

FACTFINDING REPORT AND RECOMMENDATIONS

In the Matter of

Fraternal Order of Police, Lodge No. 101

-and-

Butler County Sheriff

SERB Case No(s): 09-MED-10-1343 and 09-MED-10-1344

**Mollie H. Bowers
Factfinder**

Representing the Union:

Stephen S. Lazarus, Esq., Attorney, Spokesperson
Jessup Gage, Esq., Attorney
Det. Rick Bucheit
Dep. Jerry Stevinson
Sgt. Jan Carpenter
Sgt. Michael Nutt
Dep. B. Castreel
Dep. T. Carroll
Dep. Greg Wargo
Dep. Ken Ritchie
Amanda Tholke, Summer Associate

Representing the County:

Paul Berninger, Esq., Attorney, Spokesperson
Capt. R. G. Greer
Maj. Norman Lewis
Peter Landrum, County Financial Officer
Vickie Jo Barger, Sheriff's Office Financial Officer

Date of Hearing:

May 25, 2010

Report Issued:

July 1, 2010

BACKGROUND

The parties to this dispute are the Fraternal Order of Police, Lodge No. 101 (the "Union") and the Butler County Sheriff's Office (the "County" or the "Sheriff"). There are actually two bargaining units that are negotiating jointly with the Sheriff. One unit is comprised of non-supervisory Deputy sheriffs, 22 of whom provide court security and 102 of whom work on the road performing general law enforcement and investigative duties. Fourteen of the 102 Deputies are currently classified as Detectives. The other bargaining unit encompasses supervisors who are Sergeants (15) and Lieutenants (7). The last collective bargaining Agreement for each unit was in effect from February 17, 2007 to February 12, 2010.

The parties began bargaining in December of 2009. Subsequently, the parties applied to the State Employment Relations Board (SERB) for Factfining. On January 5, 2010, SERB appointed Mollie H. Bowers to be the Factfinder in accordance with Ohio Revised Code Section 4117.4. The parties continued to meet regularly and held Factfinding in abeyance until May 25, 2010. Eight issues were unresolved when Factfinding occurred. Those issues were:

- Article 13. Layoff and Recall
- Article 19. Wages
- Article 22. Uniforms
- Article 28. Detectives
- Article 32. Deputy Sheriff/Court Services
- Article 35. Promotions
- New Article Specialist Pay

New Article Position Bidding - Supervisors

For the purposes of this Report, all unchanged or unopened contract articles, and all articles agreed to by the parties prior to Factfinding are adopted, included, and incorporated into this Report.

ISSUES

I. Article 13. Layoff and Recall

The parties had come close to reaching an agreement on this issue prior to Factfinding. Further discussions at the outset of Factfinding resulted in an agreement on what the language shall be. The Factfinder recommends that the parties agreement be adopted as follows:

- Any incumbent of the rank of Captain shall be removed from the layoff/recall provision; and
- An employee who is laid off (including through job abolishment) shall be placed on a recall list for a period of eighteen (18) months.

II. Article 19. Wages

Union Position:

The Union has not asked for any pay increase in 2010. Because the Sheriff is unwilling to waive retroactivity, the Union proposes that a 3% increase take effect on January 1, 2011. The Union also seeks the creation of a new 3% top step, effective February 12, 2011, and the deletion of the entry level step in each classification. The step increase only applies to those at the top and does not take effect until the employee's anniversary date. According to the Union, this approach was first suggested by the County during negotiations in the 1990's and it has been utilized ever since. This is a way to give employees a pay raise that does not cost the Sheriff as much money as an

across the board pay increase. Although the Union would have preferred across the board increases, it has accepted the County's proposals in order to do its part in containing costs in challenging economic times. For the third year of the contract, the Union proposes that a 4% increase become effective on February 11, 2012.

The Union used counties as comparables. Those counties are: Clermont (which is currently negotiating over 2010 pay); Greene; Warren; Montgomery; and Hamilton. These are all counties that surround Butler County in southwestern Ohio. All have a higher sales tax than Butler County. The Union calculated both annual compensation and medical costs to reach its conclusions. With respect to total compensation, the Union asserted that the Butler County Sheriff pays 2.66% less than comparable counties. When medical costs were factored in, the Union found that bargaining unit employees are paid 14.84% less than their counterparts in comparable counties. Mr. Berninger did not disagree with the Union's representation of the 'potential' cost to the majority of bargaining unit employees who elect a family medical plan. He did assert, however, that it is not a fair comparison to use medical costs in relation to wages.

From the Union's perspective, there are also numerous other considerations that the Factfinder should take into account when she determines what to recommend with respect to pay. It presented evidence that the Sheriff strongly supports an Arizona type immigration law for Butler County. According to the Union, this has already meant that the workload of most of the bargaining unit employees has increased and it will continue to increase in the future. Nevertheless, the Union says that the Sheriff does not want to compensate these employees for the increased workload that he demands to pursue his personal interest.

The Union also asserts that money can be made available if the County Commissioners and the Sheriff so desire. For example, the Sheriff has paid out, thus far, \$68,000.00 to Don Dixon to do a study which the administration believes will show that steps in the pay scale should be done away with altogether.¹ The Union reasons that if the Sheriff can obtain sufficient funds to expend on Mr. Dixon's study, then he also can obtain the funds necessary to pay the increases it has requested.

Similarly, \$10 million was made available to the Sheriff by the County Commissioners for creation of a central dispatch site. While that money, too, was forthcoming, the County Commissioners and the Sheriff persist in disingenuously claiming that there is no money available for pay increases.

Money is also available, the Union points out, to pay Majors, Captains, and the Deputy Chief (a total of 4 people) six (6) hours of "On Call pay" per pay period. They can accumulate up to 300 hours per year. There is no roll-over. In March or April of each year, these officials can cash in up to forty (40) hours of this pay. The Sheriff has money for these payouts.

Additionally, the Union asserts that the County has a 10-12% reserve; well within the bounds necessary to maintain a good bond rating. It rejects Mr. Landrum's assertions that the percentage needs to be closer to 15%; if not as much as 25%.

The Union further contends that the County has means at hand to resolve whatever ability to pay claims it makes in these negotiations. As evidence, the Union first provided a comparison of County sales taxes statewide. This comparison was compiled by the Ohio Department of Taxation on March 3, 2010. There is only one (1) county (Stark) in the state that has a lower sales tax (6%) than Butler County. This

¹ No one could show where this money was accounted for in the budget.

County, and three others (Lorain, Wayne, and Lake), all located in northeastern Ohio, have the next lowest sales tax in Ohio - - 6.25%. The remaining eight-three counties in Ohio have a sales tax ranging from 6.50% to 7.75%. It is also significant, the Union says, that the Butler County sales tax used to be 6.5%, more in line with the neighboring counties it used as comparables, but the tax was reduced to 6.25% by the County Commissioners.

Second, the Union emphasizes that the Butler County Sheriff's Department has housed inmates, for a fee, from other jurisdictions for the last three years. In 2009, the revenue received from this endeavor was the highest ever - - \$8.2 million. These revenues do not go directly to the Sheriff, but rather to the County for disposition from the general fund as the County Commissioners see fit. The Union contends that bargaining unit employees should not suffer simply because the County Commissioners choose not to allocate enough of this money to the Sheriff to accommodate reasonable pay increases.

Third, the Union reiterates that money can be available if the Sheriff chooses to use some for reasonable pay increases. As will be seen under a subsequent article, the Sheriff is willing to increase the pay differential from 12.2% to 15% in order to achieve his self-serving objective of abolishing the Detective classification and putting a Specialist classification in its place.

Fourth, the Union asks that note be taken that the Sheriff twice has had the money to 'pay out' Major Norman Lewis for unused vacation and overtime in an amount of nearly \$20,000.00. It has twice hired Major Lewis back. At the same time, five Deputies

and ten Corrections Officers were laid off because of alleged budget shortfalls. Seven more members of the bargaining units are scheduled to be laid off by the end of May.

Fifth, there is no dispute that the Sheriff received \$300,000.00 in Stimulus money. The Union was curious to know if, where, and how that money had been spent? According to Ms. Barger, only about \$3-4,000.00 has been spent. She said that the Sheriff is very cautious about expending this non-renewable resource and is certainly not willing to offer it up to provide pay increases when his budget is already so tenuous.

Sixth, the Union acknowledges that the County and the Sheriff have been affected by the economic conditions. It presented evidence from news sources some of which suggest that the County's economic outlook may be improving.

Seventh, and finally, the Union questioned why, if the County Prosecutor is charged with defending the Sheriff's Office, others have been hired to do so. Part of the answer was that two (2) attorneys have been hired part-time and draw no benefits from the County. Jim Allen has been hired to handle one (1) foreclosure because the Sheriff's Office only has recording responsibilities. Another attorney was hired because of the liabilities associated with prison litigation; her area of expertise. The County believed that this attorney may be paid by the insurer. According to Mr. Berninger, these attorneys are just another "layer of protection for the Sheriff and the staff".

Sheriff Position:

The Sheriff offered a 0% increase in 2010, a 1% increase on February 12, 2011, and a 2% increase on February 11, 2012 to employees in these bargaining units. Mr. Berninger supplied data to show why this offer is reasonable and should be accepted by the Union. Since January 1, 2009, for example, the Sheriff has reduced the number of

positions in his office by 13.6%, seven more Deputies will be given notice at the end of May, and twenty complement positions are unfilled. During the same time, Mr. Berninger said that the Sheriff's budget has been cut by 9.77%, and that he has been advised by the County Commissioners that additional cuts will be forthcoming.

One of the reasons for this bleak outlook is that the unemployment rate in Butler County has exceeded 10% and is likely to remain in the double digits for some time to come. The economic base simply is not there to fund the pay raises that the Union is seeking.

Mr. Berninger acknowledged that jail revenues have made a significant contribution to the County's general fund in recent years. As budgets for the suppliers of inmates have tightened, however, these sources have had to seek alternative ways to manage persons who require incarceration. Mr. Landrum estimated that revenues from the jail will drop to \$6.5 million in 2010. These monies go into the general fund and, thus, there will be less apportioned to the Sheriff by the County Commissioners. The Sheriff is heavily dependent on that apportionment to run the Department. Ms. Barger said that the Law Enforcement Trust Fund contains \$80,000.00, of which \$40,000.00 is used for the canine and the helicopter so it does not have to be taken out of the general fund. Monies from this Fund are also used to pay overtime for the drug unit. The Justice Fund contains \$100,000.00, but that money cannot be used for compensation.

Mr. Berninger disputed the Union's claim that some non-represented employees have received a pay increase since 2008. According to Ms. Barger, Major Lewis had to be paid out each time that his retirement was impending. She also said that three employees, in addition to herself, received pay increases during the period in question.

She received an increase because on a promotion. Ken Carpenter received an increase because he was now doing the work of two previous employees. Erika Davis received an increase because she was now not only responsible for accounts receivable, but also for writing grants.² Marian Olivas received an increase because she was hired back as a Trainer. Josh Readnower received an increase because he performs the vital work of installing specialized equipment in cruisers.

According to Mr. Berninger, employees in the bargaining units have received step increases averaging 3% and across the board increases of 3% in each year of the contracts in effect from February 17, 2007 to February 12, 2010. He also pointed out that, in 2008, an additional 3% step was added to the top of each salary schedule and another 3% was added to the top of the Court Services pay schedule in 2009. He therefore argued that, save for those laid off, employees in the bargaining units have prospered by twelve (12) to twenty (20) percent during the term of the current collective bargaining Agreements. He added that the consumer price index increased by 7% percent during this time period, so employees in the bargaining units have been insulated from the collapse that affected their counterparts in the private sector.

The Sheriff used a combination of counties, townships, and cities to demonstrate comparability. These jurisdictions were: Warren County; Clermont County; Montgomery County; Hamilton County; Fairfield Township; City of Oxford; City of Trenton; City of Hamilton; City of Middletown; City of Fairfield; and West Chester Township. All of the data was from 2010, except for the City of Fairfield which was from 2008. Mr. Berninger concluded from these data that "Deputies and Court Services

² There was no evidence presented to show that Ms. Davis had written any grants.

Deputies are paid at rates comparable to neighboring counties[,] while Supervisors are paid at a substantially higher rate than their counterparts in other jurisdictions".

The County's expert, Mr. Landrum, explained that only "a little money from the general fund", not \$100,000.00. was used to paint and to put new carpet in the Emergency Operations Center. He also said that \$107,000.00 was approved for Mr. Dixon's study, but that only \$68,000.00 had been spent so far.

Mr. Landrum provided a significant amount of testimony and various data about the County's current and projected financial situation. Sales tax revenues were up three (3) of the five (5) months in 2010 over 2009. They were also up in May of this year. He said that it is not expected that this revenue will be sustained throughout the year. The personal property tax will be phased out over the next ten (10) years and the state has cut the reimbursement for this loss. The Civilian Labor Force Estimates, March 2010, prepared by the Ohio Department of Job and Family Services, shows that Hamilton County has the highest unemployment rate, 10.2 %, in the state. Revenues from housing inmates is projected to drop to \$6.5 million this year and will continue to fall due to economic conditions in contracting jurisdictions.

According to Mr. Landrum, the Commissioners adopted an "optimistic" budget for 2010 which cannot now be realized. In fact, he said that on advice from Fifth Third Bank experts, a firm plan must be in place by July to take action to deal with the budget shortfall, especially to pay for mandated items and for unexpected expenses. He prepared a series of "What IFs" for the County Commissioners as follows:

- Option 2.5 depend on all of the 2009 "Projected" fund reserves above the \$8.5 million threshold. (Actual + \$1.2M);³

³ The \$8.5 million equals a 10% reserve. At the end of 2009, there was \$900,000.00 carry over.

- Option 2.5, most optimistic option, still \$0.5 million below in revenues than estimated to end 2009;
- Option 2.5, most optimistic option, an additional \$0.5 million in cost savings in Boarding of Prisoners;
- All Options depend upon a smooth election year;
- Further budget reductions will be required in option 2.5 by mid-year if the events do not occur as projected or allotted;⁴ and
- OMB will monitor all General Fund revenues and expenditures monthly. (OMB Elected Official Monthly Meeting and monthly Executive Summary.

Both Ms. Barger and Mr. Landrum painted a bleak picture of what is in store for the County and for the Sheriff's Office during the remainder of 2010. Ms. Barger was so well acquainted with the Sheriff's budget that she said more layoffs would be guaranteed if the Union's pay demands were implemented. They both therefore supported the Sheriff's pay increase proposals as reasonable under the circumstances that the County is experiencing and will continue to experience for the foreseeable .

Recommendation:

The comparability data provided by both parties were not very helpful in determining what the recommendation on pay increases should be. For the Sheriff's part, there was no demonstration that the jurisdictions chosen are, in fact, comparable. All that the Factfinder could conclude was that these jurisdictions were selected because they best fit the position that the Sheriff has taken on this issue. The same is largely true of the Union's comparisons, save for the showing that personnel in the surrounding counties are paid an average of 2.66% more than in Butler County. There was no evidence that this purported pay gap resulted in any retention problems. Since personnel are being laid off,

⁴ Mr. Landrum said that events have not occurred as "projected or allotted".

recruiting is not a factor. Comparison of potential medical expenditures by employees in the bargaining units also was not persuasive because it was based on the worst case scenario for employees (even though a majority) who elect the family plan.

This dispute is about pay increases and maintenance of step increases vis-a-vis ability to pay and the Sheriff's determination to do away with step increases. Nothing has changed about the savings realized from utilizing step versus across the board increases. Neither Mr. Berninger nor his associates on the Sheriff's team gave any reason for doing away with step increases other than that this is what the Sheriff wants. So much so that although ability to pay is flagging, monies were made available to fund Mr. Dixon's study. This did not persuade the Factfinder that she should recommend in favor of doing away with step increases.

The Factfinder considered that the County is unique among those offered as comparable by either party in that it has received millions over the last three years for housing inmates from other jurisdictions. She understands that there are costs associated with providing this service. Last year, the revenues contributed to the general fund were at an all time high of \$8.2 million. The Factfinder accepted the representation that these revenues may decrease to \$6.5 million in 2010, and perhaps thereafter, but also noted that there will be a corresponding decrease in the costs of providing this service. It is significant that monies received from housing inmates from other jurisdictions goes into the general fund from which the County Commissioners decide what amount shall be allocated to the Sheriff's budget. According to Ms. Barger, once the Sheriff's budget is set, he has discretion in determining how to spend this money, as long as he does not exceed his budget. This means that the Sheriff's and the County's ability to pay increases

for employees in the bargaining units does not necessarily correspond directly to ability to pay, *per se*, but rather to the priorities that the Sheriff and the County Commissioners set for themselves, in addition to mandated and legitimately unexpected expenses. Among these is not any *bona fide* requirement that the County's reserve be increased from ten (10) to fifteen (15), much less twenty-five (25) percent. The Factfinder does understand, however, that depleting the reserve is also not a viable option. Similarly, the Sheriff may not want to spend all of the remaining Stimulus money on pay, but that does not mean that none of it is available for pay purposes.

The \$120,000.00 budgeted for the 2010 uniform allowance has not been paid. The parties are ready to do battle over this, although the outcome is all but certain. Some Deputies gave up all or part of their uniform allowance last year. The Factfinder recommends that they do so again this year, as long as the \$120,000.00 is put toward pay increases for employees in the bargaining units and as long as the Sheriff honors the offer to replace damaged or worn items when they are turned in by these personnel. This recommendation makes even more sense because it should alleviate the need for the parties to pursue the grievance further and to utilize funds that neither party can afford to expend.

The Factfinder carefully considered the information provided by Mr. Landrum and by the Union about the County's/the Sheriff's income prospects. She noted that although Ms. Davis, a non-represented employee, received a pay increase because her duties now included grant writing, no showing was made that any grants had been submitted in an effort to assist the Sheriff with his budgetary problems. Similarly, note was taken that it was the County Commissioners who decided to reduce the sales tax rate

in Butler County to the second lowest in the state. It is understandable that, in an election year, the Commissioners did not want to propose an increase. However, politics should not take precedence over reasonable pay increases and staffing considerations that affect the efficiency of the Butler County Sheriff's Department.

As a result of dealing with another issue in dispute, the Factfinder considered that some of the pay (between approximately 50 and 90%) for forty-five (45) of the Sheriff's personnel is defrayed by other jurisdictions where they provide law enforcement services. No showing was made that this benefit that the Butler County Sheriff enjoys exists in any of the jurisdictions that it offered as comparable.

Regardless of the cost of living, the pay increases afforded employees in the bargaining units do not work out to the windfall that the Sheriff's representatives would like to Factfinder to believe. Furthermore, as the Union pointed out, the parties have deliberately increased the pay of Deputies/Court Services in the last two (2) collective bargaining agreements understanding that this was necessary for the Sheriff to use the discretion that he wanted to move Deputies in and out of these two areas of activity without creating serious morale problems. In formulating her recommendations, the Factfinder also considered the Union's comparability data which showed that bargaining unit personnel in the Butler County Sheriff's Department are not severely disadvantaged vis-a-vis their counterparts in neighboring counties. The Union's comparison based on the worst case scenario regarding medical costs was not persuasive.

Finally, the Factfinder took into account that while the budget crunch is supposedly on, none of the four (4) command staff nor the Sheriff have offered to give up any of their pay. Indeed, the four (4) command staff still receive six (6) hours of "On

Call Pay" every two weeks and can cash out up to forth (40) hours, in March or April of each year with the Sheriff's approval. Now showing was made that approval was denied in 2010.

Based on this analysis, the Factfinder recommends the following in terms of pay increases for employees in these bargaining units for the duration of this contract:

- There shall be no pay increase for employees in these bargaining units for 2010;
- On January 1, 2011, the pay of these employees shall be increased by 2%;
- On February 12, 2011, a step shall be added to the top of the pay scale, with a 2% increase paid on the employee's anniversary date. At the same time, a step shall be removed from the bottom of the pay scale; and
- As of February 12, 2012, there shall be a pay increase of 2%.

III. Article XXII Uniforms

In 2009, the Sheriff asked employees in the bargaining units to forgo their uniform allowance to help with budgetary problems. Many employees agreed voluntarily, although the request was not made until part way through the year. No figures were presented on how much this saved the Sheriff.

The circumstances surrounding the 2010 uniform allowance, budgeted at \$120,000.00, have been fully described under Section II. above.

Recommendations:

- Bargaining unit personnel will not receive a uniform allowance in 2010;
- The \$120,000.00 saved as a result shall be applied to covering the pay increases for 2011 recommended above; and
- These recommendations are conditioned on the Sheriff making good on the commitment to replace damaged and worn items when they are turned in by personnel in the bargaining units.

Discussions during Factfinding resulted in an agreement regarding the uniform allowance for 2011 as follows:

(1) For Detectives and Deputy Sheriffs (excluding the Drug and Vice Investigations Unit), assigned to work in plain clothes by order of the Sheriff for at least six (6) months shall receive a check for \$1,012.00 during the first pay period in January;

(2) Employees assigned to work in the Drug and Vice Investigations Unit for at least six (6) months shall be reimbursed \$698.00 per year for a clothing allowance. This check shall be provided during the first pay period in January; and

(3) When an employee is assigned to Canine, SWAT, Bicycle Patrol, Motorcycle Patrol, Bomb Squad, or Marine Patrol, which require special clothing in addition to the standard uniform, the Employer shall pay the cost of the initial set of specialty clothing and replacement clothing.

These agreements are adopted as part of this Factfinding report.

IV. Article 28 Detectives/Specialist And Pay New Article

Sheriff Position:

The Sheriff wants to reorganize his operations. He believes that this is a management right and that bargaining only has to occur over the effects of any decision he makes. Key to the Sheriff's plan for reorganization is abolition of the Detective classification. Instead, the Sheriff wants to create a "Specialist" classification where he can assign personnel with specific capabilities not normally exercised by regular Detectives and who can be moved "in and out" to make the best use of their temperament, knowledge, and skills". According to the Sheriff, the ability to do this work depends on a

lot more than successful test results. Mr. Berninger said that the Sheriff's proposal would save considerable costs for administering promotion examinations. He also expressed the Sheriff's concern that, under the present system, very few Detectives every take the examination for Sergeant.

In defense of the Sheriff's proposal, information was provided from the jurisdictions claimed to be comparable. Of the eleven (11) jurisdictions, only two (2) Warren County and the City of Hamilton promote Detectives.

In order to exercise this right, the Sheriff is willing to increase the current 12.2% differential between Deputies and Detectives/Specialists to 15%, for each hour worked as a Specialist. This differential would be maintained even if a Detective, or eventually, a Specialist is returned to the Deputy classification. Mr. Berninger was quick to add, however, that the Sheriff fully expects appointments to the Specialist classification to be continuous. He stated repeatedly that the Sheriff is fully satisfied with the performance of all who currently are classified as Detectives.⁵ He said that the Sheriff believes that the guaranteed differential is a safeguard against arbitrary and capricious assignments. Mr. Berninger reiterated that this special pay is offered so that the Sheriff can regain the ability to appoint, at his discretion, employees with special training or recognized skills, without regard to tests, seniority or other process which, he claims do not result in meritorious assignments and promote the efficiency of the Department.

Union Position:

The Union is willing to accept the change in nomenclature from "Detective" to "Specialist". However, it rejects both the terms and the 15% supplement that the Sheriff

⁵ Employees currently serving as Detectives could be removed from the Specialist classification, however they would retain their 15% pay differential, until retirement, unless they are demoted for disciplinary or for reduction in force reasons.

proposes. Instead, the Union contends that the supplement should remain at 12.2% and that all current contract provisions should remain in place with respect to the Detective classification. In negotiations, the Union pointed out that the Sheriff's representative was asked to list the responsibilities associated with being a "Specialist". According to the Union, Mr. Berninger's response was "We haven't given a lot of thought to it yet".

According to the Union, the Sheriff wanted to go to untested assignment of Detectives in the 1991 contract negotiations. This was linked to phasing out, over several years, the Corporal classification.

In the current negotiations, the Union rejected the Sheriff's position for the following four (4) reasons:

- (1) Current Deputies would not have an opportunity to take a fair, competitive exam to be promoted;
- (2) Current Detectives reassigned to the road patrol or to other jobs within the Department would make 15% more than the Deputies, performing the same work, thus, creating a morale problem and inequity in compensation for work performed;
- (3) If a new administration was elected, the entire Criminal Investigations Division could be replaced with no questions asked; and
- (4) Political considerations, which the Sheriff's proposal invites, have no place in criminal investigations.

The Union contends that the Sheriff is once again trying to get rid of the rank of Detective for what it believes are self-serving, political reasons, unrelated to the efficiency, economy, and proficiency of the service.

The current system has worked well. There is no need to disturb it. Additionally, the Union points out that the Sheriff's is not as constrained in his selection as he would like the Factfinder to believe he is. There is a 'rule of three', meaning that regardless of

test results, the Sheriff is not obligated to select the most senior person who scores well or even the person who achieves the highest score on the examination for Detective.

The Union rejects the Sheriff's claim that the current system leads to stagnation. It says that in the last five (5) years, nine (9) of the people who were promoted to Sergeant at Lieutenant had been Detectives, compared with four (4) who had not.

Finally ,the Union notes that examinations for Detective are given very infrequently and, thus, the Sheriff's argument that testing costs will be saved is of *di minimus* importance.

Recommendation:

The Factfinder was not persuaded by the Sheriff's arguments. Based on the Sheriff's own representation, employees who are currently working in the Detective classification have performed admirably -- even if they achieved this classification, in part, through testing. There was no showing that these tests are given frequently, so purported cost saving is not a credible factor. Comparability was considered but could not carry the day because the mere count did nothing to enlighten the Factfinder about the reasons why some of those jurisdictions promote and others do not. Since the existing process has worked well, the Factfinder wondered why the Sheriff would want a change that would cost more, especially when he claims inability to pay?

The Factfinder understands management's right to assign work, but she also recognizes that this is not an unfettered right. The Sheriff says that the guarantee against arbitrary and capricious assignment is in the perpetual 15% differential if a Detective/Specialist is returned to the Deputy classification. That is not clear from the Sheriff's proposal because the 15% differential is based on hours worked in the proposed

Specialist classification. Also, the Sheriff apparently has not considered the negative implications in terms of morale if Detectives/Specialists are reassigned to the Deputy classification, doing the same work for 15% more pay.

The Sheriff is not constrained from assigning, but rather has a choice, based upon the 'rule of three', to select a candidate for the Detective classification. His representatives failed to show that stagnation had occurred and/or that Detectives do not take promotional exams. Whatever the Sheriff's agenda is on this issue, the Factfinder does not recommend in his favor.

V. Article 32 Deputy Sheriff/Court Services

There are currently two classifications of Deputy Sheriff: (1) Deputy Sheriff/Road; and (2) Deputy Sheriff/Court Services. Each of these classifications is on a separate pay scale. The proposal to merge the two classifications was initiated by the Union. It has been in the works during the last two contract negotiations. In both of those negotiations, the Court Services Officers received larger pay increases than all others in the bargaining unit in an effort to bring their compensation on a par with that of Deputy Sheriffs/Road. The *quid pro quo* for pay equivalency was that the Sheriff would be able to move Deputies into and out of the Court Service position. He has exercised this right. The result has been that Deputy Sheriffs/Road have been assigned to Court Services, doing the same work as Deputy Sheriffs/Court Services, but for a higher rate of pay. The Union says that it is time to end this anomaly and put both classifications on the higher Deputy Sheriff/Road pay scale.

The Sheriff's representative did not oppose this change, in principle. He did insist, however, on modification of the Union's proposal so that pay for the Deputy

Sheriff/Court Services will be capped at Step 4 on the Deputy Sheriff/Road pay scale. This was acceptable to the Union.

According to the Sheriff's representative, merging the classifications would mean a pay increase for Deputy Sheriffs/Court Services of between two (2) and three (3) percent. In order to attempt to cover this cost, the Sheriff said that Deputies must give up their uniform allowance for 2010. His representatives reiterated that damaged or worn items would be replaced if they were brought in for exchange.

Recommendation:

The Factfinder recommends that the language agreed to by the parties during the course of this process be adopted. That language states as follows:

Article XXXII

Deputy Sheriffs/Court Services

1. The duties of the assignment shall be limited to providing protective and security services for courts and agencies of Butler County, as assigned by the Sheriff. The pay range for the assignment is set forth in the wage rates appended to this Agreement. Effective January 1, 2011, the Deputy Sheriff/Court Services pay scale shall be the Deputy Sheriff pay scale, capped at Step 4 of the Deputy Sheriff pay scale. The Deputy Sheriff/Court Services shall be placed on the Deputy Sheriff pay scale at the point that provides a wage increase to the Deputy Sheriff/Court Services. Notwithstanding this Section, however, the Sheriff may reassign Employees in the classification of Deputy Sheriff to perform duties in Court Services, on a temporary or on-going basis, in order to accommodate the Employee's physical limitations or restrictions or based on other operational needs. During the period of such a reassignment, the Deputy Sheriff will remain, without change in the pay, status, or benefits of a Deputy Sheriff.
2. Any Deputy Sheriff/Court Services who is duly qualified may apply for vacant positions as a Deputy Sheriff on a promotional basis. Nothing in this Agreement shall be construed, however, to require than an applicant serve as a Deputy Sheriff/Court Services prior to appointment as a Deputy Sheriff, nor is the Employer required to offer preferential consideration to a Deputy Sheriff/Court Services over outside applicants.

This recommendation is based not only on the parties agreement, but also on the Union's willingness to forego uniform allowances for 2010.

VI. Article XXXV Promotions

During the course of the Factfinding process, this article was agreed to as follows:

Article XXXV**Promotions**

1. All vacancies in positions in the classifications of Detective, Sergeant, or Lieutenant shall be filled by promotion from among persons holding positions in the rank immediately below the position to be filled, unless the parties agree otherwise; provided, however, that Employees in the classification of Deputy Sheriff may take the examination for promotion to Sergeant. Any Deputy Sheriff must have four (4) years' seniority in the rank of Deputy to take the Sergeant examination, and three (3) years of rank seniority to take the Detective examination. The Sheriff shall determine, in his sole discretion, whether a vacancy exists requiring a promotion, as provided in the collective bargaining agreements; provided, however, that the Sheriff shall not delay filling a vacancy for the purpose of evading a valid, current promotional eligible list. No person shall be deemed eligible for testing or promotion who has not satisfactorily completed the required probationary period for the position from which he or she is seeking promotion prior to posting for the promotional test.

This restriction shall be waived for an Employee who has been promoted to the rank of Detective while simultaneously appearing on the eligible list for Sergeant and thereafter becomes eligible for possible promotion to Sergeant.

2. Whenever a vacancy occurs in the classifications of Detective, Sergeant, and Lieutenant, as determined by the Sheriff, and there is no eligibility list for such rank, the Sheriff's Office shall, within six (6) months of the vacancy or within a reasonable time, hold a competitive examination; provided, however, that no examination shall be scheduled sooner than three (3) months from the date of the examination announcement. The Employer shall also make available a list of study materials at least three (3) months prior to the date of the examination.

3. Examination for promotion shall consist of written tests, combined with the use of an assessment center evaluation, in the Sheriff's discretion, together with ratings for seniority and efficiency. All competitive written tests and assessment centers, if used, shall be administered, graded and certified by a qualified provider of testing services selected by the Sheriff's Office, ranking those individual names, from highest score to lowest score in an eligible list presented to the Sheriff. The maximum score that can be obtained is 100 points, determined by calculating the weighted average of the written test with the score from the assessment center, if used, with 70% of the score allocated to the written examination and 30% to the assessment center.

The remainder of the language is unchanged from the collective bargaining Agreement in effect from February, 2007 to February 2010.

Additionally, the parties agreed that if the current status of Detectives is changed as a result of this process, or any other, then Article XXXV will be adjusted accordingly.

VII. New Article - Specialist Pay

This matter is moot based upon the Factfinder's recommendation in Section IV above.

VIII. New Article - Position Bidding - Supervisors

Union Position:

The Union proposed this addition to the contract. Its proposal is that "In April of each year, all Supervisors shall bid for all Supervisory positions within the Operations Division, for which they are qualified, by order of 'Rank Seniority'". The rationale is that, under current conditions, supervisors in the Patrol Division, working out of the Sheriff's office, are limited in terms of the positions that they can bid for, even if they are qualified to perform the work in question. According to the Union, past practice shows that the Sheriff has placed supervisors who have little or no experience on the road (or remotely current such experience) in the Road Patrol Division. Support was provided by naming Melina Smith, Carrie Schultheiss, and Marion Olivas, and by describing the circumstances of each. Additionally, the Union identified Sergeant Mayer, who had no experience in the Court Services Division, had little rank seniority, but was assigned to be a supervisor in that Division. Similarly, the Union offered that Sergeant Prescott never worked in the Transport Division, had little rank seniority, but yet was assigned by the Sheriff to be a supervisor there.

Other motivations for the Union's proposal are:

- The Sheriff's administration has commented that a Court Security Deputy never does the job of a Deputy Sheriff, and cannot test to be a Detective or a Sergeant;
- Several Court Security Deputies have been 'assigned' to serve Civil papers short-term, when that Division is short of personnel. That Deputy received his normal rate of pay, as compared to the higher rate of pay of a Deputy assigned to the road;
- Comments have been made by the Sheriff's administration that they have the 'right of assignment', and that the jobs will be billed by those that are 'qualified'; not the 'most' qualified; and
- Less senior Sergeants are put into positions that they have never worked in or received any training that would 'qualify' them to be better suited for the work.

Based on these representations, the Union claims that most supervisors are capable of working almost any of the positions described above. Accordingly, the Union proposes that the bidding process should be across the Operations Division to include, the Supervisors in the Patrol Division that work out of the Sheriff's Office, Investigations Division, Court Security Division, Transport Division, and Liberty Township, by 'Rank' seniority, provided that the bidder possesses the necessary training and skills for the Division in question. The Union understands that when a vacancy occurs, moves must be made to better operate the Sheriff's Office. It argued, however, that a senior supervisor should have the opportunity to bid for any of the desired positions, in April of each year, if he/she is qualified. It agreed to exclude from this process contract positions, save Liberty Township, investigation supervisors, and the computer specialist position. It maintained, however, that if its proposal is rejected, then this would mean, that bargaining unit supervisors will continue to be foreclosed from obtaining assignments on

certain shifts and will be forever "stuck" on certain shifts for the duration of their employment with the Sheriff's Office.

Sheriff Position:

The Sheriff is vehemently opposed to the Union's proposal, claiming that this would strip from him the right to assign supervisors. According to Mr. Berninger, "some management rights have to be left in the public sector", especially in relation to what exists in the private sector. The Sheriff is adamant that seniority is a poor substitute for ability, and has little to do with which supervisor is most capable of effectively handling the assignment.

Another factor contributing to the Sheriff's position is that his Office receives various reimbursement for law enforcement services rendered to jurisdictions in the County. The Sheriff maintains that it is essential for him to be able to select personnel for these assignments, not only because he has the management right, but also because satisfaction for service rendered is of the utmost importance to continuation of these relationships.

Recommendation:

The Factfinder found that the Union's proposal is reasonable and should be adopted. It does not exclude qualifications from consideration, and certain work that requires specialized qualifications is also excluded. Mr. Berninger argued that this could disrupt arrangements with the jurisdictions in the County that contract for work from the Sheriff's Office. No proof was provided to substantiate this assertion. Once again, the Sheriff is asserting that he needs to have full control, without demonstrating that the

alternative would affect the efficiency of the service, the reputation of the Department, continued service to other jurisdictions, or even the ability to pay.

Date: July 1, 2010 Mollie H. Bowers