

FACT FINDING REPORT

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
AUGUST 24, 2017**

In the Matter of:

Ohio Patrolmen's Benevolent Association

and

Trumbull County Sheriff Office

) Case Nos.:

) 2016-MED-10-1245

) 2016-MED-10-1246

) Carol J. Bader, Esq.

) Factfinder

APPEARANCES:

For the Employer:

**Mr. Curtis J. Ambrosy, Esq.
Manchester, Newman & Bennett
144 N. Park Avenue, Suite 200
Warren, Ohio 44481,**

For the Union:

**Mr. S. Randall Weltman
Ms. Kat Houston
Attorneys, OPBA
10147 Royalton Rd. Suite J
North Royalton, Ohio 44133**

Team Members:

Paul Monroe, Sheriff
Paula Maas, Personnel Director
Rich Jackson, Benefits
Debbie Santangelo, Chief Accountant

Team Members:

Joe Jones, Director
Brian Kaintz
James Georges
Mary Schultz, Outside Auditor

The undersigned was duly appointed by SERB letter dated May 31, 2017 to serve as Fact-Finder in the matter of Ohio Patrolmen's Benevolent Association (hereafter referred to as "Union") and the Trumbull County Sheriff's Office (hereafter referred to as "Employer" or "County") pursuant to OAC 4117-9-5 (D). The hearing was held at the Trumbull County Administration Office in Warren, Ohio on August 4, 2017. The Union was represented by Mr. Randall Weltman, and the Employer was represented by Mr. Curtis Ambrosy. All witnesses were sworn in prior to their testimony. Based on discussions at the hearing, the parties agreed to have the Fact finding report issued August 24, 2017.

All tentative agreements made between the parties are deemed to have been incorporated herein and are adopted as part of the party's final agreement. The agreed upon

sections are listed in Appendix A.

FACTUAL BACKGROUND

Overview

Trumbull County, Ohio, is located in the north east corner of the state, near the Pennsylvania border and has a population of over 200,000. Once an automobile and steel manufacturing area, many of those good paying jobs were lost during the 2008-2009 recession, and have not been replaced. The County has slowly recovered in the decade since the economic downturn. The Sheriff's Office is supported by the General Fund through sales taxes, federal grants and casino revenue used for capital improvements.

The contract covers two OBPA Sheriffs' Office bargaining units (Unit 1 and Unit 2), 8 Command, (two lieutenants and six sergeants) and 38 Road Patrol Deputies. The contract expired on December 31, 2016.

Bargaining History

The parties have been in a bargaining relationship for 23 years. They have had their ups and downs; going to fact finding and conciliation more recently to settle their contracts. As with many local government entities, the last decade has been economically tough - especially beginning in 2008, when the housing crisis/ economic downturn hit the country. Trumbull County was no different from the rest of Ohio, sales tax revenues were lower, jobs were lost and the County was forced to reduce their expenses in order to balance their budget.

Over the course of two labor agreements, the Sheriff's Deputy Units accepted six years of zero raises to their base wage. (2009- 2013) In the current contract, 2014 to 2016, the wages were settled by a conciliator, who opted for the County proposal, citing the uncertainty of the financial status of the County over the next few years. The raises were for .45 cents per hour for 2014, .45 per hour for 2015, and .25 per hour for 2016. The most recent raises equate to approximately a 2.1%, 2.0% and a 1.13%¹ for a ten year deputy. There were no increases for the start rate through two years for the duration of the contract.

In the current round of negotiations, the non-economic issues were settled and the Union acknowledged that they were able to discuss those issues with Sheriff Monroe, who is new to his position. Impasse was reached over the economics and those must be settled with the County Commissioners, who administer the finances for the Sheriff's Office.

Please note: the parties had one stipulation for economics, that any raise would be

¹ The fact finder calculated percentages for raises and other comparisons throughout this report. This is for her convenience, so that she can make comparisons to other jurisdictions which primarily use this method for wage increases.

retroactive for 2017. Furthermore, though it is not common, the prior contracts of these parties show that raises are provided in a specific amount rather than a percentage.

The Factfinder reviewed all of the evidence, records, testimony, arguments and information presented. She did some additional research on the Medicaid Managed Care Organization sales tax and its impact on local governments in Ohio and the proposed "fix" by the state.

She recognizes the hard work and preparation that goes into a fact-finding presentation, and appreciates the well prepared cases of both parties.

Unresolved Issues:

The following contract sections were submitted by the parties as the unresolved issues:

- Article XVI: Hours of Work Over time
- Article XXXII: Compensation - Deputies, Sergeants, Lieutenants
- Article XXXV: Pension
- Article XLIII: Shift Differential

Based upon considerations enumerated in Ohio Revised Code 4117.14 including past collectively bargained agreements between the parties, comparison of the issues submitted relative to other public employees doing comparable work, the interests and welfare of the public, the ability of the employer to finance and administer the issues proposed, the effect of adjustments on the normal standard of public service, the lawful authority of the Employer, and other factors traditionally considered in the determination of issues submitted, the Fact-Finder makes the following recommendations:

ARTICLE XVI: HOURS OF WORK/OVERTIME;

Union Position:

The Union proposes an increase in the number of hours that can be accrued in an individual employee time bank from the current 240 hours to 480 hours. They argue that they should be allowed to accumulate comp time to the maximum allowed. The Union also stated that it saves the County cash outlay to pay their members in time, rather than money. Currently, 10% of the employees have accrued the maximum of 240 hours. (Kaintz)

Union Proposal:

"Article XVI Hours of Work/ Overtime

16.08 - Increase compensatory time bank to a maximum of four hundred eighty (480) hours."

County Position:

The Sheriff proposed that the contract language remain at 240 hours. Sheriff Monroe said that the more comp time that his deputies have, the more he may have to pay in overtime to replace them when they are absent.

County Proposal:

"ARTICLE XVI HOURS OF WORK/OVERTIME

Current contract language"

Discussion: The fact finder does not see a compelling reason to make a change in the contract language at this time. The Union stated that only 10% of their membership has reached the maximum 240 hours, so adjusting the allowed banked hours does not affect many individuals.² This also allows the Sheriff to continue to have flexibility in scheduling.

Recommended Contract Language, Article XVI: Hours of Work/ Overtime

Current contract Language

**ARTICLE XXXIII: COMPENSATION- DEPUTIES, SERGEANTS, LIEUTENANTS;
ARTICLE XXXV: PENSION;
ARTICLE XLIII: SHIFT DIFFERENTIAL**

The fact finder considered the above three issues together because they are included in the parties' compensation proposals.

Union Position:

The Union proposes that retroactive to January 1, 2017, they receive a 3% increase. In the second year of the contract, on January 1, 2018, they ask that the pension pick-up (8.5%) be rolled into the current base wage, plus a 3% increase and an additional percentage of 4.5% for a total of 16%. Effective January 1, 2019, they propose another increase in the scale by 3%. In addition, the Union asks that the current hazard duty pay (40 cents) be increased by 25 cents an hour, and removal of the language of Article XLIII Shift Differential to increase hazard pay by 20 cents per hour for a new total of 85 cents.³ In addition, the Union demands that the differential or wage spread between the highest paid deputy and the Sergeant be increased from 12.5% to 17.5%; and the Sergeant and Lieutenant from 12.5% to 17.5%. They also include a change from set amounts of increases to percentages.

The Union's point of view is that the Sheriff's Commissioned Deputies and their Command are deserving of higher base wages and other economic benefits commensurate with the population and revenues of the County. The Employer" should not able to prevail on an

² Fact finder calculation: 8 command+38 Deputies= 46 or 5 individuals

³ The impact of the change varies depending on what shift you work.

ability to pay" argument. Since the economic downturn of 2008, the Sheriff's Units 1 and 2, took six zeros for base wage increases. (2008 to 2012). They were awarded raises as a result of a conciliation for the current contract .45 per hour for 2014, .45 per hour for 2015 and .25 for 2016. These increases equated to roughly a 2.1%, 2.0%, and 1.13%⁴ for a ten-year deputy. In their opinion, they are still caught in a disparate situation. While the County is number 11 in population and number 17 in revenues, their wages are ranked at number 50 out of the 88 Ohio Counties. (UX-6)⁵ In another part of that Exhibit (p.16), they present "A Comparison of Wages and Benefits for Ten Year County Deputies and City/Township Police Officers". This shows that a majority of the local jurisdictions have some form of pension pick up. On page 14, "Comparison of Wage and Benefits for Northeast Ohio Counties: 10 year Deputy", there is a better comparison of like work, in a similar location. This shows that even including the pension pick up, Trumbull County wages come in at number 9 out of 10. Mahoning County which borders on Trumbull and in similar economic circumstances⁶ ranks at number 10. It also recently settled a contract with raises of 2.5% July 1, 2016, 2.5% July 1, 2017 and 2.5% July 1, 2018 (EX-8) Mahoning also has a three percent pension pick up.

The Union also provided evidence of the County's over funding of both the Workers Compensation account and the Health Care Fund. This was discovered in 2015 during the current collective bargaining agreement. In the case of the Health Care Fund, the Ohio Auditor's Office recommended a reduction in the fund. It had grown from under a million at the end of 2005 to 10.25 million in 2015. (UX- 4) The County has a self- funded health insurance plan, with stop loss protection (Jackson) According to the Union Exhibit, the County intended to reduce the Health Care Fund to around 4 million or two months of expenses.⁷ The Workers Comp Fund is also being reduced to a more appropriate level.

The Deputies were particularly upset about certain County Commissioner employees who received raises of 10% and above, also during the current contract, when the Deputies got 2.1%, 2.0% and just over 1%. They argue that this is evidence that they have not been treated fairly by the County Commissioners. Furthermore, they believe it negates the County's stance

⁴ 2014- .45 divided by 21.11= 2.04%; 2015-.45 divided by 21.56= 2.08%; 2016-.25 divided by 22.01= 1.13%.

⁵ The fact finder felt that this exhibit was somewhat misleading in that it did not take into account the pension pick up benefit. When that was included in the base wage rate moved up, which was approximately calculated by simply adding the 8.5% to the hourly wage, their wage went to a ranking of 22. That ranking of 22 is more commensurate with revenue of 17.

⁶ Both parties cited Mahoning as similar to Trumbull.

⁷ Mr. Jackson of the County did not agree with that level of reserve and said that in his opinion it should be three months of expenses.

that it cannot pay for larger raises for the Deputies.

To further bolster their argument that the County has the "ability to pay", the OPBA introduced witness testimony from Mary Shultz, who is a contract auditor and forensic accountant for the Union. Her report suggests that the County is financially healthy and able to provide the raise requested. In her assessment, including the excess funding from the Health Care Fund, the County has more than 19.6% in reserves, well above the minimum amount of 16% or two months expenses encouraged by best practices of the GFOA (Government Finance Officers Association). (UX-8) The witness also calculated a 1% raise for these employees, which impacts the County budget at approximately \$30,000 per year including PERS contribution and other required payments for the employer. (UX-8)

Union Proposal:

The Union proposal as set forth in the position statement, except as modified at the hearing. The substance of the proposal was not changed, but the pension pick up roll in was switched from 2017 to 2018 because it cannot be retroactive. It can be found on page 6 of the Union Position Statement.

"Article XXXII- Compensation - Deputies, Sergeants and Lieutenants

- 32.01 Effective 1/1/2018- increase scale by 3%
- 32.02 Effective 1/1/2018 increase scale by 16%, inclusive of the present day value of the current 8.5% employer paid pick up.
- 32.03 Effective 1/1/2019- increase scale by 3%
- 32.06 Increase differential between top paid Deputy and the Sergeant and the Sergeant and Lieutenant in an amount of not less than 17.5%
- 32.07 Increase hazardous duty pay to \$.85 per hour; clarify that hazardous duty applies to hours paid and not to hours worked."

County Position:

The County offers a .30 an hour increase retroactive to January 1, 2017 to all pay steps with the exception of the starting pay. (1.3%)⁸ For January 1, 2018, they offer a rollback of the pension pick up of 2.25% into base wages for all wage steps. This has an effect of increasing a ten year deputy's wage to \$23.27, with the employee now paying 2.25 of his pension contribution and the County paying the other 6.25% pension pick up. On April 1 of 2018, the County offers a 25 cent increase or 1.1%⁹ raise, which is in effect until March 31 of 2019. At that time the County asks for a wage re-opener.

The County stated several factors contributing to its current financial condition. The loss

⁸ .30 divided by ten year deputy rate of 22.51= 1.3%

⁹ .25 divided by ten year deputy rate of 23.52= 1.1%

of good paying manufacturing jobs during the 2008-2009 recession and continuing high unemployment compared to other parts of Ohio. (EX-5, EX-2)) A decreasing and aging population, which affects spending and sales tax revenue. (EX-1)

As to the "ability to pay" and the County's financial situation for this contract, the County asserts that it continues to face challenges. The budget is being maintained by living off the excess monies that were in the Health Care Fund and Workers Compensation fund. (UX-4) They also argue there is uncertainty regarding the effects of the change in the federal law to discontinue sales tax on Medicaid insurance policies. This may cause the County to lose general fund revenue in the amount of \$890,000 in the current year and up to \$ 2.1 million in 2018. Although there has been discussion in the legislature about a patch or fix for Counties affected by this, nothing was firm as of the date of the hearing. Ms. Santangelo testified that the losses will start to show in October of this year with more potential for loss next year. She also said that casino revenues have dropped over previous years. This means less money for capital improvements such as new patrol cars.

They note that Conciliator Martin Fitts, awarded 45 cents per hour for the first year in the current contract (2014), 45 cents per hour, (2015) and .25 cents the third year. There was no change to the start rate through year two.

The County urged the Fact finder to also consider the excellent benefits that the Sheriff's Office employees already enjoy. They have a generous health care plan to which they only contribute 10% of the premium with no increase the new contract. Sheriff's deputies also are provided with take home cars, fully maintained and supported by the County, paid for by casino revenues.

County Proposal:

The County's proposal is described in their Position statement as:

Article XXXII:

"Sheriff's proposal provides a retroactive increase of \$.30 an hour at each wage step level of the contract, the conversion of 2.25% of the employer paid pension pick up obligation of the employee into each wage level above the starting pay effective January 1, 2018, and then a \$.25 increase at each step level effective April 1, 2018, through March 31, 2019, where upon a reopener would occur for the final nine (9) months of the contract."

It is also set forth as contract language in Appendix 2 of the County's position statement.

Discussion:

The Fact finder reviewed the financial evidence presented by both parties with particular

attention to "ability to pay". She considered the steady increases in sales tax (general fund and judicial system), slowing casino revenue, the County's ability to over fund its Health Care and Workers Compensation Accounts, General Fund year end carry overs, double digit raises for the County Commissioners' employees in 2015, the state review of Trumbull County's financial health, and the impending change in the sales tax on Medicaid. She concluded that the County can afford to provide better raises for Units 1 and 2 than what has been offered. On the other hand, what the Union is proposing is not affordable and would certainly be unacceptable to the public. Therefore, she determined that an appropriate settlement is somewhere in between.

The Sheriff's Deputies and Command have shown a willingness to adjust their demands when they realize the County is in difficult financial straits. That evidence is clear in the six years they took zeros. In the Fact finders opinion, it is time that the County Commissioners consider those previous sacrifices and provide the Sheriffs' Deputies (and their Command) with reasonable raises and a little catch up, when it is obvious that the County has recovered.

As stated earlier, the factfinder is used to working in percentage wage increases but is reluctant to make a change where the bargaining shows a history of using specific amounts for raises. This type of contract revision should be agreed upon. Therefore, there is no recommendation to change to percentages as proposed by the Union.

Pension Pick-Up

Both parties suggest a change in the current pension pick up for the Sheriff's deputies. Each party urges there be a roll back into wages of the pension pick up. The Union proposes a full roll back into the wages of 8.5% in the second year of the contract. This change partially accounts for their request of a 16% increase in the base wages for 2018. The County wants a partial roll in of 2.25% into the base wage, while continuing to pay for 6.25% of the employee's contribution to the pension system.

In the Factfinder's view, neither proposal is helpful. The Union's roll in of the entire amount makes it appear that the membership will be getting a 16% increase in 2018, when in actuality it is 7.5%. On the other hand, the County argued that pension pickups are not transparent, hard to explain to the public, under appreciated by the employees and not common to counties in Ohio. The County wants a roll in of 2.25% and no follow up the next year. If the goal is transparency and a return to the employee paying their share, it seems as though the roll in would have been proposed again (2019) so that the employee would end up paying the 8.5% over the next few years.

While pension pick-ups, may not be common to Ohio counties, as argued by the Employer, many jurisdictions in the Trumbull County area have some form of pick up. (UX- 6,

p.13) therefore, that benefit is not unheard of in Northeast Ohio.

The Fact finder recommends that no change be made to the pension pick up at this time.

Hazard Pay and Shift Differential:

The Union proposes that the shift differential language be deleted and the 20 cent afternoon shift incentive be added to the hazard pay of 40 cents. In addition, they ask that there be a 25 cent increase. This would be a total of 85 cents per hour. The County says that the current hazard pay amount is in line with other comparable employers.

The Fact finder notes that most jurisdictions cited in Union Exhibit 6 have shift differentials. The purpose is to provide some incentive, no matter how small, to those who work the afternoon and evening shifts. These small incentives are lost if you add it the hazard pay. She recommends that the shift differential remain the same using current contract language.

Increase in wage spread

The Union proposed an increase in the spread between deputies and sergeants, sergeants and lieutenants. There was little evidence presented as to the reason the Union wants this change - other than providing another economic gain for the membership. The Factfinder sees no compelling reason to change the percentage between the ranks and recommends current language.

Recommendation Article XXXII:

The factfinder recommends that the contract changes be simple wage rate increases on a per year basis, with no other economic increases. A 55 cent (2.4%¹⁰) increase in hourly wages for all steps, retroactive to January 1, 2017, another .55 increase (2.4%¹¹) on January 1, 2018, and 40 cents for January 1, 2019 (1.7%¹²) for a ten year deputy.

In the factfinders opinion, these raises are reasonable based on the SERB Annual Wage Settlement Report (EX-8), which shows Warren Youngstown area contracts at 5.23 % increases for three year contracts, settlements for counties at 1.98, 2.12 and 2.23 or a little over six percent , and Police settlements at 2.03, 2.22 and 2.36. In addition, using the Mahoning County contract, which settled at 2.5%, 2.5% and 2.5% (EX-8) as a close economic/ location comparable, these increases are reasonable.

The intent is to make up a little from the past and to provide comparable wages based on like work and circumstances.

¹⁰ Ten year deputy rate 22.51 divided by .55 = 2.4%

¹¹ Ten year deputy rate 23.05 divided by .55 = 2.4%

¹² Ten year deputy rate of 23.60 divided by .40 = 1.7%

Recommended Contract Language¹³ for Article XXXII COMPENSATION- Deputies, Sergeants, Lieutenants:

32.01 Effective January 1, 2017, employees shall be compensated as follows:

Length of Service in grade	Hourly Rate
Sergeants	\$25.87
Deputy:	
Start	\$17.38
After one (1) year	\$18.22
After two (2) years	\$19.04
After three (3) years	\$21.53
After four (4) years	\$22.31
After five (5) years	\$22.56
After seven (7) years	\$22.81
After ten (10) years	\$23.06
Lieutenant	\$29.04

32.02 Effective January 1, 2018, employees shall be compensated as follows:

Length of Service in grade	Hourly Rate
Sergeants	\$26.42
Deputy:	
Start	\$17.93
After one (1) year	\$18.77
After two (2) years	\$19.59
After three (3) years	\$22.08
After four (4) years	\$22.86
After five (5) years	\$23.11
After seven (7) years	\$23.36
After ten (10) years	\$23.61
Lieutenant	\$29.59

¹³ The factfinder defers to the financial office of Trumbull County for specific rates (she calculated the above to the best of her ability), the intent is for 55 cent per hour increases for all steps on 1/1/2017, 55 cent per hour increases for all steps on 1/1/2018, and 40 cent per hour increases for all steps on 1/1/2019.

32.03 Effective January 1, 2019, employees shall be compensated as follows:

Length of Service in grade	Hourly Rate
Sergeants	\$26.82
Deputy:	
Start	\$18.33
After one (1) year	\$19.17
After two (2) years	\$19.99
After three (3) years	\$22.48
After four (4) years	\$23.26
After five (5) years	\$23.51
After seven (7) years	\$23.76
After ten (10) years	\$24.01
Lieutenant	\$29.99

32.03A Current contract language

32.04 Current contract language

32.05 Current contract language

32.06 Current contract language

32.07 Current contract language

Recommended Contract Language for Article XXXV: Pension

Current Contract Language

Recommended Contract Language for Article XLIII: Shift Differential

Current Contract Language

Respectfully Submitted,



Carol J. Bader

Fact finder

This 24th day of August, 2017.

I HEREBY CERTIFY THAT ABOVE REPORT WAS DELIVERED VIA EMAIL TO THE OPBA REPRESENTED BY RANDALL WELTMAN AND TO THE TRUMBULL COUNTY SHERIFF'S OFFICE REPRESENTED BY CURTIS AMBROSY ON AUGUST 24, 2017.



APPENDIX A

Trumbull County Sheriff's Office and OPBA Contract - Sheriff's Patrol Deputies

Tentative Agreements 2017-2019 Labor Agreement

ARTICLE I	PREAMBLE
ARTICLE II	UNION RIGHTS
ARTICLE III	MANAGEMENT RIGHTS
ARTICLE IV	SECURITY
ARTICLE V	NON-DISCRIMINATION
ARTICLE VI	UNION REPRESENTATION
ARTICLE VII	NO STRIKE-NO LOCKOUT
ARTICLE VIII	BULLETIN BOARD
ARTICLE IX	LABOR/MANAGEMENT COMMITTEE
ARTICLE X	PROBATIONARY PERIODS
ARTICLE XI	DISCIPLINE
ARTICLE XII	INTERNAL INVESTIGATION PROCEDURE
ARTICLE XIII	PERSONNEL FILES
ARTICLE XIV	GRIEVANCE PROCEDURE
ARTICLE XV	SENIORITY
ARTICLE XVII	WORK SCHEDULES
ARTICLE XVIII	COURT TIME
ARTICLE XIX	CALL IN PAY
ARTICLE XX	LAY OFF AND RECALL
ARTICLE XXI	HOLIDAYS
ARTICLE XXII	VACATION
ARTICLE XXIII	PERSONAL DAYS
ARTICLE XXIV	SICK LEAVE
ARTICLE XXV	LEAVE OF ABSENCE
ARTICLE XXVI	FAMILY MEDICAL LEAVE
ARTICLE XXVII	MILITARY LEAVE
ARTICLE XXVIII	HOSPITALIZATION AND INSURANCE
ARTICLE XXIX	CONTINUATION OF BENEFITS
ARTICLE XXX	EMPLOYEE LIABILITY COVERAGE
ARTICLE XXXI	CLOTHING ALLOWANCE
ARTICLE XXXIII	ACTING SUPERVISOR
ARTICLE XXXIV	SPECIAL SCHOOLING
ARTICLE XXXVI	INJURY LEAVE
ARTICLE XXXVII	VACANCIES AND PROMOTIONS
ARTICLE XXXVIII	APPLICATION OF STATE CIVIL SERVICE LAW
ARTICLE XXXIX	CONFLICT AND AMENDMENT
ARTICLE XL	SUSPENSION OF CONTRACT IN EMERGENCY
ARTICLE XLI	DURATION OF AGREEMENT
ARTICLE XLII	OVERTIME DISTRIBUTION
ARTICLE XLIV	LONGEVITY
ARTICLE XLV	HEALTH AND SAFETY
ARTICLE XLVI	DISCIPLINARY PROCEDURE
ARTICLE XLVII	DRUG TESTING
ARTICLE XLVIII	(EAP) EMPLOYEE ASSISTANCE PROGRAM
ARTICLE XLVIX	TUITION REIMBURSEMENT
ARTICLE L	EXECUTION

