

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

FACTFINDING REPORT AND RECOMMENDATIONS

June 19, 2014

In the Matter of

Washington County Sheriff's Office Washington County, Ohio (WCSO)

and

**Fraternal Order of Police
Ohio Labor Council, Inc.
Lodge #4**

SERB Cases:

**2014-MED-03-0342 Deputies and Detectives
2014-MED-03-0343 Assistant Dispatch Supervisor and Dispatchers
2014-MED-03-0344 Corrections Officers
2014-MED-03-0345 Sergeants and Lieutenants Corrections
2014-MED-03-0346 Cooks
2014-MED-03-0347 Control Room Operators and Maintenance
2014-MED-03-0348 Sergeants and Lieutenants Criminal Division**

Appearances

For the Employer:

Benjamin S. Albrecht
Fishel Has Kim Albrecht LLP
Mark Warden WCSO Chief Deputy
Troy Hawkins WCSO Captain

For the Union:

Wes Elson Staff Representative
Robby Morgenstern Control Room
Patrick A. Gherke Criminal Div.

**Richard J. Colvin
Fact-Finder**

INTRODUCTION

A. Appointment of the Fact-Finder

The State Employment Relations Board appointed the Fact-Finder on April 15, 2014. Under Section 4117.14(C) (3)

B. Composition of the Bargaining Unit

The Recognition Clause of the labor Agreement Includes:

Approximate number of employees:

25 Deputy Sheriffs in the Criminal Division
16 Corrections Officers
15 Sergeant and Lieutenants in the Criminal Division
7 Dispatchers
8 Sergeants and Lieutenants in the Corrections Division
3 Cooks
7 Assistant Communications Supervisor and Communications Sergeant
5 Full-time Control Operators and Maintenance employees

This represents some **86** employees

In January 2014, without having to proceed to the impasse process, the parties successfully negotiated a three-year successor collective bargaining Agreement. The parties agreed to a 2% wage increase for all bargaining units in 2014, however, as part of the Agreement, the parties agreed, pursuant to a Memorandum of Understanding, as follows:

In the event the Courts order or receive greater than a 2% increase for 2014, the parties agree to re-open Article 38, Wages and Longevity (wage scale only) for purposes of negotiations. Such re-opener negotiations shall be subject to the impasse process of Chapter 4117.

Because certain employees received greater than a 2% increase for 2014 from the Courts, the Union filed a Notice to Negotiate consistent with the Memorandum of Understanding to negotiate the wage scale only. No other provisions in the collective bargaining Agreement are subject to this Fact-Finding Hearing. Effectively, this Fact-Finding is a wage re-opener for 2014 even though a 2% increase had already been provided.

C. The Employer's Position

As for the "wage re-opener" contained in the Memorandum of Understanding, the WCSO proposes no additional increase contending that the 2% wage increase

previously agreed upon for 2014 is appropriate. As such, the WCSO proposes current language with respect to wages for 2014.

D. The Employer's Rationale

Among the factors to be considered by the Fact-Finder is the 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. No other Washington County employees provide law enforcement or corrections or safety services, as do the employees in the bargaining units. As such, it is necessary to compare wages, and wage increases received by other similarly situated employees in other counties doing comparable work. When reviewing both the 2% wage increase already provided and the wages earned by bargaining unit employees in comparison to similarly situated employees in other counties doing comparable work, it is apparent that the 2% wage increase previously agreed upon is appropriate and a further increase is not necessary.

The Employer submits that sheriff's offices in southeastern Ohio are appropriate comparable jurisdictions to consider due to the geographic proximity to Washington County. In fact, during negotiations of the open issues, the Union submitted 19 southeastern Ohio counties as comparable jurisdictions. The Union's 19 comparable counties are included in the WCSO's comparable counties. When reviewing the comparable jurisdictions in southeastern Ohio, the following conclusions can be reached:

Deputies

1. WCSO deputies are the 2nd highest paid of 23 county sheriff's offices in southeastern Ohio (within three counties of Washington County);
2. WCSO deputies earn 129% of the average top wage rate for their counterparts in contiguous counties;
3. WCSO deputies earn 140.4% of the average top wage for their counterparts in double-contiguous counties;
4. WCSO deputies earn 125% of the average top wage for their counterparts in triple-contiguous counties;
5. WCSO deputies earn 132% of the average top wage rate for their counterparts in 19 southeast Ohio counties that the Union used as comparable jurisdictions during negotiations;
6. WCSO deputies earn 136.7% of the average top wage rate for their counterparts in the southeastern Ohio region in which SERB places Washington County.
7. If all 23 counties included above are averaged, WCSO deputies earn 131.2% of the average top wage rate for their counterparts in all counties.

Sergeants

1. WCSO Criminal Sergeants are the 3rd highest paid of 22 county sheriff's offices in southeastern Ohio (within three counties of Washington County);
2. WCSO Criminal Sergeants earn 130.6% of the average top wage rate for their counterparts in contiguous counties;
3. WCSO Criminal Sergeants earn 136% of the average top wage for their counterparts in double contiguous counties;
4. WCSO Criminal Sergeants earn 122.4% of the average top wage rate for their counterparts in triple contiguous counties;
5. WCSO Criminal Sergeants earn 129.2% of the average top rate for their counterparts in the 19 southeast Ohio counties the Union used as comparable jurisdictions during negotiations;
6. WCSO Criminal Sergeants earn 135.1% of the average top wage for their counterparts in the southeastern Ohio region in which SERB places Washington County;
7. If all 22 counties included above are averaged, WCSO Criminal Sergeants earn 128.5% of the average top wage rate for their counterparts in all the counties.

The wage data establishes that the 2% wage increase previously provided was more than appropriate based upon the wages earned by those employees doing comparable work in comparable counties. For 2013 prior to the 2% wage increase, WCSO Deputies and Sergeants earned more than the statewide average.

Additionally, it should be noted that since 2003, bargaining unit employees have received percentage wage increases larger than the wage increases that have been provided across Ohio and southeast Ohio. Further, percentage wage increases that have been provided are greater than the cost-of-living.

The Union argues that a wage increase larger than 2% is appropriate because of the percentage wage increase provided to certain other Washington County employees, however, it must be noted that the Washington County Sheriff is not the appointing authority for those employees. Further, should the Union argue that certain Washington County employees received greater than 2% increases for 2014, it should also be noted that other Washington County employees received wage increases of 2% or less. In fact, several Washington County employees received 0% wage increases for 2014. Presumably, based upon the Union's rationale, the WCSO could argue that rescinding the 2% wage increase is appropriate. Of course, the WCSO is not making that argument. Nevertheless, of additional importance is that many WCSO bargaining unit employees receive greater hourly pay than other Washington County employees.

Finally, a 2% annual increase is not inconsistent with wage increases agreed upon by other County Sheriff's Offices and unions, or awarded by Fact-Finders in other matters.

The economic and demographic information of Washington County supports a 2% increase.

In sum, the WCSO's proposal of no additional increase to the 2% previously agreed upon is more appropriate than the Union's proposal.

E. The Union's Position

Functions of the Bargaining Unit Employees

Deputies: Deputies are responsible for law enforcement within Washington County. Their duties include, but are not limited to road patrol, investigations of crimes, crime prevention, service of court papers and such other activities as are necessary to keep the peace.

Sergeant & Lieutenants Criminal Division: The Sergeants and Lieutenants are first line supervisors. In addition to performing many of the same duties as a Deputy and Corrections Officers, they are responsible for directing and evaluating their subordinates.

Corrections Officers: Corrections Officers are responsible for activities within the Washington County Jail. Their duties include, but are not limited to booking, supervising, security, safety and movement of inmates.

Sergeants and Lieutenants (Civil) Corrections Division: Sergeants and Lieutenants are responsible for supervising, direction and evaluating their subordinates. In addition they perform many of the same duties as Corrections Officers.

Assistant Dispatch Supervisor and Dispatchers: Dispatchers are responsible for directing emergency and non-emergency calls for service. They enter warrants and other validation information into various information services.

Cooks: Responsible for coordinating food operations and preparation within the jail facility.

Control Room Operators and Maintenance Supervisor: Operators are responsible for security and movement within the jail facility. The Maintenance Supervisor is responsible for maintenance of the facility.

Bargaining Chronology

On March 6, 2014 the parties executed a new three-year successor collective bargaining Agreement. Along with the Agreement, a Memorandum of Understanding was signed. It calls for negotiation of the 2014 wage scale to be re-opened should Washington County Court employees receive greater than a two (2%) percent increase.

On March 11, 2014 the parties met at which time it was discovered the Court employee's had been given wage increases well above 2%. Based upon the Memorandum of Understanding the Union sent a notice to re-open negotiations of the wage scale. The Union proposed a two (2%) percent wage increase with retroactivity. The Employer's position is for no additional increase.

F. Union's Rationale

During the negotiation of the 2011-2014 Collective Bargaining Agreement the Employer took the position that no wage increase would be given in 2011. Among other factors, they cited two Court Orders issued late in 2010 wherein the Washington County Common Pleas Court Judges and the Washington County Juvenile Court Judge ordered that: If there were any salary or benefit reimbursement increases for any employee, including negotiated union contracts, the Commissioners must immediately notify the Court and that increases of the same percentage or dollar amount, at the option of the Court, be given to all Court employees. The result of any increase awarded to any employee would result in the automatic increase for Court employees.

Negotiation concluded when the parties accepted the recommendations of a Fact-Finding Report. On the wage issue, the Report recommended no wage increase in 2011 with a reopener in 2012 and 2013.

In addressing the issue of the Court Orders, Fact-Finder Sellman wrote: "The Employer's argument that the Court Orders will significantly impact any wage increase cannot be ignored. While the Union is correct that such an Order is not only novel, but somewhat questionable, it becomes at least more understandable when read in its full context. Since the Court administrators froze the wages of its employees based upon assurances of the County Commissioners that no wage increases would be given in 2011, it is understandable that they would compel the Commissioners to find funds to increase their employees if those promises were broken."

In October 2011 the Court ordered that 6.2% percent raises be given retroactive to June 26, 2011 for every Court employee. The Order was filed after the Judges discovered that several other County departments had been given raises in 2011. In December the Commissioners approved the transfer of funds to cover raises and benefits for over forty employees. The raises represented a 6.2% percent increase.

Union employees also received an additional 3.0% percent increase in 2012 and another 3% percent increase in 2013 .

On March 6, 2014 the parties executed a new three-year Successor Agreement (2014-2017). In addition, the parties executed a Memorandum of Understanding. It calls for negotiation of the 2014 wage scale to be re-opened should Court employees receive greater than a 2.0% percent increase, which is the amount the bargaining

unit members received. The Union proposed the Memorandum of Understanding in response to events from the previous negotiation and in response to the December 2013 letter from the Common Pleas Judges to the Commissioners.

During negotiations, the Union sought a 4% percent wage increase in each year of the Agreement and the addition of eye and dental to the Health Care Plan. The Employer offered 2.0% percent in each year and rejected the addition of eye and dental. No other significant monetary issues were discussed.

The Employer argued they could offer no more than the 2.0% percent in a large part due to a letter from the Common Pleas Judges to the Commissioners in which their Order requesting funding for a 5% percent for their employees would stand until after Contract negotiations were complete. The letter states that if other departments and unions hold to a 2% percent increase, they would do the same.

The FOP accepted the two (2%) percent in 2014.

On March 11, 2014 the parties met at which time it was discovered that the Court and other County employee's had been given wage increases, some well above 2.00% percent. Twenty-three Juvenile Court (Center) employees received between a 3.00% percent and 14.18% percent averaging 8.16% percent, six Common Pleas Court employees received between 1.45% percent and 20.98% averaging 3.58% percent. Fourteen (14) Probate/Juvenile Court employees received an average of 3.00% percent. Bargaining unit employees of the County Home received a 3.00% percent in the last year (2014) of their Contract (this fact was known to the FOP). In addition, on average, employees of the following Departments received the following increases above 2.00% percent: Veterans, 8.06% percent, Board of Elections, 4.25% percent, Children's Service 3.49% percent, Soil Conservation, 3.00% percent, Engineer, 2.75% percent and Maintenance, 2.46% percent.

Based on the Memorandum of Understanding, the Union sent a notice to re-open negotiations of the wage scale for 2014. The Union proposed an additional 2% percent wage increase, retroactive to the first full pay period in January 2014. This increase is in addition to the 2.0% percent originally agreed upon. The Employer is offering no additional increase.

The Washington County Sheriff's Office receives funding from the General Fund and ½% percent sales tax. The Criminal Division consists of those members doing patrol and investigative functions and is funded from the sales tax. Members working the jail are funded from the General Fund. Dispatchers are a mix of funding.

The Sheriff's Office generates revenue through a ½% percent sales tax, civil fees, jail fees and web check. In 2013 a total of \$4,414, 245.30 were generated through these funds. These funding sources help relieve some of the burden to the General Fund.

The 2013 carry-over was \$4,461,245.42, General Fund, \$1,571,857.73, 1.00% percent Permissive Sales Tax and \$2,261,787.15 Sheriff Sales Tax. The County had the ability to increase the budgets of most Departments and should have no problem covering the increase by the Union.

The economic outlook for Washington County is promising. In 2013 bed tax receipts were at a record high, reportedly based on the accelerated oil and gas industry in the area. The unemployment rate in March was 5.1% percent, down from 7.3% percent in February.

The fact that the Court has used its power to influence the process of negotiations cannot be ignored. The Employer has given no explanation as to why the Court went back on their word to hold to a 2.00% percent increase after the Union had accepted the offer. The Union's decision to accept the 2.00% percent was based on the fact the Employer would offer no more due to the Order requesting funding for a 5.00% percent wage increase.

Addressing the 2011 Court ordered wage increase, a Judge was quoted in the newspaper as saying: "For the past two years (Commissioners) have told us there would be no pay raises and we respected that and took them at their word", he said. "That wasn't the case." There is example after example of them giving preferential treatment, or simply playing favorites, and it is wrong and demoralizing to County employees in every office.

The FOP agrees with the Judge's statement that it is wrong and demoralizing to be treated in such a manner. In 2011, the FOP accepted a Fact-Finding Report recommending no wage increase only to see Court employees receive a 6.00% percent. In 2014, we accepted a 2.00% percent increase only to see some Court employees receive up to a 14.00% percent increase.

The FOP feels it has been treated unfairly, that the proposed wage increase is reasonable and that the Employer has the ability to pay. We respectfully request the Fact-Finder consider this when making his Recommendation.

CRITERIA

When making his Report and Recommendations upon the unresolved issue(s) the Fact-Finder has been mindful of and has been guided by the criteria set forth in Ohio Revised Code §4117.14(C)(4) identifying relevant factors as follows:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) Any stipulation 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 final dispute settlement procedures in the public service or in private employment.

Fact-Finders Recommendation and Rationale

After due consideration and study of the written and oral arguments of the parties and the relevant Criteria, the Fact-Finder recommends as follows:

A. Recommendation That the WCSO's position be adopted and that there be no additional 2.00% compensation granted to members of the bargaining unit during the calendar year 2014 as requested by the Union.

B. Rationale

In January 2014, without having to proceed to the impasse process, the parties successfully negotiated a three-year successor collective bargaining Agreement. The parties agreed to a 2% wage increase for all bargaining units in 2014. However, as a part of that agreement, the parties also agreed, pursuant to a Memorandum of Understanding, to the following:

Memorandum of Understanding

“In the event the Courts order or receive greater than a 2% percent increase for 2014, the parties agree to re-open Article 38, Wages and Longevity (wage scale only) for purposes of negotiations. Such re-opener negotiations shall be subject to the impasse process of Chapter 4117.”

It has been stated by WCSO and not disputed that no other Washington County employees provide law enforcement or corrections or safety services, as do the employees in the bargaining units.

WCSO has provided very detailed summaries of wages and wage increases received by employees similarly situated in other southeastern Ohio counties, doing comparable work, as set forth previously in this Report. The Fact-Finder agrees with

WCSO that the previous 2% increase in 2014 is appropriate and that an additional 2% increase is unwarranted at this time.

As for actual wage increases in 2013 and 2014 for WCSO employees, See, WCSO Table 7 as follows:

	2013	2014*
Washington	3.00%	2.00%
Athens	2.00%	2.00%
Belmont	1.00%	n/a
Coshocton	\$.10/hr.	\$.025/hr.
Fairfield	2.00%	2.00%
Gallia	1.00%	2.00%
Jackson	1.00%	2.00%
Jefferson	1.00%	1.00%
Muskingum	2.00%	2.00%
Perry	0.00%	0.00%
Lawrence	\$.025/hr.	\$.025/hr.
Licking	2.00%	3.00%
Guernsey	n/a	0.00%
Harrison	n/a	3.00%
Hocking	2.005	n/a
Meigs	\$.025/hr.	\$.050/hr.
Monroe	n/a	n/a
Morgan	3.00%	n/a
Noble	n/a	0.50%
Pickaway	0.50%	0.50%
Ross	2.50%	2.50%
Scioto	0%	0%
Tuscarawas	1.00%	1.00%
Vinton	0%	0%

- 2% For top step Deputy is \$0.49/hr.
- 2% For top step Criminal Sergeant is \$0.52/hr.

The Union states that the treatment it has received is unfair. The Fact-Finder understands the Union's concerns. The Honorable Court has expressed similar sentiments and added grievances of its own.

It must be remembered that the Sheriff has no control over any other party's actions as to wages in Washington County. Under 4117, referenced by the parties in their Memorandum of Understanding, no further increase is due the employees of the bargaining unit.

In this Fact-Finding, your Fact-Finder can only follow the guidelines provided by the State of Ohio and the facts as provided by the parties in making his recommendations. The facts support the WCSO.

/s/ Richard J. Colvin
Fact-Finder

Signed this 19th day of June 2014 in the City of Mason, County of Warren and State of Ohio.

CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing Fact-Finding Report was forwarded to the parties listed below by Electronic Mail, this 19th day of June 2014.

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