

STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

In The Matter of Fact Finding Between

Ohio Patrolmen's Benevolent Association	}	Case No.(s): 2016-MED-10-1135
Employee Organization	}	
AND	}	
Montgomery County Sheriff	}	Fact Finding Report Michael King, Fact Finder Date of Report: April 20, 2017
Ohio Public Employer	}	
	}	

This matter was heard on March 14, 2017, in the City of Dayton, Ohio.

APPEARANCES:

For The Union:

Joseph M. Hegedus, Attorney for the Union
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For The Employer:

Julie Droessler, Personnel Director
345 W. Second Street
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I. Introduction And Background

The undersigned, Michael King, was appointed Fact Finder by the State Employment Relations Board (SERB) on January 3, 2017. As Fact Finder the undersigned was tasked to conduct a hearing and issue a report with recommendations on each of the unresolved issues between the parties in their negotiations for a new Collective Bargaining Agreement (CBA).

This fact finding concerned unresolved contract issues for a single bargaining unit. That unit bargains on behalf of Sergeants and Lieutenants. As of the hearing date, there were approximately forty-three (43) Sergeants' positions in the bargaining unit, and no Lieutenants. There are twenty-four (24) Sergeants working in general law enforcement, and nineteen (19) in revenue-based positions. The revenue positions are associated with contract law enforcement services the Sheriff provides to local townships. One position is currently vacant.

The parties met and engaged in contract negotiations on November 9, 2016, November 30, 2016, December 14, 2016, and January 30, 2017. Through those negotiations the parties reached agreement on most issues.

A factfinding hearing was held on March 14, 2017, in Dayton, Ohio. The record was closed immediately following that hearing. Prior to that hearing the parties timely submitted pre-hearing statements pursuant to SERB Rules. Those statements were reviewed prior to the hearing, and discussed fully at the hearing. Each party was presented a full opportunity to present documents, exhibits and testimony as that party deemed appropriate.

The parties identified four issues that remained at impasse: 1] Wages, under contract Article 26; 2]Vacation under contract Article 29; 3]Insurance under contract Article 30; and 4]Alcohol and Drug Testing under contract Article 30.

II. Fact-Finder's Report

In reviewing the issues at impasse, and arriving at recommendations, I considered the parties written submissions and exhibits, oral presentations and testimony and the following factors as required by law:

- 1] Past collectively bargained 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 the public service or in private employment.

In preparing this report I have attempted to make recommendations that are reasonable based on the evidence presented, and that balance the legitimate economic interests of both parties.

III. Unresolved Issues

Issue #1 Article 26 Wage Rates and Longevity

Current Contract Language

Section 26.1 DIFFERENTIAL

- A. Employees of this bargaining unit will receive a rate of pay at least sixteen percent (16%) greater than the base rate of pay of the next lower classification/rank. The base rate of pay for Sergeants may not be less than sixteen percent (16%) higher than the top step of the Deputy Sheriff salary rate schedule. The base rate of pay for Lieutenants will be calculated on the base rate of pay of Sergeants.
- B. In addition to the sixteen percent (16%) differential between Sergeants and Lieutenants, employees in the classification/rank of Lieutenant will receive an additional one percent (1%). This is to compensate Lieutenants for the additional managerial and administrative responsibilities, fewer overtime opportunities, and to attract qualified candidates for promotion to the classification/rank of Lieutenant.
- C. During their probationary periods, employee in both the Sergeants' and Lieutenant's classification/rank will receive a rate of pay equal to ninety-five percent (95%) of the base rate of pay for their classification/rank. Upon completion of probation, all bargaining unit employees shall move to Step 2 of the wage scale.

D. In addition to any other increases set forth in this Article, all bargaining unit members will receive the following increases to their base rates:

Year one, January 1, 2014 – December 31, 2014: 2.5%

Year two, January 1, 2015 – December 31, 2015: 2.5%

Year three, January 1, 2016 – December 31, 2016: 2.5%

Employer Position:

Management proposes to maintain the sixteen percent (16%) classification differential, while reducing the annual wage increase to one and three-fourths percent (1.75%) per year. It argues that this level of wage restraint is appropriate because the Sheriff's Office is largely dependent on the county's General Fund. There are significant challenges to the General Fund, including uncertainty about how various federal determinations and state legislative actions will impact that fund. Amidst this uncertainty, the county is forming a committee to develop a new five-year (5) financial plan.

Montgomery County's non-bargaining unit employees received a 2017 wage increase of two and one-half (2.5%) percent. Management states that the County mathematically allotted a "similar" amount for wage increases to members of this bargaining unit. However, the Sheriff offers a one and three-fourths percent (1.75%) wage increase because of the way the county calculated additional salary funds for bargaining unit employees. The County allocates the stated two and one-half percent (2.5%) in a manner that makes it difficult for the Sheriff's employees to actually realize that amount. Specifically, the county takes the Sheriff's overall wage number, then increases it by two and one-half percent (2.5%). That increase is made without regard to staffing needs or to mandatory adjustments in individual pay calculations.

Assistant County Administrator Amy Wiedeman testified that wage settlements above the offered amount could adversely affect the overall budget. In response to a direct question, however, Administrator Wiedeman said she was not claiming an inability to pay members of this bargaining unit the same actual two and one-half (2.5%) percent annual increase given to non-bargaining unit employees.

Union Position:

First, the Union emphasizes that the county's non-bargaining-unit employees received an actual two and one-half percent (2.5%) wage increase. Next, the Union argues that county officials are providing misleading information with respect to potential factors likely to depress the general fund. It sees no support for the suggestion by the Employer of imminent collapse of sale tax revenues, casino receipts, or other revenue sources. According to the Union the County routinely touts its good management and robust finances during non-contract years, only to plead weak finances and inability to manage uncertainty when it comes time to bargain on new contracts.

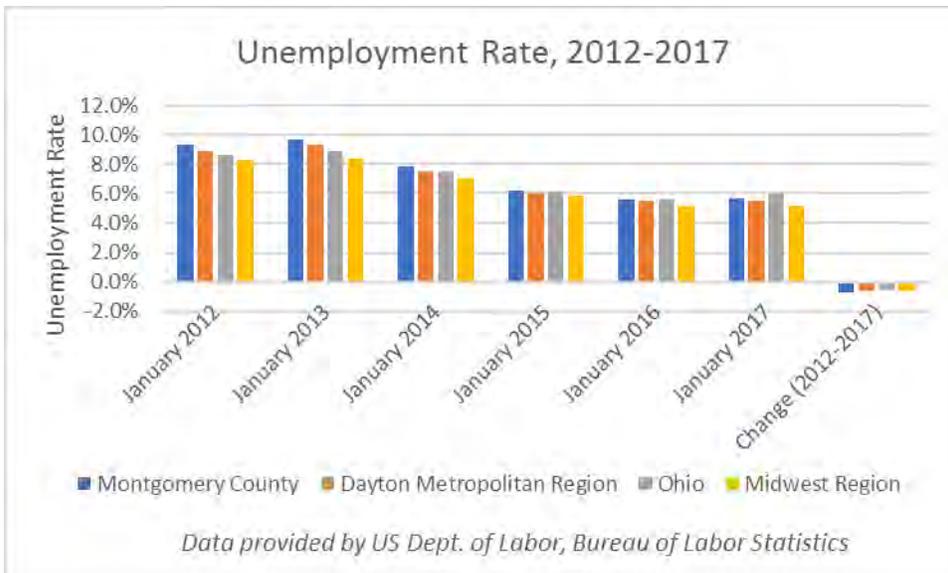
The Union seeks an actual general increase of three percent (3%) for each of the three years covered by the contract. It also seeks an increase in the rank differential to seventeen (17%) from sixteen percent (16%). Prior contracts recognized additional administrative responsibilities, and reduced overtime opportunities for Lieutenants. With Lieutenants eliminated, those additional responsibilities now fall to Sergeants. The Union believes that this additional compensation is therefore appropriate.

Finding And Recommendation

The Sheriff is funded primarily through the County’s General Fund, a fund controlled and administered by the County Commissioners. Nonetheless, both parties point to the General Fund in analyzing whether the desired wage and benefit changes should or should not be recommended.

As previously noted, the county’s representative raises several precautionary concerns about the future of the General Fund. Those concerns are well taken, but no argument is made of a total inability to pay wage or benefit increases.

Sargent & Associates accountants, offer guidance that the challenge to the Montgomery County economy and the General Fund is mild at worse. Their report notes positive indicators of the financial health of the county and the General Fund including a thriving job market and a strong economy in the Dayton region bolstered in part by the region’s manufacturing base. The following table present data against which the Sargent & Associates arguments can be tested.



The unemployment rate for Montgomery County is higher than the rate for the Dayton Metropolitan Region and the Midwest Region, but lower than the rate statewide. The rate of change from 2012 – 2017 shows that unemployment steadily decreased the last five (5) years at a rate of just under one (1%) percent each year. Unemployment changes often are predictors of economic activity.

The Employer offers four (4) Ohio counties as comparable, while the Union offers 14 potentially comparable counties. Only three (3) presumed comparable counties were offered by both parties: Butler County, Lucas County and Summit County. Table 1.1 compares population and population growth in the three (3) counties listed by both parties. These measures show relative similarity to Montgomery County.

TABLE 1.1: Population Growth by County

County	2010 Pop. Estimate*	2016 Pop. Estimate*	Growth %
Butler	368,135	377,537	2.60%
Lucas	441,815	432,488	-2.10%
Summit	541,782	540,300	-0.30%

Montgomery	535,136	531,239	-0.70%
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* 2010 and 2016 Population Estimates taken from US Census Data

Although Butler, Lucas and Summit counties all have certain similarities, the appropriateness of their use for comparative purposes, is suspect. That’s because some of the factors the Employer lists as risks to the General Fund may be regionally influenced. Those include loss of state revenue and future economic uncertainty. (Butler is close to Montgomery County, while Summit and Lucas counties are in other regions of the state.)

A geographically more proximate list of counties may be more revealing. The Union lists Butler, Clark, Clermont, Greene, Hamilton and Warren counties. Table 1.2 compares those counties.

TABLE 1.2: Population Growth by County

County	2010 Pop. Estimate*	2016 Pop. Estimate*	Growth %
Clark	138,333	134,786	-2.60%
Greene	161,577	164,765	2.00%
Clermont	197,363	203,022	2.90%
Warren	212,868	227,063	6.70%
Butler	368,135	377,537	2.60%
Hamilton	802,368	809,099	0.80%

Montgomery	535,136	531,239	-0.70%
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* 2010 and 2016 Population Estimates taken from US Census Data

Butler, Hamilton and Warren counties are closest in population size to Montgomery. However, population variances and differences in population growth or loss, make those counties less than ideal comparables.

Because comparisons of proximity, population and population growth didn't elicit a clear set of comparable counties, Table 2 examines a fourth factor for insight. Adding the comparison of personal income per capita gives a somewhat better grasp of which counties are most nearly comparable to Montgomery County.

TABLE 2: Per Capita Personal Income by County

County	2009 Personal Per Capita Income**	2014 Personal Per Capita Income**	% Change
Clark	\$ 31,582	\$ 36,580	15.8%
Stark	\$ 33,643	\$ 40,409	20.1%
Lucas	\$ 34,311	\$ 40,702	18.6%
Montgomery	\$ 35,504	\$ 40,851	15.1%
Butler	\$ 34,841	\$ 40,878	17.3%
Clermont	\$ 36,663	\$ 43,002	17.3%
Greene	\$ 37,540	\$ 43,817	16.7%
Summit	\$ 37,928	\$ 44,761	18.0%
Warren	\$ 41,603	\$ 49,584	19.2%
Hamilton	\$ 42,765	\$ 51,229	19.8%

**Per Capita Income taken from Ohio Development Services Agency

Examining Table 2, we see that Butler County remains the most nearly comparable county in proximity, population and per capita income. Warren and Hamilton counties are the least similar, and are therefore eliminated from the list. I find that Butler, Lucas and Clermont counties are appropriate comparables for purposes of determining appropriate wage adjustments.

Table 3 uses Butler, Lucas and Clermont counties to compare the top wages, rank differential and 2017 wage increases for Sergeants.

TABLE 3: Wage Comparison, By County

County	Top Wage	Rank Differential	2017 Wage Increase
Butler	\$ 39.38	25%	1.50%
Lucas	\$ 31.98	20%	3.00%
Clermont	\$ 38.45	16%	2.65%

AVERAGE	\$ 36.60	20%	2.38%
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Montgomery	\$ 36.93	16%	N/A
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The top rate for Sergeants in Montgomery County is \$36.93, on par with the average top wage for the comparable counties (\$36.60). However, the average rank differential for peer counties is 20%, compared to Montgomery County's sixteen (16%) percent. Additionally, the average 2017 wage increase for peer counties is 2.38%. Examining these factors, I find that a wage increase significantly above the offered 1.75% is necessary for this bargaining unit to remain on par with wages in peer organizations.

There is no dispute between the parties with respect to the base-level sixteen (16%) rank differential. Prior contracts recognized the desirability of an additional one (1) percentage point increase in rank differential for those persons who, because of their duties, performed additional administrative functions, and had reduced overtime opportunities. In prior contracts those persons held rank of Lieutenant. Lieutenants are now gone from this organization, at least temporarily. The Union argues that those administrative duties have now fallen to Sergeants.

I find that the Employer has not persuasively rebutted the argument that administrative chores previously done by Lieutenants are now done by Sergeants. I recommend that the new collective bargaining agreement provide a rank differential to Sergeants of sixteen (16%) percent, plus an additional one (1) percentage point to compensate Sergeants for additional administrative chores and reduced overtime opportunities. Further, I find that an annual wage adjustment of three (3) percent is appropriate, and I recommend it.

I propose the following contract language.

- A. At the time of this Agreement, there are no employees in the classification/rank of Lieutenant. Some administrative duties previously done by Lieutenants are now assumed by Sergeants. Employees of the rank of Sergeant in this bargaining unit will receive a rate of pay at least seventeen percent (17%) greater than the base rate of pay of the next lower classification/rank. This is to compensate Sergeants for the additional managerial and administrative responsibilities they now handle, as well as to compensate existing Sergeants for the reduced opportunities for promotion and to attract qualified candidates to the classification/rank of Sergeant. The base rate of pay for Sergeants may not be less than seventeen percent (17%) higher than the top step of the Deputy Sheriff salary rate schedule. The base rate of pay for Lieutenants will be calculated on the base rate of pay for Sergeants.
- B. In addition, there shall be a sixteen percent (16%) differential between Sergeants and Lieutenants.

- C. During their probationary periods, employees in both the Sergeants' and Lieutenants' classification/rank will receive a rate of pay equal to ninety-five percent (95%) of the base rate of pay for their classification/rank. Upon completion of probation, all bargaining unit employees shall move to Step 2 of the wage scale.
- D. In addition to any other increases set forth in this Article, all bargaining unit members will receive at least the following increases to their base rates:

Year one, January 1, 2017 – December 31, 2017	3%
Year two, January 1, 2018 – December 31, 2018	3%
Year three, January 1, 2019 – December 31, 2019	3%

Issue #2 Article 29 Vacation

Current Contract Language

- A. One (1) year of service will be computed on the basis of twenty-six (26) bi-weekly pay periods. All regular full-time employees will be granted the following vacation leave with full pay each year based upon their length of service with the Employer and other political sub-divisions of the state. After one (1) year of service, full-time employees are entitled to eighty (80) hours of vacation leave credit. Thereafter, vacation accrual is calculated bi-weekly based on the following:

Years of Service	Annual Accrual	Bi-Weekly Rates
1 year but less than 6 years	80 working hours	3.1
6 years but less than 12 years	120 working hours	4.6
12 years but less than 18 years	160 working hours	6.2
18 years or more	200 working hours	7.7

Union Position

The Union notes that its current vacation provision reaches the maximum benefit level at eighteen (18) years of service. However, changes in the retirement system and other economic realities are forcing employees to work longer, frequently causing some persons to stay on beyond twenty-four (24) years. This proposal recognizes changing societal circumstances, and permits employees to continue to earn benefits during an extended work-life.

Employer Position

For the Sheriff, additional vacation accrual for this bargaining unit is of absolutely no benefit. That additional week of vacation would come at a cost of one thousand four hundred seventy-seven dollars and twenty cents (\$1,477.20). In addition, the Sheriff is sometimes required to spend additional funds on overtime in order to maintain services when employees are out on vacation.

The Sheriff believes that additional vacation time is unwarranted, and financially burdensome to an already tight budget. The Sheriff maintains that current vacation levels plus the ability to accrue up to eight hundred (800) hours is “well above the satisfactory level.” The Employer recommends that this Article remain as it was in the prior contract, without any changes.

Finding and Recommendation

The Employer offers no evidence of a one-to-one relationship between employee vacations and overtime costs. Neither does the Employer offer evidence that any vacation-related overtime can’t be ameliorated by effective planning and scheduling. Even absent overtime, the Employer argues, that additional vacation benefit would add to the costs by \$1,447.20 per employee who achieved that benefit.

The Union argues that persons working long periods of time should be able to earn additional benefits in the twilight of their careers. The practice is common among other law enforcement organizations in Ohio. It offers these examples:

Butler County	20 years	5 Weeks Vacation
Clark County	20 – 24 years	5 Weeks Vacation
	25+ years	6 Weeks Vacation
Clermont County	25 years	6 Weeks Vacation
Cuyahoga County	21+ years	5 Weeks Vacation
Delaware County	20+ years	5 Weeks Vacation
Franklin County	20+ years	5 Weeks Vacation
Geauga County	20+years	6 Weeks Vacation
Greene County	25+ years	5 Weeks Vacation
Hamilton County	25+ years	6 Weeks Vacation
Lake County	25 years	6 Weeks Vacation
Lorain County	25+ years	5 Weeks Vacation
Lucas County	21 – 25 years	5 Weeks Vacation
	25+ years	6 Weeks Vacation
Summit County	15 – 19 years	5 Weeks Vacation
	20+ years	6 Weeks Vacation
Warren County	15 – 25 years	4 Weeks Vacation
	25+ years	5 Weeks Vacation

The Employer does not challenge either the accuracy of the offered comparison counties, or the appropriateness. I therefore accept the comparison here as accurate and appropriate.

The information on the counties listed above does indeed show a trend toward late career benefit enhancement, particularly in instances where employees are working past twenty (20) to twenty-five (25) years. However, it appears that members of this bargaining unit already enjoy vacation benefits superior to those counties offered for comparative purposes. The exception is Summit County, where employees can earn five (5) weeks vacation after only fifteen (15) years.

Members of this bargaining unit earn five (5) weeks of vacation after eighteen (18) years of service, substantially sooner than most of the other departments offered for comparative purposes.

The party seeking to modify a collective bargaining agreement bears the burden of persuasion that the proposed changes are desirable, appropriate and compelling under the circumstances. In the area of vacation accrual, this bargaining unit is already ahead of its peer group, and no compelling reason is provided to make the changes sought by the Union.

I recommend no changes to this contract section. Current language should continue in the new collective bargaining agreement.

Issue #3 Article 30 Insurance

Current Contract Language

Section 30.2 Premiums

- A. Current employee contributions for health coverage will continue through December 31, 2016.
- B. Effective January 1, 2017, the employee will contribute to the plans as follows:

Coverage Level	Monthly Payroll Deduction		
	Buy-Up Plan	County	Advantage Plan
Employee Only	\$195	\$40	\$25
Employee + child(ren)	\$255	\$45	\$30
Employee+ Spouse	\$270	\$55	\$35
Family	\$330	\$65	\$45

These insurance premiums shall be effective through June 30, 2018. Every year thereafter, the negotiated premium rates shall take effect upon commencement of the County Insurance plan year as established by the County.

- C. Employees may participate in the Count's wellness Incentive program, if offered, to reduce monthly contributions in the Buy-up Plan or to Increase contributions to the Health Saving Account for participants in the County Plan.

- D. In no event will bargaining unit employees contribute more towards their benefits than any other county employee during the 2016-2018 benefit plan years. Likewise, should the County offer a waiver of contributions during the plain year, the benefit will be offered to employees covered by this agreement.

Union Position

The Union wishes to amend Section 30.2, to provide that employee contribution rates in effect January 1, 2017, will continue unchanged through December 31, 2019. They also would amend current language to provide that bargaining unit members will not contribute more towards their benefits than other county employees during the 2016 – 2019 benefit plan years. In the alternative the Union asks for consideration of a higher wage increase based on the increased costs employees are asked to shoulder for health insurance.

Employer Position

The Employer notes that the Sheriff lacks authority to contract for insurance plan design and employee contribution rates. It proposes a contract reopener in 2018 to address potential health insurance plan and cost changes.

Finding and Recommendation

Premiums for insurance options offered to this bargaining unit have risen consistently. Both parties anticipate premium increases and cost shifting during the current contract cycle. These premium increases and cost shifts constitute a genuine erosion of employee's standard of living and buying power.

Montgomery County is self-insured. It contracts with an insurance company to administer the healthcare plan. There is no evidence regarding the frequency with which the county reexamines the cost effectiveness of self-insurance.

The uncertainty regarding this issue creates a conundrum for both sides. The Sheriff lacks authority to negotiate cost or design of insurance, and appears to have little if any forewarning of what his employees' costs will be in 2018 and beyond. Bargaining unit members should be made whole in some way for the earning power erosion that will occur as premiums and other insurance cost rise.

At this time, however, neither side offers a reliable estimate of the amount by which premiums are likely to rise during this contract cycle. There is nothing in the record that would allow me to determine an appropriate wage adjustment to compensate employees for a cost increase of undetermined size. Likewise, I find no evidence that would give me a rational basis to recommend that the Sheriff be locked in to absorbing the full measure of an undetermined increase in employee health insurance costs.

For the reasons stated above, I recommend that the parties agree to a reopener in 2018, to make appropriate wage adjustments for increases in the costs of employee health insurance.

I propose the following contract language:

Within thirty (30) days of the time the Employer becomes aware of any proposed changes in health insurance costs for members of this bargaining unit, the parties shall meet and negotiate on this issue. One goal of said negotiations shall be to examine and agree upon ways to lessen the impact of said higher insurance costs on employees.

Issue # 4 Drug and Alcohol Testing

Employer's Position

The Employer offers Article 32, as a new contract provision, and proposes the following language:

- A. The parties agree that bargaining unit members will be subject to drug and alcohol testing as outlined in the Sheriff's Office Policy GOM 3.5.1, Drug-Free and Alcohol-Free Workplace Policy.
- B. The parties agree that an arbitrator hearing a case involving drug testing will have no authority to change and/or modify the Sheriff's policy.

The newly proposed Article 32, references the Montgomery County Sheriff's General Orders Manual (GOM). In pertinent part the Manual provides that in order to eliminate drug abuse, the Sheriff has implemented a program of random drug testing "where collective bargaining agreements allow." The random drug testing program tests for marijuana, cocaine, opiates, Phencyclidine (PCP) and amphetamines.

The Employer argues that society has changed and now reflects widespread drug experimentation. The result is that almost every new hire has experimented with drugs, whether marijuana, prescription drugs, or some other substances. For that reason, the Sheriff says it is imperative that he is can tell the community that a random testing policy assures that current employees are not abusing legal drugs, or using illegal drugs. Employees not covered by a collective bargaining agreement already are subject to

random testing, and the Union covering deputies recently agreed to a drug testing policy, according to the Employer.

Union Position

The Union states that the burden rests on the Employer to establish the need for the proposed new contract provision. There isn't any allegation or evidence that drug use or abuse is a problem with any member of this bargaining unit. The Union also states that it is deceptive to suggest that all other employees are subject to random drug testing. In fact, no one has ever been tested under the drug policy proposed. (There were some tests under a previous policy.)

However, the Union stresses that it isn't opposed to a drug-free workplace. The newly proposed contract language was presented in a take-it-or-leave-it fashion, and not as part of a legitimate bargaining exchange. In a bargaining exchange it probably would accept some kind of drug testing provision, Union officials said.

Finding and Recommendation

I find no evidence of drug use and abuse that implicates members of this bargaining unit. There is a suggestion that one (former) officer was possibly implicated in something inappropriate more than two (2) contract cycles ago. However, that was presented as vague remembrance, and not as timely and compelling evidence. Even the reference to prior drug experimentation by new hires isn't directly tied to members of this bargaining unit.

As previously stated, the party seeking to modify a collective bargaining agreement bears the burden of persuasion that the proposed changes are appropriate and necessary. I find that that the evidence presented at hearing was inadequate to establish a need for this proposed Article. The stated purpose of the proposed new contract term is to eliminate drug abuse. However, there is no evidence of drug abuse among members of this bargaining unit. Finally, I note that the Sheriff already has the power to impose appropriate discipline, and to punish actual wrongful behavior.

I recommend that the proposed new article on Drug and Alcohol Testing not be added to the collective bargaining agreement.

Summary of Report

1. I recommend increasing rank differential to 17%, and annual wage increases of 3% in each year of the contract.
2. I recommend no changes to the vacation accrual rates.
3. I recommend a reopener to deal with potential changes in insurance costs.
4. I recommend against adding the proposed random drug testing article to the contract.

s/

Michael King
Appointed Fact Finder

Date: April 20, 2017
Beachwood, Ohio