

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

**IN THE MATTER OF FACT-FINDING
BETWEEN**

Case No. 2011-MED-06-0954

**FRATERNAL ORDER OF POLICE, OHIO
LABOR COUNCIL, INC.**

“Employee Organization/Union”

and

TUSCARAWAS COUNTY SHERIFF,

“Employer”

**REPORT OF FACT-FINDER
AND RECOMMENDATIONS**

DATE OF REPORT AND DATE OF TRANSMISSION: November 15, 2011

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I. INTRODUCTION.

This matter comes before the Fact-Finder as a result of a referral on October 4, 2011, by the State Employment Relations Board (“SERB”) pertaining to fact-finding protocol between the Fraternal Order of Police, Ohio Labor Council, Inc., as the collective bargaining representative (“Union”), and the Tuscarawas County Sheriff (“Employer”).

At the time of the Fact-Finder’s initial appointment, he was instructed to conduct the hearing and issue a report by October 18, 2011, unless the parties mutually agreed to extend the period of fact-finding as provided under Administrative Code 4117-9-05(G). On October 7, 2011, the parties mutually agreed to an extension of time for the conducting of the fact-finding hearing by October 27, 2011.

A fact-finding hearing was held on October 27, 2011 at the offices of the Tuscarawas County Sheriff located at 2295 Reiser Avenue, New Philadelphia, Ohio 44663. In addition to the representatives identified on the face sheet of this Report, also in attendance at the fact-finding hearing were Linda Neff, a telecommunicator, and Amanda Whitman, a telecommunicator, both employees of the Sheriff’s Office and members of the Union. Additionally, during the course of the fact-finding hearing, testimony was also presented by Larry J. Lindberg, the Tuscarawas County Auditor.

The Fact-Finder received and has taken into consideration the numerous exhibits and materials presented by both parties, including the parties’ respective pre-hearing position statements and the current Collective Bargaining Agreement between the parties effective September 20, 2009 to September 20, 2011. Although not every exhibit or document has been enumerated or analyzed in this Report, the Fact-Finder has reviewed each. In that context, the Fact-Finder would be remiss if he did not commend the representatives of both the Union and the Sheriff’s Office for their presentation, their efforts and the material presented.

In addition to the material presented and the arguments of the parties, the Fact-Finder has also taken into consideration the statutory guidelines enunciated in Revised Code §4117.14(C)(4)(a) through (f). In particular, Subsection (e) states in pertinent part: “In making its recommendations, the fact-finding panel shall take into consideration the factors listed in divisions (G)(7)(a) to (f) of this section.” Subsection (G)(7) identifies the considering factors as:

- “(a) Past collectively bargained agreements, if any, between the parties;
- (b) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved 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 interests 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;
- (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 final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.”

Consistent with the provisions of Revised Code §4117.14(C)(4)(e) and (G)(7)(a)-(f), SERB has set forth similar standards in Administrative Code 4117-9-05(J) and (K)(1) through (6).

II. BACKGROUND.

Tuscarawas County is located in the eastern part of the State of Ohio, south of Canton, the county seat being New Philadelphia and the county having a population of approximately 90,000. The collective bargaining unit covers 17 employees who have the classification of “telecommunicator” (CBA, Article 1, Section 1). As set forth in Article 1, Section 2,

management level employees, professional employees, students and supervisors are excluded from the bargaining unit.

III. INCLUSION OF CURRENT CONTRACT.

Except as otherwise set forth in this Report and Recommendations, or as agreed to by the parties in writing, the Fact-Finder recommends retention of current contract language.

IV. AGREED ISSUES.

The Fact-Finder finds that the parties have agreed and resolved the following:

Article 3 (Non-Discrimination), Section 1

Article 18 (Sick Leave), Section 7

Article 20 (Vacations), Section 3

New Article Pertaining to Military Leave

Article 21 (Holidays), Section 3

Article 22 (Uniform Allowance), Section 2

V. UNRESOLVED ISSUES.

Article 24 (Hospitalization). The current contract provides in Section 2 that employees contribute the same amount toward the cost of health insurance premium as is paid by all non-bargaining unit employees of Tuscarawas County except that the maximum any bargaining unit employee may be required to pay is \$60 per month. Any health insurance premium costs in excess of \$60 per month are paid by the employer.

Under the current hospitalization plan, there is only one health plan for County employees, referred to as the “Tuscarawas County Health Benefit Plan” and administered through AultCare. Although there is only a single health benefit plan available to employees, the plan does offer three different options, each option providing different benefits or different percentages of payments and, likewise, different premiums. For example, Option 1 has an

individual coverage premium charge to the employee of \$18.37 per month, whereas the same employee with Option 3 would pay \$2.50 per month. Family coverage has a monthly premium charge to the employee of \$59.73 for Option 1 but an Option 3 premium charge of \$10.00. However, it was indicated that the County's dollar participation is a premium payment of \$367 for individual coverage and \$908 for family coverage notwithstanding which option is selected. It was also noted, for example, that as to Option 1 family coverage, the County would pay \$908 plus \$59.73 by the employee for a total premium of \$967.73. The employee's participation of premium is thus approximately 6%. However, for family coverage under Option 3, the County would again pay the family premium of \$908 with the employee paying \$10, or a total premium payment of \$918, of which \$10 is only approximately a 1% payment by the employee.

The Sheriff had argued that in the past, the County Commissioners included a "cap" on the monthly premium charge that could be assessed against all non-bargaining unit employees which was capped at \$60 per month for the family plan. The Sheriff contends, however, that the "caps" were removed from the Board's policy approximately eight years ago and that the \$60 per month maximum employee contribution has been deleted from some of the County's collective bargaining agreements, including the engineer and the water and sewer district, as well as having been discontinued for all non-bargaining unit employees. The Sheriff is essentially contending that in light of the cap removal to non-bargaining unit employees, for the sake of consistency, the present \$60 cap in the telecommunicators' contract should likewise be eliminated.

The Fact-Finder is of the view that, indeed, the issue of premium payments by the employees should not necessarily be a fixed dollar amount which might create a significant disparity between bargaining unit and non-bargaining unit employees of the County or the Sheriff's Office and the entire issue of insurance premiums may be altered in subsequent years.

The Fact-Finder has carefully considered the contentions of the parties and recommends that Article 24, Section 2 read as follows:

“The Employee shall contribute the same amount toward the cost of the health insurance premium as is paid by all non-bargaining unit employees of Tuscarawas County, except that for the period from September 21, 2011 to September 20, 2012, in no event shall any bargaining unit employee be required to pay any amount in excess of \$60 per month toward the cost of the health insurance premium. The remainder of the cost for the entire health insurance premium(s) shall be funded by the Employer.

On or about September 21, 2012, either party may re-open this Agreement for the purpose of discussing health insurance premium for the remaining years of the Agreement.”

Article 25 (Wages). The Sheriff has contended that the bargaining unit employees had received a 2-1/2% wage increase effective September 20, 2009 and a 2-1/2% wage increase effective September 20, 2010 by virtue of a Memorandum of Understanding between the Union and the Sheriff’s Office dated November 20, 2009. The Sheriff has offered a 1% wage increase and further proposes a wage re-opener agreement during the 60 calendar day period prior to September 21, 2012. The Union has proposed a 2% increase in wages retroactive to September 21, 2011, an additional 2% increase on September 21, 2012, and a further 2% wage increase on September 21, 2013.

The Sheriff has indicated that a 1% wage increase would result in a cost of approximately \$7,378, which, on its face, may appear relatively small. The Sheriff contends, however, that the County’s revenues have declined and that non-bargaining unit employees of the Sheriff’s Office have not received a wage increase since January 1, 2008 and that non-bargaining unit employees of the County’s other offices, funded by General Fund monies, have not received a wage increase since January, 2007.

The Tuscarawas County Auditor, Larry Lindberg, testified that during the five year period from 1994 to 1998, monies used to operate the Sheriff’s “911” emergency telephone and

dispatch system was funded by a ¼ of 1% sales tax which generated approximately \$2 million per year. For whatever reason, after the 5 year period, the County Commissioners let the sales tax expire and “911” funds were thereafter expensed through the County’s General Fund.

The County Auditor indicated that “911” operations are funded through the County’s General Fund and expensed through what is referred to as the County “911 Fund,” also referenced as “Fund S80” and “Fund S81.” For 2010, total revenues were \$1,236,034.56 and expenses were \$1,622,855.63, leaving a negative expense over revenues of \$386,821.07. The Auditor testified that he was projecting approximately a \$320,000 expense excess over revenues for 2011.

At the end of 2007, the S80 Fund had a cash balance of \$3,337,617, but by the end of 2009, it was reduced to \$1,372,132. By the end of 2010, it was \$1,029,934, and by October 20, 2011, it was \$528,153.

The auditor also testified that the County received \$1,519,950 from the State’s local government fund which, based on Ohio Department of Taxation estimates, would be \$1,505,109 for 2011 and \$1,075,279 for 2012. The estimate in part is based on the fact that the County is on a calendar year tax basis while the State is on a fiscal year beginning July 1st. Further, the auditor contends that interest earned on county funds has also declined from a high of \$2.6 million in 2007, \$2.0 million in 2008, \$489,657 in 2010 and estimated to be \$180,000 in 2011.

The auditor argued that overall revenue for the County’s operation, as a whole, has declined from a high of approximately \$21 million in 2006 and 2007 to \$18.7 million in 2009, \$18, 499,096 in 2010 and \$15,130,519 as of October 17, 2011.

The Union has argued that based on statistical information dealing with wage settlements computed by the State Employment Relations Board, the state-wide average was a 1.26%

increase (Union Exhibit 4). SERB data reflected a 1.14% wage increase for the Akron-Canton region for 2010 compared to a 0.98% wage increase for the Warren/Youngstown region. The state-wide figure represents a change from, for example, 2001 when the state average was a 3.78% increase and dropping down to 2.98% in 2007, 2.92% in 2008 and then the 2010 figure of 1.26% increase. Certainly, the overall financial situation and economic downturn from the Fall of 2008 has impacted both the economy generally and the employees of various public units. The Union has also argued that the compensation for telecommunicators/dispatchers in counties near or adjacent to Tuscarawas County is equal to or greater than Tuscarawas County.

According to material compiled by the State Employment Relations Board (Union Exhibit 5), it is reported that the top level compensation for a Tuscarawas County 911 telecommunicator is \$33,300.80 for 2010. The Fact-Finder notes that for court matters, Tuscarawas County is situated in the Fifth District Court of Appeals, consisting of Ashland, Coshocton, Delaware, Fairfield, Guernsey, Holmes, Knox, Licking, Morgan, Morrow, Muskingum, Perry, Richland and Stark Counties. Since those counties bear some nexus with Tuscarawas County, the Fact-Finder notes, for example, that for 2010, SERB reports a dispatcher for Ashland County had a top level of \$29,924, \$31,948 for Holmes County, \$38,862 for Licking County, \$28,891 for Morgan County, \$29,140 for Morrow County, \$28,766 Perry County and \$38,563 for Stark County. Thus, the figures cover a gamut of compensation ranges. The Union also argues, however, that unlike the 911 operators in other counties, the 911 operators in Tuscarawas County have what is referred to as “national certification” which means that they are permitted to give pre-medical arrival instructions telephonically when handling a 911 emergency dispatch. The costs for such certification are incurred by the individual telecommunicators. The Union further contends that a 2%/2%/2% increase over a three year period would not be

burdensome although it is recognized by the Union (Union Exhibit 6) that for all receipts and disbursements for 2009, the County had total receipts of \$19,305,273, disbursements of \$19,659,612, with an ending balance of \$4,000,000, which, by 2010, the ending balance was reduced to approximately \$3,375,000. The Union contends that although in recent years the disbursements have been greater than gross receipts, the costs as to the telecommunicators is not unreasonable or exorbitant and the County could afford to pay the costs of approximately \$7,500 per year.

The Fact-Finder is cognizant and sensitive to the County's overall financial situation, the current economy and the wage picture for non-bargaining employees of the Sheriff's Office and non-bargaining employees of the County generally. The Fact-Finder also recognizes that the County is developing leases for oil and gas exploration on the basis that oil and gas in reasonable quantities have been discovered in Tuscarawas County and a new demand for drilling apparently exists but may take some time in developing.

In light of all of the information and positions of the parties, the Fact-Finder recommends a 1-1/2% wage increase effective September 21, 2011 and a 1% wage increase effective September 21, 2012. Further, the Fact-Finder recommends that Section 1 be amended to read:

“During the 60 calendar day period prior to September 21, 2013, either party may re-open the Agreement for the purposes of discussing wages for the remainder of the Agreement. Such re-opener shall be conducted in accordance with the applicable provisions of Ohio Revised Code Chapter 4117.”

Article 31 (Duration of Agreement). The current contract, which expired on September 20, 2011, was a two year agreement. The Sheriff proposes that a new two year period from September 21, 2011 to September 20, 2013 be the agreement's duration, whereas the Union proposes a three year contract terminating on September 20, 2014.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Report of Fact-Finder and Recommendations has been forwarded, via email transmission, this 15th day of November, 2011, on the following:

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