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STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF FACT-FINDING	:	
	:	2003-MED-09-852
Between the	:	SERB Case No.: 2003-MED-09-0858
	:	
ATHENS COUNTY SHERIFF,	:	
	:	Date of Fact-Finding Hearing:
Employer	:	February 6, 2004
	:	
and the	:	
	:	
OHIO PATROLMEN'S BENEVOLENT	:	Howard D. Silver
ASSOCIATION,	:	Fact-Finder
	:	
Union	:	

REPORT AND RECOMMENDATION OF FACT-FINDER

APPEARANCES

For: Athens County Sheriff, Employer

Kenneth L. Edsall  
Regional Supervisor  
CLEMENS, NELSON & ASSOCIATES, INC.  
5100 Parkcenter Avenue, Suite 120  
Dublin, Ohio 43017

For: The Ohio Patrolmen's Benevolent Association, Union

Matthew B. Baker, Esquire  
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175 South Third Street, Suite 820  
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This matter came on for fact-finding hearing at 11:00 a.m., February 6, 2004, within a basement conference room among the offices of the Athens County Sheriff, 13 West Washington Street, Athens, Ohio. Both parties were afforded a full and fair

opportunity, on an issue by issue basis, to present to the fact-finder a settlement offer, along with supporting evidence and arguments, for each unresolved issue that was subject to collective bargaining as provided by Ohio Revised Code section 4117.08, and upon which the parties have reached impasse.

This fact-finding process proceeds under the authority of Ohio Revised Code section 4117.14(C)(3) . The fact-finding hearing and the fact-finding procedures followed in this process are governed by Ohio Administrative Code rule 4117-9-05.

#### BACKGROUND

The parties to this fact-finding process, the Athens County Sheriff, the Employer, and the Ohio Patrolmen's Benevolent Association, the Union, are now engaged in the formulation of a successor collective bargaining agreement for a bargaining unit comprised of fourteen to fifteen full-time Athens County deputy sheriffs, a full-time fiscal officer, and two full-time transportation officers. The parties' predecessor collective bargaining agreement was in effect from December 15, 2000 through December 14, 2003.

The issues separating the parties are: leaves and leaves of absence, insurance, wages, and duration of agreement.

Both parties have satisfied the requirements of Ohio Revised Code section 4117.14 and Ohio Administrative Code section 4117-9-05

in moving this matter to fact-finding and in presenting this matter to the fact-finder.

FACT-FINDING RULES - OHIO ADMINISTRATIVE CODE RULE 4117-9-05(K)(1)-(6)

Ohio Administrative Code rule 4117-9-05(K) provides that the fact-finder shall take into consideration, in making recommendations to the parties, the criteria expressed in paragraphs (K)(1)-(6) of this rule. Ohio Administrative Code section 4117-9-05(K)(1) refers to past collectively bargained agreements between the parties, if any. Ohio Administrative Code section 4117-9-05(K)(2) refers to a 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 classifications involved. Ohio Administrative Code section 4117-9-05(K)(3) refers to the interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service. Ohio Administrative Code section 4117-9-05(K)(4) refers to the lawful authority of the public employer; Ohio Administrative Code section 4117-9-05(K)(5) refers to stipulations by the parties; Ohio Administrative Code rule 4117-9-05(K)(6) refers to such other factors, not confined to those listed in this rule, 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. In contemplating and making recommendations intended to resolve the issues separating the parties from their successor collective bargaining agreement, the fact-finder has kept in mind and has applied the criteria expressed in Ohio Administrative Code rule 4117-9-05(K)(1)-(6).

#### FINDINGS OF FACT

1. The parties to this fact-finding process are the Athens County Sheriff and the Ohio Patrolmen's Benevolent Association.
2. The parties are engaged in the formulation of a successor collective bargaining agreement.
3. The parties' predecessor collective bargaining agreement was in effect from December 15, 2000 through December 14, 2003.
4. The bargaining unit is comprised of fifteen full-time Athens County Deputy Sheriffs, a full-time fiscal officer, and two full-time transportation officers.
5. The bargaining unit also contains the classifications cook and corrections officer, neither of which is now being utilized.
6. The issues separating the parties are leaves and leaves of absence (military and paternal leaves); insurance; wages; and duration of agreement.
7. The parties' predecessor collective bargaining agreement provided that an employee on military leave is entitled to an approved absence without loss of pay for such time as the employee is in the military service on field

training or active duty, for period not to exceed a total of 176 hours in any one calendar year.

8. Under certain circumstances an employee called to military service could be required to leave civilian employment, and prior to assuming an active military role, could await to assume the active military role and military pay by more than the hours contemplated within the parties' predecessor agreement.
9. The discretionary authority proposed by the Union to be assumed by the Sheriff is a discretionary authority which the Sheriff, at the fact-finding hearing, expressed a preference not to possess.
10. The parties' predecessor collective bargaining agreement provides for five days of sick leave which may be taken as paternity leave; the Union proposes this amount be doubled to ten days.
11. Family and Maternity Leave Act (FMLA) is unpaid leave, allowing up to twelve weeks' unpaid leave.
12. The past practice between the parties was that sick leave could be used for up to twelve weeks for paternity leave.
13. Recently, two employees were allowed to use sick leave to the past practice's full extent, but a sergeant was refused and subsequently allowed to use four weeks.
14. The FMLA contemplates five days of unpaid leave if there are no medical complications; if medical complications occur, additional FMLA leave may be secured.
15. The parties' predecessor collective bargaining agreement obligated the Employer to pay 100% of the total single rate premium for insurance coverage and obligated the Employer to pay 90% of the total premium for family coverage.

16. Over the past five years the costs of providing health insurance to bargaining unit members by the Employer have increased annually by an average of 9%.
17. Single coverage at this time costs \$394.00 per month; family coverage costs \$989.00 per month.
18. Average monthly costs for providing health insurance in southeast Ohio as reported by the State Employment Relations Board's Clearinghouse is \$314.88 for single coverage, and \$790.92 for family coverage.
19. The health insurance coverage to be utilized for the bargaining unit is the same insurance coverage used throughout Athens County for both organized and non-organized county employees.
20. Non-organized employees of Athens County were informed on July 25, 2003 that their contributions for health insurance coverage would increase.
21. The Union proposes the retention of the language within the parties' predecessor collective bargaining agreement as to health insurance.
22. The Employer's proposal on health insurance recommends no change in the first year of the successor collective bargaining agreement; a 5% contribution by an employee in the second year for single coverage; and a 15% contribution in the second year for family coverage.
23. The Employer's health insurance proposal for the third year of the parties' successor agreement has the employee making a 10% contribution for single coverage, and a 20% contribution for family coverage.
24. The increased contributions proposed by the Employer beginning in the second year of the parties' successor collective bargaining agreement are reasonable and in accordance with trends in providing increasingly

expensive health insurance coverage to bargaining unit members and their families.

25. The Union recommends wage increases for the bargaining unit at 5.5%, 5.5%, and 5.5%, for, respectively, December, 2003; December, 2004; and December, 2005.
26. The Employer proposes wage increases of 0%, 2%, and 3% for the three years of the parties' successor agreement.
27. Athens County Deputy Sheriffs are paid less than officers of the Athens City Police Department and officers of the Ohio University Police Department.
28. The Athens County Sheriff receives appropriations of funds from the Athens County Commissioners to meet the costs of operations by the Athens County Sheriff's Department.
29. The average hourly annual wage of a bargaining unit member is \$32,206.72, requiring average Employer wage costs amounting to \$39,306.43.
30. Among fifteen Ohio counties compared to Athens County, Athens County's Deputy Sheriffs have a starting wage that is about 12% above the average starting wage of these fifteen counties, and a maximum rate of pay that is about 10% above the average maximum rate of pay of these fifteen counties.
31. From 2000 to 2004, the average wage increase among the fifteen counties compared to Athens County amounted to 3.4%.
32. Effective December 31, 2000, Athens County, Ohio had an unencumbered carryover balance of \$1,317,165.25.
33. Athens County has an ability to pay a greater wage increase than proposed by the Employer; Athens County, Ohio does not possess the ability to pay for the wage increase proposed by the Union.

34. The Union proposes longevity payments be increased from \$80.00 to \$100.00 for each year after five years of continuous service, in keeping with the level of longevity pay paid to sergeants and lieutenants under their collective bargaining agreement.
35. The Union proposes a shift differential of 10% above the base rate of a topped out Deputy Sheriff when an employee is designated to act in the capacity of a shift supervisor in the absence of both a sergeant and a lieutenant, in addition to any other compensation due in accordance with the parties' collective bargaining agreement, for every hour worked in the capacity of a shift supervisor.
36. City of Athens police officers required to perform at a higher rank for a minimum of one hour are paid an additional \$3.00 per hour for the hours actually worked in the higher rank.
37. Ohio University Police Department are paid a 5% to 7% premium for working in a higher rank.
38. The Union proposes a shift differential of \$.25 per hour for each hour worked during the 11:00 p.m. to 7:00 a.m. shift, and a shift differential of \$.50 per hour for each hour worked between 3:00 p.m. and 11:00 p.m.
39. The consumer price index, indicating the level of inflation for year 2003, was 1.9%.
40. The shift differentials proposed by the Union, as calculated by the Employer, would require additional costs in the amount of \$6,9897.00.
41. The Employer estimates that the increased cost to the Employer over the three years of the successor collective bargaining agreement for the increase from \$80.00 to

\$100.00 in longevity payments for each year after five years of continuous service would be \$8,140.00.

#### ARTICLE 22 - LEAVES AND LEAVES OF ABSENCE

The Union proposes adding language to Article 22, section 22.3(B) which addresses military leave for employees who are members of the Ohio National Guard, the Ohio Defense Corps, the State and Federal Militia, or other reserve components of the Armed Forces of the United States. The language of this section within the parties' predecessor agreement, agreed by the parties to be included in the parties' successor agreement, entitles an employee on military leave to an approved absence without loss of pay for such time as the employee is in the military service on field training or active duty, for periods not to exceed a total of 176 hours in any one calendar year. The Union proposes that in addition to the aforementioned language, the following language be included in the parties' successor collective bargaining agreement:

Upon approval of the Sheriff of Athens County, military leave of up to fifteen (15) additional eight (8) hour days [or one hundred twenty (120) hours] may be granted annually upon the Governor of the State of Ohio or the President of the United States declaring that a state of emergency exists, and the member is ordered to active military duty for the purpose of that emergency.

In support of this proposal the Union offered the testimony of Aaron Maynard, an Athens County Deputy Sheriff and Director of the Union. Mr. Maynard was activated for military service in November, 2001 and served for nineteen months. Mr. Maynard explained that

from the time he was required to leave his civilian status behind and assume an active military role, there was a gap which provided Mr. Maynard with neither military pay nor pay under Article 22, section 22.3(B). Mr. Maynard emphasized that the language of the proposal leaves the determination of the additional leave time to the discretion of the Sheriff.

The Employer proposes that the language of the predecessor agreement be brought forward to the parties' successor agreement unchanged, without the additional language proposed by the Union. The Employer contended at the fact-finding hearing that the Union is attempting to foist upon the Sheriff a power the Sheriff does not seek, a power that, once ensconced in the language of the parties' successor collective bargaining agreement, will be construed to imply that this authority is to be exercised. The Employer notes that if the Sheriff declines to utilize the language proposed by the Union to be included in the successor agreement, the Sheriff will appear heavy-handed. The Employer notes that the sergeants and lieutenants' bargaining unit has had applied to it the same language as appears in the parties' predecessor agreement for the past twenty years.

The Employer stresses the wide variety of leaves available to bargaining unit members, including paternity leave, FMLA leave, and sick leave.

The Union also proposes that the maximum number of sick leave days which may be used in the form of paternity leave be increased to ten days, noting that this requires only the use of an accrued

benefit, sick leave, in what is a unique experience to an employee, the birth of a child.

The Union points out that the Family and Maternity Leave Act (FMLA) provides for unpaid leave but notes that it has been a past practice that employees have been permitted to use sick leave for the full twelve weeks of the leave. The Union notes that in recent times two employees have been permitted the full extent of the past practice, but a sergeant was refused and then permitted four weeks of leave. The Union claims that asking for ten days of sick leave for use during paternity leave presents an attempt by the Union to find a happy medium.

The Employer understands that FMLA allows five days of paternity leave if no medical complications occur, but makes provision for additional leave in the event of medical complications.

#### DISCUSSION

The fact-finder does not recommend the language proposed by the Union which intends to empower the Sheriff to pay additional compensation to employees called to active military duty. The fact-finder's reluctance is based on a disinclination to recommend that a discretionary power be assumed by a party who does not seek the authority proposed. The Union's proposal intends a benefit not historically recognized by the Employer, a benefit, if included in the parties' successor collective bargaining agreement, which could

be interpreted to imply an intention that this authority be exercised.

The fact-finder finds the additional 120 hours of leave with pay proposed by the Union to be an arbitrary amount, as this benefit could just as easily have made possible 240 or 360 or 480 additional hours as needed by an employee who has been called to active military duty. The fact-finder understands the power to be imposed upon the Sheriff as proposed by the Union to be based upon a humanitarian motive, but the fact-finder does not find a sufficient factual or legal basis upon which to recommend the imposition of this additional burden upon the Employer.

The fact-finder does not recommend the inclusion of the language proposed by the Union on this issue and therefore recommends that the language of Article 22, section 22.3(B) in the parties' predecessor collective bargaining agreement be brought forward to the parties' successor collective bargaining agreement unchanged.

The fact-finder recommends the increase in paternity leave from five days to ten day as proposed by the Union in Article 22, section 22.3(D). The fact-finder is persuaded that the birth of a child is a sufficiently important event to the employee and to the employee's family that the additional leave proposed by the Union is warranted. The fact-finder acknowledges that the additional use of this benefit comes from accrued sick leave, a benefit already earned by an employee through continuous employment. The fact-finder understands the additional burden such a recommendation may

make upon the Employer, including complicating scheduling and causing additional costs, but the circumstances of this benefit are such that the fact-finder remains persuaded that the alteration as proposed by the Union merits recommendation.

Recommended Language - Article 22 - Leaves and Leaves of Absence

Section 22.1 - Current language - no change.

Section 22.2 - Current language - no change.

Section 22.3(A), (B), (C), and (E) - Current language -  
no change.

Section 22.3(D) Paternity Leave. Leave for male employees may be deducted from sick leave for care of the employee's wife and family during the post-natal period. Such sick leave shall be for a maximum period of ten (10) consecutive workdays. Written requests for this purpose must be submitted to the Employer. All requests must be accompanied by medical documentation.

ARTICLE 26 - INSURANCE

The Union proposes that Article 26, Insurance, as expressed in the parties' predecessor collective bargaining agreement, be brought forward for inclusion in the parties' successor collective bargaining agreement unchanged. The language of Article 26 in the parties' predecessor agreement obligated the Employer to pay the total single rate premium for insurance coverage and obligated the Employer to pay 90% of the total premium for family coverage.

The Employer's proposal on insurance suggests no change in the coverage provided in the parties' predecessor agreement for the first year of the successor collective bargaining agreement. Under

the language proposed for Article 26 by the Employer, effective the first day of the first full pay period containing the first anniversary of the successor collective bargaining agreement, the Employer would be obligated to pay 95% of the total single premium for insurance coverage and the employee receiving such coverage would pay 5% of the premium via payroll deduction. The Employer's proposal would also make effective the first day of the first full pay period containing the first anniversary of the successor collective bargaining agreement an obligation by the Employer to pay 85% of the family premium and an employee opting for family coverage would be required to pay 15% of this premium.

Effective the first day of the first full pay period containing the second anniversary of the parties' collective bargaining agreement, the Employer's proposed language would have the Employer pay 90% of the single coverage premium and the employee pay 10% for the single premium coverage via payroll deduction. Effective the first day of the first full pay period containing the second anniversary of the parties' successor collective bargaining agreement, the Employer would pay 80% of the family premium and an employee opting for family coverage would be responsible for 20% of the cost of family coverage via payroll deduction.

The Employer's proposal would maintain a \$25,000 term life insurance policy for bargaining unit employees and maintain dental and optical insurance policies substantially equivalent to, and to be based upon, the same percentages of contribution in effect upon

the adoption of the parties' successor collective bargaining agreement.

The Employer notes that over the past five years insurance coverage costs have risen annually by an average of 9%. Single coverage at this time costs approximately \$394 per month or \$4,729 annually; while family coverage costs \$989 per month or \$11,869 annually. The Employer notes that based on information secured from the State Employment Relations Board Clearinghouse, average monthly costs in southeast Ohio for medical insurance are \$314.88 for single coverage and \$790.92 for family coverage. The Employer notes that the state average is \$372 for single coverage and \$932 for family coverage.

The Employer notes that the health insurance coverage to be utilized for the bargaining unit is the same insurance coverage used throughout Athens County at the direction of the Athens County Commissioners. This insurance coverage is used throughout Athens County for organized and unorganized county employees. The Employer notes that, through a letter dated July 25, 2003, non-bargaining unit employees of the county were informed that contributions from employees for health insurance costs would increase.

#### DISCUSSION

There is no question that the costs of providing health insurance coverage for full-time employees is increasing annually at a significant rate. Over the past five years, on average, costs

to provide Athens County employees, organized and unorganized, with health insurance coverage have increased 9% per year.

The fact-finder views health insurance coverage as an important benefit to bargaining unit members but a benefit that is becoming increasingly expensive to provide. At present it is unusual to find an employer who is able to commit, over the next three years, to pay 100% of health insurance costs necessary for coverage of the bargaining unit. While 100% of single coverage costs and 95% of family coverage costs have been the norm in the past, the increasing cost of health insurance requires a contribution from employees who avail themselves of this benefit.

In an effort to make the transition from very little contribution to a more substantial contribution, the Employer's proposal makes no change for one year. After that year the contributions from the employees who avail themselves of health insurance coverage through employment with the bargaining unit would require a 5% contribution for one year, and a 10% contribution after two years for single coverage, and 15% for the second year and 20% for the third year for family coverage. These contributions appear to the fact-finder to be reasonable and necessary to ensure that adequate health insurance coverage, and dental and optical coverage, may be provided to those bargaining unit members who choose to secure their health insurance coverage through their employment with Athens County.

The fact-finder understands that this recommendation increases costs to bargaining unit members, but based upon the present

realities attendant to providing health insurance coverage the fact-finder finds these contributions reasonable and necessary.

The fact-finder therefore recommends the insurance proposal proposed by the Employer.

RECOMMENDED LANGUAGE - ARTICLE 26 - INSURANCE

Section 26.1. The Employer shall continue to provide benefits substantially equivalent to the level of benefits currently provided and shall continue to pay the total single rate premium for the current hospitalization insurance for all bargaining unit employees not having similar hospitalization insurance coverage elsewhere. Such policy shall include \$250,000.00 Major Medical Insurance coverage.

The Employer shall continue to provide benefits substantially equivalent to the level of benefits currently provided and shall contribute the dollar amount equal to ninety (90%) percent of the total premium toward the family plan premium.

Section 26.2. Effective the first day of the first full pay period containing the first anniversary of this Agreement, the Employer shall pay ninety-five (95%) percent of the total single premium for hospitalization insurance for employees not having similar coverage elsewhere, and employees opting for single coverage hospitalization shall pay five (5%) percent via payroll deduction.

Effective the first day of the first full pay period containing the first anniversary of this Agreement, the Employer shall pay eighty-five (85%) percent of the total family premium for hospitalization insurance for employees not having similar coverage elsewhere, and employees opting for family coverage hospitalization shall pay fifteen (15%) percent via payroll deduction.

Section 26.3. Effective the first day of the first full pay period containing the second anniversary of this Agreement, the Employer shall pay ninety (90%) percent of the total single premium for hospitalization insurance for employees not having similar coverage elsewhere, and employees opting for single coverage hospitalization shall pay ten (10%) percent via payroll deduction.

Effective the first day of the first full pay period containing the second anniversary of this Agreement, the Employer shall pay eighty (80%) percent of the total family premium for hospitalization insurance for employees not having similar coverage elsewhere, and employees opting for family coverage hospitalization shall pay twenty (20%) percent via payroll deduction.

Section 26.4. The Employer agrees to provide, at no cost to the employee, a \$25,000.00 term life policy for bargaining unit employees.

Section 26.5. The Employer agrees to maintain and provide dental and optical insurance policies substantially equivalent to, and to be paid based upon, the same percentage of contribution that was in effect upon the adoption of this Agreement.

#### ARTICLE 27 - WAGE SCHEDULE

The Union proposes that the annual wage increases for the three years of the parties' successor collective bargaining agreement be 5.5%, 5.5%, and 5.5%. The Union proposes that these wage increases occur effective the last pay period in December, 2003; the last pay period in December, 2004; and the last pay period in December, 2005.

The Union presents the case of a bargaining unit member under the Employer's proposed wage package of 0%, 2%, and 3% for the parties' successor agreement. Taking into consideration the costs of additional health insurance coverage for a family plan, the Union shows that in the second year of the contract the net effect of the wage increase proposed by the Employer amounts to .3%, and in the third year of the contract the net effect is 1.3% of base wage.

The Union presented Union Exhibit 2 which compares the starting and top wage rates of Athens County Deputy Sheriffs to officers of the Athens City Police Department and the Ohio University Police Department. The average starting wage rate among the Athens City Police Department and the Ohio University Police Department is \$31,501.70, while an Athens County Deputy Sheriff's starting wage is \$27,844.02, a difference of 11.6%. The average top wage rate for the Athens City Police Department and the Ohio University Police Department is \$40,279.20; the top rate for an Athens County Deputy Sheriff is \$33,886.21, a difference of 15.8%.

The Union presented Union Exhibit 3, a 2003 deputy sheriff wage comparison among counties with populations between 50,000 and 75,000. Athens County has a population of 62,223. Among the eleven counties compared to Athens County, the average starting wage for deputy sheriffs is \$28,811.41, while the starting wage for Athens County Deputy Sheriffs is \$27,844.02, a difference of 3.5%. The average top wage rate among the eleven county sheriffs' departments compared to the Athens County Sheriff's Department was \$35,317.79,

with the top rate for Athens County Deputy Sheriffs is \$33,886.02, a difference of 4.2%.

The Athens County Sheriff operates upon a calendar fiscal year.

The Union presented Union Exhibit 4 which compares wage increases among eleven county sheriffs' departments within counties with populations of 50,000 to 75,000, for 2003 and 2004. The 2003 wage increases, on average, amount to 3.5%; the 2004 wage increases among these counties average 3.25%.

The Union presented Union Exhibit 5, a wage increase report dated December 31, 2003 from the State Employment Relations Board's Clearinghouse, comparing wage increases from 2000 through 2003 among the Athens County Sheriff's Department, the Ohio University Police Department, and the Athens City Police Department. These wage increases show that the Athens County Sheriff's Department received a 4% wage increase effective December 15, 2000; a 4% wage increase effective December 15, 2001; and a 4.5% wage increase effective December 15, 2002. The Ohio University Police Department received a 3% wage increase effective July 1, 2001, 2002, and 2003; the Athens City Police Department received annual wage increases of 3.5% from December, 2001 through December 14, 2003.

The Union, within its wage proposal, recommends that longevity payments expressed within Article 27, section 27.7(A) of the parties' collective bargaining agreement, set at \$80 in the predecessor agreement, be increased to \$100. Under the Union's proposal those employees completing a minimum of five years of

total continuous service with the Athens County Sheriff's Department would receive longevity pay supplements in addition to their regular base hourly rate of pay, at a rate of \$100 for each year of service after the fifth year of service. The Union presented the collective bargaining agreement between the Athens County Sheriff and the Ohio Patrolmen's Benevolent Association for a bargaining unit comprised of sergeants and lieutenants, in effect from January 1, 2002 through December 31, 2004. The Union notes that within this contract, at Article 23, section 23.2, the longevity payments call for an annual rate of \$100 for each year of service after the fifth year. The Union seeks parity in this regard with the sergeants and lieutenants' bargaining unit through the Union's proposal.

Also within the Union's wage proposal is new language, to replace language in section 27.9 of Article 27 of the parties' predecessor agreement. The language of this section in the parties' predecessor agreement calls for thirty minutes of compensatory time to be paid in compensation for every eight hours worked by a member of the bargaining unit in the capacity of a shift supervisor. This circumstance involves a bargaining unit member assuming the role of officer-in-charge.

The Union's proposed language provides that an employee who is designated to act in the capacity of a shift supervisor in the absence of both a sergeant and a lieutenant shall receive a base hourly pay rate equal to an amount 10% above the base rate of a topped out deputy sheriff, in addition to any other compensation

due in accordance with the parties' collective bargaining agreement, for every hour worked in the capacity of a shift supervisor.

The Union presented Union Exhibit 7, the collective bargaining agreement between the City of Athens, Ohio and the Fraternal Order of Police, Ohio Labor Council, Inc. This collective bargaining agreement is in effect from December 16, 2001 through December 11, 2004, and covers City of Athens police officers. In section 24.1 of this collective bargaining agreement an employee who is temporarily required to perform at a higher rank for a minimum of one hour is to be paid an additional \$3.00 per hour for the hours actually worked in the higher rank. The Union points out that the Ohio University Police Department pays a 5% to 7% premium for working in a higher rank, depending on the officer's pay step.

The Union also proposes that an employee who works between the hours of 11:00 p.m. and 7:00 a.m. be paid an additional twenty-five cents per hour for each hour worked during this time period in addition to the regular hourly rate, and an employee working between 3:00 p.m. and 11:00 p.m. be paid an additional fifty cents per hour for each hour worked during this time period, in addition to the regular hourly rate.

The Employer proposes wage increases for the three years of the parties' successor agreement in the amount of 0%, 2%, and 3%. The Employer contends that this proposal is constrained by the Sheriff's ability to pay. It is noted that the Athens County Sheriff receives appropriations from the Athens County

Commissioners for funding the operations of the Athens County Sheriff's Department, and the appropriations made to the Athens County Sheriff by the Athens County Commissioners do not contain sufficient funds for big wage increases. The Employer's wage proposal calls for a 2% wage increase effective the last pay period in December, 2004; and a 3% wage increase effective the last pay period in 2005.

The Sheriff points out that cost savings have been strenuously pursued within the department, including limiting overtime, terminating job perquisites such as bottled water and free coffee, cutting down on cell phone use, and using vehicles for longer periods of time. The Sheriff explained that a grant to the juvenile court for paying the Sheriff's Department to transport juveniles will probably not be available, decreasing revenues in that regard by about \$8,000. The Sheriff points out that he has tried to be realistic about the operations of the department in making the Employer's wage proposal.

The Employer referred the fact-finder to page C-3 within its prehearing written statement which presents baseline data as to the date of hire, annual hours, rate of pay (current rate plus longevity), total hourly rate, Employer PERS contribution, Workers' Compensation coverage, Medicare coverage, Employer insurance costs, and total Employer wage costs. This document shows an average hourly rate of \$15.48 among fifteen members of the bargaining unit, with average annual wages of \$32,206.72, requiring average Employer wage costs amounting to \$39,306.43.

The Employer referred the fact-finder to page C-5 of its prehearing written statement which presents a cost analysis of the Employer's wage proposal. In the first year no wage increase is proposed. In the second year fifteen employees, at an average annual wage of \$32,206.72 multiplied by 2% equals \$9,662, and when \$2,140 is added as a result of a 22.15% roll up, the increased amount is \$11,802. The third year increased costs as calculated by the Employer for the three years of the successor agreement amount to \$41,661.

At page C-11, the Employer presents its cost analysis of the Union's wage proposal, 5.5% for each year of the successor agreement. With the wages increased annually by 5.5%, and including a 22.15% roll up, the costs for the wage increases proposed by the Union over the three years of the successor agreement amount to \$201,975. Without the roll up costs, the increased cost for the Union's wage proposal amounts to \$165,351.

As to longevity which is proposed increased by the Union from \$80 to \$100 for each year beyond five, the Employer estimates that the increased costs to the Employer over the three years of the contract will amount to \$8,140.

The Employer points to C-15 of its prehearing written statement which compares fifteen Ohio counties, including Athens County, as to road deputies at minimum and maximum wage rates. The average minimum rate is \$24,978.29, with Athens County Deputy Sheriffs paid at \$27,844.02, a difference of about 12%. The average

maximum pay is \$30,809.17, with the maximum rate paid among Athens County Deputy Sheriffs at \$33,886.21, a difference of about 10%.

The fact-finder was referred to page C-17 of the Employer's prehearing written statement presenting wage increases from 2000 through 2004 for sixteen counties, including Athens County. The annual wage increase presented by this exhibit amounts to 3.4%.

The Employer presented page C-19 of the Employer's prehearing written statement which presents as its source the Athens County Commissioners, January, 2004. This exhibit presents general fund amounts budgeted to County General Fund Departments intended for wage raises. This document reflects that for calendar year 2002 the amount budgeted was 3%; for 2003 the amount was 1.5%; and for 2004 the amount was 0%.

As to the shift differential proposed by the Union, the Employer presented the number of hours scheduled for the 3:00 p.m. to 11:00 p.m. shift and the 11:00 p.m. to 7:00 a.m. shift and calculated that the extra costs to be imposed by the shift differentials suggested by the Union would amount to \$6,987.

The Employer referred the fact-finder to page C-23 of its prehearing written statement which compares wage increases paid by the Athens County Sheriff from 1997 through 2002, to the annual consumer price index, as a percentage, for these years. This document reflects wage increases in 1997 of 2.6%, with a CPI of 1.7%; wage increases in 1998 of 2.5% and 2.6% while the CPI was at 1.6%; wage increases in 1999 of 2.5% and 2.6% with the CPI at 2.7%; wage increases in 2000 of 2.5% and 4.0% with a CPI of 3.4%; a wage

increase in 2001 of 4.0% and a CPI of 1.6%; and a wage increase in December, 2002 of 4.5% with a CPI of 2.4%. This exhibit reflects that the CPI for year 2003 was 1.9%.

As to the officer-in-charge compensation proposed by the Union, the Employer pleads that this a matter of increased costs and proposes no change to the language for compensating service as a shift supervisor over eight hours.

The Union presented Union Exhibit 9, a report of the Athens County General Fund and Special Fund Year End Balances for 2000, 2001, and 2002. This document presents carryovers for 2000, 2001, and 2002 in the amounts, respectively, of \$2,943,283.00; \$2,406,909.00; and \$2,066,638.00.

The Union presented Union Exhibit 10 which is a letter from Jill A. Thompson, Athens County Auditor, Athens County, Ohio, presenting an unencumbered carryover balance, effective December 31, 2002, of \$1,256,272.02; and an unencumbered carryover balance, effective December 31, 2003, of \$1,317,165.25.

The Union notes that Athens County has a County Budget Commission comprised of the County Prosecutor, County Auditor, and County Treasurer, and this budget commission certifies to the Athens County Commissioners the monies available for the operation of the various departments of the county. The Union notes that the Commissioners are empowered to amend the certification through additional monies for additional appropriations of funds.

The Union is convinced that the Commissioners have the money available to fund the wage increases proposed by the Union which the Union describes as very reasonable. With explicit candor, the Union admitted: "They have it! We want it!"

#### DISCUSSION

The fact-finder, in considering the Employer's ability to pay and the relative level of starting and top wage rates for Athens County Deputy Sheriffs compared to county sheriffs' departments in counties of similar population, is not persuaded that the size of the Union's wage proposal is supported either by the funds available to underwrite the increased wage costs proposed by the Union or to narrow a purported wage gap in comparison to employees in other counties performing similar work. While it is true that there are significant wage differences between the Athens County Sheriff's Department and the Athens City Police Department and the Ohio University Police Department, the fact-finder believes that the better comparable is to other county sheriffs' departments in counties of comparable size.

While the 5.5%, 5.5%, and 5.5% wage increase proposed by the Union appears to the fact-finder to be too generous, especially in light of the uncertain economic conditions faced over the next three years, the fact-finder is also persuaded that the Employer's wage proposal is too low. The fact-finder is impressed by the fairness of the Union's proposals as to assuming a shift

supervisor's role and for shift differentials, but the added costs of these new benefits are believed by the fact-finder, at this time, to be prohibitive. In the absence of any change to the costs for requiring a bargaining unit member to serve as a shift supervisor in a higher classification, in the absence of additional costs for shift differentials, and in the absence of any increased costs for health insurance coverage, the fact-finder considers the wage increase proposal of the Employer to be too limited and therefore recommends a wage increase that lies between the two proposals from the parties.

The comparables presented by the parties indicate that over the last two to three years wage increases have averaged between 3.0% and 3.5%. The fact-finder is persuaded upon the evidence presented that the Employer is able to fund a wage increase for the parties' successor agreement amounting to 3.0%, 3.5%, and 3.5%. This is a substantial diminishment from the Union's wage proposal, but the fact-finder finds that the economic realities facing Athens County require this more modest proposal. The fact-finder also finds that in the absence of increased health care costs, shift differential costs, and officer-in-charge costs, the wage proposal recommended herein is affordable, reasonable, and fair. Such increases would maintain Athens County Deputy Sheriffs in their wages relative to other deputy sheriffs of counties with similar populations. The wage increase proposed would continue generally the average increases enjoyed by this bargaining unit over the past seven years.

The fact-finder also recommends as fair and affordable the increase in longevity pay from \$80.00 to \$100.00 as expressed in Article 27, section 27.7(A). This increase is in line with what was agreed for the sergeants and lieutenants, and will serve to help retain experienced, trained officers.

**RECOMMENDED LANGUAGE -ARTICLE 27 - WAGE SCHEDULE**

Section 27.1. Effective the first day of the first pay period after December 31, 2003, the following wage and pay steps shall be effective:

<u>Classification</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>
Deputy Sheriff	13.79	14.07	14.81	15.35	15.91	16.78
Transportation Officers	11.58	11.92	12.36	13.14	13.67	14.21
Fiscal Officer	12.77	13.55	14.35	15.21	15.81	16.70
Cook	10.98	11.17	11.30			
Correction Officer	11.92	12.36	13.14			

Section 27.2. Effective the first day of the first pay period after December 31, 2004, all wage steps set forth above shall be increased by 3.5%.

Section 27.3. Effective the first day of the first pay period after December, 2005, all wage steps set forth above shall be increased by 3.5%.

Section 27.4. Current language - no change.

Section 27.5. Current language - no change.

Section 27.6. Current language - no change.

Section 27.7. All employees who have completed a minimum of five (5) years of total continuous service with the Athens County Sheriff's Department shall receive a longevity pay supplement in addition to their regular base hourly rate of pay at the annual rate of one hundred (\$100.00) dollars for each year of service

after the fifth year of service. The longevity pay supplement shall be calculated by multiplying the number of years of service in excess of five years times one hundred (\$100.00) dollars, then dividing that amount by 2,080 to determine the amount added to the base hourly rate of pay. The longevity supplement shall be paid each pay period. The employee's last anniversary date of hire shall be used for computing years of service and longevity rate.

Section 27.8. Current language - no change.

Section 27.9. Current language - no change.

#### ARTICLE 33 - DURATION OF AGREEMENT

The Union proposes that the parties' successor collective bargaining agreement take effect on the day following the expiration of the parties' predecessor agreement. The Union therefore proposes that the successor agreement take effect December 15, 2003 and conclude December 14, 2006.

The Employer proposes that the parties' successor agreement take effect upon ratification by the parties and remain in full force and effect for the following three years.

#### DISCUSSION

The Athens County Sheriff's Department operates on a calendar fiscal year and there is a reluctance on the part of the fact-finder to order wage increases from within the current fiscal year that require the expenditure of funds for time within a prior fiscal year. The fact-finder therefore steers a middle course

between the parties' proposals on the duration of their successor agreement, recommending that the successor agreement take effect January 1, 2004, and conclude at midnight on December 31, 2006. The fact-finder includes within this recommendation wage increases which would be initiated on the first day of the first full pay period following December 31, 2003, 2004, and 2005, avoiding the necessity of prorating a wage increase for a partial pay period and avoiding the requirement that monies be expended in a current fiscal year for work performed in a prior fiscal year.

RECOMMENDED LANGUAGE - ARTICLE 33 - DURATION OF AGREEMENT

A. Except as otherwise provided herein, this Agreement shall be effective January 1, 2004 and shall remain in full force and effect until 12:00 Midnight, December 31, 2006. Written notice of the intent to negotiate a successor Agreement shall be given no earlier than one hundred twenty (120) calendar days prior to the expiration date, nor later than ninety (90) calendar days prior to the expiration date of this Agreement. Such notice shall be by certified mail, return receipt requested. The parties shall commence negotiations within two calendar weeks upon receiving the notice of an intent to negotiate.

B. Current Language - No Change.

C. Current Language - No Change.

In addition to the recommended language proposed through this report, the fact-finder adopts by reference, as if fully rewritten herein, all other Articles agreed by the parties.

In making the fact-finding recommendations presented in this report, the fact-finder has considered the criteria required by Ohio Revised Code Chapter 4117. and section 4117-9-05(K)(1)-(6) of the Ohio Administrative Code.

A handwritten signature in cursive script, reading "Howard D. Silver", written over a horizontal line.

Howard D. Silver  
Fact-Finder

March 8, 2004  
Columbus, Ohio

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Report and Recommendation of Fact-Finder in the Matter of Fact-Finding Between the Athens County Sheriff and the Ohio Patrolmen's Benevolent Association, was filed with the State Employment Relations Board, via hand-delivery, and delivered via hand-delivery this 8th day of March, 2004, to the offices of the following:

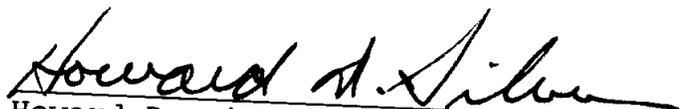
Kenneth L. Edsall  
Regional Supervisor  
CLEMENS, NELSON & ASSOCIATES, INC.  
5100 Parkcenter Avenue, Suite 120  
Dublin, Ohio 43017

For the Athens County Sheriff

and

Matthew B. Baker, Esquire  
555 Metro Place North, Suite 100  
Dublin, Ohio 43017

For the Ohio Patrolmen's Benevolent  
Association

  
Howard D. Silver  
Fact-Finder

March 8, 2004  
Columbus, Ohio