STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT RELATIONS BOARD
2005 DEC -5 A 10: 39

November 30, 2005

In the Matter of the Conciliation Between

STARK COUNTY SHERIFF'S DEPARTMENT	)	
	)	Case No.: 05-MED-04-0438
and	)	(Corrections & Communications)
	)	05-MED-04-0439
F.O.P. OHIO LABOR COUNCIL, INC.	)	(Account Clerks & Mechanics)

APPEARANCES

For the City:

Vivianne Whalen, Esq.	Attorney
Linda Steiner	Finance Representative
Rich Perez	Major
Michael McDonald	Major

For the Union:

Rich Grochowski	Staff Representative
Eric Chaget	Correction Officer
Diane Meyer	Correction Officer
Dedria Mayle	TAC Officer

Fact-Finder:

Virginia Wallace-Curry

INTRODUCTION

This matter concerns the fact-finding proceeding between the Stark County Sheriff's Department (the "Employer") and the F.O.P. Ohio Labor Council, Inc. (the "Union"). Two bargaining units are involved in this fact-finding. One unit consists of approximately 50 full-time Corrections Officers and the second unit consists of approximately 30 Clerks and Mechanics. The bargaining units perform duties which include, but are not limited to, crime prevention, crime detection, criminal investigations and general law enforcement duties, as well as the custody and transportation of prisoners and process services. The parties' collective bargaining agreement expired on June 30, 2005.

The parties engaged in negotiations for a succeeding Agreement but reached impasse on several issues. Virginia Wallace-Curry, the undersigned, was appointed as fact-finder by the State Employment Relations Board on June 15, 2005. The parties continued negotiating but were unable to reach a resolution on eight issues.

A fact-finding hearing was held on October 24, 2005. The parties were given a full opportunity to present their respective positions on the issues. The fact-finding proceeding was conducted pursuant to Ohio Collective Bargaining Law and the rules and regulations of the State Employment Relations Board, as amended. Consideration was given to the following criteria listed in 4117-9-05 (K) of the State Employment Relations Board:

(1) Past collectively bargaining agreements, if any, between the parties;

(2) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

(3) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

(4) The lawful authority of the public employer;

(5) Any stipulations of the parties;

(6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding or other impasse resolution procedure in the public service or in private employment.

The unresolved issues that were presented at conciliation involved the following provisions:

1. Article 9 – Corrective Action
2. Article 14 – Layoff and Recall
3. Article 19 - Insurance
4. Article 25 – Leaves
5. Article 28 - Sick Leave
6. Article 38 – Wages
7. Article 21 – Holidays
8. Article 24 - Vacation

UNRESOLVED ISSUES

1. Article 9 – Corrective Action

Employer's Proposal: The Employer seeks to modify Article 9, Section 9. Currently, Section 9 states that "any employee under indictment or arrest shall be placed on paid leave of

absence until resolution of the court proceeding. An employee found guilty by the trial court may be discharged." The Employer's modification would give the Employer the option of having the arrested or indicted employee remain on duty until the criminal case is disposed of, be placed on administrative leave until the criminal case is disposed of, or be subject to discipline up to and including termination while the criminal case remains pending. Any discipline or termination issued would be subject to the usual grievance and arbitration procedure as set forth in the contract. The Employer asserts that the problem arises when an employee is on administrative leave for the duration of the court proceeding, which may take almost a year, and is paid administrative leave while the case is pending and then is ultimately discharged. Compliance with the provision has had a negative effect on the Sheriff's Office, both in terms of monetary cost and loss of employee morale. The proposed language has been inserted into the deputies' contract which was effective July 1, 2003.

Union's Proposal: The Union proposes maintaining the current contract language. This language is found in the Sergeants, Lieutenants and Captains collective bargaining agreements. The Employer has chosen to treat this bargaining unit differently than the supervisors' unit. Three years ago during the last negotiations, the Employer presented this same issue before the fact-finder and conciliator and each time the current contract language was maintained.

Recommendation: It is recommended that the parties maintain the current contract language. The language proposed by the Employer, "[a]ny person under arrest or indictment may, in the Sheriff's sole discretion, be permitted to remain on duty during pendency of the criminal proceedings," seems somewhat vague and problematic. It raises the question of whether the person would remain in his or her position or be given other duties depending on the criminal

charges, and if the employee would be moved to a different position, what would the impact be on the employee performing that job already. In addition, the Employer already has the option of discharging the employee if there is just cause, regardless of the criminal proceeding being filed.

The language proposed by the Employer does not single out this bargaining unit, as the Union states, because the same language proposed here was incorporated into the deputies' contract, which became effective July 1, 2003. However, without clarification of that language or how it would be implemented, it is recommended that the parties maintain the current contract language.

2. Article 14 – Layoff and Recall

Employer's Proposal: The Employer seeks to clarify the order in which layoffs will occur within the bargaining unit. The current language was drafted when the correction officers and other line staff employee were in the same union as the deputies. Since that time, the two classifications have split and are represented by separate unions. The Employer seeks to obtain a uniform system of layoffs and recalls. Essentially, employees who are transferred within the Sheriff's Office but have not completed the probationary period of their new position will be laid off before employees who have completed their probationary period. Within each job classification, layoffs will be by agency seniority, which is how the Union requested that they be handled.

The language as proposed by the Employer is the same as that currently in place in the deputies' contract. It should be noted there was a typographical error in the Employer's proposal in Article 14, Section 2D, which should read "Employees who have

completed the probationary period with the least agency seniority."

Union's Proposal: The Union proposes a new sub-section 1A which states: The Employer agrees not to abolish or layoff a bargaining unit member, (i.e., corrections, communications, maintenance, mechanic, clerk) and replace that bargaining unit member with another bargaining unit member (i.e., deputy or any other person in a different bargaining unit). The Union seeks job security for the bargaining unit to ensure that their work be performed by their membership and not displaced by members of another bargaining unit. The Employer is slowly replacing (not hiring) corrections officers with deputy sheriffs. Without the Union's proposal, the Employer would be able to substantially alter the character of work preformed by members of this unit.

Recommendation: The Employer's proposal on Section 2 of Article 14 is recommended. Uniformity in layoff procedures is desirable for consistent contract administration. The Union's proposal unduly limits the flexibility of Management to use deputies in the correction officer position when necessary and if desired.

Recommended Contract Language

Article 14
Layoff and Recall

SECTION 2. The Employer shall determine in which classification(s) and which work section(s) layoff or job abolishment will occur. Within each classification, affected displacement shall occur in the following order:

A. Temporary, casual (intermittent), seasonal, and part-time employees
B. New hires from outside the Employer who have not completed the probationary period.
C. Transferred employees who have not completed the probationary period of their new classification by agency seniority.
D. Employees who have completed the probationary period with the least

agency seniority.

The order of layoff in each of the above categories shall be determined by least agency seniority. If two or more employees have the same agency seniority, the employee with the least classification seniority shall be displaced.

3. **Article 19 – Insurance**

Employer's Proposal: The Stark County Sheriff's Office offers employees the choice of three health insurance plans. Two are provided by the County Commissioners and a third by the Union. Currently, members of the bargaining unit do not pay any share of their own health insurance. This is practically unheard of in today's economy. The Employer has proposed that the members who elect to obtain insurance coverage will pay $30.00 per month if they are on one of the County issued health plans and will pay $10.00 per month, if they are on the Union plan. Due to the age of the plan participants and the claim history, the Union plan is currently less costly to the Employer, which is the reason for the lower co-pay. The Employer currently pays as much as $820.00 per month per employee for health insurance. The Employer is simply proposing that the employees bear a small percentage of their own health care costs.

Union's Proposal: The Union proposes the same health care language as that in the Stark County Job and Family Services (JFS) contract and that paid by the Sheriff's Department administrative staff. The Union's proposal would require employees contribute $5 single/$12.50 family per month for the plan offered by the County and no charge for the Union's plan for 2006. In 2007, employees would pay 2% of the premium cost with a cap of $15.00 single/$30.00 family plan per month. In 2008, employees would pay 3% of the premium cost with a cap of $15.00 single/$30.00 family plan per month.

Recommendation: The Union's proposal to mirror the plan offered to the County's Job and Family Services (JFS) and enjoyed by the Sheriff's Department Administrative staff is recommended. Although the Employer is correct in saying that health care at no cost to the employee is unheard of in today's economy, it appears that the employer is asking the least paid employees to contribute the most. From paying nothing to paying $30.00 a month for this bargaining unit seems high when others are not asked to do the same. However, the JFS plan began in 2005 and this bargaining units plan begins in 2006. Therefore, to mirror that plan, the 2% contribution should start in 2006 and increase to 3% for the next two years with a cap of $15.00 single and $30.00 family. By the end of this contract, the Union will most likely be paying the amount proposed by the County.

Recommended Contract Language

Article 19
Insurance

SECTION 1. The Employer agrees to continue, for the life of this Agreement, the same insurance coverage as provided to all other County employees under the County's Group Insurance Plan.

Effective January 1, 2006, employees covered by the group health insurance plan with family coverage shall pay two percent (2%) of the premium costs in twelve (12) monthly increments. Effective January 1, 2007 through the expiration of this Agreement, employees covered by the group health insurance plan with family coverage shall pay three percent (3%) of the premium costs in twelve (12) monthly increments. Said deduction will be made each month from the employee's payroll check, towards the monthly premium of the employee's insurance. A monthly cap of $30.00 shall be in effect on said premium for the life of the Agreement.

Effective January 1, 2006, employees covered by the group health insurance plan with single coverage shall pay two percent (2%) of the premium costs in twelve (12) monthly increments. Effective January 1, 2007 through the expiration of this Agreement, employees covered by the group health

insurance plan with single coverage shall pay three percent (3%) of the premium costs in twelve (12) monthly increments. Said deduction will be made each month from the employee's payroll check, towards the monthly premium of the employee's insurance. A monthly cap of $15.00 shall be in effect on said premium for the life of the Agreement.

If the Union chooses to and makes arrangements to present another option of insurance coverage to the Employees, provided the Employees qualify for such insurance coverage, Employees may choose this other option through a Stark County Sheriff group plan option. If the cost of the optional insurance remains considerably lower than that offer by the County, Employees will pay $10.00 per month for family coverage and $0 per month for single coverage.

4. Article 25 - Leaves

Employer's Proposal: The Employer proposes a change to Section 1, Family Medical Leave. Much confusion has arisen in an interpretation of the collective bargaining agreement with respect to the type of leave male employees, whose spouse or significant other has given birth, are permitted to utilize following the birth of their child.

Many male employees have attempted to use sick leave following the birth of a child. It is clear that employees may take unpaid Family Medical Leave in a 12-month period during which their spouse has given birth or the employee has adopted a child. The employees are required to substitute any paid leave, including vacation, bonus, personal leave, or, if applicable, sick leave for all of the 12-week period. The use of sick leave is not automatic and violates ORC §124.38(C). Employees using sick time may use it for their own illness, or an illness, injury or death in the employee's immediate family. In the routine situation, a male employee whose wife has a baby has not suffered an illness, injury or death in the employee's immediate family.

The Employer proposes to limit the use of sick time to seven (7) working days for the birth of a child. No additional sick leave will be authorized unless the employee furnishes medical

documentation. Male employees may use other paid leave for the remainder of the family leave in the order specified in Article 25.

Union's Proposal: The Union proposes maintaining the current contract language. It argues that this proposal is not found in the Stark County Sheriff's Department Sergeants, Lieutenants & Captains Agreement. The Employer is attempting to limit the amount of time a male employee can use sick leave to care for his spouse.

Recommendation: The Employer's proposal is recommended. This is the same language that appears in the Deputies' contract. The proposal does not limit the use of sick leave in exceptional cases which require the employee's care of a *sick* spouse. Employees are not being restricted from taking leave upon the birth or adoption of a child. The employee may take the leave, but must use other available leave. Vacation, bonus and personal leaves are paid in full when an employee leaves employment. The use of these types of leave following the birth of a child does not cost the Sheriff's Department any additional money, since it would be required to pay out these amounts when the employee either uses this paid time or leaves the Sheriff's Department. Upon resignation or retirement, accrued sick leave is not paid in full, but at a fraction of the total amount.

Recommended Contract Language

Article 25
Leaves

Male employees whose spouse or significant other is giving birth will be permitted to utilize 7 working days of sick time for the birth with the furnishing of a physician statement as required by Article 28, Section 10. No additional sick leave shall be authorized unless the employee furnishes medical documentation and/or other evidence satisfactory to the Employer. Thereafter, other paid leave shall be substituted for the remainder of the

family leave in the order specified above.

5. **Article 28 – Sick Leave**

Employer's Proposal: The Employer proposes to delete Section 6, A, (v) of the current contract in light of the previous proposal concerning male employee' use of sick time under Article 25.

Union's Proposal: The Union proposes to maintain current contract language.

Recommendation: Given that the Employer's proposal for Article 25 was recommended, it is also recommended that Article 28, Section 6, A, (v) be deleted.

6. **Article 38 – Wages**

Employer's Proposal: The Employer proposes a 3% wage increase for each year of the contract. Employees would move straight across the pay scale and not up the steps of the wage scale. In 2004 and 2005, members of the Union received a 3% raise each year. In addition, those employees who have not reached the top step of the pay scale also received a step increase. Because there is approximately a 5% difference between the steps, employees who have not yet reached top pay were essentially receiving raises of approximately 8% per year.

The Employer's current proposal is a fair increase given the economic condition of Stark County and the budget allotted to the Stark County Sheriff's Office. The Sheriff's 2005 budget is lower than the amount actually sent by the Stark County Sheriff's office in 2001.

The Employer also proposes to add a new Section 6 to the wage article. In approximately 1984, the Board of Commissioners began to pay 50% of the 8.5% of the employee's contribution

to OPERS. The Board of Commissioners is in the process of eliminating this OPERS pick-up for ***new hires only***. It is possible that during the term of this contract, new hires in the bargaining unit will not be receiving this pick-up. The Employer's language simply states that in this event, the parties will sign a side letter to this effect.

Also, during the term of this contract, the County may enact a program where state and federal taxes on the Employee PERS share will be tax deferred. Again, the parties would need to sign a side letter to this effect.

Union's Proposal: The Union proposes a 4% increase each year of the Agreement and a five hundred dollar ($500.00) bonus for each year of the Agreement. The Union also proposes that the TAC officer and assistant receive an additional $1.00 per hour.

The Union's demands for a 4% wage increase are well within the standards that are being awarded by neutrals throughout the State of Ohio. Furthermore, the Deputy Sheriffs presently enjoy a $700.00 bonus each year of the agreement in the form of a firearms proficiency bonus. The annual qualification of firearms is required to maintain peace officer's certification. This is just another way to increase the deputies' pay, and the correction officers are, likewise, asking for a $500.00 bonus each year.

The TAC Officer (Technical Agency Coordinator) has numerous duties to perform which were performed by a Deputy Sheriff who received a higher rate of pay than the current TAC officer. Portage County pays its TAC officer an additional $1.00 per hour for all the additional duties and in the majority of the other counties, the TAC officer is listed as a supervisor and non-bargaining unit job and is receiving supervisor pay due to the responsibilities of this assignment.

Recommendation: It is recommended that employees receive a three percent (3%) raise

each year of the Agreement, in addition to a step increase for those employees who have not reached the top of their pay scale. No additional bonus is recommended. Given the economic condition of Northeast Ohio, area wage increases are typically 3%. Stark County is, likewise, experiencing slow economic growth. Consequently, a 3% wage increase is recommended. With the step increases, many employees will be enjoying an 8% wage increase in reality. Also, there does not appear to be sufficient justification for a $500.00 bonus for each year of the Agreement. Although the deputy sheriff's may receive a firearm proficiency bonus, a $500 bonus each year for correction officers is not a common element of their contracts. A specific wage increase for the TAC officer and assistant is also not recommended. Even though Portage County TAC officers receive such a bonus, the wage for that position appears to be significantly lower than that for Stark County. Admittedly, the TAC officer is an important job and has many job duties. However, the TAC officer is also exempt from other duties that correction officers must perform.

The contract language regarding the side letters for PERS is recommended to conform to the Board of Commissioners' actions regarding these issues.

Recommended Contract Language

ARTICLE 38

WAGES

SECTION 1. The base hourly rate of each employee shall be as follows:

CORRECTIONS OFFICERS

Current Step 2005	2006	2007	2008
$18.50	$19.06	$19.63	$20.22
$17.57	$18.10	$18.64	$19.20

$16.69	$17.19	$17.71	$18.24

MAINTENANCE & MECHANICS

2005	2006	2007	2008
$16.50	$17.00	$17.51	$18.04
$15.65	$16.12	$16.60	$17.10
$14.88	$15.33	$15.79	$16.26

CLERKS

2005	2006	2007	2008
$11.96	$12.32	$12.69	$13.07
$11.35	$11.69	$12.04	$12.40
$10.77	$11.09	$11.42	$11.76
$10.24	$10.55	$10.87	$11.20
$9.71	$10.00	$10.30	$10.61

COMMUNICATION TECHNICIANS

2005	2006	2007	2008
$16.97	$17.48	$18.00	$18.54
$16.13	$16.61	$17.11	$17.62
$15.32	$15.78	$16.25	$16.74
$14.54	$14.98	$15.43	$15.89
$13.81	$14.22	$14.65	$15.09

Bargaining unit members shall continue to progress upward through the step

increase procedure until all members reach the top step.

Employees will be placed in steps corresponding to their wage rate as set forth in the current step column. Annually thereafter, they would go up one step each year until reaching the top step.

* * *

Section 6. The parties hereby agree and acknowledge that during the term of this collective bargaining agreement, the Employer may eliminate the pick-up of 50 percent of the statutorily required employee contribution to Ohio Public Employees Retirement System (OPERS) for employees hired on or after the date of signing of this agreement only. Additionally, the Employer may during the term of this contract, adopt a program whereby state and federal taxes on the Employee share of OPERS contributions may be deferred.

In the event that either or both of these events take place during the term of this agreement, the parties will sign a side letter which complies with federal and state law, IRS and/or OPERS regulations.

7. **Article 21 – Holidays**

Union's Proposal: The Union proposes a new Section 4 which allows the Records Clerks, wishing to use bonus, vacation, or personal time, to be granted the Friday after Thanksgiving off, provided one records clerk will be working that day. The majority of non law enforcement personnel employed by Stark County are not required to work on the Friday after Thanksgiving. The Union is asking, not for another paid day off, but to use accumulated time off to enjoy this day. By adding the last sentence "provided one records clerk will be working that day," the language insures that the Employer's work will still get done.

Employer's Proposal: The Employer proposes to maintain current contract language.

Recommendation: The Union's proposal is recommended. The Employer did not present

evidence that one records clerk could not perform the job necessary on this day when most government offices will be closed.

Recommended Contract Language

Article 21

Holidays

Add: Section 4

Due to the fact that many of the Government offices are closed on the Friday after Thanksgiving, the Records Clerks wishing to use bonus, vacation, or personal time will be granted the Friday after Thanksgiving off, provided one (1) Records Clerk will be working that day.

8. Article 24 – Vacations

Union's Proposal: The Union proposes changing the date when vacation schedules will be posted from February 1 to November 1 of the preceding year. This permits the Employer to schedule in advance the following year vacation schedule and helps employees to know their vacation is approved long in advance.

The Union also proposes that employees be permitted to apply for payment of accumulated vacation once each calendar quarter, but only twice per year. The proposed language would also allow employees to buy back up to 80 hours per year, instead of 40 hours per year.

Employer's Proposal: The Employer proposes to maintain current contract language.

Recommendation: The Union's proposal is recommended. The months from January to March are not addressed in the current contract language. The Union's proposal would allow

employees to be certain of vacation approval for this time period, should they request vacation at this time. Also, employees should be permitted to buy back more vacation time.

Recommended Contract Language

Article 24

Vacation

* * *

SECTION 4. Vacations are scheduled in accordance with the workload requirements of the individual divisions. For this reason, the Employer may require vacation requests be made by November 1 of the preceding year and will post the vacation schedule for the following year within thirty-one (31) calendar days. Vacation requests made by November 1 will be made based upon seniority and in accordance with the workload requirements as determined by the Employer. Seniority earned in other bargaining units shall be used to determine the order of the selection so long as those bargaining units use seniority earned within this bargaining unit in the selection of vacations. Adjustments to the November 1 schedule will be made upon a first-come first-serve basis.

SECTION 5. An employee wishing to change his scheduled vacation shall give the Employer two weeks' advance notice. All changes in the November 1 schedule shall be on a "first come-first served" basis for those unscheduled and available weeks remaining. Any employee requesting vacation time on a "first come-first served" basis shall make their request at least one (1) week in advance of the date(s) they are requesting. The Employer may waive the one (1) week in advance notice if the employee can show that there is a bona fide emergency.

SECTION 7. (2nd paragraph)

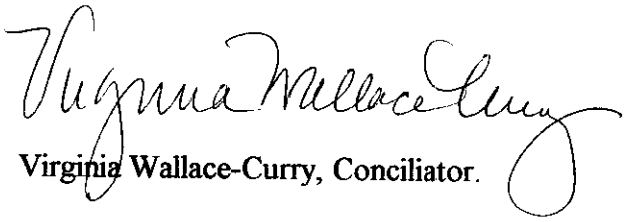
An employee may submit a written application to the Employer for payment of forty (40) hours of vacation time in lieu of taking vacation. An employee may qualify for this payment only if the employee has three (3) or more weeks of vacation accumulated on the date of submission from the preceding twelve (12) months, and the employee has at least forty (40) hours accumulated vacation time at the time of the payment. Requests for vacation buyback will be paid by the Employer once each calendar quarter. The maximum amount an employee may be paid for payment in lieu of vacation

eighty (80) hours per year at the employee's base rate of pay. Each employee may only submit requests for vacation buyback twice per year.

TENTATIVE AGREEMENTS

All tentative agreements previously agreed to by the parties are incorporated into this conciliation award and adopted by the Conciliator

Submitted by:



Virginia Wallace-Curry, Conciliator.

November 30, 2005
Cuyahoga County, Ohio

CERTIFICATE OF SERVICE

This is to certify that a true copy of the Fact-finding Award for the Stark County Sheriff's Department and the FOP, Ohio Labor Council, Inc. was sent to the parties by overnight mail and to the State Employment Relations Board by regular U.S. mail on this day, November 30, 2005. The Conciliation Award was served upon:

Mr. Rick Grochowski
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Virginia Wallace-Curry, Conciliator