



## HEARING BACKGROUND

The above matter came on for hearing on December 21, 2002 pursuant to selection by the parties. The intent of this Report and Recommendation is to have it become accepted by both parties so conciliation procedures need not be invoked for this right to strike bargaining unit comprising one (1) Corrections Lieutenant and five (5) Corrections Sergeants.

The public employer, Huron County Sheriff Richard Sutherland, is a duly elected public official located in Huron County, Ohio and shall hereafter be referred to as the "Employer" or the "Sheriff". The Employee Organization certified by the Ohio SERB to represent this bargaining unit is the Fraternal Order of Police-Ohio Labor Council, Inc. Said Employee Association is negotiating its first collective bargaining agreement with the Sheriff and shall hereafter be referred to as the "Union" or "FOP".

The hearing was held at the Employer's complex in Norwalk, Ohio. Prior to the start of the hearing both sides timely presented to the Fact Finder their pre-hearing position statements setting forth their respective positions on the thus designated open issues and contract terms.

The parties requested no further mediation be attempted since the number of issues had been pared down to a level felt to represent the parties' good faith differences.

The remaining ten (10) open issues are listed as follows:

1. Loser Pays Arbitrator fees;
2. Overtime Wages paid for hours over 8 and 40;
3. Basing overtime on regular rate of pay;
4. Add Sick Time to hours worked;
5. Call-In pay;
6. Overtime misses paid in cash;
7. Wages;
8. Pager Pay;
9. Injured On Duty Pay (new);
10. Fair Share Fee (new).

The prepared and testimonial evidence was professionally presented by each side which enabled the proceedings to be dispositive of both sides' position on the open issues.

The FOP committee was comprised of Staff Representative Hugh Bennett, Sergeants Bill Hubbard and Chris Stanfield and Lieutenant Theresa Shean.

Sheriff Sutherland attended and was represented by consultant Richard Gortz, along with Jail Administrator Virgil Valentine and County Administrator Mary Cain.

After preliminary background discussions the parties proceeded on the record in order to formally hear the evidence and render this Report and Recommendation for the enumerated open terms of the their (mutually) initial collective bargaining agreement.

The exclusion of witnesses from the hearing room was not deemed necessary by the advocates, therefore all persons in attendance remained throughout the hearing, free to leave for business purposes if required to do so.

I might add that the advocates and their clients extended their full cooperation and assistance to the Fact Finder in concluding the hearing on the list of open items in one day's session.

#### RESOLUTION CRITERIA

Although this proceeding was privately arranged the following recommendations take into consideration the factors enumerated in Section 4117.14 (C)(4)(e) of the Ohio Revised Code. These are:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of the unresolved issues relative to the employees in the bargaining units 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, the ability of the public employer to 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. Any stipulations of the parties;
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues mutually submitted to agreed upon dispute settlement procedures in the public service or in private employment.

My intent is to deal with the crux of the issues in a direct and forthright manner. The relative positions have been amply demonstrated, argued and studied by the undersigned. I believe the parties understand each others' positions by now. Therefore, I see no need to author a treatise on the subject matter that separates the parties. Since the parties understand their own as

well as each others' proposals I will not "pad" this Report by extensive reiteration of same. It is clear to both sides that proceeding to the conciliation phase is an option beyond this stage, with the potential for completely inapposite but binding results.

While I do not profess to have any special knowledge or powers beyond the parties' own, I have weighed the respective presentations and have obtained a "feel" of the situation sufficient to undertake rendering an equitable result. I feel it would be remiss not to note that the following determinations shall be enumerated and incorporated into the tentative collective bargaining agreement reached by the parties during this fact finding phase so as to form a complete labor contract.

#### ITEMS FOR RESOLUTION

As a result of the above enumerated procedures the parties presented the following unresolved issues to the Conciliator:

1. LOSER PAYS (Arbitration Fees)

#### EMPLOYER POSITION

The Sheriff's position is closely rooted in the fact that this type of approach to arbitrator costs is what is in four other cbas the Sheriff is party to. Also, the Employer feels loser pays curtails frivolous or weak grievances from being advanced into arbitration and compels settlements.

#### UNION POSITION

The FOP wants to switch to equally shared costs on arbitrator fees because the arbitral forum assists both sides in resolving disputes and answering questions about their cba or policies. To the extent that they both can profit from this, the cost should be evenly split by the parties. The Union described its viewpoint as being that mutual respect comes from paying mutual fees.

#### RECOMMENDATION

I suggest adopting the FOP's position because in a new bargaining relationship, it remains to be seen that the Union intends to "spend" the Employer into submission by means of mass grievances taken to arbitration. If that result comes about and is backed by data indicating such a fiscally irresponsible approach it would not be difficult to bargain a return to loser pays language. While I recognize that the Sheriff doesn't have "50-50" language with the other units, he also doesn't have a FOP represented unit

besides this one. This is a non-economic demand with collateral economic consequences. Responsible labor relations leadership is one safeguard against abuse of the arbitral forum for economic reasons. I have no study in this record showing that loser pays language results in more settlements

2; 3; 4; 5 & 6:

#### OVERTIME WAGES

#### EMPLOYER'S POSITION

Maintaining the status quo with the other cbas is the Sheriff's goal on the several changes proposed for the Overtime article (No. 19). One such change is a proposal to move to an 8 hour daily overtime determinant and a 40 hour in 7 consecutive day determinant. The rolling 7 day period gives a "look back" aspect that is hard to monitor. The Sheriff says no one in the country has this feature.

Sick leave has been excluded from overtime computation per a State practice designed to curb excesses. As it is now, the Employer cannot change the schedule to avoid overtime payment.

#### UNION POSITION

The FOP seeks to amend Section 2 to provide for overtime on an eight (8) hour basis in a consecutive twenty-four (24) hour period. It shall also be based upon the employee's regular rate of pay not hourly base pay and paid for hours worked in excess of forty (40) in a consecutive seven (7) day period. The regular rate would encompass longevity, bonus and shift differential as per the Featsent v. City of Youngstown, case upheld by the 6th District Court of Appeals.

The demand in Section 3 would increase Call-In Pay from two (2) hours to three (3). The FOP noted that if an employee is called in with some sick leave taken during the week they only get straight time pay. So adding sick time taken as hours worked for the computation of the overtime avoids this result. This increase is not that much of a budget buster. Most employees live twenty five minutes or more from the jail; its the inconvenience factor which needs compensating for.

Regarding Section 4, the Union proposes actual cash payment instead of a future overtime opportunity. When the wrong person is utilized, that employee gets the overtime so rather than artificially save the next opportunity for the bypassed employee simply paying him or her would be more equitable.

### RECOMMENDATION

Of the changes sought, the only one I find compelling is the Section 4 change which would up call-in pay from 2 hours to 3. Management has to exercise some discretion when calling in an employee who is off duty so the additional hour's pay to be kept at straight time will compensate for the need to travel to and from the jail as well as show up.

Therefore, I recommend raising the call-in pay to 3 hours.

7.

### WAGES

#### UNION POSITION

The thrust of the FOP's position is that disparity with road deputies must be narrowed and that the supervisory nature of this unit dictates that it has to be compensated accordingly.

To that end, Sergeants should receive a \$.25/hr. adjustment plus 5% increases each year of the agreement for the Sergeants.

For the Lieutenant, a similar adjustment plus 3.5% for each of the first two years followed by 3% raises in the next two years.

#### EMPLOYER POSITION

The Sheriff has countered with a \$.25 adjustment and 4% per year increases each year for each classification.

### RECOMMENDATION

I recommend the Employer's wage package. The \$.25 adjustment does make some inroad on the gap between the road deputies and the jail officers. But the 4% is more in keeping with general wage increases today. The Sheriff pointed out that some counties use dual certified road and corrections officers. The telling measure herein is that the Employer has offered the \$.25/hr. adjustment to move the corrections unit closer to the road deputies; it shows a resolve to treat to the issue raised by the bargaining unit. The Sheriff has drawn the line at actual parity by stressing that the two jobs are not the same.

8.

### PAGER PAY

The Employer has provided pagers for the members to carry.

The Union seeks a premium for thus using the equipment.

#### UNION POSITION

Add \$200.00 per week for members required to carry a pager while off duty, pro-rated on periods of under 24 hours.

#### EMPLOYER POSITION

The Sheriff opposes this demand in its entirety. If made to pay a premium, he indicated he would withdraw the equipment and forego its use. The Employer maintains it was for the benefit of the corrections officers to have this service but if its not wanted, he'll rescind the contract for the pagers.

#### RECOMMENDATION

I suppose I could get a "free one" herein in terms of making a recommendation which has no chance of being accepted by the Employer. However, I am not interested in "splitting the baby" or making an even number of recommendations.

Therefore I specifically reject the Union demand as it appears the bargaining unit feels imposed upon by the addition of the equipment and the Employer is vehemently opposed to paying a \$200.00/wk. premium for a service it felt the rank and file would want.

9.

#### INJURED ON DUTY LEAVE

This is a new proposal from the FOP. It's thrust is to place Huron Co. at the top of other Sheriff's Departments in terms of the maximum of 182 days of wage continuation and PERS contribution. This benefit would supplant Workers Compensation and serve in lieu of that program's eight day waiting period.

#### POSITION OF THE UNION

Full pay without a waiting period is more advantageous than the State determined 2/3 average weekly wage benefit.

Also, with PERS contributions kept up, the Workers' Compensation benefit is further behind this proposal.

#### POSITION OF THE EMPLOYER

Internally, none of the other eight (8) departments has this type of program.

Public sector time off benefits are more generous than their private sector counterparts. The County wants to keep people at work and there is a tendency for employees to max out whatever leave benefits their contracts provide. This is a very costly proposal and the Sheriff does not wish to break new ground. getting people back to work is met by use of light duty assignments by the Sheriff. The team suffers when one member is away from the correctional facility.

#### RECOMMENDATION

I have pondered the impact of adding this program and conclude that the Departmental needs are not best served by commencing an injury leave benefit at the highest level of benefit from among the comparable cbas shown to me.

For one thing, I see no evidence of abuse or inequitable dealing with the members under the current approach. The coordination with State mandated injury leave is fairly seamless and what the majority of law enforcement employees receive today.

10.

#### FAIR SHARE FEE

Subject to legal rights to challenge the determination of the service fee charged to employees not wishing to join the FOP, the Union would seek this provision to allow it to collect a service fee for non-members served by the contract and general aspects of representation.

#### UNION POSITION

Fair Share Fees are equitable for all involved parties. The "free rider" should pay his or her share for representation.

#### EMPLOYER POSITION

This is opposed by the Sheriff on the premise that if the Union does its job, employees will want to be full members and join. No other unit in the Department has fair share language so internally, the Employer doesn't think its warranted.

#### RECOMMENDATION

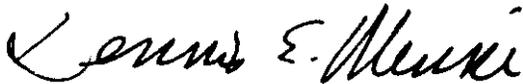
I have weighed calling for a break from the other units' contracts with the equitable aspects of shouldering the costs of collective bargaining throughout this bargaining unit and favor adding this language to the parties' contract. Fair Share Fee payers have had sophisticated legal mechanisms develop in recent years which serve to sever ideological costs from the actual cost

of collective bargaining. It is the latter expense which equates with the day to day services non-members may access; thus, it is only fair that this group shoulders its respective economic load.

I am not persuaded by the Employer's view that "doing its job" will cause all employees to join and remain union members.

Recommending that this unit be the "first" also takes into consideration that this contract is a "first" for the FOP/OLC as well.

Respectfully submitted this 25th day of January, 2002 at Strongsville, Ohio.



Dennis E. Minni  
Fact Finder