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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF A FACT FINDING BETWEEN:

Ohio Patrolmen's Benevolent Association

and

Delaware County Sheriff

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07-MED-10-1056

Before Richard J. Colvin, Fact-Finder

REPORT AND RECOMMENDATIONS

Representing the Ohio Patrolmen's Benevolent Association:

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INTRODUCTION

The parties to this Fact-Finding are the Ohio Patrolmen's Benevolent Association (the "Union") and the Delaware County Sheriff ("Sheriff" or "Employer"). The bargaining unit consists of approximately fifty-five (55) full-time Corrections Officers. The labor Agreement between the parties was effective January 1, 2005 and expired December 31, 2007.

A timely fact-finding request was filed with the State Employment Relations Board (SERB), and by letter dated December 6, 2007, in compliance with Ohio Revised Code Section 4117.14 (C) (3), the undersigned was appointed to serve as Fact-Finder. A hearing was scheduled for 10: 00 A.M. on August 4, 2008 and was conducted in accordance with Ohio Collective Bargaining Law and applicable SERB Rules and Regulations. Mediation was requested by the parties. This resolved some issues in dispute. The remaining open issues were submitted to fact-finding and the hearing was convened at approximately 1:50 P.M. The parties then presented their evidence relating to the unresolved issues and the hearing was adjourned at approximately 3:15 P.M.

When making his analysis and recommendations upon the unresolved issue(s), the Fact-Finder has been mindful of and has been guided by the criteria set forth in Ohio Revised Code Section § 4117.14 (C) (4) (e) and Ohio Administrative Code § 4117-9-05 (K).

- (1) Past collectively bargained 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 interest 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) The stipulation of the parties;
- (6) Such other facts, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution proceedings in the public service or private employment.

BACKGROUND

Delaware County was established and organized in 1808. The County encompasses nineteen townships and ten municipalities, of which the City of Delaware is the largest. Located directly north of Columbus, the County comprises an area of four hundred fifty-nine square miles and is located within five hundred miles of 58 percent of the United States' population.

Delaware County has been designated as the fastest-growing county in the United States since 2000. The population of the County has increased from 66,929 in the 1990 census to 109,989 in the 2000 census to a projected population of 160,865 in 2007. The high quality of schools, a rich cultural life, housing affordability, a low crime rate, and an excellent road network continue to attract new residents.

The County provides a wide range of services to its people including, but not limited to, general government, legislative and executive and judicial, public safety, public works, health, and human services. The County operates under the powers granted to it by Ohio statutes. A three-member board of County Commissioners is elected at-large in even numbered years for overlapping four-year terms.¹ The Commissioners serve as the taxing authority, contracting body, and administrators of public services for the County. The Commissioners create and adopt the annual operating budget and approve expenditures of County funds.

¹ Commissioners: Kristopher Jordan, Glen A. Evans and James D. Ward. The present Sheriff Administrative is: Walter L. Davis III

Recent data released from the U.S. Census Bureau ranks Delaware County as the fastest growing county in the State of Ohio for 2007 with an estimated increase in population of 2.7 percent that ranks the County within the top one hundred fastest growing counties in the nation. Even as the population continues to grow, the unemployment rate of the County has remained one of the lowest in the State. Compared to a State average of 5.6 percent, Delaware County's 2007 unemployment rate stood at 4 percent. This is due to the stable and diverse business environment in the area. J.P. Morgan Chase and Co., Kroger Company, American Showa, Inc., Wal-Mart Estate Business Trust, and Meijer, Inc. are examples. The County, Ohio Wesleyan University, the school systems, and Grady Memorial Hospital also provide a stable base of employment.

In February 2008, Delaware County was named among the "5 Best Places to get Ahead" by *Forbes Magazine*, out of the 3, 141 counties in the United States. This ranking was based upon areas where increases in medium income and job growth are the highest in the nation.

Polaris Fashion Center, Central Ohio's largest retail mall with six anchors and over one hundred fifty stores, is drawing shoppers from all over the Midwest to Delaware County. Redevelopment of a former retail store will provide an outdoor lifestyle addition of 160,00 square feet. To address the area's increased traffic demands, the Ohio Department of Transportation and the City of Columbus recently completed a new adjoining interchange on Interstate 71.

The future of Delaware County continues to look bright. The mall plus the surrounding retail development remains a major source of the County's sales tax revenue. The Polaris Centers of Commerce continue to attract new office and retail developments and join J.P. Morgan Chase and Co. at its campus-style office complex, valued at more than \$218 million. A major new retail development is taking shape on the east side of the City of Delaware, off U.S. 36/Ohio 37, which, when completed, will total more than 560,000 square feet of retail space. Nine other industrial parks located throughout the County continue to expand office, commercial, and manufacturing space.

Delaware County is also involved in promoting the establishment of enterprise zones, community reinvestment areas, and tax increment financing areas, and working with area businesses to help pay economic dividends in the future. In addition, the County established a Port Authority to support the creation of jobs and employment opportunities. Continued commercial and retail development is anticipated throughout the County over the coming years.

Management of the County is committed to maintaining a(n) historic year-end cash carryover balance of 20 percent of General Fund revenues. This level of unreserved fund balance will ensure the continued operation of government and provision of services to residents. The County also maintains funds in the County Reserve special revenue fund

that may be utilized if a budget shortfall would develop during a year. This fiscal stability is vital to maintain the credit worthiness of the County.²

David Cannon, the Delaware County Administrator, testified for the Employer as to the current financial position of the County. He said that some budget cuts would take place at the end of 2008 and that the Sheriff's office would experience budget cuts.

Todd A. Hanks, the Delaware County Auditor, also testifying for the Employer, now predicted a financial downturn in 2008 and 2009, but interestingly stated: "Of course, no one can anticipate or know what will happen six months out." On the subject of wage increases, he indicated that in his department "wages increased 4 percent in 2008".

UNRESOLVED ISSUES

1. ARTICLE 6 - GRIEVANCE/LIAISON REPRESENTATIVE

Employer Position: Add the following sentence to the end of **Paragraph A.:**

"The Sheriff will be notified of the OPBA designees within seven (7) days of execution of this contract and thereafter within seven (7) days of designation."

As to **Paragraph C.**, the Sheriff will not agree to release an officer from duty with pay for negotiation meetings with Management. The Sheriff will agree to release employees for negotiation meetings without pay, or utilization of any accrued permission leave.

Union Position: The OPBA requests that the current language be recommended by the Fact-Finder.

RECOMMENDATION: Retain current language in the Agreement, without modification.

² Source: Delaware County, Ohio Comprehensive Annual Financial Report For the Year Ended December 31, 2007, Todd A. Hanks, Delaware County Auditor

Rationale: The current Agreement in Article 6, Paragraph A. provides as follows: “The Union shall designate in writing to the Sheriff one grievance/liason representative and alternate for each shift, if possible, and written notice of any changes in those positions. The Union may designate one such person as chairman.” The proposed modification appears to the Fact-Finder not to be substantive proposal and there were no compelling reasons advanced to necessitate revising the Agreement. The Union points out that this paragraph has been in the Agreement since 1989 and in subsequently collectively bargained Agreements, and that it has not been proven to have been abused.

The modification proposed by the Sheriff in paragraph C. represents a loss of pay to the Officer, with no offset proposed. The Sheriff or his designee has the right to determine if the Officer’s absence will under man his staff. This provision has also been in the Agreement since 1989 and has not been proven to have been abused. No compelling reason has been advanced to necessitate revising the Agreement.

2. ARTICLE 7 – CORRECTIVE ACTION AND RECORDS

Employer Position: The Sheriff will not agree to the provisions in **Paragraph C.** Paragraph C. now reads: “An employee will be informed of the nature of any investigation of himself prior to any questioning. If the employee being questioned is, at that time, a witness and not under investigation, he shall be so advised.”

In **Paragraph D.**, the Sheriff proposes that the investigation and discipline be completed in *90 business days*. The existing provision calls for “within ninety working days of the initiation of the investigation.”

Additionally, the Sheriff proposes changes to the last two sentences of **Paragraph D.**: *“Written results of an official investigation, to the extent they exist, shall be provided to the Corrections Officers upon request from the officer. The Corrections Officer shall be provided discovery of all material utilized to discipline him within a reasonable time after the completion of the investigation, upon request from the Officer.”* The existing Agreement provides in the last two sentences as follows: “Written results of an official investigation shall be provided to the Corrections Officer. The Corrections Officer shall be provided full discovery of all material utilized to discipline him within a reasonable time after the completion of the investigation.”

In **Paragraph E.**, the Sheriff will not agree to allow employees to remove or add any written materials to their official personnel files. The present language reads: “...add memoranda to the file clarifying any documents contained in the file”...

In **Paragraph F.**, the Sheriff proposes to delete the words “*or challenge*” in the last line.

The Sheriff will not agree to the terms of **Paragraph G.** as written.

Union Position: The Union proposes to keep unmodified the terms and conditions of the existing Article 7 referencing the fact that these terms and conditions have existed, unmodified, since 1989, and have never been an issue.

RECOMMENDATION: **Retain current language in the Agreement, without modification.**

Rationale: I have no doubt after hearing the arguments presented by the Sheriff that he has reviewed the Agreement carefully. That review has led him to make revisions, not just in this Article, but also in other Articles he has presented for modification at this Fact-Finding hearing. Sheriff Davis has recently assumed his office and consequently was not a party to any previous negotiation with the OPBA. As the Sheriff has logically stated several times during this Fact-Finding hearing: “Just because something has been done for a long time, does not make it right!” When the original bargains were made, however, they were ratified by both parties: There was give and take on both sides.

The product of those negotiations may not appear to the Sheriff as being efficient now, perhaps even somewhat incompatible with his management style. Yet, just because these terms and conditions have been in existence for almost twenty years does not make them necessarily wrong either.

Absent some compelling reason or application of statutory criteria, the Fact-Finder’s is usually reluctant to modify long-standing customs and practices of the parties.

3. ARTICLE 10 SECTION – DISCIPLINE/DISCHARGE

Employer Position: In regard to Section A.4., the Sheriff will not agree to allow a suspended employee to use comp time, holiday time, vacation or personal days in lieu of suspension time being taken without pay. Section A.4. reads: “*A suspension is a written statement to an employee outlining his unacceptable or unsatisfactory behavior or job performance and ordering him to suspend his work performance for a specified number of work days without pay. A suspended employee may use comp time, holiday time, vacation or personal days in lieu of suspension time being taken without pay.*”

Union Position: In the Union's last offer pertaining to Section A.4., the suggestion was made that the parties accept the language of Fact-Finder John T. Meredith in SERB Case: 07-MED-10-1058, issued April 26, 2008. This case was a ratified Fact-Finding between the OPBA and the Delaware County Sheriff in a bargaining unit comprised of approximately 66 full-time Deputy Sheriffs. The language in that Agreement was contained in Article 6, Section A (4) and was identical to the language in our Agreement. The Sheriff proposed to add the phrase: "...at the discretion of the Sheriff"...The Union would not agree. The Union believed that forfeiting paid leave time is a punishment comparable to serving a suspension, and that the employee should have this paid option available to avoid financial hardship. The Union also pointed out that the existing language had been in the Agreement since 1999 and had not, in their view, caused any problem.

The Sheriff justified his proposed change to that Agreement on the grounds that substituting paid time for suspension time may be inappropriate under some circumstances. By way of example, he cited discipline for leave abuse and situations when permitting an employee to substitute paid leave would create public relations issues for the Department.

Fact-Finder Meredith took the position that some modification was warranted to prohibit substitution of paid leave when a suspension is imposed for attendance violations (including poor attendance) and/or abuse of leave.

In the instant case, the Employer has presented essentially the same argument:

It is inappropriate to reward an employee being disciplined for wrongfully taking paid time off by permitting him to take additional time off during the period of suspension. I agree, and will adopt the reasoning and language proposed by Fact-Finder Meredith.

RECOMMENDATION: **Modify the current Section 4. A., in its entirety, to read:**

“A suspension is a written statement to an employee outlining his unacceptable or unsatisfactory behavior or job performance and ordering him to suspend his work performance for a specified number of work days without pay. A suspended employee may use comp time, vacation or personal days in lieu of suspension time being taken without pay except that, under no circumstance, shall an employee be permitted to substitute paid leave when his suspension has been imposed for attendance violations (including poor attendance) and/or abuse of leaves.”

Rationale: The argument first presented by the Sheriff is essentially that it is inappropriate when an employee has been disciplined for wrongfully taking paid time off he could be permitted to take more time off during the period of his suspension. Fact-Finder Meredith agreed. The logic of this reasoning is inescapable and is, in my opinion, consistent with the interest and welfare of the public.

4. ARTICLE 14 - MISCELLANEOUS

Employer Position: In regard to **Paragraph H.**, the Sheriff will not agree to this procedure for filling a vacancy. Instead, the Sheriff proposes that any vacancy will be filled with a probationary employee, and if none is available it will be filled at the discretion of the Sheriff. The Sheriff believes that he is empowered to fill the vacancies in this manner as a result of operational necessity.

Union Position: Keep current contract language. This language has been in the contract since 1993, in some form, moreover the Union agreed in 1996 to restructure this language for the Sheriff's benefit.

Paragraph H. now reads as follows: "A vacancy which becomes available on a shift shall be immediately posted in order that the position and the days off that are assigned to the position shall be filled by seniority. Once the initial posting is filled, the Employer will then post the position that became open due to the filling of the above vacancy one additional time to be filled by seniority. There will be a five (5) day bidding period after posting of the vacancy. Whenever practicable, the positions shall be filled within ten (10) days of the posting of the vacancy."

RECOMMENDATION: Retain current language in the Agreement, without modification.

Rationale: A careful reading of the language in Paragraph H. does not indicate that its provisions are onerous or unwieldy or should present the Sheriff with insurmountable obstacles to efficiently fill posted vacancies within a reasonable time period. The Sheriff's position that he will not agree to these provisions is not tenable since these provisions are, in effect, already a part of the Agreement and have been since 1996. To propose filling any vacancy with a probationary employee, and if none is available, fill it at his discretion, is unique. Nor does the Fact-Finder accept the argument that the Sheriff is necessarily empowered to fill vacancies in this manner as a result of operational necessity.

5. ARTICLE 17 – SHIFTS AND/OR ASSIGNMENTS

Employer Position: The Sheriff would like to change the name of this Article to “**Shifts and Assignments.**” In regard to Paragraph A., the Sheriff proposes adding the term “or Sheriff’s designee,” at the end of the first sentence.

Union Position: Retain the current language with the Memorandum of Understanding. Trades were unlimited prior to this Memorandum of Understanding, and the Memorandum of Understanding was a compromise position by the Union to restrict those trades to a sixty (60) day period.

RECOMMENDATION: **Retain the current language in the Agreement, without modification.**

Rationale: The Employer presented no argument that would persuade me to either change the name of this Article or lead me to accept the addition of the words “or Sheriff’s designee”. The Memorandum of Understanding was entered into by the then Sheriff on January 20, 2004 and by the Union on January 16, 2004; said Memorandum is referenced in the present Agreement. Presumably, it has been enforced with no problem.

6. ARTICLE 19 – OVERTIME PAY AND COURT TIME

Employer Position: In regard to Paragraph A., delete the last sentence which reads: “Hours worked includes all time in paid status”. In regard to Paragraph C., the Sheriff proposes changing any reference to “jail administrator” to “the Sheriff or his Designee.” In addition, the Sheriff proposes adding the following sentence at the end of this paragraph as follows: “**At the discretion of the Sheriff or his designee, the employee may be required to undertake another work assignment if the call-in or court time does not take up the entire three (3) hour period**”.

Union Position: Maintain current contract language. Paid leaves have counted toward the calculation of overtime since 1989, except for sick leave, which was renegotiated into the contract as counting as hours worked in 2005.

RECOMMENDATION: Retain the current language in the Agreement, without modification.

Rationale: The Sheriff's proposal has to represent a good-faith effort on his part to reduce operating expenses in his Department in anticipation of impending adverse financial conditions.

There was no offsetting proposal by the Employer presented in an attempt to induce the bargaining unit to reconsider their rejection of the proposal. Were they to accept this proposal, it would, of course, result in an economic loss. Without some factual basis to make a rational judgment, the Fact-Finder cannot support the Employer's position in this Article.

7. ARTICLE 22 – SICK LEAVE

Employer Position: In regard to Section 1. Paragraph B., the Sheriff will not agree to allow employees to accrue sick leave while on sick leave. Sick Leave accrual should be for hours worked, and not hours accrued while on other forms of paid leave including vacation, etc.

In regard to Paragraph M. we believe that this may be deleted as we have addressed it in Paragraph K.

In regard to Section 5., Paragraph 2, the Sheriff will not agree to this provision, but proposes as follows: “**An Employee shall be credited with one (1) additional day off if he or she does not utilize any sick leave for a period of 365 days.**”

The Sheriff will not agree to the provisions in Section 5. Paragraph 4, related to donation of vacation, comp time and holiday comp time.

Union Position: Current language should be maintained. The Union withdrew its request (Section I) to expand the definition of immediate family in response to the Employer's withdrawal its request to limit the immediate family.

RECOMMENDATION: **Retain the current language in the Agreement, without modification.**

Rationale: The Employer, in support of its position to modify this Article, introduced no supporting data. There would be, obviously, a cost saving to the Department if these requests were implemented, but lacking some rational basis for judgment the Fact-Finder will not overrule the Union's objections.

8. ARTICLE 23 – HOLIDAYS/PERSONAL DAYS

Employer Position: The Sheriff will not agree to this policy. Instead, the Sheriff proposes a policy as follows:

- A. Each employee is automatically entitled to eight (8) hours of holiday pay regardless of whether they work on the holiday. If an employee works on a holiday, compensation for the eight (8) hour holiday shift is in addition to the automatic eight (8) hours of holiday pay at the regular rate and shall be computed at the regular rate of compensation for each particular employee. An employee on vacation or scheduled sick leave during a holiday will not be charged vacation or sick leave for the holiday. Employees who are scheduled to work and call off sick on the day of the holiday, forfeit their right to holiday pay for that day. In addition employees who take a sick day immediately before or immediately after a holiday, forfeit their right to holiday pay for that day. An employee on leave of absence is on no-pay status and shall not receive payment for a holiday. A leave of absence shall neither start nor end on a holiday. An employee on no-pay status shall not receive holiday compensation. Full time employees with work schedules other than Monday through Friday are entitled to pay for any holiday observed on their day off.**

- B. All mandatory overtime worked by an employee on a holiday will be compensated at 2 ½ times the total rate of pay. If an employee works a voluntary overtime program on a holiday, they will receive their normal overtime rate, 1 ½ times the total rate of pay.**
- C. Members of the Bargaining Unit will have the following holidays:**
- 1. New Year's Day (First day in January);**
 - 2. Martin Luther King's Birthday (Third Monday in January);**
 - 3. President's Day (Third Monday in February);**
 - 4. Memorial Day (Last Monday in May);**
 - 5. Independence Day (Fourth of July);**
 - 6. Labor Day (First Monday in September);**
 - 7. Columbus Day (Second Monday in October);**
 - 8. Veteran's Day (November 11th);**
 - 9. Thanksgiving Day (Fourth Thursday in November);**
 - 10. Christmas Day (December 25th);**
 - 11. Any day declared by the Governor of the State of Ohio or the President of the United States**

A holiday falling on a Sunday will be observed on the following Monday, while a holiday falling on a Saturday will be observed on the preceding Friday for employees whose jobs are performed Monday through Friday. All other employees will observe holidays on the days listed in this Section.

Union Position: Maintain the current contract language. The Sheriff is proposing to eliminate two (2) holidays and two (2) personal days.

RECOMMENDATION: Retain the current language in the Agreement, without modification.

Rationale: The present Agreement provides that: *"Each employee shall earn one 8 hour holiday for each completed month on the active payroll. Holiday time may be accumulated and used the same as compensatory under XIX (except that the holiday shall be equal to 8 hours at regular pay).*

At the completion of each calendar year, each employee may opt to be paid at the Corrections Officer's straight time rate in effect in December of the year in which such days are earned for any holidays accrued and not used during the year in question and shall be paid in a lump sum prior to December 15 of each year of the Agreement. In addition, each employee shall be entitled to two (2) personal leave days (16 hours) effective January 1, 2006, and each January 1 thereafter. This personal day must be used in the calendar year in which it first becomes available. This personal leave day may not be exchanged for pay or carried over into any subsequent year".

The proposal not only represents a radical change in the benefit but also a radical change in the administration of the terms and conditions of this Article. As an offset, the Employer proposed that if the Union accepted its proposal on this Article 23 and its proposal on Article 24 – Vacations, the Employer would grant the Union's proposal for wage increases of: 3.5%, 3.25% and 3.5%. This counterproposal was rejected by the Union.

I have no evidence that the reduction in paid holiday/leave time is justified by a comparison to other public and private employers doing comparable work or that there is an immediate or reasonably foreseeable inability of the Employer to continue to pay for this existing benefit. I also find no rationale to justify that the proposed revisions in language are necessary, that they would promote the relationship between the parties or enhance the Sheriff's ability to administer the Agreement.

9. **ARTICLE 24 – VACATIONS**

Employer Position: In regard to **Paragraph F.**, the Sheriff will agree to vacation carryover of one hundred and twenty (120) hours only.

In regard to Paragraph G., the Sheriff's counter-proposal is as follows:

G. Employees may request vacation leave during two application periods each year. The application periods shall last 7 days and shall take place during the second week of January and the second week of July yearly. During each of these bi-yearly application periods, employees may submit vacation leave requests for the upcoming 6-month period. At the end of each bi-yearly seven-day application period, vacation requests will be granted on the basis of seniority. Any employee may request vacation leave outside of the twice-yearly application period. Any such request must be made no more than thirty (30) days nor less than twenty-one (21) days in advance. Any requests made as referred to in this paragraph shall be considered by the employer, on a first come, first served basis, but need not be approved, regardless of staffing needs. The time restrictions herein may be waived by mutual agreement of the parties.

Union Position: We propose the same accrual schedule as the Fact-Finder³ awarded to the Deputies, otherwise no changes.

RECOMMENDATION: Retain the current language in the Agreement, without modification. No accrual adjustments are warranted for consideration at this time.

Rationale: The Employer is proposing in **Paragraph F.** above, to limit the present carryover of five hundred (500) hours to only one hundred twenty (120) hours. In **Paragraph G.** above, the Employer attempts to modify the existing language for vacation requests. Neither request has been accepted by the Union. We note the counter offer made by the Employer in point 8. *Supra*. I find, based upon the testimony and the evidence, no compelling basis for any modification of the existing language.

³ See SERB Case No. 07-MED-10-1058, John T. Meredith, issued April 26, 2008

The Sheriff has offered no factual data in support of the Employer's position nor is the Union's advocacy for an accrual change based upon Fact-Finder Meredith's conclusions, supportable at this time.

10. ARTICLE 25 - HEALTH INSURANCE

Employer Position: The Employer has no proposal to modify this Article currently on the table.

Union Position: The Union withdrew its proposal on life insurance language.

RECOMMENDATION: The current language in the Agreement is therefore, retained.

11. ARTICLE 26 - WAGES

Employer Position: The Sheriff submits that he has been led to believe that up to two million dollars (\$2,000,000.00) may be cut from his current 2008 budget. As a result, the Sheriff might not be financially able to offer any raises to this unit.

Union Position: Wage increases of: 3.5%, 3.25%, 3.5%, the same wage increases as the Deputies were awarded by the Fact-Finder⁴, and, add a stipend for Field Training Officers to mirror the Deputies' contract.

RECOMMENDATION: The Fact-Finder recommends the following increases in wages be integrated into the parties' Agreement effective January 1, 2008: 3.5% effective January 1, 2008; 3.25% effective January 1, 2009; 3.5% effective January 1, 2010.

⁴ See SERB Case No. 07-MED-10-1058, John T. Meredith, issued April 26, 2008

It is the Fact-Finder's opinion that the wage increases proposed by the Union for this bargaining unit are valid given the present and projected resources now available to Delaware County, and that the County has the ability to finance and administer the issues proposed. As to the addition of a new Section C., no added "stipend" of one-dollar (\$1.00) per hour is recommended for any Officer serving in the capacity of a Field Training Officer, at this time.

Rationale: The Fact-Finder is not convinced, based upon his review of the testimony and the evidence, and the criteria set forth in the applicable sections of ORC and OAC, that, either the current financial position of the Sheriff's Department or the current financial position of Delaware County precludes the wage increases proposed by the Union. It is noted that this is the identical wage increase granted to the approximately 66 Delaware County Deputy Sheriffs, effective January 1, 2008 through December 31, 2010, ratified by the Delaware County Commissioners this year, a factor to be considered by the Fact-Finder.

The Sheriff has indicated he feels that the County will withdraw money already allocated to his Department resulting in lay offs. His purpose in opposing this wage increase now is an attempt to be a "good steward" of the taxpayer's money.

The Sheriff provided documents substantiating his opinion that Delaware County revenue may worsen. An article in the Columbus Dispatch of May 31, 2008, indicated the revenue drop might worsen.

Among the findings was the prediction that there would be a sizable drop in projected interest revenue, from the initial estimate of \$7.5 million to \$5.6 million. Sales-tax receipts are also expected to be lower: \$21.8 million rather than \$22.2 million.

David Cannon, County Administrator, is quoted as saying: "I've been here 10 years, and this is the first time we've had to reduce what our revenue estimates are." "We've done pretty good about it, but it's never an exact science, and now we've got to adjust."

Commissioner Evans said: "I'm quietly hoping that we'll see a reversal in this (revenue projections) and that we won't have to approach it in such a drastic way."

Commissioner Ward said: "Right now, the County is in the black. ...This is a planning tool for the future, and as far as any cutbacks, none have been approved as yet."

The County has a 20 percent carryover balance from the 2007 budget, Mr. Hanks, County Auditor, said. "It's a contingency purpose, but by dipping into that, it could lower the (bond) rating that we have."

In another article appearing in the *This Week Community Newspapers* on January 10, 2008, it was announced that the Delaware County Commissioners last month approved a \$53.2 million budget for 2008. Although slight, the 2008 budget represents the first such budget decrease for the County in recent memory, County officials said. Last year, Commissioners authorized a \$54.9 million budget. Actual 2007 expenditures were estimated at \$54.2 million as of December 30. Delaware County Administrator David Cannon said the budget reduction is mainly because of projected decreases in the revenues generated by conveyance fees and interest the County collects on its investments.

While the Delaware County Sheriff's Office budget will be increased by 4 percent for its staff, and grew from 25.5 percent to 27 percent of the total General Fund, the nearly \$14.4 million budgeted for Sheriff Walter Davis III doesn't provide for more personnel.

Mr. Cannon, nevertheless, called on the Commissioners to consider the provisions of funds for employee raises. "I feel many Commissioner's employees are falling behind in pay, compared to other office's departments, based on the amount of turnover we've seen in some departments."

The Union countered that it is up to the Sheriff to prove there is **now** an economic crisis, a crisis deep enough to justify not only the rejection of the wage increase, but also reductions in other contractual benefits currently provided to bargaining unit members. The County has had 10 years of record revenue growth. An apparent shortfall today does not justify calling this a crisis situation in Delaware County for the next three years. Even the County Auditor said he cannot anticipate or know what will happen six (6) months from now.

It is noted by the Fact-Finder that the Sheriff had, during this hearing, made a contingent, tentative offer to grant the Union's wage increase-rejected by the Union.

Both the Sheriff and the Union have presented well-reasoned, well-documented and credible arguments for the Fact-Finder's consideration. Delaware County has, from the testimony and the evidence, been fortunate to have experienced exceptionally farsighted governance.

In reviewing the Delaware County, Ohio Comprehensive Annual Financial Report for the year ended December 31, 2007, the Fact-Finder observed, based upon the Auditor's remarks, nothing to indicate a problem going into the year 2008. Total Revenues at December 31, 2007 were \$53,813,498 while Total Expenditures were \$43,195,795 with a Fund Balance of \$18,839,255 at End of Year. In the Cash report, there was an Unencumbered Balance of \$11,516,322.86, as of December 31, 2007.

Interest earnings are allocated to County funds according to State statutes, grant requirements, or debt related restrictions. Interest revenue credited to the General Fund during 2007 was \$9,932,184 which included \$9,094,228 assigned from other County funds.⁵

Reasonable minds must conclude that during at least the second half of 2008, there will be more reductions in revenue. There may well be some layoffs, as anticipated by the Sheriff, that, while unfortunate, would reduce operating expenses. There are some Current Issues including completion of the Council for Older Adults' new facility and the construction of a new County Court Building.

12. ARTICLE 33 - INJURY LEAVE

Employer Position: The Sheriff would like to delete this Section from the Contract.

Union Position: Maintain the current contract language, as this has been a benefit in the contract, in some form, since 1989.

⁵ Source: Delaware County, Ohio Management's Discussion and Analysis for the Year ended December 31, 2007 Unaudited

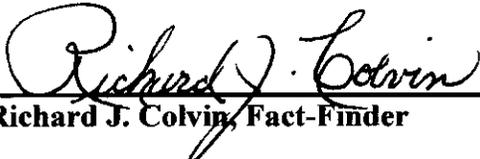
RECOMMENDATION: Retain the current language in the Agreement, without modification.

Rationale: There has been no factual data submitted that would indicate any such change is warranted. Deleting this benefit from the Agreement would represent the loss of an economic benefit to bargaining unit members. Certainly it represents a continuing cost to the Department but, as this benefit has been provided to members of the Union since 1989, its elimination would only be justified by a similar action taken by other employers in the public service or in private employment.

The Fact-Finder also recommends:

All of the open issues that were jointly resolved through collective bargaining by the parties prior to or during this hearing are deemed to have been incorporated into the current language of the Agreement.

Respectfully submitted this 21st day of August 2008,


Richard J. Colvin, Fact-Finder

CERTIFICATE OF SERVICE

This is to certify that this Fact-Finding Report was forwarded to the State Employment Relations Board by Regular U.S. Mail and was also served upon the parties listed below by Overnight Mail this 21st day of August 2008.

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