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STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

Report and Recommendation of the Fact-Finder

In the Matter of:

Corrections Commission of	)	
Northwest Ohio	)	
and	)	Case No. 10-MED-12-1774
CNO Corrections Officers Association,	)	
Local 64/International Union of	)	
Police Associations, AFL-CIO	)	

APPEARANCES

For the Employer:

Timothy McCarthy, Esq.  
Schumaker, Loop & Kendrick, LLP  
100 Jackson  
Toledo, OH 43604

For the Labor Organization:

John M. Roca, Esq.  
3516 Granite Circle  
Toledo, OH 43617

Factfinder:

Richard P. Gortz

Date of hearing: September 21, 2011

Date of Recommendation: October 21, 2011

## Introduction

The Corrections Commission of Northwest Ohio ("CCNO: or "Employer") operates a jail in Archbold, Ohio for five counties and one municipality, namely Defiance, Fulton,, Henry, Lucas and Williams counties and the City of Toledo. The Commission is composed of a county commissioner, a common pleas judge and the sheriff from each of the counties, and the mayor, municipal judge and chief of police of Toledo. The facility houses pre-sentence felons and sentenced misdemeanants. Defiance, Fulton, Henry and Williams counties no longer maintain county jails. Lucas County maintains its own jail in addition to participating in the CCNO.

The Commission has no authority to levy taxes or appropriate revenues other than pursuant to voluntary agreements with the participating jurisdictions. Budgeted fees to the jurisdictions are apportioned based upon the number of beds allotted to each.

The Corrections Officers Association, Local 64, International Union of Police Associations, AFL-CIO represents approximately 110 corrections officers ("COs") at the facility. Corrections supervisors are represented by CCNO Supervisors Assn., Local 53, International Union of Police Associations, AFL-CIO. Supervisors received 2.0% wage increase for 2011 in conciliation.

The current Collective Bargaining Agreement ("CBA") is effective January 1, 2010 through December 31, 2012, and contains a provision for a reopener on wages for calendar year 2011 and 2012. The parties met in negotiations for wages for 2011 and were unable to reach agreement.

The undersigned was appointed as fact-finder by SERB on July 29, 2011. An evidentiary hearing was held in Archbold, Ohio on September 21, 2011. The parties requested that the fact-finding report be issued on or about October 21, 2011 so that a special meeting of the Commission would not be required to consider the recommendation.

Appearance:

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For the Employer:

Timothy C. McCarthy, Esq., Advocate  
James Dennis, Executive Director  
Tonya Justus, Fiscal Manager  
Salina Hill, H.R. Manager  
Dennis Sullivan, Director of Security/Operations

For the Union:

John M. Roca, Esq., Advocate  
Kila Wineland, President, IUPA Local 64  
Neil C. Roche, Vice-President, IUPA Local 64  
Debora Harrington, Secretary/Treasurer, IUPA Local 64  
Durant Christen, Attorney

ORC 4117.14 encourages fact-finders to mediate a settlement prior to hearing evidence. The offer to mediate was not mutually accepted, and hearing on the facts proceeded.

The recommendation of the fact-finder is based upon the criteria set forth in Section 4117-9-05(k) of the Ohio Administrative Rules. They are:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) 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;
- (c) The interest and welfare of the public, and 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;
- (d) The lawful authority of the public employer;

(e) The stipulations of the parties;

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

Relevant sections of the Collective Bargaining Agreement:

**Article 26**

Wages

**Base Hourly Rate.** Effective with the date listed below, the base hourly rate for Corrections Officers shall be as follows:

	01/01/10
New hire rate	\$14.27
1 year	\$15.91
5 years	\$16.22
10 years	\$16.54
15 years	\$16.88
20 years	\$17.22

Employees shall move to the next step immediately upon acquiring the appropriate service time. Those employees with the classification of Transportation Officer, will be paid an additional twenty-five cents (\$.25) per hour to the above listed hourly wage rate based upon their years of service. The collective bargaining agreement will be reopened each year to discuss wages for the following calendar year.

Effective with the date below, the base hourly rate for Electronic Monitoring Specialists II shall be as follows:

	01/01/10
1 year	\$17.30
5 years	\$17.65

10 years	\$18.00
15 years	\$18.63
20 years	\$18.73

Issue before the fact-finder:

The parties agreed that the only issue before the Fact-Finder was wage rates for the year January 1, 2011 through December 31, 2011. In pre-hearing statements, the Employer's position is that wages are to be frozen at 2010 levels. The Union's position is that wages are to be increased 3.5% retroactive to January 1, 2011.

**POSITION OF THE PARTIES**

Position of the Union

A wage increase of 3.5% is justified and affordable. Supervisors received 2.0% increase for CY 2011. Historically, supervisors have been paid approximately \$3.50 more than Corrections Officers, with the differential ranging from \$3.27 at one of year service to \$3.75 at five years' service. This differential has been maintained for many years, but is now in jeopardy of widening due to the wage increase which the Supervisors received, and the position of the CCNO that Corrections Officers should be frozen.

In the previous CBA, Corrections Officers compensation was increased 3.0% in each of 2007, 2008, and 2009. Entry level pay was \$14.13 with pay at \$16.38 with ten years' service, and \$17.05 at 20 or more years. Employees also agreed to pick up 10% of the cost of their health coverage, with a cap of 10% increase in any contract year.

In negotiations for the current agreement, employees received 1% for CY 2010 with reopeners for 2011 and 2012. Employees saw their share of employee health care costs, such as prescription co-pays, co-

insurance, deductibles and emergency room costs increase. Accordingly, the one percent increase was wiped out by increased health costs.

Due to increases in the cost of health insurance and deductibles, employees have received no “real” pay increase since January 1, 2009. The wage increase which the Union now seeks is necessary to provide some fairness in compensation.

Granting the CCNO’s proposal of a wage freeze would only exacerbate the reality of employees continuing to be employed with no additional real compensation for two years.

The Employer can easily afford the requested 3.5% increase. The cooperating jurisdictions have had no problem funding all activities of the Employer. The jurisdictions save money as a result of pooling their resources.

The Employer’s general fund operating balances are healthy and can easily absorb the small increase sought. Comparables with other jurisdictions show that increases sought are well within the acceptable range. CBO’s with cooperating sheriff offices show counties are providing increases for their employees equivalent to the 3.5% sought here.

Debora Harrington, Secretary/Treasurer of the local testified that employees had 100% coverage through health insurance in 2009, and paid \$800, or 10% of the premium. The plan had zero deductible and co-pay. The plan is now 80/20 co-pay with \$200 deductible and a cost to employees of \$1,500 per year premium. Employees haven’t received a real pay increase since January, 2009. Fairness dictates that their wages should keep up with supervisors, who received an increase of 2.0%

The CCNO management could increase revenue by keeping “pay-to-stay”, telephone and medical fees collected, but credit them back to the counties. By keeping these fees in the general fund of CCNO, these would easily pay for the majority of the increase sought by the Union.

The increase sought is a miniscule part of the participating jurisdiction budgets. BLS for Ohio shows that corrections officers are paid a median of \$20.52, with \$18.77 the national median. Other multi-county facilities in Ohio pay more than CCNO.

In a conciliation report issued August 19, 2011, Conciliator Gregory Szuter awarded 2.0% increase to those employees who supervise the employees in this bargaining unit. Absent any increase, the differential between the CO's and their supervisors will widen. Fairness dictates an increase for this bargaining unit.

Fact-finder Donald R. Burkholder, in a November 17, 2010 report, recommended 3% increases for CY 2010 and 2011 in negotiations between the Fulton County Sheriff and Deputies. Fulton County is a participating county in CCNO.

Fact-finder Susan Grody Ruben, Esq., in SERB Case 09-MED-10-1115 recommended Fulton County Sergeants continue to receive the 9% differential between Sergeants and Deputy's wages for CY 2010 and not incur reductions sought by the employer. This, in effect, grants a 3% increase to Sergeants as well as Deputies.

Conciliator Michael Paolucci awarded the Fulton Sheriff's bargaining unit of \$1,100 bonus in lieu of a wage increase for the period January 1, 2010 through March 31, 2010, and 2% on April 1, 2011, and an additional 1/2% starting October 1, 2011.

Henry County, a participating county in CCNO, granted Sheriff employees 3.0% for each of the years 2011, 2012 and 2013.

Defiance County deputies had 3% for each of 2008, 2009, 2010 and 2011, but in recent negotiations, gave up their wage increases for 2011. Defiance County is a participating CCNO county.

Williams County, a participating CCNO county, granted 3% to employees for 2008, 2009 and 2010, and are now in fact-finding for 2011.

The City of Toledo, a participating CCNO jurisdiction, has shown an increase in revenue, and restored wages and benefits previously conceded by the police union.

The job of our Corrections Officers will be made more difficult by a new Ohio criminal sentencing bill which will require CCNO to house felons to complete their sentences, rather than housing them in state penal institutions. While this may save the State of Ohio some money, it places a burden on these employees, who should be compensated for that burden. Accordingly, taking into account the above, the employees deserve a 3.5% increase sought by the Union.

#### Position of the Employer

The Employer's position of a wage freeze for CY 2011 is justified by the dismal economic situation of not only the CCNO itself, but of all of the participating jurisdictions.

When comparing wages, only other regional jails in Ohio should be used. CCNO's starting rate and top rate are the highest of any other regional in Ohio. Comparison to Sheriff Deputies or City Police are inappropriate since the job functions and qualifications are dissimilar.

Northwest Ohio has been particularly severely hit by the recession. Total operations and capital budget for 2007 was \$15,903,201 compared with \$15,723,889 for 2010. During that period, 17.5 staff positions have been eliminated. Funding for capital purchases has decreased dramatically and funds diverted to operating expenses, which cannot go on for a long time without consequences. Capital purchases were \$309,500 in 2008, and \$15,900 in 2010.

2010 carryover balance for 2010 was \$437,000, or 2.8% of budget, which is so slim that it would not cover two payrolls, which are \$265,000 each.

Unemployment for the area is higher than national norms, and ranges between 10.8% for Defiance County to 12.8% for Fulton and Henry counties in January, 2011. Those rates have improved slightly since then to 9.2% for Defiance County and 8.6% for Fulton County.

Toledo, which comprises 37.6% of CCNO's budget, has a general fund deficit of \$6 to \$8 million.

Expenses continue to exceed revenue for the city as noted in fact-finding reports. The fact-finder recommended a wage freeze and cut in the City's contribution to the employee's portion of the pension contribution from 10% to 7% , and increased in contribution by employees for health insurance.

Although that fact-finding report was rejected, the conditions which brought about the recommendation are valid.

Lucas County is a major contributor to the CCNO operating budget, contributing 31.03%. The County's Comprehensive Annual Financial Report for 2009 shows revenues fell \$8.5 million short of the budgeted amount. For 2010, revenues fell \$3.8 million short. Real estate values have declined nearly 13%, which corresponds to a similar decline in real estate tax revenue. Commissioners have directed a 10% cut in all general fund budgets for 2012. Sheriff employees renegotiated labor agreements resulting in wage freezes for 2009, 2010 and 2011. Employees also agreed to 115 unpaid furlough hours.

Other participating counties have seen similar reductions in revenue with Williams, Defiance, Henry and Fulton counties cutting budgets and freezing hiring.

CCNO may not levy taxes for operations or capital expenditures, but must rely upon agreements with the participating jurisdictions for revenue.

Salina Hill, CCNO HR Manager testified that while employees health benefit coverage went from 100% no deductible to 80/20 in 2010, higher dental coverage was added as well as added vision coverage. Employee premium contribution decreased from \$2,209 for family in 2009 to \$1,453 in 2011, or an average of two percent of wages.

Tonya Justus, CCNO Fiscal Manager testified that the true cash carry over from 2010 to 2011 was \$437,000. With payroll at \$260,000, this is a very slim cash balance.

Various revenue streams are used to fund the agency. Participating jurisdictions negotiate each year for the number of beds for which they are responsible, and proportion costs accordingly. They are facing cuts in all directions. Local government funds are being cut by the state. Real estate values are declining, as well as resulting real estate taxes.

The fiscal oversight committee suggested shutting down 60 beds of the facility in 2012, but it is questionable whether judges would agree to implement the recommendation.

In Toledo, fact-finder Daniel Zieser, recommended in report dated August 24, 2011 that city employees represented by AFSCME, Ohio Council 8 have wages frozen for 2012 and 2012, with a reopener for 2014. This report was accepted by labor and management.

The Union's argument that revenue streams from telephone, "pay-to-stay", and similar programs should be retained by CCNO is cynical since the money is fungible. If it is retained, the jurisdictions would reduce their contributions, cancelling out the effect. The budget includes all revenue and all expenses.

The CCNO Board has requested the agency to cut its budget by 10% in 2012. With the financial situation of this agency and its contributing jurisdictions, it is obvious why the CCNO cannot give wage increases for 2011.

## Findings of Fact and Conclusions

The basis for the Employer's argument is an inability to pay. This inability is specifically due to the purported dire financial situation of the member political jurisdictions. When an employer invokes inability to pay, the burden is upon that party to prove such is the case. I find that the Employer met the burden. Never in recent history has unemployment been so high, tax revenue so low, state and federal funding so uncertain, prospects for recovery been so bleak and far-off as it is now. But, services to the member communities must be continued by the public employees who have survived the many reductions-in-force. Those employees must be treated fairly under the circumstances.

Though the Employer met the burden of "inability to pay", that inability is inexorably tied to the financial condition and compensation practices of the contributing jurisdictions. The Union has proved that many of those jurisdictions have negotiated, or had law enforcement compensation otherwise adjusted through fact finding or conciliation in ranges from one percent to three percent. The Employer argued that comparison with sheriff deputies is not fair since the jobs are different; I find that the jobs are similar enough that data comparing the relative increases in compensation is relevant. In those counties where the sheriff maintains a county jail, it is common to compare the CO's compensation levels with deputies and uniformed supervisors.

As an indication of the fiscal health of the agency, the employer exhibited financial reports showing the carry-over from one fiscal year to the next is extremely small. I agree with Conciliator Gregory Szuter in his July 14, 2011 award for supervisors of this unit that this small carry-over is a matter of budget policy rather than a matter of fiscal health. The carry-over is not necessarily small due to a lack of funds, it is small because that is the way the fiscal officer and/or the board designed the budget.

The Union exhibited newspaper articles showing that "green shoots" in the economy may be beginning to sprout. Exhibits show that the unemployment rate for the area appears to be lessening, forecasting

some possibility of greater economic activity leading to increasing tax revenue from those employment related sources.

SERB's Benchmark Report dated March 16, 2011 shows the average for Corrections Officers in Ohio is \$29,185/yr. for entry, and \$36,319/yr. for top rate. Averages for this bargaining unit are \$29,681 at entry and \$35,817 top rate, or almost exactly state average. In comparison with regional corrections facilities, this facility pays more than Multi-County and Tri-County facilities, both at the starting rate and at the top end. The Union argues that those facilities are in much more rural areas and not subject to the proximity to urban area prices as are employees at CCNO.

I find compelling the Union's argument that some adjustment to compensation is appropriate this year due to the growing disparity of wages between supervisors and the members of this bargaining unit. This argument for adjustment must be weighed against the current fiscal problems of the member jurisdictions. Further, I do not find that the Union made its case for an increase as large as that which it seeks.

A fact-finder's duty is to issue a recommendation that he or she believes is fair under the circumstances, as well as being most acceptable to both parties. Any recommendation which is, in his or her opinion, "fair", but unpalatable to one of the parties makes the fact-finding process futile. It will undoubtedly be rejected by at least one party, and the parties will be left in the same circumstances as when the fact-finder entered the hearing room. Recommendations must be predicated upon those statutory measures of internal and external equity, as well "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". It is in an attempt to balance these competing interests that the following Recommendation is made.

### **Recommendation**

While I find that the participating jurisdiction are facing tough fiscal headwinds, they are most of them are making some adjustments to compensation for deputies and other uniformed personnel. A 2% increase granted to supervisors for 2011 through the conciliation process does cause some inequity between the ranks, which I believe must be mitigated. Accordingly, I recommend a compensation adjustment of one percent (1.0%) to the wage schedule of employees in this bargaining unit, effective and retroactive to January 1, 2011.

It is recommended that Article 26, Wages be modified as follows:

**Article 26**

Wages

**Base Hourly Rate.** Effective with the date listed below, the base hourly rate for Corrections Officers shall be as follows:

	01/01/10	01/01/11 (1.0%)
New hire rate	\$14.27	14.41
1 year	\$15.91	16.07
5 years	\$16.22	16.38
10 years	\$16.54	16.71
15 years	\$16.88	17.05
20 years	\$17.22	17.39

Employees shall move to the next step immediately upon acquiring the appropriate service time. Those employees with the classification of Transportation Officer, will be paid an additional twenty-five cents (\$.25) per hour to the above listed hourly wage rate based upon their years of service. The collective bargaining agreement will be reopened each year to discuss wages for the following calendar year.

Effective with the date below, the base hourly rate for Electronic Monitoring Specialists II shall be as follows:

	01/01/10	01/01/11 (1.0%)
1 year	\$17.30	17.47

5 years	\$17.65	17.83
10 years	\$18.00	18.18
15 years	\$18.63	18.82
20 years	\$18.73	18.92

Entered in Pepper Pike, Ohio this 21<sup>st</sup> day of October, 2011:

A handwritten signature in cursive script, appearing to read "Richard P. Gortz". The signature is written in dark ink and is positioned below the date entry.

Richard P. Gortz

Fact finder

**Certificate of Service**

I hereby certify that an exact copy of this Fact-Finder's Report was transmitted this day by electronic email to Timothy C. McCarthy, Esq., advocate for the Employer and John M. Roca, Esq., Advocate for the IUPA Local 64 and Mary Laurent of the Ohio State Employment Relations Board on October 21, 2011

A handwritten signature in blue ink, appearing to read "Richard P. Gortz". The signature is fluid and cursive, with a large initial 'R' and a stylized 'G'.

Richard P. Gortz, Fact-Finder