

**STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD**

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RELATIONS BOARD

Sep 21 10 10 AM '96

**DARKE COUNTY SHERIFF, EMPLOYER  
and  
FRATERNAL ORDER OF POLICE/OHIO LABOR COUNCIL, INC.**

**IN RE:**

**96-MED-03-0163**

**FACT FINDING**

**FACT FINDER:**

**Philip H. Sheridan, Jr.  
Attorney at Law  
580 South High Street, Suite 200  
Columbus, Ohio 43215  
(614) 221-2001**

**FOR THE UNION:**

**Guy Kauffman, Staff Representative  
Fraternal Order of Police/Ohio Labor Council, Inc.  
222 East Town Street  
Columbus, Ohio 43215**

**FOR THE COUNTY:**

**Donald J. Binkley, Account Manager  
Clemans, Nelson & Associates, Inc.  
1519 North Main Street, Suite 6  
Lima, Ohio 45801**

**September 23, 1996**

## FACT FINDING

### STATEMENT OF THE CASE

The parties, the Darke County Sheriff, represented by Donald J. Binkley, Account Manager, Clemans, Nelson & Associates, Inc., and the bargaining unit, Fraternal Order of Police, Ohio Labor Council, Inc., including all deputy sheriffs appointed pursuant to R.C. § 311.04, including correction officers, patrol officers, dispatchers, and cooks, represented by Guy Kauffman, Staff Representative, have entered into negotiations for a successor contract to the contract which expired July 1, 1996.

This is the second contract between the parties. The parties attached a copy of the existing collective bargaining agreement.

The parties met and bargained in good faith, and were able to agree to some of the issues between them. The parties have a tentative agreement on the agreed items and ask that the fact finding incorporate, by reference, all of those agreed items. In addition, the parties agreed to Article 11 based upon the Sheriff's proposal as well as Article 22, and the bargaining unit withdrew its proposal on Article 39. The parties submitted fourteen issues to Fact Finding on August 8, 1996.

Pursuant to R.C. § 4117.14 and Admin.R. 4117-9-05, Philip H. Sheridan, Jr., 580 South High Street, Columbus, Ohio, was chosen by the parties as Fact Finder.

The parties agreed to a Fact Finding Hearing on August 8, 1996, and the meeting was convened at 10:00 a.m. at the Darke County Sheriff's Office. In addition to their representative, Darke County was represented by Sheriff Toby L. Spencer. In addition to their representative, Bill Grice and Tom Kaugher appeared on behalf of the bargaining unit. The matter was submitted upon statements and arguments presented to the Fact Finder.

According to provisions of R.C. Chapter 4117, the parties provided me with a copy of the current contract, the issues which have been resolved, the unresolved issues, and each party's positions on the unresolved issues.

In issuing the Fact Finding report, I have given consideration to the provisions of R.C. Chapter 4117, and in particular, the criteria contained within R.C. § 4117.14(G)(7)(a)-(f).

**UNRESOLVED ISSUES:**

Article 2	FOP-OLC Recognition
Article 3	Dues Deduction
Article 4	Management Rights
Article 16	Bidding and Vacancies
Article 20	Hours of Work and Overtime
Article 23	Wages
Article 24	Holidays
Article 25	Vacations
Article 26	Sick Leave
Article 28	Equipment and Uniforms
Article 37	Duration
Union Proposal	Longevity Compensation
Union Proposal	Mid-term Bargaining Procedure

**POSITIONS OF THE PARTIES:**

**Article 2. FOP-OLC RECOGNITION**

**The FOP-OLC POSITION:**

The FOP-OLC proposes adding language to Article 2 of the contract which provides bargaining unit work shall be performed by bargaining unit employees. The bargaining unit believes this is a job security issue and wants language in the contract which would prevent contracting out of the positions which are currently in the bargaining unit. The bargaining unit knows of no current efforts to do any contracting out or to reduce the numbers of the bargaining unit in some manner.

**The SHERIFF'S POSITION:**

The Sheriff wishes to maintain the status quo. The Sheriff also points out there is no adequate description of the jobs that are performed by this bargaining unit and he has no plans, and the County Commissioners have no plans of which he is aware, which would change the way in which his office is being operated.

**RECOMMENDATION:**

I recommend no change in the contract. This does not seem like a problem in need of solution in Darke County at this time.

**Article 3. DUES DEDUCTION**

**The FLP-OLC POSITION:**

The bargaining unit wants the fair share fee paid by non-members of the bargaining unit who are benefiting from Union representation of the entire bargaining unit. The Union has provided contract language which has been tested, and information concerning the ways in which those non-members of the Union can contest the fee, and actions of the Union which are objectionable to those

non-members because of political action or some other Union-related activity. The Union believes this is a fairness issue between the workers and points out that there are at least 4 - 6 members of the bargaining unit who do not currently pay dues to the FOP-OLC.

**The SHERIFF'S POSITION:**

The Sheriff wants to maintain the language contained in the original agreement between the parties. The Sheriff has allowed the Union to collect dues, or a fair share type fee, from any employee who once joins the Union. However, the Sheriff, and the County Commissioners, have no wish to allow a fair share fee because they believe it unfairly requires non-members of the Union to support it. No other employees in Darke County have such an agreement. This includes the Sergeants and Lieutenants Bargaining Unit in the Sheriff's Department.

**RECOMMENDATION:**

I recommend the parties agree to a Fair Share Fee clause in the Contract which includes all of the employees covered by the bargaining unit. I have recommended against Fair Share Fee in many contracts where the bargaining unit already had 100% membership. However, the few who are not members of the union are receiving all of the benefits of the bargaining unit without any of the obligations. This seems to be a fairness issue which should be decided in favor of the bargaining unit as long as it is the recognized employee organization to negotiate contracts with management.

**Article 4. MANAGEMENT RIGHTS**

**THE BARGAINING UNIT POSITION:**

The FOP-OLC wants to remove language from Section 4.2 of Art. 4, Management Rights, and replace it with the last paragraph of R.C. 4117.08. The Union's stated purpose in using the language

contained in R.C. 4117.08 is to avoid the inference of a waiver by the bargaining unit of actions taken midterm by management.

#### **THE SHERIFF'S POSITION:**

The Sheriff proposes current language in the Contract. This language is also contained in the Sgt.'s and Lieutenant's bargaining unit agreement. The Sheriff states there is no current controversy between the parties and there are no plans to make mid-term changes in the operation of the unit such that the language which the bargaining unit is proposing would be necessary.

#### **RECOMMENDATION:**

I recommend the change proposed by the bargaining unit. The language is the last paragraph of R.C. 4117.08 and it does not grant to the bargaining unit anything which is not contemplated by R.C. 4117.

#### **Article 16. BIDDING AND VACANCIES**

##### **THE FOP-OLC POSITION:**

The bargaining unit proposes language in Section 16.5 which provides "employees assigned or held accountable either as an assignee to the vacant position temporarily or held accountable as an officer in charge or O.L.C. will be remunerated or paid at the startup rate of pay of the higher position." The bargaining unit takes the position that if employees are to perform and be responsible for higher level positions than those in the bargaining unit, then they should be paid for that service. However, the bargaining unit took the position that it would accept a 2% pay increase from the rate of pay of the selected employee, as proposed by the Sheriff, instead of the startup rate of pay of the vacant position. According to the bargaining unit, this issue does arise from time to time because of shift relief and resignation, among other causes.

The bargaining unit also wants Section 16.6 to provide: "employee shall select their shift assignment according to their seniority. During the month of December of each agreement year, employee shall submit their first and second shift preferences to the employer. Any new assignment will begin the first week in January." The bargaining unit alleges the assignment by the Sheriff of shift preference is currently done by seniority and the Contract should reflect the practice of the Sheriff.

#### THE SHERIFF'S POSITION:

The Sheriff would allow a 2% increase for employees assigned to higher level positions but would limit that pay to only those employees who held the higher positions for one week or more because of problems with administering additional pay for those specifically assigned employees.

The Sheriff wants to maintain discretion in the selection of shifts. Although he does take into consideration seniority, and allows shift preference by seniority in most circumstances, he believes he must maintain some discretion because of the size of the department and its changing needs.

#### RECOMMENDATION:

I recommend the parties agree on language which allows a 2% raise for employees who are specifically assigned to higher positions for at least one shift. It appears to me the officer in charge problem occurs most often in unexpected scheduling problems rather than week's assignments. I agree with the bargaining unit that taking on the duties and responsibilities should result in additional pay.

I agree with the Sheriff that his determination of shift preference must have some discretion. The language of the parties should reflect the seniority will determine shift differential except in circumstances where, in the Sheriff's discretion, seniority should not prevail. This discretion should include good faith on the part of the Sheriff concerning the needs of the department. I also see no need to change the current practice of bidding every six months.

## **Article 20. HOURS OF WORK AND OVERTIME**

### **THE BARGAINING UNIT POSITION:**

The FOP-OLC proposes language which simplifies and makes clear the rights of the employees under Fair Labor Standards concerning overtime. The bargaining unit also wants to change the contract in order to count sick leave usage as part of the hours in the calculation of overtime.

The bargaining unit proposes that newly hired employees qualified to perform overtime will begin their overtime calculation of hours with the employee in the classification work unit who has the highest amount of hours on the overtime list.

The bargaining unit rejects the Sheriff's proposal to change the provision for Daylight Savings Time which would only pay the employees for the actual hours worked rather than the current practice of paying the employees who worked 9 hours, 9 hours of pay, and the employees who worked 7 hours, 8 hours of pay.

### **THE SHERIFF'S POSITION:**

The Sheriff proposes adding a provision which provides that employees during Daylight Savings Time changes will be paid for the hours which they actually worked. This is the same agreement which the Sheriff entered into with the sergeants and lieutenants bargaining unit.

The Sheriff rejects the Union's proposal to include sick leave hours for purpose of determining eligibility for overtime pay. The Sheriff points out this would be a change in the contract and sergeants and lieutenants do not get credit for sick leave hours.

The Sheriff also proposes changing the language contained in current Article 20.6 to the following: "whenever the employer determines to offer overtime to bargaining unit employees, the

employer shall make a reasonable effort to equally distribute offerings of overtime to eligible bargaining unit employees who would normally perform the duties requiring the overtime. In the event the work involved is a continuation of work begun during the employees regular shift, the employer may assign such overtime to the employee already working. In the event the work involved requires special skills, employees possessing such skills may be assigned to work the overtime." The Sheriff asserts that this language is much simpler and more understandable than the language contained in the current agreement.

#### **RECOMMENDATION:**

The parties agree to the Union's proposal that newly hired employees qualified to perform overtime assignments will begin their overtime calculation of hours with the employee in the classification or work unit who has the highest amount of hours on the overtime list. This should be added as a section of Article 20. However, I do not propose that the parties change the language of Article 20 in accordance with either of their proposals. The language contained in the current article appears to me to be clear that overtime is paid for hours of work in excess of that regularly scheduled and the overtime list has provided a workable method for equitably offering overtime.

In addition, I believe the Sheriff's proposal concerning Daylight Savings Time should be adopted. I do not believe employees should be paid for hours not actually worked.

#### **Article 23. WAGES**

##### **THE FOP-OLC POSITION:**

The bargaining unit proposes a 35 cent adjustment plus a 3% raise effective July 1, 1996; a 40 cent adjustment plus a 3% raise effective January 1, 1997; a 5% raise effective July 1, 1997; and a 5% raise July 1, 1998. The bargaining unit would adjust its timeframe to the effective date of the execution

of this agreement and all of the other dates would be correspondingly advanced. The bargaining unit argues that Darke County has a larger population and area to enforce than the comparables used by the bargaining unit but the Darke County employees are making the least amount of money in the group of comparables. The bargaining unit asserts that only such a series of increases will allow the member's income to increase to make it comparable to other criminal justice professionals in the immediate area. By example, the bargaining unit feels I should compare the pay of Highway Worker II's in Darke County to correction officers. This is an example of how low the pay for the Darke County Sheriff's employees is.

#### THE SHERIFF'S POSITION:

The Sheriff believes a reasonable pay increase is appropriate. He disputes some of the comparables as presented by the bargaining unit. He believes it is clear the numbers of officers in the comparables are not measured in the same way in which he would measure road deputies, for instance. He also points out the County Engineer, who employs highway workers, does not go to the County Commissioners for money for his payroll. He proposes a 3% general increase effective the first full pay period following the execution of this agreement; a 3% general increase effective the beginning the first full pay period following the first anniversary date of this agreement; and a 3% general increase effective beginning the first full pay period following the second anniversary date of this agreement.

#### RECOMMENDATION:

I recommend a 5% across the board pay increase effective with the beginning of the first full pay period following agreement; a 5% across the board pay increase effective the beginning of the first full pay period following the first anniversary date of this agreement; and a 5% general increase effective the beginning of the first full pay period following the second anniversary date of this

agreement. I do not favor wage adjustments in addition to percentage increases nor six month periods between increases. However, the 3% offered by the Sheriff does appear to be low considering the county is not arguing inability to pay but rather is championing prudent management. Neither the Sheriff nor the bargaining unit really demonstrated why Darke County should have been last or should be higher than last on the comparables that were presented. I was convinced to recommend a higher increase by the apparent disparity in patrol officer salaries in both sets of comparables.

#### **Article 24. HOLIDAYS**

##### **THE FOP-OLC POSITION:**

Currently bargaining unit employees who work for specified holidays, July 4, Labor Day, Thanksgiving Day, and Christmas Day, are paid the holiday pay which all employees receive plus pay at 1-1/2 times the holiday pay for each hour worked on that date. The bargaining unit wants to propose that employees receive 2 times their regular rate of pay plus the holiday pay for the four holidays now being paid at 1-1/2 times the holiday pay, and payment of 1-1/2 times the holiday pay plus the holiday pay for all holiday hours worked on the other listed holidays.

The bargaining unit does not agree with the Sheriff's proposals to do away with the half day vacations on Christmas and New Year's Eve and wants to maintain the practice of allowing comparable time off when employees actually work one of the listed holidays.

##### **THE SHERIFF'S POSITION:**

The Sheriff wants to do away with comparable time off because of scheduling and tracking problems. In addition, the Sheriff would propose deleting the half day Christmas Eve holiday in 1996 and thereafter and to eliminate the half day New Year's Eve holiday in 1997 and thereafter. The Sheriff would add Memorial Day beginning in 1997, and Martin Luther King Day beginning in 1998 as

"time and one-half" holidays, if worked. The Sheriff would not agree to increasing the amount of pay to those employees who work on the four other listed "time and one-half" holidays.

#### RECOMMENDATION:

I recommend the changes proposed by the Sheriff except for deleting comparable time off. I recommend the parties continue to allow employees who work on any of the listed holidays be allowed to accrue and take compensatory time off. This time off recognizes the very real disruption in family life which is caused by working on holidays.

#### Article 25. VACATIONS

##### THE FOP-OLC POSITION:

The bargaining unit proposes allowing vacation use in two hour increments instead of the current requirement that vacation be used in eight hour periods. The bargaining unit uses as the example, personal business, activities with children and other requirements which would not qualify for sick leave but would take less than a full day to accomplish.

##### THE SHERIFF'S POSITION:

The Sheriff wants to continue requiring that vacation be taken in no smaller than one day increments. The Sheriff proposes using the term "one day increments" instead of the current contract language which says 8 hours. This would correct the contract for all employees since there are several different shifts being worked. The Sheriff also proposes language which provides: "effective with employees hired July 1st, 1996 and thereafter, an employee shall not be entitled to prior vacation service credit for tenure with the state or any political subdivision of the state prior to his last date of hire with the employer."

## RECOMMENDATION:

I recommend the Sheriff's language be approved concerning not allowing employees hired after the effective date of this agreement to have prior vacation service credit for tenure with some other agency. This seems to me to be a management decision and the bargaining unit does not represent individuals who are not yet hired.

I also propose amending the language of Section 25.3 to provide in part: "vacations may not be used in less than 2 hour increments (. . .)." The Sheriff's concern about increased administration does not seem to me to be significant as I am sure there is already a procedure which determines the amount of vacation used and in the "bank." In addition, the clear language of Section 25.3 allows the Sheriff to deny the vacation usage where there is not 48 hours advanced notice and where such sign-off would result in the department being inadequately staffed. In other circumstances, where it is convenient for both the employer and the employee, I see no reason to prevent employees from using their vacation to take care of personal business and the like in two hour increments.

## Article 26. SICK LEAVE

### THE FOP-OLC POSITION:

The bargaining unit wants to remove language from Article 26 which provides an automatic penalty upon usage of more than five separate occasions of sick leave. The bargaining unit now takes the position that where no abuse of sick leave is alleged, there should not be a pay penalty for usage of otherwise earned and available sick leave.

### THE SHERIFF'S POSITION:

The Sheriff opposes taking this language out of the contract. The Union proposed this language in the last contract. It has not been a big problem in the department. Only five employees

were affected in the first year, four in the second year, and two in this year, to date. The purpose of the language was to avoid misuse of sick leave and it has been effective.

**RECOMMENDATION:**

I recommend no change in the contract. The clause was intended to dissuade employees from using sick leave except in real illness situations. It is apparently being effective. There is language in the clause which protects the employee with a chronic problem who receives a regular treatment.

**Article 28. EQUIPMENT AND UNIFORMS**

**THE FOP-OLC POSITION:**

The bargaining unit proposes an increase of \$25.00 per year in 1997 and 1998 for patrol deputies. The bargaining unit also proposes an increase in the detectives equipment and uniform allowance in 1997 and 1998 of \$50.00. The proposal is made to make sure that the deputies and other employees of the Sheriff's department are properly attired.

**THE SHERIFF'S POSITION:**

The Sheriff proposes no changes in the contract. He points out the uniform allowance is a non-cash basis system and he approves the purchases. There have been no problems with employees not having appropriate uniforms or attire and there is no need to increase the amount which is currently stated in the contract.

**RECOMMENDATION:**

I recommend no change in the current contract because it does not appear there is a problem in need of solution.

### **Article 33. SEVERANCE PAY**

#### **THE FOP-OLC POSITION:**

The bargaining unit proposes that employees who have completed five years of service can obtain severance pay upon departure from active service of 1/3 of up to 120 days of unused sick pay. The bargaining unit points out the rest of the employees of the county have this benefit.

#### **THE SHERIFF'S POSITION:**

The Sheriff is offering 1/4 of up to 120 days of accrued sick leave to those employees who have completed ten years of service and are entering into a voluntary resignation with two weeks notice.

#### **RECOMMENDATION:**

Based upon the information provided me concerning other employees of Darke County, I recommend the parties agree to payment of 1/4 of up to 120 days of accumulated sick leave (that is, up to 30 days pay) upon completion of five years of service and a non-disciplinary separation from active service.

### **Article 37. DURATION**

#### **THE FOP-OLC POSITION:**

The bargaining unit proposes that the agreement be effective upon signing and shall remain in full force and effect for a period of three years. The bargaining also proposes removing language in the contract which provides neither party must bargain collectively with respect to "any subject or matter not specifically referred to or covered in this agreement, even though such subjects or matters may not have been within the knowledge of either or both parties at the time they negotiated or signed this agreement." The stated purpose of this change is to protect the bargaining unit from mid-term changes

because it is asserted that SERB has ruled that unfair labor practice claims are not an appropriate method to contest such mid-term disputes and the parties should deal with such eventualities in their contract.

**THE SHERIFF'S POSITION:**

The Sheriff takes the same position concerning the duration of the agreement. He would maintain the current language in the contract which provides that the agreement will be effective upon signing and shall remain in full force and effect for a period of three years. The Sheriff does not agree with the removal of the "zipper clause" which is currently a part of the agreement. The Sheriff points out that there have been no disputes between the parties which have required such actions and there is no real reason to change the contract.

**RECOMMENDATION:**

I recommend no change in the contract. The agreement will be effective upon signing and shall remain in full force and effect for a period of three years.

**Union Proposal. LONGEVITY COMPENSATION**

**THE FOP-OLC POSITION:**

The bargaining unit proposes adding longevity compensation to the contract which would provide for a single cash payment to each employee who has completed five, ten, fifteen, or twenty years with the Darke County Sheriff's Department. The longevity compensation would reward bargaining unit members who decide to make the job with the employer a career.

**THE SHERIFF'S POSITION:**

The Sheriff offers existing contract language. The employer rejects this proposal because no other employees in the county receive such longevity compensation and the bargaining unit should obtain its wage increases directly and not through longevity.

**RECOMMENDATION:**

I recommend no longevity clause be added to the contract. I agree with management's position concerning pay raises.

**Union Proposal. MID-TERM BARGAINING PROCEDURE**

**THE FOP-OLC POSITION:**

The bargaining unit proposes adding language to the contract which provides: "any change initiated, planned, and implemented by the employer during the term of this collective bargaining agreement which affects the wages, hours, terms, and conditions of employment outside the existing collective bargaining agreement shall be resolved and bargained in accordance with the dispute resolution procedure outlined in O.R.C. 4117." The bargaining unit wants to address the issue of mid-term bargaining procedure. The bargaining unit asserts that such changes should be bargained to impasse and the availability of conciliation should be clear.

**THE SHERIFF'S POSITION:**

The Sheriff proposes no change in the current contract. The Sheriff can implement changes after bargaining to impasse during the term of the contract. However, there have been no such problems in the implementation of this agreement and there are no current problems pending.

**RECOMMENDATION:**

I recommend no change in the contract as there is no real issue between the parties.

**CONCLUSION:**

I have examined the positions of the parties with respect to each of the issues presented to me in accordance with the procedures outlined in Chapter 4117 of the Revised Code. I tried to leave the parties as I found them on most issues where I could see no real controversy between the parties and where there was no discernible improvement in the contract relation which was to be expected from the change proposed from either side. The parties should continue to consider resolving all issues between them as a result of compromise and agreement. Adoption of the Fact Finding would have the same result. I thank the parties for their professional and forthright presentations of the issues.

Respectfully submitted,



PHILIP H. SHERIDAN, JR.

September 23, 1996