

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In Regard To The Matter Of The Fact-Finding Between:

DELAWARE COUNTY SHERIFF)	10-MED-10-1427
)	(Deputies' Unit)
-AND-)	
)	
OHIO PATROLMEN'S BENEVOLENT ASSOCIATION)	

ATTENDANCE:

For The County:

Jonathon J. Downes, Esq.,	Labor Counsel
Matt Whitman, Esq.,	Labor Counsel
Walter L. Davis, IV	Sheriff
Tim Hansley	County Administrator
George Kaitsa	County Auditor
Judy Fransen	Sheriff's Office
Patty Freeman	Sheriff's Office
David Buttler	Lieutenant
Kevin Savaje	Captain

For The Union:

Joseph M. Hegedus, Esq.,	Labor Counsel
Chris Stayer	Director
Keith Semones	Director
Rob Curren	Director
Shane VanDyke	Assistant Director

BEFORE ALAN MILES RUBEN, FACT-FINDER

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BACKGROUND:

Delaware County is located in central Ohio, some twenty-five miles north of the City of Columbus, the State's Capitol. Encompassing 459 square miles, it has a resident population of 142,500. The County includes, in addition to the City of Delaware, the County seat, the cities of Dublin, Powell and Westerville, and the villages of Ashley, Galena, Ostrander, Shawnee Hills and Sunbury. The County contains 17.23 miles of interstate highway, sixty-eight miles of U.S. highways, 126 miles of state highways and 1,176 of county and township roads.

The Delaware County Sheriff's Department provides not only road patrol and traffic regulation enforcement, but also crime prevention and investigation services for unincorporated areas and those villages which do not maintain a police force. The Sheriff is also responsible for the operation of the County's secure jail facility.

The Department's Deputy Sheriffs and Detectives (sworn Officers) below the rank of Sergeant form a Bargaining Unit exclusively represented by the Ohio Patrolmen's Benevolent Association.¹ (The "OPBA" or "Union").

¹ Delaware County recognizes and negotiates with ten Bargaining Units. Five of those Units are in the Sheriff's Department - the Deputies, the Law Enforcement Supervisors; the Correction Officers Supervisors; the Correction Officers and the

The parties were signatories to a Collective Bargaining Agreement entered into as of January 1, 2008 for an initial term which expired on December 31, 2010.

As 2010 drew to a close, the Union and the Sheriff met to consider the execution of a successor Agreement.

The parties met only twice - in December of 2010 and February of 2011. The Union presented its proposals for amendments and additions to the Contract, but the Sheriff, at that time, made no proposals of his own for changes in the Contract provisions, nor did he offer counter-proposals to the Union's set of demands.

The negotiations between the Sheriff and OPBA, the Deputies and Detectives Unit reached impasse, and on April 14, 2011, the undersigned was requested by the parties and the Board to

Dispatchers. The Correction Officers are represented by the Fraternal Order of Police. The others are represented by the Ohio Patrolmen's Benevolent Association.

Three of the five of the County's remaining Bargaining Units - The Environmental Services Unit; The Job and Family Services Unit; and the County Engineer's Unit are all represented by the American Federation of State, County and Municipal Employees, Ohio Council 8. The 911 Unit is represented by the Ohio Patrolmen's Benevolent Association. The remaining Unit - the Emergency Medical Services Unit is represented by International Association of EMTs and Paramedics, Local R7-11, NAGE-SEIU.

conduct fact-finding proceedings. This Report deals with that assignment.²

The Fact-Finder conducted a mediation session on April 19, 2011. At that session, the Sheriff, who had recently retained new Counsel, was not prepared to offer proposals or counter-proposals. As a result, the mediation efforts were unsuccessful.

Nevertheless, a series of Union proposals to add new provisions and to amend other Articles and Sections of Articles of the subsisting Contract were withdrawn, and are deemed to have been abandoned.

Further, the parties tentatively agreed to carry forward and incorporate into the new Agreement, mutatis mutandis, all other Articles, Appendices and Memoranda of Agreements from the 2008 Agreement except those listed below.

Remaining unresolved were proposals submitted by one or both parties to make changes in, or add Sections to, the following Articles:

²On January 20, 2011, the undersigned had been appointed by the State Employment Relations Board to serve as a Fact-Finder to make recommendations for settlement of a collective bargaining impasse that had been reached between the Sheriff and the Ohio Patrolmen's Benevolent Association Correction Officers' Supervisory Unit. (10-MED-1427).

Article 2 - "Recognition";
Article 6 - "Corrective Action and Records";
Article 7 - "Discipline Meetings";
Article 8 - "Transfers and Assignments";
Article 23 - "Paid Leaves";
Article 26 - "Holidays";
Article 27 - "Health Insurance";
Article 28 - "Wages", and
Article 32 - "Duration".

At the direction of the parties an evidentiary hearing was held on May 23, 2011.

Timely in advance of the hearing the parties provided the Fact-Finder with the statements required by Ohio Administrative Code 4117-9-05(F) and the Ohio Revised Code, Section 4117.14(C)(3)(a).

At the hearing the parties introduced a combined total of five volumes of fiscal reports and analyses, Contracts between the County and its other bargaining units and Contracts covering Sheriff Deputies and Police Officers from other jurisdictions; tables of statistical information; conciliation and fact-finding reports; charts and graphs presenting economic data from Delaware County and other jurisdictions.

County Auditor George Kaitza and County Administrator Tim Hansley testified on behalf of the Sheriff.

On behalf of the Union several of its Directors - Chris Stayer; Keith Semones and Rob Curren provided commentary, and

the Union's Financial Consultant, H&J Certified Public Accountants, Inc. offered an "Independent Auditor's Report".

Following the hearing, at the request of the Fact-Finder, the parties submitted additional and more current information. The new material included statistics on the cost of Deputy Injury Leave for the period 2006 through April, 2011; a table of lapsed appropriations in 2009 and 2010; a table of the 2010 and 2011 appropriation increases for salaries and benefits by cost center; the County's general obligation bond and sewer revenue bonds totals, projections of the total cost to the County of each 1% increase in Deputies' base wages; the estimated cost of Deputies' time spent in negotiations for the 2008 Contract; the County's financial and unemployment rates through the first-quarter of 2011; credit rating reviews from both Moody's and Standard and Poor's; the Sheriff's accrued liability for unused sick leave, vacation leave and holiday leave; a 2009 CAFR (Comprehensive Annual Financial Report); a March 28, 2011 Certification by the County Auditor that total appropriations do not exceed the official estimates of resources; the 2008 average per capita personal income for Ohio's counties, and comparisons of the top wage rate for Delaware Deputies with (1) those in effect in assertedly comparable County Sheriff Departments and

(2) with the top rate of Police Patrol Officers in six Ohio cities and townships.

At the instruction of the Fact-Finder the parties submitted post-hearing briefs, and on June 24, 2011, the Fact-Finder declared the evidentiary portion of the hearing closed.

In consideration of the proceedings on the Fact-Finder's docket which closed earlier, the parties graciously consented to extend the time within which the Fact-Finder might issue his Report and Recommendations.

In making his analyses of the evidence and his recommendations upon the unresolved issues, the Fact-Finder has been guided by the factors set forth in O.R.C. Section 4117.14(C)(4)(e) and Ohio Administrative Code Section 4117-9-05(K) namely:

"(a). Past collectively bargained agreements, if any, between the parties;

"(b). 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;

"(c). 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;

"(d). The lawful authority of the public employer;

"(e). Any stipulation of the parties;

"(f). Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment."

THE FACT-FINDER'S REPORT

PREFACE:

The most contentious issue in dispute involves the Deputies' compensation. In applying the statutory listed factors to be considered in resolving this issues, it appears that predominant consideration must be given to: (1) The County's ability to pay while continuing to provide the services its residents require based on its prospective financial condition; (2) the Deputies' demand for compensation increases in light of the compensation offered to Deputies in comparable jurisdictions and (3) the Consumer Price Index.

ABILITY TO PAY:

The 2010 census showed that during the first decade of the twenty-first century, Delaware was the twentieth fastest growing County in the United States, and the fastest growing county in Ohio. Its population increased by 58%.

The 2008 per capita personal income of Delaware County residents, the last year for which data was provided, amounted

to \$51,500.00 - the highest of any County in the State.³ Indeed, the State average per capita income was only \$35,889.00.

Ohio and Delaware County did not escape the effects of the recent recession, but Delaware has fared better than the rest of the State in weathering the economic downturn.

The Ohio Office of Budget and Management reported in April, 2011 that "leading economic indicators remain consistent with continuing economic recovery".

In June, 2010 the Delaware County Auditor described the County's financial outlook in the "Management's Discussion and Analysis" portion of the 2009 Comprehensive Annual Financial Report in the following terms:

"Current indicators of the County's economic condition show that the County is not immune to the slowdown occurring throughout the nation. For 2009, property transfers and building permits decreased considerably; however, the County continues to receive encouraging information.

"Assessed valuation for the County's real property which includes residential, agricultural, commercial and industrial parcels increased 90 percent between 2002 and 2009 to \$6.111 billion. Although not as robust as previous years, the assessed value of new construction increased over \$4.1 million in 2009 primarily due to residential and commercial additions. The active number of businesses is 3,142 compared to the 2,036 businesses in 2001.

³ Obviously, not all Delaware County residents are well-off. In 2010 some 12,281 residents qualified for public assistance.

"... Even as the population continues to grow, the unemployment rate of the County has remained one of the lowest in the State. Compared to a State average of 10.2 percent, Delaware County's 2009 unemployment rate stood at 6.9 percent. This is due to the stable and diverse business environment in the area. Many of the top ten employers in the County are nationally recognized. J.P. Morgan Chase and Co., Kroger Company, American Showa Inc., and Meijer, Inc. are examples. The County Government, Ohio Wesleyan University, the public school systems, Central Ohio Primary Care Physicians, Inc., and Ohio Health (Grady Memorial Hospital) also provide a stable base of employment.

...

"The Polaris Fashion Place, Central Ohio's largest retail mall with six anchors and over one hundred fifty stores, is drawing shoppers from all over the Midwest to Delaware County. A recent addition includes an outdoor lifestyle center of 167,000 square feet featuring thirteen new stores, and restaurants. The mall plus the surrounding retail development remains a major source of the County's sales tax revenue.

...

"Delaware County was rated second in the nation for 2009 in the article '5 Best Places to get Ahead' by Forbes Magazine, out of the 3,141 counties in the United States. This ranking was based upon areas where increases in median income and job growth are the highest in the nation.

"The future of Delaware County continues to look bright. A major new retail development, Glennwood Commons, has opened on the east side of the City of Delaware off of U.S. 36/Ohio 37. Anchor stores of Meijer's, Kohl's, and Office Max join a variety of retail stores and restaurants. The County's first Kroger Marketplace in Lewis Center east of U.S. 23 opened in November. Furthermore, the Delaware County District Library has broken ground on a new 33,000 square foot library branch in Orange Township.

"Construction continues at the new Columbus State Community College campus with a summer completion date. Fall classes will be offered at the 80,000 square foot facility which is located on the southwest corner of U.S. 23 and Winter Road in Liberty Township. The college will serve an estimated 2,500 students in its first year. Future plans for the campus include the addition of seven buildings on the one hundred six acre site.

"Delaware County is also involved in promoting the establishment of enterprise zones, community reinvestment areas, and tax increment financing areas and working with area businesses to help pay economic dividends in the future. The County's Port Authority continues to support the creation of jobs and employment opportunities. Commercial and retail development is anticipated to continue throughout the County over the coming years."⁴

"Long-Term Financial Planning:

"Management of the County is committed to maintaining a year end cash carryover balance of 8 percent of General Fund revenues and no greater than 20 percent. This level of unreserved fund balance will ensure the continued operation of government and provision of services to residents. This fiscal stability is vital to maintain the credit worthiness of the County."⁵

..."

Earlier, two credit agencies had issued conflicting evaluations of the County's financial prospects.

The first of these, released by Moody's on November 13, 2009, continued to assign a favorable Aa1 rating to the County's

⁴Although there had been only one "new or expanded facility of a major business or attraction in 2009, when there had been not less than six in any of the preceding years of the decade, 390 new businesses did open in 2009, so that the total number of active businesses reached a record 3,157.

⁵According to an advisory offered by John Adams of Fifth Third Securities on July 22, 2010 "the [bond and credit] rating agencies' rule-of-thumb for carryover balances is to carryover no less than one-month's operating expenditure, if you are to stay in the "A" or above rating categories. For highly rated issues, with ratings in the "Aa" or higher categories, it is more typical to carryover two to three months worth of expenditures..."

outstanding and soon to be issued bonds,⁶ but revised the outlook for the County to "negative" based primarily on "revenue short-falls leading to substantial draws on reserves in 2008 and 2009, and budget draws on reserves for 2010 that may lead to deterioration of overall credit quality.":

"Moody's Investors Service:

"Located in central Ohio, Delaware County is one of Ohio's wealthiest and most rapidly growing counties, which experienced strong population and tax base growth for most of the past decade. While the county's growth has slowed during the recession, with a 33% decline from 2008 in year-to-date residential and commercial building permits as of September 2009, the county continues to experience a moderate amount of growth, particularly in its southern region, which captured 60% of the 2009 building permits. Despite recent slowdowns, in growth, the county's tax base has averaged a healthy 6.6% annual growth since 2004, and Moody's expects that growth will increase again as the economy recovers given the county's favorable location just north of Franklin County ... and the city of Columbus ... and ample land available for development. While the county's southern cities and townships, including wealthy bedroom communities such as Powell ... and Orange Township, are nearing full development, nearly 50%, of the county's available land is yet to be developed and development activity has been increasing around the city of Delaware ... which lies further north. Population growth has been strong, growing 64% from 1990 to 2000, and an additional 50% from 2000 to 2008, with a current estimated 2008 population of 165,000.

"Although the county's tax base, which currently stands at an estimated solid \$17.9 billion, is relatively moderate compared to counties of comparable credit quality. Moody's believes the county's tax base will continue to grow due to the strength and diversity of the Columbus Metropolitan Statistical Area's regional economy, including federal and state government and Ohio State University (50,000 students). Ohio Wesleyan

⁶ The County's general obligation debt as of 2010 was \$44,560,000.00 and its sewer revenue debt was \$30,210,000.00.

University (1,850 students), located in the city of Delaware, provides an additional measure of regional stability to the county. Key transportation corridors through the county have facilitated strong development, including further diversification of the tax base with increased commercial and retail development. The recently created Delaware County Port Authority continues to seek additional development opportunities. Major employers in the county represent a diversity of industries, including motorcycle and auto parts supplier, American Showa, and financial services provider, JP Morgan Chase & Co ... Resident socioeconomic indices are well above the state norm, with median family and per capita incomes at 153% and 151% of state averages, respectively. Full value per capita is a high \$108,319, reflecting the high quality development as well as extensive agricultural land and still modest population. Delaware County's unemployment rate remains below both the state and national rates at 7.2% in August 2009, compared to 10.5% for the state and 9.6% for the nation, for the same time period."

A contrasting report was issued by Standard and Poor's Rating Service less than a month later on December 4, 2009. S&P affirmed its AAA/stable outlook rating for the County. The rating reflected the County's "deep and diverse Columbus area economy" ... "Very strong income and extremely strong wealth levels" ... "Good financial management and revenue raising flexibility" and "Moderate overall debt burden."

The S&P Report observed that the unemployment rate was then (December, 2009) 6.7% and below the state average of 9.7% and the national average of 9.3%. [The County's unemployment rate remains below the state and national averages and, as of March, 2011, was recorded as 6.2%.]

Reflecting on the fact that the County had budgeted and planned to use reserves to offset what it expected to be revenue weakness in 2010, S&P wrote that "we still consider its overall financial position strong..." The reason for this favorable forecast was that "the county has revenue raising flexibility because it is not levying the additional available 1 mill of property taxes that could generate \$5 million dollars.⁷ The County only charges 1.25% sales tax, which is less than the 1.5% allowed by State Law."

The Auditor's optimism expressed in his June, 2010 CAFR Report, and the favorable outlook forecast in Standard and Poor's earlier rating bulletin proved to be justified in light of developments in 2010.

As it turned-out, 2010 was a year of solid, if modest recovery from the economic downturn. The County's General Fund revenues, expenditures and balances, (exclusive of road and bridge tax receipts and expenditures) are shown below:

⁷In August of 2010 the County Commissioners by a two to one vote kept the 1 mill tax rollback which would have resulted in the collection of an additional \$6.2 million dollars in revenue. The rollback had been in place since 1996.

	<u>2008:</u>	<u>2009:</u>	<u>2010:</u>
Sales Tax	\$21,805,000.	\$23,884,000.	\$26,371,000.
Real Property Tax	\$6,508,000	\$5,484,000	\$10,047,000 ⁸
Other Taxes	\$103,463.	\$34,356.	\$24,544.
Fees and Charges for Services	\$8,789,338.	\$8716816.	\$10,699206.
License and Permits	\$796608	\$712518.	\$875780.
Fines and Forfeitures	\$439658.	\$423771.	\$420418.
Inter-Governmental	\$4,163,504.	\$3,931,791.	\$4,657,542.
Miscellaneous	\$6,407,073.	\$3,113,020.	\$2,554,546.
Other Sources	\$8,856.	\$4,043.	\$12,038.
Total Inter-Governmental Funding	\$4,164,000	\$3,931,000	\$4,658,000
Total:	\$51,333,000	\$50,917,000	\$55,792,000

Total General Fund Expenditures:

<u>2008:</u>	<u>2009:</u>	<u>2010:</u>
\$54,028,000	\$52,516,000	\$55,514,000

General Fund Cash Balances as of January 1st:

<u>2008:</u>	<u>2009:</u>	<u>2010</u>	<u>2011:</u>
\$12,621,000	\$9,925,000	\$8,325,000	\$8,604,000

The General Fund cash balance of \$8,604,184.00 represented 15.5% of 2010 expenditures.

According to the County Auditor's 3rd Amended Official Estimate of Resources for 2011 issued on March 28, 2011 the December 31, 2010 General Fund cash balance had increased by

⁸The increase was largely the result of the County Commissioner's having reduced the property tax rollback from 1.8 mill to 1 mill.

The number of foreclosure filings had increased from 130 in 1995 to a peak of 1,003 in 2009 before declining in 2010 to 989. But, this number was quite small in comparison with the number in other Counties. It represented only approximately 1.1% of all of the 89,053 foreclosures reported in Ohio that year.

The number of residential building permits issued in 2010 increased by 101 from 2009, and the sewer starts for new homes increased to 459 in 2010 from 432 in 2009. Both totals, however, were well below the average of the period 2000-2007.

\$360,000.00 to \$12,182,839.00, and the carryover available for appropriation was \$11,350,421.00, but subject, however, to outstanding "advances-out" of \$2,558,291.00. The unencumbered cash balance was \$10,779,000.00 representing 19.3% of 2010 expenditures.

For the first quarter of 2011, the General Fund revenues (net of road and bridge taxes) increased by \$648,000.00 or 4% over the same period in 2010 - from \$16,355,000.00, to \$17,003,000.00.

During the 2011 first quarter general fund expenditures (net of road and bridge spending) increased by only \$475,000.00 over 2010 (\$18,851,000.00 from \$18,376,000.00) or some 2.65%.

While the revenue growth from local taxes and fees is expected to continue for the balance of 2011, State funding will be curtailed.

The full effect of the reductions in the Local Government Fund to be distributed to municipalities will take effect in 2013. The forecast is that Delaware's share will be reduced from approximately \$5 million in 2011 to \$4 million in 2012, and then to \$2,500,000.00 in 2013. The 2013 reduction will amount to approximately 50% of the 2010 distributions.

The Union commissioned an analysis of the County's financial status by H&J Certified Public Accountants, Inc. After reviewing of the Cash Reports for the General Fund the Consultant noted that the 2010 actual revenue (inclusive of roads and bridges taxes) of \$67,095,000.00 exceeded the 2009 revenue total of \$58,723,000.00 by \$8,371,000.00. The increase was primarily the result of requiring all sales tax revenues to be paid into the General Fund. The revenues, including road and bridge receipts and "advances in", amounted to \$4,840,000.00 more than had been budgeted for the year.

Actual expenses, including road and bridge outlays and "advances-out"⁹ amounted to \$66,974,000.00 in 2010, \$2,453,000.00 less than the General Fund expense budget for the year of \$69,428,000.00, or 4% less than the budgeted expenditures.¹⁰

Examination of the health insurance reserve fund showed that as of January 1, 2010 the fund had a balance of \$2,243,000.00. However, as of December 31, 2010, the balance

⁹ During 2010, \$13,043,000.00 had been transferred out of the General Fund. \$6,000,000.00 was transferred to the Road and Bridge Capital Fund and \$2,392,000.00 to Human Services.

¹⁰ Encumbrances of \$1,404,000.00 were not included in the analysis. Consideration of this amount would reduce the favorable variance from the budgeted expenditures to \$963,000.00.

had shrunk to \$1,148,000.00, because the disbursements of \$12,378,000.00 had exceeded receipts of \$11,283,000.00.

Conversely, the self-insured workers' compensation reserve fund which had a starting balance of \$243,876.00 as of January 1, 2010, wound-up with an ending balance as of December 31, 2010, of \$878,036.00. Receipts for the year totaled \$950,607.00, while disbursements amounted to only \$316,448.00.

The Fact-Finder concludes that Delaware is financially well-off.

COMPARABLE COUNTY SHERIFF DEPARTMENTS:

The Sheriff lists fourteen counties which he considers comparable to Delaware. That list, together with the constituents' populations, average per capita incomes and bargaining unit size appear below:

County:	Population:	Per Capita Personal Income (2008)	Bargaining Unit Size:
Delaware	168,708	\$51,501.00	82
Butler	363,184	\$35,921.00	107
Fairfield	122,759	\$32,834.00	79
Franklin	1,150,122	\$39,165.00	656
Geauga	90,895	\$45,939.00	110
Knox	54,500	\$29,610.00	51
Lake	236,775	\$37,669.00	42
Licking	145,491	\$35,952.00	102
Lorain	284,664	\$33,123.00	44
Marion	66,217	\$30,552.00	50
Montgomery	559,062	\$36,020.00	149
Morrow	31,628	\$28,046.00	30
Summit	542,899	\$38,940.00	337
Union	40,909	\$34,455.00	15
Warren	158,383	\$39,156.00	71

The Union proposes a list of ten counties as comparable which includes seven of those identified by the Sheriff - Butler, Franklin, Geauga, Lake, Lorain, Montgomery and Warren. For wage comparison purposes, however, Medina is substituted for Lorain in order to present the same array as found appropriate in the 2005 and 2008 Fact-Finding proceeding. Their relevant characteristics are shown below:

<u>County:</u>	<u>Population</u>	<u>Per Capita Personal Income (2008)</u>	<u>Bargaining Unit Size:</u>
Butler	363,184	\$35,921.00	107
Gauga	99,000	\$45,939.00	110
Greene	159,823	\$35,720.00	92
Clermont	196,364	\$35,844.00	61
Franklin	1,150,122	\$39,165.00	656
Hamilton	855,062	\$43,918.00	264
Lake	236,775	\$37,669.00	42
Lorain	305,707	\$33,123.00	44
Medina	172,332	\$38,099.00	39
Montgomery	532,562	\$36,020.00	149
Warren	210,712	\$39,156.00	71

Fact-Finder John T. Meredith in his Report which preceded the 2008 Contract accepted the Union's list of the "ten highest paid Counties" as most appropriate. In doing so, he affirmed Fact-Finder Adamson's use of the same Counties for purposes of his Report which preceded the 2005 Contract. At the time, the list included Medina, but excluded Lorain.

Mr. Meredith gave primary consideration to the fact that the Union's list contained "affluent counties which include suburban areas near major urban centers", but noted, however,

that Franklin County which contains Columbus skews the averages of the group. The Fact-Finder gave less weight to data from Licking and Fairfield Counties, proposed by the Sheriff, even though they were proximate to Delaware County, because they were "less suburban, less affluent and have experienced less growth."

This Fact-Finder comments that none of the mentioned Counties satisfies all the comparability criteria.

Union County, for example, proposed by the Sheriff with a population of 41,000, an average per capita income of \$34,500.00 and the Sheriff's Department of fifteen members can hardly be considered comparable to Delaware with a population of 169,000, an average per capita income of \$57,000.00 and a Department of eighty-two members. Proximity is the only reason for its inclusion.

Nonetheless, the Fact-Finder finds it useful in certain contexts to consider the information supplied by the Sheriff from his seven extra listed County Sheriff Departments, but will accord greater weight to the data from the list of ten endorsed by the previous Fact-Finders.

The Consumer Price Index:

The Consumer Price Index for all Urban Consumers for the twelve month period ending as of April 30, 2011 increased by

3.2%. That increase was the highest since 2008. The leading components of the index were gasoline (33.1%) and energy (19%). The prices of these items, along with food, although typically volatile, are not expected to retreat significantly, and the index is predicted to range between 2.75% and 3.5% over the next twelve months.

CONTRACT PROVISIONS AT ISSUE:

I. Article 2 - "Recognition":

A. The 2008 Contract:

The expired Contract provides in Article 2, Section F "Grievance/Liaison-Representatives" as follows:

"H. Negotiating Committee: Deputies on the OPBA bargaining team may be given release time for bargaining occurring during their shift or time-off from their shift because of their participation in bargaining outside their shift, with a maximum of one per shift per division, if the Sheriff or his designee determines that their absence will not underman his staff."

B. The Sheriff's Proposal:

The Sheriff seeks to require that members of the Union's negotiating team use paid leave time for their participation in bargaining sessions when the Deputy would otherwise be working his or her shift. The Sheriff would also require each Bargaining Unit member to contribute up to four hours of vacation leave per year to create a negotiation leave bank which Bargaining Unit Team Members may tap into.

The Sheriff's proposal reads as follows:

"H. Negotiating Committee Leave Bank: Deputies on the OPBA bargaining team may be given release time for bargaining occurring during their shift or time-off from their shift because of their participation in bargaining outside their shift, with a maximum of one per shift per division, if the Sheriff or his designee determines that their absence will not underman his staff. Deputies on the OPBA bargaining team may use negotiation leave for participating in bargaining during their shift. Participation in bargaining is not compensable work time. Each bargaining unit member will contribute four (4) hours of vacation leave per year to be placed in the negotiation

leave bank to be utilized in collective bargaining. Bargaining unit members participating in bargaining are limited to using either this negotiation leave bank or their personal accrued leaves for time spent in the collective bargaining process."

C. The Union's Proposal:

The Union opposes any change to the conditions under which members of the Negotiating Committee perform their services. It seeks to retain Article 2, Section H without change.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The Sheriff takes the position that Deputy time spent in collective bargaining negotiations should not constitute compensable work time, and would require that Union representatives use their own paid leave time or draw upon a negotiation leave bank to which each Bargaining Unit member would contribute four-hours of vacation leave per year.

The Sheriff argues that Deputies' "time spent during bargaining is the Union's time and should not be compensated by public funds".

In support of its position the Sheriff notes that of the fourteen Departments it cites as comparable, only the Fairfield, Franklin and Licking County Sheriffs provide negotiation pay.

Licking allows one employee per Unit to serve on the Bargaining Committee and receive relief time. Franklin County allows each member of the Bargaining Unit Committee to take as much as ninety-six hours of paid time-off. Fairfield has a more complicated arrangement recognizing five employee representatives for the purpose of conducting "Labor Council business", and pays employees who engage in bargaining during their regularly scheduled working hours.

But, as the Union points-out, the provision allowing for release time for participating in negotiations has existed in the parties' Labor Agreements since at least 1993.

The Ohio Legislature has decreed that the determination of the wages, hours and working conditions of Deputies in the Bargaining Unit is a shared responsibility of the Sheriff and the Union, and gives rise to the expectation of a cooperative approach to the determination of these issues. Negotiations can raise to the surface and address problems which, if left unresolved, can adversely affect the morale and the efficient functioning of the Department. The members of the Bargaining Unit who serve as participants in the negotiation process perform a service which inures not only to the benefit of the membership, but which also has the potential to contribute to the operational success of the Department.

During the 2008 Contract negotiations, the parties met four times. Four Deputies participated in those sessions, one of whom was present on his own time. The estimated cost to the Sheriff of the Deputies' participation in the Collective Bargaining process was only \$1,900.00.

The Fact-Finder believes that such an expenditure is a small price to pay once every three years to incentivize Bargaining Unit members to engage in the often burdensome undertaking of representation.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 2 be maintained without change and be carried forward and incorporated into the successor Agreement.

II. Article 6 - "Corrective Action and Records":

A. The 2008 Contract:

The expired Contract provides in pertinent part as follows:

"The Sheriff or his designee may file charges and administer discipline.

"A. The Sheriff (or staff officers) will not discipline a non-probationary Deputy without just cause. The principles of progressive discipline below will be followed. The Sheriff may determine that higher levels of discipline are required at times. However, any discipline issued is subject to review in the Grievance Procedure.

"1. Verbal counseling will be defined as `an exchange between the supervisor and an employee where the intent is to give adequate notice to any employee whose actions are improper and/or inadequate so that the employee may improve his or her performance to acceptable standards.'

"2. A verbal warning is a written order stating a deputy's behavior or job performance is unacceptable or unsatisfactory behavior or performance may result in corrective action being taken. Verbal warnings will be removed from the deputy's file one (1) year from the date of receipt.

"3. A reprimand is a written statement to a Deputy outlining his unacceptable or unsatisfactory behavior or job performance and noting that as a matter of discipline his activity is being documented for future employer evaluations of him. Reprimands will be removed from the Deputy's file after one (1) year providing that a second reprimand of the same nature is not received within that year. Should this occur, reprimands may remain for two (2) years.

..."

B. The Sheriff's Proposal:

The Sheriff seeks to eliminate the verbal counseling and verbal warning steps as set forth in Article 6, Section A, Paragraph 1 and 2, and remove the requirement in Paragraph 3

that a second reprimand be "of the same nature" in order to toll the one year "wipe clean" provision.

C. The Union's Proposal:

The Union wishes to maintain the current text of Article 6 and carry it forward into the successor Agreement without change.

D. The Fact-Finder's Analysis, Findings and Recommendations:

1. Elimination of the Verbal Counseling and Verbal Warning Steps:

The present disciplinary procedure consists of five steps beginning with a verbal counseling and progressing sequentially to a verbal warning confirmed in writing, a written reprimand, a suspension and, finally, discharge.

The Sheriff proposes to reduce the number of disciplinary steps preceding discharge by deleting "verbal counselings" and "verbal warnings", and substitute "a new system of mentoring and coaching Deputies without making ... [this] proposed program a step in the discipline process. Such "mentoring/coaching" or "counseling", according to the Sheriff, is not discipline and should not be subject to the grievance process.

Looking at "internal comparisons", the Sheriff's proposal would represent a departure from the disciplinary procedure found in each of the other Collective Bargaining Contracts within the Sheriff's Office.

Reviewing external disciplinary systems, eight of the fourteen Departments which the Sheriff finds comparable to Delaware include a verbal warning step in their disciplinary procedure, five do not.¹¹

No evidence was offered at the hearing to suggest that the performance of the Deputies has raised significant disciplinary problems. Indeed, the number of disciplinary actions either in total or by step category was not presented of record.

As the Fact-Finder understands the Sheriff's proposal to institute a mentoring program, the focus is not on remedying "improper and/or inadequate actions", but rather on improving performances which in themselves might not be unsatisfactory.

Such a program should be entirely independent of the disciplinary system, and the two can co-exist together.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 6, Section A, Paragraphs 1 and 2 be retained without change and carried forward and incorporated into the successor Agreement.

¹¹Article 17 of the Lorain County Sheriff's Collective Bargaining Agreement covering its Deputy Unit provides:

"C. Disciplinary Action May Include (A) one (1) or more instruction and cautioning (B) one (1) or more written reprimand..."

2. The Modification of the "Wipe Clean" Provision:

As to the Sheriff's proposal to eliminate the requirement that a second reprimand be "of the same nature" as the first in order to stay the one year, "wipe clean" mandate, so that the first reprimand would remain active in the Deputy's personnel file, the Fact-Finder considers it compelling that no evidence was offered to prove the ineffectiveness of the present disciplinary process to prevent and remediate unsatisfactory and improper job performance.

Accordingly, the Fact-Finder finds it appropriate and recommends that Article 6, Section A, Paragraph 3 be retained without change and carried forward and incorporated into the successor Contract.

III. Article 7 - "Discipline Meeting":

A. The 2008 Contract:

The expired Contract provided in Article 7, Sections G and H:

"G. The Sheriff shall inform a Deputy that a complaint has been filed against him, the nature of the complaint, and the outcome of the complaint within a reasonable period of time. Written notification must be given. If after investigating the complaint, the Sheriff decides not to make a formal investigation of a Deputy, the information gathered about the complaint shall not be placed in a Deputy's personnel file. Nothing in this section prevents the Sheriff from compiling information on a Deputy accused of engaging in, or aiding and abetting any unlawful activity. Anonymous oral complaints may not be utilized as a basis for commencing an investigation unless the complaint is reduced to writing and signed by either the complainant or the person who receives the complaint.

"H. For the purposes of this Agreement, an official investigation will be defined as any time management compiles written information about the alleged activities of an officer whether it relates to conduct allegedly occurring on or off-duty. To the extent practicable, all investigations and notifications of discipline resulting therefrom will be completed within 45 days of the time that the employer receives notice of the conduct in dispute."

B. The Sheriff's Proposal:

The Sheriff seeks to maintain Article 7 without change.

C. The Union's Proposal:

The Union would amend Article 7, Section G and H to read as follows:

"Paragraph G: The Sheriff shall inform a Deputy, in writing, that a complaint has been filed against him within ten (10) working days of the receipt of the complaint. This written notice shall contain the nature of the complaint, and the identity of the complainant. If after investigating the complaint, the Sheriff decides not to make a formal

investigation of a Deputy, the information gathered about the complaint shall not be placed in a Deputy's personnel file. Nothing in this section prevents the Sheriff from compiling information on a Deputy accused of engaging in, or aiding and abetting any unlawful activity. Anonymous oral complaints may not be utilized as a basis for commencing an investigation unless the complaint is reduced to writing and signed by either the complainant or the person who receives the complaint.

Paragraph H: For the purposes of this Agreement, an official investigation will be defined as any time management compiles written information about the alleged activities of an officer whether it relates to conduct allegedly occurring on or off-duty. All investigations and notifications of discipline resulting therefrom will be completed within 45 working days of the time that the Employer receives notice of the conduct in dispute. This provision may be extended upon written agreement signed by both parties.

..."

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The Union's proposal to require that the Sheriff notify a Deputy that a complaint has been filed against him within ten-days and complete a disciplinary investigation and administer any discipline within forty-five working days, is designed to introduce "dates certain" into the process in place of the present "notification of a complaint with a reasonable period of time" and the completion of the process within forty-five days "to the extent practical".

Reviewing the Contracts between the Sheriff and the other four Units, Correction Supervisors and Dispatchers are subject to a disciplinary procedure which, like that of the Deputies, allow the Sheriff forty-five days from the date notice of the

complaint is received to either issue discipline or dismiss the complaint. The Correction Officers, however, are subject to a ninety-day period beginning with the initiation of the investigation.

Four of the County Bargaining Unit Contracts - those with the Emergency Medical Service, the Environmental Services, the Department of Jobs and Family Services and the Engineer's Office - do not provide a specific time limitation within which the disciplinary process must run its course. The 911 Center Agreement requires completion within a "reasonable period of time following the incident giving rise to the grievance becomes known to the employer".

The Sheriff's canvas of fourteen assertedly comparable Departments reveals that seven do not provide a time limitation for the completion of the disciplinary process.¹²

The Departments listed as comparable to Delaware by the Union are similarly divided. Franklin County provides thirty-days for the process to run. Butler requires that disciplinary action be taken within forty-five days from the completion of the investigation, while Warren mandates that disciplinary action

¹² Fairfield is unique in that it allows for a ninety-day investigation period, but sets no limit on the time within which the discipline decision must be made.

must be issued within sixty-days of the investigation. Montgomery County allows thirty-days within which the investigation must be completed, and fifteen-days thereafter within which discipline must be recommended and formal charges served. Any disciplinary action must be taken within twenty-days thereafter.

The Union has not presented any case where the disciplinary process, once initiated, has dragged on for as long as nine weeks - forty-five working days - much less a longer period, or that a Deputy was not notified promptly that a complaint about his conduct had been received.

On the other hand, there may be unusual circumstances where information cannot be obtained within a given timeframe, and hence it may be "impracticable" to complete the investigation and notify the targeted Deputy of a disciplinary sanction if any, within even a forty-five work day period as proposed by the Union.

Finding no existing problem with the current disciplinary timelines which are neither unusual nor self-evidently inadequate, the Fact-Finder sees no reason for their revision.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 7, Section H be retained without change and carried forward and incorporated into the successor Agreement.

IV. Article 8 - "Transfers and Assignments":

A. The 2008 Contract:

Article 8, Sections B, C and D of the expired Contract provided as follows:

"B. The Sheriff will fill vacancies as follows:

"1. Posting: The Sheriff shall post the vacancy notice of permanent positions (i.e., a position expected to be filled for more than 6 months), naming the available job, duty hours, days-off, and a detailed job description. The posting shall be for five (5) working days (1 work day being defined as Monday through Friday). Interested candidates must apply within the five (5) day posting period by submitting a letter of interest with qualifications to the Division Supervisor. If a position that is confidential in nature needs to be filled, the Sheriff's Office agrees to notify counsel for the OPBA of said position if the position is expected to be filled for a period greater than 6 months.

"2. Selection: The Sheriff shall select the candidate he deems most qualified based on their job related experience, training, educational background needed to perform the duties as described in the posted vacancy. His selection must be made in good faith. If two bargaining unit members with comparable qualifications apply for the job posted, the bargaining unit member with the most seniority will prevail.

"C. Shift schedules and days-off, as established by the Sheriff, are assigned according to seniority. Deputies shall submit their request for shift schedules and days-off as follows:

"1. A seniority list that is current as of one week prior to shift bid will be posted at all reporting locations for the patrol division.

"2. The available shifts for patrol division will be posted 1 week prior to the first full week of December (this being Monday - Friday), at all reporting locations for the patrol division.

"3. Shift bidding will take place during the first full calendar week of December. The patrol division will be divided into thirds for this procedure. On Monday, the first third of

the patrol division will bid, on Wednesday, the second third will bid, and Friday, the third will bid. Upon completion of the bidding on Monday, the results will be posted on the North Office bulletin board, and upon completion of the bidding on Wednesday, the results will be posted on the North Office bulletin board. The time for bidding will be mutually agreed upon by the Sheriff and the bargaining unit. In the event an employee may not be able to appear for their shift bidding based on extenuating circumstances, the employee will make a written request at least two (2) weeks prior to the shift bid date requesting the Sheriff allow a proxy stand in their place for shift bidding. The written request will state the reason (extenuating circumstances) for the request and will name the employee acting as their proxy. The written request will be signed by the employee, the proxy, and the employee's division supervisor. The request will be sent directly to the attention of the Sheriff for processing. The Sheriff will not unreasonably deny any properly-submitted request. The employee will receive a written response from the Sheriff or his designee concerning the request.

"4. All available shifts will be posted with the exception of the Sergeant, Corporal, and K-9 shifts. Bargaining Unit members will keep in mind that no one shift will contain a large number of probationary deputies. If this would occur, bargaining unit members may be reassigned by the Sheriff's designee in a reverse seniority manner until the shifts are evened out.

"5. Shift schedules and days-off will be effective on the first day of the first full pay period of the New Year, at 07:00 hours. Bargaining unit members who will have to work more than 5 days in a row, or 80 hours in a pay period, as a result of their schedule change will be required to submit for time-off.

"6. The Sheriff may change a Deputy's shift schedule or day-off during the year for just cause.

"D. In the event the senior member of a shift is permanently moved from his present shift or days-off for any reason, the next senior member of the shift shall be given an opportunity to bid for the days-off previously occupied by the previous senior member, and so on down the seniority list for two additional times by seniority on the shift.

..."

B. The Sheriff's Proposal:

The Sheriff desires to retain current Contract language.

C. The Union's Proposal:

The Union wants to extend the number of days that a vacant position is posted for bid from five workdays to seven workdays, and the period for posting of seniority lists and available shifts and days-off for the shift selection process from one week to two weeks. The Union also asks that the Sheriff respond within five-days to a request to allow a proxy to stand-in for an employee during the shift selection process. The Union would therefore amend Paragraphs B and C, in part, to read as follows:

"Paragraph B Posting: The Sheriff shall post the vacancy notice of permanent positions (i.e., a position expected to be filled for more than 6 months), naming the available job, duty hours, days-off and a detailed job description. The posting shall be for seven (7) working days ('workday' being defined as Monday through Friday). Interested candidates must apply within the seven (7) day posting period by submitting a letter of interest with qualifications to the Division Supervisor. If a position that is confidential in nature needs to be filled, the Sheriff's Office agrees to notify counsel for the OPBA of said position if the position is expected to be filled for a period greater than six months.

...

"Paragraph C: Shift schedules and days-off, as established by the Sheriff, are assigned according to seniority. Deputies shall submit their requests for shift schedules and days-off as follows:

"1. A seniority list that is current as of one week prior to shift bid will be posted as all reporting locations for the patrol division.

"2. The available shifts for patrol division will be posted no later than November 15th, at all reporting locations for the patrol division.

"3. Shift bidding will take place during the first full calendar week of December. The patrol division will be divided into thirds for this procedure. On Monday, the first third of the patrol division will bid; on Wednesday, the second third will bid and Friday, the third will bid. Upon completion of the bidding on Monday, the results will be posted on the North Office bulletin board, and upon completion of the bidding on Wednesday, the results will be posted on the North Office bulletin board. The time for bidding will be mutually agreed upon by the Sheriff and the bargaining unit. In the event an employee may not be able to appear for their shift bidding based on extenuating circumstances, the employee will make a written request at least two (2) weeks prior to the shift bid date requesting that the Sheriff allow a proxy stand in their place for shift bidding. The written request will state the reason (extenuating circumstances) for the request and will name the employee acting as their proxy. The written request will be signed by the employee, the proxy and the employee's division supervisor. The request will be sent directly to the attention of the Sheriff for processing. The Sheriff will not unreasonably deny any properly-submitted request. The employee will receive a written response from the Sheriff or his designee concerning the request, within five (5) days of the submission of the request.

..."

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

1. The Job Posting Period:

Vacant positions in the Delaware County Sheriff's Office are posted for bid for five-days. The five-day posting period appears in all of the Sheriff Department's Contracts. As will be seen from inspection of the job posting time allowed by the fourteen Departments offered as comparable by the Sheriff, posting time is normally relatively short, ranging from seven calendar days in Marion, Lorain, Licking and Geauga, to eight-

days in Franklin, and to ten-days in Butler, Knox and Montgomery Counties. Fairfield has the longest period requiring posting to be not less than thirty-days.

However, only Morrow County limits the period for vacancy posting to five-days as does Delaware.

The Union's request for a slightly longer period - seven workdays - is reasonable, and the Sheriff does not contend that the increase would be administratively burdensome. Uniformity for the sake of uniformity, is not a persuasive argument, especially when there are significant operational differences among the Bargaining Units.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 8, Section B, Paragraph 1 be amended as set forth below, and as so amended, carried forward and incorporated into the successor Agreement:

"B. The Sheriff will fill vacancies as follows:

"1. Posting: The Sheriff shall post the vacancy notice of permanent positions (i.e., a position expected to be filled for more than 6 months), naming the available job, duty hours, days-off, and a detailed job description. The posting shall be for seven (7) working days. (A workday is defined as "Monday through Friday"). Interested candidates must apply within the seven (7) day posting period by submitting a letter of interest with qualifications to the Division Supervisor. If a position that is confidential in nature needs to be filled, the Sheriff's Office agrees to notify counsel for the OPBA of said position if the position is expected to be filled for a period greater than 6 months.

2. The Shift Posting Period:

The Union also asks that the posting of available shifts, along with the seniority list, take place two weeks, instead of one week, prior to the first full week of December. The Sheriff's initial pre-hearing statement also proposed this extension.

Since the Sheriff does not have any principled objection to the Union's proposal for a two week shift selection process, and no cost factors are involved, the Fact-Finder believes that it ought to be adopted.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 8, Section C, Paragraphs 1 and 2 be amended as set forth below, and as so amended, carried forward and incorporated into the successor Agreement:

"C. Shift schedules and days-off, as established by the Sheriff, are assigned according to seniority. Deputies shall submit their request for shift schedules and days-off as follows:

"1. A seniority list that is current as of two weeks prior to shift bid will be posted at all reporting locations for the patrol division.

"2. The available shifts for patrol division will be posted two weeks prior to the first full week of December (this being Monday - Friday), at all reporting locations for the patrol division."

3. Rulings on Proxy Requests:

Finally, the Fact-finder comes to consider the Union's proposal to amend Paragraph 3 of Section C to require the Sheriff to respond within five-days to an employee's request to allow a "proxy" to stand-in and bid on the employee's behalf.

Acting on an employee's written request detailing the "extenuating circumstances" why the employee is unable to participate in the bidding process in person, does not require any extensive investigation or deliberation by the Sheriff. There are no economic or other consequences which depend upon whether the employee is able to appear in person or whether he is able to persuade another employee to serve as his proxy and bid on his behalf.

However, to obviate any unforeseen contingency which might prevent rapid action, the Fact-Finder would recommend modifying the Union's proposal to require a response within seven workdays of the receipt of the request.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 8, Section C, Paragraph 3 be amended to read as follows:

3. Shift bidding will take place during the first full calendar week of December. The patrol division will be divided into thirds for this procedure. On Monday, the first third of the patrol division will bid, on Wednesday, the second third will bid, and Friday, the third will bid. Upon completion of the bidding on Monday, the results will be posted on the North

Office bulletin board, and upon completion of the bidding on Wednesday, the results will be posted on the North Office bulletin board. The time for bidding will be mutually agreed upon by the Sheriff and the bargaining unit. In the event an employee may not be able to appear for their shift bidding based on extenuating circumstances, the employee will make a written request at least two (2) weeks prior to the shift bid date requesting the Sheriff allow a proxy to stand-in their place for shift bidding. The written request will state the reason (extenuating circumstances) for the request and will name the employee acting as their proxy. The written request will be signed by the employee, the proxy, and the employee's division supervisor. The request will be sent directly to the attention of the Sheriff for processing. The Sheriff will not unreasonably deny any properly-submitted request. The employee will receive a written response from the Sheriff or his designee concerning the request, within seven (7) working days from the date of the receipt of the request.

V. Article 23 - "Paid Leaves":

A. The 2008 Contract:

The expired Contract provided in relevant part:

"A. Sick Leave:

...

"2. Deputies may use sick leave for absence due to personal illness, pregnancy, injury, exposure to contagious disease which could be communicated to other Deputies, and for absence due to illness, injury or death in the Deputy's immediate family.

...

"7. Upon death of a Deputy, unused accumulated sick leave shall be paid to his spouse, children or parents, if any, in that order, or to his estate. Payment for accumulated sick leave at the time of death shall be based on the Deputy's regular rate of pay at the time of his death, with one such hour of pay for every three (3) hours of accumulated sick leave.

"8. Upon separation from employment, the Sheriff will pay Deputies who have ten (10) years of service with the department one-fourth (1/4) of their accumulated sick leave.

...

"10. An employee shall be credited with an additional eight (8) hours of compensatory time each time they do not utilize any sick leave for a period of six (6) months. In accordance with this provision, an employee would be eligible for two-days maximum per year. The six month periods are defined as January to the end of June and July to the end of December each year.

"11. Sick Leave Donation: Employees can donate to a permanent fellow employee any amount of sick time they desire, so long as the donating employee does not drop below two hundred fifty (250) hours of accrued sick leave.

...

"D. Injury Leave: All full-time Deputies shall be entitled to time-off without wage deduction from their salary, except that any Workers' Compensation weekly salary benefits which he/she may be awarded by the Ohio Industrial Commission (OIC) will be deducted for a period not to exceed 90 consecutive working days

for Deputies working a forty (40) hour work week. This leave shall be used to recover from a medically verified disabling condition which prevents Deputies from performing their normally assigned duties. An `injury' includes one or more physical impairments resulting from the same accident. The Sheriff agrees that he will not require any members to exhaust sick leave prior to receiving injury leave. Deputies will continue to receive insurance benefits while on injury leave. They shall continue to accrue seniority, sick leave, and vacation time credit. As a condition of this benefit, the Deputy must pursue a Workers' Compensation claim for the injury.

"The following procedures must be followed to receive injury leave:

"(1). Injury leave only applies to personal injury of a Deputy occurring in the line of his duty. The Deputy shall complete an accident/injury investigation form and in conjunction with the Sheriff (or his designee) shall report such injury to the Sheriff immediately and insure that a claim is filed with the OIC. Documentation will include, but is not limited to, a statement from the Deputy's physician, an agreement covering Compensation Reimbursement, any necessary OIC forms and other documents as may be required by the Sheriff.

"(2). In all cases where a Deputy needs more than ninety (90) consecutive working days, the Sheriff will extend such leave by an additional ninety (90) consecutive working days, if determined by him to be necessary. Each Deputy requesting such an extension under this policy may be required to furnish a current affidavit from the licensed physician setting forth the need for the extension. Any decision rendered by the Sheriff regarding extension under this policy may be appealed through the Grievance/Arbitration Procedure.

"(3). The Sheriff will attempt to provide transitional duty work for Deputies who have received an injury on or off-duty. `Transitional work' means work that a deputy is fully able to perform when considering his established disabilities and which does not create an undue hardship upon the Sheriff's office."

B. The Sheriff's Proposal:

The Sheriff would eliminate the opportunity for employees to donate part of their sick leave time to a fellow Deputy.

Further, the Sheriff would limit payment of accumulated sick leave to Deputies who "retire" from employment after ten years and not to those who are "separated" from employment.

Finally, the Sheriff would revise the injury leave language to conform with provisions contained in the other Bargaining Units within his Department, and effectively eliminate the present policy of allowing Deputies to remain on paid injury leave.

The Sheriff's proposal to amend Section D of Article 23 is as follows:

"D. Injury Leave:

...

"The parties acknowledge and agree that employees of the Delaware County Sheriff's Office sustaining injuries in the course of and arising out of the scope of their employment should understand their rights, and that efforts should be made to keep the employees actively employed by the Sheriff's Office even if their work-related injuries prevent them from temporarily performing their former position of employment. For purposes of this provision, 'former position of employment' refers to the job that was being carried out at the time of a work-related injury.

"As a preliminary matter, the parties understand and agree that the processing and compensability of Workers' Compensation claims is governed by Chapter 4123 of the Ohio Revised Code. If an employee of the Sheriff's Office believes that he/she has sustained a work-related injury, he/she should immediately report the injury, complete and submit an accident report to the Sheriff, and proceed to file a Workers' Compensation claim if he/she desires to do so. Assistance with the processing of the Workers' Compensation claims will be provided through the County, but not necessarily by the Sheriff's Office.

"Any determinations as to the compensability of a Workers' Compensation claim will be made by the Bureau of Workers'

Compensation and/or the Industrial Commission of Ohio. The parties recognize that the ability to pursue and/or contest a Workers' Compensation claim are governed by Chapter 4123 of the Ohio Revised Code, and are not subject to modification by this collective bargaining agreement.

"Although an employee's entitlement to benefits stemming from a work-related injury will be governed by the Ohio Workers' Compensation Act, the parties agree that every reasonable effort should be made to try and assist the employee with his/her return to work following a claimed work-related injury. Accordingly, it will be the practice of the Sheriff's Office to assist and encourage an employee's return to work through the use of transitional or alternative duty job opportunities.

"If, after compensability of a claim has been determined, an employee is advised by his or her physician that he/she is unable to return to his/her former position of employment, the employee should immediately notify the Sheriff of this fact, and he/she should present the Sheriff with written notice of his/her medical restrictions. If the employee is claiming that he/she is temporarily and totally disabled, then he/she should be permitted to pursue temporary total disability compensation pursuant to R.C. 4123.56. If, on the other hand, an employee is advised by his/her physician that he/she is unable to return to his/her former position of employment, but is capable of working some capacity, then the Sheriff will attempt to make every reasonable effort to place the employee in a transitional/alternative duty position consistent with the employee's medical restrictions. If, for any reason, the Sheriff questions the employee's physical restrictions outlined in any documentation provided by a medical practitioner who has seen or who is treating the employee, the Sheriff shall have the right to schedule an independent medical evaluation to address the issue of the employee's work capabilities. If, as a result of the Sheriff's decision to schedule the employee for an independent medical examination, the employee is obligated to remain off of work despite a desire to return to work, the employee shall remain eligible to pursue benefits through R.C. 4123.56.

"The parties acknowledge and agree that having an employee who has sustained a work-related injury gainfully employed in some capacity is preferable to having the employee remain off of work. Through this provision, the Sheriff supports and endorses the concept of transitional/alternative duty work (i.e., work in some capacity other than the employee's position of employment at the time that he/she was injured), and the Sheriff commits to

assisting employee's return to gainful employment following a work-related injury. If, for any reason, the Sheriff's Office is unable to accommodate the medical restrictions of an employee claiming a work-related injury, then the Sheriff agrees to provide the employee with a written statement, upon the employee's request, confirming the inability to return the employee to a transitional/alternative duty position. It is understood and agreed that the employee can use said statement to support any request for benefits that he/she may pursue through R.C. 4123.56.

"Lastly, the parties herein incorporate by reference R.C. 4123.90. It is understood and agreed that the Sheriff's Office will not take any type of retaliatory action against an employee as the result of his/her pursuit of an Ohio Workers' Compensation claim. To the contrary, it is acknowledged and agreed that if a determination is made that an employee has a valid work-related injury, then the Sheriff will make every reasonable effort to assist the employee with a return to work within the employee's medical restrictions. Employees will continue to receive insurance benefits, accrue seniority, sick leave and vacation time credit while off work as a result of a valid Workers' Compensation claim."

C. The Union's Proposal:

At the fact-finding hearing the Union withdrew all of its proposals for amendments to this Article and requests that the text of Article 23 be retained intact.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The Fact-Finder will consider, in turn, the Sheriff's proposals (1) to eliminate the Deputies' Sick Leave Donation Bank, (2) limit eligibility for the accumulated sick leave payout to those who "retire" from the Department, and (3) allow the Sheriff to discontinue paid Injury Leave to Deputies who are injured on-the-job and unable to work.

1. Elimination of the Sick Leave Donation Bank:

Under Section A, Paragraph 11, of Article 23, employees are entitled to donate their accumulated sick time to a fellow Deputy so long as they maintain not less than 250 hours in their sick leave bank.

The Sheriff proposes to eliminate the bank for fear that some Deputies would use up their personal sick leave, and then coerce their colleagues to give-up some of their own.

Whether an employee retains or transfers a portion of accumulated sick leave is, so far as it appears, without any economic consequence to the Sheriff. And, the Sheriff offers no evidence of any complaints having been filed, nor anecdotal reports having been received, charging that Deputies have been unwillingly induced to transfer some of their accumulated sick leave time to a colleague who has exhausted his or her allotment.

The Fact-Finder observes that other Units within the Sheriff's Department similarly permit sick leave donations.

Under these circumstances, the Fact-Finder does not find justification for adoption of the Sheriff's proposal to delete Paragraph 11 of Section A of Article 23.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 23, Section A, Paragraph 11 be retained without change and carried forward and incorporated into the successor Agreement.

2. Limiting Cash-Out of Accumulated Sick Leave:

At present, Article 23, Section A, Paragraph 8 allows employees who have at least ten years of service with the Department to cash-out one-fourth of their accumulated sick leave "upon separation of employment".¹³

This same provision is found in each of the other Collective Bargaining Agreements within the Sheriff's Department.

This amount of sick leave conversion Delaware allows Deputies is exceeded in seven of the Sheriff's listed comparable Departments, five of which are also among the Union's ten. Lake and Lorain permit 100% of accumulated sick leave to be cashed-out at retirement - up to 960 hours, in Lake and 1,000 hours in Lorain. Montgomery and Butler allow 50% of accumulated unused

¹³ A similar provision is found in Article 24, Section E which allows Deputies to receive pay for any earned, unused vacation "at the time they are separated from the Sheriff's Department". (The Sheriff does not propose to change that provision, and fails to explain the reason to change the one and not the other.)

sick leave to be paid-out at retirement - up to 3,000 hours in Montgomery and 320 hours in Butler. Geauga County permits one-third of accrued sick leave, up to 720 hours, to be cashed-out on retirement after ten years of services. The remaining Departments allow 25% of accrued sick leave to be cashed-out at retirement up to a maximum of 240 or 250 hours.

As of May, 2011, Deputies had accrued a total sick leave balance of 40,184.

The Sheriff seeks to disqualify Deputies from accessing this benefit if, after ten years of service, they have been discharged for cause, or resign.

The Union represents that since 1992 through the first five months of 2011, no Deputy Sheriff has been terminated for cause.

Sick Leave is a conditional benefit at least nominally reserved to those who are ill or injured and unable to work.¹⁴ Theoretically, therefore, employees who have not been unable to work should have no claim to any sell-back. But, of course, the sell-back is designed to provide an incentive for employees to minimize absence from work.

¹⁴Deputies may also utilize sick leave to attend to an ill member of their immediate family.

Denial of a sell-back option to those properly discharged for cause is not inequitable.

As to those Deputies who might resign from the Department, after ten years but short of retirement, the Sheriff argues that limiting the cash-out privilege encourages Deputies to stay with the Department for their entire careers. But, the Contract's present cash-out bargain makes eligible those who leave after ten years service. Whether the departing Deputy retires or resigns after serving for that term would not seem to be of consequence.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 23, Section A, Paragraph 8 be amended as set forth below and as so amended carried forward and incorporated into the successor Agreement:

"8. Upon retirement or resignation from employment, the Sheriff will pay Deputies who have ten (10) years or more of service with the Department one-fourth (1/4) of their accumulated sick leave."

3 Paid Injury Leave:

The Contract provides paid leave for up to ninety workdays to Deputies who are unable to work because of on-the-job injuries.

Similar compensated leave time (ninety consecutive working days) is provided to Correction Officers.

None of the other Units within the Department - Dispatchers, Enforcement Supervisors and Correction Supervisors are eligible for paid occupational injury leave.

Although in other contexts the Sheriff has proposed that the Deputies Unit depart from the terms and conditions of employment observed by other of the Department's employees, the Sheriff here argues that uniformity across all Bargaining Units is desirable.

The Fact-Finder observes that it is not unusual that different Bargaining Units have different priorities, and that those differences would give rise to differing Contract terms.

Quite likely the risk of occupational injuries to Deputies who are engaged in road patrol and the apprehension of criminals was thought to be greater than to members of other Units, and therefore that an Injury Leave benefit should be a Union negotiating goal priority.

The fact that the Union was successful in achieving this goal suggests that it had agreed to one or more of the Sheriff's proposals during the "give and take" of negotiations. The Sheriff now offers no concessions for its repeal.

Unlike health insurance and certain other programs where uniformity across all employees has important cost benefits, the

Fact-Finder has not been shown where the special treatment of disabled Deputies has proven to be of economic significance.

The Department's on-the-job injury record since 2008 is depicted below:

<u>ON-THE-JOB INJURIES:</u>				
	2008	2009	2010	2011:
				(4 Months):
Total Number of Injuries	15	12	16	12
Total Hours Lost	168	462	104	222
Total Payments	\$4,069.00	\$11,301.00	\$2,804.00	\$6,232.00 ¹⁵

The average annual payout to employees over the term of the 2008 Contract and through the first quarter of 2011, has been \$6,101.00, and does not qualify as one of the Department's major cost concerns.

The Sheriff's proposal to discontinue the Injury Leave had been rejected by the Fact-Finder in the proceeding which led to the 2008 Contract:

"Comparable data clearly supports retaining the current Injury Leave provision.

"No evidence was presented to show that it has caused specific problems for the Sheriff's Department during the fifteen or more years that it has been in the Agreement. As noted in the discussion of overtime above, bargaining history and past Agreements are a consideration."

The present situation has not materially changed.

¹⁵ The payments do not reflect any recoveries from civilians who were adjudged to have been at fault in causing injury creating accidents.

Among the Union's list comparable Departments, Butler retains employees on the payroll for thirty calendar days; Lorain provides support for the first 180 calendar days of occupational injury leave; and Lake continues compensation for sixty working days; Warren grants payroll wages for the first ninety calendar days. Among other Departments, Fairfield gives injured Deputies thirty calendar days of paid leave; Licking offers payroll continuation for one year; Summit retains payroll status for employees injured on the job for 120 working days; Marion keeps injured Deputies on the payroll for the first ninety calendar days.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 23, Section D be maintained without change and carried forward and incorporated into the successor Contract.

VI. Article 26 - "Holidays"

A. The 2008 Contract:

The expired Contract provided in relevant part:

"B. Employees may utilize forty (40) hours of paid leave annually other than sick leave (i.e., vacation, holiday, comp and/or personal leave) in eight-hour increments on a demand basis. These five (5) eight (8) hour days must be granted with any amount of notice, as long as it is not necessary to replace the requesting employee due to minimum staffing requirements at the time of the request."

B. The Sheriff's Proposal:

The Sheriff would forward Article 26 without change into the new Contract.

C. The Union's Proposal:

The Union initially proposed to amend Paragraph "B" to allow Deputies to utilize eighty hours of paid leave annually in any increments on a demand basis. It subsequently modified its proposal and sought to permit use of up to forty-hours of paid leave annually on a demand basis in increments of four-hours instead of eight.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

At present employees may utilize forty-hours of their accrued paid leaves, other than sick leave, in eight-hour increments, on a demand basis.

The Union is justified in complaining that the existing requirement that demand leave be taken in eight-hour increments can be wasteful. When an employee needs to be absent for a short period of time such as attending a child's activity or a scheduled appointment, the employee is obliged to take-off the entire eight-hour period. A four-hour minimum makes more sense.

In his Fact-Finding Position Statement the Sheriff announced that he had no objection to the Union's initial proposal to take demand leave in any increment. Thus, the Sheriff did not consider the taking of demand leave in less than eight-hour installments to be administratively disruptive and interfere with his ability to effectively schedule and deploy Deputies on each shift.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 26 be amended to provide as follows, and as so amended carried forward and incorporated into the successor Contract:

"B. Employees may utilize (40) hours of paid leave annually other than sick leave, (i.e., vacation, holiday, comp and/or personal leave) in four (4) hour increments on a demand basis. Such leave must be granted with any amount of notice, as long as it is not necessary to replace the requesting employee due to minimum staffing requirements at the time of the request."

VII. Article 27 - "Health Insurance":

A. The 2008 Contract:

The expired Contract provided as follows:

"1. The Employer shall maintain a group health benefits plan for the bargaining unit. The plan and its benefits shall be equal to or better than the plan in effect for the employees of the County generally (management and non-management employees alike).

"2. The Employer may implement reasonable changes in the health benefits plan so long as the changes are implemented for county employees generally and so long as the Employer continues to fund the plan with at least its immediately preceding monthly contribution to the cost of health benefits. The Employer's implemented plan must be reasonable, the Union or employees may file a grievance to challenge the Employer's compliance with this Article including the reasonableness standard.

"The Employer shall meet and confer with representatives of the Union before implementing any changes.

..."

B. The Sheriff's Proposal:

The Sheriff seeks to be permitted to change the health benefits plan without being obliged to fund the plan with at least its immediately preceding monthly contribution. He would also eliminate the Union's right to grieve the alleged unreasonableness of any change in the plan.

The Sheriff proposed language which would "clarify that the Employer is not required to maintain current insurance contribution levels. The levels would be as are set for all other Union and non-Union County employees."

The Sheriff demands therefore to amend Article 27 to read as follows:

"1. The Employer shall maintain a group health benefits plan for the bargaining unit. The plan and its benefits shall be the same plan in effect for the employees of the County generally (management and non-management employees alike).

"2. The Employer may implement reasonable changes in the health benefits plan so long as the changes are implemented for County employees generally. The Employer shall meet and confer with representatives of the Union before implementing the changes.

..."

C. The Union's Proposal:

The Union seeks to maintain the provision in its current form.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The Sheriff's contribution requirement originated in a Union's proposal that was incorporated into the 1993 Contract as the result of a Fact-Finding recommendation that the Union's proposal to this effect be adopted in exchange for acceptance of the Sheriff's wage proposal.

The Sheriff's Contracts with the Enforcement Supervisors Unit, the Dispatchers Unit, the Corrections Supervisors Unit and the Corrections Officers Unit contain the same provisions as the Deputy's Contract.

The Contracts with the Bargaining Units in the 911 Center, the Department of Environment Services, the Department of Job and Family Services, the County Engineer's Office leave the benefits and the Employer's share of the cost of such benefits

entirely within the discretion of the County Commissioners so long as the benefits and cost sharing are applicable to non-Bargaining Unit employees. The Contract with the Emergency Medical Services Bargaining Unit allows the Employer to make reasonable changes in the health plan benefits as long as the changes are implemented for County employees generally.

Deputies currently make monthly contributions of 2.5% towards the cost of family coverage (\$36.20) and 2.6% towards the cost of single coverage (\$14.36)). The Sheriff quite accurately points-out that these amounts are singularly low compared to the contributions made by Deputies in the Departments which the Sheriff insists are comparable to Delaware, including those which, like Delaware, are members of the CEBCO insurance consortium.

The contribution rates paid by Deputies in those Departments ranged from a low of 10% in Summit and Lorain to a high of 30% in Union.¹⁶ Knox, Fairfield and Marion charge employees 15% of health insurance cost. The dollar charges, but not the percentages of Deputy contributions were also presented for the

¹⁶ Butler offers three plans. The so-called "high-option plan" requires employees to make a maximum contribution of 24% of the premium cost. The "mid-option plan" requires employees to contribute a maximum of 15% to the premium, while the "low-option plan" calls for a maximum of employee contribution of 5% of the premium cost.

members of the Montgomery, Lake and Franklin Departments. The amounts paid by Deputies in three Departments were significantly higher than those paid by the Delaware Deputies.¹⁷

The Sheriff has not proposed any specific increase in Deputy health benefit contributions, rather he would leave the contribution rate or rates entirely to the discretion of the County. But, the County Commissioners have apparently not yet authorized the Sheriff to propose a uniform contribution rate for employees enrolled in a particular plan for a particular coverage. Under those circumstances, the language offered by the Sheriff would remove employee cost sharing from the negotiating table and leave the amount to the unilateral determination of the County Commissioners. The Union would be relegated to "meeting and conferring" with the Sheriff before plan changes are implemented.

The Fact-Finder observes that having a single, County-wide health benefit plan makes eminently good sense. A proliferation of different plans for different bargaining groups with differing contribution levels, is not only administratively inefficient and costly, it encourages over-utilization by the

¹⁷ At the other extreme, the Warren County Deputies do not contribute towards payment of the health insurance premium.

avored groups and results in subsidization by the disfavored groups.

The Sheriff's proposal to change the text of Article 27, Section 1 to refer to the "same plan in effect for employees of the County generally", instead of a "plan and its benefits ... equal to or better than the plan in effect for the employees of the County generally" is sound.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 27, Section 1 be amended as follows and as so amended carried forward and incorporated into the successor Agreement:

"The Employer shall maintain a group health benefits plan for the Bargaining Unit. The plan and its benefits shall be the same plan in effect for all employees of the County generally (Bargaining Unit, and non-Bargaining Unit employees and officers) who are eligible for group health insurance benefits."

The Sheriff also wishes to amend Section 2 to eliminate the requirement that the Department's minimum contribution towards premium cost be no less than what it paid during a preceding month. He also seeks to delete the qualifications that the plan be "reasonable", and that a grievance may be filed to challenge whether the Employer has complied with the "reasonableness" standard.

These two contested provisions were introduced into the text as a result of a 1993 interest arbitration award.

A subsequent attempt by the Union to change the text was refused by the Fact-Finder whose Report preceded the adoption of the 2005 Contract.

The present Fact-Finder believes it is unlikely that County-wide changes in the plan which would increase costs would be adopted, but if the Sheriff's liability is capped at a pre-existing monthly level, there is little incentive to modify the plan to decrease costs.

Nevertheless, until the Sheriff and the County Commissioners are willing to negotiate health benefits and cost sharing terms, the Fact-Finder does not find the Sheriff's proposal to eliminate his current contribution obligation to be appropriate.

As to the proposal to eliminate the right to grieve a change in the plan, the Fact-Finder sees no merit. No grievance has ever been filed challenging the reasonableness of a change in the plan although the right to challenge "reasonableness" has been available for eighteen years.

Accordingly, the Fact-Finder finds appropriate and recommends that Section 2 of Article 27 be maintained without

change and carried forward and incorporated into the successor Contract.

VIII. Article 28 - "Wages and Pay Steps":

A. The 2008 Contract:

The expired Contract provided a four-step salary progression with the highest amount payable to employees after five years of continuous service. The base wage rate was increased by 3% in each of the three years of the Contract, i.e., January 1, 2008, January 1, 2009 and January 1, 2010. The following wage schedule became effective as of January 1, 2010 and remains in effect:

"During 1st year - \$20.82;
"After 1st year - \$22.37;
"After 3 years - \$24.65, and
"After 5 years - \$28.34

...

A. Corporals will be paid 5% above the rate of the top deputy.

...

C. Field training and/or Orientation Officers shall receive an additional \$1.00 per hour for all hours worked in that capacity."

B. The Sheriff's Proposal:

The Sheriff proposes no wage increase in 2011, a 1.5% increase as of the first full pay period of January, 2012, and another 1.5% wage increase effective as of the first full pay period of January, 2013.

The Sheriff further proposes to eliminate the Corporal's 5% wage premium provision.

C. The Union's Proposal:

The Union seeks a 3% wage increase at each wage step retroactively effective to January 1, 2011, and subsequent 3% increases on January 1st of each subsequent year of the Agreement.

Further, the Union asks that the Field Training and Orientation Officer supplement be increased by \$1.00 per hour.

Finally, the Union would institute a shift differential of fifty-cents (\$.50) per hour for all hours worked between 2:00 p.m. and 6:00 a.m.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

A. Base Wage Rate:

Based on first quarter 2011 results, it appears likely that County tax revenues will exceed those received in 2010, and the County's financial position, despite a reduction of Local Government Fund transfers and property tax income, will remain strong, and its General Fund balance continue to exceed by a considerable margin the 8% minimum deemed acceptable by the County Auditor.

Beginning in 2005 continuing through 2010, the Deputies had received an annual wage increase of at least 3.0%, and usually 3.5%.

For 2011 the County budgeted a General Fund expenditure of \$5,960,000.00 for the Sheriff's Deputies' wages and benefits - an increase of \$300,000.00 or some 5.2% over the 2010 expenditure of \$5,660,000.00. The budget for wages alone was \$4,086,000.00, some \$155,000.00 or 3.5% higher than the 2010 expenditure of \$3,930,000.00.¹⁸

The budget for benefits amounted to \$1,874,000.00, some \$144,767.00 more than the 2010 outlay of \$1,730,000.00, an increase of 8.1%.

The 2011 budget items, contemplate, of course, possible increases in the size of the Department, overtime utilization and health benefits costs, in addition to potential wage rate enhancements.

The Sheriff projects that each 1% increase in base wages, together with the linked "roll-ups" (18% PERS, 1% Workers' Compensation, 1.45% Medicare) would cost the County \$57,564.00 a year.

¹⁸ The Sheriff's share of the County's total expenditures for wages and benefits in 2010 was 40%, an increase of 1.5% since 2008.

By prudent management the Sheriff returned lapsed appropriations of some \$92,717.00 in 2009 and an additional \$151,624.00 in 2010.

It appears that other Bargaining Units within the County received only a 2% wage increase in 2011.

As of 2010, despite the regular annual increases in Deputies base wage rates, senior Deputies total compensation of \$59,947.00¹⁹ ranked six when compared to total pay received by their peers in the ten most comparable Departments, and represented 98.42% of the average of the array as set forth below:

¹⁹ Includes top base wage rate, longevity, uniform allowance, and other stipends.

2010 Comparison of Benefits:

<u>Jurisdiction</u>	<u>2010 Top Pay:</u>	<u>Uniform Allowance</u>	<u>Annual Shift Differential:</u>
Butler	\$57,510.32	\$ 698.00	\$0.00
Clermont*	\$57,220.80	Provided	\$0.00
Franklin*	\$69,395.46	Provided	\$1,248.00
Geauga	\$60,340.80	\$1,041.60	\$0.00
Greene	\$57,948.80	Provided	\$485.00
Hamilton	\$55,996.52	\$800.00	\$0.00
Lake*	\$59,508.80	Provided	\$0.00
Medina	\$55,636.00	\$1,300.00	\$0.00
Montgomery	\$60,881.60	Provided	\$0.00
Warren*	\$59,321.60	Provided	\$0.00
Delaware*	\$58,947.20	Provided	\$0.00

<u>Jurisdiction:</u>	<u>Longevity</u>	<u>Other</u>	<u>Total</u>
Butler	\$1,437.76	\$0.00	\$59,646.00
Clermont*	\$ 0.00	\$3,089.65	\$60,310.00
Franklin*	\$ 750.00	\$0.00	\$71,393.00
Geauga	\$1,000.00	\$0.00	\$62,382.00
Greene	\$ 250.00	\$0.00	\$58,684.00
Hamilton	\$ 559.97	\$0.00	\$57,356.00
Lake*	\$ 650.00	\$300.00	\$60,459.00
Medina	\$ 800.00	\$150.00	\$57,886.00
Montgomery	\$ 761.00	\$0.00	\$61,643.00
Warren*	\$ 0.00	\$0.00	\$59,322.00
Delaware*	\$1,000.00	\$0.00	\$59,947.00
Average:			\$60,908.00
Delaware % of Average			98.42%

- *Delaware County Not included in Average
- *Clermont - Contract expired 12/31/09
- *Franklin - Contract expired 4/11/10
- *Lake - Other is 30 hour job related certificate and licensed Paramedic
- *Medina - Other is Firearms Proficiency
- *Warren - Contract expired 11/20/10

As of the close of this proceeding, only two of the ten had agreed upon compensation for 2011 - the Greene County Deputies received 2% base wage rate increases while the Montgomery County Deputies agreed to maintain their 2010 wage rates.

It is apparent that the 2011 - 0% wage rate increase and the 2012 1.5% wage increase offered by the Sheriff would not be sufficient to bring the Delaware Deputies above the 2010 average

compensation in the ten comparable Departments, much less to increase their standing among the ten as the Union believes appropriate in light of Delaware County's preeminent financial position.

In fact, the Sheriff's wage proposal is less than the increase the Commissioners agreed to pay other Bargaining Units in 2011 - 2%.

The inadequacy of the Sheriff's proposal is underscored by the fact that the Consumer Price Index measured as of April, 2011 shows an increase in the previous twelve months of 3.2%, before seasonal adjustment, with the volatile gasoline, household energy index and food index likely to continue to climb in light of the steadily increasing demand for oil and the problematic ability, in light of climate changes, to increase levels of food production.²⁰

Any wage increase of less than 3% would likely result in Deputies' real income being less in 2011 than it was in 2010.

²⁰ The Sheriff introduced a chronologic table comparing increases in the Deputies wages with rises in the Consumer Price Index for the Mid-West area, all urban consumers for the seven year period 2004-2010. The Sheriff's calculations show a cumulative increase in the cost of living of 23.32%, whereas the Deputies wages increased by a cumulative 28.73% over this period. The result is that the "real wages" of Deputies increased by only 5.51% over the seven years.

Taking into account the County's financial position as of the first quarter of 2011, the Fact-Finder finds appropriate and recommends a 3% increase in the base wage rates retroactively effective to the first pay period in January, 2011.

For 2012 the outlook is obviously more clouded. Most economists predict a slow but continuing economic growth which would likely enhance Delaware County's 2012 revenues. Whether this favorable scenario is realized in 2012 is by no means certain, and prudence dictates that the Fact-Finder not assume that the most optimistic predictions will come to pass.

Nonetheless, even in the event of an unexpected financial reversal, the County is most likely to have a still substantial General Fund cash balance available for use beyond the 8% of current expenditures set as a minimum by the County Auditor.

The Fact-Finder concludes that other of the more affluent Counties will similarly benefit from an improving economy and provide their Sheriff Deputies with wage increases in 2012, if not in 2011, and Delaware Deputies have a legitimate claim to keep pace.

Accordingly, the Fact-Finder finds appropriate and recommends that the base wage rates increase in 2012 by an additional 2.75%.

There are no trustworthy economic forecasts available for 2013. The full effect of the State's reduction in Local Government Fund allocations and other revenue sharing categories will be felt in that year. Furthermore, the Federal expenditure reductions contemplated in the recent debt limit increase legislation may have the effect of depressing economic activity with a consequent material decrease in the County's and State's revenue flows, and an increase in County expenditures required to accommodate a rise in the number of residents in need of services and economic support. These circumstances give rise to financial concerns which cannot be ignored.

The Fact-Finder therefore recommends that the parties agree to reopen the Contract with respect to wage levels for that year.

Accordingly, the Fact-Finder finds appropriate that Article 28 be amended to read as follows and as so amended carried forward and incorporated into the successor Agreement:

"A. The Steps of the salary schedule are defined as follows:

- 1 Step (A) applies to new employees during their one-year probationary period.
- 2 Step (B) applies to employees after completion of the one-year probationary period.
3. Step (C) applies to employees after three years' continuous service as a deputy.

4. Step (D) applies to employees after five (5) years' continuous service.

"The following wage schedule shall become effective on January 1, 2010:

"During 1st year - \$20.82;
"After 1st year - \$22.37;
"After 3 years - \$24.65, and
"After 5 years - \$28.34

The following wage schedule shall become effective on January 1, 2011:

"During 1st year - \$21.44;
"After 1st year - \$23.04;
"After 3 years - \$25.39, and
"After 5 years - \$29.19

The following wage schedule shall become effective on the first full pay period of January, 2012:

"During 1st year - \$22.03;
"After 1st year - \$23.67;
"After 3 years - \$26.09, and
"After 5 years - \$29.99

Not less than ninety-days before the expiration date of this Contract the parties will meet to negotiate a wage schedule to become effective in 2013.

B. Corporal Pay:

The Sheriff reports that he does not intend to appoint Deputies to the Corporal rank, and therefore proposes to

eliminate the Corporals' premium pay provision. However, leaving the Corporal pay line in the Contract does no harm, and would be ready made to come into effect should the Sheriff find it expedient to utilize this rank.

Accordingly, the Fact-Finder finds appropriate and recommends that the Corporals' pay rate provision be continued without change and carried forward and incorporated into the successor Agreement.

C. Field Training and Orientation Officers Supplement:

The Union asks for an additional one (\$1.00) dollar an hour wage supplement for Deputies serving as Field Training and/or Orientation Officers. At present Deputies so assigned receive \$1.00 an hour.

The Union has not presented any evidence that these assignments have become more difficult, complex or otherwise involve greater responsibility. Nor, is there any evidence that Deputies in other Departments normally receive greater remuneration for performing these assignments.

So far as the record reveals, only four Departments of the Union's list of comparables provide a Field Training Officer supplement. Delaware's \$1.00 per hour bonus for Deputies servicing as Field Training Officers is matched by the Warren

and Lorain County Sheriffs, and exceeded only by Geauga which provides a \$2.00 per hour bonus. Franklin provides an hour of compensation at time and one-half for every eight-hours worked in the capacity of a Field Training Officer.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 28, Section C be maintained without change and carried forward and incorporated into the successor Agreement.

D. Shift Differential:

The Union demands a \$.50 per hour shift differential.

The Union has not provided persuasive data that a shift differential should be introduced into the Contract at this time. Among the Union's list of comparable Departments only Franklin and Greene offer such an allowance. Among the fourteen Departments chosen by the Sheriff as comparable, only two others are said to offer shift differentials. Knox provides a \$.45 per hour differential for hours worked between 4:00 p.m. and 8:00 a.m., and Licking gives a \$.35 per hour for shifts beginning between 12:30 p.m. and 5:30 a.m.

Accordingly, the Fact-Finder does not find appropriate and does not recommend that the Union's proposal for a shift

differential be adopted and incorporated into the successor Agreement.

IX. Article 32 - "Duration":

A. The 2008 Contract:

The expired Contract provided for a three year term commencing on January 1, 2008 and ending on December 31, 2010.

B. The Sheriff's Proposal:

The Sheriff seeks to have the successor Contract become effective as of the date of its execution and expire on December 31, 2013.

C. The Union's Proposal:

The Union prefers to have the Contract become retroactively effective as of January 1, 2011 for a three year term expiring on December 31, 2013.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The parties have traditionally entered into three year Contracts which take effect on January 1st of the year which immediately follows December 31st of the year in which the preceding Contract expired.

The Fact-Finder notes that, at a minimum, eight-months of 2011 will have elapsed before any successor Agreement is adopted or awarded.

A significant reason for the inability of the parties to come to terms earlier was the Sheriff's failure to have developed and presented the Department's proposals until just prior to the evidentiary hearing.

Having a term shorter than three years would require the parties to begin new Contract Bargaining almost immediately after the successor Agreement has been adopted - a burden which both parties are anxious to avoid.

The Sheriff's insistence upon the Contract becoming effective as of the date of its execution is driven by his desire to avoid any back pay liability.

But, the Fact-Finder has recommended that the wage increase be retroactive to January, 2011 regardless of the execution date of the successor Contract.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 32, "Duration" be amended to read as follows and as so amended, carried forward and incorporated into the successor Agreement:

"Article 32 - Duration: This Agreement shall be effective from on and after January 1, 2011, and until midnight on December 31, 2013."

Fact-Finding Report and Recommendations issued at
Cleveland, Ohio this 22nd day of August, 2011.

Respectfully submitted,

Alan Miles Ruben
Fact-Finder

AMR:ljg