FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
March 20, 2015

In the Matter of:	)	
Ohio Patrolmen's Benevolent Association	)	SERB Case No. 14-MED-03-0455
vs.	)	
The Lorain County Sheriff	)	

APPEARANCES

For the OPBA:

Kevin Powers, Attorney for the OPBA
Jeffrey Brucas, Corrections Officer with the Lorain County Sheriff's Office
Anthony Conrad, Corrections Officer with the Lorain County Sheriff's Office
Nicole River, Records Department with the Lorain County Sheriff's Office
Marcia Smeallie, Civil Office with the Lorain County Sheriff's Office
Coco Watson, Corrections Officer with the Lorain County Sheriff's Office Pickard,

For the Lorain County Sheriff:

Robin Bell, Clemans, Nelson and Associates; Attorney for the Sheriff
Vicki Kosco, Lorain County Sheriff's Office
Jack Hammond, Administrative Officer for the Lorain County Sheriff's Office
Kevin Shebesta, Clemans, Nelson and Associates Senior Consultant

Fact Finder: Dennis M. Byrne

Background

This fact-finding involves the members of the Lorain County Sheriff's Office/Corrections Staff represented by the Ohio Patrolmen's Benevolent Association (OPBA/Union) and the Lorain County Sheriff (Employer/Sheriff). There are one hundred and five (105) members of the bargaining unit including ninety-three (93) Corrections Staff, four (4) Maintenance Repair II personnel, and eight (8) typist/clerical specialist positions. Prior to the Fact Finding, the parties held six (6) negotiating sessions, but were unable to come to a final agreement, although they did tentatively agree on nine (9) articles. However, there are six (6) issues that are still open. These issues are: 1) Article 28 Sick Leave, 2) Article 32 Holidays, 3) Article 34 Hours of Work, 4) Article 36 Wages, 5) Article 37 Vacations, and 6) a new Employer proposal relating to the use of Intermittent Employees.

When they failed to reach an agreement, the parties availed themselves of the dispute resolution procedures of ORC 4117 and scheduled a Fact Finding Hearing. Before the start of the Hearing, the Fact Finder attempted to mediate the dispute; and again, despite a good-faith effort to reach an agreement, they were unable to close the gap between their respective positions on a number of the open issues. Consequently, the parties proceeded to Fact Finding. The Hearing was held on March 10, 2015, at the Lorain County Sheriff's Department. The mediation effort started at 10:00 A.M., and the formal Hearing began at 11:30 A.M and ended at approximately 1:30 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 dispute between the parties represents a classic labor relations dispute between an Employer and his employees. That is, the dispute is over the traditional issues covered by the phrase, "Wages, hours, terms, and other conditions of employment," that governs all industrial relations. On most issues there is no overriding philosophical difference of opinion or a poisonous relationship that makes any agreement between the parties problematic. Rather, there is a difference of agreement on the use of Intermittent Employees, rates of pay, etc. Therefore, most of the issues that will be discussed are issues of first impression.

Issue: Article 28 – Sick Leave

Note: Both Parties made proposals on the Sick Leave Issue.

Union Position: The Union demands that the number of hours of sick leave earned per pay period go from 2.46 hours to 4.6 hours of sick leave earned for each eighty (80) hours worked.

Employer Position: The Employer rejects the Union's demand and counters with current contract language.

Discussion: Approximately ten (10) years ago, the parties changed their agreement on sick days accumulation from 4.6 hours to 2.46 hours per pay period. However, at the same time they also agreed to allow the employees to earn four (4) hours of incentive leave (bonus time) for each calendar month without any incident of lost time. This amounts to six (6) days per year. That is, the employees can earn up to fourteen (14) days per year of sick leave and bonus time.

The Union contends that the employees are still being short changed one (1) day of time even with the current language because 4.6 hours of sick time earned per pay period amounts to fifteen (15) days of sick leave versus the current system that amounts to fourteen (14) days of sick/incentive leave. The Union also stated that it was possible that an employee could run out of sick leave under the current system if he/she suffered a severe illness.

The Employer countered with testimony that the current system was put in place because of a Union demand in prior negotiations. Furthermore, the parties' contract has sick leave sharing language in Article 28.5. Therefore, if an officer's sick leave bank is depleted, he/she can ask other union members to donate some of their accumulated sick leave to help with an extended illness. In addition, there was no evidence put into the record that showed that a lack of sick leave had caused any problems. Finally, the Sheriff pointed out that the contract allowed the Union members to convert their bonus days to sick leave. Consequently, the Employer does not believe that the Union's demand is either reasonable or necessary at this time.

The Fact Finder agrees with the Employer's position on this issue. Sick leave is often used as a way to take time off when an employee is not sick. For example, employees often call off duty when a child is ill, etc. Parenthetically, there was some discussion that the current system allowed the corrections staff to tell the truth when they needed time off. In addition, there was some testimony by Marcia Smeallie that her eye problem(s) caused her to use all of her sick leave and that a larger bank would be beneficial. However, there was no testimony that there were numerous individuals who needed increased sick time banks. Unfortunately, contracts cannot be written to cover every possible contingency; and the current language seems to work for the majority of the bargaining unit members.

Finally, there was no testimony that the Union membership wanted to go back to the previous system that allowed the employees to earn 4.6 hours of sick leave per eighty-(80) hours of work. The testimony was that the membership liked the bonus day system, but that they would also like to earn more sick leave hours. Given the cost and scope of the demand coupled with the lack of any quid pro quo, the Fact Finder cannot recommend the Union's position on this issue.

Finding of Fact: The Union did not prove that there was any need to change the current system of sick leave accumulation.

Suggested Language: Current Language

Issue: Sick Leave

Employer's Position: The Employer demands that the Union members maintain an accumulated sick leave bank of eighty (80) hours in order to convert bonus time to sick leave.

Union Position: The Union rejects the Employer's demand and counters with current contract language.

Discussion: The Sheriff contends that there is a pattern of the employees using all of their available sick leave, and that there are indications that some members of the bargaining unit are abusing sick leave. The Sheriff believes that language that forces the employees to maintain an eighty (80) hour sick leave bank in order to convert bonus days to sick leave will be an incentive for the employees to use sick leave only when they are sick.

The Union objects to this language for a number of reasons. The Union stated that if the Employer could prove that some members of the bargaining unit were abusing sick leave, then it should discipline the abusers. However, the Union argues that the Employer should not change contract language that affects the entire bargaining unit because it wants to change the behavior of a few bargaining unit members.

The Fact Finder agrees with the Union's position on this issue. If the Employer believes and can prove that some members of the bargaining unit are abusing sick leave, these individuals should be disciplined. The Employer has the right to end sick leave abuse. However, the bonus day system has been part of the contract for many years, and there is no reason to change a system that works well because the Employer is unwilling to use the contract's disciplinary language to penalize sick leave abusers.

Finding of Fact: The Sheriff did not prove that there was a need to change the bonus time buyback language.

Suggested Language: Current Language

Issue: Article 28.2 – Sick Leave

Employer Position: The Employer demands that sick leave accrual be suspended when an employee is on sick leave for over fourteen (14) consecutive days.

Union Position: The Union rejects the Employer's demand and counters with current contract language.

Discussion: This is an issue of first impression. The Employer wants to suspend sick leave accrual for individuals not in an active pay status, and the Union wants to maintain current language. Currently, there is a trend away from allowing an individual to accrue sick leave when he/she is in an inactive status. Therefore, the Employer's demand is unexceptionable.

Finding of Fact: There is a trend in industrial relations toward not paying for sick leave accumulation while an individual is an inactive pay status.

Suggested Language: Article 28 – Sick Leave

> A. Sick leave Accumulation. Each employee shall accumulate eight (8) days of sick leave per year. Said leave shall be earned at 2.46 hours for each eighty (80) hours of service in active pay status, including paid vacation and approved sick leave, but not during sick leave that exceeds fourteen (14) consecutive calendar days, a leave of absence, lay-off or other period in inactive pay status. Unused sick leave shall accumulate without limit.

Note: There were two other changes that the parties agreed upon in the Sick Leave Article. First, Section 28.3 was deleted because it was redundant, i.e., the exact language

is found elsewhere in the contract. This means that the remaining Sections of Article 28 will be renumbered. Second, the language in Section 28.4 (the old Section 28.5) was changed, but there was no testimony on the changes during the hearing; therefore, the Fact Finder is recommending that the new language be included in the contract.

Issue: Article 32.3 – Holidays

Union Position: The Union demands that any Sheriff's Department employee who is not in the Civil Division be allowed to schedule his/her personal holidays (personal days) thirty days (30) in advance of the date the personal day will be taken.

Employer Position: The Employer rejects the Union's demand.

Discussion: Some time in the past, the County increased the number of named holidays from ten (10) to thirteen (13) for all county employees. However given the nature of the corrections staff work (twenty-four hours a day, seven days a week, three hundred and sixty-five days a year), the parties agreed to give the corrections staff three Personal Holidays. These days are subject to a "use it or loose it" provision. The Union argues that sometimes the employees are unable to schedule their Personal Days because the Sheriff's Department is understaffed; consequently, the Personal Days are forfeited. The Union believes that its membership should have the right to schedule their Personal Days thirty days in advance of the anticipated use and that the Sheriff must honor the request.

The Employer is adamantly against this proposal. The Employer argues that under the Union's proposal it is possible that a majority of the corrections staff may all ask for the same day off, and there would be no way for the Sheriff to staff the jail. The Employer used the example of a wedding to make its point. That is, if a union member or

a member of their family was getting married, then the entire bargaining unit might be invited to the wedding; and under the Union's proposed language the Sheriff would have to honor the time off requests.

The Sheriff also presented evidence on the issue. The Sheriff went back through calendar year 2014 to determine if many (some) members of the bargaining unit did not use all of their personal day. The records showed that there were only five (5) members of the bargaining unit that lost time. However, with one exception, all of the individuals who lost time scheduled one day of vacation or used a single bonus day sometime during the year. The Administrative Officer checked with that individual who lost a Personal Holiday and who did not schedule a vacation or bonus day off and he stated that he forgot about his personal days. That is, his own mistake caused him to forfeit the day. In every other case, the Union member did not schedule his/her personal holiday, but did schedule other time off.

The Employer also stressed that the Sheriff wanted the employees to use their time off, and there was no reason why an employee should use a single vacation and/or bonus day when he/she had unused personal days. That is, bonus days can be converted to sick leave and vacation days can be scheduled and used or accrued according to the terms of the contract. Therefore using a vacation or bonus day when personal days are available does not seem to make any sense. Furthermore, the Employer stated that the employee should question why he/she must schedule a single vacation day when he/she has personal days available for use. The Employer also testified that all supervisors were instructed to tell the employees that personal days should be scheduled first when the employee wanted to take a day off. Finally, the Administrative Officer testified that any

time a union member had trouble scheduling a personal day, that the affected individual should contact him.

Based on the evidence in the record, the Fact Finder cannot recommend the Union's position on this issue. The data presented at the hearing does not indicate that there is a serious problem with the use of personal days. That is, the vast majority of the union members use all of their personal days. Moreover, there is some evidence that a number of the individuals who did not use all of their personal days were responsible for the loss of the days because of their own actions or inactions.

In this case, there is nothing in the record to prove that there is a need to change the current language. That is, there was no testimony that the days could not be scheduled, and there was testimony that the Employer wanted employees to use their paid time off. Consequently, the Fact Finder does not recommend that the current contract language should be changed.

Finding of Fact: The Union did not prove that there was a need to change the language regarding Personal Days in Article 32.

Suggested Language: Current Language.

Issue: Article 34 – Calamity Days

Union Position: The Union demands that Section 34.6 be deleted from the contract.

Employer Position: The Sheriff rejects the Union's demand and counters with modified language that it proposed during negotiations.

Discussion: Calamity days are days when the County Commissioners declare that County personnel do not have to come to work. For example, blizzard conditions would

often qualify as a calamity, etc. All County employees with the exception of the Sheriff's Department are covered by the Commissioners' declaration. However, the Sheriff's Department must be staffed around the clock every day of the year; consequently, the Corrections Officers must report to work. The problem arises because the Sheriff's personnel who work in the Civil Division work in the county Courthouse. If there is a declaration that a day is a calamity day, then the Courthouse is closed, and members of the Civil Division are still supposed to report to work.

The personnel who work in the Civil Division believe that there is no reason for them to report to work at a closed Courthouse. Rather, they believe that they should have the day off from work. There are a number of reasons for this demand. First, the testimony showed that there is nothing for the employees to do if the Courthouse is closed. Their jobs are closely tied to the county courts; and when the courts are closed, there is not really anything for them to do. Second, the Civil Division employees believe that reporting to the Sheriff's Office would create as many problems as it solves because an influx of personnel without any specific tasks, office space, etc. would create more problems than it would solve for the Sheriff. Finally, there is a philosophical point to the demand. The Civil Division personnel believe that their job is different from other members of the Sheriff's Department and to force them to report for duty to perform tasks that have nothing to do with their work in the Courthouse is not reasonable.

Captain Hammond, the Administrative Officer, testified that the Department always had work that needed to be completed, and that the Civil Staff could be profitably employed at the County Jail Building. Therefore, from the Sheriff's perspective, this is an equity matter. The Sheriff believes that because his Department is open and that all

other members of the Department must report for work as a matter of course, then the Civil Division employees should also report for work.

The question comes down to a difference of opinion on the issue. The Civil Division employees believe that the controlling factor is the worksite. That is, it their place of business is closed, then they should not be forced to go and report somewhere else. This is especially true because that they have no assignments outside of the Courthouse. On the other hand, the Sheriff's position is that work affiliation is the controlling factor. That is, the Sheriff believes that the Civil Division employees are members of the Sheriff's Department and that they should not be excused from work when all of their colleagues have to report for duty.

Ultimately, a person works for the individual who pays their salary. In this case all of the County employees ultimately work for the County. However, each employee is hired by a specific Department, and follows the rules and regulations set forth by the Department. In this instance, the Civil Division is part of the Sheriff's Department. Consequently, the Civil Division personnel are governed by the rules and regulations of the Sheriff's Department regardless of the locus of activity, i.e., the Courthouse. The Sheriff's Department (jail) because of its constant duties never closes. Therefore, the Sheriff's Department does not excuse its staff on calamity days. This means that the Civil Division is not excused.

The Sheriff's position is reasonable. Rather that treat a small number of its employees differently from the majority of its employees, the Department is applying a consistent rule for all of its employees. Giving the Civil Division staff calamity days off

is in many ways discriminating against all of the other Sheriff's employees. Part of the job for a member of the Sheriff's Department is to report for work on calamity days.

That being said, the Civil Division staff has a legitimate argument that if they are required to report for work there should be work for them to do. In the testimony at the hearing, the Civil Division staff stated that they reported for work, found the Courthouse closed, and after managing to get into the building had nothing to do. In response to this comment, the Sheriff's representatives testified that the Civil Division staff should report to the Sheriff's Department and that there would be work to do, or they could use personal days, vacation days, or compensatory time to call off work.

It must also be noted in this situation, that there was no testimony on the prevalence of calamity days. Most of the decisions about reporting to work probably are weather related. Therefore, there are only a few days that County employees are told to stay home. This implies that there are only a few days that the Civil Division staff is required to report for work when other Courthouse personnel are excused from work.

Finding of Fact: The Sheriff is not discriminating against the Civil Division personnel by requiring them to report to work on calamity days.

Suggested Language: 34(6) The Union recognizes that those days declared as calamity days by the Lorain County Commissioners are non-applicable to employees of the Lorain County Sheriff's Department. If the Sheriff calls a Level 3 snow emergency, those bargaining unit employees assigned to the Civil Division shall be paid for their normal work hours. If the county Justice Center closes for any other reason, bargaining unit employees assigned to the Civil Division may take the day off using available vacation, compensatory or bonus time, or may report to work at the Lorain County Jail building.

Issue: Article 34 – Hours of Work

Employer Position: The Employer proposes changing the wording of Article 34.2 to clarify that overtime is paid on hours actually worked.

Union Position: The Union countered with current contract language.

Discussion: The Employer's intention is clear, i.e., it wants to insure that it only pays overtime for hours actually worked, and the Employer's proposed language is meant to insure that the calculation of overtime is based on hours actually worked. The Employer argues that the trend in labor relations is toward a calculation of overtime only for hours that the employee is at work. Therefore, hours when the employee is on sick leave, etc., do not count in the calculation of overtime. The Employer argued that the suggested language will clear up any misunderstanding of what hours count in the overtime calculation. The Union countered with current contract language. The Union's position is that the current language has not caused problems, and "if it ain't broke, don't fix it."

The Fact Finder is aware that many contracts in both private and public employment are moving toward changing the definition of hours worked for the calculation of overtime. Consequently, the Employer's position is becoming the norm. The rational is the counting time not worked in the calculation of overtime leads to double counting the hours not worked. That is, the amount of overtime paid is artificially inflated. This leads to a situation where the Employer is paying twice for some hours when the Employee is in a non-active status. The Employer also testified that the suggested language is already found in the Lorain County Deputies Association contract. Therefore, the Employer believes that an internal comparability argument supports its position on this issue. The Fact Finder agrees.

.

Finding of Fact: The Employer's position that overtime should be calculated on hours actually worked is reasonable.

Suggested Language: Section 34.2 When an employee in the Corrections Officer classification is required to work in excess of eighty (80) hours in a fourteen (14) day period, he shall be paid overtime pay for such time actually worked over eighty (80) hours at the rate of one and one-half (1 ½) times his regular hourly rate of pay. When a full-time employee in other bargaining unit classifications is required to work in excess of forty (40) hours during the seven (7) day work period, he shall be paid overtime for such time actually worked over forty (40) hours at the rate of one and on-half (1 ½) times his regular hourly rate of pay. No employee shall be compensated for time fifteen (15) minutes prior to or after their regular eight (8) hour shift, unless said time actually worked exceeds the eighty (80) hours in the fourteen (14) day work period (or forty (40) hours in a seven (7) day work period for non-corrections officers).

Issue: Article 37 – Vacation Bonus

Employer Position: The Employer demands that the Vacation Bonus side letter be modified so that new employees would not receive the bonus days.

Union Position: The Union rejects the Employer's demand.

Discussion: The Parties' contract contains a side letter specifying that any employee who has twenty-one or more continuous years of service with the Sheriff is eligible for a vacation bonus. The agreement adds one bonus day to the employee's vacation for each additional year of continuous service up to twenty-five years. The result is that any employee with twenty-five consecutive years of service will have six (6) weeks of vacation as opposed to the five (5) weeks of vacation as specified in the language of the vacation scale listed in the body of Article 37.

There was no discussion of the reasons for the insertion of the side letter into the contract, although it obviously is an incentive to employees to stay with the Department and/or a reward for years of loyal service. The Employer stated that the County was facing an uncertain financial future; and consequently, there was a mandate to find ways to reduce the overall employment costs of all County employees, including the Sheriff's

staff. Moreover, the Employer testified that the vacation schedule listed in the body of the contract was not substandard in any way.

The Union objected to the Employer's proposal for a number of reasons. First, the Union argued that this proposal created a two-tier system and that all unions demanded equal pay for equal work. Second, the Union argued that there is no other contract between the Sheriff and other bargaining units containing similar language.[1] The Employer agrees with the Union's facts. However, the Employer stated that when the Sheriff bargained his other contracts that the demand would be made in all negotiations, and that some unit had to be the first to negotiate this item. The Employer did place a number of other Lorain County contracts into the record, and all topped out at five weeks vacation after thirty years (30) of continuous service. Furthermore, none of the bargaining units covered by these contracts had bonus day language as part of their agreements. The Employer stated that the Employer was not demanding any changes in the vacation schedule. The only demand is that the bonus day language be deleted for new hires.

There are a number of factors that must be considered in the discussion of this demand. First, the benefit is found in all Union contracts with the Sheriff, but it is not found in the contract of any other County employee. Second, the Employer's demand will only affect new hires after twenty-one (21) years of continuous service. Third, the vacation schedule found in the body of the contract is not substandard. It is true that some contracts for public employees have six (6) weeks of vacation at the top of the

[1] The Sheriff has contracts with at least three other bargaining units represented by the FOP. None of these contracts has any modification to the vacation schedule. However, the anniversary dates of those contracts are one to three years prior to this contract.

scale, but many also top out at five (5) weeks. Finally, there is some uncertainty about the overall budgetary outlook of all public employers. The changes in State funding, the proposed state budget, the aging population, etc., all make the revenue projections of an Ohio public employer questionable. Therefore, any public employer must make some attempt to control its budget even if it currently is fiscally sound.

The Fact Finder believes that each side has legitimate arguments to support its position in this case. However, the internal comparability argument is the factor that makes the Fact Finder agree with the Employer's position on this issue. That is, there are no other County employees that have as generous a vacation scale, and no other group of employees enjoys the bonus days. In addition, the impacts of any change in the bonus days will not affect any employee for over twenty (20) years. To make forecasts about what will transpire over the next twenty (20) years is an exercise in futility. Moreover, the parties will negotiate new contracts at least six (6) times before the change has any effect and that allows the Union ample opportunity to negotiate changes in the vacation schedule if necessary.

Finding of Fact: Internal comparisons between various groups of County employees show that the bonus day language in the Sheriff's contract is unique in Lorain County.

Suggested Language:

SIDE AGREEMENT
VACATION BOUUS

Bargaining unit employees hired prior to the ratification of this agreement who have twenty-one (21) or more years of service with the Employer shall be eligible for a vacation bonus as follows:

The rest of the language remains the same.

Issue: Article 36 Wages

Union Position: The Civil Division staff demand a substantial raise in the first year of the prospective contract, two and one/half percent (2.5%) in the second year of the agreement, and two and one/quarter percent (2.25%) in the third contract year.

Employer Position: The Employer is offering three percent (3.0%) in the first contract year, two and one/half percent (2.5%) in the second contract year, and two and one/quarter percent (2.25%) in the final contract year.

Note: The parties have already agreed on three percent (3.0%), two and one/half percent (2.5%), and two and one/quarter percent (2.25%) for the rest of the bargaining unit. That is the same base wage rate increase that most other Lorain County employees will receive in the coming years.

Discussion: The Civil Division employees are classified as Typists and Clerical Specialists. The individuals who work in the Courthouse do not believe that these job titles are correct. The Civil Division workers believe that they perform duties that are much more complex and important than the job title 'typist' implies. During the hearing a number of the Civil Division employees stated that they almost never type. This led to a discussion of their duties; Sheriff's sales and the work that goes into the sales were used as an example. The employees stated that they interfaced with lawyers, made sure that the paperwork was correct, and consulted with the Judges who supervised the sales, etc. They also presented a chart that showed how their workload had increased over the years. Finally, there was testimony that previous Fact Finders had recommended equity

increases in the compensation of these employees during the last few rounds of negotiations.

The Employer countered that all the bargaining units that had settled their negotiations agreed to the County's pattern settlement. In addition, the Employer stated that the work done by the Civil Division employees is performed by every other Sheriff's Department in Ohio; and according to the information presented by the Sheriff, his employees are not underpaid. Therefore, the Employer argues that there is no reason to pay these employees more than the pattern settlement. The Union countered this testimony with data that purported to show that the employees are not as well paid as other comparably situated employees in both Lorain County and the surrounding area.

The Fact Finder has examined all of the data presented by the parties and finds the data is not useful in most cases. Without similar job titles as a comparison group, the data often present an apples to oranges comparison. For example, the data presented in Union Exhibit 9 compares the Civil Division employees with Clerks, Clerk Specialists, Secretaries, etc. This is not the same job performed by the employees involved in this case.

The Union also presented evidence about the pay for Clerical Staff Wages in Lorain County. If the County Engineer and the Children's Services Board data are not considered because these two agencies usually have different sources of funding when compared to other departments, the data show that the average wage is $15.87. When the contract is signed the base rate will rise to $15.30; and on July 1, 2015 the rate will increase to $15.68. Therefore, the data from Lorain County do not show that the employees are significantly underpaid.

The fact that other neutrals have recommended equity increases over the preceding years means that the data analyzed by other Neutrals did convince them that the Civil Division employees were underpaid at one time. The data presented in this Fact Finding show that those increases worked and the gap that used to be present is closing. However, it must be pointed out the data cannot be read to show that the Civil Division employees are the best paid in either Lorain County or surrounding jurisdictions.

The Fact Finder is faced with making a recommendation based on data that do not, at least in this Neutral's opinion, give a definitive answer to whether the Civil Division employees are so underpaid that they deserve an equity adjustment. The employees strongly believe that they are underpaid, but the data only partially support that finding. Without exact data on other comparable positions, the Fact Finder cannot determine if an equity adjustment is warranted.

However, the Fact Finder does find that the Union's original demand is not supported by the data. Moreover, a base rate increase of the magnitude demanded by the Union would change the relationship between Corrections Officers, Typist/Clerical Specialist/Maintenance Repair Worker I, and Maintenance Repair Worker 2. There is no evidence that the employees in question are so underpaid that the entire pay scale must be upset in order to give them a significant equity adjustment.

Based on all of the information in the record and in recognition of the fact that an overwhelming percentage of the County labor force is receiving standard raises of three percent (3.0%), two and one-half percent (2.5%), and two and one/quarter percent (2.25%), the Fact Finder recommends that the Civil Division employees receive the same

yearly increases as other members of the Sheriff's Department and other County employees.

Finding of Fact: The data presented at the hearing are unable to prove that the Civil Division employees are significantly underpaid when compared to other workers doing similar work. The data do show that the amount of work is increasing and that the Civil Division staff is not at the top of any pay comparison. However, based all of the evidence in the record, the Fact Finder cannot recommend an equity adjustment at this time.

Suggested Language: The wage scale in Article 40 shall be amended to show that the Civil Division employees rate will increase by three percent (3.0%) in year one, two and one/half percent (2.5%) in year two, and two and one-quarter percent (2.25%) in year three of the prospective contract.

Issue: Article – New: Intermittent Employees.

Employer Position: The Employer proposes that it should be allowed to add up to 15,000 hours of Intermittent Employment per year.

Union Position: The Union rejects the Employer's demand.

Discussion: The Sheriff wishes to add a category of Intermittent Employees to his staff. The Employer stressed that these employees would not affect any full-time employee. That is, they would fill-in when there was a lack of full-time officers available. The Employer also stressed that anyone hired in this capacity would have to be trained and certified. In addition, if there was ever a need to layoff anyone, intermittent employees

would be the first ones laid off. The Sheriff claimed that this was a win-win situation. The Sheriff also asked for a one-year trial period to see if the proposal had merit.

The Union was adamantly against this proposal. The Union maintains that bargaining unit members should do bargaining unit work. The Union also pointed out that 15,000 additional hours translates into almost seven (7) full time employees. The Union stated that if the Sheriff needed more manpower, then he should hire more employees.

Ultimately, intermittent employees are a way to increase the size of the labor force at a lower cost than full-time employees. As such, intermittent employees make economic sense to the Employer. However, there is no doubt that the 15,000 hours will be staffed by individuals who will be working at a job that can be done by a full-time employee. Without an overarching reason, no Neutral would recommend a system where non-bargaining unit employees did bargaining unit work. In this case, the Employer did not prove a need for a new class of employee. This finding is especially true given the Union's position on the issue

Finding of Fact: The Employer did not prove that there was a need to hire Intermittent Employees.

Suggested Language: None

Note: All of the tentatively agree upon Articles are included in the Fact Finder's recommendations by reference.

Signed this 23rd day of March 2015, at Munroe Falls, Ohio

/Dennis Byrne/

Dennis M. Byrne, Fact Finder