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**FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

STATE EMPLOYMENT
RELATIONS BOARD

2002 APR 29 A 10:33

In the Matter of:

Warren County Sheriff's
Benevolent Association

and

Warren County Sheriff

Case No.: 2001-MED-08-0671 ✓
2001-MED-08-0672

Fact Finder: Tobie Braverman

**REPORT AND RECOMMENDATIONS OF FACT-FINDER
TOBIE BRAVERMAN**

APPEARANCES

For the Employer:

JOHN KROCK, Labor Consultant
Timothy G. Werdmann, Labor
Consultant
Col. Don Everett, Chief Deputy
Debbie Otto, Office Manager

For the Union:

Timothy J. Evans, Attorney
Cindy Younkman, Clerical
Specialist
Lavina Hayes, Clerical
Specialist
Roger Johnson, Deputy Sheriff

INTRODUCTION

The undersigned was appointed as Fact-Finder in the above-captioned matter pursuant to Ohio Revised code §4117(C)(3) by letter dated October 25, 2001. The parties extended the time for the Fact-Finder's recommendation until April 25, 2002. Hearing was held at the offices of the Warren County Sheriff, Lebanon, Ohio on March 7, March 26 and April 16, 2002. The Warren County Sheriff was represented by John Krock of Clemans, Nelson & Associates, Inc. and the Warren County Sheriff's Benevolent Association was represented by Timothy R. Evans of Holbrock & Jonson.

The Warren County Sheriff is the county wide law enforcement agency for Warren County, Ohio which is located in Southwest Ohio and has a population of approximately 158,000. Because there are few municipalities in Warren County, the Sheriff's Department provides county-wide patrol for County roads as well as for a number of Townships within the County. It also provides court services and maintains the county jail. The Union represents employees of the Sheriff's Department in four separate bargaining units; corrections officers, supervisors, sworn employees, which includes deputies, and non-sworn employees, which includes clericals and janitorial employees. The instant fact-finding involves only the latter two bargaining units. The non-sworn unit includes approximately 10 employees, and the sworn unit encompasses approximately 60 deputies.

The current Collective Bargaining Agreements between the parties expired on November 24, 2001. After a number of bargaining sessions, the parties submitted the matter to fact finding with six outstanding issues in the sworn unit, and three outstanding issues in the non-sworn unit. Before commencing hearing, an attempt was made to mediate the parties' differences. As a result, some of the issues, as will be further detailed below, were resolved. Four issues remain for recommendation by the Fact-Finder.

RESOLVED ISSUES

SWORN UNIT

1. Article 22.7 - Court Time

The parties reached agreement regarding the issue of court time as follows. Current language shall be changed to add the following after the first sentence:

Any employee who is required to attend court, in the performance of his duties, on his scheduled day off or at a time which is more than four (4) hours later than the end of his shift shall receive a minimum of three (3) hours at time and one-half his regular hourly rate for such attendance.

2. New Article - Permanent Shifts.

The Employer dropped this proposal.

3. New Article - Shift Differential

The Union dropped this proposal.

Non-Sworn Unit

1. New Article - Shift Differential

The Union dropped this proposal.

2. New Article - Longevity Pay

The Union agreed to accept any agreement reached regarding longevity pay by the sworn bargaining unit.

OUTSTANDING ISSUES

Before commencing discussion of the outstanding issues between the parties, it should be noted that the parties believed they had reached tentative agreement on the sworn unit after mediation. However, the parties disagreed as to the precise terms of the mediated agreement with regard to longevity pay, and as a result, the parties returned to fact finding on the sworn unit. A tentative agreement was also reached as to the non-sworn unit which included a review of the wage rate by the County's Compensation Review Board, after which the parties would attempt to reach final agreement. The parties were unable to do so.

SWORN UNIT

1. Article 23 - Wages

Union Position: The Union proposes that the wages of the deputy sheriffs be increased from \$42,000.00 to \$48,000.00 immediately, an increase which is the equivalent to approximately a 14.5% increase and 5% in each of the remaining two years of the

Agreement. The Warren County Sheriff employs very few deputies with any substantial seniority primarily because many leave for employment in higher paying positions. The proposed increase, though substantial, would bring Warren County on a par with others, and prevent the current turn over within the department. The Union further points out that the County is financially sound and has the ability to pay the proposed increase.

Employer Position: The Employer proposes an increase of 5% in the first year of the Agreement, and an increase of 4.5 % in each of the two remaining years of the Agreement. The Employer argues that when Warren County is compared to other county sheriff departments, rather than with municipal and township police departments, it is apparent that Warren County is already on a par with other sheriff departments. The Employer further points out that the issue of wages was resolved with the sworn unit previously, and the Union has only revived the issue of wages at this time because the parties disagreed as to the specifics of their agreement on longevity pay. The Employer further points out that the employees received an increase of approximately 18% in their last contract in order to bring them up to par with comparable sheriff departments. Another such substantial increase is not warranted.

Discussion: Not surprisingly, the comparable wage comparisons utilized by the Employer and Union here are not the same. The Union has utilizes a list which includes cities, counties and townships, and argues that a 14.50% increase would be needed to

raise Warren County to the average comparable wage in the surrounding area. The Fact-finder believes that it is more appropriate to compare a county sheriff department to the same entity. In such a comparison, it is clear that the wage increase offered by the Employer would put this bargaining unit near the top of the list of comparable wages for nearby county sheriff departments. Further, the wage increase offered by the Employer after mediation at the time of hearing is more than that already agreed upon by the Employer and the Supervisory and Corrections Officers units. Finally, it must be pointed out that the Union and Employer previously reached tentative agreement on this wage proposal.

Recommendation: The Fact-Finder believes that the following would provide the sworn unit with an average wage for comparable counties:

5% increase in the first year of the Agreement; 4.5% increase in the second year of the Agreement; 4.5% increase in the third year of the Agreement.

2. New Article - Longevity Pay

Union Position: The Union's original proposal regarding longevity pay was modified during the course of mediation when the parties believed they had reached agreement on this issue. The parties did agree that longevity steps would be added at ten and twenty years of service within the Sheriff's department. However, the application of the agreed upon amounts resulted in a lack of

agreement on the issue. The parties agreed that the increases should be 15 cents at the 10 year step, and 25 cents at the 20 year step. The disagreement arose, however in implementation of this agreed upon amount. The Union contends that the employees at the 20 year step should receive a cumulative increase of 40 cents, while the Employer contends that the increase should not be initially cumulative in this contract.

The Union argues that longevity steps are the norm in law enforcement collective bargaining agreements, and the lack of additional longevity steps in this Agreement is unusual. Further, as the seniority list submitted demonstrates, this work force is very young with a not insignificant turn over rate. The longevity steps would be useful in employee retention, thus leading to a more experienced work force. Finally, the proposal would affect only approximately five employees during the course of the agreement, and the Employer does not contend that it has any inability to pay.

Employer Position: The Employer points out that the longevity steps which it agreed to during mediation are new in this agreement, and unique to this bargaining unit. Neither the supervisory nor corrections unit has these steps. While ultimately the effect of the increases will be cumulative for 20 year employees, they should be applied separately for purposes of implementation of the new language.

Discussion: This is new contractual language which attempts to reward long term employees for their years of service and provide financial incentive to remain with the Employer. As the

Employer points out, no other group of county employees receives these pay steps. Ultimately, however, the effect of the new steps will in fact be cumulative for 20 year employees since they will have received the 15 cent 10 year step, and then the additional 10 cents at year 20. It seems inequitable to apply the new language in such a manner that those employees who are already at more than 20 years of service will not receive the cumulative affect of the new steps, while those with less than 15 years of service will. Since the ultimate effect of the new language will be cumulative, since the language will only affect a handful of employees during the term of the current contract, and since the Employer does not have any inability to pay, the increases should be implemented so that 20 year employees receive both the 15 and 25 cent increase.

Recommendation: Additional wage steps shall be added at 10 and 20 years of service. The increase at 10 years shall be 15 cents per hour, and the increase at 20 years of service shall be 25 cents per hour. Employees with 20 years of service at the time of initial implementation of this language shall receive both step increases.

3. Article 20 - Agility Testing

Employer Position: The Employer proposes new contractual language which would implement a comprehensive plan for agility testing for deputies. The proposal would replace current language which states only that the parties will work to implement a physical agility program, and which has never been acted upon, with

more specific and comprehensive language which would implement the general agreement to implement such testing. If employees are to receive higher wages, certainly it is reasonable to expect that they be physically fit to perform their duties.

Union Position: Article 20 has been part of the Agreement for years, but the Employer has never sought to implement it. If the Employer desires to now have physical agility testing it should work with the Union to implement such a program. Further, there is no indication that any employees are in fact unfit to perform their duties.

Discussion: There is no question that it is not unreasonable or inappropriate to expect that law enforcement officers be physically fit to perform the essential functions of their positions. Article 20 of the parties' Agreement already contains language regarding this issue which provides for a cooperative effort to formulate a physical agility program. That being the case, an effort should be made by the parties to go forward with the implementation of such a plan. While the Employer's proposed plan may well serve as a basis for a comprehensive physical agility program, a program which is drafted with the involvement of both parties will in all likelihood meet with better acceptance and success. Since the parties have already agreed to formulate such a plan, but have never acted upon that agreement, the contractual language should be actually utilized to implement the agreement to create a physical agility testing program.

Recommendation: Section 20.1 should be changed to read as follows:

Section 20.1 The Employer and the Benevolent Association shall form a committee with equal numbers of Union and Management representatives to meet to formulate specific plans and procedures for physical agility requirements during the term of this Agreement. A dispute settlement procedure, including a binding arbitration clause, will be included in the finished program.

NON-SWORN UNIT

1. Article 23 - Wages

Union Position: The Union contends that the Sheriff Department clerical employees are grossly underpaid both in relation to the wages of clerical employees in other counties as well as to those in other departments within Warren County. Their position entails a great deal of responsibility in regard to criminal background checks and arrest warrants. Additionally it is inherently more dangerous than most clerical positions. The Union proposes that a wage increase which is the equivalent of approximately 23% in the first year of the Agreement is necessary in order to bring the clericals to an equal footing with other comparable employees. The Union then proposes 5% increases in two remaining years of the Agreement. It further proposes an increase of 5% in each year of the Agreement for the one custodial employee included within this bargaining unit. At hearing, however, it proposed additionally that the wages of the custodian be increased further to place that position at pay range 2 of the county compensation schedule.

Employer Position: The Employer argues that the increase proposed by the Union is excessive. As part of mediation, the parties agreed to submit the compensation of the clerical employees to the County Compensation Rating Board for review. The Board factored the position at pay range 8, which falls squarely within the Employer's proposal of a 7% increase in the first year of the Agreement and 4.5% in each of the two remaining years. The Employer further points out the increase requested by the Union would result in the clerical employees being paid more than corrections officers at the top pay rate, a situation which is inequitable based upon the job duties of the two positions.

Discussion: It seems to be beyond dispute that the clerical employees are paid less than their comparable counterparts in other counties as well as less than clerical employees in other county departments within Warren County. Although their wages were submitted to the Compensation Board for review and factoring, it does not appear that this review was complete and thorough. Although the Supervisor for the clerical employees was asked to factor the job, her numbers were rejected and reduced in 4 areas even though it is unclear that anyone with first hand knowledge of the job was on the committee, and she was never spoken to. Additionally, although the factoring work sheet calls for input by the employees, none of them was asked to rate their job. The work of the Committee therefore carries little weight.

Despite the fact that the clericals are apparently underpaid compared to other clericals, the Employer's point concerning the

Union's requested pay rate cannot be ignored. It would be highly inequitable and would indeed likely cause significant dissention within the Sheriff Department to pay the clerical employees a wage greater than that of the corrections officers who have already settled their Agreement.

As to the Custodian, the Fact-finder believes that the parties did indeed reach agreement on the wages for this position, and it was never agreed to submit it to the Review Board for factoring. It is therefore inappropriate for the Union to now argue that that position should be increased beyond the proposal which it originally presented at Fact-finding.

Recommendation: The fact-finder recommends the following wage increases for the non-sworn bargaining unit:

Clerical employees: 10% in the first year of the Agreement, 4.5% in each of the remaining two years of the agreement.

Custodian: 5% in the first year of the Agreement, 4.5% in each of the remaining two years of the Agreement.

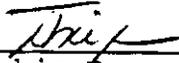
April 26, 2002



Tobie Braverman, Fact-Finder

CERTIFICATE OF SERVICE

The foregoing Report was mailed this 26th day of April, 2002 to John Krock, Clemans, Nelson & Associates, 5100 Parkcenter Ave., Suite 120, Dublin, Ohio 43017-7563, counsel for Warren County Sheriff, and to Timothy R. Evans, Holbrock & Jonson, 315 S. Monument Ave., Hamilton Ohio 54011, council for Warren County Sheriff's Benevolent Association, by Next Day Air Mail.



Tobie Braverman

TOBIE BRAVERMAN

ATTORNEY-AT-LAW
ARBITRATOR
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April 26, 2002

Mr. John Krock
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Dublin, Ohio 43017-7563

Mr. Timothy R. Evans
Holbrock & Jonson
315 S. Monument Avenue
Hamilton, Ohio 45011

RE: Warren County Sheriff's Benevolent Association and Warren
County Sheriff
Case No. 2001-MED-08-0671 and 2001-MED-08-0672
My File No. 01-329

Dear Messrs. Krock and Evans:

Enclosed please find my Report and my invoice for services rendered
in the above-referenced matter.

If you have any questions or comments, please do not hesitate to
contact me.

Thank you.

Very truly yours,

Tobie Braverman

TB/jb
Enclosures
cc: Dale A. Zimmer