

STATE EMPLOYMENT  
RELATIONS BOARD  
2005 FEB 22 A 10: 13

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF  
FACT-FINDING BETWEEN:

WARREN COUNTY SHERIFF

CASE NO. 04-MED-08-0746  
0747-0748-0749-0750

AND

WARREN COUNTY DEPUTY SHERIFF'S  
BENEVOLENT ASSOCIATION

JERRY HETRICK  
FACT-FINDER

FACT-FINDING REPORT  
AND  
RECOMMENDATIONS

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APPEARANCES

FOR THE COUNTY

Mark Lucas, Attorney  
Scott McKinley, Consultant  
Thomas Ariss, Sheriff  
Col. Del Everett

FOR THE UNION

Stephen Lazarus, Attorney  
Michael Bolte, Attorney's Office  
Scott Williams, President

Date: February 16, 2005

## **BACKGROUND**

The matter came up for hearing on January 21, 2005 before Jerry Hetrick, appointed as Fact-Finder pursuant to Ohio Rev. Code Section 4117.14. The hearing was conducted between Warren County Sheriff, employer, and Warren County Deputy Sheriff's Benevolent Association. Involved are three labor agreements and five bargaining units. Three of the bargaining units are covered under one labor agreement

The bargaining units involved include a sworn unit of deputy sheriffs (58), sworn supervisors of Sergeants & Lieutenants unit (36) and non-sworn unit of non sworn corrections officers, (43), non sworn Sergeants & Lieutenants (9) and non sworn support services employees(11) for a total of 157 bargaining unit employees.

The unresolved issues set forth in the respective briefs and discussed at the hearing are as follows:

1. Article 9 Vacancies/Promotions (Nine Issues)
2. Article 16 Insurance (Two Issues)
3. Article 20 Physical Standards
4. Article 22 Hours of Work (Seven Issues)
5. Article 23 Wages (Three Issues)
6. Article 25 Vacation
7. Article 26 Holidays (Three Issues)
8. Article 28 Sick Leave Conversion (Two Issues)
9. Article 40 Integrity of Agreement

Incorporated by reference/attachment into the Fact-Finder's recommendations are the tentative agreements reached between the parties.

In making the following recommendations, the Fact-Finder has reviewed the arguments and evidence presented by the parties both at the hearing and in position statements and evidence.

## **FACT-FINDING CRITERIA**

In the determination of facts and recommendations, the fact-finder considered the applicable criteria required by Ohio Rev. Code Section 4117.14 (C) (4) (e) as listed 4117.14 (G)(7)(a)-(f) 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 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 effects 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.

## **INTRODUCTION**

The Warren County Sheriff's Department is the county wide law enforcement agency. It enforces the law in unincorporated areas of the county, assists local law enforcement officers, maintains the county jail and performs specific functions for the County Courts.

The county is located between Dayton and Cincinnati. The county is experiencing both residential and industrial growth and has a solid industrial base. The May 2004 unemployment rate of 3.7% is below that of the nation and Ohio.

## **ISSUE 1-VACANCIES & PROMOTIONS-ALL UNITS**

The union proposes three changes to Section 9.2. First, removal of ability to perform the work and replace it with a score from any examination. Second, removal of physical fitness as an element of selection criteria. Third, removal of records of attendance as one of the criteria for promotion. The Union contends employees take a double hit when attendance and discipline for attendance is applied separately. Finally, the union would separate lateral transfers from promotions and set out two factors for such lateral transfers: seniority and records of performance and discipline, each with equal weight.

Additionally the union would add records of performance to the criteria for promotions and percentage to each criteria. It would spell out how long promotion lists are maintained, who administers promotional examinations and require employees to have completed one year in the current assignment. Without such changes, the union says the promotion and transfer policy is unfair in its application. In support, it offers an arbitration award reversing the employer's promotion decision.

There is little agreement between the employer and union regarding promotions and transfers. The employer indicates it would be happy with the current language. It sees no compelling reason for separation of promotions and transfers, even less for the elimination of ability to perform the work, attendance, and assigning weight to the criteria utilized.

### **FINDING & RECOMMENDATION**

The determination of the ability to perform is not very easily susceptible to apply a mechanical formula that fits all circumstances, especially where diverse positions are involved. What works for one may not be appropriate for another, even where the union proposal would leave a percentage to management discretion. I have read the arbitration decision carefully. The decision did not turn on the applicable criteria. It turned on management's decision not to promote the remaining applicant from a particular list. It was how the test results were used once the tests were given and scored. That once given

and scored and placed in rank order on that list it would remain for one year. It is not unusual to consider ability to perform the work, physical fitness, records of attendance and discipline when considering applicants for promotions and transfers. The use of tests is not an uncommon tool to determine qualifications and rank order of competing employees. What is important is whatever factors are used are applied fairly and non discriminatory.

The fact finder cannot agree that replacing the ability to perform the work with seniority deleting attendance as a consideration and replacing physical fitness with scores of any examination produces a more reliable or effective means of evaluating applicants. Ability to perform the work is the most essential factor in determining candidates for promotion or transfer. Physical fitness is an integral part of law enforcement work. The Union has referred to an incident where officers were required to enter a cell and subdue a prisoner. Law enforcement officers are often called to domestic violence. Such officers cannot fulfill their responsibilities to insure public safety that of fellow officers and themselves unless physically fit.

The fact finder recommends that the current language of Section 9.2 be incorporated into the subsequent collective bargaining agreements for all units. The fact-finder agrees with the union's premise that all employees are entitled to know the criteria on which promotions & transfers are based. The fact-finder recommends the following additions to Section 9.2: (all units)

#### **E. Performance Evaluation Records.**

**At the time the notice is posted as provided in Section 9.1 above, the Employer shall make available to all applicants the weights to be given to each major component being evaluated (e.g. percentage, number of points, pass/fail, etc.)<sup>1</sup>**

The fact-finder recommends no change to the Sworn and Swore Supervisors agreements regarding bargaining unit members participate in the evaluation process. Their participation enhances the evaluation process due to their knowledge of the position. However the fact-finder recommends administratively the Sheriff's Office does not use

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<sup>1</sup> The fact-finder notes the parties have agreed to the 10 day inspection of test packets. It is incorporated by reference into agreements for all units.

the applicant's immediate supervisor where that supervisor has taken disciplinary action against that applicant.

The fact-finder has reviewed the Promotion/Vacancy provisions of the nine counties offered as comparables by the employer and finds typically little difference in how promotions or vacancies are filled. The burden is on the party proposing change to demonstrate the present contract language has given rise to a condition that will require change and does not impose an unreasonable burden on the other party. The union has shown no such condition exists or has occurred in how the employer fills vacancies.

The ability to perform the work of the position to which the employee seeks to transfer and meet the physical fitness requirements, if any, are no less critical for vacancies than promotions. The fact-finder recommends no separation between promotions and vacancies.

## **ISSUE 2- INSURANCE-ALL UNITS**

Health care costs dominate labor contract settlements in Ohio and nationally. There is no question that health insurance premiums cause a financial hardship for Ohio private and public employers. That hardship puts the public employer in a difficult position when health insurance premiums increase and financial support from the state falls. That hardship is no less on employees. Currently the Agreements requires the Employer to make available to bargaining unit general insurance and hospitalization plans as provided to all other non bargaining unit County employees. By doing so there is a cost savings in purchasing insurance. The parties have implemented a partial co-payment not to exceed fifteen (15) percent with a cap of \$30.00 per pay period. For 2005 the employer projects health care plan costs to rise from \$7.8 million to \$8.5 million or 8.9%. The employer will offer two medical plan options and no employee contribution increase for 2006 for the "Choice Plan".

The employer proposed to clarify that the non-bargaining unit employees referenced are general fund employees and do not include the Mental Retardation & Developmental Disabilities employees which the board has independent authority to contract for separate

insurance. In the hearing, the employer indicated the clarification need not go into the contract.

There are separate insurance proposals at issue. The employer proposes to eliminate the employee contribution cap. The employer notes this is the only unit with an insurance cap. The union opposes the elimination of the cap but proposes the cap be increased to \$40.00. As a separate proposal, the union would propose that employees who do not use the employer's health insurance could receive an annual payment of seventy-five (75) percent of the average cost of health care for the current year.

### **FINDING AND RECOMMENDATIONS-ALL UNITS**

The 2003 SERB Report on the Cost of Health Insurance in the Public Sector indicates public sector employees make contributions to their health care. The average percentage contribution in Counties of 150,000 or more is 13.6% for single coverage and 13.7% for family coverage. Warren County employees pay a slightly higher percentage than other counties of their size but probably on par based on health care increases in 2004. The employer projects premiums to exceed the cap during the proposed three years of the contracts.

The fact finder was given no indication whether other county units bargain collectively for health care benefits. The employer has made plan design changes which it hopes will restrain or moderate any premium increases. It believes those changes will not require increased contributions for 2006.

Based on the foregoing, the fact-finder recommends the cap on contributions be maintained and increased per the union's proposal to a maximum of \$40 per pay period.

The fact-finder does not recommend inclusion of the union's proposal to opt out of the employer's health insurance plan. It is not supported by a comparison of with area counties. It could represent both a significant additional cost to the employer and reduce the county's leverage when shopping for health care coverage.

The fact-finder recommends Article 16 as follows:

Section 16.1 The employer shall make available to bargaining unit employees general insurance and hospitalization plans provided all other non bargaining unit County general fund employees.

Section 16.2 The employer may provide a comprehensive plan, flexible benefits plan, or a preferred provider plan, etc. as additional options on the same basis these plans are provided to non bargaining unit County general fund employees.

Section 16.3 If the employer determines that it is necessary to assess a partial co-payment of insurance premiums by non bargaining unit County general fund employees, the same partial co-payment shall also apply to employees in this bargaining unit. The partial co-payment shall not exceed fifteen (15%) of the in category premium up to a maximum of \$40 per pay period.

### **ISSUE 3-PHYSICAL STANDARDS-ALL UNITS**

The issue here is the retention or deletion of the current provision concerning the formulation of physical fitness standards. The employer would retain the current contract provision in which it has agreed to work with the units to formulate specific plans and procedures for physical agility requirements. The union would remove the provision from all labor agreements. The rationale for doing so is that the provision has been in the agreements for fifteen years without implementation. However the underlying reason lies with physical fitness as a component of the promotion/transfer process and the employer's stated intent to use physical fitness as an element in the future.

### **FINDING & RECOMMENDATION**

Physical fitness is clearly an integral part of sheriff's work. The previous fact-finding report for the sworn unit stated: "There is no question that it is not unreasonable or inappropriate to expect that law enforcement officers be physically fit to perform the essential functions of their respective positions". This fact-finder concurs. This is particularly so where the employee's physical fitness to perform available duties affects the public safety, the employee's own safety and that of fellow employees. It is even more critical as the employer points out when going from administrative positions to road or jail work.

Fact-finder Braverman's recommendations included the current language of Section 20.1-sworn agreement. As she correctly stated: "a program which is drafted with the involvement of both parties will in all likelihood meet with better acceptance and

success”. This fact finder is not prepared to remove a provision of the labor agreement simply on the basis of non-use, especially where the public safety concern is present. The fact-finder recommends the current contract provision be included in the new collective bargaining agreements for all units.

#### **ISSUE 4-HOURS OF WORK/OVERTIME-NON SWORN**

While there are several unresolved proposals, the crux of this Article is the union proposal to include the current work schedule as a scheduling provision and prevent future changes without union agreement. The union proposes changes in Section 22.3 adding “unless a shorter advance notice is accepted at the discretion of the supervisor.”

In Section 22.7 that has been agreed upon with the other two units, the union proposes to increase amount of court time paid. In Section 22.9 the union/employer both propose changes which have been agreed upon with the other two units which would increase the number of employees who may sign up for the overtime shift. The employer would add that the supervisor will determine who has the least amount of overtime from the equalization chart. In Section 22.9 and 10 the union would add that the assignment of overtime will be based on overtime hours worked plus equalization hours. Additionally the union would prevent corrections supervisors from working as corrections officers on overtime. The employer would define the remedy for errors made in overtime assignments as a make-up overtime assignment. In Section 22.10 the union would propose that employees could not be forced to work overtime on their days off. In Section 22.14(new) the union proposes that where an employee works a double shift, all hours worked in the second shift will be compensated at time and one half. Finally, the union proposes 22.15(new) extra time with compensation for roll call and pass down to be paid at time and one half.

The crux of the disagreement is Section 22.12 where the union seeks to include the current work schedule implemented July 2004 in the agreement and prevent any schedule change without the union’s agreement. The union wishes to make certain the employer does not implement a monthly rotation of employees that wipes out the split of junior-senior split which is desirable for training and safety purposes as well as shift preference rights.

Presently the agreement provides that the parties agree to explore scheduling alternatives. In the event the employer then enacts permanent shifts or limited shift rotations, employees may select their preferences within their work assignment area according to their seniority, subject to the operational needs of the Department.

### **FINDING AND RECOMMENDATION**

The employer correctly points out that it has the right to determine methods and means of operations, schedules of shifts and working hours. However that right is restricted by the provisions of Article 22.12. The union is proposing for Units A&B to include a 4-1-1 schedule (four months of one shift followed by one month on each of the other two shifts). Employees would be able to select shifts based on seniority. The employer opposes a fixed schedule. It cannot be restricted to one schedule to meet minimum jail standards and operational needs. There is a need to balance seniority on each shift and maintain the required number of females per shift. The employer proposes that where it enacts permanent shifts, employees may select their preference according to their rank seniority, subject to the operational needs of the Sheriff's Office. The fact-finder notes employees may currently select their preferences by seniority subject to operational needs of the Department

The fact-finder recommends: Section 22.12 provide:

The employer agrees the work schedule in effect upon the signing of this agreement shall remain in effect unless operational requirements of the Sheriff's Department necessitates a change. In the event operational requirements necessitate a change in schedule, the parties agree to explore scheduling alternatives. Any schedule change will result in employees selecting their preference of shifts, according to rank order of seniority, based on the operational needs of the Department.

The fact-finder recommends Section 22.3 provide:

Requests for compensatory time off must be submitted not less than sixteen(16) hours in advance of the time requested, unless a shorter advance notice is accepted at the discretion of the supervisor.

The fact-finder recommends Section 22.7 provide the following addition :

Any employee required to attend court on their regular scheduled day off, or

they are required to attend court at a time which is more than four (4) hours past the end of their regular scheduled shift shall receive a minimum of three (3) hours at time and one half (1 ½) their regular rate of pay for such attendance in lieu of the two hour court time. Any and all fees, compensation or allowances, to which any employee is or would be entitled to for such court time as provided by the statute or court order, shall be turned over and paid to the county and not retained by the employee.

The fact-finder recommends Section 22.9 Scheduled overtime provide:

When a supervisor becomes aware that an overtime assignment will be necessary the date and hours of the overtime will be posted with twelve (12) slots indicated after each entry. Up to twelve (12) persons will have the opportunity to sign up for the same overtime. The posting supervisor will determine which of the persons signing up has the least amount of total hours worked on the current equalization chart during that year and assign the overtime to that person. If no one signs up, and the overtime is for a clerical specialist, the posting supervisor will determine who is available within the clerical specialist classification with the least amount of overtime hours worked that year, and assign that person to work. That person assigned will be required to work. If no one signs up, and the overtime assignment is for a corrections officer, the posting supervisor will determine who is available with the least amount of overtime worked that year, and assign that person to work. That person assigned will be required to work. If no one signs up, and the overtime assignment is for a Corrections Lieutenant or Corrections Sergeant, the posting supervisor will determine who is available within the Corrections Lieutenant or Corrections Sergeant classification with the least amount of overtime hours worked that year and assign that person to work. That person assigned will be required to work. The assignment of forced overtime will be based on overtime hours worked only, using the order listed in Section 22.10.

The employer will instruct supervisor that a person who signs up for a full shift will a take precedence over two employees who put in for the same shift only if the person bidding on the full shift has fewer hours on the equalization chart

than at least one of the two people offering to split the shift.

Overtime covering vacations should be posted 14 days( in no case less than ten (10) days) in advance, except that if a supervisor allows an employee to take vacation time off on short notice, per Section 25.3, the posting will be made as soon as reasonably possible.

Overtime covering compensatory time off should be posted five (5) days (in no case less than three (3) days) in advance, except that if a supervisor allows an employee to take compensatory time off on short notice, per Section 25.3, the posting will be made as soon as reasonably possible.

The employer proposes to include a remedy for overtime assignments proven to violate the overtime distribution provisions. The remedy proposed would be the scheduling of an equivalent overtime opportunity of like amount of hours.

A review of collective bargaining agreements provided as exhibits supports the employer's proposal. If that were as far as it goes, the fact-finder's recommendation would include the make-up proposal sought by the employer. Here the employer would overturn an arbitration award establishing compensation as the remedy and offers the union no quid pro quo. The proposal addresses an administrative issue fully within the employer's control and should occur infrequently if at all. Based on the foregoing, the fact-finder does not recommend the employer proposal. The fact-finder recommends the following new provision of Section 22.9:

If an employee misses an overtime opportunity required by this Agreement due to an error on the part of the employer, the employee shall receive compensation for such overtime hours as the employee would have worked at time and one-half their regular hourly rate.

The fact finder recommends Section 22.10 –Unscheduled overtime should be modified as follows:

If an overtime opportunity exists due to the absence of a Corrections Lieutenant or Corrections Sergeant, and no member of the classification in which the overtime

arises accepts the overtime offer, the supervisor may determine who is available within the Corrections Lieutenant or Corrections Sergeant classifications with the least amount of overtime hours worked that year and assign that person to work. That person will be required to work. The overtime equalization record shall expire December 31 of each year and a new record will be created. However, January Overtime will be assigned from the December record. Unscheduled overtime offered but refused shall be charged to the employee on the equalization record only for purposes of offering overtime. The assignment of any overtime will be based on overtime hours worked only.

The fact-finder recommends the following new provision to Section 22.10:

If an employee misses an overtime opportunity required by this Agreement due to an error on the part of the employer, the employee shall receive compensation for such overtime hours as the employee would have worked at time and one half their regular hourly rate.

#### **ISSUE 5-WAGES**

Wage rates are set out in Article 23 of the collective bargaining agreements entitled Wages and Compensation. The union proposes to modify that Article to provide a change in the effective date from the first full pay period in January to November 24, November 26 and November 26 of each respective year. The union proposes Article 23 be modified to reflect the following wage increases:

November 27, 2004—five percent

November 26, 2005---five percent

November 26, 2006—five and one half percent

The union proposes a shift differential(new) for afternoon and night shifts of \$.50 per hour. The union proposes the employer contribute one-half (1/2) of the employees share to the Public Employee Retirement System(PRS), currently 8.5 % for non law enforcement and 10.1% for law enforcement. This would be in addition to the employer's present contribution rates of 13.55% and 16,7% respectively. The union proposes an

increase in the per hour clothing allowance and the number of pieces to be cleaned.<sup>2</sup>

The union makes certain additional proposals to the Sworn Unit:

- A. Pay differential for the Evidence Technician and Detectives of 1% and 2% respectively above the deputy pay.
- B. Requiring FTO personnel to have completed the probationary period.
- C. Take-home car for out of county detectives.

The union also makes additional proposals for Sworn Supervisors:

- A. Extra steps to base rates for 10 and 20 years of service of .15 and .25 per hour.
- B. Increase the rank differentials for the Sworn Sergeants and Lieutenants-15%

The union also makes additional proposals for Non Sworn Personnel:

- A. Property Room Manager-Pay at Sergeant's level
- B. Extra steps to base rates for 10 and 20 years of service
- C. Increase the rank differentials for Sergeants and Lieutenants
- D. Requiring FTO personnel to have completed their probationary period.

The employer proposes Article 23 to be modified as follows:

January 2005—two and four tenths percent

January 2006—two and four tenths percent

January 2007—two and four tenths percent

The employer's proposed wage increase would not apply to any length of service premium.<sup>3</sup>

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<sup>2</sup> The union proposed 20 pieces, the employer proposed 21. The employer proposal will be adopted.

<sup>3</sup>The fact-finder notes the employer has a proposal with another unit to delete this premium. The fact-finder notes the commissioners recommend a three percent increase across the board. Union App.I.

## **FINDING AND RECOMMENDATION**

The employer's final offer of two and four-tenths percent is below that recommended by the County Commissioner's for other county employees. That recommended increase is three percent. The wage increase report from SERB, while limited, suggests deferred increases for 2005 are three percent. The employer has indicated that the inability to pay criteria is not applicable. The statutory criteria requires fact-finders to take into consideration other factors, such as the county commissioner's recommendations for other county employees, as part of the decision making process. The employer has shown no evidence that would suggest these units should not be considered for a three percent across the board increase as per other county employees.

The question is whether the labor market comparables suggest an inequity with comparable units doing comparable work in the public or private sector.

The process must start with a determination of what comparables should be utilized.

While the previous fact-finder believed it was more appropriate to compare county sheriff departments to the same entities, they were not identified. Each party has submitted its counties for comparables. However the two listings of comparable are not close. Greene Medina, Butler, and Clermont Counties are used by both parties. The union would utilize Clark while the employer would use Clark only for Sergeants and Lieutenants. The employer would include both Hamilton and Montgomery Counties with significantly larger population but adjacent counties. Preble and Brown Counties, while adjacent, are significantly smaller in population. Richland and Licking Counties, while comparable in size appear to be in rural areas and not likely to have the industrial and growth experienced by Warren County. If for comparison purposes, the Counties of Portage, Licking, Preble, Brown, and Richland were excluded by the fact-finder as not comparables, for the sworn unit, the ranking does not change. For Lieutenants, the ranking drops, remains unchanged for corrections officers, and drops for corrections sergeants, and lieutenants. In the fact-finder's opinion, the union is not prejudiced by adoption of the employer's comparables.

The fact-finder notes the rank differential between Warren County Sergeants and Lieutenants is essentially 8.05 percent to 8.1 percent. Whether utilizing the union or the employer's comparables, the rank differential exceeds the county's 8 percent differential for the Lieutenants and Sergeants, sworn (deputies) to Sergeants, and corrections officers and Sergeants.<sup>4</sup>

The fact-finder recommends:

- A. Effective the first full pay period following January 1-2005-three percent
- B. Effective the first full pay period following January 1-2006-three percent
- C. Effective the first full pay period following January 1-2007-three percent

The fact finder recommends for Corrections Sergeants, Corrections Lieutenants, Sergeants, and Lieutenants:

- A. Effective the first full pay period following January 1-2005 –four and one half percent increase.
- B. Effective the first full pay period following January 1-2006-four percent and one half percent increase.
- C. Effective the first full pay period following January 1-2007-four percent increase

This adjustment will result in a slight improvement with the comparables both on the wage level and wage differential basis.

Major alterations to a wage schedule, such as extra steps or longevity pay should be the product of negotiations rather than a mandate from fact-finders. The fact-finder recommendations do not include either extra steps or longevity pay or a shift differential. As the union has shown no basis for basis for additional increases for the evidence technician, detective or property manager, the fact-finder does not recommend any adjustments for these classifications.

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<sup>4</sup> The fact finder used Butler/Clermont Counties and the employer's average wage comparison as well as the union's rank comparisons based on 2004 salaries.

The fact finder does not find any provision relating to detectives taking home cars for on call detectives. The record shows that those who live in the county may take home unmarked cars. Two detectives who live outside the county must first come to get their "detective car". The fact-finder recommends that on call detectives be provided unmarked cars to take home which would allow all detectives to go directly where needed. In making this recommendation, the fact-finder understands this would not require the purchase of additional cars.

#### **ISSUE 6-VACATIONS-ALL UNITS**

The union would modify the vacation eligibility requirement to attain 120 hours, 160 hours, 200 hours and add a 240 hour provision. The Union's proposal reduces eligibility requirements from eight to five years for 120 hours, reduces eligibility requirements from fifteen to ten years for 160 hours, reduces eligibility requirements from twenty-five to fifteen for 200 hours and increased the benefit for the twenty-five year employee from 200 to 240 hours. In effect, the union adds two new increases to the benefit schedule.

The Union acknowledges the vacation schedule is comparable to other Warren County employees but notes one distinction, most non uniformed public employees must work thirty years before retirement while uniformed law enforcement officers are eligible at twenty-five years. The Union's proposal would implement prior to reaching retirement eligibility.

The employer argues the vacation schedule is competitive with comparable counties, other Warren County employees and wishes to prevent whipsawing.

#### **FINDING AND RECOMMENDATION**

A review of labor contracts provided by the parties indicates the employer's eligibility requirements are competitive. Brown, Butler, Clermont, Green, and Licking Counties eligibility requirements mirror that of Warren County. Bargaining units in Clark, Medina, Portage, and Richland Counties attain 120 hours prior to completion of eight years service. Clark, Medina, Portage, and Richland Counties also attain 160 hours prior to fifteen years service. Clark, Medina, Hamilton, and Richland Counties attain 200 hours at 20 years service. Montgomery County attains 200 hours at 18 years service. Portage

County attains 200 hours at 22 years service. Warren County units do so at 25 years. Only Hamilton County has a 240 hour vacation benefit. In the fact-finder's opinion, the employer's vacation benefit provision stands in the middle of the comparables. Neither the employer nor the union provided information on the number of employees affected by the union's proposal. However sooner or later all of the approximately one hundred-forty employees would be affected by the union's proposal for the 25 year change to 240 hours. The fact-finder recommends the current vacation provision be incorporated in the new collective bargaining agreements for all units.

#### **ISSUE 7 HOLIDAYS-ALL UNITS**

The union proposes one additional holiday, Patriot's Day-September 1<sup>st</sup> which brings the number of holidays to eleven. The Union provided no supporting survey data. Additionally the union would propose to provide employees with the option to defer holiday compensation to the first pay period following December 1 as had been the practice a one time. The employer makes no proposal for additional time off and points to external comparisons showing none is warranted. The employer says the deferral of holiday compensation would be cumbersome and difficult to administer and is essentially a financial planning issue for the employee. No comments were made regarding any prior practice or when/why it was discontinued. The employer also proposes to delete one holiday. The employer has proposed to allow conversion of the premium portion of holiday pay to compensatory time off.

#### **FINDING AND RECOMMENDATIONS-ALL UNITS**

Data provided by the employer suggests Warren County's Holiday schedule is comparable. Five counties provide ten holidays. Five provide eleven holidays while one provides twelve. On the basis of holidays provided, the employer is in the middle of the pack. When personal days are included, the employer provides thirteen days off. Five counties provide less time while two counties provide identical time off. Three counties provide fourteen days, two of which do so in the form of personal days rather than holidays. When Holidays and personal days are considered, the employer is in the middle and would not materially change with the additional holiday. It is, however a cost factor

and impacts service or both. The fact-finder recommends no additional holidays, retaining the current number of holidays in the sworn, sworn supervisors and non-sworn units.

The fact-finder recommends Section 26.4 (Sworn) be changed to provide:

Employees assigned to the Criminal Investigation Division may elect to work a holiday, with approval of the Appropriate District Commander, to keep his/her case load current in the event their shift falls on a holiday.

The fact-finder recommends Section 26.6(Sworn Unit), Section 25.6 (Sworn Supervisors) and Section 26.7 (Non-sworn Unit) to be changed as follows:

Employees who work a holiday will have the option to (1) receive their holiday pay and one and one half (1½) time pay for all hours worked, or receive their holiday pay and convert their premium pay (but not the holiday pay of eight (8) hours) to compensatory time and receive just one and one half (1 ½) times their hourly rate.

The fact-finder notes the Parties have agreed to the following change in Section 26.8 Holiday trades (Non-Sworn) unit:

Certain officers, because of specialized assignments, would prefer to arrange their Holidays off in conjunction with their assigned areas, such as schools. With Prior approval of the appropriate District Commander, officers on specialized assignments may rearrange their holiday schedules. The Association Representatives will be notified of any approved trades.

#### **ISSUE 8-SICK LEAVE CONVERSION-ALL UNITS**

The union's sick leave proposal would allow increase the amount of accumulated sick leave hours by ten percent and the maximum hours from two hundred forty hours to twelve hundred hours for employees hired on or after April 3, 1985. The change is based on the rational that sick leave is timed earned which supports the increase as well several employees are or have reached ten years of service. Data from Lebanon, Green, Mason, and Franklin Police Departments are offered in support of the change.

The employer would maintain the status quo for at least two reasons: the current sick leave conversion provision grandfathered certain employees in exchange for a tradeoff in the past and this proposal would be a return to prior levels and represents a potential increase of nine hundred and sixty hours for one hundred forty plus employees at some point.

### **FINDING AND RECOMMENDATION**

It is not surprising each has offered comparables supportive of their respective positions. Clermont and Licking Counties accumulate comparable maximum hours of 240. Butler, Clark and Medina accumulate a maximum of 320 hours. Greene County provides for 240 hours for the ten year employee and 384 for at twenty-five years. Hamilton, Montgomery, Portage and Richland Counties provide for an accumulation of maximums which exceeds the employers as do those comparables offered by the union. On the basis of data provided by both parties, the fact-finder concludes that an increase in the maximum converted sick leave hours is supported. The fact-finder recommends that sick leave conversion rate of twenty-five percent remain unchanged and carried over to the new collective bargaining agreements for all units. It is recommended that the maximum sick leave hours be increased from two forty hours for twenty-five year employees to three hundred and twenty hours for all units.

### **ISSUE 9 INTEGRITY OF AGREEMENT-All Units**

The Employer proposes language which is intended to make it clear that the collective bargaining agreement prevails over statutory language relating to subject matter contained in the collective bargaining agreement. The proposal is made on the basis of an Ohio Supreme Court decision , AFSCME Local 4 v Batavia Local School Board. In effect the employer proposes a zipper clause. The employer would remove the provision from Article 40 providing:

“Therefore, both parties, for the life of this Agreement, voluntarily and unequivocally wave the right, and each agrees that the other shall not be obligated to bargain collectively or individually with respect to any subject or matter referred to or

covered in this Agreement.”

The Employer would add the following provision to Article 40 providing:

“The provision(including procedures) of this Agreement supercede those provisions (including procedures) in the revised code covering the same subject matter, and in particular, but not limited to, those governing probationary employees, probationary periods, layoffs, and job abolishment, holidays, sick leave, sick leave conversion, and vacations.(clarification).

The Union opposes the change as unnecessary.

#### **FINDING AND RECOMMENDATION**

The Batavia case held that where employees are afforded statutory rights, those rights are not superseded by general contract language and the language must be specific to the situation referred to in the statute to supersede statutory language. In that case, the issue was subcontracting. Here the parties have shown an ability to deal with issues that arise mid-term as evidenced by the numerous letters of agreement in the Union Exhibits, some post Batavia. The employer is concerned with a potential problem and no evidence shows that it would either improve its ability to serve the public or would be harmed if not obtained. The fact-finder agrees that no basis exists to remove the referenced paragraph from the collective bargaining agreements. The fact-finder is not convinced that the language would be effective to insure to prevail over the subjects found in chapter 24 of the Ohio revised code nor has the employer made a case for its inclusion. On that basis, the fact-finder recommends retention of the current contract language for all units.

Respectfully:



Jerry Hetrick, Fact-Finder

Dated: February 16, 2005

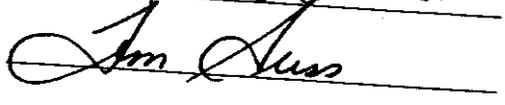


**Agreed upon Articles**

The parties agree to continue the current language for the following articles:

- Preamble
- Article 2 Management Rights
- Article 3 Non Discrimination
- Article 4 Benevolent Association Security
- Article 6 Bulletin Boards
- Article 7 Probationary Periods
- Article 8 Seniority (subject to discussion of seniority issue where raised elsewhere)
- Article 14 Labor/Management and Safety Meetings
- Article 17 Professional Insurance
- Article 29 Jury Duty (Civil Leave) Witness Fee
- Article 32 Leave of Absence Without Pay
- Article 36 Layoff and Recall
- Article 37 No Strike / No Lockout
- Article 38 Savings Clause
- Article 40 Waiver in Emergency

FOR THE EMPLOYER

  
\_\_\_\_\_  
Col. D.L. Everett  
  
\_\_\_\_\_  
Tom Suss  
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FOR THE UNION

  
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DATE SUBMITTED: 9/30/04

DATE SIGNED: 10/13/04

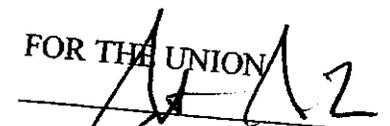
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  - Article 3 Non Discrimination
  - Article 4 Benevolent Association Security
  - Article 6 Bulletin Boards
  - Article 7 ~~Probationary Periods~~
  - Article 8 Seniority (subject to discussion of seniority issue where raised elsewhere)
  - Article 14 Labor/Management and Safety Meetings
  - Article 17 Professional Insurance
  - Article 24 Pay for Working in a Higher Classification
  - Article 30 Jury Duty (Civil Leave) Witness Fee
  - Article 33 Leave of Absence Without Pay
  - Article 37 Layoff and Recall
  - Article 38 No Strike / No Lockout
  - Article 39 Savings Clause
  - Article 41 Waiver in Emergency

FOR THE EMPLOYER

  
\_\_\_\_\_  
Col. W. L. Everett  
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Tom Muss  
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FOR THE UNION

  
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DATE SUBMITTED: 9/30/04

DATE SIGNED: 10/13/04

County ~~2/15~~ 9:00 a.m.

# ~~WCD~~ SBA Package Proposal

~~November 18, 2004~~

December 17, 2004

1. County accepts Association proposal on Article 1, Recognition (Sworn), dated October 25, 2004. <sup>1330 hrs</sup>

2. County accepts Association proposal on Article 1, Recognition (Non-Sworn), dated October 19, 2004. (But same language <sup>with re transport</sup> in l. 1 as Assoc proposal on Sworn unit ~~of 10/25/04 1330 hrs~~)

3. County accepts Association proposal on Article 1, Recognition (Sworn Supervisor), dated October 19, 2004. ~~But same language in l. 1 as Sworn~~

~~→ Union drops proposal on including schedule in contract.~~  
4. Union drops grievance filed November 17, 2004.

~~→ County drops Article 5, Benev Assoc. Rep.~~

5. Union drops Article 5, Benevolent Association Represented.

6. Union drops Article 13, Safety & Welfare.

7. Union drops Article 31, Military Leave.

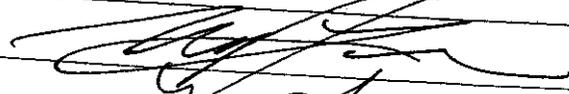
8. Union drops Article 35 (or 36). ~~Redundant. Funeral Leave~~

9. County accepts Assn proposal Art 37 except 27.10 language which is dropped, and delete "possible" & insert "if an appropriate person is available."

For the Employer

For the Union

10. Employer drops Employer's sick leave proposal.



Jim Deas  
Richard L. Everett

A. L. L.

Date Submitted: ~~11/17/04~~ 12/17/04