

2002 SEP -9 A 10: 16

FACT-FINDER REPORT
Before the
State Employment Relations Board
State of Ohio
September 5, 2002

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In the Matter of:

FRATERNAL ORDER of POLICE of OHIO
OHIO LABOR COUNCIL, Inc.
Employee Organization

and

PREBLE COUNTY SHERIFF'S
DEPARTMENT

Employer

Cases Nos. 02-MED-03-0187
02-MED-03-0188
02-MED-03-0189

INTRODUCTION:

The Preble County Sheriff's Department (herein called "the Employer" or "the Department") operates a law enforcement agency headquartered in Eaton, Ohio consisting of 59 employees in three collective bargaining units, including 17 Deputies, 26 Correction Officers, 5 Sergeants, 2 Captains, and 9 Dispatchers, all of whom are represented by the Fraternal Order of Police of Ohio / Ohio Labor Council, Inc. ("the Union" or "FOP/OLC"). The Employer and the Union were parties to a collective bargaining agreement effective from September 12, 1999 through June 27, 2002. The parties met and bargained regarding all three units on five occasions in May, June, and July, 2002 and reached agreement on the majority of the articles for a new contract, but they failed to reach agreement on a few articles. Subsequently, the parties selected the undersigned, who was appointed by the State Employment Relations Board ("SERB") to serve as Fact Finder in this matter, pursuant to Ohio Revised Code ("ORC") Section 4117.14(C)(3). A fact finding hearing was conducted on August 22, 2002. At the hearing, the parties agreed to extend the time for fact finding to September 5, 2002. Having considered the evidence presented at the hearing, the Fact Finder hereby issues the following report and recommendations.

I. HEARING:

DATE: August 22, 2002, 10:00 a.m.
LOCATION: Preble County Engineer's Office, Eaton, Ohio
ATTENDANCE:

For the Employee Organization:

Thomas J. Fehr, Staff Representative, F.O.P., Ohio Labor Council, Inc.
George Petitt, Sergeant
Joe Renner, Deputies, Detectives, and Court Services Representative
Eric Lee, Jail
Gloria Scheiding, 911 Dispatcher

For the Employer:

John J. Krock, Vice President, Clemans, Nelson & Associates, Inc.
Tom Hayes, Sheriff
Gene Krebs, Preble County Commissioner
Larry A. Swihart, Major
Wayne Simpson, Major

Fact Finder:

James L. Ferree

II. MEDIATION:

At the hearing, the parties declined the Fact Finder's offer to mediate, but the Employer withdrew one of the four unresolved issues it had submitted in its pre-hearing statement ("Physical Abilities Testing"). It is hereby recommended that all agreed-upon contract language be incorporated into the parties' new collective bargaining agreement.

The remaining unresolved issues are:

1. Article 23: Wages
 - a. Base Rate
 - b. Rank Differential
 - c. Stipends
 - d. Shift Differential
 - c. Longevity
2. Article 28.5: Dispatchers Uniforms
3. Article 34: Rules and Regulations
4. Article 37: Duration
5. New Article: Waiver of Civil Service

III. CRITERIA:

Consideration was given to the criteria listed in Rule 4117-9-05 of the State Employment Relations Board:

(J) The fact-finding panel, in making findings of fact, shall take into consideration all reliable information relevant to the issues before the fact-finding panel.

(K) The fact-finding panel, in making recommendations, shall take into consideration the following factors pursuant to division (C)(4)(e) of section 4117.14 of the Revised Code:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) 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 submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

IV. ISSUES AND RECOMMENDATIONS

Issue 1.a.: Article 23, Wages – Base Rate

The recently expired collective bargaining agreement included the following language in Article 23, “Wages”:

Section 23.1 . . . Bargaining unit members shall be assigned to the following pay ranges and wage rates according to their classification effective June 27, 2001.

<u>Classification</u>	<u>Probationary Rate</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>	<u>Step 7</u>
Dispatchers (pay Range 11)	10.28	10.67	11.08	11.48	11.91	12.35	12.76	13.18
Corrections Officers (Pay Range 11)	10.28	10.67	11.08	11.48	11.91	12.35	12.76	13.18
Sheriff Deputies (Pay Range 17)	12.73	13.28	13.85	14.43	15.02	15.61	16.19	
Sergeant	Starting rate --\$13.88 per hour; Six (6) month rate --\$14.45 per hour							
Captain	Starting rate --\$17.09 per hour; Six (6) month rate -- \$18.30 per hour							

Employees hired prior to the effective date of this Article shall be assigned to the same steps that they were assigned to on the effective date of this Article. Employees assigned to investigation shall receive a fifty cent (\$.50) stipend per hour.

Employees hired after the effective date of this Article shall ordinarily be assigned to the probationary rate; provided, however, that the Employer reserves the right to begin a new hire employee at a rate above the probationary rate where exceptional qualifications and experience warrant it.

Employees promoted into a classification assigned to a higher pay range shall ordinarily be assigned to the probationary rate; provided, however, that if such employee's current rate of pay exceeds the probationary rate, such employee shall be assigned to the step which grants him an increase in pay, and shall remain in that step for at least the duration of his probationary period.

All increases in rates of pay shall be subject to the provisions of this Article.

Section 23.2. Employees whose hire date falls in January through June each year and are eligible for a step increase shall receive said increase effective with the first full pay in January each year after they have completed one (1) year of service, until they reach the maximum step. New hires will advance to Step 1 at the completion of their probationary period.

Employees whose hire date falls in July through December each year and are eligible for a step increase shall receive said increase effective with the first full pay in July each year after they have completed one (1) year of service, until they reach the maximum step.

Section 23.3. Qualified Correction Officers assigned to Court Security or Transport Officer shall receive a \$.50 an hour stipend to their base rate of pay.

Union Position:

The Union proposes a 5% across-the-board wage increase each year for all bargaining unit members classified as Dispatchers or 911 Dispatchers, Corrections Officers and Sheriff Deputies. OLC Staff Representative Tom Fehr has negotiated contracts with seven southwestern Ohio law enforcement agencies in 2001 and 2002, and the sum of the wage increases in those contracts, over three years, averages nearly 14%. SERB state-wide data show that police units averaged total three-year wage increases of 12.1% during 1999 (4.25%), 2000 (3.95%), and 2001 (3.90%).

The Union provided bar charts (derived from attached SERB Clearinghouse Benchmark Reports) which illustrate wages paid to patrol officers, corrections officers, dispatchers, and sergeants by five Ohio counties with comparable populations (Ashland, Crawford, Knox, Ottawa, and Pickaway), an adjoining larger county (Miami), and two cities in the immediate area (Eaton, in Preble County, and Greenville, in neighboring Darke County). The chart on patrol officers shows that, after the 5% increase proposed

by the Union, Preble County Sheriff's patrol officers would be sixth in pay, out of ten units, at \$17.00 per hour. With the same 5% increase, the Preble County corrections officers would be third in a field of six, at \$13.84, and their hourly rate would be only 25 cents more than the lowest-paid officers. Similarly, dispatchers with a 5% increase to \$13.84 would still be the third-lowest paid among eight units. Some of the data was also supported by excerpts from collective bargaining agreements.

Employees' workload increased in 2001 over the previous two years, in six of eleven categories (calls, papers served, accidents, disp. calls, incident reports, and bookings), according to the Employer's figures.

Anticipating the Employer's argument that it cannot afford a wage increase, the Union cited one recent newspaper article regarding a court order requiring Preble County to fund a magistrate position, and quoting County Commissioner Gene Krebs as saying that it could cost 35 county agencies \$1000 each, or cost the Sheriff's Department one deputy position. A related letter to the editor by County Commissioner Mark J. Goeke disputes Commissioner Krebs' remarks regarding deficit spending and reduction of the \$3.2 million surplus:

I believe the financial condition of the county is sound. Our current cash balance in the general fund is estimated at \$1.9 million and our permanent improvement fund has an estimated \$1.75 million. . . . The previous commission has even been able to give some property tax money back to the taxpayer by decreasing inside millage.

The Union submitted data derived from County Auditor Reports showing actual certified unappropriated funds, after budget appropriations had been made, on January 1, 2002, totaling \$1.2 million. The Auditor's summary of income generated by the Department showed revenue up in 2001 compared with the previous two years; the Sheriff testified that he pays that money into the General Fund.

Among the portions of labor-management agreements submitted was one between the City of Eaton and the FOP/OLC which expired June 30, 2002 and which showed that Patrol Officers in Eaton, the county seat of Preble County, were paid a starting rate of \$15.25 per hour, or \$31,720 annually, in 2002; their top pay, at step 10, was \$19.89 per hour, or \$41,371 per annum. The Employer's Deputies have been paid in a range of \$12.73 to \$16.19 hourly since June, 2001. The document shows that Eaton's Dispatchers

were paid from \$11.08 an hour (\$23,046/year) to \$14.45 an hour (\$30,056) in 2002. The Employer's Dispatchers receive from \$10.28 to \$13.18 per hour.

A SERB Benchmark Report for sheriffs department employees in three jurisdictions showed wage increases in 2001, 2002, and 2003 in a range of 3% to 5.9%.

In its presentation, the Union complained that the Employer made no wage proposal during negotiations, not claiming that it was unable to pay but merely asserting that the County Commissioners had not authorized any wage proposal. The Union characterized the County's "inability to pay" arguments as "smoke and mirrors," because the Commissioners can provide the \$500,000 to \$600,000 required to fund the Union's entire proposal from the budget's unappropriated funds.

Management Position:

The Employer's pre-hearing statement summarized its position as follows:

The County Commissioners have frozen all budgets for 2002 at last year's amounts. However, they have increased the Sheriff's budget to cover the contractual step increases.

The Union proposes large wage increases to the base rate, new language for rank differential, shift differential, and longevity. These would all be new to the current agreement.

The Sheriff proposes a wage freeze to the base rate, but continue the step increases. He certainly cannot afford new costs for rank differential, shift differential, and longevity.

The Employer presented extensive testimony in support of its contention that the County is unable to pay the requested wage increases. The Department's principal witness was County Commissioner Gene Krebs, who has experience as a state representative including service on the economic development and finance committees. Commissioner Krebs discussed a three-page memorandum he wrote for the general public explaining why the County's budget had been frozen. The memo explains data on an attached table which compares appropriations for each County department in Fiscal Years 2001 and 2002. It begins with "a general philosophy toward fiscal matters:"

The projected revenue should roughly match the planned appropriations. If revenue doesn't bring in the necessary amount, appropriations need to be reigned in or a flat budget implemented until fiscal balance is fulfilled.

The memo explains that a "rainy day" fund needs to be sufficient to supplement revenues through a recession, which is typically 18 months, and that the Auditor believes

the County needs \$1.7 million in the Certified Unappropriated Fund (“CUF”) for that purpose. The memo refers to a chart which shows that the County’s revenue tracked spending until 1999, when spending started to exceed revenue.

An indication of how growth in appropriations outpaced growth in revenue is seen in comparing the Sheriff’s budget (the County’s biggest spender) with sales tax revenue (the biggest source of revenue). The Department’s budget grew from 93% of sales tax revenue in 1999 to 96% in 2001 and is expected to be 102% in 2002. The table attached to the memo shows that the appropriation for the Sheriff’s Department was \$3.8 million in FY 2001 and FY 2002, with County appropriations for all departments totaling \$9.786 million in both years. The memo says that the Sheriff is not spending too much; rather, increases of revenue are not keeping up with inflation. The memo warns:

Relying on unused budget line item funding to make the budget work is short sighted, as that does not result in growth of the strategic rainy day fund (i.e., the CUF), or allow money to be set-aside in the Permanent Improvement Fund, which is used to maintain the physical plant of the county.

The solution proposed in Commissioner Krebs’ memo is to freeze the budget until the tax base can be grown, and the memo describes an economic development project to grow sales tax revenue. The memo explains that income from a sale of real estate to the city schools must, by law, go into the Permanent Improvement Fund, and is unavailable for operating expenses. Money spent from that capital improvement fund is expected to free up \$50,000 in the General Fund in 2002.

Commissioner Krebs testified that, contrary to expectations, revenue decreased in 2001. To enable the Sheriff to meet contractual obligations, \$129,000 was shifted to his budget from other areas controlled by the County Commission. Mr. Krebs described tables of data which support the foregoing summary in his memo. A current summary of sales tax collections was introduced into evidence, and the witness predicted no improvement in the financial situation until the County’s commercial and industrial tax base improves. He described the effect of a Court order requiring the County to fund a position which will cost \$35,000 next year, and predicted that the County Commission will not increase the Sheriff’s Department’s appropriations until revenues increase.

The Union’s representative, the witness and the Employer’s representative engaged in a dialog regarding the wisdom of using the “rainy day” fund (the CUF) to pay for the

Union's proposed wage increase. On cross examination by the Union, the witness testified that the County Auditor has said that revenues will be less than he had projected. He said that it would require a resolution by the County Commissioners to reinstate the property tax millage which had been rolled back in 1999. Commissioner Krebs explained that elected officials' salaries had been increased by State law, and if it created a shortfall, all County departments will consider layoffs. He stated that only 3 – 5% of the cost of a new County building was to be paid for by bonds, with most of the funds coming from State funds which a County agency set aside.

On cross examination by the Union, Commissioner Krebs explained that money in the Permanent Improvement Fund cannot be used for daily operating expenses, short of a bankruptcy judge ordering it. Asked whether the \$1.2 million in the unencumbered fund (the CUF) is available, he responded that the goal is to increase that fund to \$1.7, and that the cost of the Court-ordered funding for a full-time magistrate position came from that "rainy day" fund. Questioned about the 1999 property tax rollback, the witness conceded that the Commissioners had acted contrary to the advice of the Auditor and its staff, but that reinstating millage could discourage businesses from locating in the County or decrease sales tax revenue if businesses close and move out. On rebuttal by the Employer, he said that, in the recently expired collective bargaining agreement, the first year's wage increase was a dollar per hour, which amounted to increases of 6.9% to 12% for the bargaining unit employees.

Further Union Evidence

The Union called County Auditor Harold Yoder to testify. He confirmed that "unappropriated funds" are available for wages, and that capital improvement funds are not available for wages, short of bankruptcy, and the County is not bankrupt. He estimated that \$200,000 would result from a reinstatement of the property tax. The witness testified that he did not foresee more revenue next year than this year. He said interest income from certificates of deposit is down also, so investment revenue is estimated to decline from \$600,000 last year to \$300,000 this year. He predicted that revenue from reinstating the property tax millage, which the County Budget Committee had advised the County Commission to do, would offset any loss of sales tax revenue.

He confirmed the Sheriff's statement that revenues generated by his department go into the General Fund; he also confirmed that the Sheriff's budget comes out of the General Fund.

On cross examination by the Employer, Auditor Yoder was asked whether the County had spent more than it was taking in, since 1998; he responded that it was true. He explained that in 1998 there was \$3.2 million in unencumbered cash balance, which was used for paving and general operating expenses. He said that the fiscal committee recommended capital improvements, and the County Commission decided to do \$1.5 million in paving. He confirmed that he is currently estimating that revenue this year will be less than he earlier projected, down to about \$9.3 million. He explained that the County Commissioners chose to use some "rainy day" funds when it appropriated \$400,000 more than the projected income in FY2002, and that once funds are appropriated, elected officials can spend it all. If that occurs, he testified, it will reduce the unencumbered cash balance to \$1.2 million, not \$1.6 million.

Auditor Yoder stated that last year the Sheriff's Department returned \$100,000 in unspent appropriated funds. Questioned about when the County's finances will improve, the witness said that he is still pleased with his projection of \$9.3 million revenue this year, and with analysts postponing their prediction of financial recovery, he does not see any relief until 2003. Asked whether it is prudent to freeze appropriations now, he responded affirmatively, and said, "Soon we will have to freeze actual expenses." He agreed that the County needs a cash reserve, and said that \$1.8 million is recommended, to maintain services if there is an economic downturn.

Further Employer Evidence:

The Department pointed out that the Auditor painted a gloomier economic picture than did the County Commissioner. The Auditor's data already show the Certified Unappropriated Funds (CUF) reduced by \$445,000 this year, while he wants to see it increased to \$1.6 million and the Commissioner thinks it should be \$1.7 million. The Union's proposals would cost \$983,638, not including step increases: \$602,946 for a 5% increase in base wages, compounded over three years; \$271,700 for the shift differential; and \$108,992 for the longevity. A SERB Clearinghouse wage survey shows the

Employer's deputies earn \$70 more than the average minimum wages of deputies in 25 Ohio counties with populations from 30,000 to 60,000 population, and \$1,029 more than the average maximum wage paid by those counties. A similar wage survey for corrections officers / jailers shows the Employer pays \$1,231 less than the average minimum wage, but \$148 more than the average maximum. The corresponding wage survey for dispatcher / communications employees also shows the Employers employees are paid less than the average minimum wage by \$932, but more than the average maximum by \$1,061. The survey for jail sergeants is a smaller number of counties (7), and it shows the Employer's sergeants minimum wages at \$1,189 less than the average, and their maximum at \$610 less than the average. A SERB Benchmark Report was submitted to support the Employer's position.

The Employer asserts that its wage scale is sufficient to compete in the job market, and it has had no problem recruiting.

Findings of Fact:

The purpose of the County's Certified Unappropriated Fund is to have a reserve for a "rainy day." The Union suggests that the rainy day has arrived, and the County needs to use that fund, as it was intended, to pay the Department's employees enough to keep up with their peers in comparable jurisdictions. The Employer pleads poverty, and wishes to maintain its budget freeze in the Sheriff's Department, which has the lion's share of the County budget.

In the opinion of the undersigned, it is time for the County Commissioners to give the Department's employees a raise, even if it requires them to rescind the tax break it gave property owners or take other revenue-enhancing action, in order to maintain a healthy "rainy day" fund (CUF). The disparity between the Employer's deputies and dispatchers, compared with the City of Eaton's patrol officers and dispatchers, in particular, puts the Employer at risk of losing experienced employees to another jurisdiction in its job market. In recognition of the County's economic position, and the continuing sacrifice of other County employees whose departmental budgets have been frozen, I am inclined to show restraint regarding the level of base wages. Therefore, I conclude that the optimum balance is likely to be achieved by awarding an increase of

2.5% in the first year of the contract, followed by 3.0% in the second year and 3.5% in the third year.

Fact-Finder Recommendation:

The parties should include in their new collective bargaining agreement wage increases of 2.5%, 3.0% and 3.5%, as set forth in the language at the end of my discussion of Issue 1, below.

Issue 1.b.: Article 23, Wages - Rank Differential

Union Position:

The Union proposes to change the rank differentials for Sergeants to 5% above the Court Security/Transport Officers (whom they supervise) at the starting rate, and 10% above at the six month rate. The Union would also change the Captains' rank differential to 6% above the Detectives, to start, and 13% above Detectives, after six months. Sergeants, when raised to \$16.60, would still be the lowest-paid among sergeants in six jurisdictions.

Management Position:

The Employer opposes this proposal. The Employer pointed out that its jail sergeants are not comparable to other jurisdictions' road sergeants. The current differential is 10% to sergeant and 27% to captain, comparing their wages with employees whom they supervise, except that captains work second and third shifts while detectives work first shift.

Findings of Fact:

The above-quoted language of the current collective bargaining agreement includes a rate for Sergeants with six months in rank at \$14.45 per hour, which is currently 5.62% above the rate for a step 7 Corrections Officer with a 50 cent stipend for Court Security or Transport Officer duties ($\$13.18 + \$.50 = \$13.68$). Similarly, the Captains' rate after six months in rank, \$18.30 per hour, is 9.6% above the Deputies' step 6 rate plus the stipend for investigation duties ($\$16.19 + \$.50 = \$16.69$). If there were no change in the pay of the Court Security or Transport officers, and the Detectives, the Union's proposal would actually decrease the value of the rank differential for Sergeants and increase it marginally for Captains. The Employer's desire to save money on wages would be

served by granting the Union's proposal, and the differential would be converted to a predictable, uniform amount which would attract rank-and-file officers into the more responsible positions. I will recommend that the parties include the Union's proposal in their new contract.

Fact-Finder Recommendation:

It is recommended that the parties include the Union's proposed language, which is incorporated into the suggested language at the end of my discussion of Issue 1, below.

Issue 1.c.: Article 23, Wages – Stipends

As quoted above, the current collective bargaining agreement provides for fifty cent per hour stipends to employees assigned to investigation (Section 23.1), Court Security, and Transport Officer duties (Section 23.3).

Union Position:

The Union proposes to increase the stipends of Detectives, and those of Court Security and Transport Officer, to \$1.25 per hour. Three comparable counties pay detectives a stipend (two pay 50 and 75 cents per hour, and the third pays 10% above the deputies' rate. The Department has not increased its stipends for years.

Management Position:

Aside from its general opposition to any increase in expenses, the Employer took no position on the stipend proposal, at the hearing.

Findings of Fact:

Even the Union's "comparables" do not support an increase of the stipends to the level proposed by the Union. Given the impact of the base wage increase, and the effect that the stipends would have on the sergeants and captains, whose rank differentials depend on wages paid to the employees who receive stipends, the Union's proposal is disproportionately large. I am not convinced that a larger stipend is warranted, and will recommend against it.

Fact-Finder Recommendation:

The parties should **not** include the proposed increase in stipends; rather, the language of the most recently expired contract regarding stipends should be continued in

the new collective bargaining agreement. Language proposed at the end of my discussion of Issue 1 reflects this recommendation.

Issue 1.d.: Article 23, Wages - Shift Differential

The recently expired collective bargaining agreement does not provide wage differentials for working particular hours of the day.

Union Position:

The Union proposes shift differentials of 50 cents per hour for all hours worked if an employee's shift starts on or after 1500 hours (3:00 p.m.) and 75 cents per hour for shifts starting on or after 1930 hours (7:30 p.m.). Six comparable jurisdictions have shift differentials ranging from 30 cents per hour to 55 cents per hour, and five of them pay more for the night shift than for the afternoon shift.

Management Position:

The Employer opposes this proposal as merely another way to get more money. Of 25 counties surveyed, 14 have no shift differential, and 11 have it, averaging 26 cents for the afternoon shift and \$30 for evening shift. The true cost of a shift differential is found by multiplying the proposed amount by 2080 hours per year, times the number of employees receiving it. The cost of the Union's proposal is \$271,700 for the three years of the contract.

Findings of Fact:

A shift differential is a commonly-found incentive to motivate employees to work when their body clocks tell them they should be sleeping. Although other County departments do not have a shift differential, most of them probably work only in the daytime. Nevertheless, the Union has not made a compelling case for forcing this benefit on the Employer in a time of economic difficulties or that a shift differential is needed. I will recommend against it.

Fact-Finder Recommendation:

It is recommended that the parties **not** include language providing a shift differential in their new contract.

Issue 1.e.: Article 23, Wages – Longevity

The recently expired collective bargaining agreement makes no distinction in wage rates, based on length of service.

Union Position:

The Union proposes to recognize the value of employees' experience by adding 50 cents to the base rate of pay of employees with ten years of service with the Department, and an additional ten cents per hour added for each year of service thereafter. Six comparable jurisdictions pay their employees additional wages for more years of service, beginning as early as upon completion of three years' employment. Three of the six comparable counties increase their sheriffs' departments' employees' pay from \$100 to \$300 per year, beginning with five years of service.

Management Position:

The Employer opposes the proposal. No other department in the County has longevity pay, and it would cost \$108,992 over a three year contract, during which time the number of eligible employees would grow from 11 to 27. Of 25 counties included in the survey, seven had no longevity pay, and others paid various amounts based on various formulas. For example, one county pays a flat \$250 after 13 years and \$500 after 30 years (Defiance); another county pays \$50 per year of service for 5 – 20 years (Madison); yet another pays 6 cents (per hour?) per year after five years (Coshocton); and another pays from 2% after 2 years to 6% after 10 years (Perry).

Findings of Fact:

While longevity pay is not uncommon and is a valued benefit for retaining experienced employees, there was no showing that it is necessary or desirable in this particular set of circumstances. Given the above-mentioned wage increase, and the effect of the step increases already in the contract, I conclude that another layer of incentive pay for length of service is not warranted at this time. I will recommend against adding this proposed new wage enhancement.

Fact-Finder Recommendation:

It is recommended that the parties **not** include language providing longevity pay in their new contract.

Recommended language of Article 23, Wages:

It is hereby recommended that the parties incorporate into their new collective bargaining agreement the following, in place of the language in its recently expired Agreement:

ARTICLE 23

WAGES

Section 23.1. Bargaining unit members shall be assigned to the following pay ranges and wage rates according to their classification effective upon signing this Agreement.

<u>Classification</u>	<u>Probationary Rate</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>	<u>Step 7</u>
Dispatchers (Pay Range 11)	\$10.54	\$10.94	\$11.36	\$11.77	\$12.21	\$12.66	\$13.08	\$13.51
Corrections Officers (Pay Range 11)	\$10.54	\$10.94	\$11.36	\$11.77	\$12.21	\$12.66	\$13.08	\$13.51
Sheriff Deputies (Pay Range 17)	\$13.05	\$13.61	\$14.20	\$14.79	\$15.40	\$16.00	\$16.59	
Sergeant	Starting rate \$14.71	Six (6) month rate \$15.41						
Captain	Starting rate \$18.12	Six (6) month rate \$19.32						

Bargaining unit members shall be assigned to the following pay ranges and wage rates according to their classification effective June 27, 2003.

<u>Classification</u>	<u>Probationary Rate</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>	<u>Step 7</u>
Dispatchers (Pay Range 11)	\$10.85	\$11.26	\$11.70	\$12.12	\$12.57	\$13.04	\$13.47	\$13.91
Corrections Officers (Pay Range 11)	\$10.85	\$11.26	\$11.70	\$12.12	\$12.57	\$13.04	\$13.47	\$13.91
Sheriff Deputies (Pay Range 17)	\$13.44	\$14.02	\$14.62	\$15.23	\$15.86	\$16.48	\$17.09	
Sergeant	Starting rate \$15.14	Six (6) month rate \$15.86						
Captain	Starting rate \$18.65	Six (6) month rate \$19.88						

Bargaining unit members shall be assigned to the following pay ranges and wage rates according to their classification effective June 27, 2004

<u>Classification</u>	<u>Probationary Rate</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>	<u>Step 7</u>
Dispatchers (Pay Range 11)	\$11.23	\$11.66	\$12.11	\$12.54	\$13.01	\$13.49	\$13.94	\$14.40
Corrections Officers (Pay Range 11)	\$11.23	\$11.66	\$12.11	\$12.54	\$13.01	\$13.49	\$13.94	\$14.40
Sheriff Deputies (Pay Range 17)	\$13.91	\$14.51	\$15.13	\$15.77	\$16.41	\$17.06	\$17.69	\$-
Sergeant	Starting rate \$15.65	Six (6) month rate \$16.39						
Captain	Starting rate \$19.28	Six (6) month rate \$20.56						

Employees hired prior to the effective date of this Article shall be assigned to the same steps that they were assigned to on the effective date of this Article. Employees assigned to investigation shall receive a fifty cent (\$.50) stipend per hour.

Employees hired after the effective date of this Article shall ordinarily be assigned to the probationary rate; provided, however, that the Employer reserves the right to begin a new hire employee at a rate above the probationary rate where exceptional qualifications and experience warrant it.

Employees promoted into a classification assigned to a higher pay range shall ordinarily be assigned to the probationary rate; provided, however, that if such employee's current rate of pay exceeds the probationary rate, such employee shall be assigned to the step which grants him an increase in pay, and shall remain in that step for at least the duration of his probationary period.

All increases in rates of pay shall be subject to the provisions of this Article.

Section 23.2. Employees whose hire date falls in January through June each year and are eligible for a step increase shall receive said increase effective with the first full pay in January each year after they have completed one (1) year of service, until they reach the maximum step. New hires will advance to Step 1 at the completion of their probationary period.

Employees whose hire date falls in July through December each year and are eligible for a step increase shall receive said increase effective with the first full pay in July each year after they have completed one (1) year of service, until they reach the maximum step.

Section 23.3. Qualified Correction Officers assigned to Court Security or Transport Officer shall receive a \$.50 an hour stipend to their base rate of pay.

Issue 2: Article 28.5: Dispatchers Uniforms

The Parties have agreed on minor changes in existing Sections 28.1 through 28.4 of the contract, the pertinent part of which now reads as follows:

ARTICLE 28

EQUIPMENT /CLOTHING

Section 28.1. The Employer shall supply, at no cost to the employees, all uniforms and equipment (including firearms, flashlights, uniforms, and shoes) required by the Employer, in quantities specified by the Employer, as reasonably needed by the employees. All such equipment shall conform to the Buckeye State Sheriff's Association standards as determined by the Sheriff. In the event that the Employer provides uniforms which require dry cleaning, the Employer shall either provide the dry cleaning service or a uniform maintenance allowance.

* * *

Section 28.4. Equipment and other items not issued or required by the Employer may be utilized or worn while on duty only with the permission of the Sheriff or his designee.

Union Position:

The Union proposes to add the following new subsection:

Section 28.5. The Employer shall provide to all dispatchers four (4) pair of black or khaki slacks, five (5) polo type shirts and one (1) jacket with the Sheriff's emblem on them as their uniform.

The Union explained that the Dispatchers would like to have more casual uniforms which do not look like those of Deputies, so the public and criminals can recognize that they are not armed officers. The proposed uniforms will cost only \$2,754 and will save money for the Employer on dry cleaning costs.

Management Position:

The Employer opposes the proposed new subsection because only three years ago the Union requested, and the Sheriff gave, all new uniforms for the Dispatchers. The Dispatchers' current uniforms are very expensive, but they last several years. There is no need to spend money, which the budget will not allow, on more uniforms.

Findings of Fact:

The current language leaves the selection of uniforms to the Employer, and requires employees to get permission of the Employer to deviate from the uniform. The proposal would make an exception for the dispatchers, whose uniform would be defined by the contract and designed to contrast with the uniforms of other Department employees. The Union has presented no persuasive reason for introducing a lack of uniformity in the

Department's uniforms. If there is a security problem regarding "the criminal element" confronting dispatchers, it strikes me that a change of clothing is not the solution. Absent a good reason to disturb the status quo, and inasmuch as it is inconsistent with agreed-upon subsections of the Article and it does not provide relief for the perceived safety problem, I will recommend against including the proposed new subsection in the parties' new Agreement.

Fact-Finder Recommendation:

It is hereby recommended that the new collective bargaining agreement **not** include the new subsection proposed by the Union.

Issue 3: Article 34: Rules and Regulations

The recently expired collective bargaining agreement includes the following language:

Section 34.1. The FOP/OLC recognizes that the Employer, in order to carry out its statutory mandates and goals as expressly limited herein, has the right to promulgate work rules, regulations, policies, and procedures consistent with the Employer's statutory authority to regulate the conduct of employees in the workplace and the conduct of the Employer's services and programs.

Section 34.2. The Employer recognizes that no work rules, regulations, policies, nor procedures shall be established or maintained that are in violation of any expressed terms of this Agreement.

Section 34.3. Absent circumstances beyond the control of the Employer, the Employer shall post on Employer bulletin boards any work rule, regulations, policy, and procedure five (5) workdays prior to implementation and enforcement, with a copy forwarded to the local FOP/OLC representative or designee the day of the posting.

Section 34.4. Employees shall comply with all policies adopted. Such rules shall be uniformly applied and uniformly enforced.

Section 34.5. All work rules relating to safety standards and safe practice procedures shall, in addition to being posted, be verbally communicated to each affected employee by the major or the training officer, or by the use of outside vendors for the conduct of awareness training.

Management Position:

The Employer proposes to delete the above language and replace it with the following:

Section 1. The Union recognizes that the Employer or his designee has the right to promulgate work rules, policies and procedures, and to regulate the personal conduct of employees and the conduct of the Employer's operations, services, programs, and business.

Section 2. Prior to implementing new or changed work rules, policies or procedures, the Employer will notify the Union at least seven (7) calendar days in advance of the effective date. If the Union requests to bargain over such a change within that notice period, the Employer and the Union will meet to negotiate in good faith. If the Union does not request to bargain, or if the Employer and the Union bargain to impasse, the Employer may implement a proposed change.

Section 3. If agreement cannot be reached on new or revised rules, policies or procedures, and the Employer implements the proposed changes, the Union may file a grievance if a conflict exists between this agreement and the newly implemented rules, policies or procedures. Said grievance may be filed by the Union at Step 3 of the grievance procedure.

Section 4. Notwithstanding the preceding sections, if the change is necessary due to exigent circumstances or a state or federal directive or regulation, the Employer is not required to give the seven (7) day notice or to bargain over it; however, the Employer may elect to do so, if time permits, without waiving their rights.

Section 5. Newly written work rules, policies or procedures applicable to bargaining unit employees will be posted or otherwise communicated (e.g., e-mail) to the affected employees in advance, provided the parties recognize that certain situations, for example an emergency or state or federal directive, may require that the Employer implement a change immediately.

The Employer contends that the change in language is necessary to preserve management's right to make work rules during the term of the collective bargaining agreement after the SERB ruling in SERB v. Toledo City School District Board of Education, SERB 2001-005. In that decision, SERB declared:

A party cannot modify an existing collective bargaining agreement without the negotiation by, and agreement of, the parties unless immediate action is required due to (1) **exigent circumstances** that were unforeseen at the time of negotiations (of the existing contract) or (2) **legislative action** taken by a higher level legislative body after the agreement became effective that requires a change to conform to the statute. . . .

. . . in future cases involving *issues not covered in the provisions of a collective bargaining agreement*, but which require mandatory interim bargaining, SERB will apply the same two-part test as stated above. (emphasis added)

The Employer observes that the foregoing suggests that unilateral implementation under SERB's Youngstown case is now limited to "exigent circumstances" and "legislative changes." The Employer's proposed change in this Article would restore the right of management to modify work rules during the term of the contract.

Union Position:

The Union disputes the need for any change in the existing language, which has not been a problem. The Union criticizes the Employer's proposal as addressing only part of

the Toledo decision, in permitting rule changes after impasse, “regardless of the need and the Toledo . . . specific requirements” that there be exigent circumstances or legislative action requiring a change in the Agreement. At most, the Union would urge the adoption of its proposed midterm dispute resolution procedure, which follows:

**ARTICLE ON PROPOSED MIDTERM
DISPUTE RESOLUTION PROCEDURE**

Section 1: The procedures contained in this article shall govern mid-contract term disputes arising between the F.O.P. and the County of Preble concerning proposed changes in terms and conditions of employment.

A. In the event the employer makes or proposes to make any changes in wages, hours or terms and conditions of employment before the expiration of this agreement, either party may serve notice upon the other of its desire to negotiate such a change.

B. The parties shall continue in full force and effect all terms and conditions of this existing agreement unless and until a new or modified agreement is agreed upon or established by operation of this Article.

Section 2: At any time after the commencement these mid-term negotiations, if either party believes that negotiations have reached an impasse, the parties shall submit their dispute to an agreed upon fact-finder by selecting from a list of seven (7) arbitrators provided by FMCS in accordance with this section and submit the dispute to factfinding.

A. The list may be requested from FMCS by either party. Each party has the right to reject one list provided by FMCS in which event the rejecting party shall immediately ask FMCS and pay for a substitute list.

B. The fact-finder shall proceed to hold a hearing to resolve the impasse in accordance with the rules of the Ohio State Employment Relations Board applied to factfinding procedures. These rules shall apply except as modified by this Article.

C. Each party shall submit a written statement outlining its position on each of the unresolved issues and the language for insertion in the contract by which it proposes to resolve the impasse.

D. The fact-finder shall make a final recommendation as to all of the unresolved issues.

E. The following guidelines shall be applied by the fact-finder:

1. The fact-finder shall establish times and place of the hearing.
2. The fact-finder shall take into consideration the factors listed in Section 3(I) below.
3. The fact-finder may attempt mediation of the dispute at any time until a final recommendation is made.

4. The fact-finder shall transmit his/her recommendations to the employer and the union at the same time via U.S. Mail or by FAX.

5. Each party shall pay one-half the cost of the fact-finding procedure.

F. Not less than fourteen (14) days after the recommendations of the fact-finder are received by the parties, the legislative body by a three-fifths vote of its total membership and, in the case of the union, the membership by a three-fifths vote of the total membership may reject the recommendations. If neither party rejects the recommendations, the recommendations shall be deemed agreed upon as the final resolution of the issues submitted. The existing collective bargaining agreement shall be deemed to be modified by incorporating the recommendations of the fact-finder, and all other issues tentatively agreed upon before the disputed issues were submitted to the fact-finder.

Section 3: If either the legislative body or the membership of the union rejects the recommendations, the parties may again attempt to reach a settlement of the issues still in dispute by further negotiations. Within fourteen (14) days of the vote by either party to reject the recommendations of the fact-finder, the parties shall submit any issues still in dispute to a final offer settlement procedure, binding conciliation in accordance with the procedures provided in this section.

A. The parties shall request a list of seven arbitrators from FMCS.

B. They shall select an arbitrator to serve as a conciliator from the list provided by FMCS.

C. The parties shall submit all unresolved issues to conciliation.

D. The conciliator may attempt mediation at any time until he/she issues his/her report.

E. The conciliator shall establish a time and place for the hearing.

F. Not later than five (5) days before the hearing, each of the parties shall submit to the conciliator and to the opposing party a written report summarizing the unresolved issues, and the language by which that party proposes to resolve the dispute as of each issue.

G. The conciliator shall be an arbitrator and shall have the power of an arbitrator under O.R.C. Section 2511. to issue subpoenas for the hearing. The conciliator shall take all the evidence and either party may make a record at its own expense.

H. The conciliator shall proceed to hold a hearing to resolve the impasse in accordance with the rules of the Ohio State Employment Relations Board applied to conciliation procedures. These rules shall apply except as modified by this Article.

I. After the hearing the conciliator shall resolve the unresolved issues by selecting on an issue-by-issue basis from between each of the final

settlement offers made by the parties taking into consideration the following:

1. Past collectively bargained agreements between the parties.
2. Comparison of the issues submitted to conciliation relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work.
3. The interests and welfare of the public; the ability of the public employer to finance and administer the resolution of the issues proposed and the effect of the adjustments on the normal standard of public service.
4. The lawful authority of the public employer.
5. The stipulations of the parties.

J. The Conciliator shall make written findings of fact and publish a written opinion and order deciding the issues presented to him/her. He/she shall deliver a copy to each of the parties, at the same time via U.S. Mail or by FAX.

K. The parties shall each pay one-half the cost of the conciliation procedure.

Section 4: The issuance of a final offer settlement award constitutes a binding mandate to the employer and the union to take whatever action may be necessary to implement the award. Both parties agree to be bound by the award and order on all issues resolved by the conciliator and all issues previously resolved by agreement of the parties during negotiations. This award, order and all previously negotiated agreements, shall constitute amendments to the collective bargaining agreement without the necessity of either party taking any further action. However, the parties may, if they desire to do so by agreement execute an amended collective bargaining agreement including the award and order of the conciliator and all tentatively agreed upon issues not submitted to the conciliator for resolution.

Findings of Fact:

The Employer wishes to get around the Ohio Supreme Court's requirement, that mid-term modifications of the collective bargaining agreement and/or other issues not covered in the contract but considered to be mandatory bargaining issues should be permitted only in exceptional circumstances. Essentially, the Union has proposed to maintain the present arrangement, or in the alternative to apply the equivalent of the full fact finding and conciliation procedures of the State Employment Relations Act to midterm disputes.

In the opinion of the undersigned, a fact finder should not assist one party in frustrating the public policy set forth by the state legislature as interpreted by the state

supreme court, especially when the other party opposes such a move. I am unconvinced that a change in the existing language, broadening the Employer's ability to make mid-term modifications unilaterally, is necessary or that it is good for the ongoing relationship between the Employer and the Union. The Union's counter proposal is overkill, and should not be imposed without the Employer's consent. The Union's preference to retain the existing language is the best alternative, because it reflects a procedure the parties have accepted, and it provides a greater degree of finality to the Employer's rules and regulations than is likely under either proposal to replace it. I will recommend against changing the existing language of this Article.

Fact-Finder Recommendation:

It is hereby recommended that the language of Article 34 remain unchanged from the recently expired Agreement.

Issue 4: Article 37, Duration

The recently expired collective bargaining agreement was effective "upon signing," which was September 10, 1999, and remained in force until June 27, 2002, on its face. The second subsection of the Article provided for automatic one-year renewals of the Agreement, absent notice from either party of its intent to terminate the Agreement. The third subsection is a "zipper" clause acknowledging that the parties had full opportunity to bargain on all appropriate subjects, and waiving any right to bargain further during the term of the Agreement.

Union Position:

The Union proposed to make the new contract effective from June 28, 2002 through June 27, 2005, to ensure that wage rates and other compensation are retroactive.

Management Position:

The Employer proposed to retain the language of the first subsection, making the new contract effective when it is executed, and changing only the year of the expiration to June 27, 2005.

Findings of Fact:

Basically, this is an economic issue, affecting mainly the date on which any wage increase will become effective. In light of the County's economic straits, I believe it

would be a burden to require the Employer to pay two or three months of the wage increases retroactively. To soften the blow of the aforementioned wage increases, the changes will be effective only after the parties have executed the new Agreement.

Fact-Finder Recommendation:

Section 37.1 of "Article 37, Duration" should only be modified to show the new expiration date, thus:

Section 37.1. This Agreement shall be in effect upon signing, and shall remain in full force and effect until June 27, 2005, unless otherwise modified, amended, or terminated as provided herein below.

Issue 5: New Article: Waiver of Civil Service

Management Position:

The Employer proposes to add a new article to the collective bargaining agreement, as follows:

WAIVER OF CIVIL SERVICE

Section 1. In accordance with the provision of O.R.C. Section 4117.10(a), all articles listed in the table of contents of this Agreement are intended to supercede and/or prevail over conflicting and/or additional subjects found in O.R.C. Section 124.1 through 124.56, Section 9.44, 4111.03, and Section 325.19 or any other sections of the Ohio Revised Code in conflict with any provisions herein. It is expressly understood that the Ohio Department of Administrative Services (DAS) and the State Personnel Board of Review (SPBR) shall have no authority or jurisdiction as it relates to employees in the bargaining unit, except as prohibited by Ohio Revised Code 4117.08(B).

The Employer contends that the new language is necessary to protect the collective bargaining agreement from being preempted by state laws, under a ruling of the Ohio Supreme Court which declared that the contract must use language with such specificity as to explicitly demonstrate the intent of the parties to waive statutory rights of public employees. (State, ex rel. OAPSE v. Batavia School District Board of Education (2000) 89 Ohio St. 3d 191.) The Employer provided excerpts from ten current collective bargaining agreements between Ohio law enforcement agencies and FOP/OLC with language similar to what is proposed above. Also provided was a copy of the Court's decision.

The Employer points out that its proposal will protect the Union against the adverse effects of the Court's decision, as well. "Why have an Agreement if the state laws still apply?" the Employer asks.

Union Position:

The Union opposes the Employer's proposal because the matter is already covered by the following contract language which neither party has proposed to change or omit:

ARTICLE 36

SEVERABILITY

Section 36.1. This Agreement supersedes and replaces all pertinent statutes, rules, and regulations over which it has authority to supersede and replace. Where this Agreement is silent, the provisions of applicable law shall prevail. If a court of competent jurisdiction finds any provision of this Agreement to be contrary to any statute, such provision shall be of no further force and effect, but the remainder of the Agreement shall remain in full force and effect.

Section 36.2. The parties agree that, should any provision of this Agreement be found to be invalid, they will schedule a meeting within thirty (30) days at a mutually agreeable time to discuss alternative language on the same subject matter.

The Union cites Fact Finder Mitchell B. Goldberg's Report in the December 2001 case of Miami Township, Clermont County, and FOP/OLC, in which the parties apparently agreed on the following:

The parties have negotiated this Agreement in good faith. Where the Agreement confers a right or benefit, it should be assumed that the parties have considered applicable state law and, to the full extent permitted by law, have agreed that the provision of this Agreement prevail.

The Union opposes "blanket coverage" for sections of the Ohio Revised Code ("ORC") which have not been reviewed, as it does not wish to waive the rights of its members regarding other subjects. Moreover, the Union is unaware of any case in which a Severability Clause was overridden since the Batavia case. Other jurisdictions which have negotiated new contracts with Mr. Fehr, and only three of them, including the Employer, have proposed language in addition to the Severability clause.

Findings of Fact:

Where the collective bargaining agent is reluctant to waive statutory rights, it should not be required to do so. The first subsection of the Severability article is a clear indication of the parties' prior agreement in this respect, and may serve to shield the appropriate terms of this Agreement from State agency interference. Absent mutual

agreement by both parties, I will recommend against adding the language proposed by the Employer.

Fact-Finder Recommendation:

It is hereby recommended that the new collective bargaining agreement **not** include the new subsection proposed by the Employer.

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing Fact Finders Report regarding the findings of fact and recommendations on the unresolved issue has been sent by overnight mail carrier to the Employer's Representative John Krock at: Clemans, Nelson & Associates, Inc., 5100 Parkcenter Ave., Suite 120, Dublin, Ohio 43017-7563; and to the Union's representative Thomas J. Fehr, Staff Representative, at 5752 Cheviot Road, Suite D, Cincinnati, Ohio 45247.

A copy of the report has been sent by regular mail to Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213..

Issued at Loveland, Ohio this fifth day of September, 2002

James L. Ferree, Fact Finder