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**STATE EMPLOYMENT RELATIONS BOARD
COLUMBUS, OHIO**

IN THE MATTER OF FACT FINDING :
:
BETWEEN :
:
HIGHLAND COUNTY SHERIFF :
:
-AND- : **REPORT OF THE FACT FINDER**
:
FRATERNAL ORDER OF POLICE, :
OHIO LABOR COUNCIL, INC. :
:

SERB CASE NUMBERS: 99-MED-10-0876
99-MED-10-0877
99-MED-10-0878

BARGAINING UNIT: The Bargaining Units represented by the Fraternal Order of Police consists of ten (10) Deputy Sheriffs; four (4) Corrections Officers; nine (9) Dispatchers; seven (7) Sergeants; and two (2) Cooks.

FACT FINDING PROCEEDING: April 28, 2000; Hillsboro, Ohio

FACT FINDER: David W. Stanton, Esq.

APPEARANCES:

FOR THE EMPLOYER

Robert W. Cross, Consultant
James D. Buckner, Consultant

FOR THE UNION

Frank T. Lambros, Staff Rep.
John Looman, Staff Representative
Keith E. Brown, Corrections' Rep.
Jerry Williams, Sergeant's Rep.
Scott Miller, Communications Rep.
Richard Warner, Deputy's Rep.

ADMINISTRATION

By correspondence dated December 1, 1999, from the State Employment Relations Board, the Undersigned was notified of his mutual selection to serve as Fact Finder to hear arguments and issue recommendations relative thereto pursuant to Ohio Administrative Code Rule 4117-9-05(j); and, (k), in an effort to facilitate resolution of those issues that remain at impasse between these Parties. The impasse resulted after numerous attempts to negotiate a Successor Collective Bargaining Agreement proved unsuccessful.

The following Findings and Recommendations are hereby offered for consideration by these Parties; were arrived at based on their mutual interests and concerns; and, are made in accordance with the Statutorily Mandated Guidelines set forth in Ohio Administrative Code Rule 4117.9 which recognizes certain criteria for consideration in the Fact Finding Process as follows:

1. Past collectively-bargained Agreements, if any, between the Parties;
2. Comparison of 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 adjustment on a normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the Parties; and,
6. Such other factors not confined in 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 public service or in private employment.

THE BARGAINING UNIT DEFINED; ITS DUTIES AND RESPONSIBILITIES TO THE COMMUNITY; AND, GENERAL BACKGROUND CONSIDERATIONS

The Collective Bargaining Agreement between the Fraternal Order of Police, Ohio Labor Council, Inc., (hereinafter "Union" and/or "FOP), and the Highland County Sheriff's Office (hereinafter "Employer") contains Article 2, titled "Recognition", which recognizes the Ohio Labor Council as the sole and exclusive bargaining agent for those employees within the following Bargaining Unit as follows: Unit A: Sergeants, Unit B: Road Patrol Deputies, Jailers, Unit C: Dispatchers and Cooks. The Bargaining Unit consists of ten (10) Deputy Sheriffs, four (4) Corrections Officers, nine (9) Dispatchers, seven (7) Sergeants, and two (2) Cooks. The Record demonstrates that the Parties have agreed to an extension of the statutory process, which included retroactivity to January 1, 2000. The Parties have indicated that the Bargaining Unit members perform the duties of patrol, response to calls for service, guard and transport prisoners, handle criminal investigations, serve warrants and subpoenas, supervise subordinate employees, handle dispatch and 911 dispatch duties and any other assigned duties that may arise. The Parties met to engage in Collective Bargaining on December 7, 1999; December 16, 1999; December 21, 1999; January 12, 2000; and on February 17, 2000 for mediation with an FMCS Assigned Mediator.

Each Party requested, and the Undersigned agreed, that this Report include the Fact Finder's recommendation that those Articles not "opened" during these negotiations be transferred to the successor Collective Bargaining Agreement containing current contract language for the following Articles and title thereof:

- Article 1 - Agreement
- Article 2 - Recognition
- Article 3 - Union Representation
- Article 4 - Management Rights
- Article 5 - No strike/No lockout

Article 7 - Bulletin Boards
Article 8 - Non discrimination
Article 9 - Disciplinary Action
Article 10 - Grievance Procedure
Article 11 - Work Rules
Article 12 - Labor Management
Article 13 - Reduction in Force
Article 15 - Court Time
Article 17 - Vacation
Article 19 - Payment upon death
Article 20 - Donated Time
Article 21 - Uniforms and Equipment
Article 22 - Personal Items
Article 23 - Training
Article 24 - Safety and Equipment
Article 26 - Work out of Classification
Article 30 - Waiver in Emergency
Article 31 - Severability
Article 32 - Copies of Agreement
Article 33 - Alcohol Drug Testing
Article 34 - Residency
Article 35 - Injury Leave

Documentation contained in each Parties Fact Finding Hearing materials was signed by each Party Representative on December 21, 1999 indicating that the aforementioned Articles "...be transferred to the new Collective Bargaining Agreement with the current contract language." Moreover, additional documentation reveals that Article 37, titled "Military Leave" was also considered by these Parties as an Article that should transfer into the successor Collective Bargaining Agreement. Based thereon it is so recommended.

The written statements defining all unresolved issues and summarizing the position of each Party with regard to each unresolved issue was provided by each Party representative prior to the evidentiary Fact Finding proceeding and each have indicated that the following Articles remain unresolved and are at impasse relative thereto;

Article 6 - Dues Deductions

Article 14 - Hours of Work and Overtime

Article 18 - Sick Leave

Article 25 - Insurance

Article 27 - Shift Differential

Article 28 - Longevity

Article 29 - Wages

Article 34/(Y) - Physical Fitness (new Article)

Article X - Police Memorial Day (new Article)

Article 4 - Probation (new Article)

As indicated by the Parties, the Union proceeded on March 15, 2000 with a ratification vote with all three Bargaining Units identified in this proceeding. Those Bargaining Unit Members participating in the ratification vote unanimously rejected the proposed changes in the current Collective Bargaining Agreement. As the Employer indicates those Articles presented for consideration were agreed to conditionally by Management subject to the ratification vote and passage. And that failure thereof, would cause it to withdraw any and all support of the ratification process.

As is obvious based on the type of Units identified herein, these employees provide emergency and safety services for the Highland County area and are considered under the Statutory scheme as "Strike-prohibited employees" (see, ORC, 4117.14(d)). The Fact Finder is required to consider comparable employee units with regard to their overall makeup and services provided to the members of their respective communities. Both Parties have relied upon

comparables of other municipalities and jurisdictions concerning “comparable work” provided by these Bargaining Units. And as is typically apparent, there are no “on point comparisons” relative to these Bargaining Units concerning wages and other benefits that remain at impasse herein. Whatever similarities exist must be taken into consideration by the Fact Finder based on the above noted Statutory Criteria. It is now, and has been, the position of this Fact Finder that the Party proposing any deviation, deletion, or modification of the current language or of the *status quo* bears the burden of proof and persuasion to compel the change proposed. Failure to meet that burden will result in a recommendation that the Parties maintain the *status quo* practice or current language.

The Fact Finder is also of the opinion that the evidentiary Record demonstrates the Parties reached what can be characterized as a “tentative agreement” relative to the unresolved issues that are present in this proceeding. It is the Fact Finder’s position that a tentative agreement reached at the bargaining table after exhaustive “give-and-take” negotiations have occurred is the best indication of the Parties’ intent of the rights and obligations each has agreed upon. Obviously, it goes without saying that often times those individuals charged with the responsibility to “put the best position forward” relative to that they are seeking at the bargaining table do not always receive the utmost confidence in that which they have brought back to the members and/or to the individuals whom ultimately ratify or approve that which has been tentatively agreed .

Nonetheless, the Statutory Process is not a mechanism by which Parties can in good faith reach a tentative agreement and then hope to reap additional improvements on that agreed to by rejecting that which their Committee and/or Commissioners might have deemed an “acceptable package”. Such a tactic would run counter to the very nature of this Statutory Process. To allow Parties to

continue to bite at the “proverbial apple” until a larger bite is obtained after the first bite was deemed acceptable, simply does not represent “good faith” bargaining. The Fact Finder has long been a supporter of this Statutory Process when the Parties are engaged in such good faith negotiations and have exhibited the necessary degree of trust to their opposition in “hammering out” an Agreement. The best interests of a Union’s membership and/or governmental entity is obtained by reaching the tentative agreement without outside intervention. Given this consideration this Fact Finder affords compelling weight to those items that have been tentatively agreed to based on the Parties’ good faith negotiations. Absent compelling evidence that those tentatively agreed to Articles should not be recommended herein, those will be precisely that which will be recognized as compelling by this Fact Finder.

The following recommendations are based on the data provided; the positions taken by the respective Party; and, those factors peculiar to police personnel and supporting classifications such as those evident herein while recognizing the unique duties associated with dispatchers, corrections officers, clerks, cooks, etc. The Fact Finder recommends the following relative to each of the unresolved issues subject to this proceeding. Moreover during the course of the Fact Finding proceeding, the Parties agreed to incorporate, as part of this recommendation by the Fact Finder, that these Articles remain as current language :

Article 6 - Dues Deduction

Article 18 - Sick Leave

Article 28 - Longevity

It is hereby recommended that the Parties maintain this *status quo* language as set forth in the predecessor Collective Bargaining Agreement as representing the Parties’ intent relative to these

Articles.

Additionally, it is hereby recommended that the Police Memorial Day and the Physical Fitness Articles, which would represent new Articles in the successor Collective Bargaining Agreement, be withdrawn. The Fact Finder is of the opinion that there is simply no need to place these two(2) new Articles in the successor Collective Bargaining Agreement at this time.

With respect to the Health Insurance Article, it is recommended that the Parties adopt the position agreed to as part of the tentative agreement concerning Health Insurance.

Additionally, it is recommended that the Parties follow the tentative agreement concerning the Shift Differential which represents that the second and third shifts are increased to \$.25 per hour for all hours worked representing a \$.10 per hour increase for the second shift and a \$.05 per hour increase for the third shift.

With respect to Article "Y" or 4 concerning "Probation", it is recommended that the Parties adopt the Employer's proposal relative to this new Article wherein new hires will serve a one (1) year probation period and promotions to Sergeants and/or Corporals will serve a six (6) month probation and any reclassifications into the Road Patrol will serve a one (1) year probation. With respect to the Cook's classification, it is recommended that there be no change to the current practice. Such is consistent with that discussed by the Parties, as well as, that supported by the data presented in the Hearing Statements presented by the Party Representatives.

ARTICLE 29 - WAGES

FOP POSITION

The FOP has proposed a \$1.00 increase for current wages for every year of this Agreement. In support thereof, it emphasizes that the comparables it has relied upon from the

counties of Adams, Brown, Clinton, Fayette, Gallia, Jackson, Pike, and Ross, with similar populations. It notes that Dispatchers are 8 % below the comparables, Correction Officers 15.6% below the comparables, Deputies 10.35% below the comparables, and Sergeants 5.35% below the comparables. It notes that the employer will open a new jail facility and increase personnel. A sufficient increase at this time will bring this organization within the upper half of the comparable agencies it has submitted. It notes that during its last negotiations, membership experienced what it characterized as its first “serious” raise of \$1.60 over three years. This is a senior law enforcement agency in the County, and as it contends, is the lowest paid law enforcement agency in Highland County. It notes that this is one of largest counties in Ohio with approximately 569 square miles to patrol wherein the average Ohio County is 450 square miles. It notes that the Sheriff’s office handles more police activity proportionately than most of the comparable agencies relied upon.

Moreover, it proposes a Hazard Duty payment for all bargaining members of \$500.00 per year and represents such as being a reasonable “recognition” of the unique hazards of law enforcement. The FOP comparables demonstrate that Pike County receives \$.45 per hour as Hazard Duty pay.

COUNTY POSITION

The County takes the position that wages be increased by \$.50 for each of the three(3) years of the successor Collective Bargaining Agreement with a multi-tier compensation schedule for new hires in Corrections and Dispatch. It would also propose the same multi-tier concept for new promotions to road patrol effective 1/1/01. In support of this contention, it emphasizes that Highland County by its economic, geographic and aggregate demographics is within the

composite of Southeastern Ohio. It emphasizes and maintains that the Sheriff's Office

Bargaining Units currently rank in comparison by classification as follows:

Sergeants number 1 out of 6 at top level - 13.62 per hour
Road Deputies - number 4 out of 7 at top level - \$11.60 per hour
Corrections - number 4 out of 6 at top level - \$9.80 per hour.
Dispatchers - number 2 out of 6 at top level - \$9.80 per hour.

Based on these current top levels, the impact of its proposed \$.50 per hour for each of the three years represents a 3.7% increase for the Sergeants, 4.3% for the Road Deputies, 5.1% for Corrections and 5.1% for Dispatchers. Based thereon, the Sergeants would maintain their number one position in the comparables; the Road Deputies would improve from number 4 of 7 to number 3 of 7 ; Corrections would remain number 4 of 6; and Dispatchers would maintain number 2 of 6. The Corrections employees would improve to reach the average hourly rate of \$10.30 per hour and the Dispatchers would improve to 9.1% over the average. The employer for each of the Bargaining Units classifications has relied upon Adams, Brown, Gallia, Jackson, and Pike Counties for the Dispatchers, Sergeants, and Corrections and it has added Hocking in the comparables relative to the Road Deputy classification.

RECOMMENDATION & RATIONALE

It is hereby recommended that the Parties adopt the following recommendation concerning Article 29, titled "Wages" and that the wages be retroactive to January 1, 2000:

January 1, 2000 - \$.75 per hour increase
January 1, 2001 - \$.65 per hour increase
January 1, 2002 - \$.60 per hour increase.

Moreover, it is recommended that for new hires only that the Parties adopt the new tier program beginning in 2001 when the new jail hiring process begins. It was indicated that the

Parties intent was that no one currently employed by the County's Sheriff Department shall be negatively impacted by this change. Based thereon, it is so recommended.

Of the comparables provided, each Party relied upon either contiguous Counties to Highland and the employer expanded its utilization of comparables to include those farther southeast in Hocking, Jackson, and Gallia. Both Parties have relied upon Brown, Adams, Pike, Jackson, and Gallia Counties. These employees are receiving, based on the Recommendation contained herein, based on the data identified in the Fact Finding materials presented, a \$2.00 wage increase over the life of the successor Agreement including retroactivity. Such also represents a \$.40 improvement for the life of this Agreement above that realized for the predecessor Agreement. Given these compelling considerations, as well as, the ultimate "rankings" with the comparables noted, this wage package is both reasonable and fair. Moreover, it is clear based on the evidence provided that the total number of "calls" received increased significantly from 1998 to 1999; the total number of "vehicle crashes" decreased in that same time frame, as well as, the total number of "criminal investigations." Total "arrests" remain almost constant and criminal arrests decreased as did traffic arrests.

It is also recommended that the Parties do not adopt the pay for Hazard Duty in that of the comparables relied upon only one - Pike County- receives Hazard Duty pay at \$.45 per hour. Based on the comparable data, which the Fact Finder simply cannot ignore, I find no compelling basis to recommend that the Union's Proposal for Hazard Duty Pay not be included in the successor Collective Bargaining Agreement. Obviously, the nature of the work is hazardous, in fact dangerous at times, however, there exists no evidentiary support to recommend inclusion in this Agreement.

Indeed the employer has not raised any “inability to pay” argument, and based on information provided during the course of the Fact Finding proceeding, it references its serious costs considerations concerning the new jail which will undoubtedly require additional employees from the community. Based on the recommendations for Wages and the other items previously discussed concerning Insurance and other economic benefits addressed in these negotiations, the impact on the employer’s ability to finance these obligations are indeed reasonable and will not “strap it” in the coming years when these new developments occur. Moreover, the Cost of Living data provided for this economic area, i.e., Columbus, Dayton, and Southeast Ohio areas, it is at approximately 2.7%. Based on these recommended wages, these employees would remain above that relative to the cost of living data provided. The current recommendation represents an increase that is above not only those recognized for Ohio, but the National average for yearly wage increases. Moreover, the increases recommended herein represent a \$2.00 per hour increase over the life of the Agreement which exceeds that of the prior Collectively Bargaining Agreement total increased rate of \$1.60 per hour over the life of that Agreement.

It is hereby recommended that the Parties adopt the aforementioned hourly increases to each of the Bargaining Units identified in this proceeding.

ARTICLE 14 HOURS OF WORK AND OVERTIME

The FOP takes the position that the current 171 hours at straight time pay in a 28 day period prior to overtime eligibility be eliminated from the successor Collective Bargaining Agreement. It emphasizes that this is antiquated standard equating to 11 additional hours of work per month prior to overtime eligibility. It notes that the FLSA Public Safety Exception for police

and fire agencies served its purpose at a time of depression when there were few jobs and less funding. It notes that these are substandard practices and are out of place at this day and age. It notes that all comparables except Adams County have, at a minimum, adopted the FOP's proposal of 160 hours within a 28 day period prior to overtime. Seven of the 9 comparables pay overtime within the pay period in which it was earned.

The FOP notes that prior to 1986 most sheriff's departments were on salary. It also notes that this 171/28 standard was Court mandated and promulgated by the Department of Labor. It emphasizes that indeed that the Parties' tentatively agreed to incorporate the 160/28 provision and that was ultimately unanimously rejected by the Bargaining Unit.

The Employer rejects the FOP proposal, emphasizing that the tentative Agreement was rejected by this Bargaining Unit. Moreover, it contends that the 171/28 practice has an economic value to this Department based on when the payment of Overtime is triggered.

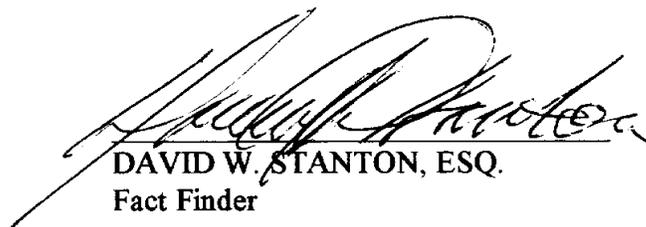
RECOMMENDATION & RATIONALE

It is hereby recommended that the Parties adopt the 160 hour/28 day provision for Overtime entitlement as was tentatively agreed to by and between the Parties. It is clear that indeed the comparables indicated that only Adams and Highland Counties recognize the 171/28 standard and that most Overtime is paid in the pay period that it is earned with the exception of Brown County which recognizes the 160 hour/28 day consideration. It appears that the 171/28 concept is indeed antiquated and prohibits employees from earning Overtime until after they have amassed 171 hours in a 28 day period. It appears that such would indeed boost morale for the employees knowing that in the event that Overtime is indeed required they will be compensated at the prevailing rate for what equates to Overtime after 160 hours in a 28 day period. While

consistent with that tentatively agreed to, this recommendation simply makes sense and represents the better position to be followed.

CONCLUSION

In the opinion of the Fact Finder, the Recommendations contained herein are reasonable and take into consideration the concerns of both Parties, i.e., that of the Union regarding financial improvement for these employees, as well as, other contractual enhancements; and, for the Employer based on the costs associated with the economic increases and that based on other contractual language based on these recommendations. In light of the data presented; representations made by the Parties; and, the stipulations entered by and between the Parties during the course of the Fact Finding Proceeding and based on the common interests of both entities, it is hereby recommended that the Parties adopt these recommendations so that the impasse that currently exists can be brought to closure and this Collective Bargaining relationship can continue without interruption.


DAVID W. STANTON, ESQ.
Fact Finder

Dated: June 26, 2000
Cincinnati, Ohio

CERTIFICATE OF SERVICE

The Undersigned certifies that a true copy of the foregoing Fact Finding Report and Recommendations has been delivered to: Frank T. Lambros, Staff Representative, FOP/Ohio Labor Council, Inc., 548 Gennie Lane, Cincinnati, Ohio 45244; James D. Buckner and Robert W. Cross, Consultants, Cross Management & Consulting Services, Inc., 8593 Ohio River Road, Wheelersburg, Ohio 45694; and, George Albu, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213, on this 26th

day of June, 2000.



DAVID W. STANTON, ESQ. (0042532)
Fact Finder