

FACT-FINDING REPORT

STATE EMPLOYMENT RELATIONS BOARD

STATE OF OHIO

October 11, 2012

In the Matter of:

Hamilton County Sheriff's Office)	
)	
and)	Case No. 12-MED-01-0069
)	Corrections Officers
Hamilton County Corrections)	
Officers Association)	

APPEARANCES

For the Sheriff's Office:

Brett Geary, Consultant to Management
 Edwin Boldt, Counsel, Sheriff's Office
 Dale Menkhaus, Director of Corrections
 David Helm, Hamilton County Human Resources

For the Union:

Steve Lazarus, Attorney
 Andrew Cleves, Law Clerk
 John Brady, Union Representative
 Pay Packer, Union Representative
 Earl Corell, Union Representative
 Robert Schlanser, Union Representative
 Jason Davis, Union Representative

Fact Finder:

Nels E. Nelson

BACKGROUND

The instant case involves the Hamilton County Sheriff's Office and the Hamilton County Corrections Officers Association. The sheriff's office operates the county jail. The union represents approximately 275 Corrections Officers and Corrections Cadets. It replaced the Fraternal Order of Police, Ohio Labor Council, Inc. as the certified bargaining agent in January of 2012.

The instant dispute involves the negotiations between the sheriff's office and the union for a successor agreement to one that expired on November 30, 2011. The parties met to negotiate on a number of occasions and resolved many of the issues. However, when no overall agreement was reached, the fact-finding process was invoked.

The Fact Finder was notified by the State Employment Relations Board on July 16, 2012, of his appointment. He met with the parties on September 11, 2012, and when mediation failed to produce an agreement, this report was prepared.

The recommendations of the Fact Finder are based upon the criteria set forth in Section 4117-9-05(K) of the Ohio Administrative Code. They are:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (c) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (d) The lawful authority of the public employer;
- (e) The stipulations of the parties;
- (f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of issues submitted to

mutually agreed upon dispute procedures in the public service or in private employment.

ISSUES

The parties submitted ten issues to the Fact Finder. For each issue, the Fact Finder will set forth the positions of the parties and summarize the arguments and evidence they presented in support of their positions. He will then offer his analysis of the issue, followed by his recommendation.

1) Article 19 - Hours of Work/Overtime, Sections 19.1 and 19.2 - Work Schedule - The current contract states that the sheriff's office determines the work schedule for each member of the bargaining unit. Pursuant to this authority, the Corrections Officers are assigned to 6-2 schedules. The union proposes that for the term of the agreement, the contract establish a 4-2 schedule for members of the bargaining unit, except for employees assigned to admissions, canine, court holding, court holding jail, court security, Over-the-Rhine, and transportation, who work a 5-2 schedule. The sheriff's office opposes the union's demand.

Union's Position - The union argues that the Corrections Officers' current 6-2 schedule is a "terrible schedule." It points out that the schedule requires employees to work six straight days, even though they are "routinely confronted by individuals who have mental health issues, physical illnesses and desire to cause problems." (Union Statement, Tab D, page 1) The union notes that its proposed schedule will give Corrections Officers more time off and also have overlapping shifts so that Corrections Officers can receive briefings and have more training.

The union contends that other employees work 4-2 schedules. It observes that supervisors in the jail work a 4-2 schedule. The union reports that the City of Cincinnati "saw significant benefits when they recently moved from the 6 and 2 schedule." (Ibid.)

Sheriff's Position – The sheriff's office argues that the union's demand should be rejected. It complains that the union "has used [the work schedule issue] to handcuff negotiations from the very beginning." (Sheriff's Statement, Exhibit B, page 1) The sheriff's office indicates that the union initially proposed a 4-2 schedule with a 8.5 hour work day and subsequent proposals were simply a variation of the original proposal. It suggests that the union's proposal is unworkable. The sheriff's office states that it showed that the union's demand would require "either significant increases in manpower or significant increases in funding." (Ibid.) It claims that "it would be improper for any neutral to impose a burdensome change in working hours on the Employer [and that] a massive change to a cornerstone of management rights should not be trivially mandated." (Ibid.)

Analysis - The Fact Finder cannot recommend the union's demand. Scheduling employees to cover the large number of posts at the jail on a seven day/24 hour basis is quite complex and alternatives may involve different quantities of manpower and lead to significant differences in costs. Without an understanding of the implications of implementing a 4-2 schedule, the Fact Finder cannot recommend it.

The Fact Finder understands the union's concern regarding the hardships related to the 6-2 schedule. He recognizes that an improvement in morale that might follow from the adoption of a less onerous schedule could generate some cost-savings. Given the possibility of mutual gains, the Fact Finder will recommend that a joint union and management committee be established to consider the full range of alternative work schedules.

Recommendation - The Fact Finder recommends the following contract language:

The work schedule of each bargaining unit employees shall be determined by the Employer. Bargaining unit employees shall be given seventy-two (72) hours notice of any nonemergency work schedule changes whenever such advance notice is practical.

A joint union-management committee shall be established to consider alternative work schedules. It shall consist of two members appointed by the sheriff's office and two members appointed by the president of the union. The committee shall report its findings and conclusions to the sheriff's office and the union's executive board.

2) Article 19 - Hours of Work/Overtime, Section 19.3 (H) - Compensatory

Time in Conjunction with Vacation - The current contract allows compensatory time to be used in conjunction with vacation subject to the "operational needs of the facility." The union proposes language that would require the sheriff's office to grant requests to use compensatory time with vacation. The sheriff's office opposes the union's demand.

Union's Position - The union argues that its demand should be granted. It claims that "because the Employer is never at authorized strength for Corrections Officers, the ability to utilize compensatory time is extremely difficult." (Union Statement, Tab D, page 1) The union states that its proposed language would allow Corrections Officers to have much needed time off. It notes that the language it is seeking is found in the Patrol Officers, Patrol Supervisors, and Corrections Supervisors contracts.

Sheriff's Position - The sheriff's office argues that the union's demand should be rejected. It states that "staffing concerns are always a part of the Employer's decision to approve or disapprove leave time." (Sherriff's Statement, Exhibit B, page 1) It claims that the proposal is "absurd ... as staffing concerns are always a part of the Employer's decision to approve or disapprove the time." (Ibid.)

Analysis - The Fact Finder cannot recommend the union's demand. While he understands that Corrections Officers may sometimes wish to extend their vacation time, the sheriff's office may have to refuse such requests in order to adequately staff the jail. If the

sheriff's office abuses its discretion and refuses to grant compensatory time in conjunction with vacation, the union has the option of challenging the sheriff's office's decision through the grievance procedure.

The fact that the sheriff's office's contracts with three other bargaining units include the language the union seeks does not change the Fact Finders' analysis. The sheriff's office's concerns regarding patrol operations are different from those in running a jail. While the Corrections Officers Supervisors' contract includes the language sought by the union, scheduling a relatively small number of supervisors is less challenging than scheduling the large number of Corrections Officers necessary to run the jail.

Recommendation - The Fact Finder recommends the current contract language.

3) Article 19 - Hours of Work/Overtime, Section 19.8 (A) - Cancellation of Overtime - The current contract has no provision that requires the sheriff's office to notify a Corrections Officer of the cancellation of overtime and no penalty for not providing advance notice. The union seeks to add a sentence requiring the sheriff's office to notify an employee's telephone number of record of the cancellation of the overtime at least one hour prior to the beginning of the shift and to compensate an employee as set forth in Article 21, Section 21.2, Call-In Pay, if it fails to do so. The sheriff's office opposes the union's demand.

Union's Position - The union argues that its proposal should be recommended. It states that under the current contract, the employer has no obligation to notify a Corrections Officer when overtime has been canceled and often does not do so. The union claims that this results in a Corrections Officer reporting for work and then being told to go home.

The union dismisses the sheriff's office's concerns regarding its proposal. It acknowledges that an employee may not answer a telephone call but points out that the sheriff's office is only required to call an employee's telephone number of record. The union also recognizes that the sheriff's office may not know about the cancellation of overtime one hour prior to the start of the shift but claims that "the employee deserves compensation if notice is not given until the last minute because the employee is already dressed and in route and deserves compensation." (Union Statement, Tab D, page 2)

The union maintains that its proposal is not objectionable. It insists that its proposal "speaks to an employer's desire to treat their employees with dignity and respect." (Ibid.) The union claims that since employees must provide two hours of notice of their intent to use sick leave, "it is [not] too much to ask the employer to provide at least one hour notice to employees of a cancellation of scheduled overtime." (Ibid.)

Sheriff's Position - The sheriff's office opposes the union's demand.

Analysis - The union's request that employees receive at least one hour notice of the cancellation of overtime is not unreasonable.

Recommendation - The Fact Finder recommends the following contract language:

If an officer works a mandatory overtime assignment or volunteers to work overtime and the overtime shift is canceled, the officer is to be credited and his/her name shall be moved to the bottom of the overtime list. An officer shall not be forced to work mandatory overtime at any time within the forty-eight (48) hour period prior to the beginning of the overtime post for which he/she has volunteered. When overtime is canceled, the employer must provide at least one (1) hour notice to the officer's phone number of record. In the event the Employer fails to provide the one (1) hour notice, the Employee shall receive compensation as set forth in Section 21.2, Call-In Pay.

4) Article 20 - Wages and Compensation, Sections 20.1- 20.3 - Wage Levels

- The current contract has a three-step wage schedule beginning at \$29,356.34 and reaching a maximum of \$43,059.53 after five years. The parties agree that there will be no wage increase in 2012. The union demands 4% wage increases for 2013 and 2014. The Sheriff's office offers a 3% increase for 2013 and a wage reopener for 2014.

Union's Position - The union argues that its wage proposal should be recommended. It points out that 15 county agencies gave out nearly \$1.2 million in raises. The union notes that the county's raises included 10 county employees controlled by the Board of County Commissioners who received nearly \$50,000 in raises. It claims that "if the county can offer those raises and bonuses, surely it can afford a wage increase for [the Corrections Officers]." (Union Statement, Tab E, page 1)

The union contends that the results of the conciliation for the Patrol Officers and Patrol Supervisors support its wage demands. It indicates that Conciliator Harry Graham awarded no wage increase in 2012 followed by 3% increases in 2013 and 2014. The union states that if the county can finance these increases, it has enough money to fund the wage increase sought by the Corrections Officers. It reports that in 2013 the additional 1% requested by the Corrections Officers will cost the county approximately \$140,000.

The union maintains that its position is also supported by a comparison of its wages to the wages of Corrections Officers in Butler, Clermont, and Warren Counties. It reports that 10-year Corrections Officers in Hamilton County received nearly \$3000 per year less than the next lowest paid Corrections Officers in the comparable counties. The union adds that salaries in the county are "a whopping 8.99% below the area." (Union Statement, Tab E, page 2)

The union argues that the county has the ability to finance its wage demands. It points out that from March to June of 2012, the general fund deficit dropped from \$4.78 million to \$2.58 million and excess expenditures dropped from \$3.26 million to \$1.53 million. The union notes that the year-end balance for the general fund was projected to be \$19.9 million, or 9.8% of the general fund, which is up from \$16.4 million, or 8.1%, in March.

The union contends that the county and the sheriff's office have received some unexpected income and have experienced lower than anticipated expenditures. It indicates that they have received money as a result of a forfeiture by a drug dealer; the collection of unpaid bail bond money; and unspent money from the property reappraisal process. The union observes that as of February of 2012, the mild winter had resulted in \$225,000 of savings.

The union maintains that the Commissioners have several viable options to increase revenue in 2012. It claims that they could end downtown parking subsidies; sell property owned by the county; accept a developer's offer for the jail and lease it back; or put a sales tax increase on the ballot. The union states that any of these measures would help finance its wage demand.

The union argues that the sheriff's office has funds available to use for wage increases. It reports that four funds have balances ranging from \$41,420 to \$2,837,980. The union states that the \$2.8 million in the Law Enforcement Fund can be used for many law enforcement purposes. The union claims that "this money could easily pay for the [requested] wage increase." (Union Statement, Tab E, page 7)

The union contends that the opening of the new casinos makes 2013 look "particularly promising." It reports that the county has already received \$700,000 from only seven weeks of operations. The union claims that beginning in 2013, the city is expected to receive nearly \$10 million per year as its share of the state's receipts from the new casinos.

The union charges that the county has wasted significant amounts of money. It complains that since 1999 the county has paid one law firm \$22.3 million and paid \$263,000 in severance pay when it fired the County Administrator despite his good work reviews and then hired a new Administrator at a salary of \$193,000. It adds that the county paid \$580,000 to an “inclusion consultant.”

The union maintains that the Commissioners must plug the deficit in the fund that pays for the stadiums used by the Bengals and Reds. It states that the .5% sales tax increase approved by the voters to build the stadiums has not been sufficient. The union accuses the Commissioners of contributing to the deficit. It suggests that the sales tax could be raised to 7% or the property tax credit could be reduced.

The union argues that the sheriff’s office has allowed “double-dipping.” It points out that the sheriff’s office had five employees double-dip, earning an average of nearly \$75,000. The union notes that the Chief Deputy retired from his \$97,500 position and was rehired at the same salary plus a pension of \$67,987. It states that seven employees in the sheriff’s office who were rehired since 2009 received at least 87% of their pre-retirement salary despite the Commissioners adopting a policy to prevent county employees from being paid more than 75% of their former salary.

The union contends that the sheriff’s office spends “huge” amounts of money on its two helicopters. It indicates that only one other county owns a helicopter while the other counties take advantage of the availability of the State Highway Patrol’s helicopters. The union complains that the sheriff’s office has used its helicopters to deliver game balls to high school football games. It reports that the annual operating cost of the helicopters exceeded \$228,000 in 2011 and as of May 31, 2012, the cost was \$158,804.

The union maintains that the townships should be forced to pay for the services they receive from the sheriff's office. It acknowledges that sheriff's office developed a plan to have the townships pay for services but complains that the plan does not fully pass the cost on to the townships until 2015. The union claims that the decision of the sheriff's office "has contributed to a \$3.2 million budget shortfall for 2012 through April." (Union Statement, Tab E, page 15)

The union claims that the sheriff's office funds the township patrols through position vacancies. It charges that the sheriff's office "uses money that should be spent on hiring Corrections Officers to fund his Kingdom of Township Patrols." (Ibid.) The union reports that in 2011 the sheriff's office was authorized to have 291 Corrections Officers but by the end of the year had only 265.

The union argues that the economic climate in the county, city, state, and nation is improving. It points out that the unemployment rate in the county has fallen from 10.5% in January 2010 to 8.3% in January 2012. The union notes that the area GDP has risen; manufacturing employment has increased; the housing market has demonstrated strong economic trends; and exports have grown.

The union contends that the county has benefited from being the home for many large companies. It indicates that many of the companies have upgraded their facilities and increased their employment. The union states that Cincinnati has been declared to be the least costly place in the U.S. to do business.

The union maintains that property development is energizing the county. It points out that the \$1 billion Riverfront project will generate substantial jobs and taxes. The union notes that additional developments include stores, hotels, and apartments. It adds that the rejuvenation of hospitals, industry, and schools will also boost the economy.

The union argues that tourism will continue to pump money into the county. It observes that in 2011 conventions in Cincinnati had an impact of \$56.8 million. The union reports that the county hosted the World Choir Games and the national convention of the Fraternal Order of Police.

The union contends that the state economy is strong. It points out that the state has added 111,300 jobs since January 2011 and its emergency fund has increased to \$247 million with a projected surplus of \$552 million at the end of Fiscal Year 2013. The union speculates that this “could mean cash infusions for regional governments.” (Union Statement, Tab E, page 25)

The union maintains that the national economy is also improving. It indicates that the unemployment rate has fallen to a four-year low; mortgage interest rates have been reduced to the lowest levels since the 1950s; and home construction has reached a three-year high. The union adds that other indices of economic health have also improved.

Sheriff's Position - The sheriff's office argues that the Corrections Officers have fared better than other county employees. It points out that in 2008 the Corrections Officers received a 3.5% increase, while non-bargaining unit employees got no increase. The sheriff's office notes that in 2011 the bargaining unit was awarded a 2.9% increase when only one other unit in the county received an increase.

The sheriff's office contends that Hamilton County has had difficult times. It indicates that it has faced four years of budget reductions and has laid off more than 700 employees. The sheriff's office states that “the 2012 budget marks the lowest revenue and expenditure levels in the county since 1998 ... [and] the 2012 General Fund budget is unsustainable for future years.” (Sheriff's Statement, Exhibit B, page 5)

The sheriff's office maintains that it shares in the cost of providing certain patrol services to townships. It indicates that it "is being asked to shoulder a substantial administrative and policy recommendation in 2012 to bill the urban townships for their patrol services." (Ibid.) The sheriff's office complains that despite the County Administrator's recommendation, the Board of County Commissioners voted to approve an additional \$2 million to cover the costs of the patrol during the transition to billing the townships for the services they receive.

The sheriff's office argues that in 2012 the county faces falling revenues. It reports that the \$65 million in expected sales tax revenue will be 3.5% below 2007; property tax receipts will decrease by \$6.3 million from 2011 collections due to the six-year reappraisal; Local Government Fund payments will decrease by 17% or \$5.9 million from 2011; real estate transaction fees will fall by 6.9%, or \$9.2 million from 2011; and interest earnings are estimated to decrease by 11.1% or \$700,000 from 2011. The sheriff's office observes that the 2012 revenue estimates represent a \$42.2 million decrease from 2007 receipts.

The sheriff's office contends that the general fund reserve shows the county's difficult financial position. It points out that the Government Finance Officers Association recommends a reserve equal to two months of regular general fund expenses as a carryover balance. The sheriff's office notes that between 2011 and 2012 the county's general fund balance will fall by \$5.8 million to only 10.2% of general fund expenses. It stresses that this "is just barely over one-month of General Fund Expenses." (Sheriff's Statement, Exhibit B, page 6)

The sheriff's office maintains that any new or additional imposed wage increases require the identification of a funding source. It acknowledges that there was an increase in the budget for the sheriff's office but it claims that it "reflects the reality that the Office could not provide necessary services with the amount allocated in 2011, the transfer of certain staff from the

Indigent Care Fund to the Sheriff, and the increase ordered by the bargaining process.” (Ibid.)
The sheriff’s office states that the increase in the budget is a non-renewable source of revenue.

The sheriff’s office argues that the county has a long term debt obligation that is a “thorn in its side.” It points out that the county increased the sales tax to build stadiums for the Bengals and Reds but the county has not been healthy enough to pay its obligations. The sheriff’s office notes that the county projects a multi-million dollar deficiency in funding and claims that “the deficit is slated to hit in the coming years, resulting in a siphoning of money from the general fund reserves.” (Sheriff’s Statement, Exhibit B, page 7).

The sheriff’s office contends that current budget trends cannot continue. It indicates that as of July 16, 2012, budget projections show general fund revenue to be \$2.58 million or 1.3% less than the 2012 budget. The sheriff’s office states that taking into account the projections of the sheriff’s office and other general fund participants, the general fund balance at the end of 2012 will be \$19.9 million or 9.8% of ongoing expenditures. The sheriff’s office adds that in April 2012 Moody’s changed the county’s outlook to negative due in part to the general fund reserve projections.

The sheriff’s office maintains that the forecast for 2013 is no better. It points out that revenue is anticipated to be \$14.8 million or 7.3% below 2012 budgeted levels. The sheriff’s office notes that expenditures will need to be decreased by approximately \$20 million and it will be expected to reduce its budget by \$3.34 million or 5.8%.

The sheriff’s office rejects the union’s argument that the Commissioners should raise taxes to pay for increases in wages and benefits. It observes that the county sales tax is equal to the sales tax in Claremont and Warren counties and higher than Kentucky and Butler County. The Sheriff’s office reports that in late-2010 the County’s Tax Levy Review Commission found

that a .5% tax increase “would have a negative assessment on the General Fund as it would eliminate the County’s ability to make emergency adjustments and could downgrade the bond rate.” (Sheriff’s Statement, Exhibit B, pages 7-8) It adds that any tax increase would be subject to a voter referendum.

The sheriff’s office dismisses the union’s suggestion that the county could increase its revenue by selling property. It indicates that the county’s options are not as available as reported by the union. The sheriff’s office states that in any event, a one-time sale of assets does not provide the continuing stream of revenue necessary to fund wage and benefit increases which compound over time. The sheriff’s office adds that the same principle applies to the union’s claim that the county should use its reserve fund to pay for wage increases.

The sheriff’s office discounts the union’s suggestion that the county and sheriff’s office should end the shared financing of township patrols. It acknowledges that this idea is worthy of consideration and indicates that it is a priority for 2012. The sheriff’s office indicates, however, that it has been tasked with transitioning the cost of the patrols to the townships but “it is unknown whether the townships ... will be in any position to fund the current patrol levels and staffing levels without the contribution from the county.” (Sheriff’s Statement, Exhibit B, page 8)

The sheriff’s office argues that it has explored the options for generating additional revenue. It emphasizes, however, that “it should not be incumbent on the Fact Finder to judge or impose such considerations on the elected officials of Hamilton County.” (Ibid.)

Analysis - The Fact Finder will recommend that the wages of the Corrections Officers be frozen in 2012 and then increased by 3% in 2013 and 2014. In addition, he will recommend that a fourth step, 2% above the third step, be added to the Corrections Officers’ wage schedule

in 2014. These recommendations are based on the criteria set forth in Section 4117-9-05(K) of the Ohio Administrative Code.

The ability to pay is one of the important statutory criteria governing the fact-finding process. The record establishes that the County has faced a financial crisis resulting from the severe national recession and the substantial cuts in state aid. It also suggests that an economic recovery is underway which will increase sales tax receipts and other County revenue. These facts justify the demand of the sheriff's office for a wage freeze in 2012, which the union has accepted, and it also supports the union's demand for wage increases in both 2013 and 2014.

Another important statutory criterion involves comparisons of the wages of employees in the bargaining unit with employees doing comparable work. In the instant case, the union provided the wages for ten-year Correction Officers in Butler, Clermont, and Warren Counties, all of which are contiguous to Hamilton County. The data indicate that the Corrections Officers in Hamilton County earn significantly less than the Corrections Officers in these nearby counties. This constitutes strong support for the union's wage demands.

Another significant factor is the wage increase achieved by the Patrol Officers and the Patrol Supervisors. While the Conciliator in that case did not discuss the positions of the parties or provide a rationale for his award, he did award a wage freeze for 2012 and 3% wage increases for 2013 and 2014. There is no justification for treating the Corrections Officers any less favorably.

The Fact Finder believes that the Corrections Officers are entitled to a greater increase than the Patrol Officers and Patrol Supervisors. First, the Corrections Officers pay considerably more for health insurance than the enforcement employees. While the Fact Finder understands that the Corrections Officers pay no more for health insurance than the vast majority of County

employees, the most immediate comparison for the Corrections Officers is to the Patrol Officers and Patrol Supervisors.

Second, the Fact Finder's recommendation for an extra increase for the Corrections Officers is also supported by their onerous 6-2 work schedule. While the Fact Finder is not in a position to recommend the union's demand for a 4-2 schedule, he does believe that the Corrections Officers' schedule does support his conclusion that more experienced Corrections Officers are entitled to a wage adjustment. In the longer run, the joint study of alternative schedules, which the Fact Finder has already recommended, may lead to the adoption of a less burdensome schedule that can be implemented at a reasonable cost.

Third, even apart from any equity considerations, the Corrections Officers' wages need to be increased. Unless the sheriff's office addresses the wage issue, the loss of senior Corrections Officers will continue and the efficient and safe operation of the jail will be jeopardized. The County cannot ignore clear market forces.

Recommendation - The Fact Finder recommends the following contract language:

Section 20.1 Effective with the beginning of the pay period that includes January 1, 2012, the annualized wage levels for all bargaining unit employees shall be as follows, and all current employees will be assigned to steps as follows (0%):

<u>Grade</u>	<u>Annual</u>
Corrections Officer First (0-36 months)	\$29,356.34
Corrections Officer Second (37-60 months)	\$33,567.01
Corrections Officer Third (61 months and above)	\$44,351.32

Section 20.2 Effective with the beginning of the pay period that includes January 1, 2013, the annualized wage levels for all bargaining unit employees shall be as follows, and all current employees will be assigned to steps as follows (3%):

<u>Grade</u>	<u>Annual</u>
Corrections Officer First (0-36 months)	\$30,237.03
Corrections Officer Second (37-60 months)	\$34,574.02
Corrections Officer Third (61 months and above)	\$44,352.35

Section 20.3 Effective with the beginning of the pay period that includes January 1, 2014, the annualized wage levels for all bargaining unit employees shall be as follows, and all current employees will be assigned to steps as follows (3%):

<u>Grade</u>	<u>Annual</u>
Corrections Officer First (0-36 months)	\$31,144.14
Corrections Officer Second (37-60 months)	\$35,611.24
Corrections Officer Third (61- 84 months)	\$45,681.86
Corrections Officer Fourth (85 months and above)	\$46,595.50

5) Article 20 - Wages and Compensation, Section 20.4 - Guarantee of

Annual Salary - The current contract states that the listing of annual salaries is not a guarantee of annual earnings. The union wishes to delete this provision. The sheriff's office wishes to retain this language.

Union's Position - The union did not comment on the issue.

Sheriff's Position - The sheriff's office did not comment on the issue.

Analysis - The Fact Finder sees no basis for changing the current contract provision.

Recommendation - The Fact Finder recommends the current contract language.

6) Article 22 - Insurance, Section 22 .1 - Spousal Surcharge - The sheriff's office currently imposes a \$35 per pay period surcharge on a Corrections Officers whose spouse has access to health insurance but fails to enroll. The union seeks to include a provision in the contract barring a spousal surcharge. The sheriff's office opposes the union's demand.

Union's Position - The union argues that its demand is justified. It observes that the enforcement units in the sheriff's office currently pay only \$10 per pay while the Corrections Officers are required to pay \$35 per pay. The union indicates that it wishes to have the language it has proposed or other language that would have the same effect.

Sheriff's Position - The sheriff's office opposes the union's demand. It indicates that when a \$10 per pay spousal surcharge was imposed, enforcement employees were not exempted. The sheriff's office indicates however, that when the county increased the surcharge from \$10 to \$35 per pay period an Arbitrator ruled that it could not increase the enforcement officers surcharge. It claims that the union's proposal is "absolutely different" from the enforcement units' situation.

Analysis - The Fact Finder cannot recommend the adoption of the union's proposal. He understands the Corrections Officers' frustration with having to pay a larger spousal surcharge than the Patrol Officers and Patrol Supervisors. However, all other county employees pay the same surcharge as the Corrections Officers. To grant the union's request would not remedy the inequity. The Fact Finder must leave the union's concern regarding the differences in employee premium contributions and the spousal surcharges to future negotiations.

Recommendation - The Fact Finder recommends that the union's demand for new contract language be denied.

7) Article 22 - Insurance, New Section 22.8 - Percentage Increase in

Premium Contributions - The current contract requires the Corrections Officers to make the same contributions for health, life, and dental plans as non-bargaining unit employees of the Hamilton County Board of Commissioners in classified civil service positions. The union wishes to add new section that would limit the increase in the Corrections Officers' annual increase in health insurance premium contributions to the percentage increase in wages.

Union's Position - The union argues that its demand should be recommended. It points out that the language it seeks has been in the Patrol Officers and Patrol Supervisors contract

since 2003. The union notes that this meant that when wages did not increase in 2009, 2010, and 2011, the Patrol Officers and Patrol Supervisors did not pay more for health insurance while non-enforcement county employees saw significant increases. It reports that as a result, enforcement employees pay \$1020 per year for family coverage under the POS 500 plan while other city employees pay \$6186.84 per year.

The union contends that the difference in health insurance premium contributions has a very significant impact on the Corrections Officers. It observes that the \$5166.84 savings in health insurance premium contributions amounts to a 9% raise for the Patrol Officers and Patrol Supervisors and would amount to a 12% raise for the Corrections Officers.

The union complains that in negotiations with the Patrol Officers and Patrol Supervisors, the sheriff's office did not address this inequity. It points out that when the sheriff's office reached impasse in bargaining for the agreement to be effective January 1, 2012, it did not attempt to change the insurance language. The union states that the sheriff's office "used the incredible insurance benefit as a basis to oppose a wage increase, calling it 'a gold health insurance package.'" (Union Statement, Tab F, page 2)

The union maintains that the sheriff's office cannot argue that it could not live with the same health language in the Corrections Officers' contract. It reports that in 2003, a Conciliator awarded the language at issue to the enforcement officers. The union acknowledges that in 2005 and 2008 the sheriff's office proposed eliminating the language but its demand was rejected by Fact Finders. It stresses, however, that the sheriff's office did not seek the removal of the provision in conciliation in 2005 or 2008 and that in 2011 the sheriff's office agreed to maintain the language even though it went to fact-finding and conciliation.

Sherriff's Position - The sheriff's office argues that the union's demand should be denied. It acknowledges that "several contracts ago a conciliator awarded a cap on insurance contributions in favor of the Sheriff's Office Enforcement Units... [but] since that award, [it] has tried unsuccessfully to remove the language from the Enforcement agreements." (Sheriff's Statement, Exhibit B, page 11)

The sheriff's office contends that it has successfully opposed efforts by non-enforcement bargaining units to add the enforcement officers' health insurance language to their contracts. It observes that "the neutral hearing officers continuously refused to grant this additional benefit, and thereby expand the exception to the rule." (Ibid.) The sheriff's office states that it "fully intends to do what it can within reason to eliminate that cap." (Ibid.) It adds that "in light of the bleak economic reality facing the county at this time, any expansion of the contributions cap beyond the Enforcement exception will cause additional hardship to the county." (Ibid.)

Analysis - While the Fact Finder appreciates the union's complaint regarding the large disparity in required health insurance premium contributions and the inability or unwillingness of the sheriff's office to address its concern, he cannot recommend the union's demand. First, granting the union's demand does not address the existing gap in premium contributions. The proposal only attempts to prevent the difference in the premium contributions between the Corrections Officers and the enforcement employees from widening. Second, granting the union's demand does not reduce the inequity with respect to health insurance premium contributions. It may prevent the difference in premium contributions between the Corrections Officers and the enforcement officers from growing but it would expand the existing inequity with respect to other bargaining units and non-bargaining unit employees. Finally, the Fact Finder has not ignored the union's concern regarding the Corrections Officers' health insurance

contributions. In fact, as indicated above, it is a significant part of the rationale for his recommendation that a fourth step be added to the Corrections Officers' wage schedule.

Recommendation - The Fact Finder recommends that the union's demand for a new provision be denied.

8) Article 23 - Holidays, Section 23.1 - Scheduled Holidays - The current contract lists ten paid holidays. The union wishes to add the day after Thanksgiving to the list of holidays. The sheriff's office opposes the union's demand.

Union's Position - The union argues that its demand should be recommended. It observes that the sheriff's office's other contracts, including Patrol Officers, Patrol Supervisors, and Correction Supervisors, all provide for 11 paid holidays.

Sheriff's Position - The sheriff's office argues that the union's demand should be denied. It observes that the union gave no reason for its proposal "other than some other agreements have [the day after Thanksgiving] as a compensable day." (Sheriff's Statement, Exhibit B, page 13) The sheriff's office complains that the union did not show the "give and take" of negotiations in the other units but wishes to "cherry pick" from the other agreements. It adds that "this is not an economic time to try to improve an already substantial benefit package." (Ibid.)

Analysis - The Fact Finder recommends that the day after Thanksgiving be added to the list of holidays. A comparison of the benefits received by other employees, both internally and externally, is an important criterion pursuant to the Ohio Administrative Code. Such a comparison clearly supports the union's position.

The Fact Finder understands that differences in benefits between bargaining units are sometimes the result of trade-offs made during bargaining. However, it is not enough to suggest that Corrections Officers may have one less holiday than other employees because of such trade-offs. The sheriff's office was obligated to provide evidence and testimony in support of such a claim.

Recommendation - The Fact Finder recommends the following contract language:

Scheduled paid holidays shall be as follows:

New Year's Day	January 1 st
Martin Luther King Day	third Monday in January
Presidents Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4 th
Labor Day	First Monday in September
Columbus Day	Second Monday in October
Veterans Day	November 11 th
Thanksgiving	Fourth Thursday in November
Day after Thanksgiving	Friday Following Thanksgiving
Christmas	December 25 th

9) Article 29 - Uniforms & Equipment, Section 29.7 - Uniform Allowance -

The current contract has a non-accountable \$800 uniform allowance for employees who have completed one year of service. The union seeks to increase the allowance to \$1000. The sheriff's office opposes the increase sought by the union.

Union's Position - The union argues that its demand is justified. It points out that the Corrections Officer Supervisors negotiated an increase to \$1000 during their last negotiations. The union claims that the Corrections Officers have a greater need than supervisors for an increase in the uniform allowance because they are "much more 'hands-on' with inmates." (Union Statement, Tab H, page 1). It complains that when uniform pants are contaminated,

Corrections Officers cannot wash them with their families' laundry, as suggested by the sheriff's office, but must replace the items using their uniform allowance.

Sheriff's Position - The sheriff's office argues that the union's demand should not be recommended. It indicates that Corrections Officers already have a "substantial" allowance and there is no justification for an increase. The sheriff's office states that the union provided "no evidence to suggest that the costs of maintaining uniforms have increased by 25%." (Sherriff's Statement, Exhibit B, page 15). It complains that the union's proposal "is nothing more than a hidden wage increase, which is neither appropriate, nor justified, at this time." (Ibid.)

Analysis - The Fact Finder recommends the union's demand to increase the uniform allowance to \$1000. The allowance for the supervisors was increased to the amount sought by the Corrections Officers and the Fact Finder sees no reason why the Corrections Officers are not entitled to the same increase. The Fact Finder acknowledges that uniform allowances have sometimes become hidden wage increases but that does not alter the fact that the sheriff's office agreed to increase the uniform allowance of the supervisory unit.

Recommendation - The Fact Finder recommends the following contract language:

On the first regularly scheduled payday following May 1 of 2012, employees who have completed more than one (1) year of service in the bargaining unit shall receive the uniform allowance of one thousand dollars (\$800). On the first regularly scheduled payday following May 1 of 2013 and in subsequent years, employees who have completed more than one (1) year of service in the bargaining unit shall receive the uniform allowance of one thousand dollars (\$1000). The payment of a nondeductible uniform allowance is a taxable event under IRS regulations. Payment shall be made by separate check. An employee who completes one (1) year of service in the bargaining unit after May 1 shall, upon completion of the one (1) year service requirement receive a pro-rata uniform allowance of eighty-four dollars (\$84) per full calendar months of service from the date of entry into the unit prior to May 1. An eligible employee who separates from service prior to May 1 of any year shall be entitled upon separation to a pro-rata share of the allowance based upon the number of months of service completed since the previous May 1.

10) Article 31 - Training, Section 31.1 - Training Time - The current contract requires the state to pay for all required training and states that training, including driving to and from training conducted outside of the county, shall be counted as time worked. The union seeks to require the state to pay for C.E.R.T. training; OPOTA training, including firearms qualification; and assignment as an instructor for any training. The sheriff's office opposes the union's demand.

Union's Position - The union argues that its demand should be adopted. It points out that the sheriff's office uses members of the bargaining unit for the transportation of prisoners, hospital runs, county security, the Over-the River Detail, and local disturbances, all of which require OPOTA certification. The union notes that members of the bargaining unit also serve as instructors, including in defensive tactics, transportation, and CPR. It claims that "it is only fair that the Employer pay to maintain certification and pay for the time as an instructor." (Union Statement, Tab I, page 1)

The union contends that other employees have the benefit it is seeking. It indicates that the Corrections Officers Supervisors have the language it is seeking in their contract. The union adds that members of the bargaining unit have been allowed to receive OPOTA training on duty but only if they are assigned to the third shift.

The union rejects the sheriff's office's concern that its proposal would require it to pay for members to go through the entire Police Academy. It states that its proposal applies only to the annual OPOTA mandated classes and updates after initial certification. The union indicates that the interpretation of the language it has proposed would be consistent with the language in the Corrections Supervisors' contract.

Sheriff's Position - The sheriff's office argues that the union's demand should be rejected. It complains that "once again, the Union has asked for more, solely because the language appears in other contracts." (Sheriff's Statement, Exhibit B, page 18) The sheriff's office states that the training the union has proposed, includes training that is not mandatory for Corrections Officers but is mandatory for enforcement officers. It claims that the union did not provide sufficient evidence to show that its proposal should be adopted.

Analysis - The Fact Finder believes that OPOTA certification is beneficial to both the Corrections Officers and the sheriff's office. Employees who have OPOTA certification are able to work extra duty assignments at attractive rates and also can apply for other jobs in the sheriff's office and other jurisdictions where OPOTA certification is required. At the same time, the sheriff's office benefits from being able to assign the Corrections Officers to tasks that require OPOTA certification.

The Fact Finder recognizes that the Corrections Officers Supervisors' contract includes the language that allows them to get updated OPOTA training at the expense of the Sheriff's office. However, the duties and responsibilities of the Corrections Officers and their supervisors are not the same. In addition, even though the specific duties of the supervisors may not require them to have OPOTA certification, it is not unreasonable for the Sheriff's office to wish them to have more than the minimum amount of training required.

The Fact Finder does not believe that the sheriff's office should require Corrections Officers to pay for training that they need to perform their jobs. The difficulty is that while some Corrections Officers are assigned daily to tasks requiring OPOTA certification, there are others who are assigned to such duties less frequently. On that basis, the Fact Finder will recommend

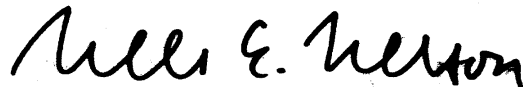
that Corrections Officers who are regularly assigned to duties requiring OPOTA certification be provided with the necessary training by the sheriff's office.

Recommendation - The Fact Finder recommends the following contract language:

All training required of, and authorized for, an employee by the Employer (including C. E. R. T. training, OPOTA training, including firearms qualification, and assignment as an instructor for any training) shall be paid for by the Employer. All such required and authorized training shall be counted as time worked, including driving to and from training sites located outside of Hamilton County. On multiple-day training sessions where the employee has been authorized by the Employer to remain at or near the training site overnight, the days of training which do not require travel to the site from Hamilton County or to Hamilton County from the site shall be counted as regular workdays, not to exceed eight hours.

This section shall apply to bargaining unit employees who are regularly assigned to a post requiring them to be a certified police officer.

12) Tentative Agreements - The Fact Finder recommends that the the tentative agreements reached by the parties be adopted.



Nels E. Nelson
Fact Finder

October 11, 2012
Russell Township
Geauga county, Ohio