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JULY 14***

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

In the Matter of the Fact-Finding Between:

Ohio Patrolmen's Benevolent Association

Employee Organization

Case Nos. 2014-MED-01-0042

and

Lake County, Ohio Sheriff

Fact-Finder: Jerry B. Sellman

Date of Report: July 11, 2014

The Employer

FACT FINDER'S REPORT AND RECOMMENDATION

APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:

Jeff Perry, Esq. – OPBA Business Agent representing the OPBA
Officer Christopher Cimperman – Officer with Lake County Sheriff's Office
Officer Dave Rentz – Officer with the Lake County Sheriff's Office
Officer Christopher W. Conley – Officer with the Lake County Sheriff's Office

FOR THE EMPLOYER:

Tom Grabarczyk, Esq. – Representative with Labor Relations Management, Inc., representing
the Lake County, Ohio Sheriff
Chief Deputy Frank Leonbruno – Chief Deputy with the Lake County Sheriff's Office
Captain Cynthia Brooks – Captain and Jail Administrator with the Lake County Sheriff's Office
Joel DiMare – County Budget Director for Lake County

I. INTRODUCTION

This matter concerns a Fact-finding proceeding between the Lake County, Ohio Sheriff's Office (hereinafter referred to as the "Employer" or the "Sheriff") and the Ohio Patrolmen's Benevolent Association (hereinafter referred to as the "Union" or "OPBA"). The State Employment Relations Board (SERB) duly appointed the undersigned as Fact-finder in this matter. A Fact-finding hearing was held on July 2, 2014 at which time the Fact-finder invited the parties to enter into mediation pursuant to the Ohio Administrative Code and the Policies of SERB in an effort to find consensus on all remaining disputed provisions of the new Collective Bargaining Agreement. The Parties engaged in mediation and mutually agreed on three outstanding issues, but the inability to mutually agree on an over-all "package" of wages and benefits proposed by the Employer prevented resolution of a global agreement on all other issues

The Articles with open issues identified and discussed by both parties included:

- Article 3 - Non-Discrimination
- Article 12 - Disciplinary Action
- Article 13 - Sick Leave
- Article 14 - Holiday Pay
- Article 15 - Annual Leave (Vacation)
- Article 16 - Seniority Payment
- Article 17 - Wages
- Article 20 - Injury Leave
- Article 22 - Court Time
- Article 26 - Overtime
- Article 33 - Specialized Training and Skills Payments

The Fact-finding proceeding was conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of the State Employment Relations Board, as amended. During the Fact-finding proceeding, this Fact-finder provided the parties the opportunity to

present arguments and evidence in support of their respective positions on the issues remaining for this Fact-finder's consideration. The Parties waived the taking of a transcript.

In making the recommendations in this report, consideration was given to all reliable evidence presented relevant to the outstanding issues before him and consideration was given to the following criteria listed in Rule 4117-9-05 (K) of the State Employment Relations Board:

- (1) Past collectively bargaining agreements, if any, between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in public service or in private employment.

II. BACKGROUND

The OPBA represents approximately 71 Corrections Officers who are employed by the Lake County Sheriff's Office. The Sheriff negotiates a collective bargaining agreement with seven (7) other separate units. The Corrections Officers' unit is the largest unit. The current Collective Bargaining Agreement expired on March 31, 2014. The parties met four (4) times to discuss a new agreement, but were unable to resolve issues relating to eleven (11) of the Articles in a new proposed Agreement.

The Lake County Sheriff's Department is located in northeast Ohio and serves a population of approximately 230,041 people.

Since 2008 Lake County and the Lake County Sheriff's office have been negatively affected by a series of economic factors not unlike many other counties in Ohio and the U.S. When the economy turned sour in 2008, income levels began to drop and did not start trending upward until 2012. Loss of income was attributed mostly to declining revenues from interest income, property tax reductions, and the loss of intergovernmental revenues (principally from the State of Ohio). From 2007 to 2013, the interest income of Lake County dropped dramatically. In 2007, interest on investments was \$8,500,435; by 2013, it had dropped to \$953,933. It is budgeted to be around \$525,000 in 2014. Revenues from property taxes fell from \$13,306,000 in 2007 to \$4,979,112. It is budgeted to be around \$4,821,429 in 2014. As a result of an increase in sales taxes instituted in 2012, sales tax revenue was up, dramatically offsetting a large portion of the losses. The net effect through 2013 is that sales tax, property tax and interest revenues are the same as they were six year ago prior to the 2008 economic downturn (\$37,800,000 in 2007 and \$38,500,000 in 2013).

Notwithstanding these economic setbacks, the total revenue collected by the County in 2013 was about the same as it was in 2009 (\$61,653,718 vs. \$61,031,822). This was achieved as a result of the sales tax increase that was passed in 2012 as stated above.

While revenues were down during this period of time, employee benefits continued to increase. Health insurance costs soared. To balance its budget and maintain its operations, the County laid off nearly twenty-five percent (25%) of its labor force between the years 2009-2011.

The Sheriff's office shared in the necessary cutbacks. The combined budgets for all divisions of the Sheriff's Office were \$17,621,411 in 2008. In 2014, the combined budgets are now \$14,081,946.

Even though total revenues had increased for the reasons set forth above, the County's expenses have increased at a much greater rate. But for the dramatic increase in revenues from the sales tax proceeds, the County was ready to lay off another twenty-five (25) people in the Sheriff's Office in 2012-2013. With forty-seven employees already laid off in the County, but for these increased revenues the total laid off would have been seventy-two (72). Most of the layoffs would have come from the Sheriff's Office.

Lake County's General Fund Revenues from its major sources have increased on average only .29% annually over the last seven years. At the same time rising health care, retirement benefits, uniforms and equipment costs have risen 20% since 2007.

The County's budget for 2014 is \$53,353,821. It is down from \$61,653,718 in 2013. With a tight budget, the County Commissioners must not only sufficiently fund public services; it must also plan for other foreseen and predictable increased expenditures. In 2014, there will be a 27th pay period, which will cost the County an additional \$1,200,000 with no additional revenue. The County Jail, in which the Corrections Unit works, has escalating repairs. A decision must be made to spend \$20,000,000 to renovate the existing jail or spend \$60-70,000,000 to build a new facility. Either decision will place further demands on the resources of the General Fund. The County's phone system has reached its useful life and it is estimated that a capital expenditure of \$2,200,000 will be needed to replace it.

Economic indicators do point to an improving economy. Both Federal and State economic reports show that unemployment in Ohio and in Lake County is decreasing and jobs are increasing. This should eventually result in additional revenues.

In order to stabilize the County budget, the Board of County Commissioners took action in 2013 to reduce certain expenditures. Effective April 1, 2013, it revised the County policy for sick time cash out upon termination in good standing or retirement for all employees not included in a bargaining unit. The prior plan allowed for maximum cash out of 960 hours. The new plan was changed to allow cash out of 50%, not to exceed 480 hours after ten (10) years of service. There are currently 859 Lake County employees under this plan. Proposals were made to all of the Sheriff's bargaining units to adopt a slightly modified version of the County Plan. The Plan submitted to the bargaining units included the same language as adopted by the County Commissioner, but also included a three tiered payout program providing for grandfathering the more senior employees.

Five of the eight bargaining units of the Sheriff's department have concluded negotiations with the Sheriff's Office and have adopted the modified County Plan and have also agreed to a modification of other Articles in the Agreement in consideration of a wage increase of 2.5%. The Employer has offered the same package agreed to by the other five bargaining units, but would not agree to modify any of the other outstanding issues without full acceptance of the package offered.

III. UNRESOLVED ISSUES

With so many disputed issues at hand, the Fact-finder made the following recommendations by giving consideration to an overall solution as opposed to an examination and resolution of each issue independent of the other.

1. **ARTICLE 3: NON-DISCRIMINATION**

The Union's Position

The Union proposes to add additional language to this Article, a new Section 2, entitling bargaining unit members the right to access free parking in the same location as any other employees of the Sheriff's Department.

The Union wants to secure parking for its members in the event a new jail facility is constructed and current parking locations for its members are eliminated. The corrections officers want to be treated the same as other employees of the Sheriff's Office.

The Employer's Position

The Employer proposes retaining current language and opposes the Union's new proposal. While there is discussion about the construction of a new jail facility, it is speculative as to if or when it will be built, where it will be built, and what the parking situation will be at the time.

Discussion, Findings and Recommendation

It is understandable that the bargaining unit members do not want to be required to pay for parking in the future when adequate parking spaces for them are currently available at no cost. Since the new collective bargaining agreement will be for a three- year term, they want to include a provision for parking in the event a new facility is built and there are no free parking spaces available. The Union's proposal, as pointed out by the Employer, seeks to address an issue that may or may not occur in the future and would derive a benefit without a known cost. I agree with the Employer that this proposal is too speculative in nature to be included in the new

agreement.

RECOMMENDATION

It is recommended that the language in ARTICLE 3 remain the same as in the prior contract.

2. ARTICLE 12 – DISCIPLINARY ACTION

The Employer’s Position

The Employer proposes to change the language in Article 12, Section 12.4 to increase the period of time, from 5 years to 7 years, discipline is considered in progressive discipline where suspensions greater than three (3) days is at issue. It argues that this language was contained in all of the other collective bargaining units with the Sheriff’s department from April 1, 2011 through March 31, 2014. In the five collective bargaining agreements that have completed negotiation with the Sheriff’s department for the period ending March 31, 2017, this same provision is carried forward. The Employer desires to create uniformity on this issue in all of the collective bargaining agreements with it.

The Union’s Position

The Union proposes retaining current language and opposes the Employer’s proposal. It argues that there exists no benefit to the public as a result of increasing the “look back” period by two years. Further, a comparison of the same provision in the comparable jurisdictions of Ashtabula, Cuyahoga, Geauga, Lorain and Medina Counties demonstrate that only one jurisdiction, Medina, has a five year look back period that discipline is considered in progressive discipline; all the others have a shorter look back period, not a longer one as proposed by the Employer. Lorain County considers only four years and all the others only consider three years.

Discussion, Findings and Recommendation

While the Employer seeks uniformity on this issue among all of the bargaining units, it is clear from past collectively bargained agreements between the OPBA and the Sheriff's department that the Union has argued for a shorter "look back" period and the current language was contained in previous agreements. The Employer did not submit any evidence in support of its position that a longer period was needed to effectively administer progressive discipline. While uniformity among contracts within a jurisdiction is in the interest and welfare of the public, as it promotes harmony among employees, there is no showing of a need for a change, particularly in light of past bargained agreements between these parties and the lesser period of "look back" periods in comparable jurisdictions.

RECOMMENDATION

It is recommended that the language in ARTICLE 12 remain the same as in the prior contract.

3. Article 13 – SICK LEAVE

The Employer's Position

The Employer proposes to reduce the amount of earned sick leave from 4.6 hours for each completed and paid eighty (80) hours of service to 3.077 hours and to reduce the amount of unused sick leave payments to which an employee is entitled upon termination in good standing or retirement. The prior plan allowed for cash out of an increased percentage of accrued unused sick leave payments for each five-year period of employment up to 100% of the 960 hours after thirty-five years of employment. The proposed plan reduces the number of cash out payments to a maximum of 480 hours on a phased-in basis.

The Employer is proposing adoption of the County's accrued unused sick time buy out

policy (Plan), slightly modified with a three-tiered phased-in provision for senior bargaining-unit members, which Plan went into effect for all employees not included in a bargaining unit on April 1, 2013¹. The proposed Plan provides for a cash-out of 50% of an employee's unused sick leave accumulation during the course of their employment up to a maximum payment of 480 hours after ten (10) years of service for all employees hired after April 1, 2005. Employees hired between April 2, 1998 and April 1, 2005, would be provided a maximum payout of 660 hours. Employees hired before April 1, 1998, will retain the 960 hours maximum payout.

The Employer argues that the mounting liability of banked accrued sick leave is unsustainable by the County in light of the small anticipated increases in future revenues. It must take action now to reduce payouts in the future. While the proposed plan extends the vesting period to ten years (previously five) and for all but the most senior employees reduces the amount of accrued sick leave payouts that can be used, it is still twice as rich as what the Ohio Revised Code sets as minimums for sick leave payouts. The current accrued sick leave pay outs were created around 1976 when wages were low and it was an incentive to retain employees. Now that wages have increased significantly and income is scarce, these payouts need to be scaled back to enable the County to balance its budget now and in the future. The proposal to the Union includes grandfathering older member of the bargaining unit so that the impact on them will be less than new hires or those hired after April 1, 2005.

The accrued sick leave payout liability does not just affect the County's budget; it also affects its Bond rating. As such, the higher the accrued liability, the lower the bond rating. Currently, the accrued sick leave liability in the County is about 5% of its total budget for the year. The accrued sick leave liability of the Sheriff's office is almost ½ of the total liability of the

¹ This Plan has also been included in five of the eight bargaining units in the Sheriff's Office.

County.² Total accrued liability for sick leave, vacation leave, and compensatory leave amounts to \$4,312,468. With the County's financial situation, cuts need to be made somewhere.

In addition, it would be unfair to other employees in the County who do not have the unused sick leave payments as enjoyed by this bargaining unit due to the action taken by the County Commissioners. The Employer's proposal was accepted by other bargaining units as part of a total wage and benefit package.

Sick leave is excessive in the Sheriff's Office. In 2007, Corrections Officers were accruing an average of 9.4 sick days per year per individual. In 2013, the amount of sick days increased to 15.55 days per year per individual. This amount of sick leave adds 6.9% to the base cost for each employee and the employer must pay another employee at 1 ½ rate to cover for the sick employee. This is a problem that all of the bargaining units need to work on as it significantly affects the cost of operations of the Sheriff's Office.

The Employer further opposes the new language proposed by the Union to add additional reasons for sick leave (set forth below). The Union's proposal to add additional language to include emergency situations that must be dealt with immediately, such as a car accident or frozen water pipes bursting, is unnecessary and burdensome to enforce. Currently, the Employer treats "emergency situations" with appropriate discretion. If an officer cannot report to work on time, or at all, due to an emergency, the Employer has been accommodating the employee and rescheduling his/her shift or working hours. This provision is unnecessary and would be subject to varying interpretations that would only complicate an already problematic area in the Sheriff's office.

² Exhibit 4 of the Employer demonstrated a total sick leave accrual of the County in the amount of \$2,408,380. Of that, the accrual liability for the Sheriff's Office was \$1,110,476.

The Union's Position

The Union proposes to retain current language for sick leave. It also proposes to add an additional provision to Section 1, dealing with the reasons for which sick leave may be granted, to include emergency situations that must be dealt with immediately, such as a car accident or frozen water pipes bursting.

The Union opposes the proposed modifications of the Employer for a number of reasons. First and foremost, the proposed language was not presented to the Union until the day of the hearing. Prior to the hearing, the Employer informed the Union of the County's sick leave cash out plan implemented in April 2013. The Union was asked to come back with a proposal setting forth how the current sick leave cashout program could be modified to conform to the County Plan. There was no discussion about reducing the number of accrued sick days that could be accrued annually from 15 days to 10 days. The parties also discussed a wage increase. Since the Union saw little savings by changing the sick leave cash out program, nothing was proposed and nothing was further discussed.

The Union does not believe that the proposal of the Employer will have any measurable impact on current cash flow considerations. The Employer did not propose anything to the Union on this issue, let alone a reduced rate of accruing sick leave cash out payments. It is unfair to impose a provision on the Union that was not discussed in negotiations.

The fact that other bargaining units agreed to the language should be given little consideration by the Fact-finder. The other bargaining units are smaller units. They also had the benefit of negotiating on the proposed language, unlike the last minute proposals given to the Union in this case.

Other jurisdictions currently enjoy richer unused sick leave cash out payment plan than

that proposed by the Employer. Willoughby's plan is identical to the plan included in the parties' expired Agreement. Wickliffe offers a 50% cash out plan with a maximum of 120 days. Mentor offers a 33.33% cash out plan with a maximum of 105 days. Geauga County offers a 33.33% cash out plan with a maximum of 90 days.

The argument of the Employer that reducing the number of sick days per year for calculation of accumulated sick leave (from 15 days to 10 days) and reducing the sick leave payout will save money during the term of this collective bargaining agreement is unfounded. It cannot be determined what amount of sick leave will be accumulated, for many employees will take sick leave when needed and not accumulate any accrued sick leave. The employer argues that sick leave is abused. To the extent it is abused, it is used and there will be no accrued liability. Trying to resolve any sick leave abuse problems by reducing the ability of any employee to a payout for unused sick leave makes no sense.

The Union needs the new proposed language in the contract regarding an additional reason for granting sick leave in order to deal with emergency situations that requires time away from work immediately. It is understood that the jail is a twenty-four hour a day job, seven days a week, every week. However, given the reduction in the size of the bargaining unit and the goal of minimizing the use of overtime, paid time off is often denied. Indeed, paid time off is often denied even when ample notice is provided.

These circumstances place the Correction Officers in a difficult position. If an emergency occurs, such as an auto accident or a water pipe bursting, it isn't reasonable to expect an employee to show up for work. It may not even be possible. Yet the Employer can deny any last minute request for time off, unless it's sick time. The employees must choose between lying to the employer or being denied the time off and then being AWOL and unpaid.

Discussion, Findings and Recommendation

This Article single handedly derailed the Parties' ability to agree on most, if not all, of the unresolved issues. The Employer was willing to offer a wage increase and agree to the retention of prior contract language on issues of longevity, comp time and specialized training and skills, but only if the new modified County Plan for unused sick leave calculation and payments was accepted. The Fact-finder understands the need to reduce long term liabilities in the face of expected increased annual expenditures and flat revenue projections.

Before discussing the merits of the Employer's proposal, it is incumbent on the Fact-finder to address some negotiation procedures used in the process that contributed to the schism between the Parties on this issue.

First, testimony indicates that the Employer did not give the Union its full proposal regarding its proposed Sick Leave proposal until the Fact-finding hearing. While a summary of the proposal was delivered to the Union the day before the hearing (with a copy to the Fact-finder), it is unrealistic to expect the Union to accept its "package proposal" at Fact-finding without prior consideration.

Secondly, the Employer argues that the Fact-finder should impose its "package proposal" on the Union because five of the other bargaining units in the Sheriff's Office have agreed to the Plan. The Employer seeks parity among the units and consistency in the application of its wage and benefits packages.

The approach taken by the Employer in negotiating with the various bargaining units in the Sheriff's Office is similar to the concept of pattern bargaining, but the underlying procedures constituting traditional pattern bargaining are not present here.

Pattern bargaining had its genesis initially with the unions, but more recently has been

used by employers. Three features characterize pattern bargaining. First, the employer negotiates with the union sequentially. Second, the employer chooses the order with which it negotiates with the unions. Third, the agreement reached with the first sequence (this bargaining unit is often referred to as the *target*) sets the pattern for all subsequent negotiations. In the strictest interpretation of pattern bargaining, the agreement with the target exactly defines the offer that the employer makes to all firms with which it subsequently negotiates. The target is almost always, with little exception, the largest bargaining unit among units with which the Employer bargains. It is not the smallest bargaining units. When engaged in pattern bargaining, an employer typically incorporates the concept of parity as it relates to core economic terms and conditions of employment. In so doing, an employer can successfully negotiate the treacherous waters of multi-unit bargaining and gain the trust of its various unions – a trust essential to maintaining constructive labor relations.

Here, the Employer is certainly proposing contractual provisions to create parity among the bargaining units and its non-bargaining unit employees. Hence, the uniformity sought on the treatment of Sick Leave and an overall wage and benefit package. It is not proper, however, to use the concept of pattern bargaining by attempting to impose the terms and conditions of collectively bargained agreements with much smaller units on the largest unit of the eight bargaining units within the Sheriff's Office. The largest bargaining unit should be the target.

The Employer's failure to present its "package" of wages and benefits to the Union for negotiation prior to Fact-finding, the attempted imposition of bargaining consensus obtained from much smaller bargaining units within the Sheriff's Office to achieve uniformity among all of the bargaining units, and the impact of the reduction bargained-for rights must be taken into consideration when examining the open issues of this Article, as well as all of the other Articles

in dispute.

With a large portion of the County's sick leave accrual coming from the Sheriff's Office, it is unquestionably a starting point for curtailing future expected liabilities when future revenues are projected to be flat or increasing at a pace behind anticipated expenses. It seems inconsistent, however, for the Employer to argue that its expenses have increased as a result of sick leave abuses (high sick leave rate and payment of resulting overtime for other employees) and at the same time argue that unused sick leave payments are increasing. If the use of sick leave is increasing, then unused sick leave payment would be decreasing. A reduction of entitlement to unused leave payments does not address the problem of sick leave abuses.

With all of this in mind, curtailing future sick leave cash outs in light of fairly predictable stagnant revenues is unquestionably in the public interest. But, as noted by both parties, this is more of a long term financial strategy that a cure-all that can be achieved in a three- year term collective bargaining agreement. Because this has been a benefit enjoyed for many years, it is difficult to give something up that was either given by the Employer or was a bargained-for right. Nonetheless, at some point this benefit must be modified in order to curtail mounting future liabilities in a county that predicts increasing operating and capital expenses and stagnant revenues.

Under the procedural circumstances set out above, there are grounds to deny the Employer's proposal for Article 12, but such would be a trade-off for other benefits that the Fact-finder believes should be incorporated in an overall wage and benefit package. As such, movement toward the County Plan is in the public interest and a modified Plan will be recommended here. The proposed tier system of the Employer should be adopted, as well as the ten- year vesting period for employees hired after April 2, 2005. The number of days that can be

accumulated on an annual basis should remain unchanged for the term of this agreement. If indeed sick leave is being abused, the total number of hours banked by those individuals will not increase. The abuse, however, needs to be addressed in other ways.

RECOMMENDATION

It is recommended that ARTICLE 13 – SICK LEAVE be modified with the three tiered payment schedule as proposed by the Employer, except that the provisions in Section 1 shall provide that sick leave shall accumulate at the rate of 4.6 hours for each completed and paid eighty (80) hours of service.

4. ARTICLE 14 – HOLIDAY PAY

The Union's Position

The Union proposes to modify Article 14, Section 2, to provide that all Holidays listed in Section 1 of this Article be paid at time and one-half exclusive of any other overtime benefit provided in the Agreement. The prior collective bargaining agreement paid premium pay for six holidays; the Union desires to increase premium pay to all ten holidays listed in Section 1. The Union also proposes to amend Section 14.4 by adding language providing for (1) entitlement to a personal day to be used within a year for each employee that is sent home with pay by the County for any non-disciplinary reason and (2) a provision allowing an employee to take a personal day within a calendar year from the date the personal day is earned (currently the employee must take the personal day within the calendar year they are earned).

The Union argues that most safety force contracts call for premium pay for work done on Holidays, particularly in comparable jurisdictions. Most of these jurisdictions pay premium pay for more holidays than Lake County. Kirtland pays nine of ten Holidays at time and one-half; Madison Township pays all ten Holidays at time and one-half; Madison Village pays all twelve

Holidays at time and one-half; Willoughby Hills pays eight of ten Holidays at double time and one-half; Ashtabula County pays all eleven Holidays at two and one-half; Cuyahoga County pays all eleven Holidays at two and one-half; Geauga County pays ten of eleven Holidays at time and one-half; and Lorain pays all thirteen Holidays at two and one-half. Based upon these comparables, the bargaining unit is entitled to an increase in the number of Holidays for which premium pay at time and one-half is paid. Most employees of Lake County have the Holidays off unless there is an emergency. Most employees outside of the service sector do as well. Correction Officers do not get the three (3) day week-ends that most non-bargaining members enjoy. They have to schedule their days off when they can. In exchange, most safety forces get additional time off and get paid a premium for working on Holidays, which is what the Union is seeking in its proposal.

The comparable County data provided by the Union is a fairer comparison than the internal comparables (other bargaining units with the Lake County Sheriff) used by the Employer. The Corrections Officer's unit is the largest bargaining unit and it should be setting the standard for the internal comparables.

Currently, employees of Lake County that are sent home due to an emergency or other factors preventing work during the day are paid for that day. Correction Officers must work all day, every day of the year, regardless of the situation. The jail can't be shut down because of bad weather or an electrical outage. Safety sensitive jobs require employees to show up for work. Since the County sees fit to send some of their 9 to5, Monday through Friday employees home with pay under these circumstances, the County should be able to give each Correction Officer a paid day off to be taken over the next year as well.

The Union argues that Correction Officers should be given one year to schedule and use a

personal holiday from the time a personal holiday is granted. If the County gave December 29th off due to a winter storm, they certainly wouldn't be able to give all of the Correction Officers a day off within the same calendar year.

The Employer's Position

The Employer opposes any changes in the current language. The current language is contained in all eight of the bargaining unit contracts with the Sheriff's Office. While the Union cites Holiday pay given in numerous municipalities and townships, those entities are not considered comparable to work performed by other public and private employees in the area. The internal comparables are the most reliable and should be used by the Fact-finder. Additionally, the municipalities and townships cited have additional sources of revenue not available to the County, such as income tax revenue to support greater payout.

In regard to the Union's request for additional personal days, the Corrections Officers are already entitled to three more personal days than other employees working for the county to compensate them for their more inflexible schedule and the inconvenience of working on emergency days.

Discussion, Findings and Recommendation

The Union has made a compelling argument that the Corrections Officers should be paid time and one-half the regular rate of pay for all Holidays. Most of the County employees will get all Holidays off, with pay, unless required to work, which event is usually an emergency situation. With the requirement to maintain certain manpower at the jail on all holidays, it is appropriate that those who work get paid premium pay. The comparable county jurisdictions referenced by the Union (Ashtabula, Cuyahoga and Geauga) all pay their Corrections Officers at a premium rate, if they work the holiday. The Employer argued that other nearby municipal and

township jurisdictions that also pay premium pay for most, if not all, Holidays worked are not comparable jurisdictions. Such may be the case in regard to the economic conditions of those jurisdictions, but the work performed by corrections officers in those jurisdictions and the pay for working on a Holiday is comparable.

An examination of the average manpower to operate the jail on a daily basis³ demonstrates that the actual out-of-pocket cost to the County to pay premium pay to those officers who work the Holiday is not significant. In light of the overall wage and benefit package recommended by the Fact-finder, the Union's request is reasonable.

The other arguments of the Union in regard to obtaining a comp day for working an emergency when other employees are not required to work and the scheduling of comp days is not compelling. The Fact-finder sees no basis for providing the extra comp time or reducing the flexibility of the Employer to schedule comp time as it currently does.

RECOMMENDATION

It is recommended that ARTICLE 14 – HOLIDAY PAY, be amended to provide that any employee who works on any of the Holidays listed in Section 1 between the hours of 12:01 a.m. and midnight, shall be compensated for such hours worked at time and one-half (1-1/2) exclusive of any other overtime benefit provided in this Agreement. The remainder of the Article shall remain the same.

5. ARTICLE 15 – ANNUAL LEAVE (VACATION)

The Union's Position

The Union proposes to modify the language in Article 15 by permitting bargaining unit members to elect to schedule one week of vacation as single days once all Officers have scheduled their vacation weeks for the upcoming year. The Union also seeks to allow employees

³ This was provided by the Employer in Exhibit 21 to demonstrate scheduling issues.

to cash out all sick and/or vacation time earned in a given year. Requests would be limited to five years; they must be made by December first of the year in question and shall be paid out by February first of the following year; and in order to cash out any sick leave the officer must have at least three hundred (300) hours remaining.

In regard to scheduling, the Union does not believe that allowing the Corrections Officers the ability to schedule their one week of vacation as single days unduly complicates the scheduling process. Officers should have the ability to take advantage of single day opportunities, such as a day to entertain out-of-town guests or attend a parent-teacher conference or attend a special sports event when the need arises. Supervisors have the ability to do this and so should the rank and file.

Allowing the Officers to cash out sick or vacation time earned in a given year has proven to be beneficial in other jurisdictions. 911 Dispatchers in Trumbull County were offered such a plan and it is working.

The Employer's Position

The Employer proposes current language in the contract. It opposes any changes in scheduling or early cash payouts for earned sick or vacation days.

The Employer argues that the proposal of the Union would result in a scheduling nightmare; the process is already extremely time consuming. In 2013, the Employer made 2538 scheduling changes under the existing system. Over 1,094 requests for changes have already been processed in 2014 year to date. Based upon an analysis of implementing the Union's proposal, the County would spend an additional 427 man hours in processing requests. The Union's plan is administratively unworkable.

In regard to cashing out accrued sick and/or vacation time on an annual basis, such a

process would result in unanticipated annual expenditures for which the County could not budget. With the current tight budget, such a program is unworkable. Additionally, the Employer encourages its employees to take sick days when they are sick and vacation days to refresh. The Union's proposal is counter intuitive to this concept and not beneficial to an employee or in the best interest of the public. The proposal of the Union is precisely what put many police pensions in disarray.

Discussion, Findings and Recommendation

The concept of taking individual vacation days in lieu of a scheduled week vacation makes sense. The Fact-finder is persuaded, however, by the evidence presented by the Employer that under its current scheduling process adopting the Union's proposal would be costly and unworkable. The Employer's arguments in opposition to the Union's request to cash out all sick and/or vacation time earned in a given year are also compelling. Such a provision in the Agreement would result in unanticipated annual expenditures for which the County could not budget; the County is already struggling to manage current and foreseeable expenses.

RECOMMENDATION

It is recommended that the provisions of ARTICLE 15 – ANNUAL LEAVE (VACATION) remain unchanged.

6. ARTICLE 16 – SENIORITY PAYMENT (LONGEVITY)

The Union's Position

The Union proposes to amend Article 16 by lowering the qualification period to receive longevity from six to five years and increasing the amount of longevity pay to which each officer is entitled every five year period. Under this proposal, Corrections Officers would start receiving longevity pay in the sixth year instead of in the seventh year.

For several years, the Corrections Officers agreed to forego longevity pay to do their part in dealing with the financial setbacks in Lake County. Now that the County is improving, longevity payments need to resume and resume at a higher rate of pay to compensate the officers for lost revenues in years past. The norm for qualifying for Longevity Pay is five years. As a result, the Union is requesting to conform to the norm.

The bargaining unit members were upset when they learned that the non-bargaining officers did not give up their longevity pay during the lean years. They were paid a higher wage and could have more afforded to forego the longevity payments.

Longevity payments to Corrections Officers in other contiguous counties are higher than those paid to Corrections Officers in Lake County. A comparison of longevity benefits for a ten-year employee in several counties reveals the following: Medina County pays \$800; Lorain County pays \$880; Geauga County pays \$1,000; and Ashtabula County pays \$1,040. While Cuyahoga County pays a lower rate than Lake County at \$750, this County has historically paid lower benefits. Lake County currently pays \$650 for a ten year employee.

The Employer's Position

The Employer proposes to eliminate longevity pay. Based upon a SERB Benchmark Report, Corrections Officers in Lake County are already paid well in comparison to corrections officers in other counties throughout Ohio. The average starting salary in Ohio is \$34,760.30 and the average top level salary is \$45,094.81. Lake County Corrections Officers are paid \$41,662 at the starting level and \$46,654 at the top level. At this level, there is no need to continue with additional payments for longevity.

Discussion, Findings and Recommendation

The Fact-finder must give consideration to this proposal in light of the other benefits and

wages sought herein, as well as the bargaining history of the Parties. Considering the past history of bargaining of the Parties on this issue and the other concessions made by the Union, it makes sense to “reactivate” longevity payments that were frozen over the last several years. Based upon the recommended wage package herein and the financial condition of the County, lowering the qualification period for longevity payments and increasing the amount of longevity payments is not in the public interest and cannot be recommended.

RECOMMENDATION

It is recommended that seniority payments resume and the language in ARTICLE 16 - SENIORITY PAYMENT (LONGEVITY) remain the same as in the prior contract.

7. ARTICLE 17 – WAGES

The Union’s Position

The Union proposes a wage increase of 3% in the first year of the Agreement, 3.5% in the second year of the Agreement and 4% in the third year of the Agreement.

In recognition of the financial recessions in the last collective bargaining agreement, the Union agreed to no pay increases and no longevity payments over the last three years. The Corrections Officers were hit hard with lay-offs and temporary furloughs. Lake County is the seventh (7th) wealthiest County in Ohio based on per capita income. Conversely, the number of employees and the total salary has been decreasing. There has been a lot of new building and growth in the area. The number of college graduates moving into the area has been increasing while most Midwestern states have had the exact opposite demographic changes taking place. The Medical Mart is unique to the world and is poised to complement the new Cleveland

Convention Center. The Horseshoe Casino is another new draw for the area and those attending conventions supply revenue directly to Lake County as well.

Lake County has many good economic events on the horizon as well. Lubrizol is set to expand their facilities locally and internationally. They recently agreed to build a new thirty-three million (\$33,000,000) facility locally, which will allow for an additional five-hundred (500) employees. The State has been doing very well for several years now; it now has a surplus. There is an ever increasing revenue stream coming from the Utica shale formation.

On the national level the economy is improving. The number of jobs being created has been over 200,000 for several months in a row. The unemployment rate has been holding steady at 6.3%. The Federal Reserve and the International Monetary Fund all look for the United States to be a driving force in the continued economic expansion. The Fed has even been reducing the bond buying Quantitative Easing program for months, which is set to end later this year. Internally, the County has been handing out two and one-half percent (2.5%) wage increases to their non-bargaining unit employees and other bargaining units. Based upon these circumstances, the Corrections Officers deserve the increases sought.

The Employer's Position

The Employer offered a 2.5% wage increase per year, if the Union agreed to its "package offer," which included acceptance of the County Plan on unused sick leave payments, reinstatement of longevity payments with no increases, and no changes in Holiday pay, vacation scheduling, injury leave, court time or overtime. Since the total package was not accepted, any wage increase was taken off the table.

Lake County revenue in 2013 was almost identical to 2007 revenue (\$61,653,718 vs. \$62,807,889). Revenue from property tax, interest income and intergovernmental income was

dramatically down and, but for income from permissive sales tax, which is twice what it was in 2007, the County would have been in real financial trouble. Since operating expenses have increased and employee benefit packages (health insurance in particular) have increased, the County has been able to maintain a balanced budget by deferring capital costs and laying off employees (down 50 employees since 2007).

Because of anticipated additional costs this year resulting from an additional payroll week (over \$1,000,000), anticipated capital costs for a new building and a new phone system and ongoing increases expenses of the Sheriff's Office, the Employer cannot afford to pay the increased salaries *and* increased benefits sought by the Union.

According to SERB Benchmark Reports, the average wage increase for corrections officers in the State was 1.7% in 2013. With this in mind, the increase offered in the "package offer" is very generous. The County cannot afford any wage increase, however, unless other benefit concessions are made by the Union consistent with the other bargaining units in the Sheriff's Office.

Discussion, Findings and Recommendation

When considering the appropriate wage rate to be paid, consideration must be given to internal and external comparisons, consistency of a wage and benefit package offered and given to employees by the public employer in the same governmental sector, the total wage and benefit package taken as a whole and the impact of those wages in light of the interest and welfare of the public. It is clear from the wage comparables that the Corrections Officers are currently being paid in the middle range of wages; not at the top and not at the bottom. It is also clear that the bargaining unit employees are deserving of a wage increase to keep up with the corrections

officers in other jurisdictions and move forward as economically as possible.

Based upon employees doing comparable work, giving consideration to factors peculiar to the area and classification involved, the wages paid to corrections officers in Lake County are above average compared to other counties in Ohio,⁴ as well as contiguous counties surrounding Lake County. No data was provided concerning and prospective collective bargaining agreements in the same region(s). It is the opinion of the Fact-finder that in light of raises given by the County to its other employees and the recommended total benefit package set in all of the contested articles, a 2.5% is appropriate for each year of the three- year Agreement. The members of this bargaining unit have given up wages and longevity pay over the last several years to help the County through difficult economic times. Due to numerous lay-offs within the Corrections unit, more work has been placed upon the officers. The increase in wages is needed in order to keep their wages comparable to other corrections officers in comparable jurisdictions and retain good experienced officers. This is in the public interest. It is also in line with wage increase given to other employees in the County.

RECOMMENDATION

It is recommended that a 2.5% increase be added to the base wage rate of the Agreement effective April 1, 2014; a 2.5% increase added to the base wage rate of the Agreement effective April 1, 2015; and a 2.5% increase added to the base wage rate of the Agreement effective April 1, 2016.

8. ARTICLE 20 – INJURY LEAVE

The Union's Position

The Union proposes to increase injury leave pay for the time lost at work from sixty (60) days to one hundred twenty (120) days.

The work of the Corrections Officers is a very dangerous. They are literally locked up behind bars for eight (8) hours a day with criminals. Many of the criminals are not mentally stable. Many are very aggressive. Fights are common and quite dangerous. They often result in injuries to the Officers. The least the Sheriff should do is properly pay the officers when they are injured in the line of duty.

The request of the Union is quite modest compared to the amount of injury leave offered to surrounding County's Corrections Officers. Only Ashtabula offers less than what the Union is proposing. The ninety (90) days they offer is still fifty percent (50%) more than the injury leave provided by Lake County Sheriff's Department. Cuyahoga County provides for one-hundred and twenty (120) days of injury leave, which is the amount of our request. Geauga Sheriff's Department provides one-hundred and eighty (180) days for their Officers to recover from their injuries.

The Employer's Position

The Employer opposes any increase in injury leave. Additionally, the Employer proposes to modify Article 20, Section 3, by deleting the word "credited" and replacing it with the word "charged."

The Employer opposes any increase in injury leave because of the additional costs to the County.

The Employer is seeking to change "credited" to "charged," because the intent of the language of the Section and the meaning applied by the parties in the past was to, in essence, debit or subtract injury time from, the appropriate designated account, such as vacation, holiday, sick leave, bereavement, etc. It was never meant to have any other meaning. The change is for

⁴ Statistics provided by the Employer in Exhibit 23.

clarification purposes only.

Discussion, Findings and Recommendation

In light of the overall wage and benefit package recommended by the Fact-finder herein, an increase in injury leave cannot be recommended.

The argument of the Employer to change the wording of how injury time is to be accounted for has merit. Based upon the meaning of the word(s) chosen and the practice of the parties in implementing this Article, the Fact-finder concludes that the word “charged” does reflect the understanding of the parties and “credited” should be changed to “charged.”

RECOMMENDATION

It is recommended that the language in ARTICLE 20 – INJURY LEAVE should remain the same as in the prior contract, with the exception that the word “credited” in Section 3 should be changed to “charged.”

9. ARTICLE 22 – COURT TIME

The Union’s Position

The Union proposes to increase the amount of overtime compensation paid a Corrections Officer from three (3) hours to four (4) hours for time spent in court, if that Officer is not released from Court in less than one (1) hour.

The court time language in Article 22 is unique to Lake County Sheriff’s Department. Most contracts for safety forces provide either three or four (3 or 4) hours of court time whenever an employee goes to court on the Employer’s behalf on their off time. However, the current contract calls for a bifurcated system. If court is over within an hour, the officer gets paid for two (2) hours at the overtime rate. If court lasts for more than an hour, they get at least three hours.

Most contracts pay officers for Court time at a higher rate than paid in Lake County. The average compensation for court time is way below that of most Officers.

While it might appear that the Officers are paid a lot for so few hours of work, said hours would typically fall in the Officers regular sleep time. Furthermore, the Officer must dress for court, drive to court, partake in any court duties before driving back home and getting out of their uniforms. The Officers should be paid for this inconvenience and time.

The Employer's Position

The Employer opposes any increase in Court Time. All other bargaining units have adopted the current language and this unit should be consistent.

Discussion, Findings and Recommendation

In light of the overall wage and benefit package recommended by the Fact-finder herein, an increase in court time compensation cannot be recommended at this time.

RECOMMENDATION

It is recommended that the language in ARTICLE 22 – COURT TIME remain the same as in the prior contract.

10. ARTICLE 26 - OVERTIME

The Union's Position

The Union proposes to modify the language in Article 26 in several respects. The Union proposes to (1) add new language to the Section 2 that would entitle an officer who is called in on his regularly scheduled day off to a minimum of four (4) hours pay; (2) increase an employee's overtime compensation bank in lieu of overtime compensation from forty-eight (48) hours to eighty (80) hours; and (3) add new language allowing employees to bank an additional

one hundred and twenty (120) hours to be used in their last five (5) years of work with such time being used in place of vacation time, which is being planned to be cashed out.

The Employer should welcome compensation time in lieu of paying the officers' overtime. Of the surrounding Sheriff's Departments, only Geauga has a limit of eighty (80) hours. The others (Ashtabula and Cuyahoga Counties) fall back on the Federal Standard of four hundred and eighty hours (480). While the Union has only requested the same eighty (80) hours provided to the Geauga Corrections Officers, it is also looking at a separate bank to be used as vacation time when retirement approaches.

The Employer's Position

The Employer is opposed to the Union's proposal. Compensation time for overtime was increased from forty (40) hours to forty-eight (48) ours in the recent past. There is not justification for increasing it further.

Discussion, Findings and Recommendation

In light of the overall wage and benefit package recommended by the Fact-finder herein, changes in the overtime provisions sought by the Union cannot be recommended at this time.

RECOMMENDATION

It is recommended that the language in ARTICLE 26 - OVERTIME remain the same as in the prior contract.

11. ARTICLE 33 – SPECIALIZED TRAINING AND SKILLS PAYMENTS

The Union's Position

The Union proposes to double the annual training/educational payments (bonuses) to Spanish Speaking Translators, E.M.T., E.M.T.A. or Licensed Paramedics, employees holding an Associate of Arts Degree and employees holding a Bachelor of Arts/Bachelor of Science Degree.

It argues that Special training and/or skills makes an employee more valuable to the Employer. As a result, Employers have been sending their employees to various types of training for years. Such training makes the employee much more valuable to the Employer. In Lake County, there are many Spanish speaking inmates. Having Officers that can understand them makes a great deal of difference to everyone. The prisoners won't be able to lie about what a Spanish speaking prisoner is saying. Those in need will be understood. Communication will be quicker and more efficient then requesting a translator.

The training to become an EMTA is fairly extensive. The training to become an EMT is much more difficult to attain. However, the training to become a paramedic is very difficult to attain. Each of these specialties allow medical attention to be given to prisoners instantly rather than simply sending them to a nurse or hospital.

The skills refined in college are helpful in many ways. The general nature of the degrees allows a variety of special talents and enhanced understandings. These shouldn't be downplayed. It also greatly helps with those who get promoted.

The size of the bonuses hasn't changed in quite a while. It has become more and more difficult to attract and retain all employees. Increasing these bonuses should help increase the retention and recruitment of some of the more valuable employees.

The Employer's Position

The Employer argues that this provision should be eliminated from the Agreement. Most employees are hired with the skills set forth in this section and they are already compensated for those skills. There is no need to compensate them further.

In its overall package proposal, the Employer is not opposed to retaining this section if the other concessions are made.

Discussion, Findings and Recommendation

Article 33 appears to give an employee a bonus for achieving certain certified skills or completing certain specialized training. Such a bonus structure is worthwhile, for it encourages employees to acquire advanced education or acquire additional skills beneficial to the Sheriff's Office and the operation of the jail. I would agree with the Employer that many employees are hired because of the education and skills set forth in this section, but encouraging those employees to advance their education and training is a major benefit to Sheriff's Office and the public the Office serves. If the level of bonuses has not been increased for a number of years, it probably is in the interest of all parties to increase the amount of the bonus. Unfortunately, no evidence was presented regarding when the amount of bonus was last examined or what is the basis for increasing the amount to that proposed by the Union.

The economic impact of this bonus structure is insignificant in comparison to the benefit to be gained by the public from employees who are better educated and better trained. The Fact-finder finds that this provision should be retained, although there is insufficient information to support increasing the bonus payments at this time.

RECOMMENDATION

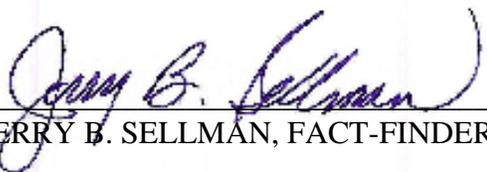
It is recommended that the language in ARTICLE 33 – SPECIALIZED

TRAINING AND SKILLS PAYMENTS remain the same as in the prior contract.

CONCLUSION

In conclusion, this Fact-finder hereby submits the above referenced recommendations on the outstanding issues presented to him for his consideration. Further, the Fact-finder incorporates all tentative agreements previously reached by the parties and recommends that they be included in the Parties' Final Agreement.

July 11, 2014


JERRY B. SELLMAN, FACT-FINDER

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the Fact Finder's Report was sent via email, receipt confirmed, on July 11, 2014 to:

SERB

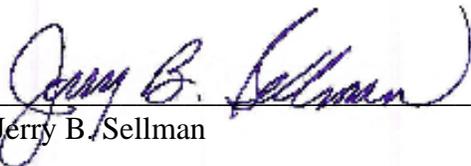
Mary E. Laurent
Administrative Assistant
65 E. State Street
Columbus, OH 43215
mary.laurent@serb.state.oh.us

Jeff Perry

OPBA
10147 Royalton Road, Suite J
PO Box 338003
North Royalton, OH 44133
jeffperryba@sbcglobal.com

Tom Grabarczyk

Labor Relations Management Inc.
6800 West Central, Suite L-2
Toledo, OH 43617
tomlrn@buckeye-express.com



Jerry B. Sellman