

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
FACT-FINDING PROCEEDINGS**

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REPORT & RECOMMENDATIONS

AS ISSUED

GREGORY JAMES VAN PELT

April 9, 2012

IN THE MATTER OF:

Hinckley Township

(Employer)

-and-

Ohio Patrolmen's Benevolent Association

(Union)

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SERB Case Nos.:
11-MED-11-1645

APPEARANCES:

On Behalf of the Employer:

William E. Blackie, Esq.
Fisher & Phillips LLP
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On Behalf of the Union:

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SUBMISSION

Prior to 2011 the present bargaining unit, together with the Employer's Patrol Officers and Dispatchers, was represented by the Hinckley Township Safety Forces Union. That collective bargaining relationship culminated in an Agreement (predecessor Agreement) that became effective on January 1, 2008 and obtained through December 31, 2010.

In February 2011, the Ohio Patrolmen's Benevolent Association was certified as the exclusive representative of the Hinckley Township Sergeants and entered into negotiations toward a successor Agreement. The Parties met in negotiations toward a successor contract on several occasions prior to reaching impasse on the issues enumerated below.

Having reached impasse, the Parties requested that the Fact-finder undertake mediation of the unresolved issues, and accordingly mediation was attempted between the Parties on November 28, 2011. However, mediation failed to resolve all issues at impasse, and an evidentiary hearing was convened immediately following mediation. At hearing, the Parties were afforded an opportunity to present evidence and testimony, and to cross examine witnesses. The matter was declared closed as of the date of hearing.

ISSUES AT IMPASSE

The Parties identified and presented the following issues as unresolved:

- | | | |
|----------------------------|---|-----------------------------------|
| 1. Article 2 | - | Recognition+ |
| 2. Article 15 (14*) | - | Promotions+ |
| 3. Article 22 (21*) | - | Discipline+ |
| 4. Article 24 (23*) | - | Sick Leave |
| 5. Article 31 (29*) | - | Holidays and Personal Days |
| 6. Article 32 (30*) | - | Vacations |
| 7. Article 33 (31*) | - | Salary Schedules |

+Denotes issues resolved through mutual agreement of the Parties, incorporated herein by reference.

***Denotes predecessor Agreement numbering.**

STATUTORY CONSIDERATIONS

In weighing the positions presented by the Parties, the Fact-finder was guided by the considerations enumerated in OAC 4117-9-05(K), *et seq*, specifically:

- 4117-9-05(K)(1)** Past Collectively bargained agreements, if any, between the parties;
- 4117-9-05(K)(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;
- 4117-9-05(K)(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;
- 4117-9-05(K)(4)** The lawful authority of the public employer;
- 4117-9-05(K)(5)** Any stipulations of the parties;
- 4117-9-05(K)(6)** Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

FINDINGS AND RECOMMENDATIONS

Article 24 (23*)

Sick Leave

Current Language

* * *

Section 2 *Employees may use sick leave for absence due to personal illness, pregnancy, injury, exposure to contagious disease which could be communicated to other employees, and for illness, injury or death in the employee's immediate family. For purposes of this Article, immediately (sic) family is defined as parent, mother and father-in-law, sister, brother, spouse, child or stepchild.*

* * *

Section 4 *When sick leave is used, it shall be deducted from (sic) the employee's credit on the basis of one (1) hour for every one (1) hour of absence from previously scheduled work.*

* * *

Section 5 *All employee (sic) who are absent for three (3) or more consecutive days may be requested to submit a statement for (sic) a licensed physician concerning their illness (or illness of those being cared for). Any abuse or patterned use of sick leave may be just and sufficient cause for disciplinary action. The Township may require a physician's verification for each occurrence of sick leave of employees who have established a patterned use or abuse of sick leave. Patterned use or abuse of sick leave includes regularly using sick leave before or after weekends, before or after holidays, before or after normal days off, on certain days of the week, in an excessive number of individual sick days off for the department as a whole, or in a manner inconsistent with the request for sick leave, e.g., personal reasons during the time the employee would have been scheduled to work.*

* * *

Section 7 *Employees at the time of retirement from (sic) active full time service with the Township and with ten (10) years or more continuous years of service with the Township shall be paid cash for ¼ of the employee's accrued and unused sick leave. The dollar value of a sick day shall be based on the employee's hourly rate at the time of retirement. Payment for sick leave on this basis shall be considered to eliminate all sick leave credit accrued by the employee at that time. Such payment shall be made by the Township of Hinckley only one (sic) to any employee during his lifetime. This section shall only apply to the retirement of a full-time employee pursuant to state retirement laws and shall not be deemed applicable to any removal, voluntary or involuntary resignation, or any other like termination except a retirement as set forth herein.*

Employer's Proposal

The Township proposes several changes to the language of Article 23, beginning with

its renumbering as Article 24 in the successor Agreement. Most significantly, the Employer proposes to increase the cash payout on retirement from the current $\frac{1}{4}$ of accrued, unused sick leave to $\frac{1}{3}$ of an amount capped at 1,000 hours maximum; i.e., effectively a maximum payout of $333 \frac{1}{3}$ hours at the employee's retirement wage rate.

The Employer also proposes inclusion of a sick leave incentive provision – formerly included in the Holidays and Personal Days provision of Article 29 - at Section 8, providing for an additional personal day for employees who do not use sick leave in a six month period.

Union Proposal

The OPBA argues that sick leave for Hinckley Township Sergeants was earned at 15 days per year, an accrual rate the Union maintains is standard. Twelve years ago, that rate was reduced to ten days per year in exchange for an increase in the vacation benefit. The OPBA proposes to maintain the current contract language.

Finding and Recommendation

As the Union here acknowledges, the City's Patrol bargaining unit has agreed to the increased accrual amount under the same cap as proposed by the Township in exchange for an increase in Patrol Officers' base wage rates. Moreover, the Employer presents evidence indicating that two of three proximate Medina County Townships provide a maximum payout of 300 hours of unused sick leave on retirement, while the third cited by the Employer is capped at 875 hours.

It is possible that, at the time of ratification of a successor Agreement, one or more bargaining unit members may have accrued more than $333 \frac{1}{3}$ hours under the previous uncapped $\frac{1}{4}$ calculation, thus losing hours already earned. In such case, the Employer indicated a willingness to compensate any member for accrued hours lost as a result of the modification. It is recommended that the Township do so.

On that understanding, as both internal and external comparables as well as current economic circumstances militate for acceptance of the Employer's proposal, it is recommended. There being no reasonable objection to the Township's proposal to move the sick leave incentive, it will be recommended as well.

ARTICLE 23 24
SICK LEAVE

* * *

Section 2 *Employees may use sick leave for absence due to personal illness, pregnancy, injury, exposure to contagious disease which could be communicated to other employees, and for illness, injury or death in the employee's immediate family. For purposes of this Article, ~~immediately~~ immediate family is defined as parent, mother and father-in-law, sister, brother, spouse, child or stepchild.*

* * *

Section 4 *When sick leave is used, it shall be deducted ~~from~~ from the employee's credit on the basis of one (1) hour for every one (1) hour of absence from previously scheduled work.*

Section 5 *All ~~employee~~ employees who are absent for three (3) or more consecutive days ~~may be requested to~~ shall submit a statement ~~for~~ from a licensed physician concerning their illness (or illness of those a for disciplinary action. The Township may require a physician's verification for each occurrence of sick leave of employees who have established a patterned use or abuse of sick leave. Patterned use or abuse of sick leave includes regularly using sick leave before or after weekends, before or after holidays, before or after normal days off, on certain days of the week, in an excessive number of individual sick days off for the department as a whole, or in a manner inconsistent with the request for sick leave, e.g., personal reasons during the time the employee would have been scheduled to work.*

* * *

Section 7 *Employees at the time of retirement ~~from~~ from active full time service with the Township and with ten (10) years or more continuous years of service with the Township shall be paid cash for ~~4~~ 1/3 of the employee's accrued and unused sick leave **up to a maximum accrual of one thousand hours i.e., 333 1/3 hours maximum pay** . The dollar value of a sick day shall be based on the employee's hourly rate at the time of retirement. Payment for sick leave on this basis shall be considered to eliminate all sick leave credit accrued by the employee at that time. Such payment shall be made by the Township of Hinckley only one **time** to any employee during his lifetime. This ~~section~~ **Section** shall only apply to the retirement of a full-time employee pursuant to state retirement laws and shall not be deemed applicable to any removal, voluntary or involuntary resignation, or any other like termination except a retirement as set forth herein.*

Section 8 *If an employee does not use sick leave for a six (6) month period, they shall receive another Personal Day.*

Article 31 (29*)
Holidays and Personal Days

Current Language

* * *

Section 2 *If a patrolman or dispatcher works on a holiday in Section 1 as a normal part of his schedule, he will be paid double time for all hours actually worked. If a patrolman or dispatcher is called in to work on a holiday in Section 1 that he was scheduled off, he shall be paid double time for all hours actually worked. Patrolmen and dispatchers who do not work on any holiday listed in Section 1 are paid their normal pay for the day. Premiums outlined in this Section do not apply to personal days.*

* * *

Section 6 *Sergeants shall be entitled to ten (10) days of paid time off and one (1) Personal Day in lieu of scheduled holidays.*

* * *

Union Proposal

The OPBA proposes to include in the Sergeants' successor Agreement language included in the recently concluded Patrol unit negotiations. Specifically, the Union's proposal would, at Section 2 of now Article 31, provide for twelve hours of time off with pay for Sergeants not working the ten holidays enumerated in Section 1.

Employer's Proposal

The Township argues that its Patrol Officers work 12 hour shifts, and that accordingly the language included in the Patrol Agreement memorializes current practice with regard to that unit. By contrast, the Employer maintains that its Sergeants work eight hour shifts; the language proposed by the OPBA would constitute an added benefit from that provided in the predecessor Agreement.

Finding and Recommendation

The Union's proposal with regard to Section 2 would effectively create a premium pay situation for Sergeants not actually required to work the holiday, a benefit not enjoyed by the Patrol bargaining unit, and presumably not by the Dispatchers in their new Agreement. Under the provisions of Section 6 of the predecessor Agreement, Sergeants – of whom there are only three – are currently given alternative days off in lieu of the enumerated holidays.

In consideration of the Township's current economic circumstances and the wage increase recommended below, it is untimely to increase the holiday benefit in this successor

Agreement. Accordingly, it is recommended that Section 2 be eliminated, and that other provisions of Article 29 be modified only insofar as is necessary to render them pertinent to the instant bargaining unit.

~~**Section 2** If a patrolman or dispatcher works on a holiday in Section 1 as a normal part of his schedule, he will be paid double time for all hours actually worked. If a patrolman or dispatcher is called in to work on a holiday in Section 1 that he was scheduled off, he shall be paid double time for all hours actually worked. Patrolmen and dispatchers who do not work on any holiday listed in Section 1 are paid their normal pay for the day. Premiums outlined in this Section do not apply to personal days.~~

* * *

Section 6 Sergeants shall be entitled to ten (10) days of paid time off and one (1) Personal Day in lieu of scheduled holidays.

* * *

Article 32 (30*)

Vacations

Current Language

Section 1 Each full-time member shall earn and be entitled to paid vacation in accordance with the following schedule:

<u>Length of Service</u>	<u>Weeks</u>	
After one (1) year	Two (2)	(80 hours)
After seven (7) years	Three (3)	(120 hours)
After ten (10) years	Four (4)	(160 hours)
After fifteen (15) year s	Five (5)	(200 hours)
After twenty (20) year s	Six (6)	(240 hours)

Section 2 Members do not accrue vacation benefits during their first year of employment. Upon completion of their first year anniversary date, which shall be computed on the basis of twenty-six (26) bi-weekly pay periods, members are entitled to two (2) weeks' vacation.

After completion of their first year anniversary date, members accrue a portion of their annual vacation benefits each bi-weekly pay period as follows:

<u>Length of Service</u>	<u>Weeks</u>
After one (1) year	Three and one-tenths hours
After seven (7) years	Four and six-tenths hours
After ten (10) years	Six and two-tenths hours
After fifteen (15) year s	Seven and seven-tenths hours

After twenty (20) year s

Nine and two-tenths hours

Section 3 *The additional vacation time provided at the seven (7), ten (10), fifteen (15) and twenty (20) year seniority intervals outlined in Section 1 is credited to a member and is available for his use upon completion of the member's anniversary date. Vacation time taken off is first deducted from vacation leave accrued during the current year and then from any approved vacation carryover.*

Section 4 *Normally, only one patrolman should be on vacation at one time. When one patrolman is scheduled for vacation, other patrolmen will not be permitted to use compensatory time, vacation time or other personal time unless approved by the Chief.*

Section 5 *Normally, only one dispatcher should be on vacation at one time. When one dispatcher is scheduled for vacation, other dispatchers will not be permitted to use compensatory time, vacation time or other personal time unless approved by the Chief.*

Section 6 *Vacation shall be scheduled between December 1st and December 31st of the preceding calendar year according to seniority. Two (2) weeks maximum shall be chosen by seniority at one time. Members shall have three (3) working days to make their selection. Prior approval of the Chief is necessary for any vacation to be scheduled in conjunction with holidays, personal days or compensatory time off. Each vacation request shall not include more than one (1) holiday.*

Members are entitled to choose the number of weeks they were entitled (sic) at their last anniversary date. Any additional vacation time due the member during the year must be scheduled after the anniversary date with two (2) weeks notice.

After January 1st, vacations are scheduled on a first-come first-served basis, in accordance with the Chief's perception of the department's manning needs. In addition, the scheduling of vacations after January 1st, scheduling of personal days and compensatory time require a minimum of two (2) weeks prior notice. Exceptions can be made where the Chief determines scheduled (sic) can be accommodated.

When one patrolman is scheduled for personal days or compensatory time, other patrolmen will not be permitted to use personal days or compensatory time unless approved by the Chief. Patrolmen will be provided a list of vacation dates, personal days and compensatory time, which have been scheduled and by which patrolman. Any vacation that has not been scheduled and used prior to the patrolman's next anniversary date is forfeited.

When one dispatcher is scheduled for personal days or compensatory time, other dispatchers will not be permitted to use personal days or compensatory time unless approved by the Chief. Dispatchers will be provided a list of vacation dates, personal days and compensatory time, which have been scheduled and by which dispatcher. Any vacation that has not been scheduled and used prior to the dispatcher's next anniversary date is forfeited.

No trading of vacations shall occur without approval by the Chief. Vacation scheduling takes precedence over personal days or compensatory time off.

Section 7 *Any member who reassigns, (sic) is terminated, retires, or is separated from employment by the Township because of a reduction in force will receive pay for his unused and accrued vacation time. In the case of resignation, the member shall give two (2) weeks' notice in writing to the Chief to be eligible for such payment.*

Section 8 *Vacation time shall not be carried over from one year to another without the express written authorization of the Chief.*

Section 9 *The surviving spouse or the estate of any employee shall receive a cash payment for all regular pay, holiday pay, and vacation pay, due the employee as of the date of the employee's death.*

Employer's Proposal

The Township proposes three substantive changes to the existing Vacation benefit set forth in Article 30 of the predecessor Agreement: First, it proposes elimination of the current sixth week of vacation benefits after 20 years, leaving the maximum benefit at 200 hours after 15 years. Second, the Employer proposes to offset that reduction in benefits by decreasing, by one year, the length of service required for bargaining unit members to begin accruing 120 hours – or three weeks – of vacation entitlement. Finally, the Township seeks to require utilization of accrued vacation in the year in which it is earned, but to permit employees to carry over up to one week with the requirement that it be utilized in the first quarter of the following year.

Union Proposal

The OPBA proposes continuation of the current contract benefit, eliminating from Article 30 – now Article 32 - only that language not specifically applicable to the Sergeants' bargaining unit.

Finding and Recommendation

The Union argues – not without basis – that the benefit of a sixth week of entitlement after twenty years of service is an incentive to Hinckley Township Sergeants to continue to serve, and supportive of high morale in the bargaining unit.

However, as of the hearing of this matter, no bargaining unit members currently enjoy that entitlement. It is clear that Hinckley Township's economic circumstances require that

some concessions be made by its Sergeants in order to facilitate pay increases beneficial to all members of the unit.

The Township's Patrol Officers agreed to eliminate the twenty year vacation entitlement, and other modest concessions sought by the Employer, in exchange for a 2% wage increase in each of the Agreement's three contract years. Moreover, three of Medina County's other Townships provide a maximum of only four weeks of vacation to police sergeants; the fourth allows five weeks.

In consideration of internal and external parity, as well as the wage recommendation below, that vacation proposal presented by the Employer is recommended here.

Section 1 Each full-time member shall earn and be entitled to paid vacation in accordance with the following schedule:

<u>Length of Service</u>	<u>Weeks Amount</u>
After one (1) year	Two (2) (80 hours)
After seven (7) six (6) years	Three (3) (120 hours)
After ten (10) years	Four (4) (160 hours)
After fifteen (15) year s	Five (5) (200 hours)
After twenty (20) year s	Six (6) (240 hours)

Section 2 Members do not accrue vacation benefits during their first year of employment. Upon completion of their first year anniversary date, which shall be computed on the basis of twenty-six (26) bi-weekly pay periods, members are entitled to ~~two (2) weeks'~~ **eight (80) hours of vacation.**

After completion of their first year anniversary date, members accrue a portion of their annual vacation benefits each bi-weekly pay period as follows:

<u>Length of Service</u>	<u>Weeks</u>
After one (1) year	Three and one-tenths hours
After seven (7) six (6) years	Four and six-tenths hours
After ten (10) years	Six and two-tenths hours
After fifteen (15) years	Seven and seven-tenths hours
After twenty (20) year s	Nine and two-tenths hours

Section 3 The additional vacation time provided at the ~~seven (7), six (6), ten (10) and fifteen (15) and twenty (20)~~ year seniority intervals outlined in Section 1 is credited to a member and is available for his use upon completion of the member's anniversary date. Vacation time taken off is first deducted from vacation leave accrued during the current year and then from any approved vacation carryover.

Section 4 Normally, only one ~~patrolman~~ **Sergeant** should be on vacation at one time. When one ~~patrolman~~ **Sergeant** is scheduled for vacation, other ~~patrolmen~~ **Sergeants** will not be permitted to use compensatory time, vacation time or other personal time unless approved by the Chief.

~~**Section 5** Normally, only one dispatcher should be on vacation at one time. When one dispatcher is scheduled for vacation, other dispatchers will not be permitted to use compensatory time, vacation time or other personal time unless approved by the Chief.~~

Section 6 5 Vacation shall be scheduled between December 1st and December 31st of the preceding calendar year according to seniority. Two (2) weeks maximum shall be chosen by seniority at one time. Members shall have three (3) working days to make their selection. Prior approval of the Chief is necessary for any vacation to be scheduled in conjunction with holidays, personal days or compensatory time off. Each vacation request shall not include more than one (1) holiday.

Members are entitled to choose the number of ~~weeks~~ **hours to which** they were entitled at their last anniversary date. Any additional vacation time due the member during the year must be scheduled after the anniversary date with two (2) weeks' notice.

After January 1st, vacations are scheduled on a first-come first-served basis, in accordance with the Chief's ~~perception~~ **determination** of the department's manning needs. In addition, the scheduling of vacations after January 1st, scheduling of personal days and compensatory time require a minimum of two (2) weeks prior notice. Exceptions can be made where the Chief determines scheduled (sic) can be accommodated.

When one ~~patrolman~~ **Sergeant** is scheduled for personal days or compensatory time, other ~~patrolmen~~ **Sergeant** will not be permitted to use personal days or compensatory time unless approved by the Chief. ~~Patrolmen will be provided a list of vacation dates, personal days and compensatory time, which have been scheduled and by which patrolman. Any vacation that has not been scheduled and used prior to the patrolman's next anniversary date is forfeited.~~

~~When one dispatcher is scheduled for personal days or compensatory time, other dispatchers will not be permitted to use personal days or compensatory time unless approved by the Chief. Dispatchers **Sergeants** will be provided a list of vacation dates, personal days and compensatory time, which have been scheduled and by which ~~dispatcher~~ **Sergeant**. Any vacation that has not been scheduled and used prior to the ~~dispatcher's~~ **Sergeant's** next anniversary date is forfeited, **subject to the provisions of Section 7, below.**~~

No trading of vacations shall occur without approval by the Chief. Vacation scheduling takes precedence over personal days or compensatory time off.

Section 7 6 Any member who ~~reassigns~~, **resigns**, is terminated, retires, or is separated from employment by the Township because of a reduction in force will receive pay for his unused and accrued vacation time. In the case of resignation, the member shall give two (2)

weeks' notice in writing to the Chief to be eligible for such payment.

Section 8-7 *Vacation time shall not be carried over from one year to another without the express written authorization of the Chief. In no event shall an employee carry over more than one (1) week of vacation, which shall be utilized in the first three (3) months of the year to which it was carried over.*

Section 9-8 *The surviving spouse or the estate of any employee shall receive a cash payment for all regular pay, holiday pay, and vacation pay, due the employee as of the date of the employee's death.*

**Article 33 (31*)
Salary Schedules**

Current Language

Sergeants

	<u>2008</u>	<u>2009</u>	<u>2010</u>
<i>Sergeants S-1 First Year</i>	\$25.26	\$26.14	\$27.06
<i>Sergeants S-2 After 1 year</i>	\$27.66	\$28.63	\$29.63
<i>Sergeants S-3 After 2 years</i>	\$30.19	\$31.25	\$32.34

Union Proposal

The OPBA proposes increases of 2% in each of the successor Agreement's three contract years.

Employer's Position

The Township maintains that it has discussed wage increases with the OPBA, but that such increases must be contingent on reaching accord on other issues, primarily those modifications to Articles 23 and 30 of the predecessor Agreement sought by the Employer.

Finding and Recommendation

There is no question that Hinckley Township's Police Sergeants are currently compensated at a level generously comparable to Sergeants in peer communities. Nor is there doubt that broader state and regional financial uncertainties will continue to affect the

Township's finances, with its revenues largely derived from a police levy tied to declining property values and increasing costs for operations.

It was in that context that the Township sought concessions from its Police Sergeants, including the elimination of a sixth week of vacation and limitations on sick leave buy-out on retirement. In seeking those changes, the Employer argued that the modifications would be offset by wage increases. It also sought inclusion of four additional steps in the Salary Schedule of Article 31 of the predecessor Agreement.

For similar concessions on the part of the Township's Patrol bargaining unit the Employer agreed to a 2% wage increase in each of the contract's three years. As the concessions sought by the Employer have been recommended here, as will the increased steps in the salary schedule, internal parity would militate for the 2% increase sought by the OPBA.

Therefore, a 2% increase in each of the three contract years is recommended, to be structured on the seven-step Salary Schedule urged by the Township, provided implementation of the scheme does not result in a reduction in wages for any incumbent Sergeant.

SUMMARY OF RECOMMENDATIONS

1. **Article 2** - **Recognition+**
2. **Article 15 (14*)** - **Promotions+**
3. **Article 22 (21*)** - **Discipline+**

4. **Article 24 (23*)** - **Sick Leave**
Sick leave buyout at 33% of unused hours up to 1,000; no limit on medical use of all accrued hours

5. **Article 31 (29*)** - **Holidays and Personal Days**
Sergeants provided 10 days off, plus personal day in lieu of regularly enumerated holidays.

6. **Article 32 (30*)** - **Vacations**
Elimination of 6th week of vacation; institution of 120 hour entitlement after 6 years; carryover of one week vacation for use in first quarter of following year.

7. **Article 33 (31*)** - **Salary Schedules**
2%-2%-2%; implementation of seven-step Salary Schedule

+ Denotes issues resolved by mutual agreement of the Parties and included herein by reference.

During the course of negotiations the Parties reached a number of tentative agreements not at impasse in these proceedings, but incorporated herein as part of this Report & Recommendations, together with all existing contract provisions not at issue.

/s/ Gregory James Van Pelt

Gregory James Van Pelt

Respectfully submitted this 9th day of April, 2012
At Shaker Heights, Cuyahoga County, Ohio