

Received Electronically @ SERB Aug 23, 2011 8:30am (oob)

**STATE OF OHIO  
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD  
IN THE MATTER OF THE FACT FINDING PROCEEDING IN  
CASE NOS. 10-MED-09-1327, 10- MED-09-1328, 10- MED-09 1329,  
10- MED-09-1330 AND 10- MED-09-1331**

**TEAMSTERS LOCAL UNION NO. 637**

**and**

**JACKSON COUNTY SHERIFF**

**REPORT AND RECOMMENDATIONS OF THE FACT FINDER**

**John F. Lenehan**

**Issued August 22, 2011**

**Appearances:**

**VIA E-MAIL**

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## REPORT AND RECOMMENDATIONS

### **I BACKGROUND**

On May 27, 2011 The State Employment Relations Board (SERB) appointed John F. Lenehan as the Fact Finder in the cases of Teamsters Local Union No. 637 and Jackson County Sheriff, Case Nos. 10- MED- 09-1327, 10-MED- 09-1328, 10-MED- 1329, 10-MED- 1330 and 10-MED-1331.-0987. The parties mutually agreed to extend the filing of the fact finding report until August 22, 2011, as provided under the Ohio Administrative Code, Section 4117-9-05 (G). A Fact Finding Hearing was held on July 21<sup>st</sup> and 22<sup>nd</sup> 2011 at the Jackson County Health Department in Jackson, Ohio. Present for and on behalf of the Employer were: 1) Brad E. Bennett, Counsel and Chief Representative; 2) John L. Shasteen, Sheriff; 3) Jim Riepenhoff, Commissioner; and 4) Clyde Holdrer, Auditor. Present for and on behalf of the Union were: 1) Susan D. Jansen, Counsel and Chief Representative; 2) John Sheriff, Secretary-Treasurer; 3) Jeffery Heft, Sergeant; 4) Peggy Howell, Dispatcher; Rodney Shepherd, Deputy; 5) Charles Chapman, on July 21, only; 6) Arie Yates, Sergeant Road Patrol.

During the Fact Finding Hearing efforts were made to mediate the outstanding issues. While the parties had some success, they were unable to resolve all outstanding issues.

#### **A. Description of the Bargaining Unit**

The parties are Teamsters Local Union No. 637 (Union) and the Jackson County Sheriff (Employer). The Union represents the following five (5) distinct bargaining units: 1) Deputies (seven employees; 2) Sergeants and Corporals (nine employees, eight of which are in the Jail

Operations); 3) Dispatchers and Dispatch Supervisors (two, one supervisor and one dispatcher); 4) Fulltime clerks (two); and, Correction Officers (fifteen, eleven full-time and four part-time).

The Employer is the Jackson County Sheriff (Sheriff, Employer or Sheriff Office) which serves approximately 33,000 citizens throughout Jackson, County, Ohio. Its functions consist of providing common pleas court services, correction services and police services to areas throughout the county.

### **B. Bargaining History**

Although there are five (5) bargaining units there has been only one agreement covering all units. The most recent agreement had an original expiration date of May 14, 2009, which was extended for one year making the expiration date May 14,, 2010. This agreement was between the Jackson County's Sheriff's Office and the Fraternal Order of Police, Ohio Labor Council, Inc. When the extension expired on May 14, 2010, the bargaining units were involved in a representation election between the F.O.P. and Teamsters Local No. 637. The Five bargaining units described herein elected to be represented by the Teamsters while another bargaining unit consisting of Lieutenants and Captains elected to stay with the F.O.P. The Employer reached an agreement with its F.O.P. unit of Lieutenants and Captains. On September 27, 2011, Teamsters Local No. 637 became the certified bargaining representative for all of aforementioned bargaining units. Since that date the parties have engaged in joint multi-unit bargaining to arrive at a first collective bargaining agreement for the Teamsters Local 637 and the Jackson County Sheriff.

Although the parties engaged in multiple bargaining sessions, they were unable to reach an agreement on all terms and conditions of employment. As a result they reached impasse, and commenced the current fact finding process, as required by law. At the time of the

commencement of the fact finding hearing substantive issues remained as to the following fourteen (14) articles:

1. Article 8, Investigations and Discipline
2. Article 14, Occupational Safety and Equipment
3. Article 15, Hours of Work and overtime
4. Article 16, Wages
5. Article 17, Holidays and Personal Day
6. Article 19, Sick Leave
7. Article 20 Leave
8. Article 21, Uniform and Equipment Allowance
9. Article 22, Insurance
10. Article 27. Paid Absence Days
11. Article 32, Professional Incentives
12. Article 34, Past Practice
13. Article 35, Bargaining Unit Work for Bargaining Unit Members
14. Article 36, Duration of Agreement

During the fact finding hearing the parties reached tentative agreements and signed off on Articles 8, 17 and 19.

## **II CRITERIA**

Pursuant to the Ohio Revised Code, Section 4117.14 (G) (7), and the Ohio Administrative Code, Section 4117-95-05 (J), the Fact Finder considered the following criteria in making the recommendations contained in this Report.

- 1) Past collectively bargained agreements between the parties;
- 2) Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employers in comparable work, given consideration to factors peculiar to the area and the classifications 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 on the normal standards of public service;
- 4) Lawful authority of the public employer;
- 5) Stipulations of the parties; and,
- 6) Such factors as not confined to those above which are normally and traditionally taking into consideration.

## **III ISSUES AND RECOMMENDATIONS**

### **Issue #1**

### **ARTICLE 8**

### **INVESTIGATIONS AND DISCIPLINE**

## **FINDING AND OPINION**

On July 22, 2011, the parties successfully mediated all outstanding issues under Article 8 and signed a Tentative Agreement. It is the finding and opinion of the fact finder that the Tentative Agreement is to be incorporated herein and made a part of this report.

## **RECOMMENDATION:**

Therefore it is the finding and recommendation of the fact finder that a copy of the Tentative Agreement on Article 8 executed by the parties on July 22, 2011 be incorporated into this report as Appendix "A".

Article 8 should read as follows:

### **ARTICLE 8 INVESTIGATIONS AND DISCIPLINE**

#### **Section 8.1. Internal Investigations**

- A. Any Employee who is to be questioned as a suspect in any investigation where criminal charges may result, shall be advised of his constitutional rights in accordance with the law.
- B. Before an Employee may be charged with insubordination for failure to answer questions or for failure to participate in an investigation, he shall be advised that such conduct, if continued, may be the basis for such a charge and read his Garrity rights. During interviews where an action of record may occur, if an Employee desires, he shall be given a reasonable opportunity to be represented by an appropriate Union representative and/or an attorney before being required to answer questions.
- C. Any interrogation, questioning, or interviewing of an Employee will be conducted at hours reasonably related to his shift, preferably during, or immediately after his working hours, unless the situation dictates otherwise. Interrogation sessions shall be for reasonable periods of time, and time shall be allowed during such questioning for rest periods and attendance to other physical necessities.
- D. Either party may make audio tapes of interrogation sessions should they so desire. The party who wishes to make an audio tape shall tell the other party before the taping begins and will also indicate when the taping is finished. However neither party is required to make tapes and unavailability of taping equipment or inability of either party to make audio tapes shall not serve as a basis for postponement of interrogation sessions.

- E. . When any anonymous complaint is made against an Employee, the Sheriff or his non-Bargaining Unit designee may investigate and if there is no corroborative evidence, the complaint shall be classified as unfounded and no action will be taken.
- F. Any Employee, who is charged with violating Office Rules and Regulations will be provided access to transcripts, reports, records, lists, written statements, and tapes pertinent to the case at the time he receives notice of the charges.
- G. Any Employee who has been under investigation shall be informed, in writing, of the outcome of the case at the conclusion of the investigation.
- H. The Employee shall be informed of the nature of the investigation prior to questioning. At any time an investigation concerning an Employee occurs wherein disciplinary action of record, (suspension, reduction, or removal) will or may result, the Employee will be notified when he is first questioned, that such result is possible.
- I. The Sheriff shall not, in the course of an investigation, obtain evidence through the use of threats or coercion.
- J. The Employer will not use a polygraph machine or other mechanical or chemical means to investigate the truth of statements made by members without the written consent of the member.
- K. . Any citizen person wanting to file a complaint against a Bargaining Unit member shall be required to reduce the complaint to writing and sign and date the complaint. Any noncriminal complaint received more than thirty (30) days from the incident or knowledge thereof shall be limited in disciplinary action to verbal and/or written reprimand. The Employer shall inform the complainant that any complaint that is filed, which after investigation is found to be untruthful, shall be forwarded to the Bargaining Unit member, who has the right to seek appropriate legal remedies.
- L. No more than five (5) days after a written complaint is received by the Sheriff, the Employee about whom the complaint is filed will be notified of same and provided with a copy of the complaint, unless the Employee is on approved leave.
- M. Investigations of a non-criminal allegation, that have resulted from a complaint being filed as specified above, shall be initiated within seventy-two (72) hours of the complaint being brought to the Sheriff's or his designee's attention.
- N. Any investigation begun pursuant to (M) above shall be completed no more than thirty (30) days from the date it was started, unless agreed to otherwise between the parties. If the investigation being conducted pursuant to (M) above will not be complete within the thirty (30) day time period, the Sheriff or his designee shall notify the employee.

**Issue #2**

**ARTICLE 14**

**OCCUPATIONAL SAFETY AND EQUIPMENT**

The parties have indicated an agreement to changes to Sections 14.2, Safe Equipment and 14.3, Training. Neither the Union nor Employer proposed any change to Section 14.1. However, the employer is not in agreement on the Union's proposals to 14.4 , Firearms Qualifications and 14.5, Minimum Staffing. Nor is the Employer in agreement with the Union proposal to maintain cages in all transportation vehicles.

**UNION'S POSITION**

Under the current provisions of Section 14.4, the Employer is to provide firearms qualifications on an OPOTA approved course once each calendar year for all peace officer certified bargaining unit employees. The Union seeks to add to this requirement, a provision that would require the Employer to provide firearms qualifications each year to all jail employees required to perform inmate transportation. According to the Union such a provision is necessary because there are many instances where jailers are required to transport inmates by themselves and without assistance. Further the Union stated in its prehearing statement that it would present evidence of instances where family members of an inmate acted in order to interrupt the transport of an inmate relative. This according to the Union places the jailer who is transporting an inmate in jeopardy.

The minimum staffing provisions of Section 14.5 of the current contract requires a minimum of two (2) road officers per shift on duty in the County when possible. The Union proposed to add this minimum staffing requirement to the jail. It claimed that this minimum staffing level is currently required by law and would not impose additional costs upon the Employer. At the hearing on July 22, 2011, the Union withdrew its proposal on minimum staffing.

In addition the Union proposes that cages would be maintained in all transport vehicles. This, according to the Union, is an issue of safety for the jailers transporting inmates.

## **EMPLOYER'S POSITION.**

The Employer's request regarding Section 14.2 was to clarify that it is only obligated to provide required training for employees. In addition, the Employer wanted reflect the current practice as to the issuance of shotguns. Historically, the Employer had a limited supply of shotguns which necessitated the provisions of Section 14.2. Since the Employer now has an ample supply of shotguns and rifles available, the Employer's proposed change to this Section would reflect the fact that shot guns are available for each cruiser should the deputy wish to use them.

Although the Employer agreed to include the Union's change to Article 14.3 as drafted in the Employer's last offer, it does not see the need to contractually be required to send Corrections Officers who provide transport to OPOTA certified firearms training. Unlike Deputies, Corrections Officers are not required to have this training as part of their job. Nor are they required to carry firearms. They also primarily transport inmates, not new arrestees, as do deputies. The inmates have been searched, placed into secured facilities and shackled prior to transport. This also makes the requiring of cages in transport vehicles unnecessary. According to the Employer, it has three transport vehicles for use by Corrections Officers. Two of the three transport vehicles are already equipped with cages. Since the cost to provide cages can be thousands of dollars, and with the uncertainty in the Employer's budget, this would not be a necessary cost at this time.

The Employer argued in its prehearing statement that the Union's demand for minimum manning was a permissive topic for collective bargaining. In support of its position, it cited Ohio Revised Code Section 41117.08 (C) (6), which states that "determining the adequacy of the work force" is not a mandatory subject for bargaining unless agreed to by the employer. Citing the case of *In re Salem Fire Fighters, Local 283*, SERB 2008-ULP-09-0380, the Employer infers that since there is no pre-existing minimum manning requirement for jail operations in the current CBA, it has no duty to continue bargaining on this matter.

In addition, the Employer stated that no other comparable sheriff's office within the counties contiguous or double contiguous to Jackson County had a minimum manning provision for Corrections Officers or Jail employees in their Collective Bargaining Agreements.

Considering the current financial situation of the Employer and the potential increase in personnel costs for those situations in which the Employer would be forced to hold over employees or call them in at overtime pay in order to comply with a minimum staffing requirement, the Employer cannot, and should not be bound to a minimum manning requirement for the Jail. With the Union's withdrawal of its proposal on this issue, the subject is now moot.

### **FINDING AND OPINION**

Since there was no proposed change to the language of Section 14.1, the language should remain the same as it is in the current contract. The changes the parties indicated that they would agree to in Sections 14.2 and 14.3 should be adopted and incorporated in Article 14. Those changes are set forth in the following recommendation.

The Union's proposal under Section 14.4 to provide firearms qualifications each calendar year to all jail employees required to perform inmate transportation should be denied. The evidence submitted by the Union was insufficient. The Employer's position is more persuasive. The Corrections Officers are not required to have this training as part of their job. Nor are they required to carry firearms. Also, they are primarily transporting inmates, not new arrestees. Prior to transport, the inmates have been searched, placed into secured facilities and shackled.

Had the Union not withdrawn its proposal on minimum staffing of three (3) corrections officers and one (1) supervisor at all times, the Employer would have prevailed on this issue. While it could be argued that the employer may have opened the door for mandatory bargaining on this subject because of the minimum staffing provisions for road officers in Section 14.5, it is the Fact Finder's opinion that minimum staffing for jail personnel would be permissive in this situation. The current agreement contains no provision for minimum staffing at the jail. Thus, the Employer would have no duty to continue bargaining on this issue. In addition the evidence indicates that other comparable sheriffs' offices within the surrounding counties to Jackson County do not have minimum manning provisions for Corrections Officers or Jail employees in their contracts. Finally, a minimum staffing requirement would increase personnel costs at a time when the Employer cannot afford it.

Based upon the reasons set forth above for denying the training for firearm qualifications each year to all jail employees, the Union's proposal under Section 14.5 for maintaining cages in

all transportation vehicles should be denied. The evidence submitted by the Union was not sufficient to justify expenditure of county resources.

Since the Union has withdrawn its proposal on minimum staffing under Section 14.5, its proposal on maintaining cages in all transportation vehicles should not be adopted there should be no change in the language of Section 14.5.

**RECOMMENDATION:**

Therefore it is the finding and recommendation of the fact finder that Article 14 should read as follows:

**ARTICLE 14  
OCCUPATIONAL SAFETY AND EQUIPMENT**

**Section 14.1 Safety Policy**

The Employer agrees to furnish and to maintain in safe condition all tools, facilities, vehicles and equipment and supplies he reasonably deems necessary to safely carry out the duties of each Office position, but reserves the right to determine what those facilities, vehicles and equipment shall be. Employees are responsible for reporting to the Employer any unsafe conditions or practice and for properly using and caring for all tools and equipment furnished by the Employer.

**Section 14.2 Safe Equipment**

The Employer will provide, at no cost to the employee, adequate rounds of ammunition to be used for in-service firing qualification.

Adequate first aid equipment and required training will be provided.

At least twice a year every police cruiser will be taken to a service center for a complete mechanical/safety check.

Shotguns and extra ammunition for the shotgun will be made available by the Employer for use in cruisers.

**Section 14.3 Training**

The Sheriff shall provide the state mandated training and shall continue to pay employees to attend such training. Any additional training paid for by the Sheriff's Department or funds controlled by the Sheriff's Department will be first offered to Sheriff's Department employees.

The Sheriff agrees to provide additional training as reasonably determined to be needed at the discretion of the Sheriff.

#### **Section 14.4 Firearms Qualification**

The Employer agrees to provide firearms qualification on an OPOTA approved course once each calendar year for all peace officer certified Bargaining Unit Employees. The Employer will provide 100 rounds of ammunition per member being certified during the qualification process.

#### **Section 14.5 Minimum Staffing**

The Employer shall maintain a minimum staffing of two (2) Road Officers per shift on duty in the County when possible. Supervisors for purpose of this section are considered Road Officers.

The parties may by mutual agreement address the issue of minimum staffing any time during the administration of this Agreement

### **Issue #3**

## **ARTICLE 15**

### **HOURS OF WORK AND OVERTIME**

Neither party has proposed changes to Sections 15.1, 15.2, 15.3, 15.4, 15.6 and 15.9. The Employer would maintain the status quo under the language of the F.O.P. contract. The Union, however has proposed specific changes to 15.5, 15.7, 15.8, 15.10 and a new Section 15.11.

#### **UNION'S POSITION**

Under Section 15.5, the Union proposes the minimum time an employee shall be paid at the overtime hourly rate for court attendance shall be no less than four (4) hours. This increases the minimum time from three (3) hours to four (4) hours.

The procedure for assigning overtime is set forth in Section 15.7. The Union seeks changes in Section 15 (C) which provides for assigning and requiring mandatory overtime to guarantee proper manpower or coverage at the jail. Currently, this section provides that if after the overtime list has been exhausted and the manpower needs have not been met, the Employer may fill the remaining manpower requirements for the overtime detail by mandatory assignment of any employee available. According to the Union, this has the effect of requiring employees to work beyond the end of their shift and well into the next shift, oftentimes working two shifts consecutively. The Union proposes that rather than forcing the available employee to work a double shift, the Employer should require employees, beginning with the least senior, to work the overtime, however, no employee should be forced to work overtime for consecutive shifts.

In Section 15.8, the Union proposes to increase the compensatory time bank from the seventy-five (75) hours to eighty (80) hours. The Union submitted into evidence a copy of the provisions of the 1997-1999 F.O.P. CBA (Union Exhibit #2) which established that the compensatory time bank was two hundred and twenty-five (225) hours in the 1997 -1999 contract. It was reduced to fifty (50) hours in the 2000-2003 CBA, and subsequently increased to seventy-five (75) hours in the 2006-2009 CBA, which is the current cap. In support of its proposal, the Union submitted external comparables (Union Exhibit #3) from SERB Region 6, which included Jackson, and the contiguous counties, indicating that other Sheriff Departments either had no cap on compensatory time accrual or the cap was significantly higher than that in Jackson County.

The Union also proposes changes to Section 15.10 regarding shift scheduling. The current language of this section provides that the Sheriff will continue his practice of working with road patrol employees in the scheduling of shifts. Since the Employer has agreed to allow jail employees to bid on shift selection every six (6) months, the road patrol deputies are seeking parity with the jailers.

For the jail employees, the Union proposed a minimum manpower of five (5) jailers and two (2) supervisors of the first and second shift. The Union also proposed a new Section 15.11 providing that bargaining unit employees be brought in prior to their scheduled start time to receive briefing and be paid the applicable rate for time spent.

## **EMPLOYER'S POSITION**

The Employer does not see the need to break from the F.O.P. contract. An employee who must report to court on behalf of the Department is paid for all time actually at the court after three hours. The cost of adding another hour at the overtime rate is not needed, and certainly not warranted. Thus, there is no need to change the provisions of Section 15.5.

As to the Union's proposal on Section 15.7 (C), the Employer asserts that the Union has not provided convincing reasons for it to change its current scheduling practices. The Employer needs the flexibility to mandate overtime with any employee available when no one in the bargaining unit volunteers for overtime.

The Employer does not see a compelling need to add more hours to the seventy-five (75) hours of accumulated Compensatory Time under Section 15.8. Nor does it believe it is necessary to change the method for the scheduling of shifts under Section 15.10 (A). or to provide for minimum staffing sought by the Union' proposal in Section 15.10 (B).

Also, the Employer maintains that the Union's demand for fifteen (15) minutes of pre-shift briefing time is not necessary because the Employer does all briefings to employees after they start their shift. Should there be a requirement to brief employees prior to the start of their shift, the Employer would have to comply with the Federal Wage and Hour Laws as set forth in the Fair Labor Standards Act (FLSA) and pay employees for all hours worked.

## **FINDING AND OPINION**

The Fact Finder agrees with the Employer that there should be no change in Section 15.5. Court time minimum pay should remain at three (3) hours overtime since the employee is paid for all time actually at the court after three hours. The Union has not produced sufficient evidence to justify changing this provision.

The Fact Finder finds merit in the Union's proposal to change the procedure for assigning and requiring mandatory overtime under Section 15.7 (C). Certainly, the Employer not only has an interest, but an absolute need, to compel overtime and to guarantee adequate staffing. What the Union proposed during the fact finding hearing would satisfy the Employer's interest in guaranteeing adequate staffing. At the same time, it would satisfy the Union's interest in having

a fairer system of requiring overtime for Correction Officers (Jailers) and not mandating forced overtime for consecutive days. During the fact finding hearing the parties did indicate that there could be an acceptance of the Union' proposal as it would apply to Corrections Officers.

Based upon a review of the bargaining history of Section 15.8, and the external comparables submitted into evidence, an increase in the accumulation from seventy-five (75) hours to eighty (80) hours in an employee's Compensatory Time Bank is not unreasonable. The cost, if any, to the Employer should be insignificant. The increase in hours is not such that there would be a substantial increase in overtime required. The overtime actually worked would be accumulated at the same rate, i.e., time and one half. Also, eighty (80) hours is an even number of hours which should calculate more easily with the average work days and minimum call in time.

Although it is understandable that the patrol deputies would want to bid for shifts in the same manner as the Correction Officers, there is insufficient information for this fact finder to make a clear unequivocal recommendation to adopt an unrestricted provision for bidding on all road patrol shifts. However, a provision can be drafted with the caveat that patrol deputy shifts will be bid provided there is no interference with patrol coverage.

It is the Fact Finders understanding that the minimum staffing proposal as set forth in the Union's proposal under Section 15.10 is being withdrawn. If not, such would be denied for the same reasons set forth under the Union's Section 14.5 Minimum Staffing proposal for the jail.

Also, it is understood that the Union's proposal on Section 15.11 is being withdrawn. The Fact Finder concurs with the Employer's position that this new section is unnecessary.

## **RECOMMENDATION**

Therefore, it is recommend that there be no change in the language of Sections 15.1, 15.2, 15.3, 15.4, 15.5, 15.6, 15.7 (A) and (B), and 15.9. It is further recommended that Section 15.7 (C), 15.8 and 15.10 be changed to read as follows:

### **Section 15.7 Overtime Opportunities**

- C. If after the call in list has been totally exhausted and the proper manpower has not been obtained to fill the scheduled overtime detail, the Employer may fill the remaining manpower requirements for the overtime detail for Correction Officers by reverse seniority (i.e. force from the least senior person to the most senior person). However, forced overtime will not be mandated for consecutive days.

**Section 15.8 Compensatory Time Bank**

Employees, at their option, may accumulate up to eighty (80) hours of authorized compensatory time. . . . (The language in the remainder of this Section remains the same as that set forth in the current contract)

**Section 15.10 Shift Scheduling**

**A. Road Patrol Deputies Employees**

The Sheriff agrees to continue his practice of working with road patrol employees in the scheduling of shifts. Provided there can be adequate patrol coverage, the Sheriff will bid all road deputy shifts every six (6) months.

**B. Jail Corrections Officer Employees**

The Sheriff will bid all shift selection by classification seniority every six (6) months.

**Section 15.11**

Withdrawn

**Issue #4  
ARTICLE 16  
WAGES**

**UNION POSITION**

The Union proposed a seven per cent increase across the board added to each employee's base rate of pay in each of the contract years retroactive to May 15, 2010, with the last increase occurring May 15, 2013. It also proposed a \$500.00 signing bonus and to increase the shift differential from \$.10 to \$.25. According to the Union, it did not have an opportunity to modify this proposal as the Employer never made a wage proposal. However, it believes the proposal is justified and has presented external comparables to support it.

In preparation for its proposal the Union did extensive research regarding the wages earned by the peers of the bargaining unit employees in comparably sized counties in the same geographic areas of the state. It surveyed the counties of Gallia, Guernsey, Hocking, Meigs, Perry and Pike, which are counties either in SERB Region 6, which is the region containing Jackson County, or counties contiguous to Jackson County that have a population 12,000 greater than and less than Jackson County's population of 32,641. According to the Union when the wages of comparable employees in these counties are considered, the Union's proposal is more than justified. Deputy Sheriffs in comparable counties are paid \$1.51 more per hour at the entry wage and \$2.00 more per hour at the top wage than are the Jackson County deputies for doing the same work. The Jackson County deputies would need a 12.3% increase to their base pay at the entry rate and a 13.5% increase to their top rate to equal the wages received by their peers beginning January 1, 2011. (Union Exhibit #5) Comparable sergeants in these counties earn \$1.36 per hour more at the entry rate and \$1.78 more at the top rate. The sergeants in Jackson County would need a 6% raise to keep up with their peers at the entry level and an 11.2% raise at the top rate (Union Exhibit #5).

Likewise, corrections officers in comparable counties earn \$1.67 more per hour at the entry rate and \$4.22 per hour at the top rate than do the Jackson County Jailers. The Jackson County Jailers would need a 15.9% raise at the entry level and 38%.3 % raise at the top level to earn what their peers are earning. (Union Exhibit #6) Dispatchers are paid \$1.18 more per hour at the entry level and \$1.29 more at the top level than Jackson County Dispatchers who would need a 10% raise at both the entry level and the top level to reach parity with their peers. (Union Exhibit #6) Employees in these comparable counties will also receive an average of a 1.8% in 2011 and a 2% increase in 2012. (Union Exhibit #9)

According to the Union even using the management's comparable counties, Jackson County deputies are paid 12% below their peers at the entry rate and 8.2% below their peers at the top rate. (Union Exhibit #7) The Employer's comparables for jailers indicate that the Jackson County Jailers earn 24% less than their counterparts at the entry level and 31.1% less at the top level. (Union Exhibit #8) The Jackson county dispatchers earn 8.8% less at the top level. (Union Exhibit #8)

The Union argues that the history of wage increases for bargaining unit employees should be taken into account. Beginning with the 2003-2006 contract, bargaining unit employees began

to see their wages frozen while the cost of health insurance was increasing. In 2003 the employees received a zero percent increase, a twenty-five cent (\$.25) increase in 2004 and an employee on a family plan paid \$91.83 a month. Considering the twenty-five cent (\$.25) per hour increase in 2004, the net effect of the health insurance premium on an employee's wages was an annual reduction of approximately \$600.00 for a deputy.

In the contract negotiated for 2006-2009, the employees received a three percent (3%) increase in 2007 and 2008, but received no increases in 2009 and 2010 when the contract was extended for a year (Union Exhibit #9). The Union is requesting that consideration be given to the fact that wages have been frozen since 2008 while comparable counties have continued to receive wage increases.

While wages have been frozen insurance premiums increased. In 2007 employees contributed 8% of their monthly insurance premium; in 2008 they contributed 9%; and in 2010 they contributed 10%, which is the current contribution amount. The Union cites Fact Finder Jerry Sellman's Report (Union Exhibit #10) where he dealt with the impact of health insurance premiums on wages when he awarded the Union's proposal to freeze wages and freeze any other increases in employee contributions to health insurance costs for the duration of the agreement. His recommendation was for the reopener on wages and health insurance in the third year of the 2003-2006 contract.

The Union also claims that evidence shows that the work load on bargaining unit employees has increased with the layoff of road deputies and dispatchers in 2010 despite the fact a deputy had been recalled in 2011. Further the evidence shows that the recall was possible because the 2011 budget for the Sheriff's Department was increased by \$158,607.00 over 2010 budget. (Union Exhibit #11)

The Union claims that the cost of 1% increase in wages is \$4, 467.64. This has been disputed by the Employer. The Union also states that employees of County Employers have receive greater wage increases than those received by the bargaining unit employees (Union Exhibit #11) other bargaining unit employees have received.

## **EMPLOYER'S POSITION**

The Employer has proposed a 0% increase the first year with reopeners in subsequent years. It made no further proposal on wages. In its rationale, the Employer states that the County and Sheriff's Office are not doing well economically.

Funding for the Employer is primarily through two sources: the Sheriff's Office share of a ½% Sales Tax and the County General Fund. The Jail Operations and Corrections Officer pay are both funded by the Sales Tax while the remainder of the Department is funded by the General Fund. The Sales Tax revenues in recent years have been relatively flat. Unfortunately, it has been down in the current year. Also, the County General Fund has seen a substantial decrease in revenue over the last several years. The County's General Fund expenses have exceeded revenue four out of the last five years.

As a result of the continuing loss of revenue in the General Fund, the County Commissioners were forced to slash budgets for all County offices in 2010. This resulted in the lay off eight (8) bargaining unit employees when the Departments General Fund budget was reduced approximately 40% from its 2009 levels (\$767,514 in 2009 to \$458,036 in 2010). Fortunately, the Employer was able to recall three (3) bargaining unit employees in 2010 when funding was later restored.

To relieve the economic impact of the reduction in General Fund Revenues, the County placed special levies on the ballot two different times in 2010 for taxpayer approval. Both of these levies were soundly defeated by Jackson County voters.

The County Commissioners were able to give all offices, including the Sheriff's, an increase over their 2010 levels. The Employer was provided with a General Fund Budget of \$616,643 for 2011. This was still below the pre-2010 levels by approximately 20%. The budget years 2010 and 2011 reflect the lowest budget level for the Employer since 1994. The forecast for 2012 is bleak. Due to anticipated loss of revenue from the recently passed State Budget, Jackson County anticipates slashing the budgets of all County Offices back to 2010 levels. This could result in further layoffs.

The Employer claims that the Union's first year wage demand alone would be fiscally disastrous. A 7% retroactive award would result in an immediate economic impact of the Sheriff's Office of \$89,535.05 upon entering into a contract. Another 7% during the first year of

the contract would have a cumulative impact of \$183,182.98 in the first year of the contract alone. This would be approximately 40% of the Sheriff's entire General Fund. Such according to the Employer is unaffordable.

The Employer argues that comparables within Jackson County indicate that the average bargaining unit wage rate is above the median County wage rate. Also, the Union bargaining units are not the only bargaining units to have taken wage freezes over the last couple years. The bargaining units within the Jackson County Commissioners, Prosecutor, Treasurer, Auditor and Recorder offices all agreed to a one year extension at the end of their contracts in 2009 just like the Sheriff's bargaining units.

### **FINDING AND OPINION**

Based upon the evidence submitted by the Union, it is clear that the wage rates for the bargaining units in the Sheriff's Office are low, and no longer competitive, compared to surrounding jurisdictions. It is also very clear, based upon the evidence submitted by the Employer, that it is impossible to meet the wage demands proposed by the Union. Both parties have presented clear and convincing evidence to support their positions.

Although the external comparables presented by the Union are clear and convincing, the Fact Finder concurs with the Employer that "now is not the economic time for the Sheriff to entertain conducting a salary survey and corresponding wage adjustments". Such would be impossible to perform. The Employer does not have the financial resources to make significant adjustments in wage rates. Thus, it is not that little or no weight should be given to external comparables, but that no weight can be given at all.

However, because of common funding sources for the wages paid to most county employees, weight can and should be given to internal comparables. Settlements have been reached between the F.O.P and the Jackson County Sheriff, the United Mine Workers and the Jackson County Commissioners, the United Mine Works and the Jackson County Auditor, and AFSCME and the Jackson County Engineer. In addition, the unrepresented employees in most county offices have received pay increases. The Collective Bargaining Agreements reached with the aforementioned unions provide for wage increases of a total of five percent (5%) over a three year period, except for the F.O.P. contract which has a two year term and ties the wage

increases to wages negotiated by this Union. The County in granting these increases would have budgeted funds to cover the increases anticipated for all employees paid out of the General Fund.

Considering the foregoing wage settlements, the fact that the employees in the bargaining unit represented by the Union have not received a pay increase since 2008 and the cost of health insurance has increased, the fact Finder concludes that a wage increase comparable to those granted in the foregoing settlements is in order and should be granted. A wage increase of 2% effective May 15, 2011, a wage increase of 1% effective May 15, 2012 and a wage increase of 2% effective 2013, would be comparable to the settlements reached and agreed to by other county offices.

Since the bargaining units have not received a pay increase since 2008, a signing bonus in the amount of \$200.00 per employee is warranted. There is insufficient evidence to justify an increase the shift differential.

### **RECOMMENDATION**

Therefore, it is recommended that the following pay increases on the wage rates for all employees in the bargaining units represented by the Union be granted.

Effective May 15, 2011	2% increase on base wage rate
Effective May 15, 2012	1% increase on base wage rate
Effective May 15, 2013	2% increase on base wage rate

Each bargaining unit member shall receive a one-time payment of \$200.00 for a ratification vote in 2011, payable within two pay periods after ratification.

**Issue #5**  
**ARTICLE 17**  
**HOLIDAYS**

**FINDING AND OPINION**

On July 22, 2011, the parties successfully mediated all outstanding issues under Article 17 and signed a Tentative Agreement. It is the finding and opinion of the fact finder that the Tentative Agreement is to be incorporated herein and made a part of this report.

**RECOMMENDATION:**

Therefore it is the finding and recommendation of the fact finder that a copy of the Tentative Agreement on Article 17 executed by the parties on July 22, 2011 be incorporated into this report as Appendix “B”.

Article 17 should read as follows

**ARTICLE 17**

**Section 17.1 Holidays**

The following are designated as holidays:

New Year’s Day	January 1
Martin Luther King Day	3 <sup>rd</sup> Monday in January
President’s Day	3 <sup>rd</sup> Monday in February
Good Friday	Friday before Easter
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1 <sup>st</sup> Monday in September
Columbus Day	2 <sup>nd</sup> Monday in October
Thanksgiving Day	4 <sup>th</sup> Thursday in November
Thanksgiving Friday	4 <sup>th</sup> Friday in November
Christmas Day	December 25

Employees not scheduled to work on a holiday shall receive an additional day off in recognition of the holiday.

Employees scheduled to work on a holiday shall receive their overtime rate of pay for that day plus an additional day off. In lieu of receiving the additional day off an employee may opt to receive eight (8) hours of pay at his regular rate of pay for the holiday.

Days off for the holidays shall be scheduled in the same manner as vacation leave.

Employees will be permitted to carry over three (3) unused holidays from one year to the next.

**Issue #6**  
**ARTICLE 19**  
**SICK LEAVE**

**FINDING AND OPINION**

On July 22, 2011, the parties successfully mediated all outstanding issues under Article 19 and signed a Tentative Agreement adding Section 19.8. It is the finding and opinion of the fact finder that the Tentative Agreement is to be incorporated herein and made a part of this report.

**RECOMMENDATION**

Therefore it is the finding and recommendation of the fact finder that a copy of the Tentative Agreement on Article 19 adding Section 19.8 executed by the parties on July 22, 2011 be incorporated into this report as Appendix "C".

Article 19, Section 19.8 should read as follows

**ARTICLE 19**

**Section 19.8**

Any abuse or suspicious pattern of sick leave use may result in the denial of leave, disciplinary action, or both. Further, falsification of an application for sick leave or a physician's statement, or failure to submit adequate proof of illness or injury as requested may result in disapproval of leave, disciplinary action, or both.

**Issue #7**  
**ARTICLE 20**  
**LEAVE**

## **EMPLOYER'S POSITION**

The Employer has proposed changes to Sections 20.3 and 20.6 of this Article. Although in the rationale submitted with its prehearing statement the Employer discusses the changes to Section 20.6, it makes no mention of Section 20.3.

Currently the Section 20.3 provides for maximum leave without pay for a period of not more than one year. The proposed change would have the Sheriff approve extensions of six (6) months with the total leave period not to exceed one year. Section 20.6 would be changed to cap injury leave at ten (10) days.

## **UNION'S POSITION**

The Union proposes to maintain the current contract language. It argues that the Employer was unable to demonstrate during negotiations that the current injury leave provisions were unworkable.

## **FINDING AND OPINION**

The Fact Finder is unable to ascertain any particular benefit to the Employer with its proposed changes to this Article. The Union's position is more convincing. This is especially true upon the examination of the current contract which the Sheriff negotiated with the F.O.P. covering the lieutenants and captains. That contract contains the identical language as contained in the current agreement which the employer now is proposing to change. Since the Employer did not agree to a change for the lieutenants and captains, it should not have a need for such change here.

## **RECOMMENDATION**

Therefore, the changes proposed by the Employer to Article 20 should be rejected and the language should remain the same as set forth in the current agreement.

**Issue #8**  
**ARTICLE 21**  
**UNIFORM AND EQUIPMENT ALLOWANCE**

**EMPLOYER'S POSITION**

The Employer request that Section 21.3 (Dry Cleaning) be removed from the Contract. Under the current contract language, the Sheriff is to provide dry cleaning of uniforms at no cost to the bargaining unit. This provision, however, is deferred until the Employer's budget increases by 5%. The Employer has never paid for dry cleaning under this provision. However, as the budget was cut by 40% in 2010 and is expected to be reduced to that level again in 2012, it is possible that the budget will increase by 5% from 2012 levels once the economy picks up. If the budget increases by 5% from 2011's level or even after 2012's anticipated reduction, the Employer's budget will still not be at the pre 2010 levels when the provision was not followed. As a result, under the current contract language, the Employer could be forced to pay for dry cleaning even though his overall budget would be substantially less than when this Article was originally negotiated. The result would be unfair and inequitable.

**UNION'S POSITION**

The Union would maintain the current contract language as set forth in the F.O.P. Contract. According to the Union, the language concerning dry cleaning dates back to the 1997-1999 collective bargaining agreement. However, the language limiting the benefit to when the Sheriff's Department budget increase by five percent (5%) was placed in the contract in 2003-2006.

**FINDING AND OPINION**

While the Employer's position has some merit, it did not seek to delete the identical language regarding dry cleaning of uniforms under the provisions of the recently negotiated

contract with the F.O.P. on behalf of the lieutenants and captains. It would be unfair and inequitable to treat the employees represented by this Union differently.

## **RECOMMENDATION**

Therefore, the changes proposed by the Employer to Article 21 should be rejected and the language should remain the same as set forth in the current agreement.

### **Issue #9**

### **ARTICLE 22**

### **INSURANCE**

## **UNION'S POSITION**

The Union proposes to add language to Section 22.1 providing that the Employer will maintain no less than the same or substantially similar level of benefits as are currently in effect, and further proposes that the County will not institute any changes in the carrier or plan design without providing the Union with at least ninety (90) days advance notice. The purpose according to the Union is to ensure that at least the benefit level of the current medical insurance plan is maintained and that the parties have ample opportunity to discuss any necessary changes to the health insurance plan. The Union states that the County has imposed significant changes over the years in the medical insurance plan design including the imposition of a \$3,000.00 deductible. The Union proposes to maintain at least the current benefit level.

In addition the Union proposes to continue the ten percent (10%) required employee contribution and that a cap be placed on the contributions of \$105.71 per month effective February 1, 2012, 109.94 per month effective February 1, 2013 and \$121.71 per month effective February 1, 2014. The union states that its proposal is designed to curtail the escalating costs of health insurance for both the County and the bargaining unit employees by providing an economic incentive for the County to provide medical insurance from a plan offered by the Michigan Conference of Teamsters Health and Welfare Fund. When the County was soliciting

bids from health insurance providers, the Union provided a proposal from the Michigan Conference of Teamsters Welfare Fund, Plan 498 which provided a better benefit for employees but which cost both the County and consequently the employees significantly less in premiums. (Union Exhibits 14 and 15)

### **EMPLOYER'S POSITION**

The Employer proposes to remove the requirement that the County not implement changes without a 30 days' notice to the Union and make the provision consistent with the law in this area. In addition, the Employer proposes that the M.O.U. between the F.O.P. and the Sheriff during the last contract be incorporated into the new agreement between the Employer and the Union and that the opt-out payment be reduced from 25% to 15% to be consistent with other county employees.

The Employer argues that the Sheriff is necessarily dependent to some extent upon the actions of the County Commissioners in pursuit of their statutory responsibilities to contract for the group health insurance for all county employees. In support of this position it cites the following cases: *Licking County Sheriff's Office v. Teamsters Local Union No. 637*, Case No. 08CV 01461 (November 17, 2008) and *State ex.rel. Ohio Patrolmen's Benevolent Assn. v. State Employment Relations B.*, 10<sup>th</sup> District No. 05 AP 526, 2006 Ohio 3263. The Employer seeks to ensure that the contractual language reflects the County Commissioners' sole authority to contract for health insurance. (See *F.O.P. SERB 2011 ULP 01 0025*) The Employer claims that it has no legal ability to contract for, or so effectuate changes to the costs for hospitalization. Since the collective bargaining agreement is between the Teamsters and the Employer, the County Commissioners cannot be forced to act or comply with the provisions in the contract. Only the Board of Commissioners has the authority to establish the plan design of health insurance for the County.

Thus, the Employer seeks to revise the language in order to avoid future grievances/arbitrations concerning whether changes made by the Commissioners comply with the bargaining agreement language signed by the Sheriff's Office. The current language places the Employer in the position of violating its own agreement through no action of its own.

A 25% lump sum option was added to the F.O.P contract through an M.O.U. between the F.O.P. and the Employer during the last contract. The M.O.U. was to provide the Sheriff's employees with the same insurance opt-out options as other county employees. Recently, other employees represented by other unions negotiated a reduction in the lump sum opt-out payment from 25% to 15%. For this reason, the Employer is proposing, at this time, that its bargaining units also go to 15% since the original intent was to provide all county employees with the same opt-out options.

Finally, the Employer claims that it cannot afford to cap employee contributions. Insurance costs have risen dramatically over the last several years and the Employer needs to ensure that the bargaining units continue to pay at least their contracted 10% of the premiums. No other Employer's bargaining units within the County have a cap. The cap proposed by the Union would result in an immediate 36% employee premium reduction and over a three year period the Employer would incur an increase of \$78,350.52.

## **FINDING AND OPINION**

The Union's proposal to add language to Section 22.1 to maintain the same or substantially similar level of benefits as are in effect upon the ratification of the Agreement should be denied. First, the control over the negotiation of health benefits with the insurance carriers is as a legal and practical matter in the hands of the County Commissioners. Second, neither the Employer nor the County Commissioners can control the benefit offerings of the providers. It is doubtful that a provider will guarantee a benefit plan for more than a year. Third, benefits impact costs, and to have some control over costs, it is necessary for the County and the Employer to have a degree of flexibility during the term of the collective bargaining agreement. Finally, no other Jackson County Employer's bargaining units have such a maintenance of benefits provision.

Both the Employer and Union have made proposals as to the provisions set forth in the fifth paragraph of Section 22.1. The Employer seeks to delete this paragraph which provides that the County agrees to meet with the Union concerning the impact of any potential changes in

health insurance and not to institute any changes without providing the union at least thirty (30) days notice. The Union is requesting that they notice be increased from the thirty (30) days to ninety (90) days.

Considering the extensive arguments of both parties, even the legal concerns of the Employer, it is the opinion of the Fact Finder that the language of this paragraph should not be deleted or changed. First, it should be noted that the identical language of this paragraph is contained in every bargaining agreement in the county, viz. County Auditor and UMWA, County Engineer and AFSCME, County Sheriff and the F.O.P. and the County Commissioners and the UMWA. Second, since the County Commissioners have agreed to notify their own employees, there should be no problem in notifying others, including the bargaining units of the Employer in this matter. Third, the Employer in this case has accepted and agreed to the language which it is now seeking to delete in its agreement with the F.O.P. on behalf of lieutenants and captains. Fourth, while a ninety (90) day notice may be better than a thirty (30) day notice, this Fact Finder will not recommend that the current notice requirements be changed in view of the language in the other agreements. Finally, the notice language of this paragraph is the fair and reasonable.

As to the Union proposal to continue the ten percent (10%) required employee contribution, there appears to be no dispute. There has been no suggestion, at this time, to increase the employee's contribution. Also, the other collective bargaining agreements recently negotiated are at the ten (10%) employee contribution level.

The Union's proposal that a cap be place on employee contributions cannot be recommended. The Employer's arguments and concern are persuasive. First, it would be too costly at this time and is not supported by either internal or external comparables. Second, there is a legal issue as to the authority of this Employer to agree to such a cap. Third, it would not be approved by the County Commissioners. Finally, a proposal involving the Michigan Conference of Teamsters Welfare Fund, Plan 498, or other plans, should be presented to the County Commissioners before submitting it at the negotiation table. The county Commissioners would be able to consider alternative plans. Apparently, the County Engineer has agreed with AFSCME for participation in the AFSCME Care Plan.

The opt-out options of the M.O.U. between the Employer and the F.O.P. should be incorporated into the agreement between the Employer and Union, along with the changes in the

opt-out payment from 25% to 15%. This would provide the same opt-out benefits to the employees represented by the Union as is provided to all other county employees.

## **RECOMMENDATION**

Therefore, it is recommended that the Union's proposal to provide for the maintenance of benefits be denied, that the Employer's proposal to delete the fifth paragraph be denied, that the Union's request to increase the thirty (30) day notice to ninety (90) days be denied, that the Union's proposal for a cap on premium payments be denied, and that the opt-out options of the M.O.U. be incorporated into the agreement and the opt-out payment changed from 25% to 15%.

Article 22 should read as follows:

## **ARTICLE 22**

### **INSURANCE**

#### **Section 22.1**

The Employer shall offer group medical insurance coverage, including major medical, vision, dental and life, to each employee in the bargaining unit upon the same terms and conditions as is offered to other employees whose coverage is provided from the "general fund" of the County.

It is agreed and understood that the schedule of benefits for employees shall be as set forth in such health plan or plans offered, including all conditions and payments specified or required by individual carriers/providers of the health insurance plan. It is further agreed and understood that during the term of this Agreement, individual carriers/providers may, through no fault of the County, Union, or employees, cease coverage.

Additionally, it is agreed and understood that during the term of this Agreement, specific carriers/providers under the plan may unilaterally institute or modify payments or conditions which modifications will be required for subscription to the plan provided by that carrier/provider. Furthermore, modifications to co-payments and/or deductibles shall not be deemed a modification of coverage.

The Union recognizes the right of the County to secure alternate insurance carriers and/or modify coverage. It is further agreed and understood that the Employer may modify the terms of coverage and may reduce coverage levels if such reductions are made to maintain or reduce costs.

The County recognizes the right of the Union to review any proposed changes in carriers or coverage. The County agrees to meet with the Union concerning the impact of any potential

changes in health insurance. It is agreed that the County shall not institute any changes without providing the Union at least thirty (30) days notice.

The Sheriff and the Union agreed to maintain a joint Labor/Management Committee to Address concerns pertaining to health insurance. The Joint Committee may request the presence of the insurance consultant to be present from time to time.

### **Section 22.2 Premiums**

Employees in the bargaining unit are required to contribute through payroll deduction to the premium costs for the insurance plan or plans provided. It is understood that employees shall contribute 10% of the monthly premium amounts as their share of health insurance premiums.

### **Section 22.3 Eligibility**

Employees in the bargaining unit shall be eligible for health insurance coverage after completion of the waiting period established by the health insurance plan.

Any employee who has a spouse employed by any other “public employer”, who is eligible for and/or who has coverage under a plan provided by the County or any other “public employer” whether of the County or otherwise shall not be eligible for dual coverage under any plan offered by the Employer. Employees covered under such other plans shall, in consideration of coverage under such plans, elect one of the following three options at the time of enrollment, or thereafter on an annual basis by a deadline date established by the Employer:

- A. An employee may elect to receive payment equal to 50% of the increased premium costs associated with their coverage under such plans, or
- B. An employee may elect to opt-out of the Employer’s health insurance annually if he or she can demonstrate coverage by another health insurance plan, in which case s/he shall be compensated in a lump sum amount equal to ~~15%~~ 25% of the annual plan savings for the coverage period, which shall be payable in December of the year in which the employee opted out, or
- C. An employee may elect to opt-down to a less expensive coverage (such a changing from family coverage to single coverage) for a compensation of ~~15%~~ 25% of the plan savings, which shall be payable in December of the year in which the employee opted down.

Any employee who obtains other coverage, whether through a spouse who is publicly employed or through a spouse who is employed in private industry or otherwise, may elect the opt-out or opt-down options described in B and C, above

**Issue #10**

**ARTICLE 27**

## **PAID ABSENCE DAYS**

### **UNION'S POSITION**

The current contract provides that an employee in active work status who does not utilize any of his sick leave for one hundred eighty (180) consecutive calendar days will be entitled to one (1) paid absence day. The Union proposed to reduce the time period to ninety (90) consecutive calendar days. It claims that it will be a further incentive for employees not to use sick leave.

### **EMPLOYER'S POSITION**

The Employer proposes to maintain the status quo or the current contract language as set forth in the F.O.P. Contract.

### **FINDING AND OPINION**

The Union has not submitted sufficient evidence or justification to support its proposal.

### **RECOMMENDATION**

Therefore, it is recommended that there be no change in the current contract language.

**Issue #11**

**ARTICLE 32**

**PROFESSIONAL INCENTIVES**

### **UNION POSIITON**

Article 32 of the current contract provides incentive pay to individuals who have obtained a post-high school degree. The Union has proposed an increase in these incentives. (Union Exhibit #18) The rationale is that there have been no increases in the incentives since 2003.

### **EMPLOYER'S POSITION**

The Employer proposes to maintain the status quo or the current contract language as set forth in the F.O.P. Contract. It argues that due to the economic climate facing the Office, including an expected reduction in funding in 2012 and four employees on layoff, it is not the time to increase hourly wages. Also, the Union has not provided compelling evidence that the incentives currently in place are an ineffective award for achieving the professional incentives listed.

### **FINDING AND OPINION**

The Union has not submitted sufficient evidence or justification to support its proposal.

### **RECOMMENDATION**

Therefore, it is recommended that there be no change in the current contract language.

## **Issue #12 ARTICLE 34 PAST PRACTICE**

### **EMPLOYER'S POSITION**

The Employer proposes to delete this Article. According to the employer the language is confusing and with unknown intent. It is the Employer's position that if certain past practices have become prevalent enough to require negotiations prior to their change; those practices should be specifically and expressly negotiated into the terms of the contract. The Employer

believes that there is really no meeting of the minds between the parties as to the meaning/intent/purpose of this Article and it should be removed as a result. Since the current parties are the ones who will have to live with the terms of the contract, they should at least know what the language requires of them. Further, the employer argues that Ohio Contract Law is clear that, in order to have a binding contract, there needs to be an offer, acceptance, consideration, and a “meeting of the minds. The continued inclusion of this Article is simply fodder for unwarranted grievances/arbitrations in the future since there is no understanding or agreement as to what is covered by it.

### **UNION’S POSITION**

The Union submits that this article has been in the collective bargaining agreement since 2000 and the Employer presented no argument during negotiations for its elimination (Union #19)

### **FINDING AND OPINION**

Past practice is a well established concept in labor law. In the absence of evidence that there were numerous grievances and arbitrations over this Article, and there was no change in this language in the F.O.P. contract for the lieutenants and captains, there is insufficient evidence to support the Employer’s position.

### **RECOMMENDATION**

Therefore, it is recommended that there be no change in the current contract language.

### **Issue #13**

### **BARGAINING UNIT WORK**

### **EMPLOYER’S POSITION**

The Employer proposes to exempt management (including the Sheriff and Chief Deputy) and the Auxiliary Unit from this Article. The Employer understands and appreciates the Bargaining Unit's desire to ensure that its work is not contracted out to others. However, due to the current economic conditions, less staff, and prospects of even further reductions in both budget and staff, the Employer also needs to be able to ensure that it can safely provide its statutory services to the citizens of Jackson County within its fiscal confines.

The Employer further argues that during periods of low staffing, as was the case throughout all of 2010, out of necessity management has little choice but to perform some of the functions of the bargaining units in order to ensure continued services are provided to the public. However, last year the bargaining units filed a grievance because the Chief Deputy worked his own job and filed-in for dispatching and other functions of the bargaining units due to large number of bargaining unit employees on lay off and the lack of funds in the Sheriff's budget to be able to absorb substantial overtime costs. The employer further argues that if management is not exempt from this Article, it will place the Sheriff in the precarious situation of having to choose between the Office's statutory duty to protect and serve the citizens of Jackson County or compliance with a union agreement. This according to the Employer is an unfair position to place an elected official.

### **UNION'S POSITION**

The Union proposes to retain the current contract language which has been in the collective bargaining agreements since 2000-2003 contract. According to the Union, the contract provides for preservation of bargaining unit work. The Union also claims that the employer provided no rationale for the proposal to eliminate this language.

### **FINDING AND OPINION**

What would be truly unfair is placing the blame for violating the duty to serve the citizens of Jackson County on the laid off deputies and the bargaining units employees. This would especially be true in the absence of any evidence submitted that services could not

be, or were not provided. Here there was no testimony or data submitted that services were not or could not be provided because of this Article.

The Employer's proposal would render this article of the contract meaningless. It would strip what little job protections the employees in the bargaining units have left. Before these protections are stripped away, the evidence should be compelling. That is not the case here. The position of the Employer is rendered disingenuous by the fact that the Employer did not seek this concession or take away the job protection rights in the agreement it recently negotiated with the F.O.P. for the lieutenants and captains. That agreement contains the current contract language; it does not provide for exempting management and the auxiliary unit. Likewise the current AFSCME contract with the County Auditor contains protections against contracting out bargaining unit work .

**RECOMMENDATION**

Therefore, it is recommended that there be no change in the current contract language.

**Issue #14**

**ARTICLE 36**

**DURATION**

**UNION'S POSITION**

The Union proposes a three year agreement expiring May 14, 2014.

**EMPLOYER'S POSITION**

The Employer proposes a three year agreement with the effective date starting upon ratification.

## **FINDING AND OPINION**

The Fact Finder finds that the contract should cover the period from May 15, 2011 through May 14, 2014. Wage Rates are to be retroactive to May 15, 2011.

## **RECOMMENDATION**

Upon ratification the agreement shall be effective for the period May 15, 2011 through May 14, 2014.

## **IV**

## **CERTIFICATION**

The fact finding report and recommendations are based on the evidence and testimony presented to me at a fact finding hearing conducted July 21 and 22, 2011. Recommendations contained herein are developed in conformity to the criteria for a fact finding found in the Ohio Revised Code 4717(7) and in the associated administrative rules developed by SERB.

Respectfully submitted,

/s/ John F. Lenehan  
John F. Lenehan  
Fact Finder

V.

**PROOF OF SERVICE**

This fact-finding report was electronically transmitted this 22<sup>nd</sup> day of August 2011, to the persons named below.

**Appearances:**

**VIA E-MAIL**

**Union Representative**

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/S/ John F. Lenehan  
John F. Lenehan