

**STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
FACT FINDER'S REPORT**

STATE EMPLOYMENT  
RELATIONS BOARD

2003 NOV -3 A 10: 38

In the Matter of Fact Finding	)	SERB 03MED03-0316 and 0317
	)	
-between-	)	
	)	
Hardin County Sheriff's Office	)	Daniel L. Merritt Esq.
	)	
The Employer	)	Fact Finder
	)	
-and-	)	
	)	
Ohio Police Benevolent Association	)	
	)	
The Union	)	27 October 2003
	)	
	)	

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**APPEARANCES**

For the Employer

Rufus B. Hurst Esq.	Attorney for Employer
Kenneth E Hilty	Chief Deputy Sheriff
David V Dyer	Lieutenant Sheriff

For the Union

Matthew B. Baker Esq.	Attorney For Union
Ron Lee	Sergeant
Dwight Underwood	Deputy

Fact Finder

Daniel L. Merritt Esq.

## **BACKGROUND**

The Hardin County Sheriff's Office (herein called the "Employer") and the Ohio Patrolmen's Benevolent Association (herein called the "Union") are the parties involved in the current labor dispute. The bargaining unit consists of approximately sixteen (16) employees classified as Deputy Sheriffs or Deputy Sheriff Sergeants. This is an initial Collective Bargaining Agreement for the negotiating parties. No prior Collective Bargaining Agreement exists.

The parties met for negotiations and reached agreement on most of the Articles. The parties failed to reach agreement on ARTICLE 19 SICK LEAVE Section 19.11 Sick Leave Conversion Upon Retirement and Section 19.14 Annual Conversion. The parties also failed to reach agreement upon ARTICLE \_\_\_ Wages for the second year of a proposed three year Collective Bargaining Agreement. On 23 May 2003 the State Employment Relations Board appointed Daniel L. Merritt Esq. As Fact Finder in compliance with Ohio Revised Code Section 4117.14 (c)(3).

A fact finding hearing was scheduled and held on Wednesday 15 October 2003 at the Hardin County Courthouse in Kenton, Ohio. Mediation was offered to the parties but was not mutually accepted. The parties stipulated that the remaining issues involved two sections of the Sick Leave ARTICLE and one part of three years proposed for a new ARTICLE on WAGES. The parties, especially the Union presented a great deal of documentary evidence to support their respective positions on each issue. The Union also called SGT. Ron Lee to

provide testimony regarding the history of certain issues. The witness was duly sworn in to testify. The Fact Finder considered all testimony presented and all of the extensive documentation submitted by the parties in reaching the recommendations presented below. The Fact Finder considered the criteria listed in Rule 411 7-9-05(K)(J) of the State Employment Relations Board. The issues to be addressed in the report include: Article 19 SICK LEAVE Section 19.11 Sick Leave Conversion Upon Retirement Section 19.14 Annual Conversion and ARTICLE\_\_\_Wages.

## **ISSUES AND RECOMMENDATIONS**

### **I. ARTICLE 19 SICK LEAVE**

#### **Union Position:**

The Union proposed that the Collective Bargaining Agreement include the current Hardin County Policy that has been followed since a 1994 County Resolution. It reads:

Section 19.11 Sick Leave Conversion Upon Retirement Any employee upon retirement under the Public Employees Retirement System (PERS) may convert one-half of their accumulated and unused sick six hundred (600) hours at the employee's rate of pay at the time of the employee's retirement.

#### **Employer Position:**

The Employer proposed to have employees who have accumulated nine hundred sixty (960) hours or less of sick leave upon the date the Collective Bargaining Agreement is signed to convert upon retirement up to two hundred

forty (240) hours of sick leave at the employee's rate of pay at retirement. The proposal also contained an accommodation for those who currently have hours in excess of two hundred forty hours. The Employee's proposal was the same as that provided by Ohio law.

Recommendation:

The Fact Finder agrees that the current Hardin County Policy regarding "Sick Leave Conversion Upon Retirement" should be continued and followed. The language of ARTICLE 19 SICK LEAVE Section 19.11 should be;

Section 19.11, Sick Leave Conversion Upon Retirement Any employee upon retirement under the Public Employees Retirement System (PERS) may convert one-half of their accumulated and unused sick leave to a maximum amount of six hundred (600) hours at the employee's rate of pay at the time of the employee's retirement.

**II ARTICLE 19 SICK LEAVE**

**Section 19.14, Annual Conversion**

Union Position:

The Union proposed that the current and past practice of Hardin County be retained. The Union submitted extensive documentation to support the principal of past practice and the practice over the years as related to the Employer and Union.

Employer Position:

The Employer proposed that any employee who had at least ten (10) years seniority and has more than six hundred (600) hours of accumulated sick leave could receive a cash payment for up to 240 hours of unused accumulated sick leave each year. No employee would lose compensation for any amount of sick leave accumulated in their bank. The Employer's proposal is focused upon reducing future cost liability.

Recommendation:

The Fact Finder reviewed the numerous legal cases regarding past practice and the documents and testimony regarding the particular practice with Hardin County Sheriff's Office. Factors to consider in past practice include ; the frequency of the past practice including breadth of practice; knowledge of practice and mutuality of the practice; consistency of the practice over the years; longevity of the practice; factors relating to the creation of the practice and whether the practice was discussed during negotiations.

The Fact Finder has reviewed all of the documentation related to this issue and determined that the practice of sick leave conversion was mutual and widespread; that the practice of sick leave conversion has been consistent; that the practice has been in practice for at least nine years and probably longer; that the creation of the practice satisfied the need of both parties at initiation of the practice and since that time that the past practice issue may have been raised during the negotiations for this initial Collective Bargaining Agreement between

the parties. The above conclusions lead the Fact Finder to accept the Union position that a past practice existed. The Fact Finder recommends that the Collective Bargaining Agreement contain the following language;

## **ARTICLE 19**

### **SICK LEAVE**

Section 19.14. Annual Conversion Employees who have accumulated sick leave credit in excess of six-hundred (600) hours shall annually have the option of receiving cash benefit conversion at one-hundred (100%) for part of the balance of their unused sick leave. Employees shall be permitted to receive a cash payment for up to two-hundred-forty (240) hours of accrued, but unused sick leave provided that the cashing-out of sick leave does not reduce the sick leave benefit bank below six-hundred (600) hours. The cash benefit conversion shall equal one (1) hour of base rate pay for every two (2) hours of accrued, but unused sick leave converted. Any employee who wishes to exercise the sick leave conversion option must notify the Sheriff or his designee in writing no later the tenth day of November each year.

## **III ARTICLE WAGES**

### **Union Position**

The parties are in agreement concerning the issue of wages for the year 2003 and 2005 and longevity pay. The parties differ on the wage increase for the year 2004. The Union proposed that the wage increase for 2004 be seven percent (7%). The Union received NO increase for 2003 and has a wage reopener for

the year 2005. The Union submitted many documents including extensive county budget audit information to support their wage request.

#### Employer Position

The Employer proposed that a wage increase be given to the Union that is "equal to that provided to other County employees where wages are paid from the general fund added to the wages in effect as of 31 December 2003." The county is being very prudent given current economic conditions. The general fund share for the Sheriff's Office was reduced and the share for 2004 will also face a budget reduction of approximately six percent. The Employer's wage proposal is responsible and reasonable given current and projected economic conditions.

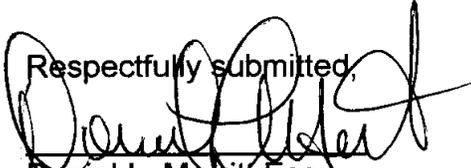
#### Recommendation:

The Fact Finder after a careful review of financial documents submitted by the parties concludes that the County has an ability to pay for an increase in wages but prudent fiscal management and budgeting cannot support the wage increase of seven percent for 2004 at this time. Economic conditions are improving and the future does indeed look promising, but for now the Fact Finder will only support a three and one-half percent wage increase for the year 2004. The language should read:

ARTICLE\_\_  
WAGES

Section 01 Wages Effective 1 January 2004, all employees shall receive a three and one half percent (3.5%) wage increase.

27 October 2003  
Sylvania, Ohio

Respectfully submitted,  
  
Daniel L. Merritt Esq.  
Fact Finder