FACTFINDING REPORT AND RECOMMENDATIONS

In the Matter of

Fraternal Order of Police, Lodge No. 101

And

Butler County Sheriff

SERB Case No. 2014-MED-01-0089

C. Forest Guest
Factfinder

Representing the Union:	**Stephen S. Lazarus, Esq., Attorney, Spokesperson** **Jeff Gebhart, Union President** **Ross Gilliagham, FOP Attorney** **Jan Carpenter, Union Vice President** **Michael Nutt, Union Trustee**
Representing the Employer:	**W. Joseph Scholler, Attorney, Spokesperson** **Julie Byrne, Attorney** **Major Norman Lewis** **Charlie Young, County Administrator** **Vickie Jo Barger** **Jim Davis, Human Resources** **Mike Craft, Captain**
Date of Hearing:	**September 4, 2014**
Report Issued:	**September 25, 2014**

FOREWARD

The Factfinder was assigned this case via SERB on July 8, 2014 and after several email exchanges between the parties a hearing date of September 4, 2014 was agreed upon. When the hearing concluded at approximately 7:30 P.M. the factfinder requested an extension for the report and the parties granted an extension until September 25, 2014.

BACKGROUND

The parties to this dispute are the Fraternal Order of Police, Lodge No. 101 (hereinafter referred to as the Union) and the Butler County Sheriff's Office (hereinafter referred to as the Employer or County or Sheriff). There are actually two different bargaining units currently engaged in a reopener with the Sheriff. This fact finding involves the unit covering the Sergeants and Lieutenants.

The current Collective Bargaining Agreement (hereinafter referred to as the contract, agreement, or CBA) was negotiated and became effective February 10, 2012 through February 6, 2016. It contains a reopener agreement after the first year. This is noted in Article 36, page 74 of the CBA. ***In part it states: "Reopener option in 2nd or 3rd year of agreement, which must be exercised by FOP Lodge 101 by February 1 of each year. Upon vote to reopen, the sick incentive is suspended. The reopener will apply to wages and sick incentive. Regarding the reopener, if the parties proceed to conciliation, the Employer waives the restrictions of the conciliator imposed by R.C. 4117.14 (G)(11).***

The Union did exercise its right to reopen the agreement for wage purposes and the Employer elected to suspend the sick incentive. These are the two issues in dispute and under consideration at this hearing.

Generally speaking we have two (2) issues that are a part of the CBA and are both subject to dispute. The Union does not like nor want to continue the "lump sum" payments as prescribed in the agreement. Since the Union has filed to reopen, the Sheriff does not want

to continue the "sick leave incentive" which is an additional amount paid to each employee. In reality, it appears to this factfinder and based on the comments prior to factfinding and during the hearing, that neither party is interested in the "sick leave incentive"

The Sheriff is wanting to implement a "performance pay" program which is $1200.00 dollars per year per employee. This number is a creation of the lump sum and sick leave incentive pay. The Union is not interested in this payment method for reasons that will be explored in this report.

The two (2) issues are unresolved at the time of the factfinding. Those issues were:

Article 17. Sick Leave (Section 16) Sick Leave Incentive

Article 20. Wages

For the purposes of this report, all other parts of this CBA as previously agreed and not in dispute are included and incorporated into this report.

It is obvious to this Factfinder that there is a high level of distrust between the Union and Employer. The Union feels that the County has been dedicated to stop pay increases and go to a lump sum payment method for some time. The County admits that this is the preferred method of pay going forward because it is more efficient and effective. They also feel that the employees are being paid more than most other law enforcement officers in the area and use comparables to support their position. Both sides use comparables to support their positions and we will discuss these later in the report.

The "lump sum" referred to during the hearing is a combination of a lump sum of $550.00 and a possible sick incentive pay of $550.00. Neither side is passionate about the sick incentive and the Union objects to the basic lump sum payment period. The Employer is actually proposing "Performance Pay", to take the place of lump sum, and that amount would be $1200.00 per year which each employee could potentially receive.

ISSUES

1. **Article 17, Section 16, Sick Leave Incentive**

This incentive pay was created with this agreement and takes forty (40) hours of the total sick leave benefit and makes it subject to incentive pay. Section 16 of the CBA provides a formula that outlines the amount to be paid under this plan. The per cent of pay is for 100% if no sick hours are used and then follows in descending percentage amounts as one might use sick leave. For example: If an employee uses 1 to 8.99 hours of sick leave he/she would only be eligible for 80% of the 40 hours. If said employee used 33 or more hours of sick leave he/she would receive nothing.

Neither of the parties appeared to "warm" to the idea of the continuation of this sick leave policy and the Union absolutely did not want to continue. After much discussion both parties appear to not want to continue this program in this form. The Factfinder cannot understand how this is a "true" benefit to the employee as it appears from the presentations that this is simply giving something already gained. In fact, depending on personal situations this could easily be a loss to employees thus no economic gain for said benefit.

The Factfinder recommends that this language in section 16 be abolished and the sick leave policy, as has been negotiated will continues to be part of this agreement, and continue for the life of the agreement.

2. **Article 20, Wages**

The current CBA has new language for wages that allow for "lump sum" payments. This language is noted as follows:

1. The wage rates and step rates shall not be increased in 2013, as set forth in Schedule 1. Employees will receive a lump sum payment of $500.00.
2. The wage rates and step rates shall not be increased in 2014, as set forth in Schedule 2. Employees will receive a lump sum payment of $550.00.

3. The wage rates and step rates shall not be increased in 2015, as set forth in Schedule 3. Employees will receive a lump sum payment of $550.00.

Union Position:

Due mainly to the above language the union reserved the right to reopen the contract after the first year and that is exactly what they did. The Union feels the lump sum payment was forced on them and now has requested a 4% increase in wages in year two and year three of the agreement due to not receiving a worthwhile increase in the first year and previous low to no increases in wages for the past several years. The previous CBA provided for 0 increases in year 1 and 2 and a 2% increase in year 3. With no % increase the first year of the current agreement, the Union feels the increase of 4% is justified and that the County is economically healthy and can afford to pay this amount. Furthermore, they argue that a full award of $1200.00 is equal to 1.35% to 1.82% increase; however this allows for consistent application and all employees receiving the full amount. The Union has concern that the very application of merit pay or performance pay leads to bias and unequal application of rules among supervisors. Finally, it is noted that these "lump sum" or merit pay amounts are not pensionable and therefore is an added reduction for the employees. (Note: the employer plans to try to have performance pay pensionable, but at this time cannot take that position).

The Union also cites that the savings from the "lump sum" amounts will help pay for this increase and also cite that the non-union workers also received a 2.5 % increase. The Union also suggests that the County is spending money in questionable ways and that this increase could easily be paid for if the County was more responsible with their spending habits. Hiring relatives, people that are not certified or trained in a position, and providing wage increases for certain selected employees continues to strain the ability to trust what the Employer is saying or promising.

To highlight these ideas the Union provides information regarding non-union employees pay increases. The Commissioners gave a 2.5% pay raise to 99 non-union employees on 1/22/14.

All got the same increase. Again on April 30, 2014, 10 non bargaining unit employees received another 2.5% increase because the Commissioners did not think these employees were given enough of an increase. All of these pay increases were applied to the employees base rate of pay. This "double standard" continues as 11 non-union employees of the Sheriff's Office received a 6.95% increase between 2012 and 2014. Another 10 employees received 6.42%.

Commissioners began the budget discussions in 2013 asking to keep raises in the 2% range. Later a County Commissioner stated he believed raises would be appropriate at a 2.5% range for 2014. However the Common Pleas Court General Division included pay raises of up to 18%. ***(Note: While it is acknowledged that comparing union and non-union benefits and pay is or might not be equitable or value related, this factfinder believes it is applicable in this case. The County is wanting to implement a different pay system driven by economics and seeking cost constraints that by their own statements would be the "same" for all. If that is the reason, one has to question why at the least that philosophy does not apply to all.)***

These kind of mixed signals and disregard for fair application across the board is concerning to the Union. While they admit that the County has at times talked about everyone getting the full pay and that a merit pay system could have built in increases, they have not seen anything that makes that a promise and do not trust what might happen going forward.

The Union presented many comparables and "fact sheets" to help makes its case. I found those comparables interesting and helpful and the fact information was also helpful. While as expected the comparables helped the Union make its case there are some interesting points to highlight:

Property Taxes appear to be gaining after several years. An article dated August 15, 2014 notes that home prices in Butler Co. increased 9% in June over June 2013.
Sales Tax is improving and over budget.

The General Fund is being funded ahead of budget and is over 18 million dollars as of June 2014.

Overall Revenues are increasing over budget projections.

(It is noted that the Employer disagreed with some of these outcomes, but the overall improvements in the financial stability of the county is obvious.)

Employer Position:

The Employer is asking the Factfinder to support the decision of the Sheriff and disallow the request of the Union. There is no ambiguity regarding their feeling as they state in their opening sentence of their prepared statement, "Butler County is so serious about internal parity and fiscal responsibility, it is willing to take a strike rather than put the County in an unhealthy financial position". To that end, at the time of this hearing a strike is occurring between another bargaining unit and the County. They cite that tax revenue is down overall and expenses continue to increase. They provided information showing the budget for the Sheriff's department and that 70% of the 30 million dollar budget is for employee compensation. This underscores their position that the employees are being paid well and receiving very good benefits, but the County must continue to reduce cost and be conservative with its spending because of current economic conditions.

They are also concerned that if the County gave a 4% increase as requested it would create a ripple effect throughout the other units within County government and this would not be acceptable. (This Factfinder does not agree that just because something is negotiated with one unit it automatically sets a preconceived standard for other units.) While this might be questionable it is noted that the County has presented its merit pay or performance pay plan to every bargaining unit that has union agreements.

The County is also concerned about the recent downgrade of their Bond Rating. The overall effect is not known, but the concern is what effect it might have on new revenues, growth, and cost of money. There were 3 main considerations provided at the hearing: 1) general fund is too narrow and needs more contribution, 2) exposure to underfunded pension system, and 3) change in methods used by Moody's. However, according to an article submitted by both parties the "downgrade" will have a minimal impact to the County. This was said several times in the article. Noted in the article was that Moody's changed their methods specifically holding local governments responsible for the States retirement system. Finance Director Tawana Keels said, "getting penalized for that doesn't make sense". Butler County is not responsible for the state Pension she said and continued that "if that factor was removed when the ratings were created, our ratings probably would not have changed".

From these statements and others I find it difficult to conclude that the change in ratings is going to harm the financial structure of the county, nor is a reflection of the good work the county has done to improve the overall financial position of the County. Apparently these "new standards" are also being used with other locations and they too are seeing the same affect.

The employer feels that the employees are already well paid and have many benefits others do not have. It is correct that the Butler County employees in question are well paid as compared with most but not all others as noted in the comparables. However, a statement of an amount does not tell the whole story of the employee's value and what he/she does for that stated amount. Furthermore, the employer has provided improved benefits going from 10 paid holidays (2004-2006) to 12 paid holidays (2007-2015). There are additional benefits for a fitness incentive of $200.00 per year and a perfect attendance incentive of $1150.00.

In addition, a contract review clearly shows that for 2004 through 2009 a 3% per year increase was provided to the employees. In 2010 and 2011 a 0% increase was provided. In 2012 a 2% increase was paid to the base of the employees. In 2013 a $500.00 lump sum was paid. This is a clear indication that the County has given, but that the employees too have given. Out of the last four (4) years the employees have received a 2% increase to the base rate and a $500.00 annual increase.

While I agree with the Employer that a full recovery has not yet materialized, I also agree with the observation of the Union that there is an overall improvement in the economy. Property values have decreased in Butler County and therefore the tax revenue from those properties have decreased, but it appears from the data that the worse period for this was in the 2011 and 2012 time period. It appears from the data that this is improving and that as time goes forward this will continue to improve.

While the Sheriffs position is to pay the $550.00 lump sum amount and to eliminate the sick leave incentive for 2014 and 2015 another possibility has been discussed and proposed. This is the performance pay that the employer is saying is being adopted throughout the County and by all union and non-union employees. <u>(There seems to be some question about the non-union pay as mentioned earlier that the Union is providing per cent increases to the base rate for non-union employees). (After reviewing the handouts the Union provided it appears that increases after 1-1-12 were given and they exceeded an average of 6%. However, after reading Resolution No. 14-01-00214 while increases were given up to 2.5% it was termed performance pay and the document seems clear that non-union employees will be going to performance based increases in the future.)</u> This is an issue that should be resolved, so that both sides have an honest understanding of what is being done. But, it is not critical to this report, because there are always differences between the two different elements.

What is important is that the Employer provide more information than included with the materials presented. The one (1) sheet proposal provides a brief explanation of how the $1200.00 can be earned by employees. It is broken down as follows:

Agency Incentives: This has five (5) criteria with a total value of $600.00 and a statement that one failed category = zero percentage pick up.

Employee Evaluation: This has ten (10) criteria with a total value of $200.00 and a statement that fail 4 or more = failed evaluation

Employee goal Awards: This has two (2) criteria, both at $200.00 each for a total of $400.00 and no explanation, but a separate $200.00 Physical Fitness Incentive that should probably not be part of the Performance Pay or Merit Pay outline.

My concern is that this is not complete nor does this cover any of the criteria as to how this will be administered in addition to other concerns already mentioned in this report. It seem to this Factfinder that if the Employer is serious about this program that a more complete and detailed outline needs to be developed.

GENERAL OBSERVATIONS

Both parties have many comparables along with other data to support their position. Both parties went back to the early 2000 period to support either their revenues and/or their increases. I find this historic information interesting, but has little to do with the particular issue at hand. The performance pay system and the methodology used is viewed very

differently by the parties. Given the lack of specifics regarding the plan, I can understand why this might occur. Simply put, there are more questions than answers regarding this new concept in pay. For example:

- **How would it be applied and administered**
- **Are the payments pensionable**
- **How will the plan avoid built in bias by supervisors**
- **Is there an appeal process or does the grievance machinery apply**
- **What is the plan to increase the amounts paid over time and by what means**

Until these and probably other questions are addressed and a satisfactory agreement is obtained it does not seem possible to have acceptance to this new pay plan.

In addition, it is obvious that there is distrust between management and union. This distrust is keeping the County from being able to move forward in a smooth manner. The performance pay system might be a good area to address the trust issue and work together to try to reach a satisfactory position. There needs to be more specifics that avoid personal bias and/or personal mistakes that result in an employee receiving less then he/she should.

The economics suggest, and I believe it is correct, that the County still has much to do to reach the financial position it desires. But, one must conclude that much has been done and the overall financial condition for the county has improved. In fact, the Commissioners should be given credit for efficiencies already gained and improved revenues and balance sheet results. Cost have been cut, programs reduced or eliminated, layoffs have occurred where necessary, more responsibility given to employees and reductions in financial obligations implemented. This has had positive results and will continue to as time goes on.

It also appears that the County is blessed with a steady growth cycle (5th in the state), solid business residences and more new business coming to the County in the near future. While property tax revenue is down due mainly to reduced value, those results can also change over time. Other taxes are over their budgeted amounts (i.e. casino, income, sales, etc.) which appears to be in a confident category as the recession continues its slow climb to improvement.

There is an old adage in management when it comes to budgeting that it is prudent to always plan your expenses high and your revenues low. While that might not be exactly what the County is doing, it does appear they are determined to increase reserves and not use those reserves for planned expenses. I agree that this is a wise decision although I might personally disagree with the amounts being stated. It appears that a little over 18 million dollars in now in reserved and according to some statements at the hearing 30 million dollars is the goal. With a total budget of approximately 80 million dollars, this amount seems a high, but that is a determination that the County Commissioners are responsible for. That being the case, it cannot be expected that to accomplish the goal it must be the employees' wages and benefits that pay for this goal. In fact, reducing the work force and having the retained work force take on more duties and responsibilities is a cost reduction method, it should also be noted that the increase in wages for those that remain is clearly offset, at least in part, by not hiring full time employees.

In summary, and after reading all of the data and documents submitted by both parties I conclude that the County is progressing in the right direction and certainly seeing improvements in the overall financial condition. While I am convinced that this is the case I too feel that the future is not certain and restraints are called for while going forward. It concerns me that I read statements from the employer that state they want parity or "the same" for all employees when referencing performance pay. It seems so obvious that different positions require different talents and also experience different liabilities, demands,

and hazards. Certainly these differences deserve some consideration insofar as pay and benefits are concerned. This feeling is bolstered when reading the Resolution 14-01-00214 and the closing statement that says, "That the amount of money to be made available for performance pay shall be determined annually by the commissioners depending on the county's financial state". While this appears to be for the non-bargaining unit employees, the principle for performance pay is being stated, thus needs to be explained and resolved for the bargaining unit employees and the negotiation process that must be conducted.

RECOMMENDATIONS

Sick Leave Incentive: Article 17, Section 16

As previously noted, neither side wants to continue this policy and therefore:
The sick leave incentive is removed from the agreement and the sick leave benefit will be as noted in the CBA.

Increase in Wages: Article 20

I have tried to see the positive and negative positions regarding the performance pay proposal and the standard base rate increases and find merit in both. However, if the merit or performance pay method has long term possibilities the Employer must be more specific with its implementation, administration, and pensionability which at this time is still unknown.

Therefore, the combination of the following is recommended in hopes that these next two (2) years will provide adequate compensation for the employees, control cost for the County, and provide time to develop the details between the parties.

<u>2014:</u>

Base Rate Increase: 1.5%

Performance Pay: $ 1200.00

<u>2015:</u>

Base Rate Increase: 1%

Performance Pay: $ 1200.00

CERTIFICATION

The undersigned hereby certifies that this is a true copy of the Factfinder's Report consisting of 15 pages. This report was electronic mailed to the parties on September 25, 2014 and a signed hard copy mailed via US Post Office. To the best of my knowledge this Report and the included recommendations complies with all applicable provisions established by the State Employment Relations Board.

I therefore affix my signature at the city of Louisville, in the county of Jefferson, in the state of Kentucky, this date of September 25, 2014.

C. Forest Guest, Fact Finder