

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

OHIO PATROLMEN'S BENEVOLENT) CASE NO. 2011-MED-03-0352
ASSOCIATION)
)
Employee Organization)
) REPORT AND RECOMMENDATION
and) OF THE FACT-FINDER
)
WILLIAMS COUNTY SHERIFF)
)
Employer)

APPEARANCES:

EMPLOYEE ORGANIZATION

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EMPLOYER

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September 13, 2011

BACKGROUND

The Ohio Patrolmen's Benevolent Association (hereinafter, the OPBA) and the Williams County Sheriff (hereinafter, the Sheriff) are proceeding to Fact-Finding with respect to a first collective bargaining between the parties. The unit to be covered by the collective bargaining agreement consists of all full-time Deputies. The Sheriff and the Fraternal Order of Police (hereinafter, the F.O.P.) had been parties to a collective bargaining agreement effective January 1, 2008 through December 31, 2010 covering employees in two (2) bargaining units, a unit of all full-time Deputies and a unit of all full-time Corporals and Lieutenants. A decertification election was held with respect to the units covered by said collective bargaining agreement and the OPBA prevailed, being certified as collective bargaining representative on February 12, 2011.

Bargaining sessions between the Sheriff and the OPBA were held on May 15, 2011, June 27, 2011 and July 25, 2011. Various tentative agreements were reached, but numerous issues remained unresolved and the matter proceeded to Fact-Finding.

The Fact-Finder was appointed on May 13, 2011. The parties were notified of the appointment and were requested by the Fact-Finder to provide their Position Statements, including proposals in contract language form in advance of the Pre-Hearing Telephone Conference which was to be held the on day prior to the Fact-Finding Hearing. The parties were also requested to provide a copy of the collective bargaining agreement between the Sheriff and the F.O.P. By agreement of the parties, the Fact-Finding Hearing was scheduled for September 7, 2011 and the Pre-Hearing Telephone Conference was scheduled for September 6, 2011.

The parties timely provided their Position Statements and copies of tentative agreements reached. The OPBA provided a copy of the collective bargaining agreement between the Sheriff and the F.O.P. The Position Statements of the parties were reviewed. The Position Statements identified open issues with respect to the following articles of the proposed agreement:

ARTICLE 3	UNION SECURITY
ARTICLE 4	MANAGEMENT RIGHTS
ARTICLE 7	GRIEVANCE PROCEDURE
ARTICLE 11	HOURS OF WORK AND OVERTIME
ARTICLE 12	LAYOFF AND RECALL
ARTICLE 13	SICK LEAVE ABSENCE POLICY
ARTICLE 14	FITNESS FOR DUTY
ARTICLE 18	VACATION
ARTICLE 19	HOLIDAYS
ARTICLE 20	WAGES
ARTICLE 21	SEVERANCE PAY
ARTICLE 24	HEALTH INSURANCE
ARTICLE 28	POSTING OF VACANCIES
ARTICLE 33	FIELD-TRAINING-OFFICER-COMPENSATION
ARTICLE 37	SEVERABILITY
ARTICLE 38	DURATION

The Pre-Hearing Telephone Conference was held on September 6, 2011. The parties confirmed that there were proposals of both parties with respect to the terms of the Letter of Understanding, Overtime Call-Out Procedure contained in the prior collective bargaining agreement under the F.O.P. and also confirmed that they had reached agreement to retain the language of Article 5, Non-Discrimination. The parties further agreed that the Report and Recommendation of the Fact-Finder was to be transmitted to the parties electronically on September 13, 2011.

The Fact-Finding Hearing was conducted on September 7, 2011 in the Mayor's Office of the City of Bryan. Testimony and evidence was presented and considered with respect to the proposals of the parties, taking into account the following considerations set forth under Ohio Administrative Code Section 4117-9-05(K):

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) Comparison of the issues submitted to final offer settlement 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;

(c) 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 adjustments on the normal standard of public service;

(d) The lawful authority of the public employer;

(e) The stipulations of the parties;

(f) 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 service or in private employment.

INTRODUCTION

This report is drafted considering the unique situation where the law is in flux and considering the fact that if the report is rejected nothing will have been accomplished. The Sheriff, obviously would want to take advantage of the provisions of Senate Bill 5 while the OPBA would obviously not want to grant Senate Bill 5 powers to the Sheriff should the referendum regarding that legislation be successful. Therefore, to the extent that rejection of the proposal would be avoided, the Sheriff is being granted some powers of Senate Bill 5, contingent upon that legislation surviving the referendum.

DISCUSSION OF ARTICLE 3, UNION SECURITY

The OPBA proposes no change in the Union Security Article. The Sheriff proposes various modifications to implement the changes which would take effect if Senate Bill 5 becomes effective. The Sheriff also proposes a limited period for employees to revoke their dues deduction authorization and language which indicates that the dues deduction provision is not to be construed as requiring an employee to become or remain a member of the OPBA as a condition of securing or retaining employment.

Limitations on union security as exists under present law is perceived as a deal-killer for OPBA and can not be recommended. Recommending a provision that can not be accepted makes the Fact-Finding process meaningless. In the Management Rights area, to deny changes to the Sheriff which would be provided by Senate Bill 5 is also perceived as a deal-killer. Therefore, proposals of the Sheriff in the Managements Rights provision will be recommended to generally mirror Senate Bill 5, provided, that legislation is not overturned by the referendum,

The Sheriff has proposed and OPBA does not protest a procedure outlining the time period during which dues authorization cards may be revoked. That provision, therefore, will be recommended.

Finally, the Sheriff also proposed language which would state that the union security provision should not be construed as requiring an employee to become or remain a member of the Union as a condition of securing or retaining employment. The language is a correct statement of the law and adds nothing to the meaning of the collective bargaining agreement. Since no provision of a contract is to be interpreted as surplusage, the language invites argument that some actual change was intended. For that reason, the proposed language is not recommended. Article 3, Union Security, therefore, is recommended to read as follows:

ARTICLE 3

UNION SECURITY

Section 3.1. The Employer agrees to deduct regular Union membership dues, initiation fees, or assessments twice per month, in accordance with this Article, from all employees eligible for the bargaining unit who have authorized such deductions.

Section 3.2. The signed payroll deduction form must be presented to the Employer by the employee. Upon receipt of the proper authorization, the Employer will deduct Union dues from the payroll check for the next pay period in which dues are normally deducted following the pay period in which the authorization was received by the Employer.

Dues deduction authorizations may be revoked by employees during the period December 2 through December 31 of each year. Dues deduction authorizations not revoked during this 30 day period shall continue in effect for a successive contract year. Written notice of the dues deduction revocation shall be served upon the Employer and the Union by the employee to make the revocation effective.

Section 3.3. For the duration of this Agreement, the Employer agrees to remit the dues deducted from eligible bargaining unit employee's pay, in accordance with this Article once each month to the OPBA, 10147 North Royalton, North Royalton, Ohio 44133.

Section 3.4. The parties agree that the Employer assumes no obligation financial or otherwise, arising out of the provision of their Article regarding the deduction of Union dues or fair share fees. The union hereby agrees that it will indemnify and hold the Employer harmless from any claims, actions, or proceeding by an employee arising from deductions made by the Employer pursuant to this Article. Once the funds are remitted to the Union, their deposition thereafter shall be the sole and exclusive obligation and responsibility of the Union.

Section 3.5. The Employer shall be relieved from making such individual dues deductions upon an employee's – (1) termination of employment; (2) transfer to a job other than one covered by the bargaining unit; (3) layoff from work; (4) an unpaid leave of absence; or (5) written revocation of the dues check off authorization.

Section 3.6. The Employer shall not be obligated to make dues deductions from any employee who, during any dues months involved, shall have failed to receive sufficient wages to make all legally required deductions in addition to the deduction of Union dues.

Section 3.7. The parties agree that neither the employees nor the Union shall have claims against the Employer for errors in the processing of deductions, unless a claim of error is made to the Employer in writing within sixty (60) days after the date such error was made, it will be corrected at the next pay period that the Union dues deduction would normally be made by deducting the proper amount.

Section 3.8. The rate at which dues are to be deducted shall be certified in writing to the payroll clerk by the Union. One (1) month's notice in advance must be given the payroll clerk prior to making any changes in an individual's dues deduction.

Section 3.9. Except as otherwise provided herein, each eligible employee's written authorization for dues deduction shall be honored by the Employer for the duration of this Agreement.

Section 3.10. All employees who do not become members in good standing of the Union shall pay a fair share fee to the Union effective sixty (60) days from the employee's date

of hire or upon revocation of the dues deduction authorization. The fair share fee shall not exceed the dues paid by members of the Union in the same bargaining unit. The fair share fee shall not be used to finance political and/or ideological activity. The fair share fee is strictly to finance the proportionate share of the cost of collective bargaining, contract administration and pursuing matters directly affecting wages, hours, and other terms and conditions of employment of bargaining unit employees. The Employer shall implement the fair share deductions subject to the provisions of this Section. The Union shall prescribe a rebate and challenge procedure which complies with O.R.C. Section 4117.09 (C), and federal law.

Section 3.11. The fair share fee amount shall be certified to the Employer by the OPBA. The deduction of the fair share fee from any earnings of the employee shall be automatic and does not require a written authorization for payroll deduction. Payment to the Union of fair share fees shall be made in accordance with the regular dues deductions as provided in this Article, Section 3.3.

DISCUSSION OF ARTICLE IV – MANAGEMENT RIGHTS

The parties each propose a Management Rights clause based on Ohio Revised Code Section 4117.08. The OPBA proposal is based on the current language of that section and the Sheriff proposal is based on that section as it would be modified by Senate Bill 5. It would make no sense for the OPBA to be saddled with an expanded Management Rights clause which is not the law. Likewise, it would seem inappropriate for the Sheriff to be limited to exercising only those Management Rights contained in a former version of the statute.

The solution to the problem would seem to be to grant each party its proposal. Therefore it is recommended that the Management Rights clause as proposed by the OPBA remain in effect unless and until Senate Bill 5 modifies Ohio Revised Code Section 4117.08. If the referendum fails and Senate Bill 5 goes into effect, then the language proposed by the Sheriff as modified below shall be in effect. The only change made to the Sheriff Proposal is to add the words “for just cause” in the clause regarding discipline. The legislature deleted the term “just cause” from the statute which might lead to a conclusion that there was some intent to expand the discretion

of management, making discipline a sole management decision. To avoid that possible argument and interpretation, the recommendation of the Fact-Finder is to reinsert that phrase. It is recommended that the *Management Rights* clause shall read as follows:

ARTICLE 5

MANAGEMENT RIGHTS

Section 4.1. Management Rights. The Union recognizes and accepts the right and authority of the Employer to determine matters of inherent managerial policy which include but are not limited to areas of discretion or policy such as:

- A. To determine the functions and programs of the Sheriff's Office;
- B. To determine the standards of services to be delivered;
- C. To determine the overall budget;
- D. To determine how technology may be utilized to improve the operations of the Sheriff's Office;
- E. To determine the organizational structure of the Sheriff's Office;
- F. To direct, supervise, evaluate or hire employees;
- G. To maintain and improve the efficiency and effectiveness of the Sheriff's Office;
- H. To determine the overall methods, process means or personnel by which the operations of the Sheriff's Office are to be conducted;
- I. To suspend, discipline, demote or discharge for just cause, lay off, transfer, assign, schedule, promote or retain employees;
- J. To determine the adequacy of the work force;
- K. To determine the overall mission of the Sheriff's Office as a unit of government;
- L. To effectively manage the work force; and
- M. To take actions necessary to carry out the mission of the Sheriff's Office as a governmental unit.

The Union recognizes and accepts that all rights and responsibilities of the

Employer not specifically modified by this Agreement shall remain the exclusive function of the Employer.

Should Ohio Revised Code Section 4117.08 go into effect as modified by Senate Bill 5, the Management Rights clause shall be modified to read as follows:

Section .1. Except as expressly modified or restricted by a specific provision of this Agreement, all statutory and inherent managerial rights, prerogatives, and functions of management are retained and vested exclusively in the Employer, including, but not limited to, those rights specified in Section 4117.08 of the Ohio Revised Code and the following:

- A. Hire, discharge, transfer, suspend, or discipline employees for just cause.
- B. Determine the number of persons required to be employed or laid off;
- C. Determine the qualifications of employees;
- D. Determine the starting and quitting time and the number of hours to be worked by its employees;
- E. Make any and all reasonable rules and regulations;
- F. Determine the work assignments of its employees;
- G. Determine the basis for selection, retention, and promotion of employees;
- H. Determine the type of equipment used and the sequence of work processes, except as provided in division (F) of this section;
- I. Determine the making of technological alterations by revising either process or equipment or both, except as provided in division (F) of this section;
- J. Determine work standards and the quality and quantity of work to be produced;
- K. Select and locate buildings and other facilities;
- L. Establish, expand, transfer, or consolidate work processes and facilities;
- M. Transfer or subcontract work;
- N. Consolidate, merge, or otherwise transfer any or all of its facilities, property processes, or work with or to any other municipal corporation or entity or effect

or change in any respect the legal status, management, or responsibility of such property, facilities, processes, or work;

O. Terminate or eliminate all or any part of its work or facilities.

Section .2. The Union recognizes that all matters encompassed in Section .1 of this article or R.C. Section 4117.08, which are not expressly modified by this Agreement or ensuing agreements, and all matters of inherent management rights shall remain the function of the Employer.

DISCUSSION OF ARTICLE 7 – GRIEVANCE PROCEDURE

The Sheriff has proposed to eliminate language in Article 7, Section 7.3 which would require that grievances filed by employees at the improper step be returned to the employee for filing at the proper step. The Sheriff also proposes that grievances not timely appealed to the next step of the procedure will be deemed to have been settled on the basis of the Employer's answer at the last completed step. The OPBA proposes no change in the provision.

The language proposed by the Sheriff would imply that a grievance filed at the wrong step be forfeit. Such a change can not be recommended. The proposal that a grievance be considered settled if not timely appealed to the next step is reasonable and is recommended with one additional modification to speed up the process. It is recommended that if the Sheriff maintains that a grievance is filed at the wrong step, the Sheriff, instead of returning the grievance to the employee, instead forward the grievance to its representative who it feels would have been the appropriate recipient.

It appears that there is some frustration by the Sheriff regarding grievances being filed immediately with the Chief Deputy, employees ignoring the requirement to discuss issues with the immediate supervisor. Part of the problem appears to be due to the wording of the grievance procedure which describes as Step 1 the **second** actual step of the grievance procedure. Another problem is the fact that the time limit for the filing of grievance does not expressly appear at Step 1. In an effort to make the grievance procedure more clear, alterations in the language of the

steps of the Grievance Procedure are recommended. The procedure would require a written answer from the immediate supervisor. In order to expedite the process the grievance form should be modified to provide a space for the response to the immediate supervisor.

The Sheriff has proposed language which would state that the first issue presented to the arbitrator be the issue of arbitrability. There was no discussion of this particular provision at the Fact-Finding Hearing and no rationale advanced in the Position Statement or hearing materials. The language would imply that arbitrability issue be presented to the arbitrator which is a proper statement of the law. The language could also be read to require two (2) separate proceedings where arbitrability issues are raised. Obviously there are costs and delays inherent in such a procedure. The most common manner in which arbitrators address arbitrability issues is to conduct a single hearing at which both the procedural matters and the substance of the grievance are heard. The language of the arbitration procedure should not foreclose that type of proceeding.

The Sheriff has proposed some cosmetic changes in the language of the collective bargaining agreement with respect to the final and binding nature of the arbitration award and as to the timing of the award. There appears to be no substantive change in the meaning of the current language created by the proposal of the Sheriff. These proposed changes are therefore rejected.

The Sheriff has proposed additional limitations on the authority of the arbitrator. The present language limits the arbitrator from modifying or amending the agreement and appears to be sufficient. It is not inconceivable that a proper arbitration award could be issued which would be contrary to the additional limitations. Those proposed additional limitations are rejected.

The Sheriff has proposed that discipline matters and other matters involving a loss of up to three thousand dollars (\$ 3,000.00) be submitted to the State Personnel Board of Review (SPBR). The proposal of the Sheriff, as written, appears to give the OPBA an option to pursue

such a grievance through the SPBR or to arbitration. There are a few problems with the proposal. First, most such disputes can not be pursued through the SPBR since that agency would not have jurisdiction over short term suspension and most other monetary issues, such as a denial of overtime or holiday. In any event, the OPBA has indicated that it has no interest in pursuing matters through the SPBR because of the fact that hearings would be held in Columbus, a three (3) hour drive from the site of the grievance. The proposal of the Sheriff is rejected.

The Sheriff has also proposed changes with respect to the language regarding payment of witnesses in arbitration. The Sheriff proposes to state that the expenses of “non-employee” witnesses be borne by the party calling such witness. The Sheriff also proposes language stating that bargaining unit witnesses would not lose pay if the hearing is during their regularly scheduled working hours. This appears to be a proper statement of the current practice and is recommended.

The Sheriff proposes language which would exclude the OPBA from arbitration hearings which are initiated by employees without the intervention of the OPBA. There are two (2) problems with this proposal. The language would imply that a grievant, without intervention of a union, could invoke the arbitration procedure. Many employers take the position that the union alone can adjust a grievance by way of arbitration, not wanting to be exposed to outside attorneys or even grievants proceeding *pro se*, demanding arbitration of grievances which the union has already determined not to be meritorious. The other problem is that the OPBA would have the right to be present at a hearing which could impact the interpretation of the collective bargaining agreement. This proposal is rejected.

The OPBA has proposed that Class Action Grievances require only the signature of a single employee while the Sheriff proposes to eliminate reference to Class Action Grievances. The prospect of having to pursue multiple arbitrations where there is an alleged contract

violation effecting numerous employees can not be recommended. The Sheriff complains that it may not know who is covered by a grievance if not all employees are required to sign the grievance. Language is recommended below that would require persons seeking to be covered by a class action grievance file a written assent prior to the grievance going to arbitration.

To accomplish the clarifications in the Grievance Procedure, language from Section 7.4 was altered and relocated into Step 1 of the Grievance Procedure and the remaining sections of the article were renumbered. The recommended language for the Grievance Procedure is as follows:

ARTICLE 7

GRIEVANCE PROCEDURE

Section 7.1. The term “grievance” shall mean all allegations by a bargaining unit employee that there has been a breach, violation, misinterpretation, or improper application of this Agreement. *The grievance procedure is not intended to be used to effect changes in the articles of this Agreement or those matters which are controlled by the provisions of Federal law and/or by the Constitutions of the United States or the State of Ohio.*

Section 7.2. Since specific administrative agency relief of a judicial or quasi-judicial nature is provided for by the statutes of the State of Ohio, or the United States for review or redress of Worker’s Compensation, Unemployment Compensation, E.E.O.C., and Civil Rights matters, such matters shall not be made the subject of a grievance and may not be processed as such. The employee and his/her representative may meet with the Employer in an effort to resolve the matter prior to the filing of a complaint or an appeal through such agency.

Section 7.3. All grievances must be presented at the proper step and time in progression, in order to be considered at the next step. If the Sheriff contends that a grievance has been submitted at the wrong step of the procedure, it shall notify the person filing the grievance and the Sheriff shall forward the grievance to its appropriate representative for response. This section shall not be interpreted as extending the time limits for filing or processing a grievance. Any grievance that is not timely appealed to the next step of the procedure will be deemed to have been settled on the basis of the Employer’s answer at the last completed step.

The aggrieved may withdraw a grievance at any point by submitting in writing, a statement to that affect, or by permitting the time requirements at any step to lapse without further appeal.

Any grievance not answered by the Employer's representatives within the stipulated time limits may be advanced by the employee to the next step in the grievance procedure. Time limits set forth herein may only be extended by mutual agreement.

Section 7.4. All written grievances must contain the following information to be considered:

1. Aggrieved employee's name and signature;
2. Date grievance was first discussed;
3. Date grievance was filed in writing;
4. Name of supervisor with whom grievance was discussed;
5. Date and time grievance occurred;
6. Where grievance occurred;
7. Description of incident giving rise to the grievance;
8. Articles and sections of the Agreement violated; and
9. Desired remedy to resolve grievance.

Section 7.5. The following steps shall be followed when processing grievances:

STEP 1 A grievance must be submitted in writing to the employee's immediate supervisor within ten (10) calendar days after the grievant knows or should have known of the incident giving rise to the grievance, otherwise it will be considered not to have existed.

The employee shall make an earnest, honest effort to settle the dispute or controversy through verbal discussions between the employee and his/her immediate supervisor. The immediate supervisor shall give a written answer within five (5) calendar days of being receiving the grievance.

STEP 2. If the grievance is not resolved in Step 1, a written grievance must be filed with the Chief Deputy within five (5) calendar days of receipt of the answer at Step 1. It shall be the responsibility of the Chief Deputy to investigate the matter, hold a hearing if deemed necessary, and provide a written response with seven (7) calendar days following

the day on which the Chief Deputy was presented the grievance. The employee may be represented by the union representative at this step if the employee so desires.

STEP 3. If the grievance is not resolved in Step 2, it may then be appealed by the grievant to a meeting between the Sheriff or his/her designated representative and the aggrieved employee, with a representative of the Union, if the employee so desires. The appeal to Step 3, must take place within seven (7) calendar days of the response in Step 2. The Employer shall respond to the aggrieved within fourteen (14) calendar days. The Employer shall notify the grievant and the OPBA Director in writing of any grievance resolution between the Employer and grievant.

STEP 4. Arbitration. If the grievance is not satisfactorily resolved at Step 3, it may be submitted to Arbitration upon request of the Union in accordance with this Section of this Article.

The OPBA, based upon the facts presented has the right to decide whether to request arbitration. Within fourteen (14) calendar days from the date of final answer on such grievance under Step 3, in the grievance procedure, the Union shall notify the Employer of its intent to seek arbitration over an unadjusted grievance. The Union may withdraw its request to arbitrate at any time prior to the actual hearing. Any cancellation fee due the arbitrator shall be paid by the party canceling the arbitration. Any grievance not submitted or processed within the calendar day periods described above shall be deemed settled on the basis of the last answer given by the Employer.

A. After receipt of a request to arbitrate, a representative of each of the parties (the Union and the Employer) shall attempt to agree on an arbitrator. Should the representatives fail to agree on an arbitrator, the arbitrator shall be selected in the following manner:

The FMCS shall be jointly requested to submit a panel of nine (9) arbitrators from Ohio. The parties shall alternately strike the names of the arbitrators until only one name remains. The party requesting arbitration shall strike the first name. Either party may reject a list once and request from FMCS another list of nine (9) names.

The arbitrator shall limit his/her decision strictly to the interpretation, application, or enforcement of specific articles in this Agreement. He/she may not modify or amend the Agreement.

B. The question of arbitrability of a grievance may be raised by either party before the arbitration hearing of the grievance on the grounds that the matter is non-arbitrable or beyond the arbitrator's scope of authority or jurisdiction. The first question to be placed before the arbitrator will be whether or not the grievance is arbitrable. If the arbitrator determines that the grievance is within the purview of arbitrability, the grievance will be

heard on its merits before the same arbitrator. Nothing herein shall be interpreted to prevent an arbitrator from determining to hear both the issue of arbitrability and the merits of a grievance in a single hearing.

C. The decision of the arbitrator shall be final and binding. The arbitrator shall be requested to issue his/her decision within thirty (30) calendar days after the conclusion of testimony and argument and the submission of post-hearing briefs if either party desires to submit such briefs.

D. The costs of the services of the arbitrator, the costs of any proofs produced at the direction of the arbitrator, any other fees of the arbitrator, or the cost of a hearing room shall be borne equally by both parties. The expenses of any non-employee witnesses shall be borne, if any, by the party calling them. Any bargaining unit member whose attendance is required for such hearing shall not lose pay or benefits to the extent such hearing hours are during normally scheduled working hours on the day of the hearing. The fees of the court reporter shall be paid by the party asking for one; such fees split equally if both parties desire a reporter, or request a copy of any transcripts.

Section 7.6. When an employee covered by this Agreement chooses to represent himself/herself in the presentation of a grievance, no adjustment of the grievance will be inconsistent with the terms of this Agreement. Prior to the adjustment of any such grievance, the appropriate Union representative will be notified of his/her right to be present at the adjustment or arbitration.

Section 7.7. The Union shall use a grievance form which shall provide the information outlined in Section 7.4. The Union shall have the responsibility for the duplication, distribution, and accounting of the grievance forms. The approved and agreed upon grievance form appears at the end of the Agreement.

Section 7.8. Where a group of bargaining unit members desire to file a grievance involving a situation affecting several bargaining unit members in the same manner, the OPBA or the Director shall file a Class Action grievance on behalf of the affected employees. Such a grievance shall identify the names and be signed by at least one of the affected employees who desire to file the Class Action grievance. Persons not signing the a Class Action Grievance who wish to be covered by the grievance, however, must provide a written notice of their desire to be covered by said grievance prior to the case proceeding to arbitration.

DISCUSSION OF ARTICLE 11 – HOURS OF WORK AND OVERTIME

The Sheriff has proposed a new Section 11.1 of the Hours of Work and Overtime provision to state that the provision is not to be construed as a guarantee of hours or a restriction on Management Rights. There was no rationale advanced for this change either in the Position Statement or the hearing materials. There is no way to know, therefore, whether the language would constitute a substantive change in the terms of the collective bargaining agreement. Therefore, this proposal must be rejected.

The Sheriff proposes a change in Section 11.2. Under the proposal of the Sheriff, the Sheriff, rather than the employee would designate whether hours will be compensated as overtime or compensatory time. There was no discussion at hearing and no rationale advanced in the Position Statement or hearing materials of the application or intent of this provision. This proposed change is rejected.

The parties have reached tentative agreement on Section 11.3. That tentative agreement is adopted by this report and recommendation.

The Sheriff also proposes language which would state that the Sheriff could require any or all employees to work overtime. It appears that this is no substantive change. Again, there was no discussion of this proposal at hearing thus no substantial reason was advanced for the proposed change. Therefore, this proposal is rejected.

The OPBA has proposed changes in Section 11.1, Paragraph 1 of this Article to define the work schedule as forty (40) hours in a seven (7) day work period as opposed to being defined as one hundred sixty (160) hours in a twenty-eight (28) day work period. Since implementing this proposal would severely limit the flexibility of the Sheriff to avoid overtime, this proposal must be rejected. As a matter of housekeeping, it is recommended that the last sentence of this paragraph be deleted as it pertains to classifications not covered by this collective bargaining agreement.

The OPBA has proposed changes in Paragraph 2 of this Section 11.1 to establish minimum staffing. This proposal must also be rejected for several reasons. First, it is anticipated that the Sheriff would reject any report with a minimum staffing requirement. Second, even an award in conciliation would be subject to attack as having been issued beyond the jurisdiction of the Conciliator. Finally, even if the language were granted, a grievance were filed and sustained, there would be no effective remedy, the arbitrator being able only to tell the Sheriff to hire, instead of providing any remedy to existing employees. The Williams County Sheriff's Department has faced a reduction in the number of Deputies from nineteen (19) to twelve (12). Attempting to staff a county with nine hundred (900) miles of road on a 24/7 basis with so few Deputies officers can only be described as brutal and requires flexibility and cooperation. Legislating staffing is not appropriate for the Fact-Finder. It is a fact of life that staffing will only change if additional revenue comes available from the County or if some tragedy caused by understaffing causes the public to demand better service. It is against this backdrop that the proposals of the OPBA are being considered.

The OPBA has proposed changes in Paragraph 3 of Section 11.1 which are, for the most part, "housekeeping provisions" aimed at addressing the fact that there is now only a single classification covered under the collective bargaining agreement. The Sheriff has indicated that it is not opposed to this proposal and therefore, these changes will be recommended.

The OPBA has proposed numerous changes in Paragraph 4 of Section 11.1. The OPBA has proposed to insert the word "extended" before "employee absences" and to add the words, "lasting more than one (1) day"; to require the seeking of volunteers for schedule changes and to require a seven (7) day notice for such schedule changes. These proposals must be rejected. Adding the words "extended" and "lasting more than one (1) day" would seem to imply that the Sheriff could not change schedules for absences of less than one (1) day. As indicated before, flexibility is key in the public interest for safety forces when staffing is critically low. While it is

“nice” to seek volunteers and the Sheriff may do so, regardless of the absence of language requiring the seeking of volunteers, the requirement to do so would seem impractical and the seven (7) day notice requirement, in most cases impossible. These proposals, therefore, must be rejected.

The OPBA has proposed numerous changes in Paragraph 1 of Section 11.2. The OPBA has proposed to change the time period utilized to compute overtime and/or compensatory time entitlement from one hundred sixty (160) hours to forty (40) hours; to delete the words “deemed to” and to delete reference to the FLSA. These proposals also are rejected. Because of the need for flexibility, the change from a one hundred sixty (160) hour to a forty (40) hour computation period is rejected. There is no need to delete the words “deemed to” and there has been no compelling reason advanced to delete reference to the FLSA. For these reasons, it is recommended that Paragraph 1 of Section 11.2 remain unchanged.

The OPBA has proposed several changes in Paragraph 2 of Section 11.2. The OPBA has Proposed that employees may “carry” up to forty (40) hours of compensatory time, rather than being limited to accumulating only that amount during a given calendar year. The OPBA has proposed language to make clear that only the excess over forty (40) hours of compensatory time be paid out and has proposed that the mandatory December payout be eliminated. The Sheriff generally indicated that it was not opposed to allowing the carrying of forty (40) hours of compensatory time and eliminating the limit to accruing only forty (40) hours per year. There was no real discussion on the elimination of the mandatory December payout. There appears, however, an intent on the part of the Sheriff to clean the books annually, rather than having carryover compensatory time. The following language is therefore recommended, which includes a slight change to state that payout will be made to bring the compensatory time balance “to”, rather than “under” forty (40) hours:

1. All overtime shall be compensated at the rate of one and one-half times the employee's regular hourly rate or one and one-half (1.5) hours of compensatory time for each overtime hour worked. The employee will designate whether the compensation will be monetary or in the form of compensatory time. If compensatory time is requested, the time must be utilized by the end of the first full pay period in December at a time approved in advance by the Employer. An employee may carry a balance of a maximum of forty (40) hours of compensatory time. Any overtime worked which would cause the employee to exceed the 40 hours maximum, shall be paid to the employee at the applicable overtime rate until such time as the employee has brought his or her compensatory balance to forty (40) hours. Any hours of compensatory time which are not used by the end of the first pay period in December each year, will be paid to the employee at his/her regular hourly rate the following pay period.

The OPBA has proposed several changes in language which had been contained in a Letter of Understanding between the parties relative to Overtime and Call Out Procedure. These changes were proposed to be incorporated into a new Section 11.3. The OPBA has proposed to apply the overtime call out pay procedure to all vacancies, expected or unexpected. Otherwise, the proposed language changes for Section 11.3 appear cosmetic in nature. The recommended language for Section 11.3 is as follows:

1 Unscheduled Overtime:

Whenever a vacancy occurs due to an unexpected absence of the regularly schedule employee, the following rotation applies:

- A. First, by TOTAL seniority beginning with the most senior deputy, followed by the next most senior deputy, etc., regardless of classification, who is currently on-duty to cover the first four (4) hours or less of said vacancy.
- B. Next, by TOTAL seniority beginning with the most senior deputy, followed by the next most senior deputy, regardless of classification, that will be on duty for a regularly scheduled shift after the vacancy.

- C. If all refuse, the deputy, regardless of classification, with the lowest seniority shall be ordered to fill the appropriate vacancy on a hold-over/ ear
- 2 Recordkeeping: The person making the call-out shall log on the Call-Out Log who was called, who accepted / declined / no answer / message left, etc., and the reason for overtime.
- 3 Overtime Approval: All overtime assignments are subject to the approval of the Sheriff or his designee as set forth in Section 11.2(3) of the collective bargaining agreement. In no event, shall a deputy work more than twelve (12) hours without prior approval from the Sheriff, Chief Deputy, or Lieutenant.
4. Follow Through Overtime: It is recognized that a deputy investigating a particular _____ case or cases may be allowed "follow through" overtime. Follow through overtime shall not be subject to the overtime seniority provisions.
- 5 Meritorious Grievances: The remedy for meritorious grievances claiming an improper assignment for overtime under this procedure shall be one-half (.5) the time of the vacancy to be received in pay or compensatory time, at the Sheriffs discretion.
- Example: 4 hour vacancy = 2 hour pay or comp time
6. Discipline: It is up to each bargaining unit member doing the call-out procedure to understand and follow the procedure. Errors in procedure will result in a written reprimand the first offense, one (1) day suspension the second offense within twelve (12) months. Progressive discipline will continue in accordance with the collective bargaining agreement.
7. This agreement shall not be construed as a waiver of the Sheriffs right to temporarily change an employee's regular work shift in accordance with Section. 11.1(4) of the current collective bargaining agreement.

(Note the appearance of this section is due to problems with the PDF converter Program)

DISCUSSION OF ARTICLE 12 – LAYOFF AND RECALL

There are numerous proposals from the parties with respect to this article. The OPBA proposes language which would seem to limit the Sheriff to laying off employees only due to a lack of funds or lack of work. The OPBA then proposes definitions for the terms “lack of funds” and “lack of work”. The Sheriff, likewise proposes to enumerate the reasons for which layoffs would be permitted and similarly defines the terms “lack of funds” and “lack of work”. The Sheriff, however, further, would define permissible reasons to layoff to include job abolishment as a result of reorganization for efficient operations, economy or lack of funds. The express rights sought by the Sheriff appear to be within the definition of Management Rights under both the old and new versions of Ohio Revised Code Section 4117.08. Therefore, the proposal of the Sheriff as shown below is recommended:

LAYOFF AND RECALL

Section 12.1. The Employer may lay employees off due to lack of work, lack of funds, job abolishment, or reorganization. Affected employees shall receive notice of any layoff fourteen (14) calendar days prior to the effective day of layoff.

As used in this section, a “lack of funds” means the Employer has a current or projected deficiency of funding to maintain current, or to sustain projected, levels of staffing and operations.

As used in this section, a “lack of work” means the Employer has a current or projected decrease in workload that requires a reduction of current or projected staffing levels in its organization or structure.

For purposes of this section, the Employer may abolish positions for any one or any combination of the following reasons: as a result of a reorganization for the efficient operation of the appointing authority, for reasons of economy, or for lack of work.

It is the understanding of the Fact-Finder that the Sheriff is in agreement with the proposal of the OPBA for Section 12.2 which would provide for a sign up sheet for employees to volunteer to accept a layoff. Neither party, however, has proposed language on how layoffs

would be effectuated from among those who have volunteered. Therefore, the following language is proposed.

Section 12.2. A voluntary sign-up sheet will be posted for two (2) weeks prior to the date the layoff will take effect. Senior employees who wish to take the layoff on a voluntary basis can sign the posting. If, on the date of the layoff, there are more than enough senior employees who have volunteered to be laid off, the more senior employee(s) requesting layoff will be laid off to the extent of the number of employees to be laid off. If not enough employees volunteer to take the layoff, the volunteers shall be laid off first followed by the least senior employee, based on total seniority as defined in Section 10.1. Layoffs shall continue in this manner until the required number of employees have been laid off. Following the layoff, the Employer may abolish positions as he deems necessary in order to reorganize the department.

The OPBA proposes that recalls be mandated where funds or work become available to sustain operations. This proposal infringes on Management Rights and its adoption would certainly lead to rejection of this proposed award. This proposal must be rejected.

Proposals have been made with respect to recalls to provide for a thirty-six (36) month recall period and that the Sheriff be required to notify employees of the qualifications for recall and of training opportunities. In light of the volunteer layoff provisions, some clarification was necessary with respect to recall procedures. For these reasons, the following language is recommended:

Section .3. Employees who are laid off shall be placed on a recall list for a period of thirty-six (36) months. Employees who are laid off shall maintain all required licensures and certifications, to include Cumulative Professional Training (CPT) hours. Employees shall be responsible for providing proof of all required licensures, certifications, and training hours. The Employer shall notify laid off employees of required licensures, certifications, training hours and training opportunities by registered mail. The Employer shall be deemed to have fulfilled its obligations by mailing the recall notice by registered mail, return receipt requested, to the last mailing address provided by the employee. If there is a recall, employees who are still on the recall list shall be recalled, in the order of total seniority as defined in Section 10.1, provided they are presently qualified to perform the work in the work section to which they are recalled. Senior employees may elect to be by-passed for recall as long as there are less senior

employees laid off sufficient to fill the Employer's staffing needs. Said by-passed employees retain recall rights.

The OPBA has proposed changes in Section 12.6 which would forbid unpaid Special Deputies from performing the duties of full-time Deputies. Granting the provision would result in three (3) possibilities. The first possibility, the Deputy seeking time off would not be granted the time off. The second possibility would be that duties would not be performed at all. The third possibility would be that there would be mini-recalls to cover expected daily use of Special Deputies. None of these possibilities would create a positive situation. This proposal must be rejected.

The Sheriff proposes language for a new Section 12.7 which would eliminate reference to State law with respect to layoffs and recalls. The OPBA has opposed this proposal and has indicated that it is willing to accept the effect of State law where there are gaps in the collective bargaining agreement. There was no evidence or argument presented by which to determine what effect would result from this language change. This proposal must be rejected.

DISCUSSION OF ARTICLE 13 – SICK LEAVE

The first proposal shown in the Position Statement of the OPBA relates to Section 13.5 where it is proposed that the Sheriff keep reasons for the use of employee's sick leave private. Neither party discussed this proposal. Obviously, the Sheriff should keep such matters private. Making such issues a matter of the collective bargaining agreement, however, probably works to the disadvantage of the employee since a grievance and arbitration procedure is not the best of forums to seek a remedy for an invasion of privacy or violation of HIPPA and it would seem that a good argument could be raised that the Grievance Procedure would have to be exhausted and/or would constitute the exclusive remedy for such violations. In light of these considerations, the proposal is rejected.

The next proposal shown in the Position Statement of the OPBA relates to Section 13.6 where it is proposed that there be a change in the procedure which would require an employee on sick leave to remain at home or in a treatment facility or be able to document reasons for absence from home. The OPBA proposes that employees be required to “conduct themselves in a manner that is consistent with circumstances necessitating the leave”. The Sheriff indicated that there was concern with the perception of the public. While the concern of the Sheriff is well-founded, even under the current language, however, there would be no change in the perception of the public where an employee provides documentation **to the Sheriff**. Under the proposal of the Sheriff, further, a Deputy with a back condition, or psychological condition which would not prevent him from performing everyday activities, but which would prevent him from engaging in the rigors of the duties of a law enforcement officer would have to subject himself to “house arrest” or provide documentation for every sojourn to the corner store. The current language is not realistic and the Sheriff has not provided evidence of the risk of significant abuse should the language be revised. The OPBA proposal as modified below is recommended:

Section 13.6. Employees on sick leave must be mindful of the perceptions of the public while absent from work due to an illness or injury and therefore must conduct themselves in a manner that is consistent with the circumstances necessitating the sick leave usage. Any absence from duty as a result of a claimed illness or injury may be investigated by the Sheriff or designee.

The Sheriff proposes a change in Section 13.7 to require a physician’s statement for an employee to return to work after absences of two (2) days or less. This proposal is unrealistic and is inconsistent with such provisions with other employers. There was no evidence of any existing abuses which might be addressed by this change and there are other methods available under the collective bargaining agreement to deal with such issues. This proposal must be rejected.

The next proposal of the OPBA related to sick leave is made with respect to Section 13.10 where the OPBA proposes to incorporate a No-Fault Attendance Control Policy into the collective bargaining agreement. The Sheriff, likewise, proposes incorporate a No-Fault Attendance Control Policy. While it is a good idea for notice purposes to incorporate the policy and the parties are “on the same page” in that respect, the parties are on different planets when it comes to the content of the policy, perhaps planets in different solar systems. The policy proposed by the Sheriff is entirely too severe, especially since its formal proposals **deletes** the purging provision upon which the Sheriff based its contention that the policy was fair. The policy of the Sheriff also punishes “partial absences”, without defining such partial absences. Thus, under a literal application of the proposal, a person will eventually be terminated if accumulating six (6) incidents of tardiness related to illness or injury over the course of his employment. The proposal of the OPBA, on the other hand, is far too liberal and abandons the No-Fault aspect to the policy by not counting absences covered by a physician certificate as incidents. Both policies neglect the lack of progressive discipline and double jeopardy issues which arise when there is a lack of attention to the accumulation of incidents by the employer and an employee is severely disciplined or even terminated for accumulating the requisite number of incidents even before he is notified that there is an issue related to attendance.

To address these issues, the following No-Fault Attendance Control Policy is recommended:

Section 13.10 The Employer’s absence policy as contained in the Sheriff’s Office Rules and Regulations as applied to members of this bargaining unit shall be amended to comply with this sick leave article. Any pattern of sick leave abuse or single egregious abuse of sick leave may be just cause for disciplinary action. Use of sick leave for four (4) or more separate incidents in any twelve (12) month rolling period will result in a counseling session in order to determine the cause for the use of sick leave and to mutually work toward a solution to the problem.

Once the employee has been counseled, if the employee has two (2) incidents of sick leave in any rolling six (6) pay periods, the employee shall be subject to a written reprimand.

Once the employee has been received the written reprimand, if the employee has two (2) incidents of sick leave in any rolling six (6) pay periods, the employee shall be subject to a five (5) day suspension.

Once the employee has received a five (5) day suspension, if the employee has two (2) incidents of sick leave in any rolling six (6) pay periods, the employee shall be subject to termination. The termination, however, shall be subject to the issue of just cause.

An employee not using sick leave for any rolling twelve (12) pay periods shall drop back one step in the progressive discipline scheme. Pay periods counted toward the drop back provision shall not be counted towards earning further entitlement to a drop back. For example, an employee, after receiving a five (5) day suspension does not use sick leave for twenty (20) consecutive pay periods, his next disciplinary step would again be another five (5) day suspension. If, on the other hand, he does not use sick leave for twenty-four (24) consecutive pay periods, his next disciplinary step would again be a written warning.

For the purpose hereof, an "incident" is a consecutive period of time covered by sick leave. For example, an employee scheduled to work Friday, Saturday and Sunday, off Monday and Tuesday and scheduled Wednesday and Thursday who leave work early using sick leave on Friday, remains in sick leave Saturday and Sunday, returns to work on Wednesday and is off again on sick leave Thursday would have accumulated two (2) incidents of sick leave.

The Sheriff has proposed a new section 12 to the Sick Leave article relating to requiring a fitness for duty examination and the consequences of an employee failing such an examination. There was nothing in evidence at hearing explaining the need for this position and nothing specific in the Position Statement. Without compelling evidence being offered for this proposed change, it can not be recommended.

The Sheriff also proposes that sick leave be governed by the provisions of the collective bargaining agreement and not the Ohio Revised Code. The OPBA, at hearing indicated that it was willing to accept the consequences of state law to fill

in gaps in the express language of the collective bargaining agreement. There was no explanation offered as to what effect the change would have on existing practice. Absent any evidence on what would result from making the change in language, the Fact-Finder can not recommend such a change.

DISCUSSION OF ARTICLE 17 – FITNESS FOR DUTY

The Sheriff has proposed a new section to this article relative to employees who are unable to perform their duties. The proposal, as worded, was opposed by the OPBA because it appeared to require employees to go through the disability separation process even if they were able to perform their duties with reasonable accommodation. The language proposed by the Sheriff, as slightly modified below, is recommended:

Section .3. In the event an employee becomes unable to perform the essential functions of his/her position, even if granted reasonable accommodation, and has no approved leave time available, the parties will utilize the disability separation process contained in Ohio Administrative Code Chapter 123:1.30, Disability Separations — Reinstatement.

DISCUSSION OF ARTICLE 18 – VACATIONS

The Sheriff has proposed to eliminate reference to the employee birthday in Section 18.3. In light of the other recommendations regarding economics in this award, this proposal is rejected.

The Sheriff has proposed in Section 18.7 a “use it or lose it” provision with respect to vacations. The effect of this proposal could be to have the employer immediately schedule thirty-six (36) additional weeks of vacation in the next calendar year. In light of staffing limitation, that almost certainly would be impossible. Current language must be recommended.

The Sheriff has proposed to eliminate bonus vacation provisions of Section 18.10. Eliminating this provision eliminates the incentive of employees to be on time and to avoid sick leave usage. *In light of the skeletal staffing, keeping the bonus vacation provision may actually save the Sheriff money.* This proposal is rejected.

The Sheriff proposes to eliminate reference to State law with respect to vacations. The OPBA opposes this change. For the reasons stated previously with respect to such proposals to eliminate application to State law, this proposal is rejected.

The Sheriff proposes to eliminate *Discretionary Days and Personal Leave Days*. In light of the recommendations with respect to other economic issues, this proposal is rejected.

The OPBA has proposed a new section 18.14 to deal with the issue of employees being called to work on days where they have made special and potentially expensive arrangements for the use of their vacation days coupled with days off. *The OPBA must realize, however, that as safety forces, public safety comes first.* The proposal of the OPBA, as modified below, gives some preference to persons who may have made plans to utilize vacation time for special events while preserving the ability of the Sheriff to meet operational needs. It also places the burden on the employee to notify the Sheriff if the days are being used for special events in order to be granted preference for time off. *The OPBA and Sheriff had made comments regarding the original draft of this provision.* The problem with the OPBA alternative would allow the employee to “reserve” his days off numerous times during the year by simply purchasing tickets (\$ 10.00 for Shrek IV) Under the FOP proposal, also, an officer could not utilize the provision to attend his daughter’s wedding. The proposed language is shown below:

18.14 When an employee has requested and has been approved for vacation days adjacent to his regularly scheduled day or days off in order to attend a special event such as a family wedding, or out of town vacation, the employee shall notify his supervisor that the scheduling is due to a special event, and in such case, for the purpose of being called in on such vacation day or days off, the employee shall be considered the most senior employee. Employees may utilize this provision no more than one (1) time per calendar year.

DISCUSSION OF ARTICLE 19 – HOLIDAYS

The proposal of the Sheriff for Section 19.1 specifies the dates for the holidays while the current language does not do so. *The Position Statement of the Sheriff makes no mention of the change and no evidence was offered by either party as to any effect of such a change. For these reasons, the change appearing in the Sheriff proposal in Section 19.1 is not recommended.*

The Sheriff has proposed to eliminate the employee birthday as a holiday and the reference to the employee birthday in the Vacation article. There does not appear to be any change being made in any other unit and the total number of holidays for the Deputies in Williams County do does not appear to be out of line with the number of holidays afforded similar employees of other jurisdictions. The proposal of the Sheriff is not recommended.

The Sheriff also proposes a new section 19.5 providing that sick leave is to be governed by the provisions of the collective bargaining agreement and not the Ohio Revised Code. The OPBA, at hearing indicated that it was willing to accept the consequences of state law to fill in gaps in the express language of the collective bargaining agreement. There was no explanation offered as to what effect the change would have on existing practice. Absent any evidence on what would result from making the change in language, the Fact-Finder can not recommend such a change.

DISCUSSION OF ARTICLE 20 – WAGES

The OPBA has proposed a number of changes in Article 20, Wages. The first change is to create a column for hourly wages which is based on a two thousand and eighty (2,080) hour work year. The inclusion of an “annual pay” or “salary” column has led to problems in other jurisdictions where issues have arisen due to a twenty-seventh (27th) pay period or in other instances where an employee may be alleged to have been compensated beyond his stated annual pay or salary. For this reason, the following language is recommended:

The figures shown for “Annual Pay” above are for reference purpose only and are not to be construed as a substantive provision of this collective bargaining agreement.

The OPBA has proposed wage increases of 3.75%, 3.75% and 3.75%. The Sheriff has proposed no increase over the course of the collective bargaining agreement. The OPBA, at hearing, however, indicated that it was not opposed to having a wage re-opener in the third year of the agreement. There is probably no more complicated group of factors to be considered than is present in this case. On the one hand, the County has been “running a profit” for the last three (3) years, revenues exceeding expenditures in 2008, 2009, and 2010 and has a healthy debt ration and no long term debt. It is acknowledged that the revenue numbers are inaccurate based on amounts going to and coming from other funds. Those amounts appear to be relatively insignificant compared to the entire budget and would expect to “wash” over the three (3) year period. On the other hand, unrepresented employees have received wage freezes while this bargaining unit received wage increases of 3%, 3% and 3% under the prior collective bargaining agreement in addition to anniversary date increases based on length of service. On the other hand, it is undeniable that the County will suffer a drastic reduction in State funding for the next two years.

The OPBA points to the Consumer Price Index over the first half of 2011 which is increasing at a 3.6% annual rate. Citation to the Consumer Price Index, however, is a two-edged sword. Wages for this bargaining unit increased by 9% over the course of the past collective bargaining agreement. The CPI-U for all cities for December 2007 was 210.032. The CPI-U for all cities for July of 2011 is 225.922, less than an eight percent (8%) increase. Thus, the purchasing power of the bargaining unit has increased since the beginning of the prior collective bargaining agreement. At the current rate of inflation, the bargaining unit should be approximately even by the end of 2011 with its purchasing power as of January 1, 2008.

If there is inflation in 2012, it would be an indication of several things; that a wage increase would be justified and that the economy is growing, bringing with it additional revenue to the County. It is therefore recommended that there be no wage increase for 2011, no wage increase for 2012 and a **presumed** wage increase for 2013 based on the changes in the CPI-U, all cities index from September 2011 to September 2012 should neither party chose to re-open the contract for wages only in the third year of the agreement. The design of this provision is to prevent either party from rejecting this report **now** based on wages, when they have the opportunity to reject the wage component in 2013 by re-opening the contract. The language, by proposing a “presumed” wage rate, allows the parties to avoid the expense of negotiating a wage re-opener if the presumed increase is “in the ballpark”.

The OPBA also proposes changes in the language of Section 20.1 relative to the placement on the wage scale of new deputies who have not completed basic training. Under the current provision, such employees may be compensated at below the scale and then, after completing the training, are assigned on the scale in the discretion of the Sheriff. The OPBA would have the employees assigned to the scale “commensurate with their length of service”. The language proposed by the OPBA would seem to require that in all instances the employees completing their basic training would be assigned to the “Hire” step on the wage progression.

That language would seem to preclude the chief from assigning a highly qualified and experienced law enforcement officer newly hired by the Sheriff at a higher step. It should be the goal of both parties to attract to employment highly qualified individuals. Therefore, the proposal of the OPBA is rejected. A slight modification in the language as shown below is recommended to make clear that said new hires progress to the next step of the wage scale upon their anniversary dates of employment.

The OPBA has proposed to delete Section 20.2 since the same relates to wages upon promotions to a higher classification which no longer exist under the collective bargaining agreement. The Sheriff has expressed no objection to this change. This change is recommended. The parties, however, may want to negotiate and mutually agree to retain the provision since it does no harm and there may be a time in the future that other classifications are created or reinstated.

The arguments and evidence of the parties has been duly considered. The language for Article 20, Wages is recommended to read as follows:

ARTICLE 20

WAGES

Section 20.1. The following wage schedule is adopted effective the beginning of the first full pay period in January 2011 until the beginning of the first full pay period in 2013:

<u>Deputy</u>	<u>Annual Pay</u>	<u>Hourly Rate</u>
Hire	\$ 35,766.80	\$ 17.19.56
After 1 st year	\$ 38,045.31	\$ 18.29.10
After 2 nd year	\$ 40,324.55	\$ 19.38.68
After 3 rd year	\$ 42,603.47	\$ 20.48.24
After 4 th year	\$ 44,882.34	\$ 21.57.80

The figures shown for "Annual Pay" above are for reference purpose only and are not to be construed as a substantive provision of this collective bargaining agreement.

Unless either party by written notice to the other received on or before November 1, 2012 requests to re-open this agreement for the purposes of negotiating wages only, the above rates shall be adjusted by the percentage increase in the Consumer Price Index CPI-U for all cities between September of 2011 and September of 2012. The adjusted rates, unless the contract is reopened, shall take effect with the first full pay period in 2013.

The Sheriff may employ deputies who have not completed their basic training at rates below those specified in the above pay scale. Such employee shall be assigned to the above pay scale upon completion of basic training as determined by the Sheriff and shall progress along the pay scale to higher steps, if any, upon their anniversary dates of employment.

Section 20.2. Employees shall receive additional compensation in the following amounts per year for completion of a degree. These are not cumulative.

\$250 for Associate's Degree

\$450 for Bachelor's Degree

\$650 for Master's Degree

\$850 for Doctorate's Degree

DISCUSSION OF ARTICLE 21 – SEVERANCE

The Sheriff has made several proposals regarding Article 21, Severance Pay. The Sheriff seeks to limit the payout for sick leave on retirement to one fourth (1/4) of one hundred twenty (120) days instead of the up to one hundred twenty (120) days available presently, based on years of service and seeks to eliminate entirely severance pay for employees who resign. The Sheriff, on the one hand argues that there is a cost consideration and on the other hand claims that only one (1) employee is effected by the proposal. There are a number of reasons to reject the proposal. First, employees, to some extent, have already worked for this benefit. Second, the cost is not significant in light of the accruals in reserves by the County over the last few years and finally, because the benefit can affect any employee who may become eligible for disability retirement. The proposal of the Sheriff is rejected.

The Sheriff also proposes language to eliminate reference to State law with respect to the payment of sick leave on retirement. For reasons stated previously, this proposal is rejected.

DISCUSSION OF ARTICLE 24 – HEALTH INSURANCE

The OPBA has made several proposals with respect to health insurance. The OPBA proposes to eliminate reference to the 2008 effective date of the language, proposes to eliminate reference to the cost paid by non-bargaining unit members and proposes a clarification to insert the words “the premium for” before the percentage amounts of the premium to be paid by the employee.

The express wording of the proposal of the Sheriff would seem to eliminate the requirement to provide major medical benefits. The express wording of the proposal, further,

would not state the percentage the Sheriff would pay toward health insurance coverage, stating only that the maximum it would be required to pay would be eighty-five percent (85%) without stating a minimum or required amount. The Sheriff also proposes that the cost of coverage be defined as the total premium paid to the insurer or the COBRA rate established by the plan administrator if the County elects to have a partially self-funded plan. It appears that the County already has in effect a partially self-funded plan so that the cost would be the rate established by the plan administrator. If the plan is “self-funded”, that means that increases in the COBRA rate are fairly irrelevant to the cost of the County. The total cost of providing health benefits is covered by premiums and excess costs over premiums. If the premiums increase, the only cost is upon the bargaining unit since the employer cost of the premium increase goes to offset the total costs it would pay. The bargaining unit must depend on the integrity of the plan administrator not to set premiums artificially high for the benefit of the employers in its consortium. Increases have been very modest in the last few years, that risk appears small.

The Fact-Finder has considered all of the arguments of the parties, the possible effects of Senate Bill 5 and the referendum with respect to that legislation and the ratifiability of the recommendation of the Fact-Finder. The recommended language for Article 24, Health Insurance is as follows:

ARTICLE 24

HEALTH INSURANCE

Section 24.1. Each employee shall receive hospitalization and major medical insurance coverage equal to or better than the benefits and terms included in the Williams County Commissioners’ insurance plan.

Section 24.2. The Employer shall pay its share of the cost of a single or family insurance plan. *The employee’s maximum contribution shall not exceed 13.2% of the total cost of the premium for family plan coverage or 11.5% of the total cost of single plan coverage during each year of this Agreement, depending on which coverage the bargaining unit employee elects. Said percentages shall increase to fifteen percent (15%) should Senate Bill 5 become effective. The additional cost for the premium plan shall be*

paid by the employee. For purposes of this section, "cost" shall be defined as the total premium paid to the insurer or the COBRA rate established by the plan administrator if the County elects to have a partially self-funded plan, whichever is applicable. The employee's share of the cost of either plan shall be collected through payroll deduction.

DISCUSSION OF ARTICLE 28 – POSTING OF VACANCIES

The Sheriff proposes that all vacancies be filled at the discretion of the Sheriff. The OPBA has proposed that seniority be considered in filling "special assignments". The proposal, however, does not indicate how seniority is to be applied. The Sheriff appeared willing to consider a concept under which seniority would be considered, but wanted to retain the right to disqualify employees granted a specialty position during a one (1) year probationary period. The OPBA, at hearing, also requested the opportunity for employees to determine to return to their former position during the probationary period. The following language is therefore recommended:

28.2 When filling a vacancy in a special assignment such as Canine, Man Unit, Detective or Commercial Vehicle Enforcement, the Employer shall consider the interested employee's experience, education, ability to perform the essential functions of the position, records of attendance, discipline and other qualifications related to the position to be filled. If, based on the above, two (2) or more interested employees are substantially equal, seniority shall govern. Employees granted such a position pursuant hereto shall serve a one (1) year probationary period during which they may be returned to duty as a Road Officer at the discretion of the Employer, such action not being subject to the Grievance Procedure hereof. Employees, during such probationary period, further, have the right to determine to return to a Road Officer position.

DISCUSSION OF ARTICLE 33 – FIELD TRAINING OFFICER COMPENSATION

The Sheriff has proposed to limit the payment of the twenty dollar (\$ 20.00) per day stipend for officers assuming training responsibilities to cases where such training is provided to newly hired employees. The rationale of the Sheriff is that it should not be punished by having to pay for remedial training. The employee providing the training, however, should not be

denied compensation. Providing remedial training, in some ways, is a less attractive duty than providing initial training being saddled with a “grumpy dog”, rather than a “happy puppy”. The proposal of the Sheriff is not recommended.

DISCUSSION OF ARTICLE 37 – SEVERABILITY

The Sheriff proposes changes in the language of this article to specifically site Ohio Revised Code Sections which are to be superseded by the language of the collective bargaining agreement. The OPBA objects to this change and asserts that it is willing to accept the consequences, good and bad, of having state law fill in the gaps in the language of the collective bargaining agreement. The OPBA cited as a specific examples the fact that under state law, prior service credit is afforded employees who had worked for another public employer and the fact that state law provides that a surviving spouse is to be provided the accumulate sick leave of a deceased spouse. The Sheriff did not provide a compelling reason to change the language of the Severability Article and provided no evidence of what impact the change would have on the current practices of the parties. The Fact-Finder, not being able to assess the impact of the proposed change can not recommend the same. This proposal of the Sheriff must be therefore rejected.

The Sheriff also makes proposals for changing the re-negotiation provision of the severability clause. The Sheriff proposes to eliminate the requirement that the parties meet to re-negotiate within thirty (30) days and to proposes to limit the requirement to negotiate to instances where the same are “practicable. At this time, in light of the fact that collective bargaining legislation is in flux, the proposal of the Sheriff is not recommended.

DISCUSSION OF ARTICLE 38 - Duration

Both parties agree to modify this provision to reflect the new intended effective dates. The proposed language is appropriate for a negotiated agreement which would become effective

upon mutual agreement, but is not appropriate for a collective bargaining agreement which might become effective by operation of law should parties fail to timely object. Therefore, the language for the Duration Clause recommended is as shown below:

Section 38.1. Except as otherwise specified herein, this Agreement shall be effective upon the earlier of its signing or the date it becomes effective by operation of law and shall remain in full force and effect until December 31, 2013.

Section 38.2. If either party desires to modify, or amend this Agreement, it shall give written notice of such intent no earlier than one hundred and twenty (120) calendar days prior to the expiration date, nor later than ninety (90) calendar days prior to the expiration date of this Agreement. Such notice shall be by certified mail with return receipt requested. The parties shall commence negotiations within two (2) calendar weeks following receipt of the Notice of Intent.

Respectfully submitted,



/s/ GREGORY J. LAVELLE
27346 Edgepark Boulevard
North Olmsted, Ohio 44070
(440) 724-4538
lavellearb@aim.com

Fact-Finder

CERTIFICATE OF SERVICE

A true copy hereof was sent to the Sheriff by electronic mail c/o Fred Lord at flord@clemansnelson.com, to the OPBA by electronic mail c/o Michelle Turner-Sullivan at msullivan@afwlawc.om and to the State Employment Relations Board by regular mail this 13th day of September, 2011.



GREGORY J. LAVELLE

Gregory J. Lavelle

ATTORNEY AT LAW AND ARBITRATOR

27346 Edgepark Boulevard • North Olmsted, Ohio 44070
Telephone (440) 724-4538
Facsimile (440) 979-9113
Email: Lavellearb@aim.com

STATE EMPLOYMENT
RELATIONS BOARD

2011 SEP 14 A 10: 20

September 13, 2011

State Employment Relations Board
65 East State Street, Suite 1200
Columbus, Ohio 43215-0352

Re: Ohio Patrolmen's Benevolent Association and
Williams County Sheriff

~~2011-MED-03-0875~~

11-MED-03-0352

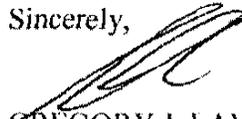
FF Report Kla

Dear Sirs,

Enclosed please find copies of the Award of the Conciliator in the above matter. If you have any questions, please feel free to call.

Thank you for your cooperation.

Sincerely,



GREGORY J. LAVELLE

GJL/bij

~~Enc: Award~~

~~SERBAwardTransmittalWilliamsCounty~~

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