

STATE EMPLOYMENT RELATIONS BOARD

STATE OF OHIO

IN THE MATTER OF FACT-FINDING BETWEEN

CUYAHOGA COUNTY SHERIFF'S OFFICE

AND

OHIO PATROLMEN'S BENEVOLENT ASSOCIATION

FINDINGS AND RECOMMENDATIONS

CASE NO: 09-MED—08-0788

September 1, 2010

William C. Binning Ph.D.

Fact-finder

For Cuyahoga County Sheriff's Office

Christopher J. Russ

1215 West 3rd St -2nd floor

Cleveland, Ohio 44113

For Ohio Patrolman's Benevolent Association

Daniel J. Leffler

Ohio Patrolman's Benevolent Association

10147 Royalton Rd. Suite J

North Royalton, Ohio 44133

The undersigned was appointed Fact-finder by the State Employment Relations Board (SERB) on June 2, 2010, pursuant to Section 4117.14 (C) (3) of the Ohio Revised Code.

The first hearing was set for July 22, 2010. The Fact-finder was present, however, a hearing was not held on that date and the parties agreed to set August 20, 2010 for a hearing. In the interim period, the parties agreed to continue to negotiate. This was a challenging task for both of the parties since this was a new contract for the recently unionized Sergeants in the Cuyahoga County Sheriff's Department.

HEARING ON AUGUST 20, 2010

The parties met at 9:00 a.m. and worked continuously until 5:30 p.m. and all of the outstanding issues were addressed.

Prior to the opening of the hearing, the Fact-finder offered to mediate as he is obligated to do by SERB rules. The parties conducted themselves in a very professional manner and a number of issues were settled in mediation. Representatives Daniel Leffler of the OBPA and Christopher Russ representing the Cuyahoga Sheriff's Department agreed to meet at a later time to draft up the language for the issues resolved through mediation. That agreed to language was received electronically on September 10, 2010 by this Fact-finder. The language for those issues resolved through mediation are presented below as part of this Fact-finding.

OPBA and Cuyahoga County SO

Mediation Settlements 8/20/2010

ARTICLE 6. PROBATIONARY PERIOD

SECTION 1. Newly promoted Employees entering this unit are probationary Employees for a period of six (6) months. There shall be no extension of the six (6) month probationary period other than for a leave of absence of that Employee during that six (6) month period.

SECTION 2. Any newly promoted Employee, who was enrolled in the County's benefits plan at the time of entering this bargaining unit, shall continue to receive uninterrupted benefits.

ARTICLE 7. UNION REPRESENTATION

SECTION 1. For purposes of processing grievances, the Union shall be represented by one (1) Chief Steward and two (2) stewards. The stewards and chief steward shall be elected members of the Union. No Employee shall be permitted to serve as steward or chief steward who has less than one (1) year employment with the Employer. The Employer agrees that at least one (1) steward shall be regularly assigned to each of three (3) shifts.

SECTION 2. The Union shall supply the Employee Relations Administrator with a list of names of the stewards and Chief Steward which is to be kept current at all times.

SECTION 3. Upon reasonable request, the Employer agrees to admit a Union representative to designated areas within the confines of the Sheriff's Office. The Employer shall reasonably determine such areas in accordance with the operational needs of the Department. Prior to such admittance, the Union representative shall advise the Employee Relations Administrator of the purpose of the visit and obtain approval before entering the Department. Such approval will not be unreasonably withheld.

SECTION 4. Meetings between Employer and Union representatives concerning grievances shall be scheduled by the Employer within the parameters established by the "Grievance Procedure" article. If such a grievance meeting is scheduled during regular duty hours of the grievant or steward, neither, if present, shall suffer any loss of pay while attending the meeting. A steward must give his supervisor notice of his intent to attend a grievance meeting sufficiently in advance of the meeting, to avoid any disruption of the Employer's operations.

SECTION 5. There shall be no Union business conducted on the Employer's premises or during an Employee's working hours except as permitted in this Agreement or pursuant to applicable state law.

Article 18. LONGEVITY

SECTION 1. All Employees who have five (5) years of continuous, uninterrupted service with the Employer shall be paid a longevity allowance of three hundred seventy-five dollars (\$375.00). Longevity will be included in the pay for the pay period in which the anniversary date occurs. The Employee shall also be paid the amount of seventy-five dollars (\$75.00) for each year of full continuous service after the initial five (5) years and is to be added to the original amount set for the five (5) year period. The said amounts, previously covered, shall be paid every year until the Employee retires. On the year of retirement, said fees shall be paid but include the full years and prorated months of service or seventy-five dollars (\$75.00) divided by twelve months = x dollars times number of months of service.

Article 19. HOLIDAYS

SECTION 1. The Employer shall observe the following eleven (11) paid holidays:

New Year's Day, Labor Day, Martin Luther King Day, Columbus Day, Presidents' Day, Veterans' Day, Memorial Day, Thanksgiving Day, Independence Day, Christmas Day, Day after Thanksgiving.

If a holiday falls on a Saturday, it shall be observed on the previous Friday. If a holiday falls on a Sunday, it shall be observed on the following Monday. To be eligible for holiday pay, an Employee must work his full last scheduled shift before the holiday and his full first scheduled shift after the holiday, unless on any approved leave herein, except sick leave.

However, **Employees shall be permitted one (1) sick leave absence per calendar year on a scheduled work day either (1) immediately before or (2) immediately after the holiday. Thereafter, an Employee who is absent due to sick leave on a scheduled work day, either immediately before or immediately after the holiday, shall not be eligible for holiday pay.**

SECTION 2. Any Employee, required to work on one of the recognized holidays, is entitled to receive compensation at the rate of one and one-half (1-1/2) times his usual rate of pay in addition to receiving his regular holiday pay.

Article 31. PROMOTION OUT OF THE UNIT

SECTION 1. An Employee promoted to a position outside of the bargaining unit who is later deprived of that position and is returned to regular work within the bargaining unit shall have his name immediately restored to the Department seniority list with all seniority held at the time of promotion, but not accumulated. If seniority will not carry, the Employee shall be placed in accordance with the "Layoff and Recall" article of the current Agreement.

SECTION 2. The Employer shall notify the Union of those Employees who are promoted out of the bargaining unit. This notice shall include date of leaving, seniority date, and position to which the Employee has been promoted. If the Employee is returned to the bargaining unit, the Employer shall notify the Union of the date of such return.

Article 33. USE OF PERSONAL VEHICLES

SECTION 1. Bargaining unit Employees shall not be required to utilize their personal vehicles during the performance of their duties.

SECTION 2. The Employer shall continue to provide parking arrangements in its current form as it is presently administered for all Sheriff's Office staff.

Article 35. OUTSIDE EMPLOYMENT

SECTION 1. Employees shall apply to the Employer and obtain the Employer's written permission prior to engaging in employment outside the Sheriff's Office. The granting or denial of such requests shall be governed by the following criteria:

- a) The outside employment may not be such as would in any manner adversely affect or interfere with the Employee's performance of duties for the Sheriff's Office.
- b) The outside employment may not create an actual conflict of interest or the appearance of a conflict of interest with the operations of the Sheriff's Office.
- c) The outside employment may not be such as would create an appearance of impropriety.
- d) The outside employment may not be at a place of business where any principal or officer of the business or the business itself has been convicted of or is under investigation for serious criminal conduct.
- e) The outside employment may not involve more than thirty (30) hours of work per week.
- f) Employees seeking outside employment shall provide the Employer with evidence that liability insurance satisfactory to the Employer or a hold harmless agreement satisfactory to the Employer has been secured which shall hold the Employer, Cuyahoga County and their representatives, harmless from any actions or inactions arising out of the Employee's outside employment.
- g) Upon request, the Employee shall be provided a written explanation for denial and/or rescission of outside employment authorization unless otherwise precluded by law.

SECTION 2. Requests shall be approved by the Employer prior to the commencement of outside employment and such applications shall be renewed annually thereafter. Requests for approval will be acted upon by the Employer as soon as is practicable. The Employer shall have the right to rescind previously granted permission for outside employment upon a change of circumstances and in accordance with the criteria set forth above in this Article.

Article 44. COURT LEAVE/JURY DUTY LEAVE

SECTION 1. The Employer shall grant court leave with pay and without any loss of benefits to any Employee who is:

- a) summoned for jury duty by a court of competent jurisdiction; or
- b) subpoenaed to appear before any court, commission, board or other legally constituted body authorized by law to compel the attendance of witnesses where the Employee is not a party to the action.

SECTION 2. The Employee shall submit any and all fees issued by the court, board, or other legally constituted body to the Employer to be eligible to receive full pay.

SECTION 3. An Employee who attends a Bureau of Worker's Compensation or Industrial Commission hearing or medical evaluation/review **which is the result of an appeal initiated by the Employer shall not suffer any loss of benefits. In the event the claim is ultimately disallowed by the Bureau of Worker's Compensation or Industrial Commission, the Employer may seek reimbursement from the Employee's accrued leave on an hour-for-hour basis or if no leave is available, a reduction in pay at the hourly rate at the time of the hearing.**

NEW ARTICLE – RETIREMENT

SECTION 1. The Employee shall receive the retirement plan governed by the Public Employees Retirement System (PERS) as is currently in effect and amended hereafter. The Employer shall continue the current salary reduction plan pursuant to PERS rules and Section 401(A) and 501(A) of the Internal Revenue Code, which provides for public employee pension plans to receive tax deferred status.

HEARING

A formal hearing was opened by the Fact-finder at approximately 11:30 a.m. and was closed at 5:30 p.m. The following issues remained unresolved:

Article 3: Non-discrimination

Article 14: Wages

Article 15: Hours of Work/Overtime (sections 2 and 4 only)

Article 17: Assumption of Rank

Article 20: Uniforms

Article 25: Employee Assignment and Transfer

Article 36: Layoff and Recall

Article 37: Sick Leave (Certain Sections)

Article 39: Vacation Leave

Article 40: Use of Vacation Leave

Article 49: Leave of Absence Without Pay

CRITERIA

In compliance with the Ohio Revised Code, Section 4117:14 and Ohio Administrative Code Rule 4117-9-05 (J) and 4117-9-05 (K), the Fact-finder considered the following criteria in making the findings and recommendations contained in this report:

1. Past Collective Bargaining Agreements between the parties [of course in this case there was no past agreement];
2. Comparison of the unresolved issues, relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to the 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, the effect of the adjustments on the normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the parties;
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in determination of the issues submitted to mutually agreed upon dispute settlement procedures in the public service or in private employment.

ISSUES AND RECOMMENDATIONS

ARTICLE 3 NON-DISCRIMINATION

UNION POSITION

The union proposed under **Article 3: Pledge against Discrimination** to include **union activity or membership**. One of the Stewards for the union was very adamant about this because of alleged threats and retaliation by the Employer when this unit started to organize. That leadership is no longer in place at the Cuyahoga County Sheriff's Department. The Union offered language from various Union supervisor contracts from around the state with union discrimination language.

EMPLOYER POSITION

The Employer held to the original language, which they believed was already agreed to by the parties.

DISCUSSION

This Fact-finder tried to persuade the Union that the language they wanted did not belong in the Anti-Discrimination SECTION of this contract and place it under a Union clause. The Union harbors very hard feelings towards the former leadership of the Sherriff's Department and is not yet persuaded that retaliation against union organizing activities will no longer be practiced.

RECOMMENDATION

The **Union** language for Article 3 is recommended.

ARTICLE 14

WAGES

UNION POSITION

The Union argues there is no established pay differential for Sergeants in the Cuyahoga Sheriff's Department. The current practice is 16.1% of the highest ranking Deputy's pay. The Union argues they have not received a pay raise since 2007 and request a 19% pay differential. The Union provided comparables from neighboring counties. The Union also offered Cuyahoga financial data arguing they could pay for the raise.

EMPLOYER POSITION

The Employer challenged some of the comparables offered by the Union and offered comparables of their own. The Employer cited the budget challenges facing Cuyahoga County Government. They pointed to the adoption of furlough days and layoffs throughout Cuyahoga County Government. Also, the Employer pointed out that many unions in the County were foregoing any pay raises. The Employer held to their offer of 16.1%

DISCUSSION

The weak economy of northeast Ohio needs to be taken into account in all public sector contracts. On the other hand these Sergeants have challenging work in providing public safety and they have gone without a raise for almost three years. Overall, it does appear that Cuyahoga Sergeants are at or below the mean for their rank in comparable jurisdictions.

RECOMMENDATION

This Fact-finder recommends that: “The Base Salary Rate for Deputy Sheriff Sergeants shall be a minimum of **Eighteen Percent (18%)** greater than the rate constituting the highest base rate paid or set to be paid a Deputy Sheriff per the contract between the Deputy Sheriffs and the Cuyahoga Sheriff’s Office.”

ARTICLE 15
HOURS OF WORK/ OVERTIME

There are a number of articles where the parties differ in this section of their new contract; each article will be addressed separately.

ARTICLE 15 SECTION 2

UNION POSITION

The Union proposes that the language in italics and emboldened be added to this Section 2: The normal work period for all full-time Employees within the bargaining unit shall be a forty (40) hour workweek. Specific hourly and weekly work schedules may vary depending upon job assignments. ***Scheduled adjustments shall not occur to avoid the payment of overtime.*** Paid holidays, paid vacation leave, compensatory time and ***sick time*** shall be considered as time worked within the forty (40) hour workweek for the purposes of this article.

EMPLOYER POSITION

For **Article 15 HOURS OF WORK/OVERTIME** the Employer offered language states for SECTION 2: The normal work period for all full-time Employees within the bargaining unit shall be a forty (40) hour workweek. Specific hourly and weekly work schedules may vary depending upon job assignments. ***Scheduled adjustments shall not occur solely to avoid the payment of overtime.*** Paid holidays, paid vacation leave and compensatory time shall be considered as time worked within the forty (40) hour workweek for purposes of this article.

DISCUSSION

The Union feels very strongly about this language, citing examples where they might have to work longer on one shift because of a “big raid” and then have hours cut later in the week and effectively lose money, since they might have a 2nd job or child care expenses as a result of working the extended shift. They do not want to lose their overtime by an adjustment in their schedule, during a week by the employer to save the Department money.

The Union also wants sick time included in the language. It is included in the Deputy Sheriff’s Contract 09-11 p.10.

RECOMMENDATION

All of the **Union’s language** is recommended for Article 15 Section 2.

ARTICLE 15 SECTION 4

UNION POSITION

SECTION 4: At the employee’s option, these overtime hours may be credited to the Employee as compensatory time at one and one-half (1 1/2) times the normal accrual rate, provided that the total number of hours accrued does not exceed two-hundred forty (240) hours. Use of compensatory time must be approved by the Employer and shall not be unreasonably withheld. In the event the Employee exceeds two hundred and forty (240) hours, the Employer shall pay the Employee all monies due the Employee for overtime actually worked.

The Union argued that this was below the Fair Labor Standards Act cap on compensatory time. The Union also argued that Sergeants have less opportunity to collect overtime than deputies have.

EMPLOYER POSITION

SECTION 4 At the Employee's option, these overtime hours may be credited to the Employee as compensatory time at one and one-half (1 1/2) times the normal accrual rate, provided that the total number of hours accrued does not exceed one hundred and sixty (160) hours. Compensatory time shall be used within three hundred sixty-five (365) days of accrual. Use of compensatory time must be approved by the Employer and shall not be unreasonably withheld. In the event the employee is unable to use compensatory time within three hundred sixty-five (365) days of accrual, the Employer shall pay the Employee all monies due the Employee for overtime actually worked.

The Employer argues pattern bargaining. The language they offer is the same as the language in the current Deputy Sheriffs' Contract January 1, 2009 to December 31 2011. p 11.

RECOMMENDATION

For Article 15 Section 4, the **Employer's** language is recommended.

ARTICLE 15 SECTION 5

UNION POSITION

The Union proposes a section under **Article 15, HOURS OF WORK/OVERTIME.** [Their language was amended during the hearing to provide an exception for specialty units.]

SECTION 5 The Employer shall not show preferential treatment in the distribution of overtime and shall insure an equitable distribution of overtime work. Specialty units are exempt from this language.

EMPLOYER POSITION

The employer objects to this language, arguing that it restricts management rights.

RECOMMENDATION

For Article 15, new Section 5, the **Union's** proposed language is recommended.

Article 17 ASSUMPTION OF RANK

UNION POSITION

This is a new article proposed by the Union and amended during the hearing: SECTION 1. The Employer will determine when the Sergeant is acting in a position of Lieutenant or Captain. An Employee assigned and performing the duties of the shift Lieutenant or Captain shall be compensated at a pay rate equal to the rank replaced for a minimum of four (4) hours, or hour-for-hour, whichever is greater. The Employee will continue in this position until the conclusion of his shift, unless another supervisor is assigned to that post to relieve the assigned office-in-charge.

EMPLOYER POSITION

The Employer is concerned about how this language would be implemented.

DISCUSSION

Extra pay for assumption of rank is in the Deputy Sheriff's contract P.11. The Union offered a 2006 Fact-finding as supporting evidence for their case.

RECOMMENDATION

The proposed language of the **Union** is recommended.

Article 20 UNIFORMS

UNION POSITION

The Union offered very specific language for Uniforms.

Article 20. UNIFORMS

Section 1 The Employer will continue to provide uniform clothing for Employees when they enter the bargaining unit. This includes summer and winter issue uniform clothing.

Section 2 Each Employee will be issued two (2) pairs of trousers and two (2) shirts, one (1) long sleeve and one (1) short sleeve, annually. A pair of boots, not to exceed one hundred and fifty dollars (\$150.00), annually. One coat/jacket every five (5) years.

Section 3 The Employer will provide compensation in the amount of nine hundred dollars (\$900.00) per year for each bargaining unit Employee as a maintenance allowance. Retroactive to 2010.

Section 4 The Employer shall issue each Employee two (2) uniform badges, sidearm, bullet-proof vest, less-than-lethal device, ammunition pouch, holster, handcuffs, whistle and chain, flashlight and holder, duty belt a winter hat and summer hat with hat badge and Rain Coat, Unserviceable items shall be replaced by the employer as soon as possible.

EMPLOYER POSITION

Article 20 UNIFORMS

SECTION 1 The Employer will provide the appropriate number of chevrons (Sergeant stripes, collar brass, badge and hat badge) for newly-promoted Employees, when they enter the bargaining unit.

SECTION 2 The Employer will provide compensation in the amount of fourteen hundred dollars (\$1,400) per year for each bargaining unit Employee as a uniform and maintenance allowance.

DISCUSSION

The parties are not very far apart on this issue. The Union argues that its proposal is less expensive than the Employer's position. The Employer clearly wants to shed the management problems of measuring and ordering uniforms and leave that to the employee. The Employer did try to assure the Union that it would continue to maintain certain worn out required items. The Fact-finder offers the following language to meet some of the concerns of both parties.

RECOMMENDATION

Article 20. UNIFORMS

SECTION 1 The Employer will provide the appropriate number of chevrons (Sergeant stripes) collar brass, badge and hat badge for newly promoted Employees when they enter the bargaining unit.

SECTION 2 The Employer will provide compensation in the amount of fourteen hundred dollars (\$1,400) per year for each bargaining unit employee as a uniform and maintenance allowance. Retroactive to 2010.

SECTION 3 The Employer will insure that each employee has two (2) uniform badges, sidearm, bullet proof vest, less- than- lethal device, ammunition pouch, flashlight and holder, duty belt, holster, handcuffs, whistle and chain and hat badge. Unserviceable items shall be replaced by the employer as soon as possible.

(Clarification of Fact-finder proposed Section C- This language is not to imply that a newly promoted Sergeant is to be issued all the new items listed under C, which was a concern of the Employer. It is to clarify that used, worn out, or no longer functional items listed are to be replaced in a timely fashion by the Employer.)

Article 25 EMPLOYEE ASSIGNMENT AND TRANSFER

UNION POSITION

The Union offered language providing for bidding for certain defined positions units and courts assignments. They propose that this bidding occur semi-annually.

Seniority would be the sole criteria for assignments. There was also language offered on notification of specialty post assignments. (See Union proposal SECTION 2)

During the hearing, some of the offered UNION language was moved to the Layoff and Recall section of the contract and will be addressed later. The Union offered language from a Fact-finding on this matter marked Union Article 25 into the record.

EMPLOYER POSITION

The Employer argues that this proposed language is an infringement of management rights and that the officers have different skills and personalities and some are better suited for certain jobs than others.

DISCUSSION

The Deputy's Contract requires that the Employer reserve 70% of the positions on each shift to the Courts and the Patrol Division units for bid by seniority. Not all assignments are based solely on seniority.

RECOMMENDATION

The position of the **Employer** is recommended.

Article 36 LAYOFF AND RECALL

UNION POSITION

The Union is quite concerned about the consequences of layoff and bumping rights of sergeants and their right to return to the deputy classification. During the hearing, the relevant language, addressing that issue in a previous article, was moved to this section of their contract language proposal. See below as SECTION 6. The other Union concern was their interest in indefinite reinstatement rights in SECTION 4 of this Article.

EMPLOYERS POSITION

The Employer was concerned about indefinite reinstatement language and wanted some limit. They proposed five years.

DISCUSSION

Regarding the bumping rights of sergeants into the Deputy classification the Union offered a Fact-finding opinion out of Licking County, addressing the issue of Bumping rights of Sergeants, which stated that if the bumping rights were restricted for Sergeants, "This proposal would serve as a disincentive for persons to attempt to advance in his or her

career.” Further developing this argument, that Fact-finder argued “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.” This Fact-finder/Conciliator strongly agrees with this offered Fact-finder’s opinion. The language to protect the bumping rights of sergeants into the deputy ranks is stated below in Section 6.

Regarding the indefinite reinstatement right, the Employer wants some finite limit recommendation offered below in SECTION 5.

RECOMMENDATION

The following language is recommended.

Article 36. LAYOFF AND RECALL

SECTION 1 When the Employer determines that a layoff or job abolishment is necessary, the Employer shall notify the affected Employee(s) and the Union at least fourteen (14) days in advance of the effective date of such layoff or job abolishment. If the Union requests, the parties shall meet to discuss the Employer’s action. Employees, whose jobs are abolished, shall have the same rights as a laid-off Employee, in accordance with the provisions of this Article.

SECTION 2 Whenever it becomes necessary to reduce the workforce, the Sheriff’s Office shall lay off Employees or abolish their positions only for reasons provided in sections 124.321 of the Ohio Revised Code. The Employer shall determine when a layoff or reduction will occur. The Employer’s decision shall be subject to the grievance Procedure herein and shall be filed directly to Arbitration.

SECTION 3 Bargaining unit Employee (s) with the least time in rank of Sergeant will be laid off first. In the event that more than one employee has the same date of promotions to Sergeant, the established seniority list will be used to determine the most senior Employee.

SECTION 4 Laid off Employees shall have the right to displace employees within the classification the employee held immediately prior to holding the classification from which the employee was laid off. Employees shall notify the appointing authority of their intention to exercise their displacement rights, within five (5) days after receiving notice of layoff. **Laid off employees who have been displaced to a lower classification retain their reinstatement rights for seven (7) years.** Employees shall exercise their reinstatement rights in the inverse order of layoff.

SECTION 5 The Employer shall post an up-to-date seniority list annually. Said list shall remain posted for a fourteen (14) day calendar period and shall include Employee's name and initial date of hire. After posting the list, any errors which are brought to the attention of the Employer within thirty (30) days of posting shall be corrected. It is the Employee's responsibility to check these lists for accuracy and request correction of errors in a timely manner. Otherwise, the Employer may rely upon the information in such lists.

SECTION 6 **If a Sergeant is reduced or the subject of lay-off or job abolishment, he shall be placed in the deputy sheriff classification. In no situation shall an employee who took a civil service exam prior to employment or prior to promotion be displaced by an employee who did not take a valid civil service exam prior to employment.**

SECTION 7 Notice of recall shall be sent to the Employee by certified or registered mail. The employer shall be deemed to have fulfilled its obligations by completing each of the following:

- a) Sending the recall notice by certified mail, return receipt requested, to the last mailing address provided by the Employee;
- b) Hand delivery to the President of the Union, or his designated Representative;
- c) posting said notice on the bulletin board.

SECTION 8 The recalled Employee shall have five (5) calendar days, following the date of receipt of the recall notice, to notify the Employer of his intention to return to work and shall have seven (7) calendar days, following the date of receipt of the recall notice, to report for duty, unless a different date for returning to work is specified in the notice.

Article 37 SICK LEAVE

There were a few sections on the Sick Leave policy where the parties had differences. The Employer's language, which is the same language in the current Deputy Sheriff's language, will be adopted, except if/when the Sergeant's Union prevails in its proposals.

There is different language proposed by the parties for SECTION 7:

EMPLOYER'S LANGUAGE

SECTION 7 If any disabling illness or injury continues past the time for which an Employee has accumulated sick leave, the Employer ***may*** authorize a leave of absence without pay for a period of up to six (6) months, upon the presentation of evidence as to the probable date for return to active work status. The Employee must demonstrate that the probable length of disability will not exceed six (6) months. If the Employee is unable to return to active work status within the six (6) month period, due to the same disabling illness, injury or condition, the Employer will be given a disability separation. A medical examination or satisfactory written documentation, substantiating the cause, nature, and extent of such illness, injury or condition, shall be required prior to the granting of such leave of absence or disability separation, unless the Employee is hospitalized at the time of request.

UNION POSITION

SECTION 7 The Union wants the word **may** changed to **shall**.

EMPLOYER POSITION

The Employer prefers to retain the **may** to provide it discretion and for pattern bargaining since **may** is used in the Deputy Sheriff's Contract p.28.

DISCUSSION

A member of the Union team argued forcefully that he personally encountered very serious challenges because he was denied sick leave and did not want other unit members to experience the same problems he experienced.

RECOMMENDATION

The **Union** position of changing the word **may** to **shall** is recommended.

Article 37 SICK LEAVE Section 10

UNION POSITION

The Union opposes the following Employer proposed language and wants it removed:

SECTION 10 If an Employee abuses sick leave in a pattern, as defined below the Employer will notify the Employee, in writing, that pattern abuse is suspected. Any subsequent requests for leave must be accompanied by a doctor's certificate. A pattern abuse of sick leave shall include, but not be limited to: consistent periods of sick leave usage before and/or after holidays, vacation days, regular days off, after pay days; absence following overtime worked; partial days; or a continued pattern of maintaining zero or near zero leave balances.

The Union maintains this language implies that members of the unit are sick leave abusers, which they vehemently deny, and want the language out. They argue that this was imposed and exported from a Fact-finding award for another unit.

EMPLOYER POSITION

The Employer denies that they are implying a pattern of abuse of sick leave by this unit. They point to pattern bargaining, the same language is in the new Deputy Sheriffs' Contract pp. 28-29.

DISCUSSION

Even if there is no current abuse, as the current members of the unit maintain and the Employer concurs, there is no reason to assume that future Sergeants might not abuse the use of their sick leave.

RECOMMENDATION

The **Employer's** position is recommended. This language in Section 10 under Sick Leave should be included in this contract.

Article 37 SICK LEAVE

SECTION 11 This article addresses cash payout of unused sick leave at the time of retirement.

UNION POSITION

SECTION 11 An Employee with ten (10) or more years of service, upon retirement is entitled to compensation, at his current rate of pay, for fifty percent (50%) of any earned, but unused sick leave to his credit, at the time of retirement of employment.

The Union is proposing no cap on the number of hours or days subject to this payout.

EMPLOYER POSITION

SECTION 11 At the time of retirement from active service with the Employer, provided that the Employee has completed ten (10) or more years of service, the Employee shall be paid in cash for one-half (1/2) of the value of accrued but unused sick leave credit, not to exceed six hundred forty (640) hours, [80] days.

The Employer argues the proposal far exceeds the state statute on sick leave payout and their language should be upheld. This is the same language in the Deputies contract and certainly has implications for pattern bargaining.

RECOMMENDATION

The language of the **Employer** for Section 11 of **Article 37 Sick Leave** is recommended.

Article 39 VACATION LEAVE

UNION POSITION

The Union proposes the following language:

SECTION 3 Each full-time member of the bargaining unit, with **Twelve (12)** or more years of service with the Employer, shall have earned, and is entitled to, one hundred sixty (160) hours of vacation leave with full pay. Such vacation leave shall accrue to the Employee at the rate of six and two-tenths (6.2) hours each biweekly period.

EMPLOYER POSITION

The Employer's language for **SECTION 3** is exactly the same except the Employer's language states **Fifteen (15)** or more years of service.

DISCUSSION

The Union argues that, they should not be held to pattern bargaining on every issue and they do not like what the Deputy Sheriffs agreed to in their contract on vacation because they ignored the middle career employee.

RECOMMENDATION

The following language is recommended:

SECTION 3 Each full-time member of the bargaining unit, with **Thirteen (13)** or more years of service with the Employer, shall have earned, and is entitled to, one-hundred sixty (160) hours of vacation leave with full pay. Such vacation leave shall accrue to the Employee at the rate of six and two-tenths (6.2) hours each biweekly period.

ARTICLE 39 VACATION LEAVE

During the course of the hearing, the parties agreed to the following language for SECTION 5:

SECTION 5 Vacation leave shall be taken by the Employee during the year in which it is earned and prior to the next recurrence of the anniversary date of employment. The Employer shall permit an Employee to accumulate and carry over his vacation leave to the following year. No vacation leave shall be carried over for more than **three (3) years**. Any vacation leave not carried over will be paid on the Employee's anniversary at the applicable rate of pay.

Article 40 USE OF VACATION LEAVE

UNION POSITION

The Union wants to add a SECTION 2 to the Employer proposed language on USE OF VACATION LEAVE. Their proposal adds a Section 2 which is exactly the same language that is in the Deputy Sheriff's Contract p 30. The proposal uses seniority and fixed dates for vacation date selection.

EMPLOYER POSITION

The Employer maintains that the Union proposal will have an adverse impact on the organization, especially in the area of Specialty units.

RECOMMENDATION

The **Employer's** position is recommended.

Article 49 LEAVE OF ABSENCE WITHOUT PAY

EMPLOYER LANGUAGE

SECTION 1 At the sole discretion of the Sheriff, a leave of absence without pay may be granted.

UNION POSITION

The Union wanted the "may" changed to "shall".

DISCUSSION

There appeared to be some misunderstanding that this was strictly a medical leave request. There is not "clear and unambiguous language" stipulating health reasons in Article 49 Section 1 for the purpose of the leave, under the Employer's proposed language. The Fact-finder made it clear at the hearing that he could not recommend the Union's preferred language since there were no limits for the basis of a request for the leave and this should remain a discretionary management right.

RECOMMENDATION

The proposed language of the **Employer** is recommended.

The Fact-finder respectfully submits the tentative agreements agreed to by the parties , the contract language from mediation incorporated in this document, and the recommendations stated above on the outstanding issues to the parties this 11th day of September 2010 in Mahoning County.

William C. Binning Ph.D.

Fact-finder