

**FACT FINDERS REPORT**

STATE EMPLOYMENT  
RELATIONS BOARD

2003 JUN -3 A 10: 11

**IN THE MATTER OF:**

Ohio Civil Service Employee's Association, AFSCME. AFL-CIO.  
And  
The Tri County Regional Jail

Case Numbers:  
02-MED-11-1189

Before Fact Finder  
N. Eugene Brundige

**PRESENTED TO:**

Dale A. Zimmer, Administrator  
Bureau of Mediation  
State Employment Relations Board  
65 East State Street, 12<sup>th</sup>. Floor  
Columbus, Ohio 43215-4213

And

James McElvain,  
Ohio Civil Service Employee Association  
390 Worthington Road, Suite A  
Westerville, Ohio 43082

And

Mark A. Fishel  
Downes, Hurst & Fishel  
400 S. Fifth Street, Suite 200  
Columbus, Ohio 43215

N. Eugene Brundige was selected by the parties to serve as Fact Finder in the above referenced cases and duly appointed by the State Employment Relations Board in compliance with Ohio Revised Code Section 4117.14 ©(3).

May 14, 2003 was established as the hearing date and the parties timely filed the required pre-hearing statements.

In their pre-hearing filings one or more of the parties identified the following issues, and/or contract provisions as being unresolved:

**ARTICLE 5 DUES DEDUCTION/FAIR SHARE**

**ARTICLE 10 UNIFORMS**

**ARTICLE 15 HOLIDAYS**

**ARTICLE 22 DISCIPLINE**

**ARTICLE 23 SUBCONTRACTING**

**ARTICLE 26 WAGES**

**ARTICLE 27 DURATION**

**BACKGROUND:**

This case involves a new unit comprised of corrections officers, transportation officers and sergeants who work for the Tri County Regional Jail located in Champaign County.

There are 32 corrections officers, 2 transportation officers and 3 sergeants.

Tri County Jail employs 55 persons. The other employees are not organized.

The Unit was certified by SERB based on a representation election held on October 22, 2002.

The parties met on seven occasions between December 2002 and the end of March 2003. They also held a session with a SERB mediator on April 14, 2003.

In that this was an initial collective bargaining agreement, the parties made great progress in resolving all issues except those listed above.

At the fact finding hearing May 14 the Fact Finder attempted to mediate the remaining issues as is required by Ohio Revised Code 4117. The parties worked hard to hear each other and to meet each others needs, prior to the joint decision to have the Fact Finder hear the issues and write a report..

The format of this report will be to list an article. A brief review of the position of each party will follow and then a discussion of that issue. My recommendation will be listed and, the contract language necessary to enact that recommendation will be provided.

## **ARTICLE 5: DUES DEDUCTION/ FAIR SHARE**

### **Union's Position:**

The union proposes standard fair share language with the appropriate rebates. The reason the Union seeks such a provision is self evident. Such proposals offer economic security to the bargaining unit.

The Union notes they have very high membership/ support in the unit and that it is the appropriate time to include fair share.

There is no disagreement on the other parts of this article, except for the concept of *fair share*.

**Management's Position:**

Management points out that this is a first contract and it is not usual to include such a provision in a first agreement. They also raise the argument that this is not a mandatory subject of bargaining, thus the fact finder does not have the authority to recommend same. Management notes that they would be breaking faith with current bargaining unit members who might object to being placed under such a plan.

Management proposes instead a *maintenance of membership provision*

**Fact Finder's Recommendation:**

The question on the authority of the Fact Finder is one that this neutral has pondered for some time. The advice given by SERB is that Fact Finders do have the authority to make recommendations in this arena if the facts and statutory criteria support the inclusion.

In this case the Fact Finder recommends a compromise position that will allow the Union to eventually gain full fair share while protecting the interests of current employees.

First, Fair Share will apply for all new employees. Second, a maintenance of membership provision will apply which requires that once an employee determines to join the union they will either remain a member or, if they discontinue membership, will pay the appropriate fair share fee.

There will be no requirement for current employees to either join the Union or pay fair share.

The language to accomplish this recommendation is listed in Appendix A..

#### **ARTICLE 10: UNIFORMS**

Both parties agree that an article on Uniforms should be included in the new agreement. The point of contention concerns a union proposal to pay a cleaning allowance to each employee.

**Union Position:** The Union argues that this is a provision that is included in many contracts and should be included in this one.

**Management Position:** Management argues that the inclusion of a cleaning allowance is merely another economic item since there is no requirement proposed that the employee provide receipts for cleaning. Management is expending a significant amount of money to acquire the uniforms and money is tight at this time.

#### **Fact Finder's discussion and recommendation:**

It is not uncommon for parties to provide additional compensation to employees through such a device. The financial situation is limited for this employer. (To be discussed later in this report). Because this is a first contract and due to the financial situation, I am not recommending the inclusion of a cleaning allowance at this time.

The language regarding Uniforms is attached in Appendix B.

#### **ARTICLE 15 – HOLIDAYS:**

**Union position:**

The parties do not disagree on the quantity or days of the holidays to be celebrated. The Union requests that employees who work the holiday receive premium pay.

**Management position:**

Management opposes premium pay for holiday work on the basis of the cost involved.

**Fact Finder's discussion and recommendation:**

It is common practice for employees to be paid premium pay for holidays worked. The cost cannot be prohibitive. I recommend the Union's position on this issue. The language to adopt this position is included as Appendix C.

**ARTICLE 22 – DISCIPLINE:****Management Position:**

As with most of the Articles in disagreement, the parties were very close on this Article. Management desired to use polygraph tests as an investigative tool. Further management proposed to ban attorneys from the disciplinary process.

Management argues that these are positions commonly contained in law enforcement related contracts.

Management further argues that these employees are not Civil service and thus the inclusion of a "just cause" standard is a significant gain for the bargaining Unit.

**Union position:**

The union believes the exclusion of attorneys is not legal and puts the bargaining unit representative in jeopardy if an employee desires an attorney.

Regarding the polygraph, the union points to the scientific uncertainty of the tests.

**Fact Finder's discussion and recommendation:**

The inclusion of this article is a significant gain for employees. I commend the parties on successfully negotiating a fair and far reaching Article. I do agree with the union that the restrictive language about who represents should not be included. The Union is the sole representative and the regulation of who represents, rests in a large part, on their shoulders.

The polygraph, while a limited tool, is often seen as an investigative aid in contracts.

Therefore I recommend the language proposed by management regarding attorneys not be included, but the use of a polygraph test, with appropriate safeguards, be included.

The language for this Article is listed under Appendix D.

**ARTICLE 23 – SUBCONTRACTING:**

**Union position:**

The Union proposes to bar any subcontracting that would “reduce the work currently done by bargaining unit employees.” The reason the Union desires such a provision is bargaining unit security.

**Management position:**

Management offers to give notice to the Union prior to any sub-contracting and would meet with the Union to consider arguments and evidence the Union might offer which would illustrate bargaining unit members could do the work more economically than a contractor. Management is opposed to a ban on sub-contracting due to the impact on its management rights.

**Fact Finder's discussion and recommendation:**

This Fact-Finder fails to be convinced that there is a need for a ban on sub-contracting especially in a first contract. I recommend Management's position on this issue. The language can be found in Appendix E.

**ARTICLE 26 – WAGES:**

**Union position:**

The Union proposes a three year agreement with 4% wage increases each year of the contract .and a \$500 signing bonus for each employee at the beginning of the agreement.

To buttress their argument, the Union offered the SERB Benchmark report dated April 28, 2003 which compares salaries for Corrections Officers throughout the State of Ohio.

**Management position:**

Management offers 2% per year for each year of a three year agreement. The employer argues that they have a limited ability to pay. They explained that the Jail is funded by the general funds of the three cooperating counties which

include Madison, Union and Champaign. They note that all three counties are facing financial difficulties.

Champaign County anticipates that it will have no carryover balance for 2004. They have adopted spending cuts and experienced layoffs.

Union County has made essentially the same appropriations from its general fund between 2001 and 2003. They have had to eliminate capital improvements.

Madison County has been using carryover balance funds to supplement its general fund revenue..

The employer compares the employees to other multi-county correctional facility employees. Tri-County employees rank three out of four in this comparison.

**Fact Finder's discussion and recommendation:**

Let me deal first with the proposal for a one time lump sum payment of \$500 dollars. This is an expensive proposition in that it would equal nearly a 2% yearly increase. Money awarded to employees in such a manner does not have the effect of increasing the base salary for the future.

I see not evidence to support the inclusion of a one time lump sum payment.

What then, is the proper salary to be recommended? An examination of the comparables and the revenue would lead this Fact Finder to recommend a 3% increase for each year of the agreement.

The language is included as Appendix F.

**ARTICLE 27 – DURATION:**

Both parties agree that the contract should be three years in duration.

The language for this section is recommended in Appendix G.

**SUMMARY:**

After giving due consideration to the positions and arguments of the parties and to the criteria enumerated in SERB Rule 4117-9-05(J) the Fact Finder recommends the provisions as enumerate herein.

In addition, all agreements previously reached by and between the parties and tentative agreed to are hereby incorporated by reference into this Fact Finding Report, and should be included in the resulting Collective Bargaining Agreement.

The Fact Finder commends the parties for the hard work they have done to compose a very good first agreement. It is my hope the parties will recognize the progress they have made, will adopt these recommendations and use this agreement to help continue the development of a positive and productive labor – management relationship.

Respectfully submitted and issued at London, Ohio this 2<sup>nd</sup> . Day of June,

2003.

  
N. Eugene Brundige,  
Fact Finder

**APPENDIX A:****ARTICLE 5 – CHECKOFF****5.01 – Dues Deduction**

The Employer will deduct bi-weekly membership dues payable to the Union, upon receipt of a voluntary written individual authorization from any bargaining unit employee on a form mutually agreed to by the Union and the Employer.

**5.02 – Correction of Deduction**

Deductions provided for in this Article shall be made during one (1) pay period each month. In the event a deduction is not made for any member during any particular month, the Employer upon written notification from the Union will make the appropriate deduction from the following pay period in which dues are regularly deducted, if the total deduction does not exceed the total of two (2) months regular dues. The Employer will not deduct more than two (2) months' regular dues from any single pay or any member.

**5.03 – Fair Share Fee**

Any bargaining unit employee hired after July 1, 2003 who has served sixty (60) days and who has not submitted a voluntary membership dues deduction authorization form to the Employer shall be required to pay a fair share fee through a bi-weekly payroll deduction. The amount shall not exceed the dues paid by similarly situated members of the employee organization who are in the bargaining unit. The Union shall continue to provide an internal rebate procedure, which provides for a rebate of expenditures in support of partisan politics or ideological causes not germane to the work of employee organizations in the realm of collective bargaining.

When an employee enters the bargaining unit for any reason, the Employer shall notify the employee of his Article and provide the employee the appropriate deduction forms. Fair share fee deductions shall begin after sixty (60) days of service.

**5.04 – Maintenance of Membership**

All employees in the bargaining unit who, on the effective date of this Agreement, are members of the Union and all employees who thereafter become members shall, as a condition of employment, remain members of the Union for the duration of this Agreement. Employees who wish to terminate their membership may do so by providing written notice to the Union at its principal offices during a thirty (30) day period commencing sixty (60) days prior to the expiration date of this Agreement.

**5.05 – Termination of Deductions**

The Employer shall be relieved from making payroll deductions upon an employee's (1) termination of employment; (2) transfer to a non-bargaining unit

job; (3) layoff from work; (4) unpaid leave of absence; (5) revocation of the dues authorization.

#### **5.06 – Limitation of Deductions**

The Employer shall not be obligated to make dues deductions of any kind from any employee who, during any dues month involved, shall have failed to receive sufficient wages to equal the dues deduction.

#### **5.07 – Error in Deduction**

It is agreed that neither the employees nor the Union shall have a claim against the Employer for errors in the processing of deductions, unless a claim is made to the Employer within sixty (60) days after the date such an error is claimed to have occurred. If it is found an error was made, it will be corrected at the next pay period that the dues will normally be deducted. Payroll collection of dues shall be authorized for the exclusive bargaining agent only.

#### **5.08 – Indemnification**

It is agreed that the Union shall save the Employer harmless against any and all claims, demands, suits or other forms of liability which may arise out of or be by reason of action taken or not taken by the Employer in fulfilling the obligations imposed on the Employer under this section, except for failure to forward deducted fees.

### **APPENDIX B:**

## **ARTICLE 10 – UNIFORMS**

#### **10.01 – Issuance of Uniforms**

The Employer shall provide all employees with the necessary uniform for employment. The standard uniform will consist of eleven (11) shirts and six (6) pairs of pants to each bargaining unit employee. Shirts will be solid black in appearance with the Tri-County Jail Logo and a pocket on the left side of the chest. Pants will be designated by the terms of the Employer's contract with the uniform supplier.

#### **10.02 – Uniform Placement**

Any damaged or worn out uniform will be turned in to the Employer and shall be replaced at the Employers expense within a reasonable time frame, unless the damage is proven to have occurred by the employee outside of the scope of his/her duties.

#### **10.03 – Uniform Accessories**

The Employer shall provide each bargaining unit employee with the equipment necessary for the performance of his or her duties. This will include one duty belt, one glove pouch, one radio carrier, one flash light pouch, one cuff

case and set of handcuffs, one small flashlight, one key chain or key hook, and one O.C. pouch with O.C. when certified.

**APPENDIX C:**

**ARTICLE 15 – HOLIDAYS**

**15.01 Observances**

The following holidays will be observed:

New Year's Day  
 Martin Luther King Jr.'s Birthday  
 President's Day  
 Memorial Day  
 Independence Day  
 Labor Day  
 Columbus Day  
 Veterans' Day  
 Thanksgiving Day  
 Christmas Day

These holidays shall be observed on the date on which they fall on the calendar.

**15.02 Work on Holidays**

Any holiday worked by an Employee will be paid a 1 ½ times their regular rate of pay. Any Employee not working the holiday shall receive 8 hours holiday pay.

IN order to be eligible for holiday pay, an employee must work or be on approved vacation leave on their work day immediately proceeding and following the above holidays.

**APPENDIX D:**

**ARTICLE 22 – DISCIPLINE**

**22.01- Standard**

The Employer may take disciplinary action against any employee in the bargaining unit only for just cause. Disciplinary action may be taken in the following manner: verbal reprimand, written reprimand, suspension, demotion and termination. Discipline will be applied in a progressive and uniformed

manner. Progressive discipline shall take into account the nature of the violation, the employee's work record and prior discipline. Disciplinary penalties shall be commensurate with the severity of the offense.

#### **22.02 – Pre-disciplinary Conference**

Whenever the Employer (or designee) determines that an employee may be disciplined for cause, including only, suspension, demotion, or termination, the Employer (or designee) will notify the employee that the employee is entitled to a pre-disciplinary conference. Prior to the conference, the employee and his/her representative shall be informed in writing of the reasons for the contemplated discipline and the possible form of discipline. At least seventy-two (72) hours prior to the pre-disciplinary conference, the employee and his representative shall be provided access to the investigation file. Upon request, copies of relevant documents shall be provided by the Employer.

#### **22.03 – Union Representation**

Whenever an employee is being questioned concerning an alleged violation of Employer policies and such conduct may lead to discipline, the employee is entitled to have a Union representative present. If the employee requests a Union representative during questioning, the Employer shall refrain from any inquiries in the absence of such representative.

#### **22.04 – Administrative Leave**

When the Employer determines that an alleged offense is of such a nature that immediate action is required, the Employer may place the employee on administrative leave with pay pending the outcome of the disciplinary investigation.

#### **22.05 –**

If a bargaining unit employee is required to undergo a polygraph examination, all questioning shall be narrowly limited to the current investigation. Whenever the Employer requires an employee to undergo a polygraph examination, the Employer shall give the employee his Garrity rights in writing.

### **APPENDIX E:**

#### **ARTICLE 26 – WAGES**

##### **Corrections Officers**

**July 1, 2003**

Step 1 \$11.41	Step 2 \$11.89	Step 3 \$12.38	Step 4 \$12.99	Step 5 \$13.69
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**July 1, 2004**

Step 1 \$11.75	Step 2 \$12.24	Step 3 \$12.75	Step 4 \$13.38	Step 5 \$14.10
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**July 1, 2005**

Step 1 \$12.10	Step 2 \$12.61	Step 3 \$13.13	Step 4 \$13.78	Step 5 \$14.52
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Step 1 shall be the entry level wage rate. Employees shall move to subsequent steps on their anniversary date with the Employer.

Sergeants -	July 1, 2003 -	\$15.45
	July 1, 2004 -	\$15.91
	July 1, 2005 -	\$16.39

**APPENDIX F:**

**Subcontracting**

If the Employer intends to contract out work that is normally performed by bargaining unit employees, it shall notify the Union at least forty-five (45) days in advance. Upon request, the Employer shall meet with the Union to discuss the issues relating to such a decision.

During this 45 day period, the Union may present evidence and documentation supporting its claim that the bargaining unit employees can continue to perform the work in a more economical manner than the proposed subcontractor.

**APPENDIX G:**

**ARTICLE 27 – DURATION**

This agreement, upon ratification, shall take

effect July 1, 2003 and shall terminate June 30, 2006. <sup>1</sup>

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<sup>1</sup> The Fact Finder has attempted to offer language that captured the intent and/or arguments of the parties. If there are places where the parties, by mutual agreement, can improve upon the language they are invited and encouraged to do so.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing **Fact Finders Report** was served by Regular Mail upon Mark A. Fishel , Downes, Hurst & Fishel, 400 South Fifth Street suite 200, Columbus, Ohio 43215, Attorney for the Employer, James McElvain, Ohio Civil Service Employee Association 390 Worthington Road, Suite A, Westerville, Ohio 43082, Advocate for the Employee Organization, and Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12<sup>th</sup>. Floor, Columbus, Ohio 43215-4213, this 2nd Day of June, 2002. <sup>2</sup>

  
**N. Eugene Brundige,**  
**Fact Finder**

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<sup>2</sup> The parties, by mutual written agreement, waived service by Overnight Express Mail.



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