level of monetary benefits in contracts,” and the County has established pattern bargaining over the last two years. However, Cordes acknowledged that various collective bargaining agreements have “spread premium sharing ratios around.” He pointed out that the premium sharing proposal offered by the Employer will result in a significant decrease in the health care costs paid by bargaining unit employees.

#### Final Recommendation

Based upon the evidentiary record presented regarding the issue of health care benefits, it is the recommendation of the fact-finder that Article 26 of the collective bargaining agreement should be modified to incorporate the Employer’s proposal.

Under the Employer’s proposed contract language, bargaining unit members will realize a significant cost savings. Specifically, employees with family coverage health insurance would only pay \$420.00 per year (\$35.00 per month) for the duration of the

contract, as opposed to \$1,332.00 in 2005, \$1,632.00 in 2006, and \$1,932.00 in 2007, respectively, based upon increases in health care costs projected by the Employer if the current method of computing employee health care premium contribution amounts would be maintained. Similarly, employees with single coverage health insurance would also realize a cost savings under the Employer's proposal.

Additionally, the fact-finder believes that bargaining unit members would also benefit from the consistent level of health care insurance premium contributions for the duration of the new contract as proposed by the Employer. Finally, the fact-finder recognizes the significance of achieving uniform health care costs for all County employees as sought by the Employer and the Board of County Commissioners.

**Issue 3: Article 30 - Longevity**

Currently, Article 30 of the collective bargaining agreement entitled "Longevity," provides, in pertinent part, as follows:

Section 30.1. All full-time regular employees shall be eligible for an annual longevity payment in accordance with the following schedule:

\* \* \*

**Contract Year 2 and 3**

<u>Years of Service</u>	<u>Amount Per Year</u>
Three (3) through fifteen (15)	\$88.00
Sixteen (16) through twenty (20)	\$90.00
Twenty-One (21) through thirty (30)	\$94.00

\* \* \*

The Union has proposed a new method for calculating longevity payments. Specifically, the Union proposes to “modify [the longevity] entitlement to 0.5 % for each year of service capped at 20 years; i.e. 10%”. (Union’s Position Statement, dated December 14, 2004, at 2).

The Employer is opposed to any increase in longevity payments. According to the Employer, it already has one of the most generous longevity payment schedules of comparable Sheriff’s Offices. Additionally, the current longevity payment schedule afforded the deputies is more generous than the schedules offered to other internal bargaining units. The Employer maintains that the Union’s excessive proposal amounts to a 300% increase in longevity payments to a 20-year bargaining unit members by the end of the contract term.

#### Final Recommendation

It is the fact-finder’s recommendation that there should be no changes to Article 30 of the parties’ new collective bargaining agreement. In support of a recommendation that the parties maintain the current contract language, the fact-finder notes that the longevity payments afforded bargaining unit members compares favorably to the payments received by deputies employed by comparable jurisdictions. (Employer’s Ex. F-1). Additionally, the Union’s proposal regarding this issue would result in the bargaining unit members receiving longevity payments which are significantly greater than those payments received by comparable employees. (Employer’s Ex. F-2). Furthermore, an analysis of other internal bargaining units

does not support the Union's proposed increase in longevity payments for the bargaining unit members. (Employer's Ex. G).

**Issue 4: Article 31 - Hours of Work and Overtime**

Section 31. 9 of the collective bargaining agreement currently provides as follows:

The use of compensatory time shall be with the advance approval of the appropriate supervisory authority. Within an established fourteen (14) day period, any available flex time must be utilized prior to applying for the use of compensatory leave. In the event an employee's balance of compensatory time is in excess of forty (40) hours, all time in excess of forty (40) hours will be paid to the employee in the first paycheck of July of each year.

If an employee provides a written request to the Employer no later than thirty (30) calendar [days] prior to July 1<sup>st</sup> of each year, an employee may cash-out and be paid for all accrued but unused compensatory time.

The Union proposes an increase in the compensatory time carryover for bargaining unit employees from forty (40) to two hundred and forty (240) hours under the new contract. In support of its position regarding this issue, the Union points out that the supervisors' bargaining unit is currently permitted to carryover two hundred and forty (240) hours of compensatory time. The Union maintains that the Employer should afford both bargaining units the same benefit in regard to compensatory time carryover. It also notes that the Fair Standard Labor Act (FSLA) allows up to four hundred and eighty (480) hours of compensatory time carryover.

Bryan Barnes, the local Union president, testified at the fact-finding hearing that the Employer does not schedule overtime. Furthermore, compensatory time requests are denied by the Employer if doing so would result in an insufficient level of manpower to cover the road patrols. According to Barnes, there is a concerted attempt by management to avoid the use of overtime work.

The Employer is opposed to any increase in the amount of compensatory time permitted to be carried over each year by the bargaining unit employees. The Employer points out that the Union raised its proposal regarding this issue for the first time at the fact-finding hearing. It notes that the parties signed off on the current language contained in Article 31 of the contract on September 30, 2004. The current contract language permits unlimited accumulation of compensatory time within one year. However, "an employee's compensatory time balance is paid off down to a carry over balance of 40 hours" each July. (Employer's Position Statement dated February 4, 2005). The Employer desires to maintain the current language because overtime is often generated when compensatory time is utilized by the bargaining unit employees. Furthermore, it points out that compensatory time is a "way to build up time for a payout when employees leave the Sheriff Department." (Employer statement at fact-finding hearing). The Employer would like to do away with this unfunded obligation altogether.

Final Recommendation

The fact-finder recommends that there should be no changes to Article 31, Section 9 of the parties' new collective bargaining agreement. At the fact-finding hearing, the Union presented insufficient evidence that the current contract language has had a negative impact upon the bargaining unit employees, including adversely affecting retention and/or hiring, or that a modification is warranted under the facts and circumstances presented at hearing. The fact-finder notes that employees are paid the balance of their compensatory time over forty (40) hours each July. As such, no bargaining unit employees is deprived of the economic benefits of their accumulated compensatory time. Additionally, the accumulation of more than forty (40) hours of compensatory time does not guarantee that bargaining unit members will be permitted by the Employer to exercise such time during a particular year due to the fact that the appropriate supervisor must still approve the request.

Issue 5: Article 32 - Uniforms

Currently, each bargaining unit member receives \$700.00 per year to finance his or her uniform maintenance. The Union proposes to increase the uniform allowance by \$50.00 per year. It points out that the promoted deputy unit currently receives an annual uniform allowance of \$750.00. The Union simply desires to receive the same uniform allowance as the aforementioned internally comparable bargaining unit. Additionally, the Union asserts that

road patrol deputies experience more wear and tear in their uniforms than supervisors, and the current allowance is inadequate to maintain their uniforms.

The Union also proposes that the personal property reimbursement for damage sustained to the eyeglasses of a bargaining unit member which occurs during the course of performing his or her assigned duties should be increased from \$200.00 per year to \$500.00 per year. Finally, the Union has proposed contract language which affords employees assigned to the SWAT unit with the same additional uniform and equipment allowance of \$150.00 per year that employees assigned to the K-9 unit currently receive under Section 32.2 of the collective bargaining agreement.

The Employer has proposed to maintain the current uniform allowance of \$700.00 per year for the duration of the new contract. However, the Employer has also proposed language concerning a voucher system for purchasing and maintaining uniforms which provides as follows:

Section 32.2. Non-probationary employees shall be provided with an annual uniform allowance account as follows:

\* \* \*

The uniform allowance is provided on a purchase requisition system (voucher) system and not on the basis of cash to the employee. The purchase requisition system shall be pursuant to the Employer's rules, regulations and procedures for the purpose of purchasing and maintaining uniforms.

Plainclothes officers shall be eligible for uniform allowance according to the above schedule for use towards clothing

determined by the Employer's rules, regulations and procedures. All requests for reimbursement by plainclothes employees must be accompanied by receipts.

According to the Employer, its proposed voucher system provides bargaining unit employees with "full purchase power without increasing their taxable income." Additionally, there is no sales tax involved with the Employer's proposed purchase requisition system. The Employer asserts that a voucher system implemented for the promoted correction officers has work very well. Furthermore, the comparative data supports the use of a purchase requisition or "voucher" system without an increase in the uniform allowance. The Employer also points out that the promoted officer unit currently receives a greater uniform allowance than the deputy unit because they negotiated more money for their uniforms in exchange for accepting less money for physical fitness testing. The Union maintains that it did not propose an increase in the uniform allowance during the previous contract negotiations because it accepted the Employer's proposed wage rate increases.

The Employer is opposed to the Union's proposal to increase the reimbursement amount for damage to bargaining unit members' eyeglasses. It asserts that the current contract language which provides for reimbursement up to \$200.00 for damaged eyewear is generous. Finally, the Employer would agree to the additional uniform allowance for SWAT members provided that there are no other increases in the uniform allowance.

Final Recommendation

Based upon the evidence presented at the hearing, it is the fact-finder's recommendation that the uniform allowance contained in Section 32.2 of the collective bargaining agreement should be increased to \$750.00 per year. The fact-finder notes that the Employer's supervisors currently receive this increased uniform allowance. The evidence presented reveals that the deputies may very well experience more uniform wear and tear than do their supervisors as a result of their different job duties and responsibilities. Under the facts and circumstances presented, it is reasonable that the bargaining unit members should receive at least the same uniform allowance as their supervisors. Additionally, the increased uniform allowance recommended by the fact-finder will not alter the standing of the bargaining unit employees compared to deputies employed by comparable jurisdictions as it pertains to their uniform allowances. (Employer's Ex. I).

The fact-finder further determines that a voucher or purchase requisition system should not be implemented under the new contract even though such a system may result in tax savings for the bargaining unit members. At the fact-finding hearing, the Employer presented insufficient evidence which would warrant its proposed modification. The fact-finder notes that the promoted supervisors deputy unit does not currently utilize such a system. Furthermore, the data presented regarding comparable jurisdictions does not support the Employer's proposal to implement a purchase requisition system.

Based upon the evidentiary record presented, the fact-finder further recommends that there should be no increase in the personal property reimbursement as proposed by the Union. At the hearing, the Union presented insufficient evidence to justify its proposed increase in the personal property reimbursement amount afforded bargaining unit members for the repair or replacement of eyewear damaged during the course of performing their duties.

Finally, the fact-finder cannot recommend the Union's proposal to add SWAT members to the list of employees who are entitled under Section 32.3 of the contract to receive an additional allowance of \$150.00 per calendar year for related expenses and equipment involved with their special assignment. The Union presented no evidence which would warrant its proposal.

**Issue 6: Article 36 - Wages**

The Union has proposed the following wage rate increases for the parties' new collective bargaining agreement:

2005	-	3.0%
2006	-	3.5%
2007	-	4.0%

In support of its position, the Union points out that Sheriff's Departments in three counties located in northeast Ohio have contracts in place for 2005 which afford their deputies higher wage rate increases than that which is proposed by the Union. Specifically, deputies

employed by Cuyahoga County will receive a 4.0% wage rate increase; deputies employed by Erie County will receive a 3.5% wage rate increase; and Geauga County deputies will receive 4.0% wage rate increases in 2005.

According to the Union, Lorain County's debt is comparatively modest, and it has the ability to fund and finance the proposed wage rate increases. The Union acknowledges that the wage rate increases which bargaining unit members received under the last contract constituted a "windfall." However, those wage rate increases only brought the employees to a "comparable level." The Union asserts that a 1% wage rate increase across the board as proposed by the Employer is not enough for the bargaining unit members to maintain their position with comparable employees. In contrast, a 3% wage rate increase is more reasonable according to the Union. The Employer has provided no justification for its wage rate proposal other than indicating that the Board of County Commissioners will not provide the deputies with higher wage rate increases.

The Employer proposes wage rate increases of 1% during each of the next three years in anticipation of the Union's request for increases in other economic benefits. However, the Employer would agree to provide a 1% wage rate increase in 2005, and 1.50% wage rate increases in 2006 and 2007 in tandem with a decrease in the bargaining unit employees' share of the monthly health care premium contribution with the understanding that there would be no increases to other forms of compensation.

The Employer is opposed to the Union's proposal because it exceeds the amount that the Board of County Commissioners has indicated that it would fund. Furthermore, "[t]he combination of the wage increase proposed by the Employer with the cut in employee's share of insurance premium would result in a total package worth 1.8% in 2005, 2.4% in 2006, and 2.9% in 2007 to those members who elected the full family coverage." (Employer's Position Statement dated February 4, 2005).

At the fact-finding hearing, County Administrator Jim Cordes acknowledged that Lorain County currently has a cash carryover of approximately \$21 million. However, only \$300,000 to \$500,000 of the aforementioned sum is unappropriated cash, with the remainder allocated to future projects. Furthermore, \$3.3 million is set aside in the "rainy day fund." Cordes indicated that Lorain County will suffer a significant loss of local government funds from the State of Ohio. According to Cordes, Lorain County will also receive less funding from the State of Ohio due to a shift in the population within the county. He also stated that Lorain County will repeal a 1 cent sales tax. Nonetheless, the Employer is not arguing that it has no ability to pay the wage rate increases proposed by the Union. However, non-mandated services may be eliminated by the County. Cordes further testified that the Commissioners have indicated their desire to "continue the pattern of economics applied in prior contracts."

On cross-examination, Cordes testified that the criminal justice system comprises approximately 65 to 68 percent of the County's budget. He confirmed that the County's deputies currently provide road patrol services, although such services are not mandated.

Cordes acknowledged that other internal bargaining units received two or three percent wage rate increases in 2005, and he admitted that Lorain County has a “strong, stable position and a bright outlook.” On redirect examination Cordes asserted that most other internal bargaining units have “settled on 1%, 1.50% and 1.50% wage rate increases, and a \$35 share of health care premiums.” Finally, Cordes testified that the Commissioners will fund this collective bargaining agreement “at the levels of other contracts funded based on total economics.”

Howard Hefelfinger, a labor consultant for Lorain County, testified at the fact-finding hearing that the contract negotiations between the Sheriff’s Department and the Union falls at the end of the bargaining cycle. He stated that the Commissioners informed him that they will only fund “1%, 1.50% and 1.50% wage rate increases with a \$35 contribution for insurance by the deputies.” He acknowledged that other internal bargaining units have received higher wage rate increases. Hefelfinger also confirmed that no other internal bargaining units have negotiated contracts for 2007.

#### Final Recommendation

It is the fact-finder’s recommendation that Article 36 of the new collective bargaining agreement should be modified to provide for wage rate increases of 1.25% in 2005, 1.50% in 2006 and 1.50% in 2007. For the following reasons, the fact-finder determines that the abovementioned wage rate increases combined with the significant reduction in the health care premiums paid by bargaining unit members under the Employer’s proposed modification to the

health care insurance plan results in a total economic package which is fair, reasonable and will allow the Union to maintain its current standing among comparable jurisdictions with regard to wages.

The record establishes that a 1.25% wage rate increase in 2005 will result in a five-year employee receiving wages in the amount of \$49,259.34, excluding his or her longevity bonus. In addition, those employees who receive family health insurance coverage will also realize a substantial savings of \$912.00 per year as a result of paying \$35.00 per month for coverage under the Employer's proposal. Accordingly, the realized increase in compensation from a combination of a reduction in out-of-pocket insurance premium expense and wage increase afforded a five-year employee is approximately 3.15% for 2005 as compared with 2004.<sup>2</sup> The fact-finder further determines that wage rate increases of 1.50% in both 2006 and 2007, in addition to the anticipated family health care coverage savings of \$1,212.00 in 2006 and \$1,512.00 in 2007 under the Employer's proposal, will result in a realized increase in compensation of 4% in 2006 and 4.50% in 2007 for five-year employees. The fact-finder recognizes that the health insurance savings represents additional monies to the bargaining unit employees, but unlike wage increases it does not generate additional compensation and related benefits by changing the hourly rate of pay.

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2. For example,  $912 \div 48,651.20 = 1.9\% + 1.25\% = 3.15\%$ . This same method was used for the next two years of the collective bargaining agreement.

The evidentiary record also reveals that the average wage rate in 2005 for five-year deputies employed by selected comparable jurisdictions is \$43,357.19. (Lake County - \$51,331.90; Mahoning County - \$39,256.02; Stark County - \$40,437.70; Summit County - \$45,633.12; Trumbull County - \$40,127.22). Based upon both the wage rate increases as proposed by the Employer and those recommended by the fact-finder, it is reasonable to project that bargaining unit members will maintain their relative standing among comparable jurisdictions. Specifically, the Lorain County deputies will continue to rank second behind only Lake County deputies pertaining to their annual wage rates. The fact-finder notes that under the Union's proposal, the wage rate received by bargaining unit employees would surpass the wage rate afforded deputies employed by Lake County, the highest paid comparable jurisdiction selected by the fact-finder.

**Issue 7: Article 37 - Injury Leave**

At the fact-finding hearing, the parties mutually agreed to language on this article and withdrew the issue concerning injury leave from further consideration by the fact-finder.

**Issue 8: Article 39 - Physical Abilities Testing**

Article 39 of the collective bargaining agreement entitled "Physical Abilities Testing," provides, in pertinent part, as follows:

Section 39.3. Employees shall be notified in writing of their Physical Abilities Test score upon completion of the test or as

soon thereafter as is practical. Employees who successfully complete the Physical Abilities Test, shall receive an incentive bonus in the amount of \$750.00

The Union has proposed that the incentive bonus received by bargaining unit employees who successfully complete the physical abilities test should be increased \$100.00 per year under the new collective bargaining agreement. At hearing, the Union urged the fact-finder to shift a monetary increase to the bargaining unit members under Article 39 if its proposed wage rate increase was not recommended.

The Employer is opposed to an increase in the amount of the bonus provided to employees upon the passage of a physical ability test administered on a yearly basis. The Employer points out that it is one of the few Sheriff's Offices that requires a physical abilities test based upon the essential functions of the position of deputy sheriff. Upon implementation of the physical abilities test, the parties agreed by Letter of Understanding that only newly hired employees would be required to take and pass the test. Accordingly, there is no justification to raise the bonus amount paid to employees who voluntarily take the test. The Employer further asserts that there is no comparative data to support the Union's proposal.

#### Final Recommendation

It is the fact-finder's recommendation that there should be no modifications to Article 39 of the collective bargaining agreement. At the hearing, the Union presented insufficient evidence which would warrant an increase in the bonus amount paid to employees who

successfully complete the physical abilities test. The fact-finder also notes that the Union presented no data from comparable jurisdictions regarding this issue.

**Issue 9: New Article - Minimum Manpower**

At the fact-finding hearing, the parties entered into a tentative side agreement regarding scheduling and minimum manpower, and that agreement is fully incorporated herein.

**Issue 10: New Article - Service Weapon**

The Union has proposed that a new provision be added to the collective bargaining agreement which would allow bargaining unit members the option of purchasing their service weapons for \$25.00 upon their retirement. The Union asserts that its proposal is beneficial to both parties for the following reasons.

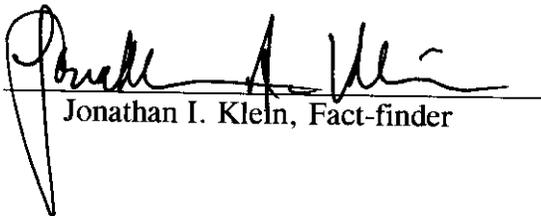
The Union maintains that many bargaining unit members may feel the need for continued protection after they retire, and in some instances may even need such protection due to past experiences with unlawful citizens. Additionally, retired deputies will more than likely believe that they have a continued obligation to provide protection to the public. As such, the continued armament of retired deputies would in essence provide an auxiliary police officer to the community. Moreover, the armament of these individuals will provide additional, safe protection to the citizens of Lorain County at no cost to the Employer.

Therefore, as an incentive to the retiring bargaining unit members, they should be afforded the option of purchasing their service weapons at the flat rate of \$25.00. In further support of its position regarding this issue, the Union points out that other sworn units such as the supervisors are permitted to purchase their service weapons for \$25.00 upon retirement. The bargaining unit members should not be denied the same benefit.

The Employer is opposed to the Union's position regarding service weapons, and it has proposed that such weapons may be purchased by retiring bargaining unit members at the fair market value. The Employer asserts that supervisors are afforded the option of purchasing their service weapons for \$25.00 upon retirement in recognition of their service at a higher rank. Additionally, the Employer's potential liability is limited because supervisors comprise a much smaller bargaining unit.

Final Recommendation

It is the fact-finder's final recommendation that a new article should be added to the parties' collective bargaining agreement which provides that bargaining unit members should be afforded the option of purchasing their service weapons for \$25.00 upon retirement. Based upon the evidence of record presented at the hearing, the fact-finder concludes that there is no overriding reason or justification for the Employer to treat the deputies differently than the promoted law enforcement bargaining unit as it pertains to this issue.

  
Jonathan I. Klein, Fact-finder

Dated: March 19, 2005

**CERTIFICATE OF SERVICE**

Originals of this Fact-finding Report and Recommendations were served upon on Robin L. Bell, Esq., Clemans, Nelson and Associates, Inc., at 2351 South Arlington Road, Suite A, Akron, Ohio 44319; Robert M. Phillips, Esq., Faulkner, Muskovitz & Phillips, LLP, at 820 West Superior Avenue, 9<sup>th</sup> Floor, Cleveland, Ohio 44113-1800; and upon Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12<sup>th</sup> Floor, Columbus, Ohio 43215-4213, each by express mail, sufficient postage prepaid, this 19<sup>th</sup> day of March 2005.

  
Jonathan I. Klein, Fact-finder

