

**FACT FINDING REPORT  
STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
May 24, 2003**

STATE EMPLOYMENT  
RELATIONS BOARD

2003 MAY 27 A 10:43

In the Matter of:

**FRATERNAL ORDER OF POLICE/  
OHIO LABOR COUNCIL, INC.**

and

**LAWRENCE COUNTY SHERIFF'S  
DEPARTMENT**

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**CASE NO. 02-MED-10-0959 ✓  
02-MED-10-0960  
02-MED-10-0961  
02-MED-10-0962**

**APPEARANCES**

For the Union,

Barry Gray, FOP/OLC, Inc.  
Joyce Caskey  
Jerry Elliott  
Quincy J. Milem  
Paul Roach  
Brenda Wilson

For the Lawrence County Sheriff's Department,

Randall L. Lambert, Lambert, McWhorter & Bowling, LPA  
Tim Sexton, Lawrence County Sheriff  
Jason Stephens, Lawrence County Commissioner

Fact Finder: Howard Tolley, Jr.

Howard Tolley, Jr.  
3900 North Cliff Lane  
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STATE EMPLOYMENT  
RELATIONS BOARD

2003 MAY 27 A 10:42

Bill Gray,  
FOP/OLC,  
5752 Cheviot Rd., Suite D,  
Cincinnati, OH 45247

Randall Lambert,  
Lambert, McWhorter & Bowling,  
215 S. 4<sup>th</sup> St., P.O. Box 725,  
Ironton, Ohio 45638

CASE NO. 02-MED-10-0959, 02-MED-10-0960,  
02-MED-10-0961, 02-MED-10-0962

May 24, 2002

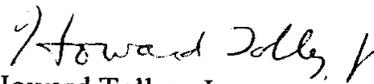
Dear Messrs. Gray and Lambert:

I have enclosed a Fact-Finding report, and the official date of service is the Saturday May 24 postmark on the envelope you may choose to retain as evidence.

In accord with O.A.C. 4117-9-05(M)&(N) the seven day voting period begins on the day following service of the report. If the 7<sup>th</sup> day is a weekend, the parties have until the next SERB business day to conduct the vote, O.A.C. 4117-1-03(1).

Please contact me at the above address or by email if you have any questions.

Best wishes,

  
Howard Tolley, Jr.  
Professor, University of Cincinnati

c. Mary Robertson SERB Bureau of Mediation  
65 East State St., 12<sup>th</sup> Floor, Columbus, OH 43215

## BACKGROUND

In negotiations for a three-year successor Collective Bargaining Agreement to the agreement dated January 1, 2000 – December 31, 2002, the parties resolved all issues except:

1. Article 28: Hospitalization and Major Medical Insurance paragraph A
2. Article 29: Wages and Compensation, paragraph A
3. Provisions in both articles (28 B, 29 J) commonly known as a “*Me Too*” clause providing additional benefits and comparable pay increases during the life of the contract if other county employees received more advantageous terms than those provided to the FOP/OLC.

The Fraternal Order of Police/Ohio Labor Council is the exclusive representative for a multiple unit consisting of Dispatchers (Unit A), Patrol Deputies, Detectives, Correction Officers, and Process Server (Unit B), Sergeants and above (Unit C), and Cooks, Clerks and Clerk Supervisor (Unit D). The multi-unit agreement covers approximately forty-three (43) employees and there is currently one vacancy. These Bargaining Unit members work for the Sheriff of Lawrence County, Ohio who receives his budget from the Lawrence County Commissioners. The LCSO is a twenty-four (24) hour law enforcement agency. The Bargaining Unit members work various shifts with duties including, but not limited to, emergency 911 communication, radio dispatch of emergency and non emergency calls, telephone communications, general law enforcement practices, service calls, investigations, arrest of suspects, court and trial preparation and appearances, evidence gathering, general and medical corrections services, service of warrants and other court documents, supervision of law enforcement and Sheriff’s Office operations and personnel, preparation of meals in the corrections facility, preparation of reports, payroll and other documents.

The Fact Finding Hearing was conducted from 11 a.m. until 3 p.m. on Thursday May 15, 2003 at the Ironton law offices of Lambert, McWhorter & Bowling. Prior to going on the record, the Fact Finder offered to mediate any outstanding disputes, and the parties decided to proceed immediately with a hearing. The Fact Finder appreciates the courtesy extended by the parties and their professional approach to the hearing.

The parties exchanged and submitted pre-hearing position statements that summarized their proposals, and they prepared supporting documents for presentation at the hearing. In accord with the Ohio Public Employee Bargaining statute, the Fact Finder has made recommendations based on the criteria in Rule 4117-9-05:

- 1) Past collectively bargained agreements, between the parties
- 2) Comparison of 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, and 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; and,
- 6) Such other actors, 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.”

## **INTRODUCTION**

The parties reached impasse on economic issues that require 1) an allocation of increased health care insurance costs between the county and its employees, 2) appropriate increases in hourly compensation, and 3) resolution of concerns about parity in compensation/benefit increases awarded to other county employees addressed in two "Me Too" clauses. On all three issues, the Fact Finder concluded that the successor agreement should address some of the concerns raised by party.

It appeared from comments made at the hearing, that both drafts for Article 29 provided to the Fact Finder included a final provision the parties had agreed to delete concerning promotions to deputy with an illustrative example. The provisions in this report on Article 29 only address the impasse over sections A and J, without limiting the party's ability to incorporate previously negotiated changes in other sections.

The successor agreement will be effective from January 1, 2003 through December 31, 2005 with retroactive application of new insurance and salary provisions resolved in 2003 during extension of the prior contract.

If the report is not sufficiently clear, the Fact Finder will respond to questions from the parties. Rule 4117-9-05(1) provides: "Any subsequent change or adjustment by the fact-finding panel in the fact-finding report must be submitted by the fact-finding panel to the board for consideration and imposition of new time periods."

### **Issue 1: Article 28 Hospitalization and Major Medical Insurance**

#### **FOP/OLC Position:**

The union seeks to maintain the current agreement provision in section "A" for the employer "to pay 85% of the premium of the current medical insurance programs in effect in Lawrence County...." and the employee paying 15%.

#### **County Position:**

The County proposes that in 2003 the percentage of the monthly premium it pays range from 79% to 94% based on the employee's choice from the County Health Insurance Plan provided for all general fund county employees. That cafeteria plan gives a choice of single, double or family coverage, and a further option to reduce the premium by electing a deductible of \$500 or \$750 instead of a \$250 deductible. One plan provides for single coverage, two others give additional dependent coverage for either a spouse or a child, and a family plan is available for the highest premium.

Rather than pay a percentage of the monthly premium, the County is paying a fixed dollar amount toward the monthly cost of each plan, -- \$347.49 for the single and \$1,180.10 for the family plans under Option 1, \$250 deductible. The employee pays the balance of the premium based on the deductible option selected—Option 1 choices range from 18% to 21% for the employee share--\$93.94 per month for the single and \$255.53 per month for the family plan. Employees who do not take insurance for the whole year receive a \$750 annual incentive paid at the end of the year.

The County proposes that a union representative will be given the opportunity to have input regarding future quotes and proposals for the County Plans considered for 2004 and 2005 before action is taken by the Commissioners.

## **Discussion:**

In order to control rising health care costs, the County Commissioners approved a new cafeteria-style insurance plan with 12 options that became effective in January 2003. Until December 2002, employees could select either single coverage or a family plan with a \$250 deductible, and under the FOP/OLC contract the county paid 85% of the premium.

At the hearing, the County provided a list of 34 bargaining unit employees indicating their Health Plan enrollment choices in 2003. The Fact Finder used that list to prepare a table comparing the costs to both the county and to the individual employees of the premiums paid in 2002 and the two proposals for 2003 submitted by the County and the FOP/OLC. See Appendix A to this report.

The County did not provide any comparability data on health insurance expenses or premiums, and the FOP/OLC provided a table listing 16 other Ohio counties that paid between 80% and 90% of health insurance premiums. Without more comprehensive data such as county population, pension pick-up, and drug co-pay provided in documents such as a SERB benchmark report, the Fact Finder does not have reliable comparability data on which to support either proposal.

In making his recommendation, the Fact Finder sought to balance a) the FOP/OLC concern that all members of the bargaining unit receive a monthly wage increase that exceeds the increase in their monthly health insurance premium, and b) the County's concern that increased health insurance costs be equitably allocated between the employees and the county.

The FOP/OLC proposal for an across the board application of an 85% share paid by the county would cause the type of inequity the FOP/OLC sought to avoid in its wage proposal. In order to avoid creating greater pay disparities in the bargaining unit the FOP/OLC favored an across the board hourly salary increase of \$.45 rather than a 3% pay raise. If the County pays 85% for all employees' Health Insurance the insurance premium share for members will vary considerably, for a low of \$66 up to \$215 per month.

The County proposal for the family coverage, Option 1, currently elected by eleven employees, amounts to a monthly premium increase for those individuals of \$102 over the 2002 premium. The county wage proposal for 2003 of \$.35 per hour would increase employee monthly pay by \$60, \$2 a month less than the increased health insurance cost in the county proposal. The FOP/OLC proposal for the County to continue paying 85% premium would increase the employee monthly share \$62 above the amount paid in 2002.

Thus for employees who elect the Family Plan, Option 1 the Fact Finder recommends the FOP/OLC position, the current 85% share paid by the County--\$1221.14, so that the employee pays \$215.49 per month, an increase of \$62 over the premium paid in 2002. For all other employees, the Fact Finder accepts the county proposal that its share of the premium range from 71% to 94% based on the plan option elected by the employee. If combined with the Fact Finder's recommendation for a wage raise in 2003, all bargaining unit members will see an increase in take home pay despite increased health insurance premiums.

The total cost of the Fact Finder's Health insurance recommendation falls mid-way between the costs of the two proposals offered by the county and the FOP/OLC while assuring that all members of the bargaining unit receive wage increases that result in higher take home pay after paying increased health insurance premiums.

No one can forecast with certainty the costs of the County health care plans for 2003 and 2004. Increases could continue to escalate, or local governments in Ohio might discover

economies through new group arrangements. The Fact Finder accepts the County proposal for consultations on quotations and proposals before future plans are approved. In addition the Fact Finder concludes that the risk of future increases should be equitably shared by both parties with a cap of 25% on the premium share that employees might be required to pay in future. The parties share an interest in controlling health insurance expenses, and success is more likely with close collaboration.

### **Recommended Language Article 28 Hospitalization and Major Medical Insurance**

A. Each full-time employee will have health insurance available, at the employee's option, pursuant to the County Health Insurance Plan. The benefit levels and contribution required by the employee will be based upon the Plan adopted by the County Commissioners as the County Plan which is available to general fund county employees with the following exception. For employees who elect the Family Plan, Option 1 with the lowest deductible, the Employer agrees to pay 85% of the premium. For all others in the bargaining unit, the Employer agrees to pay no less than 75% of the premium following expiration of the 2003 plan for the life of the contract.

A copy of the 2003 costs of the different plans is attached as Appendix A. The County will attempt to continue to offer a similar type cafeteria style plan in future years. Upon receiving quotes or proposals, the Union representative will be given the opportunity to have input regarding the County Plan before action is taken by the Commissioners.

### **Issue 2: Article 29: Wages and Compensation, paragraph A**

#### **FOP/OLC Position:**

January 1, 2003	\$0.45 per hour increase
January 1, 2004	\$0.45 per hour increase
January 1, 2005	\$0.45 per hour increase

#### **County Position:**

January 1, 2003	\$0.35 per hour increase
January 1, 2004	\$0.35 per hour increase
January 1, 2005	\$0.40 per hour increase

#### **Discussion**

The County prepared and submitted documents identifying expenses from the General Fund, and Sheriff's budget needs for 2003 that exceed existing appropriations, along with population and law enforcement personnel salary data from eight neighboring counties. The County Auditor has certified lower revenues for 2002 and 2003, and a reduced carry over, but the Fact Finder does not have a multi-year revenue budget indicating specific line item declines in sales or property tax income. At the hearing, a County Commissioner reported that \$300,000 in excess sales tax collections is being paid back through the State Auditor over a six month period in 2003. It was also noted that a U.S. COPS grant of \$123,000 per year for three years concluded in 2002; the Sheriff is seeking an additional \$160,000 from the Commissioners in 2003 to continue employment of five deputies added to the department with the federal support and additional funds to purchase other essential items in the current fiscal year.

Sales tax revenue for the General Fund includes income from a 1% sales tax adopted in February, 1983, and a 0.5% sales tax added in April 1999. The County adopted a 1999 resolution declaring an intent to use the 0.5% tax for emergency services, such as 911. As a result, the Auditor only certifies income from the 1% sales tax for general fund commitments to departments such as the Sheriff's office. In 2002, the County had accumulated approximately \$700,000 in the separate account earmarked for emergency services, and the Commissioners borrowed \$500,000 of that total to meet other general fund expenses. The County insists that it is politically/morally obligated to repay that \$500,000 and may not use revenues from the 0.5% sales tax for the FOP/OLC agreement.

The FOP/OLC submitted the latest available Lawrence County Single Audit for 2001 prepared by State Auditor Jim Petro. At page 21, that report makes no distinction between the two sales tax levies—both are identified as “Permissive Sales and Use Tax.” In addition the FOP/OLC argued that the “emergency services” to be provided by the 1999 tax could reasonably be interpreted to apply to law enforcement services of the Sheriff's office.

The FOP/OLC also provided comparable data on salary increases ranging from 2.5% to 6% and others averaging \$0.55 per hour from counties throughout Ohio, excluding the largest three. Without more comprehensive data such as county population, pension pick-up, uniform allowance, and top pay provided in documents such as a SERB benchmark report, the Fact Finder does not have reliable comparability data on which to support either wage proposal.

Based on the wage rates in Appendix A of the 2000-2002 Agreement, the starting annual pay for bargaining unit members ranges from \$15,246 for dispatchers and cooks to \$34,153 for sergeants. Both proposals call for a uniform across the board fixed increase in hourly pay of \$0.35 or \$0.45 that would result in different percentage wage increases of 3.7% or 4.2% for second year dispatchers/cooks and 2% or 2.6% for first year sergeants, based on uniform monthly increases for each employee of \$60 or \$78.

As noted above, the County's wage proposal would only cover a fraction of the increased health care premium for some employees; many others would receive a nominal or insignificant increase in take home pay with a raise of \$0.35 per hour. At the same time, the Commissioners have a responsibility to balance the County budget and have experienced undeniable loss of revenue. The amount of the annual carry over remains in dispute, and it is unclear whether the County can obtain Homeland Security or other federal dollars during the life of the contract that will offset the completion of the federal COPS grant. Fuel costs also continue to vary unpredictably, so future budget revenues and expenses remain unclear.

The Fact Finder concludes that revenue from the 1999 0.5% sales tax can be used to support wages of the Sheriff's deputies. In recommending wage increases between the figures proposed by the parties, the Fact Finder took into account the County's one time need to repay excess sales tax collections in 2003, and the FOP/OLC data on projected pay increases by other Ohio counties. The Fact Finder recommends a \$0.38 per hour increase for 2003, a \$0.40 increase in January 2004, and a \$0.45 per hour increase in January 2005.

#### **Recommended Language Article 29 J**

January 1, 2003	\$0.38 per hour increase
January 1, 2004	\$0.40 per hour increase
January 1, 2005	\$0.45 per hour increase

### **Issue 3: Articles 28 B and 29 J The “Me Too” Clauses**

#### **Position of the Parties**

The FOP/OLC seeks to retain both provisions that the County proposes to delete.

#### **Discussion**

The County argues that once a budget has been approved, Commissioners have no control over end of year reallocations to benefit groups of employees in departments headed by independent elected officials such as the Auditor, Treasurer, or Prosecutor. In one department, an official may convert salary savings from a personnel vacancy into a staff Christmas bonus. In another department, money saved in operating expenses might be reallocated to assist employees offset increased health care premiums. In 1998 an arbitrator ruled that a \$500 Christmas bonus paid by the Prosecutor to a few employees must also be paid by the Commissioners to the FOP/OLC employees. The Commissioners approved general fund budgets for both the Prosecutor and the Sheriff, but were not responsible for the pay disparity resulting from the Prosecutor's decision to award a Christmas bonus.

The FOP/OLC notes the critical importance of the “Me Too” provisions in their prior relations with the County during three contracts since 1994. After granting the FOP/OLC a 3% raise in 1995, the County granted a 5% raise to other county employees. Based on the “Me Too” clause, FOP/OLC members were then granted an additional 2% raise. Testimony at the hearing indicated that the County's 85% share of the health insurance premium was also based on a “Me Too” adjustment after the FOP/OLP had accepted a 75% share and other county employees obtained 85% in later negotiations. The FOP/OLC prevailed in the Christmas bonus grievance noted above, and currently has a grievance alleging that employees of the County Engineer pay nothing for participation in the County Health Plan.

As currently drafted in terms of percentage requirements, the existing “Me Too” provisions would be complicated if not impossible to interpret and apply in a successor agreement granting wage increases to all employees of \$0.40 per hour. The FOP/OLC wage increases will be based on a fixed increment to all hourly rates rather than an across the board percentage raise comparable to salary increases provided to other county employees. Since January 2003 the County has been operating a “cafeteria” Health Plan that it supports with different premium contributions based on employee choices, rather than a percentage of the monthly cost. Neither party offered information about comparable “Me Too” clauses in other Ohio collective bargaining agreements.

Based on the unresolved legacy of distrust over parity and comparability among county employees, the Fact Finder recommends new language for the “Me Too” clauses that offers needed reassurance to the FOP/OLC while addressing the County's legitimate concerns. In addition to the existing exceptions for Common Pleas Court and cases of merit and promotion increases, the Fact Finder concludes that the County Commissioners should only need to match benefit and wage increases that they commit from general funds for other county employees. The Sheriff, like other county elected officials, may make adjustments within a general fund allocations that should not trigger a “Me Too” clause in an employment contract with workers in another department headed by an independent elected official acting with discretionary authority not subject to Commission review. At the same time, the County should be obliged during the life of the successor agreement to provide FOP/OLC members with increased benefits they

accord to other county employees that clearly exceed the terms negotiated with the Sheriff's Department employees.

### **Recommended Language**

#### **Article 28 B**

If during the life of the contract the County Commission makes a decision that commits general funds to pay more than 85% of the Health Insurance premium to other county employees who select the family plan option with the lowest deductible, bargaining unit members selecting that family plan/option under the agreement shall receive an equivalent percentage of payment upon the effective date. This provision does not apply to one time payments reimbursing individual premium contributions granted to workers in another county department headed by an independent official acting with discretionary authority not subject to Commission review.

#### **Article 29 J**

This provision applies with the exception of employees of the Common Pleas Court and those persons or groups receiving salary adjustments based on a specific merit incident, an upgrade in a professional license or certification, or a neutral's award, or one time increases granted to workers in another department headed by an independent elected official acting with discretionary authority not subject to Commission review. If during the life of the contract the County Commission makes a decision that commits general funds to pay more than a 3% salary increase to other county employees, the hourly wages of employees covered by this agreement will be increased on the effective date by the same percentage less 3%.

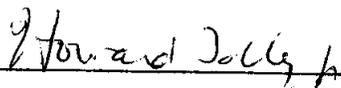
It is further agreed that if the County Commission does not decide to grant a raise of more than 3% from general funds to any group of county employees, as defined above, throughout the life of this agreement this provision shall terminate and be removed from the contract effective December 31, 2005. If an increase in wages is instituted under this paragraph during the life of this contract, then this section is open for negotiations during bargaining of the succeeding contract.

#### **Conclusion:**

If the parties find any error in this report needing correction, a conference call should be arranged to discuss the concern, and a request may be filed with SERB for authorization to adjust the report [O.A.C Rule 4117-9-05(L)]. The Fact Finder appreciates the professional approach by all individuals involved in the process and their exemplary conduct.

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the above and foregoing Fact Finding Report has been served upon Barry Gray, FOP/OLC, 5752 Cheviot Rd., Suite D, Cincinnati, OH 45247 and Randall Lambert, Lambert, McWhorter & Bowling, 215 S. 4<sup>th</sup> St., P.O. Box 725, Ironton, Ohio 45638, on this 24<sup>th</sup> day of May, 2003.

  
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Howard Tolley, Jr.

## Lawrence County 2003 Health Insurance FOP/OLP

Appendix A		
Monthly Premium Payment		
	County	Employee
<b>Single</b>		
Option 1	347.49	93.94
Option 2	347.49	55.75
Option 3	347.49	40.00
<b>EE/Spouse</b>		
Option 1	753.72	173.28
Option 2	753.72	93.09
Option 3	753.72	60.00
<b>EE/Child</b>		
Option 1	695.60	165.19
Option 2	695.60	90.72
Option 3	695.60	60.00
<b>Family</b>		
Option 1	1221.14	215.49
Option 2	1181.10	131.26
Option 3	1181.10	80.00
<b>No Insurance</b>		
	62.50	

FACT FINDING ANALYSIS OF HEALTH INSURANCE PROPOSALS

	MONTHLY HEALTH INSURANCE PREMIUM COSTS				Proposals for 2003				County Total Monthly Costs			
	2002 County	Cost (85/15) Employee	FOP (85/15) County	Employee	2003 County	County Employee	Fact Finder County	Employee	2002	FOP 2003	LCSO 2003	Fact Finder
Single									4495.96			4864.86
Option 1 (13)	321.14	56.73	375.22	66.21	347.49	93.94	347.49	93.94		4877.86	4517.37	
Option 2 (1)			342.75	60.49	347.49	55.75	347.49	55.75		342.75	347.49	
EE/Spouse												
Option 1 (1)	871.11	153.72	787.95	139.05	753.72	173.28	753.72	173.28		3939.75	3768.60	3768.60
EE/Child												
Option 1 (1)	871.11	153.72	731.67	121.12	695.60	165.19	695.60	165.19		1463.34	1391.20	1391.20
Family									17422.20			
Option 1 (11)	871.11	153.72	1221.14	215.49	1181.10	255.53	1221.14	215.49		13432.54	12992.10	13432.54
Option 2 (1)			1115.61	196.85	1181.10	131.26	1181.10	131.26		1115.61	1181.10	1181.10
Option 3 (1)			1071.94	189.17	1181.10	80.00	1181.10	80.00		1071.94	1181.10	1181.10
No Insur (8)					62.50		62.50		21918.16	26243.79	25378.96	25819.40
										500.00	500.00	500.00

H. TOLLEY  
University of Cincinnati  
Cincinnati OH  
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