

STATE OF OHIO  
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF FACT-FINDING	:	SERB Case Numbers: 11-MED-10-1522
	:	and 11-MED-10-1523
BETWEEN THE	:	
	:	
MORROW COUNTY, OHIO SHERIFF,	:	
	:	
Employer	:	Date of Fact-Finding Hearing:
	:	December 20, 2011
AND THE	:	
	:	
FRATERNAL ORDER OF POLICE,	:	
OHIO LABOR COUNCIL, INC.,	:	
	:	Howard D. Silver, Esquire
Union	:	Fact Finder
	:	

REPORT AND RECOMMENDED LANGUAGE OF THE FACT FINDER

APPEARANCES

For: Morrow County, Ohio Sheriff, Employer

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For: Fraternal Order of Police, Ohio Labor Council, Inc., Union

Tracy Rader  
Staff Representative.  
Fraternal Order of Police, Ohio Labor Council, Inc.  
222 E. Town Street  
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## PROCEDURAL BACKGROUND

This matter came on for fact-finding hearing at 10:00 a.m. on December 20, 2011 within the offices of the Morrow County, Ohio Sheriff at 101 Home Road, Mount Gilead, Ohio 43338. At the hearing both parties were afforded a full and fair opportunity to present evidence and arguments in support of their positions. Following the presentation of closing arguments the hearing record was closed at 11:30 a.m. on December 20, 2011.

This matter proceeds under the authority of Ohio Revised Code section 4117.14(C) and in accordance with Ohio Administrative Code section 4117-9-05. Both parties have met their obligations in carrying out pre-hearing procedures. The parties submitted to the fact finder prior to the hearing their positions on the issues raised by this fact-finding process. This matter is properly before the fact finder for review, report, and recommendation.

## FINDINGS OF FACT

1. The parties to this fact-finding procedure, the Morrow County, Ohio Sheriff, the Employer, and the Fraternal Order of Police, Ohio Labor Council, Inc., the Union, are parties to a collective bargaining agreement in effect from February 1, 2011 through January 31, 2014.
2. The parties' collective bargaining agreement covers two bargaining units, Unit A and Unit B, with Unit A comprised of full-time Sergeants and Lieutenants, and Unit B comprised of full-time Deputy Sheriffs, including Deputy Sheriffs assigned to road patrol, Deputy

Dispatchers, Deputy Corrections Officers, and Deputy Corrections Corporals.

3. The bargaining units covered by the parties' collective bargaining agreement are comprised of three Sergeants in Unit A, and forty-one bargaining unit members in Unit B, including five Deputy Dispatchers, nine Road Deputies, two Deputy Corrections Corporals, twenty-four Deputy Corrections Officers, and one Deputy Clerk.

4. Neither Unit A nor Unit B received a wage increase in 2009 or 2010.

5. Unit A and Unit B received a 2.5% across the board wage increase effective February 1, 2011.

6. The collective bargaining agreement between the parties in effect from February 1, 2011 through January 31, 2014 provides in Article 36, Section D that the parties agreed to reopen negotiations concerning the wage rates in Section 21.1 of the parties' Agreement for the second and third years of the Agreement, in accordance with Ohio Revised Code Chapter 4117.

7. The parties met on October 24, 2011 to discuss wage rates for February 1, 2012 and February 1, 2013 but the parties did not reach an agreement.

8. The issues that are unresolved between the parties under the re-opener language of Article 36, Section D are the pay levels for bargaining unit members effective February 1, 2012 and February 1, 2013.

## DICUSSION

The Union's final wage proposal at the conclusion of the fact-finding hearing was an across the board wage increase for the bargaining units of 2% effective February 1, 2012 and an across the board wage increase for the bargaining units of 2% effective February 1, 2013.

The Employer recommends that no wage increase occur on February 1, 2012 and proposes that bargaining be reopened a year from now about a wage increase effective February 1, 2013.

The issues raised by this fact-finding procedure are the wage levels for bargaining unit members effective February 1, 2012 and February 1, 2013.

In support of the 2% wage increases proposed by the Union for February 1, 2012 and February 1, 2013 the Union directs the fact finder's attention to a source of revenue for the operation of the Morrow County Jail operated by the Morrow County Sheriff, a federal contract under the Immigration and Customs Enforcement (ICE) Act. Through this federal contract the Morrow County Sheriff is paid for the use of the Morrow County Jail to hold illegal aliens after domestic criminal proceedings have concluded. The Morrow County Jail receives compensation under the ICE contract for each alien housed at the jail. There is no guarantee from the federal government of the number, frequency, or length of stay among aliens detained under the ICE contract at the Morrow County Jail. The length of stay of an alien awaiting deportation from the Morrow County Jail ranges from one day to three weeks. The ICE contract began in 2009 and was fully implemented in 2010 and 2011. Under the ICE contract the Morrow County Jail averaged fifty aliens housed in the jail per day in 2010, at \$53.64 per day per housed

alien. At \$53.64 per day per housed alien, with an average daily census of fifty aliens, for 365 days, produces revenue in the amount of \$978,930 for the year. The actual ICE 2010 contract revenue, as presented in Employer's Exhibit 9, was \$927,953, a figure that increased to \$1,085,288 in 2011.

The Union points out that the work that is required to be performed under the ICE contract produces about one million dollars per year in additional revenue, more than enough additional money to fund the modest wage increases proposed by the Union for the bargaining units effective February 1, 2012 and February 1, 2013.

The Union acknowledges that the funds to pay for personnel within the Morrow County Sheriff's Office originate in the Morrow County General Fund. The Union claims that in response to the increase in revenue through the ICE contract made available for the operation of the Morrow County Jail (and by extension the Morrow County Sheriff's Office) the Morrow County Commissioners, the legislative branch of Morrow County government that determines the amount of the Morrow County Sheriff's budget, applied the revenues from the ICE contract to the Sheriff's budget but reduced by about an equal amount Morrow County General Fund funds that otherwise would have been assigned to the Morrow County Sheriff's budget. The Union argues that the Morrow County Commissioners have erased any direct benefit to bargaining unit members who actually perform the work necessitated by the ICE contract, the work that gives rise to the additional revenue. By engaging in this zero sum exercise the Morrow County Commissioners have, in effect, assigned the increase in revenue from the ICE contract to other areas of Morrow County operations. The Union urges the fact finder to

reject this budgetary sleight of hand and recommend the wage increases proposed by the Union.

The Union points to comparable Ohio counties with populations that are between 28,000 and 38,000. The Union has presented eleven counties to compare to Morrow County, counties with an average population of 31,644 (Morrow County's population is 31,628), an average starting salary of \$31,314 (Morrow County's starting salary is \$29,473), and an average top rate of pay of \$38,265 (Morrow County's top rate of pay is \$34,403.) See Union's Exhibit 2, page 2.

The Ohio counties compared to Morrow County by the Union have populations that range from 28,241 to 36,655. Starting rates of pay range from \$28,995 to \$39,645. Top rates of pay range from \$33,613 to \$50,170.

The Union also presented state of Ohio wage averages for Road Deputies, Jail Deputies, Dispatch Deputies, and Deputy Clerks. The state of Ohio's average starting rate of pay for a Road Deputy is \$35,294, Morrow County's Road Deputies' starting rate of pay is \$29,473; the state of Ohio's average starting rate of pay for a Jail Deputy is \$30,106, Morrow County starts a Jail Deputy at \$25,500; the state of Ohio's average starting rate of pay for a Deputy Dispatcher is \$29,616, Morrow County starts a Deputy Dispatcher at \$25,500; the state of Ohio's average starting rate of pay for Clerks is \$27,672, Morrow County's starting rate of pay for a Deputy Clerk is \$25,500. See Union's Exhibit 2, page 3.

The state of Ohio's average top rate of pay for a Road Deputy is \$44,375; Morrow County's top rate of pay for a Road Deputy is \$34,403. The state of Ohio's average top rate of pay for a Jail Deputy is \$37,963; Morrow County's top rate of pay for a Jail

Deputy is \$29,869. The state of Ohio's average top rate of pay for a Dispatch Deputy is \$35,653; Morrow County's top rate of pay for a Dispatch Deputy is \$29,869. The state of Ohio's average top rate of pay for a Clerk is \$32,262; Morrow County's top rate of pay for a Clerk is \$29,869.

The Union argues that with the addition of the ICE contract revenue, the Employer has the ability to fund the wage increases proposed by the Union for 2012 and 2013. The Union argues that a comparison of other Ohio counties with populations between 28,000 and 38,000 to Morrow County shows that both bargaining units addressed by this fact-finding procedure deserve a raise. The Union argues that the budget of Morrow County shows that there are funds available for the modest wage increases proposed by the Union for 2012 and 2013.

The Employer emphasizes that the Morrow County Sheriff each year prepares, submits, and defends a budget for his office and the operation of the Morrow County Jail, but the amount of fiscal resources available to the Morrow County Sheriff's Office and the Morrow County Jail is determined by the legislative branch of Morrow County government, the Morrow County Commissioners.

The Employer points to the Morrow County General Fund's revenues and expenses for the years 2008, 2009, 2010, and 2011, and the projected revenues and expenses for the General Fund in 2012. See Employer's Exhibit 7, page 1. Revenues in the Morrow County General Fund in 2008 were \$7,727,452; in 2009 were \$6,948,085; in 2010 were \$7,215,469; in 2011 were \$6,863,638, and were projected for 2012 by the Budget Commission to be \$6,362,800, the lowest amount over the past four years.

The Employer points out that the unencumbered carryover figure for the Morrow County General Fund in 2010 had been \$898,285; the unencumbered carryover figure for the Morrow County General Fund for 2011 is projected to be about one-half of the 2010 carryover figure, about \$445,000. See Employer's Exhibit 7, page 2. The Employer points out that Morrow County's monthly operations expense is about \$482,000, reflecting a carryover balance from 2011 to 2012 that is less than one month's expenses. The Employer points to Employer's Exhibit 6, the Auditor of the state of Ohio's Guidelines for Fiscal Caution, guidelines that may result in the Auditor declaring a municipal corporation, county, or township to be in fiscal caution. One of the circumstances that can lead to a declaration of fiscal caution is a low year end carryover balance in the general fund such that the entity is unable to cover one month's expenses.

The Employer claims that it is at present employing a minimum staff, and police cruisers that in the past would have been replaced have not been replaced because of fiscal constraints. The Employer points out that the majority of the Sheriff Office's police cruisers have traveled over 200,000 miles but the schedule for their replacement has been extended due to limited financial resources.

The Employer notes that while revenue available to the Morrow County General Fund has decreased, expenses have continued to rise. The Employer argues that at this time the Employer does not have sufficient funds available for the 2012 wage increase proposed by the Union. The Employer recommends that a 2013 wage increase be reconsidered in December, 2012, as contemplated by Article 36, Section D of the parties' Agreement.

The Morrow County General Fund is the subject of “wish lists” from various Morrow County executive agencies funded through the Morrow County General Fund. The budget amount requested in the aggregate by the agencies funded by the Morrow County General Fund for 2012 was \$8,505,598. The projected budget of the Morrow County General Fund for 2012 is \$6,362,800. The amount requested from the Morrow County General Fund for 2012 exceeds by about one-third the amount of revenue projected to be available from the Morrow County General Fund in 2012. Such a disparity will require these agencies, under the oversight of the Morrow County Commissioners, to operate with about one-third less than the agencies, in the aggregate, stated they needed to operate.

The unencumbered carryover from 2011 to 2012 comprises less than one month of Morrow County’s expenses, and the Employer explained at the hearing that there are about \$420,000 in expenses from operations in December, 2011 that will come due in January, 2012.

The fact finder understands the frustration of the bargaining units to find no tangible direct benefit from implementation of the ICE contract, a contract that is bringing in about one million dollars a year to the benefit of Morrow County. Bargaining unit members argue that as it is their work that makes this revenue possible the bargaining unit should benefit from the increased revenue generated by this work through wage increases.

The fact finder is not persuaded that the additional ICE contract revenue in and of itself supports a wage increase in 2012 and 2013 for the bargaining units. The detention of prisoners, whether domestic or alien, requires work that is similar if not identical. If

implementation of the ICE contract were to require more than the agreed hours in a work week, presumably premium pay would be paid to compensate this overtime work. Some percentage of the bargaining unit's work in the Morrow County Jail is devoted to ICE prisoners but the fact finder does not find extra work in carrying out these duties.

The fact finder is persuaded that this is not a time during which wage increases are indicated. The resources available from the Morrow County General Fund have decreased since 2008, and the unencumbered carryover balance from 2011 to 2012 is less than \$500,000, less than one month's expenses for the operation of Morrow County. While Morrow County has not suffered a loss in local funds received from the state of Ohio, this circumstance has occurred only because Morrow County was determined to be a county least equipped to fiscally accommodate a loss of local funds from the state of Ohio. There is no guarantee that this exemption will continue in the future.

The fact finder recommends a zero percent wage increase for the bargaining units effective February 1, 2012. The fact finder recommends that during the last quarter of 2012 the parties negotiate wage levels that are to be effective February 1, 2013.

## RECOMMENDED LANGUAGE

### 2012 and 2013 Wage Increases

The fact finder recommends a zero percent wage increase for the bargaining units effective February 1, 2012.

The fact finder recommends that the parties bargain wage levels to be effective February 1, 2013 during the last quarter of 2012.

In making the recommendations presented in this report, the fact finder has considered the criteria presented in Ohio Revised Code section 4117.14(C)(4)(e) and Ohio Administrative Code section 4117-9-05(K).

Finally, the fact finder reminds the parties that any mistakes by the fact finder are correctable by agreement of the parties pursuant to Ohio Revised Code section 4117.14(C)(6)(a).

Howard D. Silver  
Howard D. Silver  
Fact Finder

Columbus, Ohio  
January 18, 2012

CERTIFICATE OF FILING AND SERVICE

I hereby certify that the foregoing Report and Recommended Language of the Fact Finder in the Matter of Fact-Finding between the Morrow County, Ohio Sheriff and the Fraternal Order of Police, Ohio Labor Council, Inc., SERB case numbers 11-MED-10-1522 and 11-MED-10-1523, was filed electronically with the Ohio State Employment Relations Board at MED@serb.state.oh.us and served electronically upon the following this 18<sup>th</sup> day of January, 2012:

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Howard D. Silver

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