

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact Finding	*	
Between	*	
	*	FINDINGS
OHIO PATROLMEN'S BENEVOLENT	*	AND
ASSOCIATION	*	RECOMMENDATIONS
	*	
	*	09-MED-10-1112
and	*	
	*	Anna DuVal Smith
CUYAHOGA COUNTY	*	Fact-Finder
BOARD OF COMMISSIONERS,	*	
CUYAHOGA COUNTY SHERIFF'S	*	
OFFICE	*	

Appearances

For the Ohio Patrolmen's Benevolent Association:

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I. BACKGROUND

The Ohio Patrolmen's Benevolent Association has represented full-time corrections officers under the Cuyahoga County Sheriff since 1987, now numbering approximately 530-580. In part because of a change in the structure of Cuyahoga County's government, negotiations of a collective bargaining agreement to replace the 2007-2009 one progressed slowly. As of the first hearing date (March 10, 2011) 28 articles remained open. However, the parties completely resolved 13 issues and most of a 14th on the first day of hearing before the record was opened. Those settlements are hereby incorporated herein as if written at length: Article 1 (Preamble), Article 18 (Holidays and Holiday Pay), Article 23 (Personal Liability Insurance), Article 24 (Hours of Work), Article 25 (Breaks), Article 27 (Training), Article 31 (Shift and Days Off Selection), Article 36 (Emergency Equipment), Article 37 (Access to Refreshment), Article 39 (Employee Discipline), Article 40 (Grievance Procedure) (except for arbitrator compensation), Article 50 (Sick Leave Donation), Article 54 (Injury/Illness Leave), and Article 62 (Leave of Absence without Pay).

Remaining issues were heard on March 10 and 22 at the Cuyahoga County Sheriff's office in Cleveland, Ohio, before Anna DuVal Smith who was appointed Fact Finder pursuant to Chapter 4117 O.R.C. Present for the Ohio Patrolmen's Benevolent Association ("Union") were Lowell Bedard, Victor R. Hester, Brendan Mosan, and Debra Moss. Present for Cuyahoga County and the Cuyahoga County Sheriff's Office ("Employer") were Rosemary Gheen, Eric Ivey, Ken Kochevar, Victor McArthur, Matthew Rubino, and Ron Shobert. Both parties were afforded a complete opportunity to examine witnesses (who were sworn or affirmed), to present written evidence, and to argue their respective positions. At issue were Article 14 (Wages), Article 17 (Longevity), Article 19 (Uniform Allowance and Appearance), Article 20 (Group Insurance), Article 21 (Employee No Sick Time), Article 22 (Life Insurance), Article 26 (Overtime), Article 29 (Post Assignment), Article 34 (Health and Safety), Article 40 (Grievance Procedure), Article 49 (Sick Leave), Article 51 (Vacation Leave), Article 63 (Retirement), a new

article (Part-Time Employees) and Article 67 (Expiration and Renewal). The oral hearing concluded on March 22, 2011, whereupon the record was closed.

In rendering these Findings and Recommendations, the Fact-Finder has given full consideration to all reliable information relevant to the issues and to all criteria specified in §4117.14(C)(4)(e) and Rule 4117-9-05 (J) and (K) O.A.C., to wit:

- (1) Past collectively bargained agreements between the parties;
- (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 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) Stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or 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.

II. ISSUES, FINDINGS AND RECOMMENDATIONS

Article 14 - Wages

Position of the Union: The Union proposes what it characterizes as a fundamental change in the wage structure retroactive to 2010. The genesis of its proposal is in the wage reopener for 2009 wherein that fact-finder awarded 2% to all bargaining unit members at the after-5-years step by creating an additional after-6-years step. This meant that new hires through the after-5 years step got step increases only. That fact-finder also opined that the new step should be temporary and that the parties should consider a higher starting salary for the next collective bargaining agreement. Additionally, previous fact-finders/conciliators have pointed out that employees working 12-hour shifts have built-in overtime of 8 hours per pay period and so have annual earnings greater than their peers who work 8-hour or 10-hour shifts. For this reason, the Union proposes that 12-hour employees be paid on a salary basis. Finally, it proposes a shift differential of 50¢/hour for 8-hour employees required to work any part of the afternoon or midnight shift.

Position of the Employer: The Employer states its proposals are based on pattern bargaining concerns, its current budgetary condition and its inability to finance increases. For the third straight year non-bargaining employees in the Sheriff's Department and throughout the

County did not receive additional compensation. Indeed, they made concessions in the form of unpaid furlough days.¹

The recommended 2011 budget for the County is \$11.1 million (3.5%) less than the 2010 projection. Many county agencies were required to cut their 2010 budget by 7.5% after their budgets had already been reduced from 2009. The Sheriff's budget did better because it is a 24/7 operation in law enforcement and corrections, and had implemented cost-saving measures in 2010. Its reduction for 2011 was 1.5% (approximately \$780 million) on top of the 9% reduction in 2009. Protective Services which was transferred to the Sheriff in 2010 reduced its budget by 7.5% (\$429,000). The County Administrator's Recommended Budget holds salaries and fringes flat unless an existing collective bargaining agreement provides for one. Meanwhile, the Ohio economy shows no sign of a sustained recovery. For this reason it opposes any increase in salaries.

Recommendation of the Fact-Finder

To begin with, it simply is not true, as the Union asserts, that bargaining unit members with four years or less of seniority did not receive a raise in 2010. In fact, they received step increases by virtue of moving up on the steps. So, too, did those who were maxed out because that fact-finder created a 6-year step from which most of the bargaining unit benefitted. Secondly, the record shows that the deputies had a pay freeze in 2009 with reopeners in 2010 and 2011. The corporals, too, had a freeze in 2008 and reopeners on wages for 2009 and 2010. Third, while the Employer is naturally conservative in its projections, there are some bright spots. Property tax receipts have been coming in as expected, county sales and use taxes improved in 2010 (in part, at least) because of new items are being taxed. The early retirement program is showing results as the retirees are being replaced with cheaper labor and the medical mart and casino projects are progressing.

¹Three in 2009, 5 in 2010, 5 in the first half of 2011 with a good likelihood for 5 more in the second half of 2011.

There are also some signs of concern. While the economy is showing signs of recovery with a 2% growth rate expected for 2011, core inflation is still too low to suggest a robust recovery. The outlook for State budget support is bleak. Cuts in public assistance means Health and Human Services will require more local support from the General Fund for the weakest members of the population, although federal dollars may be possible.

As much as the Fact Finder would like to rebuild the wage structure by dropping a step, there just is not enough financial wherewithal to provide the 7-10% increases it would take for employees who have not yet reached the maximum. If there were more information about the seniority and classification distribution there could be another outcome in a future fact-finding. Moreover, while the Fact Finder is sympathetic to the midnight and afternoon shifts, she is unable to calculate the impact of a shift differential and so must deny that request as well.

Turning to the economic climate and the Employer's ability to finance an increase, the Employer admits that there are signs of improvement. Property tax receipts have come in as expected, sales and use tax receipts have improved (in part because new items are being taxed), and the medical mart and casino projects continue. The Employer has a healthy reserve (greater than 25% because of the sales tax increase). However, State resources formerly relied on are disappearing. These include cuts in local government funding and cuts in public assistance. Health and Human Resources needs support and it is not yet known whether and how much federal support might be available to pick up the slack.

The Fact-Finder concludes that the County can now afford, even in the face of the high unemployment rate and an economy growing at a nominal rate, 2% raises for its corrections officers in 2010 and in 2011. For 2012, she recommends a reopener on wages and other compensation.

Article 17 - Longevity

The present longevity benefit is that after 5 years of continuous service, employees receive \$300 per year. For each additional year after 5, they receive an additional \$50 every year until they retire. The Employer has tried to control the escalating costs since at least 2004 but

has been unsuccessful. Pointing out that using the 10-year employee as an average, there's a \$100,00 impact. Therefore, the Employer opposes the Union's demand and seeks a cap of \$1100.

The Union wants to catch up with its brothers and sisters in the deputies unit and so proposes to raise the initial longevity payment after 5 years from \$300 to \$375 and then add \$75 per year until retirement. Upon retirement, it asks that the benefit be pro-rated to reflect service in the year of retirement.

Recommendation of the Fact-Finder

It cannot be denied that Cuyahoga County corrections officers fall behind their fellows internally and externally, both in terms of initial annual payout and the maximum.² The eight external units averaged \$558.50 at 5 years and \$1608 at 25 years. Internally, the corporals start at \$125 at 5 years and max out at \$1625. The deputies start at \$125 at 5 years until retirement but have no cap. Using 25 years as the length of employment, the deputies maximum annual payment would be \$1875.

The Fact-Finder believes internal consistency on longevity is more reasonable in this case where a definite pattern is emerging than external comparables which have more variability as a set than the internals do. She therefore recommends the Union's proposal.

Article 19 - Uniform Allowance

Positions of the Parties

The current uniform maintenance allowance is \$200. This is in addition to the uniforms the Employer provides each year and replacement or damage to watches and eyeglasses. The Union asserts that this is woeful underpayment for upkeep and replacing belts and boots, and less than what corrections officers are provided in other counties. It would love to have what the deputies do—\$1400—but admits this is not prudent now. Therefore, it requests \$500 for 2010,

²The Fact-Finder calculated sums at 5 years and 25 years for Geauga, Lake, Medina, Trumbull, Portage, Lorain, Lucas, Hamilton and Start County as well as the Cuyahoga Sheriff's corporals and deputies.

\$550 for 2011, and \$575 for 2012. The Employer points out that the corrections officers are provided two sets of uniforms a year plus the maintenance allowance. What the Union is requesting would cost the County \$265,00, \$159,00 more than what it now pays.

Findings and Recommendation of the Fact-Finder

It is difficult to judge comparability with correctional officers in other counties because there are numerous ways in which the parties provide for necessary uniforms, equipment and maintenance thereof. However, there is an internal unit whose provision provides a reasonable resolution, that of the corporals, which has negotiated a \$250 annual benefit. The Fact-Finder accordingly recommends the same.

Article 20 - Group Insurance and Article 22 - Life Insurance

The Employer would delete “Board of Commissioners of” in §1 of Article 20 to conform with the change in Cuyahoga County’s governance structure. It would also replace the existing first clause in §2 of Article 20 (“Effective the first month following ratification”) with “For the remainder of calendar year 2011”. The Employer also proposes moving life insurance (now Article 22) into Article 20 and rewording the benefit as follows:

“Section 5. The County shall provide life insurance to all bargaining unit employees on the same terms and conditions as offered to all other County employees.”

The Union prefers the “equal or better” language it currently enjoys for life insurance but does not object to including life insurance in the same article as other insurances. The Union has no explanation for its position for opposing language reflecting the reality of county-wide uniformity. Since it also prefers a 3-year agreement, it would not include the phrase “For the remainder of calendar year 2011”.

The Fact-Finder recommends consolidating these insurances into a single article, changing the designation of the Employer to “Cuyahoga County,” retaining the “equal or better” expression, and replacing the Section 3 language “Effective the first month following ratification” with “For the remainder of 2011”,

Article 21 - Employee's No Sick Time

The Employer wishes to delete this provision which provides continuation of fully paid hospitalization and surgical medical benefits for eligible employees and their family members for a maximum of 2 months after an employee has exhausted his accrued sick time. The Union would retain it as it is.

The Fact-Finder notes that the parties acknowledge this is a rarely used benefit – used only once in the past nine years. Moreover, it is not unique as the deputy sheriffs have the provision in their contract. The Fact-Finder sees no reason to eliminate this benefit at this time and so recommends its retention.

Article 26 - Overtime

The current provisions at issue are Section 1 and 2:

SECTION 1. An Employee required to work more than forty (40) hours in any workweek shall be compensated at one and one-half (1-1/2) times his regular rate of pay or, at the Employee's option, receive compensatory time credited at one and one-half (1-1/2) hours for each overtime hour worked. Employees will be provided with a weekly opportunity to state their choice of compensation. Compensated sick time, holidays, vacation or compensatory time shall be considered time worked. Employees called into work or court on a scheduled day off shall be compensated at the rate of one and one-half (1-1/2) times their regular rate of pay.

SECTION 2.

At the end of the 18th and 26th pay periods, compensation time (accumulated more than one hundred eighty (180) days prior to said pay period) which has not been used by the employee shall not be subject to loss but shall be paid to the employee by the employer.

The Employer would delete "sick time" as "time worked" (in Section 1) as in calculating overtime because the provision permits corrections officers to call in sick and collect overtime while the CO's replacement collects overtime as well. This practice, it says, under the Union's proposal would build in 90,896 overtime hours. In further support of its position, it cites 5 other bargaining units that do not have sick leave calculated in the computation of overtime, 4 that do.³

³Corporals, Communications Workers of America, Deputy Sergeants and Registered Nurses

As for clearing the bank of aging time (now more than 180 days prior to pay period), the Employer proposes to raise it to 365 days.

The Union is passionately opposed to the Employer's proposal and offers its own improvement: a bank maximum of 480 hours and retention of sick time as "time worked."

Employees shall be able to earn overtime and compensatory time at the rate of time and one-half and bank said time up to a maximum of four hundred eighty (480) hours. Unused compensatory time will be paid upon retirement, or in the event of death to the estate of the employee, at the employee's current average hourly rate of pay upon retirement or death. Pre-approved compensatory time off can only be cancelled for a state of emergency or city emergency, not solely because it will create overtime.

Historically, it says, it was the Employer that wanted 12-hour shifts at a time when there were 591 employees, but now the number of employees is so low that it is hard to get vacation or a day off for relief from long days at work as there is not enough staff for coverage.

Recommendation of the Fact-Finder

The parties have radically different positions on this issue, but these differences seem to have a common base—a 12-hour work day and insufficient numbers of corrections officers generating overtime which, in turn drives the need for time off. The Fact-Finder has considered a recommendation of status quo but believes the parties could benefit from the following: Lifting constraints on pre-approved compensatory time off as proposed by the Union, a larger bank maximum (365 days) and eliminating compensated sick time as time worked.

Article 29 - Post Assignment

The current provision at Section 2 provides:

When filling specialty area posts, the Employer shall accept and review requests from all interested employees.

The Employer shall have the right to determine and select the individual it believes to be best qualified for the position, giving due weight to:

- work experience;
- education;
- job performance;
- ability to perform the duties;
- attendance records;
- discipline records;
- seniority.

The Union asserts that employees are being removed from their specialty jobs for minor rule violations. This, it says, is counterproductive for both the Employer and the employee because the employee takes his/her experience with him/her and is inconvenienced by different working hours, days off, vacation, and shift length. Therefore, the Union proposes new language:

If an Employee is to be removed from his specialty position for discipline, the removal shall be made at the next shift bidding opportunity. Employees shall not be removed for his specialty position for less than 18 total hours of A.W.O.L. in a rolling calendar year.

The Employer defends saying filling post assignments is a core management right. This is why seniority is at the bottom of the list of factors to be applied, and when an employee is disciplined, it is not automatic that the employee is removed from their post. The problem pointed out by the Union is usually an issue between roster changes. It is rare, but when it does happen, it is not good for either party.

Recommendation of the Fact-Finder

Inasmuch as the situation described at the hearing that inspired this proposal is a rare one, there should be no change at this time.

Article 34 - Health and Safety, New Article - Part-Time Employees

The Union objects to double-podding⁴ except on a very short term basis such as during lunch or in an emergency and so seeks language to control the process. It admits double-podding is not now occurring but does not want it to happen again. The night shift in particular is worrisome because of low lighting and staffing has at times been short the COs have had trouble getting restroom breaks. The Union's proposed language is:

Section 9. All jail security posts within the jail shall be staffed at all times. There shall be no double-pod security posts except in the case of emergency or lunch period. In any event of double-podding, all inmates are to be locked down.

There shall be at least one rover/relief officer assigned per jail floor at all times.

⁴One corrections officer covering two separate security posts at the same time.

The Employer did not respond to this proposal but has a proposal for a new article to allow for part-time employees to perform bargaining unit work:

Section 1. The Employer reserves the right to assign bargaining unit work to part-time Employees when the Employer, in its sole discretion, determines that such assignment of work is required to cover unexpected absences or to provide relief. Such assignment of work shall not result in a layoff.

Section 2. Part-time Employees shall be compensated at a flat rate of \$12.35/hour and shall not be entitled to any other contractual or other benefits accruing to full-time bargaining unit members.

The Fact-Finder finds these issues to be related both in subject (how to provide adequate staffing) and time-frame (lack of immediacy). For this reason, she recommends neither proposal but suggests a bipartite committee to study the staffing issue.

Article 40 - Grievance Procedure

The parties settled all open issues with regard to this article except how to allocate the responsibility for arbitrator compensation. The present contract provides for equal sharing of arbitrator fees. Pointing out that this bargaining unit generates more grievances than other Sheriff's units, the Employer seeks a loser-pay provision. The Union responds that although five or six cases a month are advanced to arbitration, most discipline is inmate generated in an environment of confined space. Under these conditions the numbers are not surprising. Therefore the Fact-Finder should leave the provision unchanged.

The Fact-Finder is not persuaded by the sheer numbers. In order to evaluate whether a loser-pay provision would have an impact on reducing the arbitration caseload, a study would have to be performed to determine the ultimate fate of those advanced to arbitration, internally and also in comparison with other comparable units. Current language is recommended.

Article 49 - Sick Leave

Section 1: The expiring contract provides for accrual of .0575 hours for each hour worked up to 120 hours/year. The Union would remove the cap entirely. The Employer entered fact-finding with no proposal for changing this section but amended its position at hearing to account

for the fact that most of the bargaining unit works 12-hour shifts and so proposed to lift the cap to 126 hours/year (\$0.0575/hour capped at 2188 hours).

Recommendation of the Fact-Finder: While noting the Union claims of the hardship of corrections officer work, lifting the cap entirely cannot be countenanced and so the Employer's proposal is recommended.

Sections 3 and 4: During the course of the hearing the parties resolved Section 4, and that settlement is recommended herein as if written at length. The Fact-Finder also recommends changing "with" to "subject to" in the first sentence of Section 3.

Sections 5 and 9: The existing Section 5 language is as follows:

Falsification of either the signed statement or a physician's certificate or application for use of sick leave with the intent to defraud shall be grounds for disciplinary action, up to and including dismissal. An Employee who engages in patterned use of sick leave shall be warned by the Employer. If the Employee continues to engage in such conduct, the Employee may be required to submit medical documentation for the future use of sick leave.

The Employer would add a sentence to the above to provide examples of what constitutes pattern use/abuse:

A pattern use/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 insists that the pattern abuse reference be stricken because, it claims, the provision is unclear as to what constitutes "pattern abuse." Moreover, management is partly at fault because when employee requests for time off are frequently and often unreasonably denied. To the extent there is a problem, a monthly incentive for consistent attendance could improve matters. It therefore proposes the following:

Section 9: In the event that an employee does not use any sick leave; worker's compensation; or any unpaid leave of absence, he shall be entitled to a sick leave incentive bonus on a monthly basis, in accordance with the following schedule:

\$50.00 per month	January 1 - June 30	\$300.00
\$50.00 per month	July 1 - December 31	\$300.00

Sick leave incentive bonus shall be paid in the first paycheck, following the completing of the above listed dates, as defined within this section.

Recommendation of the Fact-Finder: The Union is of the view that management is, at least in part, responsible for the employees' usage of sick leave because requests for time off are frequently denied. True or not, it is hard for a neutral to justify a cash incentive just to come to work as scheduled, particularly—as here—where there is no evidence of effectiveness in other similar settings. As for the Employer's proposal, the "pattern abuse" provision in existence does not provide much in the way of guidance to employees and supervisors. What the Employer proposes provides needed clarification and thus guidance to both and is therefore recommended.

Article 51 - Vacation

The parties have identical proposals for Section 2 which grant 120 hours of vacation leave with full pay for bargaining unit members with 6 or more years of service. The Fact-Finder endorses that provision. They part company on Section 4 which currently provides 200 hours of vacation at 25 years, the Union seeking 21 years, the Employer preferring status quo. The basis for the Union's request for additional hours at the 200 hours step is that this is what the deputies have. In addition, the Union would add language to Section 5 stating "Any vacation leave not carried over will be paid on the Employee's anniversary at the applicable rate of pay." The Employer sees no need for this as it is current practice.

Recommendation of the Fact-Finder: The Fact-Finder endorses agreed-upon amount of vacation for 6-year employees, i.e. 120 hours. She also recommends Union's request to incorporate current practice with respect to payout into Section 5. However, she does not recommend the Union's proposal for Section 4 to lower the threshold for retirement inasmuch as only one other unit in the County has the lower threshold and it was justified with a 65-year retirement age.

Article 63 - Retirement

The current provision at issue provides at Section 1 compensation at retirement for unused sick leave according to the following schedule:

10-15 years of service	25% up to 240 hours
16-20 years of service	25% up to 480 hours
21+ years of service	25% up to 720 hours

The Employer wishes to retain the current benefit and points out that it is a vestige of richer times. The Union, borrowing from the deputies' contract, wants to improve the benefit to 50% capped at 640 hours at 10 years or more:

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 entitled to be paid in cash for one-half (½) of the value of accrued but unused sick leave credit, not to exceed six hundred forty (640) hours [eighty] (80) days].

Recommendation of the Fact-Finder: The Fact-Finder notes that the Union's proposal appears to be a relatively rich improvement despite the lower hours cap (640 v. 720). This is because the percentage is doubled and it eliminates the tiers, i.e., there is both a larger percentage and it applies to all those eligible regardless of length of service. In these economic times this Fact-Finder cannot consider such a provision without some reasonably reliable cost estimates and knowledge of experience with attendance under a similar plan. Therefore, the current provision should be retained.

IV. SUMMARY OF RECOMMENDATIONS

<u>Item</u>	<u>Recommendation</u>
Article 14 - Wages	2% (2010), 2% (2011), Reopener (2012)
Article 17 - Longevity	\$375 after 5 years, add \$75 per year thereafter, pro-rate the benefit in the year of retirement
Article 19 - Uniform Allowance	\$250 a year
Article 20 - Group Insurance Article 22 - Life Insurance	Consolidate the articles & other minor modifications Equal or better
Article 21 - Employee's No Sick Time	Current language
Article 26 - Overtime	Lift constraints on pre-approved comp time; raise bank maximum to 365 days; eliminate compensated sick time as time worked
Article 29 - Post Assignment	Current language
Article 34 - Health & Safety New Article - Part Time Employees	Current language Refer to study committee
Article 40 - Grievance Procedure	Current language
Article 49 - Sick Leave	Lift cap on accrual to 126 hours Section 3: change "with" to "subject to" Section 4: as agreed by the parties Section 5: Employer's definition of "pattern abuse" Section 9: No provision for sick leave incentive bonus
Article 51 - Vacation	Section 2: 120 hours at 6 years Section 4: Current language Section 5: Incorporate current practice on pay-out
Article 63 - Retirement	Current provision

Respectfully submitted,



Anna DuVal Smith, Ph.D.
Fact Finder

Cuyahoga County, Ohio
June 22, 2011

CERTIFICATE OF SERVICE

I certify that on the 22nd day of June, I served the foregoing Report of Fact Finder upon each of the parties to this matter by emailing a copy to them at their respective addresses as shown below:

Christopher Russ
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Michael John Hostler
attyhostler@yahoo.com

I further certify that on the 22nd day of June, I submitted this Report by emailing it to the State Employment Relations Board at med@serb.state.oh.us



Anna DuVal Smith, Ph.D.
Fact Finder