

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

02 03 03 A 8:49

In the Matter of:

F.O.P., Ohio Labor Council,  
Inc.

and

Hamilton County Sheriff

Case No.: 2002-MED-03-0168

Fact Finder: Tobie Braverman

REPORT AND RECOMMENDATIONS OF FACT-FINDER  
TOBIE BRAVERMAN

APPEARANCES

For the Employer:

Charles A. King, Director of  
Labor Relations, Clemans Nelson  
Joseph M. Schmitz, Director of  
Corrections  
Mark J. Lucas, President  
Clemans Nelson  
Gail G. Wright, Sheriff's  
Administrative Assistant  
Kim Serra, County Personnel

For the Union:

Paul Cox, Chief Counsel  
Tara Crawford, Paralegal  
Douglas M. Allen, Chief  
Assistant  
David Stanley, FOP Staff  
Representative  
Richard S. Sak, Associate  
Lones R. Mills, Associate  
Derek A. Owens, Associate  
Ronald N. Vest, Associate

## INTRODUCTION

The undersigned was appointed as Fact-Finder in the above-captioned matter pursuant to Ohio Revised code §4117(C)(3) by letter dated May 2, 2002. The parties extended the time for the Fact-Finder's recommendation until October 25, 2002. Hearing was held at the offices of the Hamilton County Sheriff, Cincinnati, Ohio on September 18 and 25, 2002. The Hamilton County Sheriff was represented by Charles A. King of Clemans, Nelson & Associates, Inc. and the F.O.P., Ohio Labor Council, Inc. was represented by Paul Cox, Chief Counsel.

The Hamilton County Sheriff is located in Cincinnati, Ohio and is responsible for law enforcement and other related activities throughout the county. The Sheriff is party to four collective bargaining agreements with law enforcement personnel, those being the patrol officers unit, patrol supervisors unit, correction supervisors unit and the corrections officers, which is the bargaining unit involved here. The corrections officers unit includes approximately 410 employees who work as guards at the county's four corrections facilities.

The prior Collective Bargaining Agreement for the bargaining unit was between the Sheriff and Teamsters Local 100 as representative for the employees. That Agreement expired on December 21, 2001. Teamsters Local 100 was subsequently decertified as collective bargaining representative. F.O.P. was elected as the new representative on February 8, 2002. This is

therefore the first collective bargaining agreement between these parties for this bargaining unit. After several bargaining sessions, the parties submitted the matter to fact finding with twenty-three outstanding issues. One issue, Article 44, Parking, was withdrawn by the Union. Twenty-two issues remain for recommendation by the Fact-Finder.

#### RESOLVED ISSUES

The following are the issues on which the parties have reached tentative agreement. They are recommended by the Fact-finder as part of this report. The parties have additionally agreed upon a number of items within the Articles of the Agreement which are discussed below as part of the unresolved issues. Those portions of those Articles on which no recommendation is made have been tentatively agreed upon the parties and are recommended as part of this report. Any current language not specifically agreed to or referenced herein as unresolved is recommended to continue to as part of the new Agreement.

Article 1 - Agreement/Purpose  
Article 2 - Recognition  
Article 4 - FOP Representation  
Article 5 - Management Rights  
Article 7 - Labor/Management Meetings  
Article 10 - Personnel Files  
Article 11 - Probationary Periods  
Article 12 - Seniority  
Article 13 - Layoff and Recall  
Article 15 - Bulletin Boards  
Article 16 - Work Rules-General Orders  
Article 17 - Performance Evaluation  
Article 18 - Physical Fitness  
Article 21 - Court Time/Call-in Time/Stand-by

Article 26 - Occupational Injury Leave  
Article 27 - Donated Time  
Article 29 - Expenses  
Article 30 - Training  
Article 33 - Drug/Alcohol Testing  
Article 34 - Health and Safety  
Article 35 - Civil Service Compliance  
Article 36 - No Strike/No Lockout  
Article 37 - Tuition Reimbursement  
Article 38 - Sub-Contracting  
Article 40 - Severability  
Article 41 - Copies of the Agreement

#### UNRESOLVED ISSUES

#### ARTICLE 3 - FOP SECURITY

Union Position: The Union proposes a fair share provision in the Agreement whereby all members of the bargaining unit who choose not to become members of the Union are obligated to pay a fair share fee. This provision is included in the prior Agreement as well as in the Agreements between the Employer and the Supervisors and Patrol bargaining units.

Employer Position: The Union was certified in a decertification election which it won by only 37% of the total bargaining unit. Since it did not win by a clear majority of the entire unit, the majority of the bargaining unit should not be required to pay fair share fees.

Discussion: Although the Union was selected as bargaining representative by only 37% of the entire number of eligible voters, that was the case for two important reasons. It must be noted that since the election was a decertification election, voters had four, rather than the traditional two choices. The certification

reflects that among the 240 bargaining unit members who voted, the Union received 153 votes, a substantial majority. Further, it is apparent that a number of bargaining unit members simply chose not to vote. It is impossible to discern their reasons for not voting, but it is an unfair assumption that their failure to vote means that they would have chosen either no union or one of the other two options. Finally, it must be stressed that both of the Employer's other bargaining units, as well as this unit, have traditionally included a fair share fee.

Recommendation: The Union's proposed language for Article 3 should be incorporated into the Collective Bargaining Agreement.

#### ARTICLE 4 - FOP REPRESENTATION

Union Position: The Union proposes a provision for the grant of paid leave for FOP members for a total of 300 hours per calendar year for attendance at FOP conferences and training as well as for representational activities. This language is already included in the smaller patrol unit.

Employer Position: Although the language is in the patrol unit Agreement, it is rarely used. The extensive leave requested is simply unnecessary.

Discussion: Although the leave hours requested by the Union proposal are not currently being utilized by the patrol unit, as the Union points out, this unit is much larger in size. Further, since this unit was not represented by the FOP previously, there may be more need for training than in the patrol unit which has

been an FOP affiliate for some time. The Employer presented no other rationale as to why this unit should be treated differently from the patrol unit in this regard.

Recommendation: It is recommended that the Union's proposal regarding Section 4.9 be incorporated into the Agreement.

#### ARTICLE 6 - NON-DISCRIMINATION

Union Position: The Union proposes the addition of language to the section which would expressly prohibit retaliation against members of the bargaining committee as a result of their involvement in negotiations. This would permit any alleged retaliatory conduct to be processed through the grievance procedure.

Employer Position: The conduct prohibited by the language is already unlawful pursuant to O.R.C. 4117.11 as an unfair labor practice, and the language is therefore superfluous. Additionally, the Employer objects to the broad prohibition on transfer contained in the proposed language. Transfer is a frequent occurrence, and the Employer's right to transfer employees is crucial to the efficient operation of the correctional facilities.

Discussion: Although bargaining committee members expressed a fear that there might be retaliatory action taken against them as a result of their activities as part of the bargaining committee, there was no evidence that such has been the case with prior committees such that would warrant the addition of new contractual language. All of the activities set forth in the proposed language

are already unlawful, and an allegation of retaliatory conduct can be pursued through the filing of an unfair labor practice charge through SERB.

Recommendation: Current language.

#### ARTICLE 8 - GRIEVANCE PROCEDURE

The parties have agreed to a number of language changes in the disciplinary provisions of Article 8 which are recommended by the Fact-Finder. There remain, however, two areas of disagreement within the Article.

Union Position:

The only remaining Union proposal with regard to the grievance procedure is a proposal to allow for an adjustment in the employee's work schedule when an employee is required by the Employer to attend a grievance arbitration. The Union opposes the Employer's proposal to alter the current language which provides for an equal division of arbitrator's fees between the parties to a loser pays provision.

Employer Position: The Employer is willing to adjust employee schedules to accommodate required attendance at arbitration hearings, but desires to be able to control the adjustment so that it can meet personnel needs. It further proposes a change to loser pays as a way of attempting to keep frivolous arbitrations in check.

Discussion: It is not unreasonable to allow for schedule adjustments for attendance at arbitrations, but the Employer must

be able to maintain control over scheduling. This is particularly true in this work force since there are already manpower shortages that make scheduling difficult.

The Employer has not demonstrated a basis for a change from the long extant arbitration fee split provisions of the grievance procedure. There was no evidence of a spate of frivolous arbitrations which have been lost by the Union or its predecessor which might justify this change.

Recommendation: As noted above, the parties have reached agreement on a number of changes to Article 9. Those agreed changes are recommended. It is recommended that the balance of the Article remain current language except as follows.

Section 8.7(G) shall read as follows:

Any bargaining unit employee whose attendance is required by the Employer for a grievance arbitration hearing shall receive full pay and benefits for all hours of required attendance at the applicable rate of pay. Attendance required by the Employer outside of his/her scheduled working hours shall be paid at a rate of one and one-half (1 1/2) times the regular straight time hourly rate of pay or with an adjustment in his/her work schedule for that day at the discretion of the Employer. Bargaining Unit employees whose attendance is required by either party shall not suffer any loss of pay for all hours that such attendance is requires.

#### ARTICLE 9 - DISCIPLINE

The parties have agreed to rather extensive language changes in the disciplinary provisions of Article 9 which are recommended by the Fact-Finder. There remain, however, some areas of disagreement within the Article. The areas of disagreement which remain in Article 9 concern the time period which the Employer has

to issue disciplinary action against an employee who has been charged with a crime and the question of reimbursement of hours lost and vacation, holiday and compensatory time lost for an employee who has been placed on unpaid leave when charged with a felony but who ultimately pleads guilty to a reduced misdemeanor charge.

Union Position: The Union argues that a period of three months after verification of alleged misconduct in order to institute disciplinary action against an employee should be more than sufficient. The six month period sought by the employer is far to long to keep an employee waiting for a conclusion to the disciplinary process. The Union further argues that an employee who pleads guilty to a misdemeanor should be reimbursed for lost wages and leaves since individuals plead to reduced charges for a variety of reasons, many of which do not include actual guilt.

Employer Position: The Employer argues that it needs the six month window for discipline since very often it takes that long to resolve criminal proceedings. The Employer also argues that it is inappropriate to reimburse the pay and leave of a corrections officer who pleads guilty to a misdemeanor regardless of the reasons. Such reimbursement should be made only upon a finding of not guilty or other dismissal of charges.

Discussion: It is reasonable to permit the Employer to delay its determination of the appropriate discipline of an employee charged with a criminal offense until after the conclusion of the criminal process. Since the burden of proof for criminal charges

is greater than that necessary for discipline, a finding of not guilty or dismissal of the charges would in all likelihood result in a determination that discipline should not be imposed. A guilty finding, on the other hand, would likely result in discipline which would be readily supported by the court proceedings. It is not reasonable, however to permit the employer to take up to six months to impose discipline on any employee simply because some criminal proceedings may take that long. A better approach would be to tie the time limitation for discipline to the conclusion of the criminal proceeding.

Pursuant to the current contract language, employees who are placed on unpaid leave pending the conclusion of felony criminal proceedings are reimbursed for any lost pay and used leave if they are either found not guilty or plead guilty to a lesser misdemeanor charge. While, as the Union notes, a misdemeanor plea may be entered for a variety of reasons, it is unreasonable for a law enforcement employee to expect reimbursement for a period of unpaid leave after conviction of a reduced charge. It is well established that law enforcement personnel are held to a higher standard of conduct. As such, it is reasonable to expect that the employee who pleads to a misdemeanor after having been charged with a felony does so at his own financial peril.

Recommendation: As noted above, the parties have reached agreement on a number of changes to Article 9. Those agreed changes are recommended. It is recommended that the balance of the Article remain current language except as follows.

Section 9.6 (current numbering) shall be changed to read as follows:

Any employee charged with or under indictment for a felony who is not disciplined or discharged by the Employer, may be placed on a leave of absence without pay until resolution of the court proceedings. An employee may use accrued but unused vacation, holiday or compensatory time during the leave. An employee found guilty by the trial court of a felony shall be summarily discharged. Where the charges are dismissed or the employee is found not guilty of the charges, the employee may be subject to discipline pursuant to the terms of this Article, but he/she shall be paid for all lost straight time hours and shall have any vacation, holiday and/or compensatory time used restored to his/her credit. The Employer shall continue to pay the employee's insurance premiums during the unpaid leave of absence.

New Section: In all cases, disciplinary action must be instituted within three (3) months of the date of the Employer's verification of the alleged misconduct or within thirty (30) days of the conclusion of pending criminal proceedings against the employee.

#### ARTICLE 14 - VACANCIES

Union Position: The Union proposes an extensive change to the method by which vacancies for permanent posts are made. The Union argues that its proposal would remove a great deal of discretion in the filling of the vacancies, and argues that this is necessary due to the unfairness in the way the current system is implemented. The Union further proposes a new and rather extensive promotional process to allow corrections officers to seek promotions to either supervisory positions or positions in the patrol/court services unit. The Union argues that these opportunities are not currently made available on a fair basis, and this new system would bring equity to the promotion process.

Employer Position: The Employer proposes that there be no change to Section 14.1 other than to change the reference to "permanent" posts to "preferred" posts since this more accurately describes the nature of the posts referred to in the provision. The Employer does not believe that transfers are applied unfairly, and the current language is sufficient in this regard. The Employer argues that the Union's proposal with regard to promotions is not an appropriate subject for bargaining in this bargaining unit since the only promotions involved are those which would place the employee in another bargaining unit.

Discussion: Although there is undoubtedly a perception on the part of the employees that transfers within the bargaining unit to the permanent posts referred to in Article 14 are being done in an inequitable fashion, there was no evidence presented at hearing to demonstrate any unfair or discriminatory transfer practices. Under the current language, if the four factors for consideration are relatively equal, seniority prevails. If this is not followed, there is recourse through the grievance procedure. There was no showing, however that any grievances had ever been filed regarding transfer.

With regard to the proposal regarding promotion, the Fact-Finder agrees that this is a permissive, but not mandatory, subject of bargaining since all promotions are outside of the bargaining unit.

With regard to the Employer's proposal, this constitutes an change in semantics only which better describes the nature of the positions in question.

Recommendation: Current language except to change reference to "permanent" posts to "preferred" posts.

#### ARTICLE 18 - PHYSICAL FITNESS

Union Position: The parties have successfully negotiated a new physical fitness provision, but disagree upon language as to the length of time for which accommodations and waivers will be issued and the discretion of the Employer regarding extensions of the waivers. The time proposed by the Employer is too short and Employer's discretion for extension too broad according to the Union.

Employer Position: The sixty day and thirty day time limitations on accommodations and waivers are sufficient and a reasonable time period for medical reevaluation which may be necessary. The Employer must be able to maintain sufficient control over leaves by exercising its discretion to grant or deny extensions.

Discussion: The time periods in the proposed language are reasonable time periods for necessary medical reevaluations, and if such cannot be done in that time due to circumstances beyond the employee's control, additional extensions are available. Although the Employer has discretion with regard to granting extensions, that discretion is limited to the extent that the grant of

extensions may not be withheld unreasonably, and ultimately is subject to the grievance procedure.

Recommendation: Section 18.4 as proposed by the Employer.

## ARTICLE 19 - HOURS OF WORK AND OVERTIME

### Section 19.7

Union Position: The Union proposes that the one personal day which employees currently earn for attending a weekly 15 minute roll call be increased to three. The Union argues that this is appropriate since the time spent at roll call in a year exceeds the eight hours encompassed by the one personal day awarded.

Employer Position: The Employer proposes that time spent in roll call be paid to the employee at regular hourly rates so that the employee is paid for the time actually spent in roll call. Time off is already a problem which increases the need for overtime, and payment for roll call would help this problem as well.

Discussion: As the Union points out, the time spent in roll call exceeds the eight hour personal day off which is given on an annual basis for attendance at roll call. As the Employer points out, time off in this bargaining unit is already a difficult problem which creates mandatory overtime, which is discussed further below. Under these circumstances, it is appropriate that the time spent in roll call be paid at the applicable hourly rate.

Recommendation: Section 19.7 be changed to read as follows:

Each employee, who as part of his/her job, must attend weekly roll call period as provided for in Section 19.2

above, shall be paid for attendance at roll call at the employee's applicable hourly rate.

#### Section 19.8

Union Position: The Union has proposed changes to the provisions of Section 19.8 which would place additional limitations on the Employer's ability to force employees to work mandatory overtime. Currently employees are being required to work mandatory overtime repeatedly on short notice. Although employees may volunteer for overtime in order to attempt to limit their mandatory overtime, in reality, there is so much mandatory overtime that volunteering does not prevent mandatory overtime. There is also a problem with supervisors not administering the list properly and skipping over people on the list. An additional problem addressed by the proposal is the short notice given of mandatory overtime which disrupts employee's family lives.

Employer Position: The Employer acknowledges that there is a problem with overtime, and in fact it has made several attempts to alleviate the need for mandatory overtime. The vast majority of overtime is precipitated by employees calling off sick. Because employees may call in their sick leave one hour before the start of the shift, and often are late in making that call, supervisors are put in the position of having 45 minutes before roll call to staff overtime needs on the upcoming shift. This problem is further exacerbated by recruitment difficulties and a turnover problem which result in the work force being at less than full strength.

Since the Employer simply does not have the option to not staff vacant posts, overtime is necessary.

Discussion: There is no question but that overtime is a problem for both of the parties. From the Employer's perspective, it must find adequate staffing on short notice due to absences. There is often inadequate time to offer the overtime at all four of the corrections facilities. From the Union's perspective, employees are being required to work overtime on extremely short notice which disrupts their personal lives. The opportunity to volunteer for overtime has done little to alleviate this problem. This problem is also intertwined in the manpower shortage and turnover problem which prevent the corrections officer work force from being maintained at full strength.

The Union has made a proposal regarding sick leave which would require that employees call in one and one-half rather than one hour prior to the start of their shift. This would aid in allowing supervisors more time to offer overtime at all facilities so that more volunteers could be obtained before overtime is forced. If, as the employer notes, employees do not abide by the call off time making overtime assignment more difficult, this is a problem which must be dealt with accordingly pursuant to the disciplinary procedure.

Recommendation: Section 19.8 should be amended as follows:

All officers assigned to normal shifts i.e., 0700-1500, 1500-2300, 2300-0700 hours will be subjected to mandatory overtime. Each shift will generate a master overtime list of officers based on seniority, from least to most. The master list will be updated on Monday, Wednesday and Friday of each week.

An officer must work a mandatory or volunteer overtime post to be credited and have the officer's name moved to the bottom of the overtime list. If an officer volunteers to fill an overtime post on a future date and is requested to work a mandatory post prior to the date of the voluntary post, the officer must work the forced mandatory post.

Officers cannot trade or sell their mandatory overtime requirement. Officers assigned to a temporary post will also appear on the master overtime list. However, a temporary post must be available for them to work an overtime post. Officers currently assigned to the Sheriff's OPOTA academy will not be subjected to mandatory overtime.

Any overtime that becomes available for the succeeding shift must be announced over the radio in all facilities fifteen (15) minutes prior to the mandatory overtime list being initiated. Those wishing to volunteer for the announced overtime must notify the supervisor seeking volunteers within 15 minutes after the announcement. All officers will receive a minimum of one-half (1/2) hour of notification prior to the end of their shift for any mandatory overtime which they are required to fill on the succeeding shift.

The second to last paragraph of Section 19.8 will remain the same, and the last paragraph will be deleted.

#### ARTICLE 20 - WAGES

Union Position: The Union has made a proposal for the elimination of the current 7 step salary schedule so that corrections officers would be grouped in three classifications, those being Corrections Officer First, Second and Third. Employees would advance through the three grades based upon years of service. This proposal would substantially increase the pay for the lower two grades while providing a smaller percentage increase at the top grade initially as a result of the change in method of grouping employees.

Employer Position: While the Employer brought in a proposal at fact finding that retained the current 7 step system, at hearing it indicated that movement to the 3 grade system would be agreeable. The Employer, however, does not agree with the amount of increases proposed by the Union. It further proposes that increases be effective July 1, 2002 rather than January 1, 2002 as proposed by the Union.

Discussion: Both parties are in agreement that the three grade system would be preferable over the current one. Further, although the parties have submitted different comparable pay information, there is substantial overlap in those submitted, and pursuant to both, Hamilton County corrections officers rank near the bottom of the group at the entry level, and near the middle at the higher pay grades. In view of the recruiting problems which the department is experiencing, an increase at the entry level to bring those employees closer to those of comparable counties is a significant consideration. The change to only three grades will result in immediate substantial increases for some, smaller increases for others, and no increase at two steps of the current scale. These employees should therefore be compensated with a lump sum payment which does not increase the base, but provides them with a wage increase.

With regard to the percentage increases during the second and third year of the Agreement, it should be noted that the patrol bargaining unit has been given increases of 4 and 3.5 percent in the second and third years of their agreement. They did not

however, receive the substantial increases the majority of the bargaining unit here would receive as a result in the change in the pay grading system.

Recommendation: Article 20 shall be amended as follows:

Section 20.1. Effective with the beginning of the pay period that includes July 1, 2002, the annualized wage levels for all bargaining unit employees shall be as follows:

Correction Officer First (Entry - year 2): \$25,000.00  
Correction Officer Second (Year 3 - year 4): \$29,000.00  
Correction Officer Third (Year 5 and above): \$34,709.00

Employees at current 2 year step shall be grandfathered at their current rate of pay (\$25,315.01). Employees at the current 2 year step will receive a \$550.00 lump sum payment and employees at the current 7 year step will receive a \$750.00 lump sum payment which will not effect their base pay.

The recommendation for annual increases on July 1, 2003 and July 1, 2004 is 2.5% in each year.

#### ARTICLE 22 - INSURANCE

Union Position: The Union makes two proposals with regard to insurance. The first is a provision which provides that in the event an insurance committee is instituted to seek employee input regarding insurance benefits, a member of the bargaining unit will be included. The second is a provision that the employer pay \$4.00 per month for each bargaining unit for an FOP provided criminal defense insurance policy. The Union argues that this policy is of great benefit to members in that it provides for their defense in cases wherein the Employer's insurer might deny coverage due to a conflict of interest or because of a belief which is later

disproven that the incident involved was beyond the scope of the employee's employment.

Employer Position: The Employer opposes the insurance committee proposal since it does not now have such a committee, and has no plans or intentions to create an insurance committee. That being the case, the language is superfluous. The Employer adamantly opposes the insurance plan payment. The cost of the benefit would be approximately \$60,000. Further, the Employer provides coverage for employees which would cover defense for actions arising out of the scope of the employee's employment.

Discussion: The Union's desire to be part of any insurance committee which might be formed at some future date is understandable. Certainly if such a committee is formed, members from each group in the county should be represented. Although there is no such committee currently, and plan to form such a committee, there is no harm done by having preparatory language in the Agreement. It should be noted that other county bargaining units have this language in their Agreements.

While the Union's proposal regarding the FOP defense insurance fund, is not solely for the purpose of defending employees who commit acts which are clearly beyond the scope of their employment and/or unlawful as argued by the Employer, it is not without significant financial cost. Since in any given year the policy is likely to benefit only a few employees, that cost must be given weight in determining whether the provision should be added over the Employer's vehement opposition.

Recommendation: Add Section 22.3 as follows:

If the Hamilton County Personnel Department determines that it is desirable to establish a committee or procedure for the purposes of seeking employee input on any insurance benefit provided to bargaining unit employees, such committee or procedure shall include the participation of one (1) bargaining unit employee. The bargaining unit employee who participates in such committee or procedure shall be selected by the Union. The formulation of any committee or procedure as described in this Section shall be at the sole discretion of the Director of the Hamilton County Personnel Department or the Director's designee.

The remainder of the Article: Current language.

#### ARTICLE 23 - HOLIDAYS

Union Position: The Union proposes the addition of a holiday for the Friday following Thanksgiving, triple time pay for work on holidays and a compensatory time bank for holidays. Because of the nature of the work of corrections officers, they are as often as not required to miss holidays with their families. This hardship should be compensated with additional pay. The additional holiday and compensatory time bank for holidays are the same as that included in the patrol bargaining unit.

Employer Position: The additional holiday which is included in the patrol unit was the result of an attempt to finalize the terms of the Collective Bargaining Agreement. It should not serve as a precedent here. No other group in the county gets the additional holiday. Further, no group is paid triple time for work on holidays. The inconvenience of having to work holidays is already compensated with overtime pay. With regard to the

compensatory time bank for holidays, this provision would engender additional requests for time off which would in turn exacerbate the mandatory overtime problem.

Discussion: The Fact-finder is unconvinced that there is some compelling reason to provide the patrol bargaining unit with an additional holiday which is denied to corrections officers simply because that holiday was included as part of some final collective bargaining deal. This alone, without some compelling evidence as to some unusual circumstances leading to the addition of the holiday, does not serve as sufficient rationale for the difference in treatment between the two similarly situated groups. There is, however, a clear basis for distinguishing between the patrol and corrections employees insofar as the proposed holiday compensatory time bank is concerned. Unlike patrol, the corrections unit has a relatively high absenteeism rate, a high turnover rate which results in less than maximum manpower strength, and a problem with already overburdened employees being forced to work mandatory overtime. Under these circumstances it seems only logical that a new benefit which would engender more employee time off should not be implemented. With regard to the proposal for triple time pay for holiday work, it must be noted that no other county group receives such a premium.

Recommendation: Section 23.1: Add Day after Thanksgiving.  
Remainder of Article: Current language.

ARTICLE 25 - SICK LEAVE

Union Position: The Union makes several proposals regarding the sick leave language of the Agreement. The Union proposes to expand the definition of immediate family to include step relatives, great grandparents, aunts, uncles, nieces and nephews for purposes of the Article. The Union additionally proposes to increase the time to call in to report off for illness from one to one and one half hours. This proposal relates directly to the overtime provisions discussed above. The Union proposes to eliminate the Administrative Sick Leave Watch provisions of the Article upon the basis that it is unfairly applied. The Union additionally proposes new language that would allow for the payment of 100% of accumulated sick leave upon the death of an active employee.

Employer Position: The Employer has presented its own proposal regarding sick leave which is intended to make sick leave more difficult to use due to high usage of sick leave in the bargaining unit. The Employer's proposal would require medical certification for the use of sick leave except in certain enumerated circumstances after an employee has utilized certain amounts of sick leave in a rolling twelve month period. The Employer further proposes to eliminate the personal day awarded for non-use of sick leave.

Discussion: It is clear that there is rather high sick leave usage among bargaining unit employees. For that reason, it does not seem appropriate to expand the definition of immediate family

for purposes of utilization of sick leave. It is also inappropriate to eliminate the existing administrative sick leave watch unless another system whereby the employer can attempt to control sick leave usage is implemented. The Union however strongly opposes the Employer's new proposed system, and there does not seem to have been any effort to negotiate concerning the parameters of that proposal to make it palatable to both parties. Under these circumstances, the Fact-finder believes that current language should prevail on these issues.

Insofar as the Union's proposal for payment of accumulated sick leave upon the death of an active employee is concerned, there does not seem to be any compelling reason to treat an employee who retires in any different manner than one who dies. Accumulated sick leave should therefore be paid upon the same basis.

Although the Employer believes that the personal day bonus for non-use of sick leave has not been effective to curb high usage, the documentation presented demonstrated that a number of officers do not use any sick leave and earn this benefit.

Finally, the Fact-finder believes that call off time should indeed be increased in order to allow for more efficient and fair scheduling of mandatory overtime. A two hour report in time would better allow supervisors to schedule needed overtime in a fair manner, and would allow greater notice time to employees who are compelled to work the overtime.

Recommendation: Section 25.3 should be changed to change the reference to one and one half hours to read two hours.

Section 25.7 should be changed to read as follows:

An employee with ten (10) or more years of service with the Employer or ten (10) or more years of public service with a political subdivisions of the State of Ohio who retires from active service with the Employer, or an employee who dies while in the active service of the Employer, shall be paid for fifty percent (50%) of the value of his/her accrued but unused sick leave, up to maximum payment of 800 hours. Payment shall be based upon the employee's rate of pay at the time of retirement or death.

Balance of the Article: Current language.

#### ARTICLE 28 - UNIFORMS AND EQUIPMENT

Union Position: The Union proposes that the uniform allowance for bargaining unit members be increased from \$400.00 to \$600.00 per year. This is the same amount provided to patrol officers as well as supervisors. Corrections officers wear the same uniform as these employees and should be compensated in the same amount.

Employer Position: The Employer does not advance any arguments to distinguish corrections officers from patrol officers and supervisors insofar as uniforms are concerned, but resists the increase on based upon increased cost.

Discussion: While the Employer points out that this increase in uniform allowance is obviously at increased expense to the Employer, there is no contention that there is an inability to pay. Since the members of this bargaining unit are required to wear the same uniforms as members of the other bargaining units, there is no basis for treating them differently.

Recommendation: Section 28.7 change \$400.00 to \$600.00.

ARTICLE 31 LEAVES OF ABSENCE

Union Position: The Union proposes that Section 31.3 of the Agreement be amended so that the Employer may no longer require employees to exhaust any available paid leaves while on FMLA leave. This exhaustion of other paid leaves would, under the Union's language, be optional with the employee.

Employer Position: The Employer opposes this change, and points out that most other groups within the county are required to exhaust paid leaves while on FMLA leave.

Discussion: As the Employer points out, most groups within the county are required to exhaust paid leaves during FMLA leave. Although patrol officers and supervisors are not so required, this bargaining unit is different from those two groups in two relevant respects. This bargaining unit has attendance and manpower problems which would be worsened by permitting employees to retain paid leaves while off work for unpaid FMLA leave.

Recommendation: Current language.

ARTICLE 32 - OUTSIDE EMPLOYMENT

Union Position: The Union proposes the addition of language which would require that radio equipment for purposes of use during approved off duty employment be made available at the jails. This proposal is made in an attempt to remedy the current difficulty which officers currently experience in attempting to obtain radios. Many of these radios are stored at locations to which the corrections officers do not have access and which cause them to

rely on patrol officers who must come to the location of the radio to retrieve it for the bargaining unit member. This has resulted in some irritation on the part of patrol officers as well as inconvenience to corrections officers.

Employer Position: Access to the radios is a question of expense, availability and control. Many of the radios are assigned to Townships for which the Sheriff performs patrol functions and should be maintained there. The requirement that a radio be retrieved from these locations is not so inconvenient as to warrant a requirement that radios be available at the jails. The Employer is concerned that employees will keep custody of radios rather than turning them back in, to ensure that they have a radio for their future off-duty employment.

Discussion: Both parties express legitimate interests regarding the issue of the radios. The Union seeks a solution to the problem of inconveniencing both the bargaining unit member who must go out of his way to obtain a radio and the patrol officer who must come in from patrol to provide it. The Employer, on the other hand has legitimate concerns for the security and control of the radios.

Recommendation: Section 32.6 to read as follows:

County radio equipment shall be made available to persons who have approved off-duty employment work at a secure location at the jails. The number of radios available at each jail for this purpose shall be determined by the Employer. Employees may check out radio equipment no sooner than two (2) hours prior to the starting time of their off duty employment, and must return the equipment no later than two (2) hours after the conclusion of the employment.

ARTICLE 39 - RESIDENCY

Union Position: The Union has proposed language which would eliminate the Employer's long standing requirement that employees reside within Hamilton County. Pursuant to the Union's proposal, bargaining unit members would be permitted to reside in any adjoining Ohio county. The Union argues that there is no sound reason for the requirement that employees reside in the county, and the Hamilton County Commissioners have eliminated the requirement for all other county employees.

Employer Position: The Employer opposes the elimination of the residency requirement. The Employer argues that the presence of uniformed officers leaving from and going home to residences within the county in and of itself helps to deter crime thereby reducing costs for the patrol division's mission in those areas where the employees reside.

Discussion: Although the Employer believes that the mere presence of uniformed corrections officers entering and exiting their residences in uniform deters crime and reduces costs, there was no evidence presented to support this belief. There are no response time issues involved with corrections officers which would require them to reside in the county. Further, both parties acknowledge that the Employer has a turnover and recruiting problem which prevents the corrections division from operating at full manpower. The elimination of the residency requirement would permit recruiting in surrounding counties. Under these

circumstances, it appears that the best interests of both parties would be best served by elimination of the residency requirement.

Recommendation: Addition of a new section 39.1 as follows:

Bargaining unit members may reside in Hamilton County or in any of the counties adjoining Hamilton County in the State of Ohio (i.e., Butler, Clermont or Warren Counties).

#### ARTICLE 42 - DISPUTE RESOLUTION

Union Position: The Union proposes a new article which sets forth a procedure to be utilized in the event that midterm bargaining becomes necessary. The procedure is proposed as a result of SERB's decision in SERB v. Toledo City School District Board of Education, SERB 2002-05, in which SERB determined that the statutory dispute resolution procedures do not apply to midterm bargaining. The new language would provide a framework for midterm bargaining.

Employer Position: The Union is proposing interest arbitration for midterm issues to which the Employer does not consent. It is premature to promulgate procedures to comply with the Toledo decision since it has yet to be tested in the courts.

Discussion: The fact-finder agrees that since the Toledo decision is a decision by SERB which has not yet been reviewed by the courts, it is premature to negotiate midterm bargaining procedures based upon that decision.

Recommendation: Current Language

ARTICLE 43 - DURATION

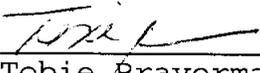
Union Position: The Union proposes an October 1, 2002 - October 1, 2005 duration for the Agreement.

Employer Position: The Employer proposes that the duration of the Agreement be from July 1, 2002 through June 30, 2005.

Discussion: Both parties agree that the date for the duration of the Agreement should be altered due to the delays which resulted by virtue of the decertification process. The Union was not certified as representative until February 8, 2002, over a month after the expiration of the prior Agreement. Under these circumstances, the effective date should be altered.

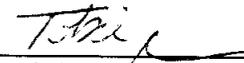
Recommendation: Duration of Agreement from July 1, 2002 - June 30, 2005.

Dated: October 25, 2002

  
\_\_\_\_\_  
Tobie Braverman, Fact-Finder

CERTIFICATE OF SERVICE

The foregoing Report was mailed this 25th day of October, 2002 to Charles A. King, Clemans, Nelson & Associates, 411 W. Loveland Ave., Suite 101, Loveland, Ohio 45140, counsel for Hamilton County Sheriff and to Paul L. Cox, 222 East Town Street, Columbus, Ohio 43215, council for Fraternal Order of Police, by Next Day Air Mail.

  
\_\_\_\_\_  
Tobie Braverman