STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding Between:	)	
SUMMIT COUNTY SHERIFF'S OFFICE	)	**Case No. 12-MED-09-0859**
-and-	)	**Jonathan I. Klein, Fact-Finder**
FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL, INC.	)	

FACT-FINDING REPORT and RECOMMENDATIONS

Appearances

For the Union:

Otto J. Holm, Jr., Staff Representative
Danny Francis, B.V.C.
Greg Taylor, Deputy
Doug Quiner, President - FOP Lodge 139
Stephen Krendick, Deputy
Ann Manuel, Detective
Gary Hall, Detective
Angela Berg, Deputy

For the Employer:

Yamini Adkins, Esq.- Deputy Director Labor Relations, Summit County Executive's Office
Randy Briggs, Esq.- Legal Counsel, Summit County Sheriff's Office
Brian Nelsen - Summit County Budget Director

Date of Issuance: March 29, 2013

I. PROCEDURAL BACKGROUND

This matter came on for hearing on February 14, 2013, before Jonathan I. Klein, appointed as fact-finder pursuant to Ohio Revised Code Section 4117.14, and Ohio Administrative Code Section 4117-9-05, on November 2, 2012. The hearing was conducted between the Summit County Sheriff's Office ("Employer"), and the Fraternal Order of Police. Ohio Labor Council, Inc. ("Union"), at the Summit County Jail located at 205 East Crosier Street, Akron, Ohio 44311. The Union is the sole and exclusive bargaining representative of all full-time employees in the classification of Deputy Sheriff as set forth in Article 5 of the collective bargaining agreement. (Union Position Statement, Tab 1). At the time of the hearing, the bargaining unit was comprised of approximately 291 Deputy Sheriffs. (Union Position Statement, at 1; Employer's Position Statement, at 1).

As of the fact-finding hearing, the following issue remained open and is properly before the fact-finder for resolution:

Issue: Article 18 - Wages and Compensation (wage reopener in the third year of the contract)

The fact-finder incorporates by reference into this Report and Recommendation any provision of the current collective bargaining agreement not otherwise modified during negotiations and the fact-finding process. In making the recommendation which follows, the fact-finder has reviewed the arguments and evidence presented by the parties at hearing, together with their respective position statements.

II. FACT-FINDING CRITERIA

In the determination of the facts and recommendations contained herein, the fact-finder considered the applicable criteria required by Ohio Rev. Code Section 4117.14(C)(4)(e), as listed in 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-05(K)(1)-(6). These fact-finding criteria are enumerated in Ohio Admin. Code Section 4117-9-05(K), as follows:

(1) Past collectively bargained agreements, if any, between the parties;

(2) 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;

(3) The interest 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) Any stipulations of the parties;

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

III. FINDINGS OF FACT AND FINAL RECOMMENDATION

Introduction

The record establishes that in 2011 the estimated population of Summit County 16 years old and over was approximately 433,062, according to the United States Census Bureau. (Union Exhibit - U.S. Census Bureau, American Fact Finder). Additionally, the median income of Summit County households in 2011 was estimated to be $46,429.00, and the mean household income that year was estimated at $62,684.00. (Union Exhibit - U.S. Census Bureau, American Fact Finder). The consumer price index (CPI) summary establishes that the index for all items increased by 2.2 percent before seasonal adjustments for the 12-month period ending October 2012. (Union Position Statement, Tab 2 - Exhibit B).

The most recent collective bargaining agreement between the parties effective January 1, 2011 through December 31, 2013, contains a wage reopener in Section 18.1. (Union Position Statement, Tab 1; Employer's Position Statement). The record indicates that bargaining sessions were held by the parties on November 19 and 28, 2012, and mediation was conducted on December 13, 2012. (Union Position Statement, at 1). The parties were unable to reach agreement regarding the base wage rate for bargaining unit employees in 2013, and they subsequently remained at impasse regarding this issue.

At hearing, both parties presented argument and documentary evidence concerning the financial condition of the Employer and its ability to pay the Union's proposed wage rate increase in the final year of the current contract. Evidence was also introduced regarding the pay rates received by law enforcement officers employed by various jurisdictions, including cities located within Summit County and Sheriff's Offices in other counties throughout the State of Ohio, which the parties considered to be comparable to the Summit County Sheriff's Office. Based upon the record presented in this case, the fact-finder determines that Sheriff's Offices in the following counties shall be utilized as comparables: Cuyahoga; Franklin; Montgomery; Hamilton; and Lucas.[1] The arbitrator notes that although the Employer disagreed with the Union's list of comparable jurisdictions, it identified no specific jurisdictions which it believed were comparable to the Summit County Sheriff's Office.

Issue: Article 18 - Wages and Compensation

Position of the Union

The Union points out that the following language contained in Section 18.1 of the current collective bargaining agreement contains a wage reopener in 2013:

> Effective January 1, 2011, the base rate for all bargaining unit members in each pay range shall remain unchanged. Effective on January 1, 2012, the base rate for all bargaining unit members in each pay range shall remain unchanged. Effective January 1, 2013, the base rate for all bargaining unit members will be subject to a reopener only on the issue of wages in accordance with O.R.C. 4117 and subject to Article 36 of the Collective Bargaining Agreement as defined in Appendix A, 2013 Wage Reopener.

The Union maintains that there is favorable evidence to support its proposed three percent wage rate increase. It notes that "[t]he comparison units used are by both parties and are included in

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1. Generally, no two jurisdictions used for comparability purposes are identical. However, the structure and funding of other sheriff offices in counties of comparable size are the most useful.

the Union's Exhibits." (Union Position Statement, at 3). The Union asserts that it is critical for the Employer to finance and administer wages that allow the County to maintain its workforce and attract new employees. It claims that the wage reopener should be used to address fair wages. "The Union places greater emphasis on comparability, however, the Union also recognizes that the County's ability to pay is currently changing and is projected to improve steadily over the next few years." (Union Position Statement, at 3). Although the Employer claims financial troubles, it has done little to change the situation other than attempting to do so ". . . on the backs of the members of the FOP, ..." (Union Position Statement, at 3).

The Union points out that 30 full-time bargaining unit members and 15 intermittent deputies were laid off in 2011. Additionally, the bargaining unit members agreed to a zero percent wage rate increase and a $600.00 reduction in their clothing allowance. Further, the Employer introduced a new and more costly health care plan. In 2012, the bargaining unit members agreed to another zero percent wage rate increase, as well as concessions of $1,200.00. The Union notes that healthcare costs also increased by five percent in 2012. As a result of the layoffs discussed above, the number of deputies employed by the Sheriff's Office has decreased from 333 to 291 within two years. Therefore, the bargaining unit employees are required to perform more duties with less staff.

According to the Union, the financial condition of the Employer will continue to change for the better with an improving revenue forecast. "Additionally, the fact that the County will carryover $25,331,340.00 (Exhibit 5) points to the healing financial woes of the County." (Union Position Statement, at 4). However, the current SERB Benchmark Report indicates that the bargaining unit members ". . . are falling financially behind their comparison group." (Union Position Statement, at 4). The Union asserts that the Employer's deputies are vastly underpaid. It points out that it agreed to major concessions that provided a boost to the Employer's budget, and it believes that a three percent wage rate increase in 2013 will not compromise the Employer's finances. However, "[a]ny further requests for wage reductions would place an enormous burden on the backs of Bargaining Unit Members . . ." (Union Position Statement, at 4).

The Union asserts ". . . that some positive steps, even if gotten through this hearing, have to begin now if the wages for the County Deputies are to be kept equitable." (Union Position Statement, at 6). It maintains that "[t]he interests and welfare of the public, the ability of the public Employer to finance and administer the issue of wages is critical for the County to maintain their workforce and to have the ability to attract new employees to fill the up-coming opening[s] in this unit." (Union Position Statement, at 6). The Union argues that this has not been a priority for the Employer over the past few years, and the proposed wage rate increase is long overdue. It contends that "[t]he guiding light of compromise is now dim with the continued resistance of the County to provide a fair livable wage." (Union Position Statement, at 6). The Employer has demonstrated its choice ". . . to put their finances into anything but wages for the members of the FOP." (Union Position Statement, at 8).

At hearing the Union asserted that contrary to the Employer's position non-bargaining unit employees have received wage rate increases over the past several years. It also maintained that "the FOP helped the County move to a new health care plan," in addition to saving the

Employer over $50,000.00 due to various concessions. The Union reiterated that the wages afforded its bargaining unit members are low and not comparable to other jurisdictions with the exception of one small city in Summit County. According to the Union, the Employer's "ability to provide adequate wages is slipping because of other agendas than the Sheriff's department." It argues that the deputies have made great sacrifices and "nobody else in the County has made such sacrifices." Additionally, "all discussions that led to keeping employees were driven by the Union."

As it concerns the financial condition of the Employer, the Union points out that a $25 million carryover has not changed from year to year despite the fact that the Employer previously indicated that it could be reduced to $15 million "before the wheels came off." Although the Employer said that it would dip into these surplus funds it has not had to do so. The Union contends that it has worked understaffed and been underpaid, and now the County's budget is stabilized and improving. It notes that both the sales tax revenue and conveyance fees have increased, and the budget picture is "bright." According to Crain's Cleveland Business magazine, there will be "more and bigger raises" in 2013. The Union points out that other County employees have received raises while the Employer has balanced the budget on the backs of the deputies who took cuts of $350,000.00. The Employer has ignored its improved financial performance, including a good to strong bond rating by Standard & Poor's.

The Union asserts that the Employer "needs to lead with its actions." The SERB Benchmark Report dated May 22, 2012, indicates that many jurisdictions are providing two to four percent wage rate increases to their employees. Therefore, the Union's proposed three percent wage rate increase in 2013 is well within the SERB Benchmark range. The Union reiterated that the bargaining unit employees "gave up a great health care plan and went to a more expensive one." The Employer is in good shape now and needs to provide a raise. According to the Union, "it will take years of triple three's to get back to where they were," and its request is reasonable. As a result of the Employer's actions, the bargaining unit is "down more than 40 employees" and the citizens are not receiving their services. The Employer must tap into its rainy day fund and show some good will towards the bargaining unit employees.

Position of the Employer

The Employer proposes the following language in Section 18.1 of the collective bargaining agreement:

> Effective January 1, 201[1], the base rate for all bargaining unit members in each pay range shall remain unchanged. Effective January 1, 2012, the base rate for all bargaining unit members in each pay range shall remain unchanged. **Effective January 1, 2013, the base rate for all bargaining unit members will be decreased by two percent (-2%).** (Emphasis supplied).

The Employer points out that a third year wage reopener was placed in the contract so that the parties could ascertain the economic climate at that time. According to the Employer, it ". . . specifically explained to the Union that a wage reopener *could* mean that a proposal could be made to *decrease* wages by the Employer." (Employer Position Statement, at 2)(emphasis in original). The Employer maintains that it is still not "out of the woods," and the County's general fund budget is significantly impacted by the Sheriff's budget which accounts for 29% of the general fund. The overall revenue of the County has dropped from approximately $111 million in 2008 to about $95 million in 2012, and the anticipated revenue in 2013 will be $99 million. However, the increase in revenue from 2012 to 2013 is ". . . related to one time increases and are not figures that can be relied on for future years." (Employer Position Statement, at 2). The Employer points out that state budget cuts in 2010 and 2011 have largely affected the current revenues, and the County is currently in a deficit. Specifically, "about 1.36 million in the red." (Employer Position Statement, at 2).

The Employer has taken the following actions to deal with declining revenues: implemented a County-wide hiring freeze; required a reduction in the budgets of all County officer holders of 5 percent and 8.7 percent in 2009 and 2010 respectively; offered incentive based voluntary separation plans; disapproved COLA increases for non-bargaining unit employees; implemented cost savings days in 2009. The Employer points out that the Union did not agree to take even one cost savings day. "Consequently, this unit had 32 full time deputies and 14 intermittent deputies that were laid off due to a looming deficit in the Sheriff's overall budget." (Employer's Position Statement, at 3). However, most of the 32 full-time deputies have been hired back as a result of attrition in the Sheriff's Office. Nonetheless, the Sheriff's Office continues to suffer from low staffing levels. "The need for overtime becomes greater and the costs associated with that overtime continues to drive up the Employer's costs thus creating a vicious cycle where the Employer is unable to control its costs." (Employer Position Statement, at 4). It is a priority for the Employer to maintain operational levels, and "[f]urther layoffs for this department would only lead to further deficit and would have a devastating affect on the day to day operations." (Employer Position Statement, at 4).

Despite the Union's agreement of zero percent wage increases in 2011 and 2012, this bargaining unit has continued to demand and receive benefits that have not been afforded other County bargaining unit employees and non-bargaining unit staff. The Employer points out that the deputies received a lump sum payment in 2011 and three vacation days were added to each employees vacation bank in 2012. The Employer asserts that "[t]he overall revenue for 2013 is 99 million which is 5 million less [than] two years ago. In 2012 the county budget was in a deficit and in 2013 it is still in the RED. The County will be required to spend down the reserve balance in order to stabilize the budget. *There is simply no way the Employer is able to add further increases to the county budget at this time without resulting in more layoffs.*" (Employer Position Statement, at 4)(italics in original). The Employer must continue to be prudent in order to maintain its operations. Therefore, it is seeking a decrease in wages to help absorb costs and reduce the deficit in the Sheriff's Office. It argues that providing further wage increases will not address the serious issues facing this department. "Overall, the financial position of the Employer is best described as **still at risk**." (Employer Position Statement, at 5)(emphasis in original). According to the Employer, it has approached the budget with one goal in mind: to keep people working.

At hearing the Employer reiterated that it has faced a hardship due to the declining economy. The Employer maintains that it is still recovering from the recession and is "not completely out of the woods." It points out that the Union is one of the most costly bargaining units affecting the General Fund. The Sheriff's Office continues to suffer from low staffing levels, which in turn increases overtime costs and impacts the morale of the deputies. The Employer is seeking to maintain its current operations and any further layoffs would be devastating.

According to the Employer, its revenue is still down from the last time the parties met and the County is currently experiencing a deficit of approximately $1.36 million. Nonetheless, bargaining unit members received benefits, such as a lump sum payment and additional vacation days, which were not afforded other County employees. It notes that no other employees will receive wage rate increases this year. The Employer asserts that it "must consider financial priorities and the bests interests of the County and it cannot add further expenses to the budget without layoffs and other cuts." It reiterated that the budget is already in the red and it seeks a two percent wage rate reduction in order to maintain its operations. The Employer argues that "at best, the wages should be flat lined with no increases."

Brian Nelsen, the Summit County Budget Director, testified that the General Fund has been significantly effected by the recession and budget cuts by the State of Ohio. According to Nelsen, the local government fund has been cut by 50 percent. He pointed out that there was $55 million in reserve at the end of 2007. However, sales tax and conveyance tax revenues decreased following the foreclosure crisis, and interest earnings also decreased substantially as a result of a continuing decline in interest rates. The Employer plans to continue cutting expenditures and anticipates that it will be "back into black by the 2013 and 2014 range." According to Nelsen, the Employer will be back to break even by 2014. He pointed out that the Employer "ran a significant deficit of about $16 million in 2009," and although there was a temporary surplus in 2010 as a result of several one-time transactions, revenues continued to decline. He noted that the Employer cut approximately $20 million in annual expenditures from the General Fund between 2008 and 2013. During that same period, the County has eliminated over 700 positions.

Nelsen acknowledged that the economy improved significantly in 2010 through 2012, and he noted that sales tax revenues increased by five percent in 2012. In fact, sales tax revenue in 2012 surpassed the 2007 figures. He confirmed that "the largest spending by the County is on personnel costs," and various administrative offices have been targeted for cuts by the Employer. He pointed out that there have been no cost of living increases for any non-bargaining unit employees since 2008, and no cost of living increases were afforded any bargaining unit employees in 2011 and 2012. He confirmed that the Employer's out of pocket expenses for the health care of its employees have increased. Although expenditures have been reduced, the reserve balance dropped by approximately $2.4 million and there will be "a little over $1 million deficit in 2013." Nelsen also maintained that the Employer "has neglected capital spending over the past years and the capital needs will come out of the General Fund." He also asserted that non-bargaining unit employees "have paid increases in health care costs for many years prior to the bargaining unit employees" being required to do so. Nelsen testified that it would not be prudent at the present time to increase the wage rates of bargaining unit employees.

On cross-examination, Nelsen acknowledged that the budget stabilization fund has an unencumbered balance of approximately $25 million which has remained unchanged since 2008. He also confirmed that the budget is improving "as to total revenue but there is no improvement as it concerns relying on reserves." Nelsen further stated that the County has a AA bond rating and is "doing good today as compared to the past." He stated that the stabilization fund, or "rainy day fund," has been used every year, and the "reserves are down to $27 million in 2013." Nelsen asserted that the Employer utilizes the reserve balance "to minimize cuts in services and maintain level spending to wean itself off using reserves." The Employer was fortunate that it had such a reserve balance because without it there would have been even more layoffs.

Final Recommendation

The fact-finder recommends a 1.5 percent wage rate increase for the bargaining unit employees in the final year of the contract and Section 18.1 of the shall be modified to provide as follows:

> Section 18.1 Effective January 1, 2011, the base rate for all bargaining unit members in each pay range shall remain unchanged. Effective on January 1, 2012, the base rate for all bargaining unit members in each pay range shall remain unchanged. Effective January 1, 2013, the base rate for all bargaining unit members in each pay range shall be increased by 1.5 percent.

The fact-finder determines that the Employer presented insufficient evidence to substantiate its position that a two percent wage rate *reduction* is necessary in order to maintain current operations and staffing levels. In contrast, the Union has demonstrated that a slight wage rate increase in 2013 is reasonable based upon the following facts and circumstances.

The record establishes that the Employer expects General Fund revenues to increase from $97,051,998 in 2012 to $99,461.250 in 2013. (Union Position Statement Attachment, at 9). The testimony presented at the hearing also reveals that the Employer acknowledges that its financial condition has improved over the past two years. The fact-finder notes that sales and use tax revenue generated in 2012 exceeded the annual amount of revenue from those sources for the first time since 2008. Additionally, the General Fund is forecasted to receive nearly $3 million in casino tax revenue in 2013, an increase of approximately $1.3 million from 2012. Such revenue was non-existent prior to 2012.

Although the General Fund revenue is expected to increase in 2013, the record reveals that expenditures have exceeded revenues in each of the past two years, and are once again expected to exceed revenues by $1,113,256 in 2013. However, the Budget Stabilization Fund Balance has remained steady at $25,325,501 since 2008.[2] At hearing the Employer acknowledged that the reserve balance has "always been a source of disagreement" between the parties. The evidence establishes that monies in the Budget Stabilization Fund are unencumbered and otherwise available to fund wages. The Union presented unrebutted testimony at the hearing that the Employer asserted during the most recent contract negotiations that it may be necessary to spend down the stabilization fund to $15 million in order to maintain operations. It is clear that such action was not necessary. The Employer presented no evidence that $25,325,501, or any other specified amount in its "rainy day fund" is necessary in order to

2. The fact-finder notes that the ending General Fund Unencumbered Balance has decreased from $19,415,751 in 2008 to $3,310,041 in 2012.

maintain operations and guard against future downturns in the economy or cuts in funding from the State of Ohio. In fact, the financial forecast of the Employer is improving and revenues in the General Fund are once again expected to exceed expenditures in 2014, 2105 and 2106. Under such an improved financial forecast the fact-finder determines that it is reasonable to expect the Employer to tap into the Budget Stabilization Fund, if necessary, in order to afford bargaining unit employees who have endured a wage freeze, higher medical insurance expenses and other cost increases, with a slight wage rate increase in 2013. The fact-finder notes that a one-year wage rate increase of 1.5 percent will result in a total overall increase of $228,614.25 in the wages paid to 291 bargaining unit employees. This figure assumes each employee to be at the top rate under the wage scale set forth in Appendix A of the collective bargaining agreement.

As it concerns the wage rate afforded deputies in the Summit County Sheriff's Office and the wage rates of employees at comparable jurisdictions, the record reveals that deputies employed by the Franklin County Sheriff's Office, Montgomery County Sheriff's Office, Hamilton County Sheriff's Office and Cuyahoga County Sheriff's Office each receive higher top step wage rates than the bargaining unit employees in this case. (Union Exhibit- Deputy Sheriff Comparables; Union Position Statement, Tab 2-C). The Employer presented no evidence disputing the wage figures contained in the aforementioned documents relied upon by the Union in support of its proposed wage rate increase. The fact-finder also notes that according to SERB data, Cuyahoga County deputies received $750 and a 1% wage rate increase in 2012, and they are scheduled to receive yearly wage rate increases of 2% in 2013 and 2014; deputies employed by the Hamilton County Sheriff's Office received a zero percent wage rate increase in 2012 and will receive yearly wage rate increases of 3 % in 2013 and 2014. The fact-finder determines that a wage rate increase of 1.5 % for bargaining unit members in 2013 is reasonable in light of the wages received by deputies at comparable sheriff's offices and in keeping with the Employer's financial picture. There is no evidence the recommended increase will cause bargaining unit members to change their rank order compared to the wages of comparable employees.

An article that appeared in www.akronnewsnow.com on March 7, 2012, also supports the fact-finder's determination that a wage rate increase is reasonable under the facts and circumstances presented in this case. In the article, Summit County Finance and Budget Director Nelsen indicated that Moody's affirmed a AA-1 bond rating for Summit County, and he stated that "[w]hat it means really from a more macro standpoint is it provides validation to the way in which we here at the County have managed our fiscal affairs, as we've worked our way through the recession and the aftermath of the recession." (Union Position Statement, Tab 4-B).

The fact-finder concludes that a modest wage rate increase is warranted given the fact that the Employer has worked its way through the aftermath of the recession and still has substantial carryover reserves available to fund such an increase. It is further justified upon taking into consideration the rise in the CPI, evidence of prior concessions, the increase in health care costs, the undisputed conditions of understaffing due to layoffs and lack of hiring, including reduced employee morale. Additionally, the Employer acknowledges that it has predicted the increase in sales tax revenue to continue for the next five years. (Union Position Statement, Tab 4-C). The fact-finder notes that Summit County Children Services and the Communications Workers of America, Local 4546 agreed last year to a zero percent wage rate increase in 2012; two percent lump sum payment in 2013; and a two percent wage rate increase in 2014. (Union Position Statement, Tab 4-G). Negotiations have or will soon commence for the next collective bargaining agreement.

For each of the aforementioned reasons, the fact-finder recommends a 1.5 % wage increase in 2013.

/s/ Jonathan I. Klein
Fact-finder

Dated: March 29, 2013

CERTIFICATE OF SERVICE

A copy of this Fact-finding Report and Recommendation was served on Otto J. Holm, Jr., Staff Representative, FOP/OLC, Inc., at 14819 Triskett Road, Cleveland, Ohio 44111, ottoholm@sbcglobal.net; Yamini Adkins, Esq., Deputy Director Labor Relations, Summit County Executive's Office, at 175 S. Main Street, Akron, Ohio 44308, yadkins@summitoh.net; and upon Donald Collins, General Counsel & Assistant Executive Director, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Suite 1200, Columbus, Ohio 43215-4213, donald.collins@serb.state.oh.us; each by electronic mail this 29th day of March 2013.

/s/ Jonathan I. Klein
Fact-finder