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FACT FINDING REPORT  
STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
December 12, 1997

In the Matter of:	)	
	)	
	)	
	)	
The Columbiana County	)	97-MED-09-0861✓
Sheriff	)	97-MED-09-0862
	)	97-MED-09-0863
and	)	97-MED-09-0864
	)	97-MED-09-0865
The Fraternal Order of Police )	)	
Ohio Labor Council	)	
	)	

APPEARANCES

For the FOP/OLC:

Hugh Bennett, Staff Representative

Brian McLaughlin, Bargaining Unit Representative

Andy Moore, Bargaining Unit Representative

For The Columbiana County Sheriff:

John Barkan, Chief Negotiator

Richard Koffel, Sheriff

Fact Finder: Dennis M. Byrne

### Background

This Fact Finding concerns the Columbiana County Sheriff (Commissioners) and the Columbiana County Sheriff's Department employees, who are represented by the Fraternal Order of Police/Ohio Labor Council. The parties met a number of times prior to the Fact Finding but were unable to reach agreement. (See the Introduction of this report.) There was no mediation effort prior to the Fact Finding Hearing because the parties indicated that they saw little chance of agreeing on the open issues. The disagreement centers on five issues; 1) bargaining unit work including subcontracting, 2) wages, 3) officer in charge pay, 4) shift differentials, and 5) uniform allowance payments. The Fact Finding was conducted on December 9, 1997 in the Columbiana County Juvenile Justice Center. The Hearing started at 10:00 A.M. and adjourned at approximately 12:30 P.M.

The Fact Finder wishes to state that he appreciates the courtesy with which he was treated. Additionally, the conduct of the parties toward the Fact Finder and each other was exemplary. The Hearing was conducted with the greatest professionalism by both parties.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations. The criteria are set forth 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 agree-upon dispute settlement procedures in the public service or private employment.

The Report is attached and the Fact Finder hopes the discussion of the issues is sufficiently clear to be understandable. If either or both of the parties require a further discussion, however, the Fact Finder would be glad to meet with the parties and discuss any questions that remain.

**Introduction:**

Some knowledge of the facts surrounding the corrections officers and the functions that they currently perform within the Columbiana County Sheriff's Department is necessary to understand the positions taken by the parties at the negotiating table. In 1990 the County signed a judicial consent decree whereby the County Commissioners agreed to close the existing jail. As a result, construction started on a new jail, which is slated to open in early 1998. At some time in the 1993/1994 period, the Commissioners decided to privatize the corrections function(s) of the Sheriff's Department in order to save money. Consequently, the commissions signed a contract with a Massachusetts company, Civigenics, to manage the jail.

State law allows privatization only under restricted circumstances. The law mandates that the correctional facility be a free standing structure and furthermore the privatized facility can house only individuals convicted of misdemeanors. Therefore, in order to privatize the jail operation, the County had to find a way to house its felons. The County solved this problem by contracting with surrounding counties to provide jail space for persons convicted of felonies. Of course, the County must pay for this service. Both the Union and the Sheriff contend that when all costs associated with the privatization effort are calculated, it is not clear how much the County will save.

The Commissioners have underlined their determination to privatize the corrections department by informing the Sheriff, in writing, that they will not provide funding for the corrections officers after December 31, 1997. It is this impending layoff and all its ramifications that dominated the discussions between the parties. It should be noted at this point that neither the Sheriff nor the Union desire the layoff. The situation is

being forced on the parties by the actions of the County Commissioners. Under more normal circumstances, the parties probably would have been able to agree on a new contract without resorting to the dispute resolution procedures of ORC 4117.

The Union vigorously attacks the privatization plan for three reasons. First, the Union believes that any saving from privatizing the jail will be small or nonexistent. The Union argues that when the total cost of the new plan, including transportation charges and fees associated with the housing of felons, are calculated, the total cost will be similar to if not greater than, the current system in which Columbiana County provides its own corrections services. Obviously, this position is predicated upon the costs associated with both systems. These cost data are unavailable at the present time. However, both the Sheriff and the Union expressed a belief that there is little prospect for significant savings to the County from the privatization plan.

The Union's second argument is that the County is taxing its citizens, then using the revenue to benefit the citizenry of other counties. The Union contends that the corrections officers earn their income in Columbiana County and, generally, spend their money in the local community to support Columbiana County merchants. If the corrections officers are laid off, their income will drop and so will the revenues of local businesses. While it is true that Civigenics will hire some personnel to man the new jail, the Union convincingly argues that these jobs will pay less than the wages corrections officers currently earn. In addition, the County must take some of its tax revenue and pay the surrounding counties for jail space for felons. In other words, local revenues are being used to pay for the salaries of corrections officers in surrounding jurisdictions. The Union contends that the local economy will be negatively impacted by privatization.

There is undoubtedly some truth in the Union's argument. The magnitude of the effect is unknown without an economic impact study, but the Union's position on these issues is standard textbook theory. In reality, the Union is claiming that there is a need for an economic impact study to adequately determine the costs and benefits of the County's plan.

Finally, the Union argues that the County is going to face time consuming and expensive legal proceedings because of the privatization dispute. Realistically, the issues involved in this dispute could make their way to the Ohio Supreme Court. In addition numerous legal matters will arise as a consequence of the commissioners' actions. Regardless of what the eventual costs turn out to be, the Union argues that all of the costs of the privatization plan must be balanced against any potential gains. The Union also maintains that the legal expenses that both parties will undoubtedly incur is money that could be used to pay for the operations of the sheriff's department rather than be used for attorney fees.

The privatization scheme has affected the current negotiations in another way. The Union knows that some of its members will remain on the job regardless of what happens in the corrections division. The Union wants to negotiate a contract for these other bargaining unit members. The Sheriff, on the other hand, contends that his budget, scope of operation, etc., are all in a state of flux. He believes that there is no way that he can agree to increased wages, benefits, and changed working conditions in the present situation. Therefore, the Sheriff countered all of the Union's demands with the status quo. That is, the Sheriff wants to extend the current agreement until he has a better

understanding of the impact that the privatization plan has on his office. After these changes have taken place, the Sheriff offered to reopen negotiations with the Union.

The end result is that bargaining in the usual sense is not taking place. The Sheriff's conviction that it is foolhardy to change the contract in the current situation has led to a situation where the Sheriff did not counter the Union's demands on an issue by issue basis. Rather the Sheriff's response to each demand is, "wait until later." This action, while entirely understandable, is not encompassed by the usual meaning of the term collective bargaining.

The preceding paragraphs outline the positions of the parties. An overview of the entire situation makes a few points clear. The most salient of these is that the litigation which will result from the privatization plan will last for years. In addition, the benefits and costs of the Commissioners' plan can be endlessly debated. However, without all of the relevant information and cost data needed to evaluate the plan, the debate will polarize the parties without shedding any light on the underlying issues. The parties need better information to formulate their strategies and demands. That information is unfortunately currently unavailable.

Consequently, the Fact Finder believes that the only way to proceed is to treat this negotiation like any other negotiation. The parties share a relationship. While it appears that the relationship is going to undergo a drastic change, the reality of the current situation is that the parties are engaged in negotiations to define their relationship. The negotiations must meet the good faith requirements outlined in ORC 4117. If the external environment changes (i.e., privatization occurs) and these changes affect the parties, then

future negotiations can modify the agreement between the two sides. However, the current negotiations cannot be held hostage to the future.

**Issue:** Article 24 Wages

**Union Position:** The Union demand is for a 4% wage increase in the first year, 3% in the second year, and 3% in the third year of the proposed contract.

**County Position:** The Sheriff proposes a continuation of the existing contract with a wage reopener at a subsequent date.

**Discussion:** The Union demand is based on two facts. First the Union presented data from SERB that shows the wages of sheriff's department employees stratified by rank. According to this data, deputy sheriffs in Columbiana County are somewhat underpaid when compared to other jurisdictions. This is true regardless of the jurisdictions used as comparables. The difference is approximately 5% when the entire state is used as the comparison group. The difference is slightly larger if contiguous counties are the comparable group. The second fact is that the usual wage increase in the State has averaged between 3.0% and 3.5% during the past year. Therefore, based on evidence from comparable jurisdictions, the Union's demand is reasonable.

The Sheriff did not offer any testimony on this issue except to agree that the Union's figures are correct. The Sheriff maintained his position that the circumstances surrounding the current negotiations preclude any wage increase at this time. However, the Sheriff through his representative did indicate that a wage increase in the 3% per year range was reasonable in other circumstances.

Given this discussion and the data presented at the hearing, the Fact Finder believes that the Union proved its point. A 3% per year increase is in line with the increases offered by other departments. An additional 1% increase in the first year will help to close the differential that exists between the Columbiana officers and officers in other jurisdictions.

**Finding of Fact:** The Union proved its position that a 10% wage increase over three years is reasonable.

**Suggested Language:** The pay scales in Article 24 shall be amended to show a 4% increase effective January 1, 1998, a 3% increase effective January 1, 1999, and a 3% increase effective January 1, 2000.

**Issue:** Article 24 Section 3 (New) Shift Differential

**Union Position:** The Union demand is for a shift differential payment of \$.35 per hour for work on the second shift, and \$.55 per hour for all work on the third shift.

**Sheriff Position:** The Sheriff rejects this demand and proposes the status quo, i.e., no shift differential payment.

**Discussion:** Generally, a shift differential is a bonus payment for the inconvenience of working nonstandard schedules. American life revolves around an 8 AM to 5 PM daily schedule. Schools, restaurants, etc., all set their hours based on a standard work day. Shift differentials are a way that employees are compensated for working schedules that force them to sleep while others work. Consequently, shift differential payments are standard in most collective bargaining agreements.

In terms of the specifics within Columbiana County, the Sheriff and the Union also discussed the problems that prisoner transport causes. Because the Sheriff is forced to transport all felons, the deputies often are forced to work unusual hours and shifts. The Union desires a shift differential as a way to compensate the deputies for working these hours.

The Union's demand is, therefore, unexceptional. What is somewhat unusual is the size of the differential specified in the Union demand. Currently there is no differential payment in the contract. To go from no differential payment to a differential of \$.35 on the second shift and \$.55 on the third shift is excessive. Therefore, the Fact Finder agrees to the concept of a differential, but not to the amount demanded by the Union. If shift differential pay is a priority with the Union, future negotiations will allow the Union to increase the size of the payment.

**Finding of Fact:** Shift differentials are a standard feature of most collective bargaining agreements, and the unique situation in Columbiana County necessitates a shift differential payment.

**Suggested Language:** Article 24

Section 3. A shift differential of twenty cents (\$.20) shall be paid to employees who work the second shift. A differential of thirty cents (\$.30) shall be paid to employees who work the third shift.

**Issue:** Article 24 Section 4 (New) Officer in Charge Pay

**Union Position:** The Union demand is that the officer with the most seniority be appointed as the Officer in Charge when no supervisor is scheduled to work a regularly scheduled shift. The Officer in Charge will be paid a supervisor's wage.

**Sheriff Position:** The Sheriff rejects the Union's demand and countered with the status quo.

**Discussion:** Payment for as the "officer in charge" is a feature of many contracts. It is a recognition that the individual who performs the duties of a supervisor should be paid for the duties and responsibilities that he/she performs. In some ways the Fact Finder is sympathetic to the Union's demand. There is an element of fairness in the position.

The Sheriff is against the demand for two reasons. The first is the cost of meeting the demand. The Sheriff again pointed out that budget for the department is in a state of flux and that he cannot in good faith change current operating practice when the changes will cause overall personnel costs to rise. Second, the Sheriff believes that the Union's demand is flawed. The Union demands that the most senior deputy be appointed as the officer in charge. The Sheriff believes that there must be some criteria other than seniority involved in the decision. Consequently, the Sheriff does not agree with the Union's position.

Given the lack of specifics about the proposal, the Sheriff's real concerns about cost, and the fact that one new payment (shift differential) has been recommended for inclusion into the contract, the Fact Finder cannot recommend inclusion of Officer in Charge Pay into the proposed contract. This is a situation where future negotiations are a vehicle to allow the parties to fashion a clause that meets both their needs and concerns.

**Finding of Fact:** While it is true that Officer in Charge pay clauses appear in many contracts, the cost of the proposal and the lack of specifics about the appointment of the Officer in Charge preclude inclusion of the clause into the contract at this time.

**Suggested Language:** None.

**Issue:** Article 27 (Section 2) Uniform Allowance

**Union Position:** The Union demands a \$100.00 increase in the uniform allowance. In addition, the Union wishes to expand the list of those members of the department who receive the allowance, and the Union also wishes to add a penalty payment to the clause to insure that the allowance will be paid in a timely manner. Finally, the Union demands that the payment be included in the first pay check issued in January.

**Sheriff Position:** The Sheriff rejects the Union's demand and counters with the status quo.

**Discussion:** Before turning to the specifics of the Union's proposal, some background is necessary. The Union wants the payment to be included in the officer's first pay of the year. In addition, the Union desires that a penalty payment be included in the clause because the uniform allowance is sometimes not paid as a matter of course. That is, there have been some instances when the officers did not receive the allowance. Consequently, grievances have been filed over the uniform allowance payment. The Fact Finder understands the Union's position. However, the grievance procedure is the way that the parties enforce their agreement; penalty payments are not a standard feature of sheriff department contracts. Moreover, it is not out of the question that an arbitrator would

order some type of interest payment added to the allowance if he/she found that the Sheriff had simply disregarded the contract. Finally, payment of the allowance in the first pay of the year is somewhat unusual. Usually the payment occurs toward the end of the year because the officer has worked for the year and, consequently, incurred the cost of maintaining his/her uniform. The payment reimburses the officer for these expenses. Without an exceptional reason the Fact Finder can see no reason to recommend changing standard industrial practice about the timing of the payment.

The Union demand for a \$100.00 increase in the allowance is based on the fact that the allowance has not been increased since 1992. The \$100.00 simply offsets inflation's effects on the allowance. In other words the Union's demand is for a constant real (inflation adjusted) payment. The Sheriff agreed that this was the case. Given the facts of the situation, the Fact Finder agrees with the Union's position. If an officer's costs of maintaining his/her uniform has risen over the past six years, then the allowance should reflect that fact.

The Union also wants to expand the list of employees who receive the allowance. The Union bases its argument on the fact that the new jail is about to open. Currently, cooks, etc., do not receive the allowance because they do not have to wear a uniform. The Union argues that when the new jail opens, these individuals will be forced to wear a uniform. The Sheriff testified that there were no plans to change the dress code for the department. Given that, the Fact Finder cannot recommend that more individuals be paid a uniform allowance. A uniform allowance is meant to be used to maintain a uniform. If an employee is not required to wear a uniform, then he/she does not need a uniform allowance.

**Finding of Fact:** Inflation has eroded the value of the uniform allowance over the last six years. The Union demand is for a constant allowance in real (inflation adjusted) terms.

**Suggested Language:** The Uniform Allowance payment specified in Article 27 shall be increased by \$100.00.

**Issue:** Article (New) Bargaining Unit Work

**Union Position:** The Union demand is for a new clause specifying that bargaining unit work be performed by bargaining unit employees be added to the contract. In addition the Union wishes to add language restricting sub-contracting to the contract.

**Sheriff Position:** The Sheriff rejects the Union's demand and counters with the status quo.

**Discussion:** This issue is the main sticking point between the parties. Given the uncertainty and anxiety created by the Commissioners' stated intention to privatize the jail, the Union's demands for language regulating subcontracting and union work is understandable. The main way that a union attempts to preserve the job security of its membership is by restricting who may perform certain tasks. The object is to reserve the work for the union membership. Paradoxically, the Sheriff agrees with this position. He strongly argues that his department can efficiently and economically perform the corrections functions needed by the County. Therefore, both parties to this negotiation are against the layoffs proposed by the Commissioners.

ORC 4117 requires a good faith effort by the parties engaged in negotiations to reach a settlement that can be ratified by the union membership and the employer. In this

instance the Sheriff is the appointing authority (the employer) and his employees are the union membership. The agreement is between the Sheriff and his employees. The Commissioners are not party to this agreement. Of course, the Commissioners must ratify the agreement because the Sheriff's budget is funded by the county's general fund. Therefore, the Commissioners always have the option to vote against the agreement. Practically, this means that the funds needed to implement the agreement will not be allocated to the department. This leads to Conciliation and, eventually, the Court of Common Pleas.

In this instance the situation is somewhat more complex because of the Commissioners' plan to privatize parts of the Sheriff's operations. In some real senses the Commissioners are attempting to dictate the outcome of the agreement between the Sheriff and his employees. Conceptually, the Commissioners' actions are part of the overall environment in which the parties operate. The parties must negotiate an agreement that works for them within an external environment. The agreement the parties negotiate must be conditioned by the environment in which they function, but it cannot be controlled solely by that environment. In this case, the parties must negotiate their agreement and then the Commissioners will take whatever action they decide is necessary. Good faith collective bargaining requires the parties find an agreement. The actions of the Commissioners does not relieve the parties of the requirement to reach an agreement. To make the foregoing concrete: the parties must negotiate a union work and/or subcontracting clause that works for them. The clause must be negotiated in good faith on its own merits. If the external environment changes and makes the contract

either meaningless or unenforceable, then future negotiations or the courts will sort out the issues.

Turning to the subcontracting language, the Union position is standard, and language similar to the Union's proposal is found in many agreements. Unions always try to limit management's ability to subcontract work in order to reserve the work for union members. In the private sector the conditions under which an employer can subcontract out work are well known, and both sides understand the conditions that must apply before a unionized employer can contract out work. Unfortunately, in the public sector, especially in the case of safety forces, the issue is not settled.

In the current negotiations, the Union demands that the Sheriff agree not to privatize or subcontract work. The Sheriff has no desire to either privatize or subcontract out the work done by his employees and would prefer to keep his department intact. Actually it is not clear that the Sheriff could legally privatize parts of his department. Therefore, while it is understandable why the Union would want the word "privatize" in the agreement, it is not appropriate to place the that word in the agreement.

In terms of subcontracting the case is more complicated. The crux of the matter is the definition of subcontracting. Depending on the definition of the term, the parties have different views on the Union's proposed language. A union will always take a more restrictive view of what constitutes subcontracting than an employer. The Sheriff, on the other hand, will attempt to maintain some flexibility to meet unexpected staffing needs, etc. In addition, it is entirely possible that the Sheriff may need to "subcontract" the housing of convicts. That is, regardless of the privatization plan, it is possible that there will be a time when the new jail will be full and some prisoners will need to be housed

elsewhere. If, for example, the housing of overflow prisoners is defined as subcontracting, the Sheriff is against the Union's proposed language. On the other hand, there is nothing to indicate that the Sheriff would subcontract bargaining unit work as a matter of course.

During the discussions on this topic, the Union presented evidence that at some time in the past the parties, as part of a grievance settlement, agreed to limit subcontracting. Therefore, the contention is that subcontracting is not really an insurmountable issue to the parties. Rather, the parties need some real discussion of the issue and its ramifications. Unfortunately, because of the circumstances surrounding this negotiation, a full and frank discussion of the issue did not occur. Both parties agree that the language proposed by the Union will not be acceptable to the Commissioners, and they will not ratify an agreement with subcontracting language. This may be true but it is beside the point. The Fact Finder believes that in this instance *both parties to the agreement* would agree to some subcontracting language, although there might be a protracted discussion about what constitutes subcontracting.

The other proposed language controls bargaining unit work. This language is unexceptional. It simply means that bargaining unit employees do bargaining unit work. In sheriff department negotiations, this language usually restricts the sheriff's ability to use part timers when full time deputies are available to work. There was little discussion of this issue, but the Sheriff did not indicate that he had any problems with the concept. Consequently, the Fact Finder believes that there is some broad agreement on the concept of bargaining unit work.

**Finding of Fact:** The parties themselves have some agreement on the issues of bargaining unit work and contracting out. There is some evidence from prior agreements that the parties would agree to the proposed language.

**Suggested Language:** The Fact Finder believes that the two issues should be separate and each would be its own article.

Article (New) Bargaining Unit Work

Work that is customarily performed by employees in the bargaining unit(s) shall not be performed by supervisors or other non bargaining unit employees except under the following circumstances.

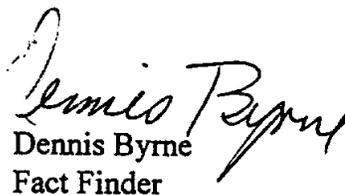
1. in the event of an emergency
2. work necessary to restore and/or maintain the normal daily operations of the department when qualified bargaining unit personnel are not available.

**Suggested Language:**

Article (New) Contracting Out

The Sheriff agrees not to contract out work customarily performed by bargaining unit members for the duration of this agreement.

December 12, 1997

  
Dennis Byrne  
Fact Finder