

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

Report and Recommendation of the Fact-Finder

In the Matter of:

Cuyahoga County Sheriff)	
)	
and)	Case No. 11-MED-04-0648
)	
Ohio Patrolmen's Benevolent)	
Association, Deputies Unit)	

APPEARANCES

For the Employer:

Christopher Russ, Assistant Law Director
Cuyahoga County
1215 W. 3rd St.
Cleveland, OH 44113

For the Labor Organization:

Max Rieker, Esq.
OPBA
10147 Royalton Road, Suite J
North Royalton, OH 44133

Fact-Finder:

Richard P. Gortz

Date of hearing: August 16, 2011
Date of Recommendation: September 7, 2011

Introduction

The Cuyahoga County Sheriff's Office ("Employer") and the Ohio Patrolmen's Benevolent Association ("Union", or "Employee Organization"), on behalf of Sheriff Deputies, are parties to a Collective Bargaining Agreement ("CBA"), dated January 1, 2009 through December 31, 2011. The bargaining unit consists of approximately 140 deputy sheriffs assigned to numerous duties, among which are responsibilities for security for buildings of the Cuyahoga County government and the court system, transportation of prisoners, investigation of threats against county official, CCW registration, forensic computer examinations, polygraph testing, and detective crime investigations. Employees in the bargaining unit also participate in SWAT, dive, and Emergency Response Teams, as well as work with the FBI and other law enforcement agencies on various crime teams. Since Cuyahoga County is entirely incorporated, the department is not engaged in day-to-day law enforcement duties within specific geographic areas.

Article 14, Wages, of the CBA states, "Wage rates for 2010 and 2011 shall be determined through wage re-opener negotiation which shall be governed by the same statutory negotiation and impasse resolution procedures as provided in Ohio Revised Code Chapter 4117."

Wage rates for 2010 were set through the final offer conciliation process with Conciliator Nels E Nelson awarding the Union position, which added another step to the wage progression table. This new top step is two percent (2.0%) above the previous step. The effect of this additional step is that all employees in the bargaining unit received an increase in the base rate in calendar year 2010. Those on steps received a scheduled step increase, while those at the top step received the bump of an additional step. Approximately three quarters of the bargaining unit is at the top step.

Negotiation for wages for calendar year 2011 resulted in impasse. The undersigned was selected by the parties as Fact-Finder under the provisions of ORC 4117 to hear the positions of the parties, to find fact and to render an opinion.

The parties submitted pre-hearing statements within the statutory time limits. The evidentiary hearing took place on August 16, 2011 in the offices of the Cuyahoga County Sheriff. The parties agreed that, due to the meeting schedule of the Cuyahoga County Council, the fact-finding report was to be issued on or about September 7, 2011.

In attendance at the hearing were:

For the Public Employer:

Christopher Russ, Assistant Law Director
Deputy Captain Michael J. Jackson
Matthew Rubino, Manager, Office of Management and Budget
Ed Morales, Assistant Law Director
Rose Gheen, Personnel Administrator

For the Labor Organization:

Max Rieker, OPBA Attorney
Deputy Anthony Church, Union Director
Deputy Daniel S. Cipollone, Union Steward
Deputy Linda Graham-Fitch
Deputy Richard Peters, Detective Lt.

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.

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 2.75% at each step.

The wage provision of the CBA is as follows:

Article 14. WAGES

2009: There shall be no wage increase for calendar year 2009.

2010-11: Wage rates for 2010 and 2011 shall be determined through wage re-opener negotiations which shall be governed by the same statutory negotiation and impasse resolution procedures as provided in Ohio Revised Code Chapter 4117.

2009 Wage Schedule		2010 wage Schedule*	
ANNUAL	HOURLY	ANNUAL	HOURLY
\$39,501.28	(\$18.9910)	\$39,501.28	(\$18.9910)
\$42,176.37	(\$20.2771)	\$42,176.37	(\$20.2771)
\$44,851.87	(\$21.5634)	\$44,851.87	(\$21.5634)
\$47,526.75	(\$22.8494)	\$47,526.75	(\$22.8494)
\$50,201.84	(\$24.1355)	\$50,201.84	(\$24.1355)
\$52,157.04	(\$25.0755)	\$52,157.04	(\$25.0755)
		\$53,200.18	(\$25.5770)

**Additional step awarded by Conciliator Nelson, 10-MED-07-0879*

Position of the Parties

Position of the Union

The Sheriff’s offer of a wage freeze for 2011 is unacceptable. All sheriff departments in the surrounding area have a better wage and benefit package, as do the larger departments in the state. The Sheriff’s position of “inability to pay” has no basis in fact. Recent fact-findings in the department have granted wage increases to other bargaining units. An increase of 2.75% across the board is justified.

Deputy Anthony Church testified that the workload of the bargaining unit has increased, with additional duties and cooperative ventures with the FBI, local police, and now with protective services.

During the Union’s presentation of finance data, Mr. Rieker entered charts showing that Cuyahoga County’s top paid deputies were paid below the average of the surrounding counties (U-1), and when allowances and longevity was included, deputies in were compensated at about 97% of those in Geauga, Lake, Lorain, Medina, Portage and Summit counties. Compared with those in Ohio’s next largest largest counties (Franklin and Hamilton), deputies were compensated at approximately 86% of the average. An historical chart (U-6) shows that Cuyahoga County deputies continue to fall behind.

The Union presented the County’s 2011 first quarter fiscal report showing that the county ended 2010 with \$12.9 million operating surplus, and that operating revenue exceeded the original 2010 estimate by \$9.5 million. Further, the Fitch Ratings give Cuyahoga County AA+ rating on limited tax general obligations, and AAA on unlimited tax general obligations. This extremely high rating shows that the County is in very good financial condition. Standard and Poor’s rates the County similarly, and their report states, “The stable outlook reflects our expectation that the county’s proactive financial management and trend of strong reserve levers will continue in

order to mitigate an overall weak economic cycle and reliance more economically sensitive sales tax revenues for operations.”

An analysis of the County’s sales and use tax shows that revenue for 2008 was approximately \$174 million, reduced to \$155 million in 2009 and recovering to \$163 million in 2010. This trend reverses a six year trend of decline. The trend is positive for this revenue stream, indicating that the worst is over. News reports show that job loss has slowed.

The Sheriff’s budget has increased 1.8% from 2010 to 2011 and employment has increased from 1098 FTE’s to 1179.

An analysis of the actual revenue received from 2006 to present, compared with actual expenditure shows that the cumulative surplus during those five years is \$211.1 million, notwithstanding a calculated loss of \$30.3 million in 2010. The County continues to salt away funds while attempting to freeze wages.

The County projects a surplus of \$6.4 million in 2011. This is above the normal and usual carry-over, which is generous itself. Sales tax revenue is positive and increasing. The Deputies are behind similarly situated deputies in adjacent and other larger counties. Conciliators have consistently granted increases to the employees of this department. The requested 2.75% increase is also in line with other law enforcement units in the County.

Position of the Employer

Cuyahoga County continues to be mired in the economic doldrums, and does not have “the ability to finance and administer the issues proposed” by the Union. No wage increases were given to non-bargaining employees in 2011, and no increases in wages have been budgeted. Nearly all County bargaining units have agreed to a freeze for the year.

While other employees received furlough days in 2009, 2010 and 2011 to help with balancing the budget, this unit did not agree to any furlough days, except for one comp day in 2009. If this unit had accepted the same number of furlough days as others, it would have resulted in a savings of \$331,000 in two years, or \$165,000 in 2011. A two percent increase in wages for this unit would result in \$171,000 increase in the budget for 2011. The County’s budget does not include any money for wage increases, and the Sheriff’s budget is reduced by 1.5% compared to 2010. In 2009, the budget was reduced by 9.0%.

Any increase in the compensation for this unit will result in a domino effect, since the Lieutenants and Sergeants units have negotiated a differential wage provision in their CBA which is based upon the Deputies wage schedule.

Matt Rubino, County Manager of the County Office of Budget and Management reviewed the budget history and the projections for the balance of 2011 and beyond. He testified that budget cuts were implemented in 2011 due to anticipated revenue losses from property tax, state revenue and other usual sources. 2010 was buoyed by some one-time revenue sources which cannot be forecast for future years. The County has a policy of maintaining a strong budget position and being conservative with budgeting so as not to put the county in a precarious financial situation. Accordingly, \$32 million was cut from the 2011 budget. 2012 will see an additional \$5.8 million reduction in state funding of the county. The county budgeted furlough days for all employees, but nearly one million shortfall to that budget is due to bargaining unit employees not agreeing to the unpaid days.

The value of real property of the county will be appraised in 2011 and be effective in 2012. It is anticipated that there will be a substantial decrease in the assessed value of this property, resulting in less income from those sources in 2012 and beyond.

Cost of living data shows that the median CPI rose 1.6% over the past 12 months. This rather small increase results in lower tax revenue to the county, since social security benefits and PERS pension benefit increases are smaller, resulting in lower income to county residents. This results in a dampening of sales tax revenue.

Captain Michael Jackson testified that additional duties will be added to the department. County Executive FitzGerald is increasing the patrol division, and has asked Sheriff Reid to transition to more law enforcement activities than in the past. Twenty-eight new deputies are to be hired. Ten of those will be involved in downtown Cleveland patrol and assisting suburban police departments with traffic control and crime investigation and mitigation. Some of the new-hires will be assigned to the new juvenile court facility opening later this year.

Egdilio Morales, County Assistant Law Director introduced documentary evidence showing that of the fifteen bargaining units in the county other than the Sheriff's department, only three received a wage increase in 2010, and two of those received layoffs in return for two percent increases. Non-bargaining employees received no increases in the past four consecutive years. Some units accepted step freezes as well as freezing the base schedule.

Mr. Morales testified that the health benefits for this unit are better than any other in the county. They continue to have first dollar coverage with no co-pay or deductible, with a premium deduction of \$20/pay. When comparing to other Sheriff Office departments, the health benefit must be factored in as part of the compensation, and should be worth an additional \$1,300 per year per employee added to the comparables. When this is done, Cuyahoga deputies are in the middle of the pack with compensation, where they have traditionally been.

Compared with others in the County, the Deputies are paid well, and paid as much as those in other departments for which a masters degree is required.

Under cross examination, Mr. Morales indicated that 21 employees in this unit were laid off in 2008. While county employees were laid off in 2009, the county ran a surplus of \$13 million over its usual target of 25% carry-over. The reason for this surplus is to accommodate cuts that the governor has already announced that he is making to the local government funds.

Approximately 75% of this unit benefited from an additional step increase of 2% ordered by Conciliator Nelson, and those below the top step received their regularly scheduled increase. Accordingly, all employees in the bargaining unit received at least 2% in 2010. County's fiscal problems continue at a level which make pay increases impractical. The County can't afford to give increases to all employees, and it is not fair that some groups receive increases while others do not. It disrupts the internal equity of compensation in the County. While sales tax revenue has rebounded slightly, it is still not up to 2008 levels. State budget cuts will impact the County severely. Accordingly, no increase in compensation is justified for calendar year 2011.

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Discussion

A serious incongruity has been created by the County administration. It continues to plead inability to pay any wage increases, while proposing to add twenty percent to the bargaining unit workforce (28 additional deputies). Some additional workforce is indeed mandated for security at the new juvenile justice center, however, programs for which the employees are being hired include many which are not mandated, such as community policing programs, downtown Cleveland patrol, and assisting suburban police departments with traffic control and crime prevention. Certainly, the decision to expand the Sheriff's law enforcement programs is rightly solely in the sphere of the County Administration, but to do so at considerable additional cost while pleading inability to pay any wage increases at all for current employees, raises questions as to County priorities.

It is true that the County coffers are not flush, and the economic forecasts are not rosy, but the County has been frugal and managed its finances well as evidenced by its AA+ and AAA bond ratings. Certainly, the County has an obligation to keep its expenses under control while providing mandated services to the community, and it has done so. Any crisis of revenue appears to be past the critical stage with some recovery occurring in the past year. The County claims that the recovery is due to specific one-time windfalls, but as the Union pointed out, windfalls come and go every year. Of course, budgets cannot be predicated on windfalls, but the trend of sales tax increase is not a windfall. It is a positive trend recognized by economist George Zeller, writing for the Plain Dealer, who is also a professor at CSU, and an economic consultant to the County. History shows that the County has managed its finances well, and

should unforeseen revenue decreases appear, those non-mandated community policing programs may be revisited by the County.

Nearly all Ohio counties are having financial difficulties, especially since most revenue is derived from sales tax, real estate tax and various state pass-throughs, all of which have decreased. If we examine the State Employment Relations Board Wage Report for 2010 (latest available), we see that bargaining settlements in the Cleveland area averaged 1.34%, that county contracts averaged .94%, and police units averaged 1.39%. While these are averages, it is clear that public jurisdictions are somehow affording some small increases to employees while facing economic hardship. Equally important to the public employer's duty to provide services to the community it serves, is the duty to treat employees fairly, even under harsh economic circumstances. Services may have to be cut, but those employees who remain must be treated fairly.

The Employer argues that employees of the bargaining unit enjoy a health benefit second to none, for which they pay a small payroll deduction of \$20 per month, and that this benefit should be considered in comparing compensation packages. While this benefit is truly at the high end of the benefits bell curve, the Employer had an opportunity to reopen negotiations on this benefit for 2010 and 2011, but did not. The Employer also makes much of the fact that the bargaining unit did not participate in the unpaid furlough days which non-bargaining and some bargaining units accepted. But that is a benefit to both parties to a three year agreement - neither party is obligated to reopen any issue covered in collective bargaining during its term.

The labor agreement has but four months to live in its current form. The union and management teams will be meeting soon to negotiate for wages, benefits and working conditions for 2012. So as to not unduly burden the County with an unbudgeted back pay liability, and at the same time giving employees modest increase in compensation to counter the increase in cost of living, this Fact-Finder recommends a wage increase of 1.5% for all steps of the wage schedule, effective October 1, 2011. This fourth quarter increase will boost the base wage and lifetime earnings of bargaining unit employees without unduly impacting the 2011 budget of the county. Using the Employer's estimate of a 2% annual increase for this unit costing \$171,000, the recommended increase will add \$31,000 to the 2011 compensation cost – a small impact on the County's law enforcement and safety salary budget of more than \$48 million.

The County points out that any increase in compensation to this group will have a domino effect since the wages of Lieutenants and Captains are based upon a differential from the Deputies wages. Nearly all quasi-military organizations use some differential, whether formal or informal, to determine compensation spread between ranks. The number of Lieutenants and Captains is relatively small when compared to this unit, and although those units recently received pay increases, that fact alone is not sufficient to deny an increase to the Deputy unit.

Recommendation of the Fact-Finder

After duly weighing the evidence presented, and taking into account the criteria established in ORC 4117 and OAR 4117-9-05(k), I hereby recommend that the base wage of employees in the bargaining unit is to be increased by 1.5% effective October 1, 2011. Article 14 shall read as follows:

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\$52,157.04	(\$25.0755)	\$52,157.04	(\$25.0755)
		\$53,200.18	(\$25.5770)

2011 Wage Schedule (effective October 1, 2011)

<u>ANNUAL</u>	<u>HOURLY</u>
\$40,093.80	\$19.2759
\$42,809.02	\$20.5813
\$45,524.65	\$21.8869
\$48,239.65	\$23.1921
\$50,954.87	\$24.4975
\$52,939.40	\$25.4516
\$53,998.18	\$25.9607

Entered this seventh day of October, 2011 in Pepper Pike, Ohio:

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

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 Max Rieker of the OPBA, Christopher Russ, Assistant Law Director of Cuyahoga County and Mary Laurent of the Ohio State Employment Relations Board.

September 7, 2011

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

Richard P. Gortz, Fact-Finder