

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT  
RELATIONS BOARD  
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| In the matter of                        | * | 04-MED-09-0940   |
|   | * | 04-MED-09-0944 ✓ |
| Fact-finding between:                   | * |                  |
|   | * |                  |
| Auglaize County Sheriff's Office        | * | Fact-finder      |
|   | * | Martin R. Fitts  |
|   | * |                  |
| and                                     | * |                  |
|   | * |                  |
| Ohio Patrolmen's Benevolent Association | * | June 6, 2005     |
| (Corrections)                           | * |                  |
|   | * |                  |

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**REPORT AND RECOMMENDATIONS OF THE FACT-FINDER**

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**APPEARANCES**

For the Auglaize County Sheriff's Office (the Employer):

- Patrick A. Hire, Consultant
- Joseph R. Lenhart, County Administrator
- Joseph P. Lynch

For OPBA (the Union):

- Matthew B. Baker, Staff Attorney
- Michael Sreenan, Representative
- Neal Brincefield, Representative
- Greg E. Link, Representative

## **PRELIMINARY COMMENTS**

The bargaining unit consists of all Full-time Corrections Officers and Full-time Corrections Supervisors employed by the Auglaize County Sheriff's Office. There are approximately 26 employees in the bargaining unit. The State Employment Relations Board (SERB) appointed the undersigned as Fact-finder in this dispute on March 23, 2005. The parties had agreed to combine the two previously separate collective bargaining agreements into a single agreement. The parties met on multiple dates for negotiations, and reached tentative agreements on numerous issues. A Fact-finding hearing for the issues at impasse was held on May 16, 2005 at the Auglaize County Sheriff's Office in Wapakoneta, Ohio. Both parties attended the hearing, presented written positions, and elaborated upon their respective positions. During mediation at the hearing the parties reached a number of additional tentative agreements. Following mediation there were four major issues at impasse: Hours of Work; Use of Part-time Employees; Duration; and Wages. Thus these four issues were submitted for Fact-finding.

In rendering the recommendations in this Fact-finding Report, the Fact-finder has given full consideration to all testimony and exhibits presented by the parties. In compliance with Ohio Revised Code, Section 4117.14 (G) (7) and Ohio Administrative Code Rule 4117-9-05 (J), the Fact-Finder considered the following criteria in making the findings and recommendations contained in this Report:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the parties; and
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.

All references by the Fact-finder in this report to the Employer's proposal and the Union's proposal are references to their respective final proposals as presented to the Fact-finder at the May 16, 2005 hearing.

## **ISSUES AND RECOMMENDATIONS**

### **Issue: Article 17 – Hours of Work**

#### **Positions of the Parties**

The Union proposed that Section 17.5 be amended to the same shift trade language as tentatively agreed to by the parties in the Law Enforcement agreement, except that references shall be to the “Jail Administrator” rather than the “Chief Deputy” and the “Auglaize County Correctional Center” rather than the “Auglaize County Sheriff’s Office.”

The Union also proposed amending Section 17.6 to provide that an employee mandated to work overtime would be permitted to receive one meal from the kitchen at no cost to the employee.

The Employer proposed that Section 17.5 be amended to provide for tighter controls on shift trades than the law Enforcement tentative agreement provides for. The primary difference it proposed from the Union’s final proposal is a shorter pay-back requirement.

The Employer proposed maintaining current contract language that does not provide for mandated employees to receive a free meal.

#### **Discussion**

Regarding shift trades, the Employer argued that the shift trade language needs to be different in this bargaining unit due to the much higher level of usage of shift trades. The Fact-finder agrees that the Employer has an administrative need to have the shift trades paid back in a timely manner. The Union’s proposal, which mirrors the new language tentatively agreed to in the Law Enforcement contract, provides much tighter controls than were in place in the two previous Corrections contracts, including a reasonable time frame for the pay back of the shift. The Fact-finder finds merit in the Union’s proposal, and did not find compelling evidence that this proposal will be inadequate in dealing with the Employer’s concerns. Further, the Employer will only be managing one set of rules in both of its collective bargaining agreements for shift trades, which should ease its administrative burden in this regard.

Regarding mandated employees receiving one free meal, the Union argued that a mandated employee does not come prepared to work that extra time, and may not have food or money for a meal with them. The Employer countered that this may not be fair to

all employees, as the kitchen is not always open. Further, it argued that an employee may be mandated at a time when there are no meals available. It also argued that the taxpayers should not have to provide the employees with free meals. The argument that is most compelling is that some mandated employees would likely benefit, while others may not. This is an unequal benefit that could cause hard feelings within the bargaining unit and could not be evenly applied by the Employer, possibly subjecting it to grievances that would be without a reasonable remedy.

### **Findings and Recommendation**

Regarding the proposals for changes in shift trades, the Fact-finder finds the Union's proposal for the adoption of the language tentatively agreed to in the Law Enforcement contract to be the most reasonable approach.

Therefore, the Fact-finder recommends the Union's proposal to amend Section 17.5 of the agreement to include the language tentatively agreed to in the Law Enforcement contract, subject to the insertion of the appropriate references to the "Jail Administrator" and "Correctional Center."

Regarding the proposal that mandated employees be entitled to a meal, the Employer's argument regarding fairness and availability is compelling.

Therefore the Fact-finder recommends the retention of current contract language that does not provide for mandated employees to receive a free meal.

### **Issue: Use of Part-time Employees**

#### **Positions of the Parties**

The Employer proposed that Sections 32.1, 32.4, 32.5, 32.7 and 32.8 of the current agreement be deleted. These sections deal with several issues regarding the use of part-time Corrections Officers, including certification, pay, staffing levels and lay-off. It proposed the retention of current contract language in Sections 32.2 and Sections 32.3.

The Union proposed the retention of Sections 32.1, 32.4, 32.5, 32.7 and 32.8 in the agreement. It also proposed the deletion of Sections 32.2 and 32.3 of the current agreement, which deal with the offering of overtime to full-time Corrections Officers vis-à-vis part-time Corrections Officers.

## Discussion

Regarding Section 32.1, neither party offered much in the way of testimony or evidence to support their respective positions. It appears in both of the current agreements, and no compelling reason was offered for its deletion.

Regarding Section 32.2 and Section 32.3, the Union argued that this duplicates language already found in Section 19.2(A). In reviewing that section of the agreement, the Fact-finder is not convinced that is so for both sections.

The tentative agreement reached by the parties for Section 19.2(A) specifically provides for the use of part-time Corrections Officers for scheduled overtime known to the Employer more than 24 hours in advance. This is the type of overtime covered in the existing Section 32.3, so clearly the existing Section 32.3 is unnecessary. The Employer's argument that the deletion of this section would eliminate the ability to hire part-time Corrections Officers is unfounded, as Section 19.2(A) specifically addresses the use of such part-time Corrections Officers in overtime situations.

However, Section 19.2(A) does not state anything about the use of part-time Corrections Officers in situations dealing with unscheduled overtime, or overtime for which the Employer has less than 24-hours notice. The Fact-finder does see merit in the Employer's argument that the deletion of Section 32.2 could be construed as eliminating the specifically provided for ability of the Employer to utilize part-time Corrections Officers in such overtime situations. The Union offered no compelling evidence or argument that it was opposed to the use of part-time Corrections Officers in such situations. It is noted by the Fact-finder that the Employer suggested at the hearing that this section may properly belong in Section 19.2(A), a suggestion that makes sense.

Section 32.4 currently provides that any part-time Corrections Officers would be laid off before any full-time Corrections Officers. The Employer argued that this language already appears in Article 13 – Layoff and Recall, and is therefore unnecessary. In fact, Section 13.2(A) does provide that all part-time employees within an affected classification must be laid off prior to any full-time employees. This provision was left alone by the parties, despite there being several other changes in this Article having been tentatively agreed to by the parties. The Fact-finder finds that Section 32.4 is redundant language, and should be deleted.

The Employer argued that Section 32.5 deals with compensation levels for part-time Corrections Officers who are not part of any of the two current bargaining units. It argued that there is no ability for the instant collective bargaining agreement to convey rights to non-bargaining unit members, nor would any arbitrator be empowered to find any remedy for such non-bargaining unit employees should this provision ever be grieved. The Union argued that this has previously been negotiated by the parties, and should not be discarded. It offered no evidence, however, that the deletion of this section

would be harmful to this bargaining unit in any way. The Employer's argument is compelling and correct on all points. Section 32.5 conveys no rights to members of this bargaining unit. The Fact-finder can see no reason for Section 32.5 to exist in the agreement, and no harm to the bargaining unit if it is removed.

Regarding Section 32.7, Employer maintained that these provisions are routinely violated, and the Union has expressed no objection. However, just as a management right is not necessarily lost due to an employer's decision not to exercise it, so too is a union's contractual right not lost simply because it deems it appropriate at times not to exercise it. There was simply no compelling argument that this section should be removed from the agreement.

Regarding Section 32.8, the Employer argued that this section restricts the Sheriff's ability to maintain the highest quality service. The Union argued that Section 32.8 protects the bargaining unit members from becoming disadvantaged if part-time employees receive more training than the full-time employees. The Employer failed to provide any compelling evidence that the Sheriff has been restricted in any way by these contractual provisions. Certainly there are regulations regarding the levels of training that the Sheriff is mandated to provide, but in this regard there should be no difference between the minimum training required of part-time or full-time Corrections Officers and Supervisors. The Union's concern over additional training appears legitimate. Regardless, given the lack of a compelling argument to delete these provisions, it is reasonable to maintain them.

## **Findings and Recommendation**

Regarding Section 32.1, no compelling reason was given for its deletion.

Therefore, the Fact-finder recommends the retention of current language in Section 32.1.

Regarding Section 32.2, the Fact-finder finds the Employer's argument for the retention of this section to be compelling, and agrees that it should be moved and added to Section 19.2(A).

Therefore, the Fact-finder recommends the retention of current language in Section 32.2, and that it be moved and added to the provisions of Section 19.2(A).

Regarding Section 32.3, the Fact-finder finds the Union's argument that this is covered in the tentative agreement for Section 19.2(A) to be compelling.

Therefore, the Fact-finder recommends the Union's proposal to delete Section 32.3.

Regarding Section 32.4, the Fact-finder finds the Employer's argument that this is a duplicative provision compelling.

Therefore, the Fact-finder recommends the deletion of Section 32.4.

Regarding Section 32.5, the Fact-finder finds the Employer's argument for the deletion of the provisions contained therein to be compelling.

Therefore, the Fact-finder recommends the deletion of Section 32.5.

Regarding Section 32.7, the Fact-finder finds no compelling reason for the deletion of this section.

Therefore, the Fact-finder recommends the Union's position for the retention of Section 32.7.

Regarding Section 32.8, the Fact-finder fails to see a compelling reason for the deletion of this section.

Therefore, the Fact-finder recommends the Union's proposal that Section 32.8 be retained.

### **Issue: Article 33 – Duration**

#### **Positions of the Parties**

The Employer proposed that Section 33.1 be amended to make the effective date for the new agreement be the date of signing. It also proposed that Section 33.1 be amended to allow for contract negotiations to begin 120 calendar days in advance of the expiration date rather than the current 90 days.

The Union proposed that the effective date be January 1, 2005. It agreed with the Employer's proposal for the amendment of Section 33.1 to allow for contract negotiations to begin 120 calendar days in advance of the expiration date.

## **Discussion**

As noted earlier, the current negotiations represent an agreement by the parties to consolidate two collective bargaining agreements into a single agreement. The previous agreements with each of the separate bargaining units had provisions for the effective date for each to be January 1<sup>st</sup>. It is noted by the Fact-finder that the parties signed one of the previous agreements on February 25<sup>th</sup>, and the other previous agreement on May 10<sup>th</sup>. As the parties in both cases exceeded the January 1<sup>st</sup> date of effectiveness for contractual provisions, they have previously demonstrated that a retroactive effective date is acceptable. The Employer offered no compelling reason that a retroactive effective date would not to be acceptable in the instant negotiations.

The Employer's proposed amendment calling for negotiations to begin 120 days prior to expiration should help the parties conclude their next negotiations prior to the expiration of the new agreement. This is both reasonable and compelling, and unopposed by the Union.

## **Findings and Recommendation**

Finding no compelling argument in support of the Employer's position on effective date, and finding that in the past the parties have agreed to the contract being effective on January 1<sup>st</sup> in the past, the Fact-finder believes the Union's proposal is consistent and fair.

The Fact-finder finds the Employer's proposal for amending Section 33.1 to reflect a 120-calendar day window for negotiations to be compelling.

Therefore the Fact-finder recommends that Section 33.1 (A) in Article 33 Duration of Agreement be amended to read as follows:

*A. This Agreement shall be effective on January 1, 2005 and shall remain in full force and effect until 12:00 Midnight, December 31, 2007. 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 sixty (60) calendar days prior to the expiration date of this Agreement. The parties shall commence negotiations within two (2) calendar weeks upon receiving notice of intent.*

## **Issue: Article 25 – Wages**

### **Positions of the Parties**

The Union proposed amending Section 25.1 to provide Corrections Officers with a 4% across the board wage increase effective January 1, 2005, an additional 4% across the board wage increase effective January 1, 2006, and an additional 4% across the board wage increase effective January 7, 2007. The Union proposed amending Section 25.1 to provide that effective January 1, 2005 Corrections Supervisors would be paid 9% above the hourly rate for the top step for a Corrections Officer, effective January 1, 2006 Corrections Supervisors would be paid 10% above the hourly rate for the top step for a Corrections Officer, and effective January 1, 2007 Corrections Supervisors would be paid 12% above the hourly rate for the top step for a Corrections Officer.

The Union also proposed that a new section be added to the agreement providing for longevity in the amount of \$40.00 for each continuous year of service after five years, to be added to the base wage rate of the employee in a formula it prescribed. The Union also proposed that a new section be added to the agreement to provide for a shift differential of \$0.40/hour for any employee working between the hours of 3:00 p.m. and 7:00 a.m.

The Employer proposed that Section 25.1 be amended to provide Corrections Officers and Corrections Supervisors with a 1.5% across the board wage increase effective upon signing of the agreement, an additional 1.5% across the board wage increase effective January 1, 2006, and an additional 2% across the board wage increase effective January 1, 2007. Its proposal retains a set hourly wage rate for Corrections Supervisors rather than setting the wage at a percentage differential based upon the top Corrections Officer wage rate.

The Employer also proposed that no new language be added to the agreement providing for either longevity or a shift differential.

### **Discussion**

Regarding the effective date of the first wage increase, the Fact-finder notes that in the most recent agreements reached with each of the two previously separate bargaining units, the first year's wage increase was effective on January 1<sup>st</sup>. There was no evidence presented by the Employer that this created any undue hardship in 2002, the first year of the previous agreements, nor was there any claim that this would present an undue financial hardship in 2005. Therefore the reasonable conclusion is that the parties past practice in the last round of negotiations of providing that the first year wage increase would be retroactive to January 1<sup>st</sup> should be maintained in this current round of negotiations.

Regarding the Union's proposal for adopting a 9-12% spread between the wage rates for Corrections Supervisors and the top rate for Correction Officers, there was a lack of meaningful evidence to show that such a percentage differential was necessary in order for the Corrections Supervisors to be adequately compensated. The Employer's comparables show that the wages paid to the Corrections Supervisors higher than the average for the contiguous counties. The Union's own comparables (Union Exhibit 7) show that the Corrections Supervisors in this bargaining unit enjoy wage rates above the average. With no evidence that the wages for the Corrections Supervisors in this bargaining unit are lagging behind relative to their counterparts elsewhere, or relative to the Corrections Officers within this bargaining unit, there is simply no compelling reason to adopt the Union's proposal for the percentage wage differential.

Regarding its across the board wage increase proposal, the Union argued the bargaining history of the parties has solidly been at around 3%. It also pointed to data from the SERB Dayton region that shows wage increases averaging 2.6% for 2005 and 3.08% for 2006. It argued that a review of the contiguous counties shows wage increases averaging 2.8% for 2005 and averaging 3% for 2006.

Regarding its proposal for an across the board wage increase of 1.5% the first year, 1.5% the second year, and 2% the third year, the Employer stated that it believed this would provide the bargaining unit employees with a reasonable wage increase. It argued that there is uncertainty in the future due to the expiration of a dedicated tax levy for law enforcement in mid 2006. If that revenue is not replaced, this will result in a \$2 million reduction in revenue for the Sheriff's Office. It argued that its wages are already competitive, and that the Office has no problem recruiting or retaining employees. It stated that it is not arguing that it is poor, only that the future is uncertain and that it desires to be fiscally prudent.

The Employer acknowledged that a replacement or renewal levy will be attempted, and that the expiration of the existing levy does not necessarily mean the loss of the \$2 million in revenue the levy currently generates. The difficulty for the Fact-finder in accepting the Employer's argument that its future is uncertain due to the expiration of the levy is two-fold. First, the levy will be in place throughout the first half of the time period covered by this agreement. Secondly, there is a flaw in claiming economic uncertainty solely on the possibility of the non-renewal of a tax levy. School districts face ongoing operational levy renewal efforts. If a Fact-finder based wage increase recommendations for school district employees solely on the uncertainty of future levy renewals, school employees would never receive any wage increases at all. Auglaize County has demonstrated both the willingness and the ability to fund law enforcement at the current level, and there was no compelling evidence presented at the hearing to convince the Fact-finder that it will be unable to do so for the term of this new agreement.

With that background, the Fact-finder believes that the appropriate wage increase lies between the Union's proposal and the Employer's proposal. Also, the Fact-finder notes that he was also Fact-finder for the Law Enforcement bargaining agreement, and in the

Report issued May 31, 2005 the wage increase that was recommended for that bargaining unit lies in between the two proposed here as well. That wage recommendation can properly be considered an internal comparable for this bargaining agreement.

Regarding longevity, the Union argued that this was a major issue to the bargaining unit members. It offered evidence that three of the contiguous county Sheriff Offices have some form of longevity, and that a majority of the Sheriff Offices in Ohio also have some form of longevity as well. The Employer countered that in those contracts providing for longevity something major has been given up by those bargaining units in order to gain such provisions in their agreements. It also offered the internal comparable of Auglaize County, where no other employees receive longevity payments. It also maintained that it has no problem retaining employees.

Given the lack of evidence that retaining senior employees is difficult or that they are enticed in troublesome numbers to move to other contiguous Sheriff Offices that provide longevity, and noting that no other employees within Auglaize County enjoy longevity benefits, it is difficult to find support for the Union's position. Seniority already benefits the bargaining unit members in a variety of ways in the current agreement. While the bargaining unit members would certainly benefit economically from longevity provisions, there just is simply no compelling reason to recommend them at this time.

Regarding shift differential, the Union offers this proposal in an attempt to compensate employees for working on less desirable shifts. It argued that a shift differential would serve as an attraction to more senior employees to work on these less desirable shifts as well. The Employer cited a virtual absence of shift differentials in the contiguous county Sheriff Offices, and a complete absence of shift differentials in other Auglaize County agencies or departments (both organized and non-organized), and argued that there is simply no reasonable argument that it should now provide such a benefit. It also noted that the Sheriff has no problem filling shifts under the current contract. The Fact-finder simply finds a lack of a compelling argument that a shift differential is warranted.

As noted above, this Fact-finder also served as Fact-finder for the Law Enforcement bargaining agreement, and in the Report issued May 31, 2005 several of the issues in these negotiations discussed above were also dealt with. The Fact-finder believes that many of the issues are of such a similar nature with the Corrections bargaining unit so as to deserve identical treatment. Specifically the across the board wage increase recommended herein, as well as the recommendations with regard to the issues of longevity and shift differential were found to have the same or similar supportive evidence. Given the internal comparability of the recommended Law Enforcement agreement, the recommendations made below with respect to wage increase, longevity and shift differential mirror those in the Law Enforcement Report.

## **Findings and Recommendation**

Regarding the effective date for the first year wage increase, no compelling reason was presented to the Fact-finder that the previous pattern of providing that the first year's wage increase be effective on January 1<sup>st</sup> should not be maintained in the instant agreement.

Therefore the Fact-finder recommends that the first-year wage increase recommended below be effective January 1, 2005.

Regarding the Union's proposal that the Corrections Supervisors' wages should be based upon a percentage differential from the Corrections Officers top pay, the Fact-finder was not presented with a compelling argument that such a differential is necessary.

Therefore, the Fact-finder recommends the Employer's proposal that the Corrections Supervisor wages be covered in the across the board wage increase recommended in this Report.

Regarding the issue of an across the board wage increase, the Fact-finder finds that the past bargaining history, economic viability of the County, and internal comparable of the recommendations contained in the May 31, 2005 Fact-finding Report for the Law Enforcement bargaining unit all support a wage increases in between those proposed by the Employer and those of the Union.

Therefore, the Fact-finder recommends a 3.0% across the board wage increase effective January 1, 2005, an additional 2.5% across the board wage increase to be effective January 1, 2006, and an additional 3.0% across the board wage increase to be effective January 1, 2007.

Regarding longevity, the Fact-finder does not find compelling evidence to support the creation of such a provision in the current agreement.

Therefore, the Fact-finder recommends the Employer's proposal that no longevity provisions be added to the agreement.

Regarding shift differential, the Fact-finder does not find compelling evidence to support the creation of such a provision in the current agreement.

Therefore, the Fact-finder recommends the Employer's proposal that no shift differential provisions be added to the agreement.

**Additional recommendations of the Fact-finder**

In addition to the above, the Fact-finder recommends all the tentative agreements reached by the parties during their negotiations, including those reached in mediation conducted by this Fact-finder.

Further, the Fact-finder notes that the parties have agreed that they will re-number the articles and sections as necessary due to the consolidation of the two previous agreements into a single agreement.

A handwritten signature in black ink, appearing to read "M. R. Fitts", written over a horizontal line.

Martin R. Fitts  
Fact-finder  
June 6, 2005

# Martin R. Fitts

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June 6, 2005

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STATE EMPLOYMENT  
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2005 JUN - 8 A 11: 33

Re: SERB # 04-MED-09-0940  
SERB # 04-MED-09-0944  
Corrections Unit  
Auglaize County Sheriff & Ohio Patrolmen's Benevolent Association

Gentlemen:

With this letter I am sending to each of you via USPS Express Mail my Fact-finding Report in the above-referenced matter.

By copy of this letter I am also sending a copy of this Report to SERB via regular USPS mail.

An invoice with my fee for Mediation and Fact-finding will be sent to you under separate letter.

Sincerely,



Martin R. Fitts  
Fact-finder

Cc: SERB ✓

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