FACT FINDERS REPORT

STATE EMPLOYMENT
RELATIONS BOARD
2006 SEP -6 A 11: 14

IN THE MATTER OF FACT FINDING:

Fraternal Order of Police, Ohio Labor Council, Inc.

And

Scioto County (Ohio) Sheriff

Case Number: 05-MED-10-1215
05-MED-10-1216
05-MED-10-1217
05-MED-10-1218

Before Fact Finder
N. Eugene Brundige

PRESENTED TO:

Edward E. Turner, Administrator
Bureau of Mediation
State Employment Relations Board
65 East State Street, 12th. Floor
Columbus, Ohio 43215-4213

And

Robert W. Cross, President
Cross Management Consulting Services, Inc.
For the Scioto County Sheriff
631 7th Street
Portsmouth, Ohio 45662

And

Wes Elson, Staff Representative
Fraternal Order of Police, Ohio Labor Council, Inc.
For the Scioto County Deputies, Sergeants, Dispatchers, Clerks, Secretaries and Clerks.
222 West Town Street
Columbus, Ohio 43215

N. Eugene Brundige was selected by the parties to serve as Fact Finder in the above referenced cases and duly appointed by the State Employment Relations Board in compliance with Ohio Revised Code Section 4117.14 (C) (3) on November 28, 2005.

The parties informed the Fact Finder that time extensions would be filed. Subsequently the parties informed the Fact Finder that they had been able to reach a tentative agreement.

That Tentative Agreement was rejected by the FOP membership and the parties established a hearing date of July 7, 2006.

Both parties submitted the required pre-hearing statements in a timely manner.

The parties entered into a waiver of overnight delivery of the report.

Prior to the beginning of the hearing mediation was attempted. Several "packages" were considered that would resolve the negotiations and both parties worked hard to find common ground. After several hours it was decided that the parties were just too far apart on a number of major issues to reach an agreement.

The hearing was conducted.

At the hearing one or both of the parties identified the following open issues.

1. **Article 15 (b) PROBATIONARY PERIODS**
2. **Article 22 VACATIONS**
3. **Article 25 HOURS OF WORK AND OVERTIME**
4. **Article 27 WAGES**
5. **Article 28 INSURANCE**
6. **Article 29 SICK LEAVE**

7. **Article 30 <u>LAYOFF AND RECALL</u>**

8. **Article 36 <u>INJURY LEAVE</u>**

The County was represented by Robert W. Cross, President of Cross Management Consulting Services and Sheriff Marty Donini.

The FOP was represented by Staff Representative Wes Elson, Staff Representative Frank Arnold and Staff Attorney Kay Cremeans along with many of the members of the FOP bargaining team.

BACKGROUND INFORMATION:

Scioto County is located in South Central Ohio bordered on the south by the Ohio River. The Sheriff's office provides basic law enforcement and jail facilities for Scioto County.

The County has recently completed the building of a new jail facility. The Collective Bargaining Agreement covers four Bargaining Units: Bargaining Unit A is comprised of all full time Deputy Sheriff's. Bargaining Unit B is made up of all full time Sergeants. Bargaining Unit C consists of all full time Dispatchers, and Bargaining Unit D contains all full time Clerks/Secretaries and Cooks.

The parties have been able to agree upon the inclusion of a new classification of full time Correction Officers. The resulting Collective Bargaining Agreement is intended to cover those employees and the parties will submit a joint petition for recognition to SERB following the conclusion of the bargaining process.

The units jointly include approximately seventy three (73) employees. Only the Deputies and the Sergeants are sworn personnel.

In formulating this report and recommendation the Fact Finder has considered the proposals and data submitted by each of the parties along with their oral and written arguments and judged this information against the criteria enumerated in SERB Rule 4117-9-05(J).

CONSIDERATION OF OPEN ITEMS:

The parties agreed to consider the items in numerical order with the moving party going first in discussion of each item.

The Fact Finder will note the position of the respective parties, and will then offer discussion and recommendations, based upon the facts ascertained, for each issue.

Article 15 (b) PROBATIONARY PERIODS

Position of the Sheriff:

This proposal relates to the creation of the new Corrections Officer position. The Sheriff believes that those deputies who bump from the Deputy position to the Corrections Officer position need to serve a one year probationary period. They note that there are different duties and the county has a major liability for the actions of Correction Officers that demand a period of time in which the performance of persons in those positions, including former Deputies, can be evaluated by the Sheriff to determine if the employee can be successful.

Position of the FOP:

The FOP notes that many of the current deputies first served in the jail and already have an awareness of the position.

The FOP points to the contract nature of the job of some deputies who serve in townships. Those persons can be removed without cause and need to be able to bump into the jail if that happens.

Discussion and Recommendation:

There is no disagreement on Sections A, C or D of this Article. Only B is in contention.

As noted earlier in this report the parties were able to reach a tentative agreement which was rejected by the FOP. While I understand that after a rejection of a tentative agreement, "all bets are off" and a TA is related to a total package, I told the parties that the practice of this Fact Finder is to examine each proposal against that TA to determine what circumstances has changed that require deviation from that which was tentatively agreed to.

In relation to this item, I note that the sheriff could have lived with language that did not include the probationary language at the time of the tentative agreement. I find no great change in circumstances which would lead me to reverse that position.

I recommend the language of the tentative agreement.

Article 15 (b) should read: *An employee promoted out of Bargaining Unit A-1 (Deputies) to Unit B (Sergeants) shall serve a one (1) year probationary period. Employees promoted from Bargaining Unit A-2 (Civilian Correctional Officer) to Bargaining Unit B-(Sergeants) shall serve a one (1) year probationary period, as will Bargaining Unit A-2 employees who have completed the 1 year in Article 15A, promoted from Civilian Correctional Officer to Deputy. Dispatchers (Unit C), Clerk/Secretaries and Cooks (Unit D) to Dispatcher (Unit C) shall be required to successfully complete a*

probationary period of ninety (90) days. An employee serving a promotional probationary period whose performance is unsatisfactory shall be returned to their former position.'

Article 22 VACATIONS

Position of the Sheriff:

The Sheriff has attempted to clarify some language that he asserts was intended in prior bargaining, but that intent was not supported in a recent arbitration decision. In the tentative agreement the Sheriff had proposed limiting vacation hours to forty after the completion of the first year of service. The language also clarifies the lump sum crediting of forty hours vacation after 8, 15 and 20 years of service.

Finally the Sheriff would limit service only to time served with the Scioto County Sheriff's office.

The final concept deals with limiting prior service credit for those employees who have previously retired from one the State Retirement Systems.

The Sheriff's representative pointed out the Batavia decision of the Supreme Court which he believes, states that when there is a conflict that supercedes, the employee is entitled to both benefits.

Position of the FOP:

The FOP only desired to clarify some language to be in line with the recent arbitration decision.

The FOP would like to continue to see 80 hours awarded at the end of the first year. They would only agree with the employer's language about the periodic lump sum dumping of vacation hours.

Discussion and Recommendation:

It appears to this Fact Finder that the parties did good work when they negotiated the tentative agreement.

Clearly there is confusion regarding which supercedes in such situations and the addition of the supercedence language is helpful.

The current prevalent practice of rehiring persons after they retire is a phenomena not anticipated by the General Assembly when the collective bargaining act passed and provides a bit of a windfall to rehired persons.

I am in general agreement with the language of the tentative agreement except that the delay in the implementation seems unfair to persons who might have been hired since January 1, 2006. If there are such persons, they were hired with a certain expectation about vacation accrual that might be reversed if this section were applied retroactively.

Thus I recommend the language of the tentative agreement with the exception of the effect date which I recommend be placed at January 1, 2007.

The language of Article 22 should read:

ARTICLE 22: VACATIONS

A. Vacation Crediting

This Article supercedes Ohio Revised Code 9.44 and Ohio Revised Code 325.19 as it pertains to this article and vacation accumulation and calculation credit.

All full-time employees will be entitled to earn vacation leave with pay in accordance with **this article as listed below:**

1. Less than one (1) full year of service - No Vacation
2. One (1) full year of service - 3.1 hrs. 80 hrs. worked (80 hrs./2 weeks)
3. Eight (8) full years of service - 4.6 hrs./80 hrs. worked (120 hrs. /3 weeks)

4. Fifteen (15) full years of service - 6.2 hrs. /80 hrs. worked (160 hrs. /4 weeks)
5. Twenty (20) full years of service - 7.7 hrs. /80 hrs. worked (200 hrs. /5 weeks)

Effective January 1, 2007, newly hired employees will receive only forty (40) hours of vacation after completion of their first year of service.

Employees who have completed 8, 15 and 20 years of service will have 40 hours of vacation credited to their vacation bank in a lump sum on their completed anniversary.

To be vacation leave eligible, and employee must have one years of service before taking vacation hours, employee may take vacation after one full yearns ~~department~~ **of office** service. **For employees hired after January 1. 2007, service is defined as service only with the Scioto County Sheriffs Office. Any employee who becomes employed by the Scioto County Sheriffs Office after retirement from one of the State's Retirement System shall not have any prior service credit counted for vacation eligibility.**

B. Vacation Usage

Each employee entitled to vacation will schedule at least one (1) week (five 5) days) of vacation on consecutive days. Upon scheduling of at least one (1) week, the balance of any vacation may be taken in units of not less than one (1) day.

An employee shall have the right to take vacations according to his/her ~~classification~~ **office** seniority, subject to the scheduling requirements of the ~~Department~~ **Office** and in accordance with the selection procedures of paragraphs C and D of this Article.

(Sections C – H remain current contract language)

Article 25 HOURS OF WORK AND OVERTIME

The FOP has major issues with this Article as included in the tentative agreement and suggests that its inclusion was one of the primary reasons for the rejection of the tentative agreement by the membership.

They propose several changes to remedy these concerns.

There is not disagreement regarding Section A.

The language of Section B and the actual practices of the Sheriff have not been consistent. The FOP contends that the Sheriff has paid overtime on the basis of any time worked over eight (8) hours in a day or forty (40) hours in a week.

They would also like to see overtime paid on a number of non worked hours as well, including vacation, holiday, compensatory, personal or funeral leave.

To buttress their argument the FOP submitted comparables from Athens, Ross and Muskingum Counties showing the forty (40) hour standard.

The FOP also strongly believes a comp time bank needs to be included in the agreement since compensatory time has been used in the department in the past.

In other areas, they believe the language of this Article should remain the same.

Position of the Sheriff:

The Sheriff's representative points out that the FLSA standard for sworn police officers is one hundred seventy one (171) hours in a twenty eight (28) day period and the language of the contract already goes beyond that standard when it allows for one hundred sixty (160) hours.

The representative admits the Sheriff was paying overtime on another standard but notes that when the mistake was discovered, it was corrected.

The Sheriff proposes changing the standard to the 171 hours.

The Sheriff would also like the language of the right to refuse overtime changed from the current twelve (12) hours, to sixteen (16) hours.

Section F, according to the Sheriff, should be changed to provide that Court Time would be paid time only, and not eligible to the employee choice that governs other compensatory time requirements.

The Sheriff proposes the same language for Section H as is proposed by the FOP and in the tentative agreement.

Discussion and Recommendation

This article seems to be at the heart of what led to the rejection of the tentative agreement reached earlier between the parties.

Thus it bears careful examination in formulating this recommendation.

Section A is not in disagreement except for some cleanup in referring to the Sheriff's "Office."

Thus I recommend Section A read as:

A. This Article is intended to be used as the basis for computing overtime and shall not be construed as a guarantee of work per day or per week. However, the standard fourteen (14) day pay period for the Sheriffs ~~Department~~ **Office** is eighty (80) hours. Any reduction in the standard work cycle shall be uniformly applied to all employees in the Sheriff s ~~Department~~ **Office** and shall be only for lack of funds.

Section B is controversial because it is apparent the Sheriff had not been administering the language as written, but instead had been paying according to a different criteria not fully agreed to between the parties.

Both parties do admit that when the error was discovered, it was corrected. The employees want the past practices to be maintained and incorporated into the resulting collective bargaining agreement.

Past Practice is certainly a valid argument to be considered in deciding a grievance arbitration, but is much less clear in relation to the rules of SERB stating the criteria which governs fact finders.

The FOP submitted data from three comparable jurisdictions (Athens, Ross and Muskingum County Sheriff's Departments). In each of these overtime was paid for hours worked over forty (40) in a week. In one, pay was also for more than eight (8) hours in a day.

While other comparables were not provided on this issue, these clearly show that other employers have deviated from the FLSA standard of one hundred seven-one hours (171) in a twenty eight (28) day period.

Even the language in the Scioto County Contract of one hundred sixty hours (160) is a deviation.

Based upon the confusion that has existed regarding payment in the past and the fact that other jurisdictions have adopted a different standard, I recommend the adoption of language establishing payment over eighty (80 hours in a fourteen (14) day work cycle. I did not receive clear and convincing evidence that the practice had been to pay for more than eight hours in a day, thus that recommendation is not included.

I recommend section B read:

. Any hours in excess of sixteen (16) in a twenty-four (24) hour period or in excess of eighty (80) hours in a fourteen (14) day work cycle shall be compensated at time and one-half (1.5) the employee's regular hourly rate of pay for **Bargaining Units A and B.** The standard for the other units listed in Article 2: Recognition shall be 40 hours in a 7 day cycle or two (2) calendar week pay period in compliance with the FLSA. **Overtime compensation shall be one and one half (1 1/2) in either overtime pay or compensatory pay at the option of the employee.**

The FOP proposal to include non worked days in the overtime calculation is not recommended.

Section C. is not in contention except to strike the word Department and replace it with Office. I recommend this change here and throughout the Agreement.

In section D, the FOP proposes retaining current language. The Sheriff proposes changing the right of refusal to work overtime from twelve (12) to sixteen (16) hours.

A fact finder is hesitant to recommend a change to current language unless a significant problem or need demands it. While the parties did tentatively agree to this proposed change, this Fact Finder was not presented with adequate evidence to support a change from status quo.

I recommend the language of Section D remain current contract language.

The Sheriff proposes striking Section E with allows for bidding of work schedules on a semi-annual basis.

The FOP recommends current language.

Again, I fail to be convinced that the current system of bidding worked a significant hardship on the Sheriff's Office.

Weighing any inconvenience against the legitimate need of an officer to be able to plan his or her non-work life convinces me that the right recommendation is that included in the tentative agreement.

I recommend Section E reads as follows:

. Semi-annually on or around February 1 and August 1, the Sheriff shall post a work schedule listing the shifts, with the new schedules starting with this first full pay period of April and October each year, days off and requirements for each of the classification and assignments of the ~~department~~ **Office.** As near as possible, as the operating requirements permit, the Bargaining Unit members will select their assignments **in the classification** **by** **classification** seniority providing they have the qualifications and can perform the essential functions of the position/schedule they select. Non-Emergency schedules changes shall require a minimum of twenty-four (24) hour prior notice.

In Section F (Court Pay) the Sheriff proposes that Court Time must be paid and that the compensatory time option should not be available.

The FOP proposes current language.

I recommend current contract language.

Section G is proposed by all parties to remain the same with the exception of an extraneous word: "for" which is proposed to be deleted.

I so recommend.

Section H is new language clarifying the payment of overtime and compensatory time at 1 ½ times the hourly rate and sets the maximum of a compensatory time bank at eighty (80) hours.

Since all parties agree, I recommend its inclusion to read as follows: [1]

In lieu of overtime pay, an employee may elect to take compensatory time at the rate of one and one half *(1 1/2)* hours compensatory time for each hour of overtime worked. Employees may accumulate up to a maximum of eighty (80) hours of compensatory time in the compensatory time bank. Compensatory time off will be taken in increments of one (1) hour or more with prior approval of the Sheriff or his/her designee. Upon separation of service for any reason, the employee or their beneficiary shall be paid at the employee's current rate of pay for all

[1] The FOP appears to include this language in Section G, while the tentative agreement and the Sheriff's proposal include a new section. I am recommending a separate section for clarity but the parties can certainly agree to number differently if they chose.

accumulated, but unused compensatory time. Once per calendar year each employee shall have the option to request a cash payment for up to eighty (80) hours of accumulated but unused compensatory time. A request for such payment shall be made in writing and submitted between April 1st and May 31st of any calendar year. Payments will be made no later than the second payroll in June of the year in which the request is made. Employees requesting cash payouts will be required to have a minimum of forty-one (41) accumulated hours of compensatory time and shall be paid for forty one (41). up to a maximum of eighty (80) hours at the employee's current rate of pay.

Article 27 WAGES

The FOP notes that the tentative agreement was rejected by bargaining unit members and part of the reason was dissatisfaction with the wage article included in the TA.

The FOP proposes an overall wage increase for deputies in the amount of 4% in the first year, 3.5% in the second year and 3.5% in the third year plus a 25 cent add on for detectives and investigators. In addition they request a collapsing of steps one and two thus allowing deputies to reach the top of the scale in ten years rather than the current twelve.

For Unit B (Sergeants) the FOP proposes a second step and $1.15 per hour increase.

The FOP agrees with the Sheriff's proposal regarding Correction officers and the recruits.

For the non sworn positions the FOP proposes 65 cents per hour in the first year, 60 cents the second year, and 60 cents the third year.

Section E is of great concern to the FOP. This section of the current agreement establishes a separate status for those deputies who work in the Townships. In essence those employees are in temporary status while working in these "contractual" positions.

The FOP proposes striking this section and thus moving these deputies and their positions under all protections and provisions of the collective bargaining agreement.

The FOP offers the three jurisdictions previously cited as their comparables. They argue that the dispatchers are far below their counterparts in other jurisdictions as are the sergeants.

Their final series of arguments related to the ability of the County to meet their wage proposals.

Position of the Sheriff:

The Sheriff explained the financial position of the Sheriff's Office noting that the financial situation was very tight.

The impact of the new jail is adding many expenses to the budget.

The Sheriff's representative submitted the Benchmark Report of the State Employment Relations Board showing that settlements in Southern Ohio have been at or below 3% per year. The comparable list submitted from the County included Athens, Lawrence, Muskingum, Ross, Tuscarawas, and Washington.

One of the County Commissioners, Tom Reiser, presented the financial position of the County. He explained that in 2001 the County enacted the ½ percent piggy back tax which took them to the maximum allowable rate.

Commissioner Reiser discussed the unfunded state requirements and mandates in areas such as attorney fees and mailing requirements for voters.

The Sheriff feels strongly that he must maintain the flexibility of Section E in order to keep the townships willing to enter into contracts for the services of Patrol Deputies.

Discussion and Recommendation

The wage increases included in the tentative agreement are fair in light of the County's financial position and the comparables of surrounding counties. The SERB report issued in 2005 notes that the average wage settlement for all Ohio public employees was 2.79% and states that it is the first time in the last ten years that the annual rate has dropped below 3% [2]

The improvements to the pay system proposed by the FOP appear to have some merit (items such as reducing the number of years for deputies, an additional step for Sergeants) but they are the type of items that are best hammered out at the bargaining table to avoid the situation where a fact finder creates additional inequities while attempting to remedy others.

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[2] http://www.serb.state.oh.us/articles/2004AnnualWageReport.html

The remaining issue is Section E. That provision was apparently negotiated in the past to increase the number of deputies and to increase police presence. It seems to have met a significant need.

It is easy to understand the position of the FOP in that the parties have created a separate class of bargaining unit members and have excluded the ability of other bargaining unit members to bid on those positions.

While I have a great deal of empathy with the position of the FOP I must also note that this type of an article has come to be a part of the agreement through a significant amount of give and take. To recommend such a change through the fact finding process would be to risk upsetting a balance in the bargaining relationship. I am not prepared to take such a risk.

I recommend section E be retained as a part of the agreement. (I do recommend the parties, during the editing process for their final agreement, consider moving this section to a more appropriate place in the contract.)

In summary, I recommend Article 27 as written in the Tentative Agreement submitted to the Fact Finder as a joint exhibit, be included in the resulting Collective Bargaining Agreement. [3]

Article 28 INSURANCE

Position of Sheriff

The employer notes that Scioto County is paying a lot more than do comparable jurisdictions. They note that the parties had reached a tentative agreement which included an 80% - 20% split for any increases in premiums. The employer updated the amounts they will be paying in the first year of the agreement which were not known at the time the tentative agreement was reached.

The Sheriff notes comparables and the SERB report, both of which illustrate that Scioto County contributes a significantly larger amount of money than do other comparable jurisdictions for Health Care.

They note the employee charges include vision and dental insurance as well as health care.

Position of the FOP

The FOP is in agreement with the insurance article with the exception of the proposed change in the cost split for premium increases. They argue the 85% - 15% split is adequate and note that their share has not yet reached the 15% level.

They supply comparables and the SERB report for the information of the fact finder.

Discussion and Recommendation:

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[3] In the interest of brevity I have not copied the Article 27 language into this report, but hereby incorporate

Health care costs continue to be a challenge for both employees and employers. They are an issue in almost all negotiations.

A review of the health care program provided for the employees of Scioto County shows a well managed and fair system.

The financial arrangement of an 80/20 split in cost increases is a fair one in light of the trends and the increasing costs of health care.

The updating of the current costs by the employer should make this article more palatable to the employees. I see no need to remove the assurances that if other County employees receive a better arrangement regarding the premium split, then it should be passed on to FOP members. I have included the current language in this recommendation.

I recommend Article 28 should read:

ARTICLE 28: INSURANCE

A. The Scioto County Board of Commissioners shall have the sole determination of what health insurance plan(s) the Bargaining Unit members have available. The Commissioners will make this determination in compliance with O.R.C. 305.17.1. The plan(s) offered will contain substantially similar benefits as those presently being offered at the execution of this Agreement. The County will continue efforts at implementing cost containment measures to help maintain the cost of benefits.

B. The County will pay a share of the premiums for health, dental, vision, surgical, major medical, and life insurance coverage up to **$1294.15** per month for a family plan and **$491.95** per month for a single plan. The Bargaining Unit member will be responsible for any amounts over this amount and shall make whatever arrangements, if any, to meet that obligation with the County Auditor.

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it, by reference.

C. In the event there is an increase in insurance premiums after the signing of this agreement, the Employer and the Employee agree to split the cost of increase at a rate of: 80% employers and 20% employee. In the event there is an increase in insurance premiums after the signing of this agreement and the County agrees to pay a higher rate than 80% for other county General Fund employees then that same rate shall be applied to employees covered under this contract.

Article 29 SICK LEAVE

Sheriff's Position

The Sheriff notes that they had tried to deal with some sick leave abuse by using a carrot and stick approach. They worked with FOP and arrived at the language in the tentative agreement. In essence the proposal would reduce the compensation for sick leave when the sick leave balance drops below a pre determined level. After that level is reached and an employee uses more than five days of sick leave annually, the payment rate is reduced to 50%.

The Sheriff offers a carrot in the form of eight (8) hours of personal leave if an employee has perfect attendance for a six month period.

The Sheriff has added a statement that the language of the collective bargaining agreement supercedes state law on the subject.

FOP Position

The FOP explains that they do not believe there is a significant problem with sick leave abuse. They proffer that the average use of sick leave is between four and five days per year.

The FOP sees no need to include the supercedence language.

They find particularly objectionable the part of the proposal where the Sheriff has sole discretion regarding the offering of a physician's statement.

They favor maintaining current contract language.

Discussion and Recommendation:

As stated earlier in this report, this Fact Finder gives great deference to those Articles that went through the bargaining process and reached tentative agreement.

Many employers are proposing language that helps manage sick leave abuse because of its significant financial impact on the budget of the employer...

As a whole this proposal seems to meet that goal while protecting the legitimate needs of the employees.

I do agree with the FOP that the "sole discretion" language regarding physician verification is a bit open ended and would, most likely, contribute to a number of grievances.

The FOP figure illustrating that the average usage of sick leave is under five days should serve to show bargaining unit members that those employees who responsibly use sick leave will not be hurt by this proposal.

For the most part I am recommending the language of the tentative agreement with a modification of the "discretion" language.

I recommend Article 29 read:

ARTICLE 29: SICK LEAVE

This Aricle supercedes the Ohio Revised Code as it relates to sick leave, sick usage and sick leave conversion and payment.

A. Accumulation

1. Employees shall earn and accumulate paid sick leave at the rate of 0.0575 hour for each hours worked.

2. Employees who work overtime shall earn sick leave at the rate of 0. 0575 hour for each hour of overtime worked.

3. Employees shall be allowed unlimited sick leave accumulation. B.

Approved Use

1. Employees shall be granted leave with full pay for actual illness or injury, confinement by reason of quarantine, serious illness of a member of the employee's immediate family who is a permanent resident in his/her home upon certification from a physician stating the employee's need to care for the ill family member, and/or non-routine visit to a physician or dentist for medical care up to the number of accumulated sick days the employee has earned. Employees absent on sick leave for a period of three (3) consecutive working days shall be requested to provide a physician's statement verifying the nature of the illness and attesting to the employee's fitness to return to work.

2. An employee injured on the job may choose to file for Workers' Compensation rather than use his sick leave days.

3. Sick leave compensation shall be figured by using the follow system as follows:

Employees who have a sick leave balance in the amount of (300 hours in 2006). (400 hours in 2007) and (500 hours in 2008) or greater shall receive compensation for sick leave at the rate of 100% up until the sick leave balance decreases below (300 hours in 2006). (400 hours in 2007) and (500 hours in 2008) at which time the employee shall receive compensation as follows:

Employees who have a sick leave balance less than (300 hours in 2006), (400 hours in 2007) and (500 hours in 2008) shall be compensated at a rate of 100% for five (5) days of sick leave per year. Any sick leave hours used per year over five (5) days shall be compensated at a rate of 50%.

Employees whom have less than four years of service shall maintain a sick leave balance of 66.66% of their possible earned sick leave to be compensated at a rate of 100%. Employees who have less than 66.66% of their possible earned sick leave will be compensated at a rate of 50% for any sick leave used over five (5) days per year.

Employees who use sick leave that is accompanied by a physician's statement verifying the nature of the illness and attesting to the employee's fitness to return to work shall be compensated at a rate of 100% and those hours shall not be applied to the five *(5)* days per year if the Sheriff accepts the validity and adequacy of the statement. If the Sheriff questions the physician's statement he/she will notify the employee and give that employee the option of acquiring a statement that incorporates the needed information. If the employee does not submit the new statement within seven (7) days of the return of the original, the Sheriff may count the hours used against the five days per year.

Sick leave days used as personal days - 3 per year, do not count against five *(5)* days above.

Employees who have perfect attendance (defined as no use of sick leave) shall receive eight (8) hours of personal leave for the January 1st - June 30th period credited on or after July 1st; employees who have a perfect attendance July 1st - December 31st shall have eight (8) hours of personal leave credited after January 1st. Probationary employees are not eligible for this benefit. Personal days must be used within six (6) months from credited.

Sections C and D should remain current contract language except where ever the term "Department" is used, it should be replaced with "Office."

Article 30 LAYOFF AND RECALL

Position of the FOP.

The FOP proposes striking the wording "without further training" from section B. They note that management had agreed to this language in the tentative agreement. They note that if there are layoffs more senior deputies need a place to bump and the jail would be the logical place.

The FOP notes that persons bumping into the jail would have one year to complete the necessary 136 hour training.

Position of the Sheriff:

The issue for the Sheriff is the cost of the training and the time away from the job to complete it.

Discussion and Recommendation:

It is clear that the Sheriff determined he could live with this burden at the time of the tentative agreement, thus I must assume it will not work a great hardship now.

Of equal importance, if it is necessary to lay off senior employees, then there must be an effort made to provide them a place to land through a bumping process. This is central to good labor relations.

I recommend the position of the FOP, Section B should read:

"The Employer shall determine when layoffs will occur within the Bargaining Unit classification and/or Assignment, and employees will be laid off in accordance with their office seniority and their ability to perform the remaining work available."

Article 36 INJURY LEAVE

Position of the Sheriff:

The Sheriff notes that the language should be clarified to ninety (90) work days per contract rather than ninety (90) per year. The employer contends that this was always the understanding the Sheriff had of this language but that at least one employee had appeared to take advantage of the language. They note this language is an attempt to remedy any possible abuse.

The employer also notes that the ninety (90) days are work days versus calendar days, and this is in addition to other available leaves.

Position of the FOP:

The FOP prefers to retain current contract language.

Discussion and Recommendation:

The proposal of the Sheriff seems reasonable. Everyone wants to protect the officer hurt in the line of duty, but clearly a benefit tied to ninety work days provides such protection.

Section B should read: "Injury leave shall be available for a period of (90) ninety workdays per collective bargaining agreement. After ninety work days absences due to such injuries shall be charged to sick leave."

The rest of the Article should remain current language.

Miscellaneous observations.

The parties noted that they have agreed to retroactivity regarding wages.

The parties agreed that the removal of the Personal Leave language in Section D was merely to relocate it to another section of the agreement.

The Parties have agreed upon a three year contract, thus they should amend the duration section accordingly.

SUMMARY:

In this report I have attempted to consider and make recommendations regarding a significant number of complex issues. If errors are discovered or if any of the recommendations appear to the parties to be onerous to implement, I urge them to ***mutually agree*** (emphasis added) to alternate language consistent with the spirit of the recommendations.

After giving due consideration to the positions and arguments of the parties and to the criteria enumerated in SERB Rule 4117-9-05(K) the Fact Finder recommends the provisions as listed herein.

In addition, all agreements previously reached by and between the parties and tentatively agreed to, are hereby incorporated by reference into this Fact Finding Report, and should be included in the resulting Collective Bargaining Agreement.

Respectfully submitted and issued at London, Ohio this 5th day of September, 2006.

N. Eugene Brundige,
Fact Finder

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Fact Finders Report was served by electronic mail and regular US mail upon Robert W. Cross, (Employer Representative), 631 7th Street, Portsmouth, Ohio 45662; and Wes Elson (FOP Representative) FOP/OLC Inc., 222 East Town Street, Columbus, Ohio 43215-4611; and by regular U.S. Mail upon Edward E. Turner/ Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, this 5th Day of September, 2006.

N. Eugene Brundige

N. Eugene Brundige,
Fact Finder