

**IN THE MATTER OF FACT FINDING**

**BETWEEN**

**LORAIN COUNTY SHERIFF**

**AND**

**FOP/OLC, INC. (Dispatchers  
Vehicle Maintenance and Supervisor)**

**SERB CASE # 10-MED-09-1079**

**Robert G. Stein, Fact Finder**

**ADVOCATE FOR THE UNION:**

**Lucy DiNardo, Staff Representative  
FOP/OLC, INC.  
2721 Manchester Road  
Akron OH 44319-1020**

**ADVOCATE FOR THE EMPLOYER:**

**Robin L. Bell, Regional Manager  
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## **INTRODUCTION**

The parties in this matter are the Lorain County Sheriff (hereinafter “Sheriff”, “Employer”) and the Fraternal Order of Police, Ohio Labor Council, Inc. (hereinafter referred to as “FOP” or “Union”). The bargaining unit represented by FOP consists of approximately eleven (11) employees, holding the classifications of full-time Dispatcher, Vehicle Maintenance Worker and Vehicle Maintenance Supervisor. These employees serve the vital functions related to law enforcement for the County of Lorain, Ohio.

The Lorain County Sheriff is located in Lorain County, Ohio, which is located due west of Cuyahoga County, Ohio. This county that has experience economic hardship for many years, but has displayed considerable resiliency in spite of considerable losses in its manufacturing base. The parties have had a bargaining relationship for several years. A fact finding hearing was held on March 21, 2011, where mediation of the remaining issues was attempted, resulting in the parties coming closer together on issues, but they were not able to reach agreement. On April 6, 2011 the parties went to hearing and presented to the fact finder were four (4) unresolved issues. Prior to this second day of meeting, pre-hearing statements were received in accordance with SERB rules and regulations.

**National/State/Local Economic Outlook:** Cuts in spending and in existing programs appear to be of central interest at the national level and recovery appears to vary widely depending upon geographic location. The economy in Ohio is still experiencing the effects of a national recession and a very slow recovery. While officially considered to have reached an end several months ago, the impact of the recession upon Ohio’s revenue stream is plain and it is

translating into substantial cuts in services and personnel. Additionally, the Ohio legislature has passed a substantial overhaul of Ohio's 27 year old public sector collective bargaining law, that if not defeated by referendum, will have far reaching affect for all governmental entities who participate in collective bargaining. In Ohio, unlike many other states, there has historically been a substantial lag time between a declared end to a recession and recovery from it. Yet, the current decline in revenue, caused by what many call the "Great Recession" is far deeper and broader than those of the past, and it is severely testing even the most resilient of Ohio's public employers and employees alike. Many states in the United States are attempting to cope with declining revenues and increasing costs. Many counties in Ohio that were already weakened by the loss of industry, commerce, and changes in revenue options in preceding years were particularly vulnerable as the events of the recession took hold. At this point in time it is difficult to know how and when Ohio's economic recovery will take place. Every month on a national and state level there are mixed signals being provided by various sectors of the economy and by the public. The national unemployment rate recently remains at 9%, yet growth in private sector jobs is steady increasing. The recent net gain in jobs both nationally and in Ohio, while encouraging, is still undermined in Ohio by severe structural unemployment. Conventional wisdom indicates that the economy will improve slowly, but will experience uneven progress and even occasional setbacks, as has been the case in the past few months. One of the more certain and troubling aspects of the current economic times are losses of high paying skilled jobs in Ohio. Jobs that sustained a viable middle class lifestyle are now being performed outside of the United States. They number in the tens of thousands and clearly underscore the existing structural problems of unemployment in areas such as manufacturing and construction. Most disturbing is the prospect that the loss of these high paying manufacturing jobs is permanent.

This altered employment pattern will require a recovery in Ohio to take a very different course than it has in the past, when industrial facilities creating these jobs were still in the state. All the news is not negative; there are indicators of economic revival and some employers are doing well in this recession and its aftermath. The GM Lordstown Plant and other auto manufacturing in Ohio are examples of recovery and there are others around the state. Looming on the horizon and what remains a great concern to local governments in Ohio is the Governor's biennium budget, already passed by the Ohio House of Representatives and being debated in the Ohio Senate. All public employers and employees in Ohio, regardless of jurisdiction, have reason to be concerned about the next biennium budget. Substantial cut in Local Government Funds to municipalities and counties will be including in this document, which must close a multi-billion dollar deficit. Prudence would dictate that this potentiality needs to be factored into any projected budget of a local governmental employer. To their credit public employee unions and employees in Ohio have, in the main, recognized and responded to their employers who continue to experience a shortfall in revenue while anticipating cuts in state aid. State employees and many county, city, and township public employees in and outside of Ohio continue to make unprecedented financial sacrifices in the form of layoffs, wage freezes, benefit givebacks, furlough days and in paying more for their medical coverage. And as mentioned above, collective bargaining in Ohio is currently on the precipice of dramatic change that if implemented, promises to be sea change in the way collective bargaining is conducted.

The Employer provided financial data to indicate it is concerned by state budget cuts as well as other measures being considered by the Ohio Legislature, such as elimination of the estate tax, both of which will have immediate impact upon the County's funding to the Sheriff. It is also recognized that employees are experiencing their own financial difficulties in terms of

surviving an uncertain economy marked by high unemployment, record housing foreclosures, declining property values, and rapidly rising gasoline prices.

**Issues: (Summary of positions are identified below, see position statements of the parties for details and rationale)**

**Issue 1, Article 34, Meal and Rest Periods.** The Employer is proposing to move from an 8 hour day to an 8.5 hour day that includes removal of official break times (in Sections 34.2 and 34.3) and the inclusion of a 30 minute unpaid lunch period. It argues that it is requiring such language in all county contracts under the jurisdiction of the Board of County Commissioners. The Union, while not opposing the removal of official break times, is under the understanding that the Employer shall permit the utilization of break periods as needed throughout the work day. The Union is opposed to adding a thirty (30) minute unpaid lunch period because it argues there are not enough personnel to allow for such a schedule. The Union firmly states this change will simply not work given the current staffing levels. The Employer, while acknowledging a possible scheduling problem on certain shifts due to staffing, argues it seeks this uniform change in scheduling and will do everything possible to make it work, reserving the right to monitor the situation to address problems with providing employees a thirty (30) minute uninterrupted lunch. What the Employer is seeking is common in the public and private sectors, and in stressful position such as dispatcher it appears reasonable for employees to take an often needed meal break during their work day. It also is reasonable for a county to seek uniform language when possible for ease of administration of multiple contracts covering different bargaining units. However, the Union raises a valid point if the Employer is seeking something it is unable to schedule from a staffing perspective, since presumably the Employer does not want to incur unnecessary costs. Not being able to provide employees with an unpaid 30 minute lunch during an 8.5 hour day will likely result in overtime, under the Fair Labor Standards Act. This is an expense that most employers attempt to avoid when every they can. The Union also raised the issue of being able to obtain lunch off site, which did not meet with any particular objection by the Employer, providing employees adhere to their punch in and punch out schedules and no emergency operational concerns are present.

**Issue 2, Article 35, Wages.** The Employer is proposing a wage freeze for the duration of the Agreement unless the Board of Commissioners approves a pay increase for any bargaining unit for which it is the appointing authority. The Union, while agreeing to no current wage increase proposes an unconditional wage reopener in 2011 for the remaining two years of the Agreement. The Employer argues that the Lorain County Sheriff's Office suffered a 20% cut in its general fund salary budget in the amount of \$1.2 million dollars in 2009, resulting in the layoff of 12 full-time deputy sheriffs, 8 part-time deputy sheriffs, and 2 record clerks. The members of instant bargaining were fortunate not to have suffered any layoffs as a result of this budget downturn. The Sheriff did not have a change in his budget in 2010 but anticipates a possible second round of significant budget reductions in 2011 and beyond. The Union appears to have a realistic grasp of the County's financial hardship and is willing to be part of a larger movement to keep labor costs in check. However, the Union strongly feels if it agrees to sacrifice wage increases it should not be treated in a disparate manner if the Board of County Commissioners provides a lump sum or across-the-board wage increase to any other bargaining units or groups of non-bargaining unit employees that are under

its jurisdiction. There is no question that the Board of County Commissioners has some extremely difficult economic challenges to overcome and a wage freeze is justified as an important part of a broader fiscally prudent response. Yet during times of economic hardship and as a fundamental matter of fairness, equity of sacrifice, where the Board has control, takes on a particularly important emphasis. That is not to say that in individual cases an employer may for reasons of recruitment or retention need to adjust wages, and even during difficult times that is not uncommon. However, what is exceptional and particularly destructive to the employer-employee relationship is to act contrary to a stated sacrificial principle with a group or groups of employees, while asking for substantial sacrifice from all others. **Issue 3, Article 40, Duration.** The parties are in agreement as to the length of the Agreement, but have a disagreement over the starting date. The Union proposes to stay with a date of January 1 and the Employer proposes an effective starting date tied to when the Agreement is signed by the parties. Retroactivity of wages is not an issue in contention in these negotiations and I find no compelling evidence to change what the parties have historically bargained regarding the timing and length of prior collective bargaining agreements. **Issue 4, Side Letter of Agreement-Insurance.** The parties are in agreement with the content of a letter that provides for decreases or waived increases in premiums or premium “holidays” being applicable to the bargaining unit during the life of the Agreement. **Issue 5, New Article Regionalization.** During the March 21, 2011 mediation session the bargaining unit was informed of the probability that the bargaining unit will be part of a merger or regionalization of dispatching services by July of 2011. The Union claims it was never notified prior to March 21, 2011 of any plans regarding regionalization and what it may mean for the bargaining unit. The facts indicate the Employer may have known about said regionalization or at least the probability of same just days prior to the March 21, 2011 mediation date. From the evidence in the record it is not clear what the regionalization process will entail and how and who will perform the work traditionally performed by the bargaining unit. The Employer argues that discussions regarding the combining of the County’s 911 Call Center, which is governed by a collective bargaining with the United Steel Workers and the Sheriff’s Dispatch Unit, which is governed by the FOP, had been taking place between the County Board of Commissioners and the Sheriff for some time. The Employer believes the subject is a permissive topic of bargaining because it does not affect the employee’s terms and conditions of employment with the current Employer. In addition the Employer points out that the FOP is attempting to not only impose the terms and conditions of employment another public employer but also with another union, which may make any agreed upon provision illegal. The Employer does recognize the concern of the Union and has agreed to meet and discuss the effects of whatever is ultimately determined in terms of regionalization and rejects any inclusion of successor language in the Agreement. It is clear this has become the most significant issue at impasse. Rumors of all the bargaining unit employees losing their jobs and having to reapply for another job in a newly configured communication service exist. Based upon what is known, it is not all clear that the terms and conditions of the bargaining unit would not be affected or even eliminated under regionalization. The placement of language providing the bargaining unit with protections afforded to it under law is reasonable.

**Based upon the above the following determinations (in bold) are made:**

**Issue 1      Article 34 MEAL AND REST PERIODS**

**DETERMINATION:**

Section 34.1. Each employee of the Employer shall be entitled during the normal work shift to a thirty (30) minute **unpaid** meal period, which shall be taken away from the work area, **including the ability to reasonably obtain lunch off site, unless emergency conditions as determined by the Employer exist requiring employees to remain on premises. During the first full year of implementation of the unpaid meal period, the Union shall have the right to meet and confer with management if there are problems with the unpaid lunch being provided on all shifts.**

Section 34.2 Maintain Current Language

Section 34.3 It is understood and agreed that because of the nature of the work of the Lorain County Sheriff's department, employees may be required during emergency situations which require immediate response to have their meal periods interrupted or **delayed, or cancelled. If employees do not receive their full 30 minutes of uninterrupted unpaid meal period during their shift, they shall be eligible for overtime compensation at the rate of one and one-half times their hourly rate for any time worked that reduces their period below 30 minutes per shift.**

**Issue 2      Article 35 WAGES**

**DETERMINATION:**

**Delete current Section 35.1 and replace with new Section 35.1 as follows:**

**Section 35.1. Effective for the duration of the Agreement (unless otherwise negotiated in Section 35.2) the hourly base rates shall be as follows:**

| <u>Classification</u>    | <u>Probationary Rate</u> | <u>1<sup>st</sup> Year Rate</u> | <u>2<sup>nd</sup> Year Rate</u> | <u>Maximum Rate</u> |
|--------------------------|--------------------------|---------------------------------|---------------------------------|---------------------|
| Communications Officer   | \$17.61                  | \$19.09                         | \$20.57                         | \$22.04             |
| Vehicle Main Coordinator | \$20.97                  | \$22.08                         | \$23.17                         | \$24.25             |

|                        |         |         |         |         |
|------------------------|---------|---------|---------|---------|
| Vehicle Main<br>Worker | \$18.30 | \$18.81 | \$19.41 | \$19.92 |
|------------------------|---------|---------|---------|---------|

**Section 35.2** Wages shall be frozen at their 2010 levels unless during the life of the Agreement another bargaining unit(s) or another group of non-union employees,\* under the jurisdiction of the Board of County Commissioners, receives a wage increase during the life of the Agreement. If this occurs the Union shall receive the same increase in wages retroactive to the earliest date the other unit(s) or group(s) received wage increases. If the increase is in the form of a lump sum, the bargaining unit shall receive said amount within thirty (30) days of the Union providing written notification to the Employer of its desire to invoke this provision.

\*(This provision is not applicable to wage adjustments provided to an individual employee as determined by the Employer)

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| <b>Issue 3      Article 40, DURATION</b> |
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**DETERMINATION:**

**Section 40.1**

- A. This Agreement shall be effective as of **January 1, 2011** and shall remain in full force and effect until **December 31, 2013**.
- B. **Current Language**

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| <b>Issue 4      SIDE AGREEMENT INSURANCE</b> |
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**DETERMINATION:**

The parties agree to the following Side Letter of Agreement, to be attached to the Collective Bargaining Agreement:

*The parties agree that if the Lorain County Board of Commissioners approves any decrease and/or waives any increase in the employee's share of the health insurance premiums for any bargaining unit for which the Board of Commissioners is the appointing authority, such decrease and/or waived increase in insurance premium shall be applied to those employees covered by this Collective Bargaining Agreement.*

\_\_\_\_\_  
*For the Union    date*

\_\_\_\_\_  
*For the Employer    date*

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| <b>Issue 5      New Article Regionalization</b> |
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**DETERMINATION:**

**Section 41.1** If at any time the Employer or the Lorain County Commissioners choose to regionalize or transfer operations of the bargaining unit to another facility in the County for the purposes of performing the same or similar job functions currently being performed by the bargaining unit within the Sheriff Department's Communication Center, the Employer agrees to meet and negotiate with the Union to resolve all issues related to the impact of said change and to the continuation of employment, wages, and benefits for all bargaining unit members. Until such negotiations are concluded all bargaining unit members shall be offered employment with the new entity and subject to negotiations and the legality of same that may involve another bargaining representative, employees shall retain their current wage and benefit levels for the life of the Collective Bargaining Agreement.

## **TENTATIVE AGREEMENT**

During negotiations, the parties reached tentative agreements on several issues. These tentative agreements and any unchanged current language are part of the determinations contained in this report.

The fact finder respectfully submits the above recommendations to the parties this \_\_\_\_\_ day of May 2011 in Portage County, Ohio.

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Robert G. Stein, Fact finder