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STATE EMPLOYMENT
RELATIONS BOARD

Factfinding Report and Recommendations

2007 MAY 25 P 12:19

in the matter of Fact-finding between

Montgomery County Sheriff

and

Fraternal Order of Police/Ohio Labor Council Lodge 104

SERB Case No.: 06-MED-10-1212

Marcus Hart Sandver, PhD

Fact-finder

Hearing Date: March 5, 2007
Recommendations Issued: May 25, 2007

Representing the Employer:

Mr. Jonathan Downes
Attorney at Law
Downes, Hurst & Fishel
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Representing the FOP/OLC:

Mr. Mark Drum
Staff Representative FOP/OLC
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I. Background.

This case grows out of a dispute between the Montgomery County Sheriff (the Employer) and the Fraternal Order of Police/Ohio Labor Council involving the negotiation of a successor agreement to the one which expired on December 31, 2006. The parties met on December 8 and 21, 2006 and on January 11, 28, and 29 to negotiate a new agreement but were not able to resolve the dispute. The parties met with the Factfinder, who worked to mediate the dispute, on February 7, 2007. Again, the dispute was not resolved. The parties met for the purposes of Factfinding on March 5, 2007.

II. The Hearing

The hearing was held in the conference room of the Montgomery County Sheriff's Office on March 5, 2007. The hearing was convened at 10:00 AM. In attendance at the hearing were:

For the Employer:

- 1. Mr. Jonathan Downes Attorney and Chief Spokesperson
- 2. Ms. Brenda Gisewite Confidential Secretary
- 3. Mr. John Brands Major, Montgomery County Sheriff's Office

For the FOP/OLC:

- 1. Mr. Mark Drum FOP/OLC Staff Representative
- 2. Mr. Rick Bergman Deputy Sheriff/Montgomery County Sheriff's Office
- 3. Mr. Steve Gardiner Deputy Sheriff/Montgomery County Sheriff's Office

4. Mr. Brian Statzer Deputy Sheriff/Montgomery County Sheriff's Office
5. Mr. Darren Harvey Deputy Sheriff/Montgomery County Sheriff's Office
6. Mr. Gerald Bemis Deputy Sheriff/Montgomery County Sheriff's Office
7. Mr. Chuck Comer Deputy Sheriff/Montgomery County Sheriff's Office

The parties were asked to place exhibits into evidence. The following were marked as Employer Exhibits:

1. Employer Exhibit # 1 A multi-tabbed notebook with 21 tabs.

The following were submitted as FOP Exhibits:

1. FOP/OLC Exhibit # 1 A multi-tabbed notebook with 5 major tabs and 31 subtabs under tab 3.

The parties were notified that the hearing would be conducted, and that the report would be written, in conformity with the rules for Factfinding found O.R.C. 4117.01 et. al. and associated Administrative Rules as promulgated by the Ohio State Employment Relations Board. At this point, the hearing turned to a discussion of the unresolved issues.

III. The Issues.

- A. Issue One – Assignments, Article 6.
 1. The positions of the parties.

The parties agreed to proposed changes in Section 1 and 2 of this article. The parties disagree over the wording of Section 3, Voluntary Assignments. The Union proposal defines the term vacancy and would require the Sheriff to fill the defined vacancy within 6 months of the occurrence of the vacancy. The Union proposal would require that any application for a vacancy should be accompanied by the applicant's last two performance appraisals from the Montgomery County Sheriff's Office. The Union proposal sets up a point system for filling the vacancy. Points would be apportioned as follows:

1. Work Experience. 30 points maximum.
20 points if the applicant had previously served in a similar position in the Montgomery County Sheriff's Office.
5 points for documented schooling or training.
5 points for experience in the same or similar position while not a member of the Montgomery County Sheriff's Office.
2. Rank Seniority. 40 points maximum. Two points per year for each year employed by the Montgomery County Sheriff's Office.
3. Personnel Interview. 30 points maximum. Interview conducted by the Employer. The Union will appoint one member to monitor interview.

The Union proposal would add language to Section 5 (disciplinary transfers) of Article 6 which would require the employer to notify the Union in writing within 5 days of the transfer. The Union proposal would add Section 7 to Article 6 which would require postings for specialized assignments and lists the positions that would qualify as specialized assignments.

In support of its position, the Union representative directed the Factfinder's attention to Tab # 1 of FOP Exhibit # 1. Behind Tab # 1 are provisions for filling vacancies in Athens, Auglaize, Champaign, Clark, Delaware, Hancock, Fairfield, Lorain, Morrow, Muskingum, Ottawa, Richland, Ross and Warren counties. In each case, the language in the various CBA's states that the Sheriff shall select the most qualified applicant to fill the position. The Union representative noted to the Factfinder that Richland County uses a point system similar to that proposed for Montgomery County.

The Union asked Mr. Darren Harvey, Deputy Sheriff, to testify in support of its position. In his testimony, Mr. Harvey stated that he had been through the selection process for a specialized position twice; once in the K-9 patrol and once in the organized crime division. Mr. Harvey testified that the members of the Montgomery County Sheriff's Office feel that interview skills are given more weight in the selection process than qualifications. The witness testified that under the current process for filling vacancies, someone from outside the Department could interview

for a vacant position and be chosen for it because he or she may have specialized training that no one in the Department has.

On cross examination, Mr. Downes asked the witness why this issue wasn't raised in past negotiations. The witness testified that he did not know because he was not on the most recent negotiating team. The witness testified that this issue has been discussed in past negotiations going back to 1992.

The Union called Rich Bergman to testify on this issue. Deputy Bergman testified that the filling of specialized assignments has become an important issue in the past few years due to the recent hiring of new deputies who have had past experience with the City of Dayton. Deputy Bergman testified that recently a specialized position was filled by someone who was not the most senior of the persons in the applicant pool.

On cross examination, Mr. Downes asked Deputy Bergman if he had ever raised this matter with Major Brands. Deputy Bergman testified that he, and others, had raised this issue at several labor-management committee meetings but without resolution. Mr. Downes asked Deputy Bergman if he considered this issue a major change in the CBA. Deputy Bergman testified that in his opinion this was a major change.

The employer asked Major Brands to testify on this issue. Major Brands testified that the bargaining history on this issue goes back to the 1998-2000 CBA. Major Brands testified that most of what the Union is seeking in its proposal already exists in practice. Major Brands testified

that the Sheriff's Office opposes the Union's language in Article 6 Section 6(A)(1) because it defines a vacancy in restrictive terms and because it requires the Sheriff to fill a vacancy within 6 months, which is not always possible. Major Brands testified that the listing of specialized positions in the Unions language in Section 7(B) includes positions that the County no longer has (i.e. SRO, D.A.R.E. Officers).

On cross examination, Mr. Drum asked Major Brands if he selects the most qualified applicant to fill vacant specialized positions. Major Brands testified that he does choose the most qualified candidate. Mr. Drum asked Major Brands why the Sheriff's Office requires that once someone is chosen to fill a specialized position they are required to stay in that position for 2 years. Major Brands testified that if the Sheriff goes to the expense to train someone for a specialized position, the Sheriff wants to be sure that the position will be filled for at least 2 years.

In summary, Mr. Downes stated that the Sheriff's opposition to Section 7B of the Union's proposal is due to inaccuracies in the language of 7B. Mr. Downes stated that the Sheriff found the Union's language in Section 6 of Article 6 to be too inflexible. Mr. Downes stated the Sheriff's position that the Union's proposed changes in Article 6 would be the source of grievances in the future. Finally, Mr. Downes stated his view that all the language from comparable Sheriff's Departments cited by the Union (except for Richland County) supports the employer position; not the FOP position.

2. Discussion.

I notice in looking over the materials supplied by the Employer and the Union on this issue that Factfinder Michael Paolucci made a recommendation on this issue in 1998. In his recommendation in 1998, Mr. Paolucci recommended the Sheriff's Department position, which is largely the language of Article 6 that exists today. I would agree with Mr. Paolucci when he observes in 1998 that "the Union's proposal is the wrong type of proposal for this type of procedure." (Paolucci, 1998, p.7) Mr. Paolucci found the Union's proposal too sweeping in scope for a Factfinding recommendation. I find the Union's rather complex point system as something too much at variance with current practice to be recommended.

3. Recommendation.

Article 6 of the current collective bargaining agreement be unchanged.

B. Employer Witness. Ms. Deborah Feldman, County Administrator.

Due to time considerations, the discussion of the issues was suspended to allow for testimony of Ms. Deborah Feldman regarding the County's finances.

Ms. Feldman testified that she had served with the County for 25 years, in both the budget office and as the Human Resources Director. Ms. Feldman testified that several large employers have either left Montgomery County or would soon be leaving, taking many high paying jobs with them. Ms. Feldman testified that Montgomery County had witnessed an outmigration of its population

to neighboring Warren, Greene and Miami Counties. Ms. Feldman testified that the County is facing an increased concentration of citizens living at or below the poverty line which brings with it an increase in crime and dependency on County Social Services.

The witness directed the Factfinder's attention to the material behind Tab 21 in Employer Exhibit #1. The information in the pages behind Tab 21 shows that most of the County's annual funding comes from revenues generated by the sales tax. Other sources of income are property tax, local government funds, investment income and charges for services. One of the problems the County is facing, from a financial standpoint, is the growth of retail properties in adjoining Greene County which has the effect of siphoning off retail sales (and sales tax dollars) that previously would have stayed in Montgomery County. In addition, the County has seen some drop off of investment income in the years 2000-2005. Furthermore, property values are dropping in Montgomery County and property tax receipts may decline as well.

On the expense side of the ledger, Ms. Feldman testified that 62% of the expenditures made by the County are for salaries and benefits, with health insurance premiums now costing in excess of \$12,000 per family per year and rising. The consequences of a financial shortfall are a grave concern for administrators in Montgomery County.

On cross examination, Mr. Drum asked Ms. Feldman how long she had served as the County Administrator. Ms. Feldman testified that she had held this position since 1997. Mr. Drum asked Ms. Feldman to estimate the amount of

funds held in the County reserve fund. Ms. Feldman testified that the County maintains a 20 percent reserve; down from 25 percent just a few years ago. Mr. Drum asked Ms. Feldman if she was aware of the wage raises negotiated by the City with the civilian employees of the Sheriff's Office and the Sergeant's in the Sheriff's Office. Ms. Feldman testified that the civilians received a 3 percent increase each year for a 2 year agreement and that the Sergeants received a 3.5 percent increase each year for a 2 year agreement.

Ms. Feldman voiced concern over losing some or all of the \$15.4 million Montgomery County receives from the local government funds that are paid out of the State budget to the counties. Ms. Feldman testified that the County has recently constructed a new animal shelter and that most of the funding for this facility comes from General Fund revenues.

C. Employer Witness. Mr. Gary Huff, Washington Township Administrator.

Mr. Huff testified that he is the administrator for Washington Township, a fairly affluent area in the Southeast part of Montgomery County. Washington Township has a population of about 30,000 people and a land area of about 20 square miles; most of it residential. Mr. Huff testified that sometime in the 1970's the administrators of the Township made the decision to contract with Montgomery County to provide police services to the residents of the Township. Mr. Huff testified that Washington Township contracts for 31 ½ or 32 ½ deputies per year. The funding for police services in Washington Township is provided for through a 5 year tax levy which will expire in 2010. Mr. Huff testified that the Township Administrators had budgeted for an increase in the budget to the

Montgomery County Sheriff's Office of 2 percent in 2007 and 2008 and 2.5 percent in 2009 and 2010. Mr. Huff testified that if costs go above the budgeted amounts then the Township would be forced to curtail some police services to its residents.

D. Employer Witness. Mr. Tom Howitt, Business Manager, Montgomery County Commissioners.

Mr. Howitt testified that he administers benefits for all employees of Montgomery County. Mr. Howitt testified that he has worked as a compensation and benefits manager for about 26 years. Mr. Howitt directed the Factfinder's attention to Tab 18 of Employer Exhibit # 1. The material behind Tab 18 contains specifications for the various health insurance packages provided to different groups of employees in Montgomery County. Mr. Howitt testified that the County has approximately 5,200 employees; of this group approximately 4,900 are benefit eligible and approximately 4,800 actually receive benefits from the County.

E. Issue 2, Article 7. Seniority and Probationary Positions.

1. Employer Position.

Under Section 7B of the current CBA, an employee must serve a 365 day probationary term before they are considered to have permanent employee status. Under Section 7.3B, an employee who has been promoted from one position into another, and is unsuccessful in the new position during the probationary period, may return to their former position at the discretion of the Sheriff. This decision is not grievable.

The Employer contends that if the Union position is recommended, it may be the source of grievances. As evidence of this, the Employer points to the arbitration decision involving the termination of Brandy Hewitt in 2005. In this case, Ms. Hewitt was promoted from a Corrections Officer position that she had held since June of 2004 to a position as a Deputy Sheriff in November of 2004. Ms. Hewitt was suspended from the Deputy position in July of 2005. She was not reinstated to the Corrections Officer position, due to the fact that she had not achieved permanent employee status in the Corrections Officer position. She had however, been in the employ of the County Sheriff's Office for longer than 365 days when she was terminated. The Union filed a grievance on her behalf and lost the case in arbitration. Under Article 7 Section 3(B), the Sheriff, at his discretion, may return employees to their previous position.

2. FOP Position.

The FOP position on this issue is to add language to Article 7 Section 3 (B) which states that "all probationary deputy sheriffs who successfully completed a probationary period in a lower classification prior to their appointment as a deputy, who are unsuccessful in completing their deputy probation period, shall be returned to their previous classification if permitted by the collective bargaining agreement of that classification. Deputy Sheriffs who have successfully completed a probation period as a Deputy Sheriff and who are unsuccessful in a probationary period of another class will be returned to their previous rank

of Deputy Sheriff if the probationary period is not successfully completed.” Thus, the FOP language in Article 7 requires that anyone who had successfully completed a probationary period in a lower class position be reinstated to that position if unsuccessful in a position he or she had been promoted into during the probationary position.

3. Discussion.

First of all, it should be noted that the FOP position would not have entitled Ms. Hewitt to reinstatement to her Corrections Officer position because she never satisfied the probationary period requirements of that position. At the hearing the Sheriff brought up the issue that the Corrections Officers and the Deputy Sheriffs are now in two separate bargaining units represented by two different labor organizations. The Sheriff voiced concern about contract language that covers one group of employees (Deputy Sheriffs) that gives them reinstatement rights into a position that is covered by a different CBA and that is represented by a different labor organization.

I think that this is a valid concern. Admittedly, the Union proposal does contain the language “if permitted by the Collective Bargaining Agreement of that classification” but this then requires the Sheriff and Corrections Officers labor organization to negotiate a subject which they might not want to bargain over. I agree with the Sheriff that at the very least, the language granting an automatic right to return to a previous classification would be the source of disputes between the parties. It is my

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understanding that the parties do agree to some changes in the language of Article 7 Section 1(A) and Section 2(A).

4. Recommendations.

That the mutually agreed changes to Article 7 Section 1(A) and 2(A) be adopted. That the Union proposed language changes in Article 7 Section 2(B) and Article 7 Section 3(A) and (B) not be adopted.

F. Issue 3, Article 9. The Grievance Procedure.

1. FOP Position.

Both parties have proposed some changes to Article 9 of the CBA. The FOP proposes to amend Section 5(b)(c) and (d) such that the grievant would not have to be present at any of the required meetings between the employer and the union in connection with the processing of the grievance; including the arbitration hearing itself. The Union proposes to amend Article 6 by increasing the time span to file a grievance from 5 days to 10 days. The Union proposal would change the language in Section 7(A) of Article 9 such that the list of potential arbitrators submitted to the parties be provided by the Federal Mediation and Conciliation Service (FMCS) instead of by the American Arbitration Association as provided in the current CBA. The Union proposal also would add language to Section 7(B) that would require that if either party plans to raise the issue of arbitrability at the hearing that the opposing party be notified in advance. In the event that the issue of arbitrability is raised, the arbitrator would be required to hear the arbitrability issue first,

take the matter under advisement, and then proceed to hear the grievance on its merits.

In support of its position, the Union has compiled data from 81 of 88 counties in Ohio (Union Exhibit # 1 Tab 3) that have labor agreements between the County Sheriff and a labor organization. In nearly 70% of these contracts (56 of the 81), the issue of arbitrability is decided by the arbitrator. In almost 90 percent of the agreements (72 of the 81), the FMCS provides the roster of neutrals to the parties. In 27 of the 81 labor agreements (33%), the loser pays the costs of the arbitration. In support of its position to change from the AAA to the FMCS as the source of the panel of arbitrators the FOP representative stated that the cost of obtaining a panel of arbitrators from the AAA is \$175 while the cost to obtain a roster from FMCS is \$50.

2. Employer Position.

The Employer position on this issue is that the Union is proposing drastic changes in the grievance procedure and the arbitration process that have been in the CBA between the parties since at least 1989. The Employer believes that these changes will cause more grievances to be filed. Sheriff Vore testified that since 1994 there have been 25 arbitrations in the Montgomery County Sheriff's Office; in 13 of these cases the employer's position was sustained, in 6 or 7 cases the Union's position was affirmed, in 4 of the cases the decision was split and in 2 cases the issue was resolved without the need for an arbitrator's decision. The

Sheriff testified that eliminating the requirement that the grievant be present at all meetings involving the resolution of the grievance will result in a number of frivolous grievances being filed.

On cross examination, Mr. Drum asked Sheriff Vore how many cases had been arbitrated in the last 3 years. The Sheriff testified that 6 cases had been arbitrated in the last 3 years. Of these cases, the Union won 3, the Employer won 2 and one was settled without a decision.

Major Brands testified that the Montgomery County Sheriff's Office has never refused to process a grievance because of the 5 day time limits found in Article 9. Mr. Brands noted that in Article 9 Section 5 (A) the Sheriff is limited to two representatives at meetings to process the grievance while under the Union's proposal in Article 9 Section 5(D), there is no limit to the number of union representatives who may attend these meetings. Major Brands further noted that he thought it was important to the success of the grievance resolution process that the grievant be required to attend meetings between labor and management in an attempt to resolve the grievance.

3. Discussion.

The conversation about changing the grievance procedure in the CBA consumed a good bit of time at the hearing. I must admit I agree with the Sheriff that there was not much justification given by the Union for increasing the time limits to file a grievance. Neither was there much said by the FOP representative that would justify excluding the grievant

from attending meetings between labor and management to resolve the grievance. Likewise the FOP argument for switching from the AAA to the FMCS to obtain a roster of arbitrators was not very persuasive.

The Employer position that the loser pay the cost of the arbitration was not well supported. The data for the last few years show that the department averages something like 2 arbitrations a year and that the employer wins about half and the union wins about half. This is hardly evidence of a high volume of frivolous grievances.

The issue of the determination of arbitrability, however, is one that does seem to merit some attention especially in light of the Ohio Supreme Court Case involving the Belmont County Sheriff decided in December of 2004.

4. Recommendation.

That the following be added to Article 9 Section 7(B),

Either party may raise the issue of arbitrability of a grievance either at the hearing or prior to the hearing. In the event that the issue of arbitrability is raised, the parties argue that arbitrability will be the initial matter determined by an arbitrator prior to submission of the matter on its merits.

G. Issue 4, Article 10. Polygraphs.

1. FOP Position.

The FOP position on this issue is that explicit language needs to be added to Article 10 to prohibit the use of polygraph examinations in disciplinary cases unless specifically agreed to by the employee in writing.

In support of this position the union has tabulated a list of 26 counties in Ohio, FOP Exhibit # 1 Tab 7, which explicitly prohibits the use of polygraph examinations in disciplinary cases unless specifically authorized by the employee in writing.

2. Employer Position.

The employer position on this issue is that the Union's proposed language is unnecessary due to the fact that polygraphs are restricted by personnel policy in Montgomery County and therefore this issue does not need to be included in the labor agreement.

3. Discussion.

I can agree with the arguments on both sides of this issue. The FOP position is that if the polygraph is not prohibited, it could at some time be used in a disciplinary investigation. The employer position is that personnel policy of the County already protects employees against involuntary use of the polygraph and thus it does not need to be addressed in the labor agreement. In this instance, I find the employers argument persuasive; not all personnel policies of the employer need to be included in the labor agreement.

4. Recommendation.

That the agreed upon changes to this Article be included in the agreement. The Union's proposed Article 10 Section 10.7 is not recommended.

G. Issue 5, Article 11. Personnel Records.

1. FOP Position.

The FOP position on this issue is to add language to Article 11(B) which would prohibit the Sheriff from releasing information from a deputy's personnel file that is not required to be released by law. Further, the deputy will be notified when a request has been made to obtain information from his or her personnel files.

In support of its position, the union has extracted provisions from labor agreements negotiated between the FOP and 19 County Sheriffs Offices prohibiting the release of information from an employee's personnel file which is not required by law. The union also reproduced the decision in the case of Plain Dealer Publishing Co. v. City of Cleveland decided August 10, 2005 by the Ohio Supreme Court which stated that police officer photographs were exempt from the Ohio Public Open Records Act. Further, the union reproduced an article from the Dayton Daily News from September 21, 2005 which included the pictures of 3 Montgomery County Sheriffs Deputies; two of whom were indicted and one fired.

2. Employer Position.

The county position on this issue is that the issue of public access to personnel records in Ohio is extremely complicated and one fraught with the constant danger of litigation. Mr. Downes, a recognized expert on public records law in Ohio, noted that the case notes alone from R.C. 149.43 take up 60 pages of fine print and are growing everyday. Any

language in a public sector labor agreement in Ohio that unduly interferes with the public's lawful right to access employees personnel records is a "lawsuit waiting to happen" in Mr. Downes view. Mr. Downes further noted that the County would only add the language proposed by the union to Article 11 if the union agreed to defray the costs of litigation this language would provoke.

3. Discussion.

I generally agree with the idea that if an issue is not the source of a problem then we really don't need a provision in the labor agreement to deal with it. It seems to me, however, that the publishing of the photographs of three Montgomery County deputies who had been punished when these photographs are considered by the Courts to be excluded from release under the public records law, is a problem. The Union has provided a considerable body of evidence which shows that a number of counties in Ohio have negotiated provisions in their labor agreement with the FOP which provides for exactly the types of legal protection that the law now requires.

4. Recommendation.

That Article 11(B) be amended to include the language:

"No information that is not required by law to be disclosed shall be disclosed in response to a public request. Anytime anyone makes a public records request to receive documents from any bargaining unit member's personnel file, the bargaining member shall receive written notification of the requests."

I. Issue 6, Article 24. Promotion Process.

1. FOP Position.

The FOP position on this issue is to change Article 24 Section 1(A) such that for a deputy to be considered for promotion to sergeant, the deputy must have served 4 years of continuous service with the Montgomery County Sheriff's Office with the successful completion of the Road Patrol Field Training Officer Program. Two of the four years of service must be served in the Road Patrol Division or the Investigation Services Division. The FOP is also proposing to add a new seniority points column to the promotion system that would award up to 100 seniority points for 20 years of service. The current seniority points scale adds 17 seniority points for 20 years of service.

Deputy Brian Statzer testified in support of the FOP position. Deputy Statzer testified that the change in the promotion system was due to the increasing size of the Sheriff's Office. Deputy Statzer testified that because the court services employees are now in the bargaining unit, the issue of experience on road patrol should become more important in promotion decisions. Deputy Statzer testified that 80% of the deputies in the department have less than 5 years of service and that few have any road experience. Deputy Statzer testified that under the present promotion system someone could be promoted to sergeant with only 3 or 4 months of road patrol experience.

2. Employer Position.

The county position on this issue is that the union has provided no substantiation for its proposal to increase the minimum service requirement for promotion from 3 to 4 years and to require 2 years road patrol experience. The Sheriff opposes the new point column for seniority on the grounds that the union cannot show any evidence that anyone had been turned down for promotion based on their seniority points.

3. Discussion.

Major Brands brought up an interesting point during the discussion on this issue. The Major stated that it costs between \$7,400 and \$8,400 to administer the promotion test for sergeants. Between March 2004 and December 2006, 23 people took the sergeants test and only 5 passed. Major Brands noted that anything that further restricts the applicant pool or makes the test harder to pass will increase the costs to the Department with little or no benefit to the Department or the members of the bargaining unit. This is quite persuasive.

The union representative contended at the hearing that a mistake was made the last time the seniority points column was negotiated and written into the CBA. If this is true, then I suggest that the members of the last negotiations team meet with the Sheriff and discuss how this mistake made its way into the contract and how it can be corrected.

4. Recommendation.

That no change be made to Article 24. If the union can provide conclusive evidence to the Sheriff, through sworn affidavits or

depositions, that a mistake was made in the calculation of the seniority points to be used in the promotion process, I would recommend that a corrected points table be discussed by the labor management committee.

J. Issue 7, Article 25. Leaves of Absence.

1. FOP Position.

There are several “sub parts” to Article 25. The FOP is proposing a change in Article 25 Section 3(A) to increase the number of personal days from 2 to 3, to increase the number of perfect attendance days from 2 to 3, and to increase the number of days off for perfect attendance plus 600 hours of accumulated sick leave from 1 to 2. The maximum number of personal leave/perfect attendance days in total would increase from 5 to 8.

The FOP is proposing to delete Article 25 Section 5(A) which requires that an employee notify her supervisor as soon as she knows that she is pregnant. The FOP is proposing to add new language to Article 25 Section 5(B) which would require the employer to offer a light duty assignment to any pregnant officer who is no longer able to fulfill the requirements of her regular job.

The FOP is proposing that a new injury leave benefit be instituted at the Montgomery County Sheriff’s Office that would establish a 120 day injury leave program. The 120 day injury leave could be extended another 120 days at the request of the employee and if deemed necessary by the employees physician.

2. Employer Position.

The employer representative noted that the increase in personal leave/perfect attendance days proposed by the union would increase this leave from 5 days to 8 days, an increase of 60 percent. The employer representative noted that the proposed personal leave/perfect attendance benefit is superior to that provided to the supervisors.

The employer representative noted that the pregnancy notification provision in Article 25 Section 5(A) has been a long standing provision of the CBA and is the same language that is found in other collective agreements in the Sheriff's Office. The employer representative stated that it is to the benefit of the pregnant officer, her co-workers and the public at large that the supervisor be made aware of an officer's pregnancy as soon as possible. In the opinion of the Sheriff's representative, the language in the FOP's proposed new Article 25 Section 5(B) which requires that the employer offer a pregnant officer a light duty assignment would be a violation of the Americans with Disabilities Act if it is not offered to all other employees.

The employer representative noted that the language in Article 25 Section 8(A-F) has been in effect since the 2000-2003 agreement went into effect and was not changed in the 2003 negotiations. Furthermore, Mr. Downes noted that the language in Article 25 Section 8(A)(B)(C) in the current CBA is the same as that found in other collective agreements across the county and in the Sheriff's Office.

3. Discussion.

The union is proposing a sweeping change in the leave benefits as outlined in Article 25. As I noted above, sweeping changes that alter long established contractual practices are not appropriate for the Factfinding forum. These are changes that must be settled in negotiations; negotiations that are conducted by the parties that must live with the consequences of these bold new changes. Adding one more personal day, particularly if the supervisors were given an additional personal day in their most recent negotiations makes sense to me and won't break the Sheriff's budget. Endorsing the union's proposed changes to Section 5 and Section 8 is quite another matter. I could see why the supervisor needs to know when a deputy becomes pregnant. Police work is dangerous work; oftentimes officers find themselves in life threatening situations. This is not to say that a pregnant officer couldn't handle a life threatening situation but it would be better for everyone (including of course the unborn child) if the pregnant officer were not placed in that situation if it could be avoided. One way of keeping pregnant officers out of harms way as much as possible, would be to have them notify their supervisor as soon as they know they are pregnant.

The provisions for mandated light duty assignments found in the Unions proposed Article 25 Section 5(B) seems to me problematic. I agree with Mr. Downes that there are potential legal problems here if men are not also offered the same light duty opportunity should they become

unable for some reason to fill the requirements of their regular assignment. I am sympathetic to the concerns raised by Major Brands that there might not be enough light duty assignments to go around to those who would be mandated to receive them under the FOP's proposal.

The creation of the 120 day injury leave benefit in the FOP's proposed Article 27 Section 8(A-F) is also problematic to me. While I understand the unions argument that police work is dangerous work that sometimes results in injuries; I'm not sure that the unions proposed injury leave proposal is an improvement over the provisions for wage continuation and transitional duty that exist in the present agreement. The testimony of Ms. Hutchison explaining how the current program works throughout the entire county was quite persuasive.

4. Recommendations.

- (1) That Article 25 Section 3 (Personal Absence Leave) be changed to add one more day (increase from 2 to 3) to the number of personal absence leave days.
- (2) That the language in Article 25 Section 5 be unchanged.
- (3) That the language in Article 25 Section 8 be unchanged.

K. Issue 8, Article 26. Wages.

1. FOP Position.

The FOP position on this issue is to request a 6 percent increase for each year for the next 3 years. In addition, the union is requesting premium pay for canine handlers of \$1,500 per year and for evidence

technicians of \$500 per year. The union is proposing to increase longevity pay for each service year category by 1.25 percent. The union is proposing a new Section (4) in Article 26 (Field Training Officers) which would provide for 6 days of compensatory time for a deputy assigned to train a new road patrol deputy for an 8 week training program. For deputies training a new road patrol deputy for a 4 week period, 3 days of compensatory time would be provided. Field training officers who train new patrol officers who do not complete the training program (either 4 week or 8 week) would receive 3 compensatory days. Field training officers who have to extend the training period of the trainee, by order of the Division Commander, will receive 4 compensatory hours for each additional week or part of a week that the training is extended.

In the jail division, training officers assigned to the court security detail and transportation will receive 3 compensatory days for each trainee completing a 4 week training program. Field training officers who have a trainee who does not complete the training program will receive 3 days compensatory time. Field training officers who have to extend the training period of a trainee, at the order of the Division Commander, will receive 4 hours of compensatory time for each additional week or partial week of training. Both the jail division FTO's and the Road Patrol FTO's will be allotted a compensatory bank of 150 hours.

In support of its position on wages, the FOP has calculated wage increase comparisons for the 25 counties in Ohio that were used in the

2004 negotiations and were viewed as comparable to Montgomery County. The FOP also added Delaware and Fairfield counties to this list. The FOP representative asked the Factfinder to note that since 2004, the deputies in Montgomery County have recorded the smallest 3 year raise (6.1 percent) of any of the comparable counties listed in Tab 22 of Exhibit # 1.

2. Employer Position.

In response, Sheriff Vore asked the Factfinder to notice from the union's comparability data that the deputies in Montgomery County are the second highest paid deputy sheriffs in the State of Ohio. Even with the 6.1 percent raise over the last 3 years, they are still the second highest paid deputies in the State. The Sheriff asked the Factfinder to note that the deputies' wages have kept pace with inflation over the past 3 years. The Sheriff noted that Dayton was not an expensive city in which to live or raise a family.

The county proposal is for a 2.5 percent raise each year for the next 3 years. The county proposes no change in the longevity benefit. The county proposes to institute premium pay of 72 cents per hour for the canine handlers and 24 cents per hour for the evidence technicians. The county has no proposal for FTO pay. The Sheriff noted that the department has a long standing practice of providing 3 compensatory days for these deputies serving in an FTO capacity. The Sheriff stated that the civilian employees in the department received a 3 percent per year raise in

their new contract plus an additional personal day. The Sheriff stated that supervisors in the department received 3.5 percent in 2007, 3.5 percent in 2008 and 3 percent in 2009, and an additional personal day.

3. Discussion.

In looking over the FOP data relating to wages in the 24 comparable counties, it is evident that the rather modest raises given by the county three years ago has shifted somewhat the relative standing of the deputies in Montgomery County to those in the comparison counties. True, the deputies in Montgomery County are second in rank order to those in Franklin County (the highest paid in the state), but if you look at the numbers you can see that in 2004 the salary of a Franklin County deputy exceeded that of a Montgomery County deputy by \$4,140 per year. In 2007, the difference was \$6,657. Another way of looking at it is that in 2004 the Montgomery County deputies were \$4,140 from the top of the pack, now they are \$6,657 below the top. If we look at the counties that were below Montgomery County in 2004, we see that Greene County was 3rd on the list behind Montgomery County. In 2004 the top step Montgomery County deputy received \$1,768 more per year in salary than the top step Greene County deputy. In 2007 the difference had narrowed to \$317. Lake County was fourth on the list in 2004, \$1,913 per year below Montgomery County. Lake County is still fourth among the comparable counties, but only \$463 below Montgomery County. If we take all the counties as a group, Montgomery County paid its deputies

\$8,000 more than the average a 16% differential. In 2007, Montgomery County paid its deputies \$6,893 more than the 24 county average, a 12.5 percent differential. The fact is that the market wage rate for deputies in this cohort group goes up about 10% every three years. By paying a 6 percent increase over the last 3 years, the Montgomery County deputies have dropped behind by something in the neighborhood of 3.5 percent from where they would have been with a 10 percent increase three years ago.

It seems to me that a wage increase of 3.5 percent per year for 3 years would slowly, but surely, put the Montgomery County deputies back in the relative standing they have historically occupied in reference to the deputies in the 24 other comparison counties.

The wage data do not include longevity payments. The FOP comparison data doesn't contain information on longevity pay, as far as I can tell.

The proposal from the County for the canine handlers and evidence technicians seems to be the same in dollar amount as that requested by the union. The Sheriff's representative did not respond to the FOP proposal for FTO pay other than to indicate that it was established practice to pay someone who serves as an FTO 3 compensatory days per trainee. Due to the fact that the decision to serve as a FTO is a voluntary one, it will become an exercise in negotiations between the deputies providing the

training and the Sheriff, as to what the rate needs to be to incentivize someone to volunteer to serve as a FTO.

4. Recommendation.

1. Article 26, Section 1.

“Wages January 1 through December 31, 2007 will increase three and one half percent (3.5%).”

“Wages January 1, through December 31, 2008 will increase three and one half percent (3.5%).”

“Wages January 1, through December 31, 2009 will increase three and one half percent (3.5%).”

2. Section 2 – Premium Pay.

For the period January 1, 2007 through December 31, 2009 the following premium pay shall apply:

- All deputies assigned as canine handlers will be paid a premium of seventy-two cents (\$0.72) hourly when in active pay status.
- All deputies assigned as evidence technicians, not to exceed 12, will be paid a premium of twenty-four cents (\$0.24) hourly when in active pay status.

Such payments will be made only when the employee performs in that assignment.

3. Longevity.

No changes to this section.

4. Field Training Officers.

Not recommended.

L. Issue 9, Article 27. Hours of work and overtime.

1. FOP Position.

The FOP is proposing several changes in Article 27. The first is in Article 27, Section 1 where the union is proposing a rotating schedule of six work days on and two off work days for four cycles, then followed by six consecutive work days and three days off for one cycle and concluding with five consecutive work days and three days off for one cycle.

The FOP is proposing that Article 27 Section 3(E) be amended such that reserve deputies are prohibited from filling overtime conditions and special events overtime (including the county fair). Under the FOP proposal part-time employees (seasonal and intermittent) will not be used to fill an overtime condition.

The FOP is proposing that Article 27 Section 5(B) be changed such that the special events call up box be used to fill overtime for special events.

The FOP is proposing a new Section 6 be added to Article 27. This section would recognize the deputies rights to work special duty overtime and establishes basic qualifications for special duty assignments.

The FOP is proposing a renumbered Section 7 in Article 27 that would raise the compensatory time bank from 51 hours to 80 hours not including compensatory time earned for FTO duties.

The FOP is proposing a change to the renumbered Article 27 Section 9 (now Section 8) C which would eliminate the requirement that employees scheduled to appear in court on their days off call the court one hour before his or her scheduled court time to make sure he or she is still needed to testify. The Union is proposing to eliminate entirely the current contract language which is in Article 27 Section 8(D), which requires that an employee scheduled to appear in court on a duty day call the court 24 hours in advance of the court time and call again 1 hour before the court time.

2. Employer Position.

The Employer proposes current contract language for Article 27 Section 1. The employer objects to the fact that there was little if anything said about this issue during negotiations prior to factfinding. The employer points out that the current schedule was reached through a settlement with the FOP in 2004.

The employer proposes current contract language for Article 27 Section 3(E). The employer points out that it is a long standing past practice to have reserve deputies serve at the county fair. The Sheriff pointed out that the reserve deputies need to work during the county fair to maintain their reserve deputy status. The Sheriff pointed out that the fair board doesn't have the funds to pay the reserve deputies and they provide law enforcement services to the fair as unpaid volunteers.

The Sheriff proposed no change to Article 27 Section 5(B) based on the fact that the special events call box had been tried in the past and was discontinued. The Sheriff noted that deputies had been allowed to work special duty in the past, but events of recent years have shown that deputies working special duty in the capacity of providing law enforcement services expose the County to potential legal liability. To protect the County against this legal liability, deputies of the Montgomery County Sheriffs Office are no longer allowed to work special duty assignments in the capacity of a law enforcement officer. In conclusion, the Sheriff stated his view that special duty assignments were outside the scope of bargaining as specified in ORC 4117.08.

The Sheriff opposed the Union's proposed change to Article 27 Section 6 regarding compensatory time. The Sheriff stated that there was a long history behind the 51 hour compensatory cap at Montgomery County. The Sheriff pointed out that the 51 hour cap was in all 3 agreements between the Sheriff and the various organizations that represent employees with the department.

The Sheriff voiced opposition to changing the "2 call" rule in Article 27 Section 8. The Sheriff pointed out to the Factfinder that Montgomery County deputies are paid for 4 hours work at 1 ½ time for making a court appearance. The Sheriff stated that the 2 call rule is necessary to guarantee that a deputy does not show up to court when he or she is not needed thus saving the department the equivalent of 6 hours of

straight time pay. The Sheriff further stated that the deputies had been unable to show any hardship from the rule requiring the 2 calls before a court appearance and pointed out to the Factfinder that this rule had been part of the CBA at Montgomery County for a significant period of time.

3. Discussion.

- a. The proposed change in Article 27 Section 1 involves a very long and detailed process of establishing a schedule that serves the needs of the department in providing adequate staffing to ensure that all essential services of the department are provided to the citizens of the county. I understand that in 2004, a new schedule was implemented by the Sheriff that eliminated rotating days off. I am also aware of the 1998 unfair labor practice charge by the FOP regarding scheduling and the settlement of this charge between the parties.

I received after the close of the Factfinding hearing, a detailed staffing plan for the Montgomery County Sheriff's Office prepared by Mr. Drum and his bargaining team. There was virtually no discussion of the new schedule at the Factfinding hearing because it had not been created yet. The FOP makes the point that it was not able to propose the new schedule to the employer at the bargaining table or the Factfinding hearing because staffing data critical to designing the plan had not been supplied to the Union. Once the data was supplied to the Union,

the staffing pattern was developed and a copy was sent to the employer representative and to the Factfinder. The employer representative reacted somewhat negatively to the proposed schedule and stated the view that such "post hearing proposals" were inappropriate.

I recommend that the proposed schedule developed by Mr. Drum and the bargaining committee be seriously considered by the Sheriff and that a face to face dialogue between the Sheriff and the FOP representatives begin as soon as practicable. I do not feel that it would be appropriate for me to recommend a yes or no on any part of the proposed scheduling proposal without hearing more details of its strengths and weaknesses. I would recommend that the schedule proposed by the FOP be presented to the Labor-Management Committee for further deliberation.

- b. The FOP proposal to prohibit reserve deputies from filling special events overtime (including the county fair) seems to me to be ill advised. If the county fair board truly has no money to pay overtime to law enforcement personnel to police the fair, then it makes sense to have the reserve deputies do this as an unpaid public service. My guess is that if the regular sworn officers of the department were to offer their services to the fair board for free, this would be gladly accepted by the board and the problem of reserve officers working the fair would be eliminated.

c. The FOP proposal to amend Article 27 Section 5(B) to require that special events overtime be filled through the special events call box is an idea that has been tried in the past. According to the Sheriff's testimony, this practice was discontinued several years ago. The Sheriff brought out the point at the hearing that he has not received any complaints or received any grievances regarding the distribution of overtime. The Union did not have evidence or testimony which would indicate that employees had been "skipped over" or that some employees were favored in the distribution of overtime. Without some evidence that there is a problem regarding this issue it is hard to make a recommendation in its favor.

d. The FOP proposal in the new Article 27 Section 6 recognizes the deputy's right to work special duty overtime. The Sheriff testified that he eliminated, special duty overtime, after an incident at a local grocery store in which there was an altercation between a deputy working special duty and a citizen. In a discussion with the management of the grocery store, the Sheriff learned that any damages caused to the public by someone working in the capacity of a law enforcement official in a Montgomery County Deputy Sheriff's uniform is the responsibility of the county, not the employer of the officer working extra duty. Under advice of legal counsel, the Sheriff made the decision to halt off

duty assignments of deputies working in the capacity of law enforcement officials in Montgomery County. In this case, I feel the Sheriff made a decision that can be interpreted as a management right. There is no contractual right to work special duty employment in the most recently expired CBA that I can find. I am aware that special duty or extra duty is common in many counties and municipalities in Ohio. I was unaware, until the present Factfinding the legal liabilities faced by a county or municipality in allowing employees to work special duty or extra duty assignments.

- e. The FOP proposes moving the “cap” on the overtime bank to 80 hours from 51 hours. In looking over the data provided by the union for 27 comparable counties I notice that in 6 counties the cap is 51 hours or lower. In 5 counties it is 80 hours. In ten counties it is between 96 and 480 hours. In 5 counties it is none. In one county there is no limit. In short, this is quite a bit of variance in the compensatory time bank cap between the counties. The Sheriff testified that the 51 hour cap is in all 3 contracts in the department. The Sheriff testified that he was not aware of anyone in his department bumping against the 51 hour cap. The Sheriff testified that the 51 hour cap has a long history in the department. I find no compelling reason to raise the cap to 80.

f. The Union proposes to change Article 27 Section 8 to eliminate the 24 hour advance call and the one hour advance call before court appearances by deputies on duty. For deputies off duty, the 24 hour call rule would still be in effect. In the Union's comparability data for 80 county Sheriff's Offices in Ohio only 5 require an advance call by the deputy to receive court appearance pay and only one that I can tell (Montgomery) requires 2 calls before a court date. The two call rule does seem a bit onerous and I could see why the deputies would feel that it is the employer's obligation (or the prosecutor's obligation) to contact them in advance if their services are not needed.

4. Recommendations.

- a. That the new proposed rotating days off schedule developed by the FOP be given serious consideration by the Labor-Management Committee.
- b. That the proposed changes to Article 27 Section 3(E) "special events overtime" not be adopted.
- c. That the proposed changes to Article 27 Section 5(B) "special events call box" not be adopted.
- d. That the proposed addition of Article 27 Section 6 "special duty employment" not be adopted.
- e. That the proposed Article 27 Section 7(new) raising the cap on compensatory time to 80 hours not be adopted.

f. That the proposed change to Article 27 Section 9(new) (c) and (d) eliminating the second call 1 hour in advance of a court appearance for an employee not on duty and eliminating the 2 calls for an employee on duty be adopted.

M. Issue 10, Article 28 – Holiday Premium Pay.

1. FOP Position.

The FOP position on this issue is to provide pay at a rate of 1 ½ times the straight time hourly rate for these employees also work on any one of the 11 named holidays in Article 28 Section 1 of the CBA. In support of its position, the Union provides comparability data from 80 counties in Ohio which shows that in only 12 counties is the holiday pay the same as, or less than, that in the Montgomery County Sheriff's Office. The Union also provides data from 5 CBA's negotiated by Montgomery County with other bargaining units that provide premium pay for working on a holiday.

2. Employer Position.

The Employer's position on this issue is that the Sheriffs Office currently pays employees premium pay for working on New Years Day, Thanksgiving Day and Christmas Day. In addition, the employer representative pointed out to the Factfinder that the Sheriffs proposal on this issue is the same as that found in the other bargaining units in the Sheriffs Office.

3. Discussion.

The Union proposal is in conformity with many other Sheriffs Offices in Ohio, with many municipalities in Montgomery County and with some of the other CBA's negotiated by the County with its other employees. The employer has agreed to incorporate the language of the 2005 MOU into the agreement providing holiday pay for 3 holidays. This is a change from past practice and shows progress on moving the deputies in Montgomery County to the point on premium pay for holidays which many other employees in Montgomery County and across the State of Ohio enjoy. I do not feel however that now is the time to recommend premium pay for 8 additional holidays.

4. Recommendation.

That the Union's proposed changes to Article 28 Sections 1 and 2 not be recommended.

N. Issue II, Article 30 – Insurance.

1. FOP Position.

A good bit of discussion and progress was made on this issue prior to the Factfinding hearing. At the hearing, the only disputed issue was the timing of the premium co-pay. The FOP proposal was that the co-pay amount for the family plan be \$110 per month effective July 1, 2008 and \$120 per month effective July 1, 2009.

2. Employer Position.

The Employer's position on this issue is that the family plan co-pay be \$110 effective July 1, 2007 and \$120 per month effective July 1,

2008. The employer pointed out to the Factfinder that the proposal that it was making is the same schedule as that found in the recently negotiated Supervisors' CBA.

3. Discussion.

For the sake of conformity with the Supervisors contract, the employer position is recommended.

4. Recommendation.

- Effective July 1, 2007, the co-pay for premium contributions to the family health insurance program shall be \$110 per month.
- Effective July 1, 2008, the co-pay for premium contributions to the family health insurance program shall be \$120 per month.

O. Issue 12, New Article 34 – Mid-Term Bargaining.

1. FOP Position.

The FOP is proposing that a new article, Article 34, be added to the CBA. The proposal would require the Sheriff to negotiate with the Union over any changes to the employment relationship between the parties which involve mandatory subjects of bargaining. If negotiations reach impasse after a prescribed period of time, there is a provision for mandatory mediation. If the mediation effort is unsuccessful, then the parties would submit the unresolved issues to mandatory and binding final offer arbitration on an issue by issue basis. The Union proposal contains criteria the arbitrator must take into consideration in making his or her decision. Upon receipt of the arbitrator's decision, the employer may

either implement the arbitrator's decision on the matter or abandon the proposed changes and revert to the status quo.

2. Employer Position.

The Sheriff voiced opposition to adding this new article to the agreement. The Sheriff pointed out to the Factfinder that on several occasions when the county has found it necessary to make mid-term changes to the agreement, it does so through the use of Memoranda of Understanding (MOU). The Sheriff expressed reservations about the formality and strict timetables found in the FOP's proposed mid-term bargaining language. The Sheriff stressed that he needed a more flexible and less costly procedure to initiate mid-term changes in the operation of the office than that proposed in the Union's Article 34.

3. Discussion.

I have looked over the nine collective bargaining agreements provided by the union to support its position on mid-term bargaining. I noticed that most of the agreements were from relatively small rural counties (with one or two exceptions). I'm not sure that the Union proposal would produce the intended result (fewer filings with SERB) and I'm also not sure if Factfinding is the appropriate forum to address this issue. The addition of language to a CBA such as the Union is proposing is only going to produce the desired result if both parties really want to make the mid-term bargaining process work. The Sheriff's opposition to

the mid-term bargaining concept does not give me optimism for its success, even if it was adopted.

4. Recommendation.

The Union's proposed new Article 34, Mid-term Bargaining, is not recommended.

IV. Certification.

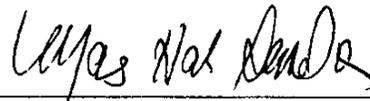
This Factfinding Report and Recommendations is based upon evidence and testimony presented to me at a factfinding hearing conducted in Dayton, Ohio on March 5, 2007.



Marcus Hart Sandver, Ph.D.
Factfinder

V. Proof of Service.

This Factfinding Report and Recommendations was hand delivered by me to Mr. Mark Drum, Staff Representative, FOP/OLC, 222 E. Town Street, Columbus, Ohio 43215 and to Mr. Jonathan Downes, Attorney at Law, Downes, Hurst and Fishel, 400 South Fifth Street, Suite 200, Columbus, Ohio 43215. and mailed regular mail to Mr. Edward Taylor, Bureau of Mediation, SERB, 65 E. State Street, Columbus, Ohio 43215 on May 25, 2007.



Marcus Hart Sandver, Ph.D.
Factfinder

2007 SEP -7 A 11: 26

Clarification of Fact-finding Report
in the matter of Fact-finding between

Montgomery County Sheriff

and

Fraternal Order of Police/Ohio Labor Council Lodge 104

SERB Case No.: 06-MED-10-1212

Marcus Hart Sandver, PhD

Fact-finder

Hearing Date: March 5, 2007
Recommendations Issued: May 25, 2007
Report Deemed Accepted by SERB July 25, 2007
Clarification Issued August 30, 2007

Representing the Employer:

Mr. Jonathan Downes
Attorney at Law
Downes, Hurst & Fishel
400 South Fifth Street
Suite 200
Columbus, Ohio 43215

Representing the FOP/OLC:

Mr. Mark Drum
Staff Representative FOP/OLC
222 E. Town Street
Columbus, Ohio 43215

Marcus Hart Sandver, PhD.
The Ohio State University
Fisher College of Business
2100 Neil Avenue
Suite 856
Columbus, Ohio 43210

STATE EMPLOYMENT
RELATIONS BOARD

2007 SEP -7 A 11: 25

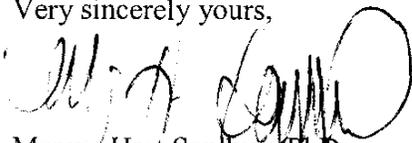
August 31, 2007

Chief, Bureau of Mediation
State Employees Relation Board
65 E. State Street
Columbus, Ohio 43215

Dear Sir or Madam:

Enclosed you will find my Clarification of Fact-finding Report in the case of involving the Montgomery County Sheriff and Fraternal Order of Police/Ohio Labor Council Lodge 104, SERB Case No. 06-MED-10-1212. I have also enclosed an invoice for my services.

Very sincerely yours,



Marcus Hart Sandver, PhD

Enclosure

I. Background.

This case involves the clarification and interpretation of a factfinding report which was issued on May 25, 2007. Neither party rejected the party. While the language of the report was being written into actual contract language a dispute arose between the parties over the exact meaning of Article 27.9 of the new agreement covering call in pay for officers who are called into court during hours outside their regular duty hours. Under the previous contract officers called in to testify in court during an off duty day were entitled to 4 hours of overtime pay or call "back pay". Officers who were on duty the day they were called back to court (but outside their regular duty hours) were entitled to 2 hours of call back pay.

The parties submitted exhibits into the record. The following were labeled and marked as Employer Exhibits.

1. Employer Exhibit # 1 Union proposal for factfinding Article 27, Initial Proposal.
2. Employer Exhibit # 2 County proposal for factfinding Article 27, Initial Proposal.
3. Employer Exhibit # 3 Montgomery County Supervisors Contract 2003-2006 Article 27, Section 8 – Court Time.
4. Employer Exhibit # 4 Montgomery County Supervisors Contract 2007-2009 Article 27, Section 8 – Court Time.
5. Employer Exhibit # 5 Pre-hearing statement for factfinding, submitted March 2, 2007.

6. Employer Exhibit # 6 FOP Rationale Statement Article 27 – Hours of work and overtime, March 5, 2007.
7. Employer Exhibit # 7 Comparison of court pay provisions, March 5, 2007.
8. Employer Exhibit # 8 Factfinding statement of Montgomery County Sheriff.
9. Employer Exhibit # 9 Exhibit list for factfinding, dated March 5, 2007.
10. Employer Exhibit # 10 Court time/Call in time Comparables Article 27, Section 8, March 5, 2007.
11. Employer Exhibit # 11 Montgomery County Sheriff's Department Wages Increases for Civilian Employees 2006-2009.
12. Employer Exhibit # 12 Montgomery County Sheriff's Office Deputies Unit FOP/OLC Interpretation of Section 27.8 of Factfinder's Report, Dated 8/23/07.
13. Employer Exhibit # 13 Initial Draft of Section 27.8 language drafted June 20, 2007.
14. Employer Exhibit # 14 Corrected draft of Section 27.8 language, drafted June 22, 2007.
15. Employer Exhibit # 15 Memo from Jonathan Downes to Mark Drum including proposed new language for Article 27.8, dated June 19, 2007.
16. Employer Exhibit #16 Memo from Brenda Gisewite to Jonathan Downes transmitting the changes in Article 27.8 she had made on June 21, 2007.

The following were submitted as FOP Exhibits:

1. FOP Exhibit # 1 FOP Proposal for Factfinding Article 27.8 Court Time, dated March 5, 2007.
2. FOP Exhibit # 2 Employee Proposal for Factfinding, dated March 5, 2007.
3. FOP Exhibit # 3 Factfinding Report and Recommendations in the matter of Factfinding between Montgomery County Sheriff and FOP/OLC Lodge 104, dated May 25, 2007, p.33 and 34; 39 and 40.
4. FOP Exhibit # 4 Memo from Brenda Gisewite to Mark Drum dated June 21 reflecting June 20 language interpreting factfinding report.
5. FOP Exhibit # 5 Memo from Brenda Gisewite to Jonathan Downes which reflects changes to 27.8 made on June 22, 2007.
6. FOP Exhibit # 6 Memo to Marcus Hart Sandver from Marc Drum summarizing the FOP interpretation of the May 25, 2007 Factfinding Recommendation regarding Article 27.8.

II. Discussion.

This was something of an unusual factfinding case from the very beginning, even before the very beginning. I had served as a conciliator to a dispute in this same unit in 2004. I was asked to provide mediation services to this unit on January 5, 2007 and

labored for 12 hours without resolving a single issue. The factfinding hearing was scheduled for March 5, 2007. There were 12 issues in dispute many of them branching out into other "sub issues". As might be expected the positions of the parties on some of the articles were pretty clear, some less clear. A major issue scheduling was presented at the hearing as a full blown proposal with no previous discussion. I received fairly exclusive post communication materials from both parties after the hearing.

The specific issue of the court pay/call in pay seems easily interpreted to me on page 33 of my recommendations. I acknowledge that the union is proposing to eliminate the current language Article 27, Section D which drops the 2 hour call in pay on a duty day and eliminates the 1 hour phone call in advance. By recommending the union's proposed 27.D (new) language it also automatically under the union's proposal brings the court time during the duty day to 4 hours. That was the intention of the recommendation.

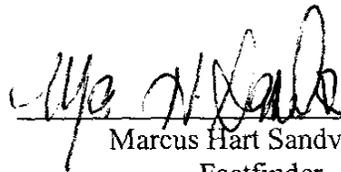
Mr. Downes is right in his discussion in Employer Exhibit # 12 that the specifics of the 2 hour versus 4 hour court time was not discussed very much, if at all during the hearing. The City did not take the time to cost out this aspect of the proposal because it got brushed aside or buried in the legion of details that were dealt with in discussing the many other issues that were before us that day.

III. Recommendation.

That Article 27.8 be revised with the union's interpretation of the language providing for a 4 hour court pay for court time served during non-work hours on a duty day. I believe this would be consistent with language as originally interpreted by Ms. Gisewite on June 16, 2007.

IV. Certification.

This Clarification of Factfinding is based upon evidence and testimony presented to me at a clarification factfinding hearing held at 3:00 on August 23, 2007 at the FOP Hearing Room at 222 E. Town Street. This report was prepared by me personally and I am responsible for its contents.



Marcus Hart Sandver, Ph.D.
Factfinder