

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding Between

The Fraternal Order of Police,
Ohio Labor Council, Inc.

Employee Organization

Case Nos. 10-MED-10-1487, 1488
1489, 1490, 1491 & 1492

And

Washington County, Ohio Sheriff's Office

Fact-finder: Jerry B. Sellman
Date of Report: June 3, 2011

The Employer

FACT-FINDER'S REPORT AND RECOMMENDATION

APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:

Mr. Wes Elton - Staff Representative FOP/OLC Inc., representing the Union
Brian Rhodes – Deputy Sheriff for Washington County, Ohio, Witness
Jeffrey Farrell – Witness
Joan Kinzel – Witness

FOR THE EMPLOYER:

Cheri B. Hass, Esq. – Attorney with Downes, Fishel, Hass, Kim LLP, representing the
Washington County Sheriff
Stacy V. Pollock, Esq. - Attorney with Downes, Fishel Hass, Kim LLP, representing the
Washington County Sheriff
Sheriff Larry Mincks – Washington County Sheriff, Witness
Ms. Barbara Purdum – Office Administrator for Washington County Sheriff's Office, Witness
Paul Cunningham – County Administrator for the Washington County, Ohio, Witness

INTRODUCTION

This matter concerns a Fact-finding proceeding between the Washington County, Ohio Sheriff (hereinafter referred to as the “Employer” or the “County”) and the Fraternal Order of Police, Ohio Labor Council, Inc. (hereinafter referred to as the “FOP” or “Union”). The State Employment Relations Board (SERB) duly appointed the undersigned as Fact-finder in this matter. A Fact-finding hearing was held on April 21, 2011 at which time the Fact-finder invited the parties to enter into mediation pursuant to the Ohio Administrative Code and the Policies of SERB in an effort to find consensus on all remaining disputed provisions of the new Collective Bargaining Agreement. The Parties were unable to find consensus on several major issues and the hearing commenced.

The open issues identified by both parties included:

1. Article 9, Dues Deduction
2. Article 15, Probationary Period
3. Article 25, Medical Insurance
4. Article 36, Wages and Longevity
5. Article 38, Duration and Execution
6. New Article, (administrative leave days for control unit)

The Fact-finding proceeding was conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of the State Employment Relations Board, as amended. During the Fact-finding proceeding, this Fact-Finder provided the parties the opportunity to present arguments and evidence in support of their respective positions on the issues remaining for this Fact-finder’s consideration. The parties waived the taking of a transcript.

In making the recommendations in this report, consideration was given to all reliable evidence presented relevant to the outstanding issue before him and consideration was given to the following criteria listed in Rule 4117-9-05 (K) of the State Employment Relations Board:

- (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 issues submitted to mutually agreed-upon dispute settlement procedures in public service or in private employment.

I. BACKGROUND

The Fraternal Order of Police, Ohio Labor Council, Inc., (“the Union”) is the exclusive representative of several bargaining units in the Washington County Sheriff’s Office. This matter involves eight (8) bargaining units which include a total of approximately 71 members. Specifically, these units include: (1) 13 Criminal Division Deputy Sheriffs; (2) 23 Corrections Officers; (3) 13 Criminal Division Sergeants and Lieutenants (three vacancies); (4) 9 Dispatchers; (5) 4 Corrections Sergeants and Lieutenants; (6) 3 Cooks; (7) 1 Communications Sergeant; and, (8) 4 Control Room Operators (one vacancy) and 1 Maintenance Supervisor. The Control Room Operators / Maintenance Supervisor classification is the most recent unit, organized in 2010.

The Washington County Sheriff's Office (the "Employer") serves approximately 62,000 citizens and is responsible for providing common pleas court services and corrections on a county-wide basis. The Office is also responsible for providing full police services to unincorporated areas of the County and incorporated areas of the County that do not have police services. The Sheriff's Office is divided into three Divisions: the Civil Division, the Criminal Division, and the Jail Division. The Criminal and Jail Divisions are organized; the Civil Division is unorganized.

Negotiations for this Agreement are successor negotiations for the Collective Bargaining Agreements ("CBA") that expired on January 31, 2011. The parties signed an extension agreement through June 15, 2011. It is understood and agreed between the parties and their representatives that all signed articles are tentative to the entire package being approved by the respective authorities, bargaining units, and elected officials

The parties have a long history of amicable negotiations; as a result, they were able to discern in a few sessions areas of agreement and impasse. Formal bargaining sessions were held on October 28, 2010, and January 11, 2011, and a number of informal discussions and e-mails were also exchanged.

II. UNRESOLVED ISSUES

1. ARTICLE 9 – DUES DEDUCTION

The Employer's Position

The Employer proposes that the current language in the Agreement remain unchanged and that members of the bargaining unit will not be required to remit a fair share fee as a condition of continued employment.

The Employer argues that membership in the Union should be voluntary. It is the Union's

responsibility to convince employees that it is worthwhile to become a Union member and pay dues. While the Union may argue that fair share fees are fundamentally about fairness, the General Assembly did not think so. Otherwise, fair share provisions would have been mandated by statute. Recently enacted Senate Bill 5 prohibits fair share fees. Furthermore, there are only 25 dues paying members out of a bargaining unit of 67 current employees (four job openings). Under these circumstances, it would be inappropriate for more than 62% of the bargaining unit to be required to pay a fair share fee. Additionally, of the five collective bargaining agreements in the County, only one has a fair share fee. The Washington County Board of Developmental Disabilities has a fair share provision in its Agreement which grandfathers employees hired prior to June 30, 2009. Notably, Washington DD is a stand-alone Board that need not be approved by the Commissioners. Finally, a fair share fee is especially improper at the present time. In light of the Employer's wage proposal, which is to freeze wages, requiring a fair share fee would actually reduce most employees' take home pay.

The Union's Position

The Union proposes the addition of a Fair Share Section to the contract.

The Union notes that over half of the bargaining unit members do not belong to the Union, therefore do not pay dues. With the exception of voting rights, non members enjoy the same benefits and representation as those employees paying dues. Since all employees share in the benefits derived from bargaining by the Union, it is only fair and equitable for all employees to pay their "fair share" of dues.

A fair share fee does not require the employee to join the Union should they not wish to do so. It merely requires them to pay their fair share for the benefits and services they receive. The vast majority of Sheriff's Office contracts throughout the State of Ohio contain fair share

provisions. This issue has been proposed during previous negotiation, but has been withdrawn in order to settle negotiations.

Discussion, Findings and Recommendation

Fair Share provisions have been included in many collective bargaining agreements over the years to require non-union members within certain unionized work groups to pay the union their “fair share” (usually a percentage of union dues) for the benefits derived from union representation. The “Fair share” is a fee collected by a union to pay for work related to negotiating collective bargaining agreements, representing unit members in grievance and arbitration proceedings and administering collective bargaining agreements. The fee is paid by unit members represented by a union who choose not to pay union membership dues.

Prior to the enactment of Ohio SB 5, Ohio Revised Code 4117.09(c) provided that a collective bargaining agreement *may* contain a provision that requires as a condition of employment, on or after a mutually agreed upon probationary period or sixty days following the beginning of employment, whichever is less, or the effective date of a collective bargaining agreement, whichever is later, that the employees in the unit who are not members of the employee organization pay to the employee organization a fair share fee. As noted by the Employer, this provision was eliminated from SB 5, which bill becomes law effective July 1, 2011.

Neutrals have long recognized the philosophical opposition of management to fair-share provisions and these provisions have not usually been recommended unless it has been demonstrated that the Union has given up a number of benefits in the negotiating process in exchange for the fair-share provision. Under the current economic circumstances which exist in the County, the Union would be hard pressed to be in a position to have offered a trade-off

sufficient to support the inclusion of a fair-share provision at this time.

This issue currently is a permissive subject of bargaining for these parties and therefore is neither required nor prohibited. In resolving this issue, the Fact-Finder considered past bargaining agreements of the parties and other collective bargaining agreements within the City and County in which the bargaining unit is situate. Based upon the fact that the parties have not agreed in any prior agreement to include fair share dues requirements, that two-thirds of the unit are not members of the unit, and that no other collective bargaining agreement (four others) requiring the county commissioner's approval contains a fair share provision, the Fact-Finder sees no basis upon which to require the Employer to change the status quo.

The Fact-finder recommends that the fair share dues deductions sought by the Union be denied.

RECOMMENDATION

It is recommended that the provisions of Article 9, Dues Deductions, remain the same.

2. ARTICLE 15 – PROBATIONARY PERIOD

The Employer's Position

The Employer proposes that the one-year probationary period for Road Patrol employees begin after completion of the Field Training Officer (FTO) Program. The current contract specifies that probation for Deputy Sheriffs begins when he/she receives certification that the required basic training has been completed. The purpose of the proposed new language is to permit the Employer to have a longer time to evaluate the Road Patrol employees.

After a Road Patrol Officer is certified, he/she must successfully complete the FTO

program, which consists of a checklist of items that familiarizes the employee with the work of a patrol officer. Some officers complete this checklist in two to three weeks. Some officers do not complete this checklist for a few months. While a new employee is completing the FTO training, the supervisor is not able to fully evaluate how the officer will perform on his or her own, without the benefits of a senior officer sitting next to him or her.

Since the purpose of a probationary period is for the supervisor to properly and adequately evaluate whether a new employee will be able to meet the requirements of the new position, the Employer argues that it makes more sense to begin the probationary period after the FTO training and not after certification.

The FTO Program is most often used when an already-employed Washington County Sheriff's Office corrections officer chooses to undergo peace officer training. The Sheriff's Office supports this continued education and hires patrol officers from within, when possible. This new provision will actually benefit those employees by giving the Sheriff a longer time to properly evaluate them.

The Union's Position

The FOP proposes no change in the current contract.

The Union argues that the contract provides adequate time for the Sheriff to evaluate a new employee. The current contract specifies that probation for Deputy Sheriffs does not begin on date of hire, but from the date when certification of required basic training has been completed. The one year period applies for other employees.

Comparisons in other jurisdictions show that one year is the maximum probation period. Some even have a six months maximum probation period.

Discussion, Findings and Recommendation

While the Employer argued that adding additional time to a probationary period would benefit the County, the Fact-Finder does not find such argument persuasive. The Employer already has *more* than a year to evaluate the new hires for road patrol officers, and no factual basis was submitted to support extending that time frame. The contract language should remain the same.

RECOMMENDATION

It is recommended that the provisions of Article 15, Probationary Period, remain the same.

3. ARTICLE 25 – MEDICAL INSURANCE

The Employer's Position

The Sheriff's Office seeks to revise the current contractual language to reflect the sole authority of the County Commissioners to contract for insurance. Under the current contract language, the Employer may secure alternate insurance carriers and/or modify coverage to maintain or reduce costs. If a change is made, it must be made to either improve coverage provided or reduce the premiums without substantially reducing the benefit levels. Since there is no recognition in the contract that the Board of County Commissioners selects the medical/hospitalization health care insurance and not the Employer, the Employer desires to not only reflect that authority, eliminate the language requiring it to provide ongoing coverage without "substantially reducing benefit levels."

The Washington County Sheriff's Office is the Employer-party to this Agreement. However, pursuant to R.C. 305.171, only a board of county commissioners has the authority to

contract for and procure health insurance. As such, by law, the Board of County Commissioners, not the Sheriff's Office, has the authority to establish the plan design of health insurance. As the contract is between the Sheriff's Office and FOP, the Board of County Commissioners cannot be forced to act.

It is well-settled that "notwithstanding the sheriffs agreement under the CBAs to provide health insurance to his employees, the sheriff is necessarily dependent, to some extent, upon the actions of the... County Commissioners in pursuit of their statutory responsibilities to contract for the group health insurance for all county employees." *Licking County Sheriff's Office v. Teamsters Local Union No. 637*, Case No. 08-CV-01461 (November 17, 2008), citing *State ex. Rel. Ohio Patrolmen's Benevolent Assn. v. State Etnp. Relations Bd.*, 10th Dist. No. 05AP-526, 2006 Ohio 3263. Further, "the sheriff has no statutory authority to control the actions of the . . . County Commissioners in their pursuit of their statutory duty to contract for group health insurance for all county officers and employees." *Id.*, citing *State ex. Rel. Ohio Patrolmen's Benevolent Assn.*, 2006 Ohio 3263.

The Sheriff's proposal regarding health insurance reflects the Sheriff's Office's statutory inability to contract for insurance. The Employer's proposal seeks to avoid reaching an agreement regarding issues it cannot legally control. Additionally, the Insurance Article, specifically Section 25.2, was subject to a grievance in 2010. The language in dispute was whether the Employer properly interpreted the contract language when it modified insurance coverage in 2010. The Agreement states that the Employer "may secure alternate insurance carriers and/or modify coverage which measure may be used to maintain and/or reduce costs. The purpose of either changing carriers or coverage shall be to either improve coverage provided or reduce the premiums without substantially reducing the benefit levels." The County

Commissioners enacted changes to the County's insurance which increased the out-of-pocket expenses, such as co-pays and deductibles. However, the Commissioners maintained the substantive medical benefits available. The Sheriff's Office argued that the Commissioner's changes did not violate the Agreement because the changes kept the premiums from increasing, while keeping the benefits the same. The Sheriff's Office argued that "benefits" means the substantive medical benefits available under the plan. The Arbitrator found that "benefits" includes the amount of co-pays and deductibles and further held that the Commissioners substantially reduced the benefit levels by increasing the out of pocket expenses.

As a result of the Arbitrator's award, 40 bargaining unit members were eligible to submit documentation to the Sheriff's Office to seek reimbursement. Eleven employees took advantage of the opportunity to seek reimbursement. Of those eleven, only four employees were entitled to a refund. The seven remaining employees saved money under the Commissioners' new health insurance plan and were not entitled to a refund. In calculating the employees entitled to a refund, and the employees who actually saved money under the changed plan, there was virtually no change. The amount of money the employees saved, versus the amount of additional money employees were required to pay, canceled one another out. Neither the Sheriff's Office nor the arbitrator had access to this information at the time of the arbitration as it was based upon 2010 year-end numbers. As such, the Sheriff's Office lost an arbitration based upon a change made by the County Commissioners concerning a plan that actually had little to no effect on the bargaining unit. Barring a language change, this issue could be repeated each year the insurance is re-negotiated by the Commissioners. The Sheriff's Office seeks to prevent the fruitless and expensive process.

The Union's Position

The FOP proposes no change to the current contract language.

Under the current group medical plan, medical and prescription costs are included in the plan, but eye and dental costs are not included. Employees currently pay twenty percent of the premium cost. While the Union recognizes that health care costs are volatile and premiums have increased, it wants to keep benefits at the current level. The current language gives the employer the ability to change carriers and/or modify coverage to maintain or reduce costs so long as it does not substantially reduce the benefit levels. As noted by the Employer, in 2009, Washington County contracted with County Employee Benefits Consortium of Ohio (CEBCO) for a three year term. The 2010 rates for the county plan went up by over fifteen percent. Unable to withdraw from the CEBCO contract without a substantial penalty, the county opted for a plan which substantially reduced benefits. The FOP filed a grievance which was sustained by Arbitrator Floyd Weatherspoon.

The FOP feels it is important to retain the current language so as to encourage the Employer to be more prudent in decisions regarding health insurance. Members already pay well above the averages for employee co-payments. In addition, the twenty percent co-payment has no dollar cap.

Discussion, Findings and Recommendation

The level of benefits to be received under a medical insurance policy and the premiums an employee must pay for those benefits continues to be a much contested issue in collective bargaining. Increased premium contributions by employees result in a dilution of their "take home" pay and leads to further negotiations on the issue of wages. No employer desires to reduce healthcare benefits provided to its employees, but employers struggle with balancing their

budgets when health care costs escalate and the benefits provided under a health care plan are reduced. Likewise, employees struggle with no or a small wage increase and an obligation to pay higher premiums so that adequate coverage can be provided. In most cases, the result of constantly rising health care premiums results in employees paying higher percentages of the health care premiums. This is the case in Washington County, Ohio where the employees of the Sheriff's Office are already paying a twenty percent co-pay.

Under current economic circumstances, the Union's desire to require the Employer to maintain current benefit levels is unrealistic. The Sheriff has no control over the selection of an insurance carrier for the County and therefore has no control over the benefits to be provided. While it is possible for the Sheriff to negotiate the co-pay it requires of its employees, it cannot do so over benefits. Requiring the Sheriff to comply with contractual terms over which it has no control makes no sense. Furthermore, maintaining a uniform, county-wide insurance program for all employees has the advantage of affording the employer an opportunity of more effective competitive bidding resulting in overall savings in total costs to the County and the employees.

RECOMMENDATION

It is recommended that the provisions of Article 25, Section 25.2 be amended as follows:

Section 25.2 Insurance Plan

The Employer will make available to all full-time bargaining unit members comprehensive major medical/hospitalization health care insurance. Inasmuch as R.C. 305.171 vests exclusive contracting authority for insurance purposes with the Board of County Commissioners, the Board shall select carriers/providers and otherwise determine the schedule of benefits and method of provision and coverage (i.e. single, family, two-party, etc.) as provided under the offered plan(s).

The Employer agrees to meet with the Union, upon its request, to discuss

changes in the coverage in the insurance plan, changes in premiums, or regarding any other concerns the Employees may have regarding medical insurance.

4. ARTICLE 36 – WAGES AND LONGEVITY

The Employer's Position

The Employer proposes no wage increase in 2011.¹ The employer does not propose a step freeze. It bases its position on three factors: current economic condition of the County, internal comparables and court orders.

The Employer argues that the County cannot afford to grant any increase in wages due to the fragile economic condition of Washington County. The Sheriff's Office is funded primarily through two sources: the Sheriff's Office Sales Tax and the County General Fund. The County General Fund has been and is expected to decline further. The Sales Tax Fund is currently increasing, but the decline in the General Fund will require greater expenditures from the Sales Tax Fund, thus reducing dollars available for distribution.

Sheriff's Office Sales Tax

The Sheriff's Office, for purposes of funding, is divided into three divisions: The Jail Division, the Civil Division, and the Criminal Division. Aside from the substantive roles these Divisions play, the major difference between the Divisions is their funding source. The Jail and Civil Divisions are funded by the County's General Fund. Most expenses in the Criminal Division are funded through a sales tax. Five dispatchers are paid through the sales tax, four dispatchers are paid from the 911 fund which is funded by telephone fees (special revenue), and

¹ The Employer also proposes no wage increase for 2012 or 2013, for it seeks a one year duration period for the Agreement.

one Communications Sgt/911 considered to be within the civil division is paid from the General Fund.

A Sales Tax was passed a number of years ago and was understood by the voters to be a tax to fund the Criminal Division of the Sheriff's Office. Since its inception, the tax has been used to fund the criminal division with only one exception. Between 2003 and 2009, a portion of the sales tax was used to make principal and interests payment for the construction of a new County Jail. The Sales Tax fund currently has a \$1.5 million reserve, enough to fund the criminal division for six months. However, several projected expenses are expected to shortly deplete this reserve. First, a cut in the County General funding will necessarily result in the Sheriff's Office depleting additional monies from the Sales Tax fund. Currently, positions that are being paid for out of the General Fund may need to obtain their funding from the sales tax fund. Specifically, the Communications supervisor and a civil deputy position are currently being paid from County General (two positions, total 80% budgeted overtime and wages \$96,926.92). Additionally, the following non-union personnel are currently paid from the County general fund: Transport officers (three and one-half positions, total wages \$128,078.92); Security/Transport Sergeant (one position, total wage \$47,372); a percentage of five Support Personnel (five positions, total 20% budgeted overtime and wages \$95,994); Court Security Officer (one part-time position wages \$24,507); Civil Clerk (one position, total wages \$35,020); Process Server (one-half position, total wages \$10,997), and PT Dispatch (1 position, total wages \$5408). Due to cuts to the local government fund, the funding for some or all of these positions will likely be transferred to the sales tax fund.

Several short term grants that have helped maintain the reserve are expiring in 2011 and are not eligible for renewal. This will result in a loss of approximately \$213,000. This loss in

grant revenue will need to be made up with sales tax revenues. The reserve will also be significantly affected by the price of gas, which is projected to keep rising. Not only will the Sheriff's Office have to continue to fuel its cars, despite the rising gas prices, but people will buy less gas, resulting in decreased revenue in to the Sales Tax fund.

The Sheriff's Office has determined not to purchase new vehicles in 2011. However, over the next three years, the Office anticipates having to replace ten to twelve cars due to excessive mileage. These expenses will deplete the sales tax fund.

With a drop in the general revenues funds, as many as seven employees may need to be paid from the sales tax fund, thus further diminishing any current reserve.

County General Fund

A wage increase that would be granted on the basis of the sales tax revenue would greatly strain the County General Fund. It would be unfair to give pay raises inconsistently within the Union. As such, if employees are given a pay raise based on the reserve available in the Sale Tax Fund, the remaining employees whose salaries are paid out of the County General Fund would also receive an increase. The County General Fund has its own serious financial issues.

The County General Fund is currently \$2 million in the red. Last year, the County budgeted \$12,650,000. Its actual expenses were over \$14.2 million. However, there was a \$3.2 million carryover to address the \$2 million deficit. This means that the County will have to cut at least \$2 million, if the state cuts local government funding in its 2011 Budget Bill.

The State Budget will not be out until July 2011, but based upon currently forecasted cuts, the County will receive approximately \$500,000 less in distributions in 2012 and approximately \$1.2 Million less in distributions from the State in 2013. These reductions in distributions will further strap the County's ability to fund operations.

Starting in 2011, the County will be losing significant interest income on its bank accounts. Historically, the County has earned significant interest on its bank accounts. The interest rates on the accounts are set every four years. The last four years, it had a good interest rate on its bank account. With the down economy, the County was only able to get a 1.15% interest rate, which is set for the next two years. This will result in \$800,000 less revenue in 2011 and \$900,000 in 2012. The County will not be able to recoup these revenues elsewhere.

In addition to the above, the Sheriff's Office bargaining unit employees are one of only two groups of county employees who received a wage increase in 2010. Specifically, all other county employees, including Sheriff's Office non-bargaining employees, had their wages frozen in 2010 and 2011. While all of the non-bargaining unit employees had their wages frozen the members of this bargaining unit received a 3% wage increase each year from year 2006 through year 2010. In year 2010, only bargaining unit members received an increase. Non-bargaining unit Sheriff's Office employees, to include the new classifications of control room and maintenance, took a wage freeze. Other than this Union, the CSEA bargaining unit members were the only other group who received an increase, which was a \$0.35/hr increase. It should also be noted that non-bargaining CSEA employees did not receive an increase in 2010. CSEA, however, does not obtain its funding from the county general fund.

The Employer submitted for the Fact-Finders consideration two Court Orders issued in late 2010, wherein the Washington County Common Pleas Court Judges and the Washington County Juvenile Court Judge ordered that: "if the County Commission approves ANY increase in salary or benefit reimbursement for any employee - including negotiated contracts with unions and the usage of excess funds in a department's budget that result from the termination of an employee or from any other cause to increase pay for that department's employees - then the

Court orders that the Court be immediately notified by the County Commissioners and that increases per employee of the same dollar amount or the same percentage, at the option of the Court, be made for all Court employees.” The Common Pleas Court and the Juvenile Court took this position, because the County Commissioners assured them that no County Employees would have an increase in salary in 2011. If the Courts were to impose a wage freeze on their employees, they likewise wanted to ensure that their employees would receive an increase in wages if the County Commissioners were not true to their word.

The Employer argues that as a result of these decisions, which were not appealed, any increase awarded to even one employee in this process will automatically result in an increase to approximately twenty-one (21) additional court employees, who are paid, in part, from the county general fund. The impact of any increase to an employee in the Sheriff’s office will result in a significant financial impact on the County.

The Union’s Position

The Union proposes a three percent (3%) wage increase effective the first full pay period which occurs in January of each year of this Agreement (2011, 2012 and 2013). The 2011 wage increase shall be retroactive to the first full pay period in January 2011. In addition there shall be a wage differential adjustment of one dollar and twenty-nine cents per hour effective retroactive to the first full pay period in January 2011 for Civil Division Sergeants (Jail & Dispatch). This adjustment shall be in addition to the three percent (3%) wage increase received in that year. The remainder of the article would remain unchanged.

The wage differential adjustment for the Dispatch and Corrections Sergeants is requested because they share many of the same supervisor responsibilities as their counterparts in the Criminal Division, but are compensated at a much lower rate. At top step, there is a four dollar

twenty-eight cent (\$4.28) difference in hourly wage. The FOP seeks to narrow the gap with the onetime adjustment.

The Washington County Sheriff's Office receives funding from the general fund and ½% permissive sales tax. The Criminal Division consists of those members doing patrol and investigative functions and is funded from the sales tax. Members working the jail are funded from general fund. Dispatchers are a mix of funding.

Washington County's General Fund revenue increased approximately \$1.2 million from 2009 through 2010. It had a \$3.1 million dollar carry over from 2010. The ½% sales tax generated over one half million dollars more in 2010 than in 2009.

The County Commissions recently discussed giving bonuses to 250 employees who did not receive a pay increase in 2010. At the same time they have asked all employees including the FOP for a pay freeze. During the discussion of the bonuses, County Commissioner Sam Cook was quoted in the Marietta Times as saying "...we're going to have the largest carryover that we've had in last probably five years".

The Orders issued by the Washington County Common Pleas Judge and the Juvenile Court has unfairly influenced negotiations. The Fact-Finder should not consider these orders when determining the County's ability to pay the increase in wages sought by the Union.

External comparisons show that other counties in the area have given wage increases to Sheriff's Office employees in 2011. The FOP feels that the proposed wage increase is reasonable and that the Employer has the ability to pay.

Discussion, Findings and Recommendation

We certainly live in interesting economic times. While expenses can be forecast with some degree of accuracy, predicting revenues is a precarious undertaking dependent upon

numerous moving revenue targets, the least of which include the state of the economy, consumer confidence, State funding and numerous state and federal grant programs. The County of Washington, as well as the Washington County Sheriff's Department, seems to have navigated the economic storm reasonably well over the past several years through prudent fiscal management, but current fiscal unknowns make precise planning a challenge.

The Union, which seeks an increase in wages, points to the increase in revenues over the last two years in both the General Fund and the Sales Tax Fund as an indicator of better times to come and an ability to pay the three percent (3%) wage increases sought. This, standing alone, would support its request, but two other factors unfortunately outweigh those positives.

While the General Fund revenues have increased and the County recorded one of the largest carryovers (surplus funds) in 2011, expenses continue to outpace revenues resulting in an ultimate depletion of the surplus. In 2010 revenues were \$12.6 Million and expenses were \$14.2 Million. Revenues are forecast, at best, to be \$12.3 Million in 2011. If the expenses are held at current levels, the surplus will be reduced by almost sixty percent (60%) in 2011 and depleted in 2012. Under this scenario, increases in wages would be unwise, which is why the County Commissioners have frozen all wages to the extent they are not otherwise obligated pursuant to an Agreement.

While the Union astutely points out that the Sales Tax Fund, which was approved by the voters to pay the Sheriff's Office expenses, is increasing and could cover the increases it seeks for its bargaining members, its position does not take into consideration multiple unknown factors that could dramatically impact the overall revenue figures. If the Employer's forecasted decreases in revenues prove to become reality, the loss of revenue from the State, the elimination of grant money (specifically paying expenses of the Sheriff's Office) and a leveling out of the

Sales Tax receipts will exacerbate the economic condition of the County. Yet, if the forecasted decrease in revenues does not materialize, there exists some justification to consider wage increases.

It is likely that the County will receive fewer revenues from the State this year and in the next couple of years. With the State of Ohio facing an \$8 Billion deficit, it is likely that the minimal forecasted decreases by the County fiscal officers will take effect. The County already knows that certain grants have been eliminated. When one considers the projected decrease in revenues, even a stabilizing of expenses will further eat into what reserve the County currently has.

The Fact-Finder considered these economic factors in light of wages paid to other employees in the County and in comparable jurisdictions. While Union members were awarded increases each year in the expired three-year contract, the wages of non-union employees in the county have been frozen for the last two years. Comparables also demonstrate that in several contiguous counties, the bargaining unit members were paid above the average minimum and maximum wages paid to deputy sheriff's doing comparable work. It is difficult to justify any wage increase under these circumstances.

The Employer's argument that the court orders will significantly impact any wage increase cannot be ignored. While the Union is correct that such an Order is not only novel, but somewhat questionable, it becomes at least more understandable when read in its full context. Since the Court administrators froze the wages of its employees based upon the assurances of the County Commissioners that no wage increases would be given in 2011, it is understandable that they would compel the Commissioners to find funds to increase their employees' wages if those promises were broken.

Much of the Sheriff's arguments against paying any wage increases to the bargaining unit are based upon the fact that the economic forecast is uncertain. The above analysis supports that. If many of the shortfalls predicted do not materialize, a different analysis of the Union's request for a wage increase would be appropriate. As a result of this, the Fact-Finder believes that no wage increases for the units would be appropriate in 2011, but a wage re-opener would be appropriate in 2012 and 2013 to readdress this issue when the State budget is passed and a clearer picture of the economic recovery is at hand. This coincides with my recommendation for a three year term agreement, which will be discussed below.

RECOMMENDATION

It is recommended that no wage increases be awarded in 2011, but that the collective bargaining agreement include a reopener provision on wages in the years 2012 and 2013.

5. ARTICLE 38 – DURATION AND EXECUTION

The Employer's Position

The Employer proposes a one (1) year Agreement.

The Employer's seeks a one year agreement to allow the County time to address anticipated cuts in funding from the State, which are expected to be announced by the Summer of 2011, and to assess the impact of declining revenues, as discussed in the wages section above. Until the Commissioners are aware of the total amount of reduction on July 1, 2011, the Commissioners are reluctant to add any new costs. The 2012 budget will see a reduction in revenue, which will need to be reflected in appropriations.

The Union's Position

The Union seeks a three year contract.

The Union argues that it has always negotiated three year contracts. While there are uncertainties in the economic future of the County, such has also been the case in the past. Regardless of the outcome of the decision on wages and insurance in these negotiations, most of the other issues have been resolved and they should be continued for the next several years.

Discussion, Findings and Recommendation

The bargaining history of the parties has been to craft a three year agreement. While there are many unknown economic factors that will affect future wages and benefits, there is nonetheless much efficiency to be gained by adopting an agreement that has predictability, particularly since both parties have agreed on most articles of the proposed collective bargaining agreement. While left unstated at the hearing, many employers have chosen to seek a one year term of duration to see the impact and outcome of SB 5, which will become effective July 1, 2011, but which is expected to be subject to a statewide referendum in the fall of 2011. Both parties are aware of the changes in the collective bargaining statute and the impact it could have on them.

With the recommendation on wages (re-opener recommended) and the position on insurance benefits, much of the concerns addressed by both parties have been currently addressed, with an opportunity negotiate primarily on those economic issues and not an entire agreement. For those reasons, the Fact-Finder believes it to be in the best interest of the parties and the County to settle on an agreement that is three years in duration.

RECOMMENDATION

It is recommended that the duration of the agreement be for a three year term to

remain in effect until January 31, 2014.

5. NEW ARTICLE – PERSONAL LEAVE

The Union's Position

The Union proposes a new provision giving Control Room Operators and Maintenance Supervisors a onetime bank of twenty-four hours (24) of personal leave. This personal leave may be scheduled in the same manner as vacation is scheduled. It may be taken alone, or in conjunction with vacation and/or compensatory time. It must be used prior to February 1, 2012, unless otherwise authorized by the Sheriff.

In 2010, the Sheriff granted non-bargaining employees four days off in 2010 ("administrative leave days") as he was unable to offer wage increases. The control room/maintenance bargaining unit received two of those four days as they were non-bargaining unit at the time the two days were granted. This unit voted to become members of the Union and after the certification, were not given the additional two days. While the Employer argues that this leave was discretionary and for non-bargaining employees, it is unfair to deny their extra administrative leave time to the individuals who were entitled to administrative leave at the time it was granted.

The Employer's Position

The Employer opposes a new provision on Personal Leave.

The Employer argues that the four administrative leave days granted by the Sheriff to non-bargaining employees in 2010 were granted individually, at the discretion of the Sheriff, as the year progressed. The control room/maintenance bargaining unit received two of those four days as they were non-bargaining unit at the time the two days were granted. Thereafter, the unit

filed a petition for certification and benefit levels were frozen. They are not entitled to these days, which were discretionary.

Discussion, Findings and Recommendation

The Fact-Finder recognizes that the Sheriff granted the personal leave days on a discretionary basis, but it is obvious that the granting of those days continued for non-bargaining employees and ceased for the Control Room Operators and Maintenance Supervisors once they became part of the Union. This practice is sure to cause dissension among the ranks and certainly is not in the best interest of the welfare of the public. Granting these days will have little economic impact on the Employer and provide fairness in the implementation of the Sheriff's policies.

RECOMMENDATION

It is recommended that new article proposed by the Union be incorporated in the Agreement. The new article will provide the following:

NEW ARTICLE: PERSONAL LEAVE

Upon execution of this Agreement Control Room Operators and Maintenance Supervisors shall receive a onetime bank of twenty-four hours (24) of personal leave.

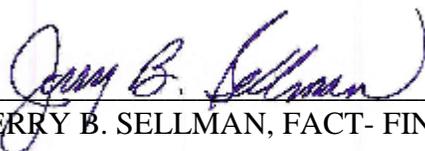
Personal leave may be scheduled in the same manner as vacation is scheduled. It may be taken alone, or in conjunction with vacation and/or compensatory time.

Personal leave must be used prior to February 1, 2012 unless otherwise authorized by the Sheriff.

CONCLUSION

In conclusion, this Fact-finder hereby submits the above referenced recommendation on the outstanding issue presented to him for his consideration. Further, the Fact-finder incorporates all tentative agreements previously reached by the parties and recommends that they be included in the Parties' Final Agreement.

June 3, 2011



JERRY B. SELLMAN, FACT- FINDER

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the Fact-finder's Report was sent by E-mail on June 3, 2011 to:

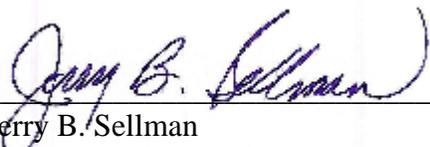
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