STATE EMPLOYMENT RELATIONS BOARD
FACT-FINDING REPORT

Montgomery County Ohio

and

Fraternal Order of Police,
Ohio Labor Council, Inc.

SERB CASE NO: 03-MED-10-1257

Fact-Finding Hearing: February 5, 2004
Fact-Finding Report: March 16, 2004

Union Representative: Ross Rader

Employer Representative: Jonathan Downes

Fact-Finder: Ann C. Wendt, Ph.D., SPHR

STIPULATION 1

The parties stipulated that the instant dispute is properly before the Fact-Finder.

STIPULATION 2

The parties stipulated that all tentative agreements concluded during their negotiations and/or through mediation shall continue if either party rejects the Fact-Finders Report. The following nine (9) issues were presented by the parties:

Article 1	Purpose
Article 6	Transfers, Trades, Assignments and Postings (this issue was settled during the Fact-Finding and will not be discussed in this report)
Article 9	Grievance Procedure

Article 25	Leaves of Absence
Article 26	Wages
Article 27	Hours of Work and Overtime
Article 28	Holidays
Article 30	Insurance
Article 32	Duration

STIPULATION 3

The parties stipulated that all SERB reporting requirements have been fulfilled.

CRITERIA

Pursuant to 4117-9-05(J) State Employment Relations Board, the findings of Fact and Recommendations presented in this Fact-Finding Report are based on reliable information relevant to the issues before the Fact-Finder.

BACKGROUND

Montgomery County is comprised of 461.7 squares miles located in the southwestern portion of Ohio. The population is 599,062 with an employed workforce of 298,581. The main sectors of employment were services, followed by trade, manufacturing, and government. Montgomery County ranked sixty-second out of eighty-eight counties in unemployment with a rate of 3.8 percent. Montgomery County has a median household income of $40,156 for 1999.

ECONOMIC AND FINANCIAL CONDITIONS OF MONTGOMERY COUNTY

The County Administrator testified that she has been with the County for twenty-two years and she has "never known a time when the County budget has been this difficult to balance. We are facing the most difficult times we have ever faced." Sales tax accounts for 45 percent of the County's revenues which is very common for county governments. The next largest source of income is from Charges for Services which provides 11.7 percent; income from investments accounts for 11.1 percent (third largest source of revenue), while property tax is 10.8 percent, closely followed by the Local Government Fund with 10.7 percent . The Local Government Fund is a State revenue sharing fund. (Employer's binder, tab 3, page 3)

Sales tax is flat and in decline. The County receives one percent of all sales tax in the County. Two reasons account for this decline. First, the economy is cyclical and second the loss of retail business to the surrounding counties, e.g., Greene, Warren and Miami Counties, Greene County being the most significant. Income from the sales tax has not grown since 2000. Even in the boom years, middle to late 90s, the sales tax only grew at an average rate of about three percent (County Binder, tab 3, p. 5). Thus, when the economy was growing significantly, County sales tax collections only grew at approximately the rate of inflation. In 2004, the County hopes to collect what it did in the year 2000. Comparison of sales tax growth between Greene and Montgomery Counties since 1993 when Fairfield Commons Mall opened, reveals a very sluggish growth in Montgomery since that date compared to Greene County (County Binder, Tab 4, p. 2-3). Further comparison of Montgomery County compared to Greene, Warren and Miami Counties reveals an average growth of 26.95 in Montgomery County to an average growth of 4.85 in Greene County, 66.52 in Warren County and 51.57 in Miami County since 1993 (County Binder, Tab 4, pp. 2-3). Sales tax receipts for January declined 3.88 percent in January 2001 to January 2004 (County Binder, Tab 4, p. 4). There is a lag of approximately three months between the time sales tax is collected by the merchants and its receipt by the County. Therefore, January 2004 County sales tax receipts for the County were collected in October 2003 by the merchants. National City Bank recently released its annual report to the community concerning what is happening in the local economy. Retail sales patterns by county in the Dayton Metropolitan area 1988-2002 ranged from 4.2 to 4.3 (Clark), 6.8 to 2.3 (Greene), 2.7 to 5.1 (Miami), 2.2 to -1.1 (Montgomery) compared to the Metropolitan average of 3.2 to 0.7. (Economic Forecast of the Miami Valley, National City, 2004) Review of the chart in this brochure show that in 1997 Montgomery County accounted for almost 64 percent of all the retail sales in the region and today Montgomery County has declined to 61.4 percent in 2002. The National City brochure also contains figures concerning employment which reveal a loss of manufacturing, durable goods and other high-paying jobs which declined by 10,400 jobs, therefore reducing the buying power of the community and resulting further reductions in sales tax collections.

It is evident that Montgomery County compared to the surrounding counties has experienced relatively sluggish growing for the period 1993-2003.

Investment Income is strictly regulated. These regulations define acceptable and unacceptable investment opportunities. These include state laws governing securities and five-year time horizons. The ability to maximize revenues is relatively limited. The County has lost approximately 12 million dollars in investment income from 1999 to 2001. This is primarily due to the drop in the interest rate. Before 9-11, the County averaged about five percent on its investments. That number now is under two percent. Since many of the investments were made during the preceding years and are coming due in 2004, this creates a significant impact in 2004. The County's investment high occurred in 1999 (Employer Binder, tab 3, p. 7). The County Treasurer's Office estimated the 2004 investment income will be $15.9 million, or 11.1 percent, of total income. (Employer's Binder, tab 3, p. 6) Based on this projection, the County will earn less than it did in 1996. Clearly, 2004 is a projection based upon interest rates as known today and investments the County knows will come due. These projections are based on interest rates remaining at their current level.

Local Government Funds were a significant source of County revenues. However, during the last several budgetary sessions of the Ohio Legislature, these funds have been a primary target of fund reductions. The Legislators, including the County's State Senator who will soon be the President of the Ohio Senate, have said that counties must develop alternatives to local government funding, and wean themselves from State support. Last year there was an attempt to eliminate the Local Government Fund. Currently, the Local Government Fund allows distributions to every county and then that money is redistributed according to a formula. State law says that county governments get 50 percent of those funds as long as less than 81 percent of the people who live in that county reside in cities. If more than 81 percent live in cities, then the county's portion drops from 50 percent to 30 percent. Montgomery County is currently at 80.5 percent. The difference between 30 percent and 50 percent is almost five million dollars. In 2001, local government funds were frozen at the 2000 level so counties no longer get growth pursuant to State Law. The County believes they will continue to see additional budget cuts. As yet, they do not know to what level that will drop.

Property tax is a relatively stable source of revenue. Montgomery County receives 1.7 mills. This is the most the County can assess without going to the voters with a request to increase the millage. The millage total does grow with inflation. Reappraisals are done every six years, growth during years when reappraisals are not done comes from new construction which is generally about two percent. However, the threat to this growth comes from the step-down in the tangible personal property tax on business. This tax is considered anti-business and many surrounding states do not have this tax.

The revenues listed above constitute about 80 percent of the County's revenues. The projected revenue for 2004 is 142.9 million dollars (County binder, Tab 3, p. 3). That is the least revenue. Since 2000, the County has been dealing with a decline in its budget. To date, that has been dealt with by internal cost-cutting that has not affected employees. The County has continued to give employees raises and continued to absorb health care costs. Cost cutting measures included discontinued increases money to capital improvements, stopped replacing vehicles, shifted some expenses to other funds, etc. These are measures that could be done within the County's legal authority and did not affect County employees. However, based on the 2004 revenue collection projections, the County had no choice but to turn to employee budget line items for cost-cutting. Employee costs such as salaries and fringe benefits are the largest share of the County's budget, representing almost 60 percent it (County Binder, Tab 3, p. 13).

The majority (67%) of the County's budget is spent on law enforcement and judicial matters, i.e., criminal justice (County Binder, tab 4, p. 1). The Sheriff's budget is the largest in the general fund.

Charges for services, e.g., Recorder's fees, Auditor's fees, etc., have been relatively strong in recent years. Many of these fees pertain to real estate transactions which have been strong because of low interest rates.

The projected 2004 budget was prepared with the philosophy of business as usual which resulted in a 15.6 million dollar deficit. The County Commissioners directed the Budget Office to balance the budget which was done by freezing almost all new capital appreciation, capital improvements and vehicle replacement; freezing the three percent business-as-usual salary increases; changes in the fringe benefit plan were made during 2003, reductions in community programs and delaying the transfer of investment income to funds other than the general fund (County Binder, Tab 3, p. 18). These reductions left a 3.4 million dollar deficit which was made up with a three percent across-the-board budget cut. The only exceptions to that were State mandates.

Jail Expansion

It has cost the County between 3.3 and 3.7 million dollars per year to out source prisoners. Most of these have been housed at the Dayton Rehabilitation Center which is not up to the standards which the County has in its facility. The unacceptable conditions at the Dayton Rehabilitation Center and overcrowding issues at the County Jail created potential liability for the County. Having all prisoners in one facility increases safety, reduces transportation costs, reduces book-in and book-out costs, reduces complaints from attorneys and inmates' families that they do not have access to prisoners, etc. The Architect's review of the current jail revealed that movement of all the Administrative Offices and the Property Room to non-secured locations would increase the number of jail beds by 240-243 at a cost of $25,000-$35,000 per bed compared to a new construction cost of $100,000 per bed, because the infra-structure was in place.

The jail expansion will result in some increased costs, e.g., additional Corrections Officers, improved medical facilities, etc., which were included into the estimated savings on out sourcing of prisoners. Estimated savings after including these costs is about 1.5 million dollars. Depending on the outcome of the Sheriff's intention to substantially reduce the number of Federal prisoners housed in the jail, this savings will be reduced. Housing of Federal prisoners currently results in about one million dollars of revenue per year. (County Binder Tab 11, pp. 1 and 4).

PRIOR COST CUTTING IN THE SHERIFF'S OFFICE

Since the current sheriff assumed his position four years ago, the Sheriff's Office has absorbed 2.5 million dollars in budget cuts. These cuts have been achieved by holding vacant positions open, a savings of $542,000 during 2003 and 2004 (currently 33 (County Binder, Tab 1, pp. 8-9)); daily releases saved $710,000; moving video arraignments inside which enabled the use of corrections officers instead of deputies saved $200,000; elimination of a clerk-typist position in the medical area saved $40,000. The total savings from these cost cutting efforts is approximately four million dollars. Eleven corrections officer positions are currently being held open. Between 2001 and 2003, three deputy positions were held open because of the budget short-fall. The sheriff testified that if funding is further decrease or costs increase, absent a mass exodus through retirements, layoffs will be necessary.

Article 1

COUNTY'S POSITION:

PREAMBLE

A. This agreement is made between the Sheriff of Montgomery County, Ohio, hereinafter referred to as "sheriff" or "employer" and the Fraternal Order of Police, Lodge 104, hereinafter refereed to as the "union." This Agreement pertains to employees of the Montgomery County Sheriff who are members of the bargaining unit as defined hereunder.

UNION'S POSITION:

PURPOSE

A. This agreement is made between the Sheriff of Montgomery County Ohio, hereinafter referred to as "Sheriff" or "Employer" and the Fraternal Order of Police, Lodge 104, hereinafter referred to as the "Union" or "Lodge" for the purpose of achieving better understanding between the parties, to achieve and maintain a satisfactory and stabilized employer/employee relationship and to promote improved work performance; to attract and retain qualified employees; to insure the right of every employee to fair and impartial treatment; provide for the peaceful and equitable adjustment of differences which may arise. It is further the purpose of this agreement to assure the effectiveness of service by providing an opportunity for employees to meet with the employer and to exchange views and opinions on policies and procedures affecting the conditions of their employment, to negotiate as to wages, employee benefit, and working conditions. This Agreement pertains to employees of the Montgomery County Sheriff who are members of the bargaining unit as defined hereunder.

ANALYSIS:

The County avers that the current language is meaningless and has been the cause of at least two grievance-arbitrations. In support of their contention, the County submitted two arbitration awards. First is a document from the court securities officers and the second document is that of the civilian employees, both of these contracts previously had the disputed language.

Although the County introduced arbitration awards stemming from similar language in other contracts, the Record does not contain evidence that disputes stemming from this language have resulted in arbitrations for the bargaining unit named in this Fact-Finding report.

While the County contented this language causes grievance arbitration disputes, the Record does not contain evidence of cost implications for the language in the contract for this bargaining unit.

RECOMMENDATION:

PURPOSE

A. This agreement is made between the Sheriff of Montgomery County Ohio, hereinafter referred to as "Sheriff" or "Employer" and the Fraternal Order of Police, Lodge 104, hereinafter referred to as the "Union" or "Lodge" for the purpose of achieving better understanding between the parties, to achieve and maintain a satisfactory and stabilized employer/employee relationship and to promote improved work performance; to attract and retain qualified employees; to insure the right of every employee to fair and impartial treatment; provide for the peaceful and equitable adjustment of differences which may arise. It is further the purpose of this agreement to assure the effectiveness of service by providing an opportunity for employees to meet with the employer and to exchange views and opinions on policies and procedures affecting the conditions of their employment, to negotiate as to wages, employee benefit, and working conditions. This Agreement pertains to employees of the Montgomery County Sheriff who are members of the bargaining unit as defined hereunder.

Article 9
GRIEVANCE PROCEDURE
SECTION 7 -- ARBITRATION

UNION POSITION:
SECTION 7 -- ARBITRATION

C. The fees and expenses of the Arbitrator will be divided equally between the County and the Union. In all cases, the parties will be responsible for compensating its own representatives and non-employee witnesses.

COUNTY'S POSITION
SECTION 7 -- ARBITRATION

C. The fees and expenses of the arbitrator will be paid in full by the losing party of the arbitration hearing, In cases where a grievance is not fully sustained or full denied by the arbitrator, the fee and expenses of the arbitration will be divided equally between the County and Union. In all cases, each party will be responsible for compensating its own representatives and non-employee witnesses.

ANALYSIS:
Comparables provided by the Union (Union Binder, tab E, p. 7), show sixteen local areas, including Montgomery County, and how they pay the arbitration fees. This table indicates that 87.5 percent of these entities have an equal sharing of arbitration costs in their collective bargaining agreements. This is consistent with the following quote.

> The prevailing practice in many contracts is that the employer and the union equally divide the arbitrator's fees and bear their own expenses....Some contracts provide instead the the loser pays the arbitrator's fee and expenses. Much more rarely is that the arbitrator assesses the costs between the parties or the employer pays the entire bill. This latter agreement is disfavored as it may be seen to be inconsistent with the arbitrator's neutrality. (Bureau of National Affairs (BNA), Collective Bargaining and Negotiations Contracting Manual, CBNC 9 9-Administrating Contracts, Arbitration Procedures, Arbitration Costs, 29 C.R. C.S.R., subsection 1404.15)

This Fact-Finder's experience in collective bargaining relationships is consistent with the previous quote, i.e., most collective bargaining contracts provide for equal sharing of per diem and expenses of an arbitrator.

The Fact-Finder asked the County's counsel if they felt the Union had abused the grievance-arbitration process. The answer was "No, but we do not want that to occur in the future." Clearly, the Record does not indicate an abuse of the arbitration procedure by this bargaining unit. The Record of this hearing does not support changing the current equal sharing of arbitration costs by the County and the Union.

RECOMMENDATION:

SECTION 7 -- ARBITRATION

C. The fees and expenses of the arbitrator will be paid in full by the losing party of the arbitration hearing, In cases where a grievance is not fully sustained or full denied by the arbitrator, the fee and expenses of the arbitration will be divided equally between the County and Union. In all cases, each party will be responsible for compensating its own representatives and non-employee witnesses.

ARTICLE 25
LEAVES OF ABSENCE

COUNTY'S POSITION:

Section 2 -- Sick Leave

A. ....

When the use of sick leave becomes necessary, the employee or some member of the employee's immediate family will notify the Communications Center and the Employee's immediate supervisor by telephone, not later than one (1) hour before the normal starting time of the shift. Unless notification is given, no sick leave will be approved except in unusual cases and then only after the approval of the Division Commander.

....

Payment for sick leave is subject to the following condition; when an employee has used more than two (2) sick leave occurrences in a twelve (12) month period, each occurrence thereafter will be computed and compensated at eighty percent (80%) of the actual hourly rate up to two (2) tours. If an employee is hospitalized, including outpatient treatment, sick leave pay begins on the first day of hospitalization at one hundred percent (100%) and is not counted as an occurrence.

UNION'S POSITION:

SECTION 2 -- SICK LEAVE

A. ....

When the use of sick leave becomes necessary, the employee or some member of the employee's immediate family will notify the Communications Center by telephone, not later than one (1) hour before the normal starting time of the shift. Unless notification is given, no sick leave will be approved except in unusual cases and then only after the approval of the Division Commander.

....

Payment for sick leave is subject to the following condition; when an employee has used more than two (2) sick leave occurrences in a twelve (12) month period, each occurrence thereafter will be computed and compensated as follows: one (1) - sixteen (16) hours sick leave usage, eighty percent (80%) of the actual hourly rate, seventeen (17) plus hours sick leave usage, one hundred percent (100%) of the actual hourly rate with approved medical documentation. If an employee is hospitalized, including outpatient treatment, sick leave pay begins on the first day of hospitalization at one hundred percent (100%) and is not counted as an occurrence.

ANALYSIS:

The Record does not contain compelling arguments for a change in the current contract language of this Article. Hence, the recommendation is: no changed.

RECOMMENDATION:

SECTION 2 -- SICK LEAVE

A. ....

When the use of sick leave becomes necessary, the employee or some member of the employee's immediate family will notify the Communications Center by telephone, not later than one (1) hour before the normal starting time of the shift. Unless notification is given, no sick leave will be approved except in unusual cases and then only after the approval of the Division Commander.

. . . .

Payment for sick leave is subject to the following condition; when an employee has used more than two (2) sick leave occurrences in a twelve (12) month period, each occurrence thereafter will be computed and compensated as follows: one (1) - sixteen (16) hours sick leave usage, eighty percent (80%) of the actual hourly rate, seventeen (17) plus hours sick leave usage, one hundred percent (100%) of the actual hourly rate with approved medical documentation. If an employee is hospitalized, including outpatient treatment, sick leave pay begins on the first day of hospitalization at one hundred percent (100%) and is not counted as an occurrence.

Article 26
WAGES

UNION'S POSITION:

SECTION 1 - PAY INCREASES

Wage increases during the term of this agreement are as follows:

Wages January 1, through December 31, 2004, will increase three and one-half percent (3.5%).

Wages January 1, through December 31, 2005, will increase three and one-half percent (3.5%).

Wages January 1, through December 31, 2006, will increase three and one-half percent (3.5%).

SECTION 2 - PREMIUM PAY

The following premium pay will apply

- All Deputies assigned as Canine Handlers will be paid a premium of one dollar ($1.00) for each hour in paid status.

- All Deputies assigned as Evidence Technicians, not to exceed twelve (12), will be paid a premium of five hundred dollars ($500.00) annually.

Such payments will be made only while the employee performs in that assignment.

SECTION 3 - LONGEVITY

Employees will continuous service with the Montgomery County Sheriff's Office will be eligible for annual longevity payment according to the following schedule:

Employees who have completed five (5) years, but less than ten (10) years of continuous service, on or before November 1, each calendar year will receive a payment of one percent (1%) of their base salary each year.

Employees who have completed ten (10) years, but less than fifteen (15) years of continuous service, on or before November 1, each calendar year will receive a payment of one and one-quarter (1.25%) of their base salary each year.

Employees who have completed fifteen (15) years, but less than twenty (20) years of continuous service, on or before November 1, each calendar year will receive a payment of one and one-half (1.50%) of their base salary each year.

Employees who have completed twenty (20) years, but less than twenty-five (25) years of continuous service on or before November 1, each calendar year will receive a payment of one and three-quarter percent (1.75%) of their base salary each year.

Employees who have completed twenty-five (25) years or more of continuous service on or before November 1, each calendar year will receive a payment of two percent (2%) of their base salary each year.

The above payments will be paid in a lump sum on the second pay day of November each year.

COUNTY'S POSITION:

SECTION 1 - PAY INCREASES

Wage increases during the term of this agreement are as follows:

During 2004, the wage scales will remain unchanged from 2003 wage scales. Employees will maintain their current wage rate and step.

During 2005, the wage scales will increase one percent (1%). Employees will maintain their current step.

Note: Employees will not have step movement during 2004 and 2005. Step Movement will resume on January 1, 2006. No retroactive movement will occur for the years of 2004 and 2005.

Reopen Negotiations in November 2005 for potential increases in 2006, for wages only.

One-time lump sum payment, paid in two (2) installments, to offset health insurance premiums:
2004 -- $850 (after contract execution)
2005 -- $850 (paid in January 2005)

SECTION 2 - PREMIUM PAY

For the contract period January 1, 2004 through December 31, 2006, the following premium pay will apply

- All Deputies assigned as Canine Handlers will be paid a premium of $1,500 annually.
- All Deputies assigned as Evidence Technicians, not to exceed twelve (12), will be paid a premium of $500 annually.

Such payments will be made only while the employee performs in that assignment.

SECTION 3 -- LONGEVITY

A. Employees with continuous service with the Montgomery County Sheriffs Office will be eligible for annual longevity payment according to the following schedule:

Employees who have completed five (5) years, but less than ten (10) years of continuous service, on or before November 1, of calendar years 2004, 2005 and 2006 will receive a payment of one percent (1%) of their base hourly rate.

Employees who have completed ten (10) years, but less than fifteen (15) years of continuous service, on or before November 1, of calendar years 2004, 2005, and 2006 will receive a payment of one and one-quarter percent (1.25%) of their base hourly rate.

Employees who have completed fifteen (15) years, but less than twenty (20) years of continuous service, on or before November 1, of calendar years 2004, 2005 and 2006 will receive a payment of one and one-half percent (1.50%) of their base hourly rate.

Employees who have completed twenty (20) years, but less than twenty-five (25) years of continuous service, on or before November 1, of calendar years 2004, 2005 and 2006 will receive a payment of one and three-quarters percent (1.75%) of their base hourly rate.

Employees who have completed twenty-five (25) years or more of continuous service on or before November 1, of calendar years 2004, 2005 and 2006 will receive a payment of two percent (2%) of their base hourly rate.

B. Longevity will be paid on the employee's base hourly rate for hours in active pay status, not to exceed 2080 per year. The longevity period will be for the twenty-six (26) pay periods including and immediately before November 1, each year.

C. The above payments will be paid in a lump sum on the second pay day of November 2004, 2005, and 2006.

INCREASE IN WAGES ANALYSIS:

The total cost of the union's wage proposal is $2,793,823.83 for 2004-2006 (Employer's Binder, tab 13, p. 11). Using tab 8, p. 2 (Employer's Binder) by comparing the top salaries, only Franklin County had a higher salary. During the ten-year period (1994-2003) Montgomery County deputy sheriffs' wages increased 34 percent, an average of 3.85 percent per year (Employer's Binder, tab 8, p. 6). During the same time period, the CPI compounded increase was 24.16 percent; thus, the annual gain compounded year over year to wage increase year over year is a net difference of 10.5 percent (Employer's Binder, tab 8, p. 7) The CPI increase exceeded the annual wage increase in only 1996 (Employer's Binder, tab 8, p. 7).

The Union's wage comparables were for cities in the Miami Valley area. Cities are substantially different in their ability to pay and taxing structures than counties. Also, the jurisdictional responsibilities within a city differ substantially than those of a county. While it is true these are law enforcement entities, the use of their wages as a comparison to Montgomery County seems inappropriate. These comparables did not identify the classifications that were included, e.g., patrol officer, lieutenant, sergeants, etc.

This is clearly a lean economic time for Montgomery County. The previous economic discussion indicates the short falls in revenue and the necessary belt tightening that has already occurred in Montgomery County. The cost of the Union's proposal is clearly beyond the County's ability to pay. While it is never pleasant when employees are faced with the thought of no pay increases, that reality is preferable to layoffs. The County simply does not have financial resources to give a traditional pay increase in 2004. The $1,700 lump sum from Anthem's demutualization provides at least the recognition of some renumeration and cushions the severity of no step increases or salary increases. The fact that the County has requested this not be subject to PERS deductions further increases the value of the lump sum payment.

RECOMMENDATION:

SECTION 1 - PAY INCREASES

Wage increases during the term of this agreement are as follows:

During 2004, the wage scales will remain unchanged from 2003 wage scales. Employees will maintain their current wage rate and step.

During 2005, the wage scales will increase one percent (1%). Employees will maintain their current step.

Note: Employees will not have step movement during 2004 and 2005. Step Movement will resume on January 1, 2006. No retroactive movement will occur for the years of 2004 and 2005.

Reopen Negotiations in November 2005 for potential increases in 2006, for wages only.

One-time lump sum payment of $1,700, paid at contract execution.

PREMIUM PAY ANALYSIS:

The cost of the Union's initial proposal to double the current allocation represented a total increase of $6000 per year for the four canine officer. Since the final Union proposal of $1.00 per hour for canine handlers was made in the Union's Fact-Finding final offer, the County did not have the opportunity to analyze the cost implications. Thus, the Fact-Finder has confined this analysis to the Union's initial proposal relative to the current $1,500 payment for canine handling. The comparables submitted by the Union to support their request for an increase, do not clearly identify comparable since many different factors are included under each jurisdiction. Bases on the evidence entered into the Record of these proceedings, the Fact-Finder cannot conclude that a compelling need exists to increase the cost of canine handling at this time.

RECOMMENDATION:

SECTION 1 - PAY INCREASES

Wage increases during the term of this agreement are as follows:

During 2004, the wage scales will remain unchanged from 2003 wage scales. Employees will maintain their current wage rate and step.

During 2005, the wage scales will increase one percent (1%). Employees will maintain their current step.

Note: Employees will not have step movement during 2004 and 2005. Step Movement will resume on January 1, 2006. No retroactive movement will occur for the years of 2004 and 2005.

Reopen Negotiations in November 2005 for potential increases in 2006, for wages only.

One-time lump sum payment of $1,700, paid at contract execution.

SECTION 2 - PREMIUM PAY

For the contract period January 1, 2004 through December 31, 2006, the following premium pay will apply

- All Deputies assigned as Canine Handlers will be paid a premium of $1,500 annually.
- All Deputies assigned as Evidence Technicians, not to exceed twelve (12), will be paid a premium of $500 annually.

CHANGE IN LONGEVITY PAY ANALYSIS:

No compelling agreements were presented by either party which supports changing the language in the current contract. Therefore, the only recommended adjustments are to update the years for consistency with the effective dates of the near contract.

RECOMMENDATION:

SECTION 3 - LONGEVITY

Employees will continuous service with the Montgomery County Sheriff's Office will be eligible for annual longevity payment according to the following schedule:

Employees who have completed five (5) years, but less than ten (10) years of continuous service, on or before November 1, of calendar years 2004, 2005, and 2006 will receive a payment of one percent (1%) of their base salary each year.

Employees who have completed ten (10) years, but less than fifteen (15) years of continuous service, on or before November 1, of calendar years 2004, 2005, and 2006 will receive a payment of one and one-quarter (1.25%) of their base salary each year.

Employees who have completed fifteen (15) years, but less than twenty (20) years of continuous service, on or before November 1, of calendar years 2004, 2005, and 2006 will receive a payment of one and one-half (1.50%) of their base salary each year.

Employees who have completed twenty (20) years, but less than twenty-five (25) years of continuous service on or before November 1, of calendar years 2004, 2005, and 2006 will receive a payment of one and three-quarter percent (1.75%) of their base salary each year.

Employees who have completed twenty-five (25) years or more of continuous service on or before November 1, of calendar years 2004, 2005, and 2006 will receive a payment of two percent (2%) of their base salary each year.

The above payments will be paid in a lump sum on the second pay day of November each year.

Article 27
Hours of Work and Overtime

COUNTY'S POSITION:

Section 6: Compensatory Time

A. An employee may choose to take compensatory time in lieu of overtime compensation if the employee indicates such choice on the Overtime Compensation Form for the tour of duty in which the overtime is worked. Compensatory time will be credited to the employee at the rate of one and one-half (1 1/2) hours for each overtime hour worked.

Each employees' time bank will be limited to the accumulation of fifty-one (51) hours of compensatory time per calendar year. At the start of a new calendar year, employees may carry over their balance of comp time from the previous year, except that in no case may the employee accumulate more than the fifty-one (51) hours maximum per calendar year. Employees are expected to use this time as soon as staffing requirements of the section will allow, subject to supervisory approval. Compensatory time will be used in the section/division in which the time is earned, and further limited to positions which are funded out of the source organizational cost account (OCA) code.

B. Employees who have accrued compensatory time, upon termination of employment or death, will be paid for the unused compensatory time at a rate of compensation not less than;

1. The average regular rate received by such employee during the last three (3) years of the employee's employment, or;

2. The final regular rate received by such employee, which every is higher.

UNION'S POSITION:

Section 6: Compensatory Time

A. An employee may choose to take compensatory time in lieu of overtime compensation if the employee indicates such choice on the Overtime Compensation Form for the tour of duty in which the overtime is worked. Compensatory time will be credited to the employee at the rate of one and one-half (1 1/2) hours for each overtime hour worked. When an employee accrues a maximum of fifty-one (51) hours of compensatory time the employee is expected to use it as soon a staffing requirements of the section will allow, subject to supervisory approval. In cases of all overtime accrued except for overtime accrued in the course of training, the employee may choose whether to take compensatory time in lieu of paid overtime provided that such compensatory time be taken prior to transfer from the Division in which the time is earned.

B. Should the employee be transferred from the Division in which the compensatory time was accrued the employee will be compensated at their straight rate of pay for unused compensatory time not to exceed the maximum of fifty-one (51) hours. Employees who have accrued compensatory time, upon termination of employment or death will, will be paid for the unused compensatory time at a rate of compensation not less than;

1. The average regular rate received by such employee during the last three (3) years of the employee's employment, or;

2. The final regular rate received by such employee, which ever is higher.

ANALYSIS:

Although the County proposed a change in this provision, testimony entered during the hearing raised relevant questions concerning this proposal. First, the issue of comp time versus overtime and a change in the comp time system to more effectively manage the problems the County assert currently exist. The Record reveals that the County recognizes the cost implications of overtime but has not been successful in developing an effective system to manage this issue. The Record also reveals that the County, through its proposal for change is not asserting widespread abuse of the current contract provisions by members of this bargaining unit. Hence, absent evidence of abuse, the need for changes in the current comp time benefits in these austere times has not been established.

RECOMMENDATION:

Section 6: Compensatory Time

A. An employee may choose to take compensatory time in lieu of overtime compensation if the employee indicates such choice on the Overtime Compensation Form for the tour of duty in which the overtime is worked. Compensatory time will be credited to the employee at the rate of one and one-half (1 1/2) hours for each overtime hour worked. When an employee accrues a maximum of fifty-one (51) hours of compensatory time the employee is expected to use it as soon a staffing requirements of the section will allow, subject to supervisory approval. In cases of all overtime accrued except for overtime accrued in the course of training, the employee may choose whether to take compensatory time in lieu of paid overtime provided that such compensatory time be taken prior to transfer from the Division in which the time is earned.

B. Should the employee be transferred from the Division in which the compensatory time was accrued the employee will be compensated at their straight rate of pay for unused compensatory time not to exceed the maximum of fifty-one (51) hours. Employees who have accrued compensatory time, upon termination of employment or death will, will be paid for the unused compensatory time at a rate of compensation not less than;

1. The average regular rate received by such employee during the last three (3) years of the employee's employment, or;

2. The final regular rate received by such employee, which ever is higher.

Article 28
Holidays & Holiday Premium Pay

UNION'S POSITION:

SECTION 2 -- HOLIDAY PREMIUM PAY

A. Employees who are regularly scheduled and work holidays will receive additional compensation in the amount of their regular/straight hourly base rate of pay for their normally scheduled work tour/hours on the holiday.

B. Employees who do not work on a holiday will receive their regular/straight hourly base rate of pay for their normally scheduled work tour/hours.

C. Employees will be entitled to holiday pay if they work the last scheduled working day prior to the holiday or are on paid leave. Paid leave will be defined as approved sick leave, vacation, personal leave, or compensatory time for the purpose of this Article.

D. Employees who are assigned Monday though Friday with weekends and holidays off, will receive their regular/straight hourly/base rate of pay for their normally scheduled work tour/hours on the Holiday.

E. Employees who are scheduled and required to work on the holiday of New Years' Day, Thanksgiving, or Christmas, will be paid at the rate of one and one-half (1 ½) times the employee's hourly base rate of pay in addition to the holiday pay referenced in paragraph A in this Section. This premium pay will be paid to a maximum of the employee's scheduled shift hours per holiday and will not be paid in addition to any other premium rate compensation, e.g., overtime, for their regular/straight time/tour of duty.

COUNTY'S POSITION:

SECTION 2 -- HOLIDAY PAY

A. Employees who are regularly scheduled and work holidays will receive additional compensation in the amount of their normal scheduled work tour/hours of holiday premium pay whether or not they are scheduled to work on each of the specified holidays.

B. Employees who are assigned to any schedule other than Monday through Friday with weekends and holidays off, are entitled to Holiday Premium pay if they work the last schedule working day prior to the holiday or are on paid leave. Paid leave shall be defined as approved sick leave, vacation, personal leave, or compensatory time for the purpose of this Article.

ANALYSIS:

This proposal would result in 100-105 employees working on a holiday. The Union's proposal designates Thanksgiving, Christmas and New Year's as holidays to be awarded additional premium pay. While it is understandable that the Union is seeking additional pay for deputies required to work on these days, in these lean budget times that additional cost is clearly beyond the counties ability to pay.

RECOMMENDATION:

SECTION 2 -- HOLIDAY PAY

A. Employees who are regularly scheduled and work holidays will receive additional compensation in the amount of their normal scheduled work tour/hours of holiday premium pay whether or not they are scheduled to work on each of the specified holidays.

B. Employees who are assigned to any schedule other than Monday through Friday with weekends and holidays off, are entitled to Holiday Premium pay if they work the last schedule working day prior to the holiday or are on paid leave. Paid leave shall be defined as approved sick leave, vacation, personal leave, or compensatory time for the purpose of this Article.

Article 30
Insurance

COUNTY'S POSITION:
Section 2 - Premiums

A. Commencing with the premium for January 1, 2004, the Employer will pay ninety percent (90%) of the premium cost for each health coverage plan offered, and the employee will pay ten percent (10%), per month during the duration of this agreement.

UNION'S POSITION:
Section 2 - Premiums

A. The Employer will pay ninety percent (90%) of the premium costs for each health coverage plan offered, and the employee will pay ten percent (10%), not to exceed forty dollars ($40.00) per month during the duration of this Agreement.

ANALYSIS:
The Union opposes the County's proposal, since major changes were made in the plan less than a year ago and as yet they have not had time to assess whether or not these changes would alleviate the problems under the former plan. Using the 2002 SERB report on insurance (2003 report will not be available until April), the average employee's share for insurance for all counties reported is single 9.9% and family 11.3 percent. The high for single is 20 percent, and for families 25%. The rapid increase in insurance costs is a universal problem. Clearly employers and employees must face these challenges. Montgomery County offers two health care plans. Employees have the option to chose between the two plans or they may waive the

coverage. In today's environment, the $40 maximum payment is very low. The employer has agreed to continue the 90%/10% split. Therefore, the County's proposal to remove the cap is consistent with the 90/10 cost sharing in both proposals.

RECOMMENDATION:

Section 2 - Premiums

A. Commencing with the premium for January 1, 2004, the Employer will pay ninety percent (90%) of the premium cost for each health coverage plan offered, and the employee will pay ten percent (10%), per month during the duration of this agreement.

Article 32
Duration of the Contract

COUNTY'S POSITION:

This agreement will be effective Date of Execution, and will remain in effect through December 31, 2006.

UNION'S POSITION:

This agreement will be effective beginning January 1, 2004, and will remain in effect through December 31, 2006.

ANALYSIS:

The County expressed concern that if the contract were retroactive to January 1 2004, this could have implications for grievances that are in process. In as much as the Fact-Finder recommended removal of the cap on health insurance premium retroactivity to January 1, 2004 does not appear to be in the best interest of the employees. If the 10% employee contribution toward the premium exceeded $40 per month the employees would be subject to these back charges since January 1, 2004. Therefore, it appears to be in the best interest of the employees that the contract become effective on the date of execution.

RECOMMENDATION:

This agreement will be effective Date of Execution, and will remain in effect through December 31, 2006.

Ann C. Wendt, Ph.D., SPHR
Fact-Finder

3/16/04
Date: March 16, 2004