

Received Electronically @ SERB June 29, 2012 1:38pm
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD
FOR THE STATE OF OHIO

IN THE MATTER OF FACT FINDING BETWEEN:

Franklin County Board of Commissioners,
Public Facilities Management Department
Employer

And SERB Case # 10-MED-08-0953

Fraternal Order of Police, Ohio Labor Council, Inc.
Employee Organization/Union

Appearances:

For the Employer:

Aaron L. Granger, Esq.

And

Robert D. Weisman, Esq.

Schottenstein, Zox & Dunn, Co., L.P.A.
Columbus, Ohio

For the Union:

Ross Rader, Staff Representative
FOP, OLC, Inc. Ohio Labor Council
Columbus, Ohio

REPORT AND RECOMMENDATIONS OF THE FACT FINDER

Frank A. Keenan
Fact Finder

BACKGROUND:

This proceeding concerns replacing a collective bargaining agreement referred to herein as the parties' current or predecessor Contract, with a successor Contract, to govern the terms and conditions of a bargaining unit comprised of all of the full time and regular part time Court Security Officers (CSO's) of the Employer, and excluding all other employees of the Employer. The current Contract provides at Article 34 – Duration of Agreement, that said “Agreement shall be effective on January 1, 2008 and remain in full force and effect through December 31, 2010.”

This 2008-2010 Agreement, the current Agreement, was executed/signed-off on, and dated, by the Union's Chief Negotiator and three of the four members of the Union's Negotiation Team on January 29, 2009, and by the fourth member of the Union's Negotiating Team on January 30, 2009.

On behalf of the Employer, the Director of Public Facilities Management, the Director of Human Resources, and the Employer's Chief Negotiator, executed/signed-off on, and dated the current Contract on January 29, 2009. Also on January 29, 2009, the Assistant Prosecuting Attorney, with the qualifier “approved as to form,” executed/signed-off on, and dated, the current Contract. Thereafter, the Employer's “legislative body,” the three Franklin County Commissioners, executed/signed-off on, and dated, the current Contract on February 17, 2009.

The record shows that prior to the Fact Finding hearing the parties met at the bargaining table to negotiate the terms of their successor Contract on eight (8) occasions, commencing on January 4, 2011, up to and including June 28, 2011. Thereafter, issues

still remaining unresolved and at impasse were submitted to SERB's Fact Finding dispute resolution process. Pursuant to SERB's process, the parties met with a SERB appointed mediator on three separate occasions, namely, July 30, 2011; August 3, 2011; and August 18, 2011. These pre-Fact Finding hearing negotiations and subsequent mediation sessions with a SERB appointed mediator resulted in the parties reaching agreement on most of the issues the parties had at the commencement of their successor Contract negotiations.

Before directly addressing the matter of the different perceptions the parties have concerning which, and how many, issues remain "unresolved," the Employer asserting in its Fact Finding position statement that six (6) issues remain "unresolved," and the Union asserting that only three (3) issues remain unresolved, I believe a logical starting point for this Report and its Recommendations would be a review of various terms for the successor Contract, which the parties were unequivocally agreed upon, albeit, and notwithstanding the fact, that the parties did not formalize these agreements in separate written documents, which they then both executed/signed-off-on, and dated.

One such agreement concerns the format, that is to say the structural framework, as it were, of the parties' successor Contract. Thus, study of the record as a whole reveals that, leastways insofar as is pertinent here in Fact Finding, as of the parties' third negotiation session with the SERB-appointed Mediator on August 18, 2011, the parties' last face-to-face negotiation prior to the Fact Finding hearing, and, indeed, probably from the outset of the parties' negotiations for their successor Contract, the parties were implicitly agreed to retain in their successor Contract the same structural format as obtains in their current Contract. Thus the record taken as a whole shows that the parties have implicitly agreed as follows: that their successor Contract will retain the same

number of Articles as obtains in the current Contract; that the successor Contract will retain the same title for each Article in the successor Contract as obtains in the current Contract; that, acknowledging that since some “Articles” have no subdivisions designated and titled “Sections,” the successor Contract will retain all of the current Contract’s Section titles, or, no title, when and where a current Contract Section is untitled; and, that, except for the numbering of most of the current Contract’s Sections within Article 26-SICK LEAVE, a matter revisited hereinafter, the parties have agreed to retain in their successor Contract the same numbering for the Sections within an Article as obtains in the current Contract.

Also noted are two additional agreements the parties reached prior to the Fact finding hearing. These two agreements and their specific terms, come to light when one compares the Union’s proposed language for Article 26-SICK LEAVE, Section 26.3 – “Eligible Uses,” for the successor Contract, set forth in Tab “S” of the Union’s materials in support of its Fact Finding position statement, with the Employer’s proposed language for Article 26-SICK LEAVE Section 26.4 - “Eligible Uses,” set forth at Tab #18 of the Employer’s materials in support of its Fact Finding position statement. Thus, one such agreement is that, with the exception of part “A,” second full paragraph thereof, of Section 26.3 Eligible Uses of Article 26-SICK LEAVE of the current Contract, the parties are agreed to retain, verbatim, all of the text of all of the Sections within Article 26-SICK LEAVE of the current Contract in their successor Contract.

The other agreement the parties reached concerns the “exception” noted just above. Thus the parties reached an agreement that for their successor Contract they would make certain amendments to the text of the current Contract’s provision at Article 26-

SICK LEAVE, Section 26.3 Eligible Uses, part “A.”, second full paragraph thereof. The amendments made serve to broaden the current Contract’s definition of a bargaining unit employee’s “immediate family.” In turn, by broadening the definition of a bargaining unit employee’s “immediate family,” the parties have expanded the occasions which justify the potential for a bargaining unit employee to receive sick leave. In sum, therefore, instead of retaining the text of the current Contract’s provisions at Article 26, Section 26.3, part “A.”, second full paragraph thereof in the successor Contract, the parties have agreed to substitute the text within the parentheses, set forth below. Preceding said parenthesized text are provisions from the current Contract which are bracketed. These bracketed provisions are part and parcel of the many provisions within Section 26.3 of the parties’ current Contract, which, as noted above, the parties have agreed to retain in their successor Contract. Setting forth this bracketed material at this point in the Report is only intended to furnish the context, and enhance the reader’s understanding of, the mutually agreed to amendments in the successor Contract to the current Contract’s Section 26.3, part “A.”, second full paragraph thereof. Thus, the parties are agreed that their successor Contract should read as follows:

[Article 26

SICK LEAVE

. . . .

Section 26.3 [or 26.4, as discussed hereinafter *] Eligible Uses. Sick leave will be granted to employees, upon approval of the Employer, for the following reasons: A. Illness or injury of the employee or a member of the employee's immediate family.]

“Definition of immediate family: mother, father, sister, brother, spouse, domestic partner, child, spouse or domestic partner's child, grandparent, grandchild, mother or father-in-law, sister or brother-in-law, son or daughter-in-law, or other person who stands in place of a parent.”

Despite the foregoing agreements, as indicated above, going into the Fact Finding hearing phase of the dispute resolution process, several matters still remained “unresolved.” Moreover, as also indicated hereinabove, comparison of the parties' respective Fact Finding hearing position statements reveals that, going into the Fact Finding hearing, the parties had different perceptions concerning just what provisions for their successor Contract remained “unresolved.” In this regard it is the Employer's perception and position in its Fact Finding position statement that six (6) issues remain “unresolved” and require a “Recommendation” from the Fact Finder concerning their resolution. Those six (6) issues are as follows: (1) Article 20-WAGES, Section 20.1 (untitled), dealing with across-the-board wage increases; (2) Article 20-WAGES, Section

* The “number” assigned to the successor Contract's “Eligible Uses” Section within Article 26-SICK LEAVE, is contingent upon the undersigned's disposition of the Employer's desires for (1) an additional “new” provision within Article 26 regarding and titled, “Sick Leave Pay Rates,” and (2) the placement of said “new” Section at and as Section 26.3, which matters are discussed hereinafter.

20.2 (untitled), dealing with shift differential pay; (3) Article 22-HOLIDAYS; (4) Article 25-INSURANCE; (5) Article 26-SICK LEAVE; and (6) Article 34-DURATION OF AGREEMENT.

However, it is the Union's perception, and position in its Fact Finding position statement, that only three (3) issues remain "unresolved," and require a "Recommendation" from the Fact Finder concerning their resolution. Those three issues are as follows: (1) Article 20-WAGES, Section 20.1 (untitled), dealing with across-the-board wage increases; (2) Article 26-SICK LEAVE; and (3) Article 34-DURATION OF AGREEMENT. Put another way, at paragraph eight (8) of the Union's Fact Finding position statement, entitled "Unresolved Issues," the Union, unlike the employer, does not list, and thereby identify, the following matters as remaining unresolved: Article 20-WAGES, Section 20.2 (untitled), dealing with shift differential pay; Article 22-HOLIDAYS; or Article 25-INSURANCE.

The conflicts and ambiguities which emerge from comparison of the parties' respective Fact Finding position statements concerning what issues remain "unresolved" between the parties, and hence require a recommendation from the undersigned as Fact Finder, are compounded when one looks at the loose leaf binder of materials the Union submitted at the Fact Finding hearing in support of its Fact Finding position statement.

Thus at Tab #4 of said materials, titled "unchanged Articles," (meaning Articles in the current Contract concerning which the parties have purportedly agreed to bring forward, "unchanged," into their successor Contract), the Union lists Article 22-HOLIDAYS. In doing so the Union indicates that the issue of Article 22 HOLIDAYS is

“resolved.” As seen hereinabove, however, the Employer regards the issue of Article 22-HOLIDAYS as “unresolved.”

And under Tab #3 of the Union’s materials in support of its Fact Finding position statement, entitled “Tentative Agreements,” one finds a one-page written document addressing “Article 25-INSURANCE.” By virtue of its placement within and under Tab #3 of the Union’s materials in support of its Fact Finding position statement, this document purports to be the union’s proposal here in Fact Finding for the successor Contract’s provision at Article 25-INSURANCE. Further with respect to this document, written at the top right hand corner of said document is the following: “Management Proposal August 18, 2011.” These circumstances of course give rise to the inference that the Union is now agreed to the terms the Employer has been proposing for Article 25-INSURANCE in the successor Contract since August 18, 2011, and has continued to propose here in Fact Finding. However, unlike all other documents dealing with Articles/Sections for the parties’ successor Contract, which one finds under Tab #3 of the Union’s materials in support of the Fact Finding position statement, this Article 25-INSURANCE proposal is not set forth on a document, executed/signed-off-on by representatives of both parties, and dated. This Circumstance perhaps explains why the Employer continues to regard Article 25-INSURANCE as “unresolved.”

With respect to a provision in the successor Contract addressing Section 20.1 (untitled) of Article 20-WAGES, dealing with across-the-board wage increases, the Union does list Section 20.1 under paragraph eight (8), entitled “Unresolved Issues,” in its Fact Finding position statement, but, conspicuously, the Union does not list Article 20, Section 20.2 (untitled), dealing with shift differential pay, under paragraph eight (8)

entitled “Unresolved Issues” in its Fact Finding position statement. Additionally, Article 20, Section 20.2 (untitled), dealing with shift differential pay, does not appear under Tab #4, entitled “Unchanged Articles” of the materials the Union has submitted in support of its Fact Finding position statement, nor, as noted above, does it appear under Tab #3 entitled “Tentative Agreements” of the materials the Union has submitted in support of its Fact Finding position statement. Whether the Union ever sought prior to the Fact Finding hearing a shift differential pay provision for the successor Contract different from that being sought here in Fact finding by the Employer, is not disclosed in either the Union’s Fact Finding position statement or in the Union’s materials submitted in support thereof. However, the Employer’s Fact Finding position statement does disclose a pre-Fact Finding hearing position taken by the Union concerning shift differential pay for the successor Contract at Article 20-WAGES, Section 20.2 (untitled), which differs from that being sought by the Employer both here and prior to Fact Finding. Thus, in the Employer’s Fact Finding position statement the Employer indicates that regarding shift differential pay, the FOP had been proposing that “beginning July 1, 2012 the shift differential for second and third shift be increased from \$.40 to \$.45, and beginning July 1, 2013 that the shift differential for second and third shift be increased to \$.50.” And, at no time throughout these Fact Finding proceedings has the Union contested or contradicted this statement by the Employer in the Employer’s Fact Finding position statement concerning the Union’s pre-Fact Finding hearing position with respect to shift differential pay. Accordingly I find that the above account of the Employer regarding the Union’s pre-Fact Finding hearing position statement concerning shift differential pay is accurate.

Having elected to not put forth in its Fact Finding position statement its pre-Fact Finding hearing proposal on shift differential pay, or some alternative thereto, different from the Employer's pre-Fact Finding hearing proposal on shift differential pay, logically enough the Union sets forth no evidence or argument in its Fact Finding position statement or in its materials in support of its Fact Finding position statement, concerning shift differential pay. Moreover, unlike the situation with respect to Article 22-HOLIDAYS and Article 25-INSURANCE, addressed and elaborated upon hereinabove, wherein the Union, in its supportive materials at Tab #4 and Tab #3, expressly signaled its concurrence with the Employer's proposal for Article 22-HOLIDAYS for the successor Contract, and expressly signaled its concurrence with the Employer's proposal for Article 25-INSURANCE for the successor Contract, respectively, no such express signal of concurrence has been given by the Union in its supportive materials with respect to the Employer's specific proposal for the successor Contract regarding Article 20-WAGES, Section 20.2 (untitled) dealing with shift differential pay.

In my judgment the Employer's Fact Finding position statement provides a possible explanation for some of the conflict in the parties' respective positions both internally and to each other, concerning which provisions for the parties' successor Contract have been "resolved" and which remain "unresolved."

Thus in its Fact finding position statement the Employer states that in its view "the parties are in agreement with the number of holidays for this bargaining unit," and that "the County [i.e. the Employer] also believes that both parties are comfortable with the current contract," the current Contract's language being what the Employer proposes for the parties' successor Contract. "However," states the Employer, "the Union has not

tentatively agreed to the specific [HOLIDAY] provision because it was packaged with other articles that are still unresolved.”

Similarly, with respect to Article 25-INSURANCE, the Employer has stated in its Fact Finding position statement that the Employer “believes that it has a basic agreement with the Union regarding the employee contribution to the monthly premium for 2011, 2012, and 2013.” The Employer additionally states in its Fact Finding position statement that prior to the Fact Finding hearing, the Union had been proposing “adoption of the language by the [Employer] relating to the amount of the [bargaining unit] employee’s monthly premium,” but that in its view “the Union has not tentatively agreed to the [Employer’s] specific position because it was packaged [presumably by the Employer] with other articles that are still unresolved.”

Then, too, in footnote one at page three of the Employer’s Fact Finding position statement the Employer asserts that in its view “the parties have arrived at the same position for Insurance, Sick Leave, and the concept of Duration, but they have not been tentatively agreed to because they were included as part of a package contingent upon agreement with other articles currently in dispute.”

As will be seen hereinafter some of the Employer’s footnote one observations concerning consensus having been reached on an issue were apparently correct, but other such observations were not correct.

In any event, whatever the reasons for the parties’ conflicting contentions, coming into the Fact Finding hearing, concerning which provisions for the parties’ successor Contract had been “resolved,” and which remained “unresolved” and therefore required a “recommendation” from the undersigned Fact Finder, in light of said conflicts it was

imperative that, prior to opening the Fact Finding hearing record for the receipt of evidence and argument concerning the parties' "unresolved" matters, the undersigned, as Fact Finder, "attempt mediation," pursuant to the authority to do so granted in Ohio Revised Code 4117.14 (C) (3) (f). Both parties were amenable to participating in a mediation effort, and, indeed, both parties did so. At the conclusion of said mediation effort, both parties executed/signed-off-on, and dated a document embodying the text of the tentative agreement they had reached in mediation concerning Article 22-HOLIDAYS, for their successor Contract, which document is attached to this Report as Appendix No. 1. Similarly, at the conclusion of the mediation effort, both parties executed/signed-off-on and dated a document embodying the text of the tentative agreement they had reached in mediation concerning Article 25-INSURANCE, for their successor Contract, which document is attached to this Report as Appendix No. 2.

With respect to Article 20-WAGES, Section 2012 (untitled), dealing with shift differential pay rates, as indicated above, during the mediation session the Employer continued to put forward and propose the same modest increase in shift differential pay, that it had been proposing prior to the Fact Finding hearing, which for the reader's convenience was that "beginning January 1, 2012 that the shift differential for second and third shift be increased from \$.40 to \$.45, per hour." The Union on the other hand did not put forth in its Fact Finding position statement any proposal regarding shift differential pay rates. Further in this regard, however, and as indicated hereinabove, as the Employer's uncontradicted Fact Finding position statement reveals, prior to the Fact Finding hearing the Union had been proposing that "beginning July 1, 2012 that the shift differential for second and third shift be increased from \$.40 to \$.45, and beginning July

1, 2013 that the shift differential for second and third shift be increased to \$.50.” Without doing the math it appears that this proposal of the Union was somewhat more generous than the Employer’s shift differential pay proposal. In any event, in the course of the mediation session held the day of the Fact Finding hearing, the Union did not revive, reiterate, or otherwise put forth its pre-Fact Finding hearing position concerning shift differential pay rates. In my judgment the above-described circumstances support an inference that the Union was thereby signaling its abandonment and/or withdrawal of the Union’s pre-Fact Finding hearing proposal for the successor Contract’s shift differential pay rate provision, and, in turn, also signaling its acceptance of the Employer’s proposal for the successor Contract’s shift differential pay rate. However, unlike the circumstances surrounding Article 22-HOLIDAYS and Article 25-INSURANCE, wherein both parties executed/signed-off-on, and dated a document recording the text of their tentative agreements concerning HOLIDAYS and INSURANCE, respectively, no such document was executed/signed-off-on, and dated by the parties concerning Article 20-WAGES, Section 20.2 (untitled), dealing with shift differential pay rates. Accordingly, notwithstanding the above-noted inference that can be drawn to the effect that the parties have reached a “tentative” agreement with respect to shift differential pay rates for their successor Contract, to wit, the Employer’s position, the parties’ failure to execute/sign-off-on, and date a document embodying their tentative agreement concerning shift differential pay rates, as they had with respect to Article 22-HOLIDAYS and Article 25-INSURANCE, injects an element of uncertainty concerning the soundness of an inference that the parties had in fact reached a tentative agreement concerning shift differential pay rates. In these circumstances I believe that the undersigned’s

recommendation concerning shift differential pay rates would rest on a more solid foundation, were it based upon the Evidence of Record with respect to the matter of shift differential pay rates, rather than were it based only upon an “inference” that the parties, by virtue of their course of action and/or inaction, had reached a tentative agreement to adopt the Employer’s proposal concerning shift differential pay rates for their successor Contract. Accordingly, the matter of shift differential pay rates, Article 20-WAGES, Section 20.2 (untitled), for the parties’ successor Contract, is taken up hereinafter in a discussion concerning the record evidence and the undersigned’s rationale for the formal “Recommendation” made with respect to Article 20-WAGES, Section 20.2 (untitled), dealing with shift differential pay rates.

Summing up the state of the parties’ negotiations for a successor Contract, as of the conclusion of the mediation session held the day of the Fact Finding hearing, the parties had successfully reached agreement in writing and resolved the content of their successor Contract on all matters but four, namely: (1) Article 20-WAGES, Section 20.1 (untitled), dealing with across-the-board wage increases; (2) Article 20-WAGES, Section 20.2 (untitled), dealing with shift differential wage increases; (3) Article 26-SICK LEAVE; and (4) Article 34-DURATION OF AGREEMENT. And even with respect to these four “unresolved” matters, in the course of the aforesaid mediation session the parties managed to narrow their differences with respect to some of these four unresolved matters. Put another way, as of the conclusion of the aforesaid mediation session the parties had either worked their way through and reached a “tentative agreement” with respect to certain Articles, the text of which they set forth in writing on a document which they then executed/signed-off-on, and dated, for inclusion into their successor

Contract, or, the parties had come to an agreement to carry forward certain Articles from the current Contract, “unchanged,” into their successor Contract. In this manner then the parties succeeded in resolving some thirty (30) Articles, out of thirty-four (34) Articles to be negotiated for their successor Contract, as of the conclusion of the mediation session held on the day of the Fact Finding hearing. Moreover, included among the thirty Articles (or parts thereof) agreed to, out of thirty-four Articles to be negotiated, the parties had reached agreement on the bargaining unit employee’s health insurance benefit for the successor Contract. In this regard, and particularly in light of the weak economy, accompanied by the constantly increasing costs of health insurance, the issue of a bargaining unit employees’ health insurance benefit typically remains at issue in the Fact Finding hearing process. But here the parties impressively and commendably reached an agreement with respect to the bargaining employees’ health insurance benefit, and set it forth in writing on a document which both parties executed/signed-off-on, and dated, for insertion into their successor Contract. Accordingly, in my judgment, the parties’ ability to reach agreement on virtually thirty out of thirty-four Articles to be negotiated for their successor Contract, as of the conclusion of the mediation session held the day of the Fact Finding hearing, is impressive. Indeed, in my judgment, while the parties’ negotiations, as seen above, were concededly protracted, they nonetheless clearly indicate that both parties have, from the outset of their negotiations and to date, been engaged in good faith collective bargaining for the terms of their successor Contract.

Turning to the four matters which remain “unresolved” and require a recommendation from the undersigned as Fact Finder, namely, Article 20-WAGES, Section 20.1 (untitled), dealing with across-the-board wage increases; Article 20-

WAGES, Section 20.2 (untitled), dealing with shift differential pay rates; Article 26-SICK LEAVE; and Article 34-DURATION OF AGREEMENT, in arriving at the Recommendations made with respect to these “unresolved” issues, the undersigned Fact Finder, pursuant to the provisions of O.R.C. 4117.14 (C) (3) (e) and O.R.C. 4117. 14 (G) (7) (a) to (f), inclusive, has taken into consideration the factors and/or guidelines set forth in O.R.C. 4117.14 (G) (7) (a) to (f), whenever the evidence of record (including perforce those matters of which the undersigned Fact Finder has taken administrative notice) reflects that one or more of said factors and/or guidelines are present here. Those factors of guidelines set forth in O.R.C. 4117.14 (G) (7) (a) to (f) read as follows: “(a) past collectively bargained agreements, if any, between the parties; (b) comparison of the issues submitted to final offer settlement relative to employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved; (c) the interests and welfare of the public, the ability of the public Employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards of public service; (d) the lawful authority of the public Employer; (e) the stipulations of the parties; and (f) such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.”

At the Fact Finding hearing both parties introduced documentary evidence, testimonial evidence, and arguments, to support their proposals and the

“Recommendations” they respectively sought from the Fact Finder. Said evidence and arguments of the parties and the Fact Finder’s “Recommendations” and rationale for same are set forth hereinafter.

A. Article 34-DURATION OF AGREEMENT

I. The Parties’ Evidence & Arguments and the Fact Finders Conclusions & Recommendations:

Inasmuch as the Recommendation made with respect to Article 34 impacts the cost of the parties’ respective positions regarding across-the-board wage increases and shift differential pay rates, Article 34-DURATION OF AGREEMENT will be addressed first.

I note at the outset that the current Contract at Article 34 provides as follows:

“ARTICLE 34

DURATION OF AGREEMENT

The Agreement shall be effective on January 1, 2008 and remain in full force and effect through December 31, 2010.” (Emphasis supplied.)

In its Fact Finding position statement the Union sets forth the precise language it proposes for Article 34 of the successor Contract and seeks to have the Fact Finder recommend to the parties for their successor Contract. Thus the Union proposes that the successor Contract, at Article 34, read as follows:

“ARTICLE 34

DURATION OF AGREEMENT

The Agreement shall be effective on January 1, 2012 and remain in full force and effect through December 31, 2014.” (Emphasis supplied.)

It can thus be seen that the Union's proposal for Article 34 of the parties' successor Contract follows the precise phrasing and language of the parties' current Contract, except, of course, for the calendar dates set forth in the current Contract.

The Employer, in its Fact Finding position statement, does not set forth the precise language it proposes for Article 34 of the successor Contract and seeks to have the Fact Finder recommend to the parties for their successor Contract. However, the Employer does summarize and set forth the concepts it proposes for Article 34 of the successor Contract and seeks to have the Fact Finder recommend for their successor Contract. Thus the Employer's summary proposes that the parties' successor Contract at Article 34 should provide for "a three-year contract beginning retroactive to January 1, 2011 (only regarding wages) and ending on December 31, 2013." (Emphasis supplied.)

It can thus be seen that the Union's precisely spelled-out proposal for Article 34 in the parties' successor Contract, and the Employer's "summary" only of its proposal for Article 34 in the parties' successor Contract rest on different concepts with respect to the beginning and the ending of the successor Contract. One "difference" referenced is that under the current Contract the parties expressed and established the point-in-time at which the current Contract would end by way of stating that the current Contract "shall...remain in full force and effect through December 31..." In labor relations parlance the phrase " through December 31..." is understood as the equivalent of providing that the Contract "shall remain in full force and effect until midnight December 31,..." The Union seeks to replicate and perpetuate this same phrasing, terminology and concept in the successor Contract, changing only the calendar year referred to in the current Contract. In this regard I note that the Employer, by stating in its fact Finding

position statement at page two, paragraph one, last sentence thereof, that the previous contract [i.e. the current Contract] “terminated at midnight December 31, 2010,” demonstrates that the Employer is aware and understands that the phrase “shall...remain in full force and effect through December 31...” in the parties’ previous Contract, the current Contract, is considered in labor relations parlance to be the equivalent of a provision reading “shall...remain in full force and effect until midnight December 31...” Nevertheless, instead of seeking to replicate the phrase and concept of the current Contract to the effect that the Contract “shall...remain in full force and effect through December 31...” in the successor Contract, as the Union has done, the Employer in its summary of its Article 34 proposal would have the successor Contract “ending on December 31...” But this phrase and terminology, “on December 31...,” is understood in labor relations parlance as the equivalent of providing that “the Contract will end at 12:00 a.m. on December 31...,” and not that the Contract “shall remain in full force and effect until midnight December 31...” In so doing, the Employer has interjected a new concept different from the concept for the ending of the parties’ current Contract. Reviewing the entirety of the record with an eye for determining if the record as a whole indicates whether the Employer’s introduction in its summary proposal of a new concept and formula for the ending of the successor Contract was deliberate and intentional or inadvertent and unintentional, clearly the Employer’s understanding that the current Contract’s provisions were the equivalent of providing that the current Contract would end at midnight December 31..., and not at 12:01 AM on December 31, as the Employer is proposing, suggests that the Employer was intentionally proposing a concept for the ending of the successor Contract new and different from the ending provided for its

current Contract. However, other factors persuade me that, on balance, the record does not support the conclusion that the Employer sought and intended to depart from the current Contract's concept for the ending of the parties' collective bargaining agreement. Thus, for example, as previously noted, the Employer, unlike the Union, did not put forth in its Fact Finding position statement the precise, specific, verbatim language it was proposing for the successor Contract, relying instead on only a "summary" of its proposal. But in my view, a summary is, by definition, a less rigorous drafting exercise than is crafting specific Contract language, and hence a summary is more vulnerable to imprecision. Additionally, with respect to other departures from the current Contract proposed by the Employer, for example, the Employer's Sick Leave and Wages proposals, the Employer has addressed in plenary fashion the purported merits of its proposal and the purportedly undesirable consequences of its failure to persuade the undersigned of the merit of its contentions, but has not so addressed the departure from the current Contract that it arguably proposes with respect to the effective ending of the parties' successor Contract. In my judgment, if the Employer had intended to depart from the current Contract's formula for ending the successor Contract, the Employer would have addressed its proposed departure and change from the current Contract's formula in the same plenary and thorough fashion that it has addressed all other changes from the current Contract that it is proposing. Its failure to do so with respect to Article 34 for the successor Contract was therefore aberrant and accordingly supportive of a finding that in phrasing of its summary of its proposal for Article 34 of the successor Contract, the Employer inadvertently interjected the "new" and different concept for the proposed ending for the successor Contract. Then, too, the Union does not address the "new" issue

that the Employer's summary of its position interjects into Article 34 for the successor Contract, and in any event the record is devoid of any evidence that the Union was in any way misled by the Employer's inadvertent "new" concept for Article 34 in the successor Contract. Put another way. I am confident that the record supports the conclusion that both parties intend that their successor Contract should terminate at midnight December 31, albeit, as seen above, they continue to differ concerning the operative calendar year the successor Contract should become effective, i.e. begin, and effectively end, the Employer proposing that the successor contract begin January 1, 2011, and therefore de facto retroactive to January 1, 2011, and terminate/end midnight December 31, 2013; and the Union proposing that the successor Contract begin in effect retroactive to January 1, 2012 and terminate/end December 31, 2014.

In its Fact Finding position statement, by definition a document crafted prior to the Fact Finding hearing, the Employer expresses its concern that, while in negotiations the Union has accepted "a three-year Contract in theory," it speculates that the Union may nevertheless "propose a later starting date" than the starting date the Employer proposed in both negotiations, and in its Fact Finding position statement, and at the Fact Finding hearing, namely, January 1, 2011. And the Employer goes on to speculate in its Fact Finding position statement that the Union may be motivated to propose a date later than January 1, 2011 as "a way to justify a larger wage increase." Without commenting on the Employer's speculation in its Fact Finding position statement concerning the Union's "motivation" for proposing a later starting date for the successor Contract than does the Employer, the Employer, as seen above, proved to be correct when it speculated

that the Union, in its Fact Finding Position statement, and at the hearing, might “propose a later starting date” than the Employer was proposing in its Fact Finding position statement. Thereafter, in the mediation session held the day of the Fact Finding hearing, and therefore after the parties had taken their respective positions and proposals with respect to Article 34 of their successor Contract, both parties clarified, affirmed and agreed that their successor Contract should be for a three-year period/term only. However, in that same mediation session the Union did not abandon its proposal in its Fact Finding position statement and supportive materials, to the effect that the parties’ successor Agreement be “effective January 1, 2012 and remain in full force and effect through December 31, 2014.” Similarly, in that same mediation session, the Employer did not abandon its proposal in its Fact Finding position statement and supportive materials that the parties’ successor Contract should be “a three-year Contract, beginning retroactive to January 1, 2011 (only regarding wages) and ending on December 31, 2013.”

Accordingly, while the parties have reached an agreement concerning the period of time their successor Contract’s Article 34 should encompass, namely, that it should encompass a three (3) year period of time, and, while the parties have agreed that whatever calendar ending date they agree to, their Contract will end at midnight on December 31st of the calendar year that they can agree upon, the parties have not reached an agreement with respect to the calendar year starting date and the calendar year ending date for the three (3) year period of time that they are agreed their successor Contract should be in effect. In these circumstances it is incumbent upon the undersigned to fashion an Article 34-DURATION OF AGREEMENT provision that provides a specific

calendar month, day, and year, starting date and a specific calendar month, day, and year ending date for the agreed-to three-year Contract term of the parties' successor Contract, and to recommend same to the parties for their successor Contract's provision at Article 34, taking into consideration in doing so, the statutory factors and/or guidelines set forth in, as noted hereinabove, O.R.C. 4117.14 (G) (7) (a) to, and including (f), discussed hereinabove.

In fashioning an Article 34-DURATION OF AGREEMENT provision for the parties' successor Contract and recommending same to the parties for their adoption into their successor Contract, I note at the outset the fact that the current Contract between the Employer and the Union, the Fraternal Order of Police, Ohio Labor Council, Inc., was apparently the parties' "first" collectively-bargained Contract. This fact comes to light by inference, based on the Employer's uncontradicted representation in its Fact Finding position statement (also referred to by the Employer as its "Prehearing Brief") at page two thereof, wherein the Employer indicates, without any subsequent contradiction from the Union, that the instant Fact Finding proceeding for a successor Contract concerns "only the second collective bargaining agreement between the FOP, OLC, Inc. and Franklin County," the inference being that the predecessor Contract, the current Contract, was the first Contract between the Employer and the FOP, OLC, Inc. (Emphasis supplied.) This inference is in turn bolstered by another inference. Thus Article 1-RECOGNITION, Section 1.1 Recognition of the current Contract reveals that the FOP, OLC was not certified by SERB as the exclusive collective bargaining representative of the CSO bargaining unit until March 3, 2008 in SERB Case No. 07-Rep-09-0125, which fact gives rise to the inference that the current Contract between the Employer and the

FOP, OLC, Inc. was the parties' first because, in the absence of any evidence of an earlier SERB certification, or an earlier voluntary recognition of the FOP, OLC, Inc. prior to 2008, or a collective bargaining agreement having been entered into by the Employer and the FOP, OLC, Inc., prior to 2008, and there is no such evidence in the record made before me, there is simply no basis or support for a finding that the parties' 2008-2010 Contract was not their first collective bargaining agreement. Accordingly, I find that the parties' 2008-2010 Contract, the current Contract, was the parties' first collective bargaining agreement covering the CSO bargaining unit. This being so, the current Contract constitutes a "past collectively bargained agreement...between the parties," within the intendment of ORC 4117.14 (G) (7) (a). Accordingly, the current Contract's provision at Article 34, and the concepts it embodies, is a proper matter, indeed a mandated matter, to be taken into consideration by the undersigned in arriving at a recommendation to the parties concerning Article 34-DURATION OF AGREEMENT, for their successor Contract. Also to be kept in mind is the underlying philosophical theory behind ORC 4117.14 (G) (7) (a), and that is that stability in the parties' collective bargaining relationship is desirable under the Statute, and that such stability can be fostered when one looks to, continues with, and repeats a contract provision that has been tried in past collectively bargained agreements between the parties and there is no evidence that said provision has not worked well. These guidelines are especially persuasive here where the character of the parties' negotiations for their predecessor/current Contract, and their successor Contract are similar. And here the character of both the current Contract's negotiations and the successor Contract's negotiations have been virtually the same, that is, they have both been "protracted."

However, as seen above, notwithstanding the protractedness of the parties' negotiations for the current Contract, the parties' first Contract, the parties were able to find common ground, and come to an agreement concerning, not only the period of time the current Contract would remain in effect, namely, a three-year period of time, but they also came to an agreement on the starting time and the ending time of the three-year period of time the parties were agreed that their Contract, the current Contract, would remain in effect. To get to their agreement both parties agreed to reach back toward roughly and essentially the time frame that they commenced their protracted negotiations, and made that date, or thereabouts, the "retroactive" start time for their first, their current Contract, to wit January 1, 2008. Add to this start time the three-year period of time the parties had previously agreed upon as the length/term of their current Contract, and the parties arrived at, and agreed, to the end time of their first agreement, which they described as "through December 31, 2010" in their 2008-2010 Contract, the current Contract. In the absence of any evidence that the method and model described above for determining the current Contract's start time and end time has not worked out well for the parties, and there is no such evidence in the record made before me, I find that the statutory factor at the ORC 4117.14 (G) (7) (a), namely, "past collectively bargained agreements...between the parties," supports most of the Employer's proposal for Article 34-DURATION OF AGREEMENT.

Additional support for most of the Employer's proposal concerning Article 34 is in my view to be found in a fact and reality, of which I take administrative notice, and that fact and reality is that following protracted negotiations parties often reach back to roughly the commencement of their protracted negotiations, as the parties did here with

respect to the current Contract, and make that date the start date of their Contract. The commonplaceness of this model and mechanism for resolving Contract “duration” issues following protracted negotiations is testament to the soundness of the parties’ reliance on this model for the current Contract and the Employer’s desire to do so again here. In my view this “reach back” concept is bolstered by the fact that the Union has not put forth any evidence that its proposal for a one-year hiatus between the current Contract’s ending and the successor Contract’s beginning shares the kind of acceptance that the Employer’s proposal does. Indeed in my considerable experience as a Fact Finder I am unaware of any party even seeking to do so, never mind meeting with success.

Indeed in my judgment the commonplaceness of parties, other than the parties before me, reaching back to more or less the start date of their protracted negotiations, and using that date as the start date for the Contract over which they have protractedly been negotiating, as the Employer seeks to do here, falls well within the intendment of the Statute’s “other factors” provision at ORC 4117.14 (G) (7) (f). This is so because the phenomenon of the commonplaceness of parties to a collective bargaining agreement being willing to implement the “reach back” concept under discussion is not a factor addressed in ORC 4117.14 (G) (7) (a) through (e), but is a factor “normally or traditionally taken into consideration in the determination of the issues submitted to, among other processes, the Fact Finding process. Accordingly, this “reaching back” concept, sanctioned, as seen above, by ORC 4117.14 (G) (7) (f), also supports, as does ORC 4117.14 (G) (7) (a), most of the Employer’s proposal for Article 34-DURATION OF AGREEMENT in the parties’ successor Contract.

Still to be considered is whether or not the text of the successor Contract at Article 34-DURATION OF AGREEMENT, should articulate that said provision is “retroactive..only regarding wages,” as urged and proposed by the Employer in its summary proposal for the successor Contract’s Article 34, or not. Given the Union’s proposal for the successor Contract’s Article 34, which, as noted above, mimics the text of the current Contract (except of course the calendar dates set forth in the current Contract’s Article 34, as noted above), and in light of the fact that the current Contract’s Article 34 makes no reference to “retroactivity” or to retroactivity “only regarding wages,” as the Employer seeks the undersigned to recommend here, the inference is that the Union would be opposed to expressly providing in Article 34 that said provision was “retroactive only regarding wages,” as urged by the Employer. Accordingly, here again pursuant to ORC 4117.14 (G) (7) (a), I look for guidance to the parties’ past collectively bargained agreements, and I note that in the current Contract the parties did not expressly provide in Article 34 that it was “retroactive only regarding wages,” What they did do with respect to the concept of retroactivity of Article 20-WAGES was they expressed retroactively head on within the wage provision, Article 20, itself. Thus the parties expressly provided in their current Contract, at Article 20-WAGES, Section 20.1, as follows:

“Section 20.1. Upon ratification of this Argument and upon approval by the Franklin County Board of Commissioners, all employees will receive a three-percent (3%) wage increase retroactive to February 1, 2008....”

In the absence of any evidence that the wording of the current Contract’s provision at Article 34 gave rise to any problems or controversy over the life of the

current Contract, and there is no such evidence in the record made before me, I am persuaded to recommend to the parties the same phrasing and concepts they utilized in Article 34 for their current Contract, coupled with the calendar months, days, and years sought by the Employer, rather than the calendar days, months, and years sought by the Union, or obviously enough, the calendar days, months, and years set forth in the current Contract.

Recommendation:

In light of the foregoing it is recommended that the parties accept and insert into their successor Contract, the following text for Article 34-DURATION OF AGREEMENT:

“Article 34

DURATION OF AGREEMENT

The Agreement shall be effective on January 1, 2011 and remain in full force and effect through December 31, 2013.”

B. Article 20–WAGES Section 20.1 (untitled) Dealing With Across The Board Wage Increases

1. The Parties’ Evidence & Arguments and the Fact Finder’s Conclusions and

Recommendations:

As is most always the case, the bulk of the Fact Finding hearing was focused on the compensation package for the bargaining unit during the term of the parties’ successor Contract. In these times of fiscal stress at all levels of government, National, State, and County, this issue is a particularly difficult one for both parties. Nevertheless

the parties are agreed that the bargaining unit will receive across-the-board increases over the term of the successor Contract. And notwithstanding the fact that the parties are coming off of three years of in effect 4% annual across-the-board increases under their current contract, both parties' far more modest proposals for their successor Contract reflect their mutual appreciation for the harsh fiscal realities of the times. To enhance one's understanding of the parties' wage proposals, the Employer, in its Fact Finding position statement sets forth, without contradiction from the Union, some important "background" information which helps me to comprehend the parties' respective positions concerning across-the-board wage increases. Thus, as the Employer has put it, "all CSO's are presently paid at the same hourly rate of \$15.70 (\$32,656 annually). When this bargaining unit was represented by the Communication Workers of America there was a differential in the CSO's salary because the starting salary did not change during the term of the Contract. Therefore, as current employees received annual wage increases, new employees would start out at the new hire rate and it created some separation among the bargaining unit members. The Communication Workers of America negotiated with the County to gradually eliminate that system over time by bringing everyone up to the top pay by the end of the contract term. That negotiation created the pay schedule that we have today with all CSO's making the same amount regardless of years of service. The FOP, OLC, Inc. now wants to modify that system by establishing some separation again for existing employees as compared to new hires. Based upon that history the County proposes to lower the entry level hire rate to \$13.56 for all three years of the contract. All current employees would stay at \$15.70 before implementation of the wage increase."

The Employer, in its Fact Finding position statement proposes that effective retroactive to January 1, 2011: the starting salary for new hires would be \$13.56; that employees with “< [i.e. “less than”] three (3) years of service would receive a 0.7% increase; that employees with “three (3) or more years” of service would receive a 1.1% increase; thereafter, effective [retroactively to] January 1, 2012: the “starting salary” for new hires will remain at \$13.56; that employees with “less than three (3) years” of service would receive an 0.7% increase; that employees with “three (3) or more years” of service would also receive an 0.7% increase; thereafter, effective January 1, 2013, the “starting salary for new hires will remain at \$13.56; employees with less than three (3) years of service would receive a 0.7% increase; and employees with three or more years of service would receive a 0.7% increase.

The Union proposes in its Fact Finding position statement that all bargaining unit employees would continue to receive \$15.70 until January 1, 2012, at which time they would receive, retroactive to January 1, 2012, as follows: “entry level to 1 year” employees would receive \$14.00; employees with “1 year to 3 years” of service would receive a 1.5% increase, bringing said employees to \$15.94 per hour; employees with “3 years and up” years of service would receive a 2.5% increase, bringing said employees to \$16.09; thereafter, effective January 1, 2013: “Entry level to 1 year “employees would receive \$14.25; employees with “1 year to 4 years “of service would receive a 1.5% increase, bringing said employees to \$16.18 per hour; and employees with “4 years and up” years of service would receive a 2.0% increase, bringing said employees to \$16.41 per hour; thereafter, effective January 1, 2014, “entry level to 1 year” employees would receive \$14.50 per hour; employees with “1 year to 5 years” of service would receive a

1.5% increase, bringing said employees to \$16.42 per hour; and employees with “5 years and up” years of service would receive a 2.09% increase, bringing said employees to \$16.74 per hour.

As seen above, going into the Fact Finding hearing the Employer was proposing that new hires, entry level employees, receive a starting wage of \$13.56 for each year of its wage scale, namely, effective 1/1/11; 1/1/12, and 1/1/13. At the same time, however, the Employer was proposing a 0.7% increase for employees with “less than three (3) years of service,” which proposal, it seems to me, would, by definition also apply to new hires, thereby creating an inconsistency/conflict with its constant \$13.56 per hour proposal for new hires. The Union on the other hand was proposing a \$14.00 per hour wage for entry level to 1 year” employees, effective on its wage scale which does not commence until 1/1/12.

In any event, in the course of the mediation session held the day of the Fact Finding hearing, the parties were agreed that they were no longer seeking to address rates of pay for new hires in their successor Contract, “new hires” being referred to and characterized by the Employer in its Fact Finding position statement as “starting to 1 year” employees, and referred to by the Union in its Fact Finding position statement as “entry level to 1 year” employees. Accordingly, the Report and Recommendations of the undersigned does not address new hires and their rate of pay.

Aside from new hires and their rates, there are other significant differences in the parties’ proposals such as the differences in the time frames they propose for their respective wage increases. Thus the Employer divides the bargaining unit workforce into two categories: those with less than three years of service, and those with three years or

more years of service. In the first year of the Employer's proposed Contract term, the Employer proposes a 0.7% wage increase effective January 1, 2011 for bargaining unit employees with less than three (3) years of service, and a 1.1% wage increase for those with three (3) or more years of service. Thereafter, commencing 1/1/12, the Employer proposes a 0.7% wage increase effective 1/1/12, for all bargaining unit employees without regard to their years of service; and on 1/1/13, the Employer proposes an additional 0.7% increase, again to all bargaining unit employees without regard to their years of service. Additionally, going into the Fact Finding hearing the Employer represents in its Fact Finding position statement, and without contradiction, that prior to the Fact Finding hearing the Union was proposing that effective July 1, 2011, starting employees for the first year of their employment, would receive \$14.00 per hour; thereafter, effective January 1, 2012, starting employees would receive \$14.25 per hour the first year of their employment; and that effective January 1, 2013, starting employees would receive \$14.50 per hour for the first year of their employment. As for employees with from 1 to 3 years of service [i.e. 1 year of service up to 3 years of service], they would, effective July 1, 2011, receive a 1.5% wage increase, while employees with three or more years of service would, effective July 1, 2011, receive a 2.5% wage increase. Thereafter, effective January 1, 2012, employees with from 1 up to 3 years of service would receive a 1.25% wage increase, and employees with 3 or more years of service would receive a 1.5% wage increase. And, in the last year of the Contract as proposed by the Union, effective 1/1/2013 employees with from 1 up to 3 years of service would receive another 1.25% wage increase, and employees with 3 or more years of service would also receive another 1.5% increase.

It can thus be seen that comparing the parties' pre-Fact Finding hearing wage proposals, one is confronted with a confusing tangle of conflicting proposals, that is: different effective start dates for the first wage increase; different years of service criteria for eligibility for a wage increase; different amounts of wage increases depending on the years of service category an employee fell into. The Employer has stuck with its pre-Fact Finding hearing positions here in Fact Finding, but the Union has not. Thus in its Fact Finding position statement the union's wage proposals differ from its pre-Fact Finding proposals, as represented by the Employer, and not contradicted by the Union. In any event, suffice it to say that, as can be seen from what follows, the Union's newest proposals in its Fact Finding position statement do not serve to simplify the tangle of the parties' conflicting proposals.

With respect to the union's proposal for Article 20-WAGES, Section 20.1, dealing with across-the-board wage increases, the Union proposes in its fact Finding position statement the same amounts of wages for "entry level to 1 year" employees over the life of the term of the Contract that it proposed pre-Fact Finding, namely, \$14.00 in year one; \$14.25 in year two; and \$14.50 in year three; with a very significant variation, however. And this variation is the start date of all of the wages it proposes in its Fact Finding position statement, namely, January 1, 2012; January 1, 2013; and January 1, 2014. Furthermore, while the Union, in the first year of wage increases, categorizes employees who are not new hires into the same two categories it did in pre-Fact Finding, namely, 1 year up to 3 years of service and 3 years and up of service, in years two and three of the Contract it proposes in its Fact Finding proposal, it changes the categories of employees to employees with "1 year up to 4 years of service, and employees with "4

years of service and up.” Thus the Union proposes that effective 1/1/13, employees with 1 year up to 4 years of service receive a 1.5% wage increase and for employees with 4 years of service and up, the Union proposes a 2% wage increase. Finally, effective 1/1/14, employees with 1 year up to 5 years of service receive a 1.5% wage increase and employees with 5 years of service and up receive a 2% wage increase.

An overarching theme in the Employer’s presentation is revealed in the Employer’s contention to the effect that in order to juggle and cover all of its many obligations “it is imperative that the County slow down the growth of wage increases.” (Emphasis supplied). In this regard, as noted hereinabove, the parties’ current Contract provided for 4% per annum across-the-board increases in the wages of bargaining unit employees. To be sure since some of these 4% increase were described to be, and were regarded to be “market adjustments,” the inference is that the parties were agreed in 2008 that the compensation of the bargaining unit employees was “below market,” and needed “adjustments” upward in order to be more in line with “external comparables.” Presumably the compensation package of the 2008-2010 Contract met this goal. Furthermore, as it turns out this adjustment was locked in at the point in time when the economy was on the cusp of the worst financial crisis since the Great Depression in the 1930’s. The adverse impacts of this crisis stubbornly persist. And the recovery of the Economy is at best “soft.” Indeed, the return of the Economy, including perforce the economy of the Employer, to levels of prosperity which would sustain the historic pattern of gains in the compensation of public sector employees, and the political pathway thereto, both remain “uncertain.”

Thus the Employer specifically contends that “the nationwide economic recession...continues to have a devastating impact on the financial challenges facing Franklin County now in its immediate and foreseeable future.” The Employer substantiates this assertion with testimony from County personnel with responsibilities for the County’s finances such as Christy Russell, Assistant Director OMB for the County and former Director of Human Relations, Margaret Snow, and with voluminous documentary evidence. The Employer’s case is well documented and in depth, and as a practical matter only the most salient evidence is chronicled here. The Employer’s Fact Finding position statement tersely outlines the Employer’s core rationale for urging the wage proposal it puts forth. Thus in its Fact Finding position statement the Employer asserts that “the nationwide economic recession...continues to have a devastating impact on the financial challenges facing Franklin County now, and in the foreseeable future. The loss of ...federal and state funding...during a period of stagnant growth, high levels of unemployment,...an anemic housing market..., an unprecedented drop in total property values...have put Franklin County on a trajectory for a collision course of financial disintegration as it attempts to withstand annual increases in expenses while enduring annual decreases in revenue. In order to be good stewards of tax payer dollars while navigating this unstable economy, Franklin County has been forced to operate leaner budgets, while maintaining the core essential services and other governmental functions its residents have come to expect with the value of their tax dollars.” The Employer contends, in effect, that it has been a responsible steward of the County’s resources, pointing out that the County implemented a half-penny sales tax in 2005, part of which remains in effect. This sales tax was and is “critical,” asserts the Employer,

because “it helps maintain Franklin County’s AAA bond rating, which allows Franklin County to pay out interest on loans through bonds at more favorable rates, saving tax payers’ money, minimizing the interest on any debt service for capital improvement projects needed “to help stimulate the economy,” and provide the County with “a mechanism to address emergencies and unforeseeable events, rather than using it to cover operational expenses.” The Employer also notes that unemployment is high, as are home foreclosures, two circumstances which adversely impact the General Funds’ receipts.

In a summing up of sorts the Employer asserts that “the General Fund revenues projected in 2012 will bring in \$118 million dollars less than it did pre-recession, back in 2007. This dramatic shrinking of annual revenue in over a five year period has to be recognized as having a significant impact on the County’s ability to pay, given [that] the size of the work force [60 plus employees] for this bargaining unit has not diminished over the same period of time. In short, Franklin County has found other creative ways to reduce spending without impacting the good paying jobs this bargaining unit enjoys, but its ability to continue to do so with continuing annual decreases in revenue will be greatly compromised if it can’t slow the growth of expenses.” Put another way, the Employer contends that “until now, this bargaining unit has largely managed to avoid being called upon to share in the burden of helping the County balance its budget during several consecutive years of decreased General Fund Revenue and the past several years of substantial budget cuts.”

Relying on “internal comparables,” the Employer contends that “while other employees within the County have seen their relative position in this market place drop, the FOP’s position in the marketplace has improved,” and that according to a wage study

conducted in 2009, the CSO bargaining unit “comes into this round of collective bargaining already being paid at the high end of the market rate.” Still further with respect to internal comparables, the Employer points to several Franklin County public agencies, including four (4) units within the Sheriff’s Department, of which at least some, presumptively have available to them the Statute’s Conciliation process, which, in my judgment, somewhat diminishes their value as an “internal comparable,” to be taken into consideration by the Fact Finder. Nonetheless, several other Franklin County agencies whose pay scales, pursuant to 4117.14 (G) (7) (f), would properly be taken into consideration by the undersigned were referenced by the Employer. Those agencies and their wage settlements are set forth below.

	<u>2011</u>	<u>2012</u>	<u>2013</u>
Franklin County Child Support Enforcement Agency	2%	N/A	N/A
Franklin County Children Services	2%	1.5%	1%
Franklin County Clerk of Courts	1.5%	1%	1%
Franklin County Department of Job and Family Services	1.5%	1%	1%
Veterans Service Commission	1.5%	1%	N/A

The Employer also set forth as an internal comparable agency “Public Facilities Management (General), but the record does not reveal whether the term “General” refers to rank-and-file employees or managerial employees. Accordingly, I have not taken into consideration the compensation of these employees/managers.

In further support of its position the Employer makes the following bullet points:
 (A) decreased revenues prevent Franklin County from offering more than a 1.1% wage

increase in the first year of the Contract and 0.7% wage increases in the second and third year; (B) a 1.1% wage increase in the first year and a 0.7% wage increase in the second and third year is consistent with the current market rate for other Franklin County Agencies this year; (C) Franklin County currently offers highly competitive wage rates in comparison to similarly situated Court Security Officers.

Also important to note is the Employer's observation at page 19 of its Fact Finding position statement, wherein, in discussing the Employer's INSURANCE proposal, the Employer cogently observed as follows:

"The Employer proposes that beginning the first day of the month following the effective date of the agreement that bargaining unit employees will pay its same amount towards health insurance premiums as other employees under the auspices of the Franklin County Board of Commissioners in 2011, but no higher than \$60.00 per month for employees to cover themselves and non-spousal dependents, and no higher than \$160.00 per month for employees who choose to cover their spouse or domestic partner. That part of the proposal [i.e. the reference to the "effective date" of the Insurance proposal, which date is spelled out in the second paragraph of the parties' tentative agreement regarding Article 25-INSURANCE, Appendix II, to wit: "Effective the first day of the month following the approval of this collective bargaining agreement by the Franklin County Board of Commissioners, employees will pay \$60.00 a month, etc. etc.] gives this bargaining unit the added advantage of not having paid those [health insurance] rates from the beginning of the year although the wage package being proposed by the Employer contemplates the wage package being retroactive to January 1, 2011."

In other words, the Employer's proposals of only 0.7% increases in wages looks better when one considers that the Employer's proposal on Insurance, tentatively agreed to by the Union, and attached to this Report as Appendix II, serves to delay the near doubling of a bargaining unit employee's obligatory contribution toward the cost of the health insurance benefit until such time as the parties' successor Contract is approved by the Franklin County Board of Commissioners.

Then, too, the Employer observes as follows:

“Far too often fact finders place too much focus in unresolved wage disputes on only one of six factors listed under Ohio Revised Code Section 4117.14 (C) (4) (e). The one that is normally the focus at hearing is Section 4117.14 (C) (4) (e) (3), commonly referred to as the ‘ability of the public employer to pay.’ However, the rest of the sentence in that same section that is routinely overlooked or dismissed is the part that demands consideration of the effect of the adjustment on the normal standard of public sections.” (Emphasis supplied.)

In my experience as a Conciliator, where the preceding Fact Finder's Report must be read and considered, I am constrained to agree that it appears that too much attention and weight is inappropriately paid in Fact Finding to the Statute's criteria and factor of “ability to pay” and little or no attention is paid to the statutory criteria and factor of the normal standards of public service. Reduced to its essence the Employer is arguing that pursuant to ORC 4117.14 (G) (7) (c) internal comparables should and must be given great weight here. I agree. In my view, as recently expressed in the undersigned's Fact Finder Report in City of Dublin and F.O.P., Capital City Lodge No. 9, SERB Cases Nos. 10-MED-10-1374 and 10-MED-10-1375, issued September 26, 2011, the internal

comparables, sometimes characterized as internal equities, must be considered by the undersigned. Thus in the City of Dublin case the undersigned observed that implicit in the City's internal equity argument is the contention that any significant wage or benefit difference between the bargaining unit and other employees of the same Employer will foster resentment and undermine morale in and among the Employer's employees who are not receiving a like benefit. It need not be belabored that a resentful and demoralized work force has an adverse impact on the quality of the "other" employees work product, thereby undermining the statutory goal of "maintenance of the normal standard of public service," and, thereby also adversely impacting the "interests and welfare of the public," another statutory goal. Accordingly, it can be seen that the Employer's case has the wind at its back. Therefore, the evidence and statutory factors gin up strong headwinds against the undersigned recommending the Union's position. Thus the record shows that the Union relies in large part on past collectively bargained contracts between the parties where the parties are coming off of 4% increase. However, as seen above, it appears that that pay raise was the product of an essentially one-time effort to "adjust" the bargaining unit's wages up to the "market" norms for the work performed by the bargaining unit. That rationale is simply unavailable here, there being no evidence that the bargaining unit, over the course of the current Contract, has once again fallen behind the market norms for the performance of the tasks required.

The Union also relies on "external comparables." In more prosperous times reliance on external comparables would likely be given considerable weight, however, given the economic constraints present here, and the uncertainty concerning substantial improvement of the economy over the remaining life of the successor Contract, the

weight to be accorded to internal comparables which favor the Employer's position, simply trumps the "external comparables" statutory factor and the "past collectively bargained agreements between the parties" statutory factor upon which the Union relies.

Additionally, in my view, no case has been made for the complexity of the greater number of different categories/brackets of the years-of-service model proposed by the Union, and accordingly the Employer's less complex model of categories of years of service will be recommended.

The case with respect to Article 20-WAGES, Section 20.1 (untitled), dealing with across-the-board wage increases, is thus winnowed down to the amount of the wage increases and the rationale for same. In my view, in light of the health insurance contribution savings to the bargaining unit by virtue of the terms of Article 25-INSURANCE, already agreed upon, the Employer's wage increases for year one and year two of the successor Contract will be recommended. However, for the last year of the Contract, that is, effective January 1, 2013, a 1% increase will be recommended, thereby bringing the bargaining unit into line with internal comparables. Additional support for said 1% increase in the last year of the successor Contract is that it puts the bargaining unit on the same footing as its internal comparables going into the negotiations for the Contract which follows the successor Contract here.

Recommendation:

It is recommended that the parties' successor provide as follows:

Article 20-WAGES

Section 20.1. Upon verification of their Agreement and upon approval by the Franklin County Board of Commissioners, employees with one (1) year up to three (3) years of

service will receive a seven tenths of one percent (0.7%) wage increase retroactive to January 1, 2011. Employees with three (3) years of service or more will receive one and one tenth of one percent (1.1%) wage increase retroactive to January 1, 2011. Effective retroactive to January 1, 2012, employees with one (1) year of service up to three (3) years of service will receive a seven tenths of one percent (0.7%) wage increase. Effective retroactive to January 1, 2012, employees with three (3) years of service or more will receive a seven tenths of one percent (0.7%) wage increase. Effective January 1, 2013, employees with one (1) year of service up to three (3) years of service will receive a one percent (1%) wage increase. Effective January 1, 2013, employees with three (3) years of service or more will receive a one percent (1%) wage increase.

C. Article 20-WAGES, Section 20.2 (untitled), Dealing with Shift Differential Pay

1. The Parties' Evidence & Arguments and the Fact Finder's Conclusions and Recommendations:

By way of background I note at the outset that Section 20.1 of Article 20-WAGES in the current Contract begins with an introductory phrase which reads as follows: "Upon ratification of this Agreement and upon approval by the Franklin County Board of Commissioners, all employees will receive a...increase retroactive to February 1, 2008." In my judgment, while their introductory phrase is not repeated in Section 20.2, dealing with shift differential pay, I read Section 20.2 as if it were, and I so find. The precise express language of the current Contract at Section 20.2, dealing with shift differential pay, reads as follows:

Section 20.2. Effective retroactive to February 1, 2008, a differential in pay of forty cents (\$.40) per hour over the regular hourly rate shall be paid to all employees who are

regularly scheduled to work 2nd or 3rd shift for all hours the employee is in active paid status, except sick leave.

A differential pay of forty cents (\$.40) per hour over the hourly rate shall be paid to all employees required to work by the Employer a full eight (8) hour shift during the 2nd or 3rd shift for all hours actually worked during the 2nd or 3rd shift.

Also noted at the outset is the fact that in their respective Fact Finding position statements, neither party sets forth the precise language it proposes for Section 20.2 of Article 20 for their successor Contract. The Employer does, however, summarize a proposal on shift differential pay, stating in its Fact Finding position statement that it proposes that the successor Contract provide that “beginning January 1, 2012...the shift differential for second and third shift be increased from \$.40 to \$.45,” thereby reiterating its pre-Fact Finding hearing position in the matter. The Union on the other hand did not put forth a proposal of its own regarding shift differential pay, nor did it discuss what the Employer had been proposing prior to the Fact Finding hearing with respect to shift differential pay. Similarly, the Union did not discuss in its Fact Finding position statement whether or not it had put forth a proposal on shift differential pay prior to the Fact Finding process. The Employer, however, in its Fact Finding position statement, reveals, without contradiction from the Union, that prior to the Fact Finding process, the Union had been proposing that “beginning July 1, 2012...the shift differential for second and third shift be increased from \$.50 to \$.45, and beginning July 1, 2013, that shift differential for second and third shift be increased to \$.50.” However, the Union failed to reiterate this pre-Fact Finding process proposal in its Fact Finding position statement; in the mediation session held the day of the Fact Finding hearing; or at the Fact Finding hearing itself.

In my judgment the aforesaid circumstances give rise to an inference that the Union was thereby signaling that it was abandoning its pre-Fact Finding process proposal and accepting the Employer's proposal for shift differential pay. However, unlike the parties' impasse regarding Article 22-HOLIDAYS and Article 25-INSURANCE, which were also discussed at the mediation session held the day of the Fact Finding hearing, and concerning which both parties executed/signed-off-on, and dated a document memorializing the tentative agreement they had reached concerning Article 22 and Article 25 during said mediation, no such document was executed/signed-off-on, and dated concerning a tentative agreement reached with respect to Article 20-WAGES, Section 20.2 (untitled), dealing with shift differential pay. Accordingly, notwithstanding the above-noted "inference" to the effect that the parties had, in effect, reached a "tentative agreement" with respect to shift differential pay, the parties' failure to execute/sign-off-on, and date a document setting forth a tentative agreement concerning Article 20-WAGES, Section 20.2 (untitled), dealing with shift differential pay, as the parties had done with respect to Article 22-HOLIDAYS and Article 25-INSURANCE, injects an unsettling element of uncertainty concerning the validity of the inference that the parties have indeed reached an implicit "tentative agreement" to adopt the Employer's proposal for shift differential pay. Thus, in my judgment, the undersigned's recommendation to the parties concerning their successor Contract's provision dealing with shift differential pay, would rest on a sounder foundation if the undersigned grounded his recommendation concerning shift differential pay "on the merits," as it were, rather than resting said recommendation on the above-noted inference, coupled with the commonplace recommendation that the parties adopt all tentative agreements

reached. Put another way, while the Union's choice to not put forth its pre-Fact Finding process position regarding shift differential pay during the Fact Finding process could be construed as an acceptance of the Employer's position on the matter of shift differential pay, the parties' failure to execute/sign-off-on, and date a document memorializing the Union's apparent acceptance of the Employer's position, as it had done with respect to Article 22-HOLIDAYS and Article 25-INSURANCE, serves to shake one's confidence in the validity of the inference that the Union has truly acquiesced in the Employer's position on shift differential pay. Accordingly, assuming for the sake of analysis only, that the Union had the right to revive, reiterate, and restate its pre-Fact Finding process position on shift differential pay in the mediation session held on the day of the Fact Finding hearing and/or at the Fact Finding hearing itself, notwithstanding the fact that the Union does not state its pre-Fact Finding process position on shift differential pay in its Fact Finding position statement, in the final analysis the Employer has presented a formidable case "on the merits" in support of its Article 20, Section 20.2 proposal for the successor Contract's shift differential pay provision.

Particularly favorable to the Employer's position on shift differential pay is the strong evidence and argument relative to both "macro" economic realities, namely, the state of the national economy, and the evidence and argument relative to "micro" economic realities, namely, the revenue and expenditure realities of Franklin County and the State of Ohio, and the impact of same on the bargaining unit, discussed hereinabove with respect to across-the-board wage increases. Those arguments are equally applicable here. As for circumstances more specific to the type of compensation under discussion here, namely, shift differential pay, the Employer makes several persuasive points to

support the propriety of the modest \$.05 increase in shift differential pay that it proposes. One such point the Employer makes is that the statutory factor of “past collectively-bargained agreements between the parties” (ORC 4117.14 (G)(7)(a)) must be taken into consideration by the undersigned Fact Finder in the course of making a recommendation to the parties, and that statutory factor clearly supports the Employer’s proposal. In this regard the Employer points out that under the parties’ last Contract, the current Contract, the bargaining unit employees received a \$.05 increase in their hourly shift differential pay for their second and third shift work, over and above what bargaining unit employees were earning for second and third shift work before the 2008-2010 Contract, the current Contract, went into effect. And for the successor Contract, the Employer argues that it, “sees no justification for increasing the current amount of forty cents (\$.40) per hour beyond a five cent increase, which is the same increase during the last Contract cycle in unquestionably stronger economic conditions. (Emphasis supplied.) In this manner then, the Employer is quite properly relying on ORC 4117.14 (G)(7)(a) as supportive of its proposal. Also to be kept in mind is the fact that the rationale and motive behind paying 2nd and 3rd shift employees more money for performing essentially the same work as 1st shift employees is that 2nd and 3rd shift employees are required to work hours that are disruptive of an employee’s social and/or family life. But here the Employer somewhat weakens that rationale for an increase in the shift differential pay, leastways at the level of increase the Union proposes, when it points out, without contradiction from the Union, that during regular daytime business hours (first shift) CSO’s are busily engaged in screening all people and property coming into the Courthouse, escorting nonemployees around the facilities, and securing the building.” Indeed, coming into the building for the

Fact Finding hearing the undersigned was surprised to see the high volume and steady stream of people seeking entry into the Courthouse. This high volume and steady stream of entrants to be screened by the CSO's surely engenders considerable stress for those officers on duty. However, notes the Employer, "when the business day is done, the workload of the CSO's dramatically decreases." Accordingly, argues the Employer, "because the security concerns and responsibilities may be diminished during the hours covered by the current shift differential [for 2nd and 3rd shift] there is no compelling rationale to significantly increase the shift differential." The Union does not contend otherwise.

Moreover, argues the Employer, based on the number of hours worked and the number of officers scheduled to work on second and third shift, "a five cent increase would add an additional \$22,464.00 per year to the total wage package," and "the Union's proposal would double that in the third year of the Contract." Again the Union does not contest these assertions. Accordingly, argues the Employer, the increase in the shift differential sought by the Union, "is not fiscally prudent."

Based on all the foregoing I am constrained to agree with the Employer's analysis and conclusions. Accordingly, it will be recommended that the Employer's position with respect to shift differential pay be adopted by the parties in their successor Contract. In the absence of an expression of the Employer's concepts for shift differential pay in specific Contract language, I rely on the language of the current Contract's provision at Article 20, Section 20.2, updated to reflect the additional \$.05 increase in the shift differential pay of the current Contract, proposed by the Employer.

RECOMMENDATION:

It is recommended that the parties' successor Contract at Article 20, Section 20.2 provide as follows:

“Section 20.2 Effective retroactive to January 1, 2011 a differential in pay of \$.45 per hour over the regular hourly rate shall be paid to all employees who are regularly scheduled to work 2nd or 3rd shift for all hours the employee is in active paid status, except sick leave. A differential of forty-five cents (\$.45) per hour over the hourly rate shall be paid to all employees required to work by the Employer a full eight (8) hour shift during the 2nd or 3rd shift for all hours actively worked during the 2nd or 3rd shift.”

D. Article 26-SICK LEAVE

1. The Parties' Evidence & Arguments and the Fact Finder's Conclusions and Recommendations:

As seen hereinabove, in the course of their pre-Fact Finding hearing negotiations the parties reached agreement concerning the provisions of their successor Contract at Article 26-SICK LEAVE on all but one matter, namely, the Employer's proposal to “add” to Article 26-SICK LEAVE a “new” provision entitled “Sick Leave Pay Rates,” and to place this new provision into Article 20 at and as Section 26.2. The Union has adamantly resisted the addition of this new “Sick Leave Pay Rates” provision for the successor Contract throughout the parties' pre-Fact Finding hearing negotiations and has continued to resist the addition of this provision here in Fact Finding.

A review of the parties' pre-Fact Finding hearing negotiations concerning the provisions for their successor Contract dealing with Sick Leave is in order. Thus, as

seen hereinabove, coming into the Fact Finding hearing, the parties had reached an agreement, with one exception, to retain in their successor Contract the text, verbatim, of seven (7) of the eight (8) Sections within Article 3 26 of the current Contract. The “exception” referred to concerns the current Contract’s provision at Section 26.3 Eligible Uses. Concerning Section 26.3 of the current Contract, the parties reached agreement on certain amendments to the current Contract’s Section 26.3’s text at part “A,” second full paragraph, which amendments, as noted hereinabove, served to broaden the definition of a bargaining unit employee’s immediate family, thereby expanding the occasions on which a bargaining unit employee could potentially qualify for sick leave. And the parties also agreed to carry forward the entire text of this “amended” version of the current Contract’s Section 26.3 into their successor Contract.

As for the Employer’s “new” and “additional” Sick Leave Pay Rates provision, which the Employer would designate as “Section 26.2 Sick Leave Pay Rates,” the Employer proposes that the parties’ successor Contract provide as follows:

“ARTICLE 26
SICK LEAVE

....

Section 26.2. Sick Leave Pay Rates. Effective January 1, 2012, the rate of pay of sick leave use will be based upon the following schedule:

If sick leave is for FMLA or Non-FMLA sick leave with a doctor’s excuse.

The leave will not be included in the calculations of the payment for sick leave.

If sick leave is for non-FMLA or sick leave without a written doctor's excuse.

If 40 hours or less of sick leave has been used in the calendar year in which the leave is requested.

If sick leave is for non-FMLA or sick leave without a written doctor's excuse.

If more than 40 hours has been used in the calendar year in which leave is requested. *

Leave will not be paid out at 100% rate of pay when sick Leave is actually utilized.

Leave will be paid out at 80% of use rate of pay when sick leave is Actually utilized.*

*The 80% sick leave rate will not be applied to any employee with 60 hours or more of accrued sick leave at the time sick leave is used. Nothing in this section shall be constituted to grant an employee more sick leave than the employee has actually accrued. In the event this section is found to violate FMLA or any other State or Federal Law or regulation the parties agree that this paragraph will be null and void.”

It can therefore be seen that were the undersigned persuaded to recommend to the parties the Employer's "new" provision for "Sick Leave Pay Rates," and further be persuaded to place said "new" provision within Article 26 at and as Section 26.2, as the Employer seeks I do, in order to at the same time accommodate the parties' agreement to retain in their successor Contract the verbatim text of the current Contract's provisions at Sections 1, 2, 4, 5, 6, 7, and 8 of Article 26, and their agreement to retain in their successor Contract their amended current Contract provision at 26.3 Eligible Uses, such would necessitate the renumbering in the successor Contract all of the current Contract's Section numbers, except for Section 26.1 – Accrual of the current Contract, which would remain Section 26.1 in the successor Contract. Accordingly, and for example, Section

26.2 Minimum Use of the current Contract would become Section 26.3 in the successor Contract; and Section 26.3 Eligible Uses of the current Contract would become 26.4 in the successor Contract, etc. etc.

The case thus comes down to the persuasiveness, or not, of the Employer's request for changes from the status quo. In support of its request for a "new" sick Leave provision designed to disincentivize what appears to be the misuse of contractually provided for sick leave, the Employer contends that issues surrounding the bargaining unit employees' attendance has become "a monumental problem" to the point where the effectiveness of the Agency's 24/7 operations have become adversely affected. More particularly, the Employer in effect asserts that the abuses of some of the Contract's sick leave benefit, described by the Employer, and correctly so, as "generous," adversely impacts the many other bargaining unit employees, especially those with good attendance, who must cover the work not being done by those who abuse the system. While characterizing the attendance problem as "monumental" might be found to be an overstatement, numbers tell it like it is, and the numbers here clearly reveal that the attendance problem is significant to serious. Thus in 2010 the total absenteeism for the sixty-plus bargaining unit work force was 11,000+ hours of absenteeism with the consequence that the average absenteeism was 180 hours per employee. When one excludes FMLA related absenteeism, in 2010 on average a bargaining unit employee was absent on average 108 hours per year. The trend lines for 2011 were similar. The Employer points out that the provisions of the collective bargaining agreement for thousands of employees of the State of Ohio have far more stringent sick leave policies than that in place for the bargaining unit here. Accordingly, argues the Employer, the

policy it is proposing to address the attendance problem here is but a modest attempt to curb what is becoming a significant problem of abuse of the current Contract's sick leave benefit.

Assistant Director of Special Services Carolyn Bethel, who testified on behalf of the Employer, highlighted the fact that with respect to absenteeism problems in the past the former exclusive collective bargaining agent for the bargaining unit employees, the Communication Workers of America, had suggested work schedule changes, which the Employer went along with, but that they have not significantly helped the excessive absenteeism problem which remains ongoing. Ms. Bethel also pointed out that much absenteeism occurs on weekend days and accordingly those called in to cover for such absenteeism are especially demoralized. She also noted the call ins are typically paid overtime, an expensive and unwarranted expense in these tough economic times. Further in this regard Ms. Bethel testified without contradiction that 55% of overtime paid to the bargaining unit in "unscheduled overtime," a statistic which clearly indicates, indeed underscores the fact of the overtime problem for the Employer and for the many in the bargaining unit who are repeatedly being called in to cover for those absent.

The Union argues in effect that the Employer has not made the case that the attendance problem is significant or that the Sick Leave benefit is being abused. Bargaining unit employee Andre Peterson testified that it appeared to him that most overtime worked by bargaining unit employees was scheduled overtime. On this point I credit Ms. Bethel, however, who was simply in a better position than Peterson to ascertain that in point of fact unscheduled overtime was 10% higher than scheduled overtime, a finding on my part that in no way impugns the integrity of Mr. Peterson's

testimony. Mr. Peterson also pointed out, without contradiction, that only a small amount of the Employer's operations ran on a 24/7 basis. Mr. Peterson further testified, again without contradiction, that sanctions already exist for sick leave abuse, that is, disciplinary penalties. Indeed, the Union argues that the Employer could have proposed a less onerous policy than what is has proposed here, a policy which the Union characterizes as a "club."

Addressing the parties' conflicting contentions, I take administrative notice of the well established inference in labor relations that where under a sick leave policy, the ratio of the number of sick leave hours taken to the number of employees in the work force is high, such phenomenon is indicative of abuse of the sick leave policy. The conclusion is in turn bolstered by the equally well established inference in labor relations, of which I take the administrative notice, of the fact that where the level of unscheduled overtime is high (here, as noted, 55% of all overtime), abuse of sick leave is usually perceived, as the Employer here perceives, as a big part of the reason behind the high level of unscheduled overtime. Looking at the aforesaid statistics here, the Employer argues that the reasonable inference to be drawn is that some in the bargaining unit are abusing their sick leave benefit, and hence the sick leave benefit needs some reform. This perception of a need for some reform of the sick leave benefit is a reasonable conclusion to be drawn. The Union does not, and indeed cannot, strongly challenge the numerical statistics noted above upon which the Employer relies, and thus alternatively argues that any paring back of the current sick leave benefit is unwarranted, because, whatever the "numbers," there is no tangible "proof" that many using their sick leave benefit are "abusing" the system, and

hence Management's effort to pare back the benefit must be viewed as simply an instance of a lack of support of the bargaining unit employees.

Faced with statistical evidence of sick leave abuse, the Employee is well within its managerial rights and well within the parameters of sound labor-management relations principles when it seeks modest reforms of the sick leave benefit based on incentivizing employees to be more judicious in their use of the sick leave benefit. To be kept in mind is the fact that the apparent sick leave abuse problem is sufficiently serious to arguably support the Employer's proposing and seeking to replace the progressive concepts of the current Contract's sick leave benefit, and the modest reforms the Employer proposes, with a far more regressive sick leave benefit/policy. Thus, the Employer could have proposed non-progressive, indeed, regressive sick leave benefit terms, such as: ratcheting up the discipline component of the present policy; it could have turned exclusively to a discipline-based policy, which could in turn lead to endless grievances and arbitrations with their attendant costs for both parties; or it could have proposed narrowing the grounds for taking sick leave, instead of expanding the grounds for taking sick leave as it has in fact agreed to do in Article 26's Section dealing with "Eligible Uses." Instead, the Employer has proposed modest reforms to the sick leave benefit relying on disincentives, an approach still within what labor relations specialists would regard as "progressive," and not regressive. Had the Employer proposed a reform in line with one or more of the above-noted regressive sick leave benefit/policies, to replace or modify the present sick leave policy set forth in the current Contract, there may well have been some justification for the Union to characterize the Employer's sick leave proposals as a "club," but here

the nature of the modest reforms the Employer purposes for the parties' successor Contract clearly does not warrant the characterization that said proposal is "a club."

Accordingly, in light of all the foregoing, it will be recommended that the parties adopt the Employer's proposal for a "new" Section in Article 26 entitled Sick Leave Pay Raises, and it will be further recommended that said provision will be placed within Article 26 at and as Section 26.2, as the Employer requests. Placing the Employer's proposed "Sick Leave Pay Rates" at Section 26.2 will necessitate the renumbering of all the other Sections within Article 26, which, as indicated hereinabove, the parties are agreed to retain in their successor Contract, except that Section 26.1 Accrual need not be renumbered.

RECOMMENDATION:

The Employer's proposal for Article 26-SICK LEAVE, Section 26.2, Sick Leave Pay Rates; and its placement within Article 26 at Section 26.2 is recommended. It is also recommended that the parties retain Section 26.1 Accrual, as numbered and provided for in the current Contract. It is further recommended, however, that the parties renumber sections 26.2 through 26.8 of the current Contract in their successor Contract. More specifically, it is recommended that: the verbatim title, text and numbering of Section 26.1. Accrual in the parties' current Contract, be retained in the parties' successor Contract; that the verbatim title and text of Section 26.2. Minimum Uses of the current Contract be retained in the successor Contract, but that said Section be numbered in the successor Contract as Section 26.3; that the verbatim title and text of Section 26.13. Eligible Uses of the current Contract, except for paragraph "A.," first two paragraphs thereof, which should read as follows: "A. Illness or injury of the employee or a number

of the employee's immediate family. Definition of immediate family: mother, father, sister, brother, spouse, domestic partner, child, spouse or domestic partner's child, grandparent, grandchild, mother or father-in-law, sister or brother-in-law, son or daughter-in-law, or other person who stands in place of a parent," but that said Section be renumbered in the successor Contract as Section 26.4; that the verbatim title and text of Section 24.4 Notification of the current Contract be retained in the successor Contract, but that said Section be renumbered in the successor Contract as Section 26.5; that the verbatim title and text of Section 26.5 Abuse/Failure To Comply With Rules of the current Contract be retained in the successor Contract, but that said Section be renumbered in the successor Contract as Section 26.6; that the verbatim title and text of 26.6 Employees Reinstated, Re-employed, or Transferred From Another Agency of the current Contract be retained in the successor Contract, but that said Section be renumbered in the successor Contract as Section 26.7; that the verbatim title and text of Section 26.7 Medical Certification of the current Contract be retained in the successor Contract, but that said Section be renumbered in the successor Contract as Section 26.8; and finally, that the verbatim title and text of Section 26.8 Occasions For Medical Certification of the current Contract be retained in the successor Contract, but that said Section be renumbered in the successor Contract as Section 26.9.

Finally, it is recommended that the parties include in their successor Contract all tentative agreements arrived at, including perforce all tentative agreements to carry forward, unchanged certain provisions from the current Contract into the successor Contract.

This concludes the Fact Finder's Report and Recommendations.

Dated June 29, 2012

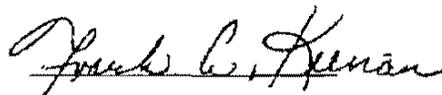
Frank A. Keenan
Fact Finder

Signature page #10-MED-08-0953
FF Report

Finally, it is recommended that the parties include in their successor Contract all tentative agreements arrived at, including perform all tentative agreements to carry forward, unchanged, certain provisions from the current Contract into the successor Contract.

This concludes the Fact Finder's Report and Recommendations.

Dated June 29, 2012



Frank A. Keenan
Fact Finder

June 29, 2012
received
1:38 pm KAA
SERB