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FACT-FINDING DECISION

STATE EMPLOYMENT RELATIONS BOARD

STATE OF OHIO

January 3, 2012

In the Matter of:

Cuyahoga County Sheriff's Department	)	
	)	Case No. 10-MED-06-0808
and	)	Protective Services Sergeants
	)	
Ohio Patrolmen's Benevolent Association	)	

APPEARANCES

For the County:

Christopher J. Russ, Assistant Law Director
Ed Morales, Assistant Law Director
Michael J. Jackson, Captain
Ellen Eschmeyer, Lieutenant
Effrem Speigner, Manager of Protective Services
Matt Rubino, Director, Office of Budget and Management
Eleanor Haugh, Manager, Benefits
Dan Ricci, Program Officer 3

For the Union:

Jeff Perry, Business Agent
Taharka H. Ankhenaton, Sergeant
Chris White, Sergeant
Thomas Fovozzo, Sergeant

Fact Finder:

Nels E. Nelson

BACKGROUND

The instant case involves the Cuyahoga County Sheriff's Department and the Ohio Patrolmen's Benevolent Association. The Sheriff's Department includes a Protective Services unit, which was located in the former Department of Central Services (now known as the Department of Public Works) until it was moved to the Sheriff's Department in 2010. The unit provides security at county buildings and performs a variety of other tasks.

The union represents two bargaining units in Protective Services. One unit consists of 140 Protective Services Officers. The other unit consists of 11 Protective Services Sergeants who supervise the Protective Services Officers. The union also represents the Sheriff's Department's Deputies, the Deputy Sergeants, Deputy Lieutenants, and Correction Officers. The Correction Sergeants and a number of other units are represented by other unions.

The instant dispute involves the county and the Protective Services Sergeants' unit. The parties have been negotiating for a successor to the collective bargaining agreement that expired on September 30, 2010. During negotiations the parties agreed that should they be unable to reach agreement, a neutral could grant or recommend wage or benefit increases or other items with cost implications retroactive to October 1, 2010.

When the parties reached impasse, the fact-finding process was invoked. The Fact Finder was notified of his appointment June 24, 2011. He met with the parties on October 11, 2011, and a number of issues were resolved through mediation. A fact-finding hearing was held on November 18, 2011, to address the remaining issues. The Fact Finder reopened the hearing on December 19, 2011, to clarify a number of issues.

The recommendations of the Fact Finder are based upon the criteria set forth in Section 4117-9-05(K) of the Ohio Administrative Code. They are:

(a) Past collectively bargained agreements, if any, between the parties;

(b) Comparison of the 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;

(c) 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;

(d) The lawful authority of the public employer;

(e) The stipulations of the parties;

(f) 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 mutually agreed upon dispute procedures in the public service or in private employment.

ABILITY TO PAY

The ability to pay is an important statutory criterion and sometimes has a significant impact on a Fact Finder's recommendations. In the instant case, the county argues that its ability to pay is limited by the impact of the recession on county revenues and cuts in state funding. The union contends that the county is recovering from the effect of the recession and can afford its demands.

The Fact Finder is very familar with the parties' arguments regarding the county's ability to pay. He served as the Conciliator in a dispute involving the Deputy Lieutenants in the Sheriff's Department and in that hearing had the benefit of a presentation by Wade Steen, the county's Chief Fiscal Officer. The union cross-examined Steen and offered additional testimony and evidence in support of its postion.

At the hearing in the case involving the Deputy Lieutenants, the Conciliator summarized the county's position as follows:[1]

> The county argues that its final offer should be selected. It claims that its abilty to pay precludes granting the union's offer. The county claims that it is "still mired in the economic doldrums." (County Pre-Hearing Statement, page 3)
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> The county maintains that the concept of "shared sacrifice" is at the heart of its position on economic items. It points out that for the third straight year, non-bargaining unit employees in the sheriff's department and throughout Cuyahoga County did not receive an increase in compensation. The county notes that instead those employees, who took three unpaid furlough days in 2009 and five days in 2010, were required to take an additional five days in the first half of 2011.
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> The county argues that its Approved Budget for 2011 supports its position. It reports that the 2011 budget is $11.0 million or 3.4% less than the 2010 actual budget. (County Pre-Hearing Statement, page 4) The county observes that the sheriff's department's 2011 budget was reduced by $780,000 or 1.5% on top of reductions in 2009 and 2010. (Ibid.) It adds that the Protective Services Division, which was transferred to the Sheriff's Department in March 2010, had its budget reduced by $429,000 or 7.5%. (Ibid.)
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> The county contends that its financial situation will not improve in the near future. It indicates that state funding will be cut $16.5 million in 2011, $32.2 million in 2012, and $39.7 million in 2013. (County Exhibits, Tab 13, page 12) The county complains that while sales tax collections have increased, they are not close to pre-2008 levels. It states that property tax receipts are forecast to decrease as a result of foreclosures and declining property values. It adds that the NBA lockout will also have an impact on its revenues.
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> The county contends that the cuts in the 2012-2013 state budget poses a significant threat. It indicates that the cuts, which began in 2011 and take full effect in 2012, will result in the loss of more than $68 million in revenue over the two years. (County Exhibits, Tab 13, page 5) The county claims that "the operating outlook in the General Fund and the HHS Levy Fund, becomes unstable in 2012 mostly due to the State cuts." (Ibid.)
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> The county offers the 2011-2013 budget update in support of its position. It points out that the update shows that the General Fund budget is just in balance and does not include any additional funding for operations. The county notes that both General

[1] The references are to the pre-hearing statements and exhibits in the Lieutenants' case.

Fund and the HHS Levy Fund revenues will decrease in 2013 due to cuts in state funds and a drop in property values.

The county maintains that the economy remains weak. It reports that the county unemployment rate is 7.9% and the state rate is 9.1%. (Ibid., page 14) The county indicates that new claims for unemployment insurance benefits remain 20% above the job-growth level. (Ibid.) It adds that the foreclosure rate increased to 13,700 in 2010 and the growth of sales tax revenue is expected to subside in 2012. (Ibid.)

The Conciliator summarized the union's arguments as follows:

The union rejects the employer's inability to pay argument. It claims that the county bears a "substantial burden of proof regarding such an assertion [and that] the Employer will not be able to demonstrate any actual reasons justifying its extraordinary final offer of a zero wage increase." (Union Pre-Hearing Statement, page 4) The union adds that in recent fact-findings and conciliations involving other bargaining units the county's inability to pay argumemt was rejected. (Union Exhibit 17)

The union contends that the economic environment is improving. It points out that the county's 2011 Second Quarter Report shows an estimated General Fund surplus of $6.4 million, which has since grown to $10.9 million. (Union Exhibit 8, page I-3) The union notes that on an All Funds basis, the Approved Budget showed a $44.2 million deficit but the Second Quarter Report shows a $19.0 million surplus. (Ibid.)

The union suggests that the improving budget situation is in part the result of increasing sales tax collections. It observes that 2011 sales tax revenue is estimated to be $212.2 million, which is equal to the amount collected before the economic crisis began. It reports that sales tax revenue is projected to increase to $222.9 million by 2013. (Ibid., page I-4)

The union maintains that the county has made significant reductions in staffing. It states that in 2008 the total FTE was 9,523 but by 2010 it was reduced to 7,982. (Ibid., I-10) The union adds that the total FTE is projected to decrease to 7,772 in 2011 and to increase only modestly in 2012. (Ibid.)

The union argues that the Executive's Recommended Budget for 2012-2013 shows the county's favorable situation. It points out that it projects General Fund carryover balances of 28.8% in 2011, 31.3% in 2012, and 30.8% in 2013. (Union Exhibit 8, page I-11 and Union Exhibit 11, page I-2) The union notes that the Recommended Budget indicates that county salary levels are projected to decline from $360.8 million in 2010 to $358.4 in 2011 and to remain below the 2007-2009 levels through 2014. (Ibid., page I-20)

The union contends that bond rating agencies have recognized the county's strong financial positon. It reports that on Decmber 10, 2009, Standard and Poor's gave the

> county’s general obligation and variable purpose bonds AA+ ratings. (Union Exhibit 14) The union observes that Fitch Ratings gave the same ratings to the bonds. (Union Exhibit 13)
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> The union maintains that recent sales tax collections demonstrate the improving situation. It points out the 2011 monthly sales tax receipts have exceeded collections in every corresponding month in 2010. (Union Exhibit 15) It notes that September sales tax collections were $16,451,124 compared to $14,777,152 in the previous year. (Ibid.)

The Conciliator’s findings with respect to the ability to pay were as follows:

> The ability to pay is another important criterion. While the financial information provided by both parties reveals that the county has suffered through a severe recession, it has survived the worse of the downturn. The record indicates the General Fund carryover is projected to be 28.8% in 2011, 31.3% in 2012, and 30.8% in 2013. (Union Exhibit 8, page I-2 and Union Exhibit 11, page I-2) This exceeds the county’s goal of maintaining General Fund reserves equal to 25% of operating expenditures. (Union Exhibit 11, page I-4) In additon, the latest data indicates that sales tax collections are continuing to rise so that receipts for 2011 should reach $170 million compared to $155 million in 2010. (Union Exhibit 15 and testimony of Wade Steen) The county’s favorable outcome is confirmed by the AA+ bond ratings from Fitch and Standard and Poor’s. (Union Exhibits 13 and 14)
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> National economic data suggests that the county’s financial conditon should continue to improve. Gross Domestic Product increased in the third quarter of 2011 at an annual rate of 2.5%, which may be less than in some other recoveries, but it eases concerns about the possility of a double-dip recession. [From the October 27, 2011, press release posted on the website of the Bureau of Economic Analysis in the US Department of Commerce] In addition, September consumer spending, which is a primary driver of the economy, rose 1.1% from the previous month. [From the October 28, 2011, press release posted on the website of the Bureau of Economic Analysis in the US Department of Commerce]
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> The Conciliator recognizes that the county faces a number of challenges. The state is expected to cut funding by $16.5 million in 2011, $37.2 million in 2012, and $39.7 million in 2013. (County Exhibits, Tab 13, page 12) In addition, property tax collectons are apt to decline due to lower property values and perhaps increasing delinquencies.
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> Despite these problems, the county’s finances should continue to improve. In addition to the points noted above, the county has reduced FTEs from 9,523 in 2008 to 7,772 in 2011. (Union Exhibit 8, I-10) The county has also undertaken a number of longer term projects, including the Medical Mart, to increase employment and incomes, which will result in higher tax collections.

ISSUES

The parties submitted six issues to the Fact Finder. For each issue, he will set forth the positions of the parties and summarize the arguments and evidence they presented in support of their positions. The Fact Finder will then offer his analysis for each issue, followed by his award.

1) Article 27 – Uniform & Equipment, Section 1 – Initial Issue, Section 2 – Uniform Maintenance Allowance, and New Section – Promotion to Sergeant – The current contract requires the county to provide an initial uniform and to furnish an annual uniform maintenance allowance of $575. The union demands that the uniform allowance be increased to $700 in 2012 and $800 in 2013; that the county provide "an initial issuance of a new uniform of shirts and pants" in 2011; and that a new section be added requiring the county to insure that each newly promoted Sergeant has the items in the initial uniform list in serviceable condition. The county opposes any change in the current contract.

Union Position – The union argues that its position ought to be accepted. It indicates that when Protective Services was moved from the Department of Central Services to the Sheriff's Department, the Sergeants were required to have new uniforms. The union complains that the Sergeants' "meager" uniform allowance was not sufficient to purchase the required items. It states that two short-sleeved shirts, two long-sleeved shirts, two pairs of pants, a jacket, and a dickie cost more than $600.

The union contends that the uniform allowances of comparable employees support its demand. It points out that the Deputies, Deputy Sergeants, and Deputy Lieutenants have uniform allowances of $1400. The union notes that their allowances are in the form of a check rather than a voucher.

County Position – The county argues that current financial and budgetary conditions make it unable to finance increased economic obligations.

Analysis – The Fact Finder faces three issues. The first issue is the union's demand to increase the annual uniform maintenance allowance. While the Fact Finder understands that the uniform allowance for the Protective Service Sergeants is significantly less than the allowance for Deputies and Deputy Sergeants, he cannot grant the union's demand. Protective Services did not become part of the Sheriff's Department until 2010 and prior to that time the Sergeants faced less demanding and expensive uniform requirements than the Deputies and Deputy Sergeants. As the Protective Services Sergeants become more integrated into the Sheriff's Department, they will be able to make a better case for a uniform allowance similar in amount to those of the Deputies and Deputy Sergeants.

The second issue is the union's demand for "an initial issuance of a new uniform of shirts and pants" in 2011. The justification offered by the union is that when Protective Services was moved to the Sheriff's Department, the Sergeants were required to purchase new uniforms which cost more than the money available in their uniform maintenance allowances. While the Fact Finder appreciates that the upgrade in uniforms may have involved some expense beyond what was covered by the uniform maintenance allowance, he does not believe that it was a significant amount of money for most members of the bargaining unit.

The final issue is the union's demand for a new section requiring the county to insure that each newly promoted Sergeant has the items in the initial uniform list in serviceable condition. The union's demand is taken verbatim from the Deputy Sergeants' contract and is not unreasonable. The Fact Finder recommends that the union's demand be granted except that the bullet-proof vest be eliminated from the list of equipment since it is not normally supplied to Protective Services Sergeants.

Recommendation – The Fact Finder recommends the following contract language:

> Section 1. Current contract language.
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> Section 2. Current contract language.
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> New Section. Newly promoted Sergeants shall not be issued those items previously issued while Officers; however, the Employer shall replace any such items if worn, damaged or no longer functional. The Employer will insure that each Employee has two (2) uniform badges, sidearm, less-than-lethal device, ammunition pouch, flashlight and holder, holster, handcuffs and hat badges. Unserviceable items shall be replaced by the Employer as soon as possible.

2) Article 30 – Life Insurance – The current contract requires the county to provide the Sergeants with life insurance equal to that provided to non-bargaining unit employees and requires any change in non-bargaining unit insurance to be extended to members of the bargining unit. The union seeks to add a stipulation that if the county negotiates a superior level of benefits with another bargaining unit, the improved level of benefits be granted to the Sergeants. The county opposes the changes sought by the union. It proposes placing the life insurance and health insurance in a single insurance provision.

Union Position – The union argues that its demand is justified. It points out that it is not asking to increase the level of benefits unless an increase is offered to another unit. The union claims that it is trying to protect its level of benefits because “the County has been trying to decrease the level [of benefits] rather than moving up to a more comparable level.” (Union Pre-Hearing Statement, page 7)

County Position – The county provided no rationale for its position beyond restrictions on its ability to pay.

Analysis – The Fact Finder faces two demands. Firstis the union's demand that the Sergeants be provided with life insurance equal to that provided to non-bargaining unit employees by the county or extended to members of any bargining unit through negotiations. In the discussion of the county's proposal to change health insurance, the county indicated that the charter requires it to standardize benefits. The union's demand relating to life insurance appears to guarantee the Protective Services Sergeants the same life insurance as other employees. On that basis, the Fact Finder recommends the union's demand be adopted.

The second issue is the county's proposal to move the life insurance provision to a single insurance article. The Fact Finder must reject the county's demand. Housekeeping matters such as this should be left to the parties.

Recommendation – The Fact Finder recommends the following contract language:

> The County shall provide all bargaining unit employees Life Insurance equal to the life insurance benefits provided to non-bargaining unit employees. Any positive change in the life insurance benefits provided to non-bargaining unit employees shall be applicable to all bargaining unit employees. If the County agrees to an increase in life insurance benefits in negotiations with another bargaining unit or if an improvement in benefits result from fact finding or conciliation, the improvement in benefits shall be extended to this bargaining unit.

3) Article 31 – Health Insurance – Under the current contract, the county offers employees a choice of five health insuance plans. The Medical Mutual of Ohio MetroHealth Select Plan requires no employee contribution. The other plans require employees to pay 7.5% of the premium cost subject to bi-weekly caps of $30 for single coverage and $45 for family coverage. The contract also provides for payments to employees who opt out of health insurance

coverage with the amounts ranging from $50 bi-weekly for employees with no eligible dependents to $100 bi-weekly for employees with dependents.

The county seeks a number of changes. It proposes that employees be required to pay 10% of the cost without any caps; that the restriction on reducing benefits be dropped; that the reference to criteria governing the adoption of cost containment features be eliminated; and that the payments to employees who opt out of health insurance coverage be discontinued.

The union seeks to retain the current contract language and to add a provision that would require the county to extend to the Sergeants any improved plan its adopts or negotiates with another bargaining unit.

<u>County Position</u> – The county argues that its proposal should be accepted. It claims that the County Charter mandates the standardization of benefits among its employees. The county indicates that its health insurance proposal "gives [it] the necessary latitude for potential changes to plan structure consistent with the vast majority of jurisdictions across the state." (County Pre-Hearing Statement, page 7)

The county contends that its recent settlement with AFSCME, Local 1746 supports its position. It points out that Local 1746 represents approximately 1,300 employees in the Department of Health and Human Services and is the largest bargaining unit in the county. The county notes that AFSCME agreed to insurance language that is "virtually identical" to its proposal in the instant case.

The county maintains that a comparison of its proposal to the health insurance provisions in agreements in Geauga, Hamilton, Lorain, Lake, Medina, and Portage counties supports its position. It states that the common element in these counties' contracts is that "the bargaining unit's plan is identical to what is offered to all non-bargaining unit employees." (Ibid.) The county asserts that offering different plans to different bargaining units would preclude optimum cost-savings.

The county argues that the Medical Mutual of Ohio MetroHealth Plan is a key feature of its proposal. It points out that the plan has nominal co-pays and does not require employees to pay any of the premium costs. The county adds that "regardless of the choice of plans, the coverage and costs remain significantly below other public employers in Ohio." (Ibid.)

The county contends that SERB's 2011 19th Annual Report on the Cost of Health Insurance in Ohio's Public Sector demonstrates that its proposal is reasonable. It reports, for example, that the average monthly employee contribution is $54 for single coverage and $151 for family coverage; that 84% of the plans require a deductible before costs are shared up to the out-of-pocket maximum; and that the average employee premium contribution for employees in counties with populations greater than 150,000 is 11.5% for those with single coverage and 12.9% for those with family coverage. The county asserts that "the most basic conclusion that can be drawn from the … SERB analysis is that Cuyahoga County employees are paying a fraction of what their colleagues across the state currently pay." (County Pre-Hearing Statement, page 9)

Union Position – The union opposes any change in the current contract language. It claims that the county wants to send employees to MetroHealth to maximize the number of paying patients and to get the added benefit of additional police protection. The union acknowledges that the cost of insurance has been increasing faster than the rate of inflation. It complains, however, that Sergeants' wages have not kept up with inflation so that they are paying a larger portion of the cost of their insurance than most but that "it isn't as readily apparent." (Union Pre-Hearing Statement, page 11)

Analysis – The Fact Finder must recommend the county's health insurance proposal with a few modifications. First, the county is proposing the insurance program that has been accepted by AFSCME, Local 1746.[2] With 1,300 members, it is clearly the largest unit in the county. There is no evidence to suggest that AFSCME received any extra consideration to entice employees to accept the changes in health insurance.

Second, the county's health insurance proposal is not unreasonable. Under the proposal, it will continue to offer a plan with no employee premium contribution plus a choice of four other plans. The SERB's 19th Annual Report on the Cost of Health Insurance in Ohio's Public Sector and the Fact Finder's experience indicates that the co-pays, co-insurance requirements, and out-of-pocket maximums are consistent with the plans offered by other public employers. In addition, the 10% employee premium contribution, which is required for all but the MetroHealth plan, is less than many public employees are required to pay.

Finally, the Fact Finder believes that it is very important for the county to offer the same insurance program, including coverage, co-pays, co-insurance, and premium contributions, to all county employees. In the past, the county has negotiated different arrangements with different bargaining units. This not only raised issues regarding fairness but also complicated bargaining. While the transition to a standardized insurance program may create some problems, it should be accomplished as soon as possible.

Recommendation – The Fact Finder recommends the following contract language:

> Section 1. An eligible employee is defined as a full time employee covered by this Agreement. The Flex Count Plan (the plan) is defined as the Section 125 or cafeteria plan, which is provided by the Employer for health insurance benefits for county employees. The Employer shall provide eligible employees the opportunity to enroll in the plan once during each plan year at its annual open

[2] The only substantive difference is due to the fact that AFSCME, Local 1746 gets dental and vision coverage through an AFSCME Care Plan which is not available to other employees.

enrollment period except in case of an eligible change in family status as determined by Section 125 of the Internal Revenue Code. The plan year commences on January 1, and ends on December 31 of the calendar year, but is subject to change.

Section 2. Effective January 1, 2012, bi-weekly employee contributions for medical and prescription drug benefits shall be determined as follows:

a) MetroHealth Plan

The County shall offer a plan through MetroHealth at no cost to employees.

b) Other Benefit Plans

The bi-weekly health insurance contribution rates shall be as follows:

1) Effective January 1, 2012: employer 92.5% of plan costs; employee 7.5% plan costs; subject to a bi-weekly cap on employee contributions of $30 for single coverage and $45 for family coverage.

2) Effective January 1, 2013: employer 90% of plan costs; employee 10% of plan costs; and

3) Effective January 1, 2014: employer 90% of plan costs; employee 10% of plan costs.

Section 3. The costs of the medical and prescription drug plans will be determined through an actuarially certified process that is verified through an outside party and that includes reserves necessary to sustain the plans. In successive plan years, the Employer may add to or delete plans/providers offered and/or employees may be offered additional plans with reduced or increased benefit levels.

Section 4. Effective January 1, 2012, the Employer shall contribute 95% of the costs for the ancillary benefit plans (i.e., vision and dental) and the Employee will contribute 5% of the cost for the ancillary benefits plans. Effective Januarys 1, 2013, the Employer shall contribute 90% of the costs for the ancillary benefit plans (i.e., vision and dental) and the Employee will contribute 10% of the cost for the ancillary benefits plans.

Section 5. The Employer shall be entitled to increase the cost containment features of the Flex Count plans which may include, but are not limited to, deductibles, co-insurance, and spousal exclusion provisions.

Section 6. The Employer may implement or discontinue incentives for employees to participate in Employer-sponsored wellness programs, including, but not limited to, the right to offer the opportunity to reduce employee contributions through participation in wellness programs as determined by the employer.

Section 7. The Employer may offer incentives to encourage use of low cost providers/plans (including HSA plans) which may be discontinued or modified by the Employer in future plan years with notification to the Union.

Section 8. A waiting period of no more than one hundred twenty (120) calendar days may be required before new employees are eligible to receive health and/or other insurance benefits. During the waiting period, the Employer may require employees who desire coverage to purchase it through a third-party vendor instead of participating in the County plans that are offered to regular full-time employees. New employees shall be eligible to participate in the County plans on the first date of the first month following completion of the waiting period.

4) Article 33 – Wages, Section 1 – Wage Steps and Sections 2 and 3 - Wage Payments – The current contract has a wage schedule with five annual steps starting at $17.22 per hour and reaching a maximum of $20.51 per hour. The union demands a 2% wage increase effective October 1, 2011, and 3% increases effective October 1 of 2012 and 2013. It also seeks the restoration of step increases for eligible employees. The county proposes no increase in the wage schedule and no step increases through June 30, 2012. It offers to increase wages by 1% and to restore step increases on July 1, 2012, and to increase the wage schedule by 2% effective July 1, 2013.

Union Position – The union argues that its demand is justified. It acknowledges that government entities throughout the world face challenging economic conditions. The union states that "despite the more recent positive views on the economy, [it] has proposed modest wage increases each year of the contract." (Union Pre-Hearing Statement, page 13)

The union contends that it has cooperated with the county. It states that it agreed to freeze wages and to take several unpaid days off. The union emphasizes that "the [county's] offer of zero for an additional year and a half, one percent (1%) and two percent (2%) in the last year and a half of the contract is hardly making up for accepting no raise in 2010, let alone the furlough days each of the last two (2) years." (Ibid.)

The union maintains that SERB's Wage Settlement Report supports its position. It states that the averages shown in the report are "almost all well above one percent." (Union Pre-Hearing Statement, pages 13-14) The union adds that "all of the relevant numbers were over a third of a percent higher with the exception of [two types of jurisdictions]." (Union Pre-Hearing Statement, page 14)

The union suggests that its position is appropriate regardless of the county's settlements with other units. It indicates that "the fact is that this unit gave back a 2% raise [and] they certainly do deserve to get that back now." (Ibid.) The union claims that "the County is in much too good a fiscal condition to hold back what was already agreed to." (Ibid.)

<u>County Position</u> – The county argues that its wage proposal should be recommended. It states that "the concept of 'shared sacrifice' … is at the heart of [its] position on economic items." (County Pre-Hearing Statement, page 2) The county reports that for the third year non-bargaining unit employees in the Sheriff's Department and in the rest of the County did not receive additional compensation but made concessions in the form of furlough days. The county reports that in 2011, cost savings equivalent to five furlough days were factored into the budget of the Sheriff's Department.

The county contends that <u>Cuyahoga County, Ohio, Cuyahoga County Sheriff's Office and Ohio Patrolmen's Benevolent Association;</u> SERB Case No. 09-MED-10-1112; October 21, 2011, supports its position. It points out that in that decision, which involves 520 Correction Officers, Conciliator Howard Silver rejected a Fact Finder's wage recommendation and awarded the county's offer calling for a wage freeze in 2010 and 2011 and a reopener for 2012. The county notes that Silver explained:

> The Conciliator is not persuaded that the Cuyahoga County, Ohio economy in 2010, 2011, or 2012 indicates increasing revenues for the county or decreasing revenues for the county. A preponderance of the evidence presented to the hearing record describes an economy that has suffered the loss of its manufacturing base beginning in 2001, and in 2008 experienced a severe national recession. Cuyahoga County must now accommodate the loss of millions of dollars redirected from Cuyahoga County to the state of Ohio's biennial budget ... The Conciliator does recognize, however, the substantial reduction in revenue for Cuyahoga County caused by the reduction in funding from the state of Ohio, a substantial contraction in the wherewithal available to the government of Cuyahoga County, Ohio to meet its obligations, operational and otherwise. (County Pre-Hearing Statement, page 3)

The county maintains that the agreement with AFSCME, Local 1746 also supports its wage offer. It observes that the agreement, which covers 1,300 employees in the Department of Human Services, provides for no wage increase on July 1, 2011, followed by a 1% increase on July 1, 2012, and a 2% increase on July 1, 2013. The county indicates that this is the same as its offer in the instant case.

<u>Analysis</u> – The Fact Finder believes that the wage issue involves three questions. The first question is the general approach for compensating the Sergeants. The current contract has a five-step wage schedule where each employee advances one step each year. As indicated above, the initial rate is $17.22 per hour and the top rate is $20.51 per hour.

The Fact Finder recommends that the scheme for compensating the Sergeants be changed. In law enforcment, Sergeants and other promoted officers are normally paid a single wage rather than being placed on a step schedule. This practice reflects the fact that Sergeants and other officers have already gone through a step schedule before being promoted. To a large extent, they have acquired the experience necessary to perform their jobs and are expected to do so subject to the sucessful completion of a probationary period.

In the instant case, the single rate for the Sergeants should be set equal to the current top rate. First, the top rate is not at all unreasonable given the Sergeants' duties and responsibilities. Even the top rate will leave them behind other supervisors in the Sheriff's Department. Second, at the present time, all of the Sergeants are at the top step so there is no cost to making the top rate the single rate for Sergeants.

The second question is the effective dates of any wage adjustments. The current contract was effective October 1, 2007, and expired on September 30, 2010. Wages were increased on October 1, 2007, and were schedued to be increased on January 1 of 2009 and 2010. In the rest of the county wage adjustments occurred in other months and contracts expired in different years and months.

The Fact Finder recommends that the contract extend from January 1, 2012, to December 30, 2014, and that any wage adjustments be effective Janauary 1. He believes that this will make it easier to understand the wage adjustments in comparison to the multitude of county bargaining units. This should simplify bargaining for both the county and the unions.

The third question is the proper wage adjustments for the Sergeants. As noted above, their top rate is currently $20.51 per hour. While this is less than the rates for Sergeants at other area public agencies as well as for other supervisors in the Sheriff's Department, the duties and responsibilities of those Sergeants are different from the Protective Services Sergeants. This makes these comparisons less useful than is generally the case.

The Fact Finder believes that a more useful approach is to consider the wage increases received by employees in other bargaining units in the county. The record indicates that from 2009 through 2011, nearly all employees agreed to wage freezes. A few unions refused to waive scheduled wage increases but those units were forced to take layoffs.

The county relied heavily on its recent settlement with AFSCME, Local 1746. It represents employees in a wide variety of classifications in the Department of Human Services. The bargaining unit includes 1,300 employees and is more than twice as large as any other bargaining unit in the county. The AFSCME agreement calls for no wage increase in 2011 followed by a 1% increase on July 1, 2012, and a 2% increase on July 1, 2013.

The Fact Finder recommends that the Sergeants' wages be increased by 2% effective January 1, 2012, and 1% effective January 1, 2013, and that the contract be reopened to negotiate wages to be effective on January 1, 2014. These wage increases are consistent with the wage increases being granted by other public employers. They also take into account the financial challenges facing the county as well as the economic recovery now underway and the resulting growth in sales tax revenue.

The Fact Finder believes that the somewhat larger wage increases than those received by AFSCME, Local 1746 are justified. First, the Sergeants were scheduled to receive a 2% wage increas in 2010 but agreed to forgo the increase because of the county's financial situation. When AFSCME refused to give up its scheduled wage increase, a number of employees were laid off. However, the union reported that the Sergeants' bargaining unit was reduced through attrition by a higher percentage.

Second, the evidence suggests that the wages of the Sergeants are low compared to employees doing similiar work. However, as noted above, the differences in duties and responsibilities make comparisons more difficut than is ordinarily the case. It does appear that the duties of the Sergeants have changed and may continue to do so. When wages are reopened, the county's financial situation may be more certain and the duties and responsibilities of the

Sergeants may have evolved making comparisons to other members of the Sheriff's Department and Sergeants in other public agencies in the area more useful.

Third, the changes in the county's health insurance program precludes the Fact Finder from recommending anything less than what he is recommending. While the health insurance provisions agreed to by AFSCME and recommended by the Fact Finder are comparble to those offered by other public employers, the new plan does mean increased costs, including higher premium contributions, for most employees.

Recommendation – The Fact Finder recommends the following contract language:

> Section 1. Effective January 1, 2012, all members of the bargaining unit shall be paid $20.92 per hour.
>
> Section 2. Effective January 1, 2013, all members of the bargaining unit shall be paid $21.13 per hour.
>
> Section 3. The contract shall be reopened for the sole purpose of bargaining wages to be effective January 1, 2014. The provisions of Chapter 4117 of the Ohio Revised Code shall apply to the wage reopener.

5) Article 50 - Duration – The current contract was effective October 1, 2007, and expired on September 30, 2010. The county proposes that the successor agreement be effecctive July 1, 2011, and expire on June 30, 2014. The union wishes the contract to be effective on October 1, 2010, and expire on September 30, 2013.

Union Position – The union offered no comments regarding the starting and ending dates of the contract.

County Position – The county offered no comments regarding the starting and ending dates of the contract.

Analysis – As indicated above, the Fact Finder recommends that the contract be effective on January 1, 2012, and expire on December 31, 2014. He believes that more consistent contract terms in the county will facilitate bargaining by the parties.

Recommendation – The Fact Finder recommends the following contract language:

> The Agreement represents the complete understanding between the parties on all issues and shall become effective 12:00 a.m. on January 1, 2012, and remain in full force and effect until 11:59 p.m. on December 31, 2014, and thereafter, from year to year, unless at least one hundred and twenty (120) calendar days prior to said expiration, or anniversary thereof, either party gives timely notice to the other of an interest to terminate or a desire to modify or change the Agreement. Within ten (10) days after receipt of said notice, a conference will be arranged to negotiate any proposals.

6) New Article - Longevity – The current contract does not include longevity. The union demands a payment of $375 after five years of continuous, uninterrupted service with the department and increases of $75 per year after the fifth year. The county opposes the union's demand.

Union Position – The union argues that the Fact Finder should recommend its demand. It states that all of the employees in the Sheriff's Department receive longevity except the employees who transferred to the department from the Department of Central Services. The union indicates that the transfers came about at the suggestion of the county.

The union contends that the employees from the Department of Central Services should not be treated like second class employees. It claims that much of the work done by Protective Services Officers and Sergeants was work that was done in the past by Deputies. The union asserts that members of the bargaining unit "have had a huge increase in the level of job requirements and responsibilities." (Union Pre-hearing Statement, page 15)

The union complains that the Sergeants' work load has increased. It points out that the number of Sergeants has decreased while the number of buildings has increased. The union notes that the extra tasks include arrests and prisoner transports.

County Position – The county rejects the union's demand. It points out that out of its 31 bargaining units only those in the Sheriff's Department get longevity pay. The county explains that this is the result of separate elected officials and non-coordinated bargaining. The county claims that longevity "is really an anachronism and should not now be added as an additional form of economic compensation." (County Pre-Hearing Statement, page 10)

Analysis – The longevity issue is complicated by the recent changes in the location of the Protective Services units and the change in the form of county government. For a number of years, Protective Services was located in the Department of Central Services where it was under the control of the Board of Cuyahoga County Commissioners. In 2010 the Commissioners moved Protective Services to the Sheriff's Office where it was under the jurisdiction of the elected Sheriff. However, the subsequent change to the executive/council form of government resulted in the Sheriff's Office becoming a department of the county so that Protective Services and the rest of the Sheriff's Department fell under the control of the County Executive.

These changes have implications for the union's demand for longevity. In the Department of Central Services and the rest of the departments formerly under the jurisdiction of the Commissioners, no employees have longevity. However, in the Sheriff's Office, which is now a county department, all of the employees enjoy longevity benefits.

The positions of the parties are predictable. The union wants the Sergeants to receive longevity like other employees in the Sheriff's Department. The county wants them to continue to be treated like employees in departments outside of the Sheriff's Department.

The Fact Finder believes that the union can make a good case for granting longevity to the Protective Services Sergeants. Their jobs resemble those of other employees in the Sheriff's Department much more than the jobs of employees in other county departments. In a significant number of cases, the Protective Services Sergeants work alongside other employees in the Sheriff's Department who receive longevity making those other employees the most relevant comparison for purposes of fact finding.

Despite these facts, the Fact Finder believes that it would be inappropriate for him to recommend that the Protective Services Sergeants be granted longevity. First, the Sergeants' unit consists of 11 individuals while the Protective Services Officers' unit includes 130 individuals. It could be argued that the issue of longevity should be decided between the county and Protective Services Officers unit.

Second, as the discussion above indicates, the county still faces some financial challenges and a degree of uncertainty regarding the strength and pace of the economic recovery as well as the future of state funding. It would not be difficult to argue that on this basis, the union's demand for longevity should be postponed until some of the county's financial issues are resolved.

Third, the Fact Finder believes that other issues, such as wages, are more pressing at the present time. Therefore, to the extent that the county has the resources, adjustments in wages have been recommended.

The fact that the Protective Services Officers are currently negotiating for a contract to be effective January 1, 2011, creates a potential complication. Since longevity is likely to be one of the Protective Services Officers' demands, simply denying the Sergeants' demand for longevity could result in the Protective Services Officers getting longevity while their supervisors were not. To eliminate that possibility, the Fact Finder will recommend a provision that requires the county to extend longevity payments to the Sergeants should the Protective Services Officers negotiate them or should they be created as the result of fact finding or conciliation.

Recommendation – The Fact Finder recommends the following contract language:

> There shall be no longevity payments for the term of the agreement except if the Protective Services Officers negotiate longevity payments or obtain them through fact finding or conciliation, those payments shall be granted to the Sergeants at the same time and under the same terms.

7) Tentative Agreements – The Fact Finder recommends that the the tentative agreements reached by the parties be adopted.

Nels E. Nelson
Fact Finder

January 3, 2012
Russell Township
Geauga County, Ohio