

2008 AUG -6 P 12: 29

FACT FINDING REPORT  
STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
August 2, 2008

In the Matter of: )  
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The Medina County Sheriff )  
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)  
and )  
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Ohio Patrolmen's Benevolent )  
Association )  
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SERB Case No.  
07-MED-10-1145

APPEARANCES

For the Union:

Randall Weltman, Attorney for the OPBA  
M. D. Brooks, Deputies' Director for the OPBA  
W.A. Harrell, Department Director for the OPBA

For the Medina County Sheriff:

William Schmitz, Attorney for the Sheriff  
B. Molaer, Attorney for the Sheriff  
Kenneth Baca, Chief Deputy for the Medina County Sheriff's Department  
Gary Berkowitz, Medina County Human Resources Director

Fact Finder: Dennis M. Byrne

## **Background**

The Fact Finding involves the members of the Medina County Sheriff's Department represented by the Ohio Patrolmen's Benevolent Association (OPBA/Union) and the Medina County Sheriff's Office (Sheriff/Employer). The parties held a number of negotiating sessions, but were unable to come to an agreement; consequently, they scheduled a Fact Finding.

Prior to the hearing, the Fact Finder attempted to mediate the dispute, and some issues were resolved. These agreements related to issues 1) Article 12 – sick leave abuse, 2) Article 22 – Insurances – capping of health insurance premium increase(s), 3) Memorandum II – payment of wage supplements by separate check. The unresolved issues are: 1) Article 12 – Sick Leave Cash out, 2) Article 15 Holidays, 3) Article 19 – Compensatory time, 4) Article 19 – On Call Time Payments, 5) Article 21 – Uniform Allowance, 6) Article 22 – Life Insurance, 7) Article 25 – Longevity, 8) Article 29 - Wages, 9) Article 29 - Road Certification Premium, 10) Article 29 – Field Training Officer Pay, and 11) Memorandum I – Sick Leave Buyback. It must also be noted that the parties were able to reach agreement on a number of other issues during negotiations, and all of these tentative agreements are included in the Fact Finder's recommendations by reference.

The disagreements between the parties are over economic issues, and the most contentious issue is the size of the general wage increase. The major stumbling block to reaching an agreement is a philosophical difference between the parties over the concept of internal comparability. The Sheriff's representative argued that all other bargaining units with the exception of the units represented by the OPBA agreed on a two and one-

half (2½ %) percent per year general wage increase, and internal comparability dictated that the Union accept the same settlement.

In addition, the Employer also presented evidence that it claimed proved that two and one-half (2½%) was a reasonable wage increase. The Union disagreed with this position and demanded three and one-quarter (3 ¼%) percent per year as the base wage increment.

The Fact Finding Hearing was held on Tuesday July 15, 2008. The Hearing started at 10:00 A.M. at the Medina County Administration Building and lasted for approximately five hours, ending a few minutes past 3:00 P.M.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations in Rule 4117-9-05. The criteria are:

- (1) Past collectively bargained agreements, if any.
- (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, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards of public service.
- (4) The lawful authority of the public employer.
- (5) Any stipulations of the parties.
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or private employment.

**Introduction:**

The major stumbling block impeding the parties' ability to reach agreement on a new contract is a difference of agreement over the weight that internal comparability should have in determining the general wage increase. The Union claims that the County

has historically followed a strategy of divide and conquer. That is, the OPBA units are the largest units in the county and have the ability to go to conciliation. Therefore according to the Union, the County comes to an agreement with its other, smaller bargaining units and then tries to impose that settlement on the OPBA units. In this instance the County has reached agreement with six (6) other bargaining units that represent all of the organized, non-conciliation units in the County. These units have settled for two and one-half (2½ %) percent general wage increases with the exception of the County Engineer's Office. However, the Engineer has his own sources of funding and is not funded by the County Commissioners. Therefore, the Employer argues that two and one-half (2½%) is a pattern throughout the County for employees paid from the County's General Fund revenues.

The Union agrees that the other county bargaining units have settled for a two and one-half (2½%) percent base wage increment. However, the Union argues that this is substandard with respect to Sheriff's Departments and that figure should not be controlling in these negotiations. Therefore, the Employer is arguing that internal comparability should be the major factor in determining the overall wage settlement with the Deputies' unit, and the Union is opposed to this position.

Consequently, some discussion of the role of internal comparability is needed before recommendations on the issues can be advanced. ORC 4117 requires that a neutral look at factors that "are normally or traditionally taken into consideration in the determination of issues" submitted for the dispute resolution procedures outlined in the Act. Internal comparability is one of those factors. However, it is only one of the factors that a neutral is to consider in making a recommendation. In general, internal

comparability has a great weight in a neutral's recommendation on some issues (benefits); however, it has less impact on recommendations on other issues (wages). Furthermore, according to the criteria listed in ORC 4117 and listed above, it cannot be the sole determinant of a neutral's recommendation on an issue.

ORC 4117 requires that the parties negotiate in good faith in an attempt to reach an amicable settlement to their differences. This requires that both sides have the opportunity to present evidence in support of their positions and have that evidence seriously considered by the other party. Often, that evidence is based on data from other external jurisdictions, i.e., the so-called comparables. Therefore, at a minimum a neutral will look at the evidence from a single employer's agreements with other all of its bargaining units (internal comparability) and agreements for the same job description(s) *between bargaining units and different employers (external comparability)*. This means that other internal bargaining units are a valid comparison group. However, because most jurisdictions believe that their employees should be paid similarly, internal comparability often assumes an exaggerated importance during negotiations.

An overemphasis on internal comparability does not reflect the way that labor markets work. In general, different occupations are paid different wages based on education, job requirements, danger, etc. In other words, a whole series of factors are considered when a wage scale is set. Similarly, when wage rates are renegotiated, a whole set of factors comes into play. To argue that all employees should receive the same wage increase is tantamount to arguing that the original, underlying wage scale takes all differences in job and individual characteristics into consideration.

That is the same as saying that jobs are static and unchanging. If a new piece of equipment is put into use, the change from typewriters to personal desktop computers for example, then the wages of the secretarial staff should change with respect to other employees because the secretarial staff had to acquire new skills. This change in relative wages reflects the fact that the labor market is dynamic and change is universal. This means that any union must have the right to bargain for its membership based on their unique jobs and conditions of employment. In general, internal comparability cannot be the sole criteria in a wage negotiation; and it is often less relevant than external comparability. The only way internal comparability can be controlling is if nothing has changed since the original wage scale was instituted.

However, a dependence on internal comparability does make sense with respect to the benefit component of total compensation. Consequently, benefits are often uniform over the entire work force. For example, health insurance plans will usually be the same for all employees. The reason is that the plan covers the gamut of health related issues faced by employees. The difference between bargaining units is that members of different units have a different incidence of certain diseases; i.e., office workers are less likely to suffer from weather related ailments than the employees who work outdoors.

The forgoing also explains why the concept of external comparability is so important in determining wages. In general, the other employees who do the same job should be compensated similarly. This means that the job characteristics and individual traits needed to perform those jobs are probably similar across jurisdictions. A good sheriff's deputy in Medina would most likely be a good deputy in Wayne or Ashland counties also. Therefore, internal comparability is based on the same employer but

compares different jobs and job skills. External comparability stresses the same jobs and job skills, but across different employers.

There is another factor involved in wage negotiations, and that is differences among employers. In general, a public employer that is in good financial condition will pay more to its employees than an employer that is having financial problems; and therefore, the wage rate and changes in the wage rate are affected by where an individual works. It is unreasonable to assume that a poorer jurisdiction will pay exactly the same wages to its employees even if the employees do exactly the same job and are just as efficient as employees of a wealthier community. Therefore, when a neutral makes a wage recommendation, he/she also must take into account a number of employer specific criteria.

The use of external comparability (comparables) to determine a jurisdiction's relative ranking within a labor market has become one of the main ways that unions, management, and neutrals evaluate economic demands. However, this leads to some problems related to the selection of and the use of the data from comparables.

The selection of comparables plagued the negotiation process in the early years of collective bargaining under ORC 4117. The parties often selected jurisdictions that were not comparable in any realistic sense, but that gave some justification for the position(s) the parties advanced in negotiations. That is, one party or the other decided that a three (3.0%) percent raise was reasonable, and then that party found other jurisdictions that paid around three (3.0%) and presented those jurisdictions as comparable.

Ultimately, the parties often with the aid of neutrals settled on a group of other jurisdictions that each side agreed was comparable to the home jurisdiction, and

information from those jurisdictions was used to define a labor market. The use of a standard set of comparables allowed the parties to determine what was happening in a labor market over time. Using comparables in this way gave the parties a way to structure their arguments that was reasonable. For example, the Union might demand five (5.0%) percent per year as its goal. If the comparables showed that this wage demand was high, then the Union understood that it would have to prove that the raises negotiated by other jurisdictions in the relevant labor market should be discounted. That is, it would be forced to show why its membership should be treated differently than other union members performing the same job in the surrounding area. This use of comparables data is useful to both the parties in determining their positions in a negotiation and to neutrals in evaluating those positions. One major determinant of comparability is geography, and both parties almost always use contiguous jurisdictions as part of their comparables list.

In this instance, the parties presented comparables lists that contain all geographically contiguous counties; that is, Ashland, Cuyahoga, Lorain, Summit, and Wayne Counties. In addition, the Union provided information on Geauga, Lake and Portage Counties. Finally, the Union also presented data drawn from other Certified Law Enforcement Agency (CLEA) jurisdictions. These include Greene, Knox, Licking, Montgomery, and Medina Counties. These latter counties are the counties that have decided to require extra training leading to a higher level of certification for their Sheriff's Departments. The Fact Finder does not believe that the CLEA counties are comparable to Medina in the generally accepted meaning of that term in labor relations.

Therefore, none of these counties will be considered in any recommendations put forth by the Fact Finder.

In addition, both parties objected to one or more of the jurisdictions on the lists submitted to the Fact Finder. The Union objected to the inclusion of Ashland County as a comparable. The Union argued that Ashland County, while geographically contiguous, has nothing in common with Medina County. Without going into a long discussion of the reasons, the Fact Finder agrees. The County objected to the Union's inclusion of Geauga and Lake Counties. The County argues that Geauga County has the highest per capita income in Ohio and that Lake County has a different economic climate when compared to Medina County. The Fact Finder agrees that Geauga County is probably not comparable to Medina County for any number of reasons. However, the case is less compelling in the case of Lake County, even though its population is somewhat greater and it is somewhat more developed. Consequently, the Fact Finder will examine data from Cuyahoga, Lake, Lorain, Summit, and Wayne Counties when formulating his recommendations.

With the preceding paragraphs as an introduction, a discussion of each issue will be given below.

**Issue:** Article 12 (10): Sick Leave Conversion

**Union Position:** The Union demands that each retiring Deputy Sheriff be paid for his/her accumulated sick leave up to 960 hours. The payment will be at the employee's rate of pay at the time of retirement.

**County Position:** The County rejects the Union's demand and wishes to continue the current practice.

**Discussion:** The Union's demand is based on the County Policy Manual's language for non-bargaining unit employees. The Policy Manual contains a table that lists the cash buy-out amounts for employees in the County. An employee with five (5) years of service with the County and at least twenty-five (25) years of public sector employment can receive 100% of his/her accrued sick leave up to nine hundred and sixty (960) hours. The Union demands the same benefit for the deputies.

The County in its discussion of this issue pointed out that the non-unionized employees do not receive benefits that are commonplace in the contracts of the organized labor force. The most salient of these benefits is longevity pay. According to the testimony in the record, the County Commissioners decided to institute a sick leave cash out rather than institute a longevity scale for its non-unionized employees. The Commissioners reasoned that a longevity payment is not an incentive to come to work, but an enhanced sick leave buyout plan does create an incentive.

The County also presented data from comparable jurisdictions that showed that if the Union's demand was accepted, then the Sheriff's Department employees would have the best (among the best) sick leave buyout programs in the labor market. Furthermore, the County testified that the language the Union is demanding is far in excess of the language found in ORC 124.38, which mandates that an employer convert one-quarter (1/4) of all unused sick time up to a maximum of two hundred and forty (240) hours. Therefore, the County does not believe that the current language in the contract is deficient.

The Union stressed that its demand was based on equity considerations with other county employees. The Union also argued that some comparable counties had similar buyout provisions. However, an examination of the comparables data shows that only Lorain County's plan is unequivocally superior to Medina's. Some other counties have different plans than the one in Medina, but these plans are not superior to the Medina plan.

Consequently, the Fact Finder does not believe that the Union proved that its membership is treated unfairly with regard to sick leave buyout. It is true that some Medina employees have a better buyout provision, but those employees do not enjoy some benefits that are available to the Sheriff's employees. Moreover, the data from other comparable jurisdictions do not support a finding that the Medina County sheriff's deputies are not adequately compensated with regard to their sick leave buyout.

**Finding of Fact:** The Union did not prove that the current sick leave buyout provision is deficient.

**Suggested Language:** Current contract language.

**Issue:** Article 15 (4) Holidays

**Union Position:** The Union demand is that an extra personal day be added to the contract. This would give the employees ten (10) named holidays and three (3) personal days. In addition, the Union desires to delete the last sentence of Article 15 (4) that says, "If such day (a personal day) is not taken by the end of the calendar year, it shall be forfeited."

**County Position:** The County rejects the Union's demand and counters with current contract language.

**Discussion:** The Union position is based on the fact that the comparables show that a number of other jurisdictions have negotiated twelve (12) holidays into their contract along with at least one personal day. The Union claims that this shows Medina's holiday schedule is substandard compared to other jurisdictions. The comparables submitted by the parties show that in most jurisdictions the combined number of holidays and personal days is approximately twelve (12). Among the five comparable counties, Cuyahoga County has eleven (11) holiday/personal days and Summit County has fourteen (14) holiday/personal days. Therefore, the evidence shows that Medina County is not out of line in terms of holidays.

**Finding of Fact:** The Union did not prove that the holiday/personal day schedule in Medina is substandard.

**Suggested Language:** Current contract language.

The next part of the Union's demand relates to the "use it or lose it" language found in Article 15 (4).

The Union's demand is that the last sentence of Article 15 (4) be deleted from the contract. This language states that if a deputy sheriff does not use his personal day(s) off, then at the end of the year the day is lost. The Union's suggested language changes this provision of Article 15 (4). The County stated that its representatives during the give and take of negotiations originally suggested this language change. The County argues that the Union "hijacked" its proposal and that this language change should not go into the contract without some quid-pro-quo.

Article 15 (4) also outlines the circumstances under which a personal day can be used. The language states that the Employer has the right to approve of the use of a personal day and that the union membership must schedule a personal prior to taking the day off. This insures that the Employer is not faced with overtime costs, etc. Therefore, it is possible that a deputy sheriff might not be able to use his/her personal day because the time off is not approved, although both parties agree that the Sheriff accommodates requests for time off. Nonetheless, it is possible that a Deputy Sheriff will have to forfeit his/her contractual time off or use it at the end of the year just to keep from losing the time.

Consequently, the Fact Finder believes that the last line of Article 15 (4) should be changed to read that if a Deputy Sheriff does not use his/her personal days by the end of the calendar year, then he/she should be paid for the time.

**Finding of Fact:** The contract guarantees a Deputy Sheriff two (2) paid days off. If a Deputy does not use the time, then he/she should have the right to cash the time in at the end of the calendar year in which it was earned.

**Suggested Language:** 15.04

In addition to the above holidays, all employees shall be entitled to two (2) personal days per year, to be taken upon advance approval, with at least twenty-four (24) hours notice, unless waived at the sole discretion of the Employer or his designee. If such day is not taken by the end of the calendar year, it shall be paid in cash during the next pay period.

**Issue:** Article 15 (5) Holiday Premium Pay

**Union Position:** The Union demands that all ten holidays be paid at the rate of time and one-half (1½) of the deputys' daily rate.

**County Position:** The County rejects this demand.

**Discussion:** The current contract language specifies that the deputies who are required to work on Thanksgiving Day, Christmas Day, New Year's Day, Independence Day, and Labor Day shall be paid at the rate of time and one-half (1½) for the day, but the other five (5) holidays are not premium pay days. The Union argues that the deputies receive ten holidays and that all holidays should be compensated at the premium rate.

The County stated that some holidays are more "important" family days than other holidays and that the deputies should be compensated at the premium rate if they have to work on the "important" days. The County believes that it is more of a hardship on a family if a father/mother must be absent of Christmas than if he/she is absent on Veteran's Day for example. The comparables are somewhat mixed on this issue. Some jurisdictions pay all holidays at the premium rate, and some do not.

A full discussion of the County's finances must wait until the wage issue is considered; however, a Neutral must consider the state of the economy when making recommendations. In this instance, the Fact Finder does not believe that the current system works a hardship on the deputies, and the evidence does not prove that they are so far behind other comparable jurisdictions on this issue that the Fact Finder should recommend acceptance of the Union's position in the face of the County's opposition to the demand.

**Finding of Fact:** The Union did not prove that all holidays should be paid at the rate of time and one-half (1½).

**Suggested Language:** Current language.

**Issue:** Article 19 (1) Compensatory Time

**Union Position:** The Union demands that a compensatory time bank be established.

**County Position:** The County rejects the Union demand.

**Discussion:** Compensatory time has been added to many contracts over the years since the passage of ORC 4117, and the Union wants compensatory time language added to this contract. However, the factors surrounding the use of compensatory time have changed over the years, and it is now potentially extremely costly for an employer to give an employee paid time off in lieu of cash for overtime hours. The County stated and the Union agrees that the Employer pays for overtime hours in cash. Therefore, given that the Employer 1) pays for overtime hours and 2) proved that the use of compensatory time could be extremely costly given the recent court decisions on the issue, the Fact Finder does not recommend acceptance of the Union's position.

**Finding of Fact:** The Employer is paying for overtime in accordance with all applicable State and Federal law in cash and does not wish to maintain a comp time bank. Given the testimony at the hearing, the Fact Finder does not believe that the Union proved a need for comp time language in Article 19.

**Suggested Language:** None

**Issue:** Article 19 (5) Section New – On Call Pay

**Union Position:** The Union demands that transport officers receive on call pay of one (1) hour of straight time pay for each week that they are on call. In addition, the Union demands that the detectives' on call pay schedule be increased.

**County Position:** The County rejects the Union's demands.

**Discussion:** There are only two job titles in the Sheriff's Department that are "on call." The first is the detectives who receive a one hundred (\$100.00) dollars per month premium for working in the Detective Bureau. Detectives are on call at all times. The second group is the transport officers. These officers are on call at different times during the year, and their duties require them to drive to local airports, other counties, etc. It should be pointed out that the dollar cost of funding the Union's demand is minimal. Nonetheless, the County objects to opening the door to a new benefit that would surely grow over time.

The County presented case law that proves that it is hard for an employee who is on call to qualify for on call pay under the Fair Labor Standards Act. In order to qualify under the act, an employee must not be free to do anything else other than be on call. If a person can visit with friends, sleep, eat at a restaurant, etc.; the Courts have ruled that the Fair Labor Standards Act requirements for on call pay do not apply. In Medina County on call status is not that restrictive, and there is no doubt the affected officers would not be entitled to on call pay under current interpretation of the Fair Labor Standards Act. However, this demand was raised during negotiations, and both parties have the right to make demands and present evidence in support of their negotiating position(s).

The County also provided evidence from comparable jurisdictions showing that on call pay is not a benefit that is negotiated into contracts in Northeast Ohio. The only contract that has an on call provision is found in the Wayne County Sheriff's Department/OPBA contract, and it covers deputies assigned to the detective bureau.

Therefore, the evidence shows that on call pay for transportation deputies is nonexistent in the labor market.

Moreover, the Sheriff stated that on call officers have access to department vehicles while they are in on call status. The detectives drive unmarked car, and this is a substantial benefit to them. The transport officers are also allowed to use department vehicles while they are in on call status. There was testimony that the only vehicles available to them were cruisers, and the officers stated that they did not desire to use these cars. In response, the Sheriff stated that he would see if unmarked vehicles could be located for use by the on call transportation officers. The County contends that the use of a county vehicle is of more value than the Union's demand.

**Finding of Fact:** The Union did not prove its contention that transport officers should receive on call pay. Furthermore, there is no evidence to support a finding that the on call pay for detectives should be increased. The Sheriff allows on call officers to use county vehicles, and this benefit is a type of on call pay.

**Suggested Language:** None

**Issue:** Article 22 (2) Uniform Allowance

**Union Position:** The Union demands an increase of one hundred (\$100.00) dollars per year in the uniform allowance

**County Position:** The County rejects the Union's demand and counters with the current contract language.

**Discussion:** The data show that Medina is at the top of all surrounding jurisdictions with respect to the uniform allowance, which is currently \$1,300.00 per year. Furthermore,

the evidence shows that Medina pays over three hundred (\$300.00) dollars more per year than other jurisdictions.

**Finding of Fact:** Medina pays the highest uniform allowance in the Northeast Ohio area.

**Suggested Language:** *Current Language*

**Issue:** Article 22 (6) Insurances: Life Insurance

**Union Position:** The Union demands an increase in the current twenty thousand (\$20,000.00) dollars term life insurance policy funded by the County to thirty five thousand (\$35,000.00) dollars.

**County Position:** The County rejects the Union's demand.

**Discussion:** The County's representative made two arguments in response to the Union's demand. First, the County stated that it offered a twenty thousand (\$20,000.00) dollars term life policy to other County employees. The County also presented data that it claimed showed that other counties did not provide more than twenty thousand (\$20,000.00) dollars of insurance to their deputy sheriffs. Therefore, the County claimed that comparable data support its position.

The Union argued that public safety officers work in a more dangerous environment than other County workers and that the difference in jobs invalidates the County's internal comparability argument. This is true. However, the County's argument that the comparables support its position is borne out by the data. Using the data from the jurisdictions that the Fact Finder believes are comparable to Medina shows that the average life insurance amount is exactly twenty thousand (\$20,000.00) dollars. This result is driven by the fact that Cuyahoga County does not offer a life insurance

benefit to its employees. If Cuyahoga County is not included in the comparables, then the average amount of insurance is twenty five (\$25,000.00) dollars.

An evaluation of the Union's demand also must include a consideration of the relative cost/benefit calculus involved. A slight increase in the amount of term life insurance provided to the Sheriff's deputies would have little or no impact on the cost of insurance to the County. However, if a deputy's family actually must use the policy, that family has suffered a catastrophic loss; and the benefit to them is incalculable. Given, the cost of term insurance, the danger of a police job, and the potential benefit to the deputy's family, the Fact Finder is recommending an increase in the amount of insurance provided to the deputies.

**Finding of Fact:** Internal comparability issues are not controlling in the provision of life insurance; rather, the danger inherent in the occupation must be considered. The twenty thousand (\$20,000.00) dollars of insurance provided to the deputies is a low amount of insurance for public safety workers.

**Suggested Language:** *The amount of insurance should be raised to thirty thousand (\$30,000.00) dollars.*

**Issue:** Article 22: Section New - Health Insurance Premium Waiver

**Union Position:** The Union demand is for a waiver of premium for individuals who opt out of the County's health insurance plan. The Union wants a two hundred (\$200.00/mo.) dollar per month payment for opting out of the family plan and a one hundred (\$100.00/mo.) dollar per month payment for anyone who opts out of the individual plan.

**County Position:** The County rejects the Union's demand.

**Discussion:** The County claims that the Union's proposal will lead to an "averse selection" problem where only the younger and healthier individuals will opt out of the health plan. This will, according to the County's logic, lead to a situation where the experience rating of the County's health plan will become worse and the cost of insurance will rise. The Fact Finder is not convinced that this will occur.

However, the County prefers to provide insurance to all of its employees rather than allow anyone to opt out of the plan. No one is harmed by the County's stance and all individuals are treated the same, i.e., there is internal parity on this issue. Therefore, given the County's objection to the Union's demand and in light of the fact that all employees are provided health insurance, the Fact Finder does not believe that he can recommend acceptance of the Union's demand.

**Finding of Fact:** The County provides health insurance to all of its employees.

**Suggested Language:** None

**Issue:** Article 27 (1) – Longevity

**Union Position:** The Union demands that the current longevity scale be increased to one hundred (\$100.00) dollars per year of service.

**County Position:** The County is offering to increase the current longevity scale by one hundred (\$100.00) dollars in the fifth year of service and to add a new step after twenty-five (25) years of service. The County's new scale would go into effect in the last year of the current contract.

**Discussion:** The idea behind a longevity payment is that it ties an employee to the employer and rewards longer tenured employees for their years of service. This is reasonable given that longer tenure usually means that the employee has progressed up the job ladder and is more valuable to his/her employer. Moreover, high job turnover means that the employer must replace scarce human capital and is faced with continuous hiring and training costs. Consequently, longevity pay is often portrayed as a win – win situation.

In this instance, the Employer argues that the longevity scale is reasonable. The Employer's position is based on the evidence from comparable jurisdictions. Parenthetically, it should be noted that the jurisdictions that the Fact Finder deleted from the applicable comparables list, i.e., Ashland and Geauga Counties, both have higher longevity payments than Medina and any other jurisdiction on the comparables list.

The Employer based its offer on the fact that other organized units in the County had negotiated a longevity scale that was somewhat richer than the scale in the Deputies' contract. The Employer stated that it wished to have uniform contracts throughout the County, and it was offering an increase in the Deputies' longevity scale to maintain internal parity. Internal parity makes sense in this issue only in the sense of uniformity. That is, no bargaining unit can point to another unit's contract and claim that it is being treated unfairly. If all units have the same contract language, then all are being treated the same (fairly).

This logic is flawed. The same longevity scale for all employees assumes that all employees are the same with regard to the labor market and that replacing any employee has the same cost to the employer as replacing any other employee. This is not correct.

Some employees are much more valuable to an employer than other employees.

Replacing a janitor is not as difficult or costly as replacing a Sheriff's Deputy. Longevity scales should be different between units. That difference reflects the difference in the jobs various individuals perform and the different labor markets for their services.

Therefore, the Fact Finder rejects the argument of internal parity put forth by the County in this instance.

The question then becomes whether the longevity scale in the Deputies contract should be changed. The data from the external comparables that analyzes the labor market for deputy sheriffs shows that Medina does not pay a substandard longevity payment. Consequently, the Fact Finder is recommending acceptance of the County's position in this case.

**Finding of Fact:** The County's proposed longevity scale in Medina adequately compensates the Sheriff's Department personnel for their years of service with the Sheriff compared to other sheriff's departments in the relevant labor market.

**Suggested Language:** The longevity scale (Article 27 (1)) shall be amended to reflect the County's proposal.

**Issue:** Article 29 (1)(2) – Rates of Pay

**Union Position:** The Union is demanding a three and one-quarter (3¼%) percent increase in the base wage for each year of the prospective contract.

**County Position:** The County is offering two and one-half (2½%) percent for each year of the prospective contract.

**Discussion:** The one (3/4% ) percent difference is the parties' positions does not reflect the chasm that separates them on this issue. The County has settled for two and one-half (2 ½%) percent with all of its other bargaining units and is adamant that the OPBA accept the same settlement. The OPBA claims that the County has historically settled with its non-conciliation units for below average wage increases and then tried to impose that settlement on its membership. The Union argues that it should not be held hostage to the wage settlements negotiated by the other County bargaining units.

This is a question of internal parity among different bargaining units with the same employer. The Fact Finder understands that the County would like to treat all of its employees the same. This seems equitable and reduces friction, i.e., how can anyone complain when everyone is treated the same? However, treating unequals equally is as pernicious as treating equals unequally. The same general wage increase over all bargaining units implicitly implies that all individuals within the County are the same with respect to their jobs. This is not true. As job requirements and technology change, rates of pay must change, i.e., the same raise across all bargaining units also assumes that the labor market is static.

On a more practical note, the passage of ORC 4117 mandated collective bargaining by an employer with all of its organized employees. Each individual bargaining unit must be allowed to present evidence showing that it should not be treated the same as all other bargaining units and that it has unique conditions affecting it that require different contract clauses (wages) than the amount paid to other units. In some ways, maintaining a position based on internal parity considerations alone negates the idea of collective bargaining.

The County also argued that its financial condition was deteriorating. The County's representatives stated that the County's financial outlook was uncertain and that the general fund balance had fallen precipitously over the past year. The Union disputed the County's contention that it faces an uncertain financial outlook. The Union put the County's Comprehensive Annual Financial Report (CAFR) into the record. According to the Union, the CAFR shows that Medina has no real financial problems and that it can afford to pay the Union's demand.

The Fact Finder notes that the County never made an "inability to pay" argument. Rather, the County has an unwillingness to pay based on its belief that its wage offer is reasonable. The County also believes that the economic climate it faces is uncertain and that it should restrict spending as much as possible. The latter point was emphasized by a fact-finding report by Robert Stein that was placed into the record. In that report, Fact Finder Stein describes the deteriorating economic situation in both the nation and the state. The undersigned Fact Finder has examined all of this evidence and finds that Medina County's financial condition as portrayed in the CAFR does not indicate that Medina's finances are problematic at this time. Rather, the data indicates that the County is in good financial condition. Moreover, Fact Finder Stein's discussion, while true in general, does not realistically portray the condition of Media's finances as outlined in the CAFR and the County's financial statements.

The County and the Union both put evidence into the record from external jurisdictions that showed Medina Sheriff's Department is among the top paid Sheriff's Departments in the applicable labor market. Media is comparable to Lorain and Cuyahoga Counties. Lake County pays somewhat more and Summit County pays

somewhat less. Wayne County pays significantly less than the other comparable jurisdictions. Both parties also put SERB benchmark data into the record. That data shows that the average wage increase for all police units is approximately three and one-quarter (3¼%) percent for first year settlements, and that all first year settlements for county governments averaged approximately three (3%) percent. The same data also show that the second and third year settlements are progressively larger than the first year settlement.

The Fact Finder believes that the weight of the data show that the Union's demand is reasonable. The Union did not demand an exorbitant settlement. Rather, the Union's demand is within the range of settlements for other jurisdictions. Moreover, the acceptance of the County's offer would have caused the Medina Deputy Sheriff's relative position vis-à-vis other comparable departments to erode. The data also shows that the County can fund an increase of this size. This is especially true given that a one (1%) change in the wage rate costs the County approximately five hundred and ten (\$510.00) dollars per deputy per year. An expenditure of this magnitude will not have a significant negative effect on the County's finances.

**Finding of Fact:** The Union proved that its wage demand was reasonable and would not adversely affect the financial condition of Medina County.

**Suggested Language:** The wage scales in Article 27 (1)(2) shall be amended to include a three and one-quarter (3¼%) increase per year of the prospective contract.

**Issue:** Article 29(4) Road Certified Premium

**Union Position:** The Union demands a one hundred (\$100.00) dollar per month payment to “road certified deputies.”

**County Position:** The County rejects the Union’s demand.

**Discussion:** The Union argued that the Sheriff required that the members of the department undergo rigorous training that is greater than the state mandated training that all deputy sheriffs must complete. The Union believes that the deputies should be rewarded for completing this training. The County contends that the required training is a job requirement for Medina County sheriff’s deputies, and should not lead to extra compensation.

The County also argues that this issue grew out of the fact that during the last negotiations a “duty differential” of twenty-four hundred (\$2,400.00) dollars was rolled into the base wage, and that payment was a one-time payment. The County contends that a Road Certification Premium is just another name for a duty differential. The County also presented evidence that no other department in the labor market paid any premium for road certification.

The Union’s demand is based on the fact that the Sheriff wants his department personnel more highly trained than the State requires. The Sheriff believes this benefits the citizens of Medina County and the Department. The training that the Sheriff requires is a job requirement, and his deputies are well compensated for doing their job.

The Fact Finder agrees with the County’s position on this issue. The training is provided and paid for by the Sheriff. It is in effect a job requirement. Therefore, given

the facts of the matter, the Fact Finder does not believe that the deputies should be paid a premium for attending required training.

**Finding of Fact:** The evidence proves that training necessary to receive a “road certification” is a job requirement within the Medina County Sheriff’s Department.

**Suggested Language:** None

**Issue:** Article 29(1) - Field Training Officer Compensation

**Union Position:** The Union demands that all Field Training Officers (FTOs) receive an hour (1hour) of overtime pay for each shift worked as an FTO.

**County Position:** The County has offered to double the current FTO stipend from one hundred (\$100.00) dollars per year to two hundred (\$200.00) dollars per year.

**Discussion:** A FTO works as a mentor to new members of the department and trains the new officers in the performance of their duties. It is an important part of the overall training of a new deputy sheriff, and not all senior members of the department work as FTOs. In recognition of the contribution they make to the department, the Sheriff has given FTOs a small stipend. However, the Sheriff’s representatives contend that all police/sheriff departments have training officers and these individuals do not receive extra compensation for their efforts. Therefore, the Sheriff does not want to institutionalize paying FTOs overtime for their efforts. The Sheriff’s representatives also pointed out that the department does not have any problems filling the FTO slots. The Sheriff contends that this shows that the current system is working well.

The evidence presented at the hearing did not support the Union’s position on this issue. Rather, the comparables’ data show that the Medina County FTOs are the most

highly compensated FTOs in the labor market. Therefore, given the evidence in the record, the Fact Finder does not believe that the Union proved that there is a need for extra compensation over the two hundred (\$200.00) dollars offered by the County to FTOs.

**Finding of Fact:** The Medina County FTOs are the best compensated FTOs in the area.

**Suggested Language:** Replace one hundred (\$100.00) dollars with two hundred (\$200.00) dollars in Article 29 (10).

**Issue:** Memorandum of Understanding I

**Union Position:** The Union demands that Memorandum I remain in the contract.

**County Position:** The County rejects the Union's demand and wants to delete Memorandum I from the contract.

**Discussion:** During the last round of negotiations, the parties were at impasse and could not find a way to come to an agreement. In order to break the deadlock, the parties agreed to add a *Memorandum Of Understanding* to the agreement. Memorandum I allowed members of the bargaining unit to cash out three (3) sick days per year. The cost of the three days of sick leave is approximately five hundred and ninety (\$590.00) dollars per deputy. The County argues that this is a cash give away and that the language of the Memorandum proves that it was a one-time payment and should expire at the end of the current contract. This position is based on the language in the Memorandum that states that the Memorandum should expire on December 31, 2007.

The County stated that the reason for the inclusion of the payment into the current contract was to bring the wages of the deputies into line with other comparable

jurisdictions. The County agrees that the wages of the deputies were low prior to the signing of the current agreement, but points out that the current agreement raised the base rate substantially and also folded the "duty differential" of twenty-four hundred (\$2,400.00) dollars into the base. The County contends that high percentage increases and the twenty-four hundred (\$2,400.00) dollar payment contained in the current contract moved the deputies to the top of the comparables list, and a further infusion of cash is unnecessary.

Up to a point, the Union agrees with this analysis. The Union agrees that the deputies were underpaid and that the last contract helped move the union membership up toward the top of the comparables list. However, the Union disputes the fact that the sick leave cash out was a one-time payment. The Union argues that the agreement was put in a Memorandum of Understanding because the County did not want the agreement in the body of the contract. In addition, the Union argues that the Memorandum states that the payment will cease on December 31, 2007 because that is the way Memoranda of Understanding work. That is, the contract itself expires on its expiration date and it must be changed and renewed. According to the Union's logic, the Memorandum must be renewed and it should now read, "this Memorandum shall expire on December 31, 2010." The problem facing the Fact Finder is to determine which position is correct given that the wording of the Memorandum is imprecise and both parties' positions on the issue can be deduced from the language in question.

One way to determine the intent of the parties is by looking at the bargaining history. Both parties agree that the reason the Memorandum was added to the labor agreement is that it allowed the County to increase the take home pay of the deputies.

This was necessary because the wage of the deputies was low. The County argues that the last contract corrected this problem and there is no longer any need for a side payment. The data submitted by the parties seems to validate this position.

The Union's position that the payment was meant to continue into perpetuity and compound over time seems unlikely. However, it is possible. This must be considered because rather than just adjust the wage rate, the County chose to backdoor the wage increase by creating a duty differential and a sick leave cash out provision, and that caused the current problem.

The Fact Finder is recommending that the sick leave cash out be phased out of the contract. The Fact Finder believes that the ambiguity of the language precludes making a decision based solely on the bargaining history of the issue. Consequently, the Fact Finder is recommending that in 2008 the deputies be allowed to cash out one (1) sick day in each year of the prospective contract. Moreover the last line of the Memorandum shall be amended to read, "This Memorandum shall expire on December 31, 2010 *and shall not be renewed without the written agreement of both parties.*"

**Finding of Fact:** The benefit described in Memorandum I is unusual. However, the language of the Memorandum is open to different interpretations and the parties presented different positions that could be covered by the disputed language.

**Suggested Language:** Memorandum I

Any Deputy or Sergeant currently assigned, on January 1, 2008 through December 31, 2010, to a) Road Patrol; b) Detective Bureau, c) Civil Bureau; or d) Truck Scales shall be permitted to cash out up to one (1) accumulated sick day during the 2008 contract year, one (1) accumulated sick day during the 2009 contract year, and one (1) accumulated sick day during the 2010 contract year. All such time shall be deducted from the employee's sick time bank. Any Deputy or Sergeant who is not currently assigned to one (1) of the four (4) assignments listed above, or who becomes assigned to such assignment after January 1, 2008

shall not be eligible for such conversion. This memorandum shall expire of December 31, 2010 and shall not be renewed without the written agreement of both parties.

Signed this \_\_\_\_\_ day of August 2008, at Munroe Falls, Ohio.

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Dennis M. Byrne, Fact Finder