

# FACT-FINDER REPORT

STATE EMPLOYMENT  
RELATIONS BOARD

Before the  
State Employment Relations Board  
State of Ohio  
November 1, 2004

2004 NOV -2 A 11: 02

In the Matter of:

FRATERNAL ORDER of POLICE,  
OHIO LABOR COUNCIL, Inc.

Employee Organization

and

MIAMI COUNTY COMMISSIONERS  
Employer

Case No. 04-MED-04-0467

## I. HEARING:

**DATE:** October 22, 2004, 10:00 a.m.

**LOCATION:** Communications Center, Troy Ohio

### APPEARANCES:

#### For the Employee Organization:

Dennis Sterling, Staff Representative, Ohio Labor Council, Inc.

Penny Hall, Member, Fraternal Order of Police

Joan R. Grigsby, Associate, Fraternal Order of Police

Darla Rose, Associate, Fraternal Order of Police

#### For the Employer:

Patrick A. Hire, Account Manager, Clemans Nelson & Associates, Inc.

Andrew R. Votava, County Administrator

Michael A. King, Director, Miami County Communications Center

### Fact Finder:

James L. Ferree

## **INTRODUCTION:**

The Miami County Commissioners (herein called “the Employer” or “the County”) employs, at the Miami County Communications Center, 1 part-time and 17 full-time “9-1-1” emergency dispatchers. They are represented in collective bargaining by the Fraternal Order of Police, Ohio Labor Council, Inc. (“the Employee Organization”, “FOP”, or “the Union”). Prior to the State Employment Relations Board (“SERB”) issuing its “Amendment of Certification” certifying the FOP on July 9, 2004, the collective bargaining unit was represented by American Federation of State, County, and Municipal Employees, Ohio Council 8 and Local 3756 (“AFSCME”). The Employer and AFSCME were parties to a collective bargaining agreement effective from January 1, 2001 through December 31, 2003.

The Employer and the FOP met and bargained for a successor collective bargaining agreement from April 30 through August 13, 2004, and reached a tentative agreement. The Union membership rejected the tentative agreement. The parties met and bargained further on September 17, 2004, but they were unable to reach agreement on certain issues. The parties selected the undersigned, who was appointed by the SERB to serve as Fact Finder in this matter, pursuant to Ohio Revised Code (“ORC”) Section 4117.14(C)(3). A fact finding hearing was conducted in the Communications Center in Troy, Ohio at 10:00 a.m. Friday, October 22, 2004. At the hearing, the parties agreed to extend the time for fact finding to Monday, November 1, 2004. Having considered the evidence presented at the hearing, the Fact Finder hereby issues the following report and recommendations.

## **II. MEDIATION:**

The parties engaged in mediation with a SERB mediator on September 17, 2004, and reached tentative agreement on all but six issues. At the hearing, the parties declined the Fact Finder’s offer to mediate further, but they finalized their tentative agreements on two issues which the Union had submitted in its pre-hearing submission (Article 10, Seniority, and Article 24, Holidays). It is hereby recommended that all tentatively agreed-upon contract language be incorporated into the parties’ new collective bargaining agreement.

The remaining unresolved issues are:

1. Article 21 “Hours of Work and Overtime”, Section 21.3.
2. Article 35, “Insurance”
3. Article 36, “Wages”, Sections 36.1, 36.2, and 36.3, and
4. Article 42, “Duration”, Section 42.1

### **III. CRITERIA:**

Consideration was given to the criteria listed in Rule 4117-9-05 of the State Employment Relations Board:

(J) The fact-finding panel, in making findings of fact, shall take into consideration all reliable information relevant to the issues before the fact-finding panel.

(K) The fact-finding panel, in making recommendations, shall take into consideration the following factors pursuant to division (C)(4)(e) of section 4117.14 of the Revised Code:

(1) Past collectively bargained agreements, if any, between the parties;

(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, 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;

(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 agreed-upon dispute settlement procedures in the public service or in private employment.

### **IV. ISSUES AND RECOMMENDATIONS**

#### **Issue 1: Article 21, Hours of Work & Overtime, Sections 21.3**

After defining the normal hours of work per week in Section 21.1, and the work week in Section 21.2, the previous contract between the Employer and AFSCME said:

**Section 21.3** When an employee is required to work in excess of eight (8) hours per day or forty (40) hours during the workweek, the employee shall be paid overtime pay for such time over eight (8) hours in a day or forty (40) hours in a workweek at the rate of one and one-half (1½) times the employee’s regular hourly rate of pay. Hours of work for the purpose of this Article shall mean all hours in active pay status, which shall be defined as actual hours worked, hours on paid vacation, hours on paid sick leave, and hours on paid personal leave. Compensation shall not be paid more than once for the same hours under any provision of this Article or Agreement.

**Management Position:**

The Employer proposes to delete references in the above language to “eight (8) hours per day or” and “eight (8) hours in a day or”, thus eliminating overtime for more than eight hours in a day.

**Union Position:**

The FOP rejects the Employer’s proposed change, and prefers to retain the language in Section 21.3 as it stood in the previous contract.

**Evidence and Arguments:**

**The Employer** puts this issue in the context of its financial situation. In its opening statement at the hearing, the Employer explained that it dispatches for the police, fire and emergency medical services of multiple jurisdictions within Miami County, serves as a public service educational facility, and is the base of operations for the Miami County Emergency Management Agency, but the other jurisdictions it serves do not contribute to the Communications Center budget. Established in 1989, the Communications Center is governed by the Board of Directors of the Miami County Communication Center and is funded by the Miami County Board of Commissioners with 20% of the county-wide 1% sales tax. That revenue fell in 2000, resumed its growth in 2001, and has flattened out in the past two years. Expenses in 1999, 2000, 2002, and 2003 exceeded revenue.

Faced with budget deficits in four of the last five years, the Board of Directors hired a new Director in January 2004, and he performed an organizational and structural review which resulted in a five-year \$2.4 million plan to maintain and refurbish the nearly 20 year old facility, keep up with technology, and compensate employees at a competitive level.

The five-year plan, completed in February, 2004 and updated in a memorandum dated October 21, 2004, provides for accreditation by the Commission on Accreditation for Law Enforcement Agencies (CALEA) and the Association of Public-Safety Communications Officials-International (APCO) at an initial cost of \$9800 and recurring annual fees of \$2000; conversion of police record data at an estimated cost of \$35,000; replacement of emergency sirens with reverse 911/311 services at an estimated initial cost of \$45,000 and recurring maintenance fees of \$5000 to \$10,000 annually; upgrading the

911 phone system with voice over internet protocol at \$70,000; enhancing cellular 911 service with GIS mapping capability at an estimated \$100,000; and repair, replacement, and refurbishment of the Communications Center itself, including the building's roof at \$10,000 to \$15,000; the parking lot at \$20,000 to \$30,000; the heating/cooling system at \$30,000 - \$50,000; replacing the radio system at a cost ranging from \$250,000 to \$15,000,000; and miscellaneous other capital expenses for replacing or refurbishing outmoded and/or worn out equipment and facilities.

The new Director has prepared a report for the Miami County Board of Directors and the Board of Commissioners in which he outlined organizational changes for the Employer, including shifting of supervisors' schedules from four ten-hour days to a twelve hour schedule, and "significant reduction in overtime costs through efficient scheduling" of Dispatchers. The report observes that the pool of part time Dispatchers needs to be increased from two to four, that overtime costs have been reduced 55% but continue to be "a significant burden on budgetary resources", with overtime hours by Dispatchers rising in the past two years. The report observes that 20 hours of overtime by full-time Dispatchers costs an estimated \$605, compared with the cost of \$204 for the same hours worked by part-time Dispatchers. The report concludes with a recommendation that the Board of Directors should look beyond the inadequate revenue source (20% of the 1% sales tax) and identify "potential funding avenues and opportunities".

With respect to the specific issue of the daily overtime after eight hours in a day, the County asserts that no other employees under the jurisdiction of the Miami County Commissioners receive overtime for work in excess of an eight hour day. The Employer states that the overtime generates 0.5% in additional personnel costs annually. The 24/7 nature of the Communications Center's operations requires staffing at all times. When supervisors were rescheduled to provide better coverage, it resulted in less overtime and a 20% reduction in supervisory positions. During negotiations, the Union agreed to give back this wage benefit in a tentative agreement which included an Employer concession on health insurance, but now the Union wants to have both.

**The Union** asked for fair treatment of the people who make the Agency work. It provided a newspaper account published in September 2004, reporting on a meeting of

County Commissioners in which Commissioner Ron Widener said, “The county is in good financial condition . . . but the last three years have been difficult to balance the budget.” He credited good management by department heads during a time of soft sales tax returns. The article concludes, “Also drawing praise from [Commissioner Jack] Evans at the county address was the new director for the county’s 911 communication center, Mike King, who has improved department operations and training. The center also has begun managing a records system upgrade that benefits recordkeeping for the Piqua, Tipp City and Troy police departments.”

The FOP asserts that the County’s real problem is scheduling. For example, the part-time Dispatcher, who may work more than eight hours in a day, but less than forty hours in the week, is still eligible for overtime. If the part-time Dispatcher is unavailable, the Employer is forced to use a full-time Dispatcher, who will generally be working overtime at a higher rate of pay. The Union proposes to keep the existing benefit, and offers to meet with the Employer to work out changes in scheduling to minimize overtime.

**Findings of Fact and Rationale:**

The Employer’s “Revenue/Expense Historical Analysis” shows that the Communications Center accumulated carryovers in the budget years 1994 – 1998 totaling over \$1 million, which subsequently shrunk to \$585,000 by the end of 2003. The Employer has not argued that it is in danger of running out of money, but it is clear that needed maintenance and desirable improvements will need either more revenue or less operating expenses. Overtime after eight hours in a day is one of the expenses which can be cut.

Although the previous collective bargaining agreement defined the work week as 40 hours, it did not define the work day, and it explicitly reserved to the Employer the right to restructure the work day, and to establish work schedules for purposes of promoting efficiency or improving services. As part of his initial improvements, the new Director changed the supervisors’ schedules from four ten-hour days to twelve-hour days, and reportedly intends to achieve “significant reduction in overtime costs through efficient scheduling” of Dispatchers. Now the Employer seeks the ability to schedule employees for more than eight hours in a day without the burden of paying overtime.

Some overtime expenses already have been cut through judicious scheduling. The Employer points out that no other employees under the direction of the jurisdiction of the Miami County Commissioners receive overtime for work in excess of an eight hour day, and that the Communications Center requires staffing at all times; there is no evidence whether any other employees under the Commissioners work in continuous operations.

In the opinion of the Fact Finder, employees generally suffer stress and inconvenience when asked to extend their work schedules, and the existing overtime pay after eight hours in a day is a valuable benefit which a Fact Finder should not lightly recommend to discontinue. The Employer has demonstrated that it is capable of reducing overtime costs through improved scheduling of personnel, and it is prepared to recommend to the Miami County Board of Directors and the Board of Commissioners that additional part-time Dispatchers should be hired to provide additional flexibility in scheduling. In conclusion, I am persuaded that the Employer should use its management prerogative to reduce overtime costs through work scheduling, rather than eliminate an existing contractual benefit.

#### **Fact-Finder Recommendation**

It is recommended that the parties retain the existing language of Section 21.3, as quoted above.

The parties have tentatively agreed on new language for Section 21.6 regarding hours of work during the probationary period and a new Section 21.8 governing employees exchanging shifts. It is hereby recommended that this tentatively agreed-upon contract language be incorporated into the parties' new collective bargaining agreement.

#### **Issue 2: Article 35, Insurance**

The previous contract, between the Employer and AFSCME, included the following:

##### **ARTICLE 35**

##### **INSURANCE**

**Section 35.1.** The Employer shall contribute toward the cost of single or family premiums for medical insurance in accordance with that provided to other County employees, under the jurisdiction of the County Commissioners.

**Section 35.2.** Employees shall pay the same amount in premiums as other County employees under the Miami County Commissioners' Health Insurance Plan. The employee's contributions for insurance coverage shall be deducted from the employee's pay.

**Section 35.3.** The insurance carrier shall be at the sole discretion of the Employer.

**Section 35.4.** The Employer shall provide a twenty thousand dollar (\$20,000) group term life insurance policy which includes accidental death and dismemberment benefits covering all bargaining unit employees. The Employer shall obtain the above described life insurance policy within sixty (60) days following signing of the Agreement effective January 1, 2001 through December 31, 2003.

**Section 35.5.** The Employer reserves all rights as to determination of insurance carriers.

**Section 35.6.** The Employer may provide a drug savings card to each employee in the bargaining unit.

### **Union Position:**

The FOP proposes to revise the language of Article 35 extensively to track the contract language of two collective bargaining agreements it has with the Miami County Sheriff's Office. The Union proposes the following (new language in bold):

## **ARTICLE 35**

### **INSURANCE**

**Section 35.1.** The Employer shall contribute toward the cost of single or family premiums for medical insurance in accordance with that provided to other County employees, under the jurisdiction of the County Commissioners. **The Employer reserves the right to make cost containment adjustments in the benefit coverage.**

**In the event of a change in any of the major economic benefits under the plan, the Employer agrees to meet with and confer with the Union prior to implementing such change.**

**Section 35.2.** Employees shall pay fifteen percent (15%) of the cost of the health insurance plan and the Employer shall pay the remaining eighty-five percent (85%). **The employee's contribution for health insurance coverage shall be deducted from the employee's pay.**

**Section 35.3.** The insurance carrier shall be at the sole discretion of the Employer.

**Section 35.4.** The Employer shall provide a twenty thousand dollar (\$20,000) group term life insurance policy which includes accidental death and dismemberment benefits covering all bargaining unit employees. **The life insurance policy shall be provided at no cost to the employee.**

**Section 35.5.** The Employer reserves all rights as to determination of insurance carriers.

**Section 35.6.** **The Employer shall maintain, at no cost to the employee, professional liability insurance for employees of the bargaining unit equal to the coverage in effect at the signing of this Agreement. (One million dollars [\$1,000,000.00] per incident).**

**Section 35.7** **In the event the insurance costs increase from one year to the next, the Employer may only increase the premiums one time per year.**

**Management Position:**

The Employer would retain the language of its previous agreement with AFSCME, except it has agreed with the Union to delete the old Section 35.6 about a drug savings card, and replace it with the above language regarding professional insurance. I will recommend that this tentatively agreed-upon contract language be incorporated into the parties' new collective bargaining agreement.

**Evidence and Arguments:**

**The Union** wants to adopt the pattern set in its contracts with the Sheriff's Office to get away from the uncertainty of leaving health insurance premium amounts uncapped. The employees' current contribution is 15% of the cost, and the Union merely wants to maintain that level. If the Employer is unrestrained, the employee contribution will potentially rise to 20% of the cost, and may change again at any time. The heart of the Union's proposal is contained in the following two sections:

Section 35.2. Employees shall pay fifteen percent (15%) of the cost of the health insurance plan and the Employer shall pay the remaining eighty-five percent (85%). The employee's contribution for health insurance coverage shall be deducted from the employee's pay.

Section 35.7 In the event the insurance costs increase from one year to the next, the Employer may only increase the premiums one time per year.

The Union points out that the Employer is free to control its costs through other measures, including the selection of the insurance carrier, and employees need to know that any wage increase they may achieve will not be totally offset by increased health insurance premiums.

Twelve neighboring jurisdictions, including those served by employees in this bargaining unit, require their employees to pay an average of 14.09% of the cost of health insurance, and the averages for the Dayton region and the State of Ohio are less than that. Health insurance costs are projected to rise in the next few years, and the dollar amount of the employees' share of the premium will increase over \$20 per month each year for family coverage, despite a 15% cap. If there is no cap, the employee's monthly premium cost for family coverage would rise \$75 per month in the first year, and another \$32 per month in the next year, diminishing the effect of any wage increase. Employees in this unit deserve the same protection as Miami Sheriff's employees.

**The Employer** argues that the FOP, and AFSCME before it, have participated in a county-wide health insurance committee which was established in negotiations in 2000. The committee provides input to the Commissioners regarding changes to the self-funded health care plan which must be in place by November for the following calendar year. The collective bargaining agreement was changed in 2000 to delete existing premium caps, resulting in the current contract language which provides “most favored nations” protection for the unit, ensuring that these employees get the same benefits, and pay the same premiums, as other employees under the County Commissioners. The Union is asking to undo that agreement.

Costs are rising 14% annually, and are driven by prescription drug increases. The parties had reached a tentative agreement which included the Union’s premium cap, but it was balanced by concessions from both parties which offset the cost items. Now, the Union wants it all: a cap on health insurance premiums, daily overtime, and large wage increases retroactive to January, 2004. The Employer’s proposal is fairest because it links all employees under the jurisdiction of the Miami County Commissioners together for health insurance benefits and costs. The Union’s comparison with the Sheriff’s Office is not appropriate, because the Union gave up the right to veto insurance changes in order to get the cap, and the Sheriff’s Office has a different source of funding.

**Findings of Fact and Rationale:**

The heart of the Union’s proposal is, “Section 35.2. Employees shall pay fifteen percent (15%) of the cost of the health insurance plan and the Employer shall pay the remaining eighty-five percent (85%).”

I am persuaded by the evidence that other public employers in the immediate area whose employees are represented by a union require their employees to cover less than 15% of the cost of health insurance, on average, and by these parties’ earlier tentative agreement to adopt the proposed 15% cap on employee premium payments, that the unit employees’ potential burden should be limited. Despite its budget constraints, the Employer is better able to bear the greater share of the burden of rising health care insurance costs than are individual employees, and employee costs will rise substantially, even under the cap. I am likewise convinced that one adjustment in premiums per year is

a reasonable limitation, given the annual cycle of the health insurance plan. Sections 35.3 and 35.5 are duplicative, and I will recommend elimination of the redundant language

#### **Fact-Finder Recommendation**

It is recommended that the parties adopt the language proposed by the Union for Sections 35.1, 35.2, and 35.7 as quoted above, in their new contract.

The parties have tentatively agreed to delete the old Section 35.6 about a drug savings card, and replace it with the above language regarding professional insurance. It is hereby recommended that this tentatively agreed-upon contract language be incorporated into the parties' new collective bargaining agreement. The recommended new language for this Article is as follows:

#### **ARTICLE 35**

#### **INSURANCE**

**Section 35.1.** The Employer shall contribute toward the cost of single or family premiums for medical insurance in accordance with that provided to other County employees who are under the jurisdiction of the County Commissioners. The Employer reserves the right to make cost containment adjustments in the benefit coverage. The selection of insurance carriers shall be at the sole discretion of the Employer.

In the event of a change in any of the major economic benefits under the plan, the Employer agrees to meet with and confer with the Union prior to implementing such change.

**Section 35.2.** Employees shall pay fifteen percent (15%) of the cost of the health insurance plan and the Employer shall pay the remaining eighty-five percent (85%). The employee's contribution for health insurance coverage shall be deducted from the employee's pay. In the event the insurance costs increase from one year to the next, the Employer may only increase the employees' premiums one time per year.

**Section 35.3.** The Employer shall provide a twenty thousand dollar (\$20,000) group term life insurance policy which includes accidental death and dismemberment benefits covering all bargaining unit employees. The life insurance policy shall be provided at no cost to the employee.

**Section 35.4.** The Employer shall maintain, at no cost to the employee, professional liability insurance for employees of the bargaining unit equal to the coverage in effect at the signing of this Agreement. (One million dollars [\$1,000,000.00] per incident).

#### **Issue 3: Article 36, Wages, Sections 36.1, 36.2, and 36.3**

The previous collective bargaining agreement, between the Employer and AFSCME, included the following:

**ARTICLE 36**

**WAGES**

**Section 36.1.** Effective the first full pay period in January, 2001, the rate of pay for full-time and part-time bargaining unit employees, still employed by the Employer on the date this agreement is signed, shall be:

<b>A.</b>	<b><u>Full-Time Employees</u></b>			
	<b><u>Operator/Dispatcher</u></b>	<b>Hourly</b>	<b>Weekly</b>	<b>Annual</b>
	Starting (0-6 months)	\$11.93	\$477.20	\$24,814.40
	Step 1 (6-18 months)	\$13.15	\$526.00	\$27,352.00
	Step 2 (18-30 months)	\$13.53	\$541.20	\$28,142.40
	Step 3 (30-42 months)	\$13.92	\$556.80	\$28,953.60
	Step 4 (42 months)	\$14.34	\$573.60	\$29,827.20

**B. Part-Time Employees**                      \$11.93 per hour

**Section 36.2.** Effective the first full pay period in January, 2002, the rate of pay for full-time and part-time bargaining unit employees shall be:

<b>A.</b>	<b><u>Operator/Dispatcher</u></b>			
		<b>Hourly</b>	<b>Weekly</b>	<b>Annual</b>
	Starting (0-6 months)	\$12.41	\$496.40	\$25,812.80
	Step 1 (6-18 months)	\$13.68	\$547.20	\$28,454.40
	Step 2 (18-30 months)	\$14.07	\$562.80	\$29,265.60
	Step 3 (30-42 months)	\$14.48	\$579.20	\$30,118.40
	Step 4 (42 months)	\$14.91	\$596.40	\$31,012.80

**B. Part-Time Employees**                      \$12.41 per hour

**Section 36.3.** Effective the first full pay period in January, 2003, the rate of pay for bargaining unit employees shall be:

<b>A.</b>	<b><u>Operator/Dispatcher</u></b>			
		<b>Hourly</b>	<b>Weekly</b>	<b>Annual</b>
	Starting (0-6 months)	\$12.91	\$516.40	\$26,852.80
	Step 1 (6-18 months)	\$14.23	\$569.20	\$29,598.40
	Step 2 (18-30 months)	\$14.63	\$585.20	\$30,430.40
	Step 3 (30-42 months)	\$15.06	\$602.40	\$31,324.80
	Step 4 (42 months)	\$15.51	\$620.40	\$32,260.80

**B. Part-Time Employees**                      \$12.91 per hour

**Section 36.4.** Bargaining unit employees shall after six (6) months of employment, move to Step 1; after eighteen (18) months of employment move to Step 2; after thirty (30) months of employment move to Step 3 and after forty-two (42) months of employment move to Step 4.

**Union Position:**

The Employee Organization proposes to revise Section 36.1 to make a 3% wage increase “across the entire pay scale” in the first year, retroactive to the first pay period in January, 2004. In Section 36.2, effective with the first full pay period in January 2005, the Union proposes 3.5% increases. In Section 36.3, effective with the first full pay period in January 2006, the Union proposes another 3.5% increases. In addition, the parties have reached agreement on a temporary pay adjustment of any Dispatcher assigned to perform the duties of Lead Dispatcher.

**Management Position:**

The Employer proposes to delete references to specific dates, and to make wage increases “effective the first full pay period following the signing of the Agreement” in the first year, “following the annual date of the signing of the Agreement” in the second year, and “following the second annual date of the signing of the Agreement” in the third year. The County proposes annual wage increases of 2.0%, 2.0%, and 2.5%. In addition, the County proposes the following:

Section 36.6. In lieu of retroactive pay for the wage increase described in Section 36.1. above, the Employer agrees to pay the bargaining unit employees a signing bonus. Such signing bonus shall be given to bargaining unit employees on the first full pay period following the signing of the Agreement. The bonus pay shall be limited to a one-time payment for the negotiations listed at SERB as Case No. 2004-MED-04-0467. Such bonus pay shall be in the following amounts:

Full time dispatcher	\$475.00
Part time dispatcher	\$150.00

**Evidence and Arguments:**

**The Union** is seeking the same wage increases which were given to the other two bargaining units in Miami County which it negotiated this year: 3% in the year 2004, 3.5% in 2005, and 3.5% in 2006. The Union points out that the County already has provided a 3% raise for its unrepresented employees for 2004. The union urges that the initial increase should be effective retroactively to the beginning of this year, inasmuch as this is a successor agreement, albeit with a new collective bargaining agent. The Union provided data showing that 12 neighboring jurisdictions, including those served by employees in this unit, have provided wage increases averaging 3.25% in the first year,

3.417% in the second year, and 3.313% in the third year; none fell below a 3% increase in any contract year. The units cited consist mainly of police officers and sheriff's deputies.

The Union provided the newspaper account which has been described above in the discussion of Issue 1, to the effect that the County will finish this year in good financial shape. It argued that only contiguous jurisdiction should be considered when comparing wages, because that is the job market in which the Employer competes.

**The Employer** asserts that its proposal provides fair and reasonable wages for its employees, and will enable it to compete in the local job market, whereas the Union's proposal exceeds wage increases in the prior agreement and is more than the parties agreed upon in their September tentative agreement. That tentative agreement gave the Union the health insurance package it wanted, and higher wage increases, in exchange for elimination of daily overtime and a bonus in lieu of retroactivity. Now, the Union wants it all, without the necessary compromises. As evidence that current wages are competitive, the Employer cites a recent advertisement for a part time dispatcher which drew 28 applications, and the lack of turnover among current employees. The five year plan will provide other benefits to Dispatchers, such as better equipment to work with, refurbishment of the building, and the training and improved communications on the job which go with CALEA/APCO accreditation. Moreover, in four of the last five years, the Employer's expenditures have exceeded revenues, by a total of \$500,000. For every \$1.00 of revenue, the Employer has paid out \$2.22, and a big wage increase will not help.

The Employer presented evidence that it is comparable with seven contiguous counties, ranking fifth in the top wage paid (\$15.82 compared with an average of \$15.31) and paying the top entry wage, 13% more than the average entry wage (\$13.17 v. \$11.65). The Employer provided 4% wage increases in each of the past three years, compared with the eight-county averages of 3.5%, 3.4%, and 3.2%, and the 2% increase already provided in 2004 makes the Employer's four-year average 3.5%, compared with the four-year average of 3.1% for the eight counties.

When comparing the Employer with Ohio counties which have similar populations, the Employer's proposed top wage is seventh among thirteen (\$15.42 compared with an average wage of \$14.95) and the Employer's entry wage is fourth (\$13.17 compared with

an average of \$12.03). Those similar-sized counties granted wage increases which averaged 3% in 2001, 4% in 2002, 3% in 2003, and 3% in 2004, so their average wage increase over four years has been 3%, compared with the Employer's 3.5% average increase.

The Employer presented evidence that the Union's proposed wage increases would cost \$96,948.58 over three years (including step increases, but excluding health insurance costs), while the Employer's proposal would cost \$70,959.33. Under the parties' September tentative agreement, which was rejected 10 to 7, the employees would have received wage increases of 3% effective upon signing the contract, 3% one year later, and 3.75% a year after that; they would have received bonus payments of \$475 for full time employees and \$150 for part time employees. On January 15, 2004, the County Commissioners approved appropriations to enable a 3% wage increase for unrepresented county employees, which they also received last year, when this unit got 4%. Sheriff's employees are not comparable with dispatchers, who do not deal with criminals and who are paid out of a different fund.

**The parties** have agreed to retain the language of Section 36.4, regarding the progression of employees through pay steps, and a new Section 36.5, providing for a temporary pay adjustment when a dispatcher is assigned to perform the duties of Lead Dispatcher. I will recommend that the tentatively agreed-upon contract language be incorporated into the parties' new collective bargaining agreement.

**Findings of Fact and Rationale:**

On balance, I am convinced by the comparable wage increase data presented by the parties that the current wage rates are sufficient to maintain its competitive position, with modest increases. The parties earlier reached a tentative agreement on wage increases of 3.0% effective upon signing of the contract, with a bonus to offset the delay; 3.0% a year later; and 3.75% a year after that. Although a majority of the Union members rejected that offer, I am satisfied that it was comparable with wage rates which will be provided to other units of public employees who are not sworn law enforcement officers, and that it will be a good investment for the Employer, consistent with its long-range needs. To avoid unforeseen delays, I will recommend that the wage increase should be effective

upon approval of the Agreement, rather than its execution. In consideration of the delay in receipt of a wage increase, compared with other employees of the Employer, I agree that a bonus is appropriate compensation.

**Fact-Finder Recommendation**

It is hereby recommended that the parties include in Article 36 their new collective bargaining agreement the following introductory language for Section 36.1:

**Section 36.1.** Effective the first full pay period following approval of the Agreement, the rate of pay for full-time and part-time bargaining unit employees who are employed in the unit in that pay period shall be increased by three percent (3.0%).

A	<b><u>Operator/Dispatcher</u></b>	<b><u>Hourly</u></b>	<b><u>Weekly</u></b>	<b><u>Annual</u></b>
	Starting (0-6 months)	\$ 13.30	\$ 531.89	\$ 27,658.38
	Step 1 (6-18 months)	\$ 14.66	\$ 586.28	\$ 30,486.35
	Step 2 (18-30 months)	\$ 15.07	\$ 602.76	\$ 31,343.31
	Step 3 (30-42 months)	\$ 15.51	\$ 620.47	\$ 32,264.54
	Step 4 (42 months)	\$ 15.98	\$ 639.01	\$ 33,228.62

**B. Part-Time Employees** \$ 13.30 per hour

**Section 36.2.** Effective the first full pay period following the anniversary date of the approval of the Agreement, the rate of pay for full-time and part-time bargaining unit employees shall be increased by three percent (3.0%).

A	<b><u>Operator/Dispatcher</u></b>	<b><u>Hourly</u></b>	<b><u>Weekly</u></b>	<b><u>Annual</u></b>
	Starting (0-6 months)	\$ 13.70	\$ 547.85	\$ 28,488.13
	Step 1 (6-18 months)	\$ 15.10	\$ 603.87	\$ 31,400.94
	Step 2 (18-30 months)	\$ 15.52	\$ 620.84	\$ 32,283.61
	Step 3 (30-42 months)	\$ 15.98	\$ 639.08	\$ 33,232.48
	Step 4 (42 months)	\$ 16.46	\$ 658.18	\$ 34,225.48

**B. Part-Time Employees** \$ 13.70 per hour

**Section 36.3.** Effective the first full pay period following the second anniversary date of the approval of the Agreement, the rate of pay for full-time and part-time bargaining unit employees shall be increased by three and one half percent (3.5%).

Starting (0-6 months)	\$ 14.21	\$ 568.39	\$ 29,556.43
Step 1 (6-18 months)	\$ 15.67	\$ 626.52	\$ 32,578.48
Step 2 (18-30 months)	\$ 16.10	\$ 644.12	\$ 33,494.25
Step 3 (30-42 months)	\$ 16.58	\$ 663.05	\$ 34,478.70
Step 4 (42 months)	\$ 17.08	\$ 682.86	\$ 35,508.94

**B. Part-Time Employees** \$ 14.21 per hour

The parties have agreed to retain the language of Section 36.4, regarding the progression of employees through pay steps, and a new Section 36.5, providing for a

temporary pay adjustment when a dispatcher is assigned to perform the duties of Lead Dispatcher. It is recommended that all the tentatively agreed-upon contract language be incorporated into the parties' new collective bargaining agreement.

Finally, it is recommended that the parties include the following in their new contract

**Section 36.6.** In lieu of retroactive pay for the wage increase described in Section 36.1. above, the Employer agrees to pay the bargaining unit employees a signing bonus. Such signing bonus shall be given to employees who are employed in the bargaining unit on the first full pay period following the signing of the Agreement. The bonus pay shall be limited to a one-time payment in the following amounts:

Full time dispatcher	\$575.00
Part time dispatcher	\$185.00

#### **Issue 4: Article 42, Duration, Section 42.1**

The previous collective bargaining agreement, between the Employer and AFSCME, provided, in Section 42.1, "This Agreement shall be effective January 1, 2001, and shall remain in full force and effect through 12:00 midnight on December 31, 2003."

#### **Management Position:**

The Employer proposed to delete the dates in the above sentence and revise it to read, "This Agreement shall be effective upon signing and shall remain in full force and effect for three (3) consecutive years."

#### **Union Position:**

The Employee Organization would revise the dates in the article to read, "This Agreement shall be effective January 1, 2004 and shall remain in full force and effect through 12:00 midnight on December 31, 2006."

#### **Evidence and Arguments:**

The Employer rejects the Union's proposal to make the new agreement retroactive to the expiration date of the previous contract because retroactivity is impossible regarding some provisions such as health insurance benefits paid out so long ago; the new contract is not a successor to the AFSCME contract, but is a first contract with FOP; there are new economic realities, including the five year plan; and there is an advantage to negotiating future contracts after other County bargaining units have completed their bargaining.

The Union asserts that there should be no break in time for provisions which were in the contract expiring December 31, 2003; to delay improvements would be unfair and

would encourage procedural delays by the Employer in the future. Insurance is tied to the County's plan, and its effective date did not depend on the contract.

**Findings of Fact and Rationale:**

In the view of the undersigned, the duration of the contract should be consistent with the effective dates of the wage increases, which I have recommended to become effective upon approval of the new contract for reasons stated above. Therefore, I will recommend that the parties include in their Agreement the following language, consistent with the parties' tentative agreement of September 2004.

The parties agreed to modify Section 42.2 to provide that the period for notice of intent to modify or extend the Agreement be changed from 90 – 80 days from the expiration date to 90 – 60 days. I will so recommend.

**Fact-Finder Recommendation**

It is hereby recommended that the parties' Agreement include the following:

**ARTICLE 42**  
**DURATION**

**Section 42.1.** This Agreement shall be effective upon ratification by both the bargaining unit and the County, and shall remain in full force and effect through 12:00 midnight on the completion of three (3) full years.

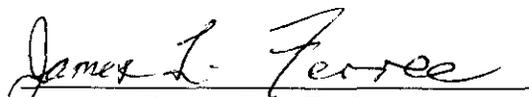
It is further recommended that the parties include in their new contract the modification of Section 42.2, discussed above.

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true copy of the foregoing Fact Finders Report regarding the findings of fact and recommendations on the unresolved issues has been sent by overnight mail carrier to the Employer's representative, Patrick A. Hire, Clemans, Nelson & Associates, Inc., 417 North West Street, Lima, Ohio 45801-4237; and to the Union's representative, Dennis Sterling, Staff Representative, 222 East Town Street, Columbus, Ohio 43215-4611.

A copy of the report has been sent by regular mail to Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12<sup>th</sup> Floor, Columbus, Ohio 43215-4213.

**Issued** at Loveland, Ohio this first day of November, 2004.

  
James L. Ferree, Fact Finder