

STATE EMPLOYMENT RELATIONS BOARD
MAY 10 11 51 AM 2000

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Negotiations Between:

CUYAHOGA COUNTY SHERIFF)	Case No. 99 MED 04 361
)	
and)	RECOMMENDATIONS
)	
OHIO PATROLMEN'S)	Margaret Nancy Johnson
BENEVOLENT ASSOCIATION)	Fact-finder

Appearances

For the Sheriff:
James P. Wilkins, Esq.
Bruce Fahey, Esq.
William E. Cook
Daniel Pukach
Mary Ellen Cabor
Patricia Kresty
Dan Calvey

For the Union:
S. Randall Weltman, Esq.
Larry Wagner
Colleen Bonk
George Tumney
Wilford Robert Kleppel

In compliance with Ohio Administrative Code Rule 4117-9-05(D), the State Employment Relations Board appointed Margaret Nancy Johnson as fact-finder in the above referenced bargaining impasse. For the purpose of fact-finding, the parties convened on May 1 and 2, 2000, at the Department of the Sheriff in the Cuyahoga County Justice Center, in Cleveland, Ohio. Prior to the hearing, both parties had timely submitted position statements for the review of the fact-finder. At the scheduled hearings, the fact-finder heard testimony and arguments on the respective positions of the parties. In accordance with the Ohio Revised Code, the fact-finder now submits her report setting forth her recommendations on those issues on which the parties had not been able to reach agreement.

Background

In February, 1999, the Ohio Patrolmen's Benevolent Association, hereinafter "Union," or "OPBA," was elected bargaining agent for the approximately one hundred and thirty (130) deputies employed by the Department of the Sheriff, hereinafter "Sheriff." While the parties are now negotiating their first contract, the bargaining unit had previously been represented by another Union. Pending the outcome of these negotiations, the parties have been operating under the terms of the prior Collective Bargaining Agreement between the Sheriff and the Cuyahoga Deputy Sheriffs Union Local #1.

Issues

The issues on which the parties remain in impasse include the following: Union Business Leave, Union Security/Check-off of Membership Dues, Bulletin Board, Probationary Period, Employee

Assignment and Transfer, Uniforms, Use of Personal Vehicles, Promotional Exams, Longevity, Hours of Work and Overtime, Salaries, Vacations, Bereavement, Health and Safety, Health Insurance, Court Time/Call-in Pay, Retirement, Employee Rights, Outside Employment, Fitness for Duty, Sick Leave, Overtime, Parking, Duration and Retroactivity.

Criteria

In submitting her recommendations, the fact-finder has given consideration to those factors relied upon by neutrals in impasse situations as enumerated in Ohio Revised Code, Section 4117.14(G)(7).

Positions of the Parties

I Union Business Leave

The Union proposes modifying the current language so as to define the union representatives as the OPBA director, alternate director, or stewards, and to delete the obligation of the Union to reimburse the Sheriff for the wages of the bargaining committee during negotiations. In support of its proposal, the Union submits for consideration by the fact-finder contract provisions from comparable and neighboring jurisdictions.

In response to the Union proposal, the Sheriff maintains that union business leave is a permissive subject of bargaining and objects to its inclusion in the report of the fact-finder.

II Union Security/Dues Check Off

The Union seeks to maintain the language in the current contract which, like the contracts in comparable jurisdictions, provides for a standard fair share fee agreement. Indeed, the Department of the Sheriff has included a fair share fee agreement in the labor contract with its Civilian Corrections Officers.

While the Ohio public employment collective bargaining statute requires a dues check-off, it does not require a fair share fee agreement on the part of an employer. Accordingly, the Sheriff opposes the Union proposal, which it considers a permissive subject of bargaining, and it proposes a modified dues deduction provision.

III Bulletin Boards

The proposal of the Union is inclusion of the current language on bulletin boards. Arguing, again, the permissive nature of bulletin boards and stressing the issue is one of internal communication, the Sheriff opposes the inclusion of language on bulletin boards.

IV Probationary Period

In reliance on comparable jurisdictions, the Sheriff proposes extending the probationary period for new hires to one year. Considering the absence of academy training and that employees are currently hired "off the street" and right into deputy positions, the increase to one year is appropriate to

establish suitability and satisfactory job performance.

In opposition to the change, the Union maintains the Sheriff has failed to provide an incentive to concede a longer probationary period.

V Uniforms

Deeming uniform provisions to be a monetary item, the Union has suggested increasing the cash allotment for maintenance of uniforms from \$300 to \$600 per year, and the number of required articles of clothing issued annually. The Union cites comparable contracts in support of its submission. Moreover, the Union argues that the daily activities of unit employees justify its proposal in regard to uniforms. Unlike other units with which the Sheriff bargains, Deputies have very specific uniform needs which distinguish the Deputy Sheriffs from the employees in other units. Because Deputies frequently interact with the public, proper attire is requisite. In spite of these uniform needs, however, the Sheriff does not promptly address requests for proper equipment.

On the other hand, the Sheriff opposes the monetary increases for uniforms as being excessive and unwarranted. Additionally, the Sheriff points out the labor contracts cited by the Union are not comparable. As the deputies in other jurisdictions are required to buy their replacements, the contracts provide for reimbursement rather than compensation. Internal comparables render further support to the opposition of the Sheriff to the changes proposed by the Union. As uniform needs are addressed at the request of the employee, if the employee has a problem meeting his requests, there are appropriate channels, other than changing contract language, to remedy the problem. While opposed to increasing uniform allowance, the Sheriff does propose restricting badges and pins worn by Deputy Sheriffs to those issued by the Department.

VI Use of Personal Vehicles

The Union proposes contract language on the use of personal vehicles which corresponds to the language in the contract between the Sheriff and the Corrections Officers. This provision is needed to ensure efficiency and economy on the part of the employees who are assigned to work at posts other than the Justice Center downtown.

The Sheriff views the Union proposal as an attempt to restrict job assignments. Instead, the Sheriff proposes language which indicates employees shall not be required to utilize their personal vehicles during performance of their duties.

VII Promotional Exams

Arising from a history of promotions not being made in accordance with the objective results of a competitive examination, the language proposed by the Union is intended to avert litigation and ensure that employees are promoted from an eligibility list established pursuant to an exam. Previously, promotions have been made on the basis of "emergency," a process

that has resulted in litigation initiated by another unit with which the Sheriff bargains. The Union proposal is necessary to guarantee a fair rather than arbitrary selection of supervisory personnel and to provide Deputies with an opportunity for advancement. The OPBA proposes one year of service as a prerequisite to testing.

The Sheriff seeks to modify current language by requiring five years of service as a prerequisite for taking the examination and by making appointments from a "rule of five." Since the eligibility list derives from a combination of factors, the top three on the list are not necessarily the three most qualified individuals. Increasing the selection to a list of five provides the employer with greater flexibility to select the best candidate. Moreover, by increasing the service prerequisite to five years, the Sheriff ensures its candidates for promotions are familiar with all aspects of the job. Comparable contracts require at least three years of service for test eligibility. While the Sheriff acknowledges that the department has had difficulties in the past with its testing agency, promotions have always been in accordance with law.

VIII Longevity

To better reward long term service and to enhance a pay package which currently lags behind comparable units, the Union seeks to increase the current longevity provision. The Sheriff argues that current language is sufficient as the pay package places Deputies in the middle of comparable units. Comparisons proposed by the Union are not analogous due to distinctions both in job requirements and in components of total wages.

IX Wages

The Union proposes a 2% wage increase retroactive to March 11, 1999, the date of certification of the bargaining unit, and thereafter, a 7% increase effective January 1, 2000, and a 6% wage increase effective January 1, 2001. The proposal of the Union is based upon the contention that the unit lags behind contiguous comparables in terms of total wage compensation in spite of the fact that the County serves a plethora of wealthy suburbs and is a metropolitan area that is experiencing a remarkable renaissance. Indeed, there is no contention of inability to pay in these proceedings.

The Sheriff proposes a 2%, 3% and 3% wage increase effective January 1, 2001, January 1, 2002, and January 1, 2003, respectively. Across the board, the per centage increases sought by this Unit are significantly in excess of those negotiated by bargaining units for the relevant time period. There is no justification for the magnitude of the increases now sought. Indeed, a review of those comparables cited by the Union indicates significant differences in job performance. While most deputies in this unit perform security details, deputies in neighboring jurisdictions are assigned road patrol, recognized as a more highly paid function. Moreover, the contention that this unit lags behind is erroneous. The compensation paid to

this unit places them in the middle of comparables. Finally, it is important to consider that employees of this unit do not have to bear the cost of buying uniforms and equipment. Accordingly, the wage increases proposed by the Sheriff adequately compensate the bargaining unit.

X Vacations

Proposing a small change to the vacation schedule of employees, the Union advocates a sixth vacation week for employees having twenty years of service. The addition is consistent with other departments and provides a means for compensating employees with significant service.

Strenuously opposed to the proposal to increase vacation, the Sheriff seeks to maintain the status quo on vacation entitlements, which is consistent with internal comparables. There is no justification for the Sheriff to deviate from the established schedule for this bargaining unit.

XI Bereavement

As this unit already has bereavement leave in excess of that granted to comparables, the Sheriff feels justified in seeking a provision ensuring the time taken is proximate to the funeral. The proposal requires that the last two days of leave be no later than two days after the funeral.

As there is no justification for any changes, the Union opposes modifying the Bereavement Leave provisions.

XII Health and Safety

To ensure that employees are safe in performing their duties and have the requisite equipment, the Union seeks two changes in current contract language. First, the Union proposes language whereby the Sheriff shall supply all items necessary to carry out legal obligations; and second, the sheriff shall assign a minimum of two deputies to any hospital detail or emergency run involving an inmate charged with or convicted of a crime carrying a life sentence. While Deputies had, in the past, carried citation books with them, presently, such books are not available to Deputies without a special request. This practice inhibits the ability of Deputies to write citations as needed and jeopardizes public safety. The manning proposal is in the interests of safeguarding the public whenever inmates facing a life or death sentence are in transit.

Opposed to the language proposed by the Union, the Sheriff maintains the Union has failed to demonstrate a genuine risk to the public or to employees. Whenever the Department must transport an inmate, managerial discretion is reasonably exercised on the basis of the facts of the situation. As to the citation books, the same are made available to Deputies if needed. The assertion that the public safety is at risk is unreasonable.

The changes proposed by the Sheriff are to make the contract language conform to current law by using the term "impaired" rather than "disabled," and "suspended" rather than "dismissed."

XIII Health Insurance

The Sheriff proposes requiring employees to contribute 7.5% of the premiums for health insurance. This percentage contribution is consistent with a trend instituted by the Commissioners of Cuyahoga County, whose employees are covered by the same insurance plan as those of the Sheriff.

As insurance costs have, indeed, been held down, the Union opposes the language change as unnecessary. Previously, all costs were covered by the Employer. The agreement by the employees to pay 5% ought not to be expanded without some justification. Given the compensation paid to employees, any increase in their insurance costs is unwarranted.

XIV Court Time/Call in Pay

The Union seeks to obtain a minimum of three hours pay whenever an employee is required either to report for duty or to attend a court hearing on his off time. Consistent with comparable contracts, the modification is intended to compensate those employees who give up time-off to perform duties on behalf of the Sheriff.

Opposed to the change, the Sheriff maintains that court room obligations are not commonly part of the duties of this unit, and that there is little justification for the proposal. When employees are required to attend court, it is usually during a regular shift and the Deputy is "on the clock."

XV Retirement

Lacking a provision for retiring employees to take accumulated sick leave, the Union proposes language by which unused sick leave becomes a part of a retirement payment. The Union proposal consists of a cash-out based upon years of service and a corresponding percentage of sick hours up to a graduated maximum of 720 hours for employees with more than 21 years of service. Sick leave pay-outs have an advantage for employers in that employees will not be inclined to use up accumulated sick leave.

In the absence of a contract provision, the statutory language controls. As the Department of the Sheriff intends to continue to follow the statute on this issue, there is no need to put such language into the contract. The overall compensation package renders the proposed language excessive and unwarranted. Moreover, in comparables cited by the Union, there is a sick leave accrual that is less than 15 days a year.

XVI Overtime/Hours of Work

The Union proposal on overtime is to retain current language with the added provision that overtime be equalized among employees in divisions or areas of work. In the absence of any evidence on disparity of overtime assignments, the Sheriff is opposed to any limitations on its managerial right to schedule and assign employees. For the purpose of curtailing sick leave abuses, however, the Sheriff proposes that sick leave is not deemed time worked for purposes of determining overtime.

XVII Employee Rights

While not intrusive, the proposal of the Union is an article which sets forth the basic elements of due process to be afforded bargaining unit members. Opposed to the proposal, the Sheriff maintains the language goes well beyond what is required by existing law. Rather than inserting new contract language, the Sheriff proposes abiding by the well established external law on the subject of employee rights.

XVIII Outside Employment

Under current contract language outside employment of employees is restricted to twenty hours per week. The Union seeks to modify the language so that the restriction only applies to the five day work period, thus enabling employees to work additional hours on week-ends, vacations, and holidays. Such a modification would not impact on concerns raised by the Sheriff, such as fatigue, while enabling the employee to supplement earnings. Should an employee exhibit signs of fatigue or abuse sick leave privileges because of outside employment, the Sheriff has the authority to impose discipline. It is not unprecedented, however, for employees to be expected to work sixteen hour days for the Department.

In opposition to the proposal, the Sheriff points out that as the primary employer, the Department is entitled to expect an employee to be alert and prepared both physically and mentally to carry out job duties. Twenty hours of outside employment is quite sufficient to enable the employee to earn extra without jeopardizing job performance for the Sheriff.

XIX Assignment and Transfer

In its assignment and transfer proposal, the Union endeavors to ensure that assignments and transfers are not arbitrarily carried out but are based on identifiable criteria, such as seniority. The Corrections Officers with whom the Sheriff negotiates have an elaborate assignment by seniority provision which has worked quite well. In contrast, the assignment practice of this unit has generated hardship on individuals and adversely impacted employee morale, as described in testimony elicited by the Union. Frequently, employees are given less than 48 hours notice for schedule changes. By specifically identifying units of assignment and negotiating a shift and job bid provision, the parties will provide employees with greater predictability and an enhanced equity in job assignments.

As the Corrections Officers have substantially different job duties than Deputy Sheriffs, the method of job assignment to Correction Officers is different from the way jobs are assigned to Deputies. The Sheriff endeavors to "cross-train" Deputies, that is to have deputies experience and be qualified in all aspects of Deputy duties. Yet, the Sheriff must retain discretion in selecting individuals best suited for specific job assignments. Not all deputies have the same temperaments or personal characteristics. But, at the time of interviews

for employment, individuals are specifically informed of the expectation of availability to work all shifts and all positions. It is imperative that the Sheriff retain the inherent managerial right to assign employees as needed.

XX Sick Leave

To remedy the problem of excessive sick leave usage, the Sheriff proposes several modifications. First, the Sheriff proposes that sick leave not count as time worked for overtime purposes; second, that sick leave credit be earned at the rate of 3.07 hours for each 80 hours, not to exceed 96 hours in one year; third, that a physicians statement be required for absences exceeding three consecutive days; fourth, that family members for whom sick leave may be taken be modified; and fifth, that patterns of sick leave be addressed. The Sheriff maintains that the evidence on the extent to which this unit uses sick leave justifies the proposed modifications

Arguing that the Sheriff has failed to demonstrate a need to change the current language, the Union seeks to retain the status quo on sick leave. If, as the Sheriff asserts there is an abuse problem, then, there already are remedial options available to the Sheriff. For example, the Department can impose discipline if sick leave is improperly used or falsified. Moreover, the theory that curtailment of leave will reduce abuse of sick leave is unsupported by evidence.

XXI Fitness for Duty

The Sheriff proposes language whereby the department can periodically require employees to demonstrate to the satisfaction of the employer that employees meet fitness standards. In opposition to the language, the Union argues that a health and safety standard already exists and that if employees are not meeting the standard the employer may impose discipline. Comparable units do not contain such a provision. Nor has the Sheriff demonstrated a need for the vaguely defined fitness test.

XXII Parking

The Union proposes that the current practice regarding employee parking in county garages be included in the contract. The Sheriff opposes the inclusion on the basis that parking is not a mandatory subject of bargaining.

XXIII Retirement

The Union proposes a new provision entitled Retirement which would set forth a sick leave cash-out schedule, enable Deputies to buy their service weapons, and would provide for a retirement identification and badge.

XXIV Duration

While both seek a three year contract, the parties differ as to the retroactivity of the contract to be negotiated. The Sheriff seeks a contract effective upon ratification and the

Union seeks the agreement to be retroactive to the date of certification.

Discussion

In addition to achieving what it deems a more competitive economic package for the employees of this bargaining unit, the Union herein is seeking to change certain procedures concerning job appointments. Hovering over these negotiations, then, have been the traditional tensions between not only cost containment and financial benefit, but also managerial prerogative and employee privilege. By making the recommendations issued in this report, the Fact finder has endeavored, after careful analysis of the evidence presented by both parties, to balance their conflicting objectives and to propose contract language which addresses respective concerns raised in the two days of hearing. When considering the proposals submitted by both parties, the fact-finder has taken into account those criteria routinely cited by neutrals in this jurisdiction. The particular criterion relied upon by the fact-finder is discussed below when explaining issue by issue the rationale for her recommendations.

While this is an initial agreement between these parties, the present negotiations have not occurred in a vacuum. Prior to the March 11, 1999 certification of this Union as their bargaining agent, the Deputy Sheriffs had been represented by Cuyahoga Deputy Sheriff's Union Local #1 (CDSU). Pending the outcome of these proceedings, the parties have been functioning under the provisions of the January 1, 1999 to December 31, 2001 labor contract between the Sheriff and the CDSU.

As this is a first contract, the Sheriff objected at the fact-finding hearing to consideration by the factfinder of certain Union proposals which the Sheriff deems to be "permissive subjects of bargaining." In evaluating this objection, the factfinder has researched the issue and reviewed the language in both the Ohio Administrative Code and the Ohio Revised Code pertaining to impasse procedures. Agreeing with the Union that factfinding is not the proper forum for determining "permissive" versus "mandatory" subjects of bargaining, this hearing officer has determined to render recommendations on all of the items upon which she took evidence and testimony. Not an adjudicatory body, fact-finding functions to hear factual arguments pertaining to contract language and, based thereon, to make recommendations consistent with specific statutory criteria for the resolution of a bargaining impasse. Accordingly, a discussion of her recommendations follows in the order in which the issues were presented at the hearing.

I Union Business Leave

The first aspect of the Union proposal pertaining to Union Business Leave is a "housekeeping" item by which the officers of this Union are defined. As this is the first contract between these parties, inclusion of the proposed change is recommended by the factfinder.

While at first glance the second modification appears equally routine, a more circumspect review indicates otherwise. The Union proposes deletion of a sentence which obliges the Union to reimburse the Sheriff for "wages paid to bargaining unit members participating" in contract negotiations. Citing comparables, the Union suggests granting leave to conduct union business without loss of pay is consistent with the practice of Sheriff Departments elsewhere within the state.

The fact-finder has carefully reviewed the comparable contracts submitted for her perusal. In most of the submitted contracts in which leave for collective bargaining is authorized, the parties have agreed upon specific conditions for such leave. For example, according to the Franklin County contract the bargaining committee members are placed on "special assignment" during negotiating sessions. The Geauga County contract limits leave to one director for each division. Similar limitations as to the number of employees and hours spent are included in the Lorain County contract. The Hamilton County contract requires written requests for leave. Perhaps the most persuasive contracts on this matter, however, are the internal comparables. Neither the Corrections Officers nor the Corporals are granted the benefit now sought by the Deputies.

In the absence of specificity in its proposal, the fact-finder does not recommend the modification sought by the Union pertaining to Union Leave. Rather, the fact-finder recommends continuation of the language set forth in the contract under which the parties are presently operating.

II Union Security/Check-off

The proposal of the Union is retention of current contract language. In contracts with Corporals, Corrections Officers and Deputies, this Sheriff has agreed to deduct a fair share fee. Comparable contracts which have been submitted to the fact-finder for her review consistently provide fair share fee language. In the absence of any persuasive argument against the retention of the fair share fee provision, the fact finder recommends fair share fee language be included in the agreement

Similarly, in the absence of any explanation for the changes sought by the Sheriff in regard to Dues Checkoff, the fact-finder recommends retention of the present language. There does not appear to the factfinder to be any need to change the practice under which the Sheriff has deducted Union dues.

III Bulletin Boards

Relying again on the internal comparables with the Corporals and the Corrections Officers and upon the practice previously established with the Deputies, the fact finder recommends the present provision pertaining to Bulletin Boards. The Sheriff has not presented any evidence which would justify curtailment of the current language or the present operating practice.

IV Probationary Period

The Sheriff proposes extending the probationary period

for employees to one year. Finding that the proposal is consistent with comparable contracts and that the testimony elicited by the Sheriff supports the reason for the change, the factfinder recommends that the probationary period be extended to one year.

V Uniforms

By proposing an increase in the uniform allowance to \$600.00 per year, the Union seeks to enhance the economic wage package provided to the bargaining unit. Strongly objecting to the use by the Union of the uniform allowance as a component of "wages," the Sheriff argues the increase is excessive and without justification. Although the Union cites comparable contracts in support of its proposal, the Sheriff indicates significant distinctions. For example, while employees in this unit are given all replacement articles, employees in other units are required to buy items of clothing, using a voucher or receipt system.

While the factfinder agrees that the increase sought by this Union is excessive, she also acknowledges that a uniform allowance may be used to improve an economic package during contract negotiations. A consideration of the contracts submitted to the fact-finder for review establishes a correlation between wages and uniforms. In those jurisdictions in which Deputy Sheriffs receive a higher rate of pay, the uniform allowance is more restrictive. While Franklin County Deputy Sheriffs are the highest paid in the state, for example, the uniform allowance for the unit is a computerized replacement credit with a vendor. On the other hand, in Mahoning and Lorain Counties, where wages paid to Deputy Sheriffs are lower than in other jurisdictions, the uniform allowance is less restrictive and/or of a greater monetary value. When reviewing the "economic package" of a bargaining unit, then, the relationship between uniforms and wages ought not to be discounted. In making her recommendation on uniforms, the fact-finder does so with wages in thought. The fact-finder recommends increasing the uniform allowance of the bargaining unit to \$450 per year.

In addition to the allowance increase, the Union also seeks to increase the annual issuance of articles of clothing. The issuance to this unit does seem somewhat limited. As articles of clothing are replaced as reasonably needed, however, the provision to the unit should be adequate. Accordingly, the fact-finder does not recommend the increases in issuances now sought by the Union. Should an employee have difficulty in securing replacement articles, the remedial action is not to increase the issuance but to address the response through proper channels of communication.

The Sheriff has submitted for consideration a proposal that "only department issued badges and pins are to be worn by Deputy Sheriffs." While the reason behind the proposal was elicited at the hearing, the need for this restriction was not demonstrated. Accordingly, the factfinder declines to recommend a limitation on employee expression in this manner.

VI Use of Personal Vehicles

Current contract language provides that unit employees shall not be required to utilize their personal vehicles during performance of duties. The Union seeks to modify the provision so that employees are not directed to use their vehicles for any working purpose whatsoever. Testimony as to the background justifying the proposal was brought forth by the Union. Concurring with the Sheriff, however, that "working purpose" obscures the very clear and unambiguous provision already in place, the factfinder does not recommend the change sought by the Union.

VII Promotional Examination

Both parties have presented modifications to the promotional exam language. Again describing incidents from the past, the Union contends that the intent to promote by competitive examination has been by passed by the Sheriff and instead of by exam, promotions have been effected on an emergency basis. In addition the Union seeks to impose a one year service requirement while the Sheriff seeks a five year service prerequisite. Further, the Sheriff seeks to be able to appoint from a rule of five.

To avoid both the litigation and the contention between the Union and the Employer which this matter has engendered, the factfinder recommends language to the effect that for the purpose of promotions, the Employer shall make requests to a testing agency for an examination and shall maintain from such examination a current eligibility list.

Upon a review of comparable contracts, the fact-finder agrees with the Sheriff that an eligibility requirement based on length of service is appropriate. While the five years sought by the Sheriff exceeds the service requirement most generally utilized in promotional exam language, three years is commonly used. Also, the factfinder observes that the Rule of Three is customary in Sheriff Departments having such provisions. Accordingly, the factfinder recommends a period of three years of continuous uninterrupted service with the Employer prior to taking a promotional exam and she recommends continuing appointments from a "rule of three."

VIII Longevity

Longevity is a means of compensating employees for their service to the employer beyond the traditional wage structure. Presently employees receive \$250 after five years of service, with an additional \$25 for each year thereafter. In recommending an adjustment in the longevity scale, the fact finder has carefully reviewed the comparables submitted for her analysis. Again, as with uniforms, she finds that longevity payments may be used to enhance lower rates of pay. Although Cuyahoga County is a major metropolitan area comparable to counties such as Franklin, Hamilton, and Montgomery, both wages and longevity for the Deputy Sheriffs fall below rates paid to Deputies in those urban jurisdictions. Indeed, longevity payments to Deputies

in Cuyahoga County fall below those paid in less thriving counties such as Lorain and Mahoning which, not yet benefiting from the "new" economy, provide Deputies with lower rates of pay but significant longevity. The factfinder concludes that the longevity component of the wages for this unit warrants some adjustment.

Accordingly, the factfinder recommends increasing longevity payments to \$375 after the initial five years of service with an additional \$75 per year thereafter, capping at \$1475 at the twentieth year of service.

IX Wages

Analysis of comparable wage scales among County Deputy Sheriffs in Ohio is a uniquely difficult task. There is great variety throughout the state in the job classifications which comprise Deputy Sheriffs. In Lorain County, for example, there are different pay rates for Evidence Officer, Patrol Officer, Communications Officer. Enforcement Officers in Hamilton County include Patrol Clerks, Court Service Officers I and II, Patrol Officers/Evidence Technicians. Deputies in Medina County are classified as Deputy I, II and III, with Deputy I classifications including Road Patrol, Detective Bureau, Civil Bureau and Truck Scales, Deputy II including Prisoner Transportation, Court Security, Warrants, Litter Control, Jail Administrative Assistant and Home Arrests, and Deputy III including Corrections Officers and Deputies assigned to jails. There is a corresponding variety in the compensation paid to the different classifications comprising Deputy Sheriffs and in the components of that compensation.

Determining, then, how the wages paid to Cuyahoga County Deputies compare with wages paid to similarly situated units is a challenge. The Union argues that this unit lags significantly behind other units performing similar services in terms of rates of pay. On the contrary, the Sheriff maintains that given the job duties of this unit, the rates of pay are competitive. Moreover, the Sheriff asserts that the rate increases heretofore negotiated for Deputies exceed the "normal" per centage. In support of its contention on comparability, the Sheriff argues that this unit predominantly performs security services, whereas deputies in other jurisdictions perform road patrol, which is customarily paid at a higher rate. Finally, the Sheriff maintains that the total wage package, including uniform allowances, places Cuyahoga County in the middle of the comparisons and not below as argued by the Union.

The factfinder acknowledges and agrees that the duties of Deputy Sheriffs in Cuyahoga County differ from those performed by some of the deputies in the comparable jurisdictions as hereinafter identified. While there is no "Road Patrol" performed by this unit, the evidence does establish that the Deputies in Cuyahoga County are assigned a variety tasks, ranging from security to investigation. Unlike in other counties having defined job classifications, the deputies in Cuyahoga County are "cross-trained" in all areas of law enforcement activity

and are expected to be able to perform wherever assigned. Nonetheless, when reviewing the comparables, the factfinder excluded the wages paid to those Deputy Sheriffs classified as performing road patrol, and she considered only those classifications deemed to be similar in job duties.

The fact-finder reviewed comparables in terms geographic location as well as population components. According to the latest data available from the SERB research department, Cuyahoga County is one of the five most populated counties in Ohio, the remaining four being Franklin, Hamilton, Montgomery and Summit. In addition to Summit, counties contiguous to Cuyahoga include Medina, Lake, Lorain and Geauga. Although the Sheriff objected to the use of contiguous counties, the factfinder believes these are worthy comparables. Historically called the "Western Reserve", this area shares an economic commonality and is one through which the populations served by the Deputy Sheriffs increasingly move about from homes to schools, employment, entertainment, and recreation.

Thus, the factfinder has analyzed all the data pertaining to wages for these counties, including, as the Sheriff properly pointed out, monetary benefits such as longevity and uniform allowance (not reimbursement), and excluding those classifications performing road patrol. Upon examination of the evidence presented, the factfinder is persuaded the unit is not in the middle of comparables as argued by the Sheriff. Rather, the review of the comparables indicates that Cuyahoga County is either at the bottom of the comparables or in the lower tier.

Looking, first at the starting salaries for Deputy Sheriffs in the five largest counties, the fact-finder acknowledges that Cuyahoga County is sandwiched in between Montgomery and Hamilton on the higher end and Summit and Franklin at the lower end. This position, however, is only temporary. By the time the employee has completed five years of service, Cuyahoga County falls behind Franklin County, and when longevity commences after eight years, behind Summit County as well. For the next twelve years, Cuyahoga County remains last among the five largest counties in terms of compensation paid to Deputy Sheriffs. After the twentieth year of service, the Cuyahoga County Deputy Sheriff edges out Summit County for fourth place in terms of compensation paid to Deputies by the five largest counties.

Two observations must be noted on this data. First, the FOP contract with the Hamilton County Sheriff covers five classifications of employee. While wages paid to the Court Service I classification rank below those paid to the Cuyahoga County Deputy Sheriff after the starting salary, the fact-finder notes that the Cuyahoga County Sheriff is expected to be able to perform in all aspects of deputy duties and is so assigned. Second, whereas the factfinder has year 2000 data for most comparables, the information for Hamilton County is based on 1999 data.

Considering, next, the financial data from contiguous counties in addition to Summit, Cuyahoga County ranks lower

than Medina, Geauga, Lorain and Lake Counties in terms of starting salaries. After ten and twenty years of service, in 1999, Cuyahoga County was only before Medina in terms of compensation paid to Deputy Sheriffs. Also, it should be noted that both Lorain and Medina Counties provide a uniform allowance in excess of that for Cuyahoga County Deputy Sheriffs. Further, in reviewing the wage information for the contiguous counties, the factfinder took into account the remarks by the Sheriff Department that Deputies in Cuyahoga County do not perform road patrol. She did not, therefore, use the hourly rates paid to road patrol in Lake, Geauga or Medina Counties.

In summary, based on the comparables reviewed, the hearing officer finds that the wage rate for Cuyahoga County Deputies requires an increase. A much more problematic issue, however, is achieving a fair and reasonable adjustment. The purpose of this process is not to thrust Cuyahoga County at the forefront of the comparables. Rather, it is to make the County more competitive in terms of wages, closing the apparent gap between Cuyahoga County and other greater metropolitan areas in the state. Nor is the intent of the factfinder to redress the past. Instead, her recommendations focus on the current negotiations. While she realizes the percentage increases recommended hereafter are not as great as the Union had proposed, the fact finder hopes that considering the issues in total, a discreet and equitable labor contract may emerge from the recommendations.

The factfinder recommends an additional 3% increase for 2000, as follows: 1.25% retroactive to January 1, 2000 and 1.75% effective June 30, 2000; a 4% increase for 2001; and a 3.5% increase for 2002. In doing so, the factfinder has carefully analyzed how the increases will rank Cuyahoga County Sheriff's Department with comparables in the year 2000. The increases will not place Cuyahoga County ahead of the highest paid counties, but it will close the gap and place Cuyahoga County in the midst of the comparables analyzed. The 4 % increase for year 2001 will continue the adjustments sought in these proceedings. Finally, pointing out that except for Lake, Geauga and Summit Counties, which each negotiated 3.5% increases, no negotiation data for years beyond 2000 was presented for consideration. By recommending 3.5% the factfinder hopes to return the county in 2002 to a percentage rate she projects will be typical.

X Vacations

As the factfinder discerns the significance of keeping units within the Sheriff's Department on a uniform vacation benefit, she does not recommend a change in the vacation schedule in this round of negotiations.

XI Bereavement

Absent persuasive evidence that a modification in the current language is a necessary precaution, the factfinder does not recommend a change in the bereavement language. The present provision requiring that bereavement leave be used consecutively

sufficiently addresses the concerns raised by the Sheriff at the hearing.

XII Health and Safety

Agreeing with the Sheriff that the Union has not established a need for its proposed changes to the Health and Safety provisions, the fact-finder does not recommend the same at this time. As to the changes proposed by the Sheriff, the factfinder concurs that current statutory language warrants using the terms "impaired" and "suspended" instead of "disabled" and "dismissed."

XIII Health Insurance

The factfinder understands the wish on the part of the Sheriff to achieve a consistency with other County employees as to health insurance. Given the evidence previously discussed, however, as to the wage comparables, the factfinder does not now recommend requiring Deputies to increase their contribution to the health insurance.

XIV Court Time/Call in Pay

The major objection of the Sheriff to the Court Time language proposed by the Union is that it is unnecessary. The Sheriff maintains that Court time when an employee is off duty does not normally occur. That being so, there should be no genuine opposition to the proposal on the part of the Sheriff. As to the call in language, the factfinder believes that such language should be restricted to call in time that does not precede a regularly scheduled shift. Otherwise, the provision may be construed as a guarantee that overtime be assigned in three hour segments.

XV Retirement

The fact finder concurs with the Sheriff that the statutory language should continue to be used.

XVI Overtime/Hours of Work

In the absence of evidence of disparate overtime assignment, the factfinder does not recommend the changes sought by the Union at this time. She does, however, recommend that language precluding sick leave as time worked for overtime purposes. The evidence submitted by the Sheriff on sick leave warrants the exclusionary language.

XVII Employee Rights

The two major objectives of the factfinder in these proceedings were to achieve a greater wage comparability and to provide language whereby assignments were made with reasonable notice to employees. While the Union proposal on Employee Rights is an exposition of current law, and one that the Union has successfully negotiated in other jurisdictions, she concurs with the Sheriff that new contract language is not necessary at this time. Well established external law is sufficient to safeguard employee rights.

XVIII Outside Employment

Presently employees are permitted to work a maximum of twenty hours outside of the Sheriff's Department. While the Union seeks to limit the extra hours to the work week, thereby enabling Deputies to increase outside work on week-ends and holidays, the factfinder agrees that twenty hours outside employment is sufficient. In performing law enforcement duties, the ability to make sound judgement and respond quickly to crises is imperative. Is the employee who has worked a sixty hour week and then works a twenty hour week-end mentally alert for the crisis that arises on Monday morning? This factfinder agrees with the decision by the Sheriff to restrict outside work to twenty hours.

XIX Assignment and Transfer

In addition to the wage adjustment, attaining some modification to the shift and post assignments has been a primary objective of the Union. Because the Sheriff perceives the Union proposal as a restriction on inherent managerial rights, however, he has objected to any modification in the contract language. The evidence establishes that there are four principle posts: Perimeter Security, Juvenile Court, Main Court and Lakeside Court. Except for Perimeter which is a twenty-four hour post, the posts are manned by two shifts. In addition, there are five specialty areas: narcotics, detective, transport, civil, and scientific investigation. Heretofore, job assignments as well as shifts have been discretionary with the Sheriff. At the time of hire, employees are specifically advised that they are expected to work as assigned by the Sheriff.

One particular complaint of the Union, however, is that shift changes have been made without sufficient prior notice and in such a manner as to adversely impact the employee. As to shift assignments, the factfinder believes the concerns of the Union can be addressed without infringing upon managerial rights. For example, shift changes with a minimum of ninety-six (96) hours notice can be implemented. This will enable the employee to make whatever personal changes, such as child care arrangements, he or she needs to make. In addition, language providing that any problems arising from shift assignments should be immediately brought to the attention of the Department for adjustment, if possible, again provides a channel for discussion without undermining managerial authority. Indeed, the evidence indicates that management has, in the past, considered the particular needs of individual employees when making shift assignments, if those needs have been made known to the Department.

As to job assignments, current contract language indicates that unit assignments should be based upon prior performance, ability, skill, seniority and experience. The factfinder notes that additional contract language could enhance the provision without interfering with managerial privileges. For example, the contract could state:

when the Sheriff is considering making an assignment in one of the specialty areas, a notice to that effect will be posted. Employees interested in the assignment are to express their interest in writing by the specified date. Assignments to the specialty areas will be made by the Employer taking into consideration factors such as prior performance, ability, skills, seniority and experience.

The additional language proposed by the factfinder does not in any way restrict managerial prerogatives to make and assign employees. It merely provides the employees with notice, an opportunity to apply, and a chance for consideration in the filling of a position.

XX Sick Leave

The evidence persuades the factfinder that the Sheriff is justified in seeking the modifications now proposed. Absences within the department warrant remedial action and the sick leave provision is an appropriate and reasonable means of doing so.

XXI Fitness for Duty

While the factfinder can concur with the right of the Sheriff to ensure physical fitness of employees, the language proposed for doing so is so vague that the hearing officer fears it is fraught with controversy. Accordingly, the factfinder does not recommend this language.

XXII Parking

Parking, like traffic, has to be dealt with by anyone working in a metropolitan area. Although the fact-finder recommends the continuation of the current practice, she does not propose its inclusion within the Agreement.

XXIII Retirement

The factfinder does not recommend the proposal of the Union. Having suggested significant economic changes for this unit, this hearing officer leaves retirement enhancements for future negotiations.

XXIV Duration

While both parties seek a three year contract, their disagreement is over commencement and retroactivity. This unit has been in negotiations, punctuated by litigation, for a long time. There is a genuine need to settle upon terms and conditions of employment for this unit and then to operate under the contract for a period of time before initiating the process all over again. Accordingly, the factfinder recommends a three year contract with retroactivity to January 1, 2000.

Summary

I Union Business Leave

Only changes in the definition of the union officials are recommended at this time.

II Union Security/Check-off

The Union proposal on Union Security/Check off is recommended.

III Bulletin Boards

Current language on bulletin boards should be retained.

IV Probationary Period

Increasing the probationary period to one year is recommended.

V Uniforms

An increase in uniform allowance to \$450.00 per year is recommended.

VI Use of Personal Vehicle

No changes in the contract language on use of personal vehicles is recommended.

VII Promotional Exam

Maintaining a current list for promotions is recommended. The Rule of Three should be retained, but a service prerequisite of three years should be included.

VIII Longevity

Longevity should be increased to \$375 after five years, with an additional \$75 for each year thereafter, capping at \$1475 at the twentieth year.

IX Wages

The recommended increase is as follows: 1.25% retroactive to January 1, 2000; an additional 1.75% effective June 30, 2000; 4% effective January 1, 2001; 3.5% effective January 1, 2002.

X Vacations

No change in vacation is now recommended.

XI Bereavement

No change in the bereavement leave provision is now recommended.

XII Health and Safety

Current language with the exception of modifying "disabled" to "impaired" and "dismissed" to "suspended" is recommended.

XIII Health Insurance

No changes are recommended at this time.

XIV Court Time/Call in Pay

Providing a minimum pay for court time when an employee is off duty is recommended. A minimum of three hours overtime for call in pay that does not precede a regularly scheduled shift is recommended.

XV Retirement

No changes are recommended.

XVI Overtime

The change proposed by the Sheriff is recommended.

XVII Employee Rights

No changes are recommended.

XVIII Outside Employment

No change is recommended at this time.

XIX Assignment and Transfer

The factfinder recommends including language which enhances career advancement for unit members while retaining the right of the Sheriff to select on the basis of merit. The specifically proposed language is in the discussion section of this report. In addition, the factfinder recommends providing at least ninety-six hours notice prior to shift changes and including in the agreement language encouraging employees to discuss shift change problems with a supervisor.

XX Sick Leave

The changes proposed by the Sheriff are recommended

XXI Fitness for Duty

The proposed language is not recommended.

XXII Parking

The proposed addition is not recommended.

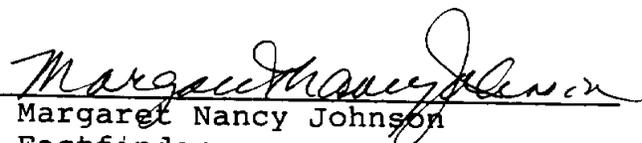
XXIII Retirement

The proposal of the Union is not recommended.

XXIV Duration

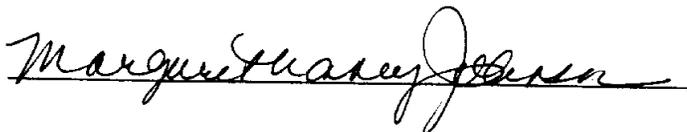
The factfinder recommends a three year contract retroactive to January 1, 2000.

Respectfully submitted,


Margaret Nancy Johnson
Factfinder

Service

The above report and recommendations were sent by express mail this 8th day of June, 2000, to: S. Randall Weltman, Esq. 1228 Euclid Avenue, Cleveland, Ohio 44115-1891; James P. Wilkens, Esq. 3480 West Market Street, Akron, Ohio 44333; and by regular mail to George Albu, Administrator, Bureau of Mediation, State Employment Relations Board, 64 East State Street, Columbus, Ohio 43215.

A handwritten signature in cursive script, reading "Marguerite Mary Johnson", written over a horizontal line.

Five Largest Ohio Counties 1999 Salaries

Starting salary	After five years	After ten years	After twenty years
Hamilton 37,519.00	Franklin 46,155.20 <u>375.00</u> 46,530.20	Franklin 46,155.20 <u>750.00</u> 46,905.20	Franklin 46,155.20 <u>1,850.00</u> 48,005.20
Montgomery 36,608.00	Montgomery 42,203.30 <u>422.30</u> 42,625.60	Montgomery 45,323.20 <u>566.54</u> 45,889.74	Montgomery 45,323.20 <u>793.16</u> 46,116.36
Summit 28,758.45	Hamilton 39,397.00	Hamilton 39,397.00 <u>393.00</u> 39,790.00	Hamilton 39,397.00 <u>787.00</u> 40,184.00
Cuyahoga 27,676.41	Summit 37,841.62	Summit 37,841.62 <u>378.42</u> 38,220.04	Summit 37,841.62 <u>567.00</u> 38,408.62
Franklin 27,601.60	Cuyahoga 37,138.12 <u>250.00</u> 37,388.00	Cuyahoga 37,138.12 <u>500.00</u> 37,638.12	Cuyahoga 37,138.12 <u>1,000.00</u> 38,138.12

Six Contiguous Ohio Counties 1999 Salaries

Starting salary	After five years	After ten years	After twenty years
Geauga 34,172.80	Lake 38,043.20	Lake 38,043.20 <u>475.00</u> 38,518.20	Geauga 37,252.80 <u>2,000.00</u> 39,252.80
Lake 33,051.20	Summit 37,841.62	Geauga 37,252.80 <u>1,000.00</u> 38,252.80	Lake 38,043.20 <u>900.00</u> 38,943.20
Lorain 31,116.80	Geauga 37,252.80 <u>500.00</u> 37,752.80	Summit 37,841.62 <u>378.00</u> 38,219.62	Lorain 37,128.00 <u>1,760.00</u> 38,888.00
Medina 30,910.00	Lorain 37,128.00 <u>430.00</u> 37,558.00	Lorain 37,128.00 <u>860.00</u> 37,988.00	Summit 37,841.62 <u>567.00</u> 38,408.62
Summit 27,920.00	Cuyahoga 37,138.12 <u>250.00</u> 37,388.00	Cuyahoga 37,138.12 <u>500.00</u> 37,638.12	Cuyahoga 37,138.12 <u>1,000.00</u> 38,138.12
Cuyahoga 27,676.41	Medina 36,874.00 <u>300.00</u> 37,174.00	Medina 36,874.00 <u>550.00</u> 37,424.00	Medina 36,874.00 <u>1,000.00</u> 37,924.00

Five Largest Counties 2000 Salaries

Starting Salary	After five years	After ten years	After twenty years
Montgomery 37,876.00	Franklin 47,777.60 <u>375.00</u> 48,152.60	Franklin 47,777.60 <u>750.00</u> 48,527.60	Franklin 47,777.60 <u>1,850.00</u> 49,627.60
Hamilton (1999) 37,519.00	Montgomery 43,680.00 436.80 44,116.80	Montgomery 46,904.00 <u>586.30</u> 47,490.30	Montgomery 46,904.00 <u>820.82</u> 47,724.82
Cuyahoga 29,533.32	Hamilton (1999) 39,397.00	Hamilton (1999) 39,397.00 <u>393.00</u> 39,790.00	Hamilton (1999) 39,397.00 <u>787.00</u> 40,184.00
Summit 28,758.45	Cuyahoga 38,995.03 <u>250.00</u> 39,245.03	Summit 39,166.08 <u>391.66</u> 39,557.74	Cuyahoga 38,995.03 <u>1,000.00</u> 39,995.03
Franklin 28,558.40	Summit 39,166.08	Cuyahoga 38,995.03 <u>500.00</u> 39,495.03	Summit 39,166.08 <u>587.49</u> 39,753.57

Contiguous Ohio Counties 2000 Salaries

Starting salary	After five years	After ten years	After twenty years
Geauga 36,420.80	Lake 39,374.40	Lake 39,374.40 <u>475.00</u> 39,849.40	Lake 39,374.40 <u>900.00</u> 40,274.40
Lake 34,382.00	Cuyahoga 38,995.03 <u>250.00</u> 39,245.03	Geauga 38,563.20 <u>1,000.00</u> 39,563.20	Geauga 38,563.20 <u>2,000.00</u> 40,563.20
Medina 31,992.00	Summit 39,166.08	Summit 39,166.08 <u>391.66</u> 39,557.74	Cuyahoga 38,995.03 <u>1,000.00</u> 39,995.03
Cuyahoga 29,553.32	Geauga 38,563.20 <u>500.00</u> 39,063.20	Cuyahoga 38,995.03 <u>500.00</u> 39,495.03	Summit 39,166.08 <u>587.49</u> 39,753.57
Summit 28,758.00	Medina 38,165.00 <u>300.00</u> 38,465.00	Medina 38,165.00 <u>550.00</u> 38,715.00	Medina 38,165.00 <u>1,050.00</u> 39,215.00