

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding Between

Teamsters Local No. 92

Employee Organization

Case Nos. 12-MED-02-0144

And

Tuscarawas County Sheriff

Fact-finder: Jerry B. Sellman

Date of Report: September 13, 2012

The Employer

FACT-FINDER'S REPORT AND RECOMMENDATION

APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:

Susan D. Jansen, Esq. – Attorney with Doll, Jansen & Ford, representing the Union

FOR THE EMPLOYER:

Michael L. Seyer – Account Manager, Clemans, Nelson & Associates, Inc. representing the Employer.

INTRODUCTION

This matter concerns a Fact-finding proceeding between the Tuscarawas County Sheriff (hereinafter referred to as the “Employer” or the “Sheriff”) and Teamsters Local 92 (hereinafter referred to as the “Union”). The State Employment Relations Board (SERB) duly appointed the undersigned as Fact-Finder in this matter on June 13, 2012. A Fact-finding hearing was scheduled and commenced on August 14, 2012, at which time the Fact-finder invited the parties to enter into mediation pursuant to the Ohio Administrative Code and the Policies of SERB in an effort to find consensus on all remaining disputed provisions of the new Collective Bargaining Agreement. The initial unresolved issues were as follows:

- 1) Article 3 - Management Rights
- 2) Article 8 – Dues Reduction
- 3) Article 9- Disciplinary Procedure
- 4) Article 10 – Filling of Positions
- 5) Article 12- Seniority
- 6) Article 14 – Hours of Work/Overtime
- 7) Article 16 - Personnel Records
- 8) Article 23 - Vacation
- 9) Article 24 - Sick Leave
- 10) Article 25 - Conversion of Unused Sick Leave
- 11) Article 27 – Holidays
- 12) Article 28 - Hospitalization
- 13) Article 29 - Wages
- 14) Article 30 – Longevity
- 15) Article 31 – Uniform Allowance
- 16) Article 34 – Shift Preference
- 17) Article 36 - Duration

The Parties engaged in productive discussions for an entire day, but were unable to find consensus on all major issues. As a result, a Fact-finding hearing was set for August 29, 2012, at which time some additional issues were resolved, but the parties were unable to find consensus on seven issues and the hearing commenced.

The open issues identified by both parties included:

- 1) Article 14 – Hours of Work/Overtime
- 2) Article 27 – Holidays
- 3) Article 29 - Wages
- 4) Article 30 – Longevity
- 5) Article 31 – Uniform Allowance
- 6) Article 34 – Shift Preference
- 7) Article 36 - Duration

The Fact-finding proceeding was conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of the State Employment Relations Board, as amended. During the Fact-finding proceeding, this Fact-finder provided the parties the opportunity to present arguments and evidence in support of their respective positions on the issues remaining for this Fact-finder's consideration. The parties waived the taking of a transcript.

In making the recommendations in this report, consideration was given to all reliable evidence presented relevant to the outstanding issue before him and consideration was given to the following criteria listed in Rule 4117-9-05 (K) of the State Employment Relations Board:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interest and welfare of the public, 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;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in public service or in private employment.

I. BACKGROUND

Tuscarawas County is located in the eastern part of the state. According to the 2010 census, it has a population of 92,582, which is an increase of 1.8% from 90,914 in 2000. The Tuscarawas County Sheriff's Department is divided into divisions for the uniformed personnel. The division subject to this proceeding is the Jail Division consisting of Corrections Officers. The Jail Division is divided into three shifts, twenty-four hours a day with each shift commanded by a Sergeant.

The Union became the certified exclusive bargaining representative for all employees in the classification of Correction Officers employed by the Tuscarawas County Sheriff on February 13, 2012. There are currently 21 employees in the unit. Prior to that certification, the Correction Officers had been represented by the Fraternal Order of Police/Ohio Labor Council ("FOP/OLC"). The Corrections Officers were included in a collective bargaining agreement with the Road Patrol Officers, Process Servers and Sergeants in a collective bargaining agreement with an effective date of January 1, 2009 through December 31, 2011.

In fashioning a new collective bargaining agreement, the parties used the agreement between the Employer and the FOP/OLC dated January 1, 2009 through December 31, 2011 as the template for many of their proposals. As a result, where reference is made in this Report to "current language", such reference is in regard to language agreed to by the Corrections Officers and the Employer in their expired Collective Bargaining Agreement.

The Employer is currently party to a contract with the FOP/OLC on behalf of the Road Patrol, Process Servers, Sergeants, and Detectives. This contract has an effective date of January 1, 2012 through December 31, 2014. The Sheriff's Office is also party to another contract with the FOP/OLC representing the 911 Telecommunicators, which has an effective

date through September 20, 2011.

Both parties relied upon internal and external comparables to support their positions. The Union compared the wages and benefits of the Corrections Officers in Tuscarawas County to corrections officers (and/or deputies who perform the same work as corrections officers) in Belmont, Columbiana, Jefferson, Knox, Muskingum, and Wayne counties. The Union indicated that it surveyed all those counties within a two (2) county range of Tuscarawas County and with a population 35,000 greater than and less than Tuscarawas County's population of 92,582. The Employer compared the wages and benefits of the Corrections Officers to those of other employees in the County, as well as those wages and benefits of officers in Carroll, Coshocton, Holmes, Jefferson, Portage and Stark Counties. The Employer indicates that these contingent counties are more representative than the counties cited by the Union which are not.

The parties referred to wages and benefits of other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved, in certain contiguous counties as set forth on the next page.

The 19 Double Contiguous Counties to Tuscarawas County
In Population Order (located in SERB Regions 1, 4, 6 and 8)

	<i>Counties</i>	<i>SERB</i>	<i>Population</i>	<i>Sq. Miles</i>	<i>Housing</i>	<i>Occupied</i>	<i>Vacant</i>
1	Summit	1	541,781	413	245,109	222,781	22,328
2	Stark	1	375,586	576	165,215	151,089	14,126
3	Mahoning	8	238,823	415	111,833	98,712	13,121
4	Licking	4	166,492	687	69,291	63,989	5,302
5	Portage	1	161,419	492	67,472	62,222	5,250
6	Wayne	1	114,520	555	45,847	42,638	3,209
7	Columbiana	8	107,841	532	47,088	42,683	4,405
8	Tuscarawas	1	92,582	568	40,206	36,965	3,241
9	Muskingum	6	86,074	665	38,074	34,271	3,803
10	Belmont	6	70,400	537	32,452	28,679	3,773
11	Jefferson	8	69,709	410	32,826	29,109	3,717
12	Knox	4	60,921	527	25,118	22,607	2,511
13	Ashland	1	53,139	424	22,141	20,196	1,945
14	Holmes	1	42,366	423	13,666	12,554	1,112
15	Guernsey	6	40,087	522	19,193	16,210	2,983
16	Coshocton	1	36,901	564	16,545	14,658	1,887
17	Carroll	1	28,836	395	13,698	11,385	2,313
18	Harrison	1	15,864	404	8,170	6,526	1,644
19	Noble	6	14,645	399	6,053	4,852	1,201

Note: There are 88 Ohio Counties

IBT 92 Comparables: Double contiguous counties with populations +/- 35,000 of Tuscarawas.

County Comparables: SERB Region 1 only; two with populations of 55,681 to 63,746 less and two with populations of 68,837 to 283,004 more than Tuscarawas.

II. UNRESOLVED ISSUES

The following discussion and resulting recommendation for each of the unresolved issues has been set forth in consideration of all of the proposals taken as a whole in light of the criteria in Rule 4117-9-05 (K) of the State Employment Relations Board as set forth above.

The parties and their representatives are to be commended for bargaining, negotiating and successfully mediating the multiple provisions of this new collective bargaining agreement. The parties initially brought seventeen (17) Articles to Fact-finding and through good faith mediation were able to resolve all but seven (7) Articles of the new Agreement. While mutual agreement was reached on most, including the various tentative agreements that were signed prior to Fact-finding, a final agreement could not be reached on a wage package that encompassed several articles. The following findings and recommendations are based upon the evidence, testimony and arguments presented at the Fact-finding hearing.

The issues presented regarding Hours of Work and Overtime, Holidays, Longevity, Uniform Allowance, Shift Preferences, Wages and Duration all have an impact on a bargaining unit employee's compensation package and the Employer's out-of-pocket expenses. Since one cannot be considered without the other, it was not surprising that these issues remained for resolution. Vacation, Sick Leave, Conversion of Unused Sick Leave, Holidays and Hospitalization issues could have been included in the mix, but the parties were able to agree on terms relative to those issues. In recommending provisions for the parties' consideration, I have examined all of these issues with regard to their impact on each of the issues presented.

In addition to the total economic impact of each Article, I have also considered internal and external comparables, as well as provisions agreed to by other bargaining unit employees within the Sheriff's Office and the County. While consistency is not a requirement, variations

from wages packages given to other employees in a governmental unit (here the County and/or Sheriff's Office) need to be justified in order to prevent the creation of bad morale, which is not in the best interest of the public welfare nor supportive of good working conditions.

ARTICLE 14 – HOURS OF WORK/OVERTIME

The Union's Position

The Union proposes to increase the maximum of compensatory time hours an Employee can accrue and use from 40 hours to 240 hours. The Union also proposes to add language governing the use of compensatory time such that if a request is made to use compensatory time not less than seven (7) days prior to the time of usage, the Employer will act on the request not less than five (5) days prior to the time of usage. If approved, the compensatory time may not thereafter be denied. In the event a request is made less than seven (7) days prior to the time of usage, the Employer may deny the use of compensatory time because of insufficient staffing.

The Union argues that its current accrual cap of 40 hours is among the lowest of any comparable county. Wayne County permits 60 hours of compensatory time accrual, Columbiana and Muskingum permit 160 and Jefferson and Knox permit 240; the average cap, excluding the compensation cap time in Tuscarawas County, is 132 hours. Further, each of the contracts in the counties contains language similar to that proposed by the Union governing the request and use of compensatory time. The bargaining unit employees previously were permitted to accrue compensatory time in excess of forty (40) hours as long as they used it and never carried a balance in excess of forty (40) hours. The current regulation requires that employees may not accrue more than a total of forty (40) hours annually. The Deputies currently get 80 hours. Further, it is only fair that the Employer notify an employee in advance if a request

to use the comp time is denied. Five days is reasonable.

The Employer's Position

The Employer proposes to increase the maximum of compensatory time hours an Employee can accrue and use from 40 hours to 80 hours and to require that the granting of requested compensatory time be subject to operational needs of the Sheriff's Office. In consideration of the increase, it wants additional language in the contract to reflect that no more than two employees working the same shift will be granted vacation, compensatory time, and/or personal leave at/in a similar time period.

The Employer recognizes that an increase in the maximum of compensatory time hours an employee can accrue is warranted, but that increase should be consistent with the hours granted to the Deputies, and to other employees under contract in the County, to place all employees on a fair and equitable footing. The increase requested by the Union is not justified and would be inconsistent with all the other contracts.

Discussion, Findings and Recommendation

In regard to the proposals for Article 14, Hours of Work/Overtime, increasing the maximum of compensatory time hours an Employee can accrue and use from the current 40 hours to 80 hours is reasonable. Such an increase is consistent with the other bargaining units in the Sheriff's Office and brings the bargaining unit more in line with surrounding counties. With this increase, and the current size of the bargaining unit, the request of the Employer to limit the number of employees working the same shift that can take vacation, compensatory or personal leave time to no more than two is also reasonable. Without some limitation, the operational needs of the Sheriff's Office could be left unfulfilled and such would not be in the best interest of the public. While the Union seeks a provision that would limit the Employer's ability to deny the

use of compensatory time if a request is made less than seven days prior to the time of usage and action on such request is not taken within five days prior to usage, the Fact-finder sees no reason for the adoption of such a provision. This provision is not contained in other internal or external bargaining agreements and the Union has not demonstrated that the issue has been a problem with the bargaining unit in the past. Without some justification for this new provision, it should not be included in the new agreement.

Recommendation: Article 14 – Hours of Work/Overtime

It is recommended that the maximum of compensatory time hours an Employee can accrue and use be increased to 80 hours; that the language requested of the Employer to limit the number of employees working the same shift that can take vacation, compensatory or personal leave time to two be included in this Article be incorporated in the Agreement; and that the Union’s proposal for new language that would limit the Employer’s ability to deny the use of compensatory time if a request is made less than seven days prior to the time of usage and action on such request is not taken within five days prior to usage be rejected. (See Appendix A)

ARTICLE 27 – HOLIDAYS

The Union's Position

The Union proposes that an employee who works overtime on a holiday shall be paid at two times their straight time hourly rate for all overtime hours worked in addition to the holiday pay. The Union argues that employees in other comparable counties have such a provision when they are required to work on a holiday. Columbiana County provides for two and one-half (2-1/2) times their usual rate of pay for working on holidays.

The Employer's Position

The Employer proposes current contract language, which pays an employee 1.5x the hourly rate of pay for all hours worked on Holidays, in addition to holiday pay. This provision has been in the contract for twenty-five years and is consistent with the Deputies' and Sergeants' contracts, as well as with all other groups in the County.

Discussion, Findings and Recommendation

While the Union seeks to increase the rate at which overtime on holidays is paid from 1 ½ to 2 times the straight time hourly rate in Article 27, such a provision is not consistent with holiday pay provisions in all other contracts with the Sheriff or the County. Comparable data submitted by the Union and the Employer show that most other jurisdictions pay similar to the Employer, i.e., 1.5 times hours worked on a holiday, plus eight hours holiday pay. Only Belmont County pays 2 times the hourly rate if the employee works on Christmas, New Year 's Day, July 4th or Thanksgiving. It must be concluded that the Holiday Pay provisions as reflected in the parties last collective bargaining agreement are comparable to Holiday Pay provisions in collective bargaining agreements of other public and private employees doing comparable work,

giving consideration to factors peculiar to the area and classification involved. There is no justification for changing prior language regarding Holiday Pay and current language submitted by the Employer is recommended.

Recommendation: Article 27 - Holidays

It is recommended that the current language contained in ARTICLE 27 of the contract remain the same for each year in the new three year agreement.

ARTICLE 29 – WAGES

The Union's Position

The Union proposes that a \$.50 increase be added to the bargaining unit employees' base rate effective each January 1, 2012, January 1, 2013, and January 1, 2014. The Union also proposes in addition to the \$.50 increase added to the base rate each year of the contract, employees will also receive a 1.5% increase added to the base rate effective January 1, 2012, a 1% increase added to the base rate effective January 1, 2013, and a 1% increase added to the base rate effective January 1, 2014. The Union also proposes to provide for employees who work the A shift an additional \$.50 added to their base rate of pay; employees who are assigned the C shift will receive an additional \$.25 added to their base rate of pay.

The Union seeks the \$.50 equity adjustment increase in each year of the contract to close the gap between what the Sergeants earn and what the corrections officers earn, as well as bring them closer to what corrections officers in other jurisdictions are earning.

In support of its proposal for the annual wage increase, the Union argues that counterparts of the Corrections Officers in comparable counties are paid 2.3% higher after three

(3) years of employment, and at the top pay level, bargaining unit employees are paid 10.6% less than average.

The following analysis of comparable wages was submitted by the Union.

Corrections Officer / Jailer (Deputy) Hourly Wage Rates
 Double-contiguous Ohio Counties with populations +/- 35,000 of Tuscarawas County

<i>Comparison Ohio Counties (County Seat)</i>	<i>Entry Wage</i>	<i>Wage @ 3 Years</i>	<i>Top Wage</i>
Belmont County <i>(St. Clairsville)</i> Effective 1-1-12	\$15.23	\$15.23 <i>(Entry)</i>	\$15.58 ¹ <i>(5 Years)</i>
Columbiana County <i>(Lisbon)</i> Effective 1-1-12	\$14.75	\$20.03	\$21.25 <i>(5 Years)</i>
Jefferson County <i>(Steubenville)</i> Effective 5-10-12	\$13.50	\$13.50 <i>(Entry)</i>	\$13.70 ¹ <i>(5 Years)</i>
Knox County <i>(Mount Vernon)</i> Effective 1-1-12	\$17.72	\$19.65	\$20.76 <i>(5 Years)</i>
Muskingum County <i>(Zanesville)</i> Effective 1-1-12	\$15.03	\$18.96	\$21.66 <i>(4 Years)</i>
Tuscarawas County <i>(New Philadelphia)</i> Expired 12-31-11	\$15.38	\$17.26	\$17.26 <i>(3 Years)</i>
Wayne County <i>(Wooster)</i> Effective 1-1-12	\$15.50	\$18.54	\$21.56 <i>(6 Years)</i>
	<i>Entry Wage</i>	<i>Wage @ 3 Years</i>	<i>Top Wage</i>
Number of Counties Averaged of 6:	6	6	6
<i>Average of County Sheriff Offices: (excluding Tuscarawas Co. SO)</i>	\$15.29	\$17.65	\$19.09 <i>(5 Years)</i>
Tuscarawas County SO:	\$15.37	\$17.26	\$17.26 <i>(3 Years)</i>
The Difference:	+ 8 ¢	- 39 ¢	- \$1.83
	+ 0.05 %	- 2.3 %	- 10.6 %
County Ranking:	3 rd of 7	5 th of 7	4 th of 7
Total:	\$91.73	\$105.91	\$114.51

On an internal comparison, the jail Sergeants are earning \$20.80 after three years and the Deputies are earning \$19.12 after three years.

The Employer has the ability to pay the increases sought. At the end of June 2012, the Jail Operations Fund reflected that income for 2012 exceeded expenses by \$674,526 compared to income exceeding expenses by \$369,518 for the same period in 2011. For the year 2012, revenues were up \$260,000 year to date and expenses were down \$44,000 when compared to the prior year. The Jail Operations Fund Balance was \$53, 907 as of December 31, 2011, but had increased to \$726,433 as of June 30, 2012. Much of the surplus for 2012 has resulted from a reduction in force of Corrections Officers that the County has not replaced. The Union points out that the County Commissions, in a press release in 2011, indicated that they had budgeted sufficient funds to maintain current staffing to provide efficient service to the public, yet the number of Corrections dwindled from 27 employees to 21 employees.

The bargaining unit employees are justified in receiving a shift differential payment for working on shifts other than the day shift.

The FOP/OLC bargaining units received a 1.5% increase January 1, 2012, a 1% increase January 1, 2013, and a 1% increase effective January 1, 2014. Even though the Corrections Officers workload has increased, they are only asking for the same increase. While the road patrol classification has increased by one (1) additional deputy since January, 2011, the corrections officer classification has decreased by six (6) employees.

The Employer's Position

The Employer proposes an equity adjustment of \$.10 to be added to the employees' base rate effective upon execution of the agreement and a \$.10 increase to the employee's base salary on each anniversary date of the agreement. In place of any retroactivity, the Employer proposes a lump sum payment for each employee in the amount of 1.5% times the regular hours worked

from January 1, 2012 through the end of August, 2012, calculated on a forty hour work week at straight time for hours worked. To be eligible for the lump sum payment, an employee must be currently employed by the Employer and have worked for at least six months at the Sheriff's Office. In addition, the Employer proposes to increase the employees' wages by 1.5% in the first full pay period effective upon execution of the agreement, 1% effective upon the first anniversary date of the agreement and 1% upon the second anniversary of the agreement.

The Employer argues that the contiguous counties of Carroll, Coshocton, Holmes, Portage and Stark provide better comparable wage comparisons than those selected by the Union. The Corrections Officers fare well in comparison to corrections officers in other counties. While the top corrections officers in Stark County are paid \$42,057 compared to the proposed rate of \$36,000 under the Employer's proposal, Stark County has 190 corrections officers compared to Tuscarawas' 21. While correction officers in Coshocton County make \$37, 689, these officers must pay 15% of their health care costs, which this bargaining unit does not have to do. This bargaining unit is paid in the middle range of all comparables when all of the contiguous counties are examined.

The Employer initially was unwilling to give the bargaining unit employees any "equity adjustment," particularly since none of the other bargaining units in the Sheriff's Office enjoyed such an increase. In order to make some concessions to the Union the Employer changed its position and is offering a \$.10 equity adjustment each year of the contract to bring this bargaining unit more in parity with the Sergeants, although the Union's request for a \$.50 increase is unjustified in light of the overall increase in wages it is willing to give the Corrections Officers. While the Union seems to argue that the members of this bargaining unit should be paid

the same as the Sergeants, the Sergeants perform different duties.

The members of this bargaining unit received 3%, 2.5% and 2.5% wage increases under the past collective bargaining agreement. With the increase from the “equity adjustment” and the increase in proposed wages, they will move up in wages and benefits compared to their counterparts in other counties.

The Employer opposes any shift differential pay primarily because the employees are already permitted to select their shift by seniority. There is, therefore, no need to provide for any additional compensation for working on any particular shift.

The Employer is not arguing that it has an inability to pay, but asserts that the Corrections Officers are paid well on a comparative basis. The proposal by the Employer is within its budget and any additional funds expended, as sought by the Union, will create fiscal irresponsibility. While the Union cites certain fund balances at given time of the year, the Fact-finder must keep in mind that the surplus at the end of any given year is necessary to pay the first quarter expenses of the next year while budgets are set and tax revenues catch up with semi-annual tax bills to residents. Where the Union cites a fund balance of \$726,433 as of June 30, 2012, the fund balance is \$424,693 as of August 31, 2012 and dwindling as the year progresses. This shows the necessity to examine year-end fund balances, since revenues fluctuate throughout the year.

Discussion, Findings and Recommendation

When considering the appropriate wage rate to be paid, consideration must be given to internal and external comparisons, consistency of a wage and benefit package offered and given to employees by the public employer in the same governmental sector, the total wage and benefit package taken as a whole and the impact of those wages in light of the interest and welfare of the

public. It is clear from the wage comparables presented by both parties that the Corrections Officers are currently being paid in the middle range of wages; not at the top and not at the bottom. It is also clear that the bargaining unit employees are deserving of a wage increase to keep up with the corrections officers in other jurisdictions and move forward as economically as possible. Both parties are agreeable to the 1.5%, 1% and 1% increases over the three year duration of the contract; they differ on any “equity adjustments” and shift differential payments. The Fact-finder recommends a \$.10 equity adjustment for each year of the contract, a 1.5% commencing the first year of the contract, a 1% increase in the second year of the contract and a 1% increase in the third year of the contract, with no provision for any shift differential.

The equity adjustment, along with the recommended wage increase, will move the bargaining unit members forward (without losing any ground) and be in sync with the wage increases given to other bargaining units working in the Sheriff’s department. When this package is considered in light of the increase in compensatory hours an employee can accrue, the increased uniform allowance recommended, the retroactive wage recommendation, the already agreed to cap on insurance premium contributions, the wage increases in the prior years, and a reasonable analysis of the jail operations budget, it is a fair proposal for both the Union and the Employer.

The Union’s representation made a cogent argument regarding what is perceived to be an upward trend in the Sheriff’s budget, but caution must be exercised in predicting future revenues and expenses. The Union is correct that as of June 2012 revenues are up and expenses are down from 2011, but several other factors must be considered. As pointed out by the Employer, by the end of August the Fund Balance was already declining and the Fund Balance by the end of the year will predictably be less. The Fund Balance at the end of 2011 was \$53,907. With currently

monthly expenses at the jail averaging over \$200,000 per month, this reserve is not much to pay expenses in the first two months of the year, which is what the carry-over is designed to do. The Fund Balance at the end of the year is not a surplus, but a carry-over for expenses at the beginning of the year. It would be prudent for the carry-over to be much larger, which it probably will be.

Bargaining unit employees complained that they were working a lot of overtime due to a reduction in the number of Corrections Officers. The Union argued that the Employer was thereby saving money, which money could be used to pay the increases sought. As of the date of the hearing, the Employer had already hired additional corrections officers and indicated its intent to increase the numbers from the 19-21 in 2011 to 26 in 2012. The bargaining unit members must keep in mind that when the additional employees are hired, they will get relief from the overtime requirements, but the Employer will also have increased wages and benefits to pay the new hires.

In addition to the increased wages and benefits to be paid to new hires, the Employer has already agreed to wage increases identical to those offered to the Union here: 1.5%, 1% and 1%. Those increases are retroactive to the beginning of the year and the Fact-finder is recommending the same for the Corrections Officers. When these overall increases are factored into the Sheriff's budget, any upward trend in fund balances will likely be diminished.

The Fact-finder does not recommend any shift differential, for he agrees with the Employer that the ability to select an appropriate shift overrides a need for the existence of paying a shift differential.

Recommendation: Article 29 – Wages

It is recommended that the base wage rate of the bargaining unit members shall be increased by \$.10 effective each January 1, 2012, January 1, 2013, and January 1, 2014; that in addition to the \$.10 increase added to the base rate each year of the contract, employees will also receive a 1.5% increase added to the base rate effective January 1, 2012, a 1% increase added to the base rate effective January 1, 2013, and a 1% increase added to the base rate effective January 1, 2014.

ARTICLE - 30 LONGEVITY

The Union's Position

The Union proposes to increase longevity pay beginning with the 10th year from the current \$400 to \$500, after 15 years from the current \$550 to \$600, after 20 years from the current \$750 to \$800 and to add an additional increment of longevity pay after twenty-five years of service in the amount of \$1,000. The Union argues that the bargaining unit employees are the lowest paid with respect to longevity pay among their counterparts in comparable counties. It admits that the bargaining unit is paid consistent with other internal groups, such as the Deputies and Sergeants, but such is not the case when compared to corrections officers or deputies performing correction officers' work in the surrounding counties.

The Employer's Position

The Employer proposes to maintain current contract language. The longevity pay of the Corrections Officers is the same as other bargaining units within the Sheriff's Office and is higher than longevity pay of non-bargaining unit employees in the County. If longevity pay is

increased for this unit it will create a whipsaw effect in the other units and sooner or later the Sheriff's Office will be bargaining against itself. The Employer only seeks internal parity.

Discussion, Findings and Recommendation

The evidence shows that this bargaining unit receives longevity pay increases consistent with other bargaining units within Tuscarawas County and is higher than that received by non-bargaining groups within the County. While counterparts in other surrounding counties may receive more, the Fact-finder sees no justification for increasing longevity pay in light of other increases which are recommended in this Report and Recommendation.

Recommendation: Article 30 – Longevity Pay

It is recommended that the current language contained in ARTICLE 30 of the contract remain the same for each year in the new three year agreement.

ARTICLE - 31 UNIFORM ALLOWANCE

The Union's Position

The Union proposes to increase the uniform allowance from the current rate of \$600 per year to \$800 in 2012, 2013 and 2014. The Union argues that the bargaining unit is among the lowest when compared to their peers in comparable counties. Corrections officers in Belmont and Columbiana counties receive a \$700 per year uniform allowance. While it is difficult to determine exactly how much corrections officers in Knox and Muskingum counties receive because they are on a Quartermaster program, under such a program it is more than the \$600 received by this bargaining unit. Of particular comparison, the Sergeants assigned to the jail in Tuscarawas County have a uniform identical to that of the correction officers and they

receive \$800 per year in uniform allowance. The bargaining unit seeks parity with the other units.

The Employer's Position

The Employer proposes to increase the uniform allowance from the current \$600 per year by \$50 each year for each year of the contract. The Employer argues that this is adequate to pay for the uniforms of the Corrections Officers and in three years the Corrections Officers will only be paid \$50 less than the Sergeants. While the Sergeants in the jail are paid a higher uniform allowance, in order to qualify as a Sergeant the individuals being promoted must be a certified peace officer, which means that they must carry additional accessories on their belts.

Discussion, Findings and Recommendation

The increase sought by the Union to reach parity with the jail Sergeants is reasonable. While the Employer seeks consistency of language in all of the collective bargaining agreements with the Sheriff's Office on most points, it does not do so here. The Union makes a compelling argument that the Corrections Officers wear virtually the same uniforms as the jail Sergeants and they are considered involved in medium duty, while the Sergeants are classified in the light duty category. For consistency of agreements and morale, the Uniform allowance should be increased to match that of the Sergeants, which cost is minimal to the Employer.

Recommendation: Article 31 - Uniforms

It is recommended that ARTICLE 31 be amended to increase the uniform allowance to \$800 for each year of the agreement.

ARTICLE – 34 SHIFT PREFERENCE

The Union's Position

Language contained in the Correction Officers' prior collective bargaining agreement provided that every six (6) months, in November and May, employees may submit a written application to their division commander indicating their first and second preference for shift assignment. The Union proposes to increase the shift assignment selection to every three months.

Currently employees are granted their preferred shift on the basis of seniority. However, the Employer retains discretion to temporarily assign employees to a shift other than their preferred shift, with a BFOQ exception to the thirty (30) day period described in Section 5. The Union also proposes to eliminate Section 5 of Article 34, which would alter the Employer's right to transfer employees.

Section 6 of Article 34 currently provides that nothing in this article (Article 34) shall be interpreted to be a waiver of any management right nor shall it be interpreted to create a minimum staffing level. The Union proposes to eliminate this provision as it calls into question the limitations set forth in Article 34. Furthermore, the Management Rights section, Article 3, already clearly states that unless specifically limited in the agreement, Management retains its management rights.

Finally, the Union proposes to increase minimum staffing to four (4) corrections officers on the midnight shift (11 p.m. to 7 a.m.), five (5) corrections officers on the afternoon shift (3 p.m. to 11 p.m.) and six (6) corrections officers on the day shift (7 a.m. to 3 p.m.) The minimum staffing level used to be five (5) on the midnight shift, six (6) on the afternoon shift and seven (7) on the day shift.

The Employer's Position

The Employer rejects the proposal as a permissive subject of bargaining. It argues that this Employee Organization is negotiating its first contract for the Corrections Officers and the Fact-finder does not have jurisdiction to consider the proposals of the Union. In support of its position, it submits two Fact-finding Reports which it claims supports its position. In *Tuscarawas County and Fraternal Order of Police, Lodge No. 4, 99-MED-09-0776* (Feldman, 2000), Fact-finder Feldman rejected the Union's proposal to add a shift preference article to the bargaining agreement by stating the following:

“The fact-finder finds that the rejection of shift preference by the employer is proper. In law enforcement it is necessary that the shift or shifts be determined by the commanding officer and not by selection through use of seniority. Better law enforcement is made through the employer's selection rather than the seniority selection.”

In *Multi-County Juvenile Attention System and AFSCME, Ohio Council 8, Local 3987, 2008-MED-03-0364, 0365* (Wallace-Curry 2009), the Fact-finder rejected the Union's proposal to add a youth leader to oversee the youth when they are working in the kitchen for instruction or community. Fact-finder Wallace-Curry stated:

“Although the Union argues that these are working conditions and matters of compensation, they are an attempt to determine staffing levels, both in numbers and in personnel. As such, they are not a mandatory subject of bargaining.”

Even if the Fact-finder were to consider some of the proposals of the Union, the elimination of language in the contract limiting the Employer's right to temporarily assign employees (Section 5), removing the management rights provision (Section 6) and adding a new provision to increase staffing levels infringes upon management rights, is permissive and cannot be considered by the Fact-finder.

Discussion, Findings and Recommendation

The argument of the Employer that the submission of a provision regarding Shift Preference is a permissive topic of bargaining and therefore outside the jurisdiction of the Fact-finder is not supported by law under the facts of this case. The authority cited by the Employer in *Tuscarawas County and Fraternal Order of Police, Lodge No. 4*, 99-MED-09-0776 (Feldman, 2000) and *Multi-County Juvenile Attention System and AFSCME, Ohio Council 8, Local 3987*, 2008-MED-03-0364, 0365 (Wallace-Curry 2009) does not support its position. In rejecting the shift preference proposal of the Union, Fact-finder Feldman merely concluded that shifts should be determined by the commanding officer and not by selection through use of seniority. He did not find that such a proposal was permissive and therefore not subject to Fact-finding as suggested by the Union, although it very well may have been inferred. The recommendation of Fact-finder Wallace-Curry dealt with a staffing issue, which is a permissive subject of bargaining.

While the issue of shift preference could be a permissive subject of bargaining, it is not under the facts of this case. Here the Corrections Officers had a prior collective bargaining agreement with the Employer, which agreement was used as a template in crafting a new agreement with a new Union. Ohio Revised Code §4117.08 provides that “all matters pertaining to wages, hours, or terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement are subject to collective bargaining.” Here the Employer argues that the Teamsters Union is a new union and it does not have any existing provisions of a collective bargaining agreement. That argument must fail. The fact that the Corrections Officers were included in a prior collective bargaining agreement with the Employer cannot be ignored.

With this said, the Fact-finder finds a benefit to, but no basis for changing, the language contained in the prior agreement between the Corrections Officers and the Employer. The “current language” is consistent with the language contained in the Road Patrol, Process Servers, Sergeants and Detectives contract, a group with whom the Corrections had previously bargained. The Union presented no compelling evidence to demonstrate that shift preference should be permitted more frequently, that temporary assignments language should be altered or that minimum staffing levels should be maintained (that is a permissive subject to collective bargaining).

Recommendation: Article 34 – Shift Preference

It is recommended that the current language contained in ARTICLE 34 remain the same for each year in the new three year agreement.

ARTICLE – 36 DURATION

The Union’s Position

The Union proposes a three year agreement with the agreement retroactive to January 1, 2012 through December 31, 2014. All of the other bargaining agreements of units within the agency run from calendar year to calendar year and such should be the case here. Further, ending an agreement prior to the end of a calendar year could subject the Union to loss of retroactivity under 4117.14 G(11) if a conciliator is appointed after the beginning of the new year, the contract having expired months before the end of a calendar year.

The Employer’s Position

The Employer proposes a three year agreement with the agreement to become effective upon execution and then expire three years thereafter.

The Employer argues that the Employee Organization representing the Corrections Officers was not certified until February 7, 2012 and, as a result, bargaining on the new agreement was delayed. There should be no retroactive application of the provisions in the agreement, particularly in regard to wages. Further, when a contract expires on December 31 of each year, the Employer needs to deal with bargaining over a G(11) waiver and it wishes to avoid such year-end pressures.

Discussion, Findings and Recommendation

Both of the parties are in agreement with a three year contract, but the Employer insisted that the effective date of the Agreement commence upon the signing of the Agreement with no reactivity to the beginning of the year. This position was taken because the certification of a new Employee Organization (Teamsters) delayed the collective bargaining process, thus costing the taxpayers additional money, and it wanted to avoid discussing O.R.C. §4117.08 waivers and retroactive pay issues resulting therefrom. While the reasoning by the Employer may be based upon legitimate concerns, the application of its logic is inappropriate in this case.

The Fact-finder recommends a three year agreement with the agreement retroactive to January 1, 2012 through December 31, 2014 for several reasons. First, it is consistent with terms given other bargaining units by the Employer; second, it is consistent with past collectively bargained agreements by the Corrections Officers; and third, a bargaining unit's exercise of a statutory right should not be mitigated without mutual consent.

Recommendation: Article 36 – Duration

The Fact-finder recommends a three year agreement with the agreement retroactive to January 1, 2012 through December 31, 2014

CONCLUSION

In conclusion, this Fact-finder hereby submits the above referenced recommendation on the outstanding issue presented to him for his consideration. Further, the Fact-finder incorporates all tentative agreements previously reached by the parties and recommends that they be included in the Parties' Final Agreement.

September 13, 2012



JERRY B. SELLMAN, FACT- FINDER

CERTIFICATE OF SERVICE

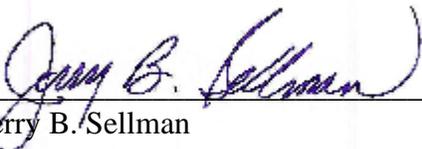
The undersigned certifies that a true copy of the Fact-finder's Report was sent by E-mail on September 13, 2012 to:

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Appendix A

ARTICLE 14
HOURS OF WORK/OVERTIME

Section 1. The standard work period for all full-time bargaining unit employees shall be two (2) weeks (fourteen [14] calendar days). The work period shall be computed beginning on the Monday "A" shift and ending on the fourteenth (14th) day following.

Section 2. When an employee is required by the Employer to work in excess of eighty (80) hours in a two (2) week, fourteen (14) day work period, exclusive of any paid meal periods, he shall be compensated at the rate of one and one-half (1 1/2) times his regular straight time hourly rate for all such hours worked in excess of eighty (80) hours in the fourteen (14) day work period. Overtime compensation shall be at time and one-half (1 1/2) in either overtime pay or compensatory time at the discretion of the employee. Compensatory time may be accrued up to a maximum of eighty (80) hours. The granting of compensatory time requested may be granted subject to operational needs of the Sheriff's Office. Such requests shall be submitted to the employee's immediate supervisor. No more than two (2) employees working the same shift will be granted vacation, compensatory time, and/or personal leave at/in a similar time period. Compensation shall not be paid more than once for the same hours under any provision of this article or agreement.

Section 3. For the purposes of overtime computation, the following shall be considered as time worked:

- Paid vacation leave
- Holiday pay
- Compensatory time
- Sick Leave/Funeral Leave

Section 4. Whenever an employee is called out to work by a properly authorized individual at a time which does not abut his regular work shift/schedule, the employee(s) shall receive a minimum of three (3) hours pay at time and one-half (1 1/2) his straight time hourly rate of pay, or the time actually worked, whichever is greater. However, in- house training that may result in overtime shall only be paid in compensatory time.