

**William C. Heekin**

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STATE EMPLOYMENT  
RELATIONS BOARD

2014 MAY 12 PM 2:53

May 8, 2014

Stephen S. Lazarus  
Hardin, Lazarus & Lewis, LLC  
30 Garfield Place, Suite 915  
Cincinnati, OH 45202

Marc A. Fishel  
Fishel, Hass, Kim, Albrecht, LLP  
400 South Fifth Street, Suite 200  
Columbus, OH 43215

RE: SERB Case No.: 2013-MED-07-0839; The Warren County Deputy Sheriff's  
Benevolent Association (Sworn Deputies) – Warren County Sheriff; impass/fact  
finding

Gentlemen:

Enclosed, please find two (2) copies of the **REPORT OF THE FACT FINDER**. Also,  
enclosed is a copy of the INVOICE.

It has been a privilege to have served as fact finder.

Cordially yours,



William C. Heekin

WCH:bwh  
enclosure

cc: Mary Laurent (w/enclosure) ✓

2014 MAY 12 PM 2: 53

IN THE MATTER OF IMPASSE	X	
	X	
BETWEEN	X	
	X	
WARREN COUNTY SHERIFF	X	<u>REPORT OF</u>
	X	<u>THE FACT FINDER</u>
AND	X	
	X	
WARREN COUNTY DEPUTY SHERIFF'S	X	
BENEVOLENT ASSOCIATION	X	

SERB FILE NO.: 2013-MED-07-0839

HEARING: April 10, 2014; Lebanon, Ohio

FACT FINDER: William C. Heekin

APPEARANCES

For the Sheriff

Marc A. Fishel, Attorney

For the Union

Stephen S. Lazarus, Attorney

## ADMINISTRATION

By way of a letter from the State Employment Relations Board (SERB) dated January 7, 2013, the undersigned was notified of his appointment to serve as a fact finder regarding a successor labor contract, negotiations impasse. This impasse concerns the Warren County Sheriff's Office ("the Sheriff's Office") and a bargaining unit that is represented by the Warren County Deputy Sheriff's Benevolent Association ("the Union") which is made up of 70 Sheriff's Office sworn deputies, including 11 detectives ("the sworn deputies unit"). Accordingly, on April 10, 2014, a fact finding hearing was held, where at its conclusion the record was closed and the matter is now ready for the issuance of a fact finding report.

## FINDINGS AND RECOMMENDATIONS

Initially, it is very important to point out that this sworn deputies unit is one of several bargaining units which is engaged in collective bargaining with the Sheriff's Office; including the supervisor unit made up of the sworn lieutenants and the sworn sergeants; as well as the non-sworn units consisting of the corrections officers, corrections supervisors, and the clerical personnel. Accordingly, during the Fall of 2013, the Sheriff's Office and the Union engaged in successor labor contract, multi-unit bargaining where on October 21, 2013, tentative agreements were reached as to each unit. Thus, as to the supervisor unit and the non-sworn units, the respective tentative agreements were ratified by both parties, thereby finalizing those successor labor contracts. However, as to the instant sworn deputies unit a majority of the rank and file members chose to exercise their right to not ratify what had tentatively been agreed upon; where the result is that several unresolved contract articles have been brought to fact finding concerning the economic issues of wages, vacation leave, and shift differential.

In addition, what is also very important is the criteria set forth in O.R.C. 4117.14 regarding that which a fact finder is mandated to consider when making recommendations:

\* \* \*

- Past collectively bargained agreements between the parties;
- 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;
- The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service,
- The lawful authority of the public employer.
- Any stipulations of the parties.
- 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 the public service or in private employment.

\* \* \*

As to the “comparable work” standard, it is to be greatly emphasized that labor contracts involving other employees of the same public employer – in this case the other law enforcement employees of the Sheriff’s Office – is always a key consideration. Moreover, while in the hierarchy of this statutory criteria it is well established that “comparable work” is at or near the top, this is especially true as to *internal* “comparable work”. Accordingly, as to the internal “comparable work” standard and the instant set of facts, this is particularly compelling where the Sheriff’s Office and its other bargaining units by way of multi-unit bargaining were able to reach tentative agreements which were later ratified. Here, the Sheriff’s Office takes the position regarding the outstanding issues that the tentative agreement involving the sworn deputies unit

that came out of the same multi-unit bargaining process, reflecting what is now included in the other labor contracts, be adopted. In other words, the proposal of the Sheriff's Office regarding the outstanding issues not only reflects the tentative agreement previously agreed upon by these parties at the bargaining table, but also what has been included in its other labor contracts. Furthermore and in referring to another ORC 4117.14 fact finding criteria standard – "Past collectively bargained agreements between the parties" – it is very important to note that, with one exception, multi-unit bargaining and conformity regarding economic issues has been the norm for many years. Stated otherwise, as to the prior labor contracts involving the Sheriff's Office and its various bargaining units going back more than a decade – including the sworn deputies unit – these contracts have traditionally been negotiated together, where the result has always been the same as to the economic issues with one exception (as to the supervisor unit in 2008).

Against this backdrop, the undersigned submits the following recommendations:

**1.**

**ARTICLE 23, WAGES AND COMPENSATION**

POSITION OF THE UNION: A 3% increase as to each year of the three year contract term.

POSITION OF THE SHERIFF'S OFFICE: As to each year of the contract term, annual increases of 3%, 2.5%, and 2.5%.

It is recommended that the position of the Sheriff's Office be adopted. Basically, in especially recognizing that the difference between the positions of each side is not great in terms of dollar amount and immediate cost to the Sheriff's Office, where the ability of the employer to pay the wage increases asked for by the Union is not in dispute, it is felt that this is the better position with the O.R.C. 4117.14 criteria as to "comparable work" and "Past collectively

bargained agreements between the parties” being such a strong herein factor. Accordingly, the undersigned cannot conclude that there is a better balancing of the relevant interests and considerations than what has been agreed upon by the Sheriff’s Office and its other bargaining units. In addition and in mentioning again that this is what was originally agreed upon at the bargaining table as to the sworn deputies unit, it is backed up by many years of collective bargaining practice. Thus, in acknowledging the external comparables as to the wage rates of other law enforcement patrol officers within Warren County which were cited by the Union, it cannot be concluded that the circumstances of the sworn deputies is so unique that a different outcome in fact finding is warranted.

**2.**

**ARTICLE 25 – VACATION**

POSITION OF THE UNION: Several increases as to the vacation leave accrual schedule.

POSITION OF THE SHERIFF’S OFFICE: Current language.

It is recommended that the position of the Sheriff’s Office be adopted. Basically and again mainly in light of the O.R.C. 4117.14 criteria as to internal “comparable work” and “past collectively bargained agreements between the parties” being so strongly supportive of the Sheriff’s Office position, it is felt that the current vacation leave accrual schedule should remain unchanged.

**3.**

**NEW ARTICLE – SHIFT DIFFERENTIAL**

POSITION OF THE UNION: Inclusion of a new “Sheriff Differential” provision.

POSITION OF THE SHERIFF’S OFFICE: That there be no new contract provision regarding an employee right to shift differential pay.

It is recommended that the position of the Sheriff's Office be adopted. Again, this is mainly based upon a finding that the O.R.C. 4117.14 criteria as to internal "comparable work" and "past collectively bargained agreements between the parties" is strongly supportive of the Sheriff's Office position even in light of the fact, as pointed out by the Union, that a shift differential pay provision appears in the Warren County dispatchers contract.

4.

It is recommended that all tentatively agreed upon contract provisions be adopted.



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William C. Heekin  
May 8, 2014  
Cincinnati, Ohio