



## **Introduction**

In negotiations for a three-year successor agreement to begin December 1, 2005, the parties agreed to extend current language of several contract articles and were unable to agree on Articles 14, 19, 20, 22, 23, 25, 28, 31.4, 39.1 and four new articles proposed by the union. After seven bargaining sessions ending October 18, 2005, the parties scheduled a January 24, 2006 fact-finding hearing. Currently, the Bargaining Unit includes approximately 394 full time Corrections Officers employed to provide safety and security of prisoners in four detention facilities – the Criminal Justice Center, Queensgate, Talbot House on Reading Road and Turning Point, also owned by Talbert House. The Employer and FOP/OLCI have been parties to collective bargaining since 2002, and the union’s first agreement was negotiated in 1987.

There are five bargaining units of Sheriff’s Office employees

- Corrections Officers 394 current Officers (420 authorized)
- Corrections Supervisors – 40 Sergeant, Lieutenant, Captain
- Enforcement Officers – 245 Patrol Officer, Corporal, Sergeant
- Enforcement Supervisors – 35
- Maintenance Unit – 20

The parties exchanged and submitted pre-hearing position statements that summarized their proposals, and they prepared supporting documents for presentation at the hearing to address the criteria established by the Ohio Public Employees Bargaining Statute in Rule 4117-9-05:

- 1) Past collectively bargained agreements, between the parties
- 2) Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- 3) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- 4) The lawful authority of the public employer;
- 5) Any stipulations of the parties; and,
- 6) Such other actors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.”

### **Hearing: January 24, 2006 Hamilton County Administration Building**

The fact-finding hearing was then conducted from 9:00 a.m. until 4:00 p.m. with presentation of evidence and argument on the following thirteen articles addressed in this report:

- Pg. 3 Article 14 Vacancies 3 issues
- Pg. 7 Article 19.3 and 19.8 Hours of Work and Overtime 12 issues
- Pg. 13 Article 20 Wages and Compensation 3 issues
- Pg. 17 Article 22 Insurance
- Pg. 18 Article 23 Holidays
- Pg. 18 Article 25 Sick Leave and Proposed New Article on Bereavement Leave
- Pg. 21 Article 28 Uniforms and Equipment 2 issues
- Pg. 22 Article 31 Leave of Absence
- Pg. 22 Article 39.1 Residency
- Pg. 23 Proposed New Article on Certified Duty Pay
- Pg. 24 Proposed New Article on Early Retirement Incentive
- Pg. 24 Proposed New Article on Dispute Resolution Procedure
- Pg. 25 Text of All Recommended Language

## Agreements

Prior to the hearing, the parties confirmed their agreement on Article 9 Discipline and Article 42 Duration. Several additional agreements clarified and reached at the hearing are incorporated in the following analysis of the unresolved issues involving 13 other articles.

## Article 14 Vacancies

### **FOP/OLCI Position:**

The FOP proposed two changes to Section 14.1 that would 1) increase the number of preferred posts and 2) delete reference to attendance records, as well as seven new sections for 3) promotion exams and procedures.

1. Preferred posts. Beyond entry-level training, there is no law enforcement certification or gun license required to serve as a corrections officer. Some corrections officers are licensed to carry firearms, and some are assigned to corrections positions that require an officer with a weapon. Other officers with appropriate certification may be assigned to special posts such as the Canine Unit.

For the past 15 years, as governed by Under Article 14.1 the Employer has recognized three "preferred posts" that currently employ 18 unit members on assignments that may require special qualifications, permanent off days, day-time shifts, and/or are not subject to mandatory overtime. The employer posts notice when vacancies arise for those preferred posts, and officers with the required certification may seek a transfer by bidding for the assignment. Article 14.1 lists 4 factors to be considered in assigning applicants to the preferred post, and a grievant with seniority claiming superior credentials may challenge the Employer's selection.

The FOP notes that the list of preferred posts has never been updated, despite the addition of new facilities and positions. Efforts to negotiate additional preferred posts outside collective bargaining were rejected. The union proposes a contract list of 13 "Preferred Posts" that would involve a total of 54 officers, a total of 10 additional "preferred posts" (see list below) employing an additional 36 individuals. The "non-preferred" post of eight-hour shifts at detention facilities with mandatory overtime would remain for over 300 bargaining unit members.

FOP Proposal for Preferred posts \* indicates this position is currently considered a Preferred Post.

- \*1. **Court Holding** - permanent off days; works normal shift hours; does not require special qualifications.
- \*2. **CJC Admissions** - permanent off days; works non-normal shift hours; does not require special qualifications.
- \*3. **CJC Transportation** - permanent off days; normal shift hours; requires special qualifications (OPOTA Certification & CDL).
4. **Court Rooms A & B** - permanent off days; normal shift hours; requires special qualifications (OPOTA Certification). Note: The Employer disputes that these positions are Preferred Posts. However, persons have applied for and been selected for these positions consistent with numbers 1 through 3 above.
5. **QCF Visiting**- permanent off days; non-normal work hours; requires no special qualifications.
6. **QCF Admissions**- permanent off days; non-normal work hours for most; no special qualifications.
7. **HCJC Base**- permanent off days; normal shift hours; special qualifications required (base training)

8. **HCJC Kitchen-** some have permanent off days; non-normal shift hours; no special qualifications.
9. **HCJC Recreation-** permanent off days; non-normal shift hours; no special qualifications.
10. **Court Holding JAX-** permanent off days; normal work hours; no special requirements.
11. **Queensgate Transportation-** most have permanent off days; most have non-normal work hours; special qualifications (OPOTA certification, CDL). Must be Certified Peace Officers and have Commercial Driver's License.
12. **L-65A Outside Detail Coordinator-** permanent off days; non-normal work hours; does not require special qualifications.
13. **Canine Unit-** permanent off days; normal shift hours; requires special qualifications (OPOTA Certification, K-9 Certified) Work with Regional Narcotics Unit, APA certified, work with fitness officer. This officer is issued all equipment necessary for the position.

The FOP argues: "the Employer cannot possibly know all of the unique skills that some of the Corrections Officers possess at the time they are hired. Expanding the Preferred Posts provides employees an opportunity to showcase their talents and also will lead to a higher rate of job satisfaction (increased retention) by placing employees in positions that are of interest to them."

2. Attendance Records. Section 14.1 C includes "Records of attendance and discipline" as a factor to be considered in selecting applicants for preferred posts. The FOP proposes to delete "records of attendance" so that the Employer cannot in future punish an employee who makes appropriate use of sick time. Inappropriate use of sick time results in negative performance evaluations considered by the Employer under 14.1 A "Ability to perform the work;" and also 14.1 C in cases when discipline was imposed for misusing sick leave. The FOP decries arbitrary use of the same sick leave to count against an employee three times when applying for a preferred post.

3. Promotion. All bargaining unit members hold the rank of "Corrections Officer." Those promoted to Corrections Sergeant join a supervisor's bargaining unit. Within Sheriff's Office bargaining units that have multiple ranks, contract provisions specify that performance on an independently designed and administered test are the primary basis for promotion -- from Sergeant to Lieutenant within the Corrections Supervisors Unit, and promotions from Corporal to Sergeant in the Enforcement (Patrol) unit. The Corrections unit bargaining agreement does not have comparable language governing a promotion exam to Sergeant, and the Employer bases 75% of the promotion decision on unspecified, subjective interview criteria, limiting exam performance to 25% of the total score.

An Arbitrator ruled in 2003 that the Supervisors lacked standing to grieve the promotion test for Sergeant, based on the employer's successful argument that the Corrections officers taking the exam were in a different bargaining unit. The FOP therefore insists that the Employer must recognize the right of Corrections officers to contract language assuring a fair promotion exam and procedure, even though promotion results in future representation by the Supervisors' unit.

The Union proposes to add Sections 14.3 to 14.9 to their contract, based on provisions taken from the Enforcement officers' agreement and the procedures used for Corporal Examinations in that unit and in Court Services. Unlike the other two units, there is no rank of Corporal for Corrections officers. The Sergeant's exam is the first opportunity for promotion,

and the FOP seeks the same procedural guarantees offered to members of comparable bargaining units when they seek their first promotion. The FOP proposal maintains the Rule of 3, allowing the Sheriff discretion to go beyond the top score on the test.

### **County Position:**

1. Preferred Posts The county noted that starting in 1987 the Employer had recognized three "permanent" posts and after 1998 successfully negotiated a change to make them "preferred," so that employees could be transferred out. Director of Corrections Joe Schmitz testified that management must have flexibility to rotate officers between different posts in order to increase job satisfaction. Whenever a new recruit class graduates, any bargaining unit member can request a transfer to a new building or a shift change, and management has readily accommodated the officers. Even though new vacancies are not posted daily for all positions that the FOP seeks to designate as "preferred," Officers can at any time on their own initiative inquire about open positions and request transfer to a particular post.

Posting all the proposed additional preferred post vacancies and considering bids would create an administrative burden and limit needed flexibility in making assignments. Additional preferred posts would limit the employer's needed flexibility to transfer employees found to have repeatedly applied undue use of force or under constant stress. Retention of new employees would not be improved, as the officers selected for preferred positions are senior officers.

2. Attendance In the current preferred post of admissions, dependable attendance is critical and should be retained as a selection factor.

3. Promotion The county has never agreed to negotiate procedures for joining a different bargaining unit, and considers promotion to Sergeant, a rank in the Supervisors unit, beyond the collective bargaining rights of Corrections Officers. None of the other bargaining units are comparable to the Corrections Division, which has only one classification and no higher rank. The Enforcement Officers contract has 5 classifications, necessitating agreed procedures for promotion in rank.

### **Discussion**

1. Preferred Posts The employer provided a 1998 document listing only three preferred posts involving a total of 18 officers. Article 14.1 states "The employer . . . shall keep the list updated." Based on FOP statements that were not contested at the hearing, the fact-finder concludes that assignment to Court Rooms A&B has been treated in practice as a fourth preferred post. The absence of promotion opportunities within the unit and the frequent use of mandatory overtime for regular posts enhance the appeal of designating additional preferred posts that offer day shifts, permanent days off, and related advantages.

The fact finder considered whether OPOTA certification as a peace officer might be a basis for designating additional preferred posts. That special qualification is needed for two of the four existing preferred posts -- HCJC Transportation (9) and Court Rooms A&B (5), and for two of the nine additional posts sought by the FOP -- Queensgate Transportation (9) and Canine Unit (1). The fact-finder recommends treating the Transportation post at Queensgate requiring OPOTA certification as no different than the preferred post for HCJC Transportation. Based on the fact-finder's calculation of four current preferred posts employing 23 officers, the addition of two more that require OPOTA certification would raise the number of eligible individuals by 10 to 33, a manageable administrative burden.

Notwithstanding that analysis, the fact-finder is reluctant to recommend a contract provision that lists specific preferred posts. Although the employer only listed three preferred posts and failed to update the list, a fourth preferred post has been recognized in practice. The

employer also offered a strong argument regarding the need for management flexibility in rotating personnel in times of stress and for other legitimate considerations. The fact-finder also concludes that the need for promotional opportunities and a resolution of the mandatory overtime issue cannot be adequately addressed by modifying the established vacancy article on preferred posts.

2. Attendance The FOP thoroughly documented the employer's practice of giving negative performance evaluations to employees with a doctor's note explaining their sick leave, even when the officer was within the number of day absences expressly allowed by the contract. The fact-finder has no basis on which to assess the legitimacy of the conflicting claims made at the hearing about the abuse of sick leave time by employees or the employer's unwarranted rebuke following return to work. Assuming that extensive sick leave was legitimate, the fact-finder concludes that an employer might reasonably seek to assign to a preferred post an employee who is less prone to repeated illness. That approach by the fact-finder might influence consideration of all 3 factors -- A. Ability to perform the work, B. Physical Fitness and C. Records of Attendance. Ultimately the fact-finder concludes that the deletion from C. of "attendance" would be unlikely to alter practice or improve the prospects for a grievant who was passed over for assignment to a special post if the employer claims that sick leave was excessive. The union's broader concern about sick leave procedures would not be remedied by deleting "attendance" from the selection criteria for appointment to preferred posts that involve few members of the unit.

### 3. Promotion

The FOP seeks to incorporate into the Corrections agreement selected language from the Enforcement (Patrol) Division contract language on promotion exams. The proposed Article 14.3 however departs from Enforcement contract Article 14.1. The proposed 14.3 applies to exams taken by Corrections officers for promotion to Sergeant in the Supervisor's bargaining unit. Article 14.1 in the Enforcement contract only applies for appointments "to positions covered by this agreement," and does not apply to tests for promotion to the entry level rank in the Enforcement supervisors unit.

The Fact-finder concludes that the tests and procedures utilized for promotion to higher ranks within the other Divisions are considerably fairer than the highly subjective process applied to Corrections Officers seeking the rank of Sergeant. With only one job classification/rank, Corrections Officers have no promotional opportunities within the unit, and they may reasonably doubt that merit and objective test results will be fairly recognized in efforts to become a Supervisor.

Since the Corrections unit is unique, with no promotional opportunities within, and since an Arbitrator has denied the Sergeants in the Supervisor's unit the right to grieve the promotion procedure for that rank, the fact-finder recommends a modified version of the FOP proposed language. In order to avoid problems that might arise over bargaining unit membership and representation during any temporary appointment of a Corrections Officer to a vacant Sergeant's position, the recommendation deletes from proposed Section 14.9 language related to Temporary position holders appointed from an eligibility list. Under the recommended language, the employer benefits from the rule of three, and, unlike those promoted to a higher rank within the other Sheriff's office bargaining units with multiple classifications, a Corrections officer granted appointed to the "permanent" post as Sergeants will still be subject to a one year probationary term in the Supervisor's unit,

**Recommended New Sections 14.3 to 14.9: ARTICLE 14 VACANCIES SEE ATTACHED**

## **Article 19 Hours of Work and Overtime**

### **19.3 First Paragraph Accumulated Compensatory Time**

#### **County Position:**

The employer proposes a reduction in the compensatory time accumulated by an employee from 240 hours to 80 hours. The county seeks to reduce the amount of comp time that forces other employees to work mandatory overtime at inflated hourly rates, exceeding the budget allocation.

#### **FOP/OLCI Position:**

The union submitted an "Hours of Work and Overtime" proposal that the employer recently provided to a fact-finder reviewing the Enforcement Officers negotiations in which the FOP had requested the maximum accumulations allowed by the Fair Labor Standards Act – 460 hours. In response, the Sheriff's Office proposed that the Enforcement unit maintain the current contract language – 240 hours. The FOP also submitted data from other counties in Ohio showing allowances for accumulated comp time that exceed 240 hours, and noted using data provided by the employer that very few Corrections officers had accumulated more than 80 hours of comp time.

#### **Discussion:**

The fact-finder concludes that the employer did not justify the proposed change that would result in different treatment for similarly situated employees in the two bargaining units.

#### **No Recommended Change in Language:**

### **19.3 B. Requests for Compensatory Time Off**

#### **County Position**

The employer proposes additional language to define the department's "operational needs" as having the proper number of staff and providing that compensatory time does not cause forced overtime to exceed the amount budgeted for the year to date. In support, the county cited the U. S. 6<sup>th</sup> Circuit decision in *Beck v. City of Cleveland* 390 F3d 912 (2004) where the court noted that the bargaining agreement failed to define "operational needs" and ruled that the city had improperly denied police officers compensatory time off.

#### **FOP/OLCI Position:**

The union objected to the proposed additional language on staff needs as too vague, and strongly opposed the use of easily manipulated budget criteria to deny employees the rights to time off granted under the FLSA.

#### **Discussion:**

The fact-finder concludes that the agreement should include a clearer statement of the employer's right to meet department needs, but that the additional language proposed by the county conflicts with the court's judgment in *Beck*. The court ruled that Cleveland's use of budget considerations to limit compensatory time off violated binding regulations promulgated by the Secretary of Labor. "... the Secretary's regulations that a City cannot deny compensatory leave merely to avoid payment of overtime to a substitute officer should obtain here." [925] Similarly in this case, the *Beck* holding does not permit use of the Sheriff's proposed language allowing a denial of compensatory time off that would result in forced overtime for others. The

fact-finder's recommended language takes selected phrases the Secretary's rule promulgated at 29 C.F.R. Sec. 553.25 as it appears in the *Beck* decision at p. 916.

**Recommended Language:**

Section 19.3 B. Requests for compensatory time off shall be honored ~~subject to the operational needs of the Department~~ unless to do so would be unduly disruptive, based on a good faith expectation that the time off would impose an unreasonable burden on the Department's ability to have adequate staff on duty.

**19.3 I. Cash for Balance and Accrual**  
**County Position**

In order to relieve end of year accounting logjam the employer proposes calculation of accrued compensatory time balances on August 31, rather than October 31 for payment of balances that accrue on September 30<sup>th</sup> each year, rather than on December 1<sup>st</sup>. In addition, the county proposes to add language that would limit the employee's unlimited right to carry over compensatory time to no more than forty hours per year. In support of its proposal to limit carry over, the county cites a financial burden -- employees who save up comp time to cash in at retirement are paid at a higher hourly rate than they were paid at the time the comp time was earned. The county also noted that data submitted by the union revealed significant limits on carry over in correction departments of comparable counties. Finally the employer noted that extensive use of comp time off imposed an unwelcome burden on other employees who might be subject to mandatory overtime.

**FOP/OLCI Position**

The union is concerned that moving up by two months the date for paying the accrued time balance might disadvantage some officers who would as a result be compensated at an hourly rate lower than an increased rate that takes effect between September 1 and Oct. 31. The FOP also sought to retain the employees' full right to carry over all accrued comp time off.

**Discussion**

The fact-finder rejects the employer's argument that limiting the carry over would benefit employees, since the union's representatives view a full carry over as an advantage rather than a burden for their members. The fact-finder accepts the county's proposed language for advancing the date to pay for compensatory time off, based on administrative convenience and its argument that officers can not reasonably object to being paid overtime at the prevailing hourly rate, rather than at an undeserved higher rate that would follow the hiring anniversary date.

**Recommended Language**

**19.3 I.** Any employee may elect to convert all or part of his/her accrued compensatory time balance existing as of ~~October~~ **August 31<sup>st</sup>** of each calendar year to cash, payable by separate check no later than ~~December 1<sup>st</sup>~~ **September 30<sup>th</sup>** of each year. Payment shall be made at the rate of pay existing at the time of cash-in.

**19.3 J. New. Use of Vacation or Comp Time instead of Sick Time**  
**FOP/OLCI Position:**

The union proposes a new provision that, following a return to work after an illness, the employee be allowed to use either vacation or compensatory time in place of sick time. The employer currently allows the practice and can realize a savings because at retirement there is an 800 hour or 50% cap on the payout for accumulated sick leave and no limit to the 100% payout

for accumulated comp time and vacation balances. Documentation from a licensed medical practitioner would still be required.

**County Position:**

The employer objects to formal contract language that employees might abuse to manipulate their work schedules and the resulting disruption in planned management of the detention centers. Notes are not required for the first several days of absence attributed to sickness, are rarely signed by a treating physician, and often fail to make clear the state of the employee's health on days prior to the date of the note.

**Discussion** The fact-finder concludes that the union did not justify the proposed change given the employer's reasonable concern about abuse and current willingness to allow the practice when deemed appropriate.

**No Recommended Change in Language:**

**19.3 K. New Paycheck Report of Comp Time**

**FOP/OLCI Position:**

The union notes that there is a field on the paycheck unused by the employer to report the number of personal days employees have accrued and proposes new contract language requiring a paycheck report of unused sick leave counted toward personal days as well as an accounting for the balance of compensatory leave. Section 24.8 provides similar language indicating that unused vacation leave balances be reported on the employee's regular paycheck. The union argues that "employees have no easy and readily available manner to determine their comp time balance or how long they have gone with no use of comp time."

**County Position:**

The employer objected that the County Auditor prepares the paychecks, that providing the additional information requested would impose unnecessary costs and administrative burdens, and that employees had ready access to the information on the intranet that was regularly updated.

**Discussion** The fact-finder concludes that the union did not justify the proposed change given the employer's reasonable budgetary concerns and the provision of data in an accessible manner to all Sheriff's office employees on the intranet.

**No Recommended Change in Language:**

**19.3 L. New Election of Compensatory Time for Vacation**

**FOP/OLCI Position:**

The union contends that employees have been improperly denied an opportunity to combine compensatory time with accumulated vacation days when making advance vacation picks, and proposes new language granting the employee the sole right to elect use of comp time for vacation time.

**County Position:**

The employer rejected the proposal, as it did other requests to allow the employee's greater control of scheduling their compensatory time off.

**Discussion** The fact-finder concludes that the union did not justify the proposed change given the conflicting language in Section 19.3 H. that the parties had agreed to retain in their agreement. "Requests for Compensatory time off in conjunction with vacation shall be honored, based upon the operational needs of the facility." Under the rule promulgated by the Secretary of Labor noted in the discussion of Section 19.3 B. above, the employer may limit compensatory time off that would be "unduly disruptive," and so the employee can not have a contractual right that guarantees sole authority over whether comp time off may be combined with vacation time.

**No Recommended Change in Language:**

### **19.8 Mandatory Overtime**

#### **First Paragraph Extension of mandatory overtime to all officers**

##### **County Position:**

The employer proposes deleting language that limits mandatory overtime to officers assigned to one of the three normal eight hour shifts, so that in future all members of the unit would be subject to mandatory overtime assignments, including those in preferred posts, but maintaining the current exception for officers assigned to the Sheriff's OPTC academy. The employer contends that the overtime burden should be shared equitably by all members of the unit.

##### **FOP/OLCI Position:**

The union opposes any further extension of onerous mandatory overtime requirements and has proposed alternatives to reduce such assignments. The employer rejected an offer from the Superintendents unit to volunteer for the overtime assignments imposed on Corrections officers. The FOP presented data indicating that the Sheriff's office has never employed a full complement of Corrections officers. Currently only 394 officers are employed, despite a budget authorization for a full staff of 420. Data from neighboring Butler and Warren counties reveals a large pool of available, qualified Corrections applicants. Instead of properly staffing the Corrections division, the Sheriff's office has imposed onerous overtime assignments on junior officers who move to other units at the earliest possible opportunity, further increasing pressure to work overtime on those who remain.

**Discussion** The fact-finder concludes that the employer did not offer a compelling rationale and estimates that the proposed change would in any event increase by less than 10 per cent the number of employees listed for mandatory overtime. The fact-finder considers freedom from mandatory overtime one of the few perks available to selected members of a unit that has no opportunity for promotion to a higher rank, and the fact-finder accepts the union's claim that current practice is not considered inequitable an effective rebuttal to the employer's argument.

**No further Recommended Change in 1<sup>st</sup> Paragraph Language beyond**

**Agreed Revision (final sentence first paragraph): "**

**Move Final Sentence of Paragraph 3 to 1<sup>st</sup> Paragraph**

**Section 19.8.** All officers assigned to normal shifts i.e. 0700-1500, 1500-2300, 2300-0700. . . will be subjected to mandatory overtime; however, Officers currently assigned to the Sheriff's OPTC academy will not be subjected to mandatory overtime. Each shift will generate a master overtime list of officers based on seniority, from least to most. **At a minimum,** The master list will be updated on Monday, Wednesday and Friday of each week, except on holidays.

**Second Paragraph Recommend Designation as "A."**

**Agreed Addition (alternative second sentence, second paragraph**

A. An officer must work a mandatory or volunteer overtime post to be credited and have the officer's name moved to the bottom of the overtime list. **An officer shall not be forced to work mandatory overtime at anytime within the forty-eight (48) hour period prior to the beginning of the overtime post for which he/she has volunteered.** ~~If an officer volunteers to fill an overtime post on a future date and is requested to work a mandatory post prior to the date of the voluntary post, the officer must work the forced mandatory post.~~

**Third Paragraph Recommend Designation as "B."**

**Fact-finder Recommendation based on employer proposal:** Move the final sentence concerning no mandatory overtime for officers assigned to the OPTA academy to first paragraph as noted above.

**Fourth Paragraph Recommend Designation as "C.":**

**County Position:**

Based on an agreed new sentence that "absent unforeseen circumstance, all officers will receive a minimum of one hour notification prior to the end of their shift." the employer proposes deleting language that entitles all officers assigned mandatory overtime on a succeeding shift to a minimum one-half hour notification prior to the end of their shift, The county argues that unanticipated employee absences beyond the Sheriff's control may jeopardize security and safety at the detention centers unless workers on duty can be obliged at the last minute to extend their work time without advance notice.

**FOP/OLCI Position:**

The union seeks to retain the absolute guarantee of a minimum one-half hour notice in fairness to employees who must notify family and loved ones that prior commitments and plans must be aborted. Employees as well as the Sheriff's division have operational and personal needs that should not be unduly disrupted.

**Discussion**

The fact-finder supports as much advance notice as possible because of the severe negative impact unanticipated mandatory overtime could have on the employee's family or supplemental work plans. Under Section 25.3 employees who call in sick must do so at least two hours prior to the time scheduled for reporting to work, absent extenuating circumstances.

**Recommended and agreed Changes in 4th Paragraph**

C. Any overtime that becomes available for the succeeding shift must be announced over the radio in all facilities fifteen (15) minutes prior to the mandatory overtime list being initiated. Those wishing to volunteer for the announced overtime must notify the supervisor seeking volunteers within 15 minutes after the announcement. **All officers will receive a minimum of one-half (½) hour of notification prior to the end of their shift for any mandatory overtime which they are required to fill on the succeeding shift.** Absent unforeseen circumstances, all officers will receive a minimum of one (1) hour of notification prior to the end of their shift for any mandatory overtime which they are required to fill on the succeeding shift.

**Proposed new 5<sup>th</sup> Paragraph**

**County Position:**

The employer proposed in a written submission that i) an officer volunteering to work an overtime post commencing two hours from the end of the regular shift may continue until the overtime begins, ii) that no officer be required to work more than 16 hours in any 24 hour period, and iii) officers working non-normal shift house receive credit for three hours of overtime work when their name is moved to the bottom of the mandatory list.

**Discussion**

The employer did not submit a written rationale for the proposal, and the union's written submission made no reference to it. At the hearing, the fact-finder did not hear the employer offer any explanation of the proposal, nor any comment about it from the union representative. Based on the fact-finder's recommendation to continue current practice exempting non-normal shift workers from mandatory overtime, the third and final sentence of the proposed new paragraph is unacceptable. While the fact-finder considers the first two sentences reasonable on their face, in the absence of any supporting rationale from the employer or response by the union they are not recommended. Presumably if the parties agree to those terms, the proposal may be implemented without express contract language.

**Current 5<sup>th</sup> Paragraph      Recommend Designation as "D.":**

**FOP/OLCI Position:**

The union proposes that when the employer learns of a need for overtime, the Sheriff's Office post notice on the intranet within 24 hours. The additional language is sought to increase volunteer opportunities and would reduce mandatory overtime assignments.

**County Position:**

The employer proposes deleting a provision that officers not currently on the mandatory overtime list who volunteer to fill overtime posts will not receive mandatory overtime credit.

**Discussion**

The fact-finder could not find a written rationale from either party for their proposed additions and deletions to the paragraph; at the hearing the representatives devoted primary attention to comp time and mandatory overtime issues of greater concern. The fact-finder was asked to address a total of 14 separate issues in Article 19, and the parties realized at the hearing that they had previously agreed on two of those issues. The fact-finder has spent considerable time attempting to understand complex personnel procedures of the Correction's division and is reluctant to offer unnecessary, possibly uninformed recommendations for specific changes to practitioners who have far greater understanding of the details and difficulty in the daily work routine. While the fact-finder considers the proposals reasonable on their face, in the absence of any supporting rationale and discussion at the hearing, they are not recommended. Presumably if the parties agree to what appear comparatively minor proposals the changes can be implemented without express contract language.

**Recommendation**

Designate the current 5<sup>th</sup> paragraph as "D" without making any other additions or deletions.

**Proposed new 6<sup>th</sup> Paragraph Recommend Designation as "E.":**

**Discussion**

The parties agreed to the language below but disagreed on whether the exemption from mandatory overtime following return from approved leave would be for 48 or for 72 hours. Based on the union's submission of an internal administrative memo approving 72 hours, the fact-finder has used that number:

**Recommended language for new paragraph:**

**E. When an employee is off on approved leave, for a minimum of forty (40) hours, that employee shall be exempt from the mandatory overtime list for the first seventy-two (72) hours after returning to duty. Nothing herein shall preclude the employee from signing up for volunteer overtime.**

**Article 20 Wages and Compensation**

**FOP/OLCI Position:**

The union proposes a) annual across the board wage increases of 6% for each year of the agreement combined with b) additional equity adjustments for employees in their first five years, achieved with new pay grades and c) deletion of a "wash-out" provision enabling termination without cause after three years on the job. The FOP provided data on compensation paid to officers in neighboring smaller counties as well as more populous counties in Ohio to show that Hamilton County compensation is 26% to 28% below the norm at both the entry and top levels. Prospective employees are more likely to take posts in Butler or Warren Counties which pay new corrections officers \$2,500 to \$5,000 more in annual salary than Hamilton County. Both counties have sufficient applicants seeking the higher wages to meet department needs. Hamilton County has a vacancy rate of up to 8% of authorized positions and suffers extraordinary turnover – over half, 214 of the 394, bargaining unit members have less than five years on the job.

During the three-year term of the current agreement, newly hired officers received no pay raise whatever. A consultant's report provided to the County Commissioners in November 2005 noted that the corrections Officer's job has become more difficult in that period. The inmate population has increased by 13% since 2001 and includes fewer low risk minimum and more medium and maximum-security prisoners with greater numbers of mentally ill, special needs and violent convicts. The Justice Center population exceeds the rated capacity and recommended level of occupancy, and three other privately owned detention facilities are not properly designed, equipped, or maintained. A long planned new jail remains on the drawing board.

As a result of understaffing and high attrition, the County must pay time and a half for needed overtime. Paying a competitive wage and offering annual increases would enable the county to have a full complement of 420 corrections officers and significantly reduce overtime and personnel training costs.

The union also submitted reports showing that the Sheriff spent \$1 million less than budgeted in 2005, and then volunteered to add enforcement patrols in the inner city. Ohio law requires the Sheriff to operate correctional facilities, and the department should not take on additional security details while neglecting higher priorities. The county chose to roll back property taxes following reappraisal, planned to set aside a projected budget surplus to increase its reserve fund, and hired a new Deputy Administrator as well as a new County Administrator with a salary more than \$85,000 higher, 61% more, than the compensation paid comparable administrators in Ohio's two largest counties. Data obtained from SERB reveals that other public employers in Hamilton County have been granting 4% annual wage increases, slightly above the latest increase in the Cost of Living Index.

**County Position:**

The employer's budget experts provided data showing that its offer of 2% annual across the board wage increases during a three-year agreement would cost \$2.2 million -- \$11 million less than the union's proposal. Based on the recommendation of U.S. and Canadian government financial officers, the county seeks to increase the reserves for its General Fund from 12% to

20% of annual expenditures, but in 2005 was fortunate to break even. Revenues in nearly all categories were less than forecast, and disappointing returns on the sales tax leave the employer exposed to extraordinary demands on the General Fund for 25 years to pay for debt incurred for stadium construction.

Staff turnover results from the "miserable" nature of the job, as officers historically leave corrections for more attractive posts as court clerks and patrol deputies. A 5 % vacancy rate is normal and budget planners now make annual expenditure projections based on 95% of the authorized posts . In negotiations for the 2002 agreement the county agreed to a 13% raise for the entry-level salary, from \$22,000 to \$25,000 an expensive wage package offered in return for no increases during the term of the agreement and a reduction in the number of distinct pay levels for corrections officers from seven to three, and the opportunity to let go without establishing cause those completing their third year before award of a \$4,000 raise in pay. The union now seeks five distinct pay levels at one year intervals, undoing the prior agreement for a three year entry level classification, to be followed for those officers retained by two years at an intermediate step.

Non-represented county employees have received minimal 2% raises for several years, and none of the represented employees have been granted anything comparable to the budget busting raises sought by the Corrections officers. The county offers a generous health care benefits package, and by changing vendors the employees were spared an increase in premiums.

#### **Discussion:**

**Budget Projections:** The fact finder concludes that the county's personnel budget for Corrections Officers could become more cost effective by reducing the number of vacancies. Over the twelve months of 2005 the fact-finder estimates that the average number of vacant corrections officer positions was 27, a vacancy rate of over 6%. The county expert testified that vacancy rates had recently increased from 3% a year. In 2005, the Sheriff's Office was under budget by more than \$1 million, a departure from prior years of balanced budgets according to the county expert. The total personnel costs of 27 entry-level corrections officer posts would exceed the \$1 million ( $\$25,000 + \text{fringes} = 37,948$  per employee). Data provided by the union at the hearing indicate minimal vacancies in other Divisions of the Sheriff's Office.

The county's hearing document budget projections for corrections officers in 2006 include not only 420 full time salary posts, but an additional 6% estimate of \$791,794 for overtime paid at time and a half. The fact finder concludes that the county will not incur both the projected salary and the overtime costs. If all 420 posts are filled, there should be little or no overtime expense. If the 6% vacancy rate continues, the county will not incur the projected salary expenses of \$1 million. Even though overtime is paid at time and a half, paying overtime may cost the county somewhat less than filling vacancies, because employees can take compensatory work time off instead of cashing in earned overtime for additional pay.

Butler County offers starting corrections officers 10% more than the starting salary in Hamilton County and has a backlog of applicants. In a free labor market, workers will naturally take higher paid positions for comparable work. Hamilton County does not pay a competitive wage for corrections officers, and overtime labor costs are the result. The union makes a convincing case that excessive mandatory overtime and the difficulty of obtaining comp time off in combination with low wages increase staff turnover, adding further expense to the county for recruitment and training of new officers. Although projections are invariably speculative, the fact-finder concludes that by raising entry-level salaries to a more competitive wage and by reducing vacancies, the county may derive savings in paid overtime that offset the increased cost. In December 1998 the County Personnel Director wrote to the Commissioners:

The tight labor market is forcing employers to take a hard look at their ability to attract and maintain a quality work force. To stay competitive, staff is recommending and

implementing measures which can enhance our recruiting and retention efforts, e.g. adjusting the pay range structure relative to the market, hiring above minimum within the range . . .

**Cost of Living:** As a resident of Hamilton County, the fact-finder appreciates partial rollback of some levies based on concern that tax increases resulting from property revaluation not exceed increases in the cost of living. A similar principle should apply to wages for county civil servants whose compensation ought to keep pace with the cost of living. The burdens of financial hard times ought to be equitably shared by taxpayers and county employees so that neither constituency is left with a disproportionate share of the pain.

According to a *Cincinnati Enquirer* report of Oct. 16, 2005 the new County Administrator will receive a \$7,000 salary bonus for preparing "a 2007 budget at or less than the 2006 budget." Personnel costs account for 67% of the county budget, while energy costs are beyond the administrator's control. In 2005 with major labor agreements due to expire in December, new initiatives were undertaken with \$1 million in the Sheriff's budget that had not been spent.

According to the county's published "Budget in Brief" the 2006 budget includes an additional \$1 million addition to the reserve (p. 10). The county's plan to increase its reserve fund to 20% of annual budget expenditures is laudable, but does not justify withholding cost of living increases to its lowest paid employees when the current reserve of 12% is considered more than adequate by Moody's Investors Service. The employer provided no documentation for its claim that 15% to 20% was recommended, and the union quoted from *Moody's on Municipals*

Generally, a fund balance of 5% of the budget is deemed prudent. A smaller balance may be justified by a long-term trend of annual budget surplus, while a larger balance may be warranted, particularly if budget revenue and expenses are economically sensitive or otherwise not easily forecasted.

The county's responsibility for maintaining detention centers is a core government function, mandated by the state of Ohio. Prior to undertaking stadium construction, Hamilton County taxpayers voted for an increased sales tax to pay the anticipated cost. A shortfall in that sales tax to pay for debt incurred to build athletic facilities should not produce cutbacks in funding a core government function.

**Wash Out:** The fact-finder recommends eliminating the three-year "wash-out" provision because it amounts to an undue extension of the one-year probationary period in Article 11. At the hearing, the employer testified that only four officers had been terminated after the third year. Fear of summary dismissal at the end of the third year might conceivably improve the performance of some entry-level employees, but termination without any showing of cause after three years appears like an extraordinarily rare and counterproductive procedure.

**Analysis:** The fact-finder recommends i) a 5% annual raise in entry-level salaries to assist in recruitment, ii) a 4% annual salary increases as an incentive for retention at grade 2, and iii) providing top paid employees with a 3% raise annually, slightly below the cost of living index. Unlike employees at grades 1 and 2 who received no increase since 2002, Officers at the top level received 2.5% annual increases in the past two years that increased pay disparities within the unit. In 2002 officers at grade 3 earned 43% more than entry-level officers, but in 2006 they earn 50% more. The top paid officers in Butler County also earn 50% more than those at the entry level, but after 4 years on the job in Warren County top paid officers earn only 26% more than a starting salary that is considerably higher than the entry level wage in Butler County. By January 2009, the higher increases recommended by the fact-finder for the entry level would leave Hamilton County officers in their 6<sup>th</sup> year earning 42% more than the starting officer's salary.

Although Warren County provides corrections officers salary step increases at 12 month intervals for the first four years on the job, the fact-finder rejects the union's proposal for a

similar arrangement that would result in unsupportable increases of more than 27% for half the bargaining unit members in the first year. The union proposal would make salaries competitive with Warren County, but the evidence provided indicates that Butler County had sufficient applicants with the salary levels recommended by the fact-finder. In response to the union's desire for larger increases at the entry level, the fact-finder recommends entry-level officers with 6% annual raises and the top paid officers 3% annual increases, slightly less than the cost of living increase. The union accepted the county's proposal to make the annual pay raise effective for the pay period with the first pay date of the new calendar year. The fact-finder understood that the parties had agreed to additional compensation for officers assigned to canine units, and hopes that efforts to reconcile in 20.7 the minor differences in material submitted are acceptable.

**County Wage Comparison, 2006 Proposals and 2006-08 Fact Finder Recommendations**

	<b>Hamilt 2005</b>	<b>Butler 2006</b>	<b>Warren 2006</b>	<b>06 HCS</b>	<b>06 FOP</b>	<b>FF 06</b>	<b>FF 07</b>	<b>FF08</b>
<b><u>Correction Off 1st</u></b>	0%		3%	2%	27-42%	5%	5%	5%
0-12 months	25,000	27,570	31,553	25,500	31,689	26,250	27,762	28,941
13-24 Months	25,000	??	33,696	25,500	33,591	26,250	27,762	28,941
25-36 months	25,000	??	35,984	25,500	35,606	26,250	27,762	28,941
<b><u>Correction Off 2d</u></b>	0%		3%	2%	30%	4%	4%	4%
37-48 months	29,000	??	39,936	29,580	37,743	30,160	31,366	32,621
49-60 months	29,000	??	39,936	29,580	40,007	30,160	31,366	32,621
<b><u>Correction Off 3<sup>rd</sup></u></b>	2.5%		0%	2%	6%	3%	3%	3%
61 months +	37,743	41,233	39,936	38,498	40,007	38,875	40,041	41,242

**ARTICLE 20 WAGES AND COMPENSATION**

Section 20.1. Effective with the ~~beginning of the pay period that included December 1, 2002~~ **first pay of 2006 (meaning the beginning of the pay period that is paid on the first regular payday in 2006)**, the annualized wage levels for all bargaining unit employees shall be as follows, and all current employees will be assigned to steps as follows:

<u>Grade</u>	<u>Annual</u>
Correction Officer First (0-36 months)	\$26,250
Correction Officer Second (37-60 months)	\$30,160
Correction Officer Third (61 monts and above)	\$38,875

Section 20.2. Effective with the ~~beginning of the pay period that includes December 1, 2003~~ **first pay of 2007**, the annualized wage levels for all bargaining unit employees shall be as follows, and all current employees will be assigned to steps as follows:

<u>Grade</u>	<u>Annual</u>
Correction Officer First (0-36 months)	\$27,762
Correction Officer Second (37-60 months)	\$31,366
Correction Officer Third (61 monts and above)	\$40,041

Section 20.3. Effective with the ~~beginning of the pay period that includes December 1, 2004~~ first pay of 2008, the annualized wage levels for all bargaining unit employees shall be as follows, and all current employees will be assigned to steps as follows:

<u>Grade</u>	<u>Annual</u>
Correction Officer First (0-36 months)	\$28,941
Correction Officer Second (37-60 months)	\$32,621
Correction Officer Third (61 monts and above)	\$41,242

Section 20.7. Any employee assigned to a canine unit shall, for the duration of the assignment shall be paid an additional seven (7) percent of his or her regular rate of pay.

~~Section 20.7.~~ 20.8. Employer Pension Obligations: (No change other than number)

## **Article 22 Insurance**

### **FOP/OLCI Position:**

The union proposed two new provisions that would i) guarantee extension of a current life insurance policy and ii) assure that health care premium increases would not increase in any by more than the percentage wage increase for that year, even if the employer changed insurance plans. Both FOP proposals take existing language from the Enforcement Officers collective bargaining agreement. The union provided data comparing insurance premiums and health care benefits/co-pays from other Ohio counties with more favorable terms for employees. In terms of basic equity, the union seeks parity with the contractual rights of Patrol officers and their Supervisors and protection against escalating health care costs that negate wage increases.

### **County Position:**

The employer provided a table showing that the two units with a contract cap on the employee's share of the premium were unique – all other represented and non-represented employees of the county had the same health care program as the Corrections officers. The exceptional language in the Enforcement Division contracts was ordered by a conciliator in 2004, and the county is determined to restore uniform health care provisions for all its employees – an 85% - 15% split of current premium. The county has recently changed health care providers resulting in a premium saving for some employees, and considers its generous health care benefits quite attractive for prospective workers. Moreover, a 3% pay raise might generate enough additional dollars of income to pay for a much higher percentage increase in health care premiums.

In response to the proposal for a guaranteed continuation of the current life insurance policy, the employer noted it would prevent change to a different insurance provider and was unnecessary given the language of Section 22.1 “The Employer shall make available to all bargaining unit employees the same major medical/hospital care insurance plans, life insurance plans . . . that are available to non-bargaining unit Hamilton County Employees.”

### **Discussion:**

The fact-finder concludes that the union proposal for a life insurance guarantee is acceptable, but in response to the employer's expressed need for a possible change of vendors, has modified the proposed language so that only the current level of coverage is guaranteed.

The fact-finder concludes that the union proposal to cap increases in premium costs would further disrupt the county's reasonable effort to maintain uniform program for all its

employees and does not account for the odd year such as 2005 when some employees enjoyed a reduction in premiums.

**Recommended New Section and Language:**

**Section 22.5. Effective December 1, 2005, the life insurance benefits currently in effect shall continue throughout the term of this agreement.**

**Article 23 Holidays**

**FOP/OLCI Position:**

The union seeks parity with the Patrol Officers who have eleven designated holidays per year including the Friday after Thanksgiving. The corrections officers have ten paid holidays per year and seek to add the day after Thanksgiving.

**County Position:**

The employer notes that unlike Corrections officers and other county employees, Patrol Officers receive 120 hours per year of holiday compensatory time. Up to 88 hours may be taken for the 11 designated holidays and the balance is often paid by check in December. Non-bargaining unit members and employees in other units have ten paid holidays, with some variation in treatment of Columbus Day and the Friday after Thanksgiving based on whether the courts or other departments are open for business.

**Discussion:**

The fact-finder notes that Corrections Officers who work on the ten designated paid holidays also receive their full salary for the eight hours. Friday after Thanksgiving is not a designated, observed holiday by the state of Ohio. The fact-finder concludes that the additional dollars required to provide another paid holiday would be better spent in raising entry-level wages to a more competitive level.

**No Recommended change in Language:**

**Article 25 Sick Leave**

**FOP/OLCI Position:**

1. The union proposes language to preclude "adverse employment action" as well as "harassment, intimidation, or fear of reprisal" against officers who provide a doctor's note for their use of sick leave, and to eliminate required meetings with the Sheriff to discuss sick leave use. Under state law employees may take up to 15 days of sick leave a year based on legitimate need, and the labor agreement requires employees to provide a note from a medical practitioner following three consecutive or a total of five non-consecutive days absent for sick leave. The FOP provided evidence that the employer gives negative evaluations of employees who use sick days justified by note, thus obstructing opportunities for promotion and for acceptance to the Patrol Academy. On return to work with a note, the Sheriff or other administrative supervisor may interrogate the employee, remove the officer from a preferred post, or transfer the employee to a different facility or shift. The union provided evidence that Corrections officers working with inmates are often exposed to disabling communicable diseases, that overnight shifts negatively impact health, and that sick employees who come to work endanger others. Finally the FOP seeks to expand the number of family members whose death and funeral would justify use of sick leave for bereavement time off, including a funeral.

2. The union proposes to move the provision on Bereavement Leave to a new article because it is a separate benefit to be taken "in lieu of the use of sick leave." The FOP proposes to increase the time allowed for bereavement leave from 3 to 5 days, as provided for in the Road Patrol and Corrections Supervisors Contracts, and also to expand the number of family members whose death and funeral would justify bereavement leave.

**County Position:**

1. The employer contends that abusive use of sick leave negatively impacts other workers and results in additional mandatory overtime. Notes provided by officers returning to work are rarely signed by a treating physician and only indicate the date of an office visit, providing no indication of when the illness began justifying absence from work. Considering the huge problems for the employer, the Sheriff is emphatic that a personal confrontation is needed to deter abuse. The employer accepts the expanded definition of immediate family based language from the Sheriff's General Orders.

2. The county agreed that the Bereavement leave provision could be shifted to a new article and noted the unresolved issue over whether three or five days should be allowed.

**Discussion:**

1. Sick Leave

Documentation: ORC Sec. 124.38 allows a requirement that the employee furnish a "satisfactory, written, signed statement to justify the use of sick leave. If medical attention is required, a certificate stating the nature of the illness from a licensed physician shall be required to justify the use of sick leave." The current agreement allows officers to obtain a note from a "licensed practitioner," as well as a physician or dentist. The union proposal refers to a "doctor's" note, and the county complains that the notes provided from office nurses give too little information. The fact-finder recommends new language specifying that when absences for sickness exceed three consecutive days, the employer may require a note from a physician or dentist, (not including "medical practitioners,") and may require greater detail about the onset of the condition that necessitated absence from work. A sick employee may have scheduled the office visit one or more days in advance and presumably will inform a treating physician of when an injury occurred or the illness began. For new language accepted by the parties that expands the definition of immediate family (currently Section 25.2 F) the fact-finder recommends a slight reorganization and modification to improve the clarity and provide consistency

Consequences: ORC Sec. 124.38 provides "Falsification of either a written, signed statement or a physician's certificate shall be grounds for disciplinary action, including dismissal." That authorization for disciplinary action justifies the employer's careful review of notes, but does not support the employer's negative performance evaluations in the absence of proven misconduct. The county grants employees who do not use sick leave, personal days off, but nevertheless believes that strict monitoring is still needed to prevent corrections officers from taking excessive sick leave without adequate justification. The union documented reference to abuse of sick leave time in personnel evaluations, but did not provide evidence that any officers had been denied or delayed in obtaining promotions or admission to the Patrol Academy as a result.

When attendance data over several years show that some officers have considerably greater need for sick leave than others, the fact finder concludes that even legitimate absences might reasonably be considered in some employment contexts. Physical fitness is considered in selecting applicants for the patrol academy, and the employer might reasonably use records of

personal sick leave to screen out officers with a history of illness. Officers who take frequent sick leave to care for ill dependents may justifiably miss work more than unattached employees, but the employer might, for some positions, seek officers with regular attendance records.

The fact finder would like to balance officers' legitimate sick leave entitlement free of harassment and intimidation with the employer's obligation to prevent fraud while providing equitable workloads for healthy employees who may be assigned mandatory overtime. The fact-finder's recommended new language for improved documentation accompanied by recommended new language urging respect for employee rights is intended to minimize the confrontation with superiors on return to work. The fact finder concludes however that it is impossible to define in contract language the fine line between legitimate inquiry and intimidation because whatever words appear on paper employment relationships vary widely based on the temperament of the individuals involved.

## 2. Bereavement Leave

The fact-finder accepts the union proposal to move the Bereavement Leave provision to a new article and extending the leave from three to five days, but recommends retaining the current provision specifying a few close members of the immediate family. The other two agreements that allow five days of Bereavement Leave also a few close members of the immediate family. Revised language of the sick leave article expands the definition of the immediate family and allows use of three days sick leave for bereavement of those additional members, as well as granting one day of sick leave for relatives beyond the immediate family. The fact-finder recommends that the new Bereavement Article follow the sick leave article, but leaves to the parties a decision on the proper number and placement in the agreement.

### **Recommended Language: ARTICLE 25 SICK LEAVE**

#### Section 25.1

No change lines 1 to 6: Employees shall . . . without limit. **For an absence of four consecutive days or more, when an employee provides written, signed certification from a treating physician or dentist indicating the diagnosis, prognosis and start date of an injury or illness necessitating absence from work, the Employer will not unreasonably infer abuse of the officer's contractual and statutory sick leave entitlement nor any improper neglect of duty.**

Section 25.2 Sick leave shall be granted to an employee, upon approval by the Employer, for the following reasons:

A. B. C. No change.

**D. Death of a member of the employee's immediate family. Such usage shall be limited to a reasonably necessary time, not to exceed three (3) days. One of the days must be the date of the funeral. An employee may use one (1) day of sick leave to attend the funeral of a relative not included in the definition of immediate family.**

~~D~~ E. and ~~E~~-F. No other change

~~F.~~

For the purpose of this Section, the definition of immediate family shall be: **spouse, parents, children, grandparents, siblings, grandchildren, mother, father, son, daughter, brother, sister, spouse, grandparent, grandchild, step-parents, step-children, step siblings, mother/father/brother/sister/children** mother/father/ daughter/son/sister/brother-in-law or a legal guardian or other person who stands in the place of a parent (loco parentis).

## **ARTICLE 26 (or # TBA) BEREAVEMENT LEAVE**

**Section ##.1** (Previously 25.10, with slight revision) Upon the death of an employee's spouse, child, **step-child living with the employee**, mother, father, sister or brother, the Employer shall grant bereavement leave in lieu of the use of sick leave. Bereavement leave shall be limited to a reasonably necessary time not to exceed five (5) work days. One (1) of the days must be the day of the funeral. Bereavement leave shall not be deducted from any sick leave balance.

## **Article 28 Uniforms and Equipment**

### **FOP/OLCI Position:**

The union proposes an increase from \$600 to \$800 in the annual allowance for cleaning uniforms, based on the allowance provided for in the county agreements with Enforcement officers and Supervisors. The FOP provided evidence on the costs of cleaning, and the withholding of taxes that make it difficult for members to cover their actual expenses. The FOP representative questioned the impact on newly hired employees of the change in payment date proposed by the county. The union also proposed an additional sentence on the selection of standard issue or a leather shoe, but did not pursue the proposal following the employer's objection.

### **County Position:**

The county proposed to move from November to May the date for annual payment of the uniform allowance in accord with the payment schedule for the other units. The proposed language provides for prorating payments based on the number of months of service so that no employees would be disadvantaged by the change. The county sought to retain the current \$600 allowance without increase, and noted that withholding had been practiced as required by law for years.

### **Discussion:**

The fact-finder recommends the county language for payment schedule and prorating with an increase in the allowance to the \$800 sought by the union. The result will create a uniform allowance and payment schedule for three bargaining units and appears a more appropriate level of reimbursement for actual cleaning expenses.

## **Recommended Language: ARTICLE 28 UNIFORMS AND EQUIPMENT**

~~**Section 28.7.** Employees with more than one (1) year of service as of October 15 of each agreement year shall receive a uniform allowance of six hundred dollars (\$600.00) payable in the second pay of November of each agreement year. The payment of a non-accountable uniform allowance is a taxable event under IRS regulations.~~

**Section 28.7.** On the first regularly scheduled pay day following May 1, of each calendar year, employees who have completed more than one (1) years of service in the bargaining unit shall receive a uniform allowance of six hundred (\$800.00) dollars. The payment of a non-accountable uniform allowance is a taxable event under IRS regulations. Payment shall be made by separate check. An employee who completes one (1) year of service in the bargaining unit after May 1 shall upon completion of the one (1) year service requirement receive a pro-rated uniform allowance of sixty-six dollars (\$67.00) per full calendar month of service from date of entry into the unit to May 1. An eligible employee who separates from service prior to May 1 of

any year shall be entitled upon separation to a pro-rated share of the allowance based upon the number of months of service completed since the previous May 1.

### **Article 31 Leave of Absence**

#### **FOP/OLCI Position:**

The union proposed to add a sentence providing that leave for childbirth/adoption would not be counted as sick leave for any purpose, and objected to the employer's proposal for a medical exam to determine ability to return from light duty status.

#### **County Position:**

The county objected to the proposed sentence since leave for adoption could not be taken as sick leave, and that leave for childbirth while resulting in a reduction of the sick leave balance did not disrupt the employee's ability to earn a personal day based on unused sick leave. The employer proposed an additional sentence to clarify that the Section on Medical Examination paid for by the county would apply in cases of employees who provided a personal physician's statement that they should be limited to light duty status.

#### **Discussion**

The fact finder concludes that the final paragraph of Article 25 Sick Leave, Section 25.6 makes sufficiently clear that a parent who uses sick leave for a pregnancy-related condition will not suffer any adverse impact in the ability to earn a personal day from unused sick leave. The accepts as reasonable the employer's proposed new language providing for a medical exam conducted at county expense in cases of prolonged recuperative duty status.

#### **Recommended Language: ARTICLE 31 LEAVE OF ABSENCE**

##### **Section 31.4. Medical Examination:**

No change in first seven lines: "The Employer . . . for FML), or to determine an employee's ability to return to full service from recuperative duty status. The examination . . .  
No change in rest of the paragraph or remainder of article.

### **Article 39 Residency**

#### **FOP/OLCI Position:**

The union proposes to adopt language from other collective bargaining units that allow officers to live outside Hamilton County. Unrepresented employees are no longer obliged to live in the county, and the Ohio legislature is about to sign and the governor to adopt a measure allowing public employees to live outside the state. In 1998 the County Personnel Director encouraged the Commissioners to lift the residency requirement in an effort to aid recruitment and retention. The boundaries proposed by the FOP would make it possible to hire applicants living in Butler and Warren Counties who are now ineligible.

#### **County Position:**

The employer objected to the proposal, but did not offer a written rationale or any rebuttal argument at the hearing.

#### **Discussion:**

The fact-finder recommends the language proposed by the union with the map it provided taken from the other bargaining unit agreements in order to end disparate treatment of corrections officers under the county's residence policies.

**Recommended Language: ARTICLE 39 RESIDENCY**

Section 39.1 Delete current provision: "All employees . . . on July 1, 2002."

Bargining unit members shall reside within the boundaries identified by an aching radius from the Justice Center to the furthest most point in Hamilton County bounded by the State of Indiana on the West and the State of Kentucky on the South (see attached map). If the Ohio Legislature provides for a change in law enforcement residency for public employees, then this provision will immediately be amended to provide for State residency for all members of the bargaining unit consistent with the Amendment. Any bargaining unit member living outside of Hmilton County will not be permitted to take a cruiser home.

**New Article Certified Duty Pay**

**FOP/OLCI Position:**

The union proposes additional compensation of \$2 per hour for those officers with certification placed by the Sheriff in posts that require certification. The Corrections officer incurs costs exceeding \$1,300 to become certified, unlike Patrol Officers whose certification and equipment is paid for by the county. Responsibility should equal pay, especially when liability may result and when the Patrol Officers would be paid considerably more for performing the same job.

**County Position:**

The employer opposed the proposal, contending that recording the hours eligible for additional compensation would be an administrative nightmare. Peace Officer Certification is contingent on approval of the local Sheriff, which has been granted to officers so they might obtain lucrative, \$25 per hour off duty employment. Corrections officer certification only requires ten weeks of training rather than the more rigorous certification obtained from the Ohio Patrol Officers Training Academy.

**Discussion:**

The fact-finder does not recommend any change in language, deferring to the employer's administrative concerns and analysis while noting that raising entry-level salaries should be a higher priority for new expenses.

**No Recommended change in Language:**

## **New Article Early Retirement Incentive**

### **FOP/OLCI Position:**

The union proposes that the Employer make available to senior bargaining unit members participation in the PERS Early Retirement Incentive program, that would provide salary savings to the county.

### **County Position:**

The Employer objected that adoption of the proposal for the Corrections Officers would produce demands for similar treatment by members of other bargaining units. In the Employer's estimate early retirements would not serve either the operational or financial needs of the Sheriff's Office.

### **Discussion:**

The fact-finder does not recommend any change in language, deferring to the employer's administrative concerns and analysis while noting that with such high levels of turnover the Corrections Division needs to retain senior personnel. It appears that the most senior member was hired in 1980 and the union did not indicate a projected number of individuals in the unit might take advantage of early retirement.

### **No Recommended change in Language**

## **New Article Dispute Resolution Procedure**

### **FOP/OLCI Position:**

The FOP/Ohio Labor Council has prepared draft contract articles based on a 2001 SERB holding related to unfair labor practice determinations in the absence of agreed upon midterm bargaining procedures. In order to avoid unnecessary delay in resolving interim disputes, the union proposes a detailed set of interim procedures.

### **County Position:**

The employer is opposed to the unique proposal and finds no need to create cumbersome procedures for unforeseen future disputes that can be more satisfactorily addressed during contract renewal negotiations.

### **Discussion:**

In the absence of any evidence of comparable bargaining units with the proposed article, the fact-finder does not recommend any change in language,

### **Conclusion:**

The fact finder has attempted to resolve the difficult issues presented with a thorough review of interrelated contract provisions and with careful attention to all the evidence and argument presented. If the parties find any substantive error in this report needing correction, a conference call should be arranged to discuss the concern, and a request may be filed with SERB for authorization to adjust the report [O.A.C Rule 4117-9-05(L)]. The Fact Finder appreciates the courtesy extended by all individuals involved in the process.

Professor Howard Tolley, Jr., University of Cincinnati  
February 8, 2006

# TEXT OF ALL RECOMMENDED LANGUAGE

## ARTICLE 14 VACANCIES

Section 14.3. The following process shall apply for all promotional examinations in which members of the bargaining unit are eligible for participation.

Section 14.4. All promotions in rank that result in an increase in pay, or assignment to a higher pay range, shall be based upon merit and fitness as determined by promotional examination. It shall be the sole right and responsibility of the Employer to administer and evaluate all promotional examinations, assessments and testing procedures, and to cause to be developed all promotional examinations, assessments and testing procedures. Examinations shall be developed by an independent testing service. Prior to the administration of any examination, the Employer shall post on department bulletin boards, with a copy to the FOP, the structure of the examination with the weight to be granted for each factor of part of the examinations. Upon request from the FOP, the Employer agrees to meet and discuss the structure and weight factors of an examination prior to the examination being administered.

In order to be eligible for a promotional examination, an applicant must have or will have completed the required length of service (as stated on the examination posting) in the immediately preceding rank prior to the date of the examination.

Section 14.5. It is the intention of the parties to give bargaining unit personnel priority for these positions over non-bargaining unit personnel.

Section 14.6. If the structure of an examination includes credit for seniority and/or efficiency, an employee must achieve a passing score on all other factors in order to receive seniority and/or efficiency credit. Seniority credit shall be based upon service completed as of the date of the examination. Efficiency credit shall be based upon the last completed evaluation as of the date of the examination.

Section 14.7. Eligibility lists established by promotional examinations shall remain in effect for two (2) years from the date of certification of the results by the testing service, or until the list is exhausted, which ever comes first. Copies of eligibility lists shall be provided to the FOP. Any bargaining unit member may inspect his/her written examination within thirty (30) calendar days from the date of certification.

Section 14.8. Promotions may be offered to any one (1) of the top three (3) scorers on an examination if more than three (3) pass the examination, or to any employee who passes the examination if three (3) or less take the examination. Employees passed over shall retain their standing on the eligibility list.

Section 14.9. Nothing in this Article shall be construed to limit or prevent the Employer from temporarily filling a vacant position pending the Employer's determination to fill the vacancy on a permanent basis.

A temporary position holder who is subsequently permanently appointed to the position, shall receive service credit toward completion of the promotional probationary period for the time spent as a temporary position holder. An employee appointed as a temporary position holder shall, after occupying the position for one full pay period, be paid at the applicable pay level of the position.

## **ARTICLE 19 HOURS OF WORK AND OVERTIME**

Section 19.3 B. Requests for compensatory time off shall be honored ~~subject to the operational needs of the Department~~ **unless to do so would be unduly disruptive, based on a good faith expectation that the time off would impose an unreasonable burden on the Department's ability to have adequate staff on duty.**

Section 19.8. All officers assigned to normal shifts i.e. 0700-1500, 1500-2300, 2300-0700, . . . will be subjected to mandatory overtime; however, Officers currently assigned to the Sheriff's OPTC academy will not be subjected to mandatory overtime. Each shift will generate a master overtime list of officers based on seniority, from least to most. **At a minimum,** ~~the~~ master list will be updated on Monday, Wednesday and Friday of each week, except on holidays.

A. An officer must work a mandatory or volunteer overtime post to be credited and have the officer's name moved to the bottom of the overtime list. **An officer shall not be forced to work mandatory overtime at anytime within the forty-eight (48) hour period prior to the beginning of the overtime post for which he/she has volunteered.** ~~If an officer volunteers to fill an overtime post on a future date and is requested to work a mandatory post prior to the date of the voluntary post, the officer must work the forced mandatory post.~~

### **Third Paragraph Recommend Designation as "B."**

Move the final sentence concerning no mandatory overtime for officers assigned to the OPTA academy to first paragraph as noted above.

### **Fourth Paragraph Recommend Designation as "C.":**

C. Any overtime that becomes available for the succeeding shift must be announced over the radio in all facilities fifteen (15) minutes prior to the mandatory overtime list being initiated. Those wishing to volunteer for the announced overtime must notify the supervisor seeking volunteers within 15 minutes after the announcement. **All officers will receive a minimum of one-half (½) hour of notification prior to the end of their shift for any mandatory overtime which they are required to fill on the succeeding shift.** Absent unforeseen circumstances, all officers will receive a minimum of one (1) hour of notification prior to the end of their shift for any mandatory overtime which they are required to fill on the succeeding shift.

Designate the current 4<sup>th</sup> paragraph as "D" without making any other additions or deletions.

### **Recommended language for new 6<sup>th</sup> paragraph Designation as "E.":**

E. When an employee is off on approved leave, for a minimum of forty (40) hours, that employee shall be exempt from the mandatory overtime list for the first seventy-two (72) hours after returning to duty. Nothing herein shall preclude the employee from signing up for volunteer overtime.

## **ARTICLE 20 WAGES AND COMPENSATION**

Section 20.1. Effective with the ~~beginning of the pay period that included December 1, 2002~~ first pay of 2006 (meaning the beginning of the pay period that is paid on the first regular payday in 2006), the annualized wage levels for all bargaining unit employees shall be as follows, and all current employees will be assigned to steps as follows:

<u>Grade</u>	<u>Annual</u>
Correction Officer First (0-36 months)	\$26,250
Correction Officer Second (37-60 months)	\$30,160
Correction Officer Third (61 monts and above)	\$38,875

Section 20.2. Effective with the ~~beginning of the pay period that includes December 1, 2003~~ first pay of 2007, the annualized wage levels for all bargaining unit employees shall be as follows, and all current employees will be assigned to steps as follows:

<u>Grade</u>	<u>Annual</u>
Correction Officer First (0-36 months)	\$27,762
Correction Officer Second (37-60 months)	\$31,366
Correction Officer Third (61 monts and above)	\$40,041

Section 20.3. Effective with the ~~beginning of the pay period that includes December 1, 2004~~ first pay of 2008, the annualized wage levels for all bargaining unit employees shall be as follows, and all current employees will be assigned to steps as follows:

<u>Grade</u>	<u>Annual</u>
Correction Officer First (0-36 months)	\$28,941
Correction Officer Second (37-60 months)	\$32,621
Correction Officer Third (61 monts and above)	\$41,242

Section 20.7. Any employee assigned to a canine unit shall, for the duration of the assignment shall be paid an additional seven (7) percent of his or her regular rate of pay.

Section 20.7. 20.8. Employer Pension Obligations: (No change other than number)

## ARTICLE 22 INSURANCE

Section 22.5. Effective December 1, 2005, the life insurance benefits currently in effect shall continue throughout the term of this agreement.

## ARTICLE 25 SICK LEAVE

### Section 25.1

No change lines 1 to 6: Employees shall . . . without limit. For an absence of four consecutive days or more, when an employee provides written, signed certification from a treating physician or dentist indicating the diagnosis, prognosis and start date of an injury or illness necessitating absence from work, the Employer will not unreasonably infer abuse of the officer's contractual and statutory sick leave entitlement nor any improper neglect of duty.

Section 25.2. Sick leave shall be granted to an employee, upon approval by the Employer, for the following reasons:

- A. No change.
- B. No change.
- C. No change.
- D. **Death of a member of the employee's immediate family. Such usage shall be limited to a reasonably necessary time, not to exceed three (3) days. One of the days must be the date of the funeral. An employee may use one (1) day of sick leave to attend the funeral of a relative not included in the definition of immediate family.**
- DE. No other change
- EF. No other change
- F.

For the purpose of this Section, the definition of immediate family shall be: **spouse, parents, children, grandparents, siblings, grandchildren, mother, father, son, daughter, brother, sister, spouse, grandparent, grandchild, step-parents, step-children, step siblings, mother/father/brother/sister/children** mother/father/ daughter/son/sister/brother-in-law or a legal guardian or other person who stands in the place of a parent (loco parentis).

#### **ARTICLE 26 (or # TBA) BEREAVEMENT LEAVE**

Section ##.1 (Previously 25.10, with slight revision) Upon the death of an employee's spouse, child, **step-child living with the employee**, mother, father, sister or brother, the Employer shall grant bereavement leave in lieu of the use of sick leave. Bereavement leave shall be limited to a reasonably necessary time not to exceed five (5) work days. One (1) of the days must be the day of the funeral. Bereavement leave shall not be deducted from any sick leave balance.

#### **Recommended Language: ARTICLE 28 UNIFORMS AND EQUIPMENT**

~~Section 28.7. Employees with more than one (1) year of service as of October 15 of each agreement year shall receive a uniform allowance of six hundred dollars (\$600.00) payable in the second pay of November of each agreement year. The payment of a non-accountable uniform allowance is a taxable event under IRS regulations.~~

Section 28.7. On the first regularly scheduled pay day following May 1 of each calendar year, employees who have completed more than one (1) years of service in the bargaining unit shall receive a uniform allowance of six hundred (\$800.00) dollars. The payment of a non-accountable uniform allowance is a taxable event under IRS regulations. Payment shall be made by separate check. An employee who completes one (1) year of service in the bargaining unit after May 1 shall upon completion of the one (1) year service requirement receive a pro-rated uniform allowance of sixty-six dollars (\$67.00) per full calendar month of service from date of entry into the unit to May 1. An eligible employee who separates from service prior to May 1 of any year shall be entitled upon separation to a pro-rated share of the allowance based upon the number of months of service completed since the previous May 1.

#### **ARTICLE 31 LEAVE OF ABSENCE**

Section 31.4. Medical Examination:

No change in first seven lines: "The Employer . . . for FML), or to determine an employee's **ability to return to full service from recuperative duty status.**  
No change in rest of the paragraph or remainder of article.

## **ARTICLE 39 RESIDENCY**

Section 39.1 Delete current provision: "All employees . . . on July 1, 2002.

Bargining unit members shall reside within the boundaries identified by an aching radius from the Justice Center to the furthest most point in Hamilton County bounded by the State of Indiana on the West and the State of Kentucky on the South (see attached map). If the Ohio Legislature provides for a change in law enforcement residency for public employees, then this provision will immediately be amended to provide for State residency for all members of the bargaining unit consistent with the Amendment. Any bargaining unit member living outside of Hamilton County will not be permitted to take a cruiser home.

## **CERTIFICATE OF SERVICE**

I hereby certify that an exact copy of the foregoing Fact Finding Report has been served via electronic mail and BY REGULAR MAIL to Mr. Charles A. King, Clemans, Nelson & Associates, Inc. 411 W. Loveland Ave., Suite 101, Loveland, Ohio 45140 and to Mr. Stephen S. Lazarus, FOP/OLCI 915 Cincinnati Club Building, 30 Garfield Place, Cincinnati, Ohio 45202-4322 and by electronic mail to to Mr. Gary Berger, County Administration Bldg. 138 E. Court St., Room 707, Cincinnati, OH 45202-1224 on this 8th day of February, 2005.

*Howard Tolley, Jr.*

Howard Tolley, Jr.