

OHIO FACT-FINDING –BUTLER CO.

BACKGROUND

This matter came up for hearing on October 12, 2010 before Jerry Hetrick appointed as Fact-Finder pursuant to Ohio Rev. Code Section 4117.14. The hearing was conducted with the Butler County Commissioners and the Butler County Sheriff's Wage & Benefit Committee involving the terms and conditions of a successor agreement(s) to the collective bargaining agreement(s) expiring May 10, 2010. Four (4) bargaining units were involved in the hearing representing: a unit of nineteen (19) clerks, fifteen (15) dispatchers, and ninety-two corrections officers which includes medical services personnel. A fourth unit consisted of a voluntarily recognized group of twelve supervisors. Supervisors are not employees under Chapter 4117 but have been recognized by the Sheriff and have been involved in the collective bargaining activities of the other units. The Sheriff contends that supervisors who are not employees under the Act have no lawful right to participate in the fact-finding procedure. In its pre hearing statement, the Sheriff has raised objection to the inclusion of supervisors in the fact-finding procedure and has proceeded, reserving the right to raise this objection in the appropriate forum. Tentative agreement for successor agreement(s) was reached by the bargaining committees on June 29, 2010. That tentative agreement froze wages at the 2009 level as well as freezing wage step movement from May 2011 to May 2012. May 2012 would see a three (3) percent increase in hourly rates as well as resumption of Step increases and the addition of a new top step. The Union membership ratified that tentative agreement while the tentative agreement was rejected by the County Commissioners resulting in this fact-finding hearing.

The Fact Finder incorporates into the successor agreement all tentative agreements and unchanged provisions as initialed by the parties. The unresolved issues set forth in the respective briefs are as follows:

- A. Article XII-Layoff and Recall
- B. Holidays
- C. Uniforms
- D. Transfers
- E. Wages
- F. Step Adjustment-Additional Wage

Settlement Options were discussed by the parties both openly and in mediation session which resulted in agreement on the Promotion, Uniforms, Layoff & Recall and Duration of Agreement Articles. While discussion on the remaining issues regarding final positions necessary to obtain recommendations of acceptance by both parties occurred, all parties concluded agreement could not be reached without issuance of Fact Finder recommendations and the Fact Finder should proceed with issuance of recommendations. At the conclusion of discussions, the Fact-Finder was given through October 29, 2010 for submission of recommendations.

FACT-FINDING CRITERIA

In the determination of facts and recommendations, the fact-finder considered the criteria required by the Ohio Rev. Code Section [4117.14@4\(e\)](#) as follows:

- (1) Past collective bargaining 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 classifications involved.
- (3) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed and the effects 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 issues submitted to mutually agreed upon dispute settlement procedures in the public service or private employment.

FINDINGS OF FACT AND RECOMMENDATIONS

ISSUE-WAGES. The pivotal issue which resulted in rejection of the tentative agreement is the wage issue. The respective bargaining committees reached tentative agreement to freeze wage rates until May 2012 as well as a suspension of step advancements. That tentative agreement provided for a 3% wage increase agreement plus a new top step in the wage progression schedule. Projected costs of the tentative agreement were placed at 6%. The Union Proposal mirrors that tentative agreement. The Employer proposes a 2% wage increase without an additional top step in the wage progression schedule effective first full pay period in May 2012 unless the Union gives notice of intent to reopen the Wage Article.

The Employer Proposal deviates from the tentative agreement both in the wage increase and the elimination of the additional top step in the wage progression schedule. The Employer bears the burden of proof that it no longer has the ability to finance the tentative agreement resulting from the bargaining process and which the parties agreed to at the bargaining table. The Fact-Finder must assume the Employer's bargaining committee had the authority to place its tentative agreement on the table for ratification by the bargaining unit membership. It did so with the full knowledge of the economic conditions and climate going into June 2010. In 2009 the Employer began cost cutting measures. The Sheriff's staff is down ninety two staff members. Presently there are ten full time Corrections Officers, eight part time Corrections Officers on layoff. Eleven Correction Officers positions are unfilled. One Corrections Sergeant is on layoff and two Sergeants have been demoted. Twenty Deputies have been laid off and twenty other employees have been demoted. Additionally the Sheriff's Office has reorganized reduced services/costs. Traffic Safety Units were eliminated, Court Services and Jail Traffic units, outside entities who contract for Sheriff's Deputies are required to contribute the cost of services, 2010 uniform allowances were withheld, unpaid leaves were implemented, shift schedules were changed to provide better coverage, training services were curtailed and three Clerical Specialists positions were eliminated. Additionally most of the Fiduciary Staff Salaries have been frozen since 2008.¹ These measures resulted from a decline in revenue since 2008. Sales tax revenues have declined over 8%; Investment income declined by 4.6 million in 2009 and is projected to decline by 1.2 million in 2010 as well as declining

¹ Employer Exhibit Agency Reorganization , Tab 2

property taxes. The County General Fund expenditures, on which the Sheriff's Department depends on for funds, is projected to decline in 2010 by 4.8 million and by 5 million in 2011 according to Mr. Berninger. The General Fund Reserve has also been reduced from 15.2% of its 2009 budget to an anticipated 10% or less of the General Fund in 2011. One of the reasons for this rather dismal economic picture is a 10% unemployment rate. The reality, according to the Employer, is that there is no money for increases in compensation and the taxpayers should not be asked for more.

There is no question that the County faces an uncertain financial future. However, all of the above information was available to the Employer when the tentative offer was made to the Union. The logical question is what has occurred between when the proposal was placed on the table and when the Employer rejected same? The Employer asserts the County Commissioners discovered revenue projections were falling short of expectations and advised the Sheriff to reduce costs by 1.8 million and resulted in a layoff of 23 corrections officers on June 25, 2010 due to a 4 million dollar budget shortfall. The Employer points out those employees in the bargaining units have received step increases averaging 3% and across the board increases of 3% in each of the contract years as well as an additional 3% step was added to the salary schedule. As a result the Employer has reduced its economic offer to a 2% wage increase in 2012 with no additional top step. It notes that the bargaining units are fairly compensated in comparison with bordering counties.

The Union proposed the tentative agreement of 3% in May 2012 with an additional step increase. The Union says tentative agreements should not be easily cast aside. The Union asserts the County has a 10-12% reserve

that is within the limits to maintain a good bond rating. The Union notes Butler County has the means and ability to finance the Union's wage increase by increasing the sales tax which is the lowest in the State and has not established an inability to finance the wage increase. As evidence the Union provided a comparison with the state wide sales tax by county. While the decision to increase sales tax is that of the County Commissioners not the fact-finder, the fact-finder takes note that the Commissioners who previously reduced the sales tax rate to the second lowest in the state now claims it cannot finance reasonable pay increases and maintain staffing levels that affect the public interest in terms of the Sheriff's ability to maintain safety services.

In the final analysis the issue essentially boils down to the ability to pay, what is/has occurred with internal/external comparables and the role of tentative agreements as a factor under Ohio Rev. Code 4117.14 (4)(e). What External comparables have/are doing in the current environment cannot be gleaned from evidence provided by the parties. Union Exhibit 3 does not indicate the timing of 2010 increases and only Warren & Preble Counties have contract settlements for 2010 and 2011-2012 wage increase information is unknown or are wage reopeners. Additionally no information is known regarding financial conditions of the comparables making reliance on sketchy data unreliable & insufficient. Internally, what is known is that non represented employees have seen no wage increase since 2008 with few exceptions. The County has reached agreement with AFSCME Local 3062 in August 2010 that freezes wages through August 31, 2012 unless there is a wage increase for non represented employees. The parties are in conciliation with the

Sergeants/Lieutenants and Deputies who provide court and work on the road. Neither party indicated the outcome of that conciliation report. The Union indicated the Employer Offer to the other Unit to be 2% in 2012 and two \$1000 payments essentially for clothing. Other Fact-Finders have considered tentative agreements as a “such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute settlement procedures in the public service or private employment”. The Fact Finder has carefully reviewed Fact Finder David Stanton’s Report and Recommendation regarding the importance of tentative agreements which indicates tentative agreements have often been recognized as those “other factor” in dispute resolution processes because of the impact on the collective bargaining process and the party’s relationship. There can be no question that upholding tentative agreements must carry weight to a Fact Finder under Ohio Statute. But a Fact Finder must also consider the issue as well as reasons causing rejection of a tentative agreement and whether cannot be blind to whether conditions have changed. Here the Employer contends that economic conditions that became known after the tentative agreement was reached at the table caused the rejection. It is a fact that a Fact Finder cannot ignore.

In the final analysis the overriding question is whether there is an ability to finance the proposed settlement and the effects of the adjustment on the normal standard of public service. Only time will tell whether there will be reductions in the Sheriff’s work force in the future. The Executive Summary General Fund for September 2010 indicates the General Fund Reserve at 11.2%, within the recommended range for reserves. The 2010

reserve is projected to be higher than that anticipated in October. The Commissioner's in the final phase of budget adjustments has restored 936,000 in sheriff patrol and electronic monitoring services. Moody's considers debt to be moderate. Sale Tax revenues have increased slightly by 1.3% over October 2009. Property tax revenue is estimated to increase 1.1 million from the 2009 budget. The Employer has proposed a 2% wage increase effective May 2012: the Union a 3% wage increase effective May 2012. The Employer did not offer cost information regarding either its 2% wage proposal or the difference in costs between its proposal and that of the Union. Union Exhibit 2 indicates the following cost of its proposal:

CORRECTIONS LT 5 649@ 3%=668.47 X 2 LT=	\$1336.94
CORRECTIONS SG. 5 <u>564@3%=580.92</u> X 10==	5809.20
CORRECTIONS OFF.5 <u>451@3%=464.53X</u> 92=	42,736.76
DISPATCHER 7 <u>454@3%==467.62X15=</u>	7,014.30
CLERKS 10 <u>418@3%==430.54X19=</u>	8,180.26
TOTAL WAGE INCREASE	65,077.46
CLOTHING IN 2010	61,152
CLOTHING IN 2012	61,152
TOTAL SETTLEMENT PROPOSAL COST	187,381.46
DIFFERENCE IN WAGES @ 2%	6,050.77

Based on this analysis, the Fact Finder recommends the following wage increase for a successor contract(s) for the respective bargaining units:

- A. The wage article of each contract and wage steps in effect May 2009 shall remain in effect until the commencement of the first Pay period in May 2012.

B. Effective the first full pay period in May 2012, wages and wage steps shall be increased by 3%.

ISSUE-WAGE- ADDITIONAL STEP

The Union seeks an additional step increase of 3% effective May 12, 2012. Additional steps have traditionally been utilized to obtain additional wage increases as they generally do not affect the majority of employees during the life of the agreement. Additional wage steps may also be utilized when the top wage step rate is required to meet the comparables. The Wage Comparability information, especially on recent settlements, is sparse. There is no showing by either party that comparable jurisdictions are adding additional wage steps at this time. In addition, there is insufficient data to indicate that the Butler County units are disadvantaged but enough to suggest the Butler County units compare favorable both in time to attain the top wage scale and the rate of compensation. The absence of a three percent additional wage step in the successor agreement does not appear to alter compensation differences between Butler County and comparables cited by either party.

All comparables have a higher sales tax than Butler County and therefore a higher ability to finance wage increases. The bottom line is the only evidence advanced by the Union is that the tentative agreement contained an additional wage step. For reasons discussed in the wage proposal and as there are differences in how Counties finance Law Enforcement costs and the absence of a tax levy to offset costs of Butler County's Law Enforcement, the recommendation of the Fact-Finder does not find the evidence supports an inclusion of an additional wage step in the successor agreement.

ISSUE-TRANSFERS-In the bargaining process the Employer sought to eliminate restrictions on the right of assignment through transfers to supplement primarily the Jail staff. The current collective bargaining agreement limited the number of deputies available for temporary transfer to jail assignments to five. The Union proposed to limit the number of temporary transfers to three. The bargaining process produced a tentative agreement to reduce the number of temporary transfers to three with an effective date of May 2012. In the fact finding hearing the Employer's position was retention of the current contract provision. The Union is seeking adoption of the tentative agreement reducing the number of temporary transfers from five to three. While the parties are in a better position than a fact-finder to bargain operating and administrative provisions of a collective bargaining agreement, the fact-finder finds the Employer's need for flexibility in current economic times and reduced staff more persuasive than the Union's proposal to reduce the manpower available for temporary transfers. While it is understandable the Union would seek further limitations, it has the carries the burden to support its proposal for change. In the fact-finder's opinion it has not done so. The Fact-Finder's recommendation for a successor agreement provides for retention of the current language of Article XXIV-Transfers.

ISSUE-HOLIDAYS- As a cost saving measure the Employer has eliminated Christmas Eve Day and New Years Eve Days for non represented employees and originally sought to do so for these represented units. Additionally the Employer proposed to temporarily suspended Columbus Day in 2010 and 2011 and President's Day in 2011

and 2012. The Employer also proposed the elimination of the employee's right to hold holiday hourly premiums and cash them in at a later date. This allowed employees not at the top step of the wage progression to gain additional compensation based on movement through the wage schedule. If all employees accrued holiday pay until a later date, a substantial late year charge resulted in the Employer's budget. The Union proposes maintaining the current contract provisions of Article XVII. The Fact-Finder adopts the Union's proposal and the recommendation for a successor agreement provides for retention of the current contract provision. While the current agreement may represent an inconvenience to the Employer and a late year charge, the Union notes Employer has not pursued this proposal against other Department employees. Moreover the Employer acknowledged the cost savings is almost inconsequential. For these reasons, support for the Employer's proposal is lacking.

ISSUE-DURATION-Both parties are in agreement that the duration of
The agreement shall be three years with an expiration date May 4, 2013.

Respectfully:

Jerry Hetrick

Jerry Hetrick, Fact Finder

Dated: October 29, 2010

BUTLER COUNTY SHERIFF

BUTLER COUNTY SHERIFF'S WAGE & BENEFIT COMMITTEE

FACT-FINDING REPORT & RECOMMENDATION

CASE NO. 10-MED-02-0129, 10-MED-02-0130

CASE NO. 10-MED-02-0131, 10-MED-02-0132

REPRESENTING THE COUNTY:

Paul Berninger, Attorney

Major Norman Lewis

Captain Katie Mahon

Peter Landrum, Asst. County Budget Director

Vicki Jo Barger, Sheriff's Office Financial Officer

Matt Franke, Communications Director

REPRESENTING THE WAGE & BENEFIT COMMITTEE

Steven Lazarus, Attorney

Megan, Glowacki, Attorney

Joshua Bowling, President, Corrections Officers

Kevin Tendam, Vice President, Corrections Officers

Phil Clark, Corrections Officer

Neal Curwin, Sergeant

Kevin Grather, Sergeant

Susan Riley, Clerks

Felicia Shelton, Clerks

Rebecca Reynolds, Dispatch

Fact Finder: Jerry Hetrick

Date of Hearing: October 12, 2010

Date of Report: October 29, 2010

