

STATE EMPLOYMENT  
RELATIONS BOARD

2005 JUN -8 A 11: 34

**STATE EMPLOYMENT RELATIONS BOARD  
STATE OF OHIO**

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**In the Matter of Fact-Finding Between )  
OHIO PATROLMEN'S BENEVOLENT )  
ASSOCIATION )**

**and )**

**DELAWARE COUNTY SHERIFF )**

**FINDINGS AND RECOMMENDATIONS**

**CASE NO. 04-MED-10-1103**

**CHARLES Z. ADAMSON, FACT-FINDER**

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**For Ohio Patrolmen's Benevolent Association:**

**Joseph Hegedus, Esq.  
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Dublin, Ohio 43017**

**For the Delaware County Sheriff:**

**Christopher C. Russell, Esq.  
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41 South High Street  
Columbus, Ohio 43215-6194**

The undersigned was appointed Fact-Finder in this dispute by the State Employment Relations Board (SERB) on November 29, 2004 pursuant to Section 4117.14(C)(3) of the Ohio Revised Code in respect to a unit of Deputy Sheriffs and Detectives employees employed by the Employer.

### **I. HEARING**

After mediation on March 16, 2004 the case proceeded to hearing on April 14, 2004 as to the issues where the parties had reached an impasse. The issues remaining at an impasse are the following:

1. Wages and Pay Steps  
(Except for tentative agreements referred to below)
2. Health Insurance

### **II. CRITERIA**

In compliance with Ohio Revised Code, Section 4117.14(C)(4)(3) and Ohio Administrative Code Rule 4117-9-05(J) and 4117-9-05(K), the Fact-Finder considered the following criteria in making the findings and recommendations contained in this report:

- (1) Past collectively bargained agreements between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues 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 the private employment

### **ISSUES AND RECOMMENDATIONS**

The bargaining unit involved herein consists of approximately sixty six employees in the classification of Deputy Sheriff and Detective who are below the rank of Sergeant. After bargaining and mediation, tentative agreement was reached in respect to all of the provisions for a new contract except to for two major areas referred to above.

### **WAGES AND PAY STEPS**

After considerable collective bargaining and some mediation the parties agreed as to a substantial proportion of a new collective bargaining agreement except for certain provisions in Article 27, Health Insurance and Article 28, Wages and Pay Steps. While both parties agreed as to retroactivity, they were a substantial distance apart as to the remainder of the outstanding Wages and Pay Step issues. The Employer proposed that members of the bargaining unit receive a 2% wage increase for each of the three years of the contract while the Union maintained that, because of the Employer's financial situation as well as other criteria set forth in O.R.C. Section 4117.4(C), the employees were entitled to a larger wage increase for each year of the contract as well as a compression of the Pay Steps.

**The Union's Position**

The following is the Union's proposal for Wages and Pay Steps:

**ARTICLE 28**  
**WAGES AND PAY STEPS**

- A. The steps of the salary schedule are defined as follows:
  - 1. Step (A) applies to new employees during their one-year probationary period.
  - 2. Step (B) applies to employees after completion of the one-year probationary period.
  - 3. Step (C) applies to employees after two (2 years' continuous service as a Deputy.
  - 4. Step (D) applies to employees after three (3) years' continuous service.
  - 5. Step (E) applies to employees after four (4) years' continuous service.

The following wage schedule shall become effective on January 1, 2005:

	<u>(A)</u>	<u>(B)</u>	<u>(C)</u>	<u>(D)</u>	<u>(E)</u>
Per Hour	\$19.76	\$20.80	\$21.89	\$23.05	\$24.26

The following wage schedule shall become effective on January 1, 2006:

	<u>(A)</u>	<u>(B)</u>	<u>(C)</u>	<u>(D)</u>	<u>(E)</u>
Per Hour	\$20.75	\$21.84	\$22.98	\$24.20	\$25.47

The following wage schedule shall become effective on January 1, 2007:

	<u>(A)</u>	<u>(B)</u>	<u>(C)</u>	<u>(D)</u>	<u>(E)</u>
Per Hour	\$21.79	\$22.93	\$24.13	\$25.41	\$26.75

Corporals will be paid 5.0% above the rate of the top Deputy.

The Union stated that the Employer had not changed its position in respect to wages for

unit employees since the report and recommendation of Fact-Finder Howard D. Silver issued March 6, 2002 during the 2002 negotiations for the expired contract with certain exceptions set forth below. The Union's presentation in the 2002 Fact-Finding hearing was brought up-to-date in the current hearing. It utilized the same or similar material in the instant matter to support its position. The Delaware County Auditor's Comprehensive Annual Financial Report for year ending December 31, 2003, refers to economic conditions and outlook. According to the Auditor's report, County population increased from 66,929 in the 1990 census to 109,989 in the 2000 census with a projected population of 136,051 in 2003. "This growth has designated the County as the fastest growing county in Ohio and sixteenth fastest growing county in the United States.

"Assessed valuation for the County increased 72% between 1999 and 2003, to \$4.27 billion. Building permits issued in the County were 5,943 in 2003, which is more than any other year recorded. ...Filings in the Recorder's Office jumped 33% in 2003 from 63,971 in 2002 to 85,022 in 2003, reflecting the pace of real estate transactions."

The report continues that while the population of the County continues to grow, the County's unemployment rate remains one of the lowest in Ohio. In 2003, the County's unemployment rate was at 3.6 % compared to the State average of 6.1 %. This resulted from the stable and diverse business environment in the area where many of the top ten employers in the County are nationally recognized. In addition, the auditor pointed out that the County, Ohio Wesleyan University, the school systems, Grady Memorial Hospital, Sarcom and Mettler-Toledo also provide a stable base of employment.

The Union emphasized that the Auditor's report noted that located in the County is

Polaris Fashion Center, a large retail mall with six anchors and over a hundred and fifty stores; it is central Ohio's largest retail mall. The Auditor added that the mall, as well as surrounding retail development, "...continues to generate millions of dollars in sales tax revenue."

The Auditor predicted that the County's future continued to look bright since it is the fastest growing county in the State and one of the fastest growing counties in the country. He added that Wall Street Journal labeled the County as one of the top twenty "power centers of tomorrow". In addition to the booming Polaris Center located at the I-71 I-270 interchange, "...new office and retail developments join Bank One Corporations continued growth at its campus style complex, valued at more than \$218 million. The four other industrial parks located throughout the County continue to expand office, commercial and manufacturing space. Delaware County is also involved in promoting the establishment of enterprise zones and working with area businesses to help pay the economic dividend in the future."

According to the Auditor, in 2003 total revenues were \$90,001,068 as compared to \$60,863,101 in 1999.

The Ohio Department of Development Ohio County Indicator's Report of August, 2003 regarding the number of private housing units authorized by building permits in Ohio and counties during the period 1994 to 2002, indicates that Franklin County was ranked first in the number of building permits in 2002 while Delaware County was ranked second. In the same report, the value of private housing units authorized by building permits in the period 1995 to 2002 shows Franklin County was ranked first while Delaware County was ranked second.

The Tax Year 2004 Real Estate and Personal Property Value reflects high valuations both for residential and farm property in the townships and corporations within Delaware County. The

report of 2002 Sales Tax Revenues in the County shows that in 2002 the General Fund collected \$15,352,143 in sales tax revenue. Of the over \$15,000,000 in sales tax revenue the County returned .25 % to the tax payers in the form of a roll-back. This resulted in the General Fund ending up with \$10,234,762. In 2003 the tax payers continued to receive the same percentage roll-back which resulted in return to the tax payers of over \$5,756,000. In 2004 the General Fund received \$18,883,491 in sales taxes; since the same .25 % roll-back was in effect the tax payers received a roll back of \$6,292,190. After the 2004 rollback the General Fund received \$12,591,301 in revenue. Todd Hanks, the County Auditor, was quoted in the Wednesday, January 5, 2005 Delaware Gazette, that if the County "...were a county of substantial size that did nothing but export its goods I would be nervous, but with the County growing the way it is the tax rate here will continue to climb as our population increases."

A chart showing a map of the State issued by the Ohio Department of Taxation on March 9, 2004 indicates that only one county, Cuyahoga County, has a total State and local sales tax rate of 8 %. Thirty counties have a total rate of 7.5 % and eleven counties have a total rate of 7.25 %. It indicates that Delaware County's tax rate is 7.25 %. The following are the total tax rates for contiguous counties: Morrow 7.5 %, Marion 7 %, Union 7 %, Franklin 6.75 %, Licking 7 % and Knox 7 %.

The Ohio's Median Household Income report was issued by the Ohio State University Extension Data Center in 2000. It indicated that Ohio as part of the Midwest had a median household income in 1999 of \$40,956 so it was slightly lower than the national average. However, among the Ohio counties the top ten counties for median income in 1999 are as follows: 1. Delaware County - \$67,258, 2. Geauga County - \$60,200, 3. Warren County -

\$57,953 and 4. Medina County - \$55,811. It points out that counties with the higher incomes are generally located near major Ohio cities. As a result, the counties with the highest median household income tend to be contiguous to Hamilton, Franklin or Cuyahoga counties. In the past several years, Delaware County has developed as one of the upscale bedroom communities for Columbus, located in Franklin County, which borders Delaware County on the south.

The Union referred to the unreserved fund balance for Delaware County based on the Comprehensive Annual Financial Report for the year ending December 31, 2003 issued by Delaware County Auditor Hanks. The report indicates, that as of the end of 2003, the County's total expenditures were \$35,848,401 with a fund balance at the end of the year of \$16,057,882. The Union concluded that, based upon these figures, that the Employer's unreserved fund balance was approximately 43%.

The Government Finance Officer's Association Research Bulletin issued September, 1999 addressed the issue of unreserved fund balance and local government finance in an article by Ian J. Allan. Allan indicated that, as a result "...of differences in the economic and financial characteristics of local governments around the country, no nationally uniform standard exists regarding the level of unreserved fund balance that local government should maintain. Instead, each government must assess the degree of uncertainty which it faces and make a decision as to the level of financial resources it wishes to maintain for contingencies". Allan refers to analysis from Moody's Investors Service, Standard & Poors Corporation and Fitch's Investors Service. The general conclusion reached by these analyses is that 5% of budgeted expenditures is appropriate. In certain circumstances a higher level may be required. Allan asserts that "...governments that maintain an unreserved fund balance above 10% of annual operating

expenditures should be able to provide appropriate justification for maintaining that level.”

One of the Union’s key arguments in support of its position is based on a comparison of the wages and benefits of the Employer’s Deputy Sheriffs with employees occupying the same position in political entities serving as bedroom communities for major Ohio cities in the same manner as Delaware County serves Columbus. The benefits enjoyed by entry level and ten year employees in Geauga County (Cleveland), Greene County (Dayton), Clermont County (Cincinnati), Lake County (Cleveland) and Warren County (Cincinnati) are compared to Delaware County entry level and ten year deputies. According to the Union’s exhibit, in 2004 Delaware County entry level deputies pay was 90.26% of the average entry level pay of the counties referred to above - the top pay of a ten year Delaware County deputy was 96.75% of the average of the counties referred to above.

The Union also compared the Employer’s deputies’ pay and benefits with that of police officers in the following municipalities in the geographic area: Delaware City, Dublin, Columbus and Westerville. Its exhibits reflect that pay and benefits for the entry level and ten years of the Employer’s deputies are substantially less than the pay and benefits enjoyed by police officers in these cities. According to the Union, the SERB Clearing House Wage Increase Report issued March 9, 2005 reflects an average wage increase for 2005 for all county deputy sheriffs of 3.45%. The SERB March 9, 2005 Report also indicates that the Clermont and Geauga County deputies received a 4% wage increase in 2005; Greene County deputies received a 3% wage increase in 2005. It notes further that in a fact-finder’s report involving Franklin County deputy sheriffs issued February 7, 2005 by Fact-Finder N. Eugene Brundidge, the fact-finder recommended wage increases of 3% for the first two years of the collective bargaining agreement and 4% for the third

year of the agreement.

### **The Employer's Position**

The Employer's attorney pointed out that the Union's position in respect to wages increases in the instant matter is not reasonable. It was noted that, in Clermont County and Greene County the deputy sheriffs received annual wage increases of 3% for each year of their collective bargaining agreements. Under all of the circumstances in this case, the Employer believes that the Union's request for a 5% wage increase each year is not justified. Further, it asserts that compression of the pay steps is not appropriate at this time.

David Cannon, who has been the Delaware County Administrator for the last six and a half years, testified on behalf of the Employer. He asserted that the 2% annual wage increases offered to the employees involved herein was in line with the 2% wage increases given to other county employees and that it should be recommended by the undersigned.

Cannon stated that the Employer's offer to the Union of 2% annually for three years of the contract was all that Delaware County could afford. He pointed out that, as the fastest growing county in the State, there were a number of high priority projects that must be addressed by the county commissioners. He considered the number one priority, the new County Court Building, which will cost the County between \$30 and \$40 million. Another important project, according to Cannon, was the improvement of the County radio system to 800 megawatts, this will cost the County approximately \$16 million. He also referred to expenses for the expansion of the County jail and for improving the EMS facilities in the County so that there would be seven minute response time to emergencies. Road improvements must also be funded by the County according to Cannon.

Cannon indicated that the undersigned should consider the fact that, while other county employees have recently 2% wage increases, they do not receive step increases that the deputy sheriffs are entitled to under the provisions of the collective bargaining agreement. Further, on cross-examination, Cannon admitted that the cash report received from the County Auditor for the year ending December 31, 2004 reflected that the County had an unencumbered balance of \$8,683,408.57. He agreed that property tax roll-backs of \$3,000,000 were returned to Delaware County tax payers in 2004 and that the tax payers would receive a \$4 million property tax roll-back in 2005.

### **Findings and Recommendations**

As indicated above, there are six criteria that SERB requires the undersigned to consider in making Findings and Recommendations. One of the criteria involves comparing employees performing comparable work while giving consideration to "...factors peculiar to the area and classification involved." Another criterion is the ability of the public employer to finance and administer a particular contract provision dealing with employees' wages and/or benefits. Keeping these guidelines in mind, the undersigned is not going to recommend a proposal which will be too burdensome to the taxpayers notwithstanding the fact that the Employer is a wealthy community with solid financial standing. By the same token, an equitable solution requires that employees receive wages comparable to deputies working in similar type communities which are in good financial condition.

Various public reports, in particular Delaware County Hanks' Comprehensive Annual Financial Report for the year ending December 21, 2003, substantiate the conclusion that the Employer has the ability to pay a 3 ½% per hour annual wage increase for each of the years of the

collective bargaining agreement involved herein. The County is fastest growing county in Ohio with assessed valuations for the County increasing 72% from 1999 to 2003. The County's population continues to grow while its unemployment rate of 3.6% is one of the lowest in Ohio. The record reflects considerable growth in recent years including industrial parks and the Polaris Fashion Center, the largest retail mall in central Ohio.

The record also reflects that years 2002, 2003 and 2004 the county's general fund received increased sales tax revenue. In 2002 the General Fund collected \$15,352,143 in sales tax revenue while in 2004 the General Fund received almost \$19 million in sales tax revenue. The record also indicates that, during the years 2002, 2003 and 2004, the county commissioners determined that .25% of the sales tax revenue would be returned to the tax payers in the form of a roll-back.

The Employer's argument that it can only afford to pay a 2% annual increase to the deputies is not substantiated by the record. Although no national uniform standard for level of unreserved funds balances exists for local governments, the record reflects that the Employer's unreserved fund balance far exceeds either the 5% or 10% unreserved fund balance referred to in the Government Finance Officer's Association Bulletin article by Ian J. Allan.

A comparison of wages and benefits of the employees involved herein with employees occupying the same position in political entities serving as bedroom communities for major Ohio cities also must be given weight in reaching a recommendation in respect to wages. The pay and benefits of police officers in cities in the Columbus area also cannot be overlooked.

Accordingly, in view of the above and the record as a whole, the undersigned recommends that the employees in the bargaining unit involved herein receive a 3 ½% increase for each year of

the three year contract. The record reflects that the Union did not prove its case and substantiate the necessity for a compression of pay steps. Accordingly, it is recommended that the rest of Article 28, Wages and Pay Steps, remain the same as Article 28 in the contract that expired December 31, 2004.

### **HEALTH INSURANCE**

The contract between the parties which expired December 31, 2004 contained the following in respect to Health Insurance:

#### **ARTICLE XXVII - HEALTH INSURANCE**

1. The Employer shall maintain a group health benefits plan for the bargaining unit. The plan and its benefits shall be equal to or better than the plan in effect for the employees of the County generally (management and non-management employees alike).
2. The Employer may implement reasonable changes in the health benefits plan so long as the changes are implemented for county employees generally and so long as the Employer continues to fund the plan with at least its immediately preceding monthly contribution to the cost of health benefits. The Employer's implemented plan must be reasonable, the Union or employees may file a grievance to challenge the Employer's compliance with this Article, including the reasonableness standard.

The Employer shall meet and confer with representatives of the Union before implementing any changes.

3. The employer will provide and pay for term life insurance in an amount equivalent to that which is provided for Delaware County General Fund employees by Delaware County

**The Union's Position**

The parties tentatively agreed during negotiations as to term life insurance for the employees involved herein but remain apart on the remainder of the health insurance provisions.

The following is the Union's health insurance proposal:

**ARTICLE 27**  
**HEALTH INSURANCE**

- A. The Employer shall maintain a group health benefits plan for the bargaining unit. The plan and its benefits shall be equal to or better than the plan in effect during the 2004 plan year. The Employer shall pay 100% of the premium.
- B. The Employer may implement reasonable changes in the health benefits plan subject to the restrictions contained in paragraph 1 above. The Union or employees may file a grievance to challenge the Employer's compliance with this article, including the reasonableness standard.
- D. The employer will pay the following amounts monthly to employees choosing to waive health coverage.

	<u>Monthly</u>	<u>Annual</u>
Employee with no Dependents	\$ 60.00	\$ 720.00
Employee with Dependents	\$120.00	\$1,440.00

At a regular meeting of the Delaware County Commissioners held on November 24, 2004, the Commissioners adopted the CEBCO Blue Access health insurance plan for all Delaware County employees. The plan which provides County employees with two options is set forth in Commissioners Journal No. 46 minutes of November 24, 2004, Resolution No. 04-1453. Option 1 and Option 2 differ in coverage, employee contributions and deductibles.

On December 17, 2004 the Union filed an unfair labor practice charges with SERB against the Employer and the County Commissioners asserting that the Employer violated O.R.C. 4117.11(A)(1) and (A)(5) by unilaterally changing the employee health plan without bargaining with the Union. Among other things, the Union and the Sheriff were parties to three contracts, including the contract involved herein expiring December 31, 2004; that the Employer had paid the entire health insurance premium for each contract unit for the previous three years and that as of November 24, 2004 the County Commissioners changed the terms and conditions of the Health Insurance Plan. It further alleges that on December 10, 2004 the County began unilaterally deducting a health insurance premium contribution form the bargaining unit members in each of the three Union units. On April 29, 2005 SERB issued a finding of probable cause against the Delaware County Sheriff directing that a complaint be issued against the Sheriff for a hearing as to whether the Sheriff violated Ohio Revised Code 4117 by unilaterally deducting health insurance premium contributions for bargaining-unit employees' paychecks. The charge against the County Commissioners was dismissed.

The Union asserts that there are substantial differences between the health plan in existence under the expired contract and the new health insurance plan instituted by the County Commissioners. The major difference between the two plans is that the Employer paid the total cost of the old plan with the deputies being required to make no health plan contribution. The Union points out that the new plan was instituted by the Employer without any exchange of proposals by the parties during negotiations. Further, it notes that if an employee selects Plan 1 of the two plans offered employees, the plan with more comprehensive coverage, the single coverage premium is \$22.07 per month while family coverage is \$55.17 per month.

The Union argues that the health plan costs paid by employees since December, 2004 have a definite impact on the wages issue referred to above. It states that if the Employer's proposal of a 2% wage increase for the three contract years was adopted by the parties the deputies would actually be receiving less than the Employer's proposal of 2% annual wage increase when the new employee health plan contributions are considered as part of the total wage and benefit package. The Union reasons that there should be some quid pro quo for the deputies paying health premiums for the first time.

### **The Employer's Position**

The Employer emphasized the undisputed escalation of health care costs in recent years. It states that the Union's proposal for health coverage is not realistic in light of the rising health care costs faced by all employers, including the Employer involved herein. It also noted that the undersigned faces an unusual fact-finding situation because of the pendency of the SERB unfair labor practice charge in respect to the current health plan in effect for Delaware County employees.

### **Findings and Recommendations**

The record reflects that since December, 2004 the deputies have been covered by a plan offering two options to County employees. Under plan 1, the plan providing more comprehensive coverage than plan 2, employees contribute \$22.07 per month for single coverage and \$55.17 for family coverage.

The record reflects that the parties devoted a substantial portion of their respective presentations to the Wages and Pay Steps issue (Article 28) and did not make a detailed presentation as to Health Insurance (Article 27). Neither party provided evidence of "external

comparables” for a valid comparison to be made to health plans of deputy sheriffs in the general geographic area in accordance with statutory criteria. The cost of health care in central Ohio is an important factor to be weighed in making recommendations in this matter. In view of the health care evidence, and the record as a whole, it is determined that neither party substantiated its health care position. Accordingly, it is recommended that Health Insurance, Article 28, in the contract which expired December 31, 2004 continue as the health care provision in the succeeding labor contract involved herein.

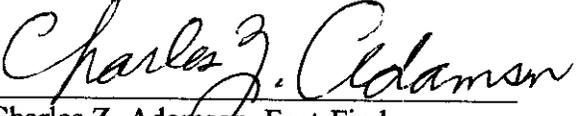
### **TENTATIVE AGREEMENTS**

The parties tentatively resolved that the following articles from the agreement expiring December 31, 2004 be included in the succeeding collective bargaining agreement involved herein. They are incorporated into these Findings and Recommendations and recommended by the undersigned:

- ARTICLE 1 - PREAMBLE
- ARTICLE 2 - RECOGNITION
- ARTICLE 3 - DUES DEDUCTION
- ARTICLE 4 - NON-DISCRIMINATION
- ARTICLE 5 - PROBATION
- ARTICLE 6 - CORRECTIVE ACTION AND RECORDS
- ARTICLE 7 - DISCIPLINE MEETINGS
- ARTICLE 8 - TRANSFER AND ASSIGNMENTS
- ARTICLE 9 - CONFORMITY TO LAW
- ARTICLE 10 - LABOR RELATIONS MEETING
- ARTICLE 11 - STANDARD OPERATING PROCEDURES
- ARTICLE 12 - GRIEVANCE PROCEDURE
- ARTICLE 13 - SENIORITY
- ARTICLE 14 - LAYOFF & SENIORITY
- ARTICLE 15 - MISCELLANEOUS
- ARTICLE 16 - OFFICER IN CHARGE
- ARTICLE 17 - UNIFORM ALLOWANCE
- ARTICLE 18 - UNPAID LEAVES OF ABSENCE
- ARTICLE 19 - MILITARY LEAVE

ARTICLE 20 -	STANDARD WORKWEEK AND OVERTIME
ARTICLE 21 -	CALL IN PAY
ARTICLE 22 -	TRAINING
ARTICLE 23 -	PAID LEAVES
ARTICLE 24 -	VACATIONS
ARTICLE 25 -	EDUCATION
ARTICLE 26 -	HOLIDAYS
ARTICLE 27 -	THE LIFE INSURANCE SECTION ONLY OF ARTICLE 27 - HEALTH INSURANCE
ARTICLE 28 -	WAGE AND PAY STEPS EXCEPT FOR ANNUAL WAGE INCREASE AND WAGE STEP COMPRESSION
ARTICLE 29 -	SCOPE
ARTICLE 30 -	MANAGEMENT RIGHTS
ARTICLE 31 -	SUBSTANCE ABUSE
ARTICLE 32 -	DURATION

Cleveland, Ohio  
Cuyahoga County  
June 1, 2005

  
Charles Z. Adamson, Fact-Finder