

STATE EMPLOYMENT
RELATIONS BOARD

2003 JUL 29 A 10: 13

FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
July 25, 2003

In the Matter of:)	
)	
The Carroll County Sheriff)	
)	
and)	03-MED-02-0087
)	03-MED-02-0088
Fraternal Order of Police)	
Ohio Labor Council)	
)	

APPEARANCES

For Local 1662:

D. Wayne Ferguson, Bargaining Committee
Jonathan Kampfer, Bargaining Committee
Candi Longen, Bargaining Committee
James Boomer, FOP/OLC Representative

For the Sheriff:

Ralph Lucas, Carroll County Sheriff
Robert Wirkner, Chief Deputy Carroll County Sheriff's Department
Wesley Day, Major Carroll County Sheriff's Department
Rufus Hurst, Attorney for the Carroll County Sheriff's Office

Fact Finder: Dennis M. Byrne

Background

The Fact Finding involves the members of the Carroll County Sheriff's Department, including deputy sheriffs and corrections officers (CO's), represented by the Fraternal Order of Police/Ohio Labor Council (FOP/OLC) and the Carroll County Sheriff. Prior to the Fact Finding Hearing, the parties were involved in two negotiating sessions. In addition, the Fact Finder conducted a mediation session prior to the start of the fact finding hearing and a number of issues were settled; however, the parties were unable to come to a final agreement, and eleven (11) issues remain on the table. They are 1) Fair Share Fee, 2) Hours of Work and Overtime, 3) Holidays, 4) Vacations, 5) Training, 6) Probationary Period, 7) Leaves of Absence, 8) Insurances, 9) Longevity, 10) Wages, and 11) Seniority.

One main goal of the parties was to have one contract cover all members of the department. That is, they wanted one contract to cover both the deputies and the correction officers, rather than have each unit negotiate its own agreement. During the mediation, the parties were able to find common ground on the definition of the work period, which was one to the two major stumbling blocks they confronted in their attempt to merge the two contracts into one. The other problem that needs to be ironed out is the language of the seniority provision. After some preliminary discussions, the parties decided that they needed more time to examine this issue. Consequently, they agreed to keep negotiating on this issue without the assistance of a Neutral. However, the Fact

Finder retains jurisdiction over this issue, and if the parties are unable to come to an agreement on the contested language, the Fact Finder may reconvene the hearing to allow the parties to present evidence in support of their respective positions.

The most salient disagreement between the parties is the level of compensation. The Sheriff is facing a deficit in his budget and does not believe that he can meet the demands put forward by the Union. The Union, on the other hand, argues that the wages and benefits paid to its membership are substandard and argues that Sheriff could and should meet its demands.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations. The criteria are set forth in Rule 4117-9-05. The criteria are:

- (1) Past collectively bargained agreements, if any.
- (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, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards 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 agree-upon dispute settlement procedures in the public service or private employment.

The report is attached, and the Fact Finder hopes the discussion of the issues is sufficiently clear to be understandable. If either or both of the parties

desire a further discussion, however, the Fact Finder would be glad to meet with the parties and discuss any questions that remain.

Issue: Article 5: Dues Deduction

Union Position: The Union demands that "Fair Share Fee" language be added to Article 5.

Sheriff Position: The Sheriff rejects the Union demand.

Discussion: The Sheriff stated that the County Commissioners are opposed to adding Fair Share Fee language into the agreement. He elaborated by saying that the Commissioners do not see any reason to force a person who chooses not to join the Union to pay union dues. In addition, in the Department's pre-hearing submission to the Fact Finder, the Sheriff pointed out that the Fact Finder in the previous negotiation recommended that Fair Share language not be included in the contract.

For its part, the Union contended that Fair Share language is found in many contracts. The Union also pointed out that the language in question has been found to be acceptable by the courts. In addition, the Union strongly objected to management's contention that a Fact Finder recommended against the inclusion of Fair Share Fee language in the contract. The Union claimed that it voluntarily withdrew the demand during the prior round of negotiations in an attempt to reach an agreement. The Union believes that the language that it proposes should be added to Article 5.

Fair Share Fee language is often added to a contract in order to insure that there are no "free riders" in the department in question. That is, a person can get the benefits of unionization without the cost. The courts have consistently found that a Union has the right to defend itself from "free riders," and a Fair Share Fee is seen as a fee for service. As such, it is unobjectionable. The Union, by its very existence, confers some benefits on every member of the department. For example, a Union negotiates wage increases for everyone, etc. Fairness requires that a person should pay for the benefits he/she receives.

However, in this instance the demand that the language be added to the contract lacks a strong rationale. The main reason for Fair Share language is to protect against "free riders." In this instance there are no "free riders," that is, all members of the department are in the Union. The Fact Finder understands the Union's desire to have the proposed language inserted into the contract as a way to protect itself in the event that a situation might arise where there are some members of the department who choose not to become Union members. However, that situation has not arisen: if and when it does, the inclusion of Fair Share language into the contract may occur.

The Fact Finder has recommended the insertion of Fair Share Fee language into contracts numerous times. He believes that it is reasonable response to a real problem. Unions deserve to be paid for the services they render. However, in this instance there is no free rider problem, and the Sheriff objects to the inclusion of the language into the agreement. Based on the facts

of the matter, the Fact Finder does not believe that the Union proved that there is a need for the proposed language.

Finding of Fact: All members of the department who are eligible for inclusion in the bargaining unit(s) are members of the Union.

Suggested Language: Current Language

Issue: Article 17: Hours of Work and Overtime

Union Position: The Union demands an increase in the overtime compensatory time bank from the current forty (40) hours to one hundred (100) hours.

Sheriff Position: The Sheriff is willing to expand the overtime compensatory time bank by twenty (20) hours, i.e., the Sheriff proposes a bank of sixty (60) hours.

Discussion: The Union demand is for an increase in the compensatory time bank of sixty (60) hours. The Union argues that this demand will actually save money for the Sheriff and increase the opportunity for time off by the employees. The Union, therefore, sees this as a win-win issue. The Sheriff believes that the use of compensatory time often leads to increased overtime and, therefore, desires to limit the number of hours that can be accumulated.

The Fact Finder is not convinced by the Sheriff's argument. An examination of the contract does not show how compensatory time is scheduled in the Department. However, the usual practice is for the employee to request the time off in writing to the Sheriff, and then he can either agree to the request or reject it. The employee's request is often denied because it would increase

the overtime use in the department. That is, a request for compensatory time off is often rejected if there are a number of officers on vacation, out on sick leave, etc. Moreover, the Sheriff always has the right to cash in compensatory time at his discretion according to the language of Article 17. Consequently, an increase in the compensatory time bank gives both sides some increased flexibility in deciding how to compensate a deputy sheriff or a corrections officer who works overtime. If the Sheriff decides not to authorize the use of compensatory time but to pay cash for the accumulated hours, it is a situation of "pay me now or pay me later."

The Union requested an increase in the compensatory time bank up to one hundred (100) hours. The Sheriff agreed to raise the bank to sixty (60) hours. The Fact Finder is recommending an increase to eighty (80) hours. This number of hours doubles the current compensatory time bank. Doubling the size of any benefit in a single contract seems reasonable, especially given the Sheriff's position on the issue.

Finding of Fact: The contract gives the Sheriff the ability to decide whether to allow a deputy or corrections officer to use compensatory time off or to pay cash for the hours in the employee's bank at the end of the year. Consequently, the Sheriff controls the use of compensatory time. An increase in the compensatory time bank increases the department's scheduling flexibility.

Suggested Language: Article 17 Section 2:

... Employees may accumulate compensatory time to a maximum of one hundred and twenty (120) hours. The compensatory time bank shall consist of

two parts: up to eighty (80) hours of earned compensatory time and up to forty (40) hours of holiday time as referenced in Article 19. ...

Note: Articles 17 and 19 both reference compensatory time. Article 19 allows the employees to convert five (5) holidays to compensatory time at their discretion. The time can be used or cashed out at the Sheriff's discretion. Therefore, the hours referenced in Article 17 consist of earned compensatory time and a maximum of forty (40) hours holiday time. Article 19 should be amended to come into conformity with Article 17.

Issue: Article 19 – Holidays/Personal Days

Union Position: The Union has two demands on this article. First, the Union asks that the language in Article 19 be "cleaned up" and brought into conformity with the language in Article 17. Second, the Union demands that its members be paid two (2) times the normal rate for hours worked over eight (8) hours on a holiday.

Sheriff Position: The Sheriff rejects the Union's demand for an increase in pay. The Sheriff agrees that the language in Article 19 should be "cleaned up."

Discussion: The Union's demand for extra pay for hours worked in excess of eight (8) hours on a holiday is based on the premise that there should be some premium pay for hours worked in excess of a full shift regardless of the particular day worked. In this instance, the employee gets premium pay for working the holiday; and the Union believes that the employees should get some extra

premium pay for working overtime. The Sheriff claims that his budget is stretched to the limit and the Union's demand has some economic impact.

The Fact Finder agrees that this demand will have some impact on the Sheriff's budget, although depending on the exact circumstances the impact may be relatively minor. However, the Union did not show any evidence that there is a problem with the current language. That is, the Union did not show any evidence that officers worked more than eight (8) hours on a holiday as a matter of course. Therefore, there is no record that there is a pressing reason to add the contested language to the agreement. In light of the lack of evidence that the current language is creating problems and in consideration of the Sheriff's financial position, the Fact Finder is not recommending the Union's position on this issue.

The second part of the Union's demand is that the language in Article 19 be brought into conformity with the language of Article 17. Given that the Fact Finder has recommended an increase in compensatory time; he is also recommending that the language in Section 19.3 be changed.

Finding of Fact: The Union's demand for a premium for time worked on a holiday has some financial impact on the department and the Sheriff faces a budgetary problem.

Note: The language in Articles 17 and 19 should be in conformity.

Suggested Language: ...The rescheduled holidays will be added to the employee's compensatory time bank and will be in addition to the compensatory time earned in Article 17 (which may result in a maximum of one hundred and twenty (120) hours in an employee's compensatory time bank.)

Note: The parties agreed that the language in Article 19 cannot be read to mean that an employee must “use or lose” holiday compensatory time. The time can be cashed out at the Sheriff’s discretion at the end of the year in which it is earned.

Issue: Article 20 – Vacation

Union Position: The Union wants to change the vacation accrual schedule so that its membership earns an extra week of vacation in the sixth (6th) and thirteenth (13th) year of service.

Sheriff Position: The Sheriff rejects the Union’s demand because he believes that the current vacation schedule is reasonable and that the cost of the Union’s demand is prohibitive given the state of his budget.

Discussion: The Union presented evidence from comparable jurisdictions on this matter during the hearing. The data show that only three of nine departments offer a second week of vacation after five (5) or (6) years of service. That is, six of nine departments have the same accrual rate for a second week of vacation as Carroll County. The data shows the same pattern for the accrual rate for a third week of vacation. Six of nine departments have the employees earning a third (3rd) week of vacation after fourteen (14) or fifteen (15) years of service. Therefore, the Union’s own data does not support its position. The Union admitted as much during the mediation phase of the Fact Finding.

The City argued that the data show that the vacation schedule in Carroll County is reasonable and in line with the vacation schedules in other Sheriff’s

departments. Furthermore, the Sheriff argued that changing the accrual rate would have a large financial impact and that he could not afford the extra expense at this time.

The Fact Finder agrees with the Sheriff's position on this issue. The Union requested an increase in the vacation scale, which is a reasonable demand during negotiations. However, the Union was unable to win the desired changes in Article 20 during the free give and take of negotiations. For a Neutral to recommend a change in a benefit such as a vacation schedule there must be proof that the employees are being treated inequitably with regard to the issue. The data do not support such a finding.

Finding of Fact: The Union did not prove an inequity exists in the vacation accrual rate.

Suggested Language: Current Language

Note: The parties agreed that the language in Article 20 should be changed to reflect the actual vacation accrual rate. That is, the current language is imprecise and shows that the employees accrue more vacation than they are entitled to. The reason appears to be related to a rounding error in the vacation schedule. For example, the accrual rate in Step 1 is 3.1 hours per pay period and it should be 3.076 hours per pay period. The Fact Finder recommends that the parties agree on the precise language needed to make the accrual rate equal the number of vacation hours earned.

Issue: Article 24 – Training/Application

Union Position: The Union has a number of demands related to Article 24.

First, the Union believes that any training required “to attain or maintain” a certification should be considered hours worked. Second, the Corrections Officers want the employer to pay for the training needed to earn a Law Enforcement Certificate. Finally, the Union demands that all new positions created be posted for bid.

Sheriff Position: The Sheriff rejects all of the Union’s demands on this issue.

Discussion: The language of Article 24, Section 2 requires the Sheriff to pay for any training that he requires the employees to attend. If the training is needed to maintain (attain) a certification, the Sheriff will pay only if he approves the payment prior to the start of the training session(s). The parties agreed that at the current time the Sheriff usually (often) approves the request for training. Therefore, there is little disagreement between the parties on this issue.

The Union membership may be attempting to place their suggested language into the contract in case there is a change in leadership in the department and a new administration may take a harder line on paying for training costs. The Fact Finder understands the Union’s position; however, contracts cannot be written to cure potential problems. At the present time, there does not seem to be a reason for the Fact Finder to recommend changing the language in Article 24, Section 2, in light of the employer’s opposition to the change.

The second part of the Union's demand is the Sheriff should be required to pay the cost of training for a Corrections Officer (CO) who earns a Law Enforcement Certificate. The Union argues that there is a benefit to the department when a CO earns the certificate; i.e., it increases the skill level of the department. The Sheriff argues that a CO who desires to become a deputy sheriff needs the certificate; and if a person desires to advance, then they should show the initiative and attend the required training. The Sheriff further argued that when a CO becomes a deputy sheriff the increased pay in that position recompenses the CO for the training expense. Finally, the Sheriff stated that there was some cost to the Union's demand and his budget was in a deficit at this time.

The Fact Finder is sympathetic to the Union's position. However, the training in question is not required by the employer or needed to maintain any certification. Therefore, the employee is electing to go to school to make him or herself eligible for promotion. The language of Article 24 does not currently require the Sheriff to pay for all training and, furthermore, there is no language covering payment of an educational bonus in the contract. Consequently, the Fact Finder cannot recommend the inclusion of the language put forth by the Union into the contract.

The final area of disagreement is whether all new positions in the department be posted for bid. The Union argued that new positions are created and the membership is often unaware that these positions are open and, therefore cannot express interest in the position(s).

The Sheriff's testimony agrees with the Union's analysis of the situation. The Sheriff testified that he evaluates each member of the department twice a year and that he knows who is interested in becoming a member of his administration. He further testified that he believed that he had the right to appoint members of his staff. Therefore, the Sheriff believes that the language of Article 24, Section 5, does not apply to anyone appointed to his staff.

The Fact Finder is unconvinced by the arguments put forth by the Sheriff on this issue. The language of Article 24, Section 5, simply requires that the Sheriff inform the employees when there is a vacancy in the department. The last sentence of the section gives the Sheriff the right to determine when a vacancy exists and whether to fill such a vacancy with a person outside the department. The Fact Finder sees nothing in the language of Article 24, Section 5, that limits the Sheriff's ability to fill the positions. The current language does require that all members of the department be informed when a vacancy exists. The Fact Finder believes that this is reasonable. In some ways the Union's demand is already covered by the language of Section 5. Therefore, the Fact Finder is recommending the Union's position on this issue.

Finding of Fact: The current contract requires that the Sheriff post vacancies and a new position, as a matter of course, creates a vacancy.

Suggested Language: Section 24.5

When the Employer determines that a permanent vacancy exists **or a new position is to be created**, a notice of such vacancy shall be posted on the bulletin board for seven (7) calendar days....

Issue: Article 27 – Probationary Periods

Union Position: The Union demands that a newly hired probationary employee who is subject to discipline short of termination be afforded the opportunity to be represented by the Union.

Sheriff Position: The Sheriff rejects the Union's demand.

Discussion: The current language of Article 27, Section 3, allows a probationary employee to be represented by the Union in non-disciplinary matters. The Union believes that probationary employees should be afforded the opportunity to be represented by the Union in disciplinary, as well as non-disciplinary, matters short of termination. Both sides agree that management has the right to terminate a probationary employee. The Union argues that it is costly to hire and train a new employee and having the Union involved in the disciplinary process may lead to productive discussions between the parties and lessen the chance that a probationary employee will "get off on the wrong foot" in his/her employment with the Sheriff.

The Sheriff rejects the Union's demand with little rationale. The Sheriff believes that the right to discipline a new employee is part of Management's Rights. In addition, the Sheriff may fear that the introduction of the Union into any disciplinary situation will increase the probability that a grievance will be filed, and subsequently the time and cost of disciplining a probationary employee will rise.

A probationary employee already has access to the grievance procedure and, consequently, Union representation for non-disciplinary issues. The grievance procedure is placed in contracts to allow the employees a voice when dealing with their employer. The grievance procedure insures that an employee has the right to contest actions taken by the employer that the employee believes are unjustified. Historically, access to the grievance procedure has lessened industrial strife and led to better industrial relations. The Fact Finder sees no reason that this instance should be any different.

Currently a probationary employee has no way to contest management's decision to impose discipline. The Union's participation in discussions surrounding a disciplinary action will simply allow the affected person a voice in the proceeding. The fact that the Union cannot be involved in a probationary dismissal protects the Sheriff's rights by allowing him to dismiss unsatisfactory probationary employees. Therefore, the inclusion of the Union in disciplinary matters that will not lead to termination does not seem unreasonable. Moreover, potential arguments that the inclusion of the Union into the disciplinary procedure will lead to higher costs, more arbitrations, etc. seem overdrawn.

Finding of Fact: The inclusion of the Union in disciplinary matters short of termination does not infringe on management's rights to discipline an employee, but does insure that the employee will have a way to protest what he/she thinks is unjust punishment.

Suggested Language: Section 3 Appeals by Probationary Employees

... In all disciplinary and non-disciplinary matters short of termination, probationary employees are entitled to union representation including access to the grievance procedure.

Note: There were a number of other issues involved in this article. The major difference between the parties was Section 4 which discusses probationary periods for transfers. The parties agreed that a person who is transferred will only have a limited time (the discussion centered on thirty (30) days) to decide that he/she does not want to continue in the new position. That is, the employee has only a limited time to decide that he/she does not want to stay in the new position and wishes to return to his/her former position.

Issue: Article 30 – Leaves of Absence

Union Position: The Union demands sixteen hours of paid leave time for Union officials to attend to Union business.

Sheriff Position: The Sheriff rejects the Union's demand.

Discussion: Currently the contract provides for no paid union time. The Sheriff believes that Union officials should be able to attend Union meetings and the contract provides for forty (40) hours of unpaid leave time. However, the Sheriff does not believe that he should pay for Union officials to attend the FOP/OLC convention, etc.

The Union's demand is not unreasonable. Many contracts in both the private and public sectors contain paid time-off provisions for Union officials to work on union business. One reason that both Unions and Management see a

benefit in having union officials attend union meetings is that conventions, etc., often have an educational component. That is, the local Union leadership often learns ways to deal with and communicate with management that leads to better, more professional relationships. The cost of the time off for Union activity often pays for itself during negotiations, grievance hearings, etc.

The Fact Finder believes that the language of Article 30, Section 3, protects the Department's interests. The Union time must be approved by the Sheriff and cannot lead to increased overtime. It is true that the Sheriff currently has budget problems and any increase in cost must be scrutinized closely but the cost of this demand is negligible. Therefore, the Fact Finder is recommending that the contract contain a provision for eight hours of paid union leave.

Finding of Fact: Paid time off to attend the Union convention is a standard feature of many contracts.

Suggested Language: Section 3: Union Leave

Elected members of the bargaining committee, or their designees, may have up to a total of forty (40) hours unpaid leave for both bargaining units, and eight (8) hours of paid leave each calendar year to attend union-sponsored seminars....

Issue: Article – New: Insurance

Union Position: The Union demands that the County provide a group insurance policy that will pay one year's salary to surviving family members.

Sheriff's Position: The Sheriff claims that he cannot meet this demand.

Discussion: The Union demand is that the survivors receive an amount of money equal to one year's pay of the decedent. The Union explained that it desired the County (Sheriff) to provide a group insurance plan for the membership. Furthermore, the Union stated that its membership would pay the premium. The idea behind the demand is that a group is able to buy insurance for less than an individual.

The Sheriff indicated that he understood the Union's position. He stated that insurance contracts were negotiated by the County and that he could not commit the County to provide such a program. However, the Sheriff did promise that he would raise the issue with the Commissioners.

The Fact Finder believes that public safety workers need insurance. The jobs they perform are dangerous and often result in injury or death. A group insurance plan is a cheaper alternative to private insurance coverage. In addition, many contracts do provide an insurance benefit to the union membership. This benefit often becomes a City or County wide fringe benefit. However, in this in case the Sheriff cannot meet the Union's demand.

Finding of Fact: The County Commissioners are responsible for providing insurance to County employees.

Suggested Language: None

Issue: Appendix B: Longevity

Union Position: The Union demands that its longevity payment be calculated according to the formula used by county engineer when he calculates longevity

payments for his department. That is, the Union demands that longevity be calculated and paid according to a formula whereby the employee receives $.5\% \times \text{number of years of service} = \%$ added to the base rate.

Sheriff Position: The Sheriff rejects the Union's demand.

Discussion: In general, the idea behind a longevity payment is that an employee with long tenure should be rewarded for his loyalty. This benefits both the employee and the employer; the employee has sees an increase in his/her take home income and the employer has reduced turnover which lowers hiring costs, etc.

The data presented by the Union does show that the longevity payment is reasonable at the beginning of the scale. However for employees with long tenure the current scale is at the bottom of the comparables list. The Union's proposal would lead to an increase in the longevity payment as a person's tenure increases. This is reasonable. However, acceptance of the Union's proposed language would more than double the Sheriff's longevity payments, this is unreasonable.

The Union's demand is actually highly unusual. The comparables presented by the Union (Belmont, Carroll, Columbiana, Jefferson, Mahoning, Muskingum, Tuscarawas, and Washington) all show longevity as a cents per hour payment. However, in most departments longevity is paid according to a scale, and that is true in Carroll County. Appendix B lists the current longevity scale that shows how each employee is paid a specified dollar amount for years of tenure with the Department. For example, if deputy has six (6) years of

service, he receives \$275.00. Similarly, if he has eleven (11) years of service, he receives \$400.00. In addition, Fact Finder Nels Nelson in a report dated September 25, 2000, discusses the same issue and concludes that the Union's demand is too expensive for inclusion into the contract.

The Fact Finder is not convinced by the Union's arguments on this issue. The Union uses the concept of internal parity as the rationale for its demand. The Carroll County Engineer adopted the Ohio Department of Transportation (ODOT) longevity language and calculates longevity as a percent per hour. In this instance the Sheriff pointed out that the Engineer has different sources of funds and is not supported by the County's General Fund. While it is true that the Engineer's employees have a different longevity payment plan than other County employees, it is also true that most other county employees do not receive any longevity payments.

The Sheriff has financial problems and his budget is stretched thin. The Union's demand would lead to a longevity payment of 10% of the base wage at twenty (20) years of service. Accepting this methodology would significantly increase the Sheriff's longevity payments. Different contracts have different provisions. The free give and take of negotiations often leads to different outcomes on the same issues. One unit often values a benefit differently than other units. The Fact Finder does not believe that the Union presented any valid reason that the Sheriff's office should pay exactly the same longevity rate as the Engineer.

At the same time, the evidence shows that the current longevity scale is deficient at the top end. That is, the payment for members of the department who have fifteen (15) years or more service is extremely low. In fact, the current payment is at the bottom of the comparables list. While the longevity payments in Muskingum and Tuscarawas Counties are somewhat similar to the payment in Carroll County, the payments in all other counties are significantly higher. Belmont County, for example, has a longevity payment approximately 400% higher. Similarly, Washington County's payment is approximately 300% higher. Therefore, the Fact Finder believes that a fair reading of the data indicates that the longevity payment could be increased for employees with over fifteen (15) years of service. However, the Sheriff's budgetary problems imply that there is only so much money available for increased wages and benefits, and the Fact Finder believes that the available monies should be used to increase the base rate.

Finding of Fact: The evidence shows that the longevity scale for members of the Carroll County Sheriff's department is at the bottom of the comparables list for all surrounding Sheriff's department. However, the Sheriff has limited funds to pay for increased wages and benefits and cannot correct all problems with the contract during this negotiation. Moreover, the Union did not prove that there was any reason to radically modify the existing payment structure.

Suggested Language: Appendix B: Current Language

Issue: Appendix A: Wages

Union Position: The Union has three demands in the wage provision. First, the Union demands a four (4) percent increase in the base rate for each year of the prospective contract. Second, the Union wants to add a shift differential to the contract; and finally, the Union wants to increase the pay of Corrections Officers who hold a Law Enforcement Certificate.

Sheriff Position: The Sheriff is offering two (2) percent in the first year, three (3) percent in the second year, and three (3) percent in the third year of the prospective contract.

Discussion: The two sides approached the wage issue in different ways. The Union presented evidence from comparable jurisdictions showing that the deputy sheriffs are paid at least ten (10) percent less than an average deputy sheriff in the area surrounding Carroll County. The same analysis shows that the corrections officers are paid almost exactly the same as an average corrections officer in the surrounding area. The Union's comparable jurisdictions include Belmont, Columbiana, Harrison, Jefferson, Mahoning, Monroe, Muskingum, Tuscarawas, and Washington Counties. It must also be noted that the Union's wage data is from 2002. Therefore, if any of the jurisdictions on the Union's list received a wage increase during 2003, then the Union's data tends to understate the size of any differential. The Sheriff did not present any data from comparable jurisdictions. Consequently, the Union's data must be accepted at face value.

The Sheriff's presentation was based on an analysis of the department's budgetary problems. The Sheriff's representatives presented financial data showing tax revenues, investment income, the general fund balance, and the Sheriff's budget for various years. In addition, the Sheriff also analyzed the differences between his offer and the Union's demand. The Sheriff contends that all of this information clearly shows that the Sheriff cannot meet the Union's demands and that his offer is all that can be funded. The Sheriff claims that his wage offer plus the increase in longevity payments earned by the employees as they progress through the scale leads to raises that are more than fair.

Before a complete discussion of the wage issue is given, two facts must be noted. First, it is highly unusual that either side claims that an increased longevity payment due solely to an increase in tenure (i.e., there is no change in the scale) is a wage increase. An increase in longevity usually is considered to mean that there is an increase in the scale. Therefore, the Fact Finder is not convinced by the Sheriff's argument that his wage offer is greater than the eight (8) percent he offered. Second, it is also unusual for one side to offer data based on comparables and the other side not to mention comparability. ORC 4117 specifies that the wages and benefits paid to others performing the same work must be considered by a Neutral when making wage recommendations. Of course, ORC 4117 also requires that a Neutral must consider the ability to pay when making a wage recommendation. However, in the Fact Finder's experience almost every party to a negotiation offers comparables data. Usually the problem facing a Neutral is to decide what jurisdictions are comparable

because the parties often have different jurisdictions on their lists. In this instance, the Fact Finder believes that he must accept the Union's comparability data because the Sheriff made no attempt to refute the data.

The Sheriff's presentation shows that the department's budget has been flat for the last three years. The data further shows that the County's general fund is approximately \$5,000,000.00 and that the revenues going into the fund over the past year have fallen slightly because investment income has declined dramatically. This is probably due to the lower interest rate environment in both Ohio and the nation. The Sheriff contends that these two trends imply that he cannot pay the union membership any more than he has offered.

The financial data placed into evidence shows that the County is not in the best of financial condition. However, there was no indication that the County is in financial distress. Moreover, while it is true that the Sheriff's budget is currently showing a deficit, there is no real reason to assume that he will not be able to balance his budget by the end of the fiscal year. It is not unusual for a department to show a deficit during the year and balance the books by transfers, etc., at the end of the year.

The main problem with the Sheriff's presentation is the fact that he found funds to pay his staff significant wage increases for 2001, 2002, and 2003. The Union presented data showing that some staff members received wage increases of approximately thirty (30) percent. The lowest raise given to any staff member, according to the Union's data, was slightly less than twelve (12) percent. The average percentage increase given to the staff as a whole is

nineteen and one-half (19.5) percent. During the same period the union membership's wages increased by eight (8) percent.

The Sheriff's testimony agrees with the Union's analysis. He stated that his staff was underpaid compared to other Sheriffs' departments in surrounding counties. Furthermore, he stated that his staff worked long hours and was always on call. The Sheriff believes that he has a professional staff that is underpaid. Of course, if the words "union leadership" are substituted for the word "Sheriff" in the preceding sentence, then the Sheriff is making the same arguments that Unions always make when negotiating for wages.

Moreover, the Union also argued that historically the Sheriff's staff is given the same base rate increase that the Union negotiates for its members. Therefore, the Union contends that the Sheriff's staff will enjoy even large raises than the data in its exhibit shows. Regardless of any other fact, the record shows that the Sheriff can find the money to pay his staff. This fact goes a long way toward undermining the contention that the department cannot afford to pay the union membership what it is asking.

The second question is whether the Union's demand is justified by the facts. It is clear from the comparables data supplied by the Union that the deputy sheriffs are not as well paid as some other Sheriff's department deputies in the area. The data also shows that there are a number of other departments that pay less. Moreover, the data show that the corrections officers are close to the top of the comparables list. Given the fact that the two units are being merged, the wage recommendation must take into account the ranking of the

entire department with respect to wages in the surrounding labor market. In addition, the Sheriff's financial condition must be taken into consideration when a wage recommendation is put forward. Given the entire record, the Fact Finder believes that a reasonable wage package is three (3) percent in the first year and three and one-half (3 1/2) percent in each of the next two years. This recommendation is in line with the wage increases negotiated by other sheriff's departments throughout the State.

There are two other parts to the Union's wage demand. First, the Union is asking for a shift differential. Shift differentials are standard in both the public and private sector; therefore, the Union's position on this issue is unexceptional. However, the Union justified its demand with the statement that the only reason that it put forth the demand was because the Sheriff indicated that it was reasonable. The data presented at the hearing do not show that the Sheriff can afford to pay for a new wage supplement. The Fact Finder believes that the base wage recommendation is reasonable and that the Department's financial problems preclude any further wage supplements. Consequently, the Fact Finder is recommending the Sheriff's position as stated at the hearing on this issue.

The final part of the Union's demand is that any corrections officer who has earned a Law Enforcement Certificate be paid according to the deputy's pay scale. The corrections officers point out that they have earned certification as a deputy and they believe that they should be paid for this certification. In addition, they argue that the fact they are certified helps the department when there is a

need to hire a new deputy. That is, they believe that there is a complement of trained replacements available; this lowers hiring, training, etc., costs.

The Sheriff argues that a corrections officer is not a deputy. Furthermore, the Department has never paid a corrections officer as a deputy and sees no reason to start a new practice especially at a time of financial hardship.

The Fact Finder agrees with the Department's position on this issue. The rule in any compensation scheme is that a person is paid for the job that he/she performs. The fact that the corrections officers earn a Law Enforcement Certificate does not change the fact that they are corrections officers. Moreover, the evidence shows that the corrections officers are near the top of the comparables list in terms of pay. Therefore, there is no reason to recommend an increase in their pay to the deputy pay scale. The fact that the corrections officers earn Law Enforcement Certificates makes them more attractive candidates for deputy positions if and when these positions come open. If they are hired as a deputy, then the higher pay scale recompenses them for their training. Moreover, the record does not show that any other department pays corrections officers according to the deputy sheriff wage scale. The record also shows that the corrections officers are not underpaid in the Carroll County labor market.

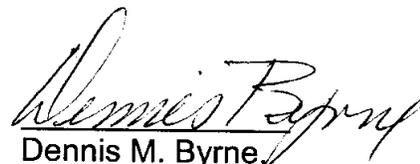
Finding of Fact: The record shows that the Sheriff's department has financial problems, but these problems do not preclude the Sheriff from paying his employees a reasonable wage.

Suggested Language: Appendix A – Wages

The wage scale shown in appendix A shall be amended to show a three (3) percent wage increase in 2003, a three and one-half (3 ½) percent increase in 2004, and a three and one-half (3 ½) percent increase in 2005.

Note: All other agreements between the parties shall be incorporated by reference into the final agreement.

Signed and dated this 25th day of July 2003 at Munroe Falls, Ohio.


Dennis M. Byrne
Fact Finder