STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding Between:

	)	
Ohio Patrolmen's Benevolent Association	)	06-MED-07-0793 ✓ 06-MED-07-0794
	)	
-And-	)	
	)	Fact-Finder:
Holmes County Sheriff	)	John T. Meredith

REPORT AND RECOMMENDATIONS ISSUED NOVEMBER 15, 2006

APPEARANCES

Present for the Union:

Joseph Hegedus, Counsel
Terry Byland, Union President
Jeremy Parks, Union Representative

Present for the Employer:

Mary Jo Toumert, Counsel
Nathan E. Fritz, Chief Deputy

INTRODUCTION

The parties to this Fact-Finding proceeding are the Ohio Patrolmen's Benevolent Association and the Holmes County Sheriff. The bargaining units consist of eleven (11) Road Patrol employees (Unit 1) and eighteen (18) Corrections Officers and Communications Officers (Unit 2). Unit 1 employees are sworn officers of the Sheriff's

Department below the rank of Sergeant. Unit 2 employees are "non-sworn, non-striking" employees of the Department.

The subject Agreement will be the initial agreement between the parties. Prior to May 1, 2006, the two bargaining units were represented by AFSCME. The OPBA successfully challenged AFSCME in a representation election and was certified by SERB as the exclusive bargaining representative. The parties engaged in collective bargaining as required by Chapter 4117 and resolved most terms for the new Agreement. However, several issues remained unresolved, and therefore fact-finding proceedings were initiated.

The State Employment Relations Board, by letter dated September 22, 2006, appointed the undersigned, John T. Meredith, to serve as Fact-Finder. By agreement of the parties, the fact-finding hearing was scheduled for 10:00 a.m. October 24, 2006 at The Holmes County Sheriff's office. Pursuant to OAC Rule 4117-9-05, the parties further entered into an agreement to extend the deadline for issuance of the fact-finding report to November 15, 2006. Prior to the hearing, the parties timely submitted their Position Statements and Amended Position Statements to the Fact-Finder.

The hearing proceeded as scheduled on October 24, 2006, and was conducted in accordance with Ohio Collective Bargaining Law and applicable SERB Rules and Regulations. With agreement of the parties, the Fact-Finder attempted to mediate the dispute. The parties engaged in meaningful discussions of all issues, but fully resolved only the issues identified in the Mediation section of this Report.

The parties then presented their evidence, and unresolved issues were submitted to the Fact-Finder at the conclusion of the hearing. These issues, and the Fact-Finder's recommendations for resolution of each, are fully discussed in the Unresolved Issues section of this Report. In making his recommendations, the Fact-Finder gave consideration to the following criteria prescribed by Ohio Collective Bargaining Law and listed in SERB Rule 4117-09-05:

(1) Past collective bargaining agreements, if any, between the parties;
(2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved.
(3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service.
(4) The lawful authority of the public employer;
(5) Any stipulations of the parties;
(6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

MEDIATION

During mediation, the OPBA withdrew its proposal to increase the cap for Conversion of Unused Sick Leave (Article 22). The OPBA also agreed to the Sheriff's proposal for Article 37, Longevity. Articles 22 and 37, therefore, are settled and withdrawn from fact-finding. The parties further agreed to language proposed by the OPBA for the Duration clause, but left the dates in that clause for the Fact-Finder's determination.

UNRESOLVED ISSUES

1. Article 15 – Checkoff or Maintenance of Membership

Union Position: The Union proposes a Fair Share provision which would require any non-member to pay a fair share fee for the benefit of the union's representation. In support of its proposal, the Union states: 1) Comparability data supports including the

Fair Share provision. In 64 of 80 Ohio counties, collective bargaining agreements for Sheriff's Department employees include a Fair Share provision. Similarly, Fair Share is included in collective bargaining agreements with the Sheriff in four of six counties contiguous to Holmes County. 2) The union is obligated to represent all employees included in the bargaining unit, without regard to union membership. Therefore, fairness and equity require that all employees share in the cost of this representation, subject to conditions prescribed by Section 4117.09(C) of the Revised Code. 3) Fair share is not a new concept in Holmes County. In fact, the Sheriff's prior contract with AFSCME included a Fair Share provision.

Employer Position: The Sheriff objects to the Union's Fair Share proposal, and counters with a proposed Maintenance of Membership clause, which would provide dues checkoff for members and would require all employees who elect to join the Union to maintain their membership for the life of the Agreement. The Employer maintains, in principle, that employees should be free to choose whether to join or not to join the Union, and that maintenance of membership is sufficient to insure that the Union has adequate funds for representation.

RECOMMENDATION: The Fact-Finder recommends that the Union's Fair Share proposal be included in the Agreement. Therefore, Article 15 would state:

> **SECTION 1. The employer shall make payroll deductions of union dues, fees or assessments from the pay or wages of employees in accordance with this Article for all employees in the bargaining unit.**
>
> **SECTION 2. The Employer agrees to deduct regular payroll deductions of dues, fees or assessments once each bi-weekly pay period upon the date of issuance of the payroll warrant from the pay of any employee in the bargaining unit upon receiving written authorization signed individually and voluntarily by the employee. The signed payroll deduction form, furnished and certified by the Union must be presented to the Employer by the Union.**

Upon receipt of the authorization, the Employer will deduct union dues, fees or assessments from the payroll check for the next pay period in which dues are normally deducted following the pay period in which the authorization was received by the Employer.

SECTION 3. **The parties agree that the Employer assumes no obligation, financial or otherwise, arising out of the provisions of this Article regarding the deduction of union dues. The Union hereby agrees that it will indemnify and hold the Employer harmless from any claims, actions or proceedings by any employee arising from deductions made by the Employer pursuant to this Article. Once the funds are remitted to the Union their disposition thereafter shall be the sole and exclusive obligation and responsibility of the Union.**

SECTION 4. **The Employer shall be relieved from making such individual deductions of dues, fees or assessments upon an employee's: (1) termination of employment; (2) transfer to a job other than one covered by the bargaining unit; (3) layoff from work; (4) an unpaid leave of absence; (5) valid and legal revocation of dues deduction authorization.**

SECTION 5. **The Employer shall not be obligated to make dues deductions from any employee who, during any bi-weekly pay period involved, shall have failed to receive sufficient wages to make all legally required deductions in addition to the deduction of union dues. In the event such deductions are not made, the Employer shall make the appropriate deductions from the following pay period or periods as certified by the Union to the Employer. The Employer is not required to make any partial dues deductions.**

SECTION 6. **The parties agree that neither the employees nor the Union shall have a claim against the Employer for errors in the processing of deductions. Corrections shall be made as soon as possible after notification in writing by the Union. If it is found an error was made, it will be corrected at the next pay period that the Union dues deduction would normally be made by deducting the proper amount.**

SECTION 7. **The rate at which dues, assessments and fees are to be deducted shall be certified to the payroll clerk by the Union. One (1) month advance notice must be given to the payroll clerk prior to making any changes in dues deductions, fees or assessments.**

SECTION 8. **The County shall forward deductions by warrant to the OPBA at 10147 Royalton Rd., Suite J, P.O. Box 338003, North Royalton, OH 44133. With such warrant shall be a listing of employees for whom deductions were made. Such warrant shall be forwarded within fourteen (14) days following the date payroll warrant is issued in which deductions were made.**

SECTION 9. **All employees covered under this Collective Bargaining Agreement who, sixty-one (61) days from the date of hire, are not members in good standing of the Union shall pay a fair share fee to the Union as a condition of employment. All employees hired prior to or after the effective date of this Agreement, who do not become members in good standing of the Union shall pay a fair share fee to the Union effective sixty-one (61) days from the employee's date of hire as a condition of employment. The fair share fee amount shall be certified to the Employer by the Union. The deduction of the fair share fee from any earnings of the employee shall be automatic and does not require a written authorization for payroll deduction.**

A separate alphabetical listing of all names of employees who are being deducted a fair share fee shall be furnished to the Union. Payment to the Union of the fair share fees shall be made in accordance with regular dues deductions as provided under Article 15. The Employer shall notify each new employee at the time of hire to their right to join or not to join the Union, and their obligation as a condition of employment to payment of a fair share fee.

Rationale: Both comparability and past collective bargaining agreements between the parties support inclusion of Fair Share in the Agreement. The interests of any nonmembers in the bargaining unit are sufficiently protected by Section 4117.09(C) of the Revised Code, to which Article 15 above is subject.

2. Article 24 – Hospitalization

Union Position: Although their wages are below average for Sheriff's employees in Ohio, Holmes County Sheriff's Department employees are paying a higher percentage of their insurance premiums than most Ohio public employees. The dollar cost of the employee contribution – $30.20/month single and $100.24/month family – is very close to the statewide average for the 72% of Ohio public employees who pay part of their premium, as reported in SERB's 2005 14th Annual Report on the Cost of Health Insurance in Ohio's Public Sector. However, because the total cost of the plan provided by Holmes County is much lower than the state average, the employee's monthly premium contribution comes to 14% single and 24% family, compared to statewide averages of 8.4% single and 10.4% family. (SERB Report, p. 3) Moreover, when all Ohio public employees are included in the statistics, the $100/month contribution for family coverage is in the highest third of contributions in the state. Also, except for Knox County deputies, sergeants and lieutenants, Sheriff's employees in contiguous counties pay lower percentages and/or lower dollar amounts. The Union is not seeking a reduction in employee contributions, but it does seek protection from future premium increases. To this end, it proposes adding a new Section 2 to Article 24 which would cap employee contributions at the current level for the duration of this Agreement.

Employer Position: The Sheriff does not have control over the cost of insurance and cannot agree to a cap without the County Commissioners' approval. Rates for 2007 and future years have not been set yet, and the Commissioners are currently negotiating with a provider for 2007. It is likely that there will be a substantial increase in rates. The Sheriff proposes retaining the language of the prior Agreement, which assures that Sheriff's Department employees will receive the same treatment as other county employees and that employee premium contributions will not be raised without "economic justification."

RECOMMENDATION: The Fact-Finder recommends adding a new Section 2 to Article 24 which would cap employee premium contributions at the current amounts during the first eighteen (18) months) of the Agreement. Thereafter, if and to the extent that employee premium contributions have been or are raised for other county employees, the County may also require Sheriff's Department employees to

pay the higher premium contribution, consistent with Section 1. Article 24 would state:

> **<u>SECTION 1.</u> For the duration of this Agreement, the Employer shall continue to provide employees with hospitalization coverage at the same level as provided by the County Commissioners for the other county employees, and the premium shall be paid by the Employer or shared with the Employer under the same provisions as other county employees. Should the Employer wish to change the coverage level, carrier, or payroll deduction percentage from that in effect on the date of this Agreement, it shall notify the Union in writing no less than thirty (30) days prior to such change or as soon as the Employer is notified. The Employer agrees it will not raise employee premiums without economic justification. The Union may request a meeting with the Employer in accordance with Article 18 of this Agreement to discuss the effects of change.**
>
> **<u>SECTION 2.</u> Notwithstanding any language contained in Section 1 above, during the first eighteen months (January 1, 2007 – June 30, 2008) of this Agreement, the maximum premium payment for employees covered by this Agreement shall be $30.80 per month for single coverage and $100.24 per month for family coverage.**

<u>Rationale</u>: The Fact-Finder acknowledges the disconnect between the Sheriff's obligation to negotiate and the Commissioners' ability to control funding, and also is fully aware of the burdens which health cost increases have imposed on both employers and employees. This burden must be shared in an equitable manner. Based on comparability data, it appears that currently Holmes County employees are paying a disproportionately high percentage of their health costs. Freezing their contribution level for an eighteen-month period will permit some adjustment in this situation. However, insurance costs are not easily predicted two and three years in advance, and it is reasonable to lift the cap after eighteen months to permit reassessment at that time. The Section 1 requirements for equal treatment with other County employees and "economic justification" for any increase should offer protection against unreasonable increases in the second half of the contract.

3. Article 29 – Wages

Union Position: The Union not only wants to increase wage rates, but also proposes development of a wage schedule based on years of service so that employees would benefit from both annual general increases in the schedule and individual increases as they move up the schedule with each additional year of service. This is consistent with the pay systems included in most union contracts for safety employees in Ohio, although most such schedules have fewer steps to the top rate than proposed by the Union here. However, the Union proposal would represent a change for Holmes County, which does not have an experience-based wage schedule. Rather, each employee has an individual pay rate, which usually is increased annually by the general percentage increase given to County employees.

A copy of the Union's proposed schedule is attached as Exhibit A to this Report. In summary, the proposed schedule for Corrections/Communications Officers begins with a starting rate of $10.97. At six months, the wage increases to $11.34, and then to $11.71 at the one-year experience level. Thereafter, it continues with 37 cent increases for each additional year of experience, topping out at $15.78 at the 14-year level. The structure of the schedule remains the same in the second and third years of the Agreement, but the dollar amount at each step are increased by 3% each year. Thus, in the last year of the Agreement, the starting rate would be $11.64, and the top rate would be $16.74.

The structure of the schedule for Road Patrol is similar. Key differences are: Instead of 37 cents, the step increment for additional experience in the first year is 39, and the schedule's base is a first-year starting rate of $11.96. The Schedule tops out at 12 years experience. The resulting schedule provides wages ranging from $11.96 (start) to $17.08 (12-year) in the first year of the Agreement; $12.32 (start) and $17.59 (top) in the second year; and $12.69 (start) and $18.12 (top) in the third year.

In the first year, each employee would receive a different increase as the employees transition from the current individualized system to the new schedule. Five of eleven deputies would receive increases between 10.3% and 22%; four would receive increases between 5.7% and 8.5%; and two would receive a 2.5% increase. Seven of 18 Communications/Corrections officers would receive raises of 10% or more. Six employees would receive increases between 5.4% and 6.9%. In the second and third years, all employees, except those at the top experience step, would receive both the 3% general increase and, on the anniversary date of their employment, an additional increase (38 to 40 cents for Corrections/Communications officers, 40 to 41 cents for Road Patrol) as they move up to the next highest experience level. In most cases, the result is a total raise (general increase plus experience) between 5.5% and 6.5%.

The Union makes several arguments in support of its position. First, the County's Audited Financial Statement shows that it is in good fiscal condition and can easily afford the proposed increase. General Fund revenues exceeded operating expenditures in 2005 and are projected to do so again in 2006. The ending General Fund balance in 2005 was $111,000 higher than the beginning General Fund balance. In fact, at the end of 2005, the County reported an "undesignated" balance in the General Fund of over $1.4 million, which exceeded the 5% minimum recommended by some fiscal analysts. (See Audited Financial Statements, pages F-3, F-22, F-26 and F-56; Government Finance Officers

Association Research Bulletin, Unreserved Fund Balance and Local Government Finance, Ian J. Allen, September 1990, submitted as Union Ex. 7.) The County already has met it's revenue projection 2006, in part because of successful investments and strong interest revenues. (Union Ex. 6A, article reporting on September Commissioners' meeting.)

Second, the Union submitted contract excerpts and wage data for the six contiguous counties. Both for starting employees and for 10-year employees, Holmes County's compensation ranks last in the group. The disparities are particularly stark at the lower end of the scale, where Holmes County's starting rates are 32%, 36% and 21% below average for Road Patrol, Corrections Officers and Communications employees, respectively.

Third, an experienced based wage scale is the most common pay system in collective bargaining agreements for Ohio' public safety employees. Holmes County Sheriff's employees should have the same assured advancement up an experience-based schedule as their counterparts in other public safety departments enjoy.

. Employer Position: The employer proposes increasing current employee wages by an average of approximately 3% in each year of a three-year contract. It moves to group the current individual rates with the effect of creating several wage categories by the third year of the Agreement. However, it stops short of adopting the union's experience-based schedule concept, in that the employer's wage table, even in the third-year, would not provide for future advancement from one wage level to the next as employees acquire additional experience. The employer's proposed adjustments and grouping have the effect of giving higher wage increases to the less senior, lower-paid employees in the bottom half of the wage scale. They do not, however, substantially close the gap between Holmes County employees and employees of Sheriff's Departments in contiguous counties.

A copy of the Employer's proposed wage scale is attached as Exhibit B. For Road Patrol, the five least senior employees would receive raises totaling 9.9%, 11.3% and 16.9% over the three-year contract period. But, the four employees at the 9-year level would receive 5.4% over three years, and the two employees at the top would get a total of 3%, (or approximately 1% per year). The average annual increase per employee is very slightly less than 3%. The pattern for Corrections/Communications Officers is similar. Eleven employees hired since January 2000, and now earning various rates between \$10.65 and \$11.99, would be grouped at \$13.10 in the third year of the contract. A late 1999 hire would move to \$13.58 in the third year, and two 1997 hires and one early 1999 hire would move to \$14.30. The two senior employees in the unit, hired in 1992 and 1993, would be paid \$14.99 and \$15.78. Individual percentage raises vary substantially as a result of the consolidation. For example, the three least senior employees would receive substantial percentage increases, whereas the three most senior employees would receive between 3% and 6% over the three-year contract (1% or 2% per year). The average raise would be just over 9% for three years, or slightly above 3% per year. When the Deputies are grouped with the Correction/Communications Officers, the projected increase in cost of the overall wage increase package would be almost exactly 3% per year.

In support of its position, the Employer notes: 1) Other employees in the County received 3% wage increases in 2006. 2) Although the Sheriff is the "appointing authority," he has no control over the appropriations for compensation. Rather, this is controlled by the County Commissioners, who have authorized only 3% for wage increases. 3) Holmes County wages should be compared to wages paid by a group of rural Ohio counties with populations below 50,000. To this end, the Employer submitted wage data for eleven Ohio Counties which fit this description – Auglaize, Clinton, Guernsey, Highland, Jackson, Ottawa, Pike, Preble, Putnam, Shelby, and Van Wert. For Corrections/Communications Offices, four of these pay less than Holmes County's stating wage and five pay less than its top wage. For Road Patrol, two of the eight for which wage data was reported pay less than Holmes at the starting rate, and four pay less at the top. 4) A 3% annual wage increase is in line with the percentage increases in other Ohio government bargaining units.

RECOMMENDATION: The Fact-Finder recommends that the following wage provision be included as Article 29 of the Agreement:

SECTION 1. Effective January 1, 2007 employees shall be compensated pursuant to the wage schedules set forth below:

ROAD PATROL WAGE SCHEDULE

Years of Service	**1/1/2007**	**1/1/2008**	**1/1/2009**
Start	**$11.70**	**$12.00**	**$12.30**
6 months	**$12.00**	**$12.36**	**$12.73**
1 year	**$12.30**	**$12.67**	**$13.05**
2 years	**$12.60**	**$12.98**	**$13.37**
3 years	**$12.90**	**$13.29**	**$13.69**
4 years	**$13.20**	**$13.60**	**$14.01**
5 years	**$13.50**	**$13.91**	**$14.33**
6 years	**$13.80**	**$14.22**	**$14.65**
7 years	**$14.10**	**$14.53**	**$14.97**
8 years	**$14.40**	**$14.84**	**$15.24**
9 years	**$14.70**	**$15.15**	**$15.61**
10 years	**$15.00**	**$15.46**	**$15.93**
11 years	**$15.30**	**$15.77**	**$16.25**
12 years	**$15.60**	**$16.08**	**$16.57**

COMMUNICATIONS/CORRECTIONS WAGE SCALE

Years of Service	**1/1/2007**	**1/1/2008**	**1/1/2009**
Start	**$10.71**	**$11.03**	**$11.36**
6 months	**$11.21**	**$11.53**	**$11.86**
1 year	**$11.71**	**$12.03**	**$12.36**
2 years	**$12.01**	**$12.33**	**$12.66**
3 years	**$12.31**	**$12.63**	**$12.96**
4 years	**$12.61**	**$12.93**	**$13.26**
5 years	**$12.91**	**$13.23**	**$13.56**
6 years	**$13.21**	**$13.53**	**$13.86**
7 years	**$13.51**	**$13.83**	**$14.16**
8 years	**$13.81**	**$14.13**	**$14.46**
9 years	**$14.11**	**$14.43**	**$14.76**
10 years	**$14.41**	**$14.73**	**$15.06**
11 years	**$14.71**	**$15.03**	**$15.36**

SECTION 2. Except as provided in Section 3, each employee shall be placed into the wage step commensurate with his or her current years of service and shall progress through the scale annually on his/her anniversary date of employment. In addition, each employee shall receive a wage increase pursuant to the above wage scale on January 1 of each year of the contract. Newly hired employees may be placed at a step other than the starting wage in the event that the employee has previous relevant experience.

SECTION 3. Senior employees who, on the effective date of this contract are being paid more than the schedule amount, shall have their current rate "red circled" and increased as follows during the term of this contract: Road Patrol Officers now being paid $16.58 shall be paid $17.00 effective 1/1/2007, $17.42 effective 1/1/2008, and $17.86 effective 1/1/2009. Communications and Corrections employees now being paid $14.92 shall be paid $15.29 (1/1/2007), $15.67 (1/1/2008) and $16.06 (1/1/2009). Communications and Corrections employees now being paid $15.31 shall be paid $15.69 (1/1/2007), $16.08 (1/1/2008) and $16.48 (1/1/2009).

Rationale: The average wage increases for comparable employees is an appropriate starting point for discussion of a wage increase recommendation. SERB's annual wage report indicates that the average wage increase negotiated by Ohio counties with their union for 2005 was 2.92%. For police units (all governmental agencies), it was 2.98%. Data presented by the parties regarding percentage increases for 2007 is consistent with this pattern. The most common increase negotiated for 2007 by neighboring counties submitted by the OPBA, and for the list of small counties submitted by the Sheriff, is 3.0%.

A 2.90% to 3.0% increase, therefore, would be sufficient for Holmes County to maintain its current relative ranking, but would not help close the gap between Holmes County wages and those paid by neighboring counties. Further, in other counties, most police contracts include salary schedules with annual experience increases during the first four or five years of employment. A 3.0% increase for each individual would not give the less senior Holmes County employees the same benefit as is gained by less senior employees in other counties who receive 3.0% <u>plus</u> their experience increment.

The OPBA makes a strong case for increasing Holmes County wages more than the average increase. Wages currently paid to Holmes County Sheriff's employees are less than wages paid to employees doing comparable work in neighboring counties. Stark and Wayne Counties are not appropriate comparisons, as they are more industrial, commercial and affluent than Holmes County. However, comparison to Coshocton, Tuscarawas, Ashland and Knox counties is not unfair. In this more limited group, Holmes still ranks at the bottom in compensation. The Fact-Finder has considered but given somewhat less weight to a list of small counties submitted by the Sheriff, as these counties are not in the same labor market. They are located in southern or western Ohio. Economically, they appear to be a varied group. Several of the poorest counties in the state are included. Others on the list have more resources. Some of these counties are paying higher wages than Holmes County, and others pay less.

This comparability data shows that Holmes County wages are below wages paid by other counties to comparable employees, and adjustments designed to start closing this gap are warranted if the County is financially able to make them.

Holmes County appears to be in good financial condition. While it certainly is not as affluent as more industrial and commercial areas of Ohio, it is not a pocket of poverty either. According to its Audited Statement for 2005, it has experienced steady population growth, and property values are appreciating. The unemployment rate is below both the state and national averages. Perhaps due to fiscally conservative practices and sound investments, it had an operating surplus in 2005, which increased its year-end general fund balance. (The "undesignated balance, reported in the general fund," was $1,451,655.) For 2006, revenues year-to-date are better than projected. Evidence presented at the hearing did not suggest that a wage increase would necessitate a reduction in services.

The wage recommendation in this report is an attempt to begin transition to an experienced-based schedule and to narrow the gap between Holmes County wages and those paid by comparable area counties. The largest increases are at the low end of the schedule where the biggest disparity now exists. Some increase is granted to employees at the top so that they do not lose ground relative to employees in other counties, but the current gap between 9/10- year employees and the top is narrowed. The delay in effective date from May 1, 2006 to January 1, 2007 will reduce the impact of transition costs on the County. In fact, total cost of the recommended wage package through December 2007 is not materially different than what the cost of a 3.0% wage increase retroactive to May 1, 2006 would have been.

While different than the short schedules in most contracts, the recommended multi-step schedule, adapted from the OPBA proposal, is appropriate for transition from an individual wage system. If the parties choose to do so, transition to a short schedule (commonly five steps) may be completed in a second or third contract.

4. Article 40 - Duration

Union Position: The Union proposes making the agreement retroactive to May 1, 2006, when the County's agreement with AFSCME would have been renegotiated but for the change in collective bargaining representative.

Employer Position: The Employer proposes making the Agreement effective on January 1, 2007, a logical date given the timing of negotiations. Also, a calendar year contract will correspond to the County's fiscal year.

RECOMMENDATION: The Fact-Finder recommends that the effective date of the Agreement shall be January 1, 2007 and that the Agreement shall remain in effect through December 31, 2009, as proposed by the Employer. The Fact-Finder further recommends that written notice for negotiation of a successor agreement be given between 90 and 60 days prior to expiration of the Agreement, as proposed by the Union. Therefore, Article 40 would state:

> **SECTION 1.** **This Agreement shall be effective as of January 1, 2007, and shall remain in full force and effect through December 31, 2009.**
>
> **SECTION 2.** **If either party desires to modify, amend or terminate this Agreement, it shall give written notice of such intent no earlier than ninety (90) calendar days prior to the expiration date of this Agreement. Such notice shall be by any reasonable means. The parties shall commence negotiations within two (2) calendar weeks upon receiving notice of intent.**
>
> **SECTION 3.** **The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right to make demands and proposals on any subject matter not removed by law from the area of**

collective bargaining, and that the understanding and agreement arrived at by the parties after the exercise of that right and opportunity are set forth in the Agreement. Therefore, the Employer and the Union, for the life of the agreement, each voluntarily and unequivocally waives the right, and each agrees that the other shall not be obligated, to bargain collectively or individually with respect to any subject or matter referred to or covered in this Agreement.

Rationale: Making an entire Agreement retroactive can be problematic, as some language changes are not easily applied retroactively. Also, there is some merit to having an agreement run on the same schedule as the employer's fiscal year. Delaying the effective date of salary increases from May 1 to January 1 saves the County some money short-term, and this money can be used, as discussed above, to transition into a step-based wage schedule, a major Union objective, without posing undue financial hardship on the employer. The January 1, 2007 start date results in extending the Agreement for three full calendar years to the end of 2009: This provides security and stability for both the union and employer; gives the employer known wage costs for budgeting for three full fiscal years; and delays the time and expense of negotiations for a successor agreement until the Fall of 2009.

5. Article 41 – Residency (New Article Proposed by Employer)

Union Position: The Union objects to including a residency requirement in the Agreement. It acknowledges that the Sheriff currently requires all employees to live in the County, but questions the legality of this practice. Further, whether or not the practice has been legal in the past, the legislature recently amended the Ohio Revised Code to prohibit political subdivisions, including counties, from requiring employees to live within their boundaries. Specifically, Section 9.481(B)(1) of the Revised Code, effective May 1, 2006, states: "Except as otherwise provided in division (B)(2) of this section, no political subdivision shall require any of its employees, as a condition of employment, to reside in any specific area of the state." Section 9.481(C) further states: "Except as otherwise provided in division (B)(2) of this section, employees of political subdivisions of this state have the right to reside in any place they desire." (The section (B)(2) exceptions relate to voter initiative petitions which may limit residency to the county or an adjacent county. There has been no such petition in Holmes County.) The Union further states that a few bargaining unit members might prefer to live in northern Coshocton County which borders Holmes County on the South, because they believe that land is less expensive there.

Employer Position: The Employer proposes adding a new article to require all Sheriff's Department employees to maintain their residence in Holmes County. New employees would be required to show proof of residency within three months of their date of hire. Employees who fail to comply would be terminated after being given an opportunity to come into compliance. (The specifics of this procedure are set out in the Employer's proposal.) In support of its proposal, the Employer notes that it would not constitute a change and thus should not impose hardship on any current employee. Rather, the proposal is consistent with the Sheriff's current (and long-standing) practice, and simply puts this practice in writing and makes it part of the Agreement.

RECOMMENDATION: The Fact-Finder recommends that no residency language be included in the Agreement.

Rationale: In enacting Section 9.481 this year, the Legislature expressed the clear policy of the State of Ohio that public employees have a right to choose where they live. The Fact-Finder recognizes that a collective bargaining agreement may, in appropriate circumstances, contradict and supersede state law on the working conditions of public employees. However, the Fact-Finder is reluctant to recommend language inconsistent with a new statute absent some compelling reason to do so. There is no evidence to suggest that omitting the proposed residency language from the Agreement will pose a significant operational hardship in the Sheriff's Department in this case. Therefore, the Fact-Finder recommends that the Agreement remain silent on residency.

SUMMARY OF RECOMMENDATIONS

1. <u>**Article - Checkoff**</u>

RECOMMENDATION: The Fact-Finder recommends that the Union's Fair Share proposal be included in the Agreement. Therefore, Article 15 would state:

> **<u>SECTION 1.</u> The employer shall make payroll deductions of union dues, fees or assessments from the pay or wages of employees in accordance with this Article for all employees in the bargaining unit.**
>
> **<u>SECTION 2.</u> The Employer agrees to deduct regular payroll deductions of dues, fees or assessments once each bi-weekly pay period upon the date of issuance of the payroll warrant from the pay of any employee in the bargaining unit upon receiving written authorization signed individually and voluntarily by the employee. The signed payroll deduction form, furnished and certified by the Union must be presented to the Employer by the Union. Upon receipt of the authorization, the Employer will deduct union dues, fees or assessments from the payroll check for the next pay period in which dues are normally deducted following the pay period in which the authorization was received by the Employer.**
>
> **<u>SECTION 3.</u> The parties agree that the Employer assumes no obligation, financial or otherwise, arising out of the provisions of this Article regarding the deduction of union dues. The Union hereby agrees that it will indemnify and hold the Employer harmless from any claims, actions or proceedings by any employee arising from deductions made by the Employer pursuant to this Article. Once the funds are remitted to the Union their disposition thereafter shall be the sole and exclusive obligation and responsibility of the Union.**
>
> **<u>SECTION 4.</u> The Employer shall be relieved from making such individual deductions of dues, fees or assessments upon an employee's: (1) termination**

of employment; (2) transfer to a job other than one covered by the bargaining unit; (3) layoff from work; (4) an unpaid leave of absence; (5) valid and legal revocation of dues deduction authorization.

SECTION 5. **The Employer shall not be obligated to make dues deductions from any employee who, during any bi-weekly pay period involved, shall have failed to receive sufficient wages to make all legally required deductions in addition to the deduction of union dues. In the event such deductions are not made, the Employer shall make the appropriate deductions from the following pay period or periods as certified by the Union to the Employer. The Employer is not required to make any partial dues deductions.**

SECTION 6. **The parties agree that neither the employees nor the Union shall have a claim against the Employer for errors in the processing of deductions. Corrections shall be made as soon as possible after notification in writing by the Union. If it is found an error was made, it will be corrected at the next pay period that the Union dues deduction would normally be made by deducting the proper amount.**

SECTION 7. **The rate at which dues, assessments and fees are to be deducted shall be certified to the payroll clerk by the Union. One (1) month advance notice must be given to the payroll clerk prior to making any changes in dues deductions, fees or assessments.**

SECTION 8. **The County shall forward deductions by warrant to the OPBA at 10147 Royalton Rd., Suite J, P.O. Box 338003, North Royalton, OH 44133. With such warrant shall be a listing of employees for whom deductions were made. Such warrant shall be forwarded within fourteen (14) days following the date payroll warrant is issued in which deductions were made.**

SECTION 9. **All employees covered under this Collective Bargaining Agreement who, sixty-one (61) days from the date of hire, are not members in good standing of the Union shall pay a fair share fee to the Union as a condition of employment. All employees hired prior to or after the effective date of this Agreement, who do not become members in good standing of the Union shall pay a fair share fee to the Union effective sixty-one (61) days from the employee's date of hire as a condition of employment. The fair share fee amount shall be certified to the Employer by the Union. The deduction of the fair share fee from any earnings of the employee shall be automatic and does not require a written authorization for payroll deduction.**

A separate alphabetical listing of all names of employees who are being deducted a fair share fee shall be furnished to the Union. Payment to the Union of the fair share fees shall be made in accordance with regular dues deductions as provided under Article 15. The Employer shall notify each

new employee at the time of hire to their right to join or not to join the Union, and their obligation as a condition of employment to payment of a fair share fee.

2. Article 24 – Hospitalization

RECOMMENDATION: The Fact-Finder recommends adding a new Section 2 to Article 24 which would cap employee premium contributions at the current amounts during the first eighteen (18) months) of the Agreement. Thereafter, if and to the extent that employee premium contributions have been or are raised for other county employees, the County may also require Sheriff's Department employees to pay the higher premium contribution, consistent with Section 1. Article 24 would state:

> SECTION 1. For the duration of this Agreement, the Employer shall continue to provide employees with hospitalization coverage at the same level as provided by the County Commissioners for the other county employees, and the premium shall be paid by the Employer or shared with the Employer under the same provisions as other county employees. Should the Employer wish to change the coverage level, carrier, or payroll deduction percentage from that in effect on the date of this Agreement, it shall notify the Union in writing no less than thirty (30) days prior to such change or as soon as the Employer is notified. The Employer agrees it will not raise employee premiums without economic justification. The Union may request a meeting with the Employer in accordance with Article 18 of this Agreement to discuss the effects of change.
>
> SECTION 2. Notwithstanding any language contained in Section 1 above, during the first eighteen months (January 1, 2007 – June 30, 2008) of this Agreement, the maximum premium payment for employees covered by this Agreement shall be $30.80 per month for single coverage and $100.24 per month for family coverage.

3. Article 29 – Wages

RECOMMENDATION: The Fact-Finder recommends that the following wage provision be included as Article 29 of the Agreement:

SECTION 1. **Effective January 1, 2007 employees shall be compensated pursuant to the wage schedules set forth below:**

ROAD PATROL WAGE SCHEDULE

Years of Service	1/1/2007	1/1/2008	1/1/2009
Start	$11.70	$12.00	$12.30
6 months	$12.00	$12.36	$12.73
1 year	$12.30	$12.67	$13.05
2 years	$12.60	$12.98	$13.37
3 years	$12.90	$13.29	$13.69
4 years	$13.20	$13.60	$14.01
5 years	$13.50	$13.91	$14.33
6 years	$13.80	$14.22	$14.65
7 years	$14.10	$14.53	$14.97
8 years	$14.40	$14.84	$15.24
9 years	$14.70	$15.15	$15.61
10 years	$15.00	$15.46	$15.93
11 years	$15.30	$15.77	$16.25
12 years	$15.60	$16.08	$16.57

COMMUNICATIONS/CORRECTIONS WAGE SCALE

Years of Service	1/1/2007	1/1/2008	1/1/2009
Start	$10.71	$11.03	$11.36
6 months	$11.21	$11.53	$11.86
1 year	$11.71	$12.03	$12.36
2 years	$12.01	$12.33	$12.66
3 years	$12.31	$12.63	$12.96
4 years	$12.61	$12.93	$13.26
5 years	$12.91	$13.23	$13.56
6 years	$13.21	$13.53	$13.86
7 years	$13.51	$13.83	$14.16
8 years	$13.81	$14.13	$14.46
9 years	$14.11	$14.43	$14.76
10 years	$14.41	$14.73	$15.06
11 years	$14.71	$15.03	$15.36

SECTION 2. Except as provided in Section 3, each employee shall be placed into the wage step commensurate with his or her current years of service and shall progress through the scale annually on his/her anniversary date of employment. In addition, each employee shall receive a wage increase pursuant to the above wage scale on January 1 of each year of the contract. Newly hired employees may be placed at a step other than the starting wage in the event that the employee has previous relevant experience.

SECTION 3. Senior employees who, on the effective date of this contract are being paid more than the schedule amount, shall have their current rate "red circled" and increased as follows during the term of this contract: Road Patrol Officers now being paid $16.58 shall be paid $17.00 effective 1/1/2007, $17.42 effective 1/1/2008, and $17.86 effective 1/1/2009. Communications and Corrections employees now being paid $14.92 shall be paid $15.29 (1/1/2007), $15.67 (1/1/2008) and $16.06 (1/1/2009). Communications and Corrections employees now being paid $15.31 shall be paid $15.69 (1/1/2007), $16.08 (1/1/2008) and $16.48 (1/1/2009).

4. **Article 40 - Duration**

RECOMMENDATION: The Fact-Finder recommends that the effective date of the Agreement shall be January 1, 2007 and that the Agreement shall remain in effect through December 31, 2009, as proposed by the Employer. The Fact-Finder further recommends that written notice for negotiation of a successor agreement be given between 90 and 60 days prior to expiration of the Agreement, as proposed by the Union. Therefore, Article 40 would state:

SECTION 1. This Agreement shall be effective as of January 1, 2007, and shall remain in full force and effect through December 31, 2009.

SECTION 2. If either party desires to modify, amend or terminate this Agreement, it shall give written notice of such intent no earlier than ninety (90) calendar days prior to the expiration date of this Agreement. Such notice shall be by any reasonable means. The parties shall commence negotiations within two (2) calendar weeks upon receiving notice of intent.

SECTION 3. The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right to make demands and proposals on any subject matter not removed by law from the area of collective bargaining, and that the understanding and agreement arrived at by the parties after the exercise of that right and opportunity are set forth in the Agreement. Therefore, the Employer and the Union, for the life of the agreement, each voluntarily and unequivocally waives the right, and each agrees that the other shall not be obligated, to bargain collectively or individually with respect to any subject or matter referred to or covered in this Agreement.

5. Proposed New Article 41 - Residency

RECOMMENDATION: The Fact-Finder recommends that no residency language be included in the Agreement.

SUBMISSION

This Fact-Finding Report is submitted by:

John T. Meredith, Fact-Finder

Shaker Heights, Ohio
November 15, 2006

CERTIFICATE OF SERVICE

This is to certify that the foregoing Fact-Finding Report was sent to the State Employment Relations Board by Regular U.S. Mail and was served upon the parties listed below by overnight mail this 15 day of November, 2006:

Joseph M. Hegedus
Ohio Patrolmen's Benevolent Association
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Dublin, OH 43017

Attorney for the OPBA

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McSherry, Patton & Toumert
178 East Washington Street
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Attorney for Holmes County Sheriff

John T. Meredith, Fact-Finder

ROAD PATROL WAGE SCHEDULE

EX. A **UNION PROPOSAL**

YEARS OF SERVICE	MAY 1, 2006	MAY 1, 2007	MAY 1, 2008
START	$11.96	$12.32	$12.69
6 MOS.	$12.35	$12.72	$13.10
1 YR	$12.74	$13.12	$13.52
2 YRS	$13.13	$13.52	$13.94
3 YRS	$13.52	$13.93	$14.35
4 YRS	$13.91	$14.33	$14.7[illegible]
5 YRS	$14.30	$14.73	$15.1[illegible]
6 YRS	$14.69	$15.13	$15.58
7 YRS	$15.08	$15.53	$16.00
8 YRS	$15.47	$15.93	$16.41
9 YRS	$15.86	$16.34	$16.83
10 YRS	$16.25	$16.74	$17.24
11 YRS	$16.64	$17.14	$17.65
12 YRS	$17.08	$17.59	$18.12

COMMUNICATIONS/CORRECTIONS WAGE SCHEDULE

YEARS OF SERVICE	MAY 1, 2006	MAY 1, 2007	MAY 1, 2008
START	$10.97	$11.30	$11.64
6 MOS.	$11.34	$11.68	$12.03
1 YR	$11.71	$12.06	$12.42
2 YRS.	$12.08	$12.44	$12.82
3 YRS	$12.45	$12.82	$13.21
4 YRS.	$12.82	$13.20	$13.60
5 YRS	$13.19	$13.59	$13.99
6 YRS.	$13.56	$13.97	$14.39
7 YRS	$13.93	$14.35	$14.78
8 YRS	$14.30	$14.73	$15.17
9 YRS.	$14.67	$15.11	$15.56
10 YRS	$15.04	$15.49	$15.96
11 YRS	$15.41	$15.87	$16.35
12 YRS	$15.78	$16.25	$16.74

SECTION [illegible]

[illegible] placed into the wage step commensurate [illegible] progress through the scale annually on their anniversary date [illegible]. In addition, each employee shall receive a wage increase [illegible] May 1 of each year of the contract. Newly hired employees may be [illegible]

EX. B ARTICLE [illegible] **EMPLOYER PROPOSAL**

WAGES

[illegible] will be placed on the following scale based on their current [illegible] increase [illegible] the contract date as follows

Communications
/Corrections

CURRENT RATE	2006-2007	2007-2008	2008-2009
[illegible]	[illegible]	12.26	[illegible]
[illegible]	11.46	12.26	[illegible]
[illegible]	11.75	12.43	[illegible]
[illegible]	12.05	12.58	[illegible]
[illegible]	12.35	12.72	13.10
[illegible]	12.93	13.25	[illegible]
[illegible]	[illegible]	14.41	14.70
[illegible]	14.41	14.70	14.99
[illegible]	15.47	[illegible]	[illegible]

Road Patrol/Detective

CURRENT RATE	2006-2007	2007-2008	2008-2009
[illegible]	12.42	12.92	13.57
[illegible]	12.91	13.30	13.90
[illegible]	13.83	14.11	14.67
[illegible]	14.29	14.50	15.03
[illegible]	14.41	14.55	15.03
[illegible]	14.56	14.59	15.03
[illegible]	16.75	16.92	17.08

The starting rate for Corrections/Communications will be $10.65 per hour
The starting rate for Road Patrol/Detective will be $[illegible] per hour