

State Employment Relations Board
State of Ohio

STATE EMPLOYMENT
RELATIONS BOARD

2009 MAR -2 A 10: 30

In the Matter of Fact-finding Between:

The Marion County Sheriff's Office : Case No. 08 MED 02 0113; -0114;-0115
Marion, Ohio

and : Fact-Finding Recommendations

Fraternal Order of Police : Margaret Nancy Johnson
Ohio Labor Council, Inc. Fact-finder

Statement of the Case

This matter came on for hearing on February 6, 2009, before Margaret Nancy Johnson, appointed in compliance with Ohio Revised Code Section 4117.14(C)(3) to serve as fact-finder by the State Employment Relations Board, hereinafter "SERB." The Office of the Sheriff, hereinafter "Sheriff" or "Employer," was represented by Jonathan J. Downes, attorney with the law firm of Downes, Hurst & Fishel. The Fraternal Order of Police, hereinafter "FOP" or "Union," was represented by Mark E. Drum, Staff Representative. Prior to the hearing both parties submitted to the fact-finder timely pre-hearing statements setting forth the positions of the parties on issues remaining in contention.

The three bargaining units whose agreements are at impasse include: a) twenty-three (23) full time sworn Deputies; b) four (4) full time sworn Lieutenants; and c) approximately five (5) full time sworn Dispatchers. Deputies are certified peace officers generally responsible for road patrol, crime prevention, detection and investigation, as well as duties in the detective division, court security, community service, K-9 patrol and drug enforcement as may be specifically assigned. Also certified peace officers with law enforcement duties, Lieutenants are the first line supervisors for the Sheriff's Office. Dispatchers respond to emergency calls and maintain communications with the safety forces of Marion County.

The parties herein have had a long standing bargaining history and a relatively uncontentious labor-management relationship. Their previously negotiated contract expired on June 30, 2008. Prior to convening in fact-finding, the parties extensively negotiated language for a successor labor contract, agreeing upon twenty-seven (27) of the thirty-eight (38) proposals brought to the bargaining table. At the time the hearing convened, the parties remained at impasse on eleven (11) Articles. In the course of mediation, an additional five (5) issues were resolved, to-wit: Article 15, Filling of Positions; Article 16, Temporary Assignments; Article 19, Grievance Procedure and Arbitration; Article 20, Investigation, Discipline Procedures, Personnel Records; and Article 22, Shift Schedules. Those tentative Agreements (TA's) reached in mediation and those to which the parties signed off on June 27, July 7, 16, 22, 30, September 9, 30, 2008 are incorporated herein.

In its pre-hearing statement, the Office of the Sheriff argues that on February 4, 2009 the parties reached tentative agreements on all remaining contract provisions and proposed to have the fact-finder incorporate those as well. As evidence of these settlements, the Sheriff submitted the proposed language including signatures of three of the four bargaining committee persons and that of the Sheriff. All TA's previously reached had included the signatures of all members of the respective bargaining committees and that of the bargaining representative for the Union. Upon learning of the February 4, 2009 Agreements, the bargaining agent protested asserting that those agreements had been executed without his presence or knowledge and that no representative of the Dispatchers had been present at the time.

To sustain its position that the TA's of February 4, 2009 ought to be incorporated into the successor agreement, the Sheriff cites a Fact-Finders Report and Recommendations issued on April 12, 1996 by Lawrence I. Donnelly in Case Numbers 95 MED-10-0838, 0839, and 0840, involving the *Circleville Police Department and the Ohio Patrolmen's Benevolent Association*. As in *Circleville*, the fact-finder does not perceive bad-faith bargaining in this instance (see *Circleville* p. 7). Unlike the fact-finder in *Circleville*, however, this hearing officer does not feel compelled to adopt the TA's signed on February 4, 2009 as evidence either of a "traditional practice" or of a "past collective bargaining agreement" (*Circleville* p. 4).

In considering the contentions of the Sheriff, this fact-finder notes that the circumstances in the case before her are quite different from those before Fact-finder Donnelly. In the *Circleville* case, more than one month prior to scheduling fact-finding, the appointed fact-finder had been advised that with the assistance of a SERB mediator, the parties had reached mutual agreement on the unresolved issues and that fact-finding would not be necessary. Subsequent to the bargaining committees reaching tentative agreement on issues in contention, the OPBA membership ratified the agreements but the Circleville City Council rejected the same.

In considering the extent to which the tentative agreements represented the results of bargaining, Fact-finder Donnelly noted that the Employer's Bargaining Committee "involved highly qualified and experienced people on the Issues (Attorney, Mayor and Police Chief," (p. 4) whose authority to negotiate agreement with the Union was not disputed. He also observed that the resolved issues included a balancing of proposals by each party and that the "packaged tentative agreements obviously reflect[ed] the results of bargaining by the parties" (p.5).

The fact-finder in this case cannot make the same observations in the matter before her. While the fact-finder does not have jurisdiction over and fact-finding is not the appropriate forum for resolving statutory disputes, the authority of the three Union committee members in the absence of their bargaining agent and a representative from the Dispatchers has been challenged by the bargaining agent for the Union. Thus, the fact-finder can not consider the TA's a factor traditionally taken into consideration. Moreover, a perusal of the February 4, 2009 TA's does not indicate, as in *Circleville*, the give-and-take of collective bargaining. Finally, unlike in *Circleville*, these TA's had not been submitted to respective constituencies for ratification. Accordingly, this fact-finder does not feel compelled to adapt the February 4, 2009 TA's as evidence of a mutual agreement and she proceeds, instead, to make recommendations on the six remaining issues based upon the evidence and data submitted for her review and consistently with the statutory criteria.

Criteria

In compliance with Ohio Revised Code Section 4117.14 (G)(7) and Ohio Administrative Code Rule 4117-0-06, the fact-finder has considered the following criteria in making the recommendations contained in this Report:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of unresolved issues relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed and the effect of the adjustments on the normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the parties; and
6. Such other factors, not confined to those listed above, which are normally and

traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

Issues

The issues upon which the parties remain at impasse include: Article 18, Subcontracting; Article 21, Hours of Work; Article 23, Wages; Article 24, Health Insurance; Article 31, Court Time; and Article 38, Appropriations.

Position of the Parties

I Subcontracting

a. Union

Proposing the deletion of current language in Article 18, the Union seeks a restriction upon the subcontracting of bargaining unit work with the exception of prisoner transports and civil processing. The intent of the proposed modification is to secure bargaining unit work for unit employees and to ensure that unit members will not be laid-off and replaced with non-unit employees. Many labor contracts have language comparable to that proposed by the Union.

b. Sheriff

With the exception of replacing the term "Office" with "Employer," the Sheriff seeks to retain current contract language. As the party proposing change, the Union has the burden of demonstrating a reason to remove this long standing provision. There is absolutely no evidence of abuse in the implementation of the terms of this Article. Moreover, given the economic climate, the Sheriff must have flexibility in manning his department.

II Hours of Work

a. Union

Changes proposed by the Union for Article 21 concern the calculation of hours worked for overtime purposes and provide overtime after forty (40) hours in any work week for all members and not just the Dispatchers. In Section 21.3 and in 21.5 the Union seeks to delete reference to the Fair Labor Standards Act and to replace such language with "in paid status." Most collective bargaining agreements in Ohio include leave time as "hours worked" for the purpose of overtime. Existing language enables the Sheriff to require employees to "flex" their work schedules to avoid the payment of overtime.

b. Sheriff

Opposed to the changes sought by the Union, the Sheriff contends "paid status" language will create a financial burden on the County. As the proponent of this change, the Union ought to justify its modification. In the absence of a need for modification, the Sheriff seeks to retain current language for the purpose of overtime calculations. The Employer agrees, however, to increase the compensatory time bank to 80 hours and compensation of K-9 officers by \$1.49 per hour.

III Wages

a. Union

Last month the City of Marion agreed with the FOP to increases of 3%, 4.5% and 4.5% for its three year contract with the city police personnel. The Union now proposes the same wage adjustment for the Deputy and Dispatchers in this bargaining unit. For the Lieutenants the Union seeks pay differentials of 12%, 13.5% and 15% for the three years of the Agreement. In addition to comparability with the City of Marion, the wage proposal of the Union is consistent with data from comparable jurisdictions. For 2009 the average increase in compensation paid to Peace Officers in similarly situated communities was 4%. Thus, the wage proposal of the Union is designed to maintain

the income of unit members on a par with that of other Peace Officers.

The Union also proposes increases in longevity to correspond to the longevity paid to City police. The proposal of the Union is not inconsistent with that of comparable departments.

b. Sheriff

Wage proposals set forth by the Sheriff emanate from the severe economic constrictions confronting the County. With a worsening economy, the County must be circumspect in wage increases. While the proposal of the County provides across the board increases in all classifications, it also ensures stability in the first year of the Agreement. For Lieutenants, the County proposes, 2%, 3% and 3% increases. By allowing the lieutenant to reach the top wage rate after two years rather than three as in the current contract, the wage scale for the classification is collapsed. By the end of contract year 2011, the top wage rate for Lieutenants will be 14.7% higher than the top wage rate for Deputy Sheriffs.

As with all General Fund employees, the County proposes no increase in 2009 for Dispatchers and Deputies, but increases of 2.5% in 2010 and 2011. Economic decline in the County justifies this proposal.

In all other respects the County proposes current language.

IV Health and Liability Insurance

a. Sheriff

With the deletion of expired language, the position of the Sheriff on Health Insurance is set forth in current contract language and in a Letter of Understanding between the Parties. Through the sidebar, the Sheriff seeks to clarify the Employer's contribution to each employee's HSA, a greater contribution than provided any other General Fund employee. The proposal includes a cap at \$1200 to the employee deductible and results in substantial gains for unit employees.

b. Union

The position of the Union on health insurance provisions has evolved in the course of negotiations and as information on employee cost was gathered. Though the Union does not dispute the benefits of the HSA unilaterally implemented by the County, it does object to the increasing costs being fostered on the membership. After raising the deductible to \$3,000, the County passed the additional cost to bargaining unit members resulting in a substantial reduction in income for employees. Thus, the Union now proposes unit members pay the 2008 amount of \$880.00 to the HSA.

V Court Time

a. Union

The Union proposes the elimination of existing language that requires the employee to forgo their minimum court pay guarantee unless he/she reports to the Sheriff for further assignment. Such language was never negotiated by the parties but was included in the contract as the consequence of a Conciliation Award. Most law enforcement contracts in the state do not include such a requirement which is contrary to the intent and purpose of the minimum pay guarantee. Because the off-duty court pay is intended to compensate employees for performance of service during time otherwise spent with family and attending to personal needs, it is inappropriate to dilute this provision with an additional requirement. This should be removed and the minimum pay increased to four hours.

b. Sheriff

Arguing that this provision has been in the contract since 2002, the Sheriff seeks its retention. Absent a compelling justification for modification, the position of the Employer is that current provisions should be maintained. There is no reason why employees should be paid overtime when they are not working. There are always tasks the Sheriff can assign to employees who are being paid for services rendered.

VI Appropriations

a. Sheriff

A reading of this provision clearly indicates that it was intended to apply only to the predecessor Agreement. Given the current economic climate, it is inappropriate to hold the Sheriff to assurances previously made. Accordingly, the Sheriff proposes the removal of the appropriations language in the current collective bargaining agreement.

b. Union

The Union proposes the retention of this language as it ensures current staffing levels. This is especially important should the Sheriff retain the current ability to subcontract unit positions. Moreover, bargaining history sustains the position of the Union. Assurances on staffing levels were previously agreed upon as a quid pro quo for the acquiescence of the Union to the Sheriff's wage proposal and the increase in the employee's share of insurance premiums from 10% to 15%. It is improper to remove this assurance in current bargaining.

Discussion

Non-economic issues upon which the parties were in negotiation have generally been resolved in the tentative agreements incorporated herein. Items remaining on the bargaining table and presented to the fact-finder for recommendation have a financial impact. Accordingly, in submitting the recommendations which follow, the fact-finder has carefully scrutinized the economic data presented for her review. Although the Sheriff does not assert inability to provide the unit with some monetary gain, it does contend that its financial resources are severely restricted and that it must be circumspect in what it can afford.

Declining revenues and increasing expenditures are a recurrent theme in negotiations during this recessionary period. Employers across the state, and indeed, across the nation, are confronted with balancing a budget. For a Sheriff in a County like Marion County, the dilemma is especially troubling because funding sources are limited. As indicated by Commissioner Josh Daniels, the principle sources of income for Marion County are interest income, sales tax and tangible property tax. A declining market and the elimination of tangible personal property tax significantly diminish revenue for the County. As a consequence, in 2009 deficit spending will be substantially greater than that in 2008, when the county appropriated \$785,070.01 more than it received.

In considering the economic issues, reference also ought to be made to the demographic characteristics of the County. Census data from 2005 indicate that 12% of the approximately 65,583 residents live in poverty. The average adjusted gross income level in Marion County is below the average for Ohio County residents. Ohio Department of Job and Family Services estimates that in December 2008 the Marion County unemployment rate was 9.8, well above the national rate of 7.1% and the state rate of 7.6%. Predominantly agricultural, Marion County businesses and business starts have been in decline for the past five years.

This is the context, then, in which the economic proposals must be considered and recommendations issued. Certainly, this is not the economic climate in which a bargaining unit can anticipate significant financial gain. When adjustments are appropriate, however, modification ought to be implemented.

I ARTICLE 18: SUBCONTRACTING

In proposing changes to this Article, the Union contends that few law enforcement contracts enable subcontracting of bargaining unit work when it may result in the layoff of unit employees. The language in Article 18, however, has been in the contract between these parties for many years without challenge or controversy. There is no evidence of abuse or of an undermining of the bargaining unit by reason of the terms set forth in this provision.

The reality of these times requires Counties to be innovative and efficient, and the Sheriff must retain the ability to function with the flexibility the economic context requires. Included within the

provision is the agreement to engage in discussion with the Union concerning possible alternatives. There is no improper animus in the language set forth and should unilateral action by a Sheriff indicate such motivation, the Union has statutory and contractual recourse.

In the absence of a compelling reason to modify the Article, the fact-finder recommends retaining this long-standing provision and amending the term "Office" to "Employer."

II ARTICLE 21: HOURS OF WORK /OVERTIME

Insofar as the parties have agreed upon modifications to Section 21.6 and 21.8, the fact-finder incorporates those adjustments. Thus, compensatory time may accumulate to a maximum of eight (80) hours. Additionally, deputies assigned to work as canine handlers will be paid a premium of one dollar and forty nine cents (\$1.49) per hour for all hours in active pay status.

Other proposed changes involve the calculation of overtime. While the Dispatchers generate overtime based upon a forty (40) hour work week, the work period of Deputies and Lieutenants consists of eighty-five (85) hours after which overtime is accrued consistently with the Fair Labor Standards Act. As indicated by the Union, many law enforcement units in Ohio have negotiated language which provides overtime after forty hours per week. The contractual language used in overtime provisions may be varied, but the Union argues that the standard is overtime for hours the employee is "in paid status" in excess of forty hours in one work week, including vacations, holidays, and compensatory time.

While other bargaining units may have achieved overtime for hours in paid status, the negotiation process in each case is unique. No two bargaining histories are ever identical. Involving give and take, compromise and concession, Collective Bargaining Agreements are by no means standardized but are, rather, quite diverse. Through negotiated terms, the signatory parties express their mutual intent. Thus, while comparability is a criterion to be considered in impasse proceedings, it is one of several factors.

In the case at hand, overtime accrued pursuant to the Fair Labor Standards Act has remained in successor agreements between the Sheriff and the FOP for several years. Absent either a need for modification or a "quid pro quo" exchange, the fact-finder cannot impose additional costs on this employer during a recessionary period when the County, like local governmental entities nationwide, is struggling with expenditure far in excess of revenue.

In its argument, the Union has not presented the cost analysis for this proposal. Accordingly, the fact-finder is without information on the financial impact of the proposed modification. She is cognizant, however, that overtime worked by a law enforcement unit has the potential for significant economic consequences for the public employer.

In these negotiations, contractual adjustments require circumspection when increasing County expenditures. Based upon collective bargaining history and the uncertainty of the expense, this fact-finder can not justify the additional cost of overtime for "in paid status" and does not recommend such language be included in the Agreement between the parties at this time.

III ARTICLE 23: WAGES

In addition to a wage adjustments, the Union proposal on wages consists of increases in the rank differential for lieutenants and in longevity pay. The Sheriff proposes current contract language on longevity and it incorporates a modified rank differential into its wage proposals.

a. Longevity

Like overtime provisions, methods used for calculating longevity pay, when provided, are varied. Some Agreements set forth an annual payment; some a percentage of the wage rate; some, as in this instance, a monetary amount included in the base rate of pay. While the County provides increases every five (5) years up to twenty (20), other jurisdictions have greater increments. Moreover, longevity is one component of a wage package encompassing numerous other economic benefits. Thus, there is

no exactitude in comparing longevity pay in the collective bargaining agreements submitted for review, and comparisons of collective bargaining agreements may not be a reliable criterion to utilize in determining this issue.

Rather, the fact-finder looks to other factors. At least since 1993, there has been no change in longevity pay for this unit, though the worth of the 1993 payment most certainly has diminished in the last fifteen years. At the same time, the quality of and demand for service rendered has not declined since then. Accordingly, the fact-finder is of the opinion that bargaining history would certainly justify an increase in this economic benefit.

The fact-finder also observes that in recessionary times when wage increases must be measured, longevity provides a means by which the public employer can let bargaining unit members know their public service is valued. A minor adjustment to longevity pay is within the ability of the Sheriff to pay and will have no negative effect upon public service. However, the creation of two additional new longevity steps is a matter the fact finder believes should be negotiated. Very little argument or evidence was presented on the issue and the fact-finder is of the opinion the establishment of additional steps should be left to subsequent bargaining.

Accordingly, the fact-finder recommends increasing the current longevity steps by five cents without adding to the increments.

B. Wages

Both the FOP and the Sheriff address a rank differential for Lieutenants in their wage proposals, recognizing that an adjustment in pay for this classification is warranted. The Union proposes a 3%, 4.5% and 4.5% increase for each year of the contract for Deputies and Dispatchers and a wage differential of 12%, 13.5% and 15% for Lieutenants. The Sheriff has countered with 0%, 2.5% and 2.5% for Deputies and Dispatchers and a 2% increase in the Top Pay Range for 2009 and 3% in 2010 and 2011 for Lieutenants.

The documentation and data on the economic forecast for the County demonstrates the difficulties confronting the public employer. In 2008, appropriations of \$17,429,594.00 exceeded revenue of \$16,644,523.09 resulting in deficit spending of \$785,070.91. For 2009, the deficit is anticipated to increase to \$2,619,848.33. The dilemma for the County is compounded in that its options for revenue enhancement are restricted. Investment income and proceeds from sales taxes reflect the national decline severely affecting local economies and governmental agencies. The approach of the County is to stabilize in 2009 with across the board freezes and modest wage increases in 2010 and 2011.

In its comparison argument the Union cites wage increases in what it deems comparable units, including the Police Department of the City of Marion. It is important to note, however, that municipalities have additional revenue sources not available to county administrations. Moreover, wage increases negotiated by public employers prior to the financial meltdown of the fall of 2008 should not be held as a standard for those bargaining in the winter of 2009 as the national economy continues its free fall. Finally, looking at the comparisons of 2008 Peace Officer salaries submitted by the Union, Marion County Officers are actually above the average and fall within the top third of those cited by the Union (See Union Tabs 17 and 18).

Upon a review of the economic data, the ability of the employer, and wage comparisons, the fact-finder recommends the proposal of the Sheriff: 0% for 2009, 2.5% in 2010 and 2011 for Dispatchers and Deputies; for Lieutenants, increasing the top pay range 2% in 2009, and all pay ranges 3% in 2010 and 2011.

IV ARTICLE 24: HEALTH INSURANCE

In prior negotiations the parties herein established an 85%/15% cost sharing for insurance premiums which is not now in dispute. Rather, the current contract contention is over language for the high deductible Health Savings Accounts (HSA) implemented for the County for its employees. In

2008 the employer funded 60% of a \$2,200 deductible, or \$1320 with employees paying the remaining \$880.00. The County proposes a side-bar agreement on the HSA with a cap to the employee deductible. The Union proposal is to maintain employee contribution at the 2008 level of \$880.00. Additionally, the Union proposes an opt-out provision for those employees with alternative insurance.

Addressing first the opt-out provision, the fact-finder is of the opinion that new language such as an opt-out should be the result of collective bargaining and mutual agreement between the parties. Provisions paying employees for non-participation in employer insurance are relatively new and few in collective bargaining agreements in Ohio. There is absolutely no criterion which the fact-finder can cite to recommend this language.

While the Sheriff has argued that the side-bar on health insurance is intended to clarify the health savings account provisions, the fact-finder is of the opinion there is very little clarity in either the language or its application. Insurance provisions require language enabling the parties to understand what payments or percentages are to be exacted from their paychecks. This, apparently, did not occur in 2009. January 2009 increases in the employee HSA contribution far exceeded the expectations of the bargaining unit members. Indeed, contributions by bargaining unit members are greater than employee contributions to HSA's in other jurisdictions (Union Tab 21). To so significantly increase the employee share of an HSA at a time when a wage freeze is being proposed appears unjustifiable. Nor is there any statutory support for the proposal of the Sheriff relative to the HSA contribution.

In arguing for its insurance provision, the Employer reasoned that all General Fund employees should receive the same insurance benefits. There is merit to this position and, in general, the fact-finder would concur with the concept of internal parity for insurance benefits. Uniformity in insurance not only enhances market options, but it also maintains employee morale. Timing in insurance changes now under review, however, suggests that parity should not be determinative of the issue in this case.

As pointed out by the Employer, while the labor contract runs from mid-year, insurance benefits follow the calendar year. Thus, in this instance, the parties were already at impasse when changes in insurance were unilaterally implemented. The modifications to employee contributions to the HSA's in late 2008 were never negotiated by this unit. Nor is there any evidence that any other bargaining unit has done so.

The Sheriff objected to the failure of the Union to voice concerns about the increase in employee contributions earlier in the process. Yet, the increase only became known in late 2008 at the same time the County was undergoing a change in administration and in counsel. An earlier objection would not have made any difference in this instance.

The fact-finder recommends further negotiation on this matter. Thus, as to the implementation of the HSA in 2009, the fact-finder recommends the 2008 HSA employee contribution with a reopener for insurance in 2010 and 2011.

V ARTICLE 31: COURT LEAVE

The Union proposal on court leave arises from a conciliation award which required bargaining unit members to report for further assignment following an off-duty court appearance on behalf of the Sheriff which was less than the minimum three hours. It is well recognized that the provision on minimum pay for court appearances by law enforcement officers is intended to compensate the officer for the need to perform duties on behalf of the employer when not scheduled to do so. Such duties not only create an inconvenience for an employee who already works non-traditional hours, but it also potentially generates expense and hardship arising from child or elder care. Hence, the premium pay.

As a result of a Conciliation Award the court leave provisions in the Agreement between the parties were modified to require the employee to report to the Sheriff in the event court appearances are less than three hours. The Union now seeks to increase the minimum hours to four and to eliminate the report-in requirement.

The fact-finder is cognizant of the difficulty of removing existing language in the absence of need.

This traditional “factor” in impasse proceedings derives from the contention that the parties had negotiated the language and should abide by their commitment. Completely absent in this proceeding, however, is “negotiated” language. The additional requirement is in the Agreement because of a Conciliation Award, not because of collective bargaining. Thus, the criterion of “past collectively bargained agreements” would actually sustain the position of the Union.

Moreover, a comparison with other law enforcement agreements would also sustain the position of the Union as to the report in requirement. Most contracts do not include such a prerequisite to the minimum pay provisions.

Given the fiscal limitation on the Sheriff, the fact-finder would not recommend an increase to four hours, but the existing three hours should be unrestricted. The return to prior contract language in this regard does not impede or affect the standard of service to the public, impose financial hardship on the Sheriff, or interfere with the welfare of the public. Indeed, there is no statutory criterion which would sustain *keeping* existing contract language. Accordingly, the fact-finder recommends maintaining the three hour minimum but removing the prerequisite to report to the Sheriff for further assignment.

VI ARTICLE 38: APPROPRIATIONS

A reading of Article 38 indicates that commitments on the part of the Sheriff included therein were limited to the duration of the predecessor contract. Under the current economic conditions, the Sheriff cannot ensure appropriations as previously agreed upon. Nor should the Office of the Sheriff be required to do so. Moreover, the agreement not to layoff employees made in 2005 was not intended to be perpetual but was, rather, specifically limited to the terms of that Agreement.

Flexibility in manning and the ability to layoff when necessary ought not to be curtailed in economically stressful times. Instead, these inherent managerial prerogatives should be retained subject to reasonable exercise. Accordingly, the fact-finder recommends the deletion of Article 38 in the current Agreement.

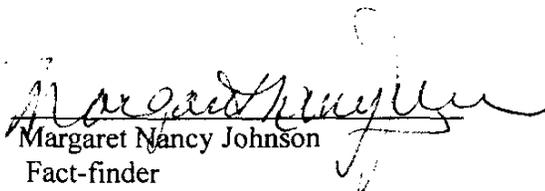
Recommendations

For reasons discussed above, the fact-finder makes the following recommendations:

1. Article 18: Subcontracting. Except for changing “Office” to “Employer,” the fact-finder recommends current contract language.
2. Article 21: Hours of Work. Except for the modifications to Section 21.6 and 21.8 agreed upon by the parties, the fact-finder recommends current contract language.
3. Article 23: Wages.
Section 23.1: The fact-finder recommends the County proposal of 2%, 3% and 3% for Lieutenants and 0%, 2.5% and 2.5% for Deputies and Dispatchers.
Section 23.2: The fact-finder recommends the Union proposal for an increase of \$.05 in each step of the current longevity scale but not the additional two increments.
4. Article 24: Insurance. The fact-finder recommends that current language be retained with the deletion of expired terms. She further recommends that the employee contribution to the HSA's in 2009 be the same as in 2008 and that the parties engage in a *reopener for health insurance only for 2010 and 2011*.
5. Article 31: Court Leave: The fact finder recommends retaining the current three hour minimum but deleting the requirement to report in for further assignment.

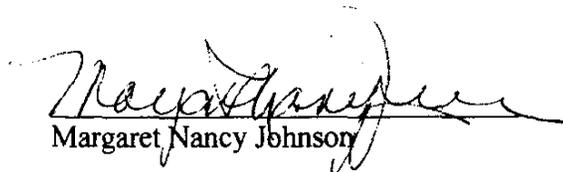
6. Article 38: Appropriation. The fact-finder recommends deletion of the current language.

Respectfully submitted,


Margaret Nancy Johnson
Fact-finder

Notice of Service

A copy of the foregoing Report and Recommendations was issued on February 27, 2009 by Express Mail to Jonathon J. Downes, Esq., Downes, Hurst & Fishel, 400 South Fifth Street, Suite 200, Columbus, Ohio 43215-5095 and to Mark E. Drum, Fraternal Order of Police, Ohio Labor Council, Inc., 222 East Town Street, Columbus, Ohio, 432315-4611, and by regular mail to Edward E. Turner, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213.


Margaret Nancy Johnson

STATE EMPLOYMENT
RELATIONS BOARD

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2009 MAR -2 A 10: 30

February 27, 2009

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Re: Case No. 08-MED-02-0113, 08-MED-02-0014 and 08-MEDF-02-0114
Marion County Sheriff and the Fraternal Order of Police, Ohio Labor Council, Inc.

Dear Gentlemen:

Enclosed please find an executed copy of the Report and Recommendations of the fact-finder in the above referenced matter. Also enclosed for the parties is an invoice for services rendered.

Thank you again for the opportunity to be of service.

Very truly yours,



Margaret Nancy Johnson