

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of:	:	
	:	09-MED-01-0052, 0053, and 0054
Ohio Patrolmen's Benevolent Benevolent Association (Sergeants, Deputies, and Lieutenants)	:	
	:	CONCILIATION AWARD
and	:	
	:	November 9, 2009
	:	
Wayne County Sheriff	:	

APPEARANCES

For the Union:

Joseph M. Hegedus, Attorney
Jim Hehry
Alex Abel
Joe Copenhaver
Mike Burkey
Kirk Shelly

For the Sheriff:

Howard Heffelfinger, Labor Consultant
Patrick Herron, County Administrator
Jarra Underwood, County Auditor
Doug Hunter
James Richards
Tim McClintock
Charles D. Hardman
Jonathan Noe

**Daniel G. Zeiser
Conciliator
P.O. Box 43280
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I. BACKGROUND

The Conciliator was appointed by the State Employment Relations Board (SERB) by letter dated June 23, 2009. The parties are the Ohio Patrolmen's Benevolent Association (Union or Association), representing the deputies, sergeants, and lieutenants of the Sheriff's Department and the duly elected Sheriff of Wayne County (Sheriff or County). Wayne County is located in northeast Ohio approximately fifty (50) miles south of Cleveland. It is named for Revolutionary War general and victor of the Battle of Fallen Timbers, "Mad" Anthony Wayne. Largely rural, the County covers five hundred fifty-five (555) square miles and has a population of 111,564 according to the 2000 census. U.S. Route 30 runs west to east through the center of the county. Wooster is the county seat as well as the largest city, with a population of approximately 25,000. It is home to Wooster Brush, which manufactures paint brushes and other painting products, and Wooster Motor Ways, a transportation company. The College of Wooster and a branch campus of the Ohio State University are located in Wooster. Other cities are Norton, Orrville, home of J. M. Smucker Company and a branch campus of the University of Akron, and Rittman. The County also contains a number of villages, townships, and unincorporated communities.

The conciliation involves the deputies, sergeants, and lieutenants of the Sheriff's Department. The unit consists of approximately 45-50 deputies, 6-10 sergeants, and 3-5 lieutenants. The unit is represented by the Ohio Patrolmen's Benevolent Association. The parties have had a collective bargaining relationship for a number of years. The current collective bargaining agreement expired on August 31, 2008. The parties negotiated, reached impasse, and engaged in fact finding on April 29, 2009. The Fact Finder's report

was issued on May 28, 2009. The Sheriff rejected the report and the parties proceeded to conciliation.

II. THE HEARING

The hearing was held on August 27, 2009 at the Wayne County Justice Center, 201 W. North Street, Wooster, Ohio. The parties provided pre-hearing statements. Prior to the hearing, the parties adopted the Fact Finder's report on all issues but wages and reached agreement on the following issues:

1. Article 15, Conversion of Unused Sick Leave;
2. Article 19, Extra Details;
3. Article 27, Vacation.
4. Article 31, Section 6, Officer in Charge Pay.

This left the following issues to be resolved by the Conciliator:

1. Wages;
2. Longevity;
3. Sergeants' differential.

The parties attended the hearing, introduced evidence, and presented their positions regarding wages. They jointly introduced the collective bargaining agreement.

Additionally, the parties introduced the following exhibits into evidence:

County Exhibits

1. Employer's Demographic Comparables.
2. Union's Demographic Comparables.
3. SERB Benchmark Report
4. Lower Paid Jurisdictions Closer than Clermont County.
5. Financial Situation of Comparable Counties.
6. July 2009 Unemployment Rate.

7. Rate of Pay Comparables.
8. Union's 2002 Proposals.
9. 2002 Reuben [sic] Fact Finding Report.
10. 2002 Keenan Fact Conciliation Report.
11. 2005 Stein Fact Finding Report.
12. 2008 Comprehensive Annual Financial Report (CAFR).
13. 2007 CAFR.
14. Unreserved Fund Balance Article.
15. Balances Included in CAFR General Fund that are not Truly General Fund Money.
16. True General Fund and Carryover Comparables.
17. Sheriff's Office Historical Employee Headcount.
18. General Fund Non-Bargaining Unit Employee Headcount.
19. Anticipated Payroll Costs Through February 2010.
20. Sheriff's Percentage of General Fund Payroll.
21. Sheriff's Historical Percentage of General Fund.
22. Historical Sales Tax Collections.
23. Historical First Quarter Income Statement.
24. General Fund Income Statement as of July 31.
25. Historical General Fund Income Statement as of July 31.
26. Historical General Fund Account Changes.
27. Capital Improvement Situation.
28. Elimination of Funding for Outside Projects.

29. A-J: Charts Showing Decline in Financial Stability.
30. Market Value of New Construction.
31. State v. Board of County Commissioners of Meigs County, 2003 Ohio 6084.
32. Ohio Revised Code 311.07 General Powers and Duties of Sheriff.
33. Internal Longevity Comparables.
34. Costs of Union Final Offer.

Union Exhibits

1. Map of Ohio Counties and County Seats.
2. Factfinding Recommendation of Michael Paolucci, Dated May 28, 2009.
3. Factfinding Recommendation of Robert G. Stein, Dated 10/14/05.
4. Conciliation Award of Frank A. Keenan, Dated 6.3.03.
5. Factfinding Recommendation of Alan Miles Ruben, Dated 1/9/03.
6. Excerpt from the Comprehensive Annual Financial Statement of Wayne County for the Calendar Year Ended December 31, 2007.
7. Excerpt from the Comprehensive Annual Financial Statement of Wayne County for the Calendar Year Ended December 31, 2008.
8. Amended Official Certificate of Estimated Resources.
9. GFOA Research Bulletin Concerning Unreserved Undesignated Fund Balance.
10. Newspaper Articles Dated 3/15/08, 2/27/09, 6/23/09, and 7/17/09.
11. Wage Increase History and Comparables for Deputies, Sergeants, and Lieutenants.
12. SERB Benchmark Report for all Counties in Ohio in Classifications of Deputy Sheriff, Sergeant, and Lieutenant, Dated 4/15/09.
13. SERB Wage Increase Report for all County Sheriff's Offices in Ohio, Dated

4/15/09.

14. State Employment Relations Board Annual Wage Settlement Report for 1999-2008.

III. CONCILIATION CRITERIA

The Ohio public employee bargaining statute sets forth criteria the Conciliator shall consider in making a final offer settlement award. The criteria are set forth in ORC 4417.14 (G)(7) (a)-(f) and OAC 4117-9-06(H)(1)-(6) and are:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved 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 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;
- (4) The lawful authority of the public employer;
- (5) The stipulations of the parties;
- (6) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

IV. POSITIONS, DISCUSSION, AND AWARD

Issue: Article 31, Wages

Union Position: There are three (3) components to the wage issue: (1) wage increase, (2) longevity, and (3) Sergeants' differential. The Union accepts the Fact Finder's recommendation on all three (3) issues. The Fact Finder recommended a 3.5% increase in each of the three (3) years of each contract. The Union seeks an increase in longevity pay for all three (3) units as follows:

<u>Length of Completed Full Time Service</u>	<u>Annual Longevity</u>
After 7 years	\$400.00
After 9 years	\$500.00
After 11 years	\$600.00
After 13 years	\$700.00
After 15 years	\$800.00
After 17 years	\$900.00

Finally, the Union requests an increase of .5% each year in the Sergeants' differential so that the differential between Deputy Sheriff and Sergeant is 1.5% during the term of the Agreement.

Sheriff Position: The Sheriff argues that he is unable to pay what the Union requests and the Fact Finder has recommended. The Sheriff offers to freeze wages in the first and second years of each contract. Wages would be reopened in the third year for all three (3) units. As to longevity, the Sheriff seeks to have the current contract language remain. Finally, the Sheriff asks that the Sergeant rank differential remain unchanged.

Discussion: The Union position is that the Fact Finder's report was well reasoned and supported by reliable, probative, and substantial evidence. The Fact Finder is one of the

most experienced Fact Finders on the SERB panel. For these reasons, the Conciliator should give deference to the Fact Finder's recommendations.

The Sheriff contends that the Fact Finder erred in his report. He relied heavily on past negotiations and alleged posturing by the County. At the parties' request, the Fact Finder did not engage in a formal hearing where the parties were able to present rebuttal testimony. Rather, he met with each party separately beginning with the County. He first met with the County and then the Union. However, he did not meet again with the County to give it the opportunity to respond to the Union's positions, which had the luxury of responding to the County's. Contrary to the Fact Finder's report, the County presented credible evidence. It has not argued a total inability to pay in the past. While it has argued limited ability to pay, this is the first time it has argued a complete inability to pay. Further, the Fact Finder erred in analyzing the County's budget carryover. It is not a surplus. Since the County does not receive income at the beginning of the year, it is needed to cover the County's expenses through the first three (3) months of the year. A 5% carryover is not the sign of health that the Fact Finder made it out to be. Such a carryover does not allow the County to cover its payroll during the first quarter. Finally, the Fact Finder ignored the unique nature of a Sheriff's office and its relationship with the County Commissioners, the funding agency. The Fact Finder stated that he could not take into account that the Commissioners were only willing to fund a certain wage increase, that is, the same increase that non-bargaining unit employees received. He also referred to the unit as "police officers" rather than deputies. He also ignored that the Sheriff is not mandated to provide a road patrol.

In rebuttal, the Union argues that the County requested an informal hearing from the

Fact Finder. It had every opportunity to present evidence. Historically, the County has argued a limited ability to pay or an inability to pay. The past Fact Finders and Conciliators recognized this and recommended or awarded accordingly. In fact, the Fact Finders and Conciliators have recognized that County has simply not been straightforward during the process, offering no increase due to inability to pay only wind up giving reasonable increases. Fact Finder Paolucci specifically found the County to be not credible, except for Auditor Underwood. The Facts show that the County can pay. That is chooses not to pay is a political issue, not an economic one.

The Sheriff contends that there is an inability to pay what the Union has requested and was recommended by the Fact Finder. There is no question that these are difficult times for public employers. State aid to counties is being cut, property taxes have fallen dramatically in recent years, and the recession, consequent layoffs, and spending cuts in the private sector have reduced revenues. For example, total employment in the County is down. (Cty. Exs. 12 and 13). As Auditor Underwood testified, the County's three (3) main revenue streams – sales tax, local government funds, and investment income – are declining. County Exhibits 22-26 show that sales taxes are expected to fall during 2009. In fact, they are over \$300,000 less than 2008 year to date. Administrator Herron testified that sales tax accounts for over one-third ($\frac{1}{3}$) of the County's revenues. Additionally, local government taxes are approximately \$250,000 less and investment income is over \$500,000 less in 2009. As of July 31, the general fund had a loss of just over \$2,000,000. This is compared to a loss of \$1.3 million in 2008 and income of just over \$250,000 in 2007. A loss of approximately \$2,250,000 is expected for the entire 2009 year. This will erode much of the \$4 million carryover that both sides emphasize. The County expects

the carryover to be just under \$2 million at the end of 2009, not enough to cover payroll through February 2010, using County Exhibit 19.

In the face of this, the County has done what good government should. It has cut back. Since 2002, the number of employees funded by the general fund has been reduced from 170 to 157. (Cty. Ex. 18). It has put a number of capital projects on hold. (Cty. Ex. 27). It has eliminated funding of several outside projects. (Cty. Ex. 28). Underwood testified that the Commissioners have cut the budgets of the various departments. For example, in 2008 the cut was ten percent (10%), with an additional cut of between \$105,000 - 108,000 in 2009. She has fewer employees in her department than a few years ago; the cutbacks came through attrition rather than layoffs. This is consistent with other departments with employees funded by the general fund. (Cty. Exs. 17 and 18). Additionally, as with most good government entities, the County budgets conservatively. It projects revenues on an eleven (11) month basis. This is so that it can use the extra month of revenue as a carryover to pay its bills in the first quarter of the next year. Thus, revenues in 2007 and 2008 were \$4 million and \$2 million over projections, respectively. However, in 2010 it is projecting all twelve (12) months. If not, then the County will have to cut more expenses, i.e., jobs. It attempts to overestimate expenditures. For example, 2008 expenditures were \$324,000 lower than anticipated.

The 2007 and 2008 Comprehensive Annual Financial Reports (CAFRs), supported by Underwood's and Herron's testimony, establish that the County as a whole is stable and diversified. The County's assets are strong, which is indicative of the County's finances. Its bond rating, AA2, is good. The County has not taken out loans to pay its debts and is not in default. Its outstanding debt can be met in 2009. Consequently, the County is not

in a fiscal emergency.

Inability to pay arguments have become more common recently. They are difficult to prove. Most government entities or municipalities face financial difficulties at one time or another. However, given the realities of government budgeting, most entities are able to transfer funds between various general fund accounts or various funds, raise taxes, cut or postpone expenditures, take on additional debt, or take some steps to find the funds needed to pay their employees. This does not mean that the County does not face some real financial problems, however. As noted above, the current economy has placed burdens on governmental entities not seen in almost thirty (30) years. The question here is whether the County has the ability to fund the increases recommended by the Fact Finder and requested by the Union.

Furthermore, the real issue is not the ability to pay, but the ability to finance the issues before the Conciliator. ORC 4117.14(G)(7) sets forth the factors the Conciliator is to consider. Paragraph (c) provides “the ability of the public employer to finance and administer the issues proposed” as one (1) factor. In short, it is not the ability to pay, but the County’s ability to finance that is at issue.

After reviewing the evidence, the Conciliator cannot help but reach the conclusion that the County can finance the Union’s requests, but it simply chooses not to. As the testimony showed, the County is in stable financial condition. Its bond rating is good, it has no loans, can meet its outstanding obligations for 2009, and has not defaulted on any of its obligations. While the three (3) main revenue streams of the County are declining, the Commissioners have responded simply by cutting expenses. While this is understandable and may be what good government does, this does not establish an inability to finance the

Union's issues. There has been no attempt to raise revenues. There was no evidence that the Commissioners have even considered a tax increase or other sources of revenue. The County would be on firmer ground if the Commissioners had attempted and failed to raise taxes, taken out loans to cover its expenses, or the County had defaulted on some of its obligations. None of this has occurred. Based on the evidence before the Conciliator, the Commissioners only response has been to cut expenses, which has fallen significantly on employees. As the funding entity for the County, the Commissioners have submitted a budget to the Sheriff that gives him a certain amount of dollars to spend. The budget represents a cut from the previous year. This does not, however, prove that there is an inability to finance the issues. In short, the County has failed to prove that it cannot finance or pay the issues raised by the Union.

As the Union points out, the Fact Finder is one of the most experienced on SERB's panel. His award was well reasoned and supported by reliable, probative, and substantial evidence. These point to its adoption by the Conciliator. Furthermore, the Conciliator rejects the arguments of the County that the Conciliator erred. The County had a full opportunity to present its positions and arguments to the Fact Finder. That it did not have a chance to rebut arguments of the Union did not make the hearing unfair and was not an error. Whether the County has argued a complete inability to pay in the past is irrelevant. It has not proved an inability to pay here. How the Fact Finder dealt with the carryover is also irrelevant. As noted above, the issue is the ability to finance. The County did not establish it cannot finance the issues in question. The unique relationship between the Commissioners and the Sheriff also misses the point. It does not affect the County's ability to finance. That the Commissioners only gave the Sheriff a certain budget does not prove

that inability. Finally, the Fact Finder is experienced. That he referred to the deputies as police officers does not equate to error. Redundantly, the issue is whether the County can finance the issues. For these reasons, the Conciliator adopts the report of the Fact Finder.

Award: The Conciliator awards a 3.5% increase in each of the three (3) years of each contract. Longevity pay will be increased for all three (3) units as follows:

<u>Length of Completed Full Time Service</u>	<u>Annual Longevity</u>
After 7 years	\$400.00
After 9 years	\$500.00
After 11 years	\$600.00
After 13 years	\$700.00
After 15 years	\$800.00
After 17 years	\$900.00

Finally, the Sergeants' differential shall be increased by .5% so that the differential between Deputy Sheriff and Sergeant is 1.5% during the term of the Agreement.

Dated: November 9, 2009

Daniel G. Zeiser

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