STATE EMPLOYMENT
RELATIONS BOARD
2006 APR 28 A 9:04

IN THE MATTER OF
FACT FINDING

BETWEEN	**SERB Case #'s 05-MED-10-1196** **05-MED-10-1197**
ADAMS COUNTY SHERIFF **And the** **FRATERNAL ORDER OF POLICE,** **OHIO LABOR COUNCIL**	**FACT FINDER: E. William Lewis** **DATE OF HEARING:** **APRIL 12, 2006** **DATE OF REPORT:** **APRIL 26, 2006**

REPRESENTATION
By:

Employer Representatives	**Union Representatives**
Mr. Kenneth Edsall, Account Mgr. Clemans-Nelson & Associates Sheriff, Kermit Howard Mr. Ryan McFarland, Chief Deputy Ms. Linda Mendenhall, Clerk Adams County Commissioners	Mr. Barry Gray, Staff Representative FOP/OLC Ms. Kay Berry, Deputy Jailer Mr. Denny Johnson, FOP, Local Lodge President

AUTHORITY

This matter was brought before Fact Finder E. William Lewis, in keeping with applicable provisions of ORC 4117 and related Rules & Regulations of the Ohio State Employment Relations Board. The parties have complied in a timely manner with all procedural filings. The matter before the Fact Finder is for consideration and recommendation based on merit and fact according to the provisions of ORC 4117.

BACKGROUND

The Fact Finder was appointed to hear this SERB Case in accordance with ORC Section 4117.14. The Adams County Sheriff, hereinafter known as the Employer, and the Fraternal Order Of Police, hereinafter known as the Union, are in the process of bargaining for a successor Agreement. The current Agreement, which expired on December 31, 2005, has been extended by mutual agreement between the parties. The Union represents two bargaining units, totaling approximately, eighteen (18) active employees. Unit 1 is composed of all Deputy Sheriff's sworn under 311.04 of the Ohio Revised Code; Deputy Patrol Officer, Deputy Jailer and Deputy Dispatcher. Unit 2 is composed of all full-time employees not sworn in accordance with ORC 311.14, including Dispatcher and one (1) Cook.

The parties commenced bargaining on their contract renewal on December 8, 2005. They had a total of three bargaining sessions prior to this hearing date. Numerous tentative agreements were reached between the parties. However, there were seven Articles, or parts thereof, unresolved according to the parties Pre-submittals.

The Fact Finding Hearing was convened at 10:00am, in the Adams County Courthouse conference room, in West Union, Ohio. Pre-hearing position statements were timely submitted by the parties, and additional documents, in the form of Exhibits, and testimony were presented at the Hearing. Prior to initiating the hearing procedure, in accordance with ORC 4117.14(C)(3)(f), the parties entered into mediation with the fact finder. During the mediation session all issues were tentatively agreed to, with the exception of Wages and Duration as it relates to Wages. The Fact Finding portion of the Hearing was convened at 2:00pm. Prior to the adjournment of the Hearing the parties indicated that they had nothing additional to submit on behalf of their bargaining positions. The Fact Finder was asked to write a Fact Finder Report and to submit it to the parties on or before April 26, 2006.

CRITERIA

In compliance with ORC 4117.14(C)(4)(e) and related Rules and Regulations of the State Employment Relations Board, the following criteria were given consideration in making this Recommendation.

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 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 public service or in private employment.

This report is based on facts provided in documentation and testimony introduced at the Hearing and is in keeping with the statutory consideration cited above. The format of this report will be to list the unresolved Articles in ascending order followed by a brief review of the position of each party, a discussion and my recommendation. My Fact-Finder's recommendation will be accompanied by the appropriate contract language.

ISSUES AT IMPASSE

ARTICLE 2	**RECOGNITION**
ARTICLE 16	**SENIORITY**
ARTICLE 32	**HOLIDAYS**
ARTICLE 34	**EQUALIZATION OF OVERTIME**
ARTICLE 35	**INSURANCE**
ARTICLE 36	**UNIFORMS**
ARTICLE 37	**WAGES**
ARTICLE 43	**PAID ABSENCE DAYS**
ARTICLE 47	**DURATION**

PARTY POSITIONS- DISCUSSION- RECOMMENDATION

ARTICLE 2 RECOGNITION

Employer Position:

Add the classification of Correction Officer to those classifications listed in Bargaining Unit 2. Include Correction Officer in ARTICLE 15—PROBATIONARY PERIOD, Section 15.1; ARTICLE 17—LAYOFF & RECALL, Section 17.4; and add Correction Officer to APPENDIX A—WAGE RATES (Steps 1 through 5 @ $0.25/hour above Dispatcher rates. Also, in APPENDIX A—include a Probationary Rate for Correction Officers hired after January 1, 2006.

Union Position:

Current language.

Discussion:

The parties reached an agreement on Correction Officer (civilian) during their re-opener negotiations in 2005. In their mediation session with the fact finder, concerns were raised by the Employer, however, the Union acknowledged the re-opener agreement and accepted the Employer's position on this issue.

Recommendation:

Employer's position reflecting the 2005 re-opener agreement addressing the Correction Officer (civilian). See APPENDIX A (Attachment 1) for wage rates.

ARTICLE 16 SENIORITY

Employer Position:

Retain current language except for Section 16.4, which is to be moved to ARTICLE 31—VACATIONS, and to be incorporated into Section 31.9.

Union Position:

Per Pre-submittal, retain current language.

Discussion:

During the mediation session the Union agreed with the Employer's proposal to move Section 16.4 to ARTICLE 31.

Recommendation:

Mediated settlement, Employer's position—move Section 16.4 to ARTICLE 31.

ARTICLE 31 VACATION LEAVE

Employer Position:

Retain current language, except add a new Section 31.9, and incorporate Section 16.4 of ARTICLE 16. Section 31.9 to read as follows:

Section **31.9.** For the purpose of vacations within the Department, **Adams County Sheriff's** departmental seniority shall prevail in the selection of vacation time **as follows. Vacations are scheduled in accordance with the workload requirements of the Employer. Vacation request made between January 1 and January 31 of each year shall be given priority and granted based on Adams County Sheriff's departmental seniority. Vacation requests received after January 31, will be granted based on workload requirements and Article 31—Vacation and determined by the first submitted request. If two or more employees of the same assignment classification submit their request on the same day, the determining factor will be seniority.**

Once vacation time has been selected and approved it shall not be changed without approval of the employee and the Sheriff, or his designated representative.

The parties agree that employees will have thirty (30) days following implementation of this Agreement to submit requests for vacation.

Union Position:

Per Pre-submittal: If Section 16.4 is moved to ARTICLE 31, include language which would guarantee an employee one and one-half times their regular rate of pay for all hours required to work during time originally approved as vacation time, but revoked by the Sheriff or his designee.

Discussion:

During the mediation session, it was tentatively agreed to, between the parties to add the new Section 31.9 as the Employer proposed.

Recommendation:

New Section 31.9 as per the Employer Position.

ARTICLE 32 HOLODAYS

Employer Position:

Section 32.1 Holidays:

A. current language

B. To read as follows: An employee required to work **and who has worked A full shift** on one of the above listed holidays shall choose to be compensated by:

1. current language

2. replace current language as follows: receiving **compensatory time** at rate of one and one-half (1 ½) times.

C. current language

Sections 32.2 and 32.3—current language

Union Position:

Current language, except change Section 32.1, B 1. To read as follows:

B. An employee required to work one of the above listed holidays shall to be compensated by:

1. receiving overtime pay at the rate of one and one-half (1 ½) hours pay for each hour worked in addition to his regular pay for all hours worked. An employee who doesn't work on a holiday shall receive one (1) day eight (8) or twelve (12) hours of straight time pay.

Discussion:

During the mediation session the parties agreed to keep the current language.

Recommendation:

ARTICLE 32 HOLIDAYS---current language

ARTICLE 34 EQUALIZATION OF OVERTIME

Employer Position:

Section 34.1 change to read as follows: The Employer shall establish a procedure that allows for equal overtime opportunities for all members **in each classification**. This does not mean that overtime hours shall be equal but they shall be offered on an equitable basis so far as practicable. Court time shall not be considered in this equalization.

Section 34.2 current language

Union Position:

Current language

Discussion:

During mediation the parties tentatively agreed to change Section 34.1 as the Employer proposed.

Recommendation:

Change 34.1 as Employer proposed. See Section 34.1—Employer Position.

ARTICLE 35 INSURANCE

Employer Position: current language

Union Position: current language

Recommendation:

Current language.

ARTICLE 36 UNIFORMS, CLOTHING & EQUIPMENT

Union Position: Sections 36.1, 36.2 and 36.4—current language.

Change Section 36.3—A,B, and C to provide as follows:

A. $430.00
B. $460.00
C. $500.00

Employer Position: Retain current language for Sections 36.1, 36.2 and 36.4

Change Section 36.3, Replacement Policy, to provide the following allowances:
A. $420.00
B. $440.00
C. $460.00

Discussion:

During the mediation session the parties tentatively agreed to the following allowances: $425.00, $450.00 and $480.00.

Recommendation:

Sections 36.1, 36.2 and 36.4—current language.

Section 36.3. Replacement Policy

A. Effective upon ratification of this Agreement, the Employer will provide each employee a four hundred twenty five dollar ($425.00) per year uniform allowance for replacements.

B. Effective January 1, 2007, the Employer will provide each employee a four hundred fifty dollar ($450.00) per year uniform allowance for replacements.

C. Effective January 1, 2008, the Employer will provide each employee a four hundred eighty dollar ($480.00) per year uniform allowance for replacements.

ARTICLE 37 WAGES

Union Position:

Section 37.1

A. Effective January 1, 2006, a three percent (3%) increase, across the board.

B. Effective January 1, 2007, a three percent (3%) increase, across the board.

D. Effective January 1, 2008, a three percent (3%) increase, across the board.

Section 37.2. Longevity: incorporate changes from 2005 re-opener

After 10 years	$500.00	$0.24
After 15 years	$1,000.00	$0.48
After 20 years	$1,500.00	$0.72
After 25 years	$2,000.00	$0.96

Employer Position:

Section 37.1

A. Effective January 1, 2006, a two percent (2%) increase, across the board.

B. Sixty (60) days prior to January 1, 2007, the parties agree to reopen negotiations regarding the issue of wages.

C. Sixty (60) days prior to January 1, 2008, the parties agree to reopen negotiations regarding the issue of wages.

Section 37.2. Longevity: incorporate changes from 2005 re-opener. See Union Position.

Discussion:

Both parties introduced Exhibits during the hearing process. The Employer also introduced testimony regarding the County's economic status, through their witness, Ms. Mendenhall, Clerk for the Adams County Commissioners. Union Exhibit 1, tab. 10, addressed comparables as well as State Auditor Financial Reports regarding the years from 1999 through 2003, for Adams County. The Employer's Exhibit 1, also addressed comparable wage data in their Tab. G, and economic data in Tabs. 7 and 8.

The Union argues that nearby Counties Brown and Highland, received at least 3% per year, and that Adams County bargaining unit members are significantly behind those employees. They further pointed out, through their evidence, that Adams County, although considered rural, is and has been, growing in population. Farming only represents fifteen percent of employment in the County. With the past and projected growth these employees need to be equal to the average of the others in the area, argues the Union. They also pointed out that these bargaining unit employees have been below the statewide settlement average for the past three years.

The Union also reviewed their exhibit (Tab. 10), of the State Auditor's Report, and pointed out that from 1999 through 2003 total resources for Adams County had increased 93%. However, the General Fund reserves had declined over the same period, declares the Union. They alleged that the Commissioners had the funds but chose not to put them into the General Fund.

The Union argued that their position of 3% per year was fair and deserving. Their proposal represents only .3 of 1% of the General Fund budget, and would cause no financial hardship to the County, claims the Union.

The Employer comparables (Tab. G), compare Deputies and Correction Officers with eight other area counties. The Deputy's were third from the bottom, however, they were near the average for entry level. The top level showed them $800.00 below the average. When comparing the new civilian classification of Correction Officer, they were at the bottom for entry level and next to the bottom for the top level. The Employer claimed that Adams County was a depressed area, and even though depressed, they had a large tax burden (Tab. 7).

Ms. Mendenhall was called as the Employer witness and she testified that she prepared the budgets for the County Commissioners. Her testimony focused on reviewing the County Tax Budget for the General Fund. The Sheriff is appropriated by the County Commissioners and funded from the General Fund.

The Employer, through Ms. Mendenhall, reviewed General Fund revenues and expenditures for the last five years (Tab. 8). Since 2001 the General Fund has expended more each year than it has received, according to Employer evidence and testimony. The Employer's evidence and testimony, addressed the County Tax Budget (less Advances) from 1998 through the 2006 projected budget. As of December 31, 2006, the General Fund will have a negative balance of $15,084, claims the Employer (Tab. 8). Evidence also showed that after 2006 the Employer

will lose approximately $130,000 in taxes, due to a State reduction in Power Plant loss reimbursements(Tab. 8).

The Employer argued that their 2% increase for 2006 was all they could afford, and two percent was all that was appropriated for the other elected officials budgets. The Tab. 8 evidence of revenue and expenditures justifies their position, argues the Employer.

Recommendation:

There is no question in the fact finder's mind that the Sheriff's Department is funded by the General Fund. Whether the Commissioners' are denying discretionary funds to the General Fund, as the Union alleges, has not been established.

In reviewing the Employer's submitted County Tax Budget (less Advances), the actual receipts establish a pattern not reflected in their 2006 budget. Property taxes have increased in each of the last three years, but the 2006 budget shows a slight decrease. Permissive Taxes have increased or stayed essentially the same each year since 1999, but 2006 shows a significant decrease. Furthermore, total receipts have increased from $5,551,472 in 2001, to $6,461,270 in 2005, but the 2006 budget reflects a $250,000 decrease. The fact finder is not convinced, through evidence and testimony, that the upwards revenue trends will suddenly reverse in 2006, especially with no Power Plant reimbursement decrease.

Considering the comparbles and past Agreements, the fact finder recommends the following:

ARTICLE 37 WAGES

Section 37.1. Bargaining unit members current wage compensation shall be increased accordingly:

A. Effective January 1, 2006, the rates of pay for all bargaining unit members shall be increased by three percent (3%) across the board.

B. Sixty (60) days prior to January 1, 2007, the parties agree to reopen negotiations regarding the issue of wages.

C. Sixty (60) days prior to January 1, 2008, the parties agree to reopen negotiations regarding the issue of wages.

Section 37.2. Longevity: Bargaining unit members shall receive longevity pay according to the following schedule:

Years of Service	Annual	Hourly
After 10 years	$500.00	$0.24
After 15 years	$1000.00	$0.48
After 20 years	$1,500.00	$0.72
After 25 years	$2,000.00	$0.96

Longevity shall be determined based upon total years of departmental service which has been completed by the employee as of his or her anniversary date of hire with the Adams County Sheriff's Department. Changes shall become effective at the beginning of the pay period following the employee's anniversary date.

ARTICLE 43 PAID ABSENCES

Employer Position:

In accordance with the Employer's Pre-submittal: current language

Union Position:

Current language

Recommendation:

Current language

ARTICLE 47 DURATION

Employer Position:

Three year Agreement, Effective January 1, 2006 through December 31, 2008.

Union Position:

Three year Agreement, Effective January 1, 2006 through December 31, 2008.

Recommendation:

Sections 47.1 and 47.3---Current language

Section 47.2. to read as follows: This Agreement shall become effective as of January 1, 2006, except as otherwise indicated herein, and shall remain in effect up to and including December 31, 2008, and shall automatically renew itself from year to year thereafter, unless written notice to terminate or amend this Agreement is given by either party to the other at least sixty (60) days prior to December 31, 2008, or prior to the date of expiration of any annual renewal hereof.

SUMMARY

The Fact Finder enjoyed meeting with the parties in mediation and the Hearing. I would like to commend the parties in their efforts to resolve the unresolved issues. I hope the recommendations contained in this Report will allow the parties to continue their positive labor-management relationship.

To the best of my knowledge this Report and its included recommendations complies with applicable provisions of ORC 4117 and its related Rules and Regulations adopted by the State Employment Relations Board.

During negotiations, mediation, and fact-finding the parties reached tentative agreement on many issues. These tentative agreements along with sections of the current Agreement not negotiated and/or changed are hereby part of the recommendations contained in this Report.

Respectfully submitted and issued in Columbus, Ohio this 25th day of April, 2006.

E. William Lewis
Fact Finder

APPENDIX A (ATTACHMENT L)

1.75% Wage increase to Investigators, Road Deputies and Jailers
Wage adjustment to Dispatchers and Cooks of $0.25 per step with the bottom step frozen.
Add two steps and increase longevity
Add Probationary steps to all classifications
Add Corrections Officer classification

		2004 Hourly	2004 Annually	2005 (1.75%/Wage Adjustment) Hourly	Annually	per hour	per year
INVESTIGATOR	P			$ 12.50	$ 26,000.00		
	1	$ 13.44	$ 27,955.20	$ 13.68	$ 28,444.42	$ 0.24	$ 489.22
	2	$ 13.84	$ 28,787.20	$ 14.08	$ 29,290.98	$ 0.24	$ 503.78
	3	$ 14.24	$ 29,619.20	$ 14.49	$ 30,137.54	$ 0.25	$ 518.34
	4	$ 14.64	$ 30,451.20	$ 14.90	$ 30,984.10	$ 0.26	$ 532.90
	5	$ 15.05	$ 31,304.00	$ 15.31	$ 31,851.82	$ 0.26	$ 547.82
ROAD DEPUTY	P			$ 11.50	$ 23,920.00		
	1	$ 13.13	$ 27,310.40	$ 13.36	$ 27,788.33	$ 0.23	$ 477.93
	2	$ 14.21	$ 29,556.80	$ 14.46	$ 30,074.04	$ 0.25	$ 517.24
	3	$ 14.31	$ 29,764.80	$ 14.56	$ 30,285.68	$ 0.25	$ 520.88
	4	$ 14.54	$ 30,243.20	$ 14.79	$ 30,772.46	$ 0.25	$ 529.26
	5	$ 14.73	$ 30,638.40	$ 14.99	$ 31,174.57	$ 0.26	$ 536.17
JAILER	P			$ 10.50	$ 21,840.00		
	1	$ 12.48	$ 25,958.40	$ 12.70	$ 26,412.67	$ 0.22	$ 454.27
	2	$ 13.13	$ 27,310.40	$ 13.36	$ 27,788.33	$ 0.23	$ 477.93
	3	$ 13.65	$ 28,392.00	$ 13.89	$ 28,888.86	$ 0.24	$ 496.86
	4	$ 13.89	$ 28,891.20	$ 14.13	$ 29,396.80	$ 0.24	$ 505.60
	5	$ 14.17	$ 29,473.60	$ 14.42	$ 29,989.39	$ 0.25	$ 515.79
CORRECTIONS OFFICER	P	XXX	XXX	$ 9.50	$ 19,760.00	XXX	XXX
	1	XXX	XXX	$ 11.50	$ 23,920.00	XXX	XXX
	2	XXX	XXX	$ 11.75	$ 24,440.00	XXX	XXX
	3	XXX	XXX	$ 12.00	$ 24,960.00	XXX	XXX
	4	XXX	XXX	$ 12.25	$ 25,480.00	XXX	XXX
	5	XXX	XXX	$ 12.50	$ 26,000.00	XXX	XXX
DISPATCHER	P			$ 9.25	$ 19,240.00		
	1	$ 11.25	$ 23,400.00	$ 11.25	$ 23,400.00	$ -	$ -
	2	$ 11.34	$ 23,587.20	$ 11.50	$ 23,920.00	$ 0.16	$ 332.80
	3	$ 11.41	$ 23,732.80	$ 11.75	$ 24,440.00	$ 0.34	$ 707.20
	4	$ 11.47	$ 23,857.60	$ 12.00	$ 24,960.00	$ 0.53	$ 1,102.40
	5	$ 11.56	$ 24,044.80	$ 12.25	$ 25,480.00	$ 0.69	$ 1,435.20
COOK	P			$ 9.00	$ 18,720.00		
	1	$ 10.17	$ 21,153.60	$ 10.17	$ 21,153.60	$ -	$ -
	2	$ 10.21	$ 21,236.80	$ 10.42	$ 21,673.60	$ 0.21	$ 436.80
	3	$ 10.48	$ 21,798.40	$ 10.67	$ 22,193.60	$ 0.19	$ 395.20
	4	$ 10.66	$ 22,172.80	$ 10.92	$ 22,713.60	$ 0.26	$ 540.80
	5	$ 10.87	$ 22,609.60	$ 11.17	$ 23,233.60	$ 0.30	$ 624.00

Longevity	Annual	Hourly
10	$ 500.00	$ 0.24
15	$ 1,000.00	$ 0.48
20	$ 1,500.00	$ 0.72
25	$ 2,000.00	$ 0.96

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Fact Finders Report was delivered by overnight mail to Mr. Kenneth Edsall, Clemans-Nelson & Associates, at 6500 Emerald Parkway, Suite 100, Dublin, Ohio 43016-6235, Employer Representative, and Mr. Barry Gray, Staff Representative, FOP/OLC, at 5752 Chevoit Rd., Suite D, Cincinnati, Ohio 45247-7008, and by regular mail to Mr. Edward Turner, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th floor, Columbus, Ohio 43215-4213, this 26th day of April 2006.

E. William Lewis
Fact Finder