

FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
October 20, 2017

In the Matter of:)	
)	
The Lorain County Sheriff)	
)	
)	SERB Case No.
vs.)	16-MED-07-0712
)	
)	
The Fraternal Order of Police/ Ohio Labor Council)	
)	

APPEARANCES

For the Lorain County Sheriff:

Robin Bell, Regional Manager Clemans, Nelson, & Associates
Jack Hammond, Administrative Captain, Lorain County Sheriff's Office
Kevin Shebesta, Senior Consultant Clemans, Nelson, & Associates
Kelly Thompson, Administrative Secretary, Lorain County Sheriff's Office

For the FOP/OLC:

Lucy DiNardo, FOP/OLC Staff Representative
Anthony Phita, Deputy Sheriff, Lorain County Sheriff's Office
Jason Zsebik, Deputy Sheriff, Lorain County Sheriff's Office

Fact Finder: Dennis M. Byrne

Background

This fact-finding involves the Lorain County Sheriff (Employer/Sheriff) and the Lorain County Deputy Sheriffs represented by the Fraternal Order of Policed/Ohio Labor Council (FOP/Union). The parties held a number of negotiating sessions in an attempt to find mutually acceptable language for inclusion into a successor agreement for their contract that expired on October 31, 2016. In spite of their efforts, they were unable to reach a final agreement on a new contract; and eight issues remain on the table. These issues are 1) Article 6, Employee Rights; 2) Article 8, Seniority; 3) Article 26, Health Care Benefits; 4) Article 31, Hours of Work and Overtime; 5) Article 32, Uniforms; 6) Article 36, Wages; 7) Article 36, Training Officer Pay; and 8) Article 43, Duration.

The Fact Finder and the parties engaged in a discussion prior to the start of the formal hearing, and the parties were able to come to an agreement on a number of open issues. Consequently, only Employee Rights, Uniforms, Health Care Benefits, Wages, and Duration remained at impasse.

Since the parties were unable to reach an agreement, there was a formal hearing on the five (5) remaining issues. The Hearing commenced at 10:00 A.M. on Tuesday September 26, 2016 at the Lorain County Sheriff's office. The hearing ended at approximately 1:30 P.M. During the hearing the parties presented testimony and exhibits in support of their positions on the outstanding issues.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations in Rule 4117-9-05. The criteria are:

- (1) Past collectively bargained agreements, if any.
- (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, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards 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 the public service or private employment.

Introduction:

Not surprisingly, the main issues that separate the two parties are wages and health care. The wage issue centers on the size of the deputies' wage increase for the coming years. The County's offer in their Prehearing Statement was a 1.0% raise in each year of the prospective contract. However, at the hearing, the County presented an amended offer. The County's offer is 2.3% in the first year, 1.7% in the second year, and 2.0% in the third year of the prospective contract. This is the pattern agreement for all other unionized employees who have completed negotiations, and it is also the base rate increase for all other non-unionized County employees. The Sheriff believes that the pattern offer is fair and should be accepted by the Deputy Sheriffs.

The Union's demand in its Prehearing Statement was for 3.0% in the first and second years, and 2.0% in the third year of the prospective contract. However, the Union testified that it had offered to accept 3.0% in the first year, 2.0% in the second year, and 1.0% in the third year of the prospective contract. Therefore, there was some discussion between the parties about a total wage increase of 6.0% over three years. The only difference in the parties' positions is that the Union demand is front-end loaded.

The parties' other disagreement is over changes to the medical plan offered by the County to all of its employees. The County has indicated that it may impose a spousal carve-out or spousal premium surcharge during the life of the agreement. The Union is adamantly opposed to this proposal, and has demanded new language that would restrict the County's ability to added spousal carve-out (surcharge) language to the contract. These are the usual positions of an employer and its employees with respect to spousal carve-out (surcharge) language; and in that sense, there is nothing exceptional about the parties' respective positions.

However, the Sheriff's representative maintained in the Prehearing Statement and during the Fact-Finding Hearing that the Fact Finder cannot make any recommendation on this proposal because the medical plan is offered by the County Commissioners and not by the Sheriff. The Employer contends that the funding authority (the Lorain County Commissioners) is not a party to the agreement between the Sheriff and his employees; therefore, the medical plan design, including any spousal carve-out or surcharge language is not a legitimate topic for negotiations between the Sheriff and his employees. In support of its position, the Employer's representative placed two Ohio Appeals Court decisions into evidence.¹

These decisions discuss the situation where County Commissioners under the aegis of ORC Section 301.171 have the sole statutory authority to decide on a medical plan for County employees. The result is that any Neutral involved in a dispute between a Sheriff (Employer) and his employees cannot make any recommendation on language

¹ *Licking County Sheriff's Office v. Teamsters*, Fifth Appellate District Licking County 2009-Ohio Court of Appeals of Ohio 4765; 2009 Ohio App. And *Allen County Sheriff v. Fraternal Order of Police*, Court of Appeals of Ohio, Third Appellate District, Allen County 2012-Ohio-3122; 2012 Ohio App.

proposed by the Union that would be binding on the funding body, i.e., the County Commissioners. Therefore, the Employer's position is that if the County Commissioners decide to add spousal carve-out (surcharge) language to the contract, the Union must accept the change.

The Fact Finder has read the two cases cited by the Employer. In the Licking County case, a Conciliator ordered that the Michigan Conference of Teamsters Health Benefit plan must be offered to the employees in addition to the existing Licking County health insurance plan. The Court found that this violated Section 301.171 of the ORC. The Court ruled that a Conciliator could not mandate that the County had to add a second health insurance plan to the plan that it already offered. The Court ruled that the Section 301.171 of the ORC gave the Commissioners the sole authority to contract for health insurance, and that the Conciliator exceeded his authority when he required a second health insurance plan be added to the contract.

In the Allen County case, the Court relying on the Licking County precedent, held that a Conciliator could not change the definition of the term family found in the parties' contract to include spouses. The issue before the Court was the Union's objection to a resolution passed by the Commissioners that a spouse of a County employee who had access to health insurance through his/her job would not be covered by the County's health plan. This resolution was passed in an attempt to control health care inflation. The Court reasoned that the Union's suggested change in the family definition would force the County to pay for spousal insurance violating the language in ORC 301.171.

The problem arises because ORC 4117 states that employees have the right to negotiate over issues related to "wages, hours, terms and other conditions of

employment.” This language is central to the collective bargaining process in both the private and public sectors and has been in existence and litigated endlessly since the passage of the National Labor Relations Act. The term “wages” has always been held to encapsulate wage supplements, i.e., benefits. There is no more important benefit than health insurance in the United States, and all unions negotiate over health insurance.

Therefore, there seems to be some disconnect between the meaning of two different parts of the ORC. ORC 4117 codifies the collective bargaining rights of employees with respect to wages (health care), and ORC 301.171 restricts the rights of some employees to bargain over wages (health care). That is, a difference between the employer (the Sheriff) and the funding agency (County Commissioners) restricts the bargaining rights of some employees versus other employees covered by the same statutes who are not employed by a county or who are not covered by a county health care plan. This may lead to problems. A reading of the partial dissent in the Allen County case is instructive on some of these potential problems.

However, at the current time, the law as enunciated by two Appellate Courts is that collective bargaining over health insurance benefits by employees who are covered by a county health plan is restricted if the funding authority and the employer are not the same entity. With the preceding paragraphs used as a background, the parties’ positions on the open issues can be discussed.

Issue: Article 6: Employee Rights

Union Position: The Union demands that the language of Article 6 that references the “steward” be changed to “Staff Representative or designee.”

Sheriff's Position: The Sheriff agreed to change the word "steward" but countered the Union's demand with the term "union associate or Union Representative."

Discussion: The reason for the Union's demand is that the members of the union were represented by the Ohio Patrolmen's Benevolent Association during the last round of negotiations. The FOP was certified as the bargaining agent prior to this round of negotiations. Moreover, the union members were also represented by the Lorain County Deputy Association (LCDA); and according to the Preamble to the parties' contract, the Deputy Association still exists. Therefore, the FOP wants to ensure that the FOP, the sole bargaining agent, has the right to be present for any proceeding that might lead to discipline for any union member.

The parties discussed this issue at length before the hearing, but could not come to an agreement on the precise language of Article 6. The Employer's main concern was that contacting the Union Staff Representative might lead to a situation where an investigation, hearing, etc., might be delayed if the Staff Representative was unable to attend a meeting because of scheduling conflicts. The Employer believes that an investigation and/or an employee interview should be conducted in a timely manner. The Union pointed out that the current language contains a twenty-four (24) hour window for the Staff Representative to attend the meeting, and stated that it would adhere to the timeline in the contract. However, the Union asserted that the affected member should have union representation at all meetings where there was some chance that the affected employee might ultimately be disciplined.

The Fact Finder notes that the parties came to an agreement on most of the issues on this Article. The remaining issue is who should be present at meetings where there

was some possibility that discipline might be discussed. The Union believes that having an employee represent an employee in these circumstances is not good industrial practice. That is, the Union believes that the employee should not be represented by another member of the Lorain County Deputy Association. The Sheriff ultimately agreed and suggested that acceptable language would be “union associate or Union Representative” as opposed to the term Staff Representative.

The Fact Finder believes that the Employer’s proposal is reasonable. The FOP is the bargaining representative of the Deputy Sheriffs. If there is a situation where a union member is under investigation and might be disciplined, the FOP should be involved or at least notified. Moreover, the affected employee has the right to have a representative of his/her choice present at any meetings where there is a chance that discipline may result. Any local union will have a grievance chair, and that person should always be contacted by the affected member. The grievance chair should contact the Staff Representative in order to determine who will represent the member under investigation.

Therefore, language that states that a union associate or Union Representative should be present adequately covers the situation. That is, the Employer’s suggested language means that the local union representative should be informed of any investigative hearings, and that should also mean that the FOP should be notified in a timely manner. If the FOP Staff Representative cannot be present at the meeting, then his/her designee will be present. Moreover, the Sheriff’s concerns about timeliness are addressed by the current language that states that the interview can only be postponed for twenty-four (24) hours to allow time for the Union Representative to be present. If the

Staff Representative cannot attend the meeting, then he/she must designate a person to attend in his/her place.

Finding of Fact: The term union associate or Union Representative shall replace the term steward in Article 6.

Suggested Language: Article 6

Section 6.1: No change

Section 6.2: **Notification:** At the time any employee is notified that he or she is the subject of an investigation that could result in a suspension or termination, the employee shall be given at least two (2) hours prior to any interviews to contact a union associate or Union Representative for the purpose of representation. The scheduled interview shall be delayed up to twenty-four (24) hours, if necessary, in order for a union associate or Union Representative to be present.

- A. In the event of an employee-involved shooting, or use by an employee of physical force resulting in life-threatening physical injury or death, the employee shall be placed on paid administrative leave immediately.
1. The Sheriff may order an immediate administrative investigation to determine compliance with departmental procedures. In such cases, the Employer will notify the union associate or Union Representative of the investigation. However, no administrative investigatory interview of the involved employee may take place prior to forty-eight (48) hours after the incident.
 - a. If necessary, the initial on-scene supervisor may administratively order an involved employee to immediately provide public safety information necessary to secure the scene, identify injured parties, and pursue suspects. Public safety information is limited to such things as outstanding suspect information, the direction of any shots fired, perimeter of the incident scene, identity of known or potential witnesses, and any other pertinent information.
 - b. The initial on-scene supervisor should not attempt to order any involved officer to provide any information other than public safety information.
2. Any criminal investigations of an employee-involved shooting will be conducted in accordance with the protocols of the investigation agency. The involved employee shall be entitled to all constitutional rights in accordance with the law.

Section 6.3: No change

Section 6.4: Add the phrase (not to exceed thirty (30) minutes) after the words “brief time” in sentence one.

Section 6.5: No change

Section 6.6: No change

Section 6.7: Refusal to answer questions. Add phrase “In the case of an administrative investigation, at the beginning of the first sentence.

Section 6.8: No change

Section 6.9: No change

Section 6.10: Access. An employee who is charged with violating Sheriff’s Office rules and regulations (and his/her union associate or Union Representative when one is involved) shall be provided access to transcripts, records, written statements, and videotapes upon request. Such access shall be provided no later than forty-eight hours prior to the pre-disciplinary conference, to the employee and the Union, at their request.

Section 6.11: Replace the word “steward” with the phrase “union associate or Union Representative” in line 4 and line 6.

Section 6.12 No change.

Section 6.13 No change.

Section 6.14 No change

Section 6.15 No change

Issue: Article 32: Uniforms

Union Position: The Union demands an increase in the uniform allowance for the Evidence Officers from \$1,000.00 per year to \$1,100 per year starting in the second year. The Union also demands an increase of \$200.00 in the first year, \$100.00 in the second year, and \$50.00 in the third year of the prospective contract for the Deputy Sheriffs.

That is the Union is demanding \$1,200.00 in the first year, \$1,300.00 in the second year, and \$1,350.00 in the third year of the new contract.

Sheriff Position: The Sheriff counters with current contract language, i.e., \$1,000.00 per year for the duration of the contract for both the Evidence Officer and Deputy Sheriff job classification.

Discussion: There was limited discussion on this issue. The Union pointed out that the uniform allowance had not changed for a number of years and that the cost of uniforms and cleaning services had risen. The Union argued that these facts justified its demands. The Sheriff stated that the evidence from comparable jurisdictions showed that the uniform allowance paid to the officers was reasonable when they were compared to other similarly situated employees. The Fact Finder examined the data and when the Departments that paid \$0.00 dollars (most likely quartermaster systems) were subtracted from the any calculations, the Lorain deputy sheriffs' uniform allowance is approximately equal to the average amount paid in other departments. However, the Sheriff's comparables list also includes Mahoning County and the inclusion of Mahoning County artificially depresses the average uniform allowance figure paid in other jurisdictions.

The result is that the Fact Finder believes that the data, such as it is, shows that the Lorain Deputies and Evidence Officers have a uniform allowance that is somewhat below the average uniform allowance paid by other comparable jurisdictions. Therefore, the Fact Finder is recommending a \$100.00 per year increase in the uniform allowance for both job classifications.

There were three other issues raised in the discussion about uniforms. First, the question of reimbursement to the Sheriff for items that are returned when an officer leaves the Sheriff's employ. The Union members claim that they are charged for turning in items that are worn. The Administrative Captain stated that he was unaware of any problems with returned uniform items, and that he could not remember a time when a deputy was charged for normal wear and tear for any returned item.

The second issue is that the officers believe that there are some necessary items that are not issued as a part of the uniform. The discussion on this issue centered on the cord and microphone that are used with the (employer supplied) radio carried by all deputies. The Sheriff does not supply either the cord or the microphone, and the officers believe that these items enhance both the Deputy's safety and efficiency.

The final disagreement between the parties is the Union's demand that language be added to Article 36 stating that if the Sheriff changes the uniform standard any time after June 1 of any year, then the cost of these changes will be paid for by the Sheriff. The Union argued that this language was necessary to protect its members from having to bear the cost of new uniforms after the uniform allowance payment had been paid to the Deputies.

The Administrative Captain pointed out that the uniform standard was decided upon by the Buckeye Sheriffs' Association. The Captain also stated that the uniform standard did not change often and that the Sheriff always gave his deputies adequate time to make the changeover. Therefore, the Employer stated that it was unsure of the reasons for the Union's suggested language.

The discussion on these subsidiary issues showed that there is a difference in opinion about the equipment issued as part of the uniform and the uniform standard. Without more information, the Fact Finder cannot intelligently discuss the issue. Therefore, the Fact Finder urges the parties to avail themselves of labor-management committee meetings to discuss these issues. However, given the facts in the record, the Fact Finder is not making any recommendation on these issues.

Finding of Fact: The information in the record shows that the current uniform allowance is marginally substandard when the Lorain County uniform allowance is compared to the uniform allowance of other similarly situated deputy sheriffs.

Suggested Language: Article 32.2: Effective January 1, 2017, non-probationary employees shall be provided with an annual uniform allowance amount as follows.

The annual uniform allowance amount as follows.

<u>Classification</u>	
Evidence Officer	\$1,100.00
Patrol Officer	\$1,100.00

Payment of such uniform allowance shall be made to each employee no later than May 1st of each contract year.

Issue: Article 36: Wages

Union Position: The Union's wage demand contained in its Pre-Hearing Statement is for 3.0% raise in the first contract year, 2.5% raise in the second contract year, and 2.5% raise in the third contract year.

Sheriff's Position: The Sheriff's position contained in his Pre-Hearing Statement is for a 1.0% raise in each year of the new contract.

Discussion: The parties are not as far apart on this issue as the demands contained in their Pre-Hearing Statements imply. The Employer made an argument that a pattern had

been established for the Sheriff's Office and that it was willing to pay the pattern settlement to the deputies. The pattern is 2.3%, 1.7%, and 2.0% in each successive year of the proposed settlement. Similarly, the Union testified that it had offered to settle the wage issue for 3.0%, 2.0%, and 1.0% in each successive year of the proposed agreement. Therefore, the parties have some agreement on a three year, 6.0% wage package. The difference is that the Union's demand is front end loaded compared to the Sheriff's offer.

While the base wage is exactly the same at the end of three years, the front-end loading and compounding effect of the Union's demand means that the union membership will receive approximately \$1,000.00 more in wages over the life of the contract. That is, the Employer's offer leads to raises totaling approximately \$7,500.00 and the Union's demand leads to raises of approximately \$8,500.00 over the life of the proposed agreement. The difference is \$333.33/yr.

There are two facts that need to be mentioned in this context. First, the \$333.33 listed above is pretax. Depending on the total family earnings of each deputy and only considering federal and state taxes, the tax burden could be approximately 33%. Second, some of the extra income would be used to pay for the deputy's pension contribution and other required payments, e.g., contributions to the health insurance plan, etc. Therefore, the extra income generated by the Union's demand would probably lead to an increase in take home pay of less than \$10.00 per pay.

The Employer argued that the Lorain County follows a pattern bargaining model. The Employer argued that the pattern was reasonable and that all of the signed contracts negotiated between the County and its employees contained raises of 2.3%, 1.7%, and 2.0%, i.e., the Sheriff's offer to his deputies. The Employer also stated that all non-

unionized employees received the pattern settlement. The Employer contends that its wage offer is reasonable, is not out of line with the raises negotiated by other Sheriff's Offices throughout Northeastern Ohio and the entire state, and that it maintains the pattern established in Lorain County.

Pattern bargaining is one way that Employers try to maintain wage scales and treat all of their employees equitably. When an employer pattern bargains, the employer attempts to negotiate a wage settlement with one of its Unions and then tries to use that agreement as a template for all other contracts. The pattern agreement is also imposed on all non-bargaining unit employees. In this case, the Employer is the Sheriff, and he is negotiating with his employees. However, the fact that the Sheriff wants to have his employees accept the County pattern agreement is somewhat outside of the norm. In effect, the Sheriff's position is similar to stating that his employees are employed by Lorain County not the Lorain County Sheriff.

ORC 4117 requires that each different bargaining unit must be allowed to negotiate contract clauses that fit its specific needs. No bargaining unit, absent an agreement that it will engage in multiunit bargaining, can be held to a pattern that it did not agree to and that might not fit its unique needs. The Sheriff's position implies that changes in job content are the same over different classes of employees. For example, the opioid epidemic that is ravaging Ohio means that the work done by public safety workers has become more dangerous. Moreover, the Deputies must be (re)trained to learn new methods for treating overdose situations. This is an example of how changing job content should lead to changing relative wage rates within the county. Furthermore,

this type of analysis means that over time the wages of some classes of county employees should change relative to the wages of other classes of county employees.

However, the Sheriff has made an offer to his employees. It is true that that offer is the pattern settlement negotiated by other Lorain County employees, but it is still a wage offer. The question is whether that offer is reasonable?

Both parties presented data from SERB on wage settlements to justify their respective positions. That data showed that the raises in 2016 for police contracts in Northeastern Ohio counties averaged approximately 2.2%. The Union presented data from the SERB Benchmark Report, and that data showed that the Lorain County Sheriff's Deputies' top rate was less than \$500.00 below the Cuyahoga County rate, and was the second highest in the Northeast Ohio area. The Sheriff presented data on comparable jurisdictions throughout Northeast Ohio, and that data showed that the Lorain county deputies' rate was among the top deputy sheriff's rates in the area, and only Lake County was significantly higher.²

The result is that the comparables data does not show that the Lorain Deputy Sheriffs are underpaid compared to other similarly situated employees. The Lorain deputies are not the highest paid deputy sheriffs but they are among the highest paid. Therefore, regardless of the fact that the Sheriff offered his employees the Lorain County pattern rate, his offer is reasonable.

This finding is reinforced by the fact that the Union's demand does not materially change the take home pay of the deputies during the life of the agreement. Therefore, the

² Data on Lake County did not appear in the Union's SERB Benchmark Report.

Fact Finder believes that the Sheriff's (County) offer is reasonable when all of the evidence is examined.

Finding of Fact: The Sheriff's wage offer keeps the Lorain County Deputy Sheriffs at the upper end of the comparable jurisdictions wage scale.

Suggested Language: Article 36: Wages

The wage scale in Article 36 of the parties' contract shall be increased by 2.3% in the first year of the agreement; increased by 1.7% in the second year of the proposed agreement; and, by 2.0% in the third year of the proposed agreement

Issue: Article 40 – Training Officer.

Union Position: The Union demand is for all Field Training Officers (FTOs) receive one and one-half hours of compensatory time for every eight (8) hours spent in training new deputies.

Employer Position: The Sheriff rejected the Union's demand and countered with current contract language.

Discussion: Note: This issue was discussed with wages. There is less difference in the parties' positions than it appears based on their stated positions. First, both agree that the \$1.00/hr. pay for each hour worked training a new officer is reasonable. The Union is demanding comp time in addition to extra pay. The Sheriff's representative stated that the Sheriff did not object to the concept of a training officer receiving some time off after he/she completed a training assignment, but there was a problem with earning comp time. The Sheriff believes that the use of comp time has any number of legal restrictions attached to it, and earning comp time would create problems with scheduling, etc. This

concern led to a discussion about the training officer earning a personal day at the end of the training period.

Finding of Fact: The Employer and the Union agree that the training officer would earn time off for completing a training assignment. In addition, the parties agreed to add Training Officer language to the contract.

Suggested Language: Section 36 (3)

Those officers selected to serve as Field Training Officers shall receive an additional one dollar (\$1.00) per hour for each hour they actually serve in the capacity of a Field Training Officer. In addition, at the end of the training assignment, the Field Training Officer shall receive a personal holiday. That day off must be scheduled according to the language of Article 29 (3) Personal Holidays.

Issue: Article 26 – Health Care Benefits

Employer Position: The Sheriff made two demands on this article. First, the Employer wants language inserted into the contract that recognizes that the Health Care Plan is provided by the County Commissioners, and that they have the right to change the plan. Second, the Employer is demanding that the deputies' cost for their insurance go from a 10.0% to a 12.0% premium share.

Union Position: The Union rejected the Employer's demands and proposed adding a stipulation to Section 23 (3) that would require the Employer prove that there was a fiscal reason for any changes made to the Health Insurance Plan.

Discussion: The background for this issue is discussed in the Introduction to this report. The Employer's first demand is for the addition of language that recognizes that the Sheriff 's Office employees' health insurance is provided under the Lorain County Health Plan offered by the County Commissioners. The reason for the demand is that the

Commissioners are planning (discussing) adding a spousal carve-out (surcharge) to the plan. The Employer recognizes that this will be a contentious issue and wants language in the contract that states that the Union recognizes that the Sheriff is not the provider of insurance and that the Commissioners are not a party to this agreement. The Employer believes that this language will forestall any grievances and/or arbitrations based on the fact that the health care plan was changed during the life of the current agreement.

The Union, in recognition of the Appellate Court rulings discussed in the Introduction, demanded that any spousal carve-out (surcharge) language would be added to the contract only if the Employer proved that there was a (fiscal) need for the language. This demand is based on the language of Article 26 (4) found in the current contract.

It is not clear that the Union's suggested language would survive a legal challenge. The proposed language is intended to tie the hands of the Commissioners with respect to adding a spousal carve-out (surcharge) to the contract. The language would mandate the Commissioners could not change the health insurance plan unless they met a requirement contained in the Sheriff's contract. Therefore, the Fact Finder does not believe that he has the authority to make a recommendation on the Union's demand given the current law regarding county provided health plans in the State of Ohio.³

Consequently, the Fact Finder is not recommending the Union's position on the spousal carve-out (surcharge) language.

³ It should be clear that the Fact Finder believes that ORC 4117 and most if not all existing laws covering collective bargaining mandate bargaining over health care. Medical insurance has always been covered by the phrase "wages, hours, terms and other conditions of employment." In effect, the current law in Ohio carves out an exception to the Union's ability to bargain over arguably the most important benefit in any contract.

The Employer also made a language demand on this issue. That language memorializes the fact that the Commissioners are not a party to the contract. The Fact Finder is not recommending the inclusion of the Employer's proposed language into the body of the contract either. The origin of both parties' demands is that an outside agency that is not a party to the contract (the County Commissioners) has a veto over negotiations with respect to health care. A contract is between an employer and his/her employees. The Fact Finder does not believe that a provision in an employment contract should reference such an outside agency. However, appending a Memorandum of Understanding (MOU) to the contract would serve to explicate the Commissioners' role in the health insurance plan. The Fact Finder is recommending that a MOU be inserted as an addendum to the contract on this issue.

Finally, the issue of the spousal carve-out (surcharge) as an issue to be bargained should be addressed. The evidence put into the record (SERB Data) by the parties shows that almost 50% of all labor contracts in the public sector have spousal carve-out provisions. These provisions will probably continue to be negotiated into contracts over the coming years. The reason is that Employers and their employees recognize that there must be some provisions in their contracts that help control spiraling medical costs. Mandating that a spouse who has employer provided health insurance enroll in their employer's plan is a relatively painless way to try to control medical insurance inflation. Clearly, there will be some financial impact on some families; but given the medical care cost inflation that exists in the United States and Ohio, some financial impact of any cost containment provision(s) is almost inevitable.

The second part of the Employer's proposal is the demand that the premium share of the deputies be increased from 10% to 12%. The Employer presented no evidence of the fiscal health of the insurance program, rather the Employer presented data showing that the average premium share of enrollees in county provided health plans was 12.6% for single coverage and 12.0% for a family plan (Employer Exhibit 7: based on SERB Data). That is, the Employer presented the issue as an equity problem. The Employer contends that the deputies have good health insurance and should make a reasonable contribution to offset the cost of their insurance.

The Employer also argued that the deputies will receive raises in excess of \$7,000.00 over the life of the new contract, and that the 2.0% increase in health premium cost share was an extremely small price to pay for an insurance plan than has as many benefits as the Lorain County plan.⁴

The Union argued that the County was in good financial condition and that there was no reason for the Employer's demand for an increase in the employee's premium share.

The Fact Finder has studied the information presented by the parties and notes that there is voluminous information provided on the cost of insurance throughout Ohio and Lorain County. The data presented by the parties does not match exactly, but the result is that both parties agree that the cost of full family plan is \$2,115.00/mo. Using that figure as a benchmark number, the current employee contribution is \$211.50/mo.

The Fact Finder has calculated that the 2.0% increase in the premium share comes to about \$40.00/mo. for a family plan. The corresponding figure is approximately

⁴ It must be noted that the Lorain County Plan has low co-pays and deductibles and offers all of the benefits required by the Affordable Care Act.

\$15.00/mo. for a single plan. The works out to be a yearly increase in the contribution of approximately \$480.00 for the family plan and \$180.00 for the single plan.

The argument that the Union made was that there was no need for the Employer to request a higher premium share. That contention is based on a maintained assumption that the Sheriff can afford to continue to maintain the status quo with respect to his budget.⁵ However, it must also be noted that the language of Article 26 (4) shows that the union membership had seen no increase in their premium payment for almost nine years

The Employer gave three justifications for its demand. First, the Employer never claimed that the County and/or the Employer could not afford to keep the premium share at 10.0%. Rather the Employer stated that the union membership should pay the average amount paid by other large county employees for their insurance. The contention is that the employees pay less for a better health plan than employees in other large counties throughout Ohio. This is borne out by the SERB data put into the record by both parties.

The Employer's position is a variant of the argument that unions often use to support their demand for a higher wage. The argument can be paraphrased as "our membership deserves to be paid at least as much as the average wage paid to other similarly situated employees based on comparables data."

Second, the Employer stated that the County plan was generous by any measure and that the cost of health care continues to rise. The Employer pointed out in its Pre-Hearing Statement that the union members had not seen an increase in their premium share for years and that some change was necessary in order to help defray the cost of

⁵ The Union stated that it received no information from the Sheriff for the need to increase the employees' premium share as is required by the language of the current contract.

ever rising insurance costs. As a result, the Employer believes that the 10% premium must be increased.

Third, the Employer’s representative also iterated the pattern bargaining argument with respect to this issue. All non-unionized county employees and all of the unionized employees who have settled their contracts have agree to the increased premium share. The Employer argues that a pattern settlement makes sense when the question is over the health plan. That is, all County employees are covered by the same health insurance plan, and all County employees should pay the same amount for coverage. In this context, that is a powerful argument.

The Fact Finder believes that uniformity in benefits and premium shares for a health insurance is standard within jurisdictions throughout Ohio and the nation. Therefore, based on all of the information in the record, the Fact Finder is recommending that the deputies’ premium share be increased to 12.0%.

Finding of Fact: The data in the record supports a finding that the Lorain County Deputy Sheriffs should pay a premium share of 12.0% for their health insurance.

Suggested Language: Article 26 – Health Care Benefits

Section 26(4): Excluding any costs which may be associated with non-mandatory individuals as provided for in Section 6 (i.e., those individuals for whom the County is not required to offer coverage) for those employees participating in the County provided insurance plan, effective January 1, 2018, the parties will contribute to the cost of the health care coverage as follows:

<u>Type of Coverage</u>	<u>Employer’s Monthly Contribution</u>	<u>Employee’s Monthly Contribution</u>
Family Plan	90%	10%
Single Plan	90%	10%

Effective January 1, 2019, the parties will contribute to the cost of the health care coverage as follows:

<u>Type of Coverage</u>	<u>Employer's Monthly Contribution</u>	<u>Employee's Monthly Contribution</u>
Family Plan	88%	12%
Single Plan	88%	12%

Note: Section 26 (4) of the current contract spells out the employee contribution to the health plan and the conditions under which that contribution could change. This language requires the Employer (Sheriff) to prove that a change in contribution amount is necessary by documenting the need, including any actuarial report(s) prepared for the Board of Commissioners. The Fact Finder believes that the reasons that the Employer gave for its demand meet the requirements of Section 26 (4). However, The Employer wishes to strike this entire paragraph from the contract.

The language in question has been part of the contract for at least two contract cycles. The Fact Finder does not believe that that language is usurped by the cases cited by the Employer's representative discussed in the Introduction to this report. The language in question binds the Employer (Sheriff) to prove that there is a need for a premium share increase. It does not bind the Commissioners to do anything except provide some information to the Sheriff. Even if that sentence is found to be null and void, the rest of the paragraph concerns an agreement between the Sheriff and his employees. Therefore, the Fact Finder is recommending that the paragraph remain in the contract as amended below.

Section 26 (4): Throughout the term of this agreement, the employee will be required to contribute, through payroll deduction, an amount not to exceed twelve percent (12.0%) of the premium cost per month for family or single coverage. In the case of a premium increase, the Employer shall provide the Union supporting documentation that an increase is necessary. If the Union disputes the premium increase, the Union may file a grievance directly as Step 3 of the grievance

procedure or avail itself of the dispute resolution procedures contained in ORC 4117.

Issue: Article 43 – Duration

Union Position: The Union demands that a contract year run from January 1st to December 31st.

Sheriff Position: The Sheriff agrees to the Union’s demand.

Discussion: The demand is based on the fact that the parties agreed sometime in the past to end the contract on October 31, 2016. This end date was inserted into the contract to give the parties time to negotiate their contract before the end of the calendar year. However, ending a contract on October 30th is unusual and the parties agreed to end the contract on December 31, 2019.

Finding of Fact: The parties agree that the contract year shall run from January 1, 2017 until December 31, 2019.

Suggested Language: Article 43

Section 4(1): This agreement covers the period of January 1, 2017, through December 31, 2019, and shall become effective as of the date of execution. It shall remain in full force and effect until December 31, 2019, unless terminated as provided herein.

Note: All other tentative agreements are included in this recommendation by reference.

Addendum

The Union appended a document titled *Lorain County Financial Analysis* as a Fact-Finding exhibit. The Employer objected to this exhibit on two grounds. First, there was no signature on the document, and the Employer stated that “anyone” could have written it. The second objection is that there was no opportunity for the Employer to cross exam the author.

The Union addressed the first issue with an email giving the Author’s name, etc. In response, the Employer restated its position that the document should not be allowed as a Fact-Finding Exhibit. The Fact Finder read the document and disagrees.

An examination of all of the data submitted by both parties shows that the Union’s exhibit contained exactly the same information that the Employer submitted in its exhibits. Therefore, the Fact Finder believes that it is not the document that the Employer objects to, but the conclusions that can be drawn from it.

The document in question simply lists information about accounting standards and shows, based on public records, that Lorain County is not in financial distress although it does have some financial concerns and is on the State Auditor’s list of possible problem counties. That is, the document in question states that the County is not in financial distress at this time. Actually, this is the same conclusion that an examination of the County’s exhibits leads to; and consequently, the Fact Finder believes that the document in question is unobjectionable.

Memorandum of Understanding

Spousal Coverage/Spousal Surcharge

In the event the Lorain County Board of Commissioners determines that a spousal carve-out/spousal surcharge is appropriate, such term/condition shall not be effective until on or after January 1, 2018. At the discretion of the Lorain County Board of Commissioners, spousal coverage may be made available only upon proof that the employee's spouse does not have other medical insurance coverage available to him/her through the spouse's employer. Additionally, in lieu of imposing a spousal carve-out, the Lorain County Board of Commissioners may establish a spousal surcharge rate (applied in addition to the base contribution share for family coverage) that would allow for a spouse who would otherwise be ineligible for coverage based on having access to insurance through the spouse's employer to remain on the County plan by paying the separate spousal surcharge in addition to the base contribution share. The spousal surcharge is not subject to the premium cost sharing provisions of Article 26 and is paid entirely by the participating employee.

Signed this 20th day of October 2017, at Munroe Falls, Ohio.

Dennis M. Byrne, Fact Finder