

STATE OF OHIO

STATE EMPLOYMENT
RELATIONS BOARD

STATE EMPLOYMENT RELATIONS BOARD 2005 MAR 16 P 2: 31

In the matter of	*	04-MED-09-0967
	*	
Fact-finding between:	*	
	*	
Allen County Sheriff's Office	*	Fact-finder
	*	Martin R. Fitts
	*	
and	*	
	*	
International Union of Police Associations	*	March 14, 2005
Local 150	*	
	*	

REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

APPEARANCES

For the Allen County Sheriff (the Employer):

Benjamin S. Albrecht, Attorney

For IUPA Local 150 (the Union):

William A. Dunn, Business Agent

PRELIMINARY COMMENTS

The bargaining unit consists of all Corrections Officers, Corrections Corporals, Dispatchers and Deputy Sheriffs employed by the Allen County Sheriff's Office. There are approximately 105 employees in the bargaining unit. The State Employment Relations Board (SERB) appointed the undersigned as Fact-finder in this dispute on November 29, 2004. The parties met on multiple dates for negotiations. The Fact-finder conducted mediation sessions on December 29, 2004 and January 7, 2005. The fact-finding hearing was held on February 18, 2005 at the offices of the Allen County Sheriff in Lima, Ohio. Both parties attended the hearing, presented written positions, and elaborated upon their respective positions. There were eleven major issues at impasse: Union Security; Discipline; Hours of Work and Overtime; Wages; Holidays; Sick Leave; Uniforms/Equipment; Duration; Shift Differential; Educational Reimbursement; and Permanent Shifts. Thus eleven issues, which included a number of sub-issues, were submitted for Fact-finding.

In rendering the recommendations in this Fact-finding Report, the Fact-finder has given full consideration to all testimony and exhibits presented by the parties. In compliance with Ohio Revised Code, Section 4117.14 (G) (7) and Ohio Administrative Code Rule 4117-9-05 (J), the Fact-Finder considered the following criteria in making the findings and recommendations contained in this Report:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of 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, and 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; and
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.

All references by the Fact-finder in this report to the Employer's proposal and the Union's proposal are references to their respective final proposals as presented in writing to the Fact-finder at the February 18, 2005 hearing.

ISSUES AND RECOMMENDATIONS

Issue: Article 3 – Union Security

Positions of the Parties

The Union proposed amending Section 3.7 to require that all bargaining unit members pay a fair-share fee to the Union regardless of affiliation or non-affiliation with the Union.

The Employer proposed the retention of current language in Section 3.7, which requires bargaining unit members who are members of the Union on the effective date of the agreement to remain a member for the life of the agreement.

Discussion

Regarding the Union's proposed change for Section 3.7, the Union stated that approximately 35 employees within the bargaining unit do not belong to the Union. It noted that the Union is legally bound to represent those employees, and that it is suffering a loss of about \$10,000 annually by not receiving a fair-share fee from them. The Union noted that the Ohio Revised Code allows fair-share fee requirements, and offered evidence that at least 70 counties have collective bargaining agreements with fair-share fee requirements in them.

The Employer countered that it was a philosophical belief of the Sheriff that people should be free to join or not join the Union, as it is their money, not the Sheriff's money. It also argued that the most appropriate comparables are the two other bargaining units in the Sheriff's Office, of which neither has a fair-share fee requirement. The Employer contended that other counties have agreed to these provisions because they do not cost those counties any money.

Findings and Recommendation

While the Employer may object to this proposal on philosophical terms, that in and of itself is not a compelling reason to oppose its inclusion in the agreement. This is not a cost item for the Employer. However it has great financial implications for the Union. It estimated that it is currently receiving \$10,000 less annually due to those in the bargaining unit who choose not to belong to the Union.

By law the Union is bound to fairly represent all members of the bargaining unit. The law also provides that representation is based upon majority rule. The fair-share fee proposal of the Union still affords an employee the right not to belong to the Union. It does provide, however, that the employee pay a fair share fee for services that the Union is legally bound to provide to them.

The comparables demonstrate that fair share fees exist in at least 70 counties in Ohio. This provides an enormity of evidence that fair-share fees are a normal and accepted provision in collective bargaining agreements. This is an overwhelming argument in support of the Union's position. The Employer countered with the argument that the better comparables are the internal comparables, that is the collective bargaining agreement with two other units in the Sheriff's Office, reflect maintenance of membership provisions versus fair share fee provisions. It should be noted, however, that the other two bargaining units in the Sheriff's Office are represented by a different labor union.

The Employer also provided evidence that in prior Fact-finding Reports several Fact-finders, including this one, have recommended the maintenance of membership provisions for this bargaining unit and the command unit. The prior Fact-finding Reports also reflect bargaining agreements between the Employer and a different labor union. There are hints in those reports that support for the former labor union may have been less than resounding. This Union gave un-rebutted testimony that it has a membership range of around 65%, a demonstration that it holds a clear and significant majority of support from the bargaining unit members. Fairness now dictates that a fair-share fee provision be included in this agreement.

Therefore, the Fact-finder recommends the Union's proposal for the amendment of Section 3.7 to provide for the payment of a fair share fee, with that provision to become effective at the execution of this agreement.

Issue: Article 11 - Discipline

Positions of the Parties

The Employer proposed that Section 11.1 paragraph F be amended to allow the Sheriff to require an employee to undergo a polygraph test to investigate the truth of statements made during an internal review.

The Union proposed the retention of current language, under which the Sheriff may request such an examination, but the employees are not required to submit to such tests and may not be disciplined for such a refusal.

Discussion

The Employer argued that by having the contractual ability to require an employee to undergo a polygraph it could more speedily conduct investigations. The Employer argued that a polygraph would allow for a determination of “probability” early on that could exclude an employee as a person of interest, thus reducing investigatory time and saving money as well.

The Union argued that polygraphs are not admissible in a court of law for good reason - they can be unreliable. Further, it argued that the use of polygraphs can be very intimidating to employees.

Much of the Employer’s argument centered on the usefulness of a polygraph in one particular instance that the Sheriff’s Office experienced. The present agreement does not preclude an employee from taking a polygraph test, thus it still may have some efficacy in reducing investigatory time and cost. However, even the Employer acknowledged limitations of polygraphs. The Union’s arguments regarding reliability and the intimidation factor are compelling. There simply is not enough supporting evidence that the Employer needs to have the ability to require a polygraph in order to reasonably conduct a thorough and cost-efficient investigation.

Findings and Recommendation

Regarding the Employer’s proposal to amend Section 11.1 paragraph F, the Fact-finder finds no compelling evidence for such a change.

Therefore, the Fact-finder recommends the retention of the current language in Section 11.1 paragraph F.

Issue: Article 17 – Hours of Work and Overtime

Positions of the Parties

The Union proposed that the language in Section 17.1 be changed in the following manner:

- 1) to define the standard workday for Dispatchers and other non-enforcement employees as 8.25 continuous hours and define the standard workweek as 41.25 hours in a 7-calendar day period;

- 2) to define the standard workday for Corrections Officers and Enforcement Officers as 8.25 continuous hours and define the standard workweek as 41.25 hours and 165 hours in a 28-day consecutive period;
- 3) require that the current practice of rotating schedules be maintained for the life of the agreement; and
- 4) require that any change in an employee's work schedule for non-emergency reasons must be by mutual agreement or the employee shall be compensated at the overtime rate.

The Employer position was the retention of current language for Section 17.1, except that it modified its position at the hearing with regard to the definition of the standard work period for dispatchers, which it proposed should be 40 hours in a 7 consecutive calendar day period.

The Union proposed changes in Section 17.2 to provide:

- 1) that all compensated time, except sick leave, be counted as active pay status for the purpose of calculating overtime; and
- 2) that the employee (in addition to the current provision for the Employer) be allowed to reduce their balance of compensatory time by cashing out compensatory time at the employee's current rate. As an alternative the Union proposed eliminating the current provision that the Employer may unilaterally reduce the employee's balance of compensatory time by cashing out the compensatory time.

The Employer proposed the retention of current language in Section 17.2.

Discussion

Regarding Section 17.1, the Employer's modified proposal presented at the hearing, which would modify the work-week for Dispatchers, is a reasonable approach to resolving any potential FLSA issues. The Union argued that without specifying an 8-hour day the Employer would be free to move to longer shifts. However, the present language currently allows the Employer to do this, yet there was no indication that the Sheriff is contemplating such a change.

The proposal offered by the Union at the hearing to require that the present practice of rotating schedules was unsupported by sufficient evidence that the hardships faced by the employees with regard to the present schedules are compelling enough to recommend incorporating this into the agreement. The Employer presented evidence that the Sheriff has attempted to be generous and flexible with regard to accommodating employee emergencies and for daily situations such as dropping children off at school.

The proposal offered by the Union to provide that if the Employer changes an employee's work schedule for non-emergency reasons without mutual agreement than the employee

would be compensated at the overtime rate is simply not supported with enough evidence to make a compelling argument for such a contractual change. The evidence that was offered showed that while this does occur, it is rare, and this is more than off-set by the evidence of flexibility shown by the Employer.

Regarding Section 17.2 and the addition of all compensated time except sick leave to the computation of calculating overtime, the Employer acknowledged that this is the current practice followed by the Sheriff's Office. The Employer's argument was that there was no compelling reason to memorialize this in the collective bargaining agreement. It also maintained that the Union's proposal was an attempt to provide greater benefits than the FLSA requires. In reality, the Union is not attempting to achieve any greater benefit than it already receives. Unlike the Union's proposal to memorialize into the agreement the practice of rotating schedules which is also a current practice, this issue is an economic benefit that is currently enjoyed and should not be subject to be unilaterally changed or withdrawn by the Employer. Memorializing this economic benefit into the collective bargaining agreement provides the Union employees with this protection.

Regarding Section 17.2 part C and the cashing out of compensatory time, the Employer's argument that it has only done this when it has had unused funds at the end of the year, and then only with the mutual consent of the employee, is compelling. The Union's proposal would force the Sheriff's Office to provide money in its budget at all times to fund the potential cash liability of compensatory time. This is simply unreasonable. The current language does not harm the employees, as they receive cash for their compensatory time in lieu of the time off, and have had their desire to decline to be cashed out honored by the Employer. The fact that this situation has only occurred three times in a dozen years indicates that this situation may not even occur during the life of the new agreement.

Findings and Recommendation

Regarding Section 17.1, the Fact-finder finds no compelling reason to recommend the Union proposal for requiring that the current practice of rotating schedules be incorporated into the agreement. Nor does the Fact-finder find a compelling reason for incorporating provisions requiring that, absent mutual agreement, any change in an employee's work schedule for non-emergency reasons should result in the employee being compensated at the overtime rate. The Fact-finder does find a compelling reason to incorporate the Employer's modified proposal presented at 1:15PM at the hearing for Section 17.1 that would change the standard work period for Dispatchers.

Therefore, the Fact-finder recommends the Employer's proposal that Section 17.1 be amended as per the Employer's modified proposal so that it reads as follows:

Section 17.1 Work Period *The standard work period for all deputies, corrections officers, and corrections corporals covered under this agreement shall be one hundred sixty-five (165) hours in a twenty-eight*

(28) consecutive calendar day period. The Sheriff may make changes to the established workday/work schedule only after first consulting with the Union.

The standard work period for all dispatchers covered under this agreement shall be forty (40) hours in a seven (7) consecutive calendar day period. The Sheriff may make changes to the established workday/work schedule only after first consulting with the Union.

Regarding Section 17.2, The Fact-finder finds the Union's proposal that would provide a definition of 'active pay status' as including all compensated time, except sick leave to be reasonable and the Union's argument in its favor compelling.

Therefore, the Fact-finder recommends the Union's proposal to include the following sentence in Section 17.2:

All compensated time, except sick leave, shall be counted as active pay status for the purpose of calculating overtime.

Further, the Fact-finder finds the Employer's argument compelling regarding the cashing-out of compensatory time.

Therefore, the Fact-finder recommends the Employer's proposal for current language in Section 17.2 part C.

Issue: Article 18 – Wages (including Appendix A – Wage Rates)

Positions of the Parties

The Union proposed amending the wage rates in Appendix A to reflect an across the board wage increase of 4% effective January 1, 2005, a second across the board wage increase of 4% effective January 1, 2006, and a third across the board wage increase of 4% effective January 1, 2007

The Employer proposed amending Appendix A to reflect a 2% across the board wage increase effective upon the signing of the agreement, a second 2% across the board wage increase effective on the first anniversary of the signing of the agreement, and a wage re-opener effective on the second anniversary of the signing of the agreement.

The Union proposed amending Section 18.5 of the agreement to increase longevity by \$0.10 per hour at each step, effective January 1, 2005. This would provide that employees with 5-10 years of service would have longevity increased to .35/hour, 10-15 years would be increased to .40/hour, 15-20 years would be increased to .60/hour, and 20 years and over would be increased to .65/hour.

The Employer proposed the retention of the current longevity provisions of the agreement.

Discussion

The Employer presented evidence that the County's general fund has been flat for the last several years, with little a growth forecast for the remainder of 2005.

The Union argued that if the Employer's wage proposal is adopted it will lose ground to the Gold Unit contract. In fact, the Union's wage proposals exceed those in the Gold Unit contract.

The Employer argued that while the two internal comparable contracts reflect 3% annual increases, those agreements do not contain new economic benefits as proposed by this bargaining unit in these negotiations. The Fact-finder notes that later in this Report there is a recommendation for holiday pay that roughly equates to a 1.25% wage increase. This is the only recommendation contained herein that provides for a new economic benefit, and has been considered in this wage recommendation.

Also taken into consideration is the recommendation for the effective dates for the wages, and the expiration date for the agreement recommended later in this Report. As the previous contract expired on December 31st, and the effective dates of the last three wage increases were effective on January 1st of 2002, 2003 and 2004, it seems only fair to recommend the wage increases recommended herein become effective retroactively to January 1, 2005. With this recommendation for the effective date of the first wage increase to be the first of this year, the bargaining unit will receive the increase sooner than proposed by the Employer, yet in keeping with the prior bargaining history of the parties. In addition, the Fact-finder is recommending later in this Report the expiration date of October 31, 2007 for the agreement, thus providing the employees an opportunity to negotiate a wage increase two months earlier than has been the prior practice. This advance of two months will likely provide a benefit for the employees at that time.

Lastly, the Fact-finder considered the Employer's proposal for a wage re-opener in the third year. Once again, however, the two internal comparables show that the Employer has fixed wage increases for all three years of those respective contracts. Although this bargaining unit had a wage re-opener in its last agreement, there is no compelling argument that the third year of this agreement poses any unique circumstances that warrant a re-opener rather than a fixed wage increase.

Regarding longevity, the Union argued that the longevity are fixed, and thus are worth less each year to the employees. It argued that its proposal, to increase the rates by \$0.10 across the board, would help restore that lost value to the longevity rates. The Employer noted that the current longevity rates mirror those in the other two bargaining units in the Sheriff's Office, and that those two agreements provide the best comparables. It noted that the longevity rates for this bargaining unit were increased in 2003.

Findings and Recommendation

Regarding Appendix A, Wage Rates, the Fact-finder believes that neither party's proposal is appropriate. There is no question that the County has experienced little growth in the general fund, although indications are that there will be some growth in 2005, possibly indicating an improving economy in future years. The recommendation for Holiday pay in this Report will provide the employees with an increased economic benefit in the first year, and certainly should be considered when viewing the recommendation for wage increases below. Considering that benefit as part of the first year wage increase, in essence no ground is lost relative to other bargaining units, and no unwarranted gains are provided for.

Therefore, the Fact-finder recommends that the Appendix A be amended to reflect an across-the-board wage increase of 2.0% effective January 1, 2005, a second across-the-board increase of 3% effective January 1, 2006, and a third across-the-board increase of 3% effective January 1, 2007.

Regarding Section 18.5, Longevity, the Fact-finder believes that the internal comparables of the other two bargaining units in the Sheriff's Office, plus the fact that the rates were increased just two years ago, offer convincing evidence that the Employer's proposal for the retention of current language is fair and reasonable.

Therefore, the Fact-finder recommends the Employer's position for the retention of the current language of Section 18.5.

Issue: Article 21 - Holidays

Positions of the Parties

The Union proposed to amend Section 21.2 to provide that employees who actually work on a holiday receive time and one-half their rate of pay, in addition to earning holiday time.

The Employer proposed that the language in Section 21.2 remain the same. The language currently provides that employees who work a holiday are paid straight time for all hours worked in addition to earning holiday time for each hour worked.

Discussion

The Union argued that since these employees are the ones most affected by working holidays, and noted that the front office employees do not have to work on those days. It also noted that the employees who actually work on a holiday get paid straight time. As all the employees receive holiday pay, the employees actually working really do not receive any type of premium for having to work on the holiday.

The Employer countered that the holiday time earned is a premium shared by all the bargaining unit already. In addition, the Sheriff permits deputies on road patrol to spend some time with their families during their shift, but acknowledged that this is not an option for corrections officers. Further, the Employer noted that the employees are allowed to arrange to work just pieces of a shift on holidays, minimizing the negative impact on the employees.

The Union estimated this as costing \$30,000 without including PERS and Medicare, while the Employer estimated the cost including PERS and Medicare to be \$50,000. The cost of a 1% wage increase is about \$33,767 to the Employer, thus the cost of the Union's proposal is roughly the equivalent of a 1.25% wage increase.

In the present agreement all employees receive holiday pay, regardless of whether they work on the actual holiday or not. The union correctly pointed out that those employees who actually work on a holiday receive straight time, but no premium pay, despite losing the holiday time with their family. While the Employer argued that it is flexible as far as granting employees some time to spend with their families on holidays, this flexibility does not extend to corrections officers. In fairness to the employees, the time not spent with their families on holidays, should be worth a premium of some sort. The Union's proposal is not extravagant, and in the Fact-finder's opinion is fair.

Findings and Recommendation

The Union's argument is compelling that the employees who actually work on holidays should receive some premium for working on that day. The cost of this benefit is properly to be considered a part of the overall economic package that is recommended herein, and was certainly considered by the Fact-finder in the recommendation for wages found in this Report.

The Fact-finder recommends the Union's proposal to amend Section 21.2 to provide that employees who actually work on a holiday be paid at a rate of time and one-half.

Issue: Article 22 – Sick Leave

Positions of the Parties

The Union proposed the addition of “brother-in-law” and “sister-in-law” to the provisions of Section 22.4 that define “immediate family” for the purposes of Article 22.

The Employer proposed the retention of current language in Section 22.4.

Discussion

The Fact-finder believes that defining “immediate family” is extremely difficult in today’s society. The current language already is generous with regard to family members that are included. The addition of “brother-in-law” and “sister-in-law” would likely be found inadequate at some point when another family scenario crops up, leading to a desire to further expand the definition in the future. This is a slippery slope that has no end. The collective bargaining agreement provides other time off, such as compensatory time, that can be used by employees for situations not covered under the language in Section 22.4.

Findings and Recommendation

The Fact-finder finds no compelling reason to further amend Section 22.4 by incorporating the Union’s proposal.

Therefore, the Fact-finder recommends the Employer’s proposal for the retention of current language in Section 22.4.

Issue: Article 25 – Uniforms/Equipment

Positions of the Parties

The Union proposed that Section 25.2 be amended to reflect an increase in the uniform allowance for Deputy Sheriffs to \$575 in the first and second year of the agreement, and to \$600 in the third year. It proposed that Section 25.2 be amended to reflect an increase in the uniform allowance for Dispatchers, Corrections Officers and Commissary Officer to \$375 in the first and second year of the agreement, and to \$400 in the third year.

The Employer proposed that Section 25.2 be amended to reflect an increase in the uniform allowance for Deputy Sheriffs to \$575 in the first, second year and third of the agreement. It proposed that Section 25.2 be amended to reflect an increase in the uniform allowance for Dispatchers, Corrections Officers and Commissary Officer to \$375 in the first, second year and third of the agreement.

Discussion

There is little difference between the parties' positions. The Fact-finder finds the Employer's proposal to be fair. While uniform costs are likely to rise during the life of this agreement, the Employer's proposal does provide an increase from the current levels which should be adequate to cover any inflationary costs. There was no evidence presented to indicate that any special circumstances existed to justify increases beyond what is recommended here.

Findings and Recommendation

Therefore, the Fact-finder recommends the Employer's proposal that Section 25.2 be amended to provide for a uniform allowance for Deputy Sheriffs of \$575 in the first year, \$575 in the second year, and \$575 in the third year of the agreement, and that Section 25.2 be amended to provide for a uniform allowance for Dispatchers, Corrections Officers and Commissary Officer of \$375 in the first year, \$375 in the second year, and \$375 in the third year of the agreement.

Issue: Article 27 - Duration

Positions of the Parties

Both parties proposed a three-year duration for the agreement.

The Union proposed that Section 27.1 be amended to provide that all terms of the agreement become effective at the time of the execution of the agreement, unless otherwise provided for in the agreement. It also proposed amending Section 27.1 to provide for an expiration date of October 31, 2007.

The Employer proposed that all terms in the agreement become effective upon signing and the expiration of the agreement be three years thereafter.

Discussion

The Union argued that the ending date of October 31, 2007 will allow the parties to avoid the end-of-the-year stress and provide for more orderly negotiations. The Employer did not strongly object to this, but argued that having the term of the agreement run for three years from the date of its execution serves as an incentive for the Union to reach an agreement sooner.

Findings and Recommendation

The Fact-finder finds a compelling argument for the Union's proposal to have the provisions of this agreement become effective upon signing unless otherwise provided for in the agreement, as well as its proposal for an expiration date of October 31, 2007.

Therefore the Fact-finder recommends the Union's proposal for the amending of Section 27.1 to provide that all terms of the agreement shall become effective at the time of the execution of the agreement, unless otherwise provided for in the agreement. The Fact-finder also recommends the Union's proposal that Section 27.1 provide for an expiration date of October 31, 2007.

Issue: New Article – Shift Differential

Positions of the Parties

The Union proposed that new language be included in the collective bargaining agreement to provide for a shift differential. Its proposal would provide an additional \$0.75/hour for the afternoon shift, and \$0.50/hour for the night shift.

The Employer opposed this new language being included in the contract.

Discussion

The Union tied this proposal to its proposal for fixed shifts, and argued that this premium for working odd hours would provide an incentive for some employees to work the less desirable shifts. It argued further that this would ensure that there would be cross-section of seniority represented on all three shifts.

The Employer argued that employees are hired knowing what shift they are going to work. It argued that comparables both inside and outside of Allen County do not support this proposal.

Findings and Recommendation

Later in this Report the Fact-finder finds no compelling reason to recommend permanent, non-rotating shifts. In light of that, there is no compelling reason to recommend shift differentials as proposed by the Union.

Therefore the Fact-finder recommends the Employer's position opposing any new language creating shift differentials.

Issue: New Article -- Educational Reimbursement

Positions of the Parties

The Union proposed that new language be included in the collective bargaining agreement that would provide for tuition reimbursement of 100% for up to 10 credit hours per quarter or 8 credit hours per semester for coursework pre-approved as job related.

The Employer opposed the inclusion of a tuition reimbursement provision.

Discussion

The union argued that this would offer employees "career enhancement" that would provide value to the Employer as well as the employees.

The Employer argued that budget constraints preclude any offering of tuition reimbursement. While it acknowledged the benefits of such a program, it noted that the potential cost for it could be very large and is just not feasible to provide this benefit at the present time.

Findings and Recommendation

The Fact-finder finds the Employer's arguments regarding the potential cost to be compelling, and thus cannot support this provision to the agreement.

Therefore the Fact-finder recommends the Employer's position that no new provisions providing tuition reimbursement be added to the agreement.

Issue: New Article – Permanent Shifts

Positions of the Parties

The Union proposed language that would create permanent, non-rotating shifts that would be posted for bid. The shifts would run from January 1st through December 31st, with posting on November 1st. Under the Union's proposal the Sheriff would retain the right to move individuals for the good of the Office, and would retain the right to create new shifts, determine the number of people assigned to each shift, and to manage the shifts to ensure the effectiveness of the Office.

The Employer opposed the addition of language creating permanent shifts.

Discussion

The Union argued that permanent shifts would reward employees for their years of service by allowing them to select shifts based upon seniority. It maintained that in conjunction with the shift differential it has also proposed above, older employees would have an incentive to bid on the afternoon and night shifts, ensuring a balance on all three shifts. It argued that the permanent non-rotating shifts would make a huge positive impact on the family relationships for the employees.

The Employer argued that the Sheriff needs to retain the right to assign employees to shifts. It noted that the Sheriff does try to accommodate people who have a need to be on a different shift. It noted that the Sheriff's Office loses very few people to other jurisdictions, which it cited as a measurement of satisfaction with the present method of scheduling shifts.

Findings and Recommendation

The right to assign employees to shifts is a valuable management right. It should be lost by an employer only if an employer and a union agree on its value through the give and take of the negotiating process. In the instant negotiations that did not occur. Therefore the Fact-finder does not believe it proper to recommend removing this right from the Employer without a fair return elsewhere in the recommendation.

There simply was no compelling argument offered for the recommendation of such provisions in the agreement other than it provides a new benefit for senior employees. No evidence was offered that this has created undue hardships for the Office, as evidenced by no rebuttal to the Sheriff's statement that very few employees leave the Office for employment elsewhere. The Union acknowledged that it was not arguing that

the lack of permanent shifts created a bad working environment; only that it would be better with permanent shifts.

Therefore the Fact-finder recommends the Employer's position that no new language providing for the establishment of permanent, non-rotating shifts added to the agreement.

Additional recommendations of the Fact-finder

In addition to the above, the Fact-finder recommends all other tentative agreements reached by the parties during their negotiations, including those reached in mediation conducted by this Fact-finder.



Martin R. Fitts
Fact-finder
March 14, 2005

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