

IN THE MATTER OF FACT-FINDING

BETWEEN

THE SUMMIT COUNTY SHERIFF'S DEPARTMENT

AND

FRATERNAL ORDER OF POLICE/OLC
SUPERVISOR' UNIT

BEFORE: Robert G. Stein

SERB CASE NO. 01 MED 07-0646

PRINCIPAL ADVOCATE FOR THE UNION:

Rick Grochowski, Staff Representativ
FOP/OLC
807 Falls Avenue
Cuyahoga Falls, OH 44221

and

PRINCIPAL ADVOCATE FOR THE SHERIFF:

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INTRODUCTION

The bargaining unit is comprised of approximately twenty-seven employees holding the classification of sergeant, lieutenant, captain, and major with the Summit County Sheriff Department. The FOP also represents the bargaining unit comprised of deputies. Prior to declaring impasse, the parties held several negotiation sessions and two mediation sessions (10/30/01, 11/6/01) with the Fact-finder.

On 11/15/01 a fact-finding hearing was held and the parties presented the Fact-finder with eleven unresolved issues. Both advocates represented their respective parties well and clearly articulated the position of their clients on each issue in dispute. In order to expedite the issuance of this report, the Fact-finder shall not restate the actual text of each party's proposals on each issue but will instead reference the Position Statement of each party. The Union's Position Statement shall be referred to as UPS and the Employer's Position Statement shall be referred to as EPS.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C)(4)(E) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement.
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.

These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made:

Union's position

SEE UPS

Employer's position

Maintain current language.

Discussion

The Union's main argument for a change in this language is the problem with employees having to work more than 8 hours in a 24-hour period. The Union refers to these as "double backs." The evidence presented by the Employer demonstrates that this occurs more than occasionally. The Employer's records listed twelve incidents of "double backs" in scheduling for 2001. The Employer argues that a lieutenant volunteers to work most of these hours. The involuntary "double backs" issue is a matter of safety to the employee, fellow employees, and the public at large. It is one thing to volunteer to work such shifts, and it is another to mandate employees who are unprepared to work such a schedule. If one volunteers he/she can plan to get additional rest prior to the day. Although at present the problem is not widespread, it does not change the fact that evidence in this case justifies preventive language.

Recommendation

Maintain current language on all sections with the exception of changes to:

Section 17.1 Each employee's work schedule shall be determined by the Employer. Schedules shall be posted at least seven (7) calendar days in advance of the effective date and shall cover not less than a twenty-eight (28) day period. Insofar as practical, affected employees shall be given seventy-two (72) hours prior notice of any non-emergency schedule change. **The Employer further agrees that there will be at least sixteen (16) hours between an employee's shift assignments, unless the employee agrees to a lesser period of time.** Work schedules shall not be established to avoid overtime, but for efficient operations.

ISSUE 2 ARTICLE 17 WAGES AND COMPENSATION

Union's position

SEE UPS

Employer's position

SEE EPS

Discussion

The Employer made a strong argument regarding the current state of County finances. The extent to which the County's financial condition has been exacerbated by the events of September 11th is unclear. A reasonable person must factor into an analysis such as this the sudden and pervasive effect that such an event had on a national and state economy. The financial condition of the Employer is a factor in this matter that according to statute must and will be considered. However, that is not to say that a wage

increase, inequity adjustments, and other economic improvements do not need to be made.

The Employer is not arguing inability to pay in this matter. However, it is arguing that income revenue and spending have been seriously impacted in the year 2001, and that the situation does not promise to change in the foreseeable future. On a national level experts disagree on the length of the recession, but not whether we are experiencing one. According to the Federal Reserve, the United States has officially been in a recession since March of 2001. How such events will effect local economies is much harder to forecast.

During the coming months the focus will shift from economic prosperity to economic recovery. We are already seeing the results of a slowing economy in the unemployment figures. Job and program preservation are likely to be emphasized, with revenue and costs getting renewed emphasis. Yet, key factor in the recovery of our consumer based/service economy will be spending. If employees do not receive reasonable wage increases that support spending, the economy suffers.

The Union proposal regarding rank differential equity among ranks is persuasive. It is common in Ohio cities for supervisors in a police department to be paid according to a rank differential. It is also common among city jurisdictions to treat the differential between ranks in a uniform manner. There is a disparity between the rank differential for sergeants and other classifications in the bargaining unit. The Employer argued that the rank of sergeant is the first supervisory rank and accordingly it should take a little longer for an employee to progress because of the steeper learning curve associated with making the change to a supervisor. This argument would be far more persuasive if the disparity

in wage schedule occurred in the first year. The disparity occurs at the end of year 2. A sergeant in his third year of employment should be performing at a high level and should be compensated in the same manner as his superior officers.

The Union's proposal to change the overtime eligibility language under Section 18.3 represents a reference to its proposal on Issue 1. The recommendation on Issue 1 does not include such a change at this time. The new Section C. regarding promotions is based upon the prior Sheriff and his management style. It is reasonable to allow a new Sheriff to put his management style into place and make an evaluation of whether promotions are being handled in a fair and manner after a reasonable period of time has transpired. The success of a supervisor is directly related to the management system and to the values and expectations of that system. At this earlier point in time the system is still in its formative stages.

The changes being sought by the Union regarding longevity pay fall into two categories. Increases and improvements in the current system. The evaluation of the evidence based upon the statutory criteria supports some improvements in the system

Recommendation

Changes appear in bold.

ARTICLE 18

WAGES AND COMPENSATION

Section 18.1. Effective the beginning of the first full pay period following **January 1, 2002**, the pay range to which bargaining unit employees are assigned shall **continue to** be as follows and shall be the defined percentage above that of the highest base pay in the next descending rank or classification pay range:

<u>Rank</u>	<u>Years In Rank</u>	<u>Percent Over Top Pay Next Lower</u>
Sergeant	0 - 1	7%
	1 - 2	10%
	2 +	16%
Lieutenant	0 - 1	7%
	1 - 2	10%
	2 +	16%
Captain	0 - 1	7%
	1 - 2	10%
	2 +	16%
Major	0 - 1	7%
	1 - 2	10%
	2 +	16%

Section 18.2. Employees shall be paid on a biweekly basis, the salary for which shall be computed by dividing the annual salary by twenty-six (26) pay periods. The biweekly salary shall be considered as compensation for all hours worked during the biweekly pay period except as follows:

- A. The Employer shall not be prohibited from docking an employee's pay for time scheduled but not worked;
- B. Whenever an employee is required to work in excess of forty (40) hours in a seven (7) day activity period, as described in Article 17, the employee shall be eligible for overtime compensation.

Section 18.3. Effective January 1, 2002, bargaining unit members shall **continue** to receive, as a one-(1) time per year payment, a supplement based upon their departmental seniority as defined in Article 15, in accordance with the following schedule:

<u>Years Of Service</u>	<u>Supplement</u>
8 - 15	1% of salary
16 - 20	1.5% of salary
21 - 25	2% of salary
26 +	2.5% of salary

Payment of longevity shall be made in the pay period which follows an employee's anniversary date. **However, in the event an employee retires prior to his anniversary date, he will receive a prorated longevity payment at the time of his retirement. For the purpose of this section, 'retirement' means actual retirement from the Public Employee's Retirement System of Ohio. Payments will be made to an employee's estate upon his death.**

ISSUE 3 Article 20 INSURANCE

Union's positions

SEE UPS.

Employer's position

SEE EPS.

Discussion

Clearly this is one of the most difficult areas of bargaining. The main reason for this difficulty is the unpredictable experience and cost associated with health care coverage. Adequate health care coverage at a reasonable cost has become as elusive as the Holy Grail. Parties to a collective bargaining agreement find themselves on the same side with regard to this issue. On the other side of the issue are those raising the cost of insurance coverage. Currently, prescription drug costs are particularly problematic.

The only reasonable approach is to make sure that every employee has is covered by adequate insurance coverage. This will require greater shared costs on an incremental scale. In the meantime we can only hope that greater health care reform will take place that will address the relentless underlying inflationary cost of this benefit. The parties have already established the principle of sharing capped increases in health care costs, which is consistent with comparable public employers in Ohio. The current cost to employees under the family plan is around \$29.00 per pay. It is capped at \$35.00.

As a matter of past bargaining history the parties agreed to raise the cap on employee contributions by \$2.00 per year. However, that relatively small cap on increases was bargained during a more favorable economic climate. In making changes it not reasonable for an Employer to dramatically shift the potential economic burden of health care coverage by removing cost caps without buying this change in the form of some economic benefit the Union is seeking. Unfortunately, the current times do not provide the Employer with much flexibility in this area. The rapid rise in health care costs requires employees to take on a greater share of the costs, particularly in the area of drug costs. However, the Employer is not in a favorable position to demand more than employees can reasonably be prepared for in terms of increases. It is also noteworthy that in the history of bargaining the 10% employee share has never exceeded the cap.

Recommendation

ARTICLE 20

INSURANCES

Section 20.1. The Employer shall provide all employees who are covered by this agreement, and who qualify for benefits and are on active pay status, with

hospitalization, surgical, medical, and prescription drug benefits, and life insurance plans.

Section 20.2. All employees who receive benefits will pay ten percent (10%) of the premium costs through payroll deductions. The costs for the self-insured plan will not exceed **forty-five dollars (\$45.00)** per pay in 2002, and will not exceed **fifty-five dollars (\$55.00)** per pay in 2003, and will not exceed **sixty-five dollars (\$65.00)** per pay in 2004.

The employee prescription drug co-payment shall not exceed **ten dollar (\$10.00)** for a generic brand of medication and shall not exceed **twenty dollars (\$20.00)** for a non-generic brand of medication during the term of this agreement.

Section 20.3. The Employer agrees to **continue** to provide term life insurance in the amount of twenty thousand dollars (\$20,000) for all employees who are covered by this agreement and who qualify for such benefit.

Section 20.4. The Employer agrees to indemnify and defend from liability any employee from actions arising out of the employee's lawful performance of his official duties. If the Employer provides this protection by insurance, it shall be at the Employer's expense.

Section 20.5. Employees shall retain Employer-paid insurances under the following circumstances:

- A. When an employee is granted an approved leave of absence without pay for a period not to exceed thirty (30) calendar days;

or

- B. For a period of absence not to exceed thirty (30) calendar days after an employee has used all accumulated sick leave to his credit as a result of a continuous illness or injury sustained off the job.

Section 20.6. An incentive payment of fifty dollars (\$50.00) per month shall be offered to each employee eligible for health benefits who has proof of other hospitalization coverage and who elects to have no County insurance coverage.

ISSUE 4 ARTICLE 21 HOLIDAYS

Employer's position

SEE EPS

Union's position

SEE UPS.

Discussion

Internal comparable data is important in assessing a benefit of this nature. Other employees in the Department have an additional personal day that is a sick leave deduction day, if used.

Recommendation

ARTICLE 21

HOLIDAYS

Section 21.1. Designated holidays shall be as follows:

January 1st (New Year's Day)

Martin Luther King Day

President's Day

Memorial Day

July 4th (Independence Day)

Labor Day

Columbus Day

November 11th (Veterans' Day)

Thanksgiving Day

Day after Thanksgiving Day

December 25th (Christmas Day)

Two (2) Personal Days (See Section 21.3)

One (1) Additional Personal/Deduct Day (deducted from an employees sick leave balance), See Section 21.3

All holidays are eight (8) hours in length. All holidays are observed on their actual date of observance.

Section 21.2. Bargaining unit employees shall receive pay or compensatory time at their option, equal to the length of the holiday, for each of the holidays that they are eligible to receive. In order to be eligible for holiday pay or compensatory time, an employee must work his scheduled shifts immediately preceding and following the holiday, or be on approved vacation leave, injury leave, or sick leave with a physician's certificate. An employee scheduled to work on a holiday who reports off sick on the holiday without a physician's certificate shall be charged with sick leave, and shall not be eligible for holiday pay or compensatory time. An employee scheduled to work on a holiday who reports off sick on the holiday with a physician's certificate shall not be charged with sick leave, and the day shall be paid as holiday time.

An employee who works a holiday will receive two and one-half (2 1/2) times his regular straight time hourly rate of pay (one and one-half [1 1/2] times for the hours worked and eight [8] additional hours of pay or compensatory time, at the employee's option). When a holiday occurs during an approved vacation leave, the holiday will be charged for that day instead of vacation leave.

Section 21.3. Bargaining unit employees shall **continue to receive two (2) personal leave days, and one (1) additional personal/deduct day each calendar year.** Requests for such leave shall be made at least ten (10) calendar days in advance of the date desired. Personal leave days not utilized within the calendar year will be forfeited. **The personal/deduct day, which will not effect an employee's sick leave balance if it is not used during a calendar year.**

Section 21.4. Holiday compensatory time to an employee's credit as of December 1st of each agreement year shall be paid off at the rate of one (1) hour's pay for each compensatory time hour, prior to the end of the calendar year.

Section 21.5. Requests for holiday compensatory time off shall be made, if practicable, not less than seven (7) calendar days prior to the requested time off. The granting of holiday time off is subject to the manpower needs of the Employer. An employee requesting to take an actual holiday off must submit a request not less than thirty (30) days prior to the holiday. Preference for the scheduling of actual holidays off shall be given according to seniority

ISSUE 5 Article 22 VACATION

Employer's position

SEE EPS.

Union's position

SEE UPS.

Discussion

The bargaining unit currently has a vacation schedule that favorably compares with those of comparable bargaining units in northeast Ohio. The employees reach the 7.7 hour per pay period level in 15 years, while other employees in such counties as Cuyahoga County must wait 25 years to receive 200 vacation hours. There is no comparable data to support a change at this time.

Recommendation

Maintain current language, except where clean up has been proposed (See Tentative Agreement section).

ISSUE 6 ARTICLE 25 INJURY LEAVE

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

The Union is proposing to add to the length of this leave. The Union rejects the notion of the Sheriff making the final determination regarding eligibility for leave under this article. However, it does agree with the Employer's proposal to add Physician/licensed practitioner to the language of Section 25.4. The Employer argues that the practice of granting Injury Leave has gotten away from "line of duty" injuries and is being used for more mundane injuries that should be directly referred to Workers Compensation. The Employer is willing to consider raising the number of days for "in line of duty injuries," but only if the system is reformed.

The Employer presented the same comparable data it used for all of the issues. This data reveals that many of these districts have injury leave, but define it as "service related" or connected. The Union argues workers compensation is in the best position to determine a work related injury from one that is not work related. It contends that if the Employer is in a position to make these judgments, it will in effect nullify this benefit.

I do not find the Employer's desire to eliminate illness from the article to be persuasive given the uncertainty that exists regarding possibility of a transfer of a disease from an inmate to a member of the bargaining unit. However, I understand the Employer's concerns for having to pay for leave that appears to be more routine in nature and does not result from the pursuit of or involve a direct engagement with criminals. Routine accidents at or involving work are traditionally matters for Workers

Compensation. However, the Employer did not produce any evidence or testimony to demonstrate that there has been abuse of this Article in the past by members of this bargaining unit.

Recommendation

ARTICLE 25

INJURY LEAVE

Section 25.1. In the event of an occupational injury or illness (excluding stress) incurred as a direct result of performing an assigned or sworn function within the scope of the employee's authority, such employee shall be placed in a fully paid leave status for the duration of the disability not to exceed one hundred twenty (120) work days. Such leave shall not be charged to the employee's sick leave. The employee shall remit to the Employer any workers' compensation benefits received for that same period as a condition of being placed in a paid status. At the end of the one hundred twenty (120) work day period, the employee may use accumulated sick leave to remain in a fully paid status and continue to remit to the Employer any workers' compensation benefits received. When sick leave is exhausted, the employee may remain on workers' compensation with all insurance benefits maintained by the Employer for up to one (1) year from the first day of the injury or illness. All normal benefits shall continue to accrue while a disabled employee is in a fully paid status.

Section 25.2. In lieu of granting injury leave, the Employer may assign the employee to light duty with the approval of, and within the limitations set by, the employee's treating physician/licensed practitioner.

ISSUE 7 Article 27 UNIFORM ALLOWANCE

Employer's position

SEE EPS.

Union's position

SEE UPS.

Discussion

The Employer's opposition in this matter is based upon the totality of the economic demands of the Union. The facts clearly demonstrate that during the recent past, the parties have bargained uniform increases of \$50 each year. The cost of inflation of items that wear out is usually what these minimal increases are intended to cover, and it is reasonable to assume that bargaining unit employees have grown accustomed to these incremental improvements. However, the current shortfall of revenue in the County must be factored into increases in this successor contract. It justifies a one-time departure of this pattern of increases for the first year of the Agreement. The Union also proposed that employees be permitted to keep their firearms under the provisions of Article 27.2. The Employer is opposed to this concept of employees who terminate their employment. However, it is not uncommon to treat differently employees who retire from those who terminate their employment. Sick leave conversion upon retirement and not termination is an example of this type of benefit differentiation.

Recommendation

ARTICLE 27

UNIFORMS AND EQUIPMENT

Section 27.1. Uniformed bargaining unit employees shall be entitled to the uniform allowance in the schedule listed below, pursuant to the Employer's rules, regulations and procedures for the purpose of purchasing and maintaining uniforms and required leather equipment.

Uniform Allowance Schedule

2002 \$800.00

2003 \$850.00

The uniform allowance is provided on a purchase requisition system and not on the basis of cash to the employee.

Plainclothes officers shall be eligible for uniform allowance according to the above schedule for use towards clothing determined by the Employer's rules, regulations and procedures. All requests for reimbursement by plainclothes employees must be accompanied by receipts. Uniformed officers shall be permitted to purchase civilian clothes (to be used in court). All requests for reimbursement by uniformed officers must be accompanied by receipts.

Section 27.2. All equipment (including leather, but excluding shoes) purchased by the Employer is the property of the Employer and shall, upon termination of employment of an employee, be returned to the Employer in condition issued, allowing for reasonable wear and tear, prior to the issuance of any final compensation to the employee. Any issued item which is lost by an employee shall either be replaced or paid for at current market value by the employee, at the option of the employee.

Employees who have completed twenty-four (24) months of service with the Employer shall be permitted to keep all equipment purchased with uniform allowance funds upon termination. **Employees who retire from the Department shall be permitted to keep the last firearm they purchased under the provisions of this Article. All other firearms must be returned to the Department.**

Section 27.3. Equipment and other items not issued or required by the Employer may be utilized or worn only with the permission of the Employer or his designee.

Section 27.4. Should the bargaining unit member not spend the total uniform allowance as defined in Section 27.1, the unused amount shall be carried over into the following year, and a continuation of carryover shall apply. If on December 15, 2004, any employee has not expended his allowance, such monies shall be returned to the Sheriff's budget.

Section 27.5. The Employer agrees to issue all newly required equipment to all Summit County Sheriff's Office supervisors. Maintenance or replacement will be in accordance with Article 27.

ISSUE 8 Article 30 SEVERANCE

Employer's position

SEE EPS.

Union's position

SEE EPS.

Discussion

According to the most recent history of bargaining, the amount of longevity paid out at retirement was improved substantially in the last contract. When viewing the comparable districts presented by the Employer it is apparent that the bargaining unit's current severance package favorably competes with the likes of Lorain, Lake, Mahoning, Medina, Stark, and Wayne counties. Other nearby counties such as Cuyahoga and Trumbull do not even have a provision for severance pay.

Recommendation

Maintain current language.

ISSUE 9 Article 38 DURATION

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

The past practice of the parties has been to have three-year agreements. There is no way of predicting whether the immediate revenue shortfalls the County is facing are a short lived or long term problem. The length of the current recession, officially 6 months old may last several years or conditions may start to improve as early as mid-2002. Experts differ on predictions in this area, but there are already some economic indicators that give some economists reason to be hopeful (e.g. trucking industry shipping activity, and new car sales). There is something to be said for the stability of a three-year agreement and there is no demonstrable evidence that other like jurisdictions are shortening up the length of their agreements during this time. Furthermore, the history of bargaining between the parties and in Summit County has been to have three-year agreements.

Recommendation

ARTICLE 38

DURATION

Section 38.1. This agreement shall be effective as of October 16, 2001, and shall remain in full force and effect until 11:59 p.m., October 15, 2004.

Section 38.2. If either party desires to modify or amend this agreement, it shall give written notice of such intent no earlier than ninety (90) calendar days prior to the expiration date, nor later than sixty (60) calendar days prior to the expiration date of this agreement. Such notice shall be by certified mail with return receipt requested. In the event that no notice is given by either party, this agreement shall be automatically renewed from year to year thereafter

ISSUE 10 New Article 32 PHYSICAL ABILITIES TESTING

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

This is an area of bargaining that is developing. It is clear that law enforcement work requires police officers to be physically fit, capable of performing a variety of tasks. Of course like any work of this nature, the demands for physical strength and excursion vary day to day and from assignment to assignment. However, the television image of the tobacco chewing, pot-bellied sheriff may be amusing, but it is not the type of law enforcement officer that most communities find acceptable. It is also clear from the evidence that during the history of bargaining between the parties, the Employer has not

proposed the establishment of physical fitness standards. It is likely that many bargaining unit members are not only physically fit, but also endorse the need for fellow officers to be physically capable of performing their work in an acceptable manner.

Any organization that wants to emphasize an environment where fitness is valued must be cognizant of the fact that it will take time to make the transition. The length of time will depend on a variety of factors, not the least of which is leadership. The Ohio State Highway Patrol (OSHP) is an example of cultural change by example. The administrative officers in the Patrol set an example for the line officers. The cultural change that is being proposed by the Sheriff has considerable merit based upon the interest and welfare of the public. During mediation, the Employer indicated it was creating a workout facility. This is a good start, but it is not enough. A program of this nature benefits in terms of support and willing participation if employees and their union have a meaningful role in creating it. The type and level of fitness, strength versus cardiac conditioning, for example, will need to be designed around the various types of jobs in the bargaining unit. Employees know what type of demands their jobs place on them. The FOP has already contributed toward the new workout facility, an encouraging sign. However, it is also a matter of fairness that employees be given sufficient lead-time and other types of encouragement prior to any mandatory demands. It is also common for public employers, even ones who have hardly embraced such a program (e.g. OSHP), to include financial incentives in this type of program.

Recommendation

It is recommended no language be placed into the Agreement at this time, until the parties have sufficient opportunity to jointly design appropriate physical fitness

into a Letter of Intent and Understanding to develop a physical fitness program that includes testing. The following is recommended:

Letter of Intent and Understanding

Physical Abilities Testing

Section 1. The parties shall establish a committee for the purpose of developing and implementing the physical abilities testing program. The committee shall consist of no more than four (4) representatives of each party.

Section 2. If the committee cannot agree on a physical abilities testing program within six (6) months of execution of this agreement, the Employer shall have the right to implement the job-related physical abilities test adopted by the Florida Department of Law Enforcement and presented to the Association during the 2001 contract negotiations.

Section 3. The parties agree that the program will initially be voluntary. However, all bargaining unit employees, except those specifically exempted by mutual agreement of the parties, shall be required to pass the test by October 1st of the final year of the labor agreement. From such point forward, the program will be mandatory in accordance with the article on Physical Abilities Testing.

Section 4. The parties further agree that the committee may, if it deems such to be appropriate, recommend changes to the Physical Abilities Testing Program. If such recommendations are agreeable to both the Association and the Employer, they will be reduced to writing and incorporated into this letter of intent and understanding.

ISSUE 11

SUBSTANCE ABUSE TESTING

Employer's position

SEE EPS.

Union's position

SEE UPS.

Discussion

The parties reached tentative agreement on this issue during bargaining. Under the standard of good faith bargaining, the issue is resolved.

Recommendation

See Tentative Agreement section below.

TENTATIVE AGREEMENTS

During negotiations, mediation and fact-finding the parties reached tentative agreement on several issues and on "clean-up" language that corrected grammar and typographical errors. These tentative agreements are part of the recommendations contained in this report.

The Fact-finder respectfully submits the above recommendations to the parties this 12th day of December, 2001 in Portage County, Ohio.



Robert G. Stein, Fact-finder