

RECEIVED ON MON, MARCH 31, 2014 @10:35 AM- SERB

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

)	
In the Matter of)	
Fact-Finding Between:)	
)	
)	
SUMMIT COUNTY)	Case No. 13-MED-09-1070
SHERIFF'S OFFICE)	
)	
)	
-and-)	
)	Jonathan I. Klein,
)	Fact-Finder
)	
FRATERNAL ORDER OF POLICE,)	
OHIO LABOR COUNCIL, INC.)	

FACT-FINDING REPORT
and
RECOMMENDATIONS

Appearances

For the Union:

Gwen Callender, Esq., General Counsel
Otto J. Holm, Jr., Staff Representative
Greg Taylor, Deputy
Danny Francis, Deputy
Stephen Krendick, Deputy
Jess Danner, Deputy
Chris Plance, Deputy

For the Employer:

James A. Budzik, Esq., Mansour
Gavin, Gerlack & Manos Co.,
LPA- Attorney for Employer
Yamini Adkins, Esq.- Deputy
Director Labor Relations, Summit
County Executive's Office
Greg Macko, Chief Deputy
Donna George- Assistant Director of
Administration/Personnel
Brian Nelson- Summit County
Director of Finance and Budget
Chip Clupper- Executive Assistant,
Summit County

Date of Issuance: March 31, 2014

I. PROCEDURAL BACKGROUND

This matter came on for hearing on March 13, 2014, 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 January 24, 2014. The hearing was conducted between the Summit County Sheriff's Office ("County" or "Employer"), and the Fraternal Order of Police, Ohio Labor Council, Inc. ("Union"), at the Akron-Canton Regional Food Bank located at 350 Opportunity Parkway, Akron, Ohio 44307. 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's Position Statement, Tab 1; Employer's Position Statement, Tab 1). At the time of the hearing, the bargaining unit was comprised of approximately 282 Deputy Sheriffs. (Union's Position Statement, at 3; Employer's Position Statement, at 2).

The following articles of the collective bargaining agreement remained *unopened* by the parties during negotiations: Article 1- Agreement/Purpose; Article 3- Suspension of Agreement in Emergency; Article 4- Non-Discrimination; Article 5- Recognition; Article 6- FOP Security; Article 7- FOP Representation; Article 8- Management Rights; Article 12- Labor/Management Committee; Article 13- Bulletin Boards; Article 14- Probationary Periods; Article 16- Layoff and Recall; Article 19- Court Time/Call-In Pay; Article 24- Funeral Leave; Article 28- Expenses; Article 29- Training; Article 30- Severance Pay; Article 31- No Strike; Article 34- Substance Abuse Screening. (Union's Position Statement, at 3).

The parties reached tentative agreements regarding the following articles contained in the collective bargaining agreement: Article 2- Conflict with Law and Severability; Article 9- Grievance Procedure; Article 10- Discipline; Article 11- Personnel Files; Article 15-Seniority; Article 17- Hours of Work and Overtime; Article 21- Holidays; Article 22- Vacations; Article 23- Sick Leave; Article 25- Injury Leave; Article 26- Leaves of Absence; Article 27- Uniforms and Equipment; Article 32- Shift and Day-Off Preference; Article 33 - Vacancies; Article 35- Trading Time; Article 36- Duration. (Union's Position Statement, at 3 - 4; Union's Position Statement, Tab 3).

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

Issue 1:	Article 18 - Wages and Compensation
Issue 2:	Article 20 - Insurances
Issue 3:	Article 33 - Vacancies

The fact-finder incorporates by reference into this Report and Recommendations any provision of the current collective bargaining agreement not otherwise modified during negotiations, as well as the abovementioned tentative agreements. In making the recommendations which follow, 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 RECOMMENDATIONS

Introduction

As set forth by this fact-finder in a previous Fact-Finding Report and Recommendations involving these same parties issued on March 29, 2013, the estimated population of Summit County 16 years old and over was approximately 433,062 in 2011, according to the United States

SERB Case No. 13-MED-09-1070

Census Bureau. 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's Position Statement, Tab 4; Employer's Position Statement, Tab 3). The per capita income of Akron residents was \$40,011.00, according to the Bureau of Economic Analysis, and the existing home price of real estate in Akron in 2013 was \$112,200.00 as set forth in Moody's Analytics, February 2013. (Employer's Position Statement, Tab 2). The record establishes that the unemployment rate in Summit County in August 2013 was 6.8 percent. (Union's Position Statement, Tab 10).

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 increases; the cap on health insurance premiums paid by bargaining unit members; and the temporary assignment of bargaining unit employees to vacant positions. Evidence was also introduced regarding the pay rates received by deputies and corrections officers employed by various 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

-
1. Generally, no two jurisdictions used for comparability purposes are identical in all respects. However, the structure and funding of other sheriff offices in counties of comparable size are the most useful. (Summit County Sheriff's Office and Fraternal Order of Police, Fact-Finding Report and Recommendations, Jonathan I. Klein, March 29, 2013).

Issue 1: Article 18 - Wages and Compensation

Position of the Union

The Union points out that 30 full-time deputies and 15 intermittent deputies were laid off in 2011. Additionally, bargaining unit employees received no wage rate increase in 2011, and agreed to a \$600.00 reduction in their clothing allowance that year in order to assist the County in its economic struggles. The County also implemented a new health care plan in 2011 which further reduced the take home pay of bargaining unit employees. In 2012, bargaining unit employees once again did not receive a wage rate increase, and they also agreed to additional concessions which further reduced their take home pay by \$1,200.00. The County also “. . . increased the cost of the employees’ share of the health insurance premium by contracting for an increased cost in the overall health insurance premium.” (Union’s Position Statement, at 4). During the 2013 wage re-opener negotiations, the Employer requested a two percent wage rate reduction despite the fact that the County’s finances were steadily improving. The Union notes that this Fact-finder recommended a 1.5% increase in wages, which recommendation was accepted by both parties.

The Union maintains that the Employer can financially afford the requested wage rate increases under the new contract. According to the Union, the Employer “. . . must simply prioritize these expenditures and start valuing its best resource for continued growth; its human resource.” (Union’s Position Statement, at 5). It notes that the County relies on this unit to provide a safe and secure place for its citizens. The Union asserts that “[t]here is no group of

employees in the same category as this bargaining unit of Deputy Sheriffs.” (Union’s Position Statement, at 5).

The record establishes that the salaries afforded Summit County deputies fall below all but one of the comparable jurisdictions. The Union asserts that “[f]or a County that is experiencing an increase in revenues and did better financially than expected in 2013 it is incumbent upon the Employer to properly compensate its employees.” (Union’s Position Statement, at 5). The Employer’s proposal that there should be no wage rate increases is indefensible. It maintains that the only way to maintain a quality work force is to pay the bargaining unit employees commensurate with their professional responsibilities. The Union requests that the Fact-Finder “take a step in the right direction” by recommending its proposed wage rate increases of 3% effective January 1, 2014; 3% effective January 1, 2015; and 4% effective January 1, 2016.

During the fact-finding hearing, the Union reiterated its position that “the only way to compensate the bargaining unit members is with a wage increase.” It points out that these employees should be appropriately compensated because they are “going out there and must use deadly force or take down prisoners.” The Union notes that the bargaining unit employees received zero percent wage increases in both 2011 and 2012, in addition to making various concessions during that period as well. According to the Union, the County can afford the proposed raises and there is no inability to pay. The County must simply choose to prioritize its human resources.

Based upon the financial data, the County’s revenue has increased by approximately

SERB Case No. 13-MED-09-1070

3.8% over the past five years, and sales tax increased over 4% last year. (Union's Position Statement, Tab 5). According to the Union, "sales tax is the biggest piece of the budget picture," and "everything other than local government funds is increasing." The Union asserts that "even with a 1.50% wage increase the deputies are still the second lowest paid deputies among the comps with only Lucas County being lower." (Union's Position Statement, Tab 8). The Union notes that "while a large number [of the bargaining unit employees] work in the jail, they can be pulled out and are still classified as deputy sheriffs." Therefore, the bargaining unit employees should not be treated as corrections officers. With respect to pattern bargaining, the Union points out that the Board of Election employees received a 3% wage rate increase, and employees in the Engineer's Office received a 3% increase in 2011 while the deputies took a cut.² Additionally, three top administrators with the County received 10% wage increases. Regarding the corrections officer issue raised by the Employer, the Union argues that Hamilton County corrections officers "must be certified as corrections officers and do not go out and work the road."

Position of the Employer

The Employer proposes a wage freeze for the term of the collective bargaining agreement for the following reasons. Initially, it points out that Summit County is unique and that its self-sufficient charter form of government stands separate and apart from almost all other counties in

-
2. At the hearing, the Employer indicated that the Board of Election is a non-chartered office comprised of non-bargaining unit employees. Additionally, employees in this office had not received a wage rate increase since 2008.

SERB Case No. 13-MED-09-1070

the State of Ohio. However, the County's rules inhibit its control over generating revenue. The Employer notes that the County is reliant upon six major revenue sources which fluctuate with the economy: sales tax; State of Ohio allocations of local government funds; property transfer tax; interest earnings; property tax; and the casino tax. The County general fund does not maintain separate revenue generating programs, and local funding for governmental entities relies significantly on the County sales tax as the primary source of funding. As it concerns the sales tax, the Employer notes that "[w]hile all other Ohio Counties are able to only go to their local board of commissioners or legislative body to pass an increase in county sales tax, *Summit County is the only county that is required to place this levy on the ballot for vote.*" (Employer's Position Statement, at 2)(emphasis in original). As such, it is no surprise that the tax rate of 6.75% in Summit County is one of the lowest in the State of Ohio. In addition to being in the "bottom rung" of Ohio counties regarding its sales tax rate, it is more significant that Summit County's share of the sales tax is one of the lowest in the State of Ohio as .50 goes to the County and .50 to the Metro Transit Authority (MTA).

This fact-finder indicated in his decision concerning the wage reopener in 2013 that the Employer did not point to any one specific county as comparable. However, ". . . the reason the Employer cannot acknowledge any one County as a comparable is because of the very reasons of the Employer's position that the County is unique and stands alone." (Employer's Position Statement, at 3). The Employer also notes that the County has historically relied on a practice of pattern bargaining with all of its bargaining units. It points out that the 1.5% wage increase recommended by this fact-finder in the 2013 wage re-opener was applied to non-bargaining unit

SERB Case No. 13-MED-09-1070

employees and accepted by all other County bargaining units except the AFSCME bargaining unit of the Summit County Engineer's Office. The fact-finder rejected AFSCME's position and relied upon the long-standing practice of pattern bargaining in Summit County.

The current cycle of contract negotiations in the County commenced with the Summit County Fiscal Office. The Employer points out that while the Fiscal Office shares some of its revenue from the General Fund it also receives revenue from other sources. In contrast, the Sheriff's Office relies solely on the County's General Fund. The County Fiscal Office proceeded to fact-finding and the fact-finder recommended 1% wage increases for each year of the contract, 2013 - 2015. The fact-finder's decision was subsequently ratified by AFSCME and accepted by the County. (Employer's Position Statement, Tab 4). The Employer argues that the Sheriff's Office has specific financial problems that impede its ability to pay even a 1% wage rate increase, however, it recognizes the principle related to equity and labor peace among the bargaining units.

According to the Employer, it compensates its employees fairly as compared to the Counties noted by the fact-finder in his previous report concerning the 2013 wage re-opener. The Employer asserts that "[w]hen comparing Summit County Deputies with other Counties, it is important to consider that most recognize there [sic] jail employees as 'Corrections Officer' while the enforcement and civil officers are recognized as Enforcement Officers/Deputy Sheriffs. Why? Because the enforcement employees actually serve more roles within the Sheriff's office under their Deputy job description." (Employer's Position Statement, at 4). In contrast, the Summit County jail deputies are assigned to specific jobs within the jail. Although bargaining

SERB Case No. 13-MED-09-1070

unit members insist on maintaining a specific job function and file grievances if there is any deviation from that function, they selectively compare themselves to enforcement deputy sheriffs for purposes of wages. According to the Employer, “. . . this bargaining unit continues to make the case for their title really being ‘Corrections Officers.’” As such, they are among the highest paid corrections officers in the State of Ohio.

The Employer also maintains that it is still affected by the aftermath of the recession, and it continues to operate in a deficit. It notes that the budget stabilization fund has been spent down from \$55 million in 2006 to approximately \$25 million today. Additionally, there will be a 4% reduction in local government funding in 2015, as well as one extra pay period that year. The extra pay period will result in an additional 4% reduction in the County budget. The Employer points out that revenues dropped from \$111 million in 2008 to approximately \$100 million in 2013, and the revenue in 2014 is projected to be approximately \$101 million. Furthermore, Moody’s has concluded that Akron’s recovery has taken a step back. Summit County has unfunded capital needs that have been in a hold status for some time.

The Employer has taken substantial actions to deal with the County’s declining revenues, such as implementing a County-wide hiring freeze; requiring a reduction in the budgets of all County office holders; offering incentive-based voluntary separation plans; disapproving COLA increases for non-bargaining employees; implementing cost savings days; and layoffs of bargaining unit members when the FOP did not accept the cost savings days. It is a priority of the Employer to maintain operational levels and a wage increase of 1% would lead to further

deficits and have a significant negative effect on the day-to-day operations of the Sheriff's Office. Therefore, the Employer proposes no pay increases for each year of the contract.

Brian Nelson, the County's Director of Finance, testified that "things started going down in 2008," and the County has been "spending down its reserve balances over the past five years." According to Nelson, "overall revenues have declined because of cuts in state government funding and property valuation reductions." He also indicated that expenditures will outpace revenues in 2014. Nelson acknowledged that sales tax revenue "dropped and then went back up in 2012;" however, property transfer tax revenue was down during the first two months of 2014. He noted that the local government fund dropped from \$15.3 million in 2001 to \$5.5 million last year, and he believes that there will be another reduction in this revenue by the State of Ohio. Nelson asserted that "the State budgets are going up on the backs of local government." He also indicated that the County must maintain a 17.3% minimum general fund reserve balance. Nevertheless, there will be "a point in 2014 where [the County] will be getting off reserve spending because revenues will sustain expenditures." In fact, Nelson confirmed that the County will be "back to a surplus in 2016."

Nelson testified that his revenue assumptions include a 2.2% increase in sales tax revenue, a property tax growth of 5%, as well as a modest increase in conveyance tax, and flat casino tax revenues. He also indicated that there will be a 5% increase in health care costs. According to Nelson, "a lot of the capital budget projects will have to occur," including an upgrade to the radio system. He claimed that "the ability of taxpayers to support the government the same as in 2007 does not exist anymore, and employment has not recovered." Nelson noted

SERB Case No. 13-MED-09-1070

that Summit County is the only county in Ohio that cannot increase sales tax unless it is approved by the voters. He also pointed out that sales tax is the largest revenue producer for the County, and its sale tax rate is the lowest in the state.

On cross-examination, Nelson acknowledged that his sales tax forecast is conservative, and he confirmed that sales tax revenue increased by over 4% last year although he had estimated only a 2.2% increase. Nelson further stated that he estimated sales tax revenue to increase by 2.2% once again this year. He testified that sales tax revenue is up approximately 5% during the first two months of 2014, and conveyance tax revenue is also up approximately 6%. Nelson confirmed that the local government fund accounts for 5% of the total budget, and it is expected to decrease by “a couple thousand dollars” next year. However, he indicated that a decrease in the local government fund is “offset by an increase of 1% in sales tax.” Specifically, a 1% increase in sales tax results in approximately \$400,000.00 in revenue. Nelson reiterated that “the sales tax trend is going back up, but it is uncertain.” According to Nelson, a 2012 executive order established a minimum general fund reserve of 17.3%, which at the present time is equal to approximately \$17.3 million. He noted that the budget stabilization fund is essentially a carryover fund, however, spending below the 17.3% level will impact the County’s ability to provide services.

The Employer reiterated that the fact-finder “must look at the difference between the wages afforded corrections officers and deputies. It points out that the Sheriff’s Office has a corrections division and an operations division, and the fact-finder should examine the work that the bargaining unit members are performing. The Employer maintains that the bargaining unit

members are not performing all of the duties listed in the job description of a deputy. (Employer's Position Statement, Tab 8). The record establishes that bargaining unit members who are corrections deputies receive higher wage rates than their counterparts in Lucas, Montgomery, Hamilton and Cuyahoga counties. In sum, the County argues it has a "limited ability to pay" any wage increases.

Final Recommendation

The fact-finder recommends the following wage rate increases for the bargaining unit employees:

Section 18.1 Effective January 1, 2014, the base rate for all bargaining unit members in each pay range shall increase by 1.50%. Effective on January 1, 2015, the base rate for all bargaining unit members in each pay range shall increase by 2%. Effective January 1, 2016, the base rate for all bargaining unit members in each pay range shall increase by 2.25%.

The fact-finder determines that the Employer presented insufficient evidence to substantiate its position that it has a "very limited ability to pay," and that a wage freeze is necessary in order to maintain current operations. In contrast, the Union has demonstrated that a wage rate increase for bargaining unit members is both reasonable and warranted based upon the following facts and circumstances.

The record establishes that the Employer expects General Fund revenues to increase from \$100,195,625 in 2013 to \$101,411,708 in 2014. (Employer's Position Statement, Tab 2- p.2). Additionally, General Fund revenues are forecasted to increase in both 2015 and 2016.

(Employer's Position Statement, Tab 2- p.10). Summit County's 2014 Operating Budget indicates that "2013 will mark the fourth consecutive year of sales tax growth over 4%."

(Union's Position Statement, Tab 6). Moreover, "[p]roperty conveyance tax collections are up 18.6% for the first nine months of 2013 while recording fees have increased at a 13.6% rate.

These collection rates mark the strongest all around increase in revenue growth the County has seen in this area since 2005." (Union's Position Statement, Tab 6). The fact-finder also notes

that 2013 was the first year that Ohio counties began receiving casino tax revenue, and the Employer estimates that revenue from this source will be \$3,375,718 in 2014, \$3,556,416 in 2015, and \$3,556,416 in 2016. (Employer's Position Statement, Tab 2- p.10).

The record indicates that sales tax is the largest general fund revenue source. In fact, it comprises nearly 40% of the general fund. The Employer forecasts an increase in sales tax revenue from \$39,450,709 in 2013 to \$42,112,158 in 2016. (Employer's Position Statement, Tab 2- p.10). The County's forecast of only a 2.2% increase in sales tax is extremely conservative in light of the financial data available from the first two months of 2014 and the fact that sales tax revenues increased by over 4% last year. At the hearing, Finance Director Nelson confirmed that sales tax revenues are, in fact, "trending up." Therefore, although the Employer pointed out that the County has one of the lowest sales tax rates in the State of Ohio, and that it would be very difficult to raise the current tax rate due to restrictions in the County's charter form of government, the sales tax revenue has been increasing and is projected to continuing doing so during the term of the new contract. (Employer's Position Statement, Tab 2).

SERB Case No. 13-MED-09-1070

Although the General Fund revenue is expected to increase each year in 2014 through 2016, the record reveals that expenditures are also expected to increase during this same period. However, General Fund revenues will still outpace expenditures in 2015 and 2016, and will only be slightly less during the current year. (Employer's Position Statement, Tab 8). Furthermore, the Budget Stabilization Fund Balance will remain steady at \$25,325,502 through 2016. As previously noted by this fact-finder in the Fact-Finding Report and Recommendations regarding the 2013 wage re-opener, monies in the Budget Stabilization Fund are unencumbered and otherwise available to fund wages. The Employer presented insufficient evidence that it is necessary to retain \$25,325,502 in the Budget Stabilization Fund in order to maintain operations and provide services to Summit County residents at current levels. In fact, the evidence establishes that the County is only required to maintain a minimum general fund reserve balance of 17.3%, which is approximately \$17.3 million under the current financial conditions.

As discussed above, it appears to the fact-finder that sales tax revenue will be substantially greater than anticipated by the County. Finance Director Nelson indicated that a 1% increase in sales tax results in approximately \$400,000.00 of additional revenue. Such an increase in sales tax will more than offset a 4% reduction in local government funding in 2015. Additionally, the fact-finder determines that there is insufficient evidence regarding which capital projects will actually commence within the next several years, and the precise share of the costs for the new regional radio system allocated by the County. At any rate, the fact-finder notes that Nelson acknowledged that the County will have a surplus in 2016. Under an improved financial forecast the fact-finder concludes that it is not unreasonable to expect the Employer to tap into

SERB Case No. 13-MED-09-1070

the Budget Stabilization Fund, if necessary, in order to afford bargaining unit employees who endured a wage freeze during two of the last three years, higher medical insurance expenses and other cost increases, with a modest wage rate increase during the term of the new contract.

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 in 2013 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's Position Statement, Tab 8). The top wage rates in 2013 for deputies employed at comparable jurisdictions are, as follows:

Franklin County	\$76,794.64
Montgomery County	\$60,881.60
Hamilton County	\$57,676.32
Cuyahoga County	\$55,577.60
Lucas County	\$47,340.80

(Union's Position Statement, Tab 8).

As indicated above, the bargaining unit employees are paid a lower wage rate than all of the comparable jurisdictions except those employed with the Lucas County Sheriff's Office. The fact-finder notes that according to SERB data, Cuyahoga County deputies are scheduled to receive a wage rate increase of 2% in 2014 and deputies employed by the Hamilton County Sheriff's Office will receive a wage rate increase of 3% in 2014. An increase in the wage rate of Summit County Sheriff's Office deputies is reasonable in order to bring their wages more in line with other deputies at comparable jurisdictions.

SERB Case No. 13-MED-09-1070

The Employer argues that it is appropriate to compare the wage rates afforded the bargaining unit deputies to those received by corrections officers employed by the aforementioned comparable jurisdictions. The fact-finder is not persuaded by this argument for several reasons. First, the bargaining unit employees are clearly classified as deputy sheriffs under Article 5 of the collective bargaining agreement. While deputies may perform correction work, they are not classified as corrections officers, and, unlike other jurisdictions, the parties themselves have agreed that the terms and conditions of employment covering deputy sheriffs will be governed by one collective bargaining agreement regardless of the location of their bid assignments. Further, the collective bargaining agreement does not set forth different wage rates for deputy sheriffs in the corrections division, as opposed to deputy sheriffs assigned to any other divisions within the Sheriff's Office. Additionally, as discussed herein, deputy sheriffs employed by the County are required to perform numerous duties, both within the jail and outside.

The fact-finder concludes that a wage rate increase is warranted given the fact that the economy has continued to improve over the past several years and the Employer has substantial carryover reserves available to fund a modest wage rate increase during the three-year term of the contract. As noted by this fact-finder in the report and recommendations issued last year regarding the wage re-opener, a wage rate increase is further justified upon evidence of prior concessions by bargaining unit employees, the increase in health care costs, and the undisputed conditions of understaffing due to layoffs and lack of hiring, including reduced employee morale. The fact-finder also notes that Summit County Children Services and the Communications Workers of America, Local 4546 agreed in 2012 to a two percent wage rate increase in 2014.

For each of the aforementioned reasons, the fact-finder recommends a 1.50% wage increase in 2014; 2% wage increase in 2015; and a 2.25% wage increase in 2016, as set forth above.

Issue 2: Article 20 - Insurances

Position of the Employer

Section 20.2 of the collective bargaining agreement provides, as follows:

All employees who receive benefits will pay an amount not to exceed ten percent (10%) of the premium costs through payroll deductions. The costs for the self-insured plan will not exceed seventy-five dollars (\$75.00) per pay in 2011, eighty-five dollars (\$85.00) per pay in 2012, and eighty-five dollars (\$85.00) per pay in 2013. For all plans, employees will be subject to the prescription co-payments set forth in the plan.

The Employer proposes to eliminate the “cap” on employee premium payments contained in Section 20.2 of the collective bargaining agreement. It points out that every other contract with County employees except those represented by the Union are subject to a flat 10% premium co-payment without a stated maximum or cap. Furthermore, the Summit County Sheriff does not have the legal ability to negotiate health insurance with carriers or providers, and the bargaining unit employees receive the same benefits and plans which are provided to all other County employees. Therefore, bargaining unit members should pay the same amount towards their health insurance premiums as all other County employees. It asserts that “[e]xceeding the caps in the contract would again negatively impact the Sheriff’s budget inasmuch as the budget would

have to absorb the difference in the increase of the excess premium payments.” (Employer’s Position Statement, at 7).

Under the Employer’s proposal, bargaining unit members would pay the exact premium payments as all other County employees. It notes that the need to have uniformity in contractual terms for county agencies was set forth in *Ohio Patrolmen’s Benevolent Association and Portage County Sheriff*, SERB Case No. 05-MED-10-21084 (Charles Z. Adamson, March 30, 2007). The record establishes that employee premium co-payments are approaching the listed contractual amounts as the cost of insurance increased approximately 4% in 2014. However, the County cannot anticipate the cost of health insurance in future years. “Ultimately, if needed, the Employer simply won’t offer deputies plans that exceed the caps in the contract as the Employer does not intend to pay the difference in this cost which would be a higher cost than for all other County employees.” (Employer’s Position Statement, at 7). Therefore, it behooves the Union to remove the caps contained in Section 20.2 of the contract. The Employer urges the fact-finder to recommend the following language:

Section 20.2 All employees who receive benefits will pay an amount not to exceed ten percent (10%) of the premium costs through payroll deduction. For all plans, employees will be subject to the prescription co-payments set forth in the plan.

The Employer reiterated its desire at the hearing that there should be consistency among all County employees regarding the issue of health insurance. It notes that the Sheriff’s Office cannot negotiate its own health care plan, but instead, must be done at the County level through

SERB Case No. 13-MED-09-1070

council. The Employer maintains that “health insurance is universal and all employees should be subject to the same plan.” It confirmed that the cost of health insurance increased 4% last year, and “they have been doing pretty good with the increases.” The Employer questions why the Union should be the only bargaining unit with a cap on its health insurance premiums, and it indicated that there is no guarantee that it could maintain the current health insurance options.

Position of the Union

The Employer has proposed to remove the cap on the amount that bargaining unit members pay towards the cost of their health insurance premiums, which amount is currently set forth in Section 20.2 of the collective bargaining agreement. However, the Employer has presented no legitimate reasons for removing the cap of \$85.00 per pay. According to the Union, “[t]his cap protects the bargaining unit [members from what could be a significant loss in salary and benefits were the Employer [to] fail to identify and promulgate health insurance initiatives that reduce costs to the Employer for its plan.” (Union’s Position Statement, at 7). It points out that the highest bi-weekly premium paid by bargaining unit employees is presently \$68.97, and the Employer predicts increases in insurance costs of 5% in 2015 and 5% in 2016. Therefore, a bargaining unit employee paying \$68.97 per pay for the PPO Plus family plan in 2014 would pay \$72.42 in 2015 and \$76.01 in 2016. As such, “[i]n both scenarios the employee is still under the cap of \$85.00.” (Union Position Statement, at 7).

The Employer’s only explanation for proposing to remove the cap is that other employees in Summit County do not have a cap. The Union notes that the Employer has not claimed that

there are any financial or administrative issues with the cap which would give the Fact-finder a reason to recommend the proposed modification to the current contract language. “In the absence of any valid and compelling reason to change the language the FOP urges this Arbitrator to maintain the current contract language of Article/Section 20.2.” (Union’s Position Statement, at 7).

At the hearing, the Union acknowledged that the Sheriff’s Office cannot negotiate its own health insurance, and “that is why it needs the cap.” The Union also notes that its bargaining unit members already pay the same amount for health insurance as every other County employee. It asserts that the cap on health insurance premiums is a “comfortable protection for employees versus costs.” Furthermore, there is no administrative or financial reason to delete the cap. Even if there is a 5% increase in health insurance costs in 2015 and 2016 respectively, the cap amount is not reached. The Union points out that it is “at the mercy of the County because they contract with the health insurance company,” and the “cap is a critical protection for bargaining unit members against a rise in cost.” In the event that a change is needed regarding the cap, the Union indicates that it “should only be a \$5.00 increase or something reasonable.”

Final Recommendation

Based upon the evidence of record presented in this case, the fact-finder recommends that the cap on premium costs paid by bargaining unit members should not be removed from Article 20 of the collective bargaining agreement. The arbitrator notes that while some internal bargaining units do not have caps on the health insurance premiums paid by their bargaining unit

SERB Case No. 13-MED-09-1070

employees, both this Union and the Summit County Sheriff's Supervisors' Association have negotiated this contractual benefit on behalf of their respective members. (Employer's Position Statement 7).

The Employer presented no administrative or financial reasons for its desire to remove the health insurance premium cap language from the contract. The Employer simply relies upon the argument of uniformity with other County employees regarding health insurance. It argues that the bargaining unit members should pay the same amount towards their health insurance premiums as all other County employees. The evidence presented in this case establishes that the deputies presently pay the same amount for their health insurance premiums as every other County employee due to the fact that the contractual cap amount has not been reached. The record reveals that even under the Employer's projected 5% increases in the cost of health insurance in 2015 and 2016 respectively, the 10% premium contribution paid by bargaining unit members will still be under the cap amount. According to the Union's calculations, a bargaining unit employee will pay \$76.01 per pay for his or her premium cost under the PPO Plus family plan.

As discussed above, complete uniformity regarding cap language is lacking in the County's collective bargaining agreements. Additionally, the arbitrator notes that the collective bargaining agreements for the Franklin County and Montgomery County Sheriff's Offices contain language which specify an amount certain that comparable employees within those jurisdictions pay for their health insurance premiums. (Employer's Position Statement, Tab 7). The contractual cap on health insurance premiums paid by bargaining unit employees affords

them some protection against drastic increases in costs over which they have very limited control. The Employer presented insufficient evidence to substantiate the removal of this cap from the collective bargaining agreement.

However, the fact-finder recognizes that although health care costs may be controlled to a certain extent by the Employer, it is often somewhat difficult to predict the precise actions of health insurers (or the self-insured) in response to rising medical costs. Therefore, the fact-finder determines that an increase in the cap is reasonable to afford the Employer some cushion over and above its current forecast regarding increases in health insurance costs during the term of the contract, and still provide bargaining unit employees with a maximum premium contribution. Accordingly, the fact-finder recommends that Section 20.2 of the collective bargaining agreement provide, as follows:

Section 20.2 All employees who receive benefits will pay an amount not to exceed ten percent (10%) of the premium costs through payroll deductions. The costs for the self-insured plan will not exceed eighty-five dollars (\$85.00) per pay in 2014, ninety dollars (\$90.00) per pay in 2015, and ninety-five dollars (\$95.00) per pay in 2016. For all plans, employees will be subject to the prescription co-payments set forth in the plan.

Issue 3: Article 33 - Vacancies

Position of the Employer

Section 33.7 of the collective bargaining agreement currently provides: “The Employer may temporarily transfer an employee for a period not to exceed ninety (90) working days.

SERB Case No. 13-MED-09-1070

When the Employer determines (with sufficient notice) that it is necessary to make a temporary reassignment[,] the Employer shall select employees pursuant to the criteria established under Article 33.1.” The Employer claims that a major obstruction to its operations is the restriction on management’s ability to move deputies to other assignments within the job description of a Deputy Sheriff. The current practice is to post for the various assignments of a deputy’s duties. “Once selected for a position/duty/assignment through the vacancy bid process under Article 33 of the Collective Bargaining Agreement, the employee remains in that position and cannot be moved into other positions except in very limited circumstances dictated by the contract.” (Employer’s Position Statement, at 8). One such circumstance is the temporary transfer of an employee for a period not to exceed 90 work days. However, even the temporary transfer of an employee is subject to the vacancy criteria set forth in the contract, and requires a “full blown posting, bid and selection process.” The Employer asserts that by the time this process is completed the operational purpose for the transfer has most likely expired.

The Employer maintains that the required analysis for temporary assignments is overly excessive and burdensome on management. Furthermore, the vacancy criteria was intended for actual vacancies and not temporary assignments. However, “. . . the interpretation of the CBA has morphed into the imposition of a strenuous and drawn out vacancy bidding process.” (Employer’s Position Statement, at 8). This process has been challenged by employees through the grievance and arbitration procedure, and a recent arbitration award “. . . set forth criteria that permitted the Employer to move deputies based on the nature of the need in emergency and non-emergency cases.” (Employer’s Position Statement, at 8). The Employer acknowledges that

while the arbitration award (Stein Award) has provided some relief regarding this contractual restriction, it is unclear how it would be applied in conjunction with the language contained in Section 33.7 of the contract.

The record establishes that the Employer has also been sued in federal court in connection with utilizing female employees to handle specific matters that are not part of their job bid assignment. A special consultant from the Department of Justice (DOJ) investigated the issue and recommended that “collapsing bid units into one unit for the entire corrections division will eliminate the need to identify gender restricted posts.” (Employer’s Position Statement, at 8). The Employer maintains that its ability to utilize deputies interchangeably in various assignments within a division will provide both the necessary flexibility for management and the maximum opportunity for deputies to work within the various functions of a deputy sheriff job.

It is difficult to maintain operational efficiency and safety needs under the current contract language. Accordingly, the Employer requests that Article 33.7 of the collective bargaining agreement should be modified to provide as follows:

Section 33.7 The Employer may temporarily transfer an employee within the Agency based on operational need.

During the fact-finding hearing, the Employer emphasized its “need to get rid of the restrictiveness contained in the language” pertaining to the posting of vacancies. Frequently, there is no longer a need after a position has been posted. The Employer maintains that it needs flexibility in the workplace regarding temporary transfers. It points out that the “Union says a deputy is a deputy, is a deputy.” Therefore, the Sheriff’s Office “should be able to move around

deputies if they want the same pay.” The Employer recognized the need for a duration regarding the transfer, and it “wants the language in the Stein award cleaned up.”

Position of the Union

According to the Union, “[t]he Employer seeks to add language to Section 33.1 by adding a Section C. Section C would add language that would allow the Employer to move employees at random throughout divisions without regard to the position the employees bid on and were awarded through a posting procedure.” (Union’s Position Statement, at 8). The Union maintains that this unfettered discretion to transfer bargaining unit employees is problematic for several reasons. First, it points out that the Employer is currently under a consent decree regarding the assignment of female employees within the jail division. This consent decree mandates a staffing plan for the jail. However, “[t]he staffing plan is still in the drafting stages and has yet to be resolved to the satisfaction of the Department of Justice.” (Union’s Position Statement, at 8). Second, the Union asserts that the Employer’s unfettered discretion to reassign employees will result in allegations of disparate treatment by bargaining unit members “. . . who would inevitably end up getting moved for nefarious purposes and not legitimate operational needs.” (Union’s Position Statement, at 8).

The Employer may argue that its proposal is the result of the filing of several grievances by deputies who were reassigned. It notes that those grievances were taken to arbitration and the parties now have a decision by an arbitrator which attempts to specify when employees may be moved. The Union argues “. . . that if the Employer’s proposed language was inserted into the

SERB Case No. 13-MED-09-1070

Agreement it would not adequately remedy the Employer's need to cover slots that are left open due to call offs and would merely result in far more grievances being filed." (Union's Position Statement, at 8). Therefore, the Union requests that the fact-finder recommend retaining the current language in Article 33 of the new collective bargaining agreement.

The Union confirmed that this issue has not been arbitrated since the Stein Award in 2012, and the number of grievances regarding this matter has also decreased. (Employer's Position Statement, Tab 8). According to the Union, the grievances filed have involved an employee "not getting a position." It points out that the current contract language contains a 90-day limit regarding temporary transfers. The Union asserts that the Employer's proposed language "would eliminate Article 33 in bidding for jobs," and render that contract provision moot. It maintains that the current language is necessary in order to "curb arbitrary and capricious" transfers and favoritism by the Employer. Additionally, this contract provision is subject to the terms of a federal court decree.

Final Recommendation

Based upon the testimony presented at hearing, the fact-finder recognizes that the language contained in Section 33.7 of the contract is clearly inadequate for addressing those situations where an immediate need exists to fill a position. Such immediate needs may be due to emergencies or other exigent circumstances, as well as unexpected absences or call-offs by bargaining unit members. As pointed out by the Employer, the language contained in Section 33.1 of the contract, which is referenced by Section 33.7 in connection with the selection of

SERB Case No. 13-MED-09-1070

temporary transfers, appears to be suited for vacancies which are either permanent or long-term in nature. The Union does not dispute the Employer's position that the need to fill a particular vacancy may no longer exist by the time it is posted for seven calendar days pursuant to Section 33.1 of the contract.

As it concerns the Union's argument that the Employer would be able to transfer employees to a different division without regard to their bid assignment under its proposed language, the fact-finder notes that the job duties of a deputy sheriff are quite extensive and include numerous tasks such as: "Patrols assigned County area, . . . Maintains security and discipline of inmates in jail facility . . . Conducts investigations and gathers evidence . . . Serves legal documents on parties as directed by the court . . . makes arrests pursuant to outstanding warrants and violations of the law; . . ." (Employer's Position Statement, Tab 8). The Union itself acknowledges that bargaining unit employees assigned to work in the jail "may be pulled out" and instructed to perform other duties by the Employer. Therefore, they should not be treated as corrections officers for wage comparison purposes as argued by the Employer. As asserted by the Union, these employees are deputy sheriffs. As previously discussed, the fact-finder agrees with the Union's position that bargaining unit employees are classified as deputy sheriffs regardless of which division they are assigned. Therefore, bargaining unit employees should fully expect that they may be assigned to any and all duties of a deputy sheriff for which they are qualified when circumstances require.

The Union presented insufficient evidence that the current contract language is necessary to curb arbitrary and/or capricious transfers, or favoritism by the Employer. Although the

contract language initially proposed by the Employer in its position statement contained no limitation regarding the duration of a temporary transfer, at hearing the Employer recognized the need for such a provision. The fact-finder determines, based upon the record, that the 90 working day limitation for temporary transfers set forth in the current contract is neither excessive nor unreasonable, and neither party expressed any concerns to the contrary at the hearing.

The rights of employees as a matter of practice to bid on assignments, shifts and days off is contained in the Stein Award involving the grievants Krendrick and Reichenbach. Arbitrator Stein attempts in his decision to find a balance between the Employer's right to make assignments and the bargaining unit employees' desire for stability of assignments within their division and bids. He also recognized the necessity for flexibility in filling assignments both predicted and unpredicted.

A fact-finder, as distinguished from Arbitrator Stein's role as an arbitrator, is to recommend, rather than strictly apply contract language, which recommendation best meets the needs and interests of the parties, resolves real problems and is premised upon evidence provided at hearing, including existing contract language. On this issue, the lack of flexibility for short-term, temporary vacancies is self-evident, and should be addressed in this proceeding.

Rather than attempting to draw a fine line between exigent and non-exigent circumstances, the fact-finder recommends language which clearly authorizes a temporary vacancy of one day's duration without the need to resort to Article 33.1 criteria. In keeping with Arbitrator Stein's admonition, such reassignments in or outside of a division should not be

SERB Case No. 13-MED-09-1070

arbitrary, capricious or punitive. In the event the temporary reassignment shall extend beyond one day, the current process of filling the reassignment under Article 33, Section 33.1 shall be employed. Again, there was no evidence that the current 90-day limitation on temporary transfers should be modified or eliminated.

Upon consideration of the evidence and arguments presented by the parties, the fact-finder recommends that Section 33.7 of the collective bargaining agreement should provide as follows:

- 33.7 The Employer may temporarily transfer an employee either within or outside the division of his or her bid assignment when necessary for operational purposes in order to fill an immediate vacancy without posting such vacancy pursuant to Article 33.1. The Employer must post a vacant position for bid pursuant to Article 33.1 and select an employee pursuant to the criteria established under that section should the temporary assignment extend beyond one day. The duration of any such temporary transfer may not exceed ninety (90) working days.

/s/ Jonathan I. Klein
Fact-finder

Dated: March 31, 2014

SERB Case No. 13-MED-09-1070

CERTIFICATE OF SERVICE

A copy of this Fact-finding Report and Recommendation was served on Gwen Callender, General Counsel, FOP, OLC, Inc. at gcallender@fop.org, Otto J. Holm, Jr., Staff Representative, FOP/OLC, Inc. at ottoholm@sbcglobal.net; Yamini Adkins, Esq., Deputy Director Labor Relations, Summit County Executive's Office at yadkins@summitoh.net; James Budzik, Esq., attorney for Summit County at jbudzik@mggmlpa.com, and upon Donald Collins, General Counsel & Assistant Executive Director, Bureau of Mediation, State Employment Relations Board at donald.collins@serb.state.oh.us; each by electronic mail this 31st day of March 2014.

/s/ Jonathan I. Klein
Fact-finder