

I. BACKGROUND INFORMATION:

This matter came on for hearing on November 8, 2013, before Dennis E. Minni, Esq., appointed as fact-finder pursuant to Ohio Revised Code Section 4117.14 and Ohio Administrative Code Section 4117-9-05. The hearing was conducted between Medina County (Public Defender's Office (hereafter the "Employer")), and Teamsters Local Union No. 293 (hereafter the "Union"), at 44 N. Broadway in Medina, Ohio. The Union is the sole and exclusive bargaining representative for this unit of full-time and regular part-time Assistant Public Defenders, who are licensed to practice law in the State of Ohio.

This collective bargaining agreement ("CBA") is an initial labor contract between these parties as the unit was certified by the SERB in April of 2013 (Case No.2012-REP-08-0085). The bargaining unit is currently comprised of five (5) Assistant Public Defenders. (Union Position Statement). Negotiations commenced on May 14, 2013 and there were seven (7) sessions altogether.

At the fact-finding hearing the parties reiterated their bargaining history, including the fact that their bargaining committees had reached a tentative agreement in August, 2013 but it was not ratified by the unit members triggering this fact-finding stage. Notable issues upon which the parties reached tentative accord were removal of the term "professional employees" from the Recognition clause (Art. 3), withdrawal of the Union's amended Management Rights language (Art. 4) refinement of CLE scheduling for mandatory seminars (Art. 23), specific

changes in the Workday And Workweek clause (Art. 24) covering end of the workday time, advising clerical employees when unit members needed to leave (and expected return to) the office on assignments and adding one (1) personal day off for employees assigned to attend Teen Court. Also, Overtime Pay (Art. 25) was deleted since recognizing the unit members as professional employees exempts them from minimum wage and overtime regulations per the FLSA.

It thus devolved that compensation rates (Art. 27) became the last open issue¹ herein. The Employer had negotiated 2.5% wage raises for 2013 and 2014 with its other organized employees some of whom are represented by Teamsters Local 293. Similar raises were granted to the County's non-union employees as well. Through mediation the parties considered Management's structuring a uniform wage schedule, a step plan and, by virtue of having three (3) or more years of service, four of the five unit members were to be adjusted upwards using the highest paid Assistant Public Defender rate from December of 2012. In order to fully implement the Employer's plan required lowering the start and first year wage rates by \$1.50 per hour, per step, in order to commence upon a uniform schedule with steps in accordance with the Union's preference for steps.

¹ Counsel for the Union explained that its formal position on the open issues needed to include the aforementioned Article 3.01 (Recognition), Article 4.01 (Management Rights), Article 23 (CLE and Required Travel), Article 24 (Workday & Workweek) in addition to the wage piece found in Article 27.01 to 27.04, inclusive, upon which the parties differ.

This is where the parties remain at odds; addressing the wage piece. At this juncture the Union seeks to bring the unit's wage rates closer to those for Medina's Assistant County Prosecutors while the County stresses that it adjusted this unit some 2.5% for 2012 and then per the terms of the tentative agreement, would add 2.5% raises in both 2013 and 2014, making that more than sufficient and internally comparable. The respective demands and rationale supporting them are set forth below in the parties' position statements, *infra*.

POSITION OF THE EMPLOYER:

Public Defenders do not have the same professional responsibilities as Assistant County Prosecutors according to the Employer. Prosecutors are "on call" at any time. They handle felony investigations and trials, search/arrest warrants, evidentiary issues and crime scene duties when requested. Public Defenders do not perform similar duties. Their scope of practice is on misdemeanors and matters in the Juvenile Court division. In most of the counties the Union uses as comparables Public Defenders do felony cases which carry greater responsibility due to the prospect of incarceration versus the plea bargains and fines normally present in the MCPDO's practice.

The Employer also stresses the wage pattern it has maintained in Medina County. In about a dozen bargaining units (three (3) represented by IBT 293) the 2013 and 2014 wage increases are set at 2.5% per each year. What is offered by Medina County herein is consistent with that pattern and the Union's demands must be evaluated by that yardstick.

POSITION OF THE UNION:

Medina County has had a 14.1% population growth between the 2000 and 2010 census reporting periods. Located contingent to Cuyahoga and Summit Counties, its median family income is \$62, 489.00 and it has a last-reported population of 172, 332 in 2010.

The Union seeks to bring Public Defenders up to the salary level of the lowest paid (around \$40,000) Assistant County Prosecutor in Medina County as of the start of 2013. Even so, this would still leave this unit's employees behind their Public Defender counterparts in Erie, Geauga, Stark and Wayne counties.

FACT-FINDING CRITERIA:

In the determination of the facts and recommendations contained herein in the absence of settlement reached by the parties, the fact-finder would have 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.

RECOMMENDATIONS OF THE FACT-FINDER:

Based upon the testimony, exhibits of record, timely filed written position statements and incorporating by reference into this Report and Recommendation all tentative agreements between the parties relative to the current negotiations, and any provision of the current collective bargaining agreement, if any² not otherwise modified during the fact-finding process, it is recommended as follows:

I think it is significant that the parties worked with a mediator to reach a tentative agreement and continued at the hearing with the undersigned to engage in mutual discussions over the non-wage proposals. In essence, they “fine-tuned” several non-economic provisions and paved the way for this unit to be a true unit of professional employees.

The crux of what is ripe for recommendation is Article 27.01, entitled **Salary Schedule**. Prior to giving my rationale on what the wage piece should be, I wish to go on record that I recommend these parties adopt what was tentatively agreed to and further refined in session with the undersigned. Specifically, there are four issues within the ambit of what I term tentatively agreed to matters or matters further negotiated during the fact-finding hearing.

² This being an initial CBA, there is no “current” agreement which could be subject to continuation.

These are removing the term “professional employees” from the Recognition clause (Art. 3); keeping the Management Rights (Art. 4) language the same as what was tentatively agreed to; modifying Art. 23.01 regarding notice for CLE training as set forth in the Employer’s Position Statement, the Workday And Workweek (Art. 24) language, also as modified in the Employer’s Position Statement dated November 22, 2013 and the elimination of Art. 25, entitled Overtime Pay made unnecessary by the adoption of Art. 24.05.

I have no indication that there was a lack of good faith bargaining, despite the parties not having reached a settlement on their compensation schedule. Given the general economic picture of the past five years or so plus this being a first labor contract for a relatively young employment entity *circa* January 1, 2004, rendered agreement on a wage schedule difficult. Thus the wage schedule was left to Fact-Finding.

To their credit, the representatives conducted matters in the best professional sense and remained cooperative with this Fact-Finder throughout.

While the Employer claims the Union’s wage demands represent an eleven (11%) per cent increment, I calculate it as being closer to ten (10%) in the aggregate. However, I am not persuaded on this record that there is a predicate for elevating Medina County’s Assistant Public Defenders to the start level of its Assistant County Prosecutors. I do not feel the Union’s approach on wages is justified. Credible evidence was adduced showing that this unit has legal responsibilities measurably less demanding and complex than prosecutorial legal staff and counterpart public defenders in counties offered as comparables. While this scope of responsibility might change in the future, targeting the entry level compensation of the prosecutors is not warranted in my view-especially given that this is a first CBA.

On balance, when the 2.5% adjustment was crafted for 2012 in order to facilitate moving to pay-steps that adjustment reflected the County-wide pattern which has not been denied this unit for either 2013 or 2014. Factoring in the “multiplier effect”, 2.5% for three (3) successive years is a fair and just pay raise in Ohio’s public sector at this time.

I realize that the Employer has noted this unit cannot be allowed to come to the table last and obtain more. While I am willing to consider recommending a pay structure beyond a particular “pattern”, there needs to be cogent evidence of the need for doing so. I see no compelling argument to support the Union’s wage demands. These employees are not playing “catch-up” after a wage freeze in 2012. With this first CBA the Union will have obtained a meaningful framework within which it may effectively represent this unit of attorneys regarding not only wages but all other terms and conditions of employment. The County has not maintained it lacks the ability to pay these employees. It has listened to all of the Union’s concerns and made concessions on some of the Union’s more critical demands; not to all of them-but neither does the County have to meet every demand whether economic or with regard to working language. Should this unit gain wage parity with the prosecutors there may be less

reason to continue maintaining a Public Defender entity. That would adversely impact the interest and welfare of the public, particularly the indigent and other citizens currently being served by the MCPDO. Public interest and welfare is one of the six (6) criteria for interest arbitration under ORC Ch. 4117.

Keeping the wage differential between Asst. Public Defenders and Asst. County Prosecutors to approximately 6% makes a very compelling argument. Adding some ten (10%) starting with 2013 on the heels of the 2.5% hike for 2012 is unwarranted at this point in time.

FINAL RECOMMENDATIONS:

Besides the tentatively agreed to provisions and those contract language matters adjusted in the fact-finding session set forth *supra*, I recommend the following wage piece retroactive to January 1, 2013 as required:

Article 27 SALARY SCHEDULE

27.01 Employees will be compensated as set forth in the following schedule:

- a) Commencing on the first pay period including January 1, 2013, all employees holding the position of Assistant Public Defender will be paid as follows:**

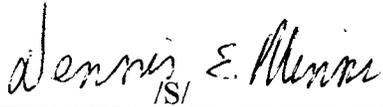
	<u>Hourly</u>	<u>Yearly</u>
Start	\$16.96	\$35,276.80
After 1 year	\$18.46	\$38,396.80
After 2 years	\$ 19.96	\$41,516.80

- b) Commencing on the first pay period including January 1, 2014, all employees holding the position of Assistant Public Defender will be paid as follows:**

	<u>Hourly</u>	<u>Yearly</u>
Start	\$17.38	\$36,150.40
After 1 year	\$18.92	\$39,353.60
After 2 years	\$20.46	\$42,556.80

CERTIFICATE OF SERVICE

Originals of this Fact-finding Report and Recommendations were served on John R. Doll, Esquire, Doll, Jansen, Ford & Rakay 111 W. First St., Suite 1100, Dayton, OH 45402-1156 (jdoll@djflawfirm.com); William F. Schmitz, Esq., Gary C. Johnson & Associates, LLC, Attorney for Employer, at 635 W. Lakeside Avenue, Suite 600, Cleveland, Ohio 44113 (wschmitz@jmslaw.net); and upon Donald Collins, General Counsel & Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213 (donald.collins@serb.state.oh.us), each by electronic mail this 17th day of February, 2014.

Handwritten signature of Dennis E. Minni in cursive script.

Dennis E. Minni, NAA, Fact-Finder