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**FACT FINDER'S REPORT
AND
RECOMMENDATION**

IN THE MATTER OF:

Wayne County Commissioners

and

Ohio Patrolmen's Benevolent Association

Case Number:

11-MED-09-1287 (Dispatchers)

Before Fact Finder: Thomas J. Nowel

PRESENTED TO:

Robin L. Bell, Regional Manager
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(For Wayne County Commissioners)

and

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and

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Thomas J. Nowel was appointed to serve as Fact Finder in the above referenced case by the State Employment Relations Board on November 22, 2011 in compliance with Ohio Revised Code Section 4117.14 (C) (3).

Hearing was held on January 12, 2012 at the Wayne County Justice Center in Wooster, Ohio. Prior to the fact finding hearing, the parties engaged in bargaining and then declared an impasse. The parties submitted pre-hearing statements in a timely manner. At the onset of the hearing, the Fact Finder explored the possibility of a mediated settlement of the unresolved issue. The parties considered certain options in good faith but then decided that they wished to proceed to hearing. The hearing commenced at approximately 10:30 am.

This case involves a wage reopener pursuant to Article 27 of the collective bargaining agreement. The term of the Agreement is November 1, 2010 through October 31, 2013. In respect to the reopener, Article 27 states in part that "The parties may reopen negotiations on the subject of Article 27 Wages only, for wages/wage schedules to be effective at the beginning of the pay period that includes January 1, 2012, and for wages/wage schedules to be effective at the beginning of the pay period that includes January 1, 2013." Article 27 states further that "Section 4117.14 (G) (11) shall not apply and is hereby expressly waived by the parties." The first year of the Agreement included a wage freeze for members of the bargaining unit.

The bargaining unit consists of the classifications of Dispatcher, Communications Officer and Lead Communications Officer. There are fourteen (14) employees in the bargaining unit at the present time.

Those participating for the County at hearing include the following:

Robin Bell, Regional Manager, Clemans, Nelson & Associates
Patrick C. Herron, Wayne County Administrator
Charles D. Hardman, Administrative Captain, Wayne County Sheriff's Office

Those participating for the Union at hearing include the following:

Mark J. Volcheck, OPBA Attorney
Matt Riley, OPBA Representative
Melisa Terrell, OPBA Representative

BACKGROUND

In analyzing the positions of the parties regarding the impasse over the wage reopener and then making a recommendation, the Fact Finder is guided by the principles that are outlined in Ohio Revised Code section 4117.14 (G) (7) (a-f).

1. The past collectively bargained agreement between the parties.
2. Comparison of the issues submitted to fact finding 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.
3. 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.
4. The lawful authority of the public employer.
5. The stipulations of the parties.
6. Other factors, not confined to those listed above, which are normally or traditionally taken into consideration in determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact finding, or other impasse procedures in the public service or in private employment.

During the course of the hearing, the parties each had full opportunity to submit exhibits, present testimony and engage in rebuttal of the submissions and arguments of the other party.

The Fact Finder indicated that he would transmit written findings of fact and a recommendation on Friday, January 20, 2012. By agreement of the parties, the Report and Recommendation will be transmitted in electronic format by way of email.

Discussion of the issue at impasse, positions of the parties and the recommendation of the Fact Finder follows.

ARTICLE 27, WAGES
2012 AND 2013 WAGE REOPENER

UNION POSITION:

The Union proposes an across the board wage increase, to be applied to the wage schedule, of two and one-half percent (2.5%) effective for the beginning of the pay period which includes January 1, 2012 and an additional two and one-half percent (2.5%) increase effective for the beginning of the pay period which includes January 1, 2013.

The Union states that there are fourteen (14) employees in the bargaining unit including twelve (12) Communication Officers, one (1) Dispatcher and one (1) Lead Communication Officer. Six (6) Communication Officers are at the top of the pay range, and the Lead Communication Officer is also “topped out.”

The Union states that it has presented the County with a modest proposal after having accepted a wage freeze for the first year of the Agreement. The Union argues that the County is not justified in arguing inability to pay, and its proposal would result in a loss of pay for the bargaining unit.

The bargaining unit provides police and 911 dispatching for eight political subdivisions in the county and fire dispatching services for ten jurisdictions (Un. 1). The population of the City of Wooster is approximately 26,000, and this jurisdiction pays one-half of the operating expenses of the county dispatching system.

The Union submits that wage increase history justifies its proposal for increases in 2012 and 2013 (Un. 2). The bargaining unit accepted a wage freeze for 2011. In addition, the consumer price index has increased 3.4% during the twelve month period ending in November, 2011 (Un. 2-A). The County’s proposals cannot be justified in the face of this increase in the cost of living.

In developing a list of comparable wages, the Union utilizes contiguous counties and municipal jurisdictions within those counties (Un. 4). The Union compares top pay rates in the various jurisdictions. Based on 2011 wage rates, bargaining unit employees in Wayne County earn 92.31% of the average of the comparables and 87.31% of the average when other pay benefits are factored in. Seven of ten jurisdictions have provided a wage increase in 2012. Two municipal jurisdictions in Wayne County provide their own dispatch services, Orville and Rittman. Dispatchers in these jurisdictions received pay increases in 2011, and Orville employees received an increase of 3.75% for 2012 (Un. 5).

The Union states that Deputies, Sergeants and Lieutenants in the Wayne County Sheriff’s Department will receive an increase of 1% for 2012, 2% for 2013 and 3% for 2014 (Un. 5-A). In addition, Deputies received a one-time lump sum payment in settlement of the wage dispute from the 2008 collective bargaining agreement. This payment was in settlement of the vacation of the conciliation award which had been appealed to the court of common pleas. The

Union argues that the County's proposal in these negotiations cannot be justified based on these internal comparables.

The Union argues that the County's proposal to reduce wages in 2012, freeze steps in 2012 and institute a wage freeze in 2013 is unjustified in light of the unencumbered balance in the County's General Fund (Un. 6). This balance is \$3,833,107.53 going into the 2012 budget year (Un. 12). Further, the carry-over from 2011 to 2012 is 18.2% of the budget (Un. 7). Based upon a "Research Bulletin" published by the "Government Finance Officers Association" in

September 1990, a 5% unencumbered balance is sufficient to maintain stable finances (Un. 8). This report states the following on page 5.

As a general rule, local governments should maintain an amount equal to 5 percent of annual operating expenditures. This should satisfy some of the credit rating agencies' concerns regarding the adequacy of resources available for contingencies. Those governments facing greater uncertainty should maintain a higher level of unreserved fund balance. Those governments that maintain an unreserved fund balance above 10 percent of annual operating expenditures should be able to provide appropriate justification for maintaining that level. This in turn will satisfy the concerns of those analysts who consider an unreserved fund balance in excess of 10 percent to be unwarranted.

The Union states that the County has the ability to fund its proposed increases for 2012 and 2013, and it argues that the County's suggestion of inability to pay lacks merit.

The Union argues further that the balances of the Wireless 911 System Fund and E-911 Fund show increases from 2011 to 2012 (Un. 9). These funds are derived from taxes and fees from cell phones customers. Further, Wayne County property taxes and sales taxes have shown an increase from 2011 to 2012 (Un. 10), and the county's 2010 year-end financial report indicates recovery from the recession (Un. 11).

The Union states that the Auditor's year-end report for 2010 indicates that the County spent \$1,238,942.50 less than was budgeted in the General Fund (Un. 18), and the 2011 year-end report indicated a similar outcome (Un. 19). Revenue exceeded what was anticipated and budgeted in both 2010 and 2011 (Un. 20 – 21).

Finally the Union argues that the claim by the County, that it is unable to fund its proposals and instead requires a reduction in wages, lacks credibility. It cites the 2009 Report and Recommendation of Fact Finder Michael Paolucci who indicates that the Employer's claim of inability to pay lacks credibility and runs contrary to financial reality (Un. 22). Although this fact finding report and follow-up conciliation were the subject of court review, the Union

argues that the same approach, of claiming inability to pay, is being followed by the County in the instant case when in fact the funds are available to meet the Union's demands.

The Union urges the Fact Finder in this case to reject the County's proposals and recommend its proposals for 2012 and 2013.

COUNTY POSITION:

The County proposes a two and one-half percent (2.5%) across the board wage reduction effective January 1, 2012 and a freezing of step increases for employees so affected in 2012. The County proposes a wage freeze (0%) for 2013.

The County argues that many of the Union's exhibits are not relevant to the instant case. Other county employees have had their wages frozen, and the OPBA negotiated a wage freeze for police officers at the City of Wooster (Emp. 5).

The County states that Union Exhibit 22 should not be considered by the Fact Finder. The Fact Finder in this 2009 case did not conduct an evidentiary hearing as required by statute, and the conciliation award was appealed to the court of common pleas. The one-time payment to employees, which was noted on Union Exhibit 5-A, was paid as a settlement to the litigation regarding the conciliation award as the parties agreed to the vacation of the decision. The one-time payments were not based on normal collective bargaining between the parties.

The County argues that the list of external comparables presented by the Union include city jurisdictions which invalidates the general theme and position of the Union that Wayne County dispatchers are paid less than the average. The County states that, based on a comparison of regional counties, the pay of its dispatchers matches the average paid among these jurisdictions and is exactly at the median range (Emp. 4). A regional county to county comparison is the appropriate comparison to be considered in this fact finding (Emp. 3).

The OPBA Dispatcher bargaining unit has experienced significant wage increases from 2002 to 2010 (Emp. 1). The Dispatcher unit is the only unionized department within the jurisdiction of the County Commissioners. Therefore a comparison with non bargaining unit, General Fund employees, must be considered by the Fact Finder. Non bargaining unit employees have had their wages frozen beginning in 2009 and into 2012. The Dispatcher bargaining unit received increases of 3% in 2009 and 3.5% in 2010 while non bargaining unit

employees' wages were frozen. The County states that, due to the economic climate, it is time for the Dispatchers to "take one for the team."

The County states that Union Exhibit 2 – A, the report regarding the consumer price index, is not relevant to Wayne County. The data illustrated by the Union relates to urban areas, and Wayne County is not an urban area. Furthermore, the CPI is not the actual cost of living.

During the hearing, Captain Hardman stated that the Wireless/911 fund is set by the state. The County receives \$.28 for each cell phone. These are restricted funds although a portion may be utilized for wages and personnel costs. What is important is the fact that this funding will terminate at the end of 2012 unless the state renews the revenue sharing with the county. There is no guarantee that this will happen. If the funding is ended, the County will be forced to cover those operating costs which are currently funded by this allocation by way of the General Fund. The County is planning for the "Next Generation 911" project which will allow for text messaging. The cost of this project is in the range of one-half million to one million dollars. It is therefore unwise to spend any excess Wireless 911 funding.

The Dispatch operation is supported by General Fund finances allocated to the Justice Center. There is an \$11,040.17 shortfall predicted for 2012, and an \$81,000.00 shortfall in the event the Wireless/911 funding is not renewed. Two of three employees of the Records Center have been laid off, and two maintenance positions have been eliminated as the County moved the work to a private cleaning company in an effort to reduce expenditures. Following the retirement of an IT employee, the County moved this work to an outside contractor in an effort to reduce costs. In addition, a communication supervisory position was left vacant in 2011 following retirement.

The County shares the Justice Center with the City of Wooster including its police department. The City funds fifty percent (50%) of the dispatch department and pays a portion of other services which are located at the Center. At the end of 2011 the Justice Center budget reflected a carry-over of only \$.06.

At hearing Wayne County Administrator, Patrick C. Herron, commented on Union Exhibit 8, the Finance Officers Research Bulletin. He stated that unreserved funds are not the same as unencumbered. Terminology is not the same today based on a 1990 report which Mr. Herron argues is outdated and not relevant to the instant case in fact finding. This report could not have anticipated the economic realities of the past few years and the impact on public sector jurisdictions.

Mr. Herron stated that Union Exhibit 6 does not present a clear picture of the cash balances for the years in question. Instead, cash in hand was reduced from 2008 to 2009 (Emp. 10).

Revenue increased slightly from 2006 to 2007 but decreased over the next years (Emp. 6). Expenses also decreased to a low in 2011, but this was due to cost cutting measures, layoffs and attrition. While revenue from the sales tax and real estate taxes have increased in 2011, the County cannot be certain that this trend will continue, and other revenue streams have regressed. It is imprudent to grant the wage increases proposed by the Union in this climate.

The reduction of local government funds from the State of Ohio has resulted in a loss of \$619,993.00 from 2011 to 2012 (Emp. 7), and it is anticipated that this loss will be \$1,085,471.00 from 2011 to 2013. The phasing out of the Tangible Personal Property Tax resulted in a loss of \$227,053.00 from 2011 to 2012 (Emp.8), and this revenue source will be completely eliminated in 2013. Furthermore, it is anticipated that the County General Fund will see a reduction in 2012 of \$232,102.00 in investment earnings (Emp. 9). This loss may be greater in 2013.

Administrator Herron stated that expenditures must remain flat in 2013. Otherwise additional layoffs may occur. He indicated that the \$11,000.00 shortfall in the 2012 Justice Center budget must be remedied by the end of the year. The Board of County Commissioners approves the Justice Center budget, and members of the Commission expect the administration to end the year with a balanced budget. It must be obvious that the County cannot match the Union's proposal for wage increases in 2012 and 2013. Instead, the County's proposal remedies the shortfall in the Justice Center budget and acts to avoid further layoffs of personnel. The cost of the Union's proposal may seem minimal (Emp. 12), but it is equivalent to one full time position. The County urges the Fact Finder to adopt and recommend its proposal for wages in 2012 and 2013.

DISCUSSION:

Both parties, the County and OPBA, make strong arguments for their positions, and they have provided professionally prepared exhibits for consideration by the Fact Finder. Both advocates and witnesses were well prepared and made excellent presentations.

Wayne County, like other public sector jurisdictions, has been impacted by the recession, loss of tax revenue and reductions in state funding. The Union recognized the financial shortfall and agreed to a wage freeze for 2011, the initial year of the current collective bargaining agreement.

External comparables are a critical factor in the development of a recommendation. The County argues that the Union's approach is flawed because municipal dispatching operations were included in its list while the county utilized regional county jurisdictions exclusively. The statute suggests comparisons based on "public and private employees doing comparable work." Both sets of comparable jurisdictions presented at hearing are legitimate and a factor for consideration. Both sets of comparable jurisdictions indicate that Wayne County's dispatchers generally fall within the middle range and average in the region. It is also important to note that the Cities of Orville and Rittman, which operate their own dispatching services and are located in Wayne County, negotiated pay increases in 2011 for their unionized dispatching bargaining units, and Orville negotiated a 3.75% increase for 2012 while Rittman bargained a wage freeze. At the same time, the County's comparison of non bargaining unit General Fund employees holds merit as the dispatching bargaining unit is the only General Fund supported department which is unionized. And, although not financed by the General Fund, the wage increases negotiated on behalf of the Wayne County Sheriff Department employees are germane to the discussion.

The statute requires that the Fact Finder consider the employer's ability to "finance and administer" any proposed settlement. The Wireless/911 Fund may not be renewed by the State after 2012, and this is a concern for the County. Wayne County Commissioners allocate funding for the Justice Center from the General Fund. Although the unencumbered carry-over in the General Fund appears to be relatively healthy, as the Union argues, the funding for the Justice Center may experience an \$11,000.00 shortfall in 2012 which administrators must resolve. The County's argument, that loss of revenue from the local government fund, Tangible Personal Property Tax and reduced investment earnings has a detrimental impact on the General Fund budget in 2012 and 2013, has merit. The County's challenge to the relevance of Union Exhibit 8, Finance Officers Research Bulletin, also has some merit in that the document and principles outlined in the report are over twenty years old. While the basic theories appear sound, they were not developed at a time of severe recession and significant loss of revenue and tax base.

Nevertheless, General Fund revenue increased from 2010 to 2011 based on improved sales tax collections and property tax increases. The County's anticipated loss from investment income in 2012 is somewhat speculative based on market performance. And while it is true that reductions in expenses are due to belt tightening, layoffs and other difficult actions taken by the County, it is also true that this portion of the financial picture is more positive than it has been over the past number of years. The General Fund unencumbered balance reflects the hard work of the County to overcome a difficult economy and lost revenue. It is therefore difficult to justify the proposal by the County to reduce the wages of bargaining unit employees by 2.5% in 2012. No evidence was presented to suggest that non bargaining unit employees'

wages have been reduced in 2012. Additionally, the proposal by the County to freeze step increases is also not justified based on the status of the General Fund. Of the fourteen bargaining unit employees, seven are already at the top of the pay range. A continuation of step increases for the remaining seven employees in 2012 reflects a minimal expenditure on the part of the County and ensures pay equity with those employees who have already reached the top pay in the wage schedule.

In light of the pay freeze which exists for all other employees within the General Fund and the fact that the Justice Center budget faces a small deficit in 2012, a wage freeze is recommended for the Dispatcher bargaining unit in 2012 although step increases will continue during 2012 pursuant to Article 27, Section 2 of the collective bargaining agreement.

Based upon an improved economic climate in 2013, a stable unencumbered balance in the General Fund and savings realized by two years of wage freezes, a small and affordable across the board increase is recommended for 2013, the third year of the collective bargaining agreement. There is only one comparable available for the year 2013 and that happens to be an internal comparable, unionized employees of the Wayne County Sheriff Department. Sheriff Deputies received a small increase in 2012, but it should be noted that the Sheriff Department has a different source of funding separate and apart from the General Fund. Deputies will receive a two percent (2%) increase in 2013. It is recommended that the Dispatcher bargaining unit receive a two percent (2%) across the board increase effective for the beginning of the pay period which includes January 1, 2013.

RECOMMENDATION:

A wage freeze is recommended for 2012. Step increases will continue during 2012 pursuant to Article 27, Section 2 of the collective bargaining agreement.

It is recommended that the Dispatcher bargaining unit receive a two percent (2%) across the board wage increase effective for the beginning of the pay period which includes January 1, 2013.

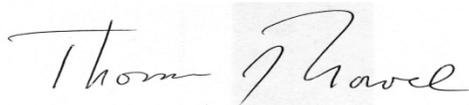
Respectfully submitted and issued at Cleveland, Ohio this 20th day of January, 2010.



Thomas J. Nowel
Fact Finder

CERTIFICATE OF SERVICE

I hereby certify that, on this 20th day of January, 2012, a copy of the foregoing Report and Recommendation was served upon Robin L. Bell, representing the Wayne County Commissioners, Mark J. Volcheck, representing the Ohio Patrolmen's Benevolent Association and Donald M. Collins, General Counsel, State Employment Relations Board, by way of electronic mail. Other representatives of the parties also received copies as previously agreed.



Thomas J. Nowel
Fact Finder