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# FACT FINDING REPORT
# STATE OF OHIO
# STATE EMPLOYMENT RELATIONS BOARD
# January 6, 2011

IN THE MATTER OF:

**FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL, INC. (CORRECTIONS OFFICERS)**

*Employee Organization*

and

**HAMILTON COUNTY SHERIFF'S OFFICE**

*Employer*

CASE NO. **10-MED-07-0868**

FACT FINDER: Howard Tolley Jr.

APPEARANCES

**FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL, INC. (CORRECTIONS OFFICERS)**

Gwen Callender, General Counsel
David Stanley, FOP/OLC Staff Representative
Pat Paulker, FOP/OLC President
Robert Schlauser, representative
David McElroy, representative

**HAMILTON COUNTY SHERIFF'S OFFICE**

Brett Geary, Management Consultant
Christian Sigman, Assistant County Administrator
Edwin Boldt, Sheriff's Counsel
Rob Wagner, County administration
Kim Serra, Senior Human Resources Manager

## Introduction

The Employer and FOP/OLCI have been parties to collective bargaining since 2002, and the union's first agreement was negotiated in 1987. The county employs roughly 4,800 employees (3,600 non-represented), to serve a population of about 885,000. The three-member Board of County Commissioners (BOCC) has collective bargaining agreements with ten unions representing a total of 1,200 employees. Currently, the Corrections Officers Bargaining Unit includes approximately 288 full time members employed to provide safety and security of prisoners in the 1,240 bed Criminal Justice Center and two smaller detention facilities. There are five bargaining units of Sheriff's Office employees, and a newly recognized sixth unit is negotiating a first contract.

Corrections Officers 288 current officers
Corrections Supervisors – 29 Sergeant, Lieutenant, Captain
Enforcement Officers – Patrol Officer, Corporal, Sergeant
Enforcement Supervisors
Maintenance Unit
Benevolent Employees – newly recognized unit of 136 members

The fact finder in this proceeding conducted a hearing and prepared a report involving the same FOP/OLC corrections officers union in 2005 at the conclusion of unsuccessful negotiations for the 2005-2008 agreement. At that time, prior to layoffs resulting from closure of the Queensgate detention facility, there were 394 Corrections Officers. As recommended in the 2005 Fact Finding Report, the 2005-2008 agreement provided annual pay increases of 3.5% for top paid employees and up to 4.5% for individuals with less than five years of service.

The current agreement for December 2008- December 2011 provided no wage increases but allows for wage reopeners for 2010 and 2011 and a "me too" clause assuring union members of any raises granted to unrepresented employees. In the fall 2009 reopener, the corrections officers accepted the ongoing freeze on salaries through 2010 based on assurances from the County Administrator that if three budget targets were met he would recommend to the BOCC mid-year raises, possibly retroactive to January, for all county employees.

Except for the Corrections Supervisors, all other represented units with wage reopeners accepted the pay freeze for 2010, understanding that a mid-year increase was possible. The Corrections Supervisors took their wage reopener to conciliation and were awarded a 2% increase for 2010 and a 3% increase for 2011. For a first contract of the newly certified Benevolent Employees unit, a Fact Finder recommended in November no pay increase in 2011, followed by a 3% increase in 2012 and a 4% increase for 2013.

On June 23, 2010 the County Administrator recommended 3% raises for all employees to the BOCC because the three 2010 Financial Indicators established in the budget plan to determine a mid-year compensation adjustment had all been achieved:

1. minimum 6% General Fund Reserve
2. revenue meets budget projections and
3. expenditures within the approved funding level.

The BOCC never placed that recommendation on a regular meeting agenda, and on September 29 adopted a Budget policy goal of raising undedicated general fund reserves to 15% of recurring general fund expenditures.

After two years with no wage increase, in the reopener for 2011 the union proposed a 7% increase and the county sought to maintain current salaries. When unable to reach agreement, the parties mutually agreed on the Fact Finder, scheduled a hearing for December 9, and submitted brief pre-hearing position statements that summarized their proposals. The parties prepared supporting documents for presentation at the hearing to address the criteria established by the Ohio Public Employees Bargaining Statute in Rule 4117-9-05:

1) Past collectively bargained agreements, between the parties
2) Comparison of 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, and 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; and,
6) Such other actors, 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 in private employment."

**Fact Finding Hearing: December 9, 2010, Hamilton County Administration Building**

The Fact-Finder conducted a hearing from 10:00 am until 2:15 pm with presentation of evidence and argument by the two principal representatives and the Assistant County Administrator/Budget Director. The union and the employer both made compelling arguments with considerable evidentiary support that the Fact Finder reviewed at length in order to resolve an extremely close question.

**Rationale and Evidence in Support of a 2011 FOP/OLC Wage Increase**

<u>Ability to Pay:</u>

Between 2007 and 2010 the county has nearly doubled General Fund reserves from 5% to 10% of expenditures. Moody's Investor Services and the Government Finance Officer's Association (GFAO) recommend a reserve between 5% and 15%, but the GFAO notes "In practice, a level of unrestricted fund balance significantly lower than the recommended minimum may be appropriate for states and America's largest governments (e.g., cities, counties, and school districts) . . ." The county projects a healthy 9.9% fund reserve at the end of 2010, well above the 7.6% in 2006 before revenues dropped precipitously. In June the County Administrator found a 6% reserve sufficient to recommend a 3% pay raise for all county employees. The Fact Finder calculated that a 3% raise for corrections officers in 2011 would leave the county with a 9% general fund reserve.

The county's high grade, high quality bond rating of Aa2 by Moody's indicates sound fiscal health and prudent budgeting. Since 2007 conservative revenue estimates have consistently been lower than actual receipts, and expenditures have fallen below initial projections. The County Administrator's annual budget recommendation includes a General Fund Five Year Plan Chart illustrating the projected variance between revenues and expenditures. The county's projected deficits for 2012 and beyond charted in 2010 are greater than the imbalances forecast in 2009 but may well be unduly alarmist. In 2009 the chart depicted a $11.2 million deficit for 2011, but in 2010 the projection depicted a balanced budget for 2011 with deficits growing in subsequent years. Based on the most recent reports, the county's projected sales tax revenues appear unreasonably low to the fact finder.

The County Administrator's June 23 memo to the BOCC calling for a mid-year 3% increase summarizes budgetary actions in 2008-2009 that adversely affected employees and notes sufficient reserves in the general fund and favorable projections for revenue and expenditures to support the anticipated cost of $1.7 million. The administrator's memo and subsequent budget proposal acknowledged the possibility of negotiated or conciliation adjustments for 2011 and anticipates annual salary increases of 3% for all employees starting in 2012. The BOCC has additional revenue options including up to $4 million of increased charges to Townships that do not currently pay the full cost of local policing performed by Sheriff's deputies and an additional $1.9 million by increasing the real estate transfer tax. Negotiations for consolidated services with the city of Cincinnati and neighboring jurisdictions may lead to further cost savings. A new Casino in Cincinnati will generate revenues that alleviate some of the county's financial difficulties.

<u>Reduced Take Home Pay:</u>

Over the first two years of the current agreement with their wages frozen, union members have had their mandatory contribution to the Ohio Public Employee Retirement System (OPERS) increased from 8.5% to 10%. The employer increased the employees' monthly health care premium costs by an average of $550 combined with increases in co-pays and deductibles while achieving major savings on health insurance that reduced the total cost of monthly premiums. The employee's share of monthly health care premiums increased from 14% to at least 20% and in some cases 30%. The employer has no standing committee with worker representatives to discuss changes to the health care plan and has full discretion to modify employee contribution rates. All individuals electing the same plan pay the same premium, so that lower wage employees contribute a higher percentage of their earnings for health care than do those at the top of the salary scale. A new spousal surcharge costs affected employees $910 per year. The cost of living has increased by over 1.2%.

<u>Issues of Comparability and Equity</u>:

The 288 Corrections Officers' wages are frozen, but their 29 supervisors were awarded increases of 2% in 2010 and 3% in 2011. Sheriff's department patrol officers and their supervisors have contractually mandated caps on increases to their health insurance premiums. For the POS/HMO plans, corrections officers annually pay between $728 and $5,208 more than the law enforcement officers whose premiums were frozen with their wages. The sheriff has reemployed six retired non-represented administrators, and hired two city retirees who all draw OPERS pensions. Four of the eight "double dippers" have salaries over $90,000. The BOCC will not permit such double dipping for its employees, but the Sheriff permits a practice allowed by state law that has contributed to the increased mandatory OPERS contributions of current employees. The FOP/OLC agreed to 0% in the wage reopener for 2010 relying in good faith on

the county to make a mid-year adjustment based on budget performance. Even though the fiscal targets were achieved, the BOCC rejected the County Administrator's recommendation for a 3% raise.

For external comparables, the Fact Finder used six jurisdictions with over 320,000 residents from the SERB Clearinghouse Benchmark Report of 10/5/10 submitted by the FOP/OLC. The Hamilton County corrections officers top level compensation ranks 5th behind neighboring Butler County, Lucas, Montgomery, and Stark Counties; Cuyahoga County ranks 6th. Hamilton County's top level of $41,846 is 97% of the six county average of $43,127. As in 2005, the Fact Finder concludes that even though it may be unable to close the gap with neighboring Butler County, Hamilton County should not fall even further behind.

**Rationale and Evidence in Support of a 2011 Wage Freeze**

Inability to Pay:

The 2007 county fiscal crisis resulted in a Moody's downgrade of its bonds from Aa2 to Aa3 when the General Fund Reserve was falling to below 5% of expenditures. The BOCC had budgeted expenditures based on a planned increase in the sales tax that voters subsequently rejected. Shortly after, the housing crisis and great recession had a devastating impact on county revenues that fell from $248 million in 2008 to $210 million in 2010. Belt tightening included lay offs of 1,200 county employees, a 20% reduction. When sales tax revenues fell well below the anticipated annual 3% increase needed to pay for stadia construction the county was faced with an acute budget shortfall outside the General Fund.

Overall the county estimates $25 million in lost revenues and new costs that will wipe out the general fund reserves by the end of 2012 as a result of budget deficits growing by 2015 to an overall ending balance deficit of over $100 million.

Revenues:

- The sluggish economic recovery and growing internet sales may prevent sales tax revenues from returning to prior levels in the near future. Unduly optimistic estimates of sales tax revenues in the past have caused ongoing budget problems.
- It is even more likely that property tax revenues will decrease, possibly by 10%, based on reappraisals establishing lower home values that will take effect in 2012. Unlike agencies funded by levies subject to adjustments that provide consistent revenue, the county will suffer the full consequence of reduced home valuations. In addition, Duke Energy has discontinued payments of its property taxes during litigation challenging the treatment of local utilities.
- The county also anticipates that as a result of Ohio's $8 billion deficit, state contributions to the local government fund could be cut in half from $18 million to $9 million.
- Interest earnings have dropped from 3.9% in 2008 to 0.25% in 2010.

Expenses:

- Employee salaries are projected to increase 3% per year with additional staff hired
- Employee Health Care is projected to increase by 10% per year
- The Ohio legislature appears ready to increase the employer's contributions to OPERS.

The county noted recent bankruptcies by other public employers, and submitted Ohio government policies that allow state takeovers of jurisdictions in times of emergency. Hamilton

County voters have twice rejected sales tax increases for a new jail and related law enforcement needs, with the result that fewer offenders are being detained. Scarce resources are needed to maintain the reduced number of beds available for the most dangerous criminals, and public safety needs take priority over increased compensation for employees. An outcry in the local media over bonus payments awarded to employees of Developmental Disability Services from an increased renewal levy approved in 2009 illustrates the political climate that constrains the BOCC's ability to seek additional revenues or grant increases. While the story lead focused on a $24,000 pay increase for the highly paid Public Health Commissioner, it appears that other employees were granted a 3% one time bonus, not a permanent 3% pay raise.

Take Home Pay:

Over the course of the current three-year agreement, 80 officers including 50 officers in 2011 will complete five years of service and receive a 28% increase in their sixth year. By the end of 2011 an additional 39 officers will receive a .5% increase after completing fifteen or twenty years of service.

While the county anticipates a 10% increase in health care premiums for 2011, employee contributions will be frozen at current levels, with few exceptions. Employees taking advantage of increased dependent coverage of two additional years for older children will be assessed the full cost of that new benefit.

Issues of Comparability and Equity:

During the recent budget crisis, the county mandated furloughs for non-represented employees that cost 3.8% of their salaries, a loss not suffered by corrections officers. The non-represented employees will go four years without any pay increase through 2011, while the corrections officers had a 3.5% in 2008 before negotiating a three-year agreement with no further increases subject to wage reopeners. Despite past increases in the spousal surcharge the county maintained that another local employer, Proctor and Gamble, charges its employer twice the rate contributed by FOP/OLC members. Budget cuts and mid-year adjustments forced 725 layoffs in all departments, with 153 in the sheriff's department. The closure of Queensgate contributed to a 25% drop in the number of corrections officers, and 18 of those laid off still await recall. Devastating cuts to Family and Job Services caused a 40% budget reduction, 462 layoffs, and closed facilities at a time of growing demand from county residents suffering high unemployment and property foreclosures.

**Conclusion**

Despite the County Administrator's June 23 memo recommending a 3% pay raise and the Conciliator's June 10 award of raises for Supervisors in 2010 and 2011, the Fact Finder concludes that as of January 6, 2011 long term projections indicate the county may be unable to sustain a 3% raise to the corrections officer beyond 2011. Current revenue and expenditure projections are sufficient to recommend an increase in 2011, but at this time it appears that lost revenues from property taxes and the state's contribution to the local government fund in 2012 and beyond may threaten the general fund reserve. While the Fact Finder questions the BOCC goal of a 15% reserve, the 9.2% projected for 2011 appears reasonably conservative. Projections for 2009 and 2010 forecast less than a 6% General Reserve Fund balance, but at year's end the actual reserves were 8.5% in 2009 and 9.9% is projected for 2010.

The Fact Finder considered the union's proposal for a 7% increase excessive, but did consider a 3% wage increase to offset increased employee health care costs, to keep pace with inflation, and to assure that its employees do not fall further behind those in comparable jurisdictions. However, given the likelihood of significant lost revenue in 2012 and the county's 2007 warning from Moody's, the Fact Finder cannot recommend a permanent wage increase that would entail recurrent expenditures beyond 2011. Instead, the Fact Finder recommends a one-time bonus of $1,200 per member based on the County Administrator's June 2010 assessment of ability to pay, subsequent increases in general fund reserves, and the three year increase in employees' health care premium costs averaging $1,400. According to a September 24, 2010 memo from the Human Relations Director to the BOCC (FOP/OLC Tab 9) in the 2008 – 2010 period the county reduced its total health care cost per employee over three years by about $2,400 and increased each employee's premium costs $1,400 for a total saving of $3,800 per employee.

Using the county's approach to determining costs of the union's proposal, the Fact Finder estimates that the cost of providing a $1,200 bonus to the 288 members would be $354,600. That would slightly reduce the projected year-end general fund reserve in 2011 from 9.2% of expenditures to 9% -- well above the 6% considered satisfactory by the County Administrator in June 2010 and comfortably above the minimum 5% recommended by Moody's. FOP/OLC members would receive a bonus of between 2.8% for Correction Officer Third and 3.6% for Correction Officer Second of annual compensation that would partially compensate for the added costs of their increased health care premiums and out of pocket expenses over the 2008-2011 contract period.

**ARTICLE 20**
**ADDENDUM TO LABOR AGREEMENT**
**WAGES AND COMPENSATION**

Addendum to Section 20.3. For the contract period including December 1, 2010 through November 30, 2011, the bargaining unit employees covered under this labor agreement shall receive a one time bonus of $1,200 in addition to their annual salary to be paid in equal amounts during regular pay periods effective the first pay period after December 1, 2010.

Respectfully submitted,
Howard Tolley, Jr., Professor, University of Cincinnati
January 6, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that an exact copy of the foregoing Corrected Fact Finding Report has been served via electronic mail to Brett A. Geary, Regional Manager, CLEMANS, NELSON & ASSOCIATES, INC., 420 W. Loveland Ave., Suite 101 Loveland, OH 45140 BGeary@clemansnelson.com, Gwen Callender, General Counsel, FOP/OLC General Counsel 222 East Town St. Columbus, OH 43215 gcallender@fopohio.org and to the State Employment Relations Board, Columbus, Ohio Mary.Laurent@serb.state.oh.us on this 6th day of January, 2011.

Howard Tolley

______________________________ January 6, 2011

Howard Tolley Date