

STATE EMPLOYMENT
RELATIONS BOARD

2008 SEP -4 A 11:48

**IN THE MATTER OF FACT-FINDING
BETWEEN**

SUMMIT COUNTY SHERIFF)	CASE NO. 07-MED-09-0881
)	
AND)	<u>FINDINGS</u>
)	AND
)	<u>RECOMMENDATIONS</u>
FRATERNAL ORDER OF POLICE)	
OHIO LABOR COUNCIL, INC.)	

JAMES M. MANCINI, FACT-FINDER

APPEARANCES:

FOR THE EMPLOYER

**James A. Budzik
Attorney at Law**

FOR THE UNION

**Chuck Choate
Senior Staff Representative
FOP/OLC, Inc.**

SUBMISSION

This matter concerns fact-finding proceedings between the Summit County Sheriff (hereinafter referred to as the Employer or Sheriff) and the Fraternal Order of Police, Ohio Labor Council, Inc. (hereinafter referred to as the Union or FOP). The State Employment Relations Board (SERB) duly appointed the undersigned as fact-finder in this matter.

The fact-finding proceedings were held on May 14 and May 22, 2008 in Akron, Ohio. The fact-finding proceedings were conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of SERB. During the fact-finding proceedings, this fact-finder attempted mediation of the issues at impasse. The issues remaining for this fact-finder's consideration are more fully set forth in this report.

The bargaining unit involved consists of all Deputies in the Summit County Sheriff's Department. There are approximately 330 Deputies in the bargaining unit. Deputies are assigned to duties in the Correction Division and in the Operation Division.

This fact-finder in rendering the following findings of fact and recommendations of the issues at impasse has taken into consideration the criteria set forth in Ohio Revised Code Section 4117(G)(6)(7). It should be noted that the parties requested that this fact-finder's report be delayed in order to accommodate the vacation schedules, etc., of the representatives. Therefore, the following recommendations on issues at impasse are hereby submitted.

1. WAGES

The Union proposes wage increases of 5% for 2008, 6% for 2009, and 7% for 2010. The Union further proposes a 1% increase for each of the four steps of the Longevity Stipend.

The Employer proposes 2% increases in each year of the Contract retroactive to January 1, 2008. The Sheriff further proposes to retain the current longevity stipend.

The Employer submitted financial budgetary information which it claims establishes that it has the limited ability to provide for pay increases beyond those proposed. In fiscal year 2007, the County's General Fund ran a deficit of 1.4 million dollars. The current forecast for 2008 indicates that once again expenditures will exceed revenues in the General Fund by approximately 8.4 million dollars. According to the County's Deputy Director of Finance, expenditures are expected to continue to grow by 3% to 4% whereas revenues are anticipated to increase by only 2% over the next several years. The County expects decreases in interest income as well as property tax revenue due to declining valuations.

The Sheriff further submits that it pays its deputies very well and in line with the average in comparable departments. The top road deputy wage in Summit County is \$47,944 which is slightly above the average top deputy wage in comparable sheriff departments. Likewise, longevity pay comparables indicate that Summit County deputies receive longevity compensation in line with that provided in other sheriff departments in the area. The current longevity stipend should be retained.

The Union contends that its wage increase proposal is warranted in order for the bargaining unit's pay to keep pace with those similarly situated in comparable departments. The Union submits that currently Summit County deputy pay ranks fourth with respect to wages of deputies in comparable sheriff departments in the state. It submits that only with the granting of its wage proposals will the deputies in Summit County be able to retain their relative ranking among sheriff departments.

The Union emphasizes that the Summit County Sheriff's Department is a full service law enforcement agency which includes operating the County's jail. It provides such law enforcement services throughout the County as well as to several townships in the area. The Union argues that greater wage increases are warranted in this case because the deputies are exposed to violent crime and dangerous conditions. The Union disputes the County's claim that it has a limited ability to pay. The Union produced a summary of the Sheriff Department's budgets and expenditures over the past several years which indicate that revenues have increased over 5% each year.

ANALYSIS – This fact-finder would recommend that there be 3% wage increases granted in each year of the Contract. The first year increase would be retroactive to January 1, 2008. This fact-finder would further recommend that the current longevity stipend be retained.

The 3% wage increases recommended herein would be in line with those granted to other sheriff departments in the state. SERB data indicates that statewide deputy wages increased by approximately 3% during the past year. The 3% increases

would also be in line with those granted to this bargaining unit during the parties' previous contract.

Evidence of wage comparability supports the above salary increase recommendation. It was shown that for 2007, the top deputy wage in Summit County was \$47,944. The average top deputy wage for sheriff departments in the region was \$46,677. Therefore with the 3% increases recommended herein, the Summit County deputy wage should continue to be slightly above the average in the area. Likewise even when statewide sheriff department comparisons are considered with the recommended increases, the Summit County deputies should retain their relative ranking among comparable sheriff departments.

This fact-finder has further determined that the County has the ability to fund the recommended 3% wage increases. Although General Fund expenditures have recently exceeded revenues, there is an indication that there could be modest growth in both sales tax and property tax revenue over the next several years. It should also be noted that even the County's own budgetary forecast for 2008 projects an unencumbered balance of 20.1 million dollars.

With respect to longevity pay, this fact-finder did not find any basis to support the Union's request for a 1% increase for each of the four steps of the longevity stipend. The current provision provides longevity pay for the bargaining unit which clearly is in line with longevity compensation found in comparable sheriff departments. As a result,

this fact-finder recommends that the current Longevity Provision be retained without any change.

RECOMMENDATION

It is the recommendation of this fact-finder that there be 3% wage increases in each year of the Agreement. The current Longevity Pay Provision should be retained.

ARTICLE 18, WAGES

Section 18.1

There shall be wage increases of three percent (3%) in each year of the Agreement with the first increase being made retroactive to January 1, 2008.

Section 18.3 – Longevity

Retain current provision with no change.

2. INSURANCES

The Employer proposes to delete the Life Insurance Provision for retired bargaining unit members which is currently set forth in Section 20.1. The Employer further proposes two modifications from the current Health Insurance Provision. Under Section 20.2, the Sheriff proposes to increase the employee's maximum amount of premium payments each pay period to \$70 in 2008, \$75 in 2009, and \$80 per pay in 2010. Further, the Employer proposes to delete the second paragraph of Section 20.2 which refers to maximum prescription co-payments by employees. The Employer proposes to further clarify Section 20.5 which is the \$50 per month incentive for those who choose not to receive health insurance from the County. Under the Sheriff's proposal, language would be included to exclude a spouse employee from receiving the \$50 opt out benefit if he/she is still receiving insurance under the County through their spouse.

The Union opposes the changes to the Insurance Provision proposed by the Employer. The Union opposes any deletion of the insurance benefit for retired bargaining unit members. The Union requests that the current provision pertaining to insurance premium co-payments by bargaining unit members be retained without any change. Further, the prescription drug co-payments currently set forth in Article 20.2 should remain the same without any change. The Union also opposes the change in the opt out language under Section 20.5.

The Employer contends that no other County contract other than the Sheriff's Department, deputies and supervisors, contain maximum premium co-payments. All of the other County contracts provide for a flat 10% premium payment by employees. Further, no other County contract contains language which proscribes a maximum co-payment on prescription drugs. The Employer submits that it does not want to be put into a position where it is placed in a separate cost pool for insurance purposes by the County's insurance department. Historically, the County has treated all of its employees in one cost pool with regards to healthcare and prescription plans. The County is requesting consistency in its contracts.

With respect to the spousal opt out provision, the Employer points out that a recent arbitration ruling indicated that employees who are receiving insurance through their spouse can still be entitled to the \$50 per month incentive. The Employer wishes to correct that ruling by ending the windfall that employees are receiving from it. It was never the intent to give the opt out benefit to employees who are still under the County insurance plan but through their spouse.

The Union argues that historically the Employer has provided retirees with the option to continue receiving life insurance benefits. For that reason, the benefit should be retained. The Union further maintains that the Employer has failed to establish any basis for reducing the benefits set forth in Section 20.2 by increasing the insurance co-pays for bargaining unit members. Likewise, the Employer did not establish any justification for deleting the prescription co-pays currently set forth in the Agreement. The Union

submits that the previous arbitration award concerning prescription co-pay was correct. The current limitation on the co-payment for non-generic drugs should be retained.

ANALYSIS – This fact-finder would not recommend any change in Section 20.1 pertaining to retirees. With respect to Section 20.2, the employee insurance co-pays should be increased to a maximum of \$75 in 2010. It is also recommended that the employee prescription drug co-payment provision for the PPO plan shall be modified to provide a maximum co-payment of \$5.00 for generic, \$10.00 for name brand formulary, and \$25.00 for name brand non-formulary medication. For the EPO plan, employees will be subject to the prescription co-pays set forth in the plan. This fact-finder further recommends that the language proposed by the Employer for clarification of the opt out benefit should be adopted.

The evidence establishes that no other County contract, except the Sheriff's Department, provides for maximum premium co-payments by employees. All of the other County contracts set forth a flat 10% premium payment by employees. As a result, it would be reasonable to increase the employee's maximum premium co-payments each pay period from the current \$65 to \$75 in 2010.

It was also established that under the current PPO tiered prescription plan, employee co-pays are \$5.00 for generic drugs, \$10.00 for name brand formulary drugs, and \$25.00 for name brand non-formulary medications. As a result, it would be appropriate to set forth in the parties' Agreement these particular prescription co-payments. Likewise, it would be reasonable to state that employees in the EPO plan pay

the prescription co-pays set forth in that plan. As indicated, the EPO plan has a generic drug mandate with a current five dollar prescription co-payment. There was insufficient basis established by the Employer for deleting Section 20.2 from the Contract which references the maximum prescription co-payments to be made by employees.

This fact-finder finds merit to the Employer's proposal to clarify the opt out insurance benefit. As the evidence showed, the intent of the incentive was to provide a benefit to employees who opt out of the County insurance plan. It was not intended for employees who are still under the County insurance plan but receive it through their spouse. Obviously under such a situation, the County is still paying the cost for their insurance coverage. Therefore, it would be appropriate to adopt the Employer's language which modifies the current provision to exclude a spouse employee from receiving the \$50 opt out benefit if they are still receiving insurance under the County plan through their spouse.

RECOMMENDATION

With respect to the Insurance Provision, this fact-finder recommends a modification to Section 20.2 to reflect the current prescription co-payments for the EPO and PPO Plans. In addition, the only other change recommended would be to clarify the Opt Out Incentive Pay Provision as more fully set forth below:

ARTICLE 20, INSURANCES

Section 20.1 – Current provision, no change.

Section 20.2 – All employees who receive benefits will pay ten percent (10%) of the premium costs through payroll deductions. The premium costs for employees will not exceed Sixty-Five Dollars (\$65) per pay in 2008 and 2009, and Seventy-five Dollars (\$75) per pay in 2010. For the EPO plan, employees will be subject to the prescription co-payments set forth in the plan. For the PPO Plan, the employee prescription drug co-payment shall not exceed Five Dollars (\$5.00) for generic drugs, Ten Dollars (\$10.00) for name brand formulary drugs, and Twenty-Five Dollars (\$25.00) for name brand non-formulary medications.

Section 20.3 – Current provision, no change.

Section 20.4 – Current provision, no change.

Section 20.5 – An incentive payment of Fifty Dollars (\$50.00) per month shall be offered to each employee eligible for health benefits who has proof of other hospitalization coverage, excluding a spouse's Summit County hospitalization coverage and who elects to have no Summit County insurance coverage. An employee who receives Summit County insurance from a spouse also working for the County, is not eligible for the incentive set forth in this section.

3. HOURS OF WORK AND OVERTIME

The Union in its amended proposal requests language which would provide that if bargaining unit members were given less than ninety minutes notice that they are to work overtime then the Sheriff can only hold them over for a four hour maximum period of time.

The Employer proposes to retain the current provision which states that the Sheriff does not have to follow the overtime procedure set forth in the section in selecting employees to work overtime if the Employer does not have sufficient notice of less than two hours of the necessity for such overtime.

The Union contends that its proposal is warranted in order to address those occasions when deputies are required to work overtime with less than two hours notice. According to the Union, there have been many instances where employees have been ordered to stay over and work overtime with less than fifteen minutes notice. In one instance, employees were actually held at the end of their shift and not permitted to leave the premises while the Sheriff determined if overtime was needed.

The Employer contends that the current provision is sufficient because it is intended to provide the Sheriff with a nominal time period to provide some relief in the case of an unforeseen need for overtime. Frequently, this is due to an emergency situation. The Employer notes that it previously reduced the nominal time period during the past negotiations from four hours to two hours. The Union's proposal would

constitute a significant restriction on the Sheriff's ability to handle operational emergencies in the County jail.

ANALYSIS – This fact-finder would recommend that the current nominal time period set forth in Section 17.6 of Paragraph C be reduced from two hours to ninety minutes. However, this fact-finder would not recommend the additional language proposed by the Union which would restrict the Sheriff from holding deputies to work overtime for a maximum of only four hours.

The evidence did show as claimed by the Union that there is a need to further reduce the time period for the Employer to notify deputies of the need to stay over and to work overtime. There are however legitimate concerns raised by the Employer with respect to any further language which would limit the Sheriff's ability to handle operational emergencies which could occur at the last minute at the County jail. Therefore, this fact-finder finds that it would be inappropriate to place any contractual overtime restrictions on the Sheriff.

RECOMMENDATION

It is the recommendation of this fact-finder with respect to Hours of Work and Overtime that the current time period set forth in Section 17.6, Paragraph C be reduced from two hours to ninety minutes. There is to be no other change to this provision as proposed by the Union.

HOURS OF WORK AND OVERTIME

Section 17.6, Paragraph C – Modify to reduce the time period from two hours to ninety (90) minutes. There is to be no other modification to this provision.

4. COURT TIME / CALL IN PAY

The Union proposes to add a new Section 19.2 which would provide for pager pay for each hour of off duty time that a bargaining unit member is required to respond or carry a pager. The Employer opposes the Union's request for new pager pay provision.

The Union contends that its pager pay request is warranted considering that all deputies are required to carry pagers at all times except when on extended leave. In that carrying of a pager is a condition of employment, the one dollar per hour stipend is justified. The Employer submits that the additional stipend requested by the Union would be cost prohibited. The Union's proposal is excessive and not supported by comparables.

ANALYSIS – This fact-finder does not recommend the Union's request for a one dollar per hour pager pay provision. There was insufficient basis established for such a new provision. It should be noted that the policy does not provide that an employee will be disciplined for failing to respond to a pager call. Moreover considering the size of the bargaining unit, the additional amount involved with providing a one dollar per hour stipend would be a significant cost for the department. There were no comparables presented which would provide support for such a new pager pay provision.

RECOMMENDATION

It is the recommendation of this fact-finder that there be no new pager pay provision as requested by the Union.

PAGER PAY – No new Section 19.2 regarding pager pay.

5. VACATIONS

The Union proposes under Section 22.3 that language be included which would provide for vacation calendars to be distributed and bid by each position as opposed to each division. Additionally, the Union proposes that January should be month of the distribution of vacation calendars. The Union further proposes that the minimum period of vacation increments that may be requested be changed from the current three days to one day. The Employer opposes the changes requested by the Union.

The Union submits that January is a better month than the current December for the distribution of vacation calendars. The other request to change the minimum period for vacation increments to the current three days to one day is also reasonable and should be adopted.

The Employer contends that the current provision pertaining to the distribution of vacation calendars should be retained. There is no evidence that it has created any major difficulties for the bargaining unit members. Moreover, the Employer does not believe that it would be appropriate for vacation scheduling to be done by position rather than by each division.

ANALYSIS – This fact-finder does not recommend any modifications to the current Vacation Provision. There was insufficient showing that there are any changes needed at this time. There was also an indication that other County contracts contain the same Vacation Provision as currently found in the parties' Agreement here. This fact-finder would like to note that the parties are in agreement that the Vacation Provision's

effective date be changed from the current January 1, 2005 to January 1, 2008. This ministerial change should be included in the parties' new Contract.

RECOMMENDATION

It is the recommendation of this fact-finder that with the exception of the ministerial change agreed upon by the parties to change the effective date to January 1, 2008, there should be no other modifications to the current Vacation Provision.

ARTICLE 22, VACATIONS

Change effective date to January 1, 2008.

No other changes are recommended.

6. VACANCIES

The Union proposes that vacancies be awarded on the basis of straight seniority. With respect to Section 33.2, the Union proposes language which provides that reassigned bargaining unit members be given the ability to grieve any reassignment based upon performance evaluations, records of attendance, or other disciplinary actions. The Union also proposes for Section 33.5 that a list be provided of those positions which are exempt from seniority bidding. The Employer opposes the changes requested by the Union.

The Union contends that vacancies have been awarded based upon factors which are not set forth in the Agreement. For that reason, strict seniority should be used for the filling of vacancies.

The Employer contends that the current provision for the filling of vacancies is the same as that found in other County contracts. The awarding of vacancies solely on the basis of seniority would severely limit the Employer's managerial right to award a vacancy to the most qualified or skilled personnel.

ANALYSIS – This fact-finder would recommend a modification to the current Vacancies Provision which would provide that if all other factors are relatively equal, seniority is to prevail. This fact-finder would not recommend any other changes to this article.

The evidence supports a modification to Article 33 which would provide that if all other factors which are set forth therein are relatively equal among the candidates for a

vacancy, then seniority is to prevail. Currently, vacancies are filled on the basis of performance evaluations, records of attendance, and a review of disciplinary action. An employee's work experience, additional skills and abilities as well as supervisory recommendations are also to be considered. This fact-finder finds that it would be appropriate to state that if all of the factors listed are relatively equal, then it would be reasonable to provide that the most senior candidate is to be awarded the vacant position. It should be noted that the relatively equal provision recommended herein is to be substituted for the current Subparagraph (d) which relates to continuous service or department seniority. There was insufficient basis established for the other changes to Article 33 as proposed by the Union. It should be noted that the grievance procedure is available to any employee who believes that factors other than those set forth in Article 33 were considered by the Sheriff in filling a vacancy.

RECOMMENDATION

It is the recommendation of this fact-finder that the Vacancies Provision be modified to include a provision which would provide that if all other factors are relatively equal among the candidates for a vacancy then seniority is to prevail.

ARTICLE 33, VACANCIES

Section 33.1 Modify by deleting the current Subparagraph (d) pertaining to continuous service and adding the following language:

If all other factors are relatively equal, then seniority shall prevail.

7. MEMORANDUM OF UNDERSTANDING – PHYSICAL TESTING

The Employer proposes to modify the existing Memorandum of Understanding to reflect that all new employees hired after January 1, 2010 must comply with the mandatory physical fitness testing provision of the Memorandum. Further, all bargaining unit employees would be subject to the policy after October 1, 2010. The Union proposes to advance the date of the existing Memorandum of Understanding to reflect the dates of the new replacement Contract.

ANALYSIS – This fact-finder would recommend that Subsection 3 be modified to reflect that all bargaining unit employees hired on or after January 1, 2010 shall be required to pass the test by October 1, 2010. From that date forward, the program would be mandatory for all employees in accordance with the memorandum on physical abilities testing. The remaining terms of the memorandum should remain in effect. This relates to a committee needing to meet to develop the physical testing program. The Sheriff has implemented a voluntary program for physical testing for the bargaining unit. However, the parties still need to negotiate over economic incentives for compliance with any mandatory physical abilities testing program. Therefore, it would be reasonable to simply change the dates in the Letter of Understanding with no further modifications being made at the present time.

RECOMMENDATION

It is the recommendation of this fact-finder that the Memorandum of Understanding pertaining to physical testing be modified as follows:

MEMORANDUM OF UNDERSTANDING – PHYSICAL TESTING

Subparagraph 3 – Modify Dates

All bargaining unit employees hired on or after January 1, 2010 shall be required to pass the test by October 1, 2010. From such point forward, the program will be mandatory for all employees in accordance with the Article/Memorandum on physical abilities testing.

The remaining terms of the Memorandum shall remain in effect with no change.

8. INJURY LEAVE

The Union initially proposed to increase the existing 120 days of injury leave to 180 days. The Employer initially proposed to modify Section 25.1 to clarify the definition of an occupational injury or illness. However during the hearing, both parties agreed to retain the current injury leave language. Therefore, this fact-finder would recommend that the provision remain the same without change.

RECOMMENDATION

It is the recommendation of this fact-finder that the Injury Leave Provision be retained without any change as agreed to by the parties at the hearing.

ARTICLE 25, INJURY LEAVE – Current language, no change.

9. UNIFORMS AND EQUIPMENT

The Union proposes to strike the word “leather” from the defining paragraph in Section 27.1. In addition, the Union seeks an increase of \$150 in Uniform Allowance in each year of the Agreement. The Union further proposes to strike the language found under Section 27.4 requiring any unused uniform allowance to be returned to the Employer. The Employer proposes to retain current language in the Uniform Allowance Provision.

The Union states that the majority of uniform items worn by deputies are no longer leather. The Union also claims that there is a need to increase the uniform allowance due to greater costs. The Union submits that there is no justification for the provision which requires the deputies to return to the Sheriff any unused uniform allowance in the third year of the Contract.

The Employer argues that there was no justification established to strike the word “leather” from the defining paragraph in Section 27.1. Moreover, the current uniform allowance levels are generous and should be maintained for the successor Contract. The current provision which requires any unused uniform allowance to be returned to the Sheriff in the third year of the Contract is reasonable and should also be retained.

ANALYSIS – This fact-finder would recommend that the uniform allowance be increased by \$50 in each year of the Contract. This would be the same type of increase granted during the prior contract. However, this fact-finder does not find that there was

sufficient basis established for deleting the provision which requires any unused uniform allowances to be returned to the Sheriff in the third year of the Contract. There should of course be a ministerial change to Section 27.4 to reflect that it would be on December 15, 2010 that unused uniform allowance monies are to be returned to the Sheriff's budget.

RECOMMENDATION

It is the recommendation of this fact-finder that the Uniform Allowance Provision be modified to include an increase of \$50 per year as more fully set forth below:

ARTICLE 27, UNIFORMS AND EQUIPMENT

Increase uniform allowance by Fifty Dollars (\$50) in each year of the Agreement. Otherwise, current language except for ministerial change to Section 27.4 to indicate that it would be on December 15, 2010 that any unused uniform allowance monies are to be returned to the Sheriff's budget.

10. MINIMUM STAFFING LEVELS

The Union proposes to add a new article which would reflect minimum staffing levels within the County jail. As part of its proposal, the Union requests that there be a minimum number of deputies assigned to each shift. The Employer opposes a minimum staffing level provision for the County jail.

The Union contends that minimum staffing is a major concern for bargaining unit members. In order to maintain a safe and secure operation of the County jail, there should be a minimum number of deputies assigned to each shift. It is in the best interest of the administration, deputies and civilian staff to implement the recommendations made by the Union for a safe operation of the County jail.

The Employer strongly opposes the Union's proposal to place into the Contract a minimum manpower and staffing levels provision for the County jail. The Sheriff contends that it is a managerial right which is involved. In addition, minimum staffing levels are a "permissive subject of bargaining" and not subject to mandatory bargaining.

ANALYSIS – This fact-finder does not recommend the minimum staffing level provision proposed by the Union. It is clear that the Employer maintains the right to control and determine the adequacy of its workforce. Moreover, minimum manning is a permissive and not a mandatory subject of bargaining. In this case, the Employer did not wish to engage in collective bargaining on this permissive subject. For these reasons, this fact-finder cannot recommend a minimum staffing level provision proposed by the Union.

RECOMMENDATION

It is the recommendation of this fact-finder that there be no Minimum Staffing Level Provision set forth in the parties' Contract.

MINIMUM STAFFING LEVEL – No new provision.
(For Summit County Jail)

11. LETTER OF UNDERSTANDING - DENTAL AND VISION INSURANCE

At the hearing, the parties agreed to the FOP's proposal to change the titles of the signatures to this memorandum. There are to be no substantive changes to the provision. Therefore, this fact-finder recommends that the parties sign the memorandum as proposed by the FOP.

RECOMMENDATION

It is the recommendation of this fact-finder that the Memorandum of Understanding concerning dental and vision insurance be signed by both the Employer and FOP representatives.

LETTER OF INTENT AND UNDERSTANDING

Dental and Vision Insurance – The parties' representatives are to sign this memorandum indicating the date it was renewed.

12. PERSONNEL FILES

At the hearing, the parties agreed to retain the current language regarding personnel files. Therefore, this fact-finder recommends that the provision be retained without any change.

RECOMMENDATION

It is the recommendation of this fact-finder that the current Personnel Files Provision be retained without any change.

ARTICLE 11, PERSONNEL FILES – Current language, no change.

13. LEAVES OF ABSENCE

The Employer proposes to modify Section 26.8(A) by deleting the word “not” so as to make injury leave entitlements to be used concurrently with FMLA leave. The Union opposes any change in the current Leaves of Absence Provision.

The Employer contends that it merely seeks consistency among County agencies. Under the County’s FMLA policy, paid leave runs concurrently with FMLA time.

The Union submits that any change in the current Leaves of Absence Provision as proposed by the Employer would constitute a reduction in the benefit of leave time. The current provision is reasonable and should be retained.

ANALYSIS – This fact-finder does not recommend any change in the Leaves of Absence Provision. That section states in applicable part that injury leave entitlements pursuant to Article 25 shall not be used concurrently with FMLA entitlements. There was insufficient justification established by the Employer to change this particular benefit for bargaining unit members.

RECOMMENDATION

It is the recommendation of this fact-finder that there be no change in the current Leaves of Absence Provision.

ARTICLE 26, LEAVES OF ABSENCE – Current language, no change.

14. SEVERANCE PAY

The Union proposes that the sick leave accrual be cashed out at each level at a 100% accrual rate. The Employer proposes to retain the current sick leave conversion provision.

ANALYSIS – This fact-finder recommends that the only change in the Severance Pay Provision should be the deletion of the 720 hour maximum payout at the 10-19 year service level. Otherwise, there should be no other changes made to this provision.

The Union established a reasonable basis for removing the maximum cap for the severance payout for those with 10-19 years of service. However, it was established that the current sick leave accrual conversion levels exceed those of the other County agencies. Those contracts follow the County ordinance with respect to severance pay. It was also shown that the current sick leave cash out benefits exceed those found in most other County Sheriff Department contracts. Therefore, the evidence failed to support the Union's proposal to otherwise increase the amount of severance pay.

RECOMMENDATION

It is the recommendation of this fact-finder that the Severance Pay Provision be modified as follows:

ARTICLE 30, SEVERANCE PAY

Section 30.1 (A) Delete 720 hours maximum payout for employee's who have completed 10-19 years of service.

Otherwise current language, no change.

15. SUBSTANCE ABUSE SCREENING

The Union proposes that substance abuse prevention policies which are currently in effect be retained throughout the new Agreement. The Employer proposes to retain the current language which states that employees are subject to the County policy.

ANALYSIS – This fact-finder does not recommend any change in the current Substance Abuse Screening Provision. The evidence shows that the current provision is consistent with that found in other County contracts. There was no showing made that bargaining unit members have suffered any hardship with respect to the current County Substance Abuse and Screening Policy.

RECOMMENDATION

It is the recommendation of this fact-finder that there be no change in the Substance Abuse Screening Provision.

ARTICLE 34, SUBSTANCE ABUSE SCREENING –

Current language, no change.

CONCLUSION

In conclusion, this fact-finder hereby submits his recommendations on all of the outstanding issues presented. It is also the recommendation of this fact-finder that all previously agreed upon tentative agreements be incorporated into the parties' new Contract.

SEPTEMBER 2, 2008



JAMES M. MANCINI, FACT-FINDER