

**FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
December 31, 2014**

In the Matter of:

OHIO PATROLMEN'S BENEVOLENT
ASSOCIATION

and

SENECA COUNTY SHERIFF

INCORRECT #

2014-MED-09-1976

2014-MED-09-1977

2014-MED-09-1978

2014-MED-09-1979

CORRECT #

2014-MED-09-1176

2014-MED-09-1177

2014-MED-09-1178

2014-MED-09-1179

**REPORT AND RECOMMENDATIONS OF FACT-FINDER
TOBIE BRAVERMAN**

APPEARANCES

For the Employer:

John J. Krock, Labor Consultant
Stacy Wilson, County Administrator
William E. Eckelberry, Sheriff
Ronald Green, Chief Deputy

For the Union:

Jonathan J. Winters, Counsel
Patricia Swavel, Corrections Officer
Amy Skeel, Dispatcher
Craig Robbins, Road Deputy
William Cunningham, Supervisor
Natalie Deatruck, Cook
Scott Beier, Sergeant

INTRODUCTION

The undersigned was selected by the parties, and duly appointed by SERB by letter dated November 17, 2014 to serve as Fact-Finder in the matter of the Ohio Patrolmen's Benevolent Association (hereinafter referred to as "Union") and the Seneca County Sheriff (hereinafter referred to as "Employer") pursuant to OAC 4117-9-5(D). The parties agreed to extend the deadline for the Fact Finder's Report until December 31, 2014. Hearing was held at Tiffin, Ohio on December 19, 2014. The Union was represented Jonathan J. Winters, Attorney at Law, and the Employer was represented by John J. Krock, Labor Consultant. The parties engaged in mediation, and at the conclusion of mediation agreed to submit the outstanding issues to the Fact-Finder based upon the documentary evidence submitted by the parties, pre-hearing position statements and discussions had during the course of the day. The parties agreed to waive service of the Fact-Finder's report via overnight delivery and agreed upon service of this Report via email.

FACTUAL BACKGROUND

The Employer is the county wide law enforcement agency for Seneca County, Ohio, a county with a population of approximately 56,000 located in Northwest, Ohio. It is party to four separate collective bargaining agreements with the Union for four groups of employees: Deputies and Dispatchers, Corrections and Medical Technicians, Cooks and Maintenance, and Rank. The bargaining units together consist of a total of approximately seventy-eight employees. The most recent collective bargaining agreements between the parties all expire simultaneously on December 31, 2014. The parties engaged in several negotiation sessions, and reached tentative agreement on a number of issues, which are referenced and incorporated herein in the attached Exhibit A.

The unresolved issues submitted to Fact-finding are as follows:

- Article 16 - Duty Hours
- Article 17 - Posting and Bidding

- Article 21 - Sick Leave Conversion
- Article 33 - Wages and Compensation

Based upon the considerations enumerated in Ohio Revised Code §4117.14, including past collectively bargained agreements between the parties, comparison of the issues submitted relative to other public employees doing comparable work, the interests and welfare of the public, the ability of the Employer to finance and administer the issues proposed, the effect of the adjustments on the normal standard of public service, the lawful authority of the Employer, other factors traditionally considered in the determination of issues submitted and, in particular, the discussions of the parties during mediation, the Fact-Finder makes the following recommendations.

ISSUES

ARTICLE 16 - DUTY HOURS

Employer Position: The Employer makes two proposals relating to this Article. It first proposes that the current language, which permits the consideration of sick leave hours as hours worked for purposes of computing overtime, be deleted. It further proposes that the current permissible accumulation of compensatory time be reduced from its current one hundred-twenty hours to forty hours. The Employer argues that the inclusion of sick leave permits employees to manipulate the system to accumulate absences and still receive more overtime and compensatory time, both of which are costly items for the Employer. The reduction in compensatory time accumulation is necessary in order to curb compensatory time usage which creates a vicious cycle of overtime expense, particularly in corrections, where some employees have used up to seven weeks of compensatory time in a single year. Because compensatory time is accumulated on a rolling year, many employees constantly retain a large bank of compensatory time which is used for considerable amounts of time off. This in turn creates a scheduling problem as well as additional expensive overtime.

Union Position: The Union points to comparables which include several comparable counties where sick time is counted as hours worked. Further, internally, all other county employees, both under separate collective bargaining agreements and non union, have sick time counted as hours worked. If there is sick leave abuse, that should be dealt with through the disciplinary process. The Union further argues that the compensatory time accumulation should remain unchanged. This is a heavily used benefit, particularly in the corrections unit. While it may lead to additional overtime, many other factors result in overtime, and compensatory time alone cannot be blamed for overtime costs. Even if the compensatory accumulation should be reduced, the reduction proposed by the Employer is extreme, and is therefore unacceptable.

Discussion: The evidence demonstrated that the counting of sick time as well as the accumulation and use of compensatory time are clearly expensive items which consume substantial portions of the Employer's budget. Both, at least in part, create situations in which payment of overtime for time not actually worked as well as the ability to accumulate and the use of compensatory time create additional costs in the form of additional required overtime. While some comparable counties submitted count sick time in hours worked, as many do not. Internally, however, all other employees within the County include sick time in the computation of hours worked. There was no evidence of a serious sick leave abuse problem in these units, and abuse can and should be dealt with through the disciplinary process.

The Employer's proposals in Article 16 are primarily for the purpose of containing costs rather than to address a problem of sick leave abuse or overuse. There is no doubt that compensatory time usage is high and it creates a significant additional expense since other employees must be scheduled to work overtime to accommodate compensatory time usage. This problem is exacerbated by the rolling year applied to overtime accumulation. The use of a calendar year for accumulation would limit compensatory time usage without making a drastic cut in compensatory time. In the interest of permitting the Employer to contain costs while implementing a less drastic reduction in compensatory time accumulation, the Fact-Finder recommends that the number of accumulated hours remain the

same, but that compensatory time be accumulated on an annual basis only. This would eliminate the perpetual retention of a high compensatory time bank.

Recommendation:

Section 16.2 Current language.

Section 16.5 Amend the third sentence of the Section to read as follows:
Employees may not be permitted to utilize more than one hundred twenty (120) hours of compensatory time per calendar year.

Balance of the Article current language.

ARTICLE 17 - POSTING AND BIDDING

Employer Position: The Employer proposes that the language in Section 17.3 which specifies the minimum number of years of service needed to qualify an employee to bid on a promotion be deleted. This was included in the Agreement several contracts ago, and resulted in a grievance during the term of this Agreement. It limits the Employer in what is inherently a management right, promotion. It should therefore be removed from the Agreement.

Union Position: The Employer recently resolved a grievance regarding the application of this language, and is now attempting to change the language. The language protects the members of the bargaining unit against the promotion of individuals with insufficient experience. This is an issue which is important to both the safety and morale of the employees. The language should therefore remain the same.

Discussion: The Employer did not present any compelling evidence to demonstrate a need for a change in this contractual language. Among the comparable counties presented, there is evidence that such language is not uncommon. The Union's argument that requiring experience for promotion builds a layer of protection for those who serve under the promoted individual by insuring experience and demonstrated ability, cannot be overlooked. Absent some additional demonstrated need to alter the language, there is no significant reason for the proposed change.

Recommendation:

Section 17.3 Current Language.

ARTICLE 21 - SICK LEAVE

Union Position: The Union makes two separate proposals relating to this Article. The first is to add language which would include a domestic partner within the definition of immediate family for purposes of sick leave usage. The language is already included in the definition of immediate family for purposes of funeral leave, and its addition here is consistent with that language. This would allow individuals to utilize sick leave to care for loved ones to whom they are not married, but with whom they have shared a household for at least one year, including same sex couples as well as couples who formerly would have been considered to have been married by common law, which is no longer recognized in Ohio.

The second proposal in this Article, relates to sick leave conversion upon retirement. The Union proposes that employees be permitted to increase the permissible amount to be paid out from one fourth to one half of accumulated sick leave, and further proposes to increase the maximum number of days and hours which may be accumulated from thirty to sixty and two hundred forty to four hundred eighty, respectively. The Union argues that sick days are an earned benefit and serve as an incentive to refrain from sick leave use. Employees who have successfully accumulated the days through good attendance should be compensated for their efforts by being to convert them to pay at a higher rate than now permissible upon retirement.

Employer Position: The issue as to the first proposal is merely one of sick leave usage. Any broadening of the ability to use sick leave creates an additional cost, both in terms of additional absences and the necessity to work other employees on overtime to cover those absences. The proposal should therefore be rejected. As to the Union's sick leave conversion proposal, this increase would result in a significant cost to the Employer which would potentially increase over time. These costs are additionally unpredictable and difficult to budget for since they are dependent upon both individual sick leave usage and retirements. No other employees within the County receive this increased benefit. Finally, the Employer notes that there are no current employees who would be eligible to receive the increased benefit during the term of this

Agreement. The proposals should therefore be rejected.

Discussion: As the Union points out, the language to permit bargaining unit members to utilize sick leave to care for domestic partners already exists in the funeral leave language of the Agreement. There was no cogent argument advanced which would support a distinction between the permissible uses of the two types of leave. Further, while the Employer argued that this would present an additional cost, the Union noted that it is currently aware of only two bargaining unit members who would be affected by the language change. The cost, therefore appears to be minimal. Since the language change is supported by language already in existence elsewhere in the Agreement, it should be adopted and incorporated into the sick leave language to permit employees to utilize sick leave to care for an ill domestic partner.

As to the Union's proposal to increase the sick leave conversion upon retirement, as the Employer notes, this increase would likely represent an escalating financial burden upon the Employer over time. It is impossible to accurately predict or budget for the potential costs of this benefit, making it difficult to budget for over time. As importantly, the increase would not result in any benefit to any current employees during the term of this Agreement. Due to the unpredictable nature of the cost as well as the lack of immediate benefit to the bargaining units, this proposal should not be adopted at this time.

Recommendation: Amend Article as follows:

21.3 Definition of immediate family; grandparents, brother, sister, father, father-in-law, mother, mother-in-law, stepparents, spouse, child, stepchild, grandchild, household member of over one year, a legal guardian, or other person who stands in place of a parent (loco parentis).

Balance of Article current language.

ARTICLE 33 - WAGES AND COMPENSATION

Union Position: The Union proposes a five percent pay increase in each year of the Agreement. The Union argues that while the bargaining units received a three percent wage increase in the current year, that came on the heels of years with a wage decrease. In reviewing

comparable counties, this group is slightly below average, and the proposed increase would bring them in line with the average. The Employer's financial situation has improved in recent years, and its reserves exceed the recommended two months of expenses. Its income is further supported by income from ICE which pays substantial fees to the County for housing inmates. The requested increase is therefore both reasonable and affordable. The Union is unwilling to forego its right to bargain by permitting the Employer to determine wage increases as proposed by the Employer.

The Union additionally proposes a twenty cent increase in longevity compensation at each of the three longevity steps. In support of this increase, the Union notes that there has been no increase in longevity pay in the last seven years. The longevity pay falls well below that of comparable jurisdictions, and it should be increased to bring the Employer into parity with comparable jurisdictions.

Employer Position: The Employer proposes that these employees receive the same wage increases as the County Commissioners determine to provide to the non-union employees in each year of the Agreement. While these employees did experience a pay decrease during the prior Agreement, that was agreed upon in order to avoid layoffs. The current pay of these employees is in the average range among comparable counties. In light of the recent economic past, the Employer urges that wages not be locked in for three years so that there is flexibility in the event of an economic down turn.

As to the Union's proposal regarding longevity pay, the proposed increase is substantial, and is far too costly to implement. The cost in the first year of the Agreement alone would be \$19,600. In addition, wage increases will be paid on the increased longevity, making the cost even greater. The requested increase is simply too expensive, and therefore unwarranted.

Discussion: The Employer's proposal would, as the Union argues, in effect eliminate the Union's ability to bargain regarding wages for the next three years. Absent some evidence that the County is experiencing financial difficulty such that wage increases must be determined at a

later time, there is no substantial justification for leaving contractual wage increases open for the term of the Agreement. The position that the Employer should determine wages for non-organized employees in each year which the Union would be bound to accept is simply contrary to the concept of collective bargaining. In examining the comparable jurisdictions provided by the parties, these bargaining units are approximately at or just below the middle in wages. In the absence of an inability to pay, a moderate wage increase is appropriate so that position is maintained.

The longevity increase requested by the Union is clearly a substantial increase. As noted by the Employer, the cost in just the first year of the Agreement is \$19,600, and the cost is amplified by the fact that wage increases are computed at the increased rate for those employees receiving a longevity step at any time during the term of the Agreement. The increase is therefore simply too great. However, in light of comparables and the modest wage increase recommended, a more modest longevity increase in the amount of five cents per step is appropriate.

Recommendation: Amend Wage charts to reflect the following wage increases: 3% effective the first pay period of 2015, 2% effective the first pay period of 2016, and 2% effective the first pay period of 2017.

Amend Section 33.5 to reflect a five cent increase at each longevity step.

Dated: December 31, 2014

Tobie Braverman, Fact-Finder

CERTIFICATE OF SERVICE

The foregoing Report was delivered via email and this 31st day of December, 2014 to John J. Krock at jkrock@clemansnelson.com Labor Consultant, for Seneca County Sheriff and to Jonathan J. Winters at jwinters@alottafarley.com, Attorney at Law, Counsel of Ohio Patrolmen's Benevolent Association

Tobie Braverman

EXHIBIT A

	Preamble
Article 1	Recognition
Article 2	Dues Deduction
Article 3	Fair Share Fee
Article 4	Management Rights
Article 5	Employee Rights
Article 6	Nondiscrimination
Article 7	No Strike/No Lockout
Article 8	Probationary Periods
Article 9	Seniority
Article 10	Work Rules
Article 11	Discipline
Article 12	Grievance Procedure
Article 13	Labor/Management Meetings
Article 14	OPBA Business
Article 15	Bulletin Boards
Article 18	Holidays
Article 19	Vacations
Article 20	Civil Leave
Article 22	Personal Leave
Article 23	Funeral Leave
Article 24	Injury Leave
Article 25	Trauma Leave
Article 26	Disability Separation
Article 27	Layoff and Recall
Article 28	Uniforms
Article 29	Badge Upon Retirement
Article 30	Education/Training
Article 31	Health and Safety
Article 32	Insurance
Article 34	Severability
Article 35	Waiver in Case of Emergency
Article 36	Substance Testing and Abuse
Article 37	Outside Employment
Article 38	Duration of Agreement