

FACT FINDING REPORT  
STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
June 23, 2014

In the Matter of:	)	
	)	
Hamilton County Deputy Sheriff's	)	
Supervisor's Association	)	
	)	SERB Case No.
	)	13-MED-13-1537
vs.	)	
	)	
The Hamilton County Sheriff	)	
	)	
	)	

APPEARANCES

For the Union:

Stephen Lazarus, Attorney for the Union  
Ross Gillingham, Attorney for the Union  
John Magee, Sergeant and Bargaining Unit Representative  
Jim Murray, Sergeant and Bargaining Unit Representative  
Steve Toelke, Lieutenant and Bargaining Unit Representative

For the Hamilton County Sheriff's Department:

Brett Geary: Clemans, Nelson and Associates; Attorney for the Sheriff's Department  
John Bruggen, Hamilton County Budget Office  
Keith Clepper, Hamilton County Sheriff's Department  
David Helm, Hamilton County Human Resources Department  
Lindsay Mongenas, Hamilton County Human Resources Consultant

Fact Finder: Dennis M. Byrne

## **Background**

This fact-finding involves the members of the Hamilton County Deputy Sheriff's Supervisors Association (Union) and the Hamilton County Sheriff (Employer). There are approximately thirty (30) union members including Corrections Sergeants, Corrections Lieutenants, and Corrections Captains. Prior to the Fact Finding Hearing, the parties held a number of negotiating sessions, but were unable to come to an agreement. There is only one issue outstanding, a wage reopener for the last year of the parties' current labor agreement that expires on December 31, 2014. The question before the Fact Finder is the amount of the wage increase for the last year of the current contract.

Despite their best efforts, the parties were unable to reach an agreement on the wage issue and scheduled a Fact Finding Hearing. Prior to the Hearing, the Fact Finder attempted to mediate the dispute, but the parties could not agree on a mutually acceptable wage increase. Consequently, the Hearing commenced at 10:00 A.M. on May 29, 2014 at the Hamilton County Administration Building and ended at approximately 1:00 P. M.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations in Rule 4117-9-05. The criteria are:

- (1) Past collectively bargained agreements, if any.
- (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, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards 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 the public service or private employment.

**Introduction:**

The parties disagree on the size of the base rate increase for the last year of the current contract. The Sheriff has offered three (3.0%) percent for the year beginning January 1, 2014. The Union is demanding five (5.0%) percent. The Sheriff made three (3) arguments in support of his position. First, the Sheriff argued that a three (3.0%) percent raise was reasonable for the union membership. Second, his representatives argued that internal parity considerations dictated that the union members receive the same amount as all other unionized and nonunionized employees of the County. Finally, the Sheriff stated that a three (3.0%) percent raise was all that could prudently be offered to the Corrections Supervisors based on the state of his budget. The Sheriff's representatives testified that the Department was overspending its budget (running a deficit) and that the Sheriff had to control wage costs in his attempt to balance the Department's budget.

The Union disagreed with the Employer's analysis and made four (4) arguments in support of its position. The Union contends that there have been significant operational changes in the department that have changed the Supervisor's duties and saved the Sheriff a significant amount of money. The Union believes that these savings would more than pay for its wage demand. Second, the Union argues that the Sheriff has imposed additional costs on the Union members that have negatively affected their take-home pay. Third, the Union contends that there is a pay disparity between the Corrections Supervisors and the Court Services staff. Finally, the Union argues that the data show that corrections supervisors in other comparable jurisdictions are paid significantly more than the Hamilton County Corrections Supervisors. The Union

believes that the evidence shows that its membership should receive at least a five (5.0%) percent raise. Each of the parties' contentions will be discussed below.

The first issue is the County's ability to pay the Union's demand. The County never raised an inability to pay argument. However, the Employer strongly argued that its budgetary situation forced it to control expenditures. The Union is demanding five (5.0%) percent, and the Sheriff is offering three (3.0%) percent. According to information presented by both parties, this difference amounts to approximately \$39,000.00. This is not an insignificant amount viewed in isolation. However according to the County's 2014 Budget in Brief Document, the Sheriff's budget is approximately \$60 million dollars. There is no realistic way that the Sheriff cannot afford the Union's demand. It is undoubtedly true that the Sheriff's Office has budgetary problems, but it is also true that the Sheriff has an unwillingness to pay rather than an inability to pay.

In the same vein, the parties presented voluminous information on both the Sheriff's and the County's financial condition. Without going into a detailed discussion of the current state of the County's finances, that testimony proved that the County has not fully recovered from the Great Recession. However, the data do prove that the County's financial condition is brightening and there is reason for optimism. That is, Hamilton County has weathered the recession and is on the road to recovery. The Budget Director testified that the County was not yet on firm financial footing and that the loss of State support was a real concern for all county and municipal governments.

On cross examination, the Budget Director testified that the County's 2014 budget projections were probably conservative, and that the County's General Fund would

probably be more robust than the current projections imply. This is reasonable given that all budget directors tend to make conservative projections about available revenues.

The County also argued that there is a “spillover” effect of any wage increase into other negotiations. This means that if there is any wage settlement in these negotiations greater than three (3.0%) percent, all other bargaining units will ask for more than three (3.0%) percent, i.e., internal parity demands that the Corrections Supervisors be paid according to the pattern settlement. This is a strong argument. All neutrals must consider internal parity when making wage recommendations, and any recommendation that breaks the pattern must be carefully considered. However, in this negotiation, that is less of a concern than in most cases.

The Sheriff’s representatives contend that there is a binding pattern of three (3.0%) percent base rate increases. However, the testimony and data show that there are a variety of different wage settlements within the Department. For example, the corrections officers received a two (2.0%) percent step increase along with a three (3.0%) percent step increase for any officer with at least seven years seniority. The Communications Staff received a three (3.0%) base rate increase along with a three (3.0%) percent merit increase. Next year these employees will receive up to a three (3.0%) percent merit payment. In other words some Communications Officers will receive three (3.0%) and some other Officers will receive less.

In addition, the Patrol Officers enjoy a health care benefit that no other member of the Department matches. This benefit restricts the increase in the employees’ contributions to the County’s health plan to the same percentage as the increase in the base rate of pay. That is, if the base rate increases by three (3.0%) percent, then the

patrol officers' contribution to the health insurance plan can only increase by three (3.0%). This is a unique benefit that was awarded in arbitration. The Sheriff's representatives and the County Officials at the hearing were justifiably proud that no other unit had been able to insert the same language into their contract.

The facts presented in the paragraph above mitigate the argument that there is a binding pattern throughout the Sheriff's Department and the County. The Fact Finder finds that a binding pattern does not exist in the usual sense of the phrase "pattern agreement." Rather, each unit has been able to craft a wage agreement that fits their unique needs. The Fact Finder believes that this proves that the County and its employees have been engaged in true negotiations over the years. Collective bargaining under ORC 4117 does not mean that the first unit to reach agreement with an employer has reached a wage bargain for all organized employees. Each unit must have an opportunity to negotiate an agreement that meets its needs. This appears to be what has happened over the years in the Sheriff's Office.

That does not mean that no pattern exists and that pattern settlements are not valuable. However, some issues are more suited to a pattern settlement than other issues. For example, it is almost unheard of for different bargaining units working for the same employer to have different health insurance plans, etc. In this particular instance, the Fact Finder believes that three (3.0%) percent is a pattern agreement *ceteris paribus*. However, the data presented by the parties show that if a bargaining unit can show cause why the pattern should not apply, then the parties are free to negotiate an agreement that meets their unique needs. This also implies that the Union has the burden of proof to show why the pattern should not be strictly applied.

**Issue:** Article 19 – Wages

**Sheriff's Position:** The Sheriff is offering a three (3.0%) percent wage increase for 2014.

**Association Position:** The Association is demanding a five (5.0%) percent increase for 2014.

**Discussion:** The difference between the parties' position is two (2.0%) percent or approximately \$39,000.00, and there was no dispute over the cost of the Union's demand. The Sheriff (County) is trying to impose a pattern agreement. One main contention of the Sheriff's representatives is that any deviation from the three (3.0%) percent offer would set a new pattern. The Union argued against this position, and the Fact Finder does not believe that the pattern is absolutely binding (see discussion above).

The question then becomes whether the Union proved that its membership had a reason for demanding an extra two (2.0%) in the third contract year. The Union gave three reasons for its demand. First, it presented comparables data that show that Corrections Supervisors in surrounding counties make substantially more than their counterparts in Hamilton County. This is a strong argument. However, the County countered this argument with a budgetary analysis that showed that the County could not afford to meet the wages paid in surrounding counties. The Fact Finder finds that the comparables data show that there is a disparity between the pay of Hamilton County Corrections Supervisors and other similarly situated employees. However, that finding is

conditioned by the fact that the Sheriff simply cannot afford to pay the same rate found in other jurisdictions.

The Union also testified that the Sheriff required the officers to buy new guns and leathers. It is not unheard of for a jurisdiction to require that officers buy their own weapons, but it is very unusual that a jurisdiction will require that its entire staff change weapons and not contribute to (buy) the weapon and leathers for the officers. The debate is usually over whether the officers can keep their weapons when they retire. This was a significant cost to the Corrections Supervisors, but it was a one time cost and does not justify a base rate increase.

The County attempted to mitigate this testimony by referencing the Uniform Allowance provision of the contract. However, the provision makes no mention of a requirement to replace a weapon. In fact, the language does not mention weapons. The only mention of leathers is that the officers who initially purchased their own leathers and who are OPOTA certified will have the leathers replaced according to a fixed schedule. Therefore, the Uniform Allowance Provision is silent on a mandate to replace an existing weapon.

The two factors discussed above might warrant a recommendation in excess of three (3.0%) percent under certain circumstances, i.e., if the County's financial condition was stronger. However, these these factors do buttress the Union's position. To use a sports analogy: these two factors go into the Union's column.

The Sheriff's representatives also testified that the Association members had received a three (3.0%) percent raise over the past year when no other employee received a raise. This may be true, but it is not a controlling factor in this matter. The parties

negotiated a wage package in their contract. That wage package was negotiated based on the demands and needs of the parties at the time the agreement was reached. The parties were unable to negotiate the third year wage package at that time. Since that time, the situation has changed and the Sheriff has modified a number of policies that affect the Corrections Supervisors. It is these changes that are driving the current round of negotiations. Nonetheless, to use the same sports analogy, the fact that the Supervisors got a raise when other employees did not would go in the Employer's column.

The Union also discussed the changing nature of the job performed by the Corrections Supervisors. The Union presented evidence that the Sheriff was cross-training his personnel so that departmental employees could be scheduled where they are needed. Specifically the entire staff was being trained to work in the courthouse, and the difference in pay between Court Services Officers and Corrections Supervisors is over twenty-seven (27.0%) percent.

Therefore, the job performed by the Corrections Supervisors is evolving into a hybrid position. This evolution necessitates more training so that the Supervisors can perform different functions. The Union presented testimony on this issue. For example, the Corrections Officers have taken over duties that were previously performed by the Patrol Division, RENU, and Internal Affairs. The duties include a jail investigative unit, interagency transfers of prisoners, K-9 handler, and other duties formerly performed by other units within the Police Department, etc. It should also be noted that the County did not present any testimony on these issues.

Any theory of compensation relates the skills needed to perform the job (training) along with job requirements to determine a pay scale. In general, the more skills needed

to perform a job the higher the rate of pay. That is, if a person acquires more “human capital,” that person is more valuable to his/her employer; and therefore, he or she is paid a higher wage. The other side of the coin is related to the job performed. If an employee takes on extra responsibility, etc., then every theory of compensation leads to the conclusion that he/she should be paid a higher wage. In this instance, the Corrections Supervisors are taking on more responsibility and performing an expanding number of functions, and they are also increasing their ‘human capital’ via on the job training. The result is that they should be paid more.

The record shows that the Corrections Supervisors are now filling positions that used to be filled by other individuals. This means that the Corrections Supervisors will take on even more responsibilities. In addition, the data show that the Corrections Supervisors are paid significantly less than many of the incumbents in positions that they are now filling.

The Fact Finder believes that the fact that the job responsibilities of the Correction Supervisors have changed and that the Supervisors are now doing jobs that were formerly held by other more highly paid personnel means that the Correction Supervisors have met their burden of proof in this matter. Therefore, the Fact Finder is recommending a five (5.0%) percent pay increase for the Supervisors. The pay increment consists of two components. The first component is a three (3.0%) percent across the board pay increase. The second component is a two (2.0%) percent pay increase to compensate the Corrections Supervisors for the new job duties that they are being asked to perform.

It should also be noted that a number of other issues touched on in this report also lead to a conclusion that the Supervisors should receive some consideration for an equity adjustment. Therefore, the evidence viewed as a whole, tends to reinforce the conclusion that the Supervisors deserve some pay increase above the three (3.0%) percent floor put forth by the Sheriff.

**Finding of Fact:** The testimony and entire record from the hearing show that the job duties and requirements of the Corrections Supervisors have increased. Increased duties and responsibilities should be compensated accordingly.

**Suggested Language:** The language in Article 19 shall be amended to show that the Corrections Supervisors will receive a five (5.0%) percent pay increase for the last year of the current agreement (2014)

Signed this 23rd day of June 2014, at Munroe Falls, Ohio.

/Dennis Byrne/

Dennis M. Byrne, Fact Finder