

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding	:	SERB Case Numbers: 11-MED-09-1291
	:	11-MED-09-1292
Between the	:	11-MED-09-1293
	:	
ADAMS COUNTY, OHIO	:	
SHERIFF,	:	
	:	Date of Fact-Finding Hearing:
Employer	:	June 22, 2012
	:	
and the	:	
	:	
FRATERNAL ORDER OF POLICE,	:	Howard D. Silver, Esquire
OHIO LABOR COUNCIL, INC.,	:	Fact Finder
	:	
Union	:	

REPORT AND RECOMMENDED LANGUAGE OF THE FACT FINDER

APPEARANCES

For: Adams County, Ohio Sheriff, Employer

Kelly E. Babcock
Account Manager
Clemans, Nelson and Associates, Inc.
420 W. Loveland Avenue
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Loveland, Ohio 45140-2322

For: Fraternal Order of Police, Ohio Labor Council, Inc., Union

Mark Scranton
Staff Representative
Fraternal Order of Police,
Ohio Labor Council, Inc.
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PROCEDURAL BACKGROUND

This matter came on for fact-finding hearing at 10:00 a.m. on June 22, 2012 within the Annex of the Adams County Courthouse, 110 W. Main Street, West Union, Ohio 45693. At the hearing both parties were afforded a full and fair opportunity to present evidence and arguments in support of their positions. Following the presentation of evidence and arguments, the hearing record was closed at 12:45 p.m. on June 22, 2012.

This matter proceeds under the authority of Ohio Revised Code section 4117.14(C) and in accordance with Ohio Administrative Code section 4117-9-05. Both parties have met their respective obligations in carrying out pre-hearing procedures. Prior to the hearing the parties submitted to the fact finder their positions on the issues raised by this fact-finding process. This matter is properly before the fact finder for review, report, and recommended language.

FINDINGS OF FACT

1. The parties to this fact-finding procedure, the Adams County, Ohio Sheriff, the Employer, and the Fraternal Order of Police, Ohio Labor Council, Inc., the Union, were parties to a collective bargaining agreement in effect from January 1, 2009 through December 31, 2011.
2. This fact-finding process encompasses three bargaining units: one bargaining unit is comprised of sworn deputy sheriffs, deputy investigators, deputy patrol officers, deputy jailers, and deputy dispatchers as certified by SERB in case number 85-RC-12-2581; a second bargaining unit is comprised of all full-time non-sworn employees, including dispatchers, corrections officers, and cooks

employed by the Adams County Sheriff, as certified by SERB in case number 85-RC-12-2582; a third bargaining unit is comprised of sergeants employed by the Adams County Sheriff, certified by SERB on December 3, 2009.

3. Both parties have engaged in good faith bargaining aimed at reaching an agreement on a successor collective bargaining agreement.

TENTATIVELY AGREED ARTICLES

The following Articles have been tentatively agreed by the parties for inclusion in their successor collective bargaining agreement. The following Articles were either unopened by the parties or opened with changes tentatively agreed by the parties. The fact finder recommends that the unopened Articles and the changes to Articles that have been tentatively agreed by the parties be included in the parties' successor Agreement.

These Articles are:

- Article 1 Agreement and Purpose
- Article 2 Recognition
- Article 3 Nondiscrimination
- Article 4 Dues Deduction
- Article 5 Labor Council Representation
- Article 6 Representation
- Article 7 Ratification
- Article 8 Copies of Agreement
- Article 9 Labor Management Committee
- Article 10 Bulletin Boards
- Article 11 Grievance Procedure
- Article 12 Investigative Action
- Article 13 Discipline
- Article 14 Personnel Files

Article 15 Probationary Period
Article 16 Seniority
Article 17 Layoffs and Recalls
Article 18 Management Rights
Article 19 Absenteeism
Article 20 Job Action
Article 21 Occupational Safety and Equipment
Article 22 Job Posting
Article 23 Assignment of Work and Temporary Transfers
Article 24 Advance Service Training
Article 25 Canine Officers
Article 26 Military Leave
Article 27 Sick Leave
Article 28 Sick Leave Conversion Upon Retirement
Article 29 Funeral Leave
Article 30 Payment to Survivors
Article 31 Vacation Leave
Article 32 Holidays
Article 33 Hours of Work and Overtime
Article 34 Equalization of Overtime
Article 38 The Effect of Agreement
Article 39 Severability
Article 40 Alcohol and Drug Testing
Article 41 Residency
Article 42 Outside Employment
Article 43 Paid Absence Days
Article 44 Police Memorial Day
Article 45 Retirement
Article 46 Family and Medical Leave
Article 47 Waiver in Case of Emergency

UNRESOLVED ARTICLES

The following Articles remain unresolved between the parties:

Article 35 Health Insurance

Article 36 Uniforms, Clothing and Equipment

Article 37 Wages

Article 48 Duration

DISCUSSION OF UNRESOLVED ARTICLES AND RECOMMEND LANGUAGE

Article 35 Health Insurance

Both parties have agreed to retain the language in Article 35 in sections 35.1, 35.2, 35.3, and 35.4. The remainder of Article 35, sections 35.5 through 35.11, is recommended by the fact finder to be comprised of a combination of Employer and Union proposals. The fact finder does not find significant differences between the parties' positions on changes to Article 35, Health Insurance. The selection of one proposal over the other is not intended by the fact finder to indicate that a significant change is being ordered in comparison to the proposal not chosen. Each party had particular interests in particular sections of Article 35, and to a substantial degree those interests are accommodated by the fact finder's recommended language. The Employer emphasized efficiency, flexibility, and the need for as much certainty as can be attained in the area of healthcare coverage. The Union did not dispute the validity of the Employer's interests but emphasized the importance of securing for members of the bargaining unit a ceiling

on monthly health care coverage premiums for which bargaining unit members will be responsible over the next three years.

The fact finder recommends the language proposed by the Employer for Article 35, section 35.5 that deletes dates that are no longer needed and that includes in the language of this section a twelve percent (12%) cap on monthly premiums to be paid by bargaining union members, whether under a single or family plan.

The fact finder recommends the Employer's recommended language for section 35.6 that incorporates the Union's proposed deletion of "to try" and "non-retired" from the first line of section 35.6. The changes proposed by the Employer for this section would orient coverage to the coverage provided to the entire coverage pool, that is, health care coverage that is provided to non-bargaining unit General Fund employees.

As to section 35.7, the fact finder recommends a mixture of proposals. The Employer's proposal is recommended wherein language about benefits that are substantially similar to conventional insurance coverage that predates this Agreement is deleted. The fact finder recommends the Union's proposed language that sets an amount of funding for both a health savings account (HSA) and a health reimbursement account (HRA), to appear in Article 35, sections 35.7 and 35.8, respectively. The fact finder recommends the inclusion of the Union's proposed language as to Employer contributions to HSAs and HRAs, contributions that are to be fifty percent (50%) of the deductible. This language becomes applicable only when an HSA or an HRA is established for use by bargaining unit members.

The fact finder recommends the Employer's proposed language for section 35.9 that would remove the language that relates to a basic level of benefits being substantially similar to conventional insurance coverage in effect prior to this Agreement.

The fact finder recommends that the remaining two sections in Article 35 be renumbered section 35.10 and section 35.11, and otherwise remain unchanged.

RECOMMENDED LANGUAGE: ARTICLE 35 INSURANCE

Section 35.1. Life Insurance: Any current life insurance on the death of an employee shall remain in full force and effect for the duration of this Agreement.

Section 35.2. Liability and False Arrest Insurance: The Employer shall continue to provide liability and false arrest insurance at no less than the current coverage. The Employer shall pay the cost of all premiums.

Section 35.3. Operator's Insurance: The Employer shall pay the cost of all premiums for operator's insurance for the operation of the Employer's vehicles while on duty.

Section 35.4. Definition: A member shall be considered to be on-duty at any time that he is performing the obligation of the Employer and not necessarily limited to the normal scheduled periods. If a member is outside his scheduled work hours and must perform any duty as a law enforcement officer (whether ordered, instructed or at his discretion), he shall be deemed to be on duty for the purposes of this Agreement except that a member shall not apply for pay outside his normal scheduled work hours without the approval of the Employer.

Section 35.5. Medical Insurance: The Employer shall pay eighty-eight percent (88%) toward the monthly premium of a single and family hospitalization. Employees shall pay by payroll deductions twelve percent (12%) toward the monthly premium of a single and family hospitalization. The Employer shall be solely responsible for determining the carrier of the plan and will do so under the provisions of the state law. The Employer will pay no less for the bargaining unit health insurance premiums than the Employer pays for other county general fund employees' health insurance premiums.

Section 35.6. The Employer shall continue to make available to bargaining unit members and their eligible dependents substantially similar group health and hospitalization, dental, vision and life insurance coverage and benefits as provided to other non-bargaining general fund employees. The Employer reserves the right to change or provide alternate insurance carriers, health maintenance organizations, or benefit levels

or to self-insure as it deems appropriate for any form or portion of insurance coverage referred to in this Article. The Employer will not be responsible for changes unilaterally imposed by an insurance provider in benefits, co-payment provisions or deductibles so long as the Employer uses its best efforts to minimize changes by incumbent insurance providers from one plan year to another.

Section 35.7. The Employer reserves the right to institute cost containment measures relative to insurance coverage. Such changes may include, but are not limited to, mandatory second opinions for elective surgery, pre-admission and continuing admission review, preferred provider provisions, prohibition on weekend admissions except in emergency situations, and mandatory out-patient elective surgery for certain designated surgical procedures.

In the event the County opts to utilize a Health Savings Account (“HSA”), in addition to Section 35.5 of this agreement, the County will partially fund the HSA of bargaining unit employees electing coverage on an annual basis in the following manner depending on the plan chosen, if available:

- Single Coverage: fifty (50) percent of the deductible
- Employee and Spouse: fifty (50) percent of the deductible
- Employee and Child: fifty (50) percent of the deductible
- Family: fifty (50) percent of the deductible

The Employer’s portion of the employee’s HSA will be funded by way of equal pro-rata monthly contributions.

Section 35.8 In the event the County opts to utilize a Health Reimbursement Account (HRA), in addition to Section 35.5 of this agreement, the County will be responsible for the first fifty (50) percent of the applicable deductible.

The Employer’s portion of the employee’s HRA will be funded by way of equal pro-rata monthly contributions.

Section 35.9 The Employer reserves the right to institute cost containment measures relative to insurance coverage. Such changes may include, but are not limited to, mandatory second opinions for elective surgery, pre-admission and continuing admission review, preferred provider provisions, prohibition on weekend admissions except in emergency situations, and mandatory out-patient elective surgery for certain designated surgical procedures.

Section 35.10 The extent of coverage under the insurance policies referred to in this Agreement shall be governed by the terms and conditions set forth in said policies or plans. Any questions or disputes concerning said insurance policies or plans or benefits thereunder shall be resolved in accordance with the terms and conditions set forth in said policies or plans and shall not be subject to the grievance and arbitration procedure set forth in this Agreement. The failure of any insurance carrier(s) or plan administrator(s) to

provide any benefit for which it has contracted or is obligated shall result in no liability to the Employer, nor shall such failure be considered a breach by the County of any obligation undertaken under this or any other Agreement. However, nothing in this Agreement shall be construed to relieve any insurance carrier (s) or plan administrator(s) from any liability it may have to the Employer, bargaining unit member or beneficiary of any bargaining unit member.

Section 35.11. Personal Insurance: Personal articles not covered by another insurance plan that are destroyed, damaged or stolen in the line of duty will be replaced or repaired by the Employer at the Employer's expense. Replacement or repair of the personal article must be approved by the Employer.

Personal articles are defined as watches, eyeglasses, dentures, rings, contact lenses or any other article approved by the Employer.

Article 36 Uniforms, Clothing and Equipment

For all intents and purposes the parties have been in agreement as to changes in Article 36, Uniforms, Clothing and Equipment. The intention of both parties is to have the language of Article 36 mirror the policy of the Adams County Sheriff on uniforms, clothing, and equipment.

The fact finder recommends the Union's proposal that would add boots and high gloss Bates shoes to the language of Article 36, section 36.1. The fact finder finds this to be in compliance with the policy of the Adams County Sheriff as to uniforms, clothing, and equipment.

As to Article 36, sections 36.2, 36.3, and 36.4, the fact finder recommends the Employer's proposal. There is, however, nothing in the Employer's proposal about these sections that conflicts with the Union's position on this language. The changes proposed by the Employer and recommended by the fact finder do not change the import of this language but reflect a proper lettering sequence within section 36.4 that includes retaining an annual, maximum amount for uniform replacement of \$625.00 per year. This

section also specifies that old uniforms not in use are to be returned to the Sheriff's Office.

The fact finder recommends retaining the language of Article 36, section 36.5.

A change to section 36.6 recommended by the fact finder would identify the Sheriff's policy on uniforms, clothing, and equipment, policy number 4.30, and would refer to the version of policy number 4.30 in effect on January 1, 2012. A recommended change to the language of Article 36, section 36.6 also includes the deletion of language relating to reimbursement for misuse or recklessness in the use of a uniform or equipment, but adds language that states that misuse or recklessness in the use of body armor may subject an employee to disciplinary action.

RECOMMENDED LANGUAGE: ARTICLE 36 UNIFORMS, CLOTHING AND EQUIPMENT

Section 36.1. The Employer shall continue the current practice of providing all required equipment, clothing and insignia for new sworn employees. The initial issue shall include the following:

- Two (2) winter shirts
- Two (2) summer shirts – short sleeve
- Four (4) trousers
- Two (2) badges (1 hat and 1 breast)
- Two (2) ties
- Collar brass
- Whistle chain and whistle
- Summer hat – winter hat
- Raincoat
- Rubber for hat
- Buttons
- Acorns for hat
- Hat strap
- Nameplate
- Winter coat
- Chill chaser (lightweight coat)
- Trouser belt
- Boots

High gloss Bates shoes

- A. Employees who are employed between October and April shall receive a winter issue that will not include the following: two (2) summer shirts; summer hat; lightweight coat; two (2) pair trousers.
- B. Employees who are employed between April and September shall receive a summer issue that will not include the following: winter hat; two (2) winter shirts; winter coat; two (2) pair trousers.

Section 36.2. The Employer shall provide an appropriate uniform for dispatchers, if required, as approved by the Sheriff.

Section 36.3. The Employer shall provide an appropriate uniform for non-sworn corrections officers, which shall include 3 shirts, 3 pants, name plate, trouser belt, high gloss Bates shoes, boots, and any other required uniform or equipment as approved by the Sheriff.

Section 36.4. Replacement Policy:

- A. For the duration of this Agreement, the Employer will provide each sworn employee up to a maximum of six hundred twenty five dollars (\$625.00) per year for uniform replacements.
- B. For the duration of this agreement, those sworn members assigned to the SRT will receive up to a maximum of eight hundred dollars (\$800.00) for uniform replacements.
- C. Uniforms for sworn and non-sworn employees will be replaced as needed at the discretion of the Sheriff. All old uniforms and equipment no longer in use due to replacement, damage, excessive use, separation from employment, or similar cause shall be returned to the Sheriff's Office for proper disposal.

Section 36.5. The Employer shall maintain the practice of cleaning uniforms.

Section 36.6. The Employer shall have a policy requiring the use of protective body armor for employees assigned to certain positions. Employees shall be required to wear the protective body armor in accordance with the Department Policy II 4.30 in effect January 1, 2012, unless the Sheriff or designee determines that the circumstances make it inappropriate to mandate wearing body armor. When the Sheriff requires employees to wear protective body armor, the following shall apply:

- A. The Adams County Sheriff's Office shall provide properly fitted protective body armor which complies with the NIJ standards in effect at the time of

the purchase.

- B. The Sheriff's Office shall maintain a list of ballistic vest expiration dates and replace (expired) vests in accordance with the manufacturer's recommendations. No employee will be required to wear an expired vest. (Replacement will not be charged against the allotment under Section 36.4 of this Agreement.)
- C. Employees shall be required to notify the Sheriff or (his) designee of any damage to the body armor for which the manufacturer would recommend replacement (if the damage or loss is due to the employee's misuse or recklessness, the employee may be referred to disciplinary action.) The determination of whether the body armor will be replaced is at the discretion of the Sheriff or designee.
- D. Only body armor issued or approved by the Adams County Sheriff shall be worn.

Article 37 Wages

Neither party has recommended a wage increase to be effective in 2012. The fact finder believes the Union's restraint in this regard reflects a recognition of the economic realities of the county, the region, the state, and the nation. The fact finder acknowledges the good will reflected in the bargaining unit's forbearance on a wage increase in 2012.

One of the complicating features of the recession that began in late 2008 is the uncertainty it has produced about the state of the economy in the near and long terms. The fact finder is persuaded that some additional time is needed by the Adams County Sheriff, and the Adams County General Fund as administered by the Adams County Commissioners, to adapt to the limitation on resources caused by the downturn in the economy that produced the national recession and the high unemployment within Adams County, a level of county unemployment that is above the state of Ohio's unemployment average by twenty-five percent - 8% for the state; 10% for Adams County.

The fact finder is persuaded, based upon the patience of the bargaining unit and what appears to the fact finder to be an economy in slow recovery, that a limited wage increase for the bargaining unit is affordable by the public employer. The fact finder recommends a one percent (1%) wage increase effective at the beginning of pay period fourteen within calendar year 2013, and a two percent (2%) wage increase effective the beginning of pay period fourteen in calendar year 2014.

The economic realities of Adams County, the budget of the Adams County Sheriff and the General Fund of Adams County as administered by the Adams County Commissioners, lead the fact finder to recommend that the Sergeants' collective bargaining agreement retain the language that specifies that each Sergeant's hourly wage shall be at least \$.75 above the hourly wage rate of a top pay sworn Road Deputy with the Adams County Sheriff's Office.

RECOMMENDED LANGUAGE: ARTICLE 37 WAGES – NON-SERGEANTS

Section 37.1. Bargaining unit members' current wage compensation shall be as follows and as listed in Appendix A.

- A. Effective upon ratification of this agreement, the rates of pay for bargaining unit members shall remain at the 2011 rates.
- B. For calendar years 2013 and 2014, bargaining unit employees shall receive the same general across the board increase as approved for non-bargaining unit employees of the Board of County Commissioners. Individual wage adjustments or salary equalizations shall not be considered an across the board increase. The Employer shall notify the Union President of any qualified across the board increase for non-bargaining unit employees.

Section 37.2. Longevity: Bargaining unit members shall receive longevity pay according to the following schedule:

<u>Years of Service</u>	<u>Annual</u>	<u>Hourly</u>
After 10 years	\$769.60	\$0.37
After 13 years	\$1,289.60	\$0.62
After 17 years	\$2,059.20	\$0.99
After 22 years	\$2,828.80	\$1.36

Longevity shall be determined based upon total years of departmental service which has been completed by the employee as of his or her anniversary date of hire with the Adams County Sheriff's Office. Changes shall become effective at the beginning of the pay period following the employee's anniversary date.

APPENDIX A
WAGE RATES

Position	Step	Length of Service	2012 Hourly Rate	2013 Hourly Rate	2014 Hourly Rate
Investigator	P	Probationary	14.52	[1% at pay period 14]	[2% at pay period 14]
	1	0 - 2 years	15.79		
	2	2 - 4 years	16.22		
	3	4 - 6 years	16.67		
	4	6 - 8 years	17.12		
	5	Over 8 years	17.56		
Road Deputy	P	Probationary	13.44		
	1	0 - 2 years	15.45		
	2	2 - 4 years	16.64		
	3	4 - 6 years	16.75		
	4	6 - 8 years	17.00		
	5	Over 8 years	17.21		
Jailers	P	Probationary	12.36		
	1	0 - 2 years	14.74		
	2	2 - 4 years	15.45		
	3	4 - 6 years	16.02		
	4	6 - 8 years	16.29		
	5	Over 8 years	16.59		
Corrections Officer	P	Probationary	11.28		
	1	0 - 2 years	13.44		
	2	2 - 4 years	13.71		
	3	4 - 6 years	13.98		
	4	6 - 8 years	14.25		
	5	Over 8 years	14.52		

Dispatchers	P	Probationary	11.00
	1	0 - 2 years	13.16
	2	2 - 4 years	13.44
	3	4 - 6 years	13.71
	4	6 - 8 years	13.98
	5	Over 8 years	14.25
Cook	P	Probationary	10.73
	1	0 - 2 years	12.00
	2	2 - 4 years	12.27
	3	4 - 6 years	12.54
	4	6 - 8 years	12.81
	5	Over 8 years	13.08

*An employee promoted from Road Deputy to Investigative will suffer no loss of wages. The employee will be placed at the next closest step that would cause no loss.

RECOMMENDED LANGUAGE: ARTICLE 37 WAGES – SERGEANTS

Section 37.1. Bargaining unit members' current wage compensation shall be as follows and as listed in Appendix A:

- A. Effective May 1, 2010, the rates of pay for all Sergeants shall be at least seventy-five (\$0.75) more than a step 5 Road Deputy with the Adams County Sheriff's Office.

Section 37.2. Longevity: Bargaining unit members shall receive longevity pay according to the following schedule:

<u>Years of Service</u>	<u>Annual</u>	<u>Hourly</u>
After 10 years	\$769.60	\$0.37
After 13 years	\$1,289.60	\$0.62
After 17 years	\$2,059.20	\$0.99
After 22 years	\$2,828.80	\$1.36

Longevity shall be determined based upon the total years of departmental service which have been completed by the employee as of his or her anniversary date of hire with the Adams County Sheriff's Office. Changes shall become effective at the beginning of the pay period following the employee's anniversary date.

APPENDIX A
WAGE RATES

	2012
Position	Hourly Rate
Sergeant	\$17.96

Article 48 Duration

The Union proposes that the parties' successor Agreement begin January 1, 2012. The Employer proposes that the parties' successor Agreement take effect upon its ratification by the parties. As there is no wage increase proposed by either party to occur in 2012, the fact finder selects the Employer's proposal in the belief that the language proposed by the Employer will have no detrimental effect upon the bargaining unit.

RECOMMENDED LANGUAGE: ARTICLE 48 DURATION

Section 48.1. This Agreement constitutes the entire contract between Employer and the Labor Council and settles all demands and issues with respect to all matters subject to collective bargaining. Therefore, Employer and the Labor Council, for the duration of this Agreement, waive the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter specifically referred to herein. All past practices are specifically deleted unless addressed herein, and further, shall have no impact upon the terms and interpretation of this Agreement.

Section 48.2. This Agreement shall become effective upon ratification by both parties, except as otherwise indicated herein, and shall remain in effect up to and including December 31, 2014, and shall automatically renew itself from year to year thereafter, unless, written notice to terminate or amend this Agreement is given by either party to the other at least sixty (60) days but no more than one hundred twenty (120) days prior to December 31, 2014, or prior to the date of expiration of any annual renewal hereof.

Section 48.3. If notice of termination shall be given, negotiations for a new Agreement shall begin during the sixty (60) days prior to the expiration of this Agreement.

In making the recommendations presented in this report, the fact finder has considered the factors listed in Ohio Revised Code section 4117.14(G)(7)(a) to (f), as required by Ohio Revised Code section 4117.14(C)(4)(e) and Ohio Administrative Code section 4117-9-05(K).

Finally, the fact finder reminds the parties that any mistakes made by the fact finder are correctable by agreement of the parties pursuant to Ohio Revised Code section 4117.14(C)(6)(a).

Howard D. Silver
Howard D. Silver, Esquire
Fact Finder

Columbus, Ohio
August 2, 2012

CERTIFICATE OF FILING AND SERVICE

I hereby certify that the foregoing Report and Recommended Language of the Fact Finder in the Matter of the Adams County, Ohio Sheriff and the Fraternal Order of Police, Ohio Labor Council, Inc., SERB case numbers 11-MED-09-1291, 11-MED-09-1292, and 11-MED-09-1293, was filed electronically with the Ohio State Employment Relations Board at MED@serb.state.oh.us and served electronically upon the following, this 2nd day of August, 2012:

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Howard D. Silver
Howard D. Silver, Esquire
Fact Finder

Columbus, Ohio
August 2, 2012