STATE EMPLOYMENT RELATIONS BOARD

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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF THE FACT-FINDING BETWEEN:	)	CASE NOS. 96-MED-09-0713
	)	96-MED-09-0714
TUSCARAWAS COUNTY SHERIFF		96-MED-09-0715
	)	
Employer		
	)	
And		
	)	
FRATERNAL ORDER OF POLICE LODGE NO. 4	)	
FOP	)	

APPEARANCES

For the Sheriff:

Michael L. Seyer, Senior Consultant
Clemans Nelson and Associates, Inc.

For the FOP:

Salvatore J. Falletta, Esquire
Green, Haines, Sgambati, Murphy & Macala Co., LPA

BACKGROUND

This matter came on for Fact-Finding under the State of Ohio's Public Employee Collective Bargaining Act of 1993 following impasse in negotiations for a successor collective bargaining agreement between the parties. Pursuant to Ohio Administrative Rules, Sections 417-9-05(F)(1-4), both parties properly submitted position statements, said statements being appended hereto and made a part hereof of as Sheriff Exhibit No. 1 and FOP Exhibit No. 1. At hearing, on 24 January 1997, the parties were afforded an opportunity to proffer testimony and exhibits in support of their respective issue positions, with both availing themselves to these opportunities. The fact of the matter is that the record in these matters is quite extensive, with both parties remaining steadfast in their positions on a substantial number of issues, notwithstanding two days of mediation.

It is noteworthy that the Sheriff throughout has insisted upon the continuation of informal practices/understandings regarding several issues, suggesting that the good faith and prior conduct should be sufficient. This position has been advocated even though there exists a distinct possibility that significant revenues might be lost as a result of the commissioners/taxpayers not renewing a piggyback sales tax. In turn, the FOP has remained steadfast on a substantial number of economic issues, the cost of which would approximate increased employment costs ranging between 35 and 40% over the term of a new three year agreement. Both positions must be viewed as not realistic in light of the realities surrounding these negotiations.

In order to shorten the length of this report, the respective arguments and exhibits in support of each party's position, will not be specifically referenced in this document. It is emphasized, however, that all evidence proffered and testimony taken was fully considered in arriving at the recommendations that follow. Of course, the statutory mandates set out under OAC Section 4117-9-05 (K)(1-6) were accorded their due weight in my analysis.

The following unresolved issues[1] were presented at fact-finding:

New Article - Minimum Staffing
Article 10 - Filling of Positions
Article 14 - Hours of Work/Overtime
Letter of Understanding at Page 34
New Article - Shifts
Article 24 - Sick Leave
New Article - Funeral Leave
Article 27 - Holidays
Article 28 - Hospitalization
Article 29 - Wages
Letter of Understanding at Page 35 of Current Agreement

Article 31 - Uniform Allowance
Article 34 - Duration

1. NEW ARTICLE - MINIMUM STAFFING

RECOMMENDATION:

No minimum manning provisions are to be incorporated into the parties' successor collective bargaining agreement.

RATIONALE:

Given the uncertainty of the sales tax renewal, along with the absence of any cogent evidence manifesting a bonafide safety need for such staffing, the incorporation of such requirements, even assuming the FOP satisfied the balancing test under the permissive/ mandatory analysis outlined in: In re Transportation Dept., Serb-93-005(4-19-93), such is just not warranted on this record.

2. ARTICLE 10 - FILLING OF POSITIONS

SECTION 3

RECOMMENDATION:

Amend Section 3 to read as follows: Nothing in this Article shall be construed to limit or prevent the Employer from temporarily filling a vacant position pending the Employer's determination to fill the vacancy on a permanent basis, providing such temporary assignments do not exceed sixty (60) calendar days. Any temporary assignment(s) under this Section, running for in excess of sixty (60) calendar days, will be considered as a management determination to fill this position on a permanent basis.

Should the temporary sixty (60) day assignment period allowed under this Section be exceeded, said vacancy will be posted with the successful bidder being awarded the position retroactive to the sixty-first (61) day of the vacancy.

RATIONALE:

While Section 2 of this Article vests the Employer with the right to determine whether a permanent vacancy exists, the temporary use of personnel to fill a vacancy cannot be left open ended.

3. ARTICLE 14 - HOURS OF WORK/OVERTIME - SECTIONS 1 AND 3

SECTION 1:

RECOMMENDATION:

Amend Section 1 of this Article to read as follows: The standard work week for all full-time bargaining unit employees shall be twenty-eight (28) calendar days. The work period shall be computed beginning on the Monday "A" shift and ending on the twenty-eighth (28th) day following.

SECTION 3:

RECOMMENDATION:

The current provisions of this Section 3 are to be continued for the duration of the parties' successor collective bargaining Agreement.

4. LETTER OF UNDERSTANDING AT PAGE 34

RECOMMENDATION:

This letter of understanding at page 34 is to be continued for the duration of the parties' successor collective bargaining agreement.

RATIONALE:

The nature of the work at bar simply does not lend itself to typical industry 5 and 2 work week pattern scheduling. The fact is that there are peaks and valleys to this type of work which cannot be slotted neatly into a standard 5 and 2 work week.

5. NEW ARTICLE - SHIFTS

RECOMMENDATION:

The provisions proposed by the FOP under this new article are not to be incorporated into the parties' successor collective bargaining agreement.

RATIONALE:

Fixed patterns of scheduling in a mandatory sense, especially given the uncertainty associated with future funding, just cannot be prudently recommended on this record. Furthermore, the studies proffered in support of the recommendations for correction officers belie that requested for over-the-road personnel.

6. ARTICLE 24 - SICK LEAVE

SECTION 5A

RECOMMENDATION:

Amend Section 5A under the parties' successor collective bargaining agreement to read as follows: Illness or injury of the employee or member of the employee's immediate family, defined as spouse, child and/or parents/step children who reside in the employee's household.

SECTION 5B

RECOMMENDATION:

Amend Section 5B of Article 24 to read as follows: Death of a member of an employee's immediate family, as defined in Section 6 below.

SECTION 6

RECOMMENDATION:

Up to five (5) days leave may be granted to an employee who provides proof of attendance at the funeral of: brother, sister, spouse, child, mother, father or other persons standing in loco parentis (in place of a parent) to the employee. The initial two (2) days of any such leave will be treated as paid funeral leave with the balance up to five (5) days being charged against the employee's sick leave. Additionally, up to two (2) days leave may be granted to an employee who provides proof of attendance at the funeral of: father-in-law, mother-in-law, brother-in-law, sister-in-law, daughter-in-law, son-in-law, grandparents and the employee's aunt/uncle or first cousin. The initial day of this latter leave will be treated as paid funeral leave with any second day taken being charged against the employee's sick leave. Funeral leave days must be consecutive work days and include the day of the funeral. Where the day of the funeral is on a day the employee is otherwise not scheduled to work, a consecutive work day will be scheduled with the approval of the Employer. Should an employee require additional paid time other than what is provided herein, the employee shall provide a written request to the Sheriff. Upon the approval of the Sheriff, such time approved by the Sheriff will be charged against the employee's balance of compensatory time, personal days or vacation leave, at the employee's option.

SECTION 10

RECOMMENDATION:

The present provisions of Section 10 are to be continued under the parties' successor collective bargaining agreement.

SECTION 11

RECOMMENDATION:

Employee's who do not use sick leave during any calendar year will be credited with eight (8) hours of compensatory time, effective 1 February of the following year.

RATIONALE:

As for that proposed by the Employer under our Section 10 relative to medical documentation, the void of any history of excessive absenteeism on this record suffices to deny this request. As for the FOP's request for a broader funeral leave provision, the potential of cost, in conjunction with other cost issues at bar, simply does not allow for the complete accommodation of that requested.

7. NEW ARTICLE - FUNERAL LEAVE

RECOMMENDATION:

Given that recommended under Article 24 above, no further change is to be incorporated into the parties' successor collective bargaining agreement.

8. ARTICLE 27 - HOLIDAYS

SECTION 4:

RECOMMENDATION:

Amend Section 4 of Article 27 to read as follows: Full-time bargaining unit employees shall receive eight (8) hours of holiday pay whether or not they work on a holiday.

SECTION 5:

RECOMMENDATION:

Continue the present provision of this section for the first year of the parties' successor collective bargaining agreement. Effective 1 January 1998, employees who work on a holiday shall be compensated for all hours worked at a rate of time and one-half their regular hourly rate in additional to that provided under Section 4 above for every other holiday commencing with New Year's Day as set out under Section 1. Effective 1 January 1999, all remaining holidays not accorded premium pay in 1998 for hours worked will be paid such in the same fashion as those identified for 1998.

RATIONALE:

It is realized that this is, in part, a catch up to that provided under county policy in some respects and exceeds that provided in others. It is believed, however, given comparables of record that such are appropriate in this instance, especially given the phase in the recommendation.

8. ARTICLE 28 - HOSPITALIZATION

SECTION 1

RECOMMENDATION:

Incorporate the following provision as a replacement to that which presently exists under this Section of Article 28: The Employer shall continue to provide employees with hospital insurance and death benefit coverage at the same or equivalent level of benefit of coverage as is presently provided. During the term of the agreement, the benefit level of the vision plan may be modified to reflect the County's plan. The Employer, however, may determine the carrier and the nature of the plan to be provided to employees.

The Employer shall contribute up to four hundred dollars ($400.00) per month per employee towards the monthly cost(s) of an employee's hospitalization and vision coverage. Should the monthly premium exceed the four hundred dollars ($400.00) amount provided by the Employer at any time during the term of this agreement, such excess amount shall be equally divided and paid for by the affected employee and the Employer. It is understood and agreed that this total payment shall apply when the cost of the monthly premium(s) exceeds four hundred dollars ($400.00) per month to a maximum of five hundred twenty dollars ($520.00) per month, the Employer shall pay the excess amount in total; however, the co-payment, as previously described, shall remain in effect.

<u>SECTION 2:</u>

<u>RECOMMENDATION:</u>

Incorporate into this Article a new Section 2 that reads as follows: If during the term of this agreement, the Employer establishes a dental care program for any county employees, members of the bargaining units covered by this agreement, shall receive coverage also at the same time, and at the terms which provide the least charges to any other employee group.

<u>SECTION 3:</u>

<u>RECOMMENDATION:</u>

A new Section 3 shall be incorporated into the parties' successor collective bargaining agreement to read as follows: The Employer will provide ten thousand dollars ($10,000.00) in death benefits for each member of the bargaining units covered by this agreement.

fail to successfully complete their probationary period, said employee shall reimburse the Employer for the actual cost of the items purchased.

Section 4. The Employer agrees to provide ten (10) quality bullet proof vests for Road Deputies during the term of this Agreement.

~~The Tuscarawas County Sheriff, hereinafter referred to as the "Employer", and the Fraternal Order of Police, Lodge #4, Bargaining Units 1 and 2, hereinafter referred to as the "Union", agree to the following: Pursuant to Article 31, Uniform Allowance~~,

Section 5. The Employer agrees to allow those bargaining unit employees who receive a uniform allowance and are required to carry a weapon to purchase such weapon with said uniform allowance. It is understood the Sheriff or his designated representative maintains the right to the prior approval of such weapon, in accordance with the Department's weapons policy. Any weapon so purchased remains the property of the Road Deputy unless such Deputy is terminated for cause, or is "disabled" from carrying a fire arm.

~~It is further understood and agreed that said weapon purchased remains the property of the Sheriff: upon termination of employment, said weapon shall be returned to the Sheriff or his designated representative~~.

ARTICLE 32

CALL-IN PAY

Section 1. Whenever an off-duty employee is subpoenaed, ~~or~~ directed to appear in court, called in on days off, appears to work according to schedule without notice of a schedule change, or is directed to attend a meeting with the prosecutor or judge involving job-related matters, at a time which does not abut his regular work schedule, the employee(s) shall receive ~~a minimum of two (2)~~ three (3) hours pay at time and one-half (1 1/2) or the actual time spent in such appearance in court or in a meeting, whichever is greater.

ARTICLE 37 (Old 34)

DURATION

Three (3) year Agreement.

RATIONALE:

Comparative data clearly indicates that a substantial number of like employees in other communities are required to pay under a co-payment and/or deductible program and, in many cases, in excess of that being proposed here. Likewise, it is fairly well established that co-pay programs are an effective cost-containment tool. The potential impact of these changes, however, must be weighed in conjunction with that to be recommended in the following Article 29 - Wages.

10. ARTICLE 29 - WAGES

SECTION 1:

RECOMMENDATION:

Effective 1 January 1997, employees in each bargaining unit covered by this agreement shall receive a three percent (3%) increase in compensation in their wage rates, said increases to be reflected throughout the four (4) step structure.

SECTION 2:

RECOMMENDATION:

Effective 1 January 1998, employees in each bargaining unit covered by this Agreement shall receive a three and one-half percent (3.5%) increase in compensation in their wage rates, said increases to be reflected throughout the four (4) step structure.

SECTION 3:

RECOMMENDATION:

Effective 1 January 1999, employees in each bargaining unit covered by this Agreement shall receive a four percent (4%) increase in compensation in their wage rates, said increases to be reflected throughout the four (4) step structure.

SECTION 4:

RECOMMENDATION:

Incorporate a new section 4 under this Article 29 to read as follows: In addition to that provided in the form of increases under Sections 1, 2 and 3 of this Article 29, in each year of the successor agreement, the position of Corrections Officer will be granted an additional one-half per cent (½%) increase per year.

SECTION 5.

RECOMMENDATION:

Add a new Section 5 under this Article 29 to provide as follows: Should the voters of Tuscarawas County turn down the renewal of the piggyback sales tax during the term of this Agreement, the Employer, notwithstanding the afore-wage increases called for in 1999, may give notice ot its intent to reopen the parties' Agreement for the limited purpose of renegotiating wages and wages alone for the 1999 calendar year. Such negotiations will commence after the Employer provides the FOP with a thirty (30) day notice of intent to commence negotiations and will be subject to the procedures provided for under Chapter 4117 of the Ohio Revised Code relative to negotiations/mediation/fact-finding and/or conciliation.

RATIONALE:

The increases recommended were accorded in recognition of downward trend of revenues available to the Sheriff through rental of jail space and general funding for the forthcoming years. Comparables, however, seem to suggest that Corrections Officers require additional adjustments, said adjustments being recommended not as a step toward parity with road personnel, but simply an equity adjustment versus like positions. Finally, the potential cost of insurance premiums for employees served as the basis for the higher wage recommendations in the second and third years of the new Agreement.

11. LETTER OF UNDERSTANDING AT PAGE 35 OF THE CURRENT AGREEMENT.

RECOMMENDATION:

Incorporate a new Section 6 under Article 29 - Wages to read as follows: The parties agree whenever an employee is awarded a position that results in a promotion, the employee shall be placed in the nearest step of the applicable pay range that provides a pay increase.

The employee shall move through the remaining steps, when applicable; upon the completion of the promotional probationary period or on the anniversary date of the promotion, which ever is first.

In the event an employee is assigned the full and complete duties of the officer in charge (OIC - sergeant) for a period of eight (8) consecutive hours, the affected employee shall be paid in a similar manner as described above. Further, such payments shall be retroactive to the first hour of any such assignment.

RATIONALE:

While the initial two paragraphs of this recommendation are nothing more than a transference from a letter of agreement to specific Article, that provided under the third paragraph is reasonable and yet not cumbersome. Stated simply, when an employee is required over a extended period of time to perform the duties of a higher rated job, that employee should receive the appropriate compensation therefor.

12. ARTICLE 31 - UNIFORM ALLOWANCE:

SECTION 1:

RECOMMENDATION:

Amend the current provision to provide as follows: All current full-time employees in the bargaining unit who are required by the Employer to wear uniforms shall be entitled to a uniform allowance of up to four hundred dollars ($400.00) per year. Effective 1 January 1998, the afore allowance for Road Deputies shall be increased by fifty dollars ($50.00) per contract year. Effective 1 January 1999, the first year amount will be increased by fifty dollars ($50.00) for all other personnel required to wear a uniform. Such allowance shall be for the purchase and maintenance of uniforms, including the cleaning and repair of uniforms prescribed by the Employer, subject to the provisions in Section 2 of this Article. The uniform allowance will be in the form of a direct voucher reimbursement system at such uniform suppliers as designated by the Employer.

SECTION 4:

RECOMMENDATION:

Incorporate a new Section 4 into this Article 31 to read as follows: The Employer will provide ten (10) new bullet proof vests for Road Deputies who are currently without same or those hired during the term of this Agreement.

SECTION 5:

RECOMMENDATION:

Amend that presently provided under letter agreement of the current contract incorporating same under a new Section 5 of this Article 31 to read as follows: The Employer agrees to allow those bargaining unit employees who receive a uniform allowance and are required to carry a weapon, to purchase such weapon with the afore-provided said uniform allowance.

It is understood the Sheriff or his designated representative maintains the right to the prior approval of any such weapon, in accord with the Department weapon's policy. Except in cases involving termination of employment involving discharge, resignation by the employee in lieu of discharge and/or disability under the provisions of RC2923-13 or a similar state/federal law, an employee who has a minimum of ten (10) years of service with the Employer may keep said weapon upon termination of employment.

13. <u>ARTICLE 34 - DURATION</u>

<u>SECTION 1:</u>

<u>RECOMMENDATION:</u>

The parties' successor bargaining agreement shall provide under Section 1 of this Article 34 that the term of such shall be from 1 January 1997 through 31 December 1999, with specific rights provided for a wage reopener as set out in Article 29 above.

Respectfully submitted,

James E. Rimmel

JAMES E. RIMMEL
FACT FINDER

Date: 2-18-97

ENDNOTES

1. At hearing, a number of issues were finally signed off on by the parties. As such, those matters have not been dealt with in this report, the parties having exchanged copies of their tentative agreements on these matters.