

In the Matter of Fact-Finding Between the Ohio Patrolmen's Benevolent Association (Full-Time Non-Deputized Dispatchers) and Lake County (Ohio) Sheriff.  
Case No. 11-MED-01-0074.

**STATE OF OHIO**

**STATE EMPLOYMENT RELATIONS BOARD**

<b>In the Matter of Fact-Finding Between</b>	:	
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	:	
<b>LAKE COUNTY (OHIO) SHERIFF,</b>	:	
	:	
<b>Employer</b>	:	<b>Case No: 11-MED-01-0074</b>
	:	
<b>and</b>	:	
	:	
	:	
<b>OHIO PATROLMEN'S</b>	:	
<b>BENEVOLENT ASSOCIATION</b>	:	
<b>(Full-time Non-Deputized Dispatchers),</b>	:	
	:	
<b>Union</b>	:	
	:	

**REPORT AND RECOMMENDATIONS OF THE FACT FINDER**

**Michael D. McDowell, Esq., Fact-Finder**  
**Report Dated: August 12, 2011**

**APPEARANCES**

**For the Lake County Sheriff:**

**Mr. Tom Grabarczyk**  
**Labor Relations Management, Inc.**  
**6800 W. Central Ave., Suite L-2**  
**Toledo, OH 43617**

**For the Ohio Patrolmen's Benevolent Association (Full-time Non-Deputized Dispatchers):**

**Daniel Leffler, Esq.**  
**OPBA**  
**10147 Royalton Road, Suite J**  
**North Royalton, OH 44133**

**SUBMISSION**

The undersigned was selected by the parties as Fact-Finder in this dispute, pursuant to written notice to the Fact Finder dated June 14, 2011. A Collective Bargaining Agreement is in full force and effect between the Lake County (Ohio) Sheriff ("Sheriff's Office" or "Employer") and the Ohio Patrolmen's Benevolent Association (Full-time Non-Deputized Dispatchers) ("Union"), and is hereinafter referred to as the "CBA." The three (3) year CBA became effective April 1, 2008, and the express term of the CBA was to end on March 31, 2011. The CBA has been continued pursuant to Article 37 of the CBA which states that the CBA "shall continue unless modified or changed by mutual agreement." The parties have submitted numerous proposals and met on three occasions during negotiations that preceded this fact-finding matter.

The Lake County Sheriff's Office operates the Central Communications Division of the Lake County Sheriff's Office ("Central Communications"). Central Communications was established in or around 1986, largely due to the introduction of the Perry Nuclear Power Plant. The Central Communications Division employs 27 full and part-time employees, including one Lieutenant, four Sergeants, 17 non-Deputized Dispatchers, two part-time Dispatchers, and three civilian employees.

The Union bargaining unit consists of the seventeen (17) full time Non-Deputized Dispatchers in the Central Communications Division who are communications personnel. They provide, among other things, enhanced 911 telephone service and Computer-Aided Dispatch (CAD) to assist in efficient dispatching for the Sheriff's Office, and police and/or fire dispatching services for 19 Public Safety Agencies in municipalities throughout Lake County, which municipalities pay the Sheriff's Office to provide such service. Central Communications also will make initial notification for the activation of the County's Emergency Operations Centers (EOCs) in the event of an incident requiring such notification at the Perry Nuclear Power Plant.

On July 22, 2011, the Parties met in Painesville, Ohio, and participated in a Fact Finding Hearing. In addition to the representatives of the Parties and the Fact-Finder, the following individuals were present at the Fact Finding Hearing:

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**For the Sheriff's Office:** Chief Deputy Frank Leonbruno  
Major Charles H. Caldwell,  
Mr. Michael Matas, County Budget Director

**For the Union:** Dispatcher Julee Payne  
Dispatcher Dale Few

The Fact-Finder heard testimony, argument and admitted evidence submitted by the parties on the following issues:

Disciplinary Action - Article 12, Section 4;  
Sick Leave - Article 14;  
Holidays - Article 15, Section 4;  
Seniority Payment - Article 17;  
Wages - Article 18;  
Terms of Agreement - Article 37;  
Furlough Days - Side Agreement.

At the hearing, the Union withdrew its issue on Article 27 - Overtime, which it had previously submitted to Fact Finding.

The Parties agreed to extend the time periods to and including the issuance of the Report and Recommendations of the Fact Finder ("Fact Finder Recommendations") as provided under the Ohio Administrative Code Rule 4117.260. The parties also agreed to waive overnight delivery of the Report and Recommendations of the Fact Finder and agreed to delivery by electronic mail only.

In presenting this recommendation, the Fact-Finder has given full consideration to all reliable information relevant to the issues, and to all criteria specified in O.R.C. Sec. 4117.14(C)(4)(e) and Rule 4117-9-05(J) and (K) of the State Employment Relations Board, to wit:

- (1) Past collectively bargained agreements between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

- (3) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

### **ISSUES, POSITIONS OF THE PARTIES AND RECOMMENDATIONS<sup>1</sup>**

At the end of the Fact Finding Hearing, the following issues remained unresolved:

#### **SHERIFF'S OFFICE ABILITY TO PAY**

The Sheriff's Office has raised the issue of its inability to pay and, as this issue sets forth the Sheriff's Office 's position with respect to all of the concessionary issues it has raised in this proceeding, it will be dealt with initially.

The Sheriff's Office operates under two budgets, one budget for Central Communications and one budget for the remainder of the departments of the Sheriff's Office. These budgets are funded from the County General Fund.

The Sheriff's Office does have two substantial revenue streams but, absent payment of some specified costs or justified costs, the revenue streams are directed to the County General Fund. The first consists of the fees the Sheriff's Office collects from other public service entities in municipalities for which it provides Central Communications fire and/or police dispatch services. These funds are first recorded in a separate 603 account which was initially established for equipment purchases but has

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<sup>1</sup> The County and the Sheriff's Office operate on a calendar year basis. A contract year for the Agreement is April 1 to March 31 of the following year. In attempt to avoid confusion and except where otherwise noted, the Fact Finder Recommendations will refer herein to the period of April 1, 2011, to March 31, 2012 as "2011", the period of April 1, 2012, to March 31, 2013 as "2012" and the period of April 1, 2013, to March 31, 2014 as "2013".

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since been authorized by the County Commissioners to pay certain Central Communications Division costs including the Sheriff's Office information technology payroll (IT personnel provide services to the entire Sheriff's Office but a lion's share of that work is in Central Communications), contract services and utilities. The balance of this account is transferred to the County General Fund.

Another account, known as the 268 account, is where the State of Ohio deposits the County's portion of the fees collected from cell phone users, which was to reimburse municipalities for providing 911 dispatch services to cell phone users. This fund has been accessed by Central Communications to provide reimbursement of costs related to wireless 911 calls, which includes certain personnel costs; also, special permission was obtained from the State to apply certain of the funds to equipment costs.

As the Central Communications budget is derived from the County General Fund, the Sheriff's Office provided evidence to show that five significant areas, revenue streams for the County have been dropping substantially since 2007:

- Investment income dropped each year, from \$8,850,435.62 in 2007 (approximately 75%), to \$2,187,337.46 in 2010. In 2011, it projected to continue to drop to \$1,250,000.00.
- Building Department revenue dropped each year except one, from \$541,981.65 in 2007, to \$412,459.66 in 2010 (approximately 24%), and is projected to drop to \$375,000.00 in 2011.
- Real Estate Conveyance fees dropped each year from \$3,435,138.60 in 2007, to \$1,989,581.70 in 2010 (approximately 41%), and is projected to drop to \$1,800,000.00 for 2011.
- Property tax revenue dropped each year, from \$13,306,029.17 in 2007, to \$11,708,516.17 in 2010 (approximately 12%), and is projected to drop to \$11,258,000.00 in 2011.<sup>2</sup>

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<sup>2</sup> The County property revenue stream is subject to possible additional reductions as next year is the 6 year reassessment year in which the real estate tax assessments will be examined in more detail and it is estimated that real estate property assessments in the County may go down 8% to 10%.

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- Sales tax revenue has dropped each year, from \$15,699,263.55 in 2007, to \$14,519,064.43 in 2010 (approximately 7.5%), and is projected to drop to \$14,100,000.00 in 2011.

The information submitted by the Sheriff's Office thus shows that the revenue from these income streams has dropped over \$11M between 2007 and 2010 and is estimated to continue to drop over another \$2M in 2011 from 2010 levels.

In 2009 and 2010, total revenues of the County have been exceeded by expenses:

- 2009 Revenues of \$61,031,822.67 compared to 2009 Expenses of \$62,106,517.24
- 2010 Revenues of \$60,147,847.69 compared to 2010 Expenses of \$60,852,447.57.

In 2011, total revenues are estimated to exceed expenses (by less than 0.05%) as total 2011 Revenues are estimated to be \$55,098,976.79 while total 2011 Expenses are estimated \$54,851,919.29.

With respect to the General Fund balances, the Union demonstrated that the County had \$2,842,234.25 as an unencumbered General Fund balance on January 1, 2011. However, the Sheriff's Office showed that this was approximately 5% of the County expenditures, on the low end of the 5% to 15% recommended range for unencumbered fund balances.

It appears that revenue sources for the County from intergovernmental revenue inflows will also drop substantially or disappear for the County, as well as for other counties in Ohio, due to the impact of the proposed State budget. This reduction would be in three major areas:

- Deregulation - pursuant to a formula to reimburse local governmental entities in Ohio for reduced property tax revenue due to the impact of utility deregulation, since 2007 the County had been receiving \$649,987.00 per year from State collected kilowatt hour taxes. The State has since ceased that reimbursement, resulting in a Lake County General Fund loss

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of an estimated \$324,993.00 in 2011, and a loss of estimated revenue of \$541,927.00 in 2012, as well as a loss of an estimated \$433,866.00 in 2013.

- Tangible Personal Property Tax Reimbursement (TTP) - when the State eliminated tangible personal property taxes (machinery, equipment, and inventory) on business, it instituted a Commercial Activities Tax to serve as a replacement revenue stream for that lost income to local entities. Since 2007, the County had received income from this source but due to State budgetary changes, the County will receive nothing for future years:

2007	\$514,697.00
2008	\$720,454.00
2009	\$952,237.00
2010	\$966,692.00
2011	\$440,488.00
2012	-0-
2013	-0-

- Local Government Fund - Under current Ohio law, each month the Local Government Fund receives a fixed percentage of State General Fund tax revenues. From this source, the County had received \$2,147,317.00, \$2,121,255.00, \$1,826,466.00, and \$1,853,900.00 for the years 2007 to 2010 respectively, and an estimated \$1,700,000 for 2011. The proposed State budget would cut these payments by approximately 21% in State Fiscal Year 2012 and approximately 36% in State Fiscal Year 2013.

The impact on the County from these anticipated intergovernmental revenue cuts will be approximately \$1M per year. As the Sheriff's budget is approximately 30% of the General Fund expenditures, the impact of these items on the Sheriff's Office budget will be a reduction in funds available of approximately \$300,000.00 per year.

The Sheriff's Office also pointed to the potential loss of income from the police and/or fire dispatching services contracts expiring in 2012 for 17 of the 19 Public Safety Agencies in municipalities throughout Lake County for which the Sheriff's Office

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provides such services. Whether and to what extent these contracts will be renewed or terminated is a matter that may have significant impact on this income stream for the County, and the structure and operation of the Central Communications.

The amount of money that is provided for the budget of Central Communications is a direct result of what the Commissioners determine is appropriate to be allocated from the General Fund. The total budget for Central Communications had been set by the County Commissioners at \$2,039,677.00, \$2,026,600.00, \$1,846,172.00, and \$1,719,274.00 for 2008 through 2011 respectively.

The amounts set forth in the Central Communications budget is exclusive of the portion of the 603 account monies not transferred to the General Fund. The 603 account was initially intended to be a capital account to require some of the Central Communications revenue stream to be held for the purchase and updating of equipment and now, with County Commissioner approval, pays directly certain other costs of the Central Communications. The Union demonstrated that the 603 account monies could be accessed to pay for personnel costs. The Sheriff's Office also demonstrated that the payment of additional personnel costs out of the 603 account would seriously diminish the amount available for necessary equipment purchases. The Central Communications budget is also exclusive of the 268 account which may be accessed to cover costs of the wireless 911 calls, and for which special permission was obtained from the State to cover approximately \$400,000.00 for equipment costs. The Sheriff's Office demonstrated that the 268 account pays for personnel costs that the Sheriff's Office can justify as related to the wireless 911 calls by Central Communications.

The Sheriff's Office anticipates that it will exceed the Central Communications budget by approximately \$126,000.00 in 2011 due to unexpected costs that were not accounted for in the 2011 Central Communications budget. The Union does not seriously contest this assertion.

The Union pointed out that the Sheriff's Office's evidence shows that the 2008 Central Communications budget was \$2,039,667.00 and the 2011 budget for was Central Communications of \$1,719,274.00. The difference is that the 2011 Central Communications budget is \$320,393.00 less. The Union points out however, that during that period the number of Dispatchers was reduced from 22 to 17 part time employees.



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The Sheriff agreed that the approximate cost of these employees was \$68,000, showing a reduction in employee cost of \$340,000.00, an amount which more than covers the budget reduction.

As a general matter, the Union argued that it should be given more credit for the income streams brought in by Central Communications services. The Sheriff's Office argued that the County financial structure is based on a General Fund, and pointed out that the income streams do not come close to covering the costs of Central Communications.

The Union also pointed out a potential cost cutting possibility - eliminating the supervisor function which is not included in the minimum staffing count, and including that function in the minimum staffing count by instituting an OIC (Officer In Charge) process. There were also some instances of supervisor overlap in the schedule. The Union also showed instances where part time Dispatchers were scheduled over and above the minimum staffing requirements. Finally, the Union pointed out that one of the consoles had only one small municipality on the phone line for the midnight shift, and that consolidating that console with another for that period would be more efficient. The Sheriff's Office maintained that the supervisor concept was important to handle emergencies and take care of administrative matters, and that the matter of overlapping supervisor schedules would be reviewed. The Sheriff's Office pointed out that the use of part time Dispatchers over the minimum staffing was a matter of managing the part time staff with a set schedule and keeping them current. The Sheriff's Office stated that the concept of switching consoles is not easy as the municipalities with which the Sheriff's Office has contracts have a significant voice as to by whom and how their consoles are staffed.

The Sheriff's Office has demonstrated that the County, upon which the Sheriff's Office depends for General Fund budgetary support, is in poor financial health, and that significant reductions in revenue streams have contributed to that result. The prognosis is not good as it is expected that there will be further reductions or elimination of intergovernmental revenues.

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Further, the Sheriff's Office acknowledged that even if the Fact Finder were to grant every concessionary proposal requested by the Sheriff's Office, the savings would not approach the shortfall projected in the budget of Central Communications for 2011.

The Sheriff's Office does have the ability to reach into the 603 account to assist but that appears to be short sighted remedy as it virtually guarantees that in the future monies will not be available to meet the equipment needs of Central Communications. There is the possibility of the 268 account monies being shifted as there was a significant question regarding the use of those monies for personnel costs; certain of it is now used for personnel costs and there is a question of priorities for the remainder as well as the looming possibility of the sunset for those funds. The Union raised certain possibilities for reducing costs for which may merit careful consideration in this economic environment but which should be balanced against the legitimate long term concerns of the Sheriff's Office.

The Sheriff's Office has established its inability to pay position and it appears that substantial organizational and structural changes may be ahead for the County, the Sheriff's Office and Central Communications. Given the above, certain of the proposals of the Sheriff's Office will be recommended based on this established inability to pay position.

**Article 12 - Disciplinary Procedure**

Union Position: The Union proposes to reduce the reckoning period for which discipline may be used as the basis for progressive discipline. Per the current contract language, records of oral or written warnings may be considered for one (1) year after the date of the reprimand; records of suspension of three days or less may be considered for five (5) years after the date of suspension; and records of suspension of more than three days may be considered for seven (7) years from the date of suspension. The Union believes the length of time for which records may be considered is out of line with comparable contracts. The Union proposes to reduce the years to one (1) year for oral or written reprimands, two (2) years for suspensions of three days or less, and three (3) years for suspensions of greater than three days.

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County Position: The County opposes this request and argues that the current Collective Bargaining Agreement should remain unchanged in this regard. The County asserts that in the past the reckoning time periods were as the Union now requests. The County asserts that it has since achieved by negotiations a uniform reckoning period for all eight bargaining units in the Sheriff's office, which is the reckoning period in the current agreement. The uniform nature of the reckoning periods for all eight bargaining units lessens confusion regarding the administration of the reckoning periods.

Recommendation of the Fact-Finder: It is recommended that the current contract language be retained. The Union has not contested the Sheriff's Office evidence that all seven of the other bargaining units that have collective bargaining agreements with the Sheriff's Office have reckoning periods that are the same as in the language of the Dispatcher's current Collective Bargaining Agreement. The Union's evidence of the reckoning periods of other municipalities, without more, is not as persuasive as the evidence of the same reckoning periods being in the seven other Sheriff's Office units.

#### **Article 14 - Sick Leave**

County Position: The Sheriff seeks to reduce the number of accrued sick days by bargaining unit employees from 15 days per year to 10 days per year. The Sheriff maintains that this reduction would amount to a savings of approximately \$17,000.00 per contract year.

Union Position: The Union opposes the modification. The sick leave provisions of Article 14 give substantial flexibility as to how it may be used. Article 15, Section 5 also allows that two (2) of the days may be taken as personal days. Retaining the sick days will also benefit the longer service Dispatchers because of the higher payment percentage for banked sick leave for employees with longer years of service.

Recommendation of the Fact-Finder: Given the finding on inability to pay above, it is recommended that the number of accrued sick days per contract year allowable to bargaining unit employees pursuant to Article 14 of the Agreement be reduced from fifteen (15) days to ten (10) days. Due to the timing of the issuance of these Fact Finder Recommendations, this recommendation is not intended to be retroactive. By that it is

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meant that to the extent that sick days in excess of ten (10) days have already been properly utilized by bargaining unit member(s) in the time period of April 1, 2011, through the acceptance of these Fact Finder Recommendations, the employee(s) will not be required to reimburse the Sheriff's Office in any way for use of those sick days in excess of ten (10).

**Article 15 - Holidays**

County Position: The Sheriff proposes to eliminate three (3) personal days available in the current contract language each year to bargaining unit employees. The Sheriff maintains that the employees will still have the opportunity for personal days as each employee will retain the option, under Article 15, Section 5, of converting two (2) sick pay days to personal days if the employee has at least 40 hours of sick time accrued. The Sheriff estimates that eliminating these three sick days will save the Sheriff \$10,000.00 per year.

Union Position: The Union opposes the modification.

Recommendation of the Fact-Finder: Given the finding on inability to pay above, it is recommended that the proposal of the Sheriff's Office be adopted and that the language of Article 15, Section 4 of the Agreement providing three (3) personal days be stricken from the Agreement. Due to the timing of the issuance of these Fact Finder Recommendations, this recommendation is not intended to be retroactive. By that it is meant that to the extent that personal day(s) have already been properly utilized by bargaining unit member(s) in the time period of April 1, 2011, through the acceptance of these Fact Finders Recommendations, the employee(s) will not be required to reimburse the Sheriff's Office in any way for use of those personal day(s).

**Article 17 - Seniority Payment**

County Position: The Sheriff proposes to freeze the Seniority Payment (longevity) for 2011, 2012 and 2013. The Sheriff estimates that eliminating the Seniority Payment will save the Sheriff \$11,173.00 in 2011, \$13,080.38 in 2012, and \$15,015.00 in 2013.

Union Position: The Union opposes the modification.

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Recommendation of the Fact-Finder: Given the finding on inability to pay above, it is recommended that the Seniority Payment set forth in Article 17 should not be paid in 2011, 2012 and 2013.

**Article 18 - Wages**

County Position: The Sheriff proposes a 1.5% across the board reduction in wages in 2011 and a 1.5% across the board reduction in wages in 2012, with a wage reopener in 2013. The Sheriff estimates that the savings in 2011, 2012 and 2013 for the 1.5% across the board reduction in 2011 would be \$14,896, \$19,801.00 and \$19,801.00 respectively. The Sheriff estimates that the savings in 2012 and 2013 for the 1.5% across the board reduction in 2012 would be \$19,801.00 in each of those years.

Union Position: The Union opposes the modification proposed by the Sheriff's Office but offers a wage freeze for 2011 and 2012, with a reopener in 2013 in a three year agreement. Initially, the Union points out that it agreed to take 6 furlough days in 2010 and again in 2011. This year, the first year of the contract, the Union members took a 2.3% reduction in each of those years. The Sheriff's Office is requesting that the Union members be required to give back another 1.5% in wages for 2011, is requesting another 6 day furlough provision - another 2.3% reduction - as well as another 1.5% reduction in wages in 2012. Essentially, the Sheriff's Office, for these two items, is requesting a total of a 3.8 % reduction each year and a 7.6% reduction over two years. In addition, the Sheriff's Office seeks a freeze on the longevity pay which for those who are eligible results on average to about another 3% decrease each year in pay for Union employees. The grand total of these reductions, for those Union members who receive longevity pay in the first two years of the agreement would be a minimum of 7.6% for those who are not eligible for longevity to a maximum 13.6% for those who are eligible for most longevity pay.

Recommendation of the Fact-Finder: It recommended that the wages of the bargaining unit members provided by Article 18 of the Agreement not be reduced and that there be no increase in wages for 2011 and 2012. However, it is recommended that there be a wage reopener in 2013. The other matters addressed by the Sheriff's Office

proposal on this issue are not deemed appropriate to be recommended at this time, given the other recommendations contained herein.

### **Article 37 - Terms of Agreement**

Union Position: The Union takes the position that to maintain consistency with the Union's proposal in Article 18 - Wages, the terms of the agreement should be amended to reflect the reopener in 2013. In addition, the Union proposes that if neither party files for the reopener, the terms of the CBA remain in effect as of March 31, 2012

County Position: . The Sheriff's Office has represented at the Fact Finding hearing that it is not opposed to a three year agreement with a reopener in the third year of the contract while advising that the County Commissioners would prefer a one year agreement.

Recommendation of the Fact-Finder: It is recommended that the Parties enter into a three (3) year agreement with a wage reopener for April 1, 2013 - March 31, 2014, the third year of the agreement. It is also recommended that negotiations on the wage reopener begin on or shortly after October 1, 2013.

### **Furloughs - Side Agreement**

County Position: The Sheriff proposed that the six (6) furlough days be included in 2012. The Sheriff stated that the Union members took, or will take, six (6) furlough days in the full calendar years of 2010 and 2011. The Sheriff estimates that if the Union takes six (6) furlough days in calendar year 2012, the savings from this unit would be approximately \$26,000.00, but it appears that this figure is actually closer to \$20,000.00.

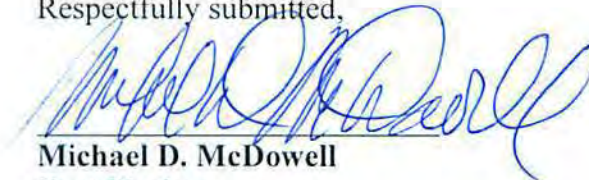
Union Position: The Union opposes this recommendation. The Union feels that they should address this issue separately as they have at the end of the preceding years when they had more information as to the necessity and appropriateness of agreeing to the furlough days, as in calendar years 2010 and 2011.

Recommendation of the Fact-Finder: Given the finding on inability to pay above, it is recommended that the Employer be authorized to schedule up to six (6) furlough days in the same manner as in calendar years 2010 and 2011 for calendar year 2012.

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This concludes the Report and the Recommendation of the Fact Finder.

Respectfully submitted,



**Michael D. McDowell**  
**Fact Finder**

Pittsburgh, PA  
August 12, 2011

### CERTIFICATE OF SERVICE

This is to certify that per agreement of the Parties, an electronic copy in .pdf format of the executed original of the foregoing was emailed this 12th day of August, 2011, to Mr. Tom Grabarczyk at [tomlrn@buckeye-express.com](mailto:tomlrn@buckeye-express.com) and to Daniel J. Leffler, Esq. at [dj\\_leffler66@yahoo.com](mailto:dj_leffler66@yahoo.com).



**Michael D. McDowell**  
**Fact-Finder**