

State of Ohio
STATE EMPLOYMENT RELATIONS BOARD
Final Offer Settlement Procedures

In the matter of the conciliation between:)	Cases Nos.
)	2013-MED-04-0487 [Unit 5]
Ohio Patrolmen's Benevolent Association)	2013-MED-04-0489 [Unit 2, Sgts.]
Labor Organization)	2013-MED-04-0490 [Unit 2, Lts.]
)	2013-MED-04-0491 [Unit 1]
and)	
)	
Trumbull County Sheriff)	Gregory P. Szuter, Conciliator
Public Employer)	
)	

REPORT AND AWARD
[Interest Arbitration]

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Also in attendance (*Sworn and testifying):
*Lt. Peter Lucic
Deputy Steve Sabulsky (present A.M only)
Tim O'Leary, OPBA civilian unit rep.
Deputy Brian Kaintz

Also in attendance (*Sworn and testifying):
Sheriff Thomas Altieri
Major Harald Firster
*Debbie Santangelo, Sr. Acct, County Auditor
*Adrian Biviano, County Auditor
James Keating, HR Director

Hearing : Warren, Ohio, November 14, 2013
Award Issued : December 16, 2013

INTRODUCTION

The Trumbull County Sheriff Office (herein also "Employer" or "Sheriff") and Ohio Patrolman's Benevolent Association, (herein "Union" or "OPBA") are parties to this final offer settlement procedure ("conciliation") under Ohio R. C. 4117 which is a form of interest arbitration relating to establishing new terms for a collective bargaining agreement. This conciliation relates to a wage re-opener provision of the collective bargaining agreement ("CBA" or "Agreement") between the Union and the Employer and effective January 1, 2011 through December 31, 2013.

UNITS FOR BARGAINING

There are several units for collective bargaining represented by the Union. Two agreements are being bargained together. For what are designated Unit 1 (road patrol deputies) and Unit 2 (sergeants and lieutenants) there is a unified agreement. The Union filed three bargaining requests, one each for deputies, sergeants and lieutenants although the latter two are in the same bargaining unit. Unit 5 (Sheriff's civilian staff) is also participating having its own agreement. Unit 4 consists of Assistant Wardens that had begun participating filing case 2013-MED-04-0488 but dropped out before the fact finding. They have been part of the same agreement as the sworn officers, Units 1 and 2. Unit 3 (correction deputies) had changed their bargaining representative in the previous (2009) agreement to the UAW. The Union also represents a unit of 9-1-1 operators in the County.¹

The Sheriff's Office has 140 employees, 134 in bargaining units (UX 12). There are about 50 employees in the patrol unit, 4 in the rank unit and 13 in the civilian unit. There are 60 employees in the corrections unit and 6 in the Assistant Warden unit.

¹ Any reference to the "OPBA units" herein does not encompass this unit.

The parties met in negotiation for the terms of the wage re-opener in accord with their Agreement. As per their tradition, the patrol unit and the rank units represented by the Union along with the civilian unit participated together in negotiations with the Sheriff. Matters still at impasse between the Sheriff and the two units were submitted to statutory fact finding hearing on August 13, 2013. The Fact Finder's Report and Recommendation ("FFR") was issued on September 6, 2013. The units voted separately on the Fact Finder's Report and Recommendation and "overwhelmingly" rejected it. Consequently the issues of at impasse moved to conciliation.

The undersigned was appointed Conciliator in this dispute by the State Employment Relations Board (SERB) by letter of September 26, 2013, pursuant to R.C. 4117.14(D)(1).

HEARING

The evidentiary hearing commenced on November 14, 2013, at Warren, Ohio pursuant to the parties' Stipulation (Appendix A) for commencement of conciliation hearing. Pre-hearing statements of the issues were submitted by November 12, 2013 by agreement, between the parties along with their final proposals and exhibits.² (Appendix B) On the record at hearing the parties entered into stipulations to accept the stenographic transcript (TX) of the hearing as the record and to confirm their mutual agreement to submit pre-hearing conciliation statements by November 12, 2013 electronically.³ Both parties attended and elaborated upon their positions regarding the issue remaining at impasse through their witnesses and representatives listed on the cover. In addition, documents were marked and received in evidence. The vast majority of the exhibits offered by each were the same documents as offered by the party to the fact finder. Four Joint Exhibits were marked

² To the extent, if any that the pre-hearing submissions were not in conformity to R.C. 4117.14(G)(3) and O.A.C 4117-9-06(E) the parties have by mutual agreement corrected any deficiency. *Infra*.

³ See TX 5.4 to 6.14.

and received in evidence. (JX)⁴ The Union presented thirteen exhibits which were received into evidence. (UX)⁵ The Employer presented fifteen exhibits that were received into evidence. (EX).⁶

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- ⁴
- JX A Collective Bargaining Agreement between the Union and the Employer and effective on execution (c.2011) through December 31, 2013. (Units 1, 2, and 4)
 - JX B Collective Bargaining Agreement between the Union and the Employer and effective on execution (c.2011) through December 31, 2013. (Unit 5)
 - JX C In the Matter of the Factfinding between Trumbull County Sheriff Office and OPBA, Fact-Finder (9/6/ 2013 E. Robert M. Lustig) SERB No(s). 2013-MED-04-0487 [duplicate] and 0489, 0490, 0491
 - JX D Written Stipulations between the parties by counsel reproduced as the Appendices hereto.
- ⁵
- UX 1 OPBA Law Enforcement Bargaining Units Compared to Trumbull County's Non-law Enforcement Bargaining Units (Commissioners, Clerk of Courts, Treasurer).
 - UX 2 OBPA Law Enforcement Bargaining Units Compared to Trumbull County's Non-law Enforcement Bargaining Units (JFAS, Child Support, MRDD).
 - UX 3 Collective Bargaining Agreement between the Trumbull County (Commissioners, Clerk of Courts, Treasurer) and AFSCME Local 2493 effective August 1, 2011 through July 31, 2014.
 - UX 4 Comparison of Wages and Benefits for ten year Deputies - Northeast Ohio Counties
 - UX 5 Vindy.com, "6 sheriff's administrators get raises," (March 2, 2007)
 - UX 6 State Employment Relations Board Annual Wage Settlement Report 2003-2012
 - UX 7 www.dispatch.com, "Minimum wage in Ohio to rise to \$7.85 in 2013" (September 23, 2012)
 - UX 8 www.ssa.gov, Cost of living adjustment (1975-2013)
 - UX 9 Trumbull County, Ohio Auditor. CAFR 2012
 - UX 10 Report of Mary Schultz, Sergeant & Associates, To Trumbull County Sheriff's Deputies, June 25, 2013
 - UX 11 In the Matter of the Factfinding between the city of Parma and IAFF, Local 639, (Fact-Finder Alan Miles Reuben, 3/5/2003) SERB No(s). 2002-MED-03-0171
 - UX 12 2012 November Seniority list
 - UX 13 Tribune, "Shale Development," (November 9, 2013)
- ⁶
- The Employer's exhibits are in a notebook divided by subject with a number of related documents under each. The following are subject tabs except for those with only one page:
- EX 1. Population (3 pages)
 - EX 2. Unemployment (14 pages)
 - EX 3. Poverty Rate (6 pages)
 - EX 4. Sales tax (2 pages)
 - EX 5. Economy - Past (16 pages)
 - EX 6. Economy - Now & Future (14 pages)
 - EX 7. In-County Comparable (30 pages)
 - EX 8. Outside Comparable (59 pages)
 - EX 9. Lay-Off Avoidance (13 pages)
 - EX 10. PERS Rates (2 pages)
 - EX 11. Memoranda of Understanding (MOU's) between Union and Employer (12 pages)
 - EX 12. Insurance (5 pages)
 - EX 13. Private vs. Public Sector Average Wages (2011)
 - EX 14. Wwww.wytv.com, "Trumbull Sheriff's Office to Purchase 4 new Cruisers" (8/27/2012)
 - EX 15. Trumbull County Auditor Documents (6 pages)

MEDIATION

The Ohio law encourages fact finders and conciliators to mediate disputes when practical. R.C. 4117.14 (G)(1). In as much as the late filing of the statements of position revealed that neither party supported the FFR but made other proposals as to wages not previously considered, the Parties engaged in mediation before the record was opened. After a good faith attempt to consider the new positions, the impasse continued and further mediation was dispensed with.

MOTIONS

After the mediation attempt, the Union at the opening of the hearing made two motions. It moved that it amend the final offer recited in its Statement of Position. It relied upon O.A.C. 4117-9-06 Final Settlement Procedure - Conciliation, Sec. (E)(4)

If, after submission of the parties' reports, mediation efforts result in a change in a final offer, a party or parties may, by mutual agreement, submit a revised final offer to the conciliator.

In its argument in response the Employer opposed the motion.

The Union then moved that the Employer's final offer be stricken because it had not been recited in the Employer's Statement of Position in contract language pursuant to SERB Conciliation Guidebook (January 2008), "Position Statements" at No.4: "(Positions are to be written in contract language form and indicate the effective date of the provisions.)" and O.A.C. 4117-9-06 Final Settlement Procedure - Conciliation, Sec. (E):

"A failure to submit such a position statement to the conciliator, to the other party, and to the board five calendar days prior to the day of the hearing shall require the conciliator to take evidence only in support of matters raised in the position statement that was submitted prior to the hearing."

In response the Employer moved to amend its final offer based on the intervening mediation and attempted to dictate the contract language for the court reporter. The Employer then receded

and moved to amend its final offer to the fact finder's position of no change. The Union opposed.

The Conciliator ruled that the Union's motion to amend its final offer would be provisionally granted subject to reconsideration in the final award. Next, the Conciliator ruled that the Employer's motion to amend its final offer would be provisionally granted subject to reconsideration in the final award. The Union's motion to strike the was held provisionally moot. The parties proceeded to present their positions with evidence on the amended positions.

At the close of hearing, the parties notified the Conciliator on November 26, 2013 that they would be filing a stipulation. The notice was taken as a joint motion (or stipulation) to re-open the record for the single purpose stated. The stipulation was received on November 26, 2013. That stipulation and the motion to re-open was added to Stipulations of the Parties. (Appendix C and D) In the stipulation the parties each agreed to the amendment of the other's final offer position and each recited their final offers in contract language. The motions provisionally granted at hearing are hereby finally agreed to by the Conciliator.

ISSUES

The Fact Finder's Report and Recommendation of September 6, 2013, made the following recommendation on the re-opener as to wage rates for 2013: " No change in wages for 2013." By the time of the conciliation the wage issue remained un-agreed by the parties: Article XXXII, Compensation- Deputies Sergeants and Lieutenants [units 1,2] and Article XXX, Compensation [unit 5]. Pursuant to the motions resolved by stipulation, the positions heard and considered were, on behalf of the Employer, no change; and on behalf of the Union, the addition of wage steps at 7.5 and 10 years service as of 11:59 p.m. December 31, 2013 with \$0.25 / hour hazard pay for 2013.⁷

⁷

See Appendix D.

CRITERIA

The Conciliator shall resolve the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the parties' final settlement offers. R.C. 4117.14(G)(7). Absent a waiver by the parties, increases in rates of compensation and other matters with cost implications awarded by a conciliator are restricted as to retroactivity. See O.R.C. Section 4117.14(G)(11).

In compliance with Ohio Revised Code § 4117.14G(7), the Conciliator considered the following in making the opinion and order contained in this report:

- (1) Past collective bargaining 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 s 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 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; and
- (6) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of issues submitted to final offer settlement through voluntary collective bargaining, mediation, conciliation or other impasse resolution procedures in the public service or in private employment.

The general standards of interest arbitration are part of what the sixth criteria refers to. See ELKOURI & ELKOURI, *How Arbitration Works* (6th Ed., Ruben, BNA, 2003) at pp. 1358-1364:

". . . [interest arbitration] calls for a determination, upon considerations of policy, fairness, and expediency, of what the contract rights ought to be. In submitting this case to arbitration, the parties have merely extended their negotiations – they have left it to this board to determine what they should, by negotiation, have agreed upon. We take it that the fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men, have voluntarily agreed to?" *Twin Sheriff Rapid Transit Co.* 7 LA 845 at 848 (McCoy *et al.* 1947)

What reasonable parties would voluntarily agree to is a matter of prudence. The advisory fact finding, which is the first of the two-step dispute resolution process for safety forces under Ohio's public bargaining law, answers the question: what would reasonable parties agree to? The Fact Finder's Report on an issue is given deference in final offer arbitration (conciliation).⁸

"What reasonable parties should voluntarily agree to" has its limits in statutory impasse procedures. Arbitrator Edwin Benn, under the similar Illinois bargaining law stated in *Cook County Sheriff & County of Cook and AFSCME Council 31*, L-MA-09-003, 004, 005 and 006 (2010) at 7-8:

... [I]nterest arbitration is a very conservative process which does not impose terms and conditions on parties which may amount to "good ideas" from a party's (or even an arbitrator's) perspective. For a party in this case to achieve a changed or new provision in the Agreements — particularly for non-economic items — the burden is a heavy one. See my recent award in *City of Chicago and [Fraternal Order of Police, Lodge No. 7, (2010)]* ... at 6-7 [citation omitted, emphasis in original]:
... "The burden for changing an existing benefit rests with the party seeking the change ... [and] ... in order for me to impose a change, the burden is on the party seeking the change to demonstrate that the existing system is broken."

⁸ Only when there is a showing of error or when substantial changes have occurred since the fact finding hearing resulting in new evidence shall a conciliator alter the Fact Finder's recommendation. *City of Warren and OPBA*, (Graham) Case 2006-MED-10-1267. Following *Warren*, are *IAFF Local 2860 and City of Eastlake*, (Meredith) Case No. 2007-MED-09-1004, *City of Lakewood and IAFF*, Case No. 2000-MED-04-0952; and *City of Medina and OPBA*, Case No. 2005-MED-08-0785. A conciliator need not defer to the Fact Finder's recommendation where the Fact Finder never discussed his rationale or the competing considerations or where it is unclear the Fact Finder was presented with the same information. In *City of Sheffield Lake and OPBA*, (Nelson) Case Nos. 2007-MED-10-1075, 2007-MED-10-1076, 2007-MED-10-1077.

FINDING OF FACTS

The factual contentions that were repeated throughout the evidence on the wage issue by the parties are summarized here. The sequence of the following discussion on the criteria is chosen to serve the context.

THE STIPULATIONS OF THE PARTIES [5]

The parties entered stipulations on the timing of the hearing and report and award, the record and the filing of the pre-hearing position statements. They have also entered stipulations on the supplementation of the record with a further stipulation that each consented to the amendment of the issue presented by the other in their respective Position Statements before mediation. (JX D)

THE LAWFUL AUTHORITY OF THE PUBLIC EMPLOYER [4]

There are no disputed issues under this head. The law enforcement and the Sheriff's civilian staff are functions of local government and is 100% supported by the General Fund of the County.

THE INTERESTS AND WELFARE OF THE PUBLIC; THE ABILITY OF THE PUBLIC TO FINANCE AND ADMINISTER THE ISSUES PROPOSED; THE EFFECT ON NORMAL STANDARDS OF PUBLIC SERVICE [3]

The interests and welfare of the public is largely and traditionally defined by the factors listed afterwards, but not exclusively. Those are the administration's concerns for any adverse operational and financial adjustments and the public's expectation of maintaining services. Possible diminution of service to the public has been claimed as a result of the financial outlook by the proposed changes. The Sheriff claims that the funding for an increase in wages, in this case for the year following the reopener, would be at through layoff and attrition. The "Me Too" clauses would compound that with other units.

A great deal of evidence addressed the County's finances here and before the Fact Finder. The Sheriff's funding is via the General Fund of the County which in turn receives its major source

of income from the sales tax and the real estate tax receipts.

The sales tax and the real estate tax receipts are uniquely affected by demographic trends. This County and its adjoining counties, Mahoning and Ashtabula, constitute one of the depressed areas of Ohio, perhaps second to the Ohio River counties. Meanwhile the adjacent county of Geauga is one of the two most affluent of the State. Trumbull County has had a two decade population decline (6.67% 2009/2000) with an increase in the poverty level (2012: 16.4% vs 14.8% state) and an increase in unemployment (2012: 8.1% vs 7.2% state). The 2008 banking and mortgage crisis and the bankruptcy of three major employers in the County have resulted in the loss well paid workers and exacerbated the population decline. While these factors affect spendable income for sales tax receipts, the mortgage crisis lead to foreclosures and re-appraisals that affected the real estate tax receipts negatively.

The Union counters that the population decline and unemployment are old trends with recent moderating. The current estimate is 207,000 vs 210,000 in 2009.⁹ County unemployment was 11.9% in 2010 vs. 8.1% current. The Brookings Institution quoted by the County Auditor stated that Youngstown - Warren was among the top 20 metro areas showing the strongest improvement from 2012 to 2011. That was based on activity by GM and other area industry. In addition, the population and its poverty are not the sole drivers of the sales tax which is supported by visitors. There is a claimed increase of outsiders due to shale oil development. Even the reduction in employment does not directly affect the sales tax. There is an increase of retirees and the aging of the County population. The Union noted that while not employed those persons still pay sales tax.

The State enacted a 0.25% sales tax rate increase which added to its current rates makes the

⁹ The County data shows a decline of 6.67% over 10 years (7.7% over 13 years) which is 0.6% per year since 2000. The recent trend of 1.5% decline since 2010 is 0.5% annually is not a real difference in trend.

state rate 5.75%. The County has had a 1% additional sales tax making sales tax rate total for the residents 6.75%. While all but 24 counties of the 88 have rates of 7% and more, the County hesitates to increase the rate because it is regressive meaning that it affects the lowest incomes most and the County has some of the lowest average incomes in the State.

The Sheriff's Office has a \$10 million annual budget with 140 employees. The expense is divided roughly 60/40 between the corrections and the patrol operations respectively. It represents about 25% of the County's General Fund expenditures. There other programs representing higher expenses but they have other funding sources.

The General Fund carry over from year to year is a measure of available cash in the public sector. The County's analysis compared the "County Reserve Fund" with the top line budget amount. Both parties used it similarly and will be identified as the "Budget" here although they are actual numbers except for 2013. The comparison produced a ratio for 2012 in the County's evidence and the methodology was applied to the earlier years showing:

	2009	2010	2011	2012	2013
Budget	44.571M	45.445M	42.370M	42.040M	43.432 M budgeted
Reserve Fund	6.700M	4.124M	4.352M	3.143M	2.43 M
Ratio	15.0	9.06	10.3	7.47	5.6

As of October the County had \$792,000 in the reserve fund. If sales tax revenues realized in the last quarter equal last year's, the reserve fund could end the year \$1.0 short of budget.¹⁰ The monthly operating costs for the County are 3.6M. The carryover will be less than one month, about 3 weeks.

¹⁰ TX 109.5 ff. The sales tax receipts are offset by three months. The last quarter receipts are the state tax collections from the third quarter sales.

The budget reports of the County were analyzed by the Union's expert to arrive at a carry over formula. The "true carry over balance" was the combination of the County's year end reserve fund balance, sales tax balance and casino shared revenue balance. The carry over then is expressed in a ratio to the budget figures used by the County. The calculation is as follows.

	2009	2010	2011	2012	2013*
Budget	44.571M	45.445M	42.370M	42.040M	43.432 budgeted
Carryover	11.775M	7.125M	6.393M	6.317M	6.317 M
Ratio	26.4	15.7	15.0	15.0	14.5

* For 2013 the County projected the same reserve fund as 2012 so the "true carryover" is assumed to be the same also.

The Government Financial Officers Association (GFOA) recommendation¹¹ is that carry over balances be tailored to particular circumstances but that it be "no less than two months of regular General Fund operating revenues or regular General Fund operating expenditures." Although the Union's expert stated this as a "reasonable" carryover, the GFOA stated it as a minimum. Hence a rule of thumb has been observed by the Conciliator in many other jurisdictions of 3 months (25%) as the most prudent term for the carry over with the minimum of two months (16%). As the Sheriff observed to the Fact Finder, a carryover of 15% does not even meet that level. The Union methodology produces an even lower ratio for 2013 and the Auditor's testimony even less.

Beginning in 2009 the State of Ohio began to curtail the amount of local government funds distributed to Counties. That year it was \$5.0M. In the following three years it was \$4.5M. After 2011 it was curtailed further to 3.2M in 2012 and then 2.4M in 2013. The amount of local government funds was effectively cut 50% by the State from 2008 to 2013. At present County considers the local government funds to be unreliable since it could be further reduced or stopped

¹¹ GFOA, (2002) "Best Practices on Unrestricted Fund Balances and Replenishing General Fund Balance," <<www.gfoa.org/downloads/caafr-appropriate-level.pdf>>

by the State. It might be prudent if the County relied on the local government funds be dedicated to the reserve. While there is no causal formula, it appears that the local government funds ran about \$1.0M less than the reserve fund. This means as the local government funds are constricted, the reserve fund will likely restricted by the similar amount.

The County did not fully subscribe to the "true carry over" by adding the casino monies. Primarily the casino monies are allocated to capital improvements. In 2012 those funds purchased four new cruisers for the Sheriff's Office as agreed in an earlier CBA. The casino monies collected by the state and distributed to the County began in 2012 as the start up year at 0.36M. In 2013 it is budgeted for 1.0M and the amount remains uncertain since it is so new. It is running 29% less than projected. The County notes the casino monies do not compensate the loss of the local government funds. The Union looks to the casino funds as a new revenue stream. The County answers that the recent approval of "racino's," race tracks permitting some form of casino gambling, will reduce the casino money because they will siphon some of the casino market.

The Union claims shale gas/oil extraction is another growth factor as reflected in the hospitality tax. The County hesitated to confirm that and noted that the hospitality tax is revenue for the Treasurer not the General Fund. It could only affirm that no financial results have been seen from shale oil/gas extraction which presumably would be the severance tax.

This discussion on the gambling and shale gas/oil revenue is all speculative. The Union may be quite right about the trend. So might the County.

Layoffs are a source of funding the increase cited by the County. It has abided by the pledge of no layoffs during the wage freeze period and the Sheriff states a reluctance to consider that. However, it was noted the Mahoning County had layoffs during periods of contract increases and

Ashtabula County has had layoffs even with freezes. This raises the reality of diminution of service which is the public's interest every bit as much as financing any changes.

PAST COLLECTIVE BARGAINING AGREEMENTS OF THE PARTIES [1]

The OPBA units have not had a wage increase in a long time. For more senior members, it is even longer. The last increases were in 2005, 2006 and 2007, 3.25, 3.50 and 3.75 respectively. In 2009 the County asked all employees for a wage freeze for 2009 and 2010 in exchange for a promise of no layoffs and all accepted. However, the OPBA units had also agreed to a wage freeze for 2008. No explanation was given on the record other than the units were early to cooperate.

In the next agreement, there was a general wage freeze (0%) in 2011 and 2012 and a re-opener in 2013. A one time longevity bonus (cost: \$58,000) was also agreed as of January 1, 2012. During the wage freezes the step increases continued but only affected members under five years.

The County points out the longevity bonus was not given outside the Sheriff's units. Due to the shorter period to fund a pension, the contributions for law enforcement pension are higher than other County employees, 18.1% vs. 14%. In addition, the OBPA and most if not all the County units have pension pickup, a benefit common in the Mahoning Valley communities but not elsewhere in the state. The Sheriff provides a home car to the patrol units paying the fuel and maintenance.

At fact finding on the 2013 reopener the Union demanded \$5.00/ hour (cost:\$769,995) and the Sheriff offered no increase.

OTHER PUBLIC EMPLOYEES DOING COMPARABLE WORK, CONSIDERING FACTORS PECULIAR TO THE AREA AND CLASSIFICATION INVOLVED [2]

The most similar law enforcement group based on propinquity, is the corrections unit (UAW) of the Trumbull Sheriff's Office. The UAW agreed with the Trumbull Sheriff to a concessionary program for new hires for the 2009-10 agreement. A new hire wage was created and the pension

pick up removed for new employees. The agreement also increased the healthcare premium share from 10% to 15% for all. The County saved \$200,000. In the following contract the CO's received a one time longevity bonus. The 2011-13 agreement is similar to the OPBA units. For the UAW re-opener the parties agreed to divide the \$200,000 savings from the concessionary program of the former agreement. They moved the new hired CO's to the old higher rate and provided \$0.25 increase to all other CO's (ie those over three years). That increase is \$40,000 in cost.

The Union makes comparisons to all ten northeast Ohio counties. The County's top pay (all cash payments) for 10 year deputies at \$49,046.40 is 89.58% of the 10 county average. It ranks seventh of ten. Looking at four contiguous counties x-Mahoning the ratio is 87.77%. In that comparison it ranks last of the four.

The County cites Mahoning County as most similar to Trumbull County based on demographics, economy and funding. Mahoning County had an 3% increase effective January 1, 2006 and wage freezes in 2007, 2008, and 2009. In 2012 Mahoning also froze all step increases and other economic items. During this freeze period the workers there also suffered layoffs.

The largest city police departments within Trumbull County are Niles and Warren. They have also had wage freezes in 2011, 2012 and 2013. The Warren firefighters also had similar freezes.

Using all the contiguous counties of Ashtabula, Geauga, Portage, and Mahoning, the Sheriff's OPBA units are predictably fourth. The prediction is based on Geauga and Portage being bedroom communities tangential to large metropolitan areas of Cleveland and Akron. Portage also has a large University. Ashtabula and Mahoning are more similar although the former is more rural than the other two. In the comparison of the three, the top pay are compared as follows:

County	Mahoning	Trumbull	Ashtabula
Top (cash) pay	\$46,861.87	\$49,046.40	\$51,547.40
Trumbull ratio	1.06	1.00	0.96

Ashtabula has the same sales tax rate and 1% higher unemployment but half the population. The deputy pay is 4% more. While a case can be made for comparison, Ashtabula has had severe budget cuts and in 2010 had only one sheriff's cruiser. Portage while distinguishable also has some similarities. It is 8% more in pay. On the other hand, Mahoning is 6% lower.

The confluence of this data suggests that while the County has room to improve the pay on a comparative scale, based on the local economy is it in the correct standing. Being 7th or 6th of 10 counties is where it would be expected to be found. It so happens to be 7th.

OTHER FACTORS, NOT LISTED, NORMALLY TRADITIONALLY CONSIDERED [6]

Properly considered, the internal comparisons to employees of the Employer outside of these bargaining units in non-law enforcement professions are germane to either "other factors" or financial ability. They are addressed here.

The SERB statewide data through 2012 can only suggest a trend. It seems the trough of 2011 with 0.73% average increase was only slightly improved upon in all occupations and all geographies to 1.0%.

In the County with the exception of the OPBA units and one other, all county employees agreed to wage freezes for 2010, 2011, 2012 and 2013. The County Jobs and Family Services agreed to an increase for the AFSCME unit in 2010 for 3% with freezes thereafter. The employees of the County except for the Sheriff units (OPBA and UAW) agreed to a wage freeze for 2013

without re-opener language and without any one time bonus.¹² In return the County has committed to a no layoff posture for the duration. The MRDD Board, not a General Fund entity, also agreed to a similar freeze as did the Engineer, also not a General Fund entity. The latter agreed to a freeze for 2014 and 2015 also.

The County Commissioners' employees (AFSCME) have had 3% increases over 2007, 2008, and 2009. The Commissioners also raised the contribution rate for non-Sheriff employees from 8.5% to 9.0%. Beginning 2009 other employees were asked for wage freeze and the OPBA agreed to one in 2008. The 2009 increase for the Commissioners' employees and the 2010 increase at CJFS allowed them increase take home pay during the freeze period chiefly through the periodic step increases in their agreements. The AFSCME and OPBA agreements are offset by one year. The AFSCME year 2009 was a final year of an agreement negotiated before the 2008 crisis. For the OPBA the 2009 package was negotiated after the crisis hit. Nonetheless the disparity exists and is compounded by the more frequent step increases.

The AFSCME step increases respectively are 2.5%, 4.75%; 4.8%, and 5.0% and are automatic at years of service: 7.5; 10; 20 and 25. The OPBA steps are annually in years one through four. During the five year (2008-12) freeze for the OPBA units nearly all AFSCME employees (ie those with over 2.5 years in 2008) could have had a step increase. With the arithmetic average step increase of 4.26% that would compound the 2009 increase of 3.0% to become 7.26% for each employee although not on a set time schedule. Of course, the weighted cost is somewhat less. Even without pinpoint accuracy, this measure also indicates the OPBA units are due for an increase. Not only are they due, they are the first to be due.

¹² The County Health Department, which is not supported except incidentally by the General Fund, was another exception but the details of that package were not the subject of discussion.

Also under the heading of "other factors" the County submits the comparison to private sector employees in the County earn less than the public sector on average. The average annual wage is 2.39% higher for public employees than private in Trumbull County. That plus the State increase in sales tax, it argues, makes difficult to consider raising that tax.

OPINION AND ORDER

ISSUE: 2013 Reopener Wages

Unit 5 CONTRACT : ARTICLE XXX Compensation (Secs. 32.01 and 32.03)

Units 1, 2 and 4 CONTRACT :ARTICLE XXXII Compensation-Deputies, Sergeants, Lieutenants (Secs. 32.07 and 32.03)

Fact Finder RECOMMENDATION: " No change in wages for 2013."

POSITIONS: The Employer's Final Offer : FFR, Appendix A pp. 1-2.

POSITIONS: The Union's Final Offer: Add steps at 7.5 and 10 years with 2.50% increases (officers), and with 2.5% and 5.0% (civilians) respectively effective 11:59 p.m. December 31, 2013; also hazardous duty pay increase by \$0.25/hr. effective January 1, 2013 (both contracts). Appendix A pp. 3-4.

OPINION AND ORDER:

In fact finding for 2013 the Union had proposed \$5.00/ hour (1/1) and Sheriff proposed 0.0% (1/1) in exchange for a no layoff pledge. The FFR agreed with the Sheriff. It stated, in agreement with Fact Finder William Miller in the 2013 fact finding for the Trumbull County Engineer's Office, that : "At this point the county's finances are too uncertain."

The Union has now abandoned the \$5.00 demand in favor of installing additional steps. However, recognizing the retroactive cost, it proposes that it be effective at 11:59 p.m. on December 31, 2013¹³. It would have no monetary effect in 2013. Of course the \$0.25 hazard pay would be retroactive to for all of 2013.

¹³ The pre-hearing position of the Union stated it would take effect "at the stroke of midnight" which would have been the first second of 2014. The Union disavowed such intent, hence the amendment as agreed by the parties.

The Sheriff does not agree to the added steps even without immediate financial effects because it considers the proposal to be bargaining the 2014 economic package in this proceeding before negotiations even begin for the new agreement. With the steps in place for 2014 (1/1) County claims it would cost \$108,000. The Union claims it would be \$45,000.¹⁴

The final offer of the Sheriff agrees with the FFR with a 0.0%. In its pre-hearing statement of position it had offered a one time lump sum cash equivalent of \$0.25/hr.¹⁵ That was \$40,000 to be divided as the membership chooses. As similar bonus was agreed to in 2012 as did the UAW corrections unit. It was divided on a longevity basis.

Understanding criteria #6 as preeminent in evaluating an FFR, the Union's final offer sought to set it aside arguing it did not deserve deference because of reliance on irrelevant facts, ignoring the "real facts." Specifically it challenged the FFR citing the Engineer's fact finder report that the economy was uncertain, ignoring the bulk of its expert report and evidence.

The Conciliator must agree with the citation to the Engineer's decision. The Union distinguished it because the Engineer was not a General Fund entity but had a "richer funding source." That does not impeach the statement cited. If with a richer fund the Engineer's outlook is uncertain on that record, then the less rich General Fund cannot have a different conclusion. The FFR did seize the expert's statement that she could not be certain that the County could afford the Union's demand. The facts speak for themselves. The minimum per GFOA standards for carryover is two months. The County has been underperforming that for several years. According to its testimony and the Union's expert's methodology, it will end 2013 with less or even half that. That

¹⁴ TX 108.5 , 172.17, 210.5

¹⁵ The Sheriff's pre-hearing position changed as the result of the stipulation.

is not a picture that allows for increasing any expenses. The Union may be correct that there is evidence that things are improving, but that is an intuition since there are no results to point at.

The gist of the Union's angst over the FFR is that the report did not use the opportunity to create an acceptable solution that was neither the Union or Employer's position. While fact finding has that possibility, it ought not be an expectation. Fact Finder Edwin Benn (*supra* p.7) explained that the statutory impasse process is not a forum for blue sky, breakthrough solutions nor is it a forum for merely good ideas to tweak existing provisions. It is where parties go to change terms and provisions that are demonstrably broken and in need of change. Blue sky and merely good ideas are to be negotiated. The parties have all the available creativity for that. Needed change is to be solved in the impasse process within the strictures of the statutory criteria.

The need for change the Union urges is the stagnant economic posture of the OPBA units *vis a vis* the AFSCME units due to their step increases. The solution is to install similar steps for more senior officers. Proposing that in the last minute of 2013 so there would be no retroactive financial effect is creative. That is more than creative, it is breakthrough. The prospective effect is costed between \$50,000 and \$100,000 for 2014. It is highly questionable whether this sort of change is within the jurisdiction of the 2013 reopener. Assuming it is, that cost is no more acceptable in January than December based on the financial evidence that Mr. Lustig, Mr. Miller and the undersigned have all seen. These facts make it the type of provision that must be negotiated not imposed.

If there was inequity now due to the differing provisions of the AFSCME steps, then there was inequity historically as well, but that had never been addressed before. There is good reason. The AFSCME units do not fit the criteria of comparable classifications. There is no evidence of any comparable law enforcement units with similar steps putting the OPBA units at a disadvantage in

their labor market. The freeze period brought all employees to a standstill when it hit. AFSCME members happened to have one more year before their contract expired. If that offset continues, then OPBA should have the advantage in time when the freeze regime is lifted since it would be the first to have increases.

The case for a \$0.25 hourly hazard pay increase is much better but it is one part of the Union's proposal. That rests on the very long hiatus in economic improvement suffered by the OPBA units and changes in the employees' costs over that period measured under the contract (eg. medical, uniforms) or by inflation. The UAW unit serves as the comparable. A conciliator has the statutory choice of the final proposal of either party and cannot split them.

The Sheriff's penultimate offer of a lump sum bonus appeals most to the Conciliator. It is the cost equivalent of the Union's hazard pay proposal and the UAW bonus. The Conciliator cannot order that. It is not the Sheriff's final offer. However, it is within the power of the parties to implement it voluntarily.

In the statutory process certain amount of deference is owed the Fact Finder Report and Recommendation. The "other factor" criteria (i.e. the FFR) favors no 2013 increase. It deserves deference or at least significant weight if not rebutted. The Union challenged the County's uncertain financial picture [#3], the comparisons to the area law enforcement units [#2], and the comparisons to intra County units other than law enforcement [#3, #6]. The evidence is not persuasive that the FFR was flawed. The past 0.0% settlements [#1] in years with better carryover also support the FFR. The stipulations of the parties [#5] and the authority of the Sheriff [#4] were not operative here. The Fact Finder's resolution is the most prudent given the record before him, and here.[#6]

The statute requires that the conciliation opinion and order choose as among the final offers of each of the party and not to craft a different solution. Within those constraints the Conciliator is

convinced on this record that the Sheriff's final offer adopting the Fact Finder's recommendation is the more reasonable. The Union's final offer of installing steps effective 11:59 p.m. December 31, 2013, with a retroactive \$0.25/hr for hazard pay is denied.

ISSUE 1 Order:

- (A) As to Unit 5 CONTRACT : ARTICLE XXX Compensation, the Sheriff's final offer is ordered into effect. See attached Appendix A p. 2.
- (B) As to ARTICLE XXXII Compensation-Deputies, Sergeants, Lieutenants, the Sheriff's final offer is ordered into effect. See attached Appendix A p. 1.

Made and entered at Cuyhoga County, Ohio
December 16, 2013



Gregory P. Szuter, Conciliator

PROOF OF SERVICE:

The foregoing has been sent by electronic mail via the internet on December 16, 2013, to Ohio Patrolmen's Benevolent Association, c/o S. Randall Weltman, Esq. and Trumbull County Sheriff Office, c/o Curtis Ambrosy, Esq. per addresses shown on the cover and filed with the State Employment Relations Board in the same manner.

APPENDIX A

**STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO**

TRUMBULL COUNTY
SHERIFF'S OFFICE

SERB CASE(S): 2013-MED-0487, 0489,
0490 and 0491

PUBLIC EMPLOYER

and

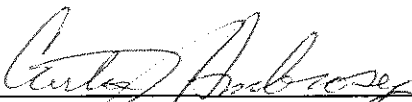
CONCILIATOR GREGORY P. SZUTER

OHIO PATROLMEN'S
BENEVOLENT ASSOCIATION

EMPLOYEE ORGANIZATION

AGREEMENT TO EXTEND CONCILIATION TIMELINES

The parties to this matter, the Trumbull County Sheriff's Office (hereinafter the "Employer") and the Ohio Patrolmen's Benevolent Association (hereinafter the "Employee Organization"), hereby agree to waive the statutory timelines and proceed to an evidentiary hearing before the Conciliator on or before November 14, 2013.



CURTIS J. AMBROSY, ATTORNEY FOR
EMPLOYER

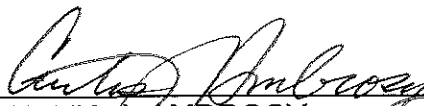


S. RANDALL WELTMAN, ATTORNEY FOR
EMPLOYEE ORGANIZATION

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Agreement to Extend Conciliation Timelines was served via electronic mail on the 23rd day of October, 2013, upon:

1. Gregory P. Szuter at gpszuter@gmail.com;
2. State Employment Relations Board at www.serb.state.oh.us;
3. S. Randall Weltman, Attorney for Employee Organization, at srwelt@sbcglobal.net.



CURTIS J. AMBROSY
ATTORNEY FOR EMPLOYER

APPENDIX B



Gregory Szuter <gpszuter@gmail.com>

OPBA/Trumbull County Sheriff (conciliation)

2 messages

Randy Weltman <srwelt@sbcglobal.net>

Thu, Nov 7, 2013 at 2:38 PM

Reply-To: Randy Weltman <srwelt@sbcglobal.net>

To: gpszuter@gmail.com

Cc: Curt Ambrosy <af44481@aol.com>

Hello Mr. Szuter:

This is to let you know that the parties have agreed to submit their conciliation Pre-Hearing Statements no later than the close of business on Tuesday November 12.

Please let us know if this presents an inconvenience or hardship. Thanks.

Randy Weltman and Curt Ambrosy

Gregory Szuter <gpszuter@gmail.com>

Fri, Nov 8, 2013 at 9:25 AM

To: Randy Weltman <srwelt@sbcglobal.net>

Cc: Curt Ambrosy <af44481@aol.com>

Counsel:

The timing presents no difficulty for me. You probably need to have it covered in a stipulation at least because as

The Conciliation Guidebook states concerning the POS date;

"On occasion, the parties will stipulate to a waiver of the rule requirement regarding the filing of position statements. The parties exercise such an option at their own risk. No precedent exists to support or oppose the ability of the parties to stipulate to a waiver."

Where is the hearing to be?

[Quoted text hidden]

--

Gregory P. Szuter

8934 Brecksville Rd. #432

Cleveland, OH 44141

T. 440-526-1505

F. 440-526-4650

APPENDIX C

GREGORY P. SZUTER, ESQ

ARBITRATOR MEDIATOR

OHIO Office:
8934 Brecksville Rd. #432
Cleveland, Ohio 44141

(440)526-1505
(440)526-4650 (facsimile)
Toll Free:(877) 301-0332
E-mail: gpszuter@gmail.com
Web: gregoryszuter.com

OSBA BOARD CERTIFIED
Specialist in Labor
and Employment Law



November 23, 2013

via email only

S. Randall Weltman
10147 Royalton Road, Suite J
P.O. Box 338003
North Royalton, OH 44133
srwelt@sbcglobal.net
440.237.7900

Curtis J. Ambrosy
Ambrosy and Fredericka
144 North Park, Suite 20
Warren, OH 44481-6400
af44481@aol.com
330.393.6400

RE: Case No(s). 2013-MED-04-0489 2013-MED-04-0490 2013-MED-04-0491
Ohio Patrolmen's Benevolent Association and Trumbull County Sheriff

Dear Counsel:

This will acknowledge that record in this case has been closed to the receipt of evidence and argument as of November 14, 2013 and that the transcript composing the record is due to be delivered within 14 days thereafter. Yesterday I received an email from the Union representative on behalf of both parties stating that additional matter will be submitted to the record post hearing. That email is taken as a joint motion to re-open the record. The record will be opened without a transcript being taken and for the limited purpose of receiving a written stipulation of the parties and not for testimony or for any other purpose whether argument or evidence or demonstrative aid. When the stipulation is received, a following order will follow to confirm the re-closing of the record.

Very truly yours,

A handwritten signature in cursive script that reads "Gregory P. Szuter".

Gregory P. Szuter

GPS\MMI

APPENDIX D

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

OHIO PATROLMEN'S BENEVOLENT ASSOCIATION	:	CASE NUMBERS:
	:	2013-MED-0487, 0489, 0490
UNION	:	0491
vs.	:	CONCILIATOR:
	:	GREGORY SZUTER
TRUMBULL COUNTY SHERIFF	:	
EMPLOYER	:	

**STIPULATION OF THE PARTIES' CONSENTING
TO AMEND FINAL OFFERS**

For the Employer:
Trumbull County Sheriff

Curtis J. Ambrosy, Esq.
144 N. Park Avenue
Suite 200
Warren, OH 44481
Telephone: (330) 393-6400
Fax: (330) 392-5685
E-Mail: af44481@aol.com

For the Union:
Ohio Patrolmen's Benevolent
Association

S. Randall Weltman, Esq.
P.O. Box 338003
10147 Royalton Road, Suite J
North Royalton, OH 44133
Telephone: (440) 237-7900
Fax: (440) 237-6446
E-Mail: srwelt@sbcglobal.net

STIPULATION:

I. The sole issue before the Conciliator being a wage re-opener for calendar year 2013 as noted in 32.03 of the Collective Bargaining Agreement for the Trumbull County Sheriff's OPBA represented Unit Numbers 1 and 2, and in 30.02 of the Collective Bargaining Agreement for the Trumbull County Sheriff's OPBA represented Unit Number 5, the amended final offer of the Employer, the Trumbull County Sheriff, amended with consent of all parties, is that there be no wage increase and current contract language continue, throughout each CBA compensation Article, including hazardous duty pay. The Sheriff proposes the following specific Contract language:

A. For Units 1 and 2:

ARTICLE XXXII COMPENSATION-DEPUTIES, SERGEANTS, LIEUTENANTS

32.03 Effective January 1, 2013, employees shall be compensated as follows:

Length of Service in Grade	Hourly Rate
Sergeants	\$23.19
Deputy	
Start	\$16.83
After one (1) year	\$17.67
After two (2) years	\$18.49
After three (3) years	\$19.83
After four (4) years	\$20.61
Lieutenant	\$26.09

B. For Unit 5:

ARTICLE XXX COMPENSATION

30.02 Effective January 1, 2013, to December 31, 2013, employees shall be compensated as follows:

	Hourly Rate
Receptionist/Clerk	\$ 10.19
Clerk	\$ 14.56
Cook (2)	\$ 13.05
Kitchen Supervisor	\$ 15.78
Custodian	\$ 14.56
Civil Process	\$ 15.46
Records Clerk	\$ 14.56
Civil Coordinator	\$ 18.99
Accts. Pay./Commissary	\$ 18.99
ID/Warrants	\$ 18.99
ID/Warrants/CCW	\$ 18.99
Civil Clerk	\$ 15.47

Employees hired after the execution of this Agreement shall start at eighty percent (80%) of the applicable "starting rate". After one (1) year, the employee shall be compensated at eighty-five percent (85%) of the applicable "starting rate". After two (2) years, the employee shall be compensated at ninety percent (90%) of the applicable "starting rate". After three (3) years of employment, the employee shall be compensated at ninety-five percent (95%) of the applicable "starting rate". After four (4) years of employment, the employee shall be compensated at one hundred percent (100%) of the applicable "starting rate".

The Employer, Trumbull County Sheriff, opposes any and all other modification, changes, additions or deletions to the language of these Collective Bargaining Agreements.

II. The OPBA amended final offers on the wage re-opener, amended with the consent of all parties, is as follows:

Contract for Units 1, 2 & 4

A. **Section 32.07** – Deputies, Sergeants and Lieutenants shall be entitled to hazardous duty pay as follows:

Effective January 1, 2013 - \$.65/hr.

Section 32.03 – Effective at 11:59 p.m. on December 31, 2013, the parties' wage scale will be modified by adding:

Deputies with 7.5 years of service – 2.50% above top rate

Deputies with 10 years of service - 2.50% above 7.5 year rate

Sergeants with 7.5 years of service - 2.50% above current rate

Sergeants with 10 years of service – 2.50% above 7.5 year rate

Lieutenants with 7.5 years of service – 2.50% above current rate

Lieutenants with 10 years of service – 2.50% above 7.5 year rate

Contract for Unit 5

B. **Section 30.01** – Effective at 11:59 p.m. on December 31, 2013, the wage scale will be modified by adding:

Employees with 7.5 years of service – add 2.50% to current rate

Employees with 10 years of service – add 5.00% to current rate

Section 30.03 – Effective January 1, 2013 all bargaining unit employees shall be entitled to hazardous duty pay as follows:

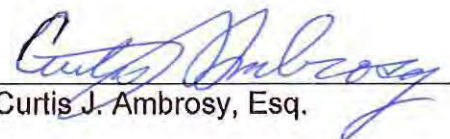
\$.25/hour

Both the Employer, the Trumbull County Sheriff, and the Employee, OPBA represented Units, hereby consent to the amendment of the other's final offer while advocating in favor of their own proposal to be adopted by the Conciliator.

Respectfully submitted,

For the Employer:
Trumbull County Sheriff

For the Union:
Ohio Patrolmen's Benevolent
Association


Curtis J. Ambrosy, Esq.


S. Randall Weltman, Esq.

APPROVED:

GREGORY P. SZUTER, Esq.

AMBROSY and FREDERICKA

Attorneys at Law
Suite 200
144 North Park Avenue
Warren, Ohio 44481-1124
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Fax - (330) 392-5685

Curtis J. Ambrosy
af44481@aol.com

James A. Fredericka
af144200@aol.com

November 26, 2013

Gregory P. Szuter, Esq.
Gpszuter@gmail.com
Arbitrator-Mediator
8934 Brecksville Road, No. 432
Cleveland, OH 44141

RE: Trumbull County Sheriff & OPBA
2013-MED-04-0487; 2013-MED-04-0489;
2013-MED-04-0490; 2013-MED-04-0491
My File No. TCC 207A-1

Dear Mr. Szuter:

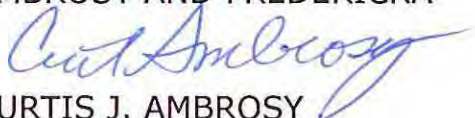
Enclosed is the signed Stipulation submitted on behalf of both the Union and the Employer which we have set forth our final amended offers and indicated our mutual consent to those final offers while advocating, of course, for the offer that benefits our particular client.

Do you wish me to file this independently with SERB or would you prefer to file this Stipulation yourself in accord with your own timetable on this matter. I have no objection to either method and I believe that's the case for Randy although, by copy of this letter, he will correct me if I am inaccurate on his behalf.

Randy and I both appreciate your patience with us in this matter.

Very truly yours,

AMBROSY AND FREDERICKA


CURTIS J. AMBROSY
ATTORNEY AT LAW

CJA:pyc
enc.
cc: R. Weltman, Esq.