

**State Employment Relations Board
State of Ohio**

STATE EMPLOYMENT
RELATIONS BOARD

2011 APR 18

In the Matter of Fact-finding Between: : Case No. 2010 MED-11-1746, 1748, 50749

Ohio Patrolmen's Benevolent Association : Report and Recommendations

and : Margaret Nancy Johnson
Fact-finder

Hancock County Sheriff :

Statement of the Case

This matter came on for hearing on March 30, 2011, in a conference room at the Hancock County Engineer's Office, in Findlay, Ohio. Selected by the parties and appointed by the State Employment Relations Board, hereinafter "SERB," Margaret Nancy Johnson presided over the proceedings as fact-finder. Michelle T. Sullivan, Attorney with the firm of Allotta, Farley & Widman, argued the case on behalf of the Ohio Patrolmen's Benevolent Association, hereinafter "OPBA" or "Union." The Hancock County Sheriff's Office, hereinafter "Sheriff" or "Employer," was represented by Donald J. Binkley, Management Consultant with Clemans, Nelson and Associates, Inc. Prior to the hearing, position statements on the issues upon which the parties were at impasse were submitted to the fact-finder in accordance with SERB requirements. Bargaining Committees for both parties were present throughout the hearing and provided testimony on matters in contention.

Three safety-force and law enforcement units employed by the Sheriff are represented by the OPBA. These include approximately five (5) Sergeants; seven (7) Communications Officers; and twenty-four (24) employees holding the classification of Deputy III. Terms and conditions of employment for these three bargaining units are set forth in a three year Collective Bargaining Agreement which expired March 7, 2011. At issue in this proceeding are terms to be included in a successor labor contract.

Modifications to sections within eight (8) contract articles were proposed by the parties. In the course of the proceedings, the parties were able to resolve disputed language to be included in Article 9, Hours of Work and Overtime, Article 14, Sick Leave and Leaves of Absence, and Article 17, Family and Medical Leave. These tentative agreements are attached herewith as Appendices A, B, and C, and along with any other tentative agreements reached by the parties prior to the hearing, these are incorporated into the recommendations which follow. Current contract language in provisions from the expired contract which are not disputed by the parties or addressed in this discussion are also incorporated herein.

In addition to an appropriate wage increase as set forth in Article 21 and language on the duration of the Agreement, Article 32, the parties remain at impasse on language for six (6) sections within four (4) Articles. More fully explained hereinafter, OPBA has proposed modification to Article 18, Sections 1 through 5, Layoff and Recall, as well as to Article 21.2, pertaining to longevity. For its part, the Office of the Sheriff has proposed changes to Article 20.1 Holidays; Article 21, Sections 7 and 8, Compensatory Time; and Article 22, Insurance.

Issues

The issues at which the parties remain at impasse are: Article 18.1, 18.2, 18.3, 18.4, and 18.5, Layoff and Recall; Article 20.1, Holidays; Article 21.1 Wages; Article 21.2 Longevity; Article 21.7 and Article 21.8 Compensatory Time; Article 22, Insurance; and Article 32, Duration.

Criteria

In making the recommendations which follow, the fact-finder has taken into consideration statutory criteria as set forth in Ohio Revised Code 4117.14:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of the issues relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustment on the normal standard of public service;
4. The lawful authority of the public employer;
5. The stipulations of the parties;
6. Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public or in private employment.

Position of the Parties

Article 18: Layoff and Recall

A. Union

The Union proposes language specifying the circumstances under which employees could be laid off to be lack of funds or lack of work and language defining what constitutes such lack. Prior to the current agreement, the lay-off provisions in the agreement were read in conjunction with Ohio Revised Code Chapter 124. In fact-finding for the current agreement, however, the fact-finder recommended inclusion of a Sheriff proposal rendering such provisions to be inapplicable. In the absence of statutory standards, it is essential to have language that sets forth when a layoff may occur so as to avoid an arbitrary or vindictive lay-off. Additionally, the Union proposes language specifying that part-time and probationary employees shall be laid off prior to full time employees. Again, this is to fill in omissions left by the inclusion of Section 18.10 in the Agreement.

The Union proposes changes in Section 18.3 that removes the right of a Deputy or an Enforcement Sergeant to bump a Communications Officer. Union rationale for its proposal is that with changing technology, it is a safety concern to have employees unfamiliar with the requirements of the job of Communications Officer bumping into that classification. Since bumping occurs when the work force is reduced, it is especially important to maintain qualified Communications Officers.

Finally, the Union proposes language clarifying how both classification and office-wide seniority is measured in instances of an interruption in employment with the Office of the Sheriff. In the absence of such language, seniority has, in the past, been measured differently. To ensure consistency, the Union proposes modification to Section 18.4 and 18.5, defining seniority.

B. Sheriff

Objecting to the Union proposals, the Sheriff seeks current contract language. In negotiations for the current contract, the intent of Section 18.10 was to eliminate the ramifications of Ohio Revised Code Chapter 124 and have the collectively bargained language of the contract control. Proposals of the Union would return the parties to the cumbersome and restrictive process Section 18.10 was intended to eliminate. Any contention that language is needed to preclude a vindictive use of lay-offs is without

factual justification The Office of the Sheriff never has and never will use a lay-off in an arbitrary or capricious manner. Indeed, lay-offs have never been grieved by the Union, indicating that the Sheriff has always applied the lay-off language in a reasonable manner.

Language proposed to clarify seniority is unnecessary verbiage. Also unnecessary is the proposal regarding probationary or part-time employees. Changes ought not to be implemented unless there is an apparent need to make adjustments. In the absence of a problem with the language, current provisions ought to be retained.

Article 20: Holidays

A. Sheriff

The Employer proposes removing the option of an employee to take eight (8) hours of compensatory time off in lieu of receiving eight (8) hours straight time pay for the six (6) "super" holidays. Six (6) of the eleven (11) paid holidays are paid at time and one-half for the actual hours worked on a super holiday rather than straight time. Compensatory time is a costly liability for the Sheriff as in addition to the holiday pay there is an additional overtime for replacements. A chart submitted by the Sheriff illustrates the cost of compensatory time. Annually, super holidays cost the Employer over \$32,000. Such costs must be curtailed and Employer proposals on compensatory time are intended to do so.

The extensive use of comp time in 2010 is demonstrated in another chart submitted by the Employer. Moreover, compensatory time contractually available to the bargaining unit exceeds what comparable jurisdictions permit. Thus, the Sheriff proposes restricting the use of comp time for the super holidays.

B. Union

The Union proposes current contract language. It is important to recognize that members of this bargaining unit must work on holidays which most employees spend with family and friends. Comp time is a method to compensate employees for this forfeiture.

Article 21: Wages

A. Union

The Union proposes a 4% wage increase for all classifications for each of the three years of the contract. Citing past collectively bargained agreements, the Union contends its proposed increase is more consistent with prior negotiations than the increase offered by the Sheriff. Because the wages paid this unit are on the lower end of the continuum, the Union asserts its proposed increase is necessary to decrease the disparity between this bargaining unit and units in other counties. As an additional justification for its proposal, the Union cites rising employee costs, gasoline and food prices, as well as the potential for increased health insurance premiums. If its proposal is not accepted, the members of the unit face the possibility of a wage deflation.

The Union also proposes an additional longevity payment for employees completing 21, 22 and 23 years of service so as to achieve parity with the Sergeants in the Corrections Center.

As to the Sheriff proposal on compensatory time, the Union seeks current contract language.

B. Sheriff

Rejecting the proposal of the Union, the Sheriff argues that the Office does not have the ability to pay a wage increase of 4%. Nor is such a proposal consistent with bargaining trends in the State. Instead, the Sheriff proposes a 1% increase for all classifications for each year of the three year contract which is more comparable with bargaining history and the current economic climate in public sector negotiations. The Sheriff also rejects the longevity adjustment pointing out that the Corrections

Sergeants received an increase in longevity in exchange for their agreeing to the removal of a cap on employee insurance contributions. Proposals made by the Sheriff are consistent with the financial data and the ability of the employer to finance a wage adjustment. It is important to recognize that it is the County Commissioners and not the Sheriff who allocate available resources.

Reductions in Local Government Funding will have a dramatic impact upon the Sheriff's Office. While the Union is seeking a 4% wage increase, it is also important to note that non-unit employees have had no wage increase since 2008 and have been required to take furlough days. The Sheriff simply does not have the funds to finance the Union proposal.

To reduce the costs of compensatory time, the Sheriff proposes reducing comp time to 40 hours for all unit members. This reduction is consistent with the comp time provisions in other jurisdictions. Additionally, the Sheriff proposes requiring a reasonable advance notice when an employee wishes to use comp time. Comp time is an unfunded liability which is disruptive to operations and results in additional overtime costs. Efforts by the Sheriff to better control this employee benefit are reasonable and warranted.

Finally, the Sheriff proposes the new contract become effective upon execution. Since a conciliator cannot award retroactive wages, a fact-finder ought to be precluded from doing so. An employer should not to be required to incur new financial obligations after the start of the fiscal year.

Article 22: Insurance

While the Union seeks current contract language, the Sheriff proposes eliminating the 25% cap on the employee contribution to insurance coverage. Contending that all County employees ought to be treated the same for insurance purposes, the Sheriff argues that the "cap" in the labor contract with this unit makes an unwarranted distinction for the bargaining unit. Since internal comparability in matters like insurance is appropriate, this disparity ought to be eliminated.

Although employee costs within the county are very comparable to public employee insurance contributions statewide, the slightly higher costs paid by county employees is justified by the excellent insurance benefits provided by the County plan.

Article 32: Duration

The Union proposes a three year contract effective March 8, 2011, with modifications only as to providing for electronic service in Section 32.3. The Sheriff, on the other hand, proposes an effective date upon execution. Additionally, the Sheriff proposes language incorporating changes to collective bargaining mandated by Senate Bill 5.

Discussion

County Characteristics

Having a 2009 population of 74,538, Hancock County is principally a rural community located in northwest Ohio. Although most of its land usage is agricultural, major employers in the County also include significant service industries as well as companies engaged in manufacturing and trade. For example, Cooper Tire and Rubber Company, Whirlpool Corporation, and Marathon Petroleum are among the major employers located in the County. In addition, Hancock County houses a private university offering undergraduate and graduate degrees and enrolling over 4,000 students. Currently, the unemployment rate in Hancock County is less than the average for the State of Ohio, and over the past decade, the per capita personal income of residents has increased as has population growth (see Union Exhibits 16 and 17). While not robust, the finances of the County are stable with the County having earned an AA- bond rating from Standard and Poors and an Aa3 from Moody's (Union Exhibit 12).

Nonetheless, as pointed out by its advocate, the Office of the Sheriff and not the County of Hancock

is the Employer in the case under review, and the Sheriff must operate within the budget allocated by the County Commissioners. Similar to counties throughout Ohio and, indeed, the nation, Hancock County has been affected by significant reductions in local government funding, declines in tax revenues, and lower interest rates. As a consequence, the Office of the Sheriff has been required to take steps to reduce costs. A Rehabilitation Center has been closed, certain expenses have been eliminated, non-unit employees took mandated furlough days and have not received pay increases since January 2008.

Against this back-drop, in the course of these negotiations, the Sheriff has sought cost-saving concessions from the bargaining units. These include reductions in compensatory time, elimination of a cap on the employee contribution to health insurance, and removal of the usage of compensatory time for holidays. Contending that the concessions are unwarranted, the Union endeavors to maintain current financial benefits, while securing a substantial increase in wages which it argues is justified based on comparables. Additionally, the Union seeks clarifying language on the issues of lay-off and recall including the measurement of seniority as provided for in the expired Agreement.

Article 18: Lay-off and Recall

A. Sections 18.1 and 18.2

Dispute over Article 18, Sections 1 and 2, arises from language incorporated into the current Collective Bargaining Agreement by reason of the recommendation of a fact-finder. Section 18.10 provides that “the parties agree that the layoff and recall provisions of Article 18 specifically supersede the provisions of R.C.124.321 through 124.328 as they apply to bargaining unit employees.” Referred to by the advocate for the Sheriff as a “Batavia Clause,” the cited language was proposed by the Office of the Sheriff during bargaining for the present contract and subsequently recommended by the fact-finder.

Although the Sheriff contends that the Union now has “buyer’s remorse” and seeks to modify the agreed upon terms, this fact-finder does not concur with that assessment. Having gone to fact-finding as an unresolved issue in the last contract negotiations, the Sheriff proposal pertaining to layoff and recall was not a mutually agreed upon provision. On the contrary, it indisputably was an item which the Union had resisted. Its inclusion in the labor agreement was neither negotiated nor “bought” by the Union, but it was the result of fact-finding recommendations, acquiescence to which does not necessarily equate with endorsement but is the consequence of practical considerations.

As is its right, the Union now seeks to include more definitive language regarding layoff and recall. Since the provision giving rise to the present Union proposal was not negotiated but arose out of impasse procedures during the most prior bargaining, on this particular issue the fact-finder does not feel constrained by the statutory criteria of past collectively bargained agreements. The matter at hand is not the type of long-term, mutually accepted contractual commitment which neutrals are reluctant to modify absent apparent need for adjustment. Rather, the recent inclusion of language in the Agreement by reason of fact-finding presents concerns to the Union which it now endeavors to allay.

Importantly, the rationale of the Ohio Supreme Court in *Batavia* and in its companion cases was remedial, providing statutory protections and judicial recourse for employees beyond the scope of their labor agreements. It stands to reason that if the Collective Bargaining Agreement is to preempt legislative employee rights, then that Agreement ought to include language comparable to the legislation which has been replaced. When statutory protections and rights are specifically superseded by negotiated agreements, it is appropriate to incorporate applicable codified terms within the language of the labor contract.

The Sheriff argues that the Office has never abused its discretion and, as in the past, it will implement Article 18 equitably and reasonably. In support of current contract language, the Sheriff points out that the administration of the layoff provisions of the labor agreement has never been grieved

by the Union. In part, that may be because the parties had a well-established mutual understanding regarding lay-off and recall which was subsequently modified during fact-finding.

Certainly, this fact-finder does not question the intentions of the Sheriff or the good faith implementation of this labor agreement. Nonetheless, the objective in these proceedings is to provide a clarity that will guide not just this Sheriff but his successors and designees. Avoidance of ambiguity and, therefore, potential dispute is achieved through language which clearly and unequivocally sets forth the understanding of both parties on matters of concern. To explicitly remove the application of statutory language *without replacing it with comparable contractual provisions* generates an uncertainty and ambiguity which the Union herein is simply seeking to preclude.

Language proposed by the Union for Article 18 is not a departure from applicable standards regarding layoff and recall. Instead, it constitutes a clear restatement of the status quo under prior labor agreements and under the statute. While the Sheriff maintains the proposal of the Union is a return to "overly burdensome" provisions, nothing in the evidence elicited demonstrates in what way the proposed language constitutes an undue restriction on management. Rather, the proposal of the Union restores the intent of the parties and their well-established mutual understanding as set forth in prior collective bargaining agreements.

If the bargaining unit in this proceeding is not to have recourse to the protection of a judicial process, as did the laid-off employees in *State ex. rel. Ohio Association of Public School Employees, AFSCME Local 4 v. Batavia Local School District Board of Education* (2000 89 Ohio St. 3d 191, then the contractual language should clearly and unequivocally define when and how a layoff and recall may occur. Such a requirement is not unduly burdensome, as argued by the Sheriff. On the contrary, it sets forth the well established reasons for a layoff. Absent such contractual language there is nothing to prevent what occurred to employees in Batavia from taking place in the County. In Batavia the school district laid-off an entire classification and then replaced those workers with the employees of a subcontractor. In the absence of the judicial recourse available to the Batavia bargaining unit, this collective bargaining agreement must replicate those statutory safeguards.

Accordingly, the Fact-finder recommends the additions and modifications proposed by the Union for Section 18.1 and Section 18.2 which should read as follows:

Section 18.1 Bargaining unit members may be laid off when a lack of funds or lack of work exists. A lack of funds shall be defined as a current or projected deficiency of funding to maintain current or to sustain projected levels of staffing and operations. A lack of work is defined as a current or projected decrease in workload that requires a reduction of current or projected staffing levels in its organization or structure.

When the Sheriff determines that a long term layoff is necessary as the result of a lack of work or lack of funds, as defined above, he shall notify the affected members fourteen (14) days in advance of the effective date of the layoff. Members will be notified of the Sheriff's decision to implement any short term lay-off, lasting seventy-two (72) hours or less as soon as possible.

Section 18.2 The Sheriff shall determine when layoffs will occur based on lack of work or lack of funds within the Sheriff's Office. Seniority for purposes of layoff shall accrue to all employees of the bargaining units. Whenever layoffs are necessary, all part-time and probationary employees shall be laid off before any full-time employees are laid off. The Sheriff shall determine in which classification(s) layoffs will occur. Within each

classification affected, employees will be laid off in order of their classification seniority beginning with the least senior and progressing to the most senior up to the number of employees to be laid off.

B. Section 18.3

The proposal of the Union for modification to Section 18.3 deletes the ability of an Enforcement Sergeant or a Deputy III to bump a less senior Communications Officer. In its pre-hearing statement, the Union states that its proposal “is rooted in its concern for the safety of the public.” Further developing this premise, at the hearing the Union elicited testimony as to the technological changes to the job duties of the classification, arguing that Enforcement Sergeants and Deputy III's do not possess the skills which the job presently requires and that extensive training would be required for a different classification to step into the job of the Communications Officer.

Aside from the anecdotal testimony of employees, there is no objective data as to difficulties experienced by out-of-classification employees performing the work of a Communication Officer: no incidents of miscommunication, delays in communication, or failures in response. Absent such evidence, this fact-finder cannot concur with the Union that the current language on bumping poses a threat to the safety of the public.

Moreover, the fact-finder agrees with the Sheriff that assessing the law enforcement needs of the public and determining how best to accommodate those needs is a managerial prerogative. Public safety is the signal most important objective of the Office of the Sheriff. Adequacy of its labor force to maintain safety and carry out law enforcement duties is within the purview of the Sheriff. In the opinion of the fact-finder, the safety concerns of the Union relative to Section 18.3 do not justify the contract amendment now proposed by the Union.

Accordingly, current contract language as to Section 18.3 is recommended.

C. Sections 18.4 and 18.5

Union proposals relative to Section 18.4 and 18.5 define how seniority is to be calculated. Current language lacks clarity and is capable of differing interpretations. Indeed, the Union proffered that in the past, the measurement of the seniority of employees who have returned to the Office of the Sheriff after a departure has differed. In some instances the prior work experience was credited for purposes of seniority and in others, it was not. There is no clear practice on the issue.

Certainly consistency and clarity are objectives in collective bargaining. Because the current provisions are capable of conflicting interpretations and insofar as the Office of the Sheriff indicates that it understood seniority to be measured as specifically proposed by the Union, there does not appear to be any substantive reason for not including the proposed language. Rather than unnecessary verbiage, as argued by the Sheriff, language proposed by the Union will state how seniority is to be measured, a definition absent in the current contract. Thus, the fact-finder recommends inclusion of Union proposals relative to Sections 18.4 and 18.5

Section 18.4 Sheriff's office seniority is the total length of service within the Sheriff's office in any full-time job capacity measured from the employee's most recent date of hire unless otherwise specified in this Agreement.

Section 18.5 Classification seniority is the total length of service within the employee's classification measured from the employee's most recent date of employment in that classification.

Article 20: Holidays

As a cost saving measure, the Employer seeks to remove the employee option to take compensatory time in lieu of straight time on six designated holidays, an option the Sheriff has argued is not available to most other County employees. In support of its proposed modification, the Sheriff submitted an overtime cost chart for 2010 which indicates the “super” holidays cost the Sheriff \$32,425.18 in overtime expenditures. This exhibit, however, does not demonstrate to what extent the comp time option contributes to that cost. Overtime is going to be incurred simply by reason that the Office of the Sheriff must operate 24/7.

Compensatory time has arisen as a perquisite for employees who do not work a traditional work week but whose schedules mandate working around the clock including on those holidays which most employees spend with families and friends. Both intensity of law enforcement and the hours of work have been cited to justify comp time, a method of payment that has a history not only with this Employer but with comparable jurisdictions in Ohio. In fact, the most recently negotiated labor agreement between the Sheriff and the Corrections Officers includes a comp time option for super holidays (Union Tab 8). Thus, past collectively bargained agreements between the parties as well as internal comparability sustain current contract language on super holidays. Rather than eliminating this established benefit, the fact-finder recommends maintaining the compensatory time option for holidays as in current contract language, but reducing the number of hours which may be accumulated, as is more fully discussed hereinafter in the consideration of wage proposals.

Article 21: Wages

A. Section 21.1

While the Union proposes an annual 4% increase for each of the three units, the Office of the Sheriff has countered with an across the board 1% wage adjustment. Both parties cite economic factors to sustain their respective positions. In addition, the Union contends “a 4% annual wage increase is necessary to decrease the disparity between Hancock and other counties.”

Addressing, first, the criterion of comparability, this fact-finder cannot concur with the conclusions of the Union. Comparability as a statutory guide to wage determinations does not require uniformity. Each collectively bargained wage package consists of a number of variable components—not just the starting and ending hourly wage rate. Especially for safety forces, there are other financial perquisites, such as longevity, that ought to be taken into consideration when assessing total compensation. Moreover, the value of employer-provided health insurance can not be disregarded. Thus, comparability, including internally, ought not to be measured in a vacuum based solely on the wage paid to a classification but ought to take into account the entire wage and benefits package.

Even so, in reviewing the comparability charts submitted by the Union for consideration (Union Tabs 4,5,6), the fact-finder notes that both the starting and ending wages paid by Hancock County to these bargaining units are in the mid to high range of wages paid by comparable counties for comparable services. This fact-finder simply cannot find a disparity warranting a remedial adjustment in these contract negotiations. Having scrutinized the charts submitted by the Union, this fact-finder does not observe the figures cited by the Union in its pre-hearing statement. What the fact-finder has noted is that throughout the charts there is a fluctuation among *all* the counties cited in northwest Ohio. One consistent characteristic, however, is that the Office of the Hancock County Sheriff is never in the lowest tier in terms of wages.

Arguing that a significant wage increase is needed to keep current and not fall behind comparable jurisdictions, the Union contends that “the majority of counties in Northwest, Ohio, have enjoyed a yearly 3% increase in the preceding years” (Pre-hearing statement, p. 9). Although the fact-finder is of the opinion that the percentage wage increase of other jurisdictions is more informative than the base rate, increases that have been negotiated in the past have little persuasive value for determining current

economic conditions and factors. Three percent (3%) increases that were agreed upon in 2007 prior to the national financial crisis when the country was in a “boom” cycle have little relevance to present economic realities.

Analyzing the SERB Clearinghouse Wage Increase Report included in Union Tab 7, what strikes the fact-finder are not the 3% wages increases culminating in 2010, but the wage freezes and re-openers negotiated post 2010. In *recent* negotiations, the highest percentage wage increase reported is 2.5% effective June 1, 2012, for the Office of the Sandusky County Sheriff, following a 2010 wage freeze and a 2% increase in 2011, 4.5% over a three year contract. While current information for most jurisdictions is not available or the parties remain in contract negotiations, an annual three percent (3%) wage increase is not the current “norm,” and the annual four percent (4%) sought by the Union is not in step with comparable wage increases throughout the state or in the region.

Wage proposals of the Sheriff, however, are not consistent with statutory guidelines either. Citing “fiscal problems” and an “inability to pay,” the Sheriff seeks not only a 1% wage increase in each contract year, without retroactivity for 2011, but also concessions in employee benefits such as a considerable reduction in compensatory time and removal of the cap on employee contributions to health insurance. Modifications to current employee perquisites proposed by the Sheriff are significant while the offered wage increase is less than adjustments in the consumer price index. Except in the most extreme instances of concessionary bargaining, modifications to established employee benefits are balanced in the give and take of collective bargaining so that reductions in one category are achieved by acquiescence to improvements in another. In an effort to achieve compromise on the unresolved issues, the question posed to this fact-finder is not if but, rather, the extent to which the Office of the Sheriff can afford a wage increase.

Few, if any, governmental entities have been exempt from the need to economize in the current financial climate. For its part, the Office of the Sheriff has taken steps to reduce expenditures and implement savings. New equipment was not budgeted for 2010, participation in a special drug trafficking operation was eliminated, transportation of prisoners has been co-ordinated with other neighboring counties, non-union employees have had wage freezes and been required to take furlough days in the last two fiscal years. While these are significant cost-savings measures, they do not establish the Sheriff lacks the “ability to finance and administer” monetary improvements for the bargaining unit greater than the 1% increase the Office has offered.

The fact-finder has scrutinized the financial data submitted by both parties for the purposes of establishing a reasonable and proper wage increase. In reviewing this data and endeavoring to decipher trends, the fact-finder notes that for enforcement expenditures within the Office of the Sheriff, fiscal year 2008 was extraordinary, as it was nationally, but that subsequent thereto costs have declined, and 2010 expenditures, including total salaries, are at 2004 levels.

Bringing down expenditures from the 2008 peak is certainly attributable, in part, to reductions implemented by the Office of the Sheriff as well as to grants procured by the Office. Nonetheless, for the purpose of determining ability to pay a wage increase, another trend noted by the fact-finder is that since 2008, appropriations for the Office of the Sheriff have exceeded actual expenses, reflective of excess County revenues over County expenditures for 2009 and 2010 resulting in increased General Fund balances for those two most recent years. The improved balance is due not only to cost containment but to notable increases over the last two years in total revenues.

From the information cited by the Office of the Sheriff, revenue for 2010 was \$20,509,309, up from \$15,850,998 in 2008. Indeed, reversing a lengthy trend, increasing revenues and declining expenditures in 2009 and 2010 have increased General Fund balances, leaving sufficient assets to maintain bond ratings as well as expenditures until revenue streams for the new fiscal year commence. This financial adjustment mirrors the general stabilization and growth within the national economy.

The Office of the Sheriff also argues that the County anticipates a reduction of as much as 1/3 in

receipt from Local Government Funds-- a cut which the Sheriff asserts "means layoffs." These projected losses do loom over governmental entities within the State and ought not to be minimized, but even a 1/3 loss is off-set by the 2010 gains in other County revenue sources. Thus, while the anticipated loss is an argument in favor of a cautious improvement in wage increases, it does not justify the 1% wage increase advocated by the Office of the Sheriff.

Moreover, there are other justifications for a more substantial wage increase than the percentage offered by the Office of the Sheriff. Just as the expenses of the Sheriff have increased, so have the budgetary needs of the employees. Not only are employees affected by the rising cost of living, but also in these negotiations, the Sheriff is seeking to implement cost saving provisions which potentially increase employee expenditures and reduce benefits. To accomplish those adjustments and to equitably recognize the financial needs of employees, more than a 1% increase is warranted.

Finally, an appropriate but balanced wage rate offered to the members of this bargaining unit is beneficial to the Office of the Sheriff. By compensating its employees with a competitive rate, the Sheriff not only can retain its trained and qualified work force but also attract superior candidates (See Employer's Position Statement on Wages). While labor unrest is disruptive, stability and caliber within the workforce of the County enhances the quality of life for residents, promotes revenue producing enterprise, and sustains economic growth rather than stagnancy. Major business initiatives within the County include a new Home Depot warehouse, added capacity for the Cooper Tire and Rubber Company, and retail growth along the I-75 corridor within the County. An effective enforcement unit is one incentive in keeping business within the county and in bringing new undertakings to the area. In return, these new and expanding businesses generate income for the County.

Since retroactivity is an issue, the fact-finder briefly addresses that matter. The *only* justification offered by the Sheriff for not recommending a retroactive wage increase is the statutory constraint upon conciliators. This proceeding however, is fact-finding, not conciliation, and retroactivity is routinely recommended or mutually agreed upon in the interest of bringing closure to controversy. Absent a protracted conflict, the "budgetary increase" specifically created by retroactivity and cited by the Sheriff is minimal in this case, the agreement only having expired on March 7, 2011. There is no overriding reason not to recommend retroactivity in this instance.

Balancing all of the objectives and data as discussed above, the fact-finder recommends the following:

2% wage increase effective March 8, 2011; a 2.2% increase effective March 8, 2012; 2.8% effective March 8, 2013

B. Section 21.1 Longevity

Citing an adjustment to longevity in the contract with Correction Officers, the Union proposes increases in base pay after 21, 22 and 23 years of service, to 8.5%, 9.0% and 9.5% respectively. The Sheriff opposes the proposal pointing out that the Corrections Officers unit negotiated the increases as the quid pro quo for removing a cap on the employee contributions to health insurance premiums. Since this Union was not willing to agree to the removal of the cap, the Sheriff rejects the longevity increase.

Except for the Corrections Officers, no other comparable longevity schedules were submitted by either party for the review of the fact-finder. Thus, there is no basis for a comparison of this unit with other units performing comparable work. Traditionally, however, longevity has been a useful technique to "trade-off," as occurred with the Corrections Officers, or to enhance the wages for employees of a financially constrained Employer. Nether of these conditions is present in the current negotiations between the Sheriff and the OPBA.

The Union has robustly refused to remove the cap on health insurance for the employee share of

costs. Additionally, while entering into these negotiations circumspectly so as not to derail the improved balance between costs and expenses as discussed above, this Employer is able to finance modest wage gains for this Union. In the opinion of the fact-finder, in this case there do not appear to be any of the usual explanations for an adjustment in the longevity provisions of the Agreement.

Accordingly, the fact-finder recommends current contract language on the issue of longevity.

C. Section 21.7 and Section 21.8

As part of its wage proposal package, the Sheriff seeks substantial reductions in the accrual of compensatory time and restrictions on the timing of submissions of requests for compensatory time off. Currently Sergeants and Communications Officers may accumulate 180 hours and Deputy III's may accumulate 270 hours, as recommended during prior impasse proceedings. The current contract also includes language concerning the draw down of already accumulated hours in excess of the limitations in Section 21.8.

The Sheriff proposes further reducing compensatory time for all units to forty (40) hours. In addition, the Sheriff proposes adjusting language on cashing in comp time and the inclusion of time restrictions on the submission of requests for time off. Finally, the Sheriff proposes that employees hired after December 31, 2010 will not be eligible to receive compensatory time.

Addressing, first, the submission requirements, the fact-finder notes that in the course of the hearing the Sheriff presented no evidence of a justification for the time restrictions. Aside from the general contention that the proposal is "to minimize scheduling disruptions created by last minute requests to use compensatory time," no testimony was elicited as to specific examples of such disruptions in the past.

Since the current language provides that "compensatory time shall be taken at a time mutually agreeable to the Sheriff and the employee so as not to interfere with normal operations," the Sheriff already has the discretion to ensure efficiency and adequacy of the workforce. As long as the managerial discretion is reasonably exercised and not abused, this contract language ought to suffice to prevent the disruptions which the Sheriff cites as a justification for a new requirement. Like her predecessor, this fact-finder "is not persuaded that reasonably timely requests for the use of compensatory time off present a problem." Such provisions have never previously been bargained by the parties and, absent evidence of a need for modification, the new language is not recommended.

Also in concurrence with the report of the prior fact-finder, the proposal to eliminate compensatory time for new hires is not recommended for this successor agreement. Deferring to concerns of the Union, the prior fact-finder observed that language depriving new hires of a benefit enjoyed by other unit members would engender divisions "detrimental to the internal cohesion of each of the bargaining units." This fact-finder agrees with the preceding assessment and, accordingly, does not recommend such a proposal in this proceeding.

No historical explanation was offered as to the distinction in the compensatory time granted to Sergeants and Communications Officers and the time contractually granted to Deputy III's, a distinction that appears to have been included in at least the two most recent contracts. In addition to reducing the hours, the Sheriff herein seeks to eliminate this difference and to treat all three units the same.

Reviewing the comparables submitted by each party, the fact-finder notes there does not appear to be any difference in compensatory time earned by employees in different classifications. Even so, the fact-finder recognizes that there are three separate units within this labor contract, each with differing job demands. In the prior negotiations, the Sheriff proposed a reduction that would bring the units to the same level of comp time, but the fact finder in that proceeding recommended retaining the distinction with a uniform reduction (25%). Whatever the reasoning, the difference in the accumulation of comp time appears to be a well established contractual item which this fact-finder is reluctant to adjust absent an understanding of its origins. Still, while retaining some difference, overall comp time

ought to be reduced to be more consistent with comparable jurisdictions.

Compensatory time is especially useful for those less senior employees working non-traditional work hours so as to accommodate personal or domestic needs other than those covered by either family medical leave or emergency leave. It is a negotiated benefit upon which employees rely and which they seek to retain at current levels. Moreover, it is a benefit that appears in comparable units within the region.

Nonetheless, even using the Union's comparable data, except for Lucas County with a larger metropolitan area, the rate of accumulation for this unit substantially exceeds that of neighboring jurisdictions. Indeed, the comp time accumulation is significantly above the average for jurisdictions providing comp time in the comparable jurisdictions cited by both parties. Reducing the comp time by one-half would bring the Sergeants and Dispatchers to 90 hours of comp time and Deputy III's to 135 hours. These accumulations are within the ranges of the comp time accumulations cited by the parties in their evidentiary data. Additionally, this reduction will help mitigate the scheduling issues cited by the Sheriff. It is a more significant reduction than was implemented in the preceding negotiations, but it appears to be justified by the evidence elicited.

Accordingly, the fact-finder recommends reducing compensatory time accumulation to 90 hours for Sergeants and Dispatchers and to 135 hours for Deputy III's. Employees shall have one year in which to draw down compensatory time. Any balances in excess of the new contractual limits shall be cashed in during the final two years of the contract, twice a year in four equal installments.

Section 21.7 Compensatory time may not be accumulated to exceed 90 hours (Sergeants and Communications Officers; 135 hours (Deputy III), nor may compensatory time be used to extend sick leave. An employee working overtime under a grant is not eligible for compensatory time for such overtime worked and will be paid.

To reflect these changes, the fact-finder recommends removing the last two paragraphs including exclusions for employees with more than twenty years of service, and replacing them with language permitting employees to draw down compensatory time in 2011, with cash-ins for hours in excess of the limits paid in four equal installments, twice a year in the final two years of the Agreement.

Article 22 Insurance

Perhaps as the most contested issue presented at fact-finding, the Office of the Sheriff seeks (vehemently) to remove the current 25% cap on any increase in the employee contribution to health insurance. Although new federal and state enactments regarding health insurance have admittedly generated some additional uncertainty, rising health care costs and employer liability for such expenses have been components in public sector collective bargaining for a long time, and these concerns have led to negotiated adjustments to traditional employer-funded health insurance. Increasingly, employees share the costs of health care in varying degrees and components from co-pays and deductibles to a percentage of the health insurance premium. Significantly, these employee contributions are the consequence of bargaining procedures, which the Union herein seeks to retain and preserve.

The proposal of the Employer would effectively eliminate health insurance as a subject of bargaining, a measure which is contrary to all the statutory criteria by which fact-finding is governed. Indeed, the comprehensive 2010 Annual Report on the Cost of Health Insurance in Ohio's Public Sector, issued by SERB's Research and Training Section and included in the Sheriff's documentation on this issue, illustrates the function of bargaining health insurance in jurisdictions throughout the state. This fact-finder cannot recommend a proposal which would remove insurance as a term and condition of employment subject to collective bargaining. Rather than an elimination of the issue, the fact-finder

proposes a compromise, the terms of which can be renegotiated and adjusted as circumstances require.

Currently, the employee share of the insurance premium is 13.533%, a percentage that has some history. Prior to 2011, the bargaining unit was contributing 15%, as was every other employee within the County. For 2011 the premium increase was such that the 25% cap for the bargaining unit included in the labor agreement was activated. Rather than have a disparity in the amount of employee contributions, the Commissioners resolved to reduce all employee contributions to 13.533% so that all County employees were paying the same. Additionally, for these current contract negotiations, the commissioners determined to remove the cap for this unit from the current contract language.

By removing the cap and replacing it with a percentage, some compromise may be achieved. Employee participation pursuant to a percentage of the premium cost is consistent with practice within the state. The question, then, is an appropriate percentage of employee contribution for this Union.

Some public sector employees contribute 20%, some 15%, and a few 10%. *All* of these percentages and employee contributions, however, have been reached through the give and take of bargaining, and are based on the financial characteristics of the entity. Even so, such percentages are an incomplete picture since the insurance coverage can vary significantly between jurisdictions. The Sheriff points out the insurance policy the County maintains for its employees is comprehensive. Thus, while charts submitted by the Sheriff indicate that employee costs for single and family insurance coverage are in the high to mid range, respectively, County employees have excellent benefits.

Additionally, the fact-finder notes that especially with insurance, internal comparability is a persuasive factor. Disparity among co-workers on a benefit unrelated to job attributes undermines employee morale and cohesion within the governmental unit. There is no reason for County employees to be treated differently in terms of insurance.

Any percentage presented as a resolution to the impasse would also have to be consistent with other provisions included within the labor contract by these parties and with proposals set forth herein. Reductions in compensatory time as well as the modest gains in wages need to be evaluated when addressing health care premium contributions.

Taking into account other recommendations pertaining to wages and cost saving measures and as a compromise on the health insurance issue, the fact-finder recommends that the employee premium participation commencing in 2012 shall remain the same as other county employees in the Plan but such employee share shall not exceed 17% of the premium costs.

Article 31 – Duration

As its proposal on Duration, the Office of the Sheriff seeks to have the date of execution as the effective date of the Agreement. Additionally, the Office seeks new language referencing Senate Bill 5 to be included as section 31.5 of the Agreement. Rejecting both of these proposals, the Union seeks a three year contract contiguous with the expired agreement and current contract language in all other respects, except for a proposal that Section 32.3 be modified to provide for electronic service. Apparently, in the course of negotiations, other proposals had been made but these have been subsequently dropped by the Union and not presented to the fact-finder.

As to the effective date of the Agreement, the fact-finder recommends it be upon the expiration of the prior Agreement. This is the established practice from which the Sheriff has offered no justification for deviation. Creating a period of time in which the parties are in limbo without applicable contract language has the potential for creating unforeseeable consequences. This fact-finder cannot recommend a proposal that may generate unintended results.

Pertaining to proposals for a new Section 31.5, the fact-finder observes that this language was not previously proposed to the Union and the matter has never been bargained, let alone bargained to impasse. In the absence of the ramifications of the proposal having been mutually addressed by the

parties or an opportunity for the Union to counter, this fact-finder cannot recommend its inclusion in fact-finding.

Finally, as to the proposal of the Union for Section 32.3, the Office of the Sheriff has not objected to this inclusion or provided any rationale for its rejection. As SERB requires electronic notifications, it follows that the Collective Bargaining Agreement should provide for the same. Agreeing with the Union, this proposal is a "housekeeping" matter for which the fact-finder has not heard any objection. In recommending this inclusion, the fact-finder is not suggesting language for which there may be long-term effects, financial obligations, or an impact upon the standard of public service. Accordingly, the fact-finder recommends adopting the Union proposal for Section 32.3

Recommendations

The preceding discussion is summarized as follows:

Article 18: Layoff and Recall

Section 18.1 Bargaining unit members may be laid off when a lack of funds or lack of work exists. A lack of funds shall be defined as a current or projected deficiency of funding to maintain current or to sustain projected levels of staffing and operations. A lack of work is defined as a current or projected decrease in workload that requires a reduction of current or projected staffing levels in its organization or structure.

When the Sheriff determines that a long term layoff is necessary as the result of a lack of work or lack of funds, as defined above, he shall notify the affected members fourteen (14) days in advance of the effective date of the layoff. Members will be notified of the Sheriff's decision to implement any short term lay-off, lasting seventy-two (72) hours or less as soon as possible.

Section 18.2. The Sheriff shall determine when layoffs will occur based on lack of work or lack of funds within the Sheriff's Office. Seniority for purposes of layoff shall accrue to all employees of the bargaining units. Whenever layoffs are necessary, all part-time and probationary employees shall be laid off before any full-time employees are laid off. **The Sheriff shall determine in which classification(s) layoffs will occur. Within each classification affected, employees will be laid off in order of their classification seniority beginning with the least senior and progressing to the most senior up to the number of employees to be laid off.**

Section 18.3 Current contract language.

Section 18.4 Sheriff's office seniority is the total length of service within the Sheriff's office in any full-time job capacity measured from the employee's most recent date of hire unless otherwise specified in this Agreement.

Section 18.5 Classification seniority is the total length of service within the employee's classification measured from the employee's most recent date of employment in that classification.

Article 20: Holidays
Current contract language

Article 21: Wages

Section 21.1: 2% increase, effective March 8, 2011; 2.2% increase effective March 8, 2012; 2.8% increase effective March 8, 2013.

Section 21.2: Current contract language

Section 21.7 Compensatory time may not be accumulated to exceed 90 hours (Sergeants and Communications Officers); 135 hours (Deputy III), nor may compensatory time be used to extend sick leave. An employee working overtime under a grant is not eligible for compensatory time for such overtime worked and will be paid.

Section 21.8 Current contract language in first paragraph except for the adjustments in hours. Elimination of last two paragraphs in Section 21.8 and replace with language providing that employees shall have one year in which to draw down compensatory time. Any balances in excess of the new contractual limits shall be cashed in during the final two years of the contract, twice a year in four equal installments.

Article 22: Insurance

Section 22.1 Employees shall pay the same amount in premiums, except that the employee share shall not exceed 17% of premium costs. and shall receive the same level of benefits as other county employees under the Hancock County Commissioner's Insurance Plan. The employee's contributions for insurance shall be deducted from the employee's pay.

Article 31: Duration

Section 31.1 This Agreement shall upon its execution by duly authorized representatives of the OPBA and the Sheriff's Office become effective as of March 8, 2011 and shall remain in full force and effect to and including midnight March 7, 2014.

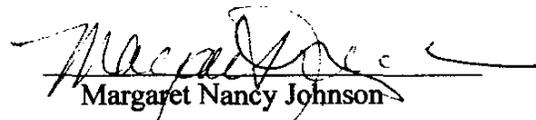
Section 31.3 Written notice provided herein shall be given by personal service, electronic mail, or by certified mail to be served upon or mailed to the Hancock County Sheriff, 200 West Crawford Street, Findlay, Ohio 45840, and upon OPBA, by serving the same upon the President of the local unit or by mailing to the OPBA. Either party may, by like notice, change the address to which the notification referenced in this section shall be given.

Respectfully submitted,


Margaret Nancy Johnson
Fact-finder

Service

The Report and Recommendations have been served this 15th day of April 2011, upon Michelle T. Sullivan, Esq. Allotta, Farley & Widman, 2222 Centennial Road, Toledo, Ohio 43617, msullivan@afwlaw.com; Donald Binkley, Clemans, Nelson & Associates, 417 N. Lima Street, Lima, Ohio 45801, dbinkley@clemansnelson.com; and upon the State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215, mary.laurent@serb.state.oh.us by e-mail and by express service.


Margaret Nancy Johnson

RECIPIENT

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