

IN THE MATTER

OF

FACTFINDING

BETWEEN

THE FRATERNAL ORDER OF POLICE, LODGE NO. 104

AND

MONTGOMERY COUNTY, OHIO SHERIFF

Hearing: August 20, 1998  
SERB Case Nos.: 98-MED-03-0252  
Date of Report: October 1, 1998  
Issue: Factfinding

Union Representative:

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REPORT AND RECOMMENDATIONS

Michael Paolucci  
Factfinder

### Administration

By letter dated May 18, 1998, from the Ohio State Employment Relations Board, the undersigned was informed of his designation to serve as factfinder for the Parties. On August 20, 1998, a hearing went forward in which the Parties presented arguments and documentary evidence in support of positions taken. The record was closed at the end of the hearing on August 20, 1998, and is now ready for a factfinding report.

### Factual Background

The Sheriff surrounds Dayton, Ohio and, as part of its responsibilities, is in charge of providing police protection services to its citizens; the Union represents certain civilian employees of the Sheriff's Department. The unit description is as follows:

Included: All Detention Specialists, Law Enforcement Specialists, Clerical Workers, Paramedics, Maintenance Workers, Kitchen Workers, Recreation Specialists, Communication Technicians, Inmate Program Coordinator, Adult Education Specialists, Civilian Dispatchers, and Victim Advocates.

Excluded: Paramedic Supervisor, Food Service Supervisor, Maintenance Supervisor, Communications Manager, Transportation Officers, and four confidential secretaries [Accountant/Budget Classification (one (1) employee), Clerk/Typist Secretary (two (2) employees), and Executive Secretary (one (1) employee)].

Prior to the hearing, mediation was inquired into by the factfinder, but upon advice of both Parties, it was determined that such efforts would not be worthwhile and a hearing was held. Also as a backdrop, this Union is one of several units that the Sheriff has to negotiate with. This unit, representing the civilian unit, was once tied directly to the FOP uniformed union. However, it has since separated itself and is asking that its independence be recognized. In an effort to achieve

separate status from the FOP, the Union, at the beginning of negotiations, included a total re-write of the current Agreement as part of its proposals. The attempted total re-write was not agreed to by the Sheriff and the animosity between the Parties has grown since that initial meeting. As a direct consequence, the number of issues presented to the Factfinder is large.

Also, the Parties, prior to entering factfinding, were engaged in multiple appeals to SERB for alleged unfair labor practices and amended certifications of the Union. Thus, attempts at reaching an Agreement have been further hampered by several ancillary issues that have surrounded the Parties' negotiations. This combination of animosity and outside issues lead to an, at time, confused presentation where the presentation of issues, and their importance, was not always clear.

During the factfinding hearing on August 20, 1998, twenty two (22) Articles were at issue with some of the Articles having multiple portions at issue. The Articles presented at the hearing are as follows:

1. Article 2 - Recognition and Dues Deduction;
2. Article 6 - Transfers;
3. Article 6 - Watch Schedules and Working Hours;
4. Article 8 - Layoff and Recall;
5. Article 9 - Grievance Procedure;
6. Article 10 - Employee Disciplinary Procedure;
7. Article 11 - Personnel Records;
8. Article 14 - Immunization and Duty Injuries;
9. Article 17 - In-Service Training;
10. Article 20 - Mileage and Parking;

11. Article 25 - Leaves;
12. Article 26 - Wages;
13. Article 27 - Hours of Work and Overtime;
14. Article 28 - Holidays and Holiday Premium Pay;
15. Article 28 - Field Training Officers;
16. Article 29 - Vacation;
17. Article 30 - Insurance;
18. Article 31 - Non-Bargaining Unit Work Performance.
19. Article 32 - Duration of Contract;
20. Article 33 - Longevity;
21. Article 34 - No Strike/No Lockout;
22. Article 35 - Definitions.

Each issue will be handled below.

Section 4117-9-05 of SERB's administrative rules addresses the issues that a factfinder must consider when making recommendations. That section, in pertinent part, reads as follows:

(K) The fact-finding panel, in making recommendations, shall take into consideration the following factors pursuant to division (C)(4)(e) of section 4117.14 of the Revised Code:

- (1) Past collectively bargained agreements, if any, between the parties;
- (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, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

- (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 in private employment. (emphasis added)

The issues will be addressed separately giving consideration to all of the required factors. However, since there are such a large number of issues, certain proposals will be addressed more succinctly than others.

Moreover, a tenet that will run through each issue is the current status of the Parties relationship. In this circumstance, where one Party wants dramatic modifications and the other Party is resisting such, *status quo* language will often be preferred. It will become necessary for the Parties, at some time in the future, to repair their relationship. In order to achieve that objective as soon as possible, it is necessary to only make such changes that are immediately justified. Otherwise, the time period in which the Parties can return to a more positive collective bargaining relationship will be unnecessarily extended. Therefore, unless justified by an immediate need, *status quo* language is preferred and will be the recommendation of the undersigned.

## **ARTICLE 2 - RECOGNITION AND DUES DEDUCTION**

### **SHERIFF POSITION**

The Sheriff believes the *status quo* is acceptable for Section 1, but has also proposed a few “clarifying” modifications to Section 1. Further, it proposes a modification to Section 2 that would allow it to inspect the Union’s records and that would not require fair share payments unless the

Union can show more than 75% Union membership. It argues that the 1998 Union elections gave the Union only a 43% majority and it contends that it should not have to agree to fair share payments unless the Union can show stronger support. It contends that all of the other unions it negotiates with has agreed to this practice.

#### UNION POSITION

The Union's proposal contains significant modifications to every portion of the language. It argues that the new language is more clear and sets down the current practice of the Parties.

#### RECOMMENDATION

It is recommended that the *status quo* be maintained. The Sheriff's concern are legitimate, but in the end are an internal matter for the Union. Since the language already exists, and no evidence that a large number of objectors has complained about being forced to contribute to the Union, then the fair share language should stay. As for the Union proposals, as with so many of the proposals made in this case, the changes are much too dramatic; have no justification other than the belief that this unit needs to be distinct from the sworn officers unit; and contains language that has not been adequately discussed or negotiated and would thus create an unknown risk. For all these reasons, the Parties current language is recommended.

### **ARTICLE 6 - TRANSFERS & WATCH SCHEDULES AND WORKING HOURS**

#### SHERIFF POSITION

The Sheriff proposes certain modifications to language including:

- an obligation that Management respond to a request for a voluntary trade within five (5) days;
- a deletion of a reference to Sergeants and Lieutenants;
- a mandatory list of items that must be included when the Personnel Director communicates with the Division Commander regarding a Voluntary Transfer; and,
- two (2) mandatory items that must be included in written explanations given to employees following a denial of a transfer.

The Sheriff has argued that these items are similar to those contained in other bargaining units' agreements.

#### UNION POSITION

The Union again re-writes the entire provision.

#### RECOMMENDATION

It is recommended that the Sheriff's proposals be adopted. They not only are reasonable, but are, for the most part, a benefit to the employees. Since an Employer's proposal that benefits the employees is something that the employees should want, then it is recommended that such be accepted. Thus, there is no reason the proposals should not be adopted and they are recommended.

As for the Union's proposal, it has a fault common to most of the Union's proposals — it is the wrong type of proposal for this type of procedure. Factfinding is not a good method to use when a Party is attempting to completely re-write existing language. The Parties stable bargaining history alone will outweigh any attempt to completely change language that, in the absence of evidence that

justifies such a dramatic change, has no basis. In this case, the Union's only claim is that it needs to have a different Agreement than that entered into by the FOP sworn officers. While such is a good rationale to use to modify specific language, it is not sufficient to completely change current language that has been applied without a problem. Thus, the Union's proposal can not be recommended.

## **ARTICLE 8 - LAYOFF AND RECALL**

### **SHERIFF POSITION**

The Sheriff proposes significant changes to the language that allows bumping into and out of this unit. Since the Sheriff believes it is important to have an overall "team" concept to the Sheriff employees, regardless of which unit an employee might be part of, it argues that it needs to allow employees to bump into this unit if they are bumped out of another unit.

### **UNION POSITION**

The Union opposes the new bumping language.

### **RECOMMENDATION**

It is recommended that the *status quo* be maintained. In light of the previous discussions, this language does not need to be modified and no serious issue exists that would justify its modification.

## **ARTICLE 9 - GRIEVANCE PROCEDURE**

Both Parties made multiple minor modifications to this entire provision.

### **RECOMMENDATION**

The current definition of a "day" is hard to manage; difficult to apply; and unique in the field of labor relations. Both Parties have recognized the need to modify the language and therefore, it is recommended that it be changed as follows: A grievance must be filed within ten (10) days of the date in which the grievable event occurred. The time period shall begin with the date on which the event occurred and shall end at the end of the tenth (10th) day following that occurrence.

Thus, it is recommended that the definition of a "day" be modified and that the time in which a grievance must be filed be extended to ten (10) days. In addition, instead of covering whether the definition of a day should be an employee work day or a calendar day at each section where it may arise, it is recommended that the Parties change all references to a "day" to a calendar day.

This is recommended even though the Sheriff made a compelling argument that it has been attempting to correct this problem with all the different unions. It contends that it is simply trying to get all the different units on the same page. In this vein, it is recommended that the new language be included, but that it is followed by language that makes it effective only upon at least one (1) other unit receiving the same modification to their Agreement. Until such time as another unit modifies their Agreement, the recommendation is that the *status quo* be maintained.

## **ARTICLE 10 - EMPLOYEE DISCIPLINARY PROCEDURE**

Both Parties made multiple minor modifications to this entire provision.

RECOMMENDATION

None of the proposals merit inclusion in this Agreement. The *status quo* is thus recommended.

**ARTICLE 11 - PERSONNEL RECORDS**

Both Parties made multiple minor modifications to this entire provision.

RECOMMENDATION

No compelling rationale was provided that would justify changing the current language. The *status quo* is recommended.

**ARTICLE 14 - IMMUNIZATION AND DUTY INJURIES**

Both Parties made multiple minor modifications to this entire provision.

RECOMMENDATION

While the Sheriff's proposal has some good qualities, it is hindered by the requirement that employees receive prior supervisory approval before obtaining health care. Such is an overreaching intrusion into an adult's life. Employees must be managed, but not so much that they are robbed of the ability to determine when they need health care — especially emergency room treatment. Since the Sheriff's proposal includes this mandate, it can not be recommended.

A review of current language shows that it is adequate and is therefore recommended.

## ARTICLE 17 - IN-SERVICE TRAINING

### SHERIFF POSITION

The Sheriff proposes language that removes superfluous language in the current provision, yet still provides the same benefits to the employees.

The Sheriff opposes the Union's proposal that pays affected employees when an in-service training occurs during a regularly scheduled work period.

### UNION POSITION

The Union proposes modifying the language such that employees who are forced to attend in-service training will be compensated at either his/her regular rate of pay or with compensatory time, the choice being the affected employee.

### RECOMMENDATION

It is recommended that the Employer's language be adopted to replace the current language, but that the Union's proposal also be included. Since the language only requires payment if an employee loses pay because of time spent for in-service training, then the Sheriff's argument that it should not have to pay for in-service training during off-duty hours has no relevance. Since the Sheriff gains when its employee receive additional training, and since the employee could lose compensated work time because of attending such a class, then it is reasonable to require the Sheriff to pay for the benefit it receives. As for the Employer's proposal, review of the language shows that it is does only remove superfluous language.

## **ARTICLE 20 - MILEAGE AND PARKING**

The Union proposes including a benefit such that more of its members receive free parking at the Sheriff garage. The Sheriff proposes modifications that give employees the option of using a credit card or receiving compensation at the IRS rate. Further, the Sheriff wants to specifically exclude costs associated with travel to training within the Sheriff's facilities.

### **RECOMMENDATION**

It is recommended that the Union's proposal not be adopted. The current benefit is reasonable; the Sheriff proved that it would be too costly; and it has no factual basis that would support increasing the benefit. Therefore, it is recommended that it not be included.

It is recommended that the Sheriff's proposal be adopted. Giving the employee's the option is a benefit to them and allows each employee to determine what is in their personal best interest. Further, the exclusion for travel to its own facilities is reasonable. Therefore, both Employer's proposal are recommended.

## **ARTICLE 25 - LEAVES**

### **SHERIFF POSITION**

The Sheriff modified the language in an attempt to be in compliance with the FMLA. It also proposed changing the sick leave benefit such that the accrual rate is reduced from 4.6 hours to 2.6 hours. It made numerous other proposed modifications.

## UNION POSITION

The Union re-wrote the entire provision and modified every benefit. The changes are too numerous to reiterate here, but it essentially changed the entire Article.

## RECOMMENDATION

It is recommended that the Employer's proposal, as it pertains to FMLA modification only, be adopted. All other benefits contained in the current language should be retained. Without evidence of abuse, there is no justification to change the sick leave benefit and all provisions, with the exception of those that bring the Sheriff into FMLA compliance, should be maintained.

The Union's proposal, as already addressed, is a dramatic restructuring of an entire provision and is inappropriate to do through a neutral factfinder. The nuances of the language and its intent cannot properly be ascertained from a third party neutral, especially with as little input from either side as this process allows. The only effective way to achieve this type of dramatic change in an entire Article is through negotiations. It would simply make this relationship worse by attempting to impose on the Parties language whose meaning, intent, and application can only be guessed at. Therefore, the Union's proposal is not recommended.

## **ARTICLE 26 - WAGES**

### SHERIFF POSITION

The Sheriff proposed a 4%, 3.75%, and 3.5% wage increase in each year of a three (3) year contract. It opposes all other Union proposals and proposes the abolishment of Hazard Pay. The Sheriff's 4% proposal is contingent on the Union accepting an increase in the Health Care Package

from 95%/5% premium share to 90%/10%. In addition, in exchange for the modification, the Sheriff has agreed to a one time 1% wage increase. The Sheriff also agrees to an "equity adjustment increase" for Civilian Dispatchers, Corrections Officers, and Recreation Officers:

#### UNION POSITION

The Union makes multiple proposals affecting every stage of the wage scale, including a \$.50 per hour Specialty Pay in certain job assignments; an increase in Hazard pay from \$.15 to \$.50; and a general wage increase of 5%, 4.5% retroactive to January 1, 1998, and effective January 1, 1999, respectively.

#### RECOMMENDATION

It is recommended that the wage increase be 4%, 4%, and 4% in each year of a three (3) year contract. Further, it is recommended that the Employer's offer of the Equity Adjustment Increase be made, together with a one (1) time 1% increase. In exchange for the one time 1% increase, it is reasonable to recommend that the health care premium be changed from a 95%/5% to a 90% from the Sheriff and 10% from each employee. It is recommended that Hazard Pay be maintained even though the Employer argued that such should be eliminated in light of its agreement to make an Equity Adjustment. Further it is recommended that the wage increase be made retroactive. Although the Sheriff claimed that the Union was guilty of "dragging its feet", it is impossible to determine which Party is more guilty of such a claim and thus, lacking any other justification for not making the wages retroactive, it is recommended that such be done so here.

## **ARTICLE 27 - HOURS OF WORK AND OVERTIME**

Both Parties made proposed modification to the Article that are too numerous to mention here. However, specific recommendations are made below.

### **RECOMMENDATION**

It is recommended that the following modification be made:

- The deletion of the language forbidding overtime for less than one (1) hour should be eliminated;
- The portions of paragraphs G&H that are not relevant to this unit should be deleted;

All other portions of the language should remain the same.

## **ARTICLE 28 - HOLIDAYS AND HOLIDAY PREMIUM PAY**

It is recommended that the *status quo* be maintained for this Article.

## **ARTICLE 28 - FIELD TRAINING OFFICERS**

### **UNION POSITION**

The Union proposes new language regarding the selection process, the training requirements, and the duties for Field Training Officers.

### **SHERIFF POSITION**

The Sheriff opposes any such new language as an unnecessary intrusion on its duty to manage the workforce.

## RECOMMENDATION

It is recommended that the new language not be included. It is traditional for a Sheriff to reserve the ability to appoint its Field Training Officers. Such typically being within the sole discretion of management, it would be an unusual circumstance that would permit a restraint on management's right to appoint these positions. The Union not only wants to restrain management's prerogative, it wants to control the entire decision making process. For these reasons, the new language can not be recommended.

## **ARTICLE 29 - VACATION**

### SHERIFF POSITION

The Sheriff is satisfied with the current language, but does propose several minor modifications.

### UNION POSITION

The Union proposes reducing the number of years it takes to obtain each new level of vacation; proposes a maximum of six (6) weeks of vacation from the current five (5); and proposes a date of May 7 as the date in which the Sheriff must approve summer vacation requests. It also proposes making the policy regarding vacation a more rigid, administrative process; a change from the current mandate that management and each employee shall meet and agree on vacation time.

## RECOMMENDATION

The *status quo* is recommended. The Union's proposal goes too far in an attempt to obtain

an increase in vacation benefits. Further, the administrative procedure it requests would be too much of a burden to manage. As for the Sheriff's proposals, the deletions it proposes do not appear to have an immediate need and therefore are not recommended.

## **ARTICLE 30 - INSURANCE**

### **RECOMMENDATION**

As already recommended in the Wages portion, it is recommended that Health Insurance be done pursuant to the Sheriff's proposal. The overwhelming reason for this recommendation is that all other employees in the Sheriff's office have the exact same benefit. It would be unreasonable and illogical to have this unit stand out among all other employees as the only one with a better health insurance benefit. Therefore, it is recommended that the Agreement be modified to have a 90/10 split for the cost of Health Insurance Premiums with a \$40 cap.

## **ARTICLE 31 - NON-BARGAINING UNIT WORK PERFORMANCE**

### **UNION POSITION**

The Union proposes including language that would prevent any employee not in the bargaining unit from performing bargaining unit work.

### **SHERIFF POSITION**

The Sheriff opposes any inclusion of language that would limit its ability to assign work.

### **RECOMMENDATION**

It is recommended that the new language not be included. The Union's interest in protecting

its members' jobs is an important one. However, the language it proposes is a severe restriction on management's ability to direct the work force, especially in a public employment setting where job assignments are less strict than in a private-manufacturing job. This language goes beyond traditional subcontracting language and therefore can not be recommended.

### **ARTICLE 32 - DURATION OF CONTRACT**

Based on the previous discussion in the Wages section, it is recommended that the Agreement be made retroactive to January 1, 1998 and expire on December 31, 2001.

### **ARTICLE 33 - LONGEVITY**

This Article was withdrawn at the hearing.

### **ARTICLE 34 - NO STRIKE/NO LOCKOUT**

This Article was settled at the hearing.

### **ARTICLE 35 - DEFINITIONS**

This Article was settled at the hearing.

All issues not addressed should be presumed to have been purposefully excluded. Thus, issues presented that are not specifically addressed must be considered a recommendation for the

*status quo* to be maintained.

October 1, 1998  
Cincinnati, Ohio



Michael Paolucci