



I. SUBMISSION

This fact finding came before this fact finder pursuant to the Employment Relations Act of the State of Ohio, the parties having been unable to resolve of their impasse differences prior to this hearing. The hearing in this cause was scheduled and conducted at the conference facility of the employer in New Philadelphia, Ohio on April 6, 2000, whereat the parties presented their evidence in both witness and document form. The parties stipulated and agreed that this matter was properly before the fact finder; that the witnesses, if any, would be sworn and that the witnesses need not be sequestered. The parties further agreed not to file any post hearing briefs. It was upon this evidence and argument that this matter was heard and that this Opinion and Award was thereafter rendered.

II. STATEMENT OF FACTS

This matter came before this fact finder with five open issues. Those issues were listed as follows:

1. Hours of work / Overtime
2. Vacation Scheduling
3. Wage Increase
4. Uniform Allowance
5. Shift Preference

During the course of hearing the union withdrew its demand concerning vacation scheduling under Article 23 of the contract of collective bargaining. The parties signed off that particular clause. That particular sign off is attached hereto and made part hereof as fully rewritten herein and marked Exhibit A (seven pages) for identification purposes.

The duties of the bargaining unit, sworn officers, are those of a road patrol for law enforcement purposes within the county of Tuscarawas, Ohio. The employer stated that activity concerning shift preference would hinder law enforcement. That was so, indicated the employer, because the employer believed that the more senior employees would choose the daylight shift leaving the junior employees on law enforcement road patrol during the evening and nighttime hours. Management believed that it was necessary to have senior employees on all shifts because of the experience necessary for law enforcement.

The union on the other hand, indicated and stated that all of the road patrol deputies are competent and able to competently complete law enforcement activities, even if they are not the most senior people. The union further indicated and stated that seniority should trigger a recognized preference for the shift worked, desired.

Under the current contract the bargaining unit was receiving five hundred dollars per year for uniform allowance. The bargaining unit now sought the amount of five hundred and fifty dollars per year indicating and stating that the increase was reasonable. The employer

revealed that more than half of the bargaining unit does not use the five hundred dollars allotted and that others in the bargaining unit are seeking to use the uniform allowance for items not included in the uniform allowance. The union evidence failed to reveal a definitive need for additional funds.

There is presently in existence a situation which allows the use of flex time for overtime at the facility. In other words, if a bargaining unit member is called in early for fifteen minutes or a half an hour, then in that event rather than payment of wage, management may give that particular employee compensated time off without a payment of wage. The employees take issue with the fact that this provides for an uneven work schedule, loss of overtime and a difficulty to manage home life due to varied hours as a result of the activity of the employer. The employer on the other hand has indicated and stated that overtime premium pay is at a minimum as a result of this activity. The employer stated that such activity had been in use ever since the first contract between the parties herein. The bargaining unit did admit, however, that they did receive overtime for court time but sought a payment of overtime for hours worked over eight in a workday and in excess of forty hours in any work week. That request is contrary to the present clause which contains flex time and compensatory time.

The bargaining unit in this particular matter is seeking a wage increase of 16% over three years, i.e., 8% for the year 2000, 4% additional for the year 2001, and an additional 4%

for the year 2002. The employer on the other hand, has offered a 3% increase for the first year an additional 2 ½ % increase over the second year and an additional 2 ½ % increase for the third year. Comparables were placed into the record in this matter and it revealed that the monies offered by the county would merely maintain the place and ranking of this particular bargaining unit in adjacent and contiguous, comparable counties. There was no showing on the part of the employer that funds were not available for the requested increase of the union.

Based upon all of that evidence, this matter rose to opinion and award by the fact finder in this particular matter.

### III. OPINION AND DISCUSSION

The fact finder finds that the vacation sign off is fair, just and reasonable and orders it into effect and into the new contract.

The fact finder further finds that the rejection of shift preference by the employer is proper. In law enforcement it is necessary that the shift or shifts be determined by the commanding officer and not by selection through use of seniority. Better law enforcement is made through the employer's selection rather than the seniority selection. The three shifts would then contain a mixture of senior and junior officers. That is probably a better mix. The request for shift preference made the union is thereby denied.

Likewise, the uniform allowance request of an additional fifty dollars per year is also denied. That is based upon the fact that there was no definitive showing by the union of lack of funds necessary to buy uniforms whether it be for summer or winter or spring or fall. The employer alleged and it was not denied by the union, that in fact over half the members of the bargaining unit do not use the uniform allowance of five hundred dollars per year. On that basis the uniform allowance request addition is denied.

The present system of flex payment for overtime and compensatory time for overtime is archaic. For that reason, I am making the following determination of the overtime request which following language shall be placed into the new contract of collective bargaining. The language appears reasonable and just and equitable and it revealed the following:

“

#### **ARTICLE 14 (NEW) OVERTIME**

**Section 1.** Overtime shall be paid at the rate of one and one-half (1 ½ ) times a rate determined by dividing the employee's base pay for 2080 hours. All bargaining unit employees shall be compensated at such rate for all hours worked over eight (8) hours in a workday or, in excess of forty (40) hours in any work week. At the employee's option, the employee may be compensated with compensatory time, at one and one-half times the hours worked provided that the employee does not accumulate at time more than one hundred and twenty (120) hours of compensatory time.

**Section 2.** All employees covered by this Agreement who are called out by a properly authorized person shall receive call out pay three (3) hours at one and one-half (1 ½) times their hourly rate of pay when called out for court, and one (1) hour at one and one-half times his hourly rate of pay when called out for other reasons. The employee shall receive the call out pay as set forth herein, or the actual time worked, whichever is greater, at

the overtime rate.

**Section 3.** Holidays, vacation days, personal days, sick days and compensatory time shall be considered hours worked for the computation of overtime.

**Section 4.** A seniority list of each shift within a division shall be used for selection of overtime, starting with the most senior member in his/her classification. The list shall rotate, as used, placing the top member to the bottom of the list if overtime is worked, and if overtime is refused, the member is placed at the bottom of the list.

**Section 5.** Employees ordered to work overtime shall be selected from the bottom of the seniority list and the seniority rotation shall be in inverse in order.

**Section 6.** Employees may each year of the Labor Agreement request payment for all unused compensatory time, and such payment shall be on the first payday in December.”

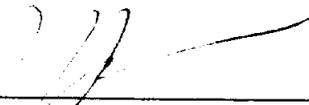
The fact finder has considered all of the comparables and all of the arguments concerning the wages. The fact finder has determined from the totality of evidence that the following should encompass the wage increase:

1. Effective the first full pay period following the execution of this agreement a three and one-half percent increase (3 ½ %) is ordered.
2. Effective the first full pay period following the anniversary date of the execution of this agreement, an additional three and one-half percent (3 ½ %) increase is granted.
3. Effective the first full pay period following the second anniversary of the

execution of this agreement, an additional three and one-half percent (3 ½ %) increase is granted.

IV. AWARD

The reasoning for the award is as indicated above in the Opinion and Discussion section. The fact finder therefore orders the rulings as stated in the Opinion and Discussion above. The fact finder further states that his findings appear to be just, reasonable and equitable under the evidence introduced at hearing.

  
\_\_\_\_\_  
MARVIN J. FELDMAN, Fact Finder

Made and entered  
this 14<sup>th</sup> day  
of April 2000.

TUSCARAWAS COUNTY SHERIFF

FINAL OFFER

FOP/OLC



MLS 4/6/00

ARTICLE 23

VACATION

Section 1. Full-time employees are entitled to vacation with pay after one (1) year of continuous service with the Employer. The amount of vacation leave to which an employee is entitled is based upon length of service as follows:

<u>Length of Service</u>	<u>Vacation</u>
less than 1 year	none
1 year but less than 8 years	80 hours
8 years but less than 15 years	120 hours
15 years but less than 25 years	160 hours
25 years or more	200 hours

Such vacation leaves shall be accrued to employees at the following rates:

EXHIBIT NO.

A ; Page 1

VACATION  
(CONTINUED)

TUSCARAWAS COUNTY SHERIFF

FINAL OFFER

FOP/OLC



MCS/6/1/98

<u>Annual Vacation Entitled To</u>	<u>Credited Per Pay Period</u>
80 hours	3.1 hours
120 hours	4.6 hours
160 hours	6.2 hours
200 hours	7.7 hours

**Section 2.** *New Current* employees of the Employer shall be entitled to vacation service credit earned in other state or local government agencies in Ohio during previous periods of employment. *Employees hired after January 1, 2000, shall only be entitled to vacation service credit earned in other Tuscarawas County agencies during previous periods of employment.*

**Section 3.** No employee will be entitled to vacation leave nor payment for accumulated vacation under any circumstances until he/she has completed one (1) year of employment with the Employer. *An employee who leaves employment with the Sheriff with less than one (1) year of service is not entitled to any vacation leave payment.*

VACATION  
(CONTINUED)

TUSCARAWAS COUNTY SHERIFF  
FINAL OFFER

WLS  
4/6/00  
FOP/OLC  
1/10

Section 4. *Vacation leave is earned while in paid status including vacation leave, paid military leave, and sick leave. No vacation leave is earned while an employee is in no pay status; however, vacation leave accrual shall be provided on a prorated basis.*

Section 4 5. *Vacations shall be taken in minimum increments of eight (8) hours. Vacations are scheduled in accordance with the workload requirements of the Employer. For this reason, the Employer may require requests for vacation of five (5) work days or more to be made sixty (60) days prior to the vacation period, and requests for vacation of less than five (5) work days to be made fourteen (14) days prior to the vacation period. Adjustments to the schedule will be made based upon seniority and in accordance with the workload requirements as determined by the Employer. Employees may request prior to February 15 the dates for that vacation year (February 15 through February 14 of the following year) on which they prefer to use their accumulated vacation. Employees may request first and second choices during this preference scheduling period and shall be notified by March 1 of the dates approved for vacation. Such requests shall be honored on the basis of the employee's seniority with the Employer within the respective bargaining unit(s) subject to the following limitations and exceptions:*

VACATION  
(CONTINUED)

TUSCARAWAS COUNTY SHERIFF

FINAL OFFER

FOP/OLC

MCS  
4/4/00



- A. *Vacation requests made during the above-referenced scheduling period shall be in minimum increments of five (5) working days.*
  
- B. *Vacation requests submitted after February 15 shall be awarded solely on the basis of order of application, and no seniority rights to preferred dates shall exist. Such vacation requests shall be submitted at least fourteen (14) calendar days prior to the posting of the next or affected work schedule.*
  
- C. *Vacations are scheduled and approved in accordance with the work load requirements of the Employer; however, the Employer shall maintain the right to deny such vacation request.*
  
- D. *An employee who has received approved of his vacation request, and is subsequently reassigned, shall not lose his right to that approved vacation period.*

EXHIBIT NO.

A; Page 4

VACATION  
(CONTINUED)

TUSCARAWAS COUNTY SHERIFF

FINAL OFFER

FOP/OLC

4/6/00



*E. Approval/disapproval for vacation leave shall be in writing to the employee within seven (7) calendar days from the submission of a request for vacation, if such request is made after February 15 of each calendar year.*

*F. Vacation shall not be involuntarily scheduled.*

*Upon a written request to the Sheriff and the approval of the Sheriff, vacation leave may be accrued up to two (2) times the employee's annual accumulation rate. Excess vacation shall be forfeited except where an employee has made a good faith effort to request vacation leave and such requests were denied due to the needs of the Employer.*

~~Section 5. All changes in the schedule shall be made on a first come-first served basis for those unscheduled and available weeks remaining. The Employer may waive the advance notice requirement if the employee can show that there is a bona fide emergency.~~

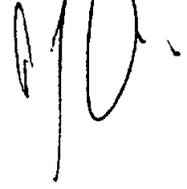
~~The Employer shall have the right to deny vacation requests if workload requirements so mandate.~~

VACATION  
(CONTINUED)

TUSCARAWAS COUNTY SHERIFF  
FINAL OFFER

FOP/OEC

4/18/00  
MCS



~~Section 6.~~ Vacation leave shall be taken by an employee between the year in which it was accrued and the next anniversary date of employment. Employees shall forfeit their right to take or to be paid for any vacation leave to their credit which is in excess of the stated accrual. Such excess leave shall be eliminated from the employee's leave balance.

~~Section 7~~ 6. Days specified as holidays in this agreement shall not be charged to an employee's vacation leave.

~~Section 8.~~ An employee is entitled to compensation, at his current rate of pay, for the prorated portion of any earned but unused vacation leave for the current year to his credit at time of separation, and in addition shall be compensated for any unused vacation leave accrued to his credit, to the maximums set forth in this article.

~~Section 9~~ 7. In the case of the death of any employee, the unused vacation leave and unpaid overtime to the credit of any such employee shall be paid to the deceased employee's spouse, or to the estate of such employee.

EXHIBIT NO.

A; Page 6

VACATION  
(CONTINUED)

TUSCARAWAS COUNTY SHERIFF

FINAL OFFER

MCS FOP/OLC  
4/6/00

Section 8. Any employee hospitalized that required at least one (1) overnight stay while on vacation shall, upon request and upon submission of sufficient evidence of the hospitalization, be entitled to change his vacation status to sick leave for all days hospitalized and an subsequent days necessary for recovery. Upon submission of the request with verifiable evidence, any vacation charged to the employee for the duration of the illness shall be restored to his credit.

Section 9. In the event that a previously approved vacation period becomes available due to the attrition of another employee from within their assigned bargaining unit, any appropriate employee within the bargaining unit may apply for vacation leave during the affected period in accordance with Section 3.

FOR THE EMPLOYER

Michael L. Seyer  
Richard L. Smith

FOR THE UNION

[Signature]  
J. A. Moore DEPUTY

DATE SUBMITTED                     

DATE SIGNED 4-6-2000

EXHIBIT NO.

A; Page 7