State of Ohio

State Employment Relations Board

In the Matter of Fact Finding	:	SERB Case Number: 2014-MED-01-0090
Between:	:	
Butler County Sheriff Hamilton, Ohio Employer	:	Date of Hearing: September 18, 2014 Date of Report: October 10, 2014
And:	:	
Fraternal Order of Police, Lodge 101 Union	:	Felicia Bernardini, Fact Finder

Fact Finder Report and Recommendation

Appearances:

For Butler County Sheriff, Employer

Joe Scholler, Attorney, Frost Brown Todd, LLC, Fact Finding Spokesperson

Julie Byrne, Attorney, Frost Brown Todd LLC, Second Chair

Major Norman Lewis, Sheriff's Office

Captain Michael Craft, Sheriff's Office

Vickie Jo Barger, Finance Director, Sheriff's Office

Jim Davis, Assistant HR Director, Butler County Commissioners

Chief Deputy Anthony Dwyer, Sheriff's Office, Witness

Charles Young, County Administrator, Butler County Commissioners, Witness

For Fraternal Order of Police, Lodge 101, Union

Steve Lazarus, Attorney, Hardin, Lazarus & Lewis, LLC, Fact Finding Spokesperson

Ross Gillingham, Attorney, Hardin, Lazarus & Lewis, LLC, Second Chair

Deputy Gregory Wargo, FOP Lodge 101

Deputy Jeff Gebhart, President, FOP Lodge 101

Deputy Erik Betz, FOP Lodge 101

Deputy John Smith, FOP Lodge 101

Deputy Terry Carroll, Court Services, FOP Lodge 101

Introduction

Case Background

Felicia Bernardini was selected by the parties to serve as fact finder in the above referenced case and duly appointed by the State Employment Relations Board (SERB) on June 23, 2014 in compliance with Ohio Revised Code (ORC) Section 4117.14C(3). The case concerns a fact finding proceeding between the Butler County Sheriff (hereafter referred to as the "Employer" or the "Sheriff") and the Fraternal Order of Police, Lodge 101 (hereafter referred to as the "Union" or "FOP"). This case involves a two-year wage reopener concerning Article XX: Wages, of the current contract, effective dates February 10, 2013 to February 6, 2016. The option to reopen wages is included in Article XXXVIII: Duration, Section 2. The language of the reopener states in part, *"Upon vote to reopen, the sick incentive is suspended."* This being the case, Article XVII: Sick Leave, Section 16: Sick Leave Incentive is also open. Prior to the hearing, the parties met twice to bargain, once in May and again in June. No settlement was reached. The fact finding hearing was scheduled for September 18, 2014. Both parties timely filed the required pre-hearing statements. The day of the hearing it was agreed by the parties to forego mediation and move directly to the evidentiary hearing.

General Background Information

Butler County is situated in the southwest corner of the State along the Ohio – Indiana border. It is just north of Hamilton County and the City of Cincinnati, and is bordered in Ohio by

Montgomery, Warren and Preble Counties. Butler County's population in 2012 was 370,589.[1] The population of Butler County has grown by double digits in each of the past two decades and is expected to grow by 7-8% by 2020.[2] At 4.6%, Butler County has one of the lowest unemployment rates in Ohio.[3] The Butler County Sheriff is an independently elected officeholder within the County. The Sheriff's Office is a full service law enforcement operation. The Sheriff's operations include calls for service and road patrol in the unincorporated areas of the County as well as in several incorporated areas via service contracts. The Sheriff's Office also provides investigative services, court security, jail operations, dispatch services, community programs, and several other specialized services and programs. The Sheriff is responsible to the taxpayers of the County for his annual operating budget. Funds for the Sheriff's operating budget are appropriated by the Board of County Commissioners.

The bargaining unit is represented by the Fraternal Order of Police, Lodge 101. Included in the Unit are all fulltime, sworn personnel in the classifications of Detective, Deputy Sheriff, Deputy Sheriff/Court Security, and all other non-supervisory sworn members of the Sheriff's Office. There are currently 114 positions in the unit.

Positions, Discussion and Recommendations

Below, the position of each party is briefly summarized. The summaries are followed by the fact finder's analysis and discussion of the positions. The fact finder's recommendation to the parties follows the discussion.

In analyzing the positions of the parties and making recommendations the fact finder is guided by available, relevant evidence and the criteria set forth in ORC 4117.14(G)(7)(a) to (f):

(a). Past collective bargaining agreements, if any between the parties;

(b). 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;

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1 Ohio County Profiles, Ohio Development Services Agency, Office of Policy, Research and Strategic Planning

2 Ibid

3 Ohio Not Seasonally Adjusted Unemployment Rates August 2014, Ohio Department of Job and Family Services, Bureau of Labor Market Information

(c). The interests 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;

(d). The lawful authority of the public employer;

(e). Any stipulations of the parties;

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

1. Article XX: Wages

Union Position

The Union is seeking the following wage increases:

- Effective 9, 2014 – 4% for Deputies and Detectives; 6% for Court Services Deputies; and 4% for Corporals above the Deputy top step.
- Effective 8, 2015 – 4% for Deputies and Detectives; 6% for Court Services Deputies; and 4% for Corporals above the Deputy top step.

The Union points out that the bargaining unit had no wage increase in either 2010 or 2011. They received a 2% pay increase in 2012, but in 2013 they received only a $500 lump sum payment that was not added to base wages. These lean wage settlements were in direct response to fiscal difficulties faced by the County as a result of the Great Recession. Zero wage increases and economic concessions were par for the course in those years. Today however, as the economy continues to recover, wage settlements should return to a level that properly reflects the economic recovery and the associated realities of increases in the cost of living. Just so, in surrounding Counties and in local municipalities, law enforcement units have been reaching wage settlements in the range of 2-3% added to base pay. Several of the surrounding jurisdictions returned to providing wage increases in 2012. Most had restored percentage wage increases by 2013, and by 2014 almost all have a multi-year pattern of percentage add-to-base wage increases. Meanwhile, Butler County continues to treat bargaining units as though the County were still in the depths of the recession. The County's insistence that its financial condition has not recovered enough to be able to afford pay raises for bargaining unit members could not be further from the truth.

The economic reality is that the County is in excellent financial health. The County's General Fund cash balance at the end of 2013 was $14, 432, 664. This is the highest ending balance the County has had in 13 years. This strong position continues in 2014. As of June, the cash balance of the General Fund was $18,522,808.26 which equals a 22% carryover. The County, in a conservative fashion, has underestimated revenue projections in 2013 and 2014, with actual revenue collected exceeding projections by over 5% in 2013, and by that amount again in the first half of 2014. Sales tax, the largest revenue source for the General Fund, is being collected at 6.6% above the 2014 projections as of June. This positive revenue trend is not an unreliable, inconsequential anomaly; it is directly related to the development boom that Butler County is enjoying. There are multiple retail, medical, educational and housing developments underway in the County bringing construction jobs and investment in the near term, and hundreds of permanent skilled jobs to the area in the long term. In addition to the overall health of County finances, the Sheriff's Office itself has adequate resources to fund wage increases for bargaining unit members. For example, inmate housing revenue is up by 11.3% above 2013 and $500K over projected collections. Some of these funds, not spent on increased inmate expenses are being returned to the County's General Fund and could be allocated back to the Sheriff to fund wage increases. The Sheriff also has a history of returning a portion of his annual budget to the General Fund at the end of the fiscal year as unspent. This returned portion was as high as $1.16M in 2011, and has been almost $300K in 2012 and 2013. In comparison to these revenue and budget numbers, the Union's proposed wage increase is quite modest. The cost estimates for the Union's proposal (including both non-contracted and contracted bargaining unit members, as well as when applying the Employer's 21.8% figure for payroll "roll-ups," are $130,521.67 in 2014, and another $258,236.27 in 2015.

The Union has based its proposed wage increase on comparable data from a mix of neighboring counties, and area municipalities and townships. The Union has compared the ten-year tenured (top step) Deputy in Butler County with the ten-year tenured Deputy or Police Officer in these other jurisdictions. The jurisdictions selected for comparison are the exact jurisdictions that the Employer used when making comparable comparisons in the prior contract negotiations in 2010, and used again just weeks ago when making comparable comparisons in a fact finding hearing involving the Sheriff's Office supervisory ranks. Applying this 'Employer-chosen' set of comparable jurisdictions the wage data reveals that Butler County Deputy pay is substantially below the market average, it is even farther below average for Court Services Deputies. By the time one factors in the longevity benefits in these other jurisdictions, not received by Butler County Deputies, this bargaining unit is over 7.5% below average. While Butler County Sheriff's Office wages would remain frozen (under the Employer's proposal) other comparable jurisdictions' wages are starting higher and increasing with percentages added-to-base through 2015. This would leave the Butler County Deputies lagging their counterparts by double digits. Settling on a suitable set of jurisdictions to use as comparables for the Sheriff's Office has been unduly complicated by the Employer. Barring any major shift in demographics, a set of comparables that are acceptable in one round of bargaining, ought to be suitable in the following contract negotiations. In this case however, the Employer has changed their comparables from those previously used. They have also suggested that the Sheriff's Office employees can be fairly compared to large city police units, and to all southwest Ohio Counties regardless of county demographics. Despite the Employer's manipulation of the comparables, anyway you slice and dice the data; Butler County Deputy Sheriffs lag their counterparts, albeit by lesser amounts when you gerrymander the comparables.

The Union further maintains that the Employer's "inability to pay" argument, and "no reason to pay" argument (i.e., wages are on par with market) are simply diversions for the actual Employer position which is that the County Commissioners are on a campaign to wipeout the long-standing compensation model and replace it with their preferred merit pay model. The Employer's proposed merit pay model is fraught with administrative and equity problems. The merit pay plan's design is ill-conceived and arbitrarily assigns dollar values to simplistic standards that the Employer acknowledges are achievable for all bargaining unit members. The Employer has further acknowledged that its proposed merit pay plan is an 'introductory version' and that over time the standards would be changed. How can the Union sign-on to something that the Employer admittedly intends to change? Furthermore, this unit's job requirements are far different from any other unit in the County. This unit is a law enforcement unit and deserves the Employer's respect for the work it does to protect the tax-paying citizens of the County. The notion that there is internal comparability among the County's bargaining units is wholly without merit.

Employer Position

The Employer proposes to maintain the current contract language which calls for the following lump sum payments

- $550 in 2014 upon settlement
- $550 in February 2015

The Employer maintains that its proposal to this bargaining unit is based on the need for financial prudence and internal parity. Butler County has suffered because of the Great Recession. County revenue dropped nearly $20M between 2008 and 2010. Although revenues have stabilized they are nowhere near pre-Great Recession levels. The financial recovery has been slow and strict financial controls are required to restore the County's finances to health. So serious is the County about maintaining strict financial controls it has been willing to take a three-week strike from another bargaining unit rather than grant recommended base wage increases, and it has delayed millions of dollars in longstanding requested capital improvement projects.

The County's finances have stabilized but are not fully recovered. In 2008, the County General Fund had $96.4M in revenues. Revenues in the General Fund dropped as low as $78.8M in 2011 before beginning to rebound. In 2013 the General Fund reached $83.4M. As a result of significant program and service cutbacks and employee layoffs, 2013 revenues exceeded expenditures and resulted in a $14M carryover balance. The carryover balance has been restored to 2008 levels, but it has been done by managing expenditures, not due to restored revenue levels. Furthermore, the County has minimized its capital improvements in favor of replenishing its reserve fund, leaving $6M in needed general fund capital improvements unfunded. For example, the County felt it imprudent to invest $200,000 in the airport that would have earned the County a $1.8M matching grant for capital improvements to the airport. Another important indicator of the County's financial challenges is the fact that Moody's recently dropped the County's bond rating from Aa1 to Aa2. The result is that it will be more expensive for the County to borrow funds.

The Sheriff's Office has also faced funding and service cuts in the recent past. Today the Sheriff's Office revenue is over $2M less than it was in 2011, and programs such as DARE, the Crime Prevention Unit, the Neighborhood Watch Program and the Highway Interdiction Unit have been eliminated. Meanwhile the Sheriff has assumed responsibility for the City of Hamilton's dispatchers, the 800 megahertz radio staff, the county 911 service, the welfare fraud division, Lakota Schools' Resource Officer and the county's dog warden office. The Sheriff cannot justify a base wage increase in light of its current financial circumstances; the Sheriff must take necessary measures to control expenses and this means avoiding unwarranted base wage increases.

Lump sum payments rather than base wage increases will not seriously disadvantage this bargaining unit. The County maintains that external comparables demonstrate that the Deputies are reasonably paid. For comparison purposes the Employer uses counties contiguous to Butler County and the second ring of adjoining counties. Using this 'regional' labor market for comparison bargaining unit members are at the average when comparing entry-level wages, and a couple thousand dollars above average at top-level wages. In Butler County, a majority of the unit's members are at the top step of the pay scale. In addition to base wages, there are many opportunities for bargaining unit members to earn overtime making their actual earnings significantly higher than their base wages. The Sheriff has never sought to be a wage leader among its comparables, but to provide competitive compensation, which it does as evidenced by a stable workforce with no significant turnover problem. Besides external comparables there are internal comparables to consider. Almost all of the County's bargaining unit employees have agreed to lump sum increases in their most recent contract negotiations. There are two exceptions: the Children Services Unit – which went on strike, and the Clerk of Courts – which accepted a pay for performance proposal. Non-bargaining unit county employees have been moved to a pay-for-performance program and as the various bargaining units go through negotiations they have each been offered the opportunity to transition to a pay-for-performance program. When a bargaining unit accepts a pay-for-performance program, the County is willing to stretch slightly from its original lump sum proposal. Such is the case with this bargaining unit. If the Deputies are willing to accept a pay-for-performance program, unit members could earn up to $1200 for achieving certain performance objectives.

Finally, the Employer maintains that the costs associated with the Union's proposal cannot be viewed in a vacuum. The Sheriff's Office has collective bargaining agreements with four other units – all of which contain wage reopeners in December 2014. If base wage increases were to be awarded in the case of this unit, the other bargaining units would leverage the increase to obtain their own base wage increase. The domino effect would create a financial hardship for the County.

Discussion and Recommendation

The first level of analysis in a wage dispute is whether there exists a compelling reason to adjust wages, not simply whether the Employer can afford a wage increase. There are always more ways to spend public funds than there are funds to be spent, so it is inadequate to simply focus on the Employer's finances. Should the wage analysis lead to a determination that an adjustment is warranted the second level of analysis is an examination of the Employer's ability to pay. In order to recommend a wage adjustment the examination must lead to the conclusion that the Employer's financial situation is stable and healthy. Only then does the fact finder proceed to the final level of analysis which is to determine what the prevailing practice is – in form and amount – for a wage adjustment. The discussion below follows this train of thought and is organized around an examination of existing wages, followed by a review of the Employer's financial condition, and finally a look at the prevailing practice concerning wage adjustments.

A Review of Current Wages

The Employer's selection of comparable jurisdictions is the set of counties contiguous to Butler (*i.e.*, Hamilton, Warren, Preble and Montgomery) and the second ring of contiguous counties (*i.e.*, Darke, Miami, Green and Clermont). The sample is informative and is aligned with this bargaining unit in terms of law enforcement mission, governmental jurisdiction and funding sources. The wage data from this set of surrounding County Sheriff Offices represents a regional labor market for the job of Deputy Sheriff. The Employer has entered into the record a SERB Benchmark Report for wages in these surrounding jurisdictions. Based on the SERB data for 2014 this unit's wages are very closely aligned to the average wage across all nine counties, both at the entry level (about $200.00 above average) and at the top-step level (about $2000.00 above average). In this set of wage comparables, Butler County Deputies are also the median wage rate in 2014 – when the base wage is increased by the Employer's proposed $550 lump sum. In 2015, when wages are adjusted by known contractual increases, and this unit's wages remain steady with a second Employer-proposed $550 lump sum, the unit maintains its relative position in the group both at the mean and as the median wage. Based on this data the Employer asserts that the unit would not be adversely impacted by freezing base wages for two more years because wages for this unit are at the regional labor market mean and can maintain this relative position with lump sums. The Employer further states that the Butler County Sheriff has never sought to be a wage leader in the area and therefore wages at the mean are appropriate. To bolster its position that wages are appropriately placed, the Employer introduced records showing that overtime opportunities are readily available to unit members, and due to overtime, actual income levels are considerably higher than the negotiated base wage.

The Union's selection of comparable jurisdictions is the set of law enforcement comparables used by the Employer in 2010 and 2014 collective bargaining/fact finding proceedings with this unit and the Lieutenant/Sergeant Unit. The set includes a combination of area counties (*i.e.*, Clermont, Greene, Hamilton, Montgomery and Warren), municipalities (*i.e.*, Fairfield, Hamilton, Middletown, Monroe, Oxford and Trenton), and townships (*i.e.*, Fairfield and West Chester). This set of comparables is informative because they have an air of 'mutuality' in that both parties have recognized them as acceptable comparables in the past, and they closely mirror the population density and income level of Butler County. The Union presents data for law enforcement units in these jurisdictions showing base wage rates for the ten-year tenured unit member, and total compensation (*i.e.,* base wage + longevity). The Union focuses its analysis on the total compensation figures. These figures reveal that in 2014 the Butler County top-step wage rate is 6.42% below the average wage rate (*i.e.,* \$3843.00). Applying known contractual increases for these jurisdictions in 2015 and assuming a 2% wage increase in the jurisdictions yet to reach a wage settlement for 2015, the picture becomes increasingly bleak. As wages remain stagnant for Butler County Deputies, wages increase in these comparable jurisdictions leading to a wage disparity of 10.47% (*i.e.,* \$6320). In the Union's set of comparables, this unit is the second lowest paid jurisdiction followed only by the City of Monroe. The Union further points out that wage data for this same set of comparables shows that in 2009 Butler County Deputies were basically where the Employer describes the unit today – in the middle of the pack, the median, just \$2000 above average at the top-step. If wages are allowed to be frozen (as the Employer proposes) with only a single 2% raise over a five year span (2010-2015) this unit will be highly disadvantaged in comparison to other similarly situated law enforcement units.

As is often the case, a combination of the Employer's and Union's data tells a somewhat more balanced story than either party's comparables. From the Employer's set of comparables, Darke and Preble are clearly demographic outliers and removing them from the data set reduces the range. The Union's set of comparables have been used in the past by the Employer and appear to be reasonable. However, the Union makes assumptions about what constitutes 'total compensation' that may not accurately reflect all of the supplements, benefits, and bargained trade-offs that constitute actual total compensation in any of the referenced jurisdictions. Furthermore, the Union assumes that units that have not yet bargained for 2015 will settle on 2% increases – an assumption I am not willing to make. This being the case, I have combined the data from the parties and focused the analysis on base wages. The analysis reveals that at the top-step – the level of most current bargaining unit members – the Butler County base wage in 2014 is 4% below average, and will be 8% below average in 2015 (based on known wage increases). In the combined set of comparable jurisdictions (minus Darke and Preble) Butler County Deputies are not the median wage, they are in the bottom quartile – only the City of Monroe and Miami County are below Butler County's base wage in both 2014 and 2015. As for the Employer's contention that overtime opportunities more than make up for any perceived deficit in the Butler County wages, an overabundance of overtime is standard among law enforcement units and without some further information that would distinguish this unit's overtime opportunities, overtime must be seen as a common and neutral factor.

The CPI is an important analytical tool and often serves as a guide in considering the appropriateness of wage proposals. From 2010 to 2014, a timeframe when this bargaining unit received a single 2% wage increase added to base and one $500 lump sum payment, the CPI-U has increase as follows: 1.6% in 2010, 3.2% in 2011, 2.1% in 2012, 1.5% in 2013, and 1.7% in the first half of 2014.[4] This is an aggregate increase in the cost of living of 10.1%. It is important to note however, that from 2004-2009 this bargaining unit received six consecutive 3% annual wage increases totaling 18%. Meanwhile the CPI-U increased an aggregate 15.5% from 2004-2009[5]. Furthermore, even though this unit has only received one added-to-base wage increase since 2010, several other County bargaining units did not even receive that increase. Wage adjustments are typically not tied directly to the CPI index, however it does serve to inform the fact finding process of the relative standard of living experienced by unit members.

The Employer has maintained that it does not seek to be a wage leader, simply to provide competitive compensation. As long as the employer maintains its ability to attract and retain the desired workforce this is a reasonable position for an employer to take. At the fact finding hearing there was no evidence introduced to suggest that the Employer's ability to recruit and retain has been adversely impacted by being at the mean for regional wages. There was no data or even a reference to high turnover, as has been experienced in other bargaining units in this County. In fact the only information in the record regarding this matter is the testimony of Chief Deputy Dwyer. Chief Dwyer testified that Court Service Deputy vacancies are not difficult to fill. There are always adequate applicants for vacancies in Court Services. Many staff members currently in corrections positions are willing to take a reduction in pay to move to Court Services due to the fact that Court Services positions are considered law enforcement positions which is a desirable career path move for jail employees.

After carefully reviewing the evidence presented in this case it appears that a modest wage adjustment is warranted. Using the set of comparables as I have combined and adjusted them (no data from Darke or Preble Counties) the Employer's proposed $550 lump sum does not keep this unit at the mean, nor does it keep it as the median wage rate for the surrounding comparable jurisdictions. The Employer's proposal leaves the Unit in the bottom quartile. The Union's proposal for Deputies would place the unit at the mean in 2014 and elevate the unit into the third quartile in

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[4] US Bureau of Labor Statistics, Consumer Price Index,12-month percent change data tables

[5] Ibid

2015. Current CPI figures and this unit's wage history relative to the CPI (outpacing inflation from 2004-2009, lagging inflation from 2010-current) also suggests that a wage adjustment is warranted.

A Review of County Finances

The Sheriff's Office revenue for 2014 is $8.8M, whereas the Sheriff's budget in 2014 is $25.6M. The Sheriff's Office is clearly dependent on monies from the County's General Fund to cover its operating budget. Therefore the health of the County's General Fund is the primary consideration when evaluating the Employer's ability to finance any recommended wage adjustment.

Both parties introduced extensive documentation on the matter of the Employer's ability to pay. The Union focused on the overall increase in revenue into the County's General Fund and the much improved carryover balance. The Employer has focused on the fact that even with strict management of expenditures (including layoffs and deferred capital improvements) expenditures have outpaced revenue in three of the past five years. In 2013 the General Fund's cash balance was over $14.4M, an increase of $4.1M over the 2012 cash balance. This cash balance is roughly the same as that of 2008, before the Great Recession. However, revenue levels have not returned to the level seen in 2008; in fact, revenue in 2013 was $13M lower than in 2008. The fact that the General Fund carryover balance has returned to a pre-recession level is due to strict management of expenditures, not due to fully restored revenue. In the current year, cash reserves have grown to $18.5M as of the end of June. A snapshot of 2014 General Fund performance is found in the County's June 2014 Financial Report:

> "When comparing the Top 10 General Fund revenues with June 30, 2013, eight revenue categories were trending higher than the prior year. These categories include: Sales Tax trending 6.6% higher, Investment Income 12.1% higher, Boarding of Prisoners trending 0.7% higher, Building Regulations 59.7% higher, Indirect Costs 130.5% higher, Transfer Tax trending 5% higher, Casino Fees trending 17.1% higher and All Other trending 6.4% higher.
>
> Positive performance in eight categories offset declining performance in two categories including: Local Government Fund trending 6.0% lower and Recorder Fees 40.3% lower. Revenue for Property Tax remained about the same as 2013.
>
> When comparing monthly performance results, revenues were trending 44.2% higher in the month of June 2014 as compared to the month of June 2013. Revenues for the month of June 2014 were trending 42.6% higher than forecast.
>
> When comparing monthly performance results, expenditure were trending 19.1% higher in the month of June 2014 as compared to the month of June 2013. Expenditures for the month of June 2014 were trending 8.3% higher than forecast."

For the past couple of years the County has been conservative in projecting revenue. In 2013, actual revenue exceeded the County's 2013 revenue estimate by 5.2%. The same is true so far in 2014 – actual revenue collections are 5.2 % higher than what had been projected. Similarly, the Employer claims that 2015 General Fund revenue will be down in comparison to 2014, based on anticipated decreases in casino revenue, a slowing housing market (suggested by 2014's decrease in recorder fees) and slowing population growth. Further rationale for this projection was not provided at hearing.

There is also the matter of the County's bond rating downgrade by Moody's Investors Service. The downgrade was based in part on the *"narrow General Fund position relative to other Aa-rated entities,"* and the County's exposure to underfunded public pensions. However, Moody's also referenced the County's *"very large tax base capturing suburban growth of the Cincinnati and Dayton metro areas"* as an economic strength upon which the Aa2 rating is based. As of June 2014, the General Fund cash reserve was at $18.5M. The Employer has expressed a desire to raise the cash reserve even higher to$25M to offset the adverse impact of its exposure to public pension liabilities. County Administrator Young testified that the immediate impact of the downgrade is not great, but there could be implications should the County seek to finance projects with borrowed funds. At this time however Mr. Young indicated that the County is in an aggressive debt reduction mode and does not plan to take on additional debt.

Upon review of all of the financial data, and national, regional and local economic information provided by the parties, it is reasonable to conclude that the County's finances are very much (although not completely) recovered – almost to pre-recession levels. There is every indication, given the healthy amount of local economic development underway and the existing upward trend in revenue, that the County will be restored to pre-recession revenue levels in the near future. Certainly the County has many competing priorities for allocating these revenues, including growing the General Fund cash reserve to improve the County's financial position and restore its Aa1 Moody's rating, paying down debt, and addressing $6M in deferred capital improvement projects. However, in the midst of all of those stated priorities, the Employer has also made its own offer of a wage adjustment – presumably without disrupting its commitment to these other priorities. Therefore, it is reasonable to conclude that there is money available to fund a wage adjustment. The Employer has offered a $550 lump sum payment in both 2014 and 2015 for each bargaining unit member, approximately $76.3K in each year of the contract. The Employer has also alternatively offered to provide a $1200 wage adjustment in both 2014 and 2015 to each bargaining unit member, if it is accompanied by pay for performance contract language. A $1200 wage adjustment equals approximately $166.6K in each year of the contract.

The Prevailing Practice in Wage Adjustments

Given that there is evidence, in terms of the local labor market wage comparables and cost of living data, to support a wage adjustment for this unit; and given that the County's financial data and economic information indicate that the Employer has an ability to pay for a wage adjustment, the final determination is the appropriate form and amount for such an adjustment. To this point the bargaining history and past collective bargaining agreements of the parties is relevant, as is information concerning the form and amount of wage adjustments in the region and in other law enforcement units.

The parties have a long-standing history of negotiating cost of living wage adjustments in the form of percent increases added to the base wage rate. I understand that the Employer seeks to bring an end to that practice and introduce a new structure for wage adjustments. To make a radical departure from the status quo the parties must either negotiate the change for themselves, or clearly demonstrate that there has been a radical change in circumstances that warrant the neutral's intervention to impose the change. I understand that the Employer believes that radical action is needed to align the bargaining unit's compensation model with what it believes to be the private sector's best practice model and what it believes to be taxpayer expectations. However, the County's financial circumstances are not such that the only way forward is to freeze pay indefinitely and restructure the entire compensation model. Public employers all across Ohio have found themselves dealing with the same financial and economic challenges as Butler County. And yet, the prevailing practice has been to retain the existing pay model and negotiate wage settlements within the existing structure. If the parties mutually come to conclusion that it makes sense to change the compensation model then they will make the case for themselves and act upon it through negotiations. Based on the statutory criteria for fact finding, I will not impose the pay for performance model but maintain the existing pay model and recommend an adjustment within that model.

Within the existing compensation model there is a history, both in this bargaining unit and in other similar units, of negotiating wage freezes, lump sum payments, as well as percent increases added to base, depending on economic conditions and bargaining dynamics. Internal to the County, a pattern of $500 and $550 lump sum payments has been introduced in bargaining units with the right to strike. In this bargaining unit the Employer-proposed $550 lump sum payments in 2014 and 2015 are predicated on the assertion that the County simply cannot afford to pay for cost of living increases added to base wages. I have arrived at a different conclusion based on my review of the County's finances and the health of the General Fund. With consideration given to the cost of the Employer's own fallback proposal of $1200 per unit member (the equivalent of a 2% base wage increase in 2014), and monies available from suspending the sick leave incentive, a modest percentage wage increase can be afforded without undermining the Employer's priority of growing the General Fund cash reserves. The reserves may grow at a fraction slower than the Employer would prefer, but the cash reserves can still grow and also be used to address some of the deferred capital improvements if the County so chooses. The prevailing practice in other non-striking units in the region – those referenced as comparables by both the Union and the Employer – has been to negotiate percent increases added to base wages. Lump sum payments are the exception and are used when there are unique circumstances that warrant them, such as in the West Chester Township case. It is true that in increasing base wages by a percentage, County expenses will increase over the long term by more than the initial one-year cost of the increase. However, it would be a 'worst case scenario' to project that a base wage increase will compound at a consistent 2%, 3% or more over the long term. This unit has demonstrated a cooperative approach in accepting wage freezes for multiple years in a row when financial circumstances warrant it. Based on this, it is not a foregone conclusion that labor expenses will only grow as a result of collective bargaining, rather than follow a pattern of growth and contraction in response to economic conditions.

Another stated priority of the County is to maintain a competitive wage in the regional labor market. With modest cost of living increases added to base wages in 2014 and 2015, the Employer need not fear that it will become a regional wage leader. Cost of living raises will fulfill the Employer's interest in staying close to the regional mean wage, as surrounding jurisdictions also add cost of living increases. The SERB Wage Settlement Report shows that wage adjustments have been on the increase since their low point in 2010. Increases shown in the SERB report are small; in 2013 the average law enforcement wage settlement was 1.66%, and county wage settlements (regardless of unit type) averaged 1.8% in 2013. Data presented by the parties in their comparable presentations show that wage increases for Deputies and Police in the area consistently range from 2%-3% in both 2014 and 2015. A 2.5% increase added to base wages in 2014 would move this unit from the bottom quartile to the second quartile, and an additional 2.5% increase in 2015 would allow the unit to continue in the second quartile. Such raises are in keeping with known wage settlements in other similar units; are consistent with the direction and rate of increases evidenced by SERB's wage settlement data; address the impact of inflation on the unit's standard of living; and is affordable without undermining the growth of the General Fund cash reserve.

Recommendation

The statutory criteria require that the fact finder consider comparable public jurisdictions, the Employer's ability to pay, and the bargaining history and past contracts of the parties. In light of these criteria the fact finder recommends the following wage settlement:

- Effective retroactive to February 9, 2014 all wage rates and step rates in Schedule 1 will increase by 2.5%.
- Effective February 8, 2015 all wage rates and step rates will increase by 2.5%.
- The Corporal wage rate shall be adjusted as of February 9, 2014 to maintain a 3% wage differential above the 2014 top-step Deputy. The Corporal wage rate shall be adjusted on February 8, 2015 to maintain a 3% wage differential above the 2015 top step Deputy.

<u>2. Article XVII: Sick Leave, Section 16: Sick Leave Incentive</u>

Union Position

The Union proposes deletion of the sick leave incentive program and the application of the monies designated to fund the incentive redirected to fund the Union's wage proposal.

Employer Position

The Employer seeks elimination of the sick leave incentive program. The terms of the sick leave incentive program expressly suspend the incentive in the event the Union reopens the wage section. The terms of the agreement provide that the bargaining unit members should not receive both a reopener and the sick leave incentive. The Employer is willing to maintain the sick incentive program only if it is paired with the Employer's lump sum proposal.

Discussion and Recommendation

Both parties have recommend elimination of the sick leave incentive program. I support the mutual expressed preference of the parties and recommend deleting Section 16 of Article XVII: Sick Leave.

Conclusion

In this report I have attempted to make reasonable recommendations that both parties will find acceptable. If errors are discovered or if the parties believe they can improve upon the recommendations, the parties by mutual agreement may adopt alternative language.

After giving due consideration to the positions and arguments of the parties and to the criteria enumerated in ORC 4117.14(G)(7)(a) to (f) the fact finder recommends the provisions as enumerated herein. In addition, all tentative agreements (TAs) previously reached by the parties along with all sections of the current Agreement not negotiated and/or changed, are incorporated by reference into this Fact Finding Report and should be included in the resulting collective bargaining agreement.

Respectfully submitted and issued at Columbus, Ohio this 10th day of October 2014.

Felicia Bernardini,
Fact Finder

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of this Fact Finder Report was sent by e-mail on October 10, 2014 to:

State Employment Relations Board
Mary E. Laurent
65 E. State Street
Columbus, Ohio 43215
med@serb.state.oh.us

Stephen Lazarus
Hardin, Lazarus & Lewis, LLC
30 Garfield Place, Suite 915
Cincinnati, Ohio 45202
stevelazarus@hllmlaw.com

Joe Scholler
Frost Brown Todd, LLC
9277 Centre Pointe Dr.
West Chester, Ohio 45069
jscholler@fbtlaw.com

Felicia Bernardini

Felicia Bernardini