

STATE EMPLOYMENT RELATIONS BOARD  
STATE OF OHIO

In The Matter of Fact Finding Between

Ohio Patrolmen's Benevolent Association	}	
Employee Organization	}	Case No.(s): 2013-MED-10-1238
	}	2013-MED-10-1239
	}	2013-MED-10-1240
AND	}	2013-MED-10-1241
	}	
Ashland County Sheriff	}	Fact Finding Report
Ohio Public Employer	}	Michael King, Fact Finder
	}	

This matter was heard on March 7, 2014, in the City of Ashland, Ohio.

APPEARANCES:

For The Union:

Joseph M. Hegedus  
92 Northwoods Blvd., Suite B-2  
Columbus, Ohio 43235

For The Employer:

James A. Budzik  
Mansour, Gavin, Gerlack & Manos Co. L.P.A.  
55 Public Square, Suite 2150  
Cleveland, Ohio 44113

## **I. Introduction And Background**

The undersigned, Michael King, was appointed Fact Finder by the State Employment Relations Board (SERB) on December 5, 2013. As Fact Finder the undersigned was tasked to conduct a hearing and issue a report with recommendations on each of the unresolved issues between the parties in their negotiations for a Collective Bargaining Agreement (CBA).

This fact finding concerned unresolved contract issues for four (4) separate bargaining units. One unit represents Sergeants and Lieutenants. That unit covers approximately five (5) persons. A second unit represents Road Deputies and Detectives. The second unit represents approximately ten (10) persons. The third bargaining unit represents Corrections Officers, and negotiates on behalf of approximately twenty-six (26) persons. Finally, a fourth bargaining unit represents Communications Officers, of which there are approximately twelve (12) employees.

The initial factfinding hearing was held on February 7, 2014, in Ashland, Ohio. By agreement of the parties that hearing was converted to a mediation session. Mediation efforts were unsuccessful, and a subsequent hearing was scheduled for March 7, 2014.

Prior to that hearing the parties timely submitted pre-hearing statements pursuant to SERB Rules. Those statements were reviewed prior to the hearing, and discussed fully at the hearing. Each party was presented a full opportunity to present documents, exhibits and testimony as that party deemed appropriate.

## **II. Fact-Finder's Report**

In reviewing the issues at impasse, and arriving at recommendations, I considered the parties written submissions and exhibits, oral presentations and testimony and the following factors as required by law:

- 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.

In preparing this report I have attempted to make recommendations that are reasonable based on the evidence presented, and that balance the legitimate economic interests of both parties.

The fact-finding hearing in this matter occurred on March 7, 2014, and the record was closed immediately thereafter.

### III. **Unresolved Issues**

With few exceptions, the issues at impasse are common to all four bargaining units. The primary issues of dispute are wages and health insurance. All groups except Corrections Officers also seek an increase in shift differential pay.

#### *Issues #1 and #2 Wages and Insurance*

I find that these two issues are intricately related in the current negotiation, and for that reason I will discuss them together.

Current Contract Language For Insurance

Article XXI

21.02 Hospitalization. The employees shall continue to pay the premiums for the present hospitalization insurance in the amount of \$50.00/month for the single plan and \$100/month for the family plan. The Employer reserves the right to change insurers, providing the benefits are comparable to or better than the existing coverage. In the event R.C. Chapter 4117 mandates employee contributions, employees shall be subject to such provisions.

Employer Suggested Change To Contract

21.02 Employees shall continue to pay the employee portion of premiums toward health care to the same extent as other County employees. The Employer reserves the right to change benefits or insurers providing the benefits are the same as other County employees. The Employer will provide a \$10,000 term life insurance policy for each employee. The Employer will also provide a prescription card program, a Health Care Reimbursement Account Option, and a Dependent Care Reimbursement Account Option if available and consistent with other county employees.

**Management Position:**

Management proposes wage adjustments over the term of a three-year contract as follows:

2014	0% (Wage Freeze)
2015	2% (Wage Increase)
2016	2% (Wage Increase)

Management states that the proposed wage adjustments are the most it can afford. The Sheriff's Office primarily is funded from Ashland County's General Fund. That fund and all allocations from that fund are controlled by the Ashland County Commission. Thus, the Sheriff's budget is determined by the County Commissioners. The Commissioners have implemented austerity measures including setting departmental budgets for 2014 at the exact same level as 2013. For the Sheriff, that means a budget of approximately \$3.8 million, down from approximately \$4.2 million as recently as five years ago, Sheriff E. Wayne Risner testified.

In addition to the more austere budget allocations, Sheriff Risner says he has lost some of the flexibility he previously had to deal with shortfalls by moving monies among various funds. For example, last year the County eliminated his equipment fund. "Now I have no money to buy a (patrol) car," he says. That kind of new equipment would have to be specifically requested from the County Commission.

Management states that as fiscal constraints have grown, the Sheriff's office has had some reduction in staff. That's meant that remaining employees have been asked to do more with less. Sheriff's Department employees are "absolutely not" overpaid, according to Sheriff Risner.

Nonetheless, Sheriff Risner states that because of the County Commissioner's budgeting, his department has an inability to pay the higher wages sought by the bargaining units. In determining whether the Employer has an inability pay, the Sheriff argues that examination should be limited to the budget amounts allocated to the Sheriff by the Ashland County Commission. Further, the Sheriff states that wage and benefit increases above those offered would almost certainly result in employee layoffs.

Likewise, the Sheriff argues that certain health insurance changes are set by the County Commissioners and are beyond the Sheriff's ability to modify. He lacks legal authority to negotiate health insurance for is employees. Also, he argues that health insurance benefits should be uniform throughout the County workforce.

**Union Position:**

The Union believes that an extraordinary wage increase is appropriate because of the continuing increase in the portion of health insurance costs now borne by employees. It proposes the following annual wage increases:

2014	6% Increase
2015	6% Increase
2016	6% Increase

The Union argues that the only relevant issue with respect to whether the Sheriff has an ability to pay is the health of the County's General Fund. The actual and proposed allocations from that fund are entirely discretionary. Therefore, the decision by the County Commissioners to use that discretion in a certain way doesn't constitute an inability to pay on the part of the Sheriff. Also, the Commissioners may change that allocation at any time they wish.

A forensic accounting report offered by the Union supports the argument that the Ashland County General Fund is in good shape, and is capable of financing the wage and benefit adjustments requested. Utilizing records provided by the County, that account (Sargent & Associates) noted the following about county estimates and actual fiscal results:

For 2013 the County estimated Sales Tax at \$5,200,000. The actual collection was \$5,446,000, which was \$246,000 higher than the estimate and \$200,000 more than received in 2012. The casino revenue was estimated at \$418,000, and actual receipts were \$600,000.

The County has estimated the Sales Tax at \$5,350,000 for 2014, which is less than received in 2013. This is a conservative estimate, as there has been a steady increase in Sales Tax revenues over the past few years, from \$4,612,000 in 2009 to \$5,446,000 in 2013. The Casino revenue is estimated as \$490,000 for 2014, which is also less than received in 2013. Even with conservative estimates, these gains offset the loss of the Personal Property Tax and the decrease of (Local Government Fund) funds.

Next Sargent & Associates identified the year-end General Fund balances for the previous five (5) years, and the estimate for 2014:

2009	\$1,409,000
2010	\$1,586,000
2011	\$1,746,000
2012	\$1,086,000
2013	\$1,606,000
2014	\$1,010,000

Using this information the Union argues that the Ashland County income estimates have traditionally been low, and that the General Fund is healthy. The health of that fund is understated by the report because the General Fund can and sometimes is used to subsidize other funds through permissible transfers out. For example, in 2012, Commissioners made discretionary transfers out of \$1,062,000 to the Children Services Fund.

While the County's General Fund has remained strong, the Union argues that continuing changes in insurance rates have reduced the effective compensation of bargaining unit members. The Union offers this analysis of the impact of health insurance contribution changes over the years:

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2009

1. The Employer pays 100% of the health insurance premium;
2. The annual plan deductible was a maximum of \$500 for single employees and \$1,000 for those on the family plan;
3. Employees who treated within the defined Network did so pursuant to a 90/10 co-insurance split resulting in a 10% co-insurance for employees;
4. The maximum annual in-network out-of-pocket cost per employee per calendar year was \$1,250 for an individual and \$2,500 for an employee on the family plan.

2010

1. A premium payment of \$50 per month for those on the single plan and \$100 per month for the family plan;
2. A deductible of \$400 for single plan and \$800 for family plan;
3. The co-insurance has been changed from 90/10 to 80/20, doubling the employee's participation from 10% to 20%; and
4. The maximum annual out-of-pocket expense has increased to \$2,000 for an individual and \$4,000 for an employee on the family plan.

2011

1. A premium payment of \$50 per month for those on the single plan and \$100 per month for the family plan;
2. Deductibles, co-insurance and annual maximum out-of-pocket remain the same;
3. Emergency room co-pay is increased from \$75 to \$150 per visit and a new \$30 co-pay for any office visit to a Specialty Care physician has been added.

2012

1. The Health Insurance Plan costs and benefits essentially remained the same between 2011-2012.
2. However, the prescription plan for a 90-day supply of mail order drugs significantly changed to the detriment of the employees. In 2011, the prescription plan co-pay was as follows: \$10 per RX for generic drugs, \$20 per RX for name brand Rx. This was changed in 2012 to \$8 per Rx for generic drugs, \$40 per Rx for preferred drugs, and \$70 per Rx for no-preferred brand drugs.

2013-2014

1. The benefits package and its cost remain somewhat stable, but there is a proposed increase in premium payment as follows:

From: Single \$50 Per month  
Family \$100 Per month

To: Single \$51.60 Per Month  
Employee+Spouse \$113.80 Per Month  
Employee+Children \$92.83 Per Month  
Employee+Family \$154.98 Per Month

**Finding And Recommendation**

Over the last thirteen (13) years, the bargaining units represented here had the following wage adjustments:

2001	3%	Increase
2002	4%	Increase
2003	4%	Increase
2004	3.5%	Increase
2005	3.5%	Increase
2006	3%	Increase
2007	3%	Increase
2008	3%	Increase
2009	4%	Increase
2010		Freeze
2011		Freeze
2012	2%	Increase
2013	2%	Increase

In exhibits provided by the Employer, Ashland County Sheriff, and the four represented Bargaining Units, more than 18 Ohio counties were presented as potentially comparable to Ashland County. Only 3 counties were named as comparable by both the Ashland County Sheriff and the four represented Bargaining Units: Holmes, Medina and Wayne counties. Though these three counties and Ashland County may have some similarities based on their proximity to one another, a major point of differentiation is the size of their respective populations.

**Table A: Population Growth by County (A)**

<b>County</b>	<b>2012 Pop. Estimate*</b>	<b>2015 Pop. Projection**</b>	<b>Growth %</b>
<b>Holmes</b>	43,025	43,610	1.4%
<b>Medina</b>	173,684	179,200	3.2%
<b>Wayne</b>	114,848	114,530	-0.3%

<b>Ashland</b>	52,962	53,620	1.2%
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\*2012 Estimate taken from US Census Data

\*\*2015 Projection taken from Ohio Development Services Agency Public Records

While Holmes County is relatively similar in population size and estimated population growth to Ashland County, Medina and Wayne are significantly larger than the county in question. Additionally, Medina’s population growth at 3.2% (compared to Ashland’s at 1.2%) and Wayne County’s negative population growth render these counties unusable as valid comparables for Ashland County.

Huron and Knox Counties are most similar in size to Ashland of any of the counties named in exhibits. Their estimated percentages of population growth are both at variance with Ashland County’s rate. Nonetheless, I find that Holmes, Huron and Knox counties are substantially similar and are the most appropriate comparatives.

**Table B: Population Growth by County (B)**

<b>County</b>	<b>2012 Pop. Estimate*</b>	<b>2015 Pop. Projection**</b>	<b>Growth %</b>
<b>Huron</b>	59,280	59,360	0.1%
<b>Knox</b>	60,705	63,030	3.8%

<b>Ashland</b>	52,962	53,620	1.2%
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\*2012 Estimate taken from US Census Data

\*\*2015 Projection taken from Ohio Development Services Agency Public Records

Utilizing top wages for deputies in 2013 as an example, the table below compares wages in Ashland County to wages in Holmes, Huron and Knox counties. Ashland County Deputies are slightly below their peers in Huron and Knox County but significantly above deputies in Holmes County, and above the average for all counties considered comparable.

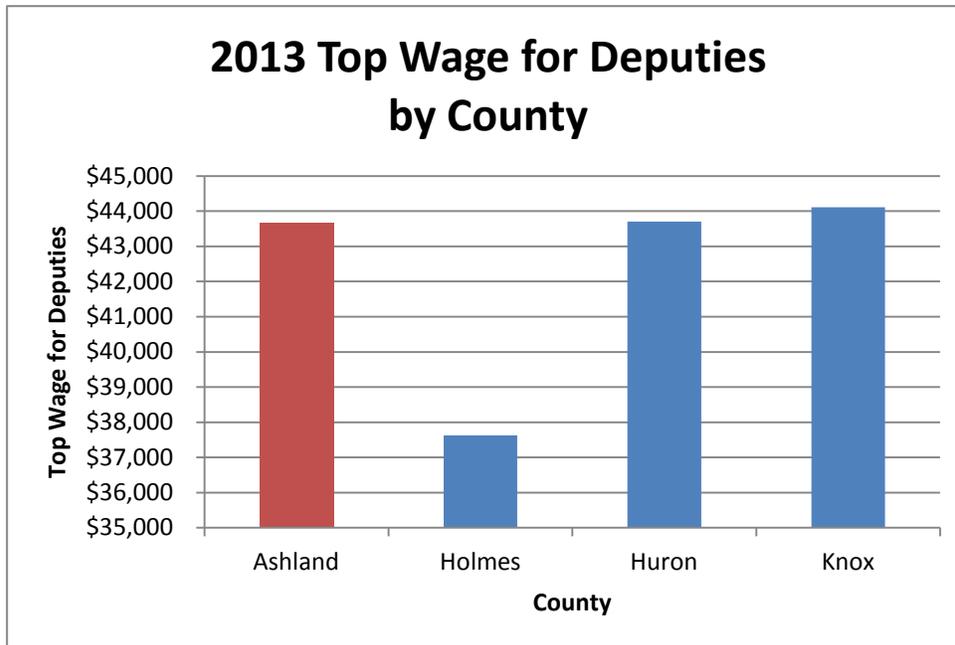
**2013 County Comparison of Top Wage for Deputies**

<b>County</b>	<b>2013 Top Pay Wage</b>
<b>Holmes</b>	\$ 37,627.00
<b>Huron</b>	\$ 43,704.00
<b>Knox</b>	\$ 44,116.00

<b>Ashland</b>	\$ 43,656.00
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<b>State Average</b>	\$ <b>45,884.00</b>
<b>Selected County Average*</b>	\$ <b>41,815.67</b>

\*Selected County Average does not include Ashland County



Using this analysis I find that the wages paid to members of the bargaining unit are generally within an acceptable range when compared to similarly situated personnel in substantially similar jurisdictions. Thus, if we were only dealing with wages, the Sheriff's offer wouldn't be totally unreasonable. Annual wage increases of two (2) percent to three (3) percent would be appropriate.

However, the impact of changes in insurance costs can't be ignored. The history of bargaining here is that the parties negotiated a unique and inter-related combination of wages and benefits over the years. It is undisputed that the wage levels agreed upon over the years come in the context of give and take on numerous issues including the base levels and costs for health insurance. It is also undisputed that the Sheriff lacks legal authority to negotiate with health insurers to obtain a contract for his employees.

In support of their request for an extraordinary wage adjustment, the bargaining units cite to an opinion of Conciliator Frank A. Keenan, in a matter involving the City of Trotwood and the Ohio Patrolmen's Benevolent Association, Case No. 04-MED-06-0658. In that case Conciliator Keenan quotes from a prior opinion of his wherein he notes:

"O.R.C. 4117.14 (G)(7)(f), the "other factors" criterion of the statute, has, since the inception of the statute, embraced the notion that if, for example, the Union seeks a significant matter, such as fair share fee provisions, especially in early days of the Statute, it needs to be prepared to "pay for it," with, for example, a wage demand less than what other statutory factors might support. This course was frequently followed by AFSCME bargaining units in the early days of the Statute. Conversely, where the

employer seeks a matter of significance to it, departing from the pattern of successive collective bargaining contracts, as is the situation here, given the City's desire to have the bargaining unit participate in the basic health care premium, to achieve its goal, it needs to pay for it."

I fully concur with Conciliator Keenan. In reviewing negotiated wage rates over the years since 2001, I find that the wage adjustments were unremarkable. They were consistent with wage adjustments of that period, and sometimes were even modest for the period. The aforementioned wage adjustment pattern reflected the unique and inter-related package of wages and benefits that the parties bargained for. The continuing changing to health insurance contribution and costs alters that inter-relationship. The result is that, as Conciliator Keenan explains, the Employer should pay for this change.

Here there is an important separation between the appointing authority, and the funding authority. Members of the bargaining unit are appointed by the Sheriff, but their jobs are funded by the County Commissioners. Likewise, there is an important distinction between the appointing authority, and the authority with the legal right to negotiate health insurance contracts for county employees. In both instances, the latter authority is not at the bargaining table.

In the course of the fact-finding hearing, neither side offered a plausible alternative to the Sheriff with respect to changes in the health insurance plan. Clearly, he could ask the Commissioners to reverse themselves. However, there isn't any indication that this would be a productive exercise. For that reason, I find that the health insurance changes as recommended by the Sheriff should be implemented, with new contract language as offered by the Sheriff inserted into the new contract.

Also, for the reasons set forth above, I find that an extraordinary wage adjustment is appropriate. I recommend wage adjustments over a three-year contract as follows:

2014	4.5% increase
2015	4.0% increase
2016	3.0% increase

In arriving at this recommendation, I find that the determination of ability to pay must be based on the resources of the funding authority, not the appointing authority. In other words, the measure of ability to pay here is the health of the General Fund.

I note that the Employer didn't contest the findings of the Union's forensic accountant's report. That report concluded as follows:

The County of Ashland has weathered the economic downturn. There has been a steady gain of sales tax revenue from 2009 to 2013, and there is no reason to believe the Sales Taxes will decline in the near future. The state budget cut of the LFG funds is offset by the new Casio revenue.

Based on the evidence presented by the parties, I find that when the health of the County's General Fund is used as a standard, the Employer is able to pay the recommended wage increases.

As noted above, the Sheriff has stated that larger-than-offered wage increases probably will result in personnel cuts. I take the Sheriff at his word on this. However, I view that not as a collective bargaining issue, but as an administrative decision. The decision to reduce personnel is one that the Sheriff could make irrespective of whether wages are raised or reduced.

### *Issue # 3 Shift Differential*

The Sergeants and Lieutenants, Road Deputies and Detectives, and Communication Officer bargaining units all seek an increase in the shift differential pay. Currently the Employer provides an additional sixty-five cents (65) per hour for the shift from 4pm to Midnight, and an additional seventy-five (75) cents per hour for the Midnight to 8am shift.

#### Union Position

The Union proposes increasing the shift differential to one (\$1) dollar per hour for the respective bargaining units. It argues that such an increase is appropriate given the stagnant pay rates, and erosion of actual pay due to higher insurance contributions.

#### Management Position

The Employer opposes any change to this payment schedule, insisting that the current payments are fair and reasonable within the Sheriff's fiscal constraints.

#### Finding and Recommendation

I find that this wasn't a major issue for either party. Neither party offered a compelling reason to change. For all the reasons set forth in the above reference section regarding wages and insurance, I recommend that no change be made here. The recommended extraordinary wage increase obviates in part the need for any change in this area.

#### Summary of Award

1. Accept Employer's Proposal on Insurance
2. Extraordinary Wage Increase of 4.5% in 2014; 4.0% in 2015; and 3.0% in 2016

\*\*\*\*RECEIVED FRIDAY, MARCH 20, 2014 @ 1:46 PM-SERB\*\*\*\*

3. Accept Employer's Proposal on Shift Differential Payments

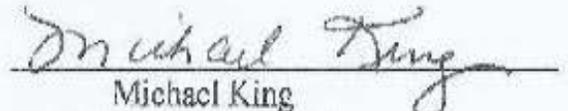
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Michael King  
Appointed Fact Finder

Date: March 24, 2014  
Beachwood, Ohio

Summary of Award

1. Accept Employer's Proposal on Insurance
2. Extraordinary Wage Increase of 4.5% in 2014; 4.0% in 2015; and 3.0% in 2016
3. Accept Employer's Proposal on Shift Differential Payments

  
Michael King  
Appointed Fact Finder

Date: March 24, 2014  
Beachwood, Ohio