STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the matter of conciliation between: MONTGOMERY COUNTY SHERIFF and OHIO PATROLMEN'S BENEVOLENT ASSOCIATION	)))))))))))	Case No. 03-MED-09-0874 **CONCILIATOR'S REPORT AND AWARD** Date of Hearing: June 22, 2004 at Dayton, Ohio Date of Award: July 16, 2004

Appearances:

Mitchell B. Goldberg, Appointed Conciliator

For the Public Employer:

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I. Introduction and Background.

The undersigned Mitchell B. Goldberg was appointed by SERB as the conciliator for this public employment labor dispute on April 6, 2004. The parties, in accordance with Rule 4117-9-06 (E), filed their respective position statements with the conciliator in advance of the scheduled hearing date. SERB submitted the fact-finder's report for consideration pursuant to Section 4117.14 (G)(6) of the Revised Code. The matter was heard on June 22, 2004 in Dayton, Ohio. Testimonial and documentary evidence was received, after which post-hearing briefs were submitted. The parties and the conciliator engaged in mediation efforts that resulted in some adjustment to the final settlement offers of the parties, but two economic issues remain in dispute. The following report and award decides the remaining issues between the parties relative to the pending dispute on an issue-by-issue basis from each of the parties' final settlement offers. The following final offer settlement award considers the factors outlined in Section 4117.14 (G)(7) of the Revised Code.

An abundance of economic evidence was submitted through the presentation of Debbie Feldman, the County Administrator, and through voluminous financial exhibits. Similar evidence was reviewed and discussed in recent fact-finding reports and a conciliation award involving other related safety units, the deputies unit, and the civilians who work in the Sheriff's department. Fact-finder, William M. Slonaker, Sr., JD, MBA, SPHR, issued a comprehensive report covering the civilians' unit on March 29, 2004. Ann C. Wendt, Ph.D., SPHR issued a Fact-finding report on March 16, 2004 for the deputies unit. Marcus Hart Sandver, Ph.D. issued a conciliation report and award for the deputies unit on June 8, 2004. As mentioned above, the fact-finding report issued by Professor Lawrence I. Donnelly on March 4, 2004 for this supervisors' unit was reviewed and considered.

II. Unresolved Issues.

The two unresolved issues are economic in nature and directly relate to compensation. The first issue involves the Union's proposal for an increase in longevity pay for its officers. The second issue involves the Employer's proposal for a change in the contribution levels for health insurance premiums. Both of these issues must necessarily take into consideration the wages and benefits that were either awarded through conciliation, or recommended by fact-finders, and/or agreed upon between the parties as of the date of this award for this unit, and the other Sheriff Department units.

A. Longevity.

Fact-finder Donnelly was able, through successful mediation, to reduce the unresolved issues before him from fifteen to three. Those issues were Article 26 – Wage Rates and Longevity, Insurance, and a Union "Me Too" proposal, which he recommended against, and which has not resurfaced in these proceedings. The AFSCME unit, consisting of some 900 employees, received a 0% increase and a step freeze for 2004, with a $1,700 lump sum payment. Fact-finder Donnelly patterned his recommendations after this contract stating:

> The Fact-finder sees these monetary adjustments as a reasonable pattern for this unit of forty-five employees. True, the two groups are in different departments with different administrative lines. True, also with each unit other different issues were agreed to during negotiations. But, it would be reasonable for the current unit to receive adjustments in line with those in the AFSCME unit.

Accordingly, Fact-finder Donnelly premised his wages recommendation upon a 0% increase with a lump sum $1,700 payment in '04. He was aware, however, that the deputies wage recommendations would be forthcoming, and that the supervisors would receive automatic wage increases if the deputies received increases. Professor Sandver ultimately issued a conciliation award with a 1.5% increase in '04, a 2% increase in '05 and a 2.5% increase in '06. Therefore, the Union came into this proceeding with these increases and a $1, 700 lump sum payment from the Fact-finder.

Fact-finder Donnelly also recommended the Union's longevity increase proposal, but delayed the effective date for implementation until November 1, 2005. The Union's final offer for purposes of these proceedings is to implement a 1% increase in each longevity step, effective in November, 2005, as follows: 5-9 years of service – 2% of base salary each year; 10-14 years of service – 2.25% of base salary each year; 15-19 years of service – 2.5%; 20-24 years of service – 2.75%; and, 25+ years of service – 3%. The payments are paid in lump sums on the second payday of November 2005. The Union's final offer on this issue is coupled with a waiver of the $1,700 lump sum payment recommended by the Fact-finder.

The waiver of the lump sum payments amounts to an approximate savings of $76, 500 to the Employer if the lump sums were to be paid with the across the board increase of 1.5% in 2004 as a result of the conciliation award in the deputies case. The Employer calculated that the cost of the Union longevity proposal is $43, 392.65. There is no question that the Employer has the ability to pay this amount. It has a large unreserved fund balance of 35.7 million dollars. It received 9.4 million dollars from the Anthem Insurance demutualization proceeds that is maintained in a separate interest bearing account. The County has chosen to spend large sums from the general fund for capital improvements, but there are still funds available to pay for this proposal. The doom and gloom evidence is based upon past problems and does not fairly consider that we are now in an economic recovery. This is reflected in increased sales tax and property tax revenues.

The longevity proposal together with the existing wage increase for 2005 equals approximately 3% per year. This is in line with the consistent historical allocations and projections of the County Administrator and below the average annual increases statewide for Sheriff departments. In calendar year 2006, the wage increases drop back to 2.5%, well below the average. In terms of comparables, the longevity payments proposed by the Union are in line with those of other large urban counties.

The Employer believes that the longevity increases proposed by the Union are unjustified and unnecessary when one considers the entire economic picture. Because the payments are based upon percentages, the supervisors already enjoy much larger annual payments compared to deputies. This unit recently moved from flat rate payments to percentages, which guarantees them future increases when wages are adjusted. The supervisors rank near the top compared with other similar counties when one looks at the total dollar value of annual longevity payments. Only Franklin County has a larger total amount for wages and longevity.

While a fact-finder's report is entitled to a certain amount of deference or consideration, the report of Fact-finder Donnelly contains certain inconsistencies relative to this issue. He acknowledged that the wages of these employees would still be in line with other comparable counties, and with the internal structure, even with the Employer's initial position of a wage and longevity freeze. Yet, he accepted the Union's proposal with a minor variance without articulating any factual basis for his recommendation.

He does conclude that the adjustments for this unit should be in line with the AFSCME adjustments to constitute a reasonable pattern, and since the ASCME contract contains adjustments in the third year, it would be reasonable to adopt the Union's longevity proposal in the third year. The lump sum payments are substitutes for longevity increases in the first two years. However, the settlement for wages for the AFSME unit is a re-opener, and AFSCME does not have longevity payments. Moreover, this unit received a longevity increase. The civilians requested an increase but did not receive it. The deputies did not request an increase. If the Union's proposal is accepted, a disparity will result in this area between the respective units.

After considering all of the evidence presented on this issue, I reach the same conclusion as the Fact-finder, although I agree with the Employer that the Fact-finder's reasoning on this issue is not entirely clear. I find that this particular issue does not involve substantial costs and can easily be funded by the Employer. The Employer's better arguments are those that contend that the pattern among the departmental units will be disrupted, and that the unit members are already paid among the highest in the state, and that longevity payments are already comparable.

The waiver by the Union of the $1,700 lump sum payments is somewhat of a "red herring" in the sense that the Union probably concluded it would have little chance of persuading a conciliator that it is reasonable to accept the lump sum payments and the across the board wage increases as the result of the deputies award when the Fact-finder's report was premised upon a 0% increase offer from the Employer. Nevertheless, the Union walked into this proceeding with both in hand. The Fact-finder related the lump sum payments with the Union's longevity proposal for increases in the first two years. It, therefore, is not unreasonable to accept the Fact-finder's judgment with respect to longevity when the lump sum payments are waived.

The Union appears to be making a statement that it considers longevity payments more advantageous than across the board increases. If this is the case, the disparity between the department units may be justified. The Employer should be able to pay reasonable economic packages to each group and have each group allocate the total package in its best interest. If the supervisors prefer larger longevity payments within a total package that is within acceptable limits they should recognize that other parts of the package such as wages should be compromised. The same is true for the other units. Each unit should be able to cost out the respective package that is available based upon existing economic circumstances. Here, the supervisors are receiving minimum increases consistent with the deputies. The longevity increases do not kick in until late 2005. These facts should be factored in during the next negotiations. The increases in 2005 and the guaranteed longevity increases when wage increases are paid in the future should be accounted for and reconciled between the parties.

For now, considering all of the evidence, I cannot find that the Fact-finder's recommendation on this issue is so fundamentally flawed that it must be overturned. The across the board increases of 1.5% in year one, compared with $1700 paid in two installments of $850 (at execution and on 1/1/05) are somewhat comparable). [1] The Fact-finder computed the proposed $1700 payments in the first two years as amounting to about 2.5%. Considering the increased costs to be absorbed by the unit members on the rising health insurance premiums discussed below, which is more than that recommended by the Fact-finder and more than the increases absorbed by other units, I cannot find that the Fact-finder's decision with respect to longevity should be disturbed.

[1] Employer Exhibit 12 shows that a Sergeant will receive $1,700 in about 18 months with the 1.5% increase in the first year. A Lieutenant will receive $1,700 in about 15.5 months. This is compared with the proposal paying $1,700 in 12 months. However, the cost of the proposals over the life of the contract is substantial to the Employer. The amount of $1,700 lump sum compares to $3,356.50 and $3, 909.17 for Sergeants and Lieutenants respectively over the life of the three-year contact.

B. Health Insurance.

The Union's proposal to the Fact-finder was to retain the current 90%/10% Employer/Employee premium sharing arrangement with a $40 per month cap. The Employer agreed to the 90/10 split, but proposed a two step increase of the cap to $80 beginning January 1, 2004, and an increase to $90 per month beginning January 1, 2005. The Fact-finder continued the $40 per month cap in place until July 1, 2004 when it is raised to $50. The cap increases to $60 on July 1, 2005 for the duration of the agreement. The Union's final offer on this issue is to implement the Fact-finder's recommendation.

The Employer' final offer is an increase in the cap to $80 per month beginning July 1, 2004 for two years, and then to $100 per month in the final six months of the contract.

Dr. Sandver accepted the Employer's position in his conciliation award.[2] He stated:

> [B]oth parties are going to have to shoulder more and more of the increasingly expensive medical care available in the United States. Every day we read about some new advance in the science of medicine in the newspapers. People have the ability to survive diseases they never could before. People routinely live to 90 and 100 years old. It is expensive to provide this type of card; someone has to pay for it. We are the ones who pay the bills. There is no end in sight.

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[2] The Union argues that this award was a "contrived" or negotiated settlement disguised as an independently arrived at award. However, notwithstanding the manner in which this award was produced, it reflects the state of the facts. To the extent it was negotiated, both parties finalized their agreement with their eyes open, and otherwise negotiated the final terms with a view toward their own best interests.

Dr. Wendt produced her report after Fact-finder Donnelly's report and recommended the Employer's position at that time removing the entire cap. She based her recommendation on the SERB 2002 report, which states that the average pubic employee's share for insurance for all counties is 9.9% for single coverage and 11.3% for family coverage.[3] She found that the existing $40 payment is "very low."

Fact-finder Slonaker, in the civilians case recommended an increase in the cap from $40 to $80 effective July 1, 2004, but no change in the cap for single coverage. He recognized that even with the lump sum pay increases, the additional co-pays for services and medicines (which essentially doubled) and the new co-insurance requirement will result in the average member using family coverage receiving an economic wash when all the results are factored in. The average annual pay for the civilians is approximately $34, 606, substantially less than the supervisors in this unit.

The Union contends that the Fact-finder's recommendation is more reasonable than the Employer's position. The Fact-finder's recommendation, which has been incorporated into the Union's final offer still increases the members' cash outlays by 25% in each of the first two years with a minimal pay increase. Moreover, as stated by Fact-finder Slonaker, benefits have declined which in turn involves more costs for each employee. Premium costs for the United plan, however, only increased 1.1%, and the

[3] The 2003 report shows that for counties of more than 150,000 in population the average employee contribution for a family plan is about 10%. For the Dayton region, employees contribute about 12% for family plans.

increase in the self-insured plan was only 6.8%. Premium increases have been controlled, however, payments demanded from employees have risen dramatically. Moreover, the Employer did not even propose a $100 figure during fact-finding; it only proposed a cap of $90 to begin January 2005.

The Employer argues that its position is consistent with the payments required of all other employees in the County, represented and non-represented employees. This is so even though these unit members are among the highest paid employees in the county and can more easily assume the additional economic burden.

The Employer's new offer has substantially increased from that proposed to the Fact-finder, but is nevertheless closer to the payments required of other employees, including those who are paid considerably less money. The Fact-finder did not have this evidence before him, and as a result, his findings should be adjusted to take this evidence into account.

III. Award.

A. Longevity issue. The Union's final offer is awarded.

B. Health Insurance. The Employer's final offer is awarded.

Date of Award: July 16, 2004

Mitchell B. Goldberg

Mitchell B. Goldberg, Appointed
Conciliator