



**FACT-FINDING TRIBUNAL OF THE
STATE EMPLOYMENT RELATIONS BOARD**

**IN THE MATTER OF:
FRATERNAL ORDER OF POLICE,
OHIO LABOR COUNCIL, INC.,
Employee Organization,
and
BROWN COUNTY COMMISSIONERS
(COMMUNICATIONS CENTER),
Employer.**

**REPORT OF FACT FINDER
CASE NO.: 09-MED-10-1290
EMERGENCY 911 DISPATCHERS
DATE OF REPORT: February 2010**

STATE EMPLOYMENT
RELATIONS BOARD
2010 FEB -2 P 12:06

DATE OF HEARING: January 13, 2010
PLACE OF HEARING: Georgetown, Ohio
FACT FINDER: Charles W. Kohler

STATE EMPLOYMENT
RELATIONS BOARD
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APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:

FOR THE EMPLOYER:

Mark A. Scranton, Staff Representative

Benjamin S. Albrecht, Attorney at Law

INTRODUCTION

The State Employment Relations Board (“SERB”) appointed the undersigned as fact finder pursuant to Ohio Revised Code Section 4117.14(C)(3). This matter involves the negotiation of a reopener for 2010 wages in a collective bargaining agreement effective January 1, 2009, through December 31, 2011, between the Brown County Commissioners (“Employer” or “County”) and the Fraternal Order of Police, Ohio Labor Council, Inc. (“Union”). A fact-finding hearing was held on January 13, 2010, in Georgetown, Ohio.

STATUTORY CRITERIA

The following findings and recommendations are offered for consideration by the parties; were arrived at pursuant to their mutual interests and concerns; are made in accordance with the data submitted; and in consideration of the following statutory criteria as set forth in Rule 4117-9-05 of the Ohio Administrative Code:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the parties;
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

BACKGROUND

Brown County is situated along the Ohio River in southwestern Ohio. It had a 2007 population of about 44,000. The Brown County 911 Communications Center provides emergency and non-emergency dispatching services for the county, and its towns and villages. It provides communications services to ten fire departments, eight emergency medical services providers, and ten police departments as well as the Brown County Sheriff's Office.

The bargaining unit consists of full time employees in the classification of Emergency 911 Dispatchers. The unit consists of approximately ten employees. Supervisors are excluded from the bargaining unit. The unit was certified by the SERB in March of 2002.

This fact finding involves a reopener to determine wage rates for calendar year 2010. The parties entered into a collective bargaining agreement, effective January 1, 2009, through December 31, 2011. Article 32 of the agreement specified bargaining unit wages that were effective on January 1, 2009. The article states that wage rates for 2010 will be determined by a reopener, to be negotiated on or after November 1, 2009. In addition, 2011 wages are to be negotiated in another reopener.

The 2009 collective bargaining agreement included steps for the first time. It provided for a probationary rate of \$9.80 per hour. For each additional year up until the fifth year, the wage rate increases by an additional \$0.65 per hour on the anniversary date of each employee. The wage rates for 2009 are:

Probationary - \$9.80
After 1 year - \$10.45
After 2 years - \$11.10
After 3 years - \$11.75
After 4 years - \$12.40

Employees who had five or more years in 2009, received an increase on their anniversary of \$0.65 from their 2008 rate. As a result, the top dispatcher rate for 2009 was \$15.28 per hour.

For 2010, the County proposes that wage rates for each employee be retained at the 2009 wage. In other words, for 2010, all employees would earn the same wage that they were earning as of December 31, 2009, without a step increase.

The Union does not propose any changes to the 2009 wage scale. However, the Union proposal would permit employees to receive step increases as they became eligible for such increases. Employees who have five or more years of service on their 2010 anniversary date, would receive an increase of \$0.65 over their 2009 rate.

POSITION OF THE COUNTY

The County asserts that, even though it proposes a freeze in wages, all bargaining unit employees will receive additional compensation in 2010 under its proposal. This is due to a reduction in the amount of the employees' contribution toward health insurance. The County asserts that any bargaining unit member who obtains health insurance through the County will see a net increase in compensation due to a reduction in insurance cost. In 2009, employees paid 40 percent of the insurance premium. Under

an agreement reached for 2010, employees will pay 30 percent of the premium. The difference will vary depending upon whether the employee has individual coverage, or one of the types of family coverage that is offered. An employee with individual coverage will have the monthly premium contribution reduced by \$28.71. An employee with full family coverage will have a reduction of \$117.92 per month.

The Employer asserts that the average bargaining unit member received a wage increase of 13.5 percent in 2009. It contends that it would be financially difficult to fund any additional wage increases in 2010. The communications center is primarily financed by a one-quarter percent sales tax. The amount of revenue that has been collected has been decreasing. In 2007, the County collected approximately \$650,000; in 2008, it collected approximately \$630,000; in 2009, it collected about \$575,000. Projections for 2010 revenues are \$590,000.

In 2007, 2008, and 2009, actual expenditures for the operation of the communications center exceeded the sales tax revenue. This required the use of carryover funds in order to meet operating expenses. The 2008 deficit was approximately \$117,000, while the 2009 deficit was \$242,000. The projected deficit for 2010 is \$188,000.

The Employer points out that the sales tax revenue has been adversely affected by the overall economy. In particular, it notes that the number of businesses operating in the County has been decreasing. For instance, in 2005, there were 924 businesses. In 2007, the number of businesses was 802.

The November 2009 unemployment rate in Brown County was 11.5 percent. The Employer points out that this is higher than the November 2009 Ohio average of 10.2 percent, and the U.S. average of 9.4 percent. The County argues that the high unemployment rate will necessarily result in a reduction in sales tax revenue.

The carryover balance for the communications center at the beginning of 2009 was \$362,000.00. Due to the \$242,000 operating deficit in 2009, the current carryover balance is approximately \$120,000.00. Since the projected deficit for 2010 of \$188,000 will exceed the carryover balance, additional funding will be needed from the County General Fund. The County notes that funds from the cell phone surcharge cannot be used for personnel costs at this time.

The Employer asserts that the overall financial situation of the County government is not strong. In order to cope with the current financial conditions, the County Commissioners placed all employees directly under its control on ten unpaid furlough days in 2010. Further, it eliminated all wage increases for County General Fund employees. The County also instituted a reduction in working hours for many employees.

The Employer points out that, under the current director, Rob Wilson, numerous improvements have been made to the communications center. Wilson began his duties in August of 2008. Among the changes made by Wilson was a significant increase in compensation of bargaining unit members. Prior to the time that Wilson became the director, the communications center experienced a high rate of

turnover. Many dispatchers left to go to work for higher wages in other counties. The Employer asserts that, since wages have been improved, the turnover has been almost completely eliminated.

In order to improve the County General Fund finances, the County Commissioners passed a resolution to increase the sales tax by one-fourth of one percent, effective January 1, 2010. However, due to a voter-initiated referendum, the tax increase has not been implemented. It is subject to a referendum election that is scheduled for May 2010. If the sales tax increase is upheld, the County will be able to impose the increase on October 1, 2010. It will begin to receive revenue in December 2010. Therefore, any potential revenue from this source will not be available for 2010 wages.

The County notes that dispatchers have received wage increases that have exceeded the increase in the consumer price index. The Employer points out that the CPI has increased very little since 2006. However, a dispatcher who was employed in 2006 now receives \$2.15 or \$2.50 more per hour. The Employer asserts that the adoption of the Union proposal will result in an increase in wage costs of \$10,800, not including the cost of payroll taxes for things such as retirement, unemployment, workers' compensation, etc.

The Employer has presented wages for comparable counties including Gallia County, Hocking County part-time dispatchers and Lawrence County. It asserts that wages in these comparable counties are similar to the wages paid in Brown County. Therefore, it asserts that there is no justification for a wage increase in 2010, considering the financial condition of the Brown County communications center and the County General Fund. Further, the Employer asserts that its proposed wage freeze for 2010 is

consistent with the County's decision to freeze the wages of all non-bargaining unit employees who work for the County Commissioners.

POSITION OF THE UNION

The Union asserts that bargaining unit members are paid less than employees performing similar duties in other comparable jurisdictions. It submitted various evidentiary materials in support of the pay differences. On an annual basis, the Union notes that the 2009 starting salary for Brown County is \$20,384. The Union's information provides that the 2009 starting salary in Highland County is \$28,080; in Adams County it is \$24,044; in Clinton County it is \$26,790. It also notes that the salary in Clermont County in 2008 was \$28,641.00. Current wages in Clermont County will be determined through conciliation.

The highest paid dispatcher in 2009 in Brown County was paid \$31,782. In Clermont County, the top 2008 salary was \$40,206, with current wages pending conciliation. The Union also provided the 2009 top salary for Highland County, which it asserts to be \$32,468; and for Clinton County, which it asserts to be \$34,528.

The Union points out the disparity between the wages of the directors of the various communication centers compared to dispatcher salaries. It notes that the director of the Brown County communications center has a salary of approximately \$63,000. In comparison, the starting salary for a dispatcher is \$20,000. The Union notes that, in Highland County, the director earns about \$40,000, and the starting

salary for dispatchers is about \$28,000. In Adams County, the director earns \$30,000, and the starting salary for dispatchers is about \$22,000.

The Union agrees that the amount of insurance premium contribution has been reduced for 2009. However, it points out that the Employer only agreed to reduce the contribution due to an arbitration and an unfair labor practice that were resolved, and resulted in the reduction in premium. The Union also asserts that, even though the insurance contribution or premium is lower, the type of plan offered by the County requires a relatively high payment by employees for deductibles.

The Union states that it initially believed that the County was willing to continue with the wage plan that was in effect in 2009. It asserts that it did not seek any increase in the wage scale, but only is requesting that employees who earn step increases be entitled to receive them in 2010.

In regard to insurance contributions, the Union notes that employees in the bargaining unit pay 30 percent of the premium. The average employee contribution in the region is about 10 percent. The statewide average for similar size counties is 15 percent for a single policy, and 17 percent for a family policy.

Among counties that are close geographically, employees in Clermont, Highland and Clinton pay 20 percent of the premium. Adams County employees pay 12 percent. Thus, according to the Union, the bargaining unit members shoulder a higher burden for payment of health insurance.

The Union contends that the County's financial situation is not as bleak as it contends. It notes that, in April 2009, one of the county commissioners indicated that the plight of the County was "not all doom and gloom." Further, it points to a newspaper report of a discussion at a meeting of county commissioners in April of 2009. The report refers to a comment by Commissioner Geschwind, who acknowledges that 911 dispatchers had been somewhat underpaid. Geschwind noted that the County was often training dispatchers, who then left for other counties where they would receive a higher wage. According to the Union, Geschwind was providing support for the collective bargaining agreement that was reached in 2008, and provided for the step increases. Thus, the Union argues that the County has recognized the need to continue to pay a competitive wage to dispatchers.

The Union states that most of the current bargaining unit members have less than three years of service. They are employees who would benefit most from the step increases. Further, most of the current employees did not receive the large increases cited by the Employer as evidence of higher than average wage increases in the previous few years.

The Union disagrees with the cost calculations for wages as determined by the Employer. The Union asserts that the cost of its proposal for 2010 would be a cost increase of \$8,592.

The Union points out that the 2010 wage cost for the ten bargaining unit employees has been estimated to be \$292,000. In contrast, the wages for the four non-bargaining unit employees are \$152,500. Further, it asserts that in 2009, the actual cost of operating the communications center was less than the

amount appropriated. It argues that the cell phone surcharge has a surplus balance of about \$130,000. Further, the surplus will grow to \$218,000.

The Union notes that, during 2009, employees expected that they would receive a wage increase of at least \$0.65 per hour during 2010. Therefore, the employees budgeted for the anticipated wage increase. The employees did not anticipate that the Employer would renege on its agreement to provide step increases to employees. The Union notes that an employee who starts at \$9.80 an hour can survive if they can count on a \$0.65 per hour wage increase in the following year. However, when the wage increase is denied, the employees' financial situation becomes difficult.

DISCUSSION

When the parties negotiated the current agreement, they instituted step increases for the first time. Prior to 2009, employees normally received increases in wages through annual across-the-board increases. During the same negotiations that resulted in the steps, the parties agreed to defer negotiations of wage rates during the second and third years of the agreement.

The County asserts that, due to lower levels of economic activity, it would not be fiscally prudent to make any agreement that would increase wage costs. It maintains that it has already acted to freeze wages at 2009 levels for other County employees who have their wages determined by the county commissioners. The County argues that its proposal is only asking that the bargaining unit members be treated in the same fashion as these other employees. The Union points out that it recognizes the need

of the County to be fiscally prudent and thus it is willing to agree to a wage freeze for 2010, provided that employees are able to receive the step increases that were negotiated in 2009.

The fact finder observes that the parties, during negotiations, recognized the value of work experience. Therefore, they agreed to provide the dispatchers with an increase in compensation as their work experience increases. Under the agreement, during 2009, dispatchers received an increase in their wage rate on their anniversary date. In particular, the fact finder notes that the beginning wage rate is designated as a probationary rate. This conveys the impression that it is only a temporary rate that will increase once the probationary period has ended. The 2009 probationary rate is \$9.80 an hour, or \$20,384 annually. Under the step schedule, the rate increases to \$10.45 after one year, or \$21,736 annually. This is an increase of 6.6 percent. The County hired four dispatchers in 2009; one in January, one in July, and two in October. If the Employer's proposal is implemented, these employees would remain at the probationary step in 2010. They would not have any wage increase despite the fact that their value to the Employer has increased substantially during the one year of probationary service.

One of the criteria that a fact finder must consider is the effect of proposals on the welfare of the public and the effect of proposals on public service. If dispatchers who gain experience are not fairly compensated for that additional skills, it is logical to expect an increase in turnover. There is undisputed evidence that, prior to 2009, many inexperienced dispatchers went to work for Brown County, where they obtained training and experience. After gaining job skills, they left Brown County for higher paying positions in other jurisdictions. As a result, the communications center had to hire and train new dispatchers.

In 2008, the parties attempted to provide a response to the turnover problem by increasing wages and establishing a progression of wage steps. Thus, the parties agreed at that time that it was important to increase wages as the competency of an employee increases. If the Employer's proposal for 2010 is implemented, dispatchers would be denied any increase in compensation based on additional work experience. In essence, the concept of a wage progression based on additional experience would be abandoned.

Perhaps in recognition of the importance of the 911 emergency communications center, the commissioners increased the salary of the director to \$63,000, effective February 9, 2009. The current director was hired on August 11, 2008, at a salary of \$58,500.

The County contends that, due to changes in health insurance, employees will effectively receive a increase in take home pay. It notes that the County is now paying a greater share of the premium. However, there is also evidence the changes may require some employees to pay more medical expenses out-of-pocket. The plan has a high deductible, used with a Health Savings Account. Certainly, many employees will benefit from this type of plan. However, for an individual employee, the changes in insurance may not result in a net increase in take home pay.

The counties of Clermont, Highland, Adams and Clinton are contiguous to Brown County. The November 2009 unemployment rate in Brown County was 11.5 percent. Highland, Adams and Clinton counties all had significantly higher rates, while Clermont's rate was lower. The rates were as follows:

Highland - 16.1%
Clinton - 15.0%
Adams - 14.1%
Brown - 11.5%
Clermont - 9.8%

There are many factors that determine the financial health of a county, and the unemployment rate is only one factor. However, the rate certainly has a direct effect on sales tax revenue, which is the funding source for the communications center. Although the Brown County rate is relatively high, it is lower than the surrounding counties, except for Clermont. Clermont is also dissimilar to Brown County in other ways, primarily because its economy benefits from its proximity to Cincinnati. The other three counties are much more comparable to Brown County.

The communications center also receives funding from a fee imposed on cellular phones. This is a monthly fee of \$0.28 per phone. The fee is collected pursuant to state law. It is collected by the state, and is distributed to counties based upon the number of cell phones in each county. The purpose of the funds is to provide revenue to improve the capability to determine the location of a 911 call from a cellular phone. The County is currently upgrading cellular capability. Until the system meets state mandated standards, the state law provides that revenue may not be used for other purposes, including personnel costs. This fund has a projected surplus of \$218,000.

In reviewing the wages in comparable jurisdictions, it is apparent that wages in Brown County are comparatively low, especially for less experienced employees. In 2009, starting wages in Highland,

Adams and Clinton counties averaged \$26,305, compared to \$20,384 in Brown County. The Union proposal would not increase the starting rate. However, those dispatchers who started in 2009 would receive an increase to \$21,736 on their anniversary date in 2010 under the Union proposal.

The disparity is not as pronounced at the top rates. The average top rate in Highland and Clinton counties was \$34,014, whereas the top rate in Brown County was \$31,782. If the Union's proposal is adopted, the 2010 top rate would be \$33,134. Thus, even though the evidence shows that dispatchers have received wage increases in excess of the cost of living for several years, wages have not yet caught up to comparable jurisdictions.

Clearly, Brown County is experiencing financial difficulties. It declared a fiscal emergency in January 2010. It reduced working hours for many employees. It also is requiring non-bargaining unit employees to take ten unpaid holidays in 2010. Further, it attempted to improve its finances by authorizing an increase in the sales tax rate. However, it now must wait for the outcome of an election in May 2010 to determine whether the increase can be implemented.

In 2009, the operating expense for the communications center was \$818,474. The Employer estimates the cost of the Union's proposal at \$10,827, while the Union's own estimate is \$8,592. Using the Employer's number, the proposal would amount to an increase in communications center expenses of about 1.3 percent. If the Union's estimate is used, the increase in expenses is about 1.0 percent.

The fact finder must consider the financial ability of the public employer to finance any increase in costs. While Brown County does have financial challenges, the evidence does not show that it is unable to fund step increases for 2010. The cost of the step increases can be funded by reductions or delays in other expenditures of the communications center, or by additional transfers from the County general fund.

The absence of any overall increase in rates can be justified due to the current economic conditions. The lack of an increase in rates will result in cost savings to the County. However, when comparing wages for dispatchers with wages in surrounding comparable jurisdictions, the elimination of step increases for 2010 cannot be justified.

RECOMMENDATION

The fact finder recommends that the proposal of the Union be adopted for 2010 wage rates. In accordance with the agreement of the parties, the fact finder recommends that all increases be retroactive to January 1, 2010.

The above recommendation is respectfully submitted to the parties for their consideration.

A handwritten signature in black ink, appearing to read 'Charles W. Kohler', written over a horizontal line.

Charles W. Kohler, Fact Finder

CERTIFICATE OF SERVICE

I do hereby certify that on this 1st day of February 2010, a copy of the foregoing Report and Recommendations of the Fact Finder was electronically served upon Mark A. Scranton, Staff Representative at markscranton.fopolci@yahoo.com, and Benjamin S. Albrecht, Attorney at Law, at balbrecht@downesfishel.com.

I do hereby certify that on this 1st day of February 2010, a copy of the foregoing Report and Recommendations of the Fact Finder was served on Mark A. Scranton, Staff Representative, 5752 Cheviot Road, Suite D; Cincinnati, Ohio 45247; and Benjamin S. Albrecht, Attorney at Law, at 400 S. Fifth Street, Suite 200; Columbus, Ohio 43215; and Administrator, Bureau of Mediation, State Employment Relations Board; 65 East State Street, 12th Floor; Columbus, Ohio 43215-4213; each by regular U.S. Mail, postage prepaid.



Charles W. Kohler, Fact Finder