

STATE OF OHIO

State Employment Relations Board

STATE-EMPLOYMENT
RELATIONS BOARD

FEB 20 10 42 AM '96

IN THE MATTER OF:

CASE NO. 95-MED-10-0911

OHIO PATROLMEN'S BENEVOLENT
ASSOCIATION

"Employee Organization"

and

MEDINA COUNTY SHERIFF

"Employer"

FACT-FINDER:

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**REPORT OF FACT-FINDER
AND RECOMMENDATIONS**

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I. INTRODUCTION

These matters come before the Fact-Finder as a result of a referral on December 1, 1995 by the State Employment Relations Board ("SERB") pertaining to fact-finding protocol between the Ohio Patrolmen's Benevolent Association (hereinafter referred to as "OPBA" or "Association") and the Medina County Sheriff (hereinafter referred to as "Sheriff" or "Employer"). After initial referral, the parties requested an extension of the scheduling of the fact-finding hearing for purposes of allowing the parties to explore further a potential resolution for a new Collective Bargaining Agreement. Thereafter, the Fact-Finder was notified that the negotiations had not produced a concluded agreement and request for commencement of fact-finding was made. A fact-finding hearing for the taking of evidence, submission of issues and presentation of the parties' respective positions was held, by mutual agreement of the parties, on February 6, 1996. The hearing was conducted at the Medina County Administration Building, Medina, Ohio.

The Fact-Finder received numerous exhibits and extensive material presented by both parties, including OPBA pre-hearing statement and its Exhibits A through Q, and a 55 page pre-hearing statement on behalf of the Sheriff, which included documentary material and exhibits. In addition, the Fact-Finder received, as evidence, the current Agreement between the parties covering the period from January 1, 1994 through December 31, 1995 and the parties' prior Collective Bargaining Agreements covering two-year periods 1990-1991 and 1992-1993.

The Fact-Finder has taken into consideration the statutory guidelines enunciated in Revised Code §§4117.14(C)(4)(a) through (f), the guidelines set forth in Revised Code §§4117.14(G)(7)(a) through (f), and SERB Regulations, Ohio Administrative Code 4117-9-05(J) and (K)(1) through (6). In addition, the Fact-Finder has reviewed and taken into consideration

the various exhibits and briefs submitted by the parties, some of which will be discussed in further detail *infra*.

Appearing on behalf of the parties, in addition to the respective representatives designated on the face sheet of this Report, were the following:

On Behalf of OBPA:

Kevin R. English, Deputy Sheriff, Patrol Division,
OPBA Representative

Gregg Greiner, Deputy Sheriff, Patrol Division,
OPBA Director

Gary Hubbard, Deputy Sheriff (Sergeant), Patrol Division
(Sergeant's Representative)

Scott Phillips, Detective, Sheriff's Department (Detective
Representative)

Ty J. Stupak, Corrections Officer, Jail Division (Jail
Representative)

On Behalf of Sheriff:

Michael Gurich, Captain, Sheriff's Department

In addition, testimony was presented by John Stricker, Jr., Medina County Administrator, called by the Sheriff's Department.

Although a substantial amount of material has been presented to the Fact-Finder, he would be remiss if he did not commend the representatives of OBPA and the Sheriff's Department for presenting their respective positions in an articulate, detailed and highly professional manner. There were a substantial number of issues presented, and they are not easily resolved, as is evident by the fact of the parties' actual impasse and this Report, and the thoroughness of the parties' presentations significantly assisted the Fact-Finder in his task. In preparing this Report and Recommendations, the Fact-Finder has attempted to summarize the salient aspects involved where considered pertinent and relevant. Brevity, therefore, should only be construed as an attempt to contain the length of this Report and not to diminish the

importance of each issue or the significance of the material presented by the respective parties in support of their particular positions. This Report and Recommendations would be of inordinate size if all of the arguments, pro and con, and all of the material were discussed and analyzed at length. Additionally, the Fact-Finder is cognizant of the caveat expressed by Justice Douglas in *Johnson v. University Hospital of Cleveland* (1989), 44 Ohio St.3d 49, 58, wherein he stated: "Our occupational duty continuously requires us to balance rights and responsibilities of persons regardless of their color, sex, position, or station in life. We accomplish that balancing in this case while recognizing that our decision will be something less than universally accepted."

II. BACKGROUND

Medina County encompasses 423 square miles with a population of approximately 122,000 people. Medina County is at the eastern end of a 12 county area referred to as the "North Central Ohio Region." The most westerly counties within that region are Ottawa and Sandusky Counties. However, immediately adjacent on the northern and eastern side of Medina County are Cuyahoga, Summit and Stark Counties. It was indicated that, although the County's industrial base is growing, it is still overshadowed by the more heavily industrialized Counties of Cuyahoga and Summit. Manufacturing accounts for approximately 22% of the occupational activities within the County, and the governmental occupational group consists of approximately 13% of the County's occupations. Based on the U.S. Bureau of Census, 1993 Estimate, the per capita individual income in Medina County is \$17,108.00.

The OPBA represents deputy sheriffs, detectives, corrections officers, sheriff sergeants and corporals, and the communications workers. The bargaining unit is approximately 48 employees.

It was also indicated that there are other collective bargaining units within the Medina County Government structure. The County's Department of Human Services has a bargaining unit of 65 employees represented by the Teamsters, the Sanitary Engineers Office has 30 employees represented by the SEIU, and the County's Board of Mental Retardation and Developmental Disabilities has a bargaining unit of 170 employees represented by the Ohio Education Association. The Collective Bargaining Agreements of the other units were not placed in evidence in the instant fact-finding, however, some reference to those other units was made during the fact-finding.

III. RECOMMENDATIONS

ARTICLE IX - EMPLOYEE RIGHTS

Section 9.09

The Association has proposed a new Section 9.09 providing, in essence, that, if the Sheriff conducts a polygraph examination as part of an internal affairs investigation, the examination can only be administered if there is "probable cause." Testimony was presented that the Sheriff, on occasion, has used an independent polygraph examiner for the purpose of having a polygraph examination administered as part of an internal criminal investigation or as part of a disciplinary action against a deputy. The Sheriff, on the other hand, contends that use of a polygraph is simply another tool available as part of an investigative process, and that the individual being examined is advised in advance that the examination cannot be used against the person in any possible future criminal prosecution. The Sheriff further argues that the use of a polygraph is exempt under federal law, and it is essentially a management decision whether or not to administer a polygraph test. It was also indicated during the hearing that the mere refusal to submit to a test, however, may, standing by itself, be grounds for disciplinary action.

The instant issue is more complex than appears on initial examination. The Federal Employee Polygraph Protection Act of 1988 (29 U.S.C. §2001, *et seq.*) sets forth a very detailed protocol to be undertaken when an employer is intending to take an employee's polygraph. Significantly, Section 7(a) [29 U.S.C. §2006(a)] states: "This chapter shall not apply with respect to the United States Government, any State or local government, or any political subdivision of a State or local government." The Department of Labor issued extensive regulations implementing the federal Act which is set forth at 29 C.F.R. §801.1 - §801.75. Section 801.10(a) tracks §7(a) of the Act pertaining to the state and local government exemption. It is, therefore, evident that the polygraph protections enumerated in the federal statute are not applicable in the instant case. Ohio does not have a comparable statute.

Revised Code §4117.08 enumerates the subjects includible for collective bargaining. Subsection (A) states: "All matters pertaining to wages, hours, or terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement are subject to collective bargaining between the public employer and the exclusive representative, except as otherwise provided in this section." Subsection (C) provides, in essence, that, unless otherwise set forth in the collective bargaining agreement, the items set forth in Subsections (C)(1) through (9) are considered "management prerogatives." Section 4117.08(C)(5) reflects that the employer has the right to "Suspend, discipline, demote or discharge for just cause, or layoff, transfer, assign, schedule, promote, or retain employees." The Association has contended that requiring a probable cause standard to be included as part of the polygraph examination process is a matter dealing with "terms and other conditions of employment."

In *Cincinnati v. Ohio Council 8 AFSCME* (1991), 61 Ohio St.3d 658, the Supreme Court indicated that there are three classes of collective bargaining subjects. The first is

mandatory subjects. Mandatory subjects "are those which the applicable statute requires the parties to bargain over in good faith." *Id.* at 663. The mandatory subjects of bargaining are those listed in R.C. §4117.08(A). The second class of collective bargaining subjects are those provisions which, by law, cannot be included in a collective bargaining agreement. For example, R.C. §4117.09(C) precludes requiring membership in an employee organization as a condition of employment. *Id.* at 664. In other words, so-called "illegal" subjects of bargaining, if contained in the collective bargaining agreement, are void and unenforceable. Accord, see, *Streetsboro Edn. Assn. v. Streetsboro City School Distr. Bd. of Edn.* (1994), 68 Ohio St.3d 288.

Between the above two classifications, there is a large range of matters that fit within the third classification known as "permissive subjects of bargaining." "A permissive subject is one whose inclusion in the agreement is not prohibited by law, but which is also not a mandatory subject of bargaining. While parties to a collective bargaining relationship are required to bargain over mandatory subjects, they are not required to bargain over permissive subjects, although nothing prevents them from doing so. Indeed, the possibility of bargaining over a permissive subject is expressly recognized in R.C. §4117.08(C). The only constraint on permissive bargaining is that it is impermissible to insist to the point of impasse on inclusion of a permissive subject in an agreement. (Citation omitted.)" *Id.* at 664-665.

Additionally, it is noted that under R.C. §4117.10(A), it is provided that "where no agreement exists or where the agreement is silent, the employer and employees are subject to all applicable state or local laws pertaining to wages, hours and terms and conditions of employment for public employees."

In *Buie v. Chippewa Local School Distr. Bd. of Edn.* (1994), 93 Ohio App.3d 434, the Court reviewed certain procedural matters pertaining to the termination of a tenured

teacher. The Court of Appeals concluded that, inasmuch as the collective bargaining agreement did not set forth specifications pertaining to certain procedural matters of teacher termination, such matters were thus governed by the statutory termination procedures under R.C. §3319.16.

In *City of St. Bernard v. State Employment Relations Bd.* (1991), 74 Ohio App.3d 3, the City's firefighters had commenced negotiations, and one of the items was the issue of residency. The City refused to bargain on this issue, contending that residency was not a subject of mandatory bargaining. Ultimately, SERB determined that the City had committed an unfair labor practice, which view was upheld by the Court of Appeals. Within its decision, the Court noted: "Mandatory subjects of collective bargaining are deemed to be matters of immediate concern that vitally affect the terms and conditions of employment of the bargaining-unit employees." *Id.* at 5. "As further required by R.C. 4117.08(C), public employers must also bargain in areas that are subjects of management rights and direction of the governmental unit if they 'affect wages, hours, terms and conditions of employment.' Therefore, a public employer's decision to exercise a management right which affects the terms and conditions of the unit's employment becomes a mandatory subject for bargaining." *Id.* at 6. The Court ultimately concluded that inasmuch as employment was contingent upon residency, it was thus within the scope of mandatory bargaining.

Although the Sheriff's decision to conduct a polygraph examination is one of significant concern, particularly to the subject individual involved, the Fact-Finder is not convinced that such provision is one that "vitally affects the terms and conditions of employment." Rather, the issue involved deals with disciplinary matters and the means or methodology by which the Sheriff determines how to conduct his investigation in order to ultimately conclude whether discipline of any kind should be imposed.

During the course of the fact-finding, the suggestion was made that the Sheriff might well act in a capricious and arbitrary manner and use the polygraph test and its results for imposing discipline. It should be noted, however, that, under R.C. §4117.08(C)(5), the Employer's right to "suspend, discipline, demote, or discharge" must be for "just cause." Implicit, in the Fact-Finder's view, is that the Employer could not discipline or discharge in the absence of just cause if the Employer was asserting its management right under §4117.08(C).

Accordingly, the Fact-Finder recommends that the Association's proposed Section 9.09 not be adopted.

Section 9.10

The Union has proposed a new Section 9.10 reflecting that bargaining unit members not be required to conduct internal investigations relating to any other bargaining unit member. The Association indicated that, in the past, internal investigations were conducted by bargaining unit members in the Detective Bureau which was the section usually given the responsibility for conducting internal investigations.

The Fact-Finder appreciates the morale element involved in having one bargaining unit member investigate the conduct of another bargaining unit member. On the other hand, the Fact-Finder does not believe that the Sheriff should be totally restricted in the manner in which an internal investigation is to be conducted or what personnel are most appropriate for conducting that investigation. It is recognized that there are senior ranking officers, sergeants and lieutenants who could conduct an investigation. The Fact-Finder recommends that the Union's proposed Section 9.10 be adopted in theory, and that, because of the numbering sequence, the proposed Section 9.10 be inserted as a new Section 9.09 to read as follows:

"During the conduct of an internal investigation, to the extent possible, deputies shall not investigate deputies and corrections officers shall not investigate corrections officers. To

the extent possible, an internal investigation shall be conducted by supervisors and/or officers."

ARTICLE XII - SICK LEAVE

Section 12.10

Under the present Agreement, Section 12.10 provides, in essence, that, when an employee retires, having at least 10 years of employment with the Sheriff, such employee is entitled to a cash payment of his accumulated and unused sick time based on a payment equal to one-fourth of the individual's hourly rate of pay for all unused sick hours up to a maximum of 240 hours. The Association proposes to retain the provision but urges that the one-fourth pay formula be increased to one-third and that the 240 hour limitation be increased to 400 hours. The Association argues, in part, that using such a new formula would encourage employees to accumulate their sick time rather than utilizing it during the course of their employment.

The Sheriff's argument is two-fold. First, the Sheriff contends that all County employees are under a uniform formula of one-fourth of hourly pay with a maximum of 240 hours. The Sheriff thus contends that "no special formula should be carved out for deputy sheriffs." (Brief, page 23) Secondly, the Sheriff argues that the County employs approximately 900 employees and that, if all employees were to receive the additional allotment of accumulated sick leave for cashout purposes upon their retirement, the County would thus be exposed to a significantly larger financial burden. The potential dollar liability suggested by the County assumes, of course, that all employees would "cash out" at the same time, however, presumably, over some period of time, a good proportion of those 900 employees would be retiring, and there is clearly some additional financial exposure which would have to be assumed by the County if there was an increase in the number of accumulated hours and cash formula. The Sheriff also suggests that the "one-fourth/240 hour" formula is set forth in R.C. §124.39(B).

The Sheriff is correct in his reference to Section 124.39(B), however, under Section 124.39(C), a governmental authority is permitted to allow more than one-fourth of the value of accrued sick leave and more than the 240 hours. This can occur either by resolution of the County Commissioners or as a part of a collective bargaining agreement. R.C. Section 124.39(C)(1) and (3). Indeed, such an excess formula was involved in *DeCrane v. City of Westlake* (1995), 103 Ohio App.3d 481.

On balance, the Fact-Finder is of the view that it is not justified to create a different formula for the Sheriff's Department from that applicable to all other County employees. Accordingly, the Fact-Finder recommends that the current contract language be retained.

ARTICLE XIV - HOLIDAYS

Without enumerating the parties' respective positions on this issue, suffice to indicate that, after general discussion, it is recommended that the current contract language be retained.

ARTICLE XVIII - OVERTIME AND COURT TIME

Section 18.02

Without enumerating the parties' respective positions on this issue, suffice to indicate that, after general discussion, it is recommended that the current contract language be retained.

Section 18.04

The Association has proposed a new Section 18.04 providing for employees the election to take compensatory time in lieu of overtime pay at the rate of 1-1/2 hours for each hour of work and allowing the employees to accumulate their compensatory time up to 100 hours. The Association also proposes that the employees be allowed to "cash out" their

accumulated compensatory time twice each year. The Association has contended that, periodically, the Sheriff's Department has provided for compensatory time. Rather than having this practice occur intermittently, the Association proposes that if compensatory time is utilized, the employees should be allowed to "bank" such compensatory time. The Association has also argued that by being allowed to "cash out" the compensatory time rather than receiving regular overtime pay for overtime work, the Sheriff's Department would be saving financially in that it would not be obligated to pay the pension contribution to the Public Employees' Retirement System.

The Sheriff, on the other hand, argues that its general practice is to pay cash for any overtime and that such a policy should continue. The Sheriff indicated that, by allowing for accumulation of compensatory time, there might be a strain on staffing and assignments. By having cash payments for overtime, the Sheriff's Department would be able to maintain better control over its overtime budgeting matters and, at the same time, would still be able to monitor more efficiently its staffing concerns. Additionally, the Sheriff argues that under the Fair Labor Standards Act, if compensatory time is earned in 1996 but paid in 1997, the wage rate that must be paid for the 1996 compensatory time is based on the 1997 wage rates.

The Association correctly notes that, under Ohio Administrative Code 145-3-07(D)(1) and (E)(1), a compensatory time payment made during the year in which the compensatory time is accrued constitutes "earnable salary" to which contribution must be made to the Public Employees' Retirement System, which is the retirement system covering the bargaining unit members (deputy sheriffs and corrections officers) but that payment made for compensatory time at any time other than in the year in which the compensatory time is accrued does not constitute "earnable salary" and, thus, no contribution on that payment need be made to the Public Employees' Retirement System. The Sheriff, on the other hand, notes that, under

the provisions of the Federal Fair Labor Standards Act (29 U.S.C. §207(o)(3)(B)), any compensation paid to an employee for accrued compensatory time is required to be paid "at the regular rate earned by the employee at the time the employee receives such payment." Thus, the Sheriff argues that, if compensatory time is earned in 1996 but paid in 1997, under the pre-emption requirements of the Federal Fair Labor Standards Act, the employee would have to be paid at his 1997 compensation rate. The Fact-Finder does not believe that the Fair Labor Standards Act provision just cited and Ohio Administrative Code 145-3-07(D) and (E) are inconsistent or mutually exclusive. They deal with different subject matters. However, it does appear clear that, in terms of any compensation to be paid, the provisions of the Federal Fair Labor Standards Act would prevail insofar as determining the rate of compensation which should be paid for the suggested compensatory time. For a general discussion of federal pre-emption in the field of labor relations, see *Independent Electrical Contractors of Greater Cincinnati, Inc. v. Hamilton County Division of Public Works* (1995), 101 Ohio App.3d 580, and cases cited therein, discretionary appeal denied (1995), 73 Ohio St.3d 1410.

The Fact-Finder is of the view that the Sheriff should be accorded the management prerogative in electing to pay the bargaining unit members in cash for overtime rather than allowing compensatory time. However, the Fact-Finder is equally of the view that, if the Sheriff, for whatever reason, elects to allow compensatory time rather than making a cash payment for overtime, then, in such event, the employee should be allowed the option to bank the compensatory time in lieu of overtime pay and also be allowed to accumulate that compensatory time. The Fact-Finder is of the view that 40 hours is a reasonable amount of allowable banked compensatory time. Accordingly, the Fact-Finder recommends that a new Section 18.04 be adopted with the following language:

"The Sheriff, at his option and discretion, shall have the right to determine the method of compensation for overtime by either paying a bargaining unit member in cash or in allowing compensatory time. If the Sheriff grants compensatory time to the bargaining unit member, such employee shall thereby be allowed to take compensatory time off in lieu of overtime pay, at the rate of one and one-half (1-1/2) hours for each hour of work. Said employee may accumulate his/her compensatory time in a bank which shall not exceed forty (40) hours. Compensatory time may be "cashed out" at such times as determined by the Sheriff but not less often than annually. Compensatory time off shall be granted as approved by the Sheriff."

ARTICLE XX - UNIFORM MAINTENANCE ALLOWANCE

Section 20.01

Under the current Contract, corrections officers and deputies receive a uniform maintenance allowance of \$775.00 and detectives receive \$875.00. The Association has proposed that the allowance for corrections officers and deputies be increased to \$800.00 for 1996, \$825.00 for 1997 and \$850.00 for 1998, and that the allowance for detectives be similarly increased to \$900.00 for 1996, \$925.00 for 1997 and \$950.00 for 1998. The Sheriff has proposed a uniform allowance increase of \$25.00, bringing the allowance to \$800.00 for corrections officers and deputies and \$900.00 for detectives and that such amount would be the annual allowance for each of the three years of the proposed contract. The Association argues that, because of inflationary factors and the need for deputies to purchase their own uniforms and other related equipment, the relatively small increase adjusts for those inflationary consumer factors. The Sheriff argues that the allowance, when compared with surrounding counties is reasonable and that the allowance does not cover such things as firearms, leather equipment, ammunition, bullet proof vests and the like, as that equipment is furnished through the Sheriff's Department. Considering the contentions of the parties, and for reasons to be set forth

hereinafter regarding the proposed new Section 20.05, the Fact-Finder recommends that Section 20.01 be amended to read as follows:

"Effective January 1, 1996, the Employer shall pay uniform maintenance allowance of \$800.00 to corrections officers and deputies and \$900.00 to detectives. Such payments shall be made in June of each year to employees and shall require no receipts from the employee. The Employer shall continue to provide weapons, leather gear, and necessary equipment as presently provided."

Section 20.02

During the course of the fact-finding, it was indicated that the County is in the process of constructing a state-of-the-art \$15 million jail which would require the staffing and hiring of 41 new corrections officers. These corrections officers would be classified as "unsworn civilian corrections officers" and not have the same legal rights applicable to a deputy or a certified corrections officer. It is projected that these 41 new corrections officers would be hired during the Summer of 1996. These new civilian corrections officers would be part of the bargaining unit, but, as will be discussed in more detail, *infra*, would constitute a second-tier level of compensation. As regards the instant Article XX dealing with uniform maintenance allowance, the Association proposes that the newly hired civilian corrections officers be allowed an initial uniform allowance of \$600.00 which is the amount allowed under the present Section 20.02 regarding the hiring of new deputies and certified corrections officers. The Sheriff, on the other hand, has proposed a uniform allowance of \$500.00. It was not entirely clear as to the difference in uniform allowance, however, by implication, and the nature of the work activity, it is apparent that there would probably be more "wear and tear" by road patrol deputies. However, that differential is not entirely clear as between sworn corrections officers and the civilian corrections officers. Admittedly, the sworn corrections officers may have more responsibilities, however, as to uniform allowance, the differences are not immediately apparent.

However, over time and gaining some experience during the term of this Contract, the differences in the uniform allowance may well be justified. Accordingly, the Fact-Finder recommends that Section 20.02 of the present Contract be retained. Additionally, the Fact-Finder recommends that a new section be added to read as follows:

"Newly hired civilian corrections officers shall receive an initial uniform allowance of \$600.00 within thirty (30) days of initial hire. Thereafter, during each year of the within Contract, a civilian corrections officer shall receive a uniform allowance of \$500.00, such payment to be made in June of each year and shall not require a receipt."

Section 20.05

The Association has proposed a new Section 20.05 providing for two provisions. The first is a proposal that the Sheriff would bear the cost of any changes or additions made to the current uniform. The second proposal is that any personal or employer owned uniforms, equipment or property that might be damaged or destroyed while the employee is on duty would be repaired or replaced at the Sheriff's cost and not be charged against the employee under the Uniform Maintenance Allowance, Section 20.01. The Sheriff, on the other hand, argues that the uniform allowance presently provided is sufficient to cover any repairs or replacements that might be needed and that such should be the employee's responsibility.

The Fact-Finder is of the view that, if there is a relatively minor change or addition to the uniform, such modification should be absorbed by the employee under the uniform allowance. However, if the change results in some significant expenditure, over \$100.00, then the cost should be absorbed by the Sheriff. Additionally, the Fact-Finder is of the view that, if an employee has suffered damage to his uniform by virtue of some on-duty contact, for example, a prisoner tears a shirt, it is reasonable to expect that the Sheriff would

repair or replace that clothing item. Accordingly, the Fact-Finder recommends that a new Section 20.05 be inserted to read as follows:

"(a) In the event that there is a change or addition to the current uniform, the Employer shall bear the cost of any such change or addition in excess of the first \$100.00 applicable to said change or addition.

(b) In the event that personal or employer-owned uniforms, equipment or property is damaged or destroyed while an employee is on duty, the employer agrees to repair or replace said item, unless negligence can be shown on the part of the employee."

ARTICLE XXI - INSURANCES

Section 21.06

Under present Section 21.06, each employee is provided a group term life insurance policy in the amount of \$10,000.00. The Association has proposed an increase in the life insurance policy to \$25,000.00. The Association's principal argument is that the present level of insurance is only approximately one-third of an average deputy's annual salary, and because of the nature of the risks of a peace officer, the insurance policy should have a higher limit. The Sheriff has indicated, on the other hand, that the cost of a \$10,000.00 policy is approximately \$3.40 per month per employee, and that if the present policy were increased, there would be the resulting increased costs. Thus, the additional costs of raising the present \$10,000.00 to say a \$20,000.00 policy would only cost approximately \$40.00 per year per employee. This additional amount does not appear to create a financial burden on the Sheriff or the County. In this regard, the Fact-Finder is particularly sensitive to and sympathetic with the Association's proposal that the \$10,000.00 policy is insufficient. Considering the risks and the nature of a deputy's work activity, the Fact-Finder is of the view that the insurance policy probably should be raised, if not to \$25,000.00, certainly another \$5,000.00 or \$10,000.00.

However, it was indicated that all County employees, those covered under collective bargaining agreements and non-collective bargaining employees, are all covered by a County-wide \$10,000.00 policy per employee. Thus, although the Fact-Finder is understanding of the Association's position, he is of the view that it would be inappropriate to carve out a particular exception in this matter as regards the bargaining unit members. Accordingly, the Fact-Finder recommends that the current contract provision in Section 21.06 be retained.

Section 21.08

Under the current contract, employees contribute \$10.00 per month to a single person plan coverage and \$20.00 per month for a family plan coverage under a modified managed care program operated by the County. The managed care program was instituted approximately 2 years ago. The County operates as a self-insurer and has a third party administrator. John Stricker, Jr., the County Administrator, who is the individual who administers the insurance program for the County, testified that, at the beginning of 1995, the County had approximately \$1.4 million surplus in its health insurance fund and that, because of its claims experience, as of December 31, 1995, the fund has a negative balance. Stricker also testified that in 1995 there was a premium increase of approximately 5% over 1994 but that because of 1995 experiences, the 1996 premium rate will reflect a 20% increase over 1995 in premiums to be paid by the County. The County's premium contribution for 1995 was approximately \$3.2 million and, for 1996, the premium contribution is projected to be approximately \$4 million. It was also indicated, however, that, as of January 1, 1995, the County had a general fund surplus of approximately \$2.4 million which, as of January 1, 1996, had increased to approximately \$3 million. The Fact-Finder appreciates that the County may well be in a reasonably stable financial condition. However, equally so, if the County were not faced with a premium increase of approximately \$800,000, but, rather, no increase in premium

or a very modest increase, the monies that the County will have to appropriate for its premium contributions might be otherwise available for other County purposes.

In light of other dispositions made in this Report, the Fact-Finder is of the view that the employees should absorb the additional 20% premium charge, which contribution will be constant during the term of the proposed Contract. Accordingly, the Fact-Finder recommends that Section 21.08 be amended to read as follows:

"Beginning January 1, 1996, employees shall contribute \$12.00 per month for a single plan and \$24.00 per month for a family plan."

ARTICLE XXV - LONGEVITY

Section 25.01

This section deals with the longevity benefit paid to an employee. After some general discussion pertaining to this issue, the Fact-Finder recommends that Section 25.01 read as follows:

"Employees shall receive longevity payments commencing upon the completion of five (5) years of full-time continuous employment with the employer. Such amount shall be increased every five (5) years through twenty (20) years of employment pursuant to the following schedule:

| <u>Length of Service</u> | <u>Amount</u> |
|--------------------------|---------------|
| Five (5) Years | \$300.00 |
| Ten (10) Years | \$550.00 |
| Fifteen (15) Years | \$800.00 |
| Twenty (20) Years | \$1,050.00" |

ARTICLE XXVII - RATES OF PAY

Section 27.01

This section of the current Contract deals with the rates of pay for deputies and sworn correction officers. The Association seeks increases of 6%, 5% and 4% over a three year

contract period. Their argument is that the County is in a basically sound financial condition in that it has been able to meet its expenses and still have a significant carryover balance ranging from 14.1% as of January 1, 1994 to a 13.8% carryover balance as of January 1, 1996. Thus, the Association contends that ability to pay should not be an issue. The Association also presented material reflecting various wage increases that have been granted to other sheriffs' departments throughout the State of Ohio (OPBA Exhibit J). The exhibit is broken down into various counties and geographical regions utilized by SERB for reporting purposes. The exhibit ultimately concludes that for 1995 the state-wide average pay increase was 3.65%, for 1996 the state-wide average pay increase is 3.63% and for 1997 the state-wide average pay increase is 3.52%. Obviously, a number of variables enter into those average figures.

The Sheriff's Department has argued that there are a number of financial aspects which must be taken into consideration. For example, the County's sales tax rate is 5.5%, one of the lowest in the State of Ohio. The County's tax revenue is \$14,768,000, compared to nearby Lake or Lorain Counties which have approximately twice as much population but their total tax revenue is in the range of \$30,000,000. The Sheriff further argues that the County's Department of Human Services and the County Sanitary Engineer's contracts have provided for wage increases of 3%, 3-1/2% and 3% plus a \$100.00 signing bonus. Also, the County's Board of Mental Retardation and Developmental Disabilities provided for a 2%, 2% and 3% wage increase. Thus, the Sheriff argues that the Association's wage proposal is clearly inappropriate and has countered with an offer of 3%, 3% and 3%. The Sheriff further argues that Medina County deputy sheriffs have the eighth highest salary in the State and that a 3%, 3% and 3% proposal is reasonable and would still retain the deputy sheriffs' compensation within the upper levels (Brief, pages 38-39).

The Fact-Finder is not unmindful of all of the positions and arguments made by the respective parties. Certainly, one of the major elements that must be taken into consideration by the Fact-Finder is the compensation rate that is paid to other County employees, be they in a bargaining or a non-bargaining unit. It is apparent, however, that there is no single uniform wage rate factor, although the wage rate increase appears to be in the 3% ballpark. The Fact-Finder does not dispute that, historically, the County appears to have been reasonable and fair in its compensation treatment of the bargaining unit personnel. The Fact-Finder notes that, during the period from 1986 through 1991, the Sheriff's Department gave an average wage increase of 5% in each of those years, and for the years 1991 through 1995, gave an average wage increase of 4% in each of those years. (Sheriff's Brief, page 6) Considering the historical compensation rate and other compensation adjustments which have been previously discussed in this Report, the Fact-Finder recommends a wage increase of 4% effective January 1, 1996, 4% effective January 1, 1997 and 3-1/2% effective January 1, 1998.

Section 27.04 (To Be Designated As New Section 27.06)

This section deals with the compensation to be paid when a deputy is designated to act as an officer in charge. In light of the discussion occurring during the course of the fact-finding, the Fact-Finder recommends that the section be amended to read as follows:

"Any deputy who is designated as the officer in charge of the Road Division or the Jail Division, and acts in the capacity of sergeant, shall be compensated at the corresponding sergeant's rate of pay."

Section 27.04

This proposed new Section 27.04 is comparable to the present Section 27.05 of the current contract. This section deals with the compensation of a detective allowing for "detective differential." In light of discussions occurring during the course of the fact-finding,

the Fact-Finder recommends that the new Section 27.04, formerly Section 27.05, be modified to read as follows:

"Any employee assigned to the position of Detective shall receive a 'detective differential' in the amount of One Hundred Dollars (\$100.00) per month."

Section 27.05

This is a new section proposed by the County to establish the new position of civilian corrections officers at a salary of \$20,800.00. As previously indicated in this Report, the County is in the process of completing construction of a state-of-the-art jail facility at a cost of approximately \$15 million. It was indicated that the minimum staffing requirement for this facility will be 41 corrections officers. The County proposes, as an overall economy measure, but, at the same time, with a view of maintaining appropriate security, of utilizing civilian corrections officers in addition to the sworn certified corrections officers presently used. The utilization of civilian corrections officers is not unknown in the State of Ohio. It is intended that the civilian corrections officers would be hired approximately mid-1996. The County also contends that the starting salary of \$20,800.00 (\$10.00 per hour based on a 2,080 hour work year) places the County in a fair and competitive price range. Neighboring Stark County, which is approximately three times the population of Medina County, has a corrections officer starting salary of approximately \$21,000.00, and Lake County, with a population of 215,000, has a starting salary for corrections officers at \$22,880.00.

The Association has contended that, inasmuch as it is willing to accept the "two-tier" compensation level allowing for the unsworn civilian correction officers to be hired at a different rate of pay and recognizing that these individuals would also be members of the bargaining unit, the Association submits that a compensation rate for the civilian corrections officers should be closer to that paid to the sworn corrections officers or, at least, not less than

\$25,000.00. The Association also contends that the new jail facility, which will house up to approximately 256 prisoners as compared with the present jail facility allowing for 78 prisoners, will place additional manpower burdens on personnel but, at the same time, will be an income producing activity for the County in that it will be able to "rent" unused jail space to other law enforcement agencies and courts needing a place to house prisoners.

Unfortunately, there is no history or specific guide as to whether the projected starting salary of \$20,800.00 will or will not be sufficient to entice interested and trained individuals to seek the position of unsworn civilian corrections officer. Experience may well reflect that the commencing salary does not produce the type of individual with the credentials desired by the County and a re-examination may be necessary. At this initial stage, however, and considering other dispositions made by the Fact-Finder, he does not feel that the present proposed commencing salary for an unsworn civilian corrections officer at \$20,800.00 is unfair. Facially, it appears to be relatively consistent with salaries paid to corrections officers in other counties (Sheriff Brief, pages 43-44). The Fact-Finder believes that the County should be afforded some degree of latitude in its "start-up" of the new jail facility and the type of personnel who will be staffing that facility. Accordingly, it is recommended that a new Section 27.05 be added to read as follows:

"Effective upon execution of the agreement by the parties, newly hired civilian corrections officers shall receive the following rates of pay: for the calendar year commencing January 1, 1996, a salary of \$20,800.00; for the calendar year commencing January 1, 1997, a salary of \$21,632.00; for calendar year commencing January 1, 1998, a salary of \$22,390.00."

Section 27.06

This section deals with the issuance of paychecks. In light of discussions during the course of the fact-finding, it is recommended that the current contract language be retained.

Association Section 27.08 (New) and Sheriff Proposed Section 27.09 (New)

The Association has proposed that any deputy who is involved as a SWAT officer be paid an annual differential of \$200.00, and also, any deputy who is serving as a field training officer also be paid an annual amount of \$200.00. The Sheriff has, on the other hand, proposed a \$100.00 differential pay for field training officers on the basis of additional time being involved for that particular activity. In light of other economic dispositions made in this Report, the Fact-Finder recommends that the Sheriff's proposal be adopted and that the following language be used:

"The Sheriff shall provide One Hundred Dollars (\$100.00) field training officer (FTO) pay for a maximum of ten (10) total field training officer appointments for all OPBA bargaining units, e.g., communication technicians, deputies, corrections officers, corporals, and sergeants. The Sheriff shall determine all FTO appointments."

ARTICLE XXXIV - DURATION

Section 34.01

As previously noted, the past agreements between the Association and the Sheriff have been for two year durations. Most of the discussions which evolved during the fact-finding protocol were discussed in terms of a three (3) year format. Although the parties did not specifically agree to the duration of a new contract, in light of other dispositions made in this Report, which have indicated a three (3) year time period, it is the Fact-Finder's recommendation that Section 34.01 be amended to read as follows:

"This Agreement shall become effective at 12:01 A.M. on January 1, 1996 and shall continue in full force and effect, along with any amendments made and annexed hereto, until Midnight, December 31, 1998."