

Received after business hours on 12/10/14, processed next business day

FACT-FINDING REPORT

STATE EMPLOYMENT RELATIONS BOARD

STATE OF OHIO

December 3, 2014

In the Matter of:

Cuyahoga County)	2012-MED-10-1261
)	Case No. 2012-MED-07-1261
and)	Deputy Sergeants
)	
Ohio Patrolmen's Benevolent Association)	

APPEARANCES

For the County:

Todd Ellsworth, Assistant Law Director
 Egdilio Morales, Assistant Law Director
 Donald Michalosky, Captain
 Jason Sobczyk, Employee Relations Specialist 2

For the Union:

Dan Leffler, Attorney
 George Tumney, Union Representative (Retired)
 Jeff Hirko, Union Representative
 David Lisy, Union Representative

Fact Finder:

Nels E. Nelson

BACKGROUND

The instant case involves the Cuyahoga County Sheriff's Department and the Ohio Patrolmen's Benevolent Association. The department provides protection and security to the citizens of Cuyahoga County. The union represents a number of bargaining units in the department, including the Deputy Sergeants. The Sergeants' bargaining unit consists of 13 Sergeants.

The instant dispute involves the negotiations between the county and the union for a successor agreement to the one that expired on December 31, 2012. The parties met to negotiate on a number of occasions and resolve several issues. When they concluded that they would be unable to reach an agreement, they agreed upon the Fact Finder and a Conciliator, should one be needed.

The Fact Finder was notified of his appointment on October 21, 2014. He met with the parties on October 29, 2014, and at that time, there were more than 50 unresolved issues. A number of issues were resolved through mediation. However, when no overall settlement was reached, a fact-finding hearing was held on November 5, 2014, and this report was prepared.

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

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (c) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (d) The lawful authority of the public employer;

(e) Any stipulations of the parties;

(f) 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.

ABILITY TO PAY

The parties presented different perspectives on the county's ability to pay the union's demands.

Union Position - The union argues that the county is in "excellent financial condition." It points out that sales tax revenue has risen each year since 2009. The union notes that in 2013 sales tax revenue was \$237.2 million, or \$189.8 million excluding the money earmarked for the Medical Mart. (Union Pre-Hearing Statement, Tab 11) The union adds that the county's 2014 Second Quarter Report projected 2014 sales tax revenue to be \$194.7 million, excluding the Global Center portion, or 2.5% greater than the 2013 actual amount. (Union Pre-Hearing Statement, Tab 19 and County Pre-Hearing Statement, Tab 5)

The union contends that Casino Tax revenue has also grown. It observes that while the county's projection cannot include revenue from the Casino Tax in its General Fund revenue projections, it is expected to yield \$7.5 million in 2014.

The union maintains that 2014 General Fund revenue is strong. It reports that projected revenue is \$378.3 million, which is \$3.0 million or .8% above the budgeted amount. (Union Pre-Hearing Statement, Tab 19) It adds that this is \$20.2 million or 5.6% greater than in 2013 (Ibid.)

The union argues that the county's ending balances show its strong position. It points out that the Second Quarterly Report projects the General Fund ending balance to be \$140.2 million

or 36.8% of expenditures. (Ibid.) The union observes that this is \$3.6 million more than the budgeted amount.

The union contends that the county's bond ratings reflect its strong financial position. It observes that Moody's assigned an Aa3 rating to its \$231 million hotel project bonds. The union reports that Moody's also confirmed its Aa1 rating on \$314 million of general obligation bonds.

The union cites a number of other factors, including the "LeBron James effect." It states that LeRoy Brooks, a local economist, predicted that James's return to Cleveland will result in \$57 million to \$69 million in additional revenue for restaurants, hotels, and bars. (Union Pre-Hearing Statement, Tab 9) The union indicates that he estimated that the total economic impact would be between \$245 million and \$521 million. (Ibid.)

County Position - The county argues that it faces a "significant challenge." It points out that cuts in the state budget resulted in a loss of more than \$67 million between 2011 and 2013. (County Pre-Hearing Statement, Tab 5) The county notes that in addition, the General Fund and Health and Human Services Levy Fund were impacted by a decrease in property tax collections starting in 2013.

The county contends that revenue growth and "economics" were not enough to address these changes. It states that its operating budgets were "mostly flat" for 2013 through 2015 and exhibited "mostly flat" revenue trends. The county indicates that the 2014 base operating budget was "just in balance" with available estimated current resources.

The county maintains that the budget for 2014-2015 relies on a number of assumptions. It describes the assumptions as follows:

Revenue estimates were based on the trends as of late 2013. Modifications to trends were made to budgeted revenue where necessary.

The salary and fringe benefits are based on current levels projected for 2014 and held flat for non-bargaining employees.

Fringe benefits including health care costs anticipate at least a 3% rate of growth in future years of the budget outlook. At this point, no changes to employee compensation levels have been made.

A 2% inflationary parameter was applied to most budgets for operating and service contracts and other expenditure lines.

The current budget estimates include the impact of budget cuts enacted as part of the past two State budgets (HB153 and HB59). In most cases those levels of production are held flat after 2014 and beyond.

Additional requests for funding were evaluated separately from the base budget development process and within the context of funding source and budgetary priority. (County Pre-Hearing Statement, Tab 5, 2014 Budget Update; October 7, 2014; page 4)

The county argues that it has had to continue to make targeted reductions to keep operating expenditures in line with available resources. It points out that over the biennium \$8.5 million of cuts were recommended to executive agencies. The county notes that the targeted areas included vacant positions, jail operations, contractual services, and building maintenance. It adds that the General Fund budget for executive agencies was \$165 million or 7.2% less than in 2013 and was held to \$168.5 million for 2015.

The county contends that there has been a decline in the major sources of General Fund revenue. It states that the core revenue sources have declined by almost 5% since 2011, including cuts to the Local Government Fund totaling \$26.5 million between 2011 and 2013. The employer indicates that "the steady decline in economic vitality of the region has contributed to the 15% drop in real dollars since 2008... [and] this fact ... will require sustained periods of growth to be alleviated." (Ibid., page 6)

The county complains that the past two state budgets have used cuts to local government to achieve "structural balance." It observes that there have been cuts in the Local Government

Fund, Commercial Activity Tax reimbursement, Public Utility reimbursement, and assistance to human services programs. The county reports that the 2014-2015 budget cannot restore any of the previous cuts and made changes resulting in an additional 4.5% reduction in its Local Government Fund allocation.

Analysis - The Fact Finder believes that the county clearly has the ability to pay the union's demands. While the county has experienced significant revenues losses due to the Great Recession and the subsequent slow recovery as well as significant cuts in state aid, its financial condition has improved significantly. Sales tax collections have increased and a number of developments in the county promise increased revenues. The county's ending balances and bond ratings confirm that the county is in good financial condition.

The Fact Finder is not suggesting that the county has an unlimited ability to pay. The cuts in state funding and slow economic recovery have been difficult for the county. This suggests that the union's demands for an immediate elimination of any shortfalls in compensation cannot occur in a single round of bargaining. However, given the county's improved financial situation and its strong prospects, the union's concerns cannot be ignored.

ISSUES

The parties submitted 21 issues to the Fact Finder. For each issue, the Fact Finder will describe the current contract provision and the positions of the parties. He will then present his analysis of the issue and his recommendation.

1) Article 14 - Wages - Rank Differential - The current contract provides for a base wage rate 18% higher than the highest rate for a Deputy Sheriff. The union proposes increasing the rank differential to 30%. The county opposes the union's demand.

Analysis - The Fact Finder cannot recommend an increase in the rank differential. First, while he recognizes that the Corrections Sergeants are paid 42% more than the Corrections Officers and the Protection Services Sergeants are paid 29% more than the Protective Services Officers, Deputy Sergeants still earn 13.4% more than the Corrections Sergeants and 46.3% more than Protective Services Sergeants. (Union Pre-Hearing Statement, Tab 23)

Second, the data provided by the county and the union support the conclusion that the rank differential should not be increased. The county provided the pay levels and rank differentials for Sergeants in 11 counties within 55 miles of Cuyahoga County. Pay in Cuyahoga County is 109.7% of the average for the other counties. The average rank differential is 13.6% compared to 18% in Cuyahoga County and only two of the counties have rank differentials as high as Cuyahoga County. While some of the counties may not be entirely comparable to Cuyahoga County, the data does not support the union's demand to increase the rank differential.

The union's data also fails to support an increase in the rank differential. It indicates that Sergeants in the county earned 98.5% of the average in four nearby counties, Geauga, Lake, Lorain, and Summit Counties. However, if the high wage for Geauga County is omitted, Sergeants in Cuyahoga County earned 103.2% of the average for the remaining counties.

Third, the Fact Finder believes that the appropriate way to increase the wages of sergeants is to increase the wages of deputies rather than to distort the rank differential. The Fact Finder has recommended a \$750 salary adjustment for deputies effective January 1, 2015, followed by a 2% increase in the salary schedule and then additional 2% increases effective January 1 of 2016 and 2017. These recommended increases combined with the 18% rank differential addresses the Sergeants' salary concerns.

The Fact Finder must note that the county's 2013 actual "total compensation" for the Sergeants and their estimated "total compensation" for 2014 are of little use to him. First, the county's "total compensation," includes overtime earnings, statutory retirement contributions, employer health insurance payments, and vacation payments, which are not ordinarily included in total compensation. Second, the statutory criteria require comparisons to other employees doing similar work. The county, however, provided data only for Cuyahoga County.

Recommendation - The Fact Finder does not recommend the union's proposal and recommends that the current contract language be retained.

2) Article 15 - Hours of Work/Overtime, Section 2 - Overtime Calculation -

The current contract counts sick leave as time worked for purposes of computing overtime. The county seeks to eliminate sick leave from the overtime calculation. The union proposes the current contract language.

Analysis - The Fact Finder cannot recommend the change sought by the county. First, while the Corrections Officers and the Protective Services Officers and Sergeants do not count sick leave towards overtime, the most relevant comparisons for Deputy Sergeants are the Deputy Lieutenants and the Corrections Officer Corporals and Sergeants who do include sick leave in the overtime calculation.

Second, the change sought by the county could have a significant impact on employees on 12-hour shifts, which have eight hours of built-in overtime. Given that a number of Sergeants work 12-hour shifts, the county's proposal is problematic.

Third, the county is seeking to change a long-standing contract provision. The Fact Finder sees no reason, at this time, to recommend the change sought by county.

Recommendation - The Fact Finder does not recommend the county's proposal and recommends that the current contract language be retained.

3) Article 15 - Hours of Work/Overtime, Section 4 - Compensatory Time

Bank - The current contract has a comp time bank with a maximum of 160 hours of accumulation. The union seeks to increase the maximum to 480 hours. The county opposes the union's demand.

Analysis - The Fact Finder cannot recommend the union's proposal to increase the maximum accumulation to 480 hours or the county's demand to keep it at 160 hours. The comp time max for the Deputies is 240 hours and the Fact Finder sees no reason for the Sergeants to have a lower maximum.

Recommendation - The Fact Finder recommends the following contract language:

At the Employee's option, these overtime hours may be credited to the Employee as compensatory time at one and one half (1-1/2) times the normal accrual rate, provided that the total of hours accrued does not exceed two hundred forty (240) hours. Compensatory time shall be used within 365 days of accrual. Use of compensatory time must be approved by the Employer and shall not be unreasonably withheld. In the event the Employee is unable to use compensatory time within three hundred sixty five (365) days of accrual, the Employer shall pay to Employee all monies due to the Employee for overtime actually worked.

4) Article 15 - Hours of Work/Overtime, Section 4 - Use of Compensatory

Time - The current contract states that employees must use compensatory time within 365 days of when it was earned or they will be paid for the time. The union seeks to eliminate the one-year requirement. The county wishes to reduce the time to use comp time to 180 days.

Analysis - The Fact Finder cannot recommend either the elimination of the time limit for using comp time sought by the union or the reduction in the time limit proposed by the

county. Since the Deputies have two years to use comp time, the Fact Finder recommends the same arrangement for the Sergeants.

Recommendation - The Fact Finder does not recommend either party's proposal and recommends that the current contract language be retained.

5) Article 15 - Hours of Work/Overtime, Section 4 - County Option - The current contract gives employees the option to be paid for overtime or to have the time credited to their comp time bank. The county proposes that it have the option to pay for overtime work or to grant compensatory time. The union opposes the county's proposal.

Analysis - The Fact Finder cannot recommend the county's proposal that comp time be available to employees at the county's option. This proposal is contrary to the arrangement for employees in other sheriffs' departments and city police departments.

Recommendation - The Fact Finder does not recommend the county's proposal and recommends that the current contract language be retained.

6) Article 15 - Hours of Work/Overtime, Section 4 - New - Compensatory Time Cash-Out - The current contract does not allow an employee the option to cash out compensatory time. The union proposes that employees be able to cash out comp time at any time. The county opposes the union's proposal.

Analysis - The Fact Finder does not recommend the union's proposal. First, the unlimited right to cash out comp time could prove to be a significant burden to human resources and payroll in processing such requests. Second, the union was not able to show a justification for its proposal.

Recommendation - The Fact Finder does not recommend the union's proposal and recommends that the current contract language be retained.

7) Article 15 - Hours of Work/Overtime, New Section 6 - Shift Differential -

The current contract has no shift differential. The union seeks a \$.25 per hour shift differential for the second shift and \$.50 per hours for the third shift. The county opposes the union's proposal.

Analysis - The Fact Finder cannot recommend the union's proposal. First, while he recognizes that 15 of 36 or 42% of the police departments in Cuyahoga County have shift differentials, none of the Deputy Sheriffs in the union's comparable sheriff's departments have a shift differential.¹

Second, the Fact Finder recognizes that the Protective Services Officers have a \$.25 per hour differential for the second shift and \$.50 per hour differential for third shift. He must note, however, that the qualifications and responsibilities of the Deputy Sergeants and the Protective Services Officers are different as is their compensation. In addition, the Fact Finder has not recommended the Deputy Sheriff's demand for a shift differential

Third, the Fact Finder believes that whatever increase in compensation he recommends, the money should go toward increasing the base rate of pay. He is convinced that adding new varieties of compensation makes the compensation of the deputies less clear. Furthermore, while a shift differential may benefit some of the bargaining unit, an increase in the base wage will benefit all members of the unit.

Recommendation - The Fact Finder does not recommend the union's proposal.

¹ This data is from Union Pre-Hearing Statement, Tabs 23 and 23A, in the fact finding involving the county and the Deputy Sheriffs.

8) Article 21 - Group Insurance - The current contract provides for group health insurance. The county proposed a number of changes in the present contract provisions. The union accepted some of the changes sought by the county but opposed others.

Analysis - The Fact Finder must recommend the county's proposal. The Deputy Sheriffs have agreed to the changes as have a number of other bargaining units requiring the Fact Finder to recommend the same health insurance for the Deputy Sergeants, absent some compelling reason for doing otherwise.

Recommendation - The Fact Finder recommends the following contract language:

SECTION 1. An eligible employee is defined as a full-time employee covered by this Agreement. The Flex Count Plan (the plan) is defined as the section 125 or cafeteria plan, which is provided by the Employer for health insurance benefits for county employees. The Employer shall provide eligible employees the opportunity to enroll in the plan once during each plan year at its annual open enrollment period. The plan year commences on January 1, and ends on December 31 of the calendar year, but is subject to change.

SECTION 2. Effective, January 1, 2015, bi-weekly employee contributions for medical, prescription drug, and ancillary (dental and vision) benefits shall be determined as follows:

- A) **METROHEALTH PLAN:** The county shall offer a plan through MetroHealth System at no bi-weekly contribution to employees.
- B) **OTHER PLANS:** The Employer shall pay 90% of plan costs and the employees shall pay 10% of plan costs.
- C) **DENTAL AND VISION:** The Employer shall pay 90% of plan costs and the employees shall pay 10% of plan costs.

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

SECTION 4. The Employer shall be entitled to increase the cost containment features of the Flex Count plans which may include, but are not limited to

deductibles, co-insurance, and spousal exclusion provisions. Deductibles and co-insurance shall be effective January 1, 2015.

SECTION 5. The Employer may implement or discontinue incentives for employees to participate in Employer-sponsored wellness programs, including, but not limited to, the right to offer the opportunity to reduce employee contributions through participation in wellness programs as determined by the Employer.

SECTION 6. The Employer may offer incentives to encourage use of low cost providers/plans (including HSA plans) which may be discontinued or modified by the Employer in future plans years with notification to the Union.

SECTION 7. A waiting period of no more than one hundred twenty (120) calendar days may be required before new employees are eligible to receive health and/or other insurance benefits. During the waiting period, the Employer may require employees who desire coverage to purchase it through a third-party vendor instead of participating in the county plans that are offered to regular full-time employees. New employees shall be eligible to participate in the county plans on the first date of the first month following completion of the waiting period.

SECTION 8. Implementation following negotiations: an open enrollment period for medical benefits shall occur in December 2014. Employees who do not make a selection will default to the MetroHealth Plan. The county shall make a good-faith effort to also allow employees to change their flexible spending account allocation during the open enrollment period in December 2014.

9) Article 25 - Health & Safety, Section 8 - New - Fitness Testing - The

current contract does not require fitness testing. The county proposes the following:

The parties recognize that Deputy Sergeants must be fit to perform their jobs effectively and so that they do not constitute a threat to themselves or others. The county may require that Deputy Sergeants take part in reasonable, balanced and job-related training to assess an employee's ability to perform the actual or simulated jobs tasks such as, but not limited to, self-defense and other training or testing that is job-related and consistent with the operational needs of the Employer. Prior to implementing training or assessment pursuant to this Article, the county shall use an expert to certify the validity of the test or assessment measure. If the employee cannot complete and pass required training and/or assessment, he/she shall be given an opportunity to re-train and/or be re-assessed. If the employee subsequently fails to complete and pass training and/or assessment required by the county, he/she shall receive written notification of this failure.

The union opposes the county's proposal.

Analysis - The Fact Finder cannot recommend the county's proposal for fitness testing. First, its proposal is incomplete and unclear. It cannot describe the test or what might be included in the testing. In contrast to this, the union's proposal for a fitness bonus included the specific elements of its proposed testing.

Second, the union is justifiably concerned regarding the potential consequences for employees who fail a fitness test. The county's proposal simply states that employees who fail the test "shall receive written notice of [their] failure." A fitness test which does nothing more than notify employees that they are not fit, would not appear to accomplish very much.

The Fact Finder recognizes that the record indicates that both the county and the union are concerned about fitness. The county proposes a mandatory program with unspecified consequences. The union offers a voluntary program where a fitness bonus is supposed to provide the incentive for employees to participate. While the Fact Finder finds neither approach acceptable, it would not be appropriate for him to design and recommend a program based on his own ideas and preferences. The union and the management of the sheriff's department have an opportunity to work together to develop a fitness program that meets their common interests and goals and to enlist expert help in doing so.

Recommendation - The Fact Finder does not recommend the county's proposal.

10) Article 27 - Employee Discipline, Section 1 - Schedule of Disciplinary

Offenses - The current contract states that employees are to be disciplined under the county's Standard Schedule of Disciplinary Offenses and Penalties. The county wishes to add a sentence indicating its right to amend be Standard Schedule of Disciplinary Offenses. The union opposes the county's demand.

Analysis - The Fact Finder understands that the county needs to retain the authority to modify the Standard Schedule of Disciplinary Offenses. He also recognizes the union's fears regarding any revision of the current schedule, which has been in its current form for more than 30 years. The union, however, is protected by the contract provision requiring just cause for discipline.

Recommendation - The Fact Finder recommends the following contract language:

Employees covered by this Agreement shall be disciplined or discharged in accordance with the Employer's Standard Schedule of Disciplinary Offenses and Penalties or any successor discipline policy.

11) Article 27 - Employee Discipline, Section 4 - Investigations - The current contract requires investigations of bargaining unit members to be conducted by law enforcement personnel above the rank of Sergeant. The county proposes language that would bar an investigation of the bargaining unit member by someone other than a member of the bargaining unit. The union opposes the county's demand.

Analysis - The real issue is the role of the county's Department of Human Resources Department and the Inspector General in disciplinary matters in the Sheriff's Department. The Fact Finder believes that routine disciplinary matters should be handled by the Sheriff's Department. He recognizes, however, that there are other issues that may appropriately involve individuals from outside the department. With these points in mind, the Fact Finder will recommend the language contained in the deputy sheriffs contract.

Recommendation - The Fact Finder recommends the following contract language:

Routine disciplinary matters shall be investigated by employees in the Sheriff's Department above the rank of Sergeant. Other investigations shall not be conducted by bargaining unit members.

12) Article 27 - Employee Discipline, Section 4 - New - Use of Polygraph –

The current contract is silent with respect to the use of the polygraph. The union proposes a provision that would ban the use of the polygraph in internal investigations. The county opposes the union's demand.

Analysis - The Fact Finder does not recommend the union's demand. While he recognizes that the Lieutenant's contract requires the permission of an employee before a polygraph can be used in an internal investigation, it is the only contract in the department with such language. Furthermore, the record indicates that the polygraph has not been used in internal investigations.

Recommendation – The Fact Finder does not recommend the union's proposal.

13) Article 29 - Promotional Examinations, Section 1- Design of

Examinations - The current contract requires the county to conduct promotional examinations. The county proposes adding language indicating that promotional examinations may include physical agility tests and interviews as well as a written examination. The union opposes the county's demand.

Analysis - The issue of the make-up of promotional exams changed during the fact finding process. Questions arose regarding the county's ability to use agility tests and interviews as part of the promotion process. In order to forestall unnecessary grievances, the contract should indicate that the county is not barred from using the agility tests and interviews. The Fact Finder recognizes that the record suggests that agility tests have been used in the past. In addition,

despite questions regarding the validity and reliability of using interviews as a selection method, that they are part of virtually every promotional process.

Recommendation – The Fact Finder recommends the following contract language:

The Employer agrees that a request shall be made to the appropriate governmental agency, or some other private, independent testing entity to conduct promotional examinations within the boundary of Cuyahoga County. The promotional examinations may include but are not limited to written exams, physical agility tests, or interviews. The employer will maintain from such entity a current eligibility list for two (2) years. No employees with less than three (3) years of continuous, uninterrupted service with the bargaining unit shall be eligible to sit for a promotional examination.

14) Article 29 - Promotional Examinations, Section 4 - Written Exam - The union proposed a new section requiring the county to give a written promotional exam within 60 days of the occurrence of a vacancy and to establish a passing score of 70%. The county opposes the union's demand.

Analysis - The Fact Finder does not recommend the union's demand. It did not present sufficient evidence or a convincing rationale to justify the addition of its proposed language to the contract.

Recommendation - The Fact Finder does not recommend the union's proposal.

15) Article 29 - Promotional Examinations, Section 5 - Rule of Three - The union proposes a new section requiring the county to fill positions from the eligibility list using the "rule of three." The county opposes the union's demand.

Analysis - The Fact Finder does not recommend the union's demand. It did not present sufficient evidence or a convincing rationale to justify the addition of its proposed language to the contract.

Recommendation – The Fact Finder does not recommend the union’s proposal.

16) Article 31- Personnel Records, Section 3 - Notification - The current contract requires the county to notify an employee of a request to view his/her personnel file unless the request is made by a supervisor in the Sheriff’s Department or a member of the Sheriff’s executive staff. The county seeks to add to the exclusions from the notice requirement “other authorized Employer representatives.” The union opposes the county’s demand.

Analysis - The Fact Finder believes that this issue, like a number of other issues, reflects the union’s concern that the Sheriff’s Department is no longer an independent entity with an elected Sheriff and its suspicions about the activities and investigations conducted by the Inspector General.

While the Fact Finder recognizes the union’s concerns, the collective bargaining agreement must reflect the new reality. The county charter resulted in some functions moving from the department level to the county level. This suggests that county-level individuals must have access to the Deputy Sergeants’ records on the same basis as individuals in the Sheriff’s Department. The Deputies’ collective bargaining agreement already recognizes the new environment by incorporating the county’s proposal in its collective bargaining agreement.

Recommendation - The Fact Finder recommends the following contract language:

Employees will receive prompt notification any time an inquiry is made to view their personnel file, unless the request is made by the Deputy Sheriff supervisory personnel, a member of the executive staff of the Sheriff, or other authorized Employer representative.

17) Article 36 - Sick Leave, Section 2 - Calling Off - The current contract requires employees to call-off one hour prior to the start of their scheduled shift. The county proposes increasing the notice time to two hours. The union opposes the county’s demand.

Analysis - The Fact Finder cannot recommend the county's demand. It did not show that the current requirement has created any particular problems or that increasing the notice to two hours would make any difference. In addition, the Deputies' contract provides for one-hour notice.

Recommendation - The Fact Finder does not recommend the county's proposal and recommends that the current contract language be retained.

18) Article 36 - Sick Leave, Section 2 - Doctor's Slip - The current contract requires an employee who was absent from work for seven consecutive calendar days to submit a doctor's slip. The county proposes requiring a doctor's slip after three consecutive calendar days. The union opposes the county's demand.

Analysis - The Fact Finder believes that a doctor's slip should be required after an employee is absent for more than five consecutive days. This reflects the county's concern regarding absences as well as the union's concern about the inconvenience and expense of attaining a doctor's slip for a minor illness. The five-day requirement was agreed to by the Deputy Sheriffs.

Recommendation - The Fact Finder recommends the following contract language:

An employee who was unable to report for work and who is not on a previously approved day of vacation, sick leave, or leave of absence shall be responsible for notifying the employer at least one (1) hour prior to the Employee's scheduled work assignment, unless emergency conditions prevent such notification. In the case of a condition exceeding five (5) consecutive calendar days, a physician's statement specifying the Employee's inability to report to work and the probable date of return to work shall be required, and the following shall apply:

- 1) When hospitalization is required, the employee shall be responsible for notifying the Employer upon admission to and discharge from, such hospital unless emergency conditions prevent such notification.

2) For other extended absences (three days or more) the employee shall contact the Department of Human Resources at 216-698-2302.

19) Article 36 - Sick Leave, Section 11 - Sick Leave Cash-Out - The current contract provides that upon retirement, employees are entitled to be paid 50% for any unused sick leave not to exceed 640 hours. The union proposes specifying the percentage of accumulated sick leave that must be paid by a schedule based on years of service reaching 75% of accumulated sick leave with a maximum of 960 hours. The county seeks to reduce the percentage of sick leave that is paid to 25% up to a maximum of 240 hours.

Analysis - The Fact Finder cannot recommend either party's demand. In fact finding for the Deputy Sheriffs, the Fact Finder recommended the current contract provision regarding sick leave. He believes that the Deputies and the Sergeants should have the same arrangement for cashing out unused sick leave.

Recommendation - The Fact Finder does not recommend either the county's or the union's proposal and recommends that the current contract language be retained.

20) Article 36 - Sick Leave, New Section 12 - Sick Leave Bonus - The current contract has no provision for converting unused sick leave to vacation. The union proposes that an employee who uses no sick time and has no attendance violations for any rolling six-month period be permitted to convert five sick days to five vacation days. The county opposes the union's demand.

Analysis - The Fact Finder recommends the union's demand. The Deputies' collective bargaining agreement includes the provision sought by the Sergeants. The Fact Finder sees no reason why the Sergeants should be denied the benefit received by the Deputies.

Recommendation - The Fact Finder recommends the following contract language:

Any employee who uses no sick time, and has no attendance violations, as defined by the Employer's attendance policy, for any "rolling" six month period will be permitted, upon the Employee's request, to convert five (5) sick days to five (5) vacation days. Such conversion may occur only twice in any twelve (12) month period.

21) Article 55 - Expiration and Renewal - The current contract was effective January 1, 2010, and expired on December 31, 2012. The county proposes that the successor agreement be effective January 1, 2015, and expire on December 31, 2017. The union proposes a contract to be effective January 1, 2014, through December 31, 2016, provided a tentative agreement is reached on the other open issues.

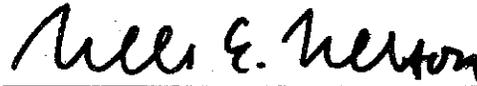
Analysis - The Fact Finder recommends that the contract be effective upon its execution. He recognizes that this means that the parties will have to return to the bargaining table in less than one year. However, the parties were unable to reach an agreement on an effective date.

Recommendation - The Fact Finder recommends the following contract language:

This Agreement is effective upon its execution, subject to approval by the Cuyahoga County Council, notwithstanding any other dates referenced on the cover of the Agreement, as footers on each page or elsewhere herein, unless specifically indicated. The Agreement shall remain in full force and effect until 11:59 PM on December 31, 2015, and shall thereafter continue in full force and effect from year to year and shall be renewed for successive years unless written notice of termination or a desire to modify or change this Agreement is given by either party at least 120 days prior to the expiration date. Upon receipt of such notice, a conference shall be arranged within 30 days.

22) Tentative Agreements - The Fact Finder recommends the tentative agreements

reached by the parties.



Nels E. Nelson
Fact Finder

December 3, 2014
Russell Township
Geauga County, Ohio