

IN THE MATTER OF FACT FINDING

BETWEEN

THE CUYAHOGA COUNTY SHERIFF

AND

**AFSCME, OHIO COUNCIL 8 AND LOCAL 2927
(Inmate Services Contract)**

SERB CASE # 2011-MED-10-1519

Robert G. Stein, Fact-finder

LEAD ADVOCATES FOR THE UNION:

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INTRODUCTION

The parties to this matter are AFSCME Ohio Council 8, Local 2927 (hereinafter “Union”) and the Cuyahoga County Sheriff (hereinafter “Employer” “County” or “Sheriff”). The Employer is located in northern Ohio. The bargaining unit is comprised of approximately thirty-one (31) employees who hold the positions of Licensed Practical Nurse (LPN); Social Service Worker 2; Medical Team Assistant (MTA); Dental Assistant; and Typist, and provide vital services on behalf of the Sheriff’s Inmate Services Unit. (Collective Bargaining Agreement)

General/State/Local Economic Overview: Caution and disquiet have marked the years since the “great recession” was declared to have ended on a national level. Of course, what is often declared to be ended nationally does not always translate in the same manner or at the same time at the local level in Ohio. Recovery has taken time since 2008 and has been marked by considerable national political discord, but in spite of this extended gridlock fostering fiscal uncertainty, the private sector has continued to add jobs (see latest BLS on 215,000 jobs created in November, and 184,000 jobs created in October, both exceeding expectations), the stock market has recovered and exceeded levels previously reached in 2008, and the index of manufacturing activity continues to rise for the sixth straight month, “signaling strong demand at home and abroad that could boost growth prospects into next year.” (WSJ, 12-3-13)

The economy in Ohio does continue to show signs of steady improvement from a very long

and severe national recession, yet during 2013 it has stalled with rate of job creation slowed considerably from the rate of growth achieved following the declared end of the recession. Yet, in Cleveland and Cuyahoga County the economy appears to be in a period of positive development and hope for the future. As this neutral is a born and raised Clevelander, this is overdue, but very welcomed news. As previously mentioned, County government has experienced a major change in structure and leadership, and appears to be making progress in restoring public trust as evidenced by its organization, emphasis on integrity, cost saving measures, and its apparent willingness to make tough decisions in order to move the County forward. Yet, the Council structure is still very new and further evaluation of what appears to be a successful start is ongoing as with any new change of this magnitude. In Cleveland, investments appear to be translating into promising economic growth with examples being recent additions of a hotel and convention center, the opening of the Global Center for Health, and passage of a tax increase as a measure of the public's confidence.

The fact finder, at the request of the parties, entered into mediation and was able to move the parties closer in terms of their position on these remaining issues under the title of wages. They include a general wage increase and equity adjustments. All other issues were either previously resolved or were tentatively agreed upon.

These items were specifically addressed by the fact finder in this report and are based upon the evidence and arguments proffered by the Union and the County. The recommendations contained in this report are intended to conform to the statutory criteria that all fact finders must follow.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C) (4) (E) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.

The recommendations contained in this report are listed in accordance with Articles that were open and the subject of mediation. For the sake of brevity the specific rationale proffered by the parties in support of their position statements. However, in summary the parties' positions on the issues of wages and health care are as follows:

Summary of Union's Position on General Wage Increases, including Equity Adjustments:

The Union's position on the issues can be found in its Position Statement. It argues that both general wage increases and equity increases should be folded into a new wage schedule for all classifications in the bargaining unit. Historically, the classifications of Typist and MTA have always had the same salary range and steps. The Union proposes that these ranges receive the same combined general increases and wage equity increases and shall be paid such increases retroactive to 1/1/12. The Union provided in Pre-hearing Statement the following rationale for these combined general and equity adjustments:

Hospital Aide (Medical Team Assistant)

A comparative analysis of the job duties between the Medical Team Assistant (MTA) under the purview of the Inmate Services contract (Exhibit 8, p. 1) and the Medical Team Assistant (MTA) at MetroHealth Medical Center (Exhibit 8, p. 2-4) definitively shows that the two (2) classifications perform the same core responsibilities. Further review demonstrates that when the updated job functions and responsibilities are reviewed (Exhibit 8, p. 2) the similarity between the classifications, is even more strikingly similar. The MTA at Inmate Services has as its core responsibilities the triaging to assess medical conditions; administering TB test, drawing of blood for testing; testing all vitals; performing electrocardiograms; charting patient information; assisting nurses in emergency conditions and assisting physicians and nurse practitioners. These core responsibilities track the job functions of the MTA classification at MetroHealth with uncanny similarity. Perhaps the reason for the identical name for the classifications in both institutions is that they perform the same job functions. Although the work that both MTAs perform is the same, the wage gap between the two is significant. And again, while the Union believes there should be total parity between the two (2) classifications, the Union is not seeking total parity with the MetroHealth Medical Team Assistant (MTA), but is seeking to begin the process of parity of wages for like work.

The current wage structure for the Medical Team Assistant (MTA) at Inmate Services is as follows:

2008

MTA with less than 1 year:	\$11.96
MTA with 1-2 years:	\$12.61
MTA with 3 or more years:	\$13.33

The current schedule for the Medical Team Assistant (MTA) at MetroHealth is:

2013

MTA start:	\$14.20	
MTA 1 year	\$15.06	
MTA 2 years	\$15.97	
MTA 3 years	\$16.95	
MTA 4 years	\$17.95	(Exhibit 5) (Job Grade 6)

(Additional increases for MetroHealth employees are scheduled for February 1, 2014 and 2015)

The Union's Wage Proposal (Medical Team Assistant)

1 st year of contract (2012)		2 nd year of contract (2013)	
MTA Start:	\$12.08	MTA Start:	\$12.32
MTA 2-3 years	\$13.55	MTA 2-3 years	\$13.85
MTA 3 years +	\$14.50	MTA 3 years +	\$14.80
3 rd year of contract (2014)			
	MTA Start:	\$12.57	
	MTA 2-3 years	\$14.15	
	MTA 3 years +	\$15.10	

In the Dental Assistant classification, which has historically approximated (with a 2.4% differential) the MTA and Typist salaries, the Union is proposing combined general salary increases and equity increases that break this historic ratio and actually exceed, by as much as \$1.00 per hour the top salary in the salary step schedule. The Union argued that the historic ratio between the Dental Assistant salary needs to be modified. Its rationale and proposal calling for retroactivity to 1/1/12 are as follows:

Dental Assistant

The core job responsibilities for the Dental Assistant classification at Inmate Services are clear and straightforward (Exhibit 9, p. 1) and are even clearer when utilizing the updated job functions provided by the employee that performs the job functions (Exhibit 9, p.2). The core responsibilities include: scheduling dental appointments, assisting with tooth extractions, take and develop x-rays, patient education, clean and sterilize instruments (for the entire medical unit); maintain dental instruments; assist oral surgeon

and assist MTA's when dentist is not on duty. In reviewing the core responsibilities for the Dental Assistant/Non-Certified (Exhibit 9, p. 2-4) at MetroHealth Center the job functions are identical in scope and delivery. Due to the fact that the Dental Assistant at Inmate Services does not have and is not required to have ADA Certification, the comparables with the MetroHealth Dental Assistant would place her on the MetroHealth Wage Schedule which apply to those Dental Assistants that are not certified. Even though the wage comparables place the Inmate Services Dental Assistant on a lower rated schedule, due to the non-certification, the differences in wages between the two dental assistant classifications is significant.

The current wage structure for the Dental Assistant at Inmate Services is a follows:

2008

Dental Assistant with less than 2 years	\$12.86
Dental Assistant with 2-3 years	\$13.25
Dental Assistant with 4+ years	\$13.65

The current wage schedule for the Dental Assistant/Non-Certified classification at MetroHealth is:

Dental Assistant

Start	\$14.20	
1 year	\$15.06	
2 years	\$15.97	
3 years	\$16.95	
4 years	\$17.95	(Exhibit 5) (Job Grade 6)

The Union's Wage Proposal (Dental Assistant)

1 st year of contract (1/2012)		2 nd year of contract (1/2013)	
Start:	\$12.99	Start:	\$13.25
2-3 years	\$14.45	2-3 years	\$14.75
4+ years	\$15.40	4+ years	\$15.75
3 rd year of contract (1/2014)			
	Start:	\$13.51	
	2-3 years	\$15.05	
	4+ years	\$16.10	

Regarding the classification of Social Service Worker 2 the Union points out the educational requirements for this position and similarity in duties to other Social Workers in the County. Its rationale and position proposing retroactivity back to 1/1/12 are as

follows:

Social Service Worker 2

In reviewing the requirements for the position of Social Service Worker 2 at Inmate Services, (Exhibit 7) while the position description lacks the specific education requirement, all three (3) of the current employees are required and hold a Master’s Degree in Social Work. The job functions and actual work performed by the Social Workers is similar to and consistent with the work performed by the Social Worker classification at MetroHealth Medical Center and its satellite facilities. (Exhibit 7, p. 3-4)

Social Workers from both agencies are responsible to provide assessment and intervention on behalf of their patients, identify patient needs and set forth social work treatment, individual counseling for their patients, referrals for psychological treatment and drug abuse, as well as comprehensive planning on behalf of their patients. Additionally, the Inmate Social Services Worker acts as an advocate on behalf of their patients with all functionaries within the criminal justice system.

The core job functions performed by the Social Worker II at MetroHealth and the Social Service Worker 2 at Inmate Services are very much the same. The only difference is that the Social Service Worker 2 classification at Inmate Services is responsible for dealing with patient’s issues which would not be seen consistently by the Social Worker II employed MetroHealth.

Despite the similarity of the job functions and the educational requirements of the positions, there is a large discrepancy between the wage rates afforded MetroHealth Social Workers and the Social Workers employed at Inmate Services. Once again, the Union is not seeking total parity between the two (2) positions, but is attempting to provide some equity for like work.

The current wage schedule for the Social Services Worker 2 classification at Inmate Services is:

2008

Start:	\$14.73
2-3 years	\$15.17
4 years	\$15.63

The current wage schedule for the Social Worker II classification at MetroHealth is as follows:

Start:	\$21.89
1 year	\$23.22
2 years	\$24.61
3 years	\$26.09
4 years	\$27.66 (Exhibit 5) (Job Grade 12)

(Additional wage increases for MetroHealth employees are scheduled for February 1, 2014 and 2015)

The Union's Wage Proposal (Social Service Worker 2)

1st year of contract (2012)

Start: \$14.88
 2-3 years \$17.15
 4 years \$18.85

2nd year of contract (2013)

Start: \$15.17
 2-3 years \$17.80
 4 years \$19.25

3rd year of contract (2014)

Start: \$15.48
 2-3 years \$17.90
 4 years \$19.65

The last classification for which the Union proposes a combined general wage increase and an equity increase retroactive to 1/1/12 is Licensed Practical Nurse (LPN). This was the most controversial classification for the parties to discuss, primarily because each party was operating from a very different premise to support their position. In addition, the Union particularly emphasized the stark contrast in comparable pay, not only for all classifications in the bargaining unit, but in particular that of the LPN. The Union made the following arguments in its Pre-hearing Statement:

Licensed Practical Nurse

A detailed review of the Position Description of the LPN classification in the Inmate Services Unit (Exhibit 6, p. 1) shows that the primary functions of the LPN are as follows: To provide total patient care at the direction of a Registered Nurse or Licensed Physician within the correctional health care setting. Meet specific patient needs in areas of safety, hygiene, nutrition, medication. Additionally, utilizes skills and abilities to provide safe and competent care, including medication administration, nursing triage and treatments. The position description further sets forth the required knowledge of the classification, which includes primary knowledge of: pharmacology; skilled licensed practical nursing procedures; equipment operation; recognize problems and take appropriate action and develop good rapport with the patients. Please note that the second page of the exhibit represents additional job functions performed by the Inmate Services LPN, which were

drafted by the LPN's as an update to the position description. Comparing these job functions and required knowledge to the LPN job description for the LPN at MetroHealth Medical Center (Exhibit 6, p. 3-4) and the knowledge of and requirements of the position at MetroHealth are similarly if not exactly the same as the LPN classification at the Inmate Services. The educational requirements for both positions is the same: graduate of a school of Practical Nursing as well as holding a license by the State of Ohio. While the positions are very similar, there is a huge pay difference between the LPN at MetroHealth and the LPN at Inmate Services.

While it would be ideal if the pay for both positions could be equalized, the Union is not seeking total parity with the MetroHealth LPN, but is seeking to begin the process of parity of wages for like work at County facilities.

The current wage structure for the LPN classification under the Inmate Services is as follows:

2008

LPN with less that 2 years	\$18.27
LPN with 2-3 years	\$18.82
LPN with 4+ years	\$19.38

The current wage structure for the LPN classification at MetroHealth is:

Start:	\$20.45
1 year	\$21.69
2 years	\$23.00
3 years	\$24.36
4 years	\$25.82 (Exhibit 5) (Job Grade 11)

(Additional wage increases to MetroHealth employees are scheduled for February 1, 2014 and 2015)

The Union's Wage Proposal (Licensed Practical Nurse)

1st year of contract (2012):

Start:	\$18.45
2-3 years	\$20.60
4 years +	\$21.40

2nd year of contract (2013):

Start:	\$18.82
2-3 years	\$21.05
4 years +	\$21.90

3rd year of contract (2014):

Start:	\$19.20
2-3 years	\$21.05
4 years	\$22.40

Summary of County's Position on General Wage Increases, including Equity Adjustments:

The County's position on the issues can be found in its Position Statement. The County is proposing keeping separate a General Wage increase from any justifiable adjustments regarding equity. The County's advocate, Mr. Morales, strongly emphasized the long standing bargaining history treating these issues separately from the standpoint of reason and fairness to all the union and non-union employees in the County. (See p. 11, Book II Tab 16 of the Employer's brief as well as Book I, Tabs 1-17) And, while not opposed to periodic justifiable equity adjustments where firmly supported, the County argued that the Union's proposal was excessive, particularly regarding the classification of LPN. The County vigorously disagreed with the Union's argument that the pay for LPN's in the bargaining unit should equate with that of LPNs at MetroHealth. It contends that comparable recognized as valid during the history of bargaining with this unit. In terms of a general wage increase the County in fact finding proposes the following: The County proposes that wages be increased by:

- 1) 1% effective the first date of the first full pay period in January, 2012;**
- 2) 2% effective the first date of the first full pay period in January, 2013;**
- 3) 2% effective the first date of the first full pay period in January, 2014.**

It argues that establishing a wage pattern is traditional in Cuyahoga County, which has several bargaining units, represented by numerous international unions. The County also provided extensive documentation regarding its finances, in the form of two separate binders and argued that while it is certainly doing better financially, it has yet to return to the income levels reached in 2007. (See Appendix A, Tab 16, Book II and p. I-6, Tab 17,

Book II) The County also spent considerable time on the first day of mediation addressing Section IV, Section 178 of Book II, which is the second quarter report on Justice Services & Public Safety.

Fact-finder's Findings.

The arguments of the County and the facts support the separation of general wage increases from selected equity adjustments which appears to have been an historical part of bargaining for the numerous bargaining units in the County for decades. The neutral has had the fortune and privilege OF serving as mediator and fact finder for many years and has had firsthand experience with the issues of maintaining a separate wage increase, while making targeted equity adjustments. Additionally, this approach is consistent with the statutory criteria regarding past collective bargaining that is specifically addressed in ORC 4117.14 (C) (4) (E). In the experience of this neutral general wage increases are not routinely subsumed by equity increases. Equity increases have to be independently justified. Moreover, the fairness or reasonableness of a general wage increase is measured in relative terms and is linked with the general morale of the workforce. Therefore, it is important in labor relations to distinguish this number from other forms of compensation, such as clothing allowances, rank differential, other conditions unique to a specific type of work, and periodic equity adjustments generally driven by market conditions. However, as important as it is for both employers and unions to understand what other bargaining or non-bargaining units are receiving in terms of a general wage increase this knowledge does not always lead to relative equity in the percentage of general wage increases negotiated. This is often due to timing of negotiations and settlements, or the impact of fact-finding or conciliation with some bargaining units versus others. The instant negotiations is clearly an

example of the effects of timing in that the parties are negotiating for general wage increases that go back to the beginning of 2012. The Union clearly points out a disparity in general wage increases on p. 4 of its brief citing the pattern of settlements from 2009 through 2013. For example in 2009, a year in which the recession was taking hold, general wage increases ranged from 2.75% to lump sum settlements, to no general wage increases. In 2010 the variance was less and in 2011 it appears most employees did not receive a wage increase. Given the improving state of finances in the County (See Book II, p. I-6) which shows an increasing trend in the General Fund, but the countervailing need for public employers to make prudent decisions regarding spending in an atmosphere where the public is rightly demanding careful accountability, the general wage increase proposed by the County is relatively consistent with what has been negotiated by other units.

The evidence and testimony submitted by the Union in support of targeted equity increases is persuasive and reasonable, particularly when considered independently from the general wage increases being proposed by the County, as articulated above. In the case of Social Service Worker 2, it is clear that the level of education required and the work is similar to other like classifications in Local 1746 also represented by AFSCME in the County. In the case of the MTA classification, the Typist 2/Clerk classification, and the Dental Assistant classification there is an historic relationship in terms of their salaries. MTAs and Typist 2/Clerks have had the same pay scale and there was insufficient evidence introduced in the record that would require a departure from this pattern. In the case of the classification of the Dental Assistant there has historically been a 2.4% differential between the top pay of a MTA and that of a Dental Assistant. The Union is seeking to eliminate this historic separation, however, the evidence and testimony placed in the

record does not justify a departure from this long standing relationship in pay. Based upon an evaluation of these three classifications relative to what is being paid in other like jurisdictions it is clear that an equity adjustment being sought by the Union in these three classifications is also justified. Furthermore, the Employer acknowledges that in terms of internal comparable bargaining unit classifications (e.g. CWA bargaining unit) and other like jurisdictions, a market equity adjustment in addition to a general wage increase is needed in terms of the updated duties (including software knowledge and application) and responsibilities assigned to these employees.

The Union is also seeking an equity adjustment for LPNs and like other classifications in the bargaining unit, strongly emphasizes the salient example of MetroHealth, where AFSCME also represents bargaining unit employees in the classification of LPN. And while MetroHealth appears for many reasons to be a valid target, it is not clear that it is a suitable comparable given its absence as a recognized comparable in the past negotiations. That is not to say that in the future the parties should not consider this to be a comparable classification, but it is not clear that the conditions and requirements placed on LPNs at MetroHealth are sufficiently similar to those of the bargaining unit justifying a one to one comparison. Of course, the classification of LPN is uniformly regulated by the profession and by the state, so naturally there are like educational and skill requirements regardless of where an LPN practices. Further careful examination of the similarities and differences between duties and responsibilities between MetroHealth LPNs and bargaining unit LPNs may serve the parties in the future, as would consideration of what affect other competitive forces (e.g. University Hospitals, Cleveland Clinc) have on the pay and benefits provided by MetroHealth to its LPNs in terms

of recruitment and retention. The facts indicate a reasonable equity increase is justified to maintain competitive equity with other like inmate jurisdictions.

Given the above the fact finder recommends the inequity adjustments, but not until year three of the agreement.

RECOMMENDED WAGES

GENERAL WAGE INCREASE:

- 1) 1% effective the first date of the first full pay period in January, 2012;**
- 2) 2% effective the first date of the first full pay period in January, 2013;**
- 3) 2% effective the first date of the first full pay period in January, 2014.**

***FOLLOWING THE 2014 GENERAL WAGE INCREASE THE EMPLOYEES OF THE BARGAINING UNIT SHALL BE PROPERLY PLACED IN THE FOLLOWING REVISED WAGE SCALES AND THEIR WAGES SHALL BE ADJUSTED ACCORDINGLY AND AS OF THE FIRST DATE OF THE FIRST PAY PERIOD IN JANUARY 2014:**

Classification	Effective 1/1/14*
Typist 2 with less than 1 year:	\$13.51
Typist 2 with 1-2 years:	\$14.15
Typist 2 with 3 or more years:	\$15.10

Classification	Effective 1/1/14*
MTA with less than 1 year:	\$13.51
MTA with 1-2 years:	\$14.15

MTA with 3 or more years:	\$15.10
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Classification	Effective 1/1/14*
LPN with less than 2 years:	\$19.20
LPN with 2-3 years:	\$20.78
LPN with 4+ years:	\$21.37

Classification	Effective 1/1/14*
Dental Assistant with less than 2 years:	\$13.51
Dental Assistant with 2-3 years:	\$14.49
Dental Assistant with 4+ years:	\$15.46

Classification	Effective 1/1/14*
Social Worker with less than 2 years:	\$15.48
Social Worker with 2-3 years:	\$17.90
Social Worker with 4+ years:	\$19.65

TENTATIVE AGREEMENT

Any tentative agreements reached by the parties as well as any current language that is not changed or not addressed above shall be considered to be recommended in the successor Collective Bargaining Agreement.

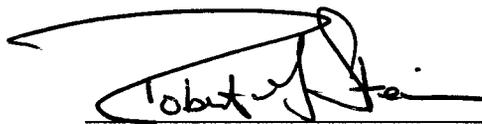
The fact finder respectfully submits the above recommendations to the parties this ____ day of December 2013 in Portage County, Ohio.

Robert G. Stein, Fact finder

TENTATIVE AGREEMENT

Any tentative agreements reached by the parties as well as any current language that is not changed or not addressed above shall be considered to be recommended in the successor Collective Bargaining Agreement.

The fact finder respectfully submits the above recommendations to the parties this 5th day of December 2013 in Portage County, Ohio.

A handwritten signature in black ink, appearing to read "Robert G. Stein", written over a horizontal line.

Robert G. Stein, Fact finder