

**State of Ohio**

**State Employment Relations Board**

<b>In the Matter of Fact Finding</b>	:	SERB Case Number: 12-MED-10-1195 &
	:	12-MED-10-1196
Between:	:	
	:	
Gallia County Sheriff,	:	
Gallipolis, Ohio	:	Date of Hearing: May 15, 2013
Employer	:	Date of Report: June 10, 2013
	:	
And:	:	
	:	
Fraternal Order of Police/Ohio	:	Felicia Bernardini, Fact Finder
Labor Council, Inc.	:	
Union	:	

**Fact Finder Report and Recommendation**

**Appearances:**

**For: Gallia County Sheriff, Gallipolis, Ohio**

David Riepenhoff, Esq., Fishel Hass Kim Albrecht, LLP., Fact Finding Spokesperson

Joseph R. Browning, Gallia County Sheriff

Dick Grau, Chief Deputy

Karen Sprague, Gallia County Administrator

Harold Montgomery, Gallia County Commissioner

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

Tracy Rader, Staff Representative, Fraternal Order of Police/Ohio Labor Council, Inc., Fact Finding Spokesperson

Eric Werry, Patrol Sergeant

Scott Darst, Road Patrol

Carol Braley, Corrections

## **Introduction**

### Case Background

Felicia Bernardini was selected by the parties to serve as Fact Finder in the above referenced case and duly appointed by the State Employment Relations Board (SERB) on November 21, 2012 in compliance with Ohio Revised Code (ORC) Section 4117.14C(3). The case concerns a fact finding proceeding between the Gallia County Sheriff (hereafter referred to as the “Employer” or the “Sheriff”) and the Fraternal Order of Police/Ohio Labor Council, Inc., (hereafter referred to as the “Union” or “FOP/OLC”).

Prior to the hearing, the parties engaged in contract negotiations on five scheduled dates, beginning December 14, 2012 and concluding on March 22, 2013. The negotiations resulted in 30 tentative agreements (TA’s). Upon reaching impasse, seven contract articles remained unresolved. The current contract expired on December 31, 2012. After an initial contact with the parties, a time extension was filed through February 15, 2013. Bargaining continued past the extension; impasse was reached and a hearing was scheduled for May 15, 2013. Both parties timely filed the required pre-hearing statements.

The day of the hearing, the Fact Finder proposed mediation of the outstanding issues prior to moving to the evidentiary hearing. The parties chose to forego mediation and move directly to the hearing.

David Riepenhoff, Esq., Fishel Hass Kim Albrecht, LLP., represented the Employer.

Tracy Rader, Staff Representative, Fraternal Order of Police/Ohio Labor Council, Inc. represented the Union.

### Issues

The open issues addressed by both parties at the hearing are as follows:

Article 9: Discipline & Investigations

Article 12: Layoff and Recall

Article 16: Wages

Article 17: Holidays

Article 28: Longevity Pay

Article 31: Substance Abuse

Article 37: Duration

### General Background Information

Gallia County is located in Southeastern Ohio. It is situated along the Ohio River and is part of Ohio's Appalachian Country. <sup>1</sup> 72.49% of the County is forested land.<sup>2</sup> There are no municipalities in the County with a population over 5000. The County Seat is the Village of Gallipolis with a population of 3,641, as of the 2010 census.<sup>3</sup> 15.8% of families in Gallia County have an income below poverty level.<sup>4</sup> As of 2010, the median household income in the County was \$37,409.<sup>5</sup>

The Employer is the Gallia County Sheriff. The Sheriff is responsible for conducting countywide law enforcement activities including road patrol, traffic enforcement, investigative services, operation of the Gallia County Jail, courthouse security, and operation of the County's Work Release Center. The Sheriff is an independently elected county officeholder. The Sheriff is dependent on appropriations from the County's General Fund, made by the County Board of Commissioners, to fund the operations of his office. The FOP/OLC represents the two bargaining units that are party to this fact finding case. There are approximately 24 employees in the Deputy Unit classified as Investigators, Road Patrol, or Corrections; and there are two employees in the Supervisor Unit classified as Sergeants.

### **Positions, Discussion and Recommendations**

At the hearing the parties agreed to present each unresolved proposal in numeric order based upon the number of the contract article. Therefore the format of this report will follow the same progression. On an issue-by-issue basis, the position of each party is summarized. Position summaries are followed by a brief analysis and discussion, which is followed by the recommendation of the Fact Finder.

In analyzing the positions of the parties and making recommendations the Fact Finder is guided by available, relevant evidence and the criteria set forth in ORC 4117.14(G)(7)(a) to (f):

- (a). Past collective bargaining agreements, if any between the parties;

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<sup>1</sup> Ohio County Profiles, Gallia County, Ohio Development Service Agency, Office of Policy, Research and Strategic Planning

<sup>2</sup> Ibid

<sup>3</sup> Ibid

<sup>4</sup> Ibid

<sup>5</sup> Ibid

- (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 interests 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;
- (d). The lawful authority of the public employer;
- (e). Any stipulations of the parties;
- (f). Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

#### 1. Article 9: Discipline & Investigation

##### *Employer Position*

The Employer seeks two changes in this Article, one in Section G, the other in Section K. In Section G the Employer proposes to eliminate contract language that requires all non-criminal investigations of employees to be concluded within 60 work days. In Section K the Employer would eliminate the requirement that a complaint against an employee be in writing and signed by the complainant, and the requirement to advise a complainant that he/she may be sued by the bargaining unit member if the complaint is determined to be untrue.

The Employer asserts that the 60-working day scenario is no longer operationally realistic given the staffing cuts of 2012, wherein the Investigation Unit, comprised of 3 fulltime and 1 part-time investigators, was eliminated. The Chief Deputy and Jail Administrator are the only internal resources currently available for these types of investigations. Alternatively, the Sheriff must avail himself of external assistance from the Bureau of Criminal Investigation (BCI) or The State Sheriff's Association which offers a free reciprocal service that provides for investigators from other counties to conduct internal employee investigations. Eliminating the timeline would make it more realistic given the need to use these external resources (which are themselves stretched very thin). There is no desire to stretch out these types of investigations because it is to everyone's advantage to have timely conclusions; but having to complete an investigation in 60 working days when relying on resources from other organizations creates an undue administrative burden. The Employer points to

the contracts of other County Sheriff's in the area to show that only Jackson County has a similar provision.

Section K of the contract speaks to complaints against employees of the Sheriff's Office. The section requires that a complainant reduce his/her complaint to writing and sign it. This language can have a chilling effect on citizen complaints. It is impossible to compel a citizen to put his/her complaint into writing, therefore compliance with the language is unrealistic. Prisoner complaints are another example of how this language is impractical. By law, inmates must have a variety of avenues for filing complaints and transferring information to authorities. Requiring that complaints be written and signed would seem to provide for only a single method for filing a complaint. This language creates a requirement that undermines the Sheriff's obligation to fully serve the needs of the public and hold the public's welfare above all else. As with Section G, the language of Section K does not represent an industry standard. Jackson County is the only county in the area that has comparable language.

#### *Union Position*

The Union seeks to retain current language in this Article. Section G provides a reasonable assurance that complaints will be dealt with in a timely manner. The 60-day window for investigation of a complaint can be followed by the disciplinary process and in some cases the grievance process, all of which can take as much as six months or more to bring to closure. Given that the investigation is only the first step in what can be a lengthy process, leaving an employee under investigation for more than two months is unreasonable. This language is long-standing in the contract and has not been a problem. Despite concerns over workload and lack of investigatory staff, the Employer has not had any need to seek an extension under this section; and there have been no grievances filed concerning the length of an investigation. The Union is not unwilling to work with the Employer if circumstances dictate some unique consideration.

As for the language in Section K that requires written complaints, the Union rejects the Employer's rationale that the language is unenforceable and could lead to law suits against the Employer. Quite the contrary, allegations and complaints that are not properly documented are much more likely to lead to law suits. Arbitrators and judges require written documentation of charges, complaints and allegations. For unit members to be able to address false complaints against them there must be written documentation and an identifiable complainant. Nothing in this Article prevents the Employer from taking anonymous complaints. In fact, Section E specifically addresses

the processing of anonymous complaints. This is an indication that not every complaint must be attributable to a single identifiable complainant.

*Discussion and Recommendation*

The Employer proposes two changes to the Discipline and Investigations Article based on operational practicalities rather than a philosophic or programmatic shift in mission. The Union, on the other hand, opposes the changes based on the long-standing, bargained nature of the language and the particular protections that the language provides for members when faced with the unpleasant, albeit common, occupational hazard of citizen complaints.

As for Section G, there seems to be agreement that internal investigations should be handled expeditiously. The Sheriff said as much in his testimony at the hearing. The Sheriff has focused his rationale for the proposed change on his reduced resources; specifically, the fact that he has fewer staff today than when the language was originally negotiated. The Union has rightly pointed out that the provision the Employer seeks to change was bargained between the parties and the burden is on the Employer to show good cause for the proposed change. The Union would expect the Employer to be able to cite instances during the term of the last contract when an internal investigation could not be completed within the 60-day contractual window. For the Fact Finder, specific examples of internal investigations that exceeded the 60-day time limit, or documented instances when the Employer sought a waiver of the time limit, are not the only basis on which to accept the Employer's rationale to change the contract language. The parties to a collective bargaining agreement are schooled to comply with specific unambiguous provisions of their contract; for the most part they do not seek relief from such provisions on a case-by-case basis, therefore they do not manufacture the type of documentation the Union is expecting to see in this matter. The Employer has made its case that the circumstances are different enough today from when the provision was negotiated to warrant some relief from the specific time limit. There is however, no evidence to suggest that the provision should simply be eliminated. The Sheriff's own testimony that there are many competing demands for his resources is a clear indication that without some specific timeliness standard, a non-criminal investigation could repeatedly be shifted to the bottom of the stack and languish unresolved for too long.

As for Section K, here too the Employer focuses on the impracticality of the provision. The Sheriff seeks to eliminate the provision because he cannot reject a complaint simply because it is not reduced to writing and signed. During the course of the hearing, the Union directed the Employer's

attention to Section E of the Article which allows for the processing of anonymous complaints. It was the Union's testimony at the hearing that a complaint that is not reduced to writing and signed can be considered an anonymous complaint and processed pursuant to Section E of the Article. This being the case, it seems as though Section K sets an expectation that complaints be reduced to writing and signed, and that keeping this provision will help maintain an appropriately formal standard for such complaints, while Section E provides just enough wiggle-room for the circumstance where an individual will not, or cannot, sign a written complaint.

### **Recommendation**

With consideration given to the fact finding criteria pertaining to the bargaining history of the parties, and the Employer's ability to administer provisions of the collective bargaining agreement, the Fact Finder recommends increasing the non-criminal internal investigation timeline to 90 working days in Section G and retaining current language in Section K. The contract shall read in part as follows:

### **Article 9: Discipline and Investigations**

#### Section 9.1. Internal Investigations:

A. – F. Current contract language.

G. Any employee who has been under investigation shall be informed, in writing, of the outcome of the case at the conclusion of the investigation. All investigations, except those concerning criminal charges, shall be completed within ~~sixty (60)~~ **ninety (90)** workdays of the filing of the complaint.

H. – K. Current contract language.

#### Section 9.2. Disciplinary Procedure:

A. – F. Current contract language.

### 2. Article 12: Layoff and Recall

#### *Employer Position*

The Employer seeks a change from the current use of Departmental seniority to Classification seniority in the order of layoff and recall, and seeks to carve-out the Work Release Center (WRC) from the layoff procedure.

The Employer proposes classification seniority to replace the current use of departmental seniority and argues that switching to classification seniority would reduce disruption and allow for the most experienced unit members in a classification to retain their positions in the event of a

layoff. As it is, even though layoffs are by classification, an employee in an effected classification with less classification seniority (*i.e.*, less experience in the job) but more departmental seniority (*i.e.*, more overall time with the Sheriff's Office without regard for specific job experience) could bump an employee with more classification seniority but less departmental seniority.

The Employer also proposes to add language that would exempt the Work Release Center from the current requirement that all part-time employees, within a classification, be laid off prior to any bargaining unit employees. The WRC is currently staffed by part-time employees, they are non-bargaining unit employees, they are paid a lower hourly rate and they are funded by a federal grant. The Work Release Center did not exist when the current contract language was negotiated. When the layoff occurred in 2012, fulltime employees were asked whether or not they wanted to bump into part-time positions at the WRC; for their own reasons they opted against that particular bumping opportunity. However, subsequently these same employees filed a grievance based on part-time employees being retained at the WRC while fulltime employees were on layoff.

#### *Union Position*

The Union seeks to maintain current language in this Article. The Union opposes changing the language because the Employer already has the ability to select the classification in which the layoff will occur. To bump a less senior employee in a different classification, the affected employee must be qualified and have the necessary certification to hold the position. Based on the current provisions, the Union does not see the need for change to address the Employer's concerns. As for the Work Release Center, the Union argues that it should not receive a carve-out because it is not the only place within the Sheriff's Office where part-time employees are used; and simply because there are no fulltime bargaining unit positions at the WRC today, does not mean that there will not be fulltime employees there at some point in the future. This being the case, the contract provision should be retained as it is.

#### *Discussion and Recommendation*

Layoff is always a traumatic work-related experience for both the unit members and the Employer. It is a last resort for most Employers given its disruptive nature on the workforce and its adverse impact on mission accomplishment. The current contract language that provides for layoff by classification and only allows cross-classification bumping if the employee holds required qualifications and certifications is a combination of particulars that appears to take the interests of

both parties into consideration. Seniority, both its definition and application, is so central to the ethos of organized labor that the Union ought to have a say in how it is used in a contract. Having negotiated a provision that sets forth how seniority is to be used in layoff and recall situations, it is for the parties to come to agreement through discussion and exploration of the operational impact when said provision is changed. The Employer's proposed change from departmental seniority to classification seniority is one that ought to be negotiated rather than imposed.

As for exempting the Work Release Center from the requirement to layoff all part-time employees prior to laying off any fulltime bargaining unit members, the Fact Finder agrees with the Employer. Here the situation is completely new. The WRC was not open when the language was negotiated. It is a separate facility at some distance from the county jail, it is staffed by non-bargaining unit part-time employees working at a lesser hourly rate and funded largely by a federal grant. In the only actual circumstances involving a layoff since the WRC opened, testimony in the record indicates that when offered the opportunity to bump to the WRC, affected employees preferred to take the layoff and await recall. All of these circumstances indicate that bargaining unit members will not experience any material harm by carving out the WRC with respect to part-time staff.

### **Recommendation**

With deference to the bargaining history of the parties and the Employer's ability to administer provisions of the contract, the Fact Finder recommends retaining current language with respect to the type of seniority used in the order of layoff and recall, and recommends adopting the Employer's proposed change regarding carving-out the Work Release Center's part-time staff. The contract shall read in part as follows:

#### **Article 12: Layoff and Recall**

Section 12.1. – Seniority List: Current contract language.

Section 12.2. – Layoff Notification: Current contract language.

Section 12.3. – Layoff:

Paragraph one, current language.

Paragraph two, current language.

Paragraph three, current language.

All temporary, intermittent, part-time, or seasonal employees **within a classification, except those assigned to the Work Release Center**, shall be laid off prior to any bargaining unit employees, and in no case shall such non-bargaining

unit employees be used in such a manner as to affect a functional layoff by denying bargaining unit member work to bargaining unit members. **Should there be fulltime bargaining unit employees assigned to the Work Release Center at the time of a layoff, those fulltime employees will be part of the layoff, bumping and recall procedures in existence at the time of the layoff.** Any gender requirements mandated by the State, pertaining to jail staffing, can be considered in layoff determinations.

Section 12.4. Recall – Section 12.8. Negotiated Voluntary Workweek Reduction: Current contract language.

### 3. Article Wages

#### *Union Position*

The Union seeks both a general wage increase in each of the three years of the contract and the introduction of a rank differential that also increases in each successive year of the contract. The Union proposal is as follows:

3% increase, effective retroactive to January 2013, for Road Patrol Deputies and Corrections.

4.5% rank differential for Sergeants and Investigators above the Road Patrol Deputy wage scale (at each step), effective retroactive to January 2013.

3% increase, effective January 2014 for Road Patrol Deputies and Corrections.

5.0% rank differential for Sergeants and Investigators above the Road Patrol Deputy wage scale (at each step), effective January 2014.

3% increase, effective January 2015 for Road Patrol Deputies and Corrections.

5.5% rank differential for Sergeants and Investigators above the Road Patrol Deputy wage scale (at each step), effective January 2015.

The Union also proposes to eliminate subsections A and B of Section 16.3 regarding the PERS pickup provision. The change is of a “housekeeping” nature, it has no substantive impact on the functioning of the PERS pickup benefit.

The Union’s rationale for this proposed package of increases is partially based on the fact that non-represented county employees, including those in the Sheriff’s Office, were given a \$.50/hour raise effective in January 2013. This raise for non-represented employees was announced in late 2012 after the Sheriff had opened negotiations with these Units. The Union proposal is also

based in part on the comparison of these Units' wages and those in comparable jurisdictions. For external comparables, the Union has introduced wage data from adjoining counties and also surrounding counties that are one county further out than the contiguous counties. This combination of contiguous and "double contiguous" counties represents the relevant labor market in that the Union considers them to be the drivable distance for other similar work opportunities. In comparison to the average wages in the adjoining counties, Gallia's Road Patrol Deputy wage scale is just above average. In comparison to the second tier of surrounding counties, the Gallia Road Patrol Deputy wage scale is approximately 12% below the average.

As for the rank differential, Gallia County's current wage scale for Sergeants and Investigators is only about 3% above that of the Road Patrol Deputy at each of the four steps. In comparison, only Vinton County (calculated to be 0.75%) has a lower wage scale differential for Sergeants. The other counties have a wage scale differential equal to, or above that of Gallia County. In the second tier of surrounding counties, only Pike County has a lower wage scale differential for Sergeants. All of the other Counties have a Sergeant wage scale differential above 3%, some as high as 10%, or more.

*Employer Position*

The Employer offers the following pay raises during the term of the contract.

1% increase, effective with the signing of a new contract.

1% increase, effective January 1, 2014.

1% increase, effective January 1, 2015.

In addition, the Employer offers a one-time signing bonus of \$200.

The Sheriff's appropriation for 2013 is lower than what was requested. In the key line-item of "salaries," the 2013 appropriation is higher than the 2012 expenditure, but lower than the 2011 expenditure. The increase over 2012 in salaries is due to the recall of both fulltime and part-time staff in both the enforcement division and jail operations. However, even with the recall of laid-off employees, the Sheriff's operations are not fully back to the pre-layoff levels of 2011. Returning the Sheriff's Office to pre-layoff staffing levels is the top priority when it comes to personnel expenditures. There are no resources in the budget for wage increases, and the Sheriff cannot expect additional appropriations from the General Fund. The cost of the Union's 3% salary proposal, when compounded over the three years of the contract, is just over \$165K. This does not include the proposed rank differential. By comparison, the Employer's 1% salary proposal, when compounded over the three years of the contract, costs just over \$73K. The lump sum signing bonus adds an

additional \$4600. These bargaining units experienced a pay freeze in 2010, and had 2% pay raises in both 2011 and 2012. During this same three years, non-represented employees in Gallia County received only a \$0.25/hour raise in 2011, which is the equivalent of about a 1.5% raise for average hourly employees. For external comparables, the Employer would also look to the surrounding counties, but would rule out four large counties because they do not share similar demographic characteristics to Gallia County. These counties are Lawrence (Ironton), Scioto (Portsmouth), Ross (Chillicothe), and Athens (Athens). In addition, when comparing wages, the Employer includes the 5% pension pickup that these bargaining unit members enjoy, and which is unique among peer counties in the region. With these parameters taken into consideration, Gallia County compares more than favorably on all three wage scales: Deputies, Corrections, and Sergeants and Investigators.

#### *Discussion and Recommendation*

The Employer provided a lengthy, well organized and informative presentation on Gallia County finances. Thorough and helpful testimony was entered into the record by Ms. Karen Sprague, Gallia County Administrator, and supported by detailed documentation. In addition, County Commissioner, Harold Montgomery provided testimony confirming Ms. Sprague's rendition of Gallia County's recent fiscal history.

The bulk of the Sheriff's budget comes from the County's General Fund. The General Fund receives revenue from a wide variety of sources some of which are expected to be stable in 2013, while others are projected to decrease or increase. Sales Tax is the largest single revenue source for the General Fund, second is Real Estate Tax. After dropping in 2008, Sales Tax has increased slightly in each of the past four years. Sales Tax revenue for 2013 is projected to be slightly under what it was in 2012. Similarly, Real Estate Tax revenue is projected to be slightly under what was collected in 2012. Year-to-date receipts for both of these primary revenue sources are running somewhat behind where they were in 2012, indicating that the County's conservative projections for 2013 are bearing out.

Some revenue streams to the General Fund have been dramatically reduced in the last couple of years. For example, Local Government Funds from the State are half of what they were in 2008, down from \$488K to \$271K. Tangible Personal Property Tax and Tangible Personal Property Reimbursement have both been phased out, as has the CRA Payment from the State. Utility Reimbursement from the State is being phased out and today is only a tenth of what it was in 2007. Also taking a significant hit, is Depository Investment revenue. The County had been earning 3%

interest on its bank deposits for the past four years. As a result of rebidding the County's account, the interest rate has dropped to 0.5% and will be at that low rate for the next four years. On the other hand, Casino Tax Revenue is anticipated to be three times greater than it was in 2012 based on all four casinos being operational. On balance, the County's Budget Commission is projecting a lower 2013 total in the General Fund than was collected in 2012.

The County's carry-over balance has been below the GFOA's recommendation of two months of total revenue. In 2011, the County's carry-over was approximately \$260K, and this only due to the County having advanced funds to itself to cover a delay in the transfer of grant funds from the State. To avoid a repeat of the 2011 year-end fiscal concerns, last year (2012) county departments, funded by the General Fund, were asked to take a 14% budget reduction in order to rebuild the General Fund carry-over. This budget cut led to layoffs in the Sheriff's Office. The County ended 2012 with a carry-over of \$902K – much improved over 2011. This improvement in the carry-over prompted the County Commissioners to appropriate slightly higher 2013 budget amounts for departments funded out of the General Fund. This slightly higher 2013 appropriation includes sufficient funds for each county department to provide a \$.50/hour raise for non-represented county employees. In 2013, the General Fund is projected to have a year-end carry-over of \$397K.

Per testimony by the County Administrator, the recent history of pay raises for non-represented county employees has been: zero increase in 2010, \$.25/hour increase in 2011, zero increase in 2012, and \$.50/hour increase in 2013. In this same timeframe, the Sheriff's FOP/OLC bargaining unit employees received 0% in 2010, 2% in 2011, and 2% in 2012. If typical hourly wages for non-represented county employees are generally in the same ballpark as the FOP/OLC units (*i.e.*, \$12.75 - \$17.00), then the \$.25/hr. (in 2011) and \$.50/hr. (in 2013) raises represent 2% and 4% raises respectively at the low end of the wage range, and 1.5% and 3% raises respectively at the high end of the wage range. These raises over a four year period (2010-2013) average out to be similar to what the FOP/OLC bargaining unit members have averaged in three years (2010-2012). When looking at internal comparables, actual hourly rates are less important than how cost of living raises have been handled. In this case, although figured differently and given in different years, the raises experienced by the Sheriff's FOP/OLC units and non-represented county employees have been reasonably close in the last few years.

When looking at external comparables, actual hourly rates are of interest as well as general cost of living raises. Even though the Union and Employer have grouped their comparable data

somewhat differently (with the Employer ruling out the four largest counties in the region: Lawrence, Scioto, Athens, Ross), the conclusion from their respective data-sets is similar. Among similarly sized counties in the geographic region, the Gallia County Sheriff's bargaining unit employees fair quite favorably when it comes to wages. Adding in the four demographically larger counties changes the averages and puts the Gallia County employees 10%-12% under the average (in some classifications – not correctional officers); but as the Employer points out, Gallia County employees in these FOP/OLC bargaining units, enjoy a 5% pension pick-up benefit, which cuts this wage gap in half. Looking at available information concerning general cost of living increases for external comparables, the Employer offers retrospective data from the 2012 SERB Wage Report and the Union offers some prospective data it has gleaned via survey. The SERB data show that wage settlements in the region and for law enforcement have averaged below 1.5% in each of the last three years. Many jurisdictions had no increase in one or more of these years, which is what has brought these averages so low. The same is true in the Gallia County Sheriff's Office. These bargaining units had a wage freeze in 2010 and received 2% increases in 2011 and 2012. They also experienced the workforce trauma of layoff in 2012. Looking prospectively, the Union's survey of surrounding County Sheriff's Offices indicates that only a few have wage settlements for 2013 and none have settlements for 2014. The 2013 settlements are low, generally 2%-3%.

As for the Union's proposal regarding the rank differential for Sergeants and Investigators, the data submitted into the record at this hearing does not fully make the case that the differential is needed. The Fact Finder fully supports rank differentials as a compensation practice and as a public policy. However, in order to judge the merit of implementing a rank differential in the Gallia County Sheriff's Office the Fact Finder would be best served with information regarding how such a differential would be operationalized (what happens to the existing wage scale, what happens to employees in the wage scale, etc.), whether rank differentials in comparable counties are constructed as wage scales or flat-rate supplements, and at what differential rate the pay compression problem is actually remedied. In this particular case, not all of this information is available.

In summary, current wages (2012) are competitive with respect to regional averages in comparable counties. Therefore, the wage settlement should reflect the realities of the County's financial situation as well as general cost of living inflationary trends, and need not address market disparities (there are none of significance). Even though the County's finances have steadily improved since the recession of 2008, it is clear that expenses must be tightly controlled to allow the carry-over to rebound and stabilize at an acceptable level going forward. The Commissioners have

allocated the equivalent of approximately a 3% raise in 2013 for non-represented county employees, resulting in a four-year average wage increase of approximately 1.2% for non-represented county employees. The Sheriff's offer of a 1% raise in 2013 will result in approximately a 1.2% average wage increase over the same four-year period for the FOP/OLC bargaining units. This average rate for raises in Gallia County is below the national average inflation trend during this same timeframe which is just above 2% (1.6% in 2010, 3.2% in 2011, 2.1% in 2012 and 1.5% YTD in 2013).<sup>6</sup> Acknowledging that the Sheriff's budget is already set for 2013 and that General Fund monies for supplemental appropriations are not available, the Fact Finder recommends the 1% pay raise offered by the Employer but will make it retroactive to January 2013 so as not to penalize unit members for the normal and customary delays that occur in the collective bargaining process. In 2014 and 2015 when the Sheriff and Commissioners can plan for modest wage increases, the Fact Finder recommends 2% wage increases, which track more closely with general inflation.

#### **Recommendation**

With due consideration to the fact finding criteria concerning the Employer's ability to pay and reasonable wage comparables, the Fact Finder recommends the following schedule of wage increases for all three wage scales, no rank differential, and no lump sum signing bonus. The Fact Finder also recommends that the obsolete language in Sections 16.3.A and 16.3.B, be deleted.

**Effective January 1, 2013 all rates of pay shall increase 1%.**

**Effective January 1, 2014 all rates of pay shall increase 2%.**

**Effective January 1, 2015 all rates of pay shall increase 2%.**

#### **4. Article 17: Holidays**

##### *Employer Position*

The Employer proposes to reduce the premium pay provisions and standardize the manner in which holidays are paid. Currently, highly valued "family" holidays such as Thanksgiving and Christmas are paid at triple time (3x), and other holidays such as President's Day and Columbus Day are paid at two and one half times (2.5x). The Employer would eliminate the distinction between these two types of holidays and pay all holidays at one and one half times (1.5x) or allow the employee to choose straight time plus four hours of additional comp time. This is strictly an economic item for the Sheriff's Office. Data from the Auditor's records showing the actual cost of

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<sup>6</sup> Bureau of Labor Statistic, CPI-U Table

holiday pay for the last three years reveal that 2012 holiday pay for these units was \$33,403; in 2011 it was \$36,242; and in 2010 it was \$30,365. It is difficult to calculate exactly what the savings would be if the benefit were reduced, but whatever savings can be achieved is helpful when budgeted monies are tight. The Employer points out that there is no comparable like it either internal to the County or among the external surrounding counties. The Gallia County Sheriff's Office premium pay is unlike that of any other jurisdiction.

#### *Union Position*

The Union seeks to maintain the current contract language. The history of the parties is that they regularly find themselves at fact finding or conciliation. The parties rarely, if ever, settle their contract through negotiations. That said, most every economic section of this contract has been awarded by fact finders and conciliators, and has stood up to the scrutiny of the same.

#### *Discussion and Recommendation*

Without any fanfare or great effort on the Union's part, they have addressed the crux of the matter. This is a bargained (or, awarded, as the case may be) benefit and separating it from its original negotiations context does it a disservice. Preserving the status quo, which represents the bargaining history of the parties, is one of the fundamental criteria of fact finding. This is not to say that once bargained provisions should not be changed, but the circumstances for change must truly warrant it. In this case, the holiday premium paid to these bargaining units is no doubt an outlier with respect to comparables, and this makes the provision vulnerable to change. However, the Gallia County financial situation is not so dire that concessions are necessary to keep the County out of a fiscal emergency. Indeed, if concessions were necessary, the Commissioners would not have provided pay raises to county employees this year. If it were brought to fact finding in a different set of fiscal circumstances this holiday premium pay could well be brought into line with that of other similar units.

#### **Recommendation**

In deference to the bargaining history of the parties, the Fact Finder recommends that current contract language be maintained.

### 5. Article 28: Longevity

#### *Union Position*

The Union proposes to increase the longevity supplement by five cents at each years-of-service level specified in the contract. Almost all comparable Sheriff's Offices provide some form of longevity benefit. Longevity pay was awarded in this contract in 2000. The original idea was to start with a small benefit and increase the amount of the benefit in subsequent negotiations. However, it has been 13 years and the benefit level has never increased. The Union seeks an increase at this time to help maintain the value of the benefit and keep it competitive with other jurisdictions. This is a priority for the bargaining unit members because they have considerable tenure, therefore they are no longer eligible to receive annual step increases and only have these small pay bumps from longevity to recognize their ongoing service and dedication.

#### *Employer Position*

The Employer seeks to maintain current language. This is an economic issue. This is not the time to give economic increases just for the sake of it. No unit members have expressed complaints about this benefit at its current levels. The Employer's economic priority is to return the Sheriff's Office to its pre-layoff staffing levels, rather than put economic resources into benefit enhancements.

#### *Discussion and Recommendation*

There is little evidence in the record to suggest that this benefit is out of step with surrounding jurisdictions. Due to the various configurations of the longevity benefit it is challenging to determine how the benefits compare, either through percentages or dollar amounts. However, from the data presented at the hearing, it appears that the Gallia County Sheriff's Office benefit may be very competitive at the higher years-of-service levels, and perhaps somewhat below average at the low end of the years-of-service levels. Regardless, the finances of the County do not warrant employee benefit enhancements. In these still economically volatile times it seems wisest to focus on growing base wages at the rate of inflation.

#### **Recommendation**

In accordance with the fact finding criteria regarding the Employer's ability to pay and comparability, the Fact Finder recommends maintaining current contract language.

## 5. Article 31: Substance Testing

### *Employer Position*

The Employer proposes to add a provision that would allow for random testing, effective January 1, 2014. The Employer already has probable cause testing. The Employer proposes to sit down with Unit representatives to work out the operational details of how the program would work. This proposal is about improving public safety, adding a further basis for public confidence in the Office, and increasing confidence among employees. There has been an explosion of drug activity in Gallia County and this would allow employees, who provide testimony in criminal drug cases, an extra measure of credibility regarding their handling of evidence. Furthermore, in safety sensitive positions, probable cause testing allows for very few alternatives to help an employee who may actually have a substance abuse problem. Random testing would serve as an early screening program, and should the need arise, appropriate referrals for employee assistance could be made. The original language in this article was awarded by a conciliator in 2000. The times have changed and this additional program is warranted.

### *Union Position*

The Union seeks to maintain current language in this Article. The Unit membership does not oppose random drug testing in principle. The bargaining unit members are not illegal drug users and would submit to a drug test anytime the Employer has a reasonable suspicion. If the Employer truly wants to test employees, the Sheriff should start with the non-represented employees where he clearly has the authority to do it. Once the program is up and running successfully, there may be a basis for expanding the program to the bargaining unit; such an expansion could be done via the Labor/Management Committee.

### *Discussion and Recommendation*

The Employer has good reasons for seeking to implement a random drug test program in his Office. The nature of the work performed by safety-sensitive positions supports it and the increase of illegal drug activity within his jurisdiction warrants it. For these reasons it seems reasonable to expect the Sheriff to move forward with his program: draft the policy statement, outline the step-by-step procedures, work out implementation details, request funding in his appropriation, and roll-out his program with all of the non-represented safety-sensitive positions under his authority. As stated by the Union, successful implementation of the program with non-represented employees will

demonstrate the Sheriff's commitment and provide the momentum needed to expand the program to the FOP/OLC Units either through the Labor/Management Committee or in the next round of contract negotiations. In any event, it would be preferable for the parties to negotiate this provision rather than have it awarded by a fact finder, in order to insure that the operational implications of the language are well understood by both parties.

### **Recommendation**

In accordance with the fact finding criteria regarding the bargaining history of the parties, the Fact Finder recommends maintaining current contract language.

### 6. Article 37: Duration

At the hearing, the Employer and the Union agreed to a three year contract effective January 1, 2013 through December 31, 2015.

### **Conclusion**

In this report I have attempted to make reasonable recommendations that both parties will find acceptable. If errors are discovered or if the parties believe they can improve upon the recommendations, the parties by mutual agreement may adopt alternative language.

After giving due consideration to the positions and arguments of the parties and to the criteria enumerated in ORC 4117.14(G)(7)(a) to (f) the Fact Finder recommends the provisions as enumerated herein. In addition, all tentative agreements (TAs) previously reached by the parties along with all sections of the current Agreement not negotiated and/or changed, are incorporated by reference into this Fact Finding Report and should be included in the resulting collective bargaining agreement.

Respectfully submitted and issued at Columbus, Ohio this 10<sup>th</sup> day of June 2013.



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Felicia Bernardini,  
Fact Finder

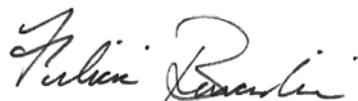
## CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of this Fact Finding Report was sent by e-mail on June 10, 2013 to:

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Felicia Bernardini