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STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

In the matter of Fact Finding between:	)	SERB Nos. 11-MED-11-1461
	)	11-MED-11-1462
MAHONING COUNTY SHERIFF'S	)	11-MED-11-1463
OFFICE, MAHONING COUNTY, OHIO,	)	
Public Employer,	)	
	)	Hearing: March 20, 2012
and	)	at Youngstown, Ohio
	)	
FRATERNAL ORDER OF POLICE,	)	Date of Report:
OHIO LABOR COUNCIL, INC.,	)	April 13, 2012
Employee Organization.	)	

FACT FINDING REPORT

Before Mitchell B. Goldberg, Appointed Fact Finder

Appearances: Rachel L. Livengood, Human Resources Director for the Employer, and Charles L. Wilson, Senior Staff Representative for the Employee Organization

• Introduction and Background.

The Ohio State Employment Relations Board ("SERB") appointed the undersigned as the Fact Finder of this public employment labor dispute on November 28, 2011. The parties agreed that the issuance date for this Report would be April 13, 2012. They filed timely pre-hearing statements in accordance with SERB Rules and Guidelines. The hearing was conducted on March 20, 2012 at the Sheriff's offices in Youngstown, Ohio. Oral testimony and documentary exhibits were offered in support of the parties' positions on the unresolved issues.

There are three separate contracts between the Sheriff department employees represented by the FOP-OLC, and the "Employer" who is identified as both the Mahoning County Sheriff's Department and the Mahoning County Board of County Commissioners. The "Blue" CBA (Case No. 1462) applies to the Deputies, the "Gold" CBA (Case No. 1463) applies to the Supervisors (Captains, Lieutenants and Sergeants), and the "Civilian" CBA (Case No. 1461) applies to the non-sworn civilian employees. There are approximately 170 deputies, 19 supervisors and 12 civilian employees.

The current CBAs expire on June 30, 2013. The unresolved issues involve compensation related payments that were conditionally frozen as part of each CBA. The Duration clause in each CBA states:

> The parties understand and agree that the funding or available resources of the Mahoning County Sheriff's Office are difficult to predict and that current and future State and County budgets may have additional negative impact on the budget of the Sheriff's Office. This may occur if there are future decreases in or the General Fund revenues do not increase at a rate greater than inflation. As such, the parties agree that upon a thirty (3) day written notice from the County to the Union that may be filed in October, 2011, the parties agree to reopen negotiations of economic articles, or other Articles having economic impact, to address the impact from the County budget or other funding sources on the Sheriff's Office budget. If neither party files a notice to negotiate in October, 2011, the provisions of this Agreement, including all freezes, will continue until June 30, 2013. The reopening of the Agreement shall invoke the dispute settlement procedure set forth in O.R.C. Section 4117.14.

The parties engaged in an interest arbitration with Fact Finder Harry Graham on October 8, 2010. They agreed to accept his award that in turn accepted an Employer proposal for a freeze the compensation articles that are the subject of this proceeding.

These are Article 8-Sick Leave, Article 19-Overtime, Article 20=Holidays, Article 21-Vacations, Article 22-Clothing Allowance, Article 23-Longevity, Article 35-Compensation, and Article 41-Hazardous Duty Pay. The Graham award was based upon the County's "poor financial health." The most recent Certificate of Estimated Resources issued by the Mahoning County Budget Commission in August 2010 revised funds available to the General Fund downward by approximately $4 million. A further decline was projected for 2011. The County's payments for housing prisoners in the jail declined by $3 million from 2007 to 2010. This was the financial and economic background behind the above re-opener to re-negotiate these compensation related items for the last contract year, July 1, 2012 – June 30, 2013.

The specifics of the parties' agreement to freeze or suspend existing compensation benefits is set forth in Appendix B to the Blue CBA:

> APPENDIX B
> FROZEN OR SUSPENDED PROVISIONS AND
> REOPENER NEGOTIATIONS
>
> During the course of negotiations and the impasse proceedings for this Agreement of July 1, 2010 to June 30, 2013, certain provisions of the Articles listed below are to be "frozen" or "suspended" for the period of July 1, 2010 through December 31, 2011. These provisions are identified individually in the body of the Agreement. The provisions "frozen" or "suspended" will remain "frozen" or "suspended" until December 31, 2011, subject to the following "re opener" provisions which will include the period of negotiations and/or impasse proceedings (if utilized) for these provisions. That is, the provisions of the Agreement identified as "frozen" or "suspended" until the parties reach agreement regarding these provisions or agreement is reached in the negotiations during "re opener" negotiations or a conciliator renders a decision regarding each of the "frozen" or "suspended" provisions.
>
> The Articles which contain "frozen" or "suspended" provisions include:

Article 8	Sick Leave	Article 22	Clothing Allowance
Article 19	Overtime	Article 23	Longevity
Article 20	Holidays	Article 35	Compensation
Article 21	Vacations	Article 41	Hazardous Duty Pay

The frozen provisions will remain frozen until December 31, 2011 unless the parties agree otherwise, or until the issues are resolved through the impasse procedures. Either party may reopen negotiations by serving notice on the other and the negotiations period may begin on October 1, 2011. The items will remain frozen throughout negotiations until amended by agreement or through the impasse proceedings.

• Positions.

The Union

The Union wants to re-activate the above compensation items and benefits for the last contract year. It believes that its position is reasonable, notwithstanding the County's financial condition. It is

asking only that the County honor its contractual obligations that it agreed to undertake when the benefits were placed into the CBAs. It is not requesting any additional wages or benefits. Arbitrator Graham's decision to freeze the accrual of these further benefits was for the purpose of giving the County some breathing room so that it would have the opportunity to re-arrange its finances and priorities in a restructuring process that would permit it to pay these obligations as promised. The Union believes that the County, in its discretion, has merely directed its resources toward other obligations. It has the funds to

meet these contractual obligations, but it has chosen make the Sheriff's budget absorb an unreasonable share of the budgetary belt-tightening that has occurred from past and recent deterioration in its funding sources.

The Union believes that the County has not credited the Union with its past efforts to assist the County with its budgetary problems. In 2003, the Union accepted a 3-year CBA with 0-0-0 with the understanding that it would save its members from a layoff. Instead, 50 of its members were laid off in 2005. The County asked the Union for concessions after a consent degree required a certain staffing number; the Union agreed and accepted concessions to maintain the legally required staffing. The Union has assisted and supported the County's efforts to increase tax revenues. During the same period other County departments have grown with new hires, and other County employees have received pay increases and additional benefits.

The costs for merely restoring the benefits that are frozen is approximately $1.5 million. A new Certificate of Estimated Resources is due to be published in June or July. The Union believes that this Certificate will show an increase in revenue over the 2012 Certificate, upon which the County is relying to support its contention that it is unable to pay the frozen contractual benefits due to a shortage of available revenue. The Union believes that the new Certificate will show increased revenue of over $2.5 million. This is more than enough to pay for the contractual obligations that have been frozen.

The County

The County is willing to allocate some additional funds to the Sheriff's department, but believes that it is unable to allocate more due to its other financial

commitments. It analyzed all of its available resources when it developed its budget. It has been faced with a slower rate of sales tax growth due to the poor economy. This is a primary source of General Fund revenue. The Local Government Fund revenue was estimated to be $3.36 million in the 2012 Budget Certification. This funding source, however, was reduced by the state legislators by 25% in the first year of the State biennial budget and will be reduced by another 25% in the second year. This revenue source accounted for more than $4.5 million in the County's 2011 budget. This contributed to the 15% decline in the 2012 Budget Certification from 2011.

The County points out that the Sheriff's budget was only reduced by 3% in 2012. This contradicts the assertion that the County has unfairly tightened its belt by making the Sheriff's department absorb an unreasonable budget reduction compared with the cuts received by

other County departments.

Nevertheless, the County, in an effort to address the Union's concerns, has revised its earlier position that maintains the benefit freezes through the balance of the CBA term. It now anticipates receiving payments from the City of Youngstown as a reimbursement for the housing of inmates in the approximate range of $250,000 to $300,000. The County would use these funds and more to allocate $500,000 to the Sheriff's department for the purpose of "activating" the above frozen or suspended CBA provisions . More importantly, the County's revised position statement reiterates its repeated commitment to direct funds to the Sheriff's Office toward the suspended benefits "if additional monies

become available."

• Discussion.

The issue when distilled can be framed is simple economic terms: Does the County presently,

or will it have in the near future, the necessary funds to pay the eight economic articles that are now

frozen? The hearing began with the County's representation that there was an "inability to pay" the amounts required to unfreeze the articles because there were no funds to do so in the "Sheriff's" budget approved by the County Commissioners. The Union contended that the CBA funding must come from the County's entire General Fund revenues, not merely the funds allocated by the Commissioners to the Sheriff's department. I agree that this is the case. The parties to the CBA s are the Sheriff's Department and the Board of County Commissioners, both of whom are identified as the Employer, and the Union. The CBAs are executed by the Sheriff, the County Administrator, and each Commissioner on behalf of Mahoning County, Ohio, as the "Employer." Accordingly, the County itself is contractually bound by the obligations contained in the CBAs. It stands to reason that it is the County's resources and General Fund revenues that are on the line to meet the CBA economic commitments, and not merely the funds that the Commissioners determine in their discretion to allocate toward the Sheriff Department budget.

There is really no issue to resolve about the underlying merits of any or all of the eight articles. They exist as contractual obligations. The County is not objecting to

paying for these items for any reason other than its claimed lack of funds. It has now proposes to allocate funds received from the city of Youngstown for the housing of its jail inmates toward these contractual obligations. It proposes to allocate a total of $500,00 to the Sheriff's department toward its obligations.

Both parties agree that County sales tax receipts are on the rise, and that the next Budget Certificate will show increased revenues. The Union believes it will be in the range of a $2.5 million increase. The County believes that this projection is too optimistic, and that it needs any increase in revenues to fund its normal and necessary operations in addition to the Sheriff's department. All of its departments have been burdened by the poor economy and past revenue declines.

However, the Union has shown that its members have accepted and endured major economic concessions, both in wages and in the loss or freezing of its negotiated benefits. Some of its lower paid members are now accepting food stamps to meet their living expenses. The following recommendations are an attempt to restore these frozen benefits in a reasonable manner in line with expected, but uncertain increases in sales tax revenue as reflected in the next Budget Certification.

• Recommendations.

I recommend that the County immediately allocate $500,000 to the Sheriff's department so that the Sheriff can apply the funds specifically toward the frozen articles. Those articles or parts thereof shall be unfrozen to the extent of $500,000. Thereafter,

further unfreezing should occur when the next Budget Certification is published. If the increased sales tax revenues and other revenues are $2.5 million or more over the last Certification, the County shall allocate to the Sheriff's department from its increased funds the remaining amounts necessary to unfreeze the articles for the remainder of the CBA term. If sales tax revenues and other revenues increase less than $2.5 million but are above $1.5 million, the County should allocate an additional $500,000 to the Sheriff's department for application toward the frozen articles as directed by the Union. If increased revenues are below $1.5 million, the County should allocate $250,000 to the Sheriff's department for application toward the frozen articles as directed by the Union for the balance of the CBA term. The total payments from the County's general fund, $500,000 now, and either $250,000, $500,000 or the total amount necessary to unfreeze all of the articles shall be used to fund and unfreeze the frozen articles to the extent necessary to activate those suspended benefits for the last CBA year, effective July 1, 2012 through June 30, 2013..

Date of Report: April 13, 2012 /s/

Mitchell B. Goldberg, Fact Finder

CERTIFICATE OF SERVICE

This Report was served upon the following persons or entities by electronic mail on the 13th day of March 2012:

SERB Email: med@serb.state.oh.us

Rachel Liven good, rlivengood@mahoningcountyoh.gov

Charles Wilson, cwilsonfop@aol.com

/s/

Mitchell B. Goldberg

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF :	}	
	}	
FRATERNAL ORDER OF POLICE,	}	CASE NO.(S): 10-MED-04-0475
OHIO LABOR COUNCIL, INC.,	}	10-MED-04-0476
EMPLOYEE ORGANIZATION,	}	10-MED-04-0477
	}	
and,	}	
	}	(This will close the open case for
MAHONING COUNTY SHERIFF,	}	Case No.(s): 11-MED-11-1461
EMPLOYER.	}	11-MED-11-1462
	}	11-MED-11-1463)
	}	

FILING OF COLLECTIVE BARGAINING AGREEMENT
(Addendum)

Pursuant to Board Rule 4117-09-07, the F.O.P. Ohio Labor Council Inc. hereby files a copy of an addendum and amendment to the Collective Bargaining Agreement executed between the parties in the above captioned case(s). (See attached).

Respectfully Submitted

Tara M Crawford

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cc: Mr. Randall Wellington
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