

STATE EMPLOYMENT
RELATIONS BOARD
Aug 30 10 12 AM '00

IN THE MATTER
OF
CONCILIATION
BETWEEN
HIGHLAND COUNTY SHERIFF
AND
THE FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL, INC.

Hearing: August 17, 2000 ✓
SERB Case Nos.: 99-MED-10-0876; 0877; 0878
Date of Report: August 21, 2000
Issue: Conciliation

Union Representative:

John Looman
FOP/OLC, Inc.
222 E. Town Street
Columbus, Ohio 43215-4611

County Representative:

Robert W. Cross
Cross Management Services
8593 Ohio River Road
Wheelersburg, Ohio 45694

OPINION AND AWARD

Michael Paolucci
Conciliator

Administration

By letter dated July 20, 2000, from the Ohio State Employment Relations Board, the undersigned was informed of his designation to serve as Conciliator for the Parties. On August 17, 2000, a hearing went forward in which the Parties presented arguments and documentary evidence in support of positions taken. The record was closed at the end of the hearing on August 17, 2000, and is now ready for a Conciliation Report.

Factual Background

The County is located in south-central Ohio and surrounds the City of Hillsboro, Ohio; its ten (10) Deputies, five (5) Sergeants, four (4) Corrections Officers, nine (9) Dispatchers, and two (2) cooks are represented by the Union. (It must be noted that the factfinder's report shows seven (7) Sergeants. The above reported numbers are based on the Union's pre-hearing statement).

The Parties met for negotiations on December 7, 16, and 21, 1999, and on January 12, 2000. In addition, the Parties met for a mediation session on February 17, 2000 with an FMCS Mediator. A Factfinding hearing was held on April 28, 2000 and, by Report dated June 26, 2000, the Factfinder issued his report. Due to the extensive recitation of facts and conclusions contained in Factfinder Stanton's Report, and having reviewed that report and found it to be consistent with the facts and background submitted during the Conciliation Hearing held before the undersigned, a complete reiteration of that factual background is deemed unnecessary. Instead, the Factfinder's Report is attached and is made a part hereof. As a result of incorporating Factfinder Stanton's report here, only those matters that are felt to be significant to the findings made here will be addressed.

Importantly, although prior to the hearing there were eight (8) unresolved issues, only four

(4) were presented to the undersigned. The resolved issues were as follows:

1. Article 14 — Hours of Work/Overtime. The Parties agreed to incorporate the Factfinder's recommendation as part of the new Agreement.
2. Article 18 — Sick Leave. The Parties agreed to incorporate the Factfinder's recommendation as part of the new Agreement.
3. Article 27 — Shift Differential. The Parties agreed to incorporate the Factfinder's recommendation as part of the new Agreement.
4. Article 36 — Physical Fitness. The Parties agreed to incorporate the Factfinder's recommendation as part of the new Agreement.

These issues, having been resolved by both Parties as a result of their mutual acceptance of the Factfinder's report, will not be addressed.

Prior to proceeding through the Conciliation hearing, the possibility of mediating the remaining issues was inquired into by the undersigned. The Parties having informed the undersigned that mediation had little probability of success, the Conciliation Hearing was conducted where the foregoing issues were presented:

1. Article 6 — Dues Deduction. The Union proposes including a "fair share" fee provision.
2. Article 25 — Insurance. The Union proposes a one hundred fifty dollar (\$150.00) cap on the employee's contribution to the costs of health care.
3. Article 28 — Longevity Pay. The Union proposes increasing the longevity pay by \$100.00 at each step.
4. Article 29 — Wages. The Parties each propose different wage increases.

Each issue will be addressed separately.

Section **4117-9-06** of SERB's administrative rules addresses the issues that a Conciliator must consider when making recommendations. That section, in pertinent part, reads as follows:

(H) The conciliator shall take the following into consideration in resolving the dispute between the parties:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employers doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interests 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) The stipulations of the parties; and
- (6) Such other factors, not confined to those listed in this rule, which are normally or traditionally taken into consideration in the determination of issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding or other impasse resolution procedures in the public service or in private employment.

The issues will be addressed separately giving consideration to all of the required factors.

1. **ARTICLE 6 — DUES DEDUCTION**

UNION POSITION

The Union proposes including a “fair share” fee provision. It made the traditional argument in support of the need for dues deduction including the strength it provides to the Union; the fact that the non-member employees are receiving a benefit at no cost; and the dissension such non-membership creates among the remaining bargaining unit members. In addition, it contends that in

this particular case there are two (2) non-bargaining unit members who continually speak out about their status. It made the argument that these two (2) employees consistently (and sarcastically) “thank” the FOP for the benefits they receive; that these sarcastic remarks are made aloud, to other members in a manner intended to arouse the anger of bargaining unit members; is done with the sole purpose of making the dues paying members feel foolish for contributing to the Union; is done while referring to dues paying members as “suckers” and other similarly styled juvenile epithets; and has caused a great deal of disunity among the Union. It contends that these two (2) employees are causing the Union to lose its ability to represent its members and is causing current dues paying members to question why they are contributing.

For all these reasons, the Union asks that the dues deduction section be added.

COUNTY POSITION

The County counters the Union’s arguments with the claim that the problems are no different than any other entity that must discuss fair share fees; that the outside comparables do not support a mandatory dues deduction; and that the area surrounding the County has few fair share fee bargaining units (four (4) of the nine (9) Union comparables and only two (2) of the six (6) employer comparables). It contends that if the Union wants the non-members to become members, then it must present something that attracts them. It discounts the Union claim regarding the two (2) outspoken members as being without merit since these two (2) employees are long time employees whose alleged problems have existed for a long period. The problem is essentially nothing new. For these reasons, it asks that the Factfinder’s recommendation be adopted.

FACTFINDER RECOMMENDATION:

The Factfinder grouped this article with several others and recommended that all remain *status quo*. It appeared that the recommendation was done pursuant to an Agreement of the Parties.

FINDING:

A review of the record reveals that the Union's last best offer on the dues deduction is justified and must be included in the new Agreement. The sole reason that this finding is made is the conduct of the two (2) non-member bargaining unit employees. They have simply acted inconsistent with employees who object to being represented based on philosophical differences with the Union. Their conduct, as represented by the Union, is that of a freeloader. When the failure of a bargaining unit member to join the Union is based on philosophical objections to being represented by the organization, then fair share language is less desirable. A Union must court its members by presenting a benefit that the employees are willing to pay for. Moreover, individuals must be able to express their disagreement with the philosophy of a Union without being forced to join as a member. When this difference in philosophy exists, the need for fair share is weakened.

When, instead, the failure to join a Union is because an individual likes to get something for nothing, then fair share language is completely justified. In this case, the Union made a powerful argument that the dissension caused by these two (2) employees was so widespread that it threatened the very existence of the Union. A collective bargaining agreement has an important purpose in providing stability to the Parties; to the Parties relationship; and to each Party individually. If it fails to achieve this general purpose, then it fails altogether. Since fair share fee language will help preserve the purpose of the Agreement by providing stability to the Union, and thereby stability to

the Union's relationship with the Sheriff, then it is reasonable and must be ordered.

This finding must stand even though the comparables as provided by the Sheriff show that such language is rare in the area. The fact that it is rare is outweighed in this case by the fact that it is necessary. Moreover, the fact that it exists in the area creates a presumption that it does exist whenever justified. The need was created here by the conduct of the affected employees. Since the cost to the Sheriff is insignificant, and since the Union will be strengthened by the language, then it must be ordered without regard to the comparables in the area.

2.

ARTICLE 25 — INSURANCE

The Union proposes a one hundred fifty dollar cap (\$150.00) on the employees contribution to health care under the Family Plan. In addition, it proposes maintaining the limits so that the bargaining unit employees receive the same benefit as other county employees under the Single Plan.

UNION POSITION:

The Union argues that if the language is not changed then its members will suffer because of the weakness of another bargaining unit that recently agreed to have their contribution increased to three hundred dollars (\$300.00) per month. In order to protect that from occurring, and in order to stay in step with the remaining county employees, it proposes that the cap be put into effect.

SHERIFF POSITION:

The Sheriff argues that the Union's proposal is too expensive; that the current benefit is

adequate; and that the language insures that this bargaining unit receives the same as all other employees in the County's employ. For these reasons, it contends that the Factfinder's recommendation should be adopted.

FACTFINDER'S RECOMMENDATION:

The Factfinder recommended that the Parties include language the same as that contained in the tentative agreement that was reached.

FINDING:

It must be found that the Union's proposal be adopted. The large increase because of another bargaining unit is unreasonable and this bargaining unit deserves protection based on its history. In order to protect the increase in health costs from the dramatic increase that would occur because of a weaker bargaining unit, it is reasonable to impose the cap as presented by the Union. Therefore, the Union's last best offer on Insurance must be included in the new Agreement.

3. **ARTICLE 28 — LONGEVITY PAY**

The Union proposes increasing each step of the longevity pay by one hundred dollars (\$100.00).

UNION POSITION:

The Union contends that the reward to these employees for their long years of service is currently inadequate and is reasonably increased by one hundred dollars (\$100.00) for each step. It contends that the employees are being severely underpaid; that the City of Hillsboro pays its

employees dramatically more; that the City of Hillsboro police have a much easier job yet still receive higher pay; and the County Sheriff employees are paid an unreasonably low salary. It contends that in order to reward the long term employees for their service, it is reasonable to increase the longevity pay benefit by this very low amount.

SHERIFF POSITION:

The Sheriff contends that the outside comparables do not support any increase. It contends that the current wage increases are more than reasonable; are above the cost of living; are much higher than the comparables; and counter any argument for granting what amounts to a wage increase.

FINDING:

It must be found that the wage increase along with the comparables on longevity pay require a finding that the additional benefit not be granted. The historical underpayment of this bargaining unit is being adequately addressed by the higher than normal wage increases. Moreover, the benefit is currently higher than other similar agencies in the area. For these reasons, it must be found that the *status quo* position of the Sheriff must be ordered.

4. **ARTICLE 29 — WAGES**

The Sheriff requests that the factfinder's recommendations be adopted as it applies to the wage increase. That recommendation is as follows:

January 1, 2000 - \$.75 per hour increase

January 1, 2001 - \$.65 per hour increase
January 1, 2002 - \$.60 per hour increase

The Union requests that the following wage increases be made:

January 1, 2000 - \$.75 per hour increase
January 1, 2001 - \$.75 per hour increase
January 1, 2002 - \$.75 per hour increase

SHERIFF POSITION:

The Sheriff argued that the wage increase would result in the following:

3.7% increase for Sergeants; retaining the first position in comparables;

4.3% increase for Road Deputies; improving their position from fourth to third in comparables;

5.1% increase for Corrections Officers; maintaining their fourth position in comparables;

5.1% increase for Dispatchers; maintaining their second position.

Based on these comparables, and based on the fact that each of these wage increase are above the cost of living and other comparable increases, it argues that the factfinder's recommendations should be adopted.

UNION POSITION:

The Union contends that the County's comparables are the wrong counties; that the bargaining unit is much lower than the appropriate comparables; that the County has enough money as proven by the fact that it will open a new jail facility and increase personnel; and that even though the Sheriff is the oldest law enforcement agency in the County, it is the lowest paid. The Union emphasizes that the County is one of the largest in Ohio in terms of square mileage and as a result

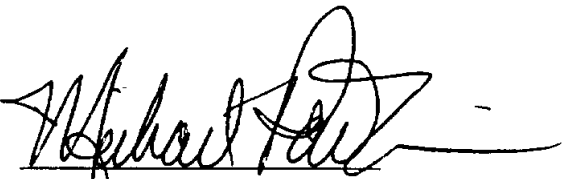
this police force handles proportionately more activity than any of the comparables relied on by either Parties. It presented, by way of example, the fact that very often only two (2) Deputies will be in charge of patrolling the entire four hundred and fifty (450) square miles during one (1) shift. For these reasons, it asks that the higher wage increase, as it has proposed, be ordered here.

FINDING:

While the Union's position is legitimate in terms of intra-County comparables, it seeks to gain too much ground up for historically lower pay in one contract. The Factfinder's recommendation, since it exceeds the cost of living and exceeds the percentage wage increase in other comparable units, is reasonable. Therefore, it is ordered that the increase as proposed by the Sheriff, and as recommended by the Factfinder, be included in the new Agreement here.

IT IS SO ORDERED.

August 28, 2000
Cincinnati, Ohio



Michael Paolucci

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**STATE EMPLOYMENT RELATIONS BOARD
COLUMBUS, OHIO**

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IN THE MATTER OF FACT FINDING :

BETWEEN :

HIGHLAND COUNTY SHERIFF :

-AND- :

**FRATERNAL ORDER OF POLICE, :
OHIO LABOR COUNCIL, INC. :**

REPORT OF THE FACT FINDER

SERB CASE NUMBERS:

99-MED-10-0876
99-MED-10-0877
99-MED-10-0878

BARGAINING UNIT:

The Bargaining Units represented by the Fraternal Order of Police consists of ten (10) Deputy Sheriffs; four (4) Corrections Officers; nine (9) Dispatchers; seven (7) Sergeants; and two (2) Cooks.

FACT FINDING PROCEEDING: April 28, 2000; Hillsboro, Ohio

FACT FINDER: David W. Stanton, Esq.

APPEARANCES:

FOR THE EMPLOYER

Robert W. Cross, Consultant
James D. Buckner, Consultant

FOR THE UNION

Frank T. Lambros, Staff Rep.
John Looman, Staff Representative
Keith E. Brown, Corrections' Rep.
Jerry Williams, Sergeant's Rep.
Scott Miller, Communications Rep.
Richard Warner, Deputy's Rep.

ADMINISTRATION

By correspondence dated December 1, 1999, from the State Employment Relations Board, the Undersigned was notified of his mutual selection to serve as Fact Finder to hear arguments and issue recommendations relative thereto pursuant to Ohio Administrative Code Rule 4117-9-05(j); and, (k), in an effort to facilitate resolution of those issues that remain at impasse between these Parties. The impasse resulted after numerous attempts to negotiate a Successor Collective Bargaining Agreement proved unsuccessful.

The following Findings and Recommendations are hereby offered for consideration by these Parties; were arrived at based on their mutual interests and concerns; and, are made in accordance with the Statutorily Mandated Guidelines set forth in Ohio Administrative Code Rule 4117.9 which recognizes certain criteria for consideration in the Fact Finding Process as follows:

1. Past collectively-bargained Agreements, if any, between the Parties;
2. Comparison of 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 and the ability of the public employer to finance and administer the issues proposed and the effect of the adjustment on a normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the Parties; and,
6. Such other factors not confined in 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 public service or in private employment.

THE BARGAINING UNIT DEFINED; ITS DUTIES AND RESPONSIBILITIES TO THE COMMUNITY; AND, GENERAL BACKGROUND CONSIDERATIONS

The Collective Bargaining Agreement between the Fraternal Order of Police, Ohio Labor Council, Inc., (hereinafter "Union" and/or "FOP), and the Highland County Sheriff's Office (hereinafter "Employer") contains Article 2, titled "Recognition", which recognizes the Ohio Labor Council as the sole and exclusive bargaining agent for those employees within the following Bargaining Unit as follows: Unit A: Sergeants, Unit B: Road Patrol Deputies, Jailers, Unit C: Dispatchers and Cooks. The Bargaining Unit consists of ten (10) Deputy Sheriffs, four (4) Corrections Officers, nine (9) Dispatchers, seven (7) Sergeants, and two (2) Cooks. The Record demonstrates that the Parties have agreed to an extension of the statutory process, which included retroactivity to January 1, 2000. The Parties have indicated that the Bargaining Unit members perform the duties of patrol, response to calls for service, guard and transport prisoners, handle criminal investigations, serve warrants and subpoenas, supervise subordinate employees, handle dispatch and 911 dispatch duties and any other assigned duties that may arise. The Parties met to engage in Collective Bargaining on December 7, 1999; December 16, 1999; December 21, 1999; January 12, 2000; and on February 17, 2000 for mediation with an FMCS Assigned Mediator.

Each Party requested, and the Undersigned agreed, that this Report include the Fact Finder's recommendation that those Articles not "opened" during these negotiations be transferred to the successor Collective Bargaining Agreement containing current contract language for the following Articles and title thereof:

- Article 1 - Agreement
- Article 2 - Recognition
- Article 3 - Union Representation
- Article 4 - Management Rights
- Article 5 - No strike/No lockout

Article 7 - Bulletin Boards
Article 8 - Non discrimination
Article 9 - Disciplinary Action
Article 10 - Grievance Procedure
Article 11 - Work Rules
Article 12 - Labor Management
Article 13 - Reduction in Force
Article 15 - Court Time
Article 17 - Vacation
Article 19 - Payment upon death
Article 20 - Donated Time
Article 21 - Uniforms and Equipment
Article 22 - Personal Items
Article 23 - Training
Article 24 - Safety and Equipment
Article 26 - Work out of Classification
Article 30 - Waiver in Emergency
Article 31 - Severability
Article 32 - Copies of Agreement
Article 33 - Alcohol Drug Testing
Article 34 - Residency
Article 35 - Injury Leave

Documentation contained in each Parties Fact Finding Hearing materials was signed by each Party Representative on December 21, 1999 indicating that the aforementioned Articles "...be transferred to the new Collective Bargaining Agreement with the current contract language." Moreover, additional documentation reveals that Article 37, titled "Military Leave" was also considered by these Parties as an Article that should transfer into the successor Collective Bargaining Agreement. Based thereon it is so recommended.

The written statements defining all unresolved issues and summarizing the position of each Party with regard to each unresolved issue was provided by each Party representative prior to the evidentiary Fact Finding proceeding and each have indicated that the following Articles remain unresolved and are at impasse relative thereto;

Article 6 - Dues Deductions

Article 14 - Hours of Work and Overtime

Article 18 - Sick Leave

Article 25 - Insurance

Article 27 - Shift Differential

Article 28 - Longevity

Article 29 - Wages

Article 34/(Y) - Physical Fitness (new Article)

Article X - Police Memorial Day (new Article)

Article 4 - Probation (new Article)

As indicated by the Parties, the Union proceeded on March 15, 2000 with a ratification vote with all three Bargaining Units identified in this proceeding. Those Bargaining Unit Members participating in the ratification vote unanimously rejected the proposed changes in the current Collective Bargaining Agreement. As the Employer indicates those Articles presented for consideration were agreed to conditionally by Management subject to the ratification vote and passage. And that failure thereof, would cause it to withdraw any and all support of the ratification process.

As is obvious based on the type of Units identified herein, these employees provide emergency and safety services for the Highland County area and are considered under the Statutory scheme as "Strike-prohibited employees" (see, ORC, 4117.14(d)). The Fact Finder is required to consider comparable employee units with regard to their overall makeup and services provided to the members of their respective communities. Both Parties have relied upon

comparables of other municipalities and jurisdictions concerning “comparable work” provided by these Bargaining Units. And as is typically apparent, there are no “on point comparisons” relative to these Bargaining Units concerning wages and other benefits that remain at impasse herein.

Whatever similarities exist must be taken into consideration by the Fact Finder based on the above noted Statutory Criteria. It is now, and has been, the position of this Fact Finder that the Party proposing any deviation, deletion, or modification of the current language or of the *status quo* bears the burden of proof and persuasion to compel the change proposed. Failure to meet that burden will result in a recommendation that the Parties maintain the *status quo* practice or current language.

The Fact Finder is also of the opinion that the evidentiary Record demonstrates the Parties reached what can be characterized as a “tentative agreement” relative to the unresolved issues that are present in this proceeding. It is the Fact Finder’s position that a tentative agreement reached at the bargaining table after exhaustive “give-and-take” negotiations have occurred is the best indication of the Parties’ intent of the rights and obligations each has agreed upon. Obviously, it goes without saying that often times those individuals charged with the responsibility to “put the best position forward” relative to that they are seeking at the bargaining table do not always receive the utmost confidence in that which they have brought back to the members and/or to the individuals whom ultimately ratify or approve that which has been tentatively agreed .

Nonetheless, the Statutory Process is not a mechanism by which Parties can in good faith reach a tentative agreement and then hope to reap additional improvements on that agreed to by rejecting that which their Committee and/or Commissioners might have deemed an “acceptable package”. Such a tactic would run counter to the very nature of this Statutory Process. To allow Parties to

continue to bite at the “proverbial apple” until a larger bite is obtained after the first bite was deemed acceptable, simply does not represent “good faith” bargaining. The Fact Finder has long been a supporter of this Statutory Process when the Parties are engaged in such good faith negotiations and have exhibited the necessary degree of trust to their opposition in “hammering out” an Agreement. The best interests of a Union’s membership and/or governmental entity is obtained by reaching the tentative agreement without outside intervention. Given this consideration this Fact Finder affords compelling weight to those items that have been tentatively agreed to based on the Parties’ good faith negotiations. Absent compelling evidence that those tentatively agreed to Articles should not be recommended herein, those will be precisely that which will be recognized as compelling by this Fact Finder.

The following recommendations are based on the data provided; the positions taken by the respective Party; and, those factors peculiar to police personnel and supporting classifications such as those evident herein while recognizing the unique duties associated with dispatchers, corrections officers, clerks, cooks, etc. The Fact Finder recommends the following relative to each of the unresolved issues subject to this proceeding. Moreover during the course of the Fact Finding proceeding, the Parties agreed to incorporate, as part of this recommendation by the Fact Finder, that these Articles remain as current language :

Article 6 - Dues Deduction

Article 18 - Sick Leave

Article 28 - Longevity

It is hereby recommended that the Parties maintain this *status quo* language as set forth in the predecessor Collective Bargaining Agreement as representing the Parties’ intent relative to these

Articles.

Additionally, it is hereby recommended that the Police Memorial Day and the Physical Fitness Articles, which would represent new Articles in the successor Collective Bargaining Agreement, be withdrawn. The Fact Finder is of the opinion that there is simply no need to place these two(2) new Articles in the successor Collective Bargaining Agreement at this time.

With respect to the Health Insurance Article, it is recommended that the Parties adopt the position agreed to as part of the tentative agreement concerning Health Insurance.

Additionally, it is recommended that the Parties follow the tentative agreement concerning the Shift Differential which represents that the second and third shifts are increased to \$.25 per hour for all hours worked representing a \$.10 per hour increase for the second shift and a \$.05 per hour increase for the third shift.

With respect to Article "Y" or 4 concerning "Probation", it is recommended that the Parties adopt the Employer's proposal relative to this new Article wherein new hires will serve a one (1) year probation period and promotions to Sergeants and/or Corporals will serve a six (6) month probation and any reclassifications into the Road Patrol will serve a one (1) year probation. With respect to the Cook's classification, it is recommended that there be no change to the current practice. Such is consistent with that discussed by the Parties, as well as, that supported by the data presented in the Hearing Statements presented by the Party Representatives.

ARTICLE 29 - WAGES

FOP POSITION

The FOP has proposed a \$1.00 increase for current wages for every year of this Agreement. In support thereof, it emphasizes that the comparables it has relied upon from the

counties of Adams, Brown, Clinton, Fayette, Gallia, Jackson, Pike, and Ross, with similar populations. It notes that Dispatchers are 8 % below the comparables, Correction Officers 15.6% below the comparables, Deputies 10.35% below the comparables, and Sergeants 5.35% below the comparables. It notes that the employer will open a new jail facility and increase personnel. A sufficient increase at this time will bring this organization within the upper half of the comparable agencies it has submitted. It notes that during its last negotiations, membership experienced what it characterized as its first “serious” raise of \$1.60 over three years. This is a senior law enforcement agency in the County, and as it contends, is the lowest paid law enforcement agency in Highland County. It notes that this is one of largest counties in Ohio with approximately 569 square miles to patrol wherein the average Ohio County is 450 square miles. It notes that the Sheriff’s office handles more police activity proportionately than most of the comparable agencies relied upon.

Moreover, it proposes a Hazard Duty payment for all bargaining members of \$500.00 per year and represents such as being a reasonable “recognition” of the unique hazards of law enforcement. The FOP comparables demonstrate that Pike County receives \$.45 per hour as Hazard Duty pay.

COUNTY POSITION

The County takes the position that wages be increased by \$.50 for each of the three(3) years of the successor Collective Bargaining Agreement with a multi-tier compensation schedule for new hires in Corrections and Dispatch. It would also propose the same multi-tier concept for new promotions to road patrol effective 1/1/01. In support of this contention, it emphasizes that Highland County by its economic, geographic and aggregate demographics is within the

composite of Southeastern Ohio. It emphasizes and maintains that the Sheriff's Office

Bargaining Units currently rank in comparison by classification as follows:

Sergeants number 1 out of 6 at top level - 13.62 per hour
Road Deputies - number 4 out of 7 at top level - \$11.60 per hour
Corrections - number 4 out of 6 at top level - \$9.80 per hour.
Dispatchers - number 2 out of 6 at top level - \$9.80 per hour.

Based on these current top levels, the impact of its proposed \$.50 per hour for each of the three years represents a 3.7% increase for the Sergeants, 4.3% for the Road Deputies, 5.1% for Corrections and 5.1% for Dispatchers. Based thereon, the Sergeants would maintain their number one position in the comparables; the Road Deputies would improve from number 4 of 7 to number 3 of 7 ; Corrections would remain number 4 of 6; and Dispatchers would maintain number 2 of 6. The Corrections employees would improve to reach the average hourly rate of \$10.30 per hour and the Dispatchers would improve to 9.1% over the average. The employer for each of the Bargaining Units classifications has relied upon Adams, Brown, Gallia, Jackson, and Pike Counties for the Dispatchers, Sergeants, and Corrections and it has added Hocking in the comparables relative to the Road Deputy classification.

RECOMMENDATION & RATIONALE

It is hereby recommended that the Parties adopt the following recommendation concerning Article 29, titled "Wages" and that the wages be retroactive to January 1, 2000:

January 1, 2000 - \$.75 per hour increase
January 1, 2001 - \$.65 per hour increase
January 1, 2002 - \$.60 per hour increase.

Moreover, it is recommended that for new hires only that the Parties adopt the new tier program beginning in 2001 when the new jail hiring process begins. It was indicated that the

Parties intent was that no one currently employed by the County's Sheriff Department shall be negatively impacted by this change. Based thereon, it is so recommended.

Of the comparables provided, each Party relied upon either contiguous Counties to Highland and the employer expanded its utilization of comparables to include those farther southeast in Hocking, Jackson, and Gallia. Both Parties have relied upon Brown, Adams, Pike, Jackson, and Gallia Counties. These employees are receiving, based on the Recommendation contained herein, based on the data identified in the Fact Finding materials presented, a \$2.00 wage increase over the life of the successor Agreement including retroactivity. Such also represents a \$.40 improvement for the life of this Agreement above that realized for the predecessor Agreement. Given these compelling considerations, as well as, the ultimate "rankings" with the comparables noted, this wage package is both reasonable and fair. Moreover, it is clear based on the evidence provided that the total number of "calls" received increased significantly from 1998 to 1999; the total number of "vehicle crashes" decreased in that same time frame, as well as, the total number of "criminal investigations." Total "arrests" remain almost constant and criminal arrests decreased as did traffic arrests.

It is also recommended that the Parties do not adopt the pay for Hazard Duty in that of the comparables relied upon only one - Pike County- receives Hazard Duty pay at \$.45 per hour. Based on the comparable data, which the Fact Finder simply cannot ignore, I find no compelling basis to recommend that the Union's Proposal for Hazard Duty Pay not be included in the successor Collective Bargaining Agreement. Obviously, the nature of the work is hazardous, in fact dangerous at times, however, there exists no evidentiary support to recommend inclusion in this Agreement.

Indeed the employer has not raised any “inability to pay” argument, and based on information provided during the course of the Fact Finding proceeding, it references its serious costs considerations concerning the new jail which will undoubtedly require additional employees from the community. Based on the recommendations for Wages and the other items previously discussed concerning Insurance and other economic benefits addressed in these negotiations, the impact on the employer’s ability to finance these obligations are indeed reasonable and will not “strap it” in the coming years when these new developments occur. Moreover, the Cost of Living data provided for this economic area, i.e., Columbus, Dayton, and Southeast Ohio areas, it is at approximately 2.7%. Based on these recommended wages, these employees would remain above that relative to the cost of living data provided. The current recommendation represents an increase that is above not only those recognized for Ohio, but the National average for yearly wage increases. Moreover, the increases recommended herein represent a \$2.00 per hour increase over the life of the Agreement which exceeds that of the prior Collectively Bargaining Agreement total increased rate of \$1.60 per hour over the life of that Agreement.

It is hereby recommended that the Parties adopt the aforementioned hourly increases to each of the Bargaining Units identified in this proceeding.

ARTICLE 14 HOURS OF WORK AND OVERTIME

The FOP takes the position that the current 171 hours at straight time pay in a 28 day period prior to overtime eligibility be eliminated from the successor Collective Bargaining Agreement. It emphasizes that this is antiquated standard equating to 11 additional hours of work per month prior to overtime eligibility. It notes that the FLSA Public Safety Exception for police

and fire agencies served its purpose at a time of depression when there were few jobs and less funding. It notes that these are substandard practices and are out of place at this day and age. It notes that all comparables except Adams County have, at a minimum, adopted the FOP's proposal of 160 hours within a 28 day period prior to overtime. Seven of the 9 comparables pay overtime within the pay period in which it was earned.

The FOP notes that prior to 1986 most sheriff's departments were on salary. It also notes that this 171/28 standard was Court mandated and promulgated by the Department of Labor. It emphasizes that indeed that the Parties' tentatively agreed to incorporate the 160/28 provision and that was ultimately unanimously rejected by the Bargaining Unit.

The Employer rejects the FOP proposal, emphasizing that the tentative Agreement was rejected by this Bargaining Unit. Moreover, it contends that the 171/28 practice has an economic value to this Department based on when the payment of Overtime is triggered.

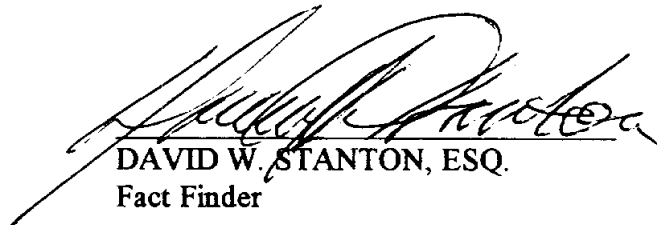
RECOMMENDATION & RATIONALE

It is hereby recommended that the Parties adopt the 160 hour/28 day provision for Overtime entitlement as was tentatively agreed to by and between the Parties. It is clear that indeed the comparables indicated that only Adams and Highland Counties recognize the 171/28 standard and that most Overtime is paid in the pay period that it is earned with the exception of Brown County which recognizes the 160 hour/28 day consideration. It appears that the 171/28 concept is indeed antiquated and prohibits employees from earning Overtime until after they have amassed 171 hours in a 28 day period. It appears that such would indeed boost morale for the employees knowing that in the event that Overtime is indeed required they will be compensated at the prevailing rate for what equates to Overtime after 160 hours in a 28 day period. While

consistent with that tentatively agreed to, this recommendation simply makes sense and represents the better position to be followed.

CONCLUSION

In the opinion of the Fact Finder, the Recommendations contained herein are reasonable and take into consideration the concerns of both Parties, i.e., that of the Union regarding financial improvement for these employees, as well as, other contractual enhancements; and, for the Employer based on the costs associated with the economic increases and that based on other contractual language based on these recommendations. In light of the data presented; representations made by the Parties; and, the stipulations entered by and between the Parties during the course of the Fact Finding Proceeding and based on the common interests of both entities, it is hereby recommended that the Parties adopt these recommendations so that the impasse that currently exists can be brought to closure and this Collective Bargaining relationship can continue without interruption.

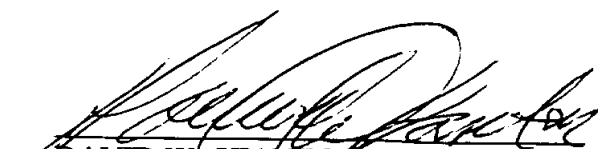

DAVID W. STANTON, ESQ.
Fact Finder

Dated: June *26*, 2000
Cincinnati, Ohio

CERTIFICATE OF SERVICE

The Undersigned certifies that a true copy of the foregoing Fact Finding Report and Recommendations has been delivered to: Frank T. Lambros, Staff Representative, FOP/Ohio Labor Council, Inc., 548 Gennie Lane, Cincinnati, Ohio 45244; James D. Buckner and Robert W. Cross, Consultants, Cross Management & Consulting Services, Inc., 8593 Ohio River Road, Wheelersburg, Ohio 45694; and, George Albu, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213, on this *26th*

day of June, 2000.



DAVID W. STANTON, ESQ. (0042532)
Fact Finder