

**Before the State Employment Relations Board  
State of Ohio**

**In the matter of**

Mahoning County Board of Commissioners  
Employer

Case No. 14-MED-03-292  
14-MED-03-293  
14-MED-03-294

And

Sandra Mendel Furman,  
Fact finder

FOP/OLC Inc. (representing civilians, blue (deputies)  
and gold (officers))  
Union

**FACTFINDER'S REPORT**

**Procedural Matters**

The fact finder was appointed by SERB notification dated May 30, 2014. The matter was scheduled for hearing on September 3, 2014 by agreement of the parties pursuant to re-opener language. Pre-hearing statements were received by the fact finder and served by each party upon the opposing party at or prior to the hearing. There has been substantial compliance with OAC rule 4117-9-05 (F).

The hearing was held at the Sheriff's Department. The fact finder offered to mediate any/all of the issues. The parties engaged in mediation then proceeded with their proofs. All issues relating to the gold unit were resolved in mediation.

A full hearing was had. The parties presented witnesses and exhibits in support of their respective positions. Representing the Employer were Gina Bricker, Assistant Prosecuting Attorney and Kevin Kralj, Assistant Prosecuting Attorney. Also present and/or testifying on behalf of the County were Karen U'Halie, Human

Resources Director, Audrey Tillis, County Budget Director and William Cappabianca, Sheriff's Administrator.

The Union was represented by Charles (Chuck) Choate, Staff Representative and various members of the bargaining committee: John Tkach, Lt. Dave Stewart, Captain Stephen Szekely, Sgt. Steve Lindow and Karen Ziemiaski. Wade Steen CPA testified on behalf of the Union.

The parties had engaged in several bargaining sessions for a successor agreement prior to selection of the fact finder. At the date of hearing there were two (2) issues left for determination by the fact finder: compensation and duration. The parties submitted well-argued closing statements.

The report is submitted at the date stipulated by the parties.

### **Findings of Fact<sup>1</sup>**

1. 2010 census figures for Mahoning County show a population of 238,823. It was not established whether or not there is a projected increase or decrease based upon the 2010 census.
2. Current unemployment rate in Mahoning County is 5.9%- its lowest point since 2007. It was 8.1% for the SMSA at the end of 2012.
3. Economic development projects for the greater geographic area (Youngstown-Warren and Western PA) since 2008 indicate \$5 billion in investment, 5654 new jobs and 12,574 retained jobs.
4. Funding has been down over the past five years in three areas: investment income, local government funds received from the State and federal dollars received from housing federal prisoners.
5. There are various mandated services that must be funded by state law. These include: Veterans Services, the Board of Elections, Commissioners' General Administration and Facilities. Mandated services take up over 18% of the budget. (FY13)
6. The County implemented a variety of cost savings measures since 2008.
7. Personnel costs savings measures included staff reduction, concessions, furloughs and wage freezes.

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<sup>1</sup> Generally figures are rounded.

8. Since 2009 the County has reduced 289 jobs.
9. Casino income has come to the County since FY2012. It has increased in amount from \$124,000 to \$560,000 in FY14. No further projections were available.
10. 60% of casino income is allocated to stabilization reserve. (i.e. "rainy day fund")
11. There has been a steady growth in sales tax collections since FY2009 with FY2013 reflecting the highest collection rate since FY2002.
12. In FY2013 \$1million in tax receipts went to the debt service fund.
13. In FY2014 \$1.05 million is allocated to debt service.
14. Bond ratings are an important measure of fiscal health. As of September 2, 2014 Mahoning County had an A+ rating. A+ is a step below the maximum possible rating.
15. Wages, salaries and fringe benefits constitute the majority of County's expenditures, close to 80%.
16. There was no testimony concerning major planned capital improvement projects.
17. The General Fund (GF) is expected to receive a total of \$50,241,000 in revenues from taxes and other sources in CY2014.
18. The GF reflects a \$12,386,000 balance for FY 2013 including restricted funds in the amount of \$575,000.
19. FY 2011 was the best revenue year since FY 2004 and FY 2012 and FY 2013 amounts are very close in receipts.
20. The GF represents 15% of the total budget. The Sheriff's Department's funding is currently exclusively out of the GF. Jail funding sources are currently *only* from the GF.
21. The largest single source of funding for the GF is sales tax.
22. The current County sales tax rate is 1%. (The combined rate is 7%)
23. The five-year proposed sales tax ballot issue failed in May 2014 by a very slight margin.

24. The current sales tax ballot issue set for November 4, 2014 is for a .25% sales tax increase. ("Justice" tax) Amounts received if passed will be dedicated to providing services for the Jail, Sheriff, Coroner, Prosecutor and the 911.
25. The next opportunity for a ballot initiative for a tax increase is May 2015.
26. Projected need for the FY 2016 budget is \$59.5 million.
27. There is over \$1million available as an excess of revenues over expenditures in 2013 in the GF.
28. Over \$4 million is available in the GF as of the end of 2013.
29. The GF fund balance to expenditure ratio is 23% well within the best practices range of 20-30%.
30. The County has the ability to pay for wage increases for the FOP units.
31. A wage increase of 3% as sought by the Union would comprise less than 1% of the total budget.
32. FOP/OLC is the certified bargaining representative for three (3) separate units in the Department.
33. The civilian unit consists of all non-sworn members of the Department. Currently there are thirteen (13) members.
34. The blue unit consists of Deputy Sheriffs. Currently there are 185 members.
35. The gold unit consists of Captains, Lieutenants and Sergeants. Currently there are twenty-five (25) members.
36. The parties have had a collective bargaining relationship for around thirty (30) years.
37. The current contract's expiration date is June 30, 2016. It is a three (3) year agreement.
38. The current impasse arose due to re-opener language in Articles 35 and 54.
39. The Sheriff's Department spending in 2013 declined \$100,000 in 2013 from 2012 levels.
40. Some of the concessions occurring in the 2008-2013 time period for County employees were restored in 2013. This resulted in some economic benefit to members that had previously experienced "take-aways" and cuts. These

included measures to compensate for the loss of PERS “pick-up”. (PERS flips) Actual raises were non-existent or minimal at best; the goal was to minimize the income tax impact to employees due to the PERS flip.

41. PERS “flip” did not affect the Sheriff’s Department employees.
42. No employees have been laid off in the Sheriff’s Department during the current cba term.
43. There have been wage freezes and many other concessionary measures in prior contracts including year one (1) of the current three (3) year cba.
44. In June 2010 sixty-five (65) Deputy Sheriffs were laid off.
45. Forty-five (45) deputies returned after recall in August 2012.
46. There have been thirty-one (31) new Deputy Sheriff hires since December 2012. Of these thirty-one (31), twenty-three (23) have successfully completed their probationary period.
47. The civilian unit has added two (2) secretaries since the concessions of the recent past.
48. There have been eleven (11) new positions created in recent years: three (3) in the Gold Unit; six (6) in the Blue unit and one (1) in the Civilian unit.
49. Sheriff’s Department wages have been frozen since FY 2010 which took them back below FY2008 wages.
50. Fact Finder Mitchell Goldberg’s report dated 4-13-12 ordered the “unfreezing” of certain economic items in the cba contingent upon certain future events related to funding levels and ordered immediate funding of certain frozen benefits by an allocation of \$500,000. The parties adopted the report.
51. There is no joint bargaining.
52. There is no “me-too” language in the cba relating to wages.
53. There was no testimony that the County seeks parity among its various units.
54. Internal comparables for other County employees reflect the following:
  - AFSCME Local 2533/Auditor/Data are currently in negotiations (cba expired 7-1-14)
  - AFSCME Local 3956/Clerk of Courts- same

- FOP/911/Telecommunications-same (no wage increase in 2013 during re-opener<sup>2</sup>)
- AFSCME/ Local 1156/Facilities-no increase from 2011-14; re-opener in 2013<sup>3</sup>; currently in negotiations;
- AFSCME Local 1156 A/Recorders (elected official): no wage increases but PERS flip and other economics (parking stipend and life insurance; longevity rolled into wages)
- Teamsters Local 377/Treasurer (elected official): PERS flip; no wages in 2013 with re-opener in 2014 and 2015.<sup>4</sup>There are no “me too” clauses in the current cba.

55. The County proposed a re-opener for 2015 wages and 0% for 2014.

56. In the prior cba the Union percentage wage increase was 0% each year of the three-year contract.

57. There was no wage increase for 2013.

58. The County projects the costs of the Union’s proposed 3-3% increases as nearing \$700,000 as it will necessarily include increased costs for overtime, longevity and PERS contributions.

59. There is a notable disparity (22% average) of wages between the FOP unit and that of peer units presented by the FOP.

60. For jurisdictions around the County, (Portage, Summit and Cuyahoga) Mahoning County salaries are below the average.<sup>5</sup>

61. Only the Union presented external comparable data.

62. There was no evidence that the Department has retention or recruitment issues.

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<sup>2</sup> Fact finder Stein recommended a lump sum payment equivalent to 2% plus a 2% upwards adjustment at the end of the cba period-if the May 2014 levy had passed. It failed.

<sup>3</sup> No information was provided regarding the 2013 re-opener.

<sup>4</sup> No information was provided as to the status of the re-openers for the Treasurer’s Teamsters unit.

<sup>5</sup> It was not clear if the Cleveland information related to deputies’ work or police officers. There were no comparisons made with units having equivalent county population.

## **RECOMMENDATION**

### **Compensation Article 35**

The fact finder has taken into consideration relevant factors set forth in R.C. 4117.14 (C) (4) (e), and has followed the guidelines set forth in OAC 4117-9-05(J) and (K).<sup>6</sup> Some of the listed factors were not relevant. Other factors had no evidence or arguments in support presented in the record.

The Union position is a 3% increase for the 2014 and 2015 remaining cba years (July 2014-June 2015). It states that the County can afford the increases; that same are justified by the long periods of freezes and other concessions and such increases would place the groups on parity with peers (comparables). Union Exhibits and Steen's testimony illustrate sufficient funding exists to fund the increases.

The County prepared projections in its Ex. 1 of the effect of granting the Union's request for 3% increases for each of the two years of the contract (7-1-14 through 6-30-16). County Ex. 3 illustrates that the County has red ink projections for the next two (2) years. Significantly there are nearly \$4.9 million dollar deficits projected for FY15 and \$9.9 million dollar deficits for FY16 in the projections. In the past six (6) years \$8 million has been lost as income.

There is a cash carryover for FY 2014 of \$3.2 million.

The fact finder has several comments.

Projections are predictions-not facts. The budget documents are prepared both for auditors and for the public in addition to the direct stakeholders- county officials and employees-represented and otherwise. In the environment of a one time failed tax levy and the current re-introduction of a revised levy immediately pending it is unclear as to whether or not the projections will be borne out.<sup>7</sup>

There is a rainy day fund and it is funded with extant reserves just under \$1million dollars.

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<sup>6</sup> The relevant factors to be considered are: past collective bargaining agreements; comparables as defined in the rules; public welfare and interest; ability to pay and administer; effect on public services; lawful authority of the employer; parties' stipulations and other traditional factors related to bargaining.

<sup>7</sup> The decision was written without awareness of the electoral outcome of the November 4, 2014 tax increase ballot issue.

Casino revenues will increase the revenue flow albeit in an indeterminate amount. Forty percent (40%) of casino revenues are available for unrestricted purposes.

There is no doubt that this wage issue is challenging to decide. The County must be mindful of accounting principles, fixed expenses, the public trust, ability to promote and secure tax levy passage and the inevitable "rainy day". These are valid concerns. It argued emphatically that the figures don't lie and there is an inability to pay any wage increases at this time. It provided multiple exhibits with red ink and deficits to illustrate its position. The Budget Director's testimony was supportive and clarifying of the County's desire to avoid financial recklessness.

The fact finder believes that a 3% across the board increase for the remaining years of the contract is unreasonable under extant, known circumstances. But the fact finder in no manner agrees that the record supports no increase for 2014 and 2015.

Furthermore the parties have been through strenuous efforts to negotiate a satisfactory resolution under the current re-opener. To add yet one more cycle of negotiations as proposed by the County in this very short window of time is neither cost efficient nor does it promote labor stability. Thus the County's position fails in this writer's position.

As further support for the recommendation following the fact finder notes that there has been a re-bound in the income of the County- not a windfall nor vast reserves but a healthier fiscal outlook. The fact that the County was able to restore most of the concessions is symptomatic of a better financial position than that experienced just a few years previously.

The fact finder recommends a 1.5% increase for each of the remaining two years of the cba. There has been great sacrifice among the workforce. Due to the lengthy time period of no wage increases recommending the 1.5% increase for each of the two remaining years of the cba is an equitable result. There were certain other economic advantages obtained by the unit in other language not before the fact finder. These represent a cost to the County but not

always a bigger paycheck for the employee. SERB's wage settlement report for 2013 indicates that 1.5% is the average for units in the Youngstown-Warren area and for police units. This result represents a recommended increase in line with area averages per the 2013 SERB annual report. It was the most recent data available. This recommended increase does not result in adverse impact on the budget so as to cause deficits.

The recommended increase does not meet the Union's stated need to match its peers. Nor does it match the pre -2008 trend of annual increases. Times changed. The 1.5% recommended increase begins the process of addressing the long drought for the units of no increases.

There are sufficient resources to fund the recommendation as is demonstrated by a healthy carryover. The County's bond rating is secure at this time. The fact that the County has been able to add positions to all three Sheriff's units since 2012 is further evidence of optimism and growth.

It may be that the sought for .25% tax increase passes at the ballot box but perhaps not. The increase recommended needs to be firmly grounded in ***what is known***. The fact finder believes it to be unfair to the parties' desire for certainty to frame her report on an "if this, then that happens" rationale.

Importantly, all agree that the area's financial health and growth are rebounding after a long period of hardship and stagnation. There is optimism about various initiatives relating to technology and other areas of growth including the automotive industry in nearby Lordstown and its affiliated supply chain. There was evidence presented on economic development efforts both within Mahoning and surrounding communities that may continue to spur revitalization here. Unknown developments may provide for more of an income base.

The parties will meet again in two years to assess the situation and bargain again. The equities and facts will undoubtedly be different.

### **Recommendation**

**Article 37 Wages Section 1 should be amended as follows:**

**Unit members in the blue and civilian units to receive a 1.5% across the board increase for the remaining term of the contract effective July 1, 2014 and another 1.5% increase on July 1, 2015. There shall be no re-opener in 2015.**

Respectfully submitted,

s/Sandra Mendel Furman

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**Certificate of Service**

An electronic copy of the fact finder report were sent by electronic mail to the State Employment Relations Board, 65 East State Street, 12<sup>th</sup> floor, Columbus, Ohio 43215; to Gina De Nova Bricker and Chuck Choate on November 5, 2014.

s/ Sandra Mendel Furman

Sandra Mendel Furman, Esq.