

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

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2010 Jul 12 AM 8:32

In the matter of:

HAMILTON COUNTY DEPUTY,
SHERIFF'S SUPERVISION ASSN.,

Case No. 2009-MED-10-1176

Employee Organization,

And

HAMILTON COUNTY SHERIFF,

Employer

REPORT OF FACT-FINDER
JACK E. MCCORMICK
MARCH 11, 2010

Pursuant to the Rules and Regulations of the State Employment Relations Board a fact-finding hearing was conducted on February 23, 2010 at the Hamilton County Administration Building, 138 East Court Street, room 707, Cincinnati, Ohio at 10:00 a.m. Appearing for the parties were as follows:

<u>Employer</u>	<u>Union</u>
Edwin H. Bordt	Steve Lazarus, Esq.
Kim Serra	Jessup Gage, Esq.
Kelly Babcock	Theodore Sampson
Brett Geary, Esq	John S. Murray
Christian Sitman	Steve Toelke
	John M. Magee

The bargaining unit consists of the Hamilton County, Ohio Correction Supervisors, including Sergeants, Lieutenants, and Captains, which currently number twenty-eight in total, charged with the supervision of correction officers in the various Hamilton County correction facilities.

The sole issue before this Fact Finder is that of wages. The parties have two very contrasting proposals. The Union is proposing five percent (5%) wage increases for the calendar year 2010 followed by an additional four percent (4%) increase beginning December 23, 2010. The Employer has proposed this unit receive the same general percentage for 2010 as approved by the Hamilton County Board of Commissioners for non-bargaining unit employees and the same wage re-opener for 2011. The Employer's proposal essentially is a zero (0%) wage increase for this bargaining unit, unless or until, a "me too" provision is triggered. That is, for the contract period including January 1, 2010 through December 31, 2010 the bargaining unit employees covered under the labor Agreement would be eligible for the largest general

percentage increase approved by the Hamilton County Board of Commissioners for non-bargaining unit, or other employees. There would be a wage re-opener for the 2011 year. This is the same language that was agreed upon between the Employer and the Corrections Officers in a previously agreed upon Agreement with that unit.

The issue between the parties herein is whether or not the Employer, in fact, has the ability to pay for any wage increases. In view of the size and complexity of this Employer's budget this requires a thorough examination.

This Employer, not unlike all other governmental units, is feeling the effects of the economic downturn. In the year 2009 it saw general revenue drop by eleven percent. Through layoffs and other measures it has reduced its general fund expenditures from \$254.8 million to \$217.26 million in 2009. The County reduced the Sheriff's office budget by 7.7% or \$4.8 million dollars from 2009 to 2010. In its final approval the County increased the Sheriff's budget by another \$936,000 in order for the Sheriff to recall up to ten deputies and add up to one hundred Electronic Monitoring Units. Even with these modifications the Sheriff's budget of expenditures still result in a decrease from 2009 to 2010 of 1.5% in expenditures. Nevertheless the County currently projects that it will enjoy a \$17.6 million dollar carryover into 2010 in its general revenue fund. The County asserts that this is the bare minimum of a "cushion" as it represents approximately one month's expenditures for the County as a whole. The Union notes that this "carryover" increased by over a million dollars in a one recent month. The Union also correctly notes that in its bargaining unit there are currently six layoffs and that apparently there are also two vacant sergeant positions which the County does not, at least at this time, intend to fill.

As a factual matter there is no question that this County has made prodigious efforts to bring its expenditures into line with the declining revenues of the last few years. It has drastically

reduced its work force in all areas, including, but not limited to the Sheriff's office. In 2008 the County laid off a total of 229 employees, 94 in the Sheriff's Office. In 2009 they laid off an additional 466 employees 59 of which were in the Sheriff's Office.

The Union on the other hand points to several factors with it wishes the Fact Finder to consider in determining the County's ability to pay.

Among those factors this unit now consists of only twenty-eight employees (down from the prior forty) as well as the incremental growth in the budget carryover in the recent months. It must be noted, however, that this budget carryover in the General Revenue Fund fell from \$50.3 million in 2003 to the approximate \$17.6 million in 2010.

It further asserts that Hamilton County is the center of a strong and growing economic region, that income levels in the County are among the strongest in the state and the nation, and that population trends show the County and the region maintaining population stability. The Union then went on to cite a several items regarding future economic development that will enhance the revenue stream for the County. It also took umbrage with several policy matters that it, asserts demonstrates a misplaced sense of priorities. Finally, it asserts that this bargaining unit's wage proposal should not be affected by the fact that it may result in wage increases for other units who have a "me too" provision.

Inasmuch as it is likely that another neutral will be reviewing this Fact Finder's report he will attempt to discuss these thorny issues.

Taking the last assertion first, the issue is whether or not, in making his finding, a Fact Finder must consider the economic consequences of a wage increase for one unit that will result in wage increases for other units? The County asserts that any wage increase for any employees of the County cannot be viewed in a vacuum. In order to resolve those two philosophical

contentions one must look to section 4117.14(C)(4). Among the factors which a fact finder must, by law, consider are:

(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;

(6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration of the issues submitted to mutually agreed upon dispute settlement procedures in the public service or in private employment.

Subsections 2, 3, and 6 seem to argue in the favor of the County's position that a fact finder may not view his or her recommendations in a vacuum. In addition it might be argued that the agreement between the Corrections Officers for a zero (0%) wage increase with a "me too" provision is the closest "comparable" (see 2 above). This presents any neutral with a conundrum. What if the facts are that, leaving aside the ability to pay for a moment, a proposed wage increase is not only divergent from that granted to a "comparable unit" the (corrections officers), but would, by its implementation, cause a cascading affect on the Employer's costs, which in turn affects its "ability of the public employer to finance" the wage increase? It is a conundrum because if a fact finder does not take into account the financial affect that a wage increase for one unit without considering its affect on any other unit he or she is ignoring the mandate to find "the ability to finance". In this particular case, and under these particular facts, this Fact Finder does not believe he can consider the Union's proposals in a vacuum. In this neutral's opinion it would be irresponsible for any neutral, whom is charged with finding the

ability to pay, to ignore the collateral affects of a wage recommendation that he or she knows will occur if that recommendation is adopted. This may appear too legalistic of an approach, however collective bargaining in this state is governed by law and no matter what a neutral's personal inclinations might be he must follow the law.

Moving on to another topic. The Union presented a volume of documents, newspaper articles and other materials which it asserts shows that, if this County reordered its priorities, it could, in fact, pay for the wage increases it proposes. These items include, but are not limited to, the County Administrator's salary, the Sheriff's Department's refusal to require all townships that desire to have the Sheriff patrol in that jurisdiction to pay for such services, the Sheriff's Department's helicopter operations, the three million dollars in the Sheriff's Law Enforcement Fund, the County's proposal to air condition a theatre in the amount of \$306,700, low tax rates etc..

Those are very cogent arguments, however, unfortunately for the Union, no matter what this neutral's opinion may be about the County's priorities, they remain exclusively within the County's management rights.

The next topic will be the merits of any wage increase for this unit. The Union presented comparables using the ten largest counties in the state. In 2008 Hamilton County's Corrections Lieutenants with a base pay of \$58,000 were at the bottom of that list. Franklin County's Lieutenants receive \$92,331 and only Mahoning County's receive less than Hamilton County at \$55,553.

The Hamilton County Sergeants in 2009 were paid approximately \$50,000 while Franklin County's was \$82,430 and the lowest, Mahoning County received \$48,308. Clearly, as a matter of fact the Hamilton County Lieutenants and Sergeants are at the bottom of the wage scale for

large counties. Accordingly, using these comparables the Union has established, at least on the merits, the need for a wage increase for this bargaining unit.

However, there is an additional internal comparable that likewise argues for a wage increase for this bargaining unit. In the Sheriff's Department law enforcement and law enforcement supervising units their labor agreements specifically provides that their health care contributions cannot increase by more than the percentage wage increase. This language was awarded by a conciliator, three contract cycles in the past. The Employer has proceeded to fact-finding with these enforcement officers and supervisors in the last two negotiation cycles. In both of those negotiations, the Employer failed to reject the fact finder reports that retained the insurance language cited above. That language has led to a huge savings for members of those bargaining units in their insurance costs. The Union asserts that this has resulted in the enforcement officers paying \$1,760 less in annual premiums than all other Sheriff's office employees in the year 2009. In the year 2010 they will save an additional \$1,641.00. As health insurance premiums dramatically increase for members of this particular bargaining unit in 2009 and again in 2010, the enforcement officers were relieved of any increases because they received a zero percent wage increase during each of those years. Accordingly, there is a divergence of benefits received by this particular bargaining unit as compared to a comparable bargaining unit.

This brings us to the final question which is what if any wage increase is merited and what if any wage increase does this Employer have the ability to pay?

Using the Employer's current labor costing it appears that in 2010 the total cost with "roll ups" for this unit at twenty-nine employees will be \$1,884,544. This means each one percent wage increase for this bargaining unit would cost the Employer \$18,845. This is slightly more than one percent of its current projected carryover for 2010. Furthermore, it does not take into

account the two vacant positions in this unit that now exist. If, as the Employer indicated on February 23, 2010, it does not intend to fill these two vacancies, then the savings realized would be substantial. However, one must consider the cascading effect of any wage increase for this bargaining unit that would occur in 2010 (see discussion above).

There is solution to this conundrum. Having found that equity requires a wage increase for this bargaining unit, but also finding that such an increase occurring in the contract year 2010 would have a collateral affect on the Employer's ability to pay, the solution is to adopt the Employer's proposed language for the contract year 2010 and provide the wage increase for this bargaining unit for the year 2011. This will give the Employer sufficient time to perhaps reexamine its priorities, if it so wishes, leave vacant positions vacant for all, or part of the 2010 year, or make any other provisions it may feel necessary to fund the wage increases beginning in year 2011.

Again, using the Employer's payroll data, a four percent (4%) wage increase for this unit in the contract year 2011 will cost the Employer \$75,382 net of step increases and longevity accruals. This is out of a General Fund budget of \$211.8 million dollars.

Accordingly, the Fact Finder makes the following recommendation:

For the contract period including January 1, 2010 through December 31, 2010, the bargaining unit employees covered under this labor agreement shall be eligible for the largest general percentage approved by the Hamilton County Board of Commissioners (HCBC) for non-bargaining employees (except those with individual employment contracts) or other Hamilton County Sheriff's office employees only if any increase is approved during such period (excluding any increase awarded through the statutory conciliation process.) Such general percentage increase shall be effective on the same date as the increase was effective for such other non-bargaining unit employees of the HCBC or the Sheriff's office employees and it shall apply only to this bargaining unit's employees' hourly rates.

Effective the first pay period of 2011 the annualized pay levels for all bargaining unit employees shall be as follows: (four percent increase).

Corrections Sergeant

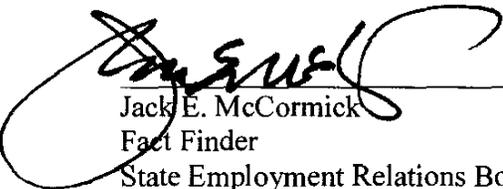
\$54,597.81

Corrections Lieutenant

\$65,868.31

Corrections Captains

\$76,407.41



Jack E. McCormick
Fact Finder
State Employment Relations Board
March 11, 2010

CERTIFICATE OF SERVICE

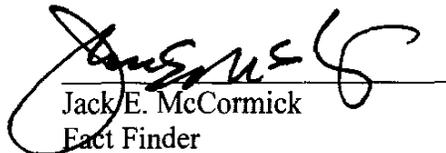
The foregoing was served upon the following parties by ordinary mail, postage prepaid, this 10th day of March 2010:

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