

**STATE EMPLOYMENT RELATIONS BOARD  
STATE OF OHIO**

In the Matter of Conciliation Proceedings Between:

The Wayne County Board of Commissioners : Case No. 2011 MED-09-1287

and : Conciliation Award

Ohio Police Patrolmen's Benevolent Association : Margaret Nancy Johnson  
Dispatchers Unit Conciliator

Statement of the Case

This matter came on for hearing on March 29, 2012 in a conference room at The Justice Center in Wooster, Ohio, pursuant to statutory proceedings for resolution of a public sector bargaining impasse as set forth in Ohio Revised Code Section 4117.14(D). Following rejection of the Report and Recommendations of the Fact-finder issued on January 20, 2012, the State Employment Relations Board, hereinafter "SERB," appointed Margaret Nancy Johnson to serve as Conciliator and to select between the final offer proposals of the two parties on the single issue in dispute.

The Wayne County Commissioners, hereinafter "Commissioners," "Employer," or "County," have been represented in these proceedings by Robin L. Bell, Regional Manager with Clemans, Nelson and Associates. Mark J. Volcheck argued the case on behalf of the Ohio Patrolmen's Benevolent Association, hereinafter "Union" or "OPBA." Both parties had the opportunity to present testimony and documentary evidence supportive of respective positions. A record of the proceedings at the hearing, hereinafter referenced as "Tr.," was taken by Stephanie R. Dean, Court Reporter.

Approximately fourteen (14) employees in the classifications of Dispatcher, Communications Officer, and Lead Communications Officer, constitute the bargaining unit. Multiple jurisdictions within Wayne County are served by the bargaining unit which processes 911 calls, as well as fire and law enforcement dispatching (see Union Exhibit 1-C). These public entities contract with the Commissioners for the services rendered by the unit. With a population of approximately 26,000, the City of Wooster is the largest contractor for dispatching services provided by the County.

Article 27, Section 27.1 of the current three year labor agreement between the parties expiring on October 31, 2013 provides for a wage reopener for the final two years of the contract (Joint Exhibit 3). In addition, Article 27, Section 27.2 provides for annual step increases. Having been unable to resolve the issue of the wage reopener, the parties engaged in fact-finding on January 12, 2012. For contract year 2012, the fact-finder recommended continuing the step increases without a wage increase, and for contract year 2013, he recommended a 2% increase. While the OPBA accepted the report and recommendations of the fact-finder, the County rejected the same, giving rise to this conciliation proceeding.

Issue

The sole issue before the Conciliator is the wage reopener for contract year 2013.

### Criteria

In making the Award which follows the Conciliator has taken into consideration the statutory criteria as set forth in Ohio Revised Code 4117.14(G)(7):

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 the private employment.

### Position of the Union

For its final offer in these proceedings, the Union proposes the recommendations of the fact-finder: a 0% wage increase in 2012 and a 2% across the board increase in 2013, with step increases continuing as provided for in the Agreement. Since this proposal is consistent with statutory criteria including comparability, bargaining history, and financial data, as well as with the deference afforded to recommendations issued by a fact-finder, the final offer of the Union should be awarded.

In public sector impasse proceedings in Ohio, the principle that considerable weight ought to be afforded by a conciliator to the judgment of a fact-finder is well-established. When the fact-finder has taken a reasoned approach to the issues under consideration and has analyzed factual data presented by the parties, then the recommendations issued in the fact-finding report should be implemented (See Union Exhibit 1). In the absence of any reason to reject findings based upon evidence and testimony, the Union argues for the acceptance of the recommendations issued on January 20, 2012.

Bargaining history sustains the proposal of the Union (See Union Exhibit 2). In the preceding labor agreement, the unit averaged a 3% increase. Coming off of the recession, the parties agreed to a wage freeze in 2011 with a re-opener for 2012 and 2013. The proposal of the Union is the equivalent of a .6% annual increase over the three years of the Agreement. Based upon bargaining history, the proposal ought to be adapted.

The modest increase sought by the Union is entirely consistent with economic trends and the Consumer Price Index ("CPI"), which indicates the cost of goods increased 3.4% from November 2010 to November 2011 (See Union Exhibit 2A and Union 2B). Even with the Union proposal, wages for bargaining unit employees will not have kept current with adjustments in the cost of living. In spite of a two year freeze in wages, employees have been required to pay more for basic goods including food and fuel.

Not only is the increase proposed by the Union consistent with bargaining history and the CPI, it is also warranted by wage comparisons within the geographic area. A review of the top pay for Dispatchers in jurisdictions within the region demonstrates that Wayne County falls below the average in top pay for Dispatchers (See Union Exhibit 4). Although three (3) of ten (10) comparable jurisdictions have negotiated a 0% wage increase for 2012, the remaining seven have negotiated

increases ranging from 3.75% to 2%. Additionally, Dispatchers in Orville and Rittman, cities within Wayne County not serviced by this unit, have negotiated increases in wages for the three year period covered by the Agreement now in consideration (See Union Exhibit 5). Thus, the Union proposal for a 2% increase in 2013 following a freeze in 2011 and 2012 is entirely consistent with comparable data.

Internal comparability also supports the position of the Union in these proceedings. The OPBA is the bargaining agent for the other two conciliation units in Wayne County: Deputies, and Sergeants and Lieutenants. Each one of those units negotiated a 1%, a 2% and a 3% increase for 2012, 2013 and 2014, respectively (Union Exhibit 5A). Along with the negotiated wage increases, employees also received lump sum payments of approximately \$1,200.

Finally, the Union submits that the financial data supports its contention that the County clearly has the ability to pay the increases sought by the unit. Unencumbered balances in the General Fund have increased from \$2,545,670 in 2008 to \$3,833,107 in 2012 (See Union Exhibit 6). The annual carryover maintained by the County exceeds what is recommended as a general rule for local governments (See Union Exhibit 8). While General Fund revenues have increased from 2010 to 2011, in that two year period General Fund expenditures have decreased (Union Exhibit 7). Financial data supports the contention of the Union that the County can afford the modest increase sought by this unit.

In spite of financial losses to local governments as a consequence of legislation, the revenue sources for Wayne County are strong. Revenue for dispatching comes from jurisdictions with which the County contracts, including the City of Wooster which pays 50% of dispatching services. From 2011 to 2012 both the Wireless 911 and the E-911 Funds experienced increases (Union Exhibit 9). Similarly from 2010 to 2011, property and sales tax receipts were up (See Union Exhibit 10). A review of Revenue Statements for 2010 and 2011 establish that revenues have exceeded budgeted amounts (See Union Exhibits 20 and 21). In 2011, the General Fund received \$1,236,044 more than budgeted.

The conservative budgeting of the County has resulted in actual expenditures being less than budgeted. For the period ending December 31, 2010, County expenditures were less than budgeted by \$1,238,942 (See Union Exhibit 18). Actual expenditures from the General Fund were \$1,843,406 less than budgeted in the year ending December 31, 2011 (See Union Exhibit 19).

Cost for the increase sought by the Union is calculated at approximately \$10,936, a sum the County can afford to pay. Historically, the County has underestimated its ability to pay for services rendered by its conciliation bargaining units. The increase sought by the Union in this proceeding is reasonable, affordable, and consistent with all statutory criteria as well as with the recommendations of the fact-finder.

The Union proposes wage increases of **0% in 2012, 2% in 2013**, and step increases as in current contract language.

#### Position of the County

The position of the County in these conciliation proceedings is consistent with bargaining history, financial indicators, and sound fiscal judgment in an uncertain economic environment. In the past, wage increases for this bargaining unit have reflected percentage increases experienced by other County employees. Internal comparability fosters employee satisfaction and good morale, factors important for efficiency and productivity. While the Union cites economic improvements from 2010 to 2011, the County must focus on long term forecasts based upon averages over a more substantial period of time. Current financial stability in the County should not be viewed in a vacuum but ought to take into account cost saving measures implemented to control expenditures and restore a sufficient reserve balance in a time when revenue sources are being significantly reduced or eliminated.

Wages paid to its Communications Officers rank the County in the middle in comparison to wages paid by surrounding counties to Dispatch units. Three counties pay more and four counties pay less (See Employer Exhibit 1). Demographic data including tax revenues, median family income and

populations for these same surrounding counties similarly place the County in the mid-range (See Employer Exhibit 2). Rather than the cities cited by the Union, the Employer contends that neighboring counties are the correct comparable jurisdictions.

As cities and counties have very different revenue sources, the Employer argues the Union's comparables are not appropriate and that counties ought to be the focus in this proceeding (See Employer Exhibit 3). Moreover, the demographic and geographic data of the comparables cited by the Union are too disparate and distant for a true comparison (See Employer Exhibit 4-1 through 4-3).

Nonetheless, if cities should be deemed comparable, then the safety forces of Wooster in which the bargaining unit is centered should be considered. Both the fire and the police units in Wooster have agreed to consecutive wage freezes for the duration of their labor agreements (See Employer Exhibit 5). This is significant given the fact that Wooster reimburses the County for dispatch services.

Reviewing evidence on external comparability demonstrates that the wage history of this unit compares very favorably with wage increases reported by public entities within the State. SERB data indicates that increases given to this unit are greater than percentage increases within the area generally, and the increases are far greater than the Consumer Price Index cited by the Union (See Employer Exhibit 8-1 through 8-4). Moreover, with step increases, employees within this unit have received substantial increases in annual wages in both 2010 and 2011 (See Employer Exhibit 9).

Although this unit is the only organized unit with which the County collectively bargains, wages paid to the Dispatchers have been consistent with other employee groups including non-bargaining employees. While the Department of the Sheriff is a separate entity having different revenue sources, wage increases to both the safety units and the civilian unit within the Office of the Sheriff as well as the wage history for County non-bargaining employees establish comparability in wage rates, with all employees accepting wage freezes over the course of several years (See Employer Exhibit 6). Indeed, a concern of the County is that should an increase be given to this unit, then other employees groups who have the ability to demand a larger share of the budget may do so. The County cannot sustain the risk of the Court of Common Pleas and/or the Board of Elections demanding greater funding should this unit receive a wage increase (see Tr. 86-87).

The increases granted to the Sheriff's Deputies and Sergeants and Lieutenants units ought not to be determinative in this impasse proceeding. Rather, those increases must be viewed in the context of litigation and with the recognition that to cover those increases the Sheriff is going to have to make significant reductions. Moreover, the Office of the Sheriff is a separate entity under the authority of an elected official, not the Commissioners.

Although the County has reserves, the issue is whether the wage increase sought by the Union is sound fiscal judgment during a period of economic uncertainty and significant cuts to local government funding. It is indisputable that revenues within the County are decreasing with the changes implemented by the state legislature and by reason of the national recession. Reductions in 2011 through 2013 will effect a loss of \$1,605,383 to the County (See Employer Exhibits 10,11, 12, 13). These include reductions in Local Government Funding and the phasing out of the Personal Property Tax.

Between 2011 and 2013, the County will also have incurred losses in interest of \$276,400 (See Employer Exhibit 12). From 2007 until now, the interest loss is over 10% of the County budget. Future investments are going to earn between 1/2% to 1%. Interest loss is not speculative; only the rate of loss is unknown. Forecasts indicate that "recent increases are likely to be temporary and the longer-term component of inflation is much lower than recent price increases suggest" (See Employer Exhibit 15). Thus, given the losses incurred by the County any wage increase in 2013 will have an adverse impact upon strategic planning and long-term budgeting for the County.

Properly looking to the future, the County should not be increasing its expenditures at a time when its revenues are declining. It is incumbent upon the County to consider long-term changes and not year -

to-year increases. Evaluating change over a longer period of time, the County notes its loss of revenues from 2007 to 2011 is \$2,663,350 (See Employer Exhibit 16). Moreover, although real estate taxes show an increase from 2010 to 2011, in fact, when calculating in reimbursements from the state, actual real estate and personal property revenues declined by \$215,774 in that time period (See Employer Exhibit 16). In spite of short term improvements, the long-term financial landscape is bleak.

It is important to recognize that the County does not have sole authority over how the wireless 911 fund is used. One County Commissioner is on the planning committee but the Commissioners cannot dictate use of the 911 wireless funds. Since 2008, the Committee has allocated funds to help cover salaries and in 2012, \$70,000 was dedicated to salaries, less than the over-all cost of one employee. The problem, however, is that by statute the funding sunsets at the end of 2012 and it is uncertain how much, if any, of the 911 wireless fund will continue to be available.

Finally, the County is endeavoring to maintain an appropriate year-end balance in the General Fund. Although in the past, these reserves were used to pay for expenditures, the financial crisis has shown it is essential that revenues match expenditures, and that reserves be sufficient to cover either the revenues or the operating expenses for at least the first two months of a fiscal year. The County has developed a General Fund Balance Policy (See Employer Exhibit 20) to stabilize General Fund balances. Presently, the General Fund carry-over is less than what the County policy provides.

The County budgets conservatively because it must do so. Commissioners cannot expend resources which are not available. In establishing its budget, the Commissioners endeavor to look forward and anticipate, based upon analyzed data, financial resources available to the County. Economic indicators sustain the conclusions of the County that a wage freeze for 2012 and 2013 for the Dispatch unit is appropriate given the economic uncertainties facing the employer (See Employer Exhibits 21, 22, 23).

The County proposes **0% in 2012 and 0% in 2013.**

#### Discussion

The sole issue pending before the Conciliator is Article 27.1 which includes a wage re-opener for contract years 2012 and 2013. As the fact-finder recommended 0% in 2012 and the Union has accepted that recommendation, the only year in contention is 2013. For 2013 the fact-finder recommended a 2% increase, a raise the Union now adapts as its proposal in these proceedings. The County, however, rejected that increase and advocates for a continuation of the wage freeze through contract year 2013.

Both parties have persuasively argued and presented reasonable evidence in support of respective positions on wages for 2013. Financial documentation introduced into the record sustains the differing contentions made by the Union and by the County. Accordingly, neither the reasonableness of the divergent proposals nor the accuracy of the economic factors upon which the proposals are based is in issue.

Rather, from the evidence elicited, the role of the Conciliator is to ascertain which of the two final offers best adheres to the statutory criteria established by the state legislature for resolving public sector interest disputes. Legislative intent in impasse proceedings is that determinations be based upon specific data, and while the recommendations or the awards issued in the process will reflect an opinion, the conclusions reached must be consonant with the objective factors set forth in the Ohio Collective Bargaining Act. Thus, the function of the neutral is not to endorse a particular fiscal argument or policy but, rather, to select which final offer position best complies with statutory standards. To the extent a particular criterion is applicable and has been addressed by one or both of the parties, the Conciliator analyzes that factor as set forth in O.A.C. 4117.14(G)(7) in the discussion which follows.

### *Past Collectively Bargained Agreements*

In general the criterion of past collectively bargained agreements is cited by neutrals for the proposition that terms and conditions of employment which the parties previously negotiated should not be modified in the absence of convincing evidence of a need for amendment. Nonetheless, past agreements have also been referenced to establish trends or practices in a bargaining relationship. Since both the County and the Union used prior agreements in this proceeding to argue for consistency, that contention must be addressed.

In its presentation, the County argued, “The fact of the matter is the history of negotiations, the way that this unit has, in essence, been tied to percentage increases of other groups of employees within the county would justify another, the three years of zeros in this contract.” (Tr. 32). To sustain that argument, the County introduced its Exhibit 6 wherein the history of this unit was compared to wage increases for non-organized Board of Commissioner employees as well as three bargaining units within the Office of the Sheriff: a civilian unit, a Deputy unit, and a unit for ranking officers.

Internal comparability argued by the County will be more fully addressed below as a factor traditionally taken into account by neutrals. For the purposes of bargaining history, however, the Conciliator cannot find uniformity in wage increases between employee groups that would dictate this unit receives the same increase as the Sheriff units or the non-organized employees. In fact, a review of County Exhibit 6 shows different percentage increases and inconsistency within the “contract blocks” among the various employee groups. Historically, while similar, the percentage wage increases for the employees groups have never been uniform.

The County also introduced into evidence actual wage increases received by individual members of this unit in 2008 (Employer Exhibit 8-2) and increases received by members by reason of new rates in 2010 and 2011 (Employer Exhibit 9). Contending that employees received an average increase of 3.46 percent in 2008 and significant increases in both 2010 and 2011 as a consequence of step increases, the County seems to argue the wage freeze it now proposes for 2013 is proper and justified. To the extent prior increases were the result of negotiated rate changes or modification to employment steps, those increases are not determinative of the issue now under consideration. Changes in steps which previously had been collectively bargained do not preclude an across the board annual wage increase in subsequent negotiations.

As to bargaining history, the Union argues that its final offer is appropriate based upon past increases negotiated by the parties. Union Exhibit 2 is introduced to compare the 2.5%, 3.0% and 3.5% increases for contract years 2008, 2009, and 2010, respectively, with the 0%, 0%, 2% proposed for 2011, 2012 and 2013. In analyzing the history of negotiations, especially in reference to Union Exhibit 2, it is important to recognize that the wage increases for 2008, 2009 and 2010 were bargained by the parties before the crisis of 2008 and the ensuing national recession. Increases agreed to by an employer prior to 2008 taking effect subsequent thereto ought not to be a factor in determining increases for a current contract.

While both parties argued bargaining history, the Conciliator finds insufficient evidence of a practice or trend to have an impact in the matter of a wage increase in this case. Additional criteria and factual analysis are more determinative of the matter at hand and the Conciliator proceeds to address those substantive factors.

### *Comparability*

Introducing a Wage History Comparison (Employer Exhibits 8-1 and 8-2), the County contends that since 2002 increases negotiated for this unit have exceeded settlements in counties and in the geographic region. In fact, however, a comparison of wage increases for dispatchers with SERB data

(see County Exhibit 8) indicates that wage settlements reached by the County and its Dispatchers have not been anomalous. On the contrary, the wage increases bargained by the Dispatch unit and the County are relatively comparable to increases in other jurisdictions. Considering figures for Police, for the Akron/Canton region, and for Counties, at least up until the recession, wage increases for the Dispatch unit have not been disproportionate.

Except for 2002 when the Dispatch unit received 4.5% and for 2009 and 2010 for which the parties had negotiated substantial increases prior to the recession, wage adjustments for this unit have been within .75% of wage increases reported by SERB for both the Akron/Canton area and also for Counties. Comparing police units as reported by SERB for those same years (2003-2008) with the County Dispatch unit, the difference in wage increases is less than .5% (See Employer Exhibit 8-1).

While percentage totals through 2011 on County Exhibit 8-1 suggest increases for the Dispatch unit substantially higher than for Akron/Canton or County units as reported on SERB Settlements, those figures do not take into account the unavailability of SERB data for 2011 or the timing of negotiations for 2009 and 2010. Certainly, the disparities noted in 2009 and 2010 are at least partially attributable to the fact that the Dispatch unit had negotiated its 2009 and 2010 increases in 2007. One of the problems with the “long term” approach and review of comparables on County Exhibit 8-1 is that it does not take into account what was occurring at the time the increases were negotiated.

Whether or not cities are a proper comparable, the evidence establishes that in the past the County has negotiated wage increases that are relatively consistent with increases for Police, for the Akron/County region, and for counties in general. Nothing in the past has differentiated the County in terms of its negotiated wage rates for this unit. From past data, there does not appear to be any factor “peculiar to the area and classification involved” which sets this unit apart.

Turning from historical data to more current or recent negotiations, the County has argued that reference by the Union to cities across Ohio in the matter of comparability is inapt. Rather than using cities which have an entirely different source of revenue and are geographically remote from the County, the Employer contends the more appropriate comparison is with neighboring counties. Although the services rendered by this unit may, indeed, be the same as those provided by dispatch units in municipalities or other political entities, the argument that the County should be compared with other counties is justifiable. Thus, the Conciliator has focused her comparison on counties as suggested by the Employer (See Union Exhibit 4 and County Exhibit 3).

In reviewing comparable data, the Conciliator considers percentage increases rather than the total income package. As the range within which a County lies has been determined after years of collective bargaining, the percentage increases are more informative. The issue before the conciliator is not so much what the unit should be paid as what should be the percentage increase of its wage.

Of the six (6) counties on Employer Exhibit 3 including Wayne County, only three have negotiated wages for 2012. Like the Employer, Stark and Summit Counties are either at the bargaining table or in impasse procedures; Medina, Ashland, and Holmes County have resolved 2012 wages and 2013 is unknown. While Medina has a wage freeze in place for 2012, Ashland and Holmes Counties have negotiated 2.0% and 3.25% increases respectively. Interestingly, the average of the three wage increases is 1.75%, and the median, taking away the high (3.25%) and the low (0%), is the 2% negotiated by Ashland County.

Continuing the comparison using Employer Exhibit 2, each of the counties that have negotiated wage increases for 2012 have both 2010 tax revenues and also median family incomes *below* those of Wayne County (See Employer Exhibit 2). Looking at percentages on unemployment, Wayne County has a lower rate (7.6) than Ashland (9.6), but higher than Holmes (6.0) (Union Exhibit 11). Although larger in population than either, in terms of geographic proximity and characteristics, Wayne is quite similar to both Ashland and Holmes Counties, appropriate comparables in this matter.

Considering data on the loss of state reimbursements, the Conciliator finds that Holmes and

Ashland Counties, in fact, all counties state-wide, are experiencing the same dramatic losses as the Employer. In its Exhibit 13, the County provides data on the phasing out of state reimbursement of Tangible Personal Property (“TTP”). Actual TTP received by the County in 2011 was \$243,512; TTP to be received in 2012 is \$16,459 and 0 in 2013. As the Conciliator reads the TTP chart provided, Holmes County drops from \$166,300 to \$45,376 and then to 0, and Ashland County loses the entire 2011 reimbursement of \$14,166 in 2012. Considering reimbursement from the Local Government Fund, Ashland and Holmes Counties are proportionally experiencing the same income losses as the Employer (See Employer Exhibit 12) and although the figures are anticipated rather than actual, these losses were looming when Ashland and Holmes Counties negotiated wage increases for their Dispatch units.

Although the Wayne County Dispatch unit will receive a wage freeze for 2012, Ashland and Holmes County units will receive a 2% and 3.25% increase respectively. No doubt, there are other counties with which comparisons may be made. Nonetheless, these are the jurisdictions for which comparable data and bargaining information were provided to the conciliator and these are the counties with which she has analyzed comparability. The evidence on this criterion indicates that the proposal of the Union for a 2% wage increase in 2013 more closely aligns with wage increases recently negotiated by neighboring counties than the wage freeze offered by the Employer.

While focusing on counties, reference must be made to specific municipalities identified by the parties in the course of the presentation of evidence. The County points out that the safety forces in the City of Wooster, for which this Union provides dispatch services, have agreed to 0% increases through 2013, and in the case of the firefighters through 2014 (See Employer Exhibits 5). In contrast, the Union argues that the cities of Rittman and Orrville which each have their own dispatch units, have agreed upon a 0% and a 3.75% increase, respectively, averaging a 1.875% increase for 2012.

Clearly, the actions of the IAFF and the OPBA in their negotiations with the City of Wooster are commendable, but these are different units employed by a different political entity having, as the County points out, a different revenue source. Thus, the comparison with the Wooster safety forces does not fit as well with the statutory criterion as a comparison with units doing like, if not identical, work. Moreover, even though the conciliator notes that Wooster's median family income is less than in the County in general (See Employer Exhibit 4-1), without access to financial data for Wooster, this Conciliator cannot determine that the wage freeze agreed upon by the IAFF and the OPBA ought to be replicated in this proceeding.

From the evidence elicited, however, the Conciliator does note that the two Wooster safety units are considerably larger than the Dispatch unit under consideration and that “any safety force in a city is one of the largest expenses in the general fund” (See Employer Exhibit 5). Called a “no-brainer” by the local IAFF Vice-President and a “win-win” in the September 7, 2011 Daily Record article, the Wooster agreements have advantages to the unions in terms of manning and working conditions. For example, while the firefighters are down one employee from normal staffing, the wage agreement “maintain[s] staffing levels and conditions” for firefighters (See Employer Exhibit 5).

Wooster's contribution to the costs of this unit is considerable, but Wooster, the largest city in the County, is the only city which contracts with the County for dispatch services; the other jurisdictions are villages or townships (See Union Exhibit 1(C)). The conciliator cannot conclude that either increases or freezes implemented for law enforcement or fire prevention/ suppression units by the public entities serviced by the County should determine the rate increase, if any, to be granted to the Dispatch unit.

In conclusion, as regards the statutory criterion of comparability, the Conciliator finds the evidence sustains the position of the Union. Similar jurisdictions and units performing similar duties within the geographic area have received wage increases closer to that proposed by the Union in this proceeding.

## *Ability to Pay*

In terms of analysis of data, ability to pay is a challenging criterion to assess. While the statutory language is much more comprehensive and includes “the interest and welfare of the public” and “the effect of the adjustments on the normal standards of public service,” in the course of almost three decades of impasse proceedings under the Act, the criterion has become identified simply as “ability to pay.” Routinely, it includes an analysis of revenues and expenditures, projections and estimates. Although perhaps the most statistical, ability to pay is also the criterion having a “human face”-- the citizens for whom the services are rendered. Thus, ability to pay is not solely about numbers but it is a balancing of “standards of public service” and the “interest and welfare of the public” with fiscal responsibility.

Astute financial management of the County at a time of extraordinary economic instability- locally, nationally, and globally- is noteworthy. Balancing a budget when revenues are being reduced is a daunting undertaking which the County has managed commendably. In order to secure sufficient assets for future needs, the County appropriately takes a long term approach, analyzing the past and anticipating income, recognizing that revenue sources are being eliminated and reimbursements reduced by reason of state legislation. Yet, public safety and welfare have a cost, and the individuals performing public sector services require compensation commensurate with the work performed as well as with the finances of the governmental entity responsible for the activity.

The role of the conciliator is not to advocate for conservative financial planning or to impose a wage increase deemed reasonable and fair. When considering the ability to pay criterion, the task before the conciliator is to determine whether the County has the resources to pay a wage increase which has been found to be consistent with those negotiated in comparable jurisdictions for similar services as well as with the economic climate. To address that issue the Conciliator has scrutinized the financial data which both parties have introduced into the record.

### **Revenue Comparisons**

A major difference in the financial approach of the County and the Union is that the County examines a five (5) year span from 2007 to 2011 while the Union focus is on positive changes within the last two years, 2010 and 2011. Emphasizing reductions implemented by the state in funding, the County has also described short term changes (Employer 16), looking at revenue losses between 2010 and 2011; but the Employer argues that in order to properly forecast future revenues, it must consider and analyze trends over a longer term. Cognizant that the legislatively mandated reductions in funding will create substantial burdens for local governmental entities, the conciliator has carefully examined the figures presented for review.

One of the problems the Conciliator has with the data presented by the County is that it includes revenues received in 2007 at the height of the financial “bubble” as well as the revenues of 2008 following the “burst” thereof, a most extraordinary financial crisis from which the nation is yet emerging. Arguing that those extremes are the very reason for long term analysis, the County contends that going back prior to the crisis would create an even greater disparity (Tr.75). For the purposes of this proceeding, however, the Conciliator finds that relying upon income from 2007 and 2008 distorts and deflates the more recent trends in economic improvement, however gradual and tentative. County finances going into these negotiations are positive, if not robust. Receipts are increasing and the County is expending less (See Union Exhibit 7 and Herron testimony, Tr. 75).

Data from three years--2009, 2010 and 2011-- provide more of a trend than the analysis of the Union but still focus on post 2008. Compared with income levels prior to the financial crisis, total receipts are clearly reduced, but County finances are not stagnant. Especially when contrasted with the

overall budget managed by the County before 2008, the increases are modest, but the pattern is one of improvement.

While the County emphasizes the loss in state reimbursements pertaining to real estate, in fact, property taxes have increased \$76,372 for the three year period, and property transfer taxes have increased \$24,763 for those same years. From 2009 through 2011 total sales tax receipts have increased \$832,420. These tax increases are indicia of positive economic activity in the County. Recognizing as pointed out by the County reductions in state reimbursements and loss in investment earnings off-set gains in receipts, the Conciliator, nonetheless, finds that the net result from 2009 through 2011 is an increase in revenue.

In addition to losses from state funding, the County cites revenue loss from investment income as a basis for its proposal in this proceeding. Interest revenue accounts for over 10% of the County budget (Tr.58). Reduced interest, while significant to the County, is double-edged. The purpose of a monetary policy on low interest rates is not to stymie the economy but an attempt to stimulate growth. To some extent the County has seen increased purchasing activity post 2008 (see sales and transfer tax increases, County Exhibit 16). Moreover, although the Conciliator concurs with the County that low return on investment is long term, the historically low interest rates will eventually increase, and the speculation is not “if” but “when.” Reduced revenue from investments is not a permanent loss. In regards to interest income, the investments of the County still continue to “earn.” While the return is not as high as in previous years, in 2013, the county will receive \$279,057 in interest on its principal (Employer Exhibit 12)

### **General Fund Carryovers**

In the presentation of evidence on its financial condition, the County contends that pursuant to updated guidelines (Employer Exhibit 19), its policy on General Fund balances has been modified and that under the new policy the carry-over for 2012 is short \$754,807 (Employer Exhibit 20). As formulated by County personnel having the requisite expertise, the carryover policy certainly is reasonable and consistent with newly implemented recommendations of the Government Finance Officers Association (GFOA). In this proceeding the Conciliator will not question the propriety of an internal decision on sufficiency of year-end general fund balances; but she must be address whether adherence to the policy justifies the wage freeze now insisted upon by the County for 2012 for this unit.

Formulated to guide governmental entities, there is nothing mandatory or statutory about the carryover recommendations issued by the GFOA. The best practices document suggests “governments maintain adequate levels of fund balance[s] to mitigate risks and provide a back-up for revenue shortfall,” but the individual policies should be tailored to meet the needs of the particular jurisdiction. As a minimum the GFOA recommends an “unrestricted fund balance in their general fund of no less than two months of regular fund operating revenues or regular general fund operating expenditures.”

As expenditures are more readily within the control of the employer, the County utilizes those figures for its carryover policy. Arguing that it is protecting against the revenue short-falls which are scheduled to occur, the County has added an average reduction in revenues over the last five years to the average two month expenditures to arrive at its proposed carryover of \$4,587,914 for 2012.

Averages used by the County for the 2012 carryover are derived from revenue and expenditures from 2007 through 2011, a five year “look-back period to make sure [it was] not placing too much reliance on any one year” (County Exhibit 20). The conciliator understands the purpose of looking at a five year period is to avoid “the risk of placing too much emphasis upon the level of unrestricted fund balance[s] in the general fund at any one time.” Yet, the volatility in the 2007 and 2008 figures used to determine the revenue/expenditure averages and the proposed carryover for 2012 is not a normal swing; it is the effect of a national financial crisis.

As with her consideration of revenues, the conciliator has looked at expenditures for the three year

period from 2009 through 2011 to ascertain the sufficiency of the carryover. Comparing the unencumbered balances for those three years, the unencumbered balance has grown from \$3,183,481.81 to \$3,833,107.53 effective January 1, 2012 (see Union Exhibit 6). Looking at the two month average expenditures for those years, the unrestricted cash carryover of \$3,833,108 as of 1/1/2012, exceeds those expenditures by \$55,947, \$268,694 and \$332,259 respectively. Even including 2007 and 2008, the carry-over exceeds the average two month expenditures (see County Exhibit 20). In the opinion of the conciliator, the replenishment sought by the County in its carryover balance is well underway, and the increases proposed by the Union in this proceeding will not have an adverse impact upon the goal of the County in the matter of its policy on maintaining a sufficient year-end carryover to meet exigencies.

### **911 Funding**

On the issue of ability to pay, the County argues that it may lose its Wireless 911 funding. To help the conciliator understand the 911 funding, the County explained how the Justice Center located in Wooster functions as a joint facility with the City of Wooster Police Department and the Wayne County Sheriff's Office along with an Emergency Management Agency. Governed by a Board consisting of the Sheriff, the Wooster Police Chief, the EMA Director, the Mayor of Wooster, a County Commissioner, and two at large members, the Justice Center operates within a budget established by its Board. For 2012, \$1,314,685 was appropriated for Justice Center operations (See Employer Exhibit 14).

The 911 funding discussed at the hearing is a tax of \$ .28 per cell phone generating approximately \$20,000 per month for Wayne County but not exclusively for operations at the Justice Center. Rittman and Orville each maintain a dispatch center. Collected from phone companies, the State disburses the monies to each county. In the presentation of its case the County points out that the 911 legislation sunsets at the end of 2012.

A 911 Wireless Advisory Committee, not the County, determines the distribution of funds received from the state based on the number of 911 calls coming into the three dispatch centers. In 2012, the County was allocated \$70,000 with \$15,000 going to the other two Dispatch Centers, Orville and Rittman. Losing the \$70,000 or a portion of it in 2013 is a concern raised by the County. In addition to personnel costs, the 911 funds are used for equipment and infrastructure.

While the Union cites the substantial unencumbered balances in the wireless 911 and E-911 funds (See Union Exhibit 9), the County counters with looming infrastructure needs and the uncertainty of continued funding. Indeed, the County contends that if Wireless 911 funding ends, the Justice Center will face a 3.62% reduction in its budget (Employer Exhibit 17).

How much, if anything, the County will lose by reason of legislative action in regard to 911 funding is not certain. Also uncertain are the costs of the equipment upgrades and capital improvements cited by the County. What is indisputable, however, is that the County has a substantial cushion in the fund balances and that the same increased from 2011 to 2012.

The cautionary approach of the County in such an uncertain economy is understandable. Yet, when the wireless 911 fund balance increased from \$494,814 in 2011 to \$670,741 in 2012 and the E-911 balance increased from \$112,571 in 2011 to \$120,529.99 in 2012, it may be found that the County can afford the 2% increase for 2013 sought by the Union for Dispatchers.

As previously indicated, the potential losses cited by the County are not peculiar to Wayne County. If there are losses to be sustained in the 911 funding, other counties referenced in the discussion on comparables will experience those same losses, with possibly less of a cushion than Wayne County. Yet such counties have been able to negotiate increases for their dispatch employees. Moreover, Orrville, facing proportionally the same potential loss in funding as the County (Tr. 117), negotiated a 3.75% wage increase in 2012 for its Dispatch Unit.

While there was some testimony and evidence regarding additional duties performed by Orville

Dispatchers not performed by this unit (Employer Exhibit 24), the conciliator is of the opinion that such differences do not render the jobs dissimilar. The essence of the job classification is the dispatch of emergency personnel. These units perform comparable duties and the differences cited by the Employer, mostly clerical in nature, do not justify a wage freeze for County Dispatchers and an increase for those working in Orville.

### *Traditional Factors*

#### **Internal Comparability**

Not specifically listed as a statutory criterion, internal comparability is a standard normally considered by neutrals in impasse proceedings. As pointed out by the County, consistency in wage increases among employees generates good morale and satisfaction among employees, thereby contributing to better efficiency, productivity and reliability.

Although the County has resources with which to pay the increase sought by the Union, it contends that granting an increase to this Union is a “risk,” opening a “dam” of demands that it cannot afford for its other employees (Tr. 87). In his testimony the County Administrator explains that General Fund Departments have the ability to mandate increases, specifically the Board of Elections and the Court of Common Pleas.

Moreover, the County argues that other employee groups with which it bargains are receiving a wage freeze for 2013. As to the Sheriff’s deputies and ranking officers, the County contends that the Sheriff is a separate entity and that the increases experienced by those units will be off-set by reductions which must be made within the Office of the Sheriff, a contingency recognized throughout the County.

On the issue of internal comparability, the conciliator does not believe that an organized unit should be compared with non-organized employees. These are entirely separate groups, having totally different working conditions, terms of employment, and salary schedules, and encompassing a range of personnel. Endeavors by unions in the past to cite increases granted to administrative personnel as justification for increases for bargaining units have been found inapt by neutrals. Employment contracts of bargaining units and non-organized employees are simply not comparable. An employee group designated by the County as “BoC Non-Bargaining” (See Employer Exhibit 6) provides little guidance to the conciliator for purposes of comparability.

In the presentation of its case, the County made specific reference to the Court of Common Pleas and to the Board of Elections. Although the County opines that its only recourse for hypothetical excesses of elected personnel/staff and political appointees/ staff, is judicial, in fact, public outcry is a persuasive tool in those instances. The sky is *not* the limit; but, most significantly, no report or award in which wage increases for an organized unit have been based upon those of a non-union group, whether a Board of Elections or a Court of Common Pleas, has been presented to the conciliator for consideration.

As to organized employees, the conciliator concurs with the County that a distinction between conciliation units and non-safety units is not appropriate. A difficulty with the internal comparability analysis, however, is that the only organized County units are within the Office of the Sheriff, which the County argues is a different employer. While the Sheriff is, in fact, a separately elected public entity, nonetheless, the County Commissioners are signatories to the Agreements between the Sheriff and the units within the Office of the Sheriff. For the purposes of internal comparability, the Conciliator finds that public sector units working for the County, including those employed by the Sheriff, are appropriate comparisons.

Internal comparability is further complicated by the fact that the civilian unit within the Office of the Sheriff receives the same increases received by non-organized employees of the Board of

Commissioners. For the last four years, that unit has experienced a wage freeze. While the Commissioners endeavored to impose a wage freeze on the deputy and ranking officer units, those groups eventually received lump sum payments in addition to 1%, 2% and 3% increases for 2012, 2013, and 2014. The County argues that the Office of the Sheriff will be making reductions in order to pay the negotiated wage adjustments.

This unit is not proposing the same increases negotiated by the County in settlement of litigation with the officers in the Office of the Sheriff. Rather, its proposal is in between the wage freeze of the civilian employees and the rate increases agreed to for officers. Pursuant to County argument and evidence (Employer Exhibit 9) “the Sheriff’s Department has always been first” with regard to contract cycles (Tr. 40). In the instance of the current cycle, the officers in the Sheriff’s Department have set a standard which the communications unit in the county is *not* pursuing. This unit is, however, seeking the same 2% increase that deputies and officers will receive in 2013.

Evidence on internal comparability demonstrates that this unit has in the cumulative since 2002 received the same increases that deputies in the Office of the Sheriff received. The 2% increase sought by this unit and negotiated by the County with the deputies is consistent with the history of internal comparability between the deputies unit in the Office of the Sheriff and employees in the dispatch unit (See Employer Exhibit 6).

### **Consumer Price Index**

As the Union cited the Consumer Price Index as a justification for the increase it seeks (See Union Exhibit 2A), the County addressed the “Future of Inflation” both in testimony and in documentary evidence (Employer Exhibit 15, Herron testimony). The argument of the County in regard to the CPI is three-fold: 1) wage increases given to this unit in the past have exceeded the CPI; 2) the CPI has, in fact, fallen in recent measurements; and, 3) to the extent the CPI is an appropriate financial measurement in these proceedings, the increases in consumer costs affect the County as well as the individual.

As to the contention that wage increases in the past have exceeded the CPI (See Union Exhibit 8), the Conciliator notes that those increases were the consequence of collective bargaining and its statutory process. Wage rates negotiated by the parties or increases emanating from impasse procedures in the past were presumably based upon financial data then current. It is not the function of the Conciliator to determine that wage increases previously implemented were too high relative to the CPI. Rather, in impasse proceedings, the neutral looks at financial data in an endeavor to assess an appropriate increase in the present economic climate.

The high volatility of the CPI is evident both in County Exhibit 8 and also in the publication entitled “The Future of Inflation” to which the County directed the Conciliator (see County Exhibit 15). Although the conclusions reached therein are that “recent increases are likely to be temporary, and the longer-term component of inflation is much lower than recent price increases suggests” (p. 4), the purpose of the article is to allay concerns about rampant inflation. The author states:

Of course, knowing that prices increases are temporary doesn't make filling up your gas tank or grocery car today any less painful. But for budgeting purposes, it helps to know the pain won't last long enough to cut into your daughter's college fund. Just as important, knowing that prices won't continue to rise can prevent the central bank from fighting an imaginary monster, needlessly tightening policy.

Although certain components of the CPI, such as gasoline prices, have spiraled, over-all increases

are more measured; but consumer prices have inarguably increased. Any wage increase implemented for this unit need not be exactly uniform with increases in the CPI, but as the CPI is an indicator of the economic climate referenced above, any increase should be somewhat reflective of the CPI. The conciliator finds the 2% increase proposed by the Union after two years of a wage freeze is not inconsistent with inflationary trends as recorded by the CPI.

As to the contention that the employer also feels the effects of price increases, the conciliator observes that the County has the availability of more revenue sources with which to buffer such increases than the individual employee. While the individual employee may have to “cut into [a] daughter's college fund” to pay certain expenses, the operating fund of the County is not reliant solely upon one or two revenues streams, but has, rather, multiple income sources with which to pay expenses and increased costs.

While not determinative of the matter under discussion, the consumer Price Index is a factor considered by neutrals in impasse proceedings. The percentage increase in consumer prices is part of the economic landscape in which the parties negotiate. In this proceeding the wage increase proposed by the Union for 2013 is not inconsistent with increases in the CPI.

### **Recommendations of the Fact-finder**

Finally, the Conciliator notes that although the recommendations of the fact-finder are not binding, conciliators will generally give weight to the analysis within a fact-finder's report. Having thoroughly analyzed the documentation and arguments presented for her consideration, the Conciliator concludes that the financial figures sustain the earlier finding that the 2% increase recommended by the fact-finder is an appropriate wage increase for this unit for contract year 2013.

### Award

The Conciliator awards the position of the Union: a 2% increase for the bargaining unit for the contract year 2013.

Respectfully submitted,

s/s Margaret Nancy Johnson

### Service

A copy of this award has been served this 30<sup>th</sup> day of April, 2012 electronically upon: Robin L. Bell at [rbell@clemansnelson.com](mailto:rbell@clemansnelson.com); Mark J. Volcheck at [markvolcheck@sbcglobal.net](mailto:markvolcheck@sbcglobal.net); and upon the State Employment Relations Board at [MED@serb.state.oh.us](mailto:MED@serb.state.oh.us).

/s/ Margaret Nancy Johnson