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STATE OF OHIO
MAY 22 1997

STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

In the Matter of Fact-Finding	*	
Between	*	<u>FINDINGS</u>
	*	<u>AND</u>
COMMUNICATIONS WORKERS	*	<u>RECOMMENDATIONS</u>
OF AMERICA	*	
	*	Case No. 96-MED-10-0935
and	*	May 22, 1997
	*	
CUYAHOGA COUNTY SHERIFF	*	Anna DuVal Smith
	*	Fact-Finder

Appearances

For the Communications Workers of America:

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Charles M. DeGross, Esq., Director
Communications Workers of America
4735 Richmond Road
Warrensville Heights, Ohio 44128

For the Cuyahoga County Sheriff:

William E. Cook, Employee Administrator
Patricia A. Kresty, Assistant Administrator
Cuyahoga County Sheriff's Department
1215 West 3rd Street
Cleveland, Ohio 44113

I. BACKGROUND AND SUBMISSION

The Communications Workers of America (hereinafter "Union" or "CWA") represents approximately seventy (70) clerical employees of the Cuyahoga County Sheriff (hereinafter "Sheriff" or "Employer") in the following classifications: Clerk Typists, Payroll Clerks, Dispatchers, Secretaries, Programmers, System Analysts, and Civil Clerks. Its contract with the City expired on December 31, 1996. Negotiations for a successor contract produced a tentative agreement, but the bargaining unit rejected this resolution. The parties proceeded to fact-finding under §4117.14(C) O.R.C. The undersigned, who was appointed Fact-Finder pursuant to 4119-9-05(E) of the Ohio Administrative Code on November 29, 1996, met with the parties on April 17, 1997, in an attempt to mediate the dispute. A tentative agreement was reached again, but this, too, was rejected by the bargaining unit. Further mediation efforts were deemed fruitless, so the parties proceeded to hearing. Pre-hearing statements of each party were timely received by the fact-finder. and an oral hearing convened at 1:30 p.m. on May 8, 1997, at the Justice Center, Cleveland, Ohio. Present for the Union in addition to Messrs. Cosgrove and DeGross were Christine Lynne and Toni Mosley. The parties presented three issues: Sick Leave, Wages and Duration. The parties were afforded a complete opportunity to present oral and written evidence and to argue their respective positions. The oral hearing concluded at 3:00 p.m. At the request of the Fact-Finder, a seniority list was submitted by facsimile on May 8, whereupon the record was closed. In rendering this Report and Recommendation, the Fact-Finder has given full consideration to all reliable information relevant to the issues and to all criteria specified in §4117.14(C)(4)(e) and Rule 4117-9-05 (J) and (K) O.A.C., to wit:

- (1) Past collectively bargained agreements 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) 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.

II. ISSUES IN DISPUTE: POSITIONS OF THE PARTIES

WAGES and DURATION

The Position of the Union

The Union seeks a change in the wage structure as well as a general wage increase. For clerk-typists, the present contract provides for a six-step structure maximizing at 16 years. The Union proposes to keep the same number of steps, but maximize at 12 years. In addition, it wants a 3 percent wage increase at each step, retroactive to January 1, 1997. Other classifications would receive a 4 percent wage increase, also retroactive. The Union also proposes a three-year agreement with a single wage reopener for 1998 and 1999.

The Union argues that a substantial adjustment is in order on account of the relatively low wages of this unit, the vast majority of which are single parents who must keep second jobs because the wage they receive from the County places them under the 1994 poverty level. Moreover, a substantial increase would not place their wages out of line in comparison to clerical employees of other county sheriffs.

In support of this position, the Union offers contracts covering clerical employees of thirteen county sheriffs across the state: Allen, Ashtabula, Butler, Columbiana, Greene,

Guernsey, Licking, Lorain, Marion, Montgomery, Morrow, Shelby, and Wood. It says ten of these have substantially higher wages than Cuyahoga County and all have shorter step programs. The other three also have higher wages, but also had sick leave give-backs. The Union further claims Cuyahoga County has traditionally led the state in wages except with this and the Sheriff's AFSCME unit. Now that the County has money available, it is time to redress the relatively low wages of this unit and make up for the wage freeze the unit took in the past.

With respect to the step program, the Union says its comparables demonstrate that 16-year and even 12-year programs are rare. It needs an adjustment now and reopens to further shorten the steps in the near future.

The Union urges the Fact-Finder not to rely on the County units offered by the Sheriff, saying Inmate Services has no step increases, which is a rarity, and the Department of Youth Services is a different division.

The Position of the Employer

The Sheriff offers 3 percent in each year of a three-year contract with the first increase payable on ratification of the contract. It says 3 percent is in conformity with the parameters set by the County Commissioners for collective bargaining and in line with the 3-4 percent public sector increases won state-wide in 1996. In support of its position, it offers the contracts of two other County clerical units which accepted 3 percent annual wage increases through 1998: Sheriff's Department Inmate Services, whose clerks earn \$7.43 an hour in 1997, and Department of Youth Services, whose typists earn \$7.96 in 1997.

The Sheriff challenges the comparability of the contracts offered by the Union, noting that they do not contain large, metropolitan counties such as Franklin or Hamilton. They range in population from 27,000 to 537,000, and most are under 250,000. The Sheriff questions whether the functions of clerk-typists in these smaller counties are the same as they are in Cuyahoga County. It also points out that the agreements contain other articles of economic value that should be taken into account.

Discussion and Findings of Fact

Underlying the different positions of the parties on the outstanding issues is complete disagreement on what constitute comparable units. I agree with the Sheriff that it is likely the job functions of clerical employees in small, rural counties are broader in scope than in a large, metropolitan county with more numerous classifications. Moreover, the Cuyahoga County Sheriff does not compete with downstate, western or extreme eastern Ohio sheriffs for clerical employees, the labor market being a local one for general clerical skills. Thus, appropriate comparison units would be both geographically proximate and similar in size. This argues for ruling out at least the small, rural, distant units of Ashtabula, Guernsey, Morrow and Shelby counties, and also the somewhat larger Allen, Columbiana and Wood counties. Removing these smaller counties, however, places Cuyahoga County's wage position in a worse light, for, on average, lower wages are paid in the smaller cities. Of the counties submitted by the Union, the most appropriate comparisons are to Lorain for proximity and Montgomery for size. Butler might also be used because it may be strongly influenced by the adjacent metropolitan Hamilton and Montgomery counties. A similar case could be made for the smaller Licking and Greene counties, which are contiguous to

Franklin and Montgomery, respectively. But whether one uses the smaller set of three or the larger set of five, the case is clear: 1996 wages of Cuyahoga County Sheriff clerk-typists are far below the others.¹ Whether they are also low relative to the more similarly-sized and closer metropolitan counties cannot be said from the record before me, for no data for Franklin, Hamilton or Summit counties were submitted, and within Cuyahoga County only wages for two other units, both employed by the County Commissioners, were offered. These latter appear to position the County as a low-wage employer, but the Sheriff admitted that other county clerks earn much higher wages than the clerks in Inmate Services and typists in the Division of Youth Services who earn less than \$8 an hour in 1997.

Be that as it may, there are a number of justifications for being a low-wage employer. Ability to pay, ability to attract sufficient labor, low relative productivity, and compensating benefits come to mind. The County has successfully and justifiably relied on an inability to pay argument in the past. This unit, in fact, took a wage freeze in recognition of the County's recent fiscal crisis, which accounts at least in part for its present low relative wages. The County does not rely on this argument and, in fact, presented no evidence whatsoever to establish an inability to meet the Union's wage demand. The Sheriff also says it has no

¹In 1996, Montgomery County Sheriff clerk/typists and secretaries earned \$10.22-\$12.66/hour; Butler County Sheriff clerks earned \$9.61-11.67; Lorain's wages varied from \$8.69-\$10.24 plus a lump-sum. Licking County's clerk/typists' wages were \$12.43-12.95. The Greene County Sheriff's contract covering 1996 was not submitted, but the 1997 wages of "clericals" (including secretaries, fiscal officer and office deputy) hired after January 4, 1997, were \$9.29-13.38 while nondeputized clerical employees received two three-percent wage increases during each year of the three year agreement beginning January 4, 1997. All five contracts include longevity and health insurance, although longevity benefits vary widely and the insurance benefits are impossible to evaluate from the record before me. Cuyahoga County clerk-typists, by comparison, earned \$7.32-10.43, and 42 percent of them are on the first step.

difficulty attracting new hires, who apparently value the benefits provided, but admits to experiencing significant turnover. Seniority data submitted establish that 12 of the 59 clerk/clerk-typists were hired in the 12-month period of May 1, 1996-April 30, 1997 for an annual turnover rate in this classification of 20 percent. Raising wages, especially to reward length of service, should help with this problem. The only productivity issue raised in fact-finding related to the usage of sick leave, but his problem is best addressed through language targeted to the specific problem. Finally, the Sheriff does not point to, nor do I find, economic benefits in the existing contract that compensate for the low relative wages of these employees. I thus find no good reason for the Sheriff to maintain such low relative wages, especially since the County is evidently willing to pay clerical employees in other agencies at higher rates. In addition, to rely exclusively on internal parity unfairly sets each unit up as being responsible for each other unit's wages. Historical wage patterns and internal parity are traditional factors to be taken into account, but are not the sole factors.

In sum, an adjustment beyond the 3 percent annual increase parameter the Commissioners set for collective bargaining is justified because of the low relative wages and the Employer's ability to pay. However, the turnover rate and the very high concentration of employees at the lowest step (42 percent of clerk-typists) also warrants improving the clerk-typist wage structure to speed progression through the steps. In particular, reducing the time spent at the entry wage and total time needed to achieve the top wage should retard productivity losses from turnover. Since it would also raise the average wage, it would reduce the need to hold outside employment and use paid time off. This should also have a positive effect on productivity. The data from other counties support that a faster

progression is far from unusual.² The structure sought by the Union does reduce the amount of the time needed to reach the top from 16 to 12 years and time spent at the entry wage from 5 to 4 years. In my opinion, this does not go far enough to meet the needs of both the lower-wage employees and the Sheriff. Far less time should be spent at the entry wage so that employees have an opportunity to improve their economic position without having to leave the employ of the Sheriff once they have gained experience. I therefore recommend 3 percent on each step of the clerk-typist structure but the addition of a new step and more rapid progression with two years spent in each step, topping out at twelve years. Other employees should receive a 4 percent increase this year. For 1997, this makes the weighted average wage of the bargaining unit \$8.43, which represents an increase of 6.4 percent over the present weighted average of \$7.92. In light of this, I do not recommend reopeners for 1998 and 1999, but 3 percent annual increases in each of those years.

Recommendation

Effective January 1, 1997

Clerk Typist with less than 2 years	\$7.54 per hour
Clerk Typist with 2-3 years	\$7.73 per hour
Clerk Typist with 4-5 years	\$8.00 per hour
Clerk Typist with 6-7 years	\$8.24 per hour
Clerk Typist with 8-9 years	\$8.76 per hour
Clerk Typist with 10-11 years	\$9.27 per hour
Clerk Typist with 12+ years	\$9.79 per hour

²Of the contracts submitted by the Union with step systems, only Wood County tops out at 15 years and it has no separate longevity benefit. The others maximize at five years or sooner, with longevity typically beginning at the completion of five years of service. Lorain evidently has a two-tiered system, but its employees are eligible for longevity after three years of service. Montgomery has a 7-step schedule and longevity after five years, but I have been unable to identify the criteria for progressing through the steps.

The following classification shall receive a 4% increase:

**Clerk Typist in Commissary
Dispatcher
Payroll Clerk
Secretary
System Analyst
Sr. Programmer
Clerk Typist with hourly rate above \$9.79**

Effective January 1, 1998

A three percent (3%) increase shall be applied to the Clerk Typist step system and all other bargaining unit classifications.

Effective January 1, 1999

A three percent (3%) increase shall be applied to the Clerk Typist step system and to all other bargaining unit classifications.

SICK LEAVE

Positions of the Parties

The Sheriff seeks a new provision to improve employee accountability for sick leave. It says it needs language in this area because it has been experiencing problems with the way sick leave has been used. It submits 1996 attendance records for ten employees as examples to show high frequency, short length of use, and low balances. It contends this demonstrates sick leave is a benefit whose usage needs to be clearly defined, and offers the provisions of its AFSCME and corrections officers contracts to show that its proposed solution, which is set forth below at length, is not unique. It also represents that this system has proven effective.

The Union opposes the Sheriff's request, preferring to adhere to current practice which is governed by Ohio law. Pointing to management rights, the Union says there are

other ways to establish accountability without penalizing the entire unit. It acknowledges that two other Sheriff units have agreed to sick leave language in their contracts, but says that two contracts do not make a trend and wonders what the Sheriff had to give up in order to get this language.

Discussion and Findings of Fact

The evidence submitted by the Sheriff adequately demonstrates the need for better control. Collectively-bargained language defining sick leave rights and responsibilities is the industry standard. Indeed, every single contract relied on by the Union in support of its wage demand contains such a provision, not only setting forth the rate of accumulation, but also accountability and minimum usage clauses. The Sheriff's proposal is a modest one, retaining the 15 day annual accumulation which is the norm in the contracts submitted, one-hour minimum usage and documentation for three-day occurrences and after three separate undocumented occurrences in a calendar year. The proposal is reasonably targeted towards the frequent, short-length users and is being successfully used in other units. I therefore recommend it.

Recommendation

SECTION 1. Each member of the bargaining unit shall earn sick leave credit at the rate of four and six-tenths (4.6) hours for each eighty (80) hours of completed service. Sick leave credit shall be prorated to the hours of completed service in each pay period. Unused sick leave may be carried forward from one calendar year to the next without maximum.

SECTION 2. An Employee who is unable to report for work, and is not on a previously approved absence, shall notify the Employer within one-half (1/2) hour after the start of the Employee's shift. The Employee shall submit to the Employer a signed, written statement for the request and justification of sick leave upon returning to work. If such request is disapproved, the Employee may be subject to disciplinary action, including dismissal.

SECTION 3. Sick leave usage must be requested for a minimum of one (1) hour.

SECTION 4. With the approval of the Employer, sick leave may be used by the Employee for the following reasons:

- 1) Illness, injury or pregnancy-related condition of the Employee or member of Employee's immediate family where the Employee's presence is reasonably necessary for the health of the affected family member.
- 2) Examination or treatment of an Employee or member of his immediate family where the Employee's presence is reasonably necessary including medical, psychological, dental or optical examination by an appropriate practitioner.
- 3) For purposes of this Section, definition of immediate family shall be spouse, child, stepchild, mother, father, mother-in-law, father-in-law.

SECTION 5. When an Employee requests the use of sick leave for three (3) consecutive days or more, or for any sick leave usage in excess of three (3) undocumented sick leave occurrences in a calendar year, the Employee shall furnish to the Employer a certificate from a physician, dentist or other licensed practitioner stating the nature of the illness, injury, or treatment.

SECTION 6. Falsification of either the signed statement or a physician's certificate or application for use of sick leave with the intent to defraud shall be grounds for disciplinary action which may include dismissal.

SECTION 7. The Employer may require that an Employee submit to a medical and/or psychological examination in order to determine the Employee's capability to perform the Employee's position. Such examination shall be conducted by a physician or licensed practitioner designated by the Employer, and the cost of the examination shall be paid by the Employer. If the Employee is found to be unqualified for the position, he may be placed on sick leave or Family Medical Leave.

SECTION 8. Unless otherwise approved by the Employer, only accumulated sick leave may be utilized for compensation of an approved absence(s) as defined in Section 4 of this (subject) submission.

SECTION 9. If any disabling illness or injury continues past the time for which the Employee has accumulated sick leave, the Employee may be placed on Family Medical Leave in accordance with the Family Medical Leave Act.

III. SUMMARY

Wages
Sick Leave

See pages 8-9.
See page 10-11.

Respectfully submitted,



Anna DuVal Smith, Ph.D.
Fact-Finder

Cuyahoga County, Ohio
May 22, 1997