FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
December 13, 2004

In the Matter of:

Fraternal Order of Police, Ohio Labor Council, Inc. — 04-MED-01-0038

and

Brown County Sheriff

REPORT AND RECOMMENDATIONS OF FACT-FINDER
TOBIE BRAVERMAN

APPEARANCES

For the Employer:	For the Union:
Robert W. Cross, Consultant Dale Reynolds, Commissioner	Barry Gray, Staff Representative William J. Richey, III, Union Representative Rick Eagan, Union Representative

INTRODUCTION

The undersigned was selected by the parties, and was duly appointed by SERB by letter dated March 16, 2004, to serve as Fact-Finder in the matter of the Brown County Sheroff (hereinafter referred to as "Employer") and Fraternal Order of Police (hereinafter referred to as "Union") pursuant to OAC 4117-9-5(D). The parties agreed to extend the deadline for the Fact Finder's Report until December 13, 2004. Hearing was held at Georgetown, Ohio on November 29, 2004. The Union was represented by Barry Gray, Staff Representative, and the Employer was represented by Robert W. Cross, Consultant.

FACTUAL BACKGROUND

Brown County, Ohio is a largely rural county located in Southern, Ohio. There are no cities within the County, and 209,000 of its 315,673 acres of land are family farms. It does include a number of villages. The population of the county is 42,025. The County is considered to be part of the Appalachian Region. It has an unemployment of rate of 7% and 11% of the population is below the poverty level. The County, has however, grown and continues to grow at a moderate rate.

The Sheriff Department obtains its funding from the County General Fund. The Department's employees are represented by the Union. The bargaining unit consists of approximately 40 employees in the classifications of road corporal, road deputy, court services corporal, court services, corrections corporal, corrections officer and cook. The parties have been party to successive collective bargaining agreements since 1985. The most recent Collective Bargaining Agreement expired on April 1, 2004. The parties have waived any statutory claims concerning the award being effective in the following fiscal year and the Employer has agreed that wage increases should be retroactive to the expiration date of the Agreement. After a number of negotiation sessions, the parties submitted their remaining disputed bargaining issues to fact finding. All tentative agreements made between the parties are deemed to have been incorporated herein and are adopted as part of the parties' final agreement.

The unresolved issues are as follows:

Article 24 - Wages

Article 25 - Hospitalization

Article 30 - Termination

ISSUES

ARTICLE 30 - TERMINATION

Union Position: The Union urges that the duration of the Collective Bargaining Agreement be three years with no re-openers on either wages or insurance. During the term of the current Collective Bargaining Agreement there have been annual re-openers on the issue of wages and insurance. The result of those re-openers has been that annual negotiations are protracted and the employees do not get a wage increase of any kind until up to a year or more after the date of the wage increase date anticipated by the Agreement. This creates a hardship for the employees. The contract should therefore secure wages and insurance for all three years of the Agreement.

<u>Employer Position</u>: The Agreement should include a re-opener on wages and insurance in each year of the Agreement. The Employer's revenues from year to year are variable, as is evidenced by the decrease in income precipitated by lower interest rates and volatile insurance premium increases. Further, there have been re-openers in the past contract. That precedent should continue into the current Agreement.

<u>Discussion</u>: The evidence presented at hearing demonstrated that since the parties negotiated wage and insurance re-opener provisions in their last Collective Bargaining Agreement, it has consistently taken up to a year to resolve each re-opener. The current fact finding was scheduled seven months after the expiration of the re-opener. The end result has been that the bargaining unit employees have gone without wage increases for more than a year on several occasions, while other employees within the County receive their increases on an annual basis. While neither party presented any evidence to demonstrate why re-openers have consistently been unusually protracted, the evidence is clear that that has in fact been the case.

While the Employer's overall costs have risen in recent years while income has decreased, there is no evidence that costs and income have been so volatile that the Employer is unable to budget for wages and insurance for a three year period. The parties have functioned on this basis since 1987 except for the period of the last Collective Bargaining Agreement. In view of the facts that the re-opener provisions are a new feature for these parties, County income is relatively stable so as to permit for planning, and together with the fact that each re-opener has caused a long delay in pay increases to the employees, a three year agreement without re-openers is appropriate.

Recommendation: Three year Collective Bargaining Agreement with no re-opener provisions.

ARTICLE 24 - WAGES

Union Position: The Union proposes an increase in the amount of $1.00 in each year of a three year contract. The employees are currently paid at an hourly rate well below that of those of the state-wide average pay for county sheriff departments. The requested increase would help to close the gap between the Union and the average wage so that this bargaining unit is paid a competitive wage. Although the County may not have the same revenues as it has in past years when interest rates were higher, the County clearly is not in dire straits. Tax revenues have been relatively stable, and both the number of businesses and housing starts have increased slowly but steadily in recent years. The Employer can afford to pay more than its proposed 30 cent increase.

Employer Position: The economic conditions of the Employer dictate a modest pay increase in the amount of 30 cents for the current contract year retroactive to the expiration date of the Agreement. This is in line with the increases which have been given to other County employees paid from the general fund over the last several years. The Employer argues that the county comparison offered by the Union includes counties which are not comparable to Brown County in population size or tax revenue. Comparison with the counties in the Appalachian Region of Southern Ohio which are more comparable to Brown County demonstrate that the Employer falls in the middle of the wage comparisons. The County's revenues have decreased as a result of lower interest rates on investments and flat sales tax collections. At the same time, expenses in several areas have increased. In view of these factors, the County cannot afford more than a modest pay increase. The Employer's proposed 30 cent pay increase represents a fair increase in light of the Employer's fiscal circumstances. Additionally, this is the same increase granted to other county employees in the current year.

Discussion: The evidence demonstrates that when the wages of this bargaining unit are compared to Southern Ohio counties with similar population and tax basis, the wages fall somewhere in the middle. The wages of this bargaining unit simply cannot be compared with the state average since that average includes many urban counties with significantly larger population and tax base. The Employer simply cannot fund a wage increase to make this bargaining unit comparable to the state average.

At the same time, the evidence demonstrates that while revenues did decrease due to declining interest rates, the impact of that phenomenon is largely past, and revenues from last year to the current year have been fairly stable. The County has further experienced small but steady growth. While the Employer cannot afford the increase requested by the Union, it can afford an increase. Although other County employees have received a 30 cent per hour increase, two factors differentiate those employees from this bargaining unit. First, the Fact-finder is recommending that these employees increase their share of the monthly health insurance premium, while the remaining County employees pay a lesser amount at this juncture. Further, those other County employees have not been forced to wait for up to a year or more for wage increases as the result of unusually long delays in the negotiation process. The Fact-finder believes that the County can afford to pay an increase in the amount of 50 cents in each year of the Collective Bargaining Agreement.[1] This is a significantly lower amount than that granted to the bargaining unit in recent years, but is appropriate in view of the decreased revenue of the County caused by the decrease in interest rates.

Recommendation: The language of the salary schedule should

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[1] While a percentage increase seems to be a more equitable way to calculate pay increases overall, both parties have proposed a flat dollar amount increase, and increases have historically been given on this basis. The Fact-finder therefore has adopted a flat dollar amount increase in line with the parties' practice.

be amended to increase the rate of each classification by 50 cents per hour retroactive to April 1, 2004.

ARTICLE 36 - INSURANCE

Union Position: The Union proposes that the insurance provisions of the Agreement remain the same. The Employees currently pay 15% of the total premium. This percentage is comparable to other comparable counties. In comparable counties employees pay from a low of 0 to a high of 20% of their premium. The Employer changed insurance in the past year and had a substantial savings in premium as a result. It is unreasonable to expect the employees to absorb all premium increases as proposed by the Employer. This would clearly result in wage decreases to the employees in view of the typical annual insurance premium increases which range in the area of 12%.

Employer Position: The Employer proposes that its costs for insurance be capped at current monthly premium rates. It seeks to have the employees absorb the expense of all future increases. Insurance costs have increased dramatically in recent years, and there is no end in sight. The Employer is unable to budget for the increases, but is prohibited from operating at a deficit. It simply must be able to limit its insurance costs. It has paid the greater part of premiums historically, but simply cannot continue to absorb future increases.

The Employer further proposes language which would provide employees who are eligible for insurance through some other source, such as their spouse's employer, to opt out of the

Employer's insurance coverage. The Employer proposes that employees who opt out be paid an annual bonus of $960.00. This provision would provide an incentive for employees to opt out of coverage, which could potentially permit the Employer to save money on its overall insurance costs for the bargaining unit.

Discussion: There is no question but that the cost of providing health insurance has sky rocketed. There is every indication that double digit annual premium increases will continue into the future. The issue of insurance has become one which is for all intents and purposes out of the control of the parties. The parties are left only with the ability to determine how to allocate the pain.

The Employer's proposal is one which places the entire burden of increases on the Employees. This is simply not a reasonable allocation of the burden of insurance. Placing the entire burden of insurance increases on the employees clearly would not only erode a modest wage increase, but additionally has the clear potential to result in a reduction of the employees' annual wages over time. There is no evidence that such a cap exists in any of the comparable counties submitted by either party. Further, none of the Employer's other employee groups is currently obligated to pay all insurance premium increases, and the Employer presented no evidence that it intended to implement such a change for its other employees in the foreseeable future. The testimony at hearing indicated that all other employees pay 15% or less of their monthly health insurance premiums.

That being said, it is clear that it is difficult for either party to absorb unpredictable insurance increases. There is no question but that ever increasing rates place additional stress on already tight budgets. It is clearly difficult for the Employer to provide annual wage increases while paying ever increasing insurance premiums. A reasonable compromise on this issue is to increase the employee contribution by a modest amount in order to protect the interests of both parties. This is particularly appropriate in view of the recommendation for a three year agreement without a re-opener provision on insurance. The employee contribution for insurance in several of the counties provided as comparable jurisdictions is 20% of the monthly premium. This would represent a modest increase for the employees, but would maintain the greater burden for insurance on the Employer, which is better able to bear it.

The Employer's proposal for an opt out provision would provide some potential relief to the Employer on insurance. The proposed bonus is far less than the annual cost of insurance. Importantly, the proposal requires that employees who choose to opt out in order to obtain the bonus provide proof of insurance coverage from another source. This would prevent the potential for employees who might place themselves in the dangerous position of having no health insurance in order to obtain the bonus payment.

It should be noted, however, that the Employer's proposal, while providing a bonus of a little more than one month's family health insurance premium, does not pay any bonus in the event that an employee opts out but for some reason must opt back in to the Employer's insurance within a twelve month period. This denial of the bonus is unfair to an employee who has opted out but for unforseen reasons cannot continue to opt out for the entire twelve months. A better solution would be to provide a bonus amount readily divisible by twelve and to then provide the bonus on a pro rata basis if the employee must opt back in within a twelve month period. The Employer would still reap substantial savings in this way, and the employee would still obtain a portion of the incentive.

Recommendation: Article 25 shall be amended to read as follows:

> (A)The Brown County Sheriff's Office will pay a minimum of 80% of the premium toward the monthly cost of a family plan and/or the cost of a single plan as chosen from the hospitalization, surgical, major medical plans or HMO plans available through the Brown County Sheriff's Office. The Brown County Sheriff's Office will pay the same amount as other county general fund employees if it increases above the present levels. ...
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> (G)Employees who are eligible and currently taking the County's health insurance and who waive coverage will receive a payment in the amount of One thousand two hundred dollars ($1,200) upon the completion of twelve (12) months without coverage. Employees will be required to provide proof of health insurance coverage at the time that they opt out of coverage. In the event that the employee opts back into coverage during the twelve month period, the employee will be paid a pro rata portion of the bonus for each month during which he/she opted out of coverage.

Balance of the Article: Current Language.

Dated: 12/13/04

Tobie

Tobie Braverman, Fact-Finder

CERTIFICATE OF SERVICE

The foregoing Report was mailed this 13th day of December, 2004 to, Barry Gray, Staff Representative, Fraternal Order of Police, Ohio Labor Council, Inc., 5752 Cheviot Road, Suite D, Cincinnati, OH 45247-7008 and to Robert W. Cross, President, Cross Management Consulting Services, Inc., 631 7th Street, Portsmouth, OH 45662 by UPS Overnight delivery.

Tobie

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5752 Cheviot Road, Suite D
Cincinnati, OH 45247-7008

Mr. Robert W. Cross, President
Cross Management Consulting Services, Inc.
631 Seventh Street
Portsmouth, OH 45662

Re: Brown County Sheriff and Fraternal Order of Police, Ohio Labor Council, Inc. Serb #04-MED-01-0038 My File #04-067.

Dear Mr. Gray and Mr. Cross:

Enclosed please find my Report and Recommendations in the above-referenced matter. Also enclosed please find my invoice for services rendered. It was a pleasure to be of service to the parties.

Thank you in advance for your cooperation in this matter. If you have any questions or comments, please do not hesitate to contact me.

Very truly yours,

Tobie Braverman

Enclosures
cc: Dale A. Zimmer