

**FACT FINDER'S REPORT**STATE EMPLOYMENT  
RELATIONS BOARD

2008 JAN 28 A 10: 20

IN THE MATTER OF:

Teamsters Local Union No. 637  
and  
The Licking County Sheriff

Case Numbers:

2007-MED-09-0967  
2007-MED-09-0968  
2007-MED-09-0969  
2007-MED-09-0970  
2007-MED-09-0971

Before Fact Finder  
N. Eugene Brundige

PRESENTED TO:

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And

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Fact Finder N. Eugene Brundige was selected by the parties and appointed by The State Employment Relations Board in compliance with Ohio Revised Code Section 4117.14(C)(3).

The Fact Finding Hearing was held on December 17, 2007. The hearing involved five (5) bargaining units within the Licking County Sheriff's Department. All five (5) units are represented by Teamsters Local 637. There are four (4) separate collective bargaining agreements.

The parties have been engaged in multi-unit bargaining and have entered into a retroactivity agreement pursuant to Ohio Revised Code § 4117.14(G)(11) which, in essence, states that a neutral may award wages and other economic benefits in fiscal year 2008.

The Fact Finder explored the possibility of mediation as a way to settle some of the outstanding issues. The parties believed that further efforts would not result in a collective bargaining agreement and proceeded with the hearing.

In their pre-hearing filings the parties identified the following issues and/or contract provisions as being unresolved:

Article 11 (Corrective Action) 11.2 Pre-disciplinary Meetings

Article 16 (Filling of Positions) 16.5 Testing Methods

Article 19 (Layoff and Recall) 19.4 Bumping

Article 21 (Wages and Miscellaneous) 21.2 Wage Scales

Article 25 (Medical Insurance)

Article 29/30 (Uniforms and Allowances)

Article 30 (Hours of Work and Overtime)

**Article 31 (Sick Leave)**

**Article 32 (Sick Leave Conversion)**

**Article 34 (Vacation)**

**Article 36 (Personal Days)**

**Article 39 (Education Courses or Training)**

**Newly Proposed Article (Bargaining Unit Work)**

**Newly Proposed Article (Restricted Duty)**

**Newly Proposed Article (Special Duty/Special Event Assignments) <sup>1</sup>**

This Fact Finding Report will cover four (4) collective bargaining agreements.

All issues presented by the parties pertained to all contracts unless noted otherwise.

The Union was represented by Susan Jansen, Spokesperson; John Sheriff, Secretary-Treasurer for Local 637; Kim Bratek, Field Service Representative for the Michigan Conference of Teamsters; Marilyn Inceogler; Brenda Grimmitt; Alan Thomas; Aarin Stemen; Aimee M. Slone; Susan Daniels; Linda Eveland; Donald Keene and Robert Bamr.

The County was represented by Benjamin Albrecht, Spokesperson; Sheriff Randy Thorp; Chief Deputy Chad Dennis and Sue Wadley, Licking County Human Resources.

Even though there were a significant number of open issues the respective positions of the parties were clearly and fully articulated.

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<sup>1</sup> Article 33 was listed in the Union's submission but at the hearing it was clarified that the parties were in agreement regarding the Funeral Leave Article.

All arguments, positions, and data presented were considered in formulating the recommendations that comprise this report.

In this report the Fact Finder will examine each of the issues, summarize the position of each of the parties, and then will offer a recommendation. In those areas where a change in contract language is proposed, the implementing language will also be recommended.

### **Article 11 (Corrective Action) 11.2 Pre-disciplinary Meetings**

#### **UNION POSITION:**

The Union proposes to add to the pre-disciplinary section of the Contract the requirement that the Union's Business Representative also be officially notified, along with the charged party, of the pending charges. The Union would then have the Business Representative and the Sheriff's Representative agree upon a mutually convenient date for the pre-disciplinary hearing.

The Union admits that for the most part the Sheriff and the Business Representative(s) have been able to mutually establish meeting dates but wants to avoid the possibility of problems in the future.

#### **EMPLOYER POSITION:**

The Sheriff argues that there has not been a problem therefore there is no need to modify the language. The Employer also argues that some employees may not want the Union involved in pre-disciplinary matters.

**DISCUSSION AND RECOMMENDATION:**

For the most part this Fact Finder follows the old axiom that if it is "not broke don't fix it." It appears that the present practices are working well and most of the language does not need to be changed.

I disagree with the Sheriff's representative on one point. While employees may waive Union representation, the Collective Bargaining Agreement exists between the Sheriff and the Union and therefore the Union has a right to know when a member is charged with a disciplinary violation.

I recommend the following sentence be added to the end of Section 11.2. ***"The notice of the pre-disciplinary meeting will also be given to the Union Business Representative. An employee may waive his/her right to Union representation in writing."***

Otherwise, I recommend Article 11 remain unchanged.

**Article 16 (Filling of Positions) 16.5 Testing Methods****UNION POSITION:**

The Union notes that since it was first selected as the bargaining agent in 1998, it has been attempting to establish a more objective, standardized method of promoting bargaining unit members. To this point the Union feels that little progress has been made toward this goal.

The Union proposal is to establish a joint committee comprised of an equal number of bargaining unit members and representatives of the Sheriff. This committee would be empowered to determine the method of examination

based upon objective criteria. Once the committee agreed upon the process and the criteria, the Sheriff would provide bargaining unit members wishing to compete for promotion, study materials to assist the member in preparing.

**EMPLOYER POSITION:**

The Sheriff notes that the Chief Deputy is working on a process that would improve the promotion process and notes that bargaining unit members have been invited to give feedback to the process.

In addition the Representative of the Sheriff notes that once again there is no demonstrated and proven problem that needs to be solved. The Employer recommends current language.

**DISCUSSION AND RECOMMENDATION:**

While bargaining unit members certainly have a vested right to have an objective and fair process to govern promotions, the statute clearly gives great deference to the Employer in the selection and promotion of employees.

Many public sector collective bargaining agreements in Ohio contain restrictions on those inherent management rights, but those are usually earned through the give and take of the bargaining process.

This Fact Finder, like many, is hesitant to recommend such changes without a strong demonstrated showing of arbitrary, capricious, or unfair practices in past promotions.

The record in this matter does not reflect such a pattern. Therefore, at this time I am not recommending inclusion of language such as the Union proposes,

but do urge the Employer to continue to work on a process and to involve the Union in an advisory capacity.

**I recommend no change in Section 16.5.**

**Article 19 (Layoff and Recall) 19.4 Bumping (Deputies)**

**Article 20 (Layoff and Recall) 20.4 Bumping (Sergeants)**

**UNION POSITION:**

The Union notes that this proposal affects only those bargaining unit members in the Deputy and Sergeant classifications.

The Union proposes to remove the ability of exempt persons to bump into the bargaining unit(s). Laid off exempt employees would be permitted to fill vacancies in the Deputy classification but such persons would be placed at the bottom of the Deputy seniority list.

**EMPLOYER POSITION:**

The Employer sees this proposal as punitive and one that would dampen the desire of bargaining unit employees to promote into exempt positions. It sees no need to change the current language.

**DISCUSSION AND RECOMMENDATION:**

I agree with the Sheriff. It is difficult to understand why a Union would want such a punitive provision.

Usually Unions desire to make it attractive for its members to become part of the management structure. This proposal would serve as a disincentive for persons to attempt to advance in his or her career.

There is no good business reason why the Sheriff would want to lose the investment in, and experience of, senior exempt employees should a layoff occur.

**I recommend the language of Article 19.4 be unchanged.**

### **Article 21 (Wages and Miscellaneous) 21.2 Wage Scales**

#### **UNION POSITION:**

The proposal of the Union is for a six percent (6%) increase beginning January 1, 2008, and 6% in each of the subsequent two (2) years of the agreement. The Union also proposes an equity increase for Sergeants,

The Sergeants' proposal would place them midway between the wage rate for a top step Deputy and a Lieutenant, but not less than one percent (1%) greater than the top Deputy wage rate.

The Union believes these increases are necessary in order for bargaining unit members to achieve comparability with Sheriff's departments in those counties the Union views as comparable.

For its list of comparable jurisdictions the Union has listed those counties having a population of between 120,000 and 170,000. Licking County is in the middle of the range at 145,491. It also looks at those counties adjacent to Licking County along with the cities in adjacent counties. These include Newark, Lancaster, Zanesville, Delaware, Mt. Vernon, Coshocton, Pataskala, Heath, and New Lexington.

Because the Union has taken into consideration both size and geographic proximity, it believes its comparables to be more relevant.

The Union notes that, based upon its comparables, Licking County Deputies are sixth (6<sup>th</sup>) lowest of the eight (8) counties surveyed and are \$1.08 below the average of all other comparables. This, the Union argues, equals a 5.1% increase needed to reach the average.

The Union submits that many neutrals who have examined this issue in the past have considered both size and the geographic proximity of other jurisdictions.

It notes that Fact Finder Joe Santa Emma recognized the significant disparity in 2002 when he recommended a 2% equity adjustment and a 4% across the board wage increase.

The Union asks that special attention be taken of Greene County because it is the only other Triple Crown Accredited<sup>2</sup> county in the State. It also asks that the Fact Finder given consideration to Fairfield and Richland Counties in that they are both of comparable size and are in close proximity.

The Union argues that when health care premiums are added to the economic equation, bargaining unit members fall even further behind their counterparts in comparable counties. The Teamsters notes that Licking County employees pay more than any of the eight (8) other cited counties. The Union

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<sup>2</sup> "Triple Crown Accredited" refers to the fact the Sheriff's Office has been accredited by three different organizations: The Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA), The National Commission on Correctional Health Care (NCCHC) and The National Commission on Correctional Health Care from the American Correctional Association (ACA).

asserts that the majority of Licking County employees pay \$396.56 per month for family insurance benefits.

The Union argues that Sergeants rank ninth (9<sup>th</sup>) out of the nine (9) counties to which they are compared. The Sergeants' wage rate is \$3.50 per hour below the average. The Union argues that Sergeants' wages would need to be increased by 15.9% to reach average.

**EMPLOYER POSITION:**

The Licking County Sheriff offers a combination of comparable jurisdictions. The Sheriff believes that jurisdictions in the same geographic area are the most appropriate but after reviewing the comments of past fact finders and conciliators the Employer has included additional comparables.

The first list of comparable jurisdictions is comprised of those counties that are in a "double contiguous"<sup>3</sup> relationship to Licking County.

The second list is of jurisdictions that are in the population range of 75,000 to 160,000.

In addition the Employer has combined the two lists. The Employer argues that regardless of what comparables are used the wage proposals of the Union are not appropriate.

The Sheriff also argues that no further equity adjustment is required for any specific bargaining unit.

The County offers a wage proposal of 2% for each of the three (3) years of the Agreement. While recognizing that 2% is below the statewide average wage

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<sup>3</sup> No more than two counties away from Licking.

settlement, the Employer argues that such a proposal must be advanced in light of the numerous economic proposals still on the table.

The economic situation of the County was discussed. While there is not an ability to pay argument being advanced in this situation, Licking County like so many other jurisdictions is facing the uncertainty of challenging economic times.

**DISCUSSION:**

As always the Fact Finder is faced with what to do with comparable data which tells a very different story based upon those who gather and massage the information.

These parties have significantly improved the data presented by recognizing that external comparables always must be considered by reviewing a number of different factors. Certainly geography is always a consideration, especially when the compared employees are viewed as a part of the same labor pool, but there is also relevance in looking at other comparably situated jurisdictions.

The views of this Fact Finder regarding the need for the General Assembly or SERB to clarify the construction of comparables have not changed since I last made recommendations to these parties. I noted then, and I still believe,

*“If the Collective Bargaining Act is revised it would be the suggestion of this Fact Finder that the General Assembly provide either more clarity about the determination of comparables or a mechanism to assist the parties in agreeing on one set.”*

Until such changes are enacted, the Fact Finder must examine all the data and make an “educated guess” as to the weight to apply to the application of external comparables.

The other challenge is to factor in the other economic benefits and costs to employees in attempting to recommend a fair wage increase that is within the capacity of the County to pay without negatively impacting the level of services provided.

One area of concern is the cost of health care in Licking County. While this issue will be discussed more fully in that section of the report, it is important to note that employees pay a significantly higher contribution for family coverage than do many comparable jurisdictions.

In other benefit areas employees in these bargaining units compare much more favorably.

*A review of all the data presented presents a mixed message regarding bargaining unit employees. On a percentage basis, Licking County bargaining unit employees have done well over recent years. When looking at the corresponding dollars, the picture is less favorable.*

And then there is the question of the Sergeants' compensation. Several neutrals have, over the past several years, concluded that they are below their comparable counterparts. These neutrals, myself included, have recommended equity increases.

*The Employer submits that the Sergeants have now caught up and no further adjustments are necessary. The Union disagrees.*

Regardless of whose comparables are utilized, this Fact Finder concludes that the Sergeants have made some progress, but still do not enjoy the same relative position as those in other bargaining units.

To that end, I will again recommend a modest equity adjustment.

It is interesting to note that the parties' submitted positions (6% per year for the Union and 2% per year for the Employer) do not differ greatly from those put forth three (3) years ago.

Again, it is the belief of this Fact Finder that neither party expects to have its salary proposal recommended.

As a benchmark this Fact Finder has looked to the SERB Report for guidance. The most recent data is for settlement reports for 2006.

In that report the statewide average settlement was 3.01%. In the Columbus Region, settlements averaged 3.13%. County settlements averaged 3.03%, and police contracts averaged 3.23% statewide.

In the mind of this Fact Finder settlements in this range will keep Licking County bargaining unit employees from losing ground and perhaps improving their relative position.

Based upon the data I have reviewed, I recommend the following.

**FINDING AND RECOMMENDATION:**

I recommend the following increases be applied to the current salary schedules for all employees except Sergeants.

In the first year of the Agreement	3.50%
In the second year of the Agreement	3.50%

In the third year of the Agreement	3.75%
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As noted earlier I am persuaded that the County must continue its efforts to improve the relative position of the Sergeants.

To that end, I recommend the following increases be applied to the current salary schedules for Sergeants.

In the first year of the Agreement	3.75%
In the second year of the Agreement	3.75%
In the third year of the Agreement	4.00%

#### **Article 25 (Medical Insurance)**

##### **UNION POSITION:**

The Union offers a very novel proposal for dealing with the issues present in the health care/medical insurance arena.

The Union proposes that bargaining unit employees participate in a health care plan sponsored by the Michigan Conference of Teamsters Welfare Fund.

The County could elect to enroll non-bargaining unit employees in the same plan if it so determined.

According to the Union and the representative of the Michigan Plan present at the hearing, a significant premium decrease could be obtained by participation in a significantly larger risk pool.

Because of the potential savings, the Union proposes that the County pay 100% of the premium costs.

The Union notes that the premium costs would be guaranteed at a fixed rate for a four (4) year period.

The Union notes that the Michigan Plan utilizes the Blue Cross/Blue Shield PPO Network and therefore coverage of specific doctors and hospitals should not be problematic.<sup>4</sup>

#### **MANAGEMENT POSITION:**

The Employer proposes maintaining current contract language regarding medical insurance benefits. The plan proposed by the Union is seen by the County as being a radical change from current practice.

The Employer argues that, pursuant to Ohio Revised Code § 305.171, only the County has the statutory authority to provide medical insurance benefits and the Sheriff lacks the authority to enter into such a collective bargaining agreement.

The County notes that while the initial switch to the Michigan plan would result in some savings, it is likely the costs would increase greatly once the guaranteed period is concluded.

The Employer further notes that the County recently converted to a self-funding plan which offers two (2) different levels of coverage. It notes the Union plan offers only one.

The Employer also is concerned that it would have little or no input into the operation or benefit levels of the plan since it is operated by a Board of Trustees.

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<sup>4</sup> The Fact Finder has not included the projected savings and premium costs in that during the course of the hearing it was gleaned that the figures provided by the previous County Benefits person to the Union were not correct and therefore the Union did not have the opportunity to update its projections.

The Employer would also not have a claims history should it be decided to convert back to more traditional coverage in the future.

Finally, the Employer objects to any plan in which the Employer would pay 100% of the premium noting the problems and issues that are inherent in such an arrangement.

**DISCUSSION:**

The Union's proposal is interesting and provocative. On the surface it would appear that such a plan would lower premiums significantly without a great reduction in benefits.

It is hard to draw conclusions based upon facts, however, due to the unfortunate turn of events that led the former County Benefits persons to apparently provide incorrect data to the Union.

While the current County Human Resources Director was unaware of the sharing of inadequate information, the testimony at the hearing leads this Fact Finder to conclude that the proposed cost savings cannot be taken as accurate.

Even if factual information had been provided there remains the issue of whether this Fact Finder has the authority to, or should recommend a plan that greatly changes the role of the County in providing medical benefits.

Based upon the evidence and data presented I cannot recommend inclusion of this plan but I do urge the County and the Union to continue to *explore the plan as a way of addressing the significant costs of health care.*

To that end I will propose enabling language that would permit the parties, by mutual agreement only, to participate in such a plan if the issues of concern can be resolved during the life of this Agreement.

**FINDING AND RECOMMENDATIONS:**

I recommend:

The language of Article 25 shall remain the same as the current Agreement except that the following statement should be added to the end of Section 25.1:

*“During the term of the Agreement the parties shall continue to discuss and explore participation in the medical insurance plan offered by the Michigan Conference of Teamsters Benefit Plan. If the parties mutually agree, coverage may be switched to the Michigan Plan at any time during the life of this Agreement.”*

**Article 29/30 (Uniforms and Allowances)**

**UNION POSITION:**

The Union notes that the current contract provides for an initial issue of certain uniform items and equipment but that it is the responsibility of the member to maintain their uniforms. The Union proposes that the Employer provide replacement uniform items or equipment which become damaged or unserviceable when such wear or damage are not due to the negligence of the bargaining unit member.

Further, the Union notes that current language provides that Deputies, Sergeants, Cooks, Nurses, and Maintenance employees receive an annual clothing allowance. The Union proposes that this amount be increased by \$100.

To support its proposals the Union asserts that sworn employees in Greene, Richland, Warren, and Wood Counties all receive a cleaning service in addition to the uniform allowance. In addition, employees in Clark, Fairfield, Medina, Portage, and Wood Counties all receive higher uniform allowances.

**MANAGEMENT POSITION:**

The Employer notes that during the previous negotiations, the parties increased the uniform allowance to \$500 for Deputies. The Employer now proposes the same increase for civilians and Sergeants.

The Sheriff objects to the Union's proposal to add new language which would require the Employer to replace worn or damaged equipment and uniform parts. The Sheriff notes that this is the purpose of the Uniform Allowance.

Finally the Employer requests that the Uniform Allowance Article be stricken from the Communications Agreement due to the fact it has no application.

**DISCUSSION:**

While I understand the desire of the Union to acquire as many benefits as possible for its members, the requirement of uniform replacement by Management plus the clothing allowance, as it is defined in the current agreements, seem inconsistent.

I cannot recommend the change requested that would require the Employer to replace uniform parts and equipment.

A review of the comparables would lead me to believe that this benefit is not overly generous for sworn personnel.

This Fact Finder is aware that the costs of replacement of sworn uniform parts are certainly significant. Inadequate evidence was offered to convince me that the same level of costs is present for civilian uniforms. Therefore my recommendation for a slight increase will be for sworn personnel only.

Likewise, the amount should be consistent between Deputies and Sergeants.

I do agree with Management that there is no reason to continue to include Article 29 in the Communications Agreement.

#### **RECOMMENDATIONS AND FINDINGS:**

I recommend the following:

- Article 29 be deleted from the new Communications Collective Bargaining Agreement.
- The Uniform Allowance in the Civilians Collective Bargaining Agreement should be increased to \$500 and paid semi-annually in payments of \$250.
- The Uniform Allowance in the Collective Bargaining Agreements for both Sergeants and Deputies should be increased to \$550 and paid semi-annually in payments of \$275.

**Article 30 (Hours of Work and Overtime)****UNION POSITION:**

The Union notes that the current language provides that when a member is engaged in a call out, court, or charge filing time, that members shall be paid a minimum of two (2) hours pay at his or her regular rate or for the actual hours worked at the applicable rate, whichever is greater.

The Union proposes expanding the language to cover situations where the work designated in this section is to be performed on the employee's regular day off or a pre-approved vacation day, the bargaining unit employee would be paid a minimum of three (3) hours pay at two (2) times the regular rate of pay, or the actual hours worked at two (2) times the regular rate of pay, whichever is greater.

The Union argues the necessity of such a change to more adequately compensate employees due to the fact these situations are occurring more often.

**MANAGEMENT POSITION:**

Management recognizes the inconvenience caused to bargaining unit employees by such interruptions and proposes to increase the two (2) hours in the current agreement to three (3) hours on regularly scheduled days off or pre-approved vacation days.

The Employer argues that the Union's proposal is excessive and binds the Sheriff to pay for actions of others, such as the prosecutor, over whom the Sheriff has no authority or ability to monitor or control.

**DISCUSSION:**

There is no disagreement that an adjustment is needed to better compensate bargaining unit employees for the added inconvenience of having to work on his or her regular day off, or on pre-approved vacation days. The issue is how much of an adjustment is reasonable.

I find the Union's proposal to be excessive and the Employer's to be inadequate.

To that end I recommend the following:

**FINDING AND RECOMMENDATION:**

In Article 30, Section 30.05 add the following words after "*whichever is greater.*" ***Unless the call-out, court, or charge-filing time occurs on the employee's regularly scheduled day off or pre-approved vacation day, then the employee shall be paid a minimum of four (4) hours pay at his/her regular rate or he/she shall be paid the actual hours worked at the applicable rate, whichever is greater.***

**Article 31 (Sick Leave)****UNION POSITION:**

The current collective bargaining agreements provided each bargaining unit employee with eighty (80) hours of sick leave per year. The Union proposes to increase that amount to one hundred twenty (120) hours annually.

The Union presented evidence that all other comparables it has submitted provide employees with one hundred twenty (120) hours annually.

**EMPLOYER POSITION:**

The Employer notes that the current sick leave provisions of the collective bargaining agreements were achieved through the bargaining process ending in a Conciliation Award by Dr. Harry Graham. In that award the sick leave program and its efforts to control perceived abuse, was awarded as a *quid pro quo* for other significant benefits achieved by the Union.

The Employer argues that to modify the sick leave article as proposed by the Union would upset this balance.

**DISCUSSION:**

On the surface it would appear that the Union has a strong case for modification of the language in Article 31, but one of the statutory criteria Fact Finders are to consider is the bargaining history between the parties.

This Fact Finder remembers the delicate balance achieved between the amount of sick leave, the number of sick leave occurrences, and the mutual efforts to control and maintain the proper use of sick leave versus sick leave abuse.

Because the program first awarded by Dr. Graham appears to be working to the benefit of the parties, I see no reason to modify it, and this includes the amount of sick leave earned annually.

**FINDING AND RECOMMENDATION:**

I recommend no changes to Article 31, Sick Leave

**Article 32 (Sick Leave Conversion)**

**UNION POSITION:**

The Union notes that when a bargaining unit member retires, that member is paid 25% of the value of his or her unused sick leave with a maximum payment for thirty (30) days.

The Union proposes to increase the conversion to 100% and remove any cap on the maximum number of days.

The Union argues that the majority of the comparables it has presented provide a greater conversion at retirement than does Licking County.

**EMPLOYER POSITION:**

The Employer proposes that current language be maintained. It notes that *the conversion is consistent with the benefit provided by state law and current County policy.*

The Employer argues that no compelling reason has been offered to increase this benefit and notes that Fact Finders Marcus Hart Sandver and Harry Graham have both recommended maintaining the current program in previous recommendations and awards.

**DISCUSSION:**

The Employer is correct in noting that the current conversion rate is that enumerated in the Ohio Revised Code. The Union is correct in noting that many jurisdictions, including those cited by the Union, provide a higher conversion benefit than does Licking County.

This benefit is one often negotiated between the parties and provides an area where give and take is possible to meet one or more goals of the participants in bargaining.

It is not as usual for such benefits to be recommended in fact finding, but the number of open issues in this bargaining signals that the parties are referring many of their bargaining issues to the impasse process.

This method of bargaining is seldom as acceptable to the parties as give and take between the parties because it is difficult for a neutral to adequately ascertain what are the true prioritized goals of each side in bargaining.

From the evidence presented, I can only conclude that this is one of those areas where an adjustment in the status quo is reasonable and called for by the comparable data.

To that end, I recommend a change in the maximum buy out amount.

#### **RECOMMENDATION AND FINDINGS:**

Section 32.1 should read, ***An employee, at the time of retirement from active service with the County, shall be paid one-fourth (1/4) of the value of his or her earned but unused sick leave credit. The maximum of such payment, however, shall be for thirty-five (35) days.***

#### **Article 33 (Funeral Leave)**

Even though one of the parties listed Funeral Leave as an open issue, at the hearing, the parties indicated they were in agreement on the issue of Funeral Leave.

Thus, it is recommended that the agreement reached on Article 33 be incorporated by reference into this report and included in any subsequent *collective bargaining agreement*.

### **Article 34 (Vacation)**

#### **UNION POSITION:**

The Union notes that two (2) proposals were advanced in this Article. The first addressed vacation accrual and the second modified the request and scheduling language.

The parties have reached tentative agreement related to the second part but are still in disagreement regarding the accrual rates.

The Union is in disagreement with the language changes proposed by the Employer believing that those changes will result in a loss of benefits to its members.

#### **EMPLOYER POSITION:**

The Employer agrees that the issues of scheduling and vacation requests have been resolved.

The Employer proposes wording that it believes would clarify current language but would maintain the current accrual levels.

#### **DISCUSSION:**

A review of the comparables presented by the Union indicates that in all cases there has been some negotiated “tinkering” with the accrual levels for vacation in each jurisdiction cited.



While four (4) of the cited jurisdictions contain an eight (8) year step there are also two (2) five (5) year steps, one six (6) year, and one seven (7) year.

The Employer is correct in noting that the language needs clarification to provide a clear understanding regarding when accrual takes place. But, such a change requires some adjustment or payment to achieve that clarification.

I also note that the period between one year service and eight (8) years is a long time for a fairly new employee to achieve an increased amount of vacation time.

Thus I recommend the following:

**RECOMMENDATIONS AND FINDINGS:**

Section 34.1 should remain as written except as noted below –

<u>YEARS OF SERVICE</u>	<u>HOURS</u>
Less than 1 year	none
<b><i>After 1 year of service</i></b>	<b><i>80</i></b>
<b><i>After 6 years of service</i></b>	<b><i>120</i></b>
<b><i>After 15 years of service</i></b>	<b><i>160</i></b>
<b><i>After 25 years of service</i></b>	<b><i>200</i></b>

Section 34.2 – No change

Section 34.3 should remain as written except as noted below –

<u>YEARS OF SERVICE</u>	<u>HOURS</u>
Less than 1 year	3.1
<b><i>After 1 year of service</i></b>	<b><i>4.6</i></b>
<b><i>After 6 years of service</i></b>	<b><i>6.2</i></b>
<b><i>After 15 years of service</i></b>	<b><i>7.7</i></b>

The remainder of Section 34.3 remains the same.

Section 34.4 should read:

**Section 34.4 Vacation Requests** Employees submitting their vacation requests in forty (40) hour blocks by February 28 will have their vacation requests granted on the basis of seniority subject to the operational needs of the Employer. All vacation requests submitted after February 28 will be granted on a first-come, first-serve basis subject to the operational needs of the Employer.

Any request for change of dates for extenuating circumstances must be in writing and must be approved by the Employer.

Any vacation leave not scheduled by May 30 of each year shall be lost or scheduled for the employee by the Employer or converted at year-end if the amount is forty (40) hours or less. All not scheduled vacation leaves are subject to the operational needs of the Sheriff's Office. The Employer may cancel and reschedule vacation leave requests due to the operational needs of the Office.

**Subject to the aforementioned provisions**, after vacation leave is credited in amounts greater than eighty (80) hours, vacation time may be used in increments of eight (8) hours or more. Employees who are credited eighty (80) hours or less vacation leave under Sections 35.1 or 35.2 must use vacation leave in blocks of forty (40) hours. The eight (8) hour blocks of vacation leave may not be scheduled until after **February 28**

Section 34.5 - No change

Section 34.6 – No change

Section 34.7 – No change

Section 34.8 – No change

### **Article 36 (Personal Days)**

#### **UNION POSITION:**

The Union proposes that the current four (4) personal days per year be increased to six (6).

In addition the Union would add a provision that personal days requested at least seven (7) days in advance shall be granted.

Finally, the Union proposes that the limit of two (2) unused personal days that can be converted to pay be changed to allow all unused personal days to be converted to pay.

**EMPLOYER POSITION:**

The Employer notes that the addition of two (2) personal days would add significant cost to the County.

The Sheriff is concerned about the impact the guaranteed use of personal days would have on scheduling and operations.

**DISCUSSION:**

This Fact Finder can find no convincing evidence that six (6) is a reasonable number of personal days. That proposal is rejected.

The ability to take personal days is a much more serious issue. Employees need the flexibility to use personal days to take care of personal and family obligations that cannot be accommodated by other leaves.

Likewise, the Sheriff is charged with providing law enforcement services to the residents of Licking County and every contractual guarantee makes it more difficult to schedule employees for adequate coverage.

To award such a provision requires significant proof that the current system is not working. I failed to see such proof.

Finally, the proposal to permit employees to convert unused personal days to cash would have a significant cost impact and evidence was not forthcoming that would indicate such a need.

**FINDINGS AND RECOMMENDATION:**

I recommend no change to Article 36.

**Article 39 (Education Courses or Training)****UNION POSITION:**

The Union notes that currently the CBA guarantees that when attendance is required by the Employer, a bargaining unit member may be allowed time off without loss of pay to take work related courses or training.

The Union wishes to expand this provision to all mandatory continuing education requirements for certification.

The Union seeks to have such training paid by the County and bargaining unit members will not be required to attend such courses or firearms qualifications during off duty hours.

This proposal affects third shift employees most directly in that firearms qualification training is usually available for those employees working first and second shift.

The Union believes that the County should pay for an employee to attend any state required training, and any training necessary to maintain peace officer certification.

**EMPLOYER POSITION:**

The Employer proposes providing a post-graduate degree supplement of \$750 and does not believe the Union objects to that addition.

Other changes proposed by the Union are opposed by the Employer. It notes that currently the Employer permits an employee to take leave without loss of pay to participate in training required by the Sheriff.

The County notes the significant costs associated with this proposal and argues that the Union has sought this change several times previously but that it has never been awarded by a neutral.

Except for the post-graduate supplement the Employer urges current language in this Article.

#### **DISCUSSION:**

This Fact Finder has heard the arguments associated with this proposal in a previous case, and has some sympathy for those persons working third shift who do not have the benefit of taking the firearms qualification while on duty.

In a perfect world it would be good if every shift could be treated exactly the same but this Fact Finder cannot find significant reason to recommend the added expense that would be involved in the Union's proposal.

#### **FINDINGS AND RECOMMENDATION:**

Section 39.3 should remain the same except that following the language "Bachelor Degree - \$500 Annual" should be inserted "***Post-Graduate Degree - \$750 Annual.***"

The remainder of Article 39 should remain current language.

### **Newly Proposed Article (Bargaining Unit Work)**

#### **UNION POSITION:**

The Union proposes a new Article that would protect bargaining unit work and ease its concern that the Sheriff might decide to use corrections officers in the jail rather than sworn Deputies.

#### **EMPLOYER POSITION:**

The Sheriff notes that this article would infringe on the management rights specified in ORC § 4117, and is concerned that such restriction would interfere with current practices within the Sheriff's Office whereby a superior ranking officer often performs the duties of a lower ranking officer.

Additionally, the Employer objects to "tying the Sheriff's hands" should it become necessary for the Sheriff to restructure.

#### **DISCUSSION:**

Modification of management rights are items of bargaining that should only be gained through *quid pro quo* negotiations and are not the type of things that should be recommended by neutrals.

In this case the Union's position is even more problematic wherein the Union is seeking to protect itself from a future event that might or might not happen.

**I cannot recommend the inclusion of this proposed new article.**

### **Newly Proposed Article (Restricted Duty)**

#### **UNION POSITION:**

The Union proposes to add language that would permit a bargaining unit member who is absent from duty due to illness or injury to return to work on a *restricted duty basis*.

#### **EMPLOYER POSITION:**

The Employer acknowledges that discussions were held during negotiations on this subject but the Employer has withdrawn its proposal.

The Sheriff notes that the right to provide restricted duty assignments already exists pursuant to applicable laws and is unnecessary in a collective bargaining agreement.

*The Employer argues that the Union failed to provide evidence of the need for such a provision.*

#### **DISCUSSION:**

Light or restricted duty provisions are a common part of many collective bargaining agreements.

While the Employer is correct in noting that the Sheriff has the statutory authority to place employees on restricted duty, there is also an interest on the part of the Union to assure that affected employees are treated in a fair and equitable manner.

While the proposal of the Union does not seem unfair on its face, there was inadequate discussion or evidence presented at hearing to convince this Fact Finder to recommend its conclusion.

Instead I will recommend a joint committee comprised of representatives of the Bargaining Unit(s) and of the Sheriff that will be charged with developing an agreed to procedure for utilizing restricted duty.

Hopefully, the parties will continue their cooperative relationship and agree upon procedures that can be implemented.

**RECOMMENDATION AND FINDINGS:**

I recommend a new Article be added which would be titled, "***Restricted Duty,***" and which should read:

Within ninety (90) days of the effective date of this Agreement the parties shall respectively appoint representatives to a joint committee to discuss, and attempt to agree upon, procedures that can be utilized in providing restricted duty opportunities for bargaining unit members who, due to illness or injury of a temporary nature, are prevented from performing his or her normal duties.

If the parties are able to agree upon such a procedure, it shall be reduced to writing and executed as a memorandum of understanding.

**Newly Proposed Article (Special Duty/Special Event Assignments)**

**UNION POSITION:**

The Union proposes establishing a methodology for posting and filling extra duty or special duty assignments from outside agencies.

The Union believes such a system would ensure a fair and impartial process for the assignment of special duties.

**EMPLOYER POSITION:**

The Employer acknowledges some problems in the assignment of extra duty in the past but argues that efforts have been, and are being, made to improve the process.

The Chief Deputy reported on his efforts to improve the assignment of extra duty assignments.

The Employer argues that this issue can be discussed in a labor management committee forum and better addressed there than by the inclusion of language in the Collective Bargaining Agreement.

**DISCUSSION:**

While this topic is certainly an appropriate topic for inclusion in the labor agreement, the acknowledgement that progress on this issue is being made, convinces this Fact Finder to allow the parties the opportunity to continue their good work in the hope that they will be able to find a workable solution.

**RECOMMENDATION AND FINDING:**

I do not recommend the inclusion of a new article on Special Duties/Special Event Assignments at this time.

**SUMMARY:**

The Fact Finder has appreciated the opportunity to work with the parties in this situation. The parties give evidence of a mature and cooperative relationship.

The recommendations of this Report will hopefully aid them in furthering that relationship.

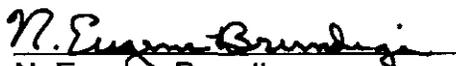
If, in considering this Report, there are recommendations that the parties can jointly agree to improve upon, I urge them to do so. Otherwise, hopefully these recommendations will provide a foundation for moving forward.

After giving due consideration to the evidence and data presented, the positions and arguments of the parties, and to the criteria enumerated on SERB Rule 4117-9-05(J) the Fact Finder recommends the provisions as listed herein.

In addition, all agreements previously reached by and between the parties and tentative agreed to, along with any sections of the current agreement not negotiated and/or changed, are hereby incorporated by reference into this Fact Finding Report, and should be included in the resulting Collective Bargaining Agreement.

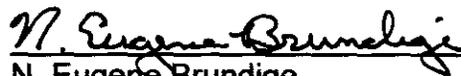
Respectfully submitted and issued at London, Ohio this 25<sup>th</sup> day of

January, 2008.

  
N. Eugene Brundige,  
Fact Finder

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Fact Finder's Report was served by regular U.S. Mail<sup>5</sup> and electronic mail, upon Benjamin S. Albrecht, Downes, Hurst, and Fishel, 400 South Fifth Street, Suite, 200, Columbus, Ohio 43215-5492, ([balbrecht@dhflaw.com](mailto:balbrecht@dhflaw.com)), Attorney for the Employer, and Susan D. Jansen, Doll, Jansen, & Ford, Attorney for Teamsters Local Union 637, 111 W. First St., Suite 1100, Dayton, Ohio 45402-1156 ([sjansen@djlflawfirm.com](mailto:sjansen@djlflawfirm.com)), and Edward E. Turner, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12<sup>th</sup> floor, Columbus, Ohio 43215-4213, this 25<sup>th</sup> day of January 2008.

  
N. Eugene Brundige,  
Fact Finder

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<sup>5</sup> The parties have waived Overnight Delivery and agreed to regular US Mail.