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FACT-FINDING REPORT

OHIO PATROLMEN'S BENEVOLENT ASSOCIATION (PROTECTIVE SERVICES OFFICERS) **(UNION)** **and-** **CUYAHOGA COUNTY (OHIO) SHERIFF'S DEPARTMENT** **(EMPLOYER)**	**CASE NO. 11-MED-09-1358**

July 3, 2012

Proceedings before Jared D. Simmer. The undersigned was selected by the Parties to serve in the role of Fact-Finder in the above-captioned case. Pursuant to the provisions of Section 4117-9-05 of the Ohio Revised Code, the Fact-Finder was officially appointed by the State Employee Relations Board of Ohio (SERB).

I. APPEARANCES

On behalf of the Union

Daniel Leffler, Esq.

On behalf of Cuyahoga County

Christopher J. Russ, Esq., County Law Department.

II. BACKGROUND

This proceeding involves collective bargaining negotiations between the Ohio Patrolmen Benevolent Association – Protective

Services Officers (hereinafter "Union"), and Cuyahoga County, Ohio (hereinafter "County").

The Cuyahoga County Sheriff's Office is responsible for patrolling county roads, maintaining a correction's center, and providing protection of persons, County property and the preservation of orders as it affects the ongoing operations of County buildings. Employees of the Protective Services Unit provide armed security detail in thirty (30) different County-owned buildings. There are approximately 150 full-time employees in the unit.

The collective bargaining agreement (hereinafter "Contract") was set to expire on December 31, 2010 but by mutual agreement was extended for an additional twelve (12) months, expiring on December 31, 2011.

A fact-finding hearing was held on May 31, 2012 in the offices of the County Sheriff. Prior to the hearing, the parties had met in over a dozen negotiating sessions and in the process resolved a number of the outstanding issues. At the Parties request their tentative agreements (TA's), including the understanding that the successor agreement at issue here will be for a 3-year term running from January 1, 2012 through December 31, 2014, are adopted by reference.[1]

It is to be presumed, then, that the Fact-Finder's recommendations will reflect verbatim the Parties' mutually agreed-to changes, and incorporate by reference all other pre-existing contract terms not addressed in either the TA's or raised at the fact-finding hearing.

It should be noted that both Parties filed pre-hearing briefs setting forth their respective positions, and in addition provided the

[1] Jt. 2 – Tentative Agreements, May 22, 2012.

Fact-Finder with well researched briefing books at the hearing. Both were reviewed and given due consideration in the preparation of this Fact-Finding Report.

In light of the documents prepared for the Fact-Finder's consideration, and their conduct at the hearing, both representatives are to be commended for the professional way in which they admirably represented their respective constituencies.

That said, the nine unresolved issues that the Fact-Finder has been asked to address are as follows:

Article 13 – Hours of Work

Article 17 – Sick Leave

Article 29 – Uniform and Equipment

Article 30 – Assumption of Rank

Article 33 – Health Insurance

Article 35 – Wages/Longevity

Article 50 – Parking

Proposed new article – Employee No Sick Time

Proposed new article – Hospitalization During Layoff

Two things should be noted that in the following Report; one, the Fact-Finder has attempted to balance the respective equities of both parties in arriving at his recommendations. And, two, the Report reflects the present reality that governments at all levels (local, state and federal), and their respective political subdivisions, continue to wrestle with the economic consequences of the deepest and most long-lasting recession since the great depression. These include rising costs, accompanied by flat or falling tax revenues, as well as uncertain revenue streams going forward. Taken together, these economic

conditions have called into question many long-held public sector collective bargaining assumptions including continued low-cost or no-cost benefits, steadily rising wages, stable staffing levels and unchallenged job security.

Because these harsh economic realities cannot simply be wished away, nor ignored per State law as regards the fact-finding process, in light of his statutory duty this Fact-Finder recommends the following changes to the Contract that can be viewed as, at best, modest in scope.

FACT-FINDER'S FINDINGS AND RECOMMENDATIONS

Article 13 – Hours of Work

Union's Proposal:

The Union proposes new language that would clarify hours of work and permit approved leave (with the exception of sick leave) to count as hours worked for the purposes of overtime calculation. And, it suggests that sick leave be counted as hours worked if the employee is on approved medical leave for a doctor's appointment, or if the sick leave is used prior to the occurrence of overtime. In support, the Union points out that its proposal is consistent with language found in both the Sheriff Deputies and Corrections Officer contracts.

County's Proposal:

The County proposes no change to current language believing that this is not the time to add unnecessary costs to the Contract.

Fact-Finder's Findings and Recommendations:

While the Union's proposal appears modest, In light of the fact that it would unnecessarily add costs under the contract at a time when budgets continue to be constrained the Fact-Finder cannot recommend the proposed changes.

While he is not unmindful that certain other County bargaining unit employees apparently enjoy this benefit, it's probable that this language was achieved in earlier agreements when the County budget was in better shape.

The Union's position is understandable, but it must be noted that Protective Services has only recently come under the jurisdiction of the Sheriff's Department. So, while a case could perhaps be made for more harmonization of language between the various Department contracts on internal equity grounds, this will be a long-term process that is most likely not feasible in the near term.

Recommendation – maintain the status quo with no changes to existing contract language.

Article 17 – Sick Leave:

Union's Proposal:

The Union would like language that would increase the number of consecutive days an employee could be on sick leave before a doctor's note would be required, i.e., from three (3) or more consecutive days to seven (7) days. This proposal would mirror the language currently found in the Sheriff Deputies contract.

County's Proposal:

The County proposes no change to current language believing, again, that it would simply add unnecessary costs to the County's budget.

Fact-Finder's Findings and Recommendations:

Again, while other County bargaining unit employees enjoy this benefit, and the Union's request standing alone is not unreasonable, because Protective Services has only recently come under the jurisdiction of the Sheriff's Department, these kinds of changes will have to be part of a long-term process in the context of collective bargaining where such enhancements are the result of mutual give and take.

Recommendation – maintain the status quo with no changes to existing contract language.

Article 29 – Uniform and Equipment:

Union's Proposal:

The Union proposes two changes to current language. One, to include language that would require the County to provide the initial uniform issuance, to replace worn-out uniforms and to issue job specific equipment. And, two, to increase the current uniform allowance from $425/year to $1400/year. The Union emphasizes that its proposed increase in the uniform allowance simply mirrors the language in the Deputies' contract, and recognizes that for all practical purposes, the Protective Services uniform requirement is essentially the same as that of the deputies.

County's Proposal:

The County proposes no change to current language asserting that the any enhancement is unnecessary.

Fact-Finder's Findings and Recommendations:

While the Fact-Finder could not recommend adoption of the Union's request to mirror the Deputies' contract language on hours of work or sick leave, he is comfortable, however, recommending adoption of this proposal, however.

Because uniforms are an essential component of ahe Sheriff Department's attempt to project a professional appearance, and help engender public respect, the Fact-Finder concludes that they should be viewed more as a condition of employment rather than a benefit that only accrues to the employee.

Since the Fact-Finder is unsure why Protective Services employees should necessarily enjoy any less financial support and encouragement for a professional appearance than deputies do, and given the mutual benefit of a professional appearance to the department the Fact-Finder agrees with the gist of the Union's argument, but in light of his belief that enhancements leading to some sort of eventual comity across units in the Sheriff's Department should take place over more than one negotiating cycle, recommends that to start that the annual allowance should be increased from $425/year to $750/year.

Recommendation – adoption of the Union's proposed changes to the Contract with the exception that the annual clothing allowance increase from $425/year to $750/year.

Article 30 – Assumption of Rank:

Union's Proposal:

The Union would like to include a new provision that would permit a bargaining unit member to act as an "Office-in-Charge" (OIC) whenever acting in the role of sergeant. When assigned as an OIC an employee would be paid the greater of a minimum of four (4) hours or actual hours worked, at the regular sergeant's rate of pay. To facilitate implementation, it was suggested that a labor-management conference be held to discuss the particulars of implementation.

County's Proposal:

The County is amenable to including the new provision and paying a rate above the current officer rate. However, it disagrees with the Union on the magnitude of the differential.

Fact-Finder's Findings and Recommendations:

The Fact-Finder believes that the idea of out-of-classification pay for bargaining unit members performing sergeant's duties is both reasonable and fair and generally supported by the County.

Accordingly, he is comfortable recommending adoption of the Union's proposed language with the exception of its suggested pay differential. Since Deputy Sheriffs currently receive a 12% pay differential over their regular rate of pay when acting as sergeant, for internal equity purposes and because he can find no reasonable basis to suggest some greater amount, it is recommended that Protective Services employees receive a differential when working out of class.

Recommendation – change existing language per the Union's proposal, however with a 12%, rather than 18%, pay differential when Protective Servicers employees are asked to work out of class and assume the responsibilities of sergeant.

Article 33 – Health Insurance:

Union's Proposal:

Again mirroring language in the Deputies' contract, the Union proposes that employee contributions for monthly health insurance be 5% of the cost for all plans, with a maximum contribution of $30/family and $20/month for single plans.

County's Proposal:

The County proposes that effective January 1, 2013 employees contribute 10% of monthly health care premium costs, with no cap on contributions. In support, it cites internal equity considerations, and the County's stated attempt to administer uniform personnel procedures for all County employees.[2]

Fact-Finder's Findings and Recommendations:

This Fact-Finder has never been a big proponent of having various public sector locals working for the same employer being provided different health insurance plans. The reasons for this are practical, equitable, and economic. From a practical perspective, offering different plans unnecessarily adds to the employer's administrative burdens in having to manage different plans, with different coverage, deductibles and costs. From an

[2] Cuyahoga County Charter, Article II, Section 2.03(12), pg. 4.

equitable perspective, it seems patently unfair to have different employee groups of the same employer being provided different coverage at different costs. And, from an economic perspective, unifying various plans into one, central health care contract increases the employer's bargaining leverage with the insurance provider thereby (at least theoretically) decreasing costs.

For all the above reasons, the Fact-Finder recommends adoption of the County's proposed changes to the Contract.

Recommendation – adoption of the County's proposed changes to the contract.

Article 35 – Wages/Longevity:

Union's Proposal:

The Union proposed a 3-year wage increase, as well as the inclusion of language dealing with longevity.

In its discussion of wages, the Union asserted three reasons in support of its contention that this local deserved wage increases of 3% per year in each year of the contract.

One, it pointed out that because other County locals had recently received negotiated pay increases it was only fair that this local receive increases as well. To illustrate, it mentioned the county corrections officers who recently received annual increases in the 2-3% range.

Second, across the board increases are warranted for internal equity considerations to prevent this unit from falling further behind the pay that similar county units presently receive (e.g., county corrections officers receive around $20/hour at top of scale vs. Protective Services who earn

substantially less), and because this unit is underpaid for the job that they perform.

And, third, because the County apparently has the financial wherewithal to pay the proposed increases since it did not raise an inability to pay at the hearing.

The Union also suggests a longevity provision wherein employees receive $375 after five (5) years of service, and an additional $75/year thereafter, a proposal that again mirrors the language in the Deputies' contract.

County's Proposal:

The County is amenable to a wage increase, but suggests that increases of 1% in 2012, 2% in 2013 and another 2% in 2014 are reasonable given the County's projected budget uncertainties.

The County proposes no language regarding the Union's longevity proposal, however, pointing out that in the most recent contract negotiations the Protective Services Sargeants requested but failed to achieve longevity pay.

Fact-Finder's Findings and Recommendations:

This Fact-finder is not going to belabor the point about the County's ability to pay since it was not raised as an issue. While many pages of this Report could be devoted to an analysis of the state of the County's finances[3], projected costs, anticipated revenues, etc., suffice it to say that while the County's economic outlook is presently arguably stable, like other public employers

[3] Both representatives did an admirable job of collected, analyzing and presenting their respective takes on the County's financial condition.

uncertainty abounds. And, this Fact-Finder is not unaware of the modest pay increases, if not continuing wage freezes, being negotiated by other units around the state.

While other Sheriff Department units may have recently received increases in excess of the County's offer, it must be noted that these were negotiated in prior contract years when economic conditions were more favorable.

That said, it seems clear on the other hand that the members of this unit appear underpaid relative to both internal and external pay comparisons with units both inside and outside of the County. So, while pay adjustments may be warranted, these are not the most favorable economic times in which to do so. Rather, gains must be made over time and in the anticipation that economic conditions improve.

However, the Fact-Finder does feel that wage adjustments somewhere between the Union's proposals and the County's proposals are warranted. Accordingly, he recommends a wage increase of 1.5% in the first year of the Contract, and 2% in the second and third year, with retroactivity. While modest and minimally able to address the unit's below market average rates of pay, it should be noted that this recommendation still exceeds the 2%-1%-reopener that the Protective Services sergeants agreed to in their most recent 3-year agreement.

As for the Union's proposal to provide Protective Services bargaining unit members with longevity pay it is worth noting that in the Sheriff's department it is only Protective Services (both staff and sergeants) that don't receive longevity pay. While the Fact-Finder understands the County's argument that

the other units have it because at one time the Sheriff's was an elected official, this does not negate the inherent inequity of the situation. In other words, it seems incongruous that longevity pay, designed to reward continued employment, is appropriate for all other employees in the department but not this local.

For this reason, the Fact-Finder recommends that longevity pay be phased in for Protective Service employees in this unit in the amount of ½ of the Union's proposal, to wit, $187.50 after five (5) years of service, and an additional $37.50/year thereafter.

Recommendation – a 3-year wage increase of 1.5%-2%-2% over the life of the contract, with retroactivity back to the expiration of the contract, i.e., January 1, 2012. Further, longevity pay of $187.50 after five years of service, and an additional $37.50/year thereafter.

Article 50 - Parking:

Union's Proposal:

The Union would like to maintain current contract language that provides free parking to second and third shift employees, and for first shift employees at a cost consistent with past practice.

County's Proposal:

The County proposes deletion of this existing article. In support of its position it points out that this provision found its way into the contract back when Protective Services reported to the Board of County Commissioners who also had authority over the County parking lots. The County insists, however, to the

extent that the status quo remains in effect that the current parking arrangement will be continued, subject to change should the County and/or Public Works change their policies.

Fact-Finder's Findings and Recommendations:

While the Fact-Finder is unsure if this parking accommodation is available to any other bargaining unit in the Sheriff's Department, Protective Services move from County Commissioner supervision to the Sheriff renders the current arrangement something of an anachronism.

Without knowing more about the reasons for or fairness of this arrangement, for this reason the Fact-Finder finds no reason to change the current contract language and so recommends that it remain at least for the duration of the new agreement, with the exception that if there is a County-wide change in parking policy during the next three years that there be a mandatory reopener to discuss modifications in the interest of fairness, economic considerations, or for any other reason.

Recommendation – maintain the status quo with no changes to existing language subject to the proviso, however, that there be a mandatory reopener on this issue if/when the County implements a county-wide change in parking policy during the duration of this successor agreement.

Proposed New Article – Employee No Sick Time:

Union's Proposal:

Again turning to the Deputies' contract for a template, the Union asks that employees be able to remain on the County

health insurance plan after an employee has exhausted his/her accrued sick leave.

County's Proposal:

The County opposes the Union's proposal believing it to be an attempt at a back-door pay increase, and an anachronism left over from the time when the Sheriff's Department was headed by an elected official.

Fact-Finder's Findings and Recommendations:

Given the economic uncertainties previously cited, and the economic impact that adoption of the Union's proposal would have, at the present time the Fact-Finder does not find sufficient justification on the record to recommend adoption of the Union's proposal.

Recommendation – do not adopt the Union's request for a new Contract article.

Proposed New Article – Hospitalization During Layoff

Union's Proposal:

Again turning to the Deputies' contract, the Union asks that employees be able to remain on the County health insurance plan after an employee layoff.

County's Proposal:

The County proposes no change to current language, again believing that the benefit is an anachronism that shouldn't be granted in this contract.

Fact-Finder's Findings and Recommendations:

For the same reasons given for not recommending a new article allowing employees to remain on the County health insurance plan after s/he has exhausted his/her accrued sick leave, i.e., the economic uncertainties previously cited, and the economic impact that adoption of the Union's proposal would have on the County's budget, the Fact-Finder does not find sufficient justification on the record to recommend adoption of the Union's proposal.

Recommendation – do not adopt the Union's request for a new Contract article.

Conclusion:

The Fact-Finder takes notice of the fact that Protective Services only relatively recently moved from County Commissioner oversight to supervision by the Sheriff Department. Hence, it should not be surprising that what has been negotiated over time by long-standing Sheriff Department units is now incongruent in many respects with the Protective Services Contract. In future negotiating cycles the Department will focus on the most important provisions and more than likely attempt greater contract conformity across units. This will, of course, take time, and involve the "horse trading" that's inherent in collective bargaining. In this Report the Fact-Finder has attempted to help start that process along.

While this Fact-Finder realizes that neither Party may not be fully satisfied with these recommendations, he believes that this Report meets the standard of both Parties being equally unhappy witht the results, but cognizant that difficult economic times means that

modest changes to the existing Contract may be the best that can be accomplished under the circumstances.

Issued: July 3, 2012

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Respectfully submitted,
Jared D. Simmer, Esq.
Fact-Finder

CERTIFICATE OF SERVICE

I, Jared D. Simmer, Esq., hereby certify that the above Fact-Findig Report was served upon the following parties, to wit, Ohio Patrolmen's Benevolent Association, via its representative, Daniel Leffler, Esq., and the Cuyahoga County Sheriff's Department, via its representative, Christopher Russ, Esq,, by electronic mail this 3rd day of July, 2012, and similarly upon the Ohio SERB this same day.

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Jared D. Simmer, Esq.

JARED D. SIMMER, ESQ., MLIR
ARBITRATOR/MEDIATOR

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July 3, 2012

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Re: Fact-Finder's Report (Cuyahoga County and OPBA - Protective Services)

Dear Messrs. Leffler and Russ:

Enclosed, please find my Fact-Finder's Report in the above-captioned matter. I trust it meets your needs for the upcoming ratification meetings.

In closing, thank you for the opportunity to be of service to you and your clients. I look forward to hopefully working with you both in the near future.

Sincerely,

Jared D. Simmer

Jared D. Simmer, Esq.

JDS/opc
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