

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
BEFORE GREGORY J. LAVELLE, ESQ., FACT-FINDER

IN THE MATTER OF FACT-FINDING BETWEEN:

FRATERNAL ORDER OF POLICE, OHIO LABOR)	CASE NO. 2017-MED-05-0717
COUNCIL, INC.)	2017-MED-05-0718
)	
Employee Organization)	
)	
and)	REPORT AND RECOMMENDATION
)	OF THE FACT-FINDER
MARION COUNTY SHERIFF)	
)	
Employer)	

APPEARANCES:

EMPLOYEE ORGANIZATION:

Chuck Choate	Staff Representative
Christy Utley	Associate
Kevin Davidson	Associate
Mike Wheeler	Associate
Jill Butera	Paralegal

EMPLOYER:

Jonathan Downes, Esq.	Labor Counsel
Scott DeHart	Labor Counsel
Tim Bailey	Sheriff
Sarah Green	Budget Director
Aaron Corwin	Chief Deputy
Darrin Tolle	Lieutenant
Kelly Bates	Administrative Assistant

May 18, 2018

BARGAINING HISTORY

Fraternal Order of Police, Ohio Labor Council, Inc. (hereinafter, the F.O.P.) is a party to three (3) collective bargaining agreements with the Marion County Sheriff (hereinafter, the Sheriff), the Lieutenant Agreement and the Deputies Agreement, which are effective from their dates of execution through September 30, 2017 and the Dispatchers Agreement, which is effective November 17, 2017 through September 30, 2020.

The history with respect to the Dispatcher classification is rather convoluted. In 2011, the Dispatchers employed by the Sheriff had a top rate (exclusive of longevity) of \$ 22.74 per hour compared to the top rate of Deputies (exclusive of longevity) of \$ 25.12 per hour, a \$ 2.38 difference. Dispatchers were then laid off and after the recall period elapsed, new dispatchers were hired by the Sheriff at a considerably lower rate. Later, a unit of Dispatchers working for the City of Marion under a different collective bargaining agreement with the F.O.P. were combined with the Dispatchers of the Sheriff under a new collective bargaining agreement with the F.O.P. With the combination of the units, Dispatchers previously working under the collective bargaining agreement with the Sheriff received raises of eight dollars (\$ 8.00) per hour. The net result, compared to the pre-layoff rates, however, was to increase the differential between the highest paid Dispatcher and the highest paid Deputy to \$ 2.52 per hour. (\$ 27.18 for Deputies compared to \$ 24.66 for Dispatchers as of May 1, 2018)

During the collective bargaining agreements, several alternative shift arrangements were put into effect, providing for ten (10) hour and twelve (12) hour shifts. The Sheriff also, during the collective bargaining agreements, permitted employees to flex their shifts and switch schedules with prior approval and also flexed employees off where they had worked overtime. The involuntary flexing of work schedules was discussed by the F.O.P. with the Sheriff twice but was neither resolved formally nor processed to arbitration.

The parties entered into negotiation for successor collective bargaining agreements. Tentative Agreements were reached with respect to the following provisions:

- Article 1 - unchanged
- Article 2 - unchanged
- Article 3 (Deputies) - eliminated reference to Dispatchers
- Article 4 - unchanged
- Article 6 - unchanged
- Article 7 - unchanged
- Article 10 - unchanged
- Article 11 - changed manner of posting work rules
- Article 12 - deleted
- Article 13 - unchanged
- Article 14 - unchanged
- Article 15 - unchanged
- Article 16 - unchanged
- Article 18 - unchanged
- Article 20 - unchanged
- Article 24 - changed qualifying period for health insurance
- Article 25 (Deputies) - removed reference to Dispatchers
- Article 31 - unchanged
- Article 32 - revised to refer to State and Federal mandates for military leave
- Article 33 - unchanged
- Article 34 - unchanged
- Article 35 - unchanged
- Article 36 - unchanged

The Fact-Finder was appointed on March 22, 2018. The parties requested that mediation be attempted. A mediation session was scheduled for May 2, 2018 with an additional date of May 9, 2018 being agreed for Fact-Finding. Mediation was conducted on May 2, 2018. Tentative agreements were reached on the following provisions:

- Article 5 - amended release time language
- Article 9 - changed 9.3 to limit bulletin board materials
- Article 17 - unchanged
- Article 29 - various changes

Complete agreement on all issues was not reached and the parties proceeded to Fact-Finding on the following issues:

Article 8	- Maintenance of Standards
Article 19	- Grievance and Arbitration
Article 21	- Hours of Work and Overtime
Article 22	- Shift Schedules
Article 23	- Wages and Other Compensation
Article 26	- Vacation
Article 27	- Holidays
Article 28	- Sick Leave
Article 30	- Funeral Leave
Article 37	- Duration
Article 38	- Mid-Term Bargaining

Further mediation was conducted on May 9, 2018. Tentative agreements were reached with respect to the following provisions:

Article 27	- Holidays
Article 28	- Sick and Injury Leave

Complete agreement was not reached with respect to all items. Since all issues had been fully discussed during mediation, the parties stipulated that the remaining issues be determined by the Fact-Finder based on the discussions and materials provided during the mediation sessions, the submission of formal position statements being waived. It was agreed by the parties at the close of the Fact-Finding Hearing that the Recommendation of the Fact-Finder be delivered electronically to the parties on May 18, 2018.

RECOMMENDATION

INTRODUCTION - NATURE OF THE DETERMINATIONS

The issues presented herein were reviewed in accordance with the provisions of Ohio Administrative Code 4117-9-05(k), the Fact-Finder considering:

- (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.

DISCUSSION OF THE ISSUES

INTRODUCTION

The non-economic proposals of the parties will first be discussed individually. The economic items will then be discussed.

DISCUSSION OF NON-ECONOMIC ITEMS

DISCUSSION OF MAINTENANCE OF STANDARDS, ARTICLE 8 AND MID-TERM BARGAINING, ARTICLE 38.

The Sheriff proposes to delete all of Article 8 and Article 38. Article 8, Section 8.1 states that the Sheriff shall not change any term or condition of employment not specifically established by the collective bargaining agreement. This provision appears to be intended to work in conjunction with Article 38 which provides for mid-term Bargaining with respect to wages, hours and working conditions which would be mandatory subjects of collective bargaining.

Article 8 and Article 38 seem intended to state the requirements for bargaining under Chapter 4117 of the Ohio Revised Code. These provisions would seem to be redundant at this time. The problem is that the legislative climate is volatile with respect to labor and thus, it can not be predicted that what is mere redundancy now may not be redundant in the future. The Sheriff has not maintained, much less,

established that Article 8, Section 8.1 and Article 38 present a problem at this time. The collective bargaining agreement should establish the rights and responsibilities of the parties during its term. For this reason, the proposal of the Sheriff to delete Article 8, Section 8.1 and Article 38 is rejected.

The F.O.P., with respect to Article 8, Section 8.2, proposes to require minimum staffing of bargaining unit members for road patrol. The Deputies Agreement requires the Sheriff, to the extent practical, to schedule two "people" for road patrol at all times. The Sheriff proposes to delete this section while the F.O.P. proposes language to require no less than two bargaining unit members be on duty for road patrol.

The present language provides little protection to the bargaining unit, requiring only "scheduling" of "people" rather than "staffing" of bargaining unit members. Thus, if the Sheriff were to schedule a bargaining unit employee and a non-bargaining unit supervisor for road duty, the Sheriff would not be in violation of the existing provision, regardless of whether the bargaining unit employee actually appeared for work. In addition, if it were not practical to schedule two people for road duty at a given hour of the day, the Sheriff, under the existing language would not even be required to schedule two "people". The language proposed by the F.O.P. is a minimum manning clause. There is a vast difference between "scheduling" "people" for road duty where practical and having two (2) bargaining unit employees actually on road duty at all times, regardless of the circumstances.

It is obviously in the best interest of the Sheriff to provide the best coverage to protect the public which is affordable under the circumstances. That duty, however, should be left to its discretion. It is therefore recommended that the proposal of the F.O.P. to modify Section 8.2 be rejected and that the proposal of the Sheriff to delete the existing Section 8. 2 be recommended.

The F.O.P. has also proposed that an Officer-in-Charge be on duty at all times a Lieutenant is not working. There is no reference to an Officer-in-Charge in either the Deputies or Lieutenants contracts and no request for premium pay in the F.O.P. proposal. The F.O.P. proposal can not be recommended.

DISCUSSION OF SHARE OF ARTICLE 19, GRIEVANCE PROCEDURE AND ARBITRATION.

The F.O.P. has proposed three (3) changes to Article 19, proposing to eliminate the right of the Sheriff to invoke arbitration, proposing to lengthen the time from fourteen (14) days to thirty (30) days for the F.O.P. to invoke arbitration and proposing to change the language regarding the fees and expenses of arbitration from a loser-pays provision to a split fee provision.

There was no rationale offered by the F.O.P. for its proposal to eliminate the right of the Sheriff to invoke arbitration. Since arbitration has been considered the lynchpin of labor management relations, this proposal must be rejected.

The F.O.P. has proposed to lengthen the time period to invoke arbitration from fourteen (14) to thirty (30) days. A thirty (30) day time period is fairly common. The time period for invoking arbitration under the Dispatcher Agreement, however, is twenty-one (21) days and neither party proposed to change that time limit in the last fact-finding. It makes no sense to have different time limits in contracts between the same union and employer. Therefore, a twenty-one (21) day limit is recommended.

The F.O.P. has proposed to change the language regarding the fees and expenses of arbitration from a loser-pays provision to a split fee provision. The Deputy and Lieutenant collective bargaining agreements provide that the loser in arbitration is to pay the costs and fees of the Arbitrator and rent, if any, for the hearing room. The Dispatcher contract contains the identical provision.

There was little argument presented by the parties relative to their positions. The F.O.P. contended that a split of fees and expenses provision was the most usual arrangement.

Consistency among bargaining units has been the theme of both parties (when to their advantage) and would seem to mitigate toward a decision to leave the language unchanged. Consistency, however, should not be the sole consideration.

The usual argument in favor of a “loser pays” provision is the theory that such provisions prevent cases from going to arbitration where the position of a given party is frivolous. There is no allegation in this case that either party has taken frivolous positions in arbitration. In the experience of this former advocate and current arbitrator, moreover, the fact that a particular collective bargaining agreement has a loser pays provision has had no effect on the decision as to whether a grievance should proceed to arbitration. This Fact-Finder served for fifteen (15) years as head of the Arbitration Review Committee for various locals of several international unions involving collective bargaining agreements having both split fee and loser pays clauses and never had the issue raised or discussed by committee members in any case. One might even consider the argument that “loser pays” provisions might lead to more arbitrations. The vast majority of arbitrations result from the parties “seeing what they want to see” from the facts or the contract language and proceeding to arbitration with the full expectation of winning. The fact that the award would be expected to come without cost might be an additional incentive to proceed to arbitration.

A problem with “loser pays” provisions, moreover, is that in a significant number of cases there is no clear winner or loser. There may be decision awarding reinstatement without back pay, or a reduced suspension. There could be a finding of improper allocation of overtime with a replacement of overtime remedy instead of payment as requested in the grievance and any number of other “no clear winner” cases. Many “loser pays” collective bargaining agreements have explicit language allowing the arbitrator to equitably adjust the allocation of fees and expenses in such cases. There is no such language in the current collective bargaining agreements or in the proposal of the Sheriff. It is clear under arbitral standards that an arbitrator would have the authority to make a determination of the proper allocation of fees and expenses in a “no-clear-winner” case. What is even more clear, however, is that the arbitrator

is going to **charge the parties** for writing on the subject. Thus, if, over the course of time, the parties “win” an equal number of cases, they will end up splitting the costs and fees of more expensive arbitrations.

For the above reasons, split-fee language is recommended. The problem with the F.O.P. proposal, however, is that it only states that the costs and expenses be “split” between the parties. Such language invites the question “Split how?” The language should state that the such costs and expenses be split **equally**. Therefore, the recommended language for the first sentence of Section 19.8 read as follows:

Section 19.8 Cost of Arbitration The cost of the services of the Arbitrator, the cost of any proof produced at the direction of the Arbitrator, the fee of the Arbitrator and rent, if any, for the hearing room, shall be split equally between the parties.

DISCUSSION OF ARTICLE 21, HOURS OF WORK AND OVERTIME

The F.O.P. has made a number of proposals with respect to Article 21, Hours of Work and Overtime. Those proposals will be discussed individually below.

DISCUSSION OF THE F.O.P. PROPOSAL TO GUARANTEE TWO (2) CONSECUTIVE DAYS OFF

The F.O.P. has proposed that the word “consecutive” be added in the third sentence of Section 21.2 so that the sentence would read:

Employees in the bargaining unit shall normally be scheduled for a shift each day for five (5) consecutive days followed by the next following two (2) **consecutive** days off.

The requested addition of the word “consecutive” would seem to be meaningless, the word “consecutive” adding nothing to the meaning of the sentence. The language before the addition of the word “consecutive” would be read to already mean that consecutive days off are to be granted. This proposal of the F.O.P. is rejected.

DISCUSSION OF THE F.O.P. PROPOSAL TO PROVIDE FOR A MEET AND DISCUSS PROVISION TO CREATE SHIFTS OF LENGTHS OTHER THAN EIGHT (8) HOURS.

This proposal is redundant. The parties always have the right to meet and agree to any provision, not just provisions relative to the length of shifts. In addition, the Sheriff already has in place shifts of other than eight (8) hours. This proposal must be rejected. The fact that the Sheriff has in place shifts of other than eight (8) hours creates some issues. For example, there is no language relative to the lunch breaks of those working other than eight (8) hour shifts. Neither party has made a proposal with respect to that issue. It is a "suggestion", rather than a formal recommendation, that the parties discuss and formalize their understanding through the Labor Management Meetings under Article 10.

DISCUSSION OF F.O.P. PROPOSAL ON DEFINITION OF OVERTIME

The F.O.P. has proposed to delete Section 21.3 and redefine overtime as time worked in excess of forty (40) hours in a week or in excess of eight (8) hours in a day. The F.O.P. would also delete language forbidding the pyramiding or duplicating of overtime hours. In light of the fact that the Sheriff has many regular shifts of over eight (8) hours and many regular workweeks of over forty (40) hours, this proposal would have a gigantic economic impact. This proposal must be rejected.

DISCUSSION OF F.O.P. PROPOSAL REGARDING DEFINING OF THE WORKWEEK AND RESCHEDULING EMPLOYEES TO AVOID OVERTIME.

The F.O.P. has proposed language to define the workweek and to forbid the re-scheduling of employees to avoid overtime:

The workweek shall be computed between 12:01 A.M. on Sunday of each calendar week and 12 o'clock midnight the following Saturday. Employees may not be rescheduled after the start of the workweek for the purposes of avoiding overtime.

This proposal is made to attempt to alter the practice of flexing the schedule of employees during a pay period in order to avoid overtime. This subject had been raised twice during the term of the expired collective bargaining agreements. It was determined that allowing the flexing of employees proved to be a benefit which allowed the Sheriff to grant the request of employees to flex their schedules. Since it is unclear whether the Sheriff under current contract language can flex the schedules of employees to avoid overtime, it is recommended that the language proposed by the F.O.P. be rejected and that the practice, as described by the parties be incorporated in the collective bargaining agreement as follows:

The employer may flex time of an employee within a pay period where the employee has worked overtime. The employer will consider the request of the employee as to the time to be flexed. An employee may otherwise request to flex his schedule or to switch shifts with another employee. Said request may be granted or denied within the discretion of the Employer. If time can not be flexed within the pay period, the employee may choose to receive either payment at time and one half or comp time.

The Sheriff also made a proposal with respect to defining the Work Period. Under the proposal of the Sheriff, the work period was to be defined as fourteen (14) consecutive calendar days from the start date, to be determined by the Sheriff. This proposal appears to describe the current practice and is recommended.

DISCUSSION OF F.O.P. CALL-IN-PAY PROPOSAL, SECTION 21.4

The F.O.P. has proposed to replace the current section 21.4 with a new provision which makes several changes. Deleted from the language of the current section is reference to a request by a "superior officer" which would imply that if a request to return to work is made by a "superior officer", but not a "supervisor", the section would not apply. That could be intended to mean that either that

a member of the bargaining unit would not have to return to work if requested by a “superior officer” or that the member would have to return to work, but the compensation provisions of the section would not apply. Neither of those potential meanings would support recommending that change in language.

The F.O.P. has also deleted reference to the reasons for the call; unscheduled, unseen or emergency work. It would seem that all call back work would, by definition, be “unscheduled”, therefore the language sought to be deleted would be redundant. Absent a clear explanation of the reasons for this proposed change, however, this change must be rejected. Just as in assembling a bicycle, if when completed with the task, you find what seems to be an extra piece that does not seem to have a purpose, do not throw it away, since it probably does have a purpose and It will be too late to re-install the “unnecessary piece” after the wheels have come off.

The F.O.P. has also proposed several changes which would affect the manner in which call-back pay would be calculated. The F.O.P. proposes to change the minimum call back from three (3) hours to four (4) hours and would have call-back apply to situations where the call-back time abuts a regular shift. These proposed changes would have some economic impact and would add complication in administration. These changes must also be rejected.

DISCUSSION OF ARTICLE 21, SECTION 21.6 – COMPENSATORY TIME

The F.O.P. has proposed to eliminate reference to the FLSA with respect to the time limit to utilize compensatory time; to increase maximum accumulation to one hundred twenty (120) hours and to eliminate the requirement to utilize compensatory time in no less than one (1) hour increments. The F.O.P. also proposed a system for the payment of compensatory time of a deceased employee.

There is no cited reason for the elimination of the reference to the FLSA. That proposed change must be rejected.

The F.O.P. proposes that the maximum amount for accumulation of compensatory time be increased from eight (80) to one hundred twenty (120) hours. The F.O.P. points out that the maximum accumulation under the Dispatchers Contract is one hundred twenty (120) hours. The maximum

accumulation under that contract, however, was drastically reduced and there is only one bargaining unit member under the Deputies and Dispatchers Contracts who has any significant accumulation of compensatory time. The F.O.P. proposal with respect to the maximum accumulation of compensatory time is rejected.

The F.O.P. has proposed a system for the payout of compensatory time upon the death of an employee, eliminating, by implication, the payout on separation. There is a statutory scheme for the payout of accumulated compensatory time. The present language should remain unchanged to preserve the right to a payout on separation. While this Fact-Finder has suggested that there be a single contract provision for the payout of all accrued time upon the death of an employee which is designed to eliminate confusion, attorney and court cost and exposure of the Sheriff to multiple claimants, such a provision is for the parties to consider and negotiate outside of Fact-Finding. The provision regarding payout of compensatory time upon separation or death of an employee should remain unchanged.

The F.O.P. has proposed to eliminate the requirement that compensatory time be taken in no less than one (1) hour increments. This is a reasonable requirement. No change is recommended to this language.

DISCUSSION OF ARTICLE 22, SHIFT SCHEDULES.

The F.O.P. has proposed new language for the Deputies Contract to allow employees to request flex hours and shift trades. The F.O.P. proposal, however, does not outline the standards for approval of the requested flex time or shift change. Employees may **always** request flex hours and shift trades. The subject of flex time requests has already been discussed earlier in this report. The proposal of the F.O.P. must be rejected.

The F.O.P. has also proposed that there be no flex-time under the Lieutenant Contract. This proposal would prohibit all flex-time, including flex time at the request and for the benefit of the employee. For that reason and for the reasons above, the proposal of the F.O.P. must be rejected.

The F.O.P. has also proposed under the Lieutenant Contract that all hours worked outside of a regular assigned schedule shall be paid at the appropriate overtime rate. There is no way to tell the economic impact of this provision. In light of this factor and the other economic improvements recommended below, this proposal must be rejected.

The F.O.P., in connection with the provisions relative to flex-time, proposed language exempting days worked under certain circumstances from being treated as being entitled to premium rates:

Time worked on the first or second consecutive regular days off to work schedules being changed at the request of the member or trading days off by mutual consent of members, or time worked as a result of changing shifts where there is a continuous twenty-four (24) hours per day operation and/or a continuous seven (7) day per week operation, is not subject to premium rates.

This provision is a bit confusing, especially in light of the newly created work schedules. It is not recommended.

DISCUSSION OF ARTICLE 37 – DURATION OF AGREEMENT, SECTION 37.2

The parties are in agreement to delete the requirement of delivery of certified mail notice of Intent to modify, amend or terminate the agreement. The F.O.P. seeks to add a paragraph to Section 37.2 which would grant a conciliator the option to afford retroactivity to September 30, 2020 with his award for successor collective bargaining agreements. The Sheriff has opposed the inclusion of that proposed language. The Fact-Finder finds no precedent for such a provision. Given the fact that the conciliator must accept the proposal of one party or the other on an issue by issue basis, it is highly unlikely that giving the “option” to the conciliator to grant retroactivity will result in the conciliator actually choosing that option over a proposal of the Sheriff not to grant retroactivity. If the “issue” is determined to be “wages”, inclusive of retroactivity, the proposal of the F.O.P. to afford retroactivity might be

considered to be a "poison pill" which would lead to an award in favor of the Sheriff on the "wage issue".

The proposal of the F.O.P. must be rejected, Section 37.2 being recommended to read as follows:

Section 37.2 Notice To Negotiate Subsequent Agreement If either party desires to modify, amend or terminate this Agreement, it shall give written notice of such intent no earlier than one hundred fifty (150) calendar days prior to the expiration date, nor later than ninety (90) calendar days prior to the expiration date of this Agreement. The parties shall commence negotiations within ten (10) calendar days upon receiving notice of intent unless extended by mutual agreement.

DISCUSSION OF ECONOMIC ISSUES

The primary economic issue in this case is wages. The factors going into the determination of wages are common with all issues having an economic impact. Therefore, the issue of wages will be discussed first.

DISCUSSION OF WAGES

Marion County Deputies, at the top of the wage scale, are currently compensated at a rate nearly eleven percent (11%) above the median rate for Deputies in the surrounding counties. (Sheriff Fact-Finding Exhibits, Tab 6, Wage Comparison) The general wage increases under the Dispatcher Contract were 2%, 2% and 2%. (Conciliation Report at Page 10) This matches the anticipated inflation rate over the course of the collective bargaining agreement. www.thebalance.com/u-s-inflation-rate-history-by-year-and-forecast-3306093. Employees at the top of the scale, therefore, would be expected to be in the same position economically in terms of purchasing power at the end of the collective bargaining agreement as they were at the start due to the effects of inflation and those at the lower steps of the wage scale would advance economically having received additional increases due to length of service.

The F.O.P. proposes general wage increases for the Deputies contract of two percent (2%), two percent (2%) and two percent (2%) after applying an adjustment of one dollar and seventy-five cents

(\$ 1.75) per hour. The justification advanced for the adjustment was the desire of the F.O.P. to re-establish the spread between the top rate of Dispatcher and the top rate of Deputy measured at the time before the merger of the Dispatcher Units. The F.O.P. pointed out that Dispatchers who were employees of the Sheriff at the time of the merger between the Dispatch Departments of the City of Marion and the Sheriff received wage increases of eight dollars (\$ 8.00) per hour.

The Sheriff has offered wage increases for Deputies of two percent (2%), effective with pay period fourteen (14) in 2018, two percent (2%) effective the first pay period commencing on or after January 1, 2019 and two percent (2%), effective the first pay period commencing on or after January 1, 2020. The Sheriff has also offered a five hundred dollar (\$ 500.00) lump payment to approximate retroactivity and an additional five hundred dollar (\$ 500.00) lump payment to address the decrease in the gap between the top rate for Dispatchers and Deputies.

A two percent (2%) increase per contract year is recommended. A two percent (2%) increase is somewhat consistent with the wage increase afforded to the Dispatch Unit and consistent with the projected rate of inflation. The Deputies are already compensated at a rate over ten percent (10%) higher than the median rate for deputies in surrounding counties. The projected revenues and expenditures of the County (Sheriff Fact-Finding Exhibits, Tab 17), further, do not support a greater increase.

The fact that a two percent (2%) increase is recommended does not mean that the Sheriff proposal must be recommended as written. The proposal of the Sheriff of two percent, (2%), two percent (2%), two percent (2%) is not the same as the two percent, (2%), two percent (2%), two percent (2%) proposal made to the Dispatch Unit. The second and third year increases under the Dispatch Contact come early, being effective in May, rather than in October, while the second and third year increases under the Deputies Contact are proposed to come late, being effective in January of the following calendar year. The effect of the Sheriff proposal for the Deputies Contact, in terms in compensation received represents only a one and one half percent (1.5%) increase in the second and

third years. The wage increases should reflect an actual two percent (2%) increase per contract year. It is therefore recommended that the annual increases under the Deputies Contract take effect on the first pay period commencing on or after October 1st in 2018 and 2019 and that the Deputies be granted the lump sum payments as proposed by the Sheriff. (See Appendix A – Deputies)

The F.O.P. may argue that the additional lump sum payment of five hundred dollars (\$ 500.00) does little to expand the gap in compensation between the highest paid Dispatcher and the highest paid Deputy, nothing, in fact, to expand the gap in wage rates since the bonus is not to be rolled into the wage rate. The F.O.P., for comparison purposes, measures the wage gap between Dispatchers and Deputies at a time before the merger of the Marion City Dispatchers and the Marion County Dispatchers. This is not a valid comparison. The proper comparison would be of the wages in effect for Dispatchers and Deputies before the layoff of the Marion County Dispatchers in 2011. At that time, the top Dispatcher rate was \$ 22.74 and the top Deputy rate was \$ 25.12, a difference of \$ 2.38, an approximate 10.6% differential. With the recommended rate for Deputies of \$ 28.84 and the top rate for Dispatchers of \$25.15, the differential increases to 14.7%. The size of the gap between the wages rates of Dispatchers and Deputies does not justify recommending an additional increase for Deputies greater than that stated above.

The F.O.P. proposes that Lieutenants be afforded a rank differential of twenty percent (20%) above the base salary and benefits of the Deputies, claiming that the gap in wage rates between the highest paid Lieutenant and the highest paid Deputy is too small. The top rate for Deputies is presently \$ 27.18 and the top rate for Lieutenants is \$ 28.90, a 10.6% rank differential. The F.O.P. claims that the rank differential should be in between twelve percent (12%) and fifteen percent (15%). The present Lieutenant Contract does not contain a wage scale, since the rank of Lieutenant was just recently reinstated. The Sheriff, therefore, proposed to create a new wage scale for Lieutenants with a start rate and rates for one (1), two (2), three (3) and four (4) years of service in the Lieutenant classification with two percent (2%) adjustments in the wage scale annually. The Sheriff also proposed a “retro lump sum”

of six hundred dollars (\$ 600.00) for each Lieutenant. The Sheriff proposed that the 2018 “rate” increase take effect with pay period fourteen (14) and that the pay “range” increases were to take effect the in the first pay period which commences on or after January 1st of 2019 and 2020. The proposal of the Sheriff would bring the top rate for Lieutenant to \$ 32.07, as compared to the top rate for Deputies of \$ 28.84, an 11.2% rank differential. (See Appendix A – Lieutenants)

The wage scale proposed by the Sheriff is generally recommended. The new scale allows for some savings for those newly hired or promoted into the Lieutenant classification and a reasonable wage progression which addresses the proposal of the F.O.P. to increase the difference in pay between the ranks of Deputy and Lieutenant. It is recommended, however, that the 2018 wage scale proposed by the Sheriff take effect with pay period fourteen (14) in 2018; that the 2019 wage scale proposed by the Sheriff take effect with the first pay period commencing on or after October 1, 2018 and that the 2020 wage scale proposed by the Sheriff take effect with the first pay period commencing on or after October 1, 2019.

Wage scale increases are to be based on length of service in the Lieutenant classification while longevity under the Lieutenant Contract is to be based on length of service with the Sheriff. An example of the operation of the wage recommendation for Lieutenants, using Lieutenant X with Hire Date of 7/16/01 and class date of 6/24/15 is as follows:

Retro lump sum	\$ 600.00	
Pay period 14 rate	29.92	+ .45 longevity
PP ending on or after 6/24/18	30.37	+ .45 longevity
PP ending on or after 10/1/18	30.97	+ .45 longevity
PP ending on or after 6/24/19	31.44	+ .45 longevity
PP ending on or after 10/1/19	32.07	+ .45 longevity

DISCUSSION OF LONGEVITY PAY, ARTICLE 23, SECTION 23.2

The F.O.P. has proposed to increase the amounts paid for longevity for the Deputies and the Lieutenants. The amounts paid for longevity in the Deputies and the Lieutenants Contracts are equal to or greater than those under the Dispatcher Contact through the twenty (20) year level. The Dispatcher Contract, however, provides for additional increments at twenty five (25) and thirty (30) years. The additional increments were probably a product of the City Dispatcher Agreement and have not benefitted any member of the pre-existing Sheriff Dispatch Unit. The F.O.P. did not propose the additional increments for the Deputy and Lieutenant Contracts. For these reasons and economic reasons the proposal of the F.O.P. must be rejected. The fact that long service employees under the Dispatch Contract have fared better than long service employees under the Deputies and the Lieutenants Contracts is worth considering, however, in determining the overall equity of the economic package.

DISCUSSION OF SHIFT DIFFERENTIAL

The F.O.P. has proposed that a shift differential of forty-five cents (\$.45) per hour be paid to members of the Deputies Unit:

Section 23.7 Shift Differential All Bargaining Unit Members assigned to any shift or combination of shifts whose starting time is between 3:00 p.m. and 7:00 a.m. will be paid an additional forty-five cents (\$.45) for all hours worked during those hours.

The F.O.P. proposes a “me too” provision with respect to shift differential for the members of the Lieutenant Unit:

Section 23.6 Shift Differential If shift differential is established and/or increased under the Deputies’ Collective Bargaining Agreement, the same establishment/increase shall be immediately applied to this Bargaining Unit.

There is no shift differential under the present Deputies and Lieutenants Contracts. There is, however, a shift differential under the Dispatcher Contract. The mechanics of the shift differential provisions are very different. Dispatchers must be “permanently assigned” to hours between 3:00 P.M. and 7:00 A.M. and are paid for all hours in paid status. The F.O.P. proposal for the Deputies and Lieutenants would not require the employee to be permanently assigned to the shift to earn the bonus, but would require the shift differential to be paid so long as the shift **began** between 3:00 P.M. and 7:00 A.M. Thus, a person working a shift which starts at 2:59 P.M. would not be entitled to any shift differential. The difference between the systems would create an administrative nightmare. There are also new “day shifts” which include evening hours being worked which commence before 3:00 P.M.

In addition, there is no evidence or rationale advanced for creating a shift differential. There are several factors which might make a shift differential appropriate, such as work load differences between the shifts or the labor market. There is no evidence to support the recommendation of a shift differential. The proposal of the F.O.P must be rejected.

DISCUSSION OF ARTICLE 26, VACATION

The F.O.P. has proposed that employees having twenty (20) years of service accumulate two hundred eighty (280) hours of vacation. Under the current collective bargaining agreements for the Lieutenants and Deputies, employees having at least fifteen (15) years of service, but less than twenty-five (25) years of service are entitled to accrue one hundred sixty (160) hours of vacation per year and employees having twenty-five (25) years of service or more are entitled to accrue two hundred (200) hours of vacation per year. The same accrual schedule is in effect for Dispatchers hired after November 3, 2017. Dispatchers hired before that date, however, are on a different accrual schedule, being entitled to accrue more hours of vacation more quickly and being entitled to accrue two hundred forty (240) hours of vacation once they have twenty-five (25) years of service.

The F.O.P. proposal provides, at the top level, more hours of vacation than would be accrued by Dispatchers hired before November, 3, 2017; two hundred eighty (280) hours as opposed to two

hundred forty (240) hours. The impact of the change for maximum accrual from twenty-five (25) years to twenty (20) years is nominal, about six (6) months accrual for a single employee. There would be two employees immediately impacted by the proposed change in the accrual rate after twenty-five (25) years and one (1) employee who would be impacted in the third year of the collective bargaining agreement. The Dispatch Unit did receive greater than a two percent (2%), two percent (2%), two percent (2%) wage increase due to the effective dates of the increases and other factors and employees with longevity of twenty-five (25) years or greater fare better in a number of ways under the Dispatchers Contract. For the above reasons, it is recommended that employees under the Deputies and Lieutenants Contracts who have twenty-five (25) years or more of service accrue two hundred forty (240) hours of vacation per year. To avoid additional issues of retroactivity, it is recommended that the change in accrual rate become effective with the first pay period commencing on or after October 1, 2018.

DISCUSSION OF ARTICLE 30, FUNERAL LEAVE

The F.O.P. has proposed that aunts and uncles be added to the list of persons for whose funeral leave can be granted. If the father and mother of the employee each had four (4) siblings, each of whom was married, there would be a total of sixteen (16) persons added to the persons for whose funeral leave could be granted. Each of the sixteen (16) would be expected to be a generation older than the employee and a generation closer to his actuarial life expectancy. This proposal can not be recommended.

DISCUSSION OF HOLIDAYS, ARTICLE 27 AND SICK DAYS, ARTICLE 28

The parties, at the close of hearing, informally reviewed tentative agreements, including proposals of the Sheriff regarding Holidays, Article 27 and Sick Days, Article 28. The F.O.P. did not express an objection to the proposals of the Sheriff with respect to those articles. No formal tentative agreements, however, were executed by the parties. The Fact-Finder has reviewed the

proposals of the Sheriff with respect to said articles and recommends that the proposals of the Sheriff be adopted.

POSTSCRIPT

This Report and Recommendation is intended to address all outstanding issues. However, if either party feels that an issue has not been addressed, it is suggested that a conference call be arranged to discuss that issue. Under Ohio Administrative Code 4117-9-05(k)(5), a Fact-Finder is required to consider any stipulations of the parties. The Fact-Finder will consider a joint motion to re-open the hearing for the presentation and consideration of any further stipulated matters.

Respectfully submitted,

/s/ GREGORY J. LAVELLE
125 Emily Lane
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CERTIFICATE OF SERVICE

A true copy hereof was sent by electronic mail to the Marion County Sheriff, c/o Jonathan J. Downes, Esq. by electronic mail at jjd@zrlaw.com, to Fraternal Order of Police, Ohio Labor Council Inc. c/o Chuck Choate by electronic mail at cchoate@neo.rr.com and to the State Employment Relations Board by electronic mail at mary.laurent@serb.state.oh.us this 18thrd day of May, 2018.

GREGORY J. LAVELLE

