

**IN THE MATTER OF FACT FINDING**

**BETWEEN**

**THE CUYAHOGA COUNTY SHERIFF**

**AND**

**OHIO PATROLMEN'S BENEVOLENT ASSOCIATION**

**SERB Case No(s). 13-MED-09-1204  
(Corrections Officers)**

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## INTRODUCTION

The parties to this matter are the Ohio Patrolmen's Benevolent Association (hereinafter "Union," or "bargaining unit") and the Cuyahoga County Sheriff, Ohio (hereinafter "Employer" "Sheriff," or "Department"). Cuyahoga County is located in Northeast, Ohio. The Collective Bargaining Agreement (hereinafter "Agreement") originally ran from January 1, 2010 through December 31, 2012. The parties then agreed to a one year extension through December 31, 2013. The bargaining unit is comprised of approximately 522 full-time Corrections Officers, with a budget approval level of 556 officers. In 2002 there were approximately 605 officers in the bargaining unit. Around the same time the work day and week changed for many officers from an 8-hour shift to a 12-hour shift. (Emp. Ex. 26) The parties, after an extended period of time, which was delayed by representation election, were unable to settle their negotiations and reached impasse. The parties came to fact-finding with approximately 30 unresolved articles and agreed to mediation lead by the fact-finder. This effort resulted in several tentative agreements being reached and reduced the number of unresolved issues by approximately two-thirds.

### **General/State/Local Economic Overview:**

It can finally be said with some certainty that the economy is improving on the national, state, and local level. If you use the Stock Market as one measure, things are greatly improved, but for the majority of Americans, a better metaphor is "the bleeding has subsided and the patient's (a.k.a. economy) condition is stable with signs of further improvement. Conditions post 2008 are not nearly the same as they were prior to the recessionary onset. Painful lessons learned in its aftermath have caused local governmental operations to be more closely scrutinized in terms of costs and efficiency. In Ohio a catalyst for this change in managerial thinking resulted from severe cuts in state funding to local governments that have forced public employers to do more with considerably less. But in Ohio structural problems in the economy began well before 2008. Over 400,000 manufacturing jobs in Ohio have disappeared in the last 12+ years, many of which paid a livable wage along with good benefits. Gone are years passed when recovery from a recession in northern Ohio could expect to be brought fostered by a structurally strong manufacturing base that for decades supported a viable middle class who were mainstays in Ohio's consumer based economy. The improvement in the economy is uneven, some people survived, recovered very well or even thrived since the end of the "great recession," others did not and either remained unemployed, underemployed, and were forced to utilize their savings to survive following job losses. A vast majority of the improvement in the economy continues to be skewed to the wealthy while middle and lower income wage earners have experienced stagnation or net erosion in the purchasing power of their wages. Fortunately, inflation has been kept in check during the past several years softening the impact on wage earners who have seen little or no growth in their earnings. Economic and political pressure to address wage stagnation, particularly at minimum continues to grow.

Cuyahoga County has in the last several years overcome a great deal both economically and politically. The benefits of necessary political reform, competent executive leadership at the County and City level, and a strong reviving local economy on many fronts are taking both

Cleveland and Cuyahoga County into a very positive direction, the likes of which this neutral, a native of Cleveland and resident of Ohio has never seen in his lifetime.

The items specifically addressed by the fact finder in this report are based upon the evidence and arguments proffered by the Union and the Employer. The recommendations contained in this report conform to the statutory criteria that all fact finders must follow, but are somewhat limited in their utility in that there is a lack of statutory direction in terms of assigning each relative weight.

## **CRITERIA**

### **OHIO REVISED CODE**

In the finding of fact, the determinations contained in this report are based upon the criteria set forth in Section 4117-9-05(K) of the Ohio Administrative Code. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements, if any between the parties;
2. Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private sector employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effects of the adjustments on the normal standard of public service;
4. The lawful authority of the employer;
5. Any stipulations of the parties;
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in the private employment.

**MAIN ISSUES: Summary of the Parties' Positions and Discussion:**

The Union's and the Employer's detailed position and rationale on each of the unresolved issues can be found in their respective Pre-hearing Statements and in evidence in the record. The stated position of each party on the open issues is as follows:

**ISSUE 1      ARTICLE 14      WAGES****UNION:****A. Article 14: WAGES**

The Union proposes a wage increase of four percent (4%) per year for all three years. The Union also proposes to remove the "new hire" step by making the current "After 1 year" rate the new hire rate or simply to delete step-six. The Union request is to adopt the following:

**SECTION 1.** There shall be a 4% wage increase, retroactive to January 1, 2014, applied to all steps of the hourly wage rate scale. All members of the bargaining unit shall be paid in accordance with the following scale:

<u>01/01/2014</u>	
New Hire:	\$14.88/hour
After 1 Year:	\$16.26/hour
After 2 Years:	\$17.65/hour
After 3 Years:	\$19.02/hour
After 4 Years:	\$20.42/hour
After 5 Years:	\$20.81/hour

**SECTION 2.** Effective January 1, 2015 there shall be a 4% wage increase applied to all steps of the hourly wage rate scale. All members of the bargaining unit shall be paid in accordance with the following scale:

New hire	\$15.48/hour
After 1 year	\$16.91/hour
After 2 years	\$18.36/hour
After 3 years	\$19.78/hour
After 4 years	\$21.24/hour
After 5 years	\$21.64/hour

**SECTION 3.** Effective January 1, 2016 there shall be a 4% wage increase applied to all steps of the hourly wage rate scale. All members of the bargaining unit shall be paid in accordance with the following scale:

New hire	\$16.10/hour
After 1 year	\$17.59/hour
After 2 years	\$19.09/hour
After 3 years	\$20.57/hour
After 4 years	\$22.09/hour
After 5 years	\$22.51/hour

The Sheriff has cut the number of employees in the jail, while greatly increasing the work demands on the current members. The Sheriff's budget is approximately \$88 million for 2014, of which 70% is dedicated to jail operations. (U. Ex. 19, 23). Correction Officers maintain order over an average daily inmate population of over 2,000 violent offenders. (U. Ex. 21, p. IV-22). The rated capacity for the Cuyahoga County jail is 1,749 inmates.

(U. Ex. 23). The Employer continues to cut staffing while maintaining a crowded facility that is 115% to capacity. As a result, the Sheriff has resorted to "Double Podding" cells, despite previous arbitration and Court findings prohibiting the practice. (See U. Ex. 30). "Double Podding" is the practice of having one (1) Correction Officer guarding two (2) pods at the same time. A pod is a housing unit. Most pods in one jail tower hold 24 inmates on a single floor; the pods in the other tower usually hold 48 inmates on a double floor auditorium. (U. Ex. 27). One (1) Correction Officer cannot view two (2) pods at all times. All pods are part of the jail operations master plan. As such, each pod is listed as an individual post/station on the master plan and each post must be staffed individually. (See U. Ex. 28). The practice of double podding increases the chance of injury or death to both the COs and inmates.

The most disturbing aspect of the danger from double-podding is that County's disinterest in employee safety. The Ohio Department of Rehabilitation and Correction inspected the Cuyahoga County Correction Center ("jail") on December 17<sup>th</sup> & 18<sup>th</sup>, 2013. (U. Ex. 29). The Department of Rehabilitation issued a Report on the Cuyahoga County jail on February 11, 2014 ("Jail Report"). The Jail Report confirms that the jail's maximum capacity is 1790 inmates. (Id.). However, the Jail Report confirmed the jail population was 2,070 inmates on the date of inspection. (Id.). There were 280 additional inmates over the maximum capacity or, put another way, a population of inmates which is 15.6% over the State maximum. (Id.)

The COs are vital for the safety of the citizens of this County and public policy demands a well-staffed jail with competent employees. The Revised Code requires the Employer and Sheriff to maintain the jail, but does not require the Sheriff to maintain any other function related to patrol or security. (U. Ex. 30, p. 4). While the Employer "complains" about the cost of running the facility and the overtime for officers, it must be realized that the jail is mandatory by Revised Code, the jail is woefully overcrowded and the shortage of staff drives up the cost of overtime.

The County may feel it is an "employer's market." As far as corrections officers go, they are mistaken. If the Employer offered a competitive civil service examination, followed by a background investigation, coupled with a physical examination, polygraph test and psychological test, all of which is standard in this field and reasonable citizens believe is being done, the Employer would find there may very well not be enough eligible applicants to fill needed positions due to the relatively low unemployment rate in Ohio. The simple fact remains that potential employees must ask; "Can I really do this job for \$12.35?" Many people have been hired at this Department and when they realized what was really involved, they left within days of being hired.

The bargaining unit is cognizant of today's thriving economy. The stock market is at record highs. The County is financially benefiting from this revitalization of the City of Cleveland. The Horseshoe Casino, the Theatre District, E. 4<sup>th</sup> and West 6<sup>th</sup> Street areas are filling the coffers of the County via sales and bed taxes. During the last Conciliation hearing, the County argued the effects of LeBron James leaving the Cavaliers as their explanation of why the County was financially incapable of granting any pay raises; now, they contend the return of the LeBron James factor does not exist. Needless to say, the area stands to gain a significant cash infusion from the Cavs home opener on October 30<sup>th</sup> which drew millions of dollars into the City and the County and that James' return will bring in \$129 million in additional ticket revenue alone.

It is very important to consider that the Corrections Corporals and the Sergeants within the Sheriff's Department receive a rate of pay that is within the specter of similarly positioned employees in the surrounding counties. However, as the Union's comparables prove, the corrections officers are embarrassingly underpaid. Additionally, the surrounding departments' pay schedules are extremely more generous than this County's. The bargaining unit must endure seven (7) years of employment to reach the top pay of \$20.01 per hour.

Geauga County starts their officers at \$19.42 per hour and in the second year of employment they will be making more per hour than a 7 year veteran of the Cuyahoga County Sheriff's Office. (U. Ex. 32). Lake County starts their officers at \$20.03 per hour which is greater than a 7 year employee of Cuyahoga County. (U. Ex. 33). After just 2 years of employment, a Lorain County CO earns \$21.04 per hour. (U. Ex. 34). A Medina County CO will earn \$20.41 per hour after 1 year of service. (U. Ex. 35). A Portage County CO will earn \$20.73 after just 2 years of service. (U. Ex. 36).

Yet, the OPBA asks the County to grant raises in the amount of 4% per year which will result in the top

officers earning just \$22.58 per hour in 2016. This will figure is still lower than the current wages in Lake, Lorain, Geauga and Medina Counties. The current top pay for Cuyahoga County Correction Officers is:

- 39% less than the top pay in Geauga County (U. Ex. 32, p. 15).
- 12% less than the top pay in Lake County (U. Ex. 33, p. 47).
- 23% less than the top pay in Lorain County (U. Ex. 34, p. 40).
- 17% less than the top pay in Medina County (U. Ex. 35, p. 20).
- 11% less than the top pay in Portage County (U. Ex. 36, p. 13).

What is most appalling is the fact that the starting wage at Cuyahoga County is:

- 59% less than Geauga County (U. Ex. 32, p. 15).
- 54% less than Lake County (U. Ex. 33, p. 47).
- 27% less than Lorain County (U. Ex. 34, p. 40).
- 17.49% less than Medina County (U. Ex. 35, p. 20).
- 45% less than Portage County. (U. Ex. 36, p. 13).

The OPBA submits that other Cuyahoga County bargaining unit and non-bargaining employees received increases in pay when this unit did not. For some positions, the County has performed job audits. Two of these units were the Public Defender's Office and the Kennel employees.

Regarding the Public Defender's CBA, the County states that they are increasing the unit members pay to have "parity" with the attorneys in the County Prosecutors Office. (U. Ex. 47, p. 24-25). The OPBA points out that the Public Defender's attorneys work directly for the County Executive and the County Council, whereas the assistant prosecutors work for the Elected County Prosecutor. All the employees listed on the Side Letter Agreement attached to the CBA received over \$5,000 in wage increases and some as high as \$7,000. (U. Ex. 47, p. 32).

The County also did an audit of wages earned by employees at the County Kennel. They discovered that:

...In addition to examining the history of increases received by other County bargaining units, the County conducted an analysis of similarly situated employees in several external comparable public jurisdictions. The County determined that compensation for Kennel employees is not within an equitable range of deviation from compensation of the employees performing the same or similar work in the jurisdictions studied, particularly the starting wage rate for the Cuyahoga County Deputy Dog Wardens, which is currently \$11.93. Attracting qualified applicants has proven difficult and turnover has been high, leading to concerns regarding the efficient and effective operation of the Kennel. This poses problems since these positions provide protections to our overall public safety and welfare, and to the residents of Cuyahoga County..." (U. Ex. 48, p. 29).

The OPBA must argue that if the County residents' public safety and welfare is jeopardized by stray animals, how much more important is the safety and welfare of millions of people that live in this and surrounding counties; as well as, several thousand workers, inmates, support staff and visitors to the jail. The County must maintain a secured facility to house criminals that would have a direct impact on the safety and welfare of millions of people. This County's jail is the largest population of criminals in the entire State of Ohio. Yet, the Corrections Officers are amongst the least paid. Again, this unit needs to have a pay adjustment in comparison to same or similar employees and contiguous norms.

As discussed in the mediation process, the other units within the Sheriff's Department are in the acceptable comparable rate with their contemporaries. However, the CO bargaining unit is far below the wages of their contemporaries. In fact, the 38% difference between the top rate of a CO and the rate of a Corporal is astounding. If the County can "boost" the wages of the public defenders and kennel workers' pay to bring them in line with others, then the County must provide an "adjustment bump" to the Corrections Officers wages.

The County cries out that the financial "sky is falling" in good times and bad. The financial records clearly show the County can afford to grant this well deserved wage proposal. The Employer has funds available to pay for wage increases. According to the Employer, the Employer maintained an unreserved General Fund balance of \$187

million at the end of 2013 or a Fund balance-to-expense ratio of over 50%. (U. Ex. 10). For 2014, the County has estimated an unreserved Fund balance of \$140 million or a 36.8% balance-to-expense ratio after deducting \$26 million set aside for specific projects. (U. Ex. 19). The current year projection for General Fund operating expenditures is 3.3% under budget (\$12.9 million) including a planned use of \$3.0 million in reserves for one-time investments. (U. Ex. 19, p. I-2). The 2013 actual General Fund operating revenue was \$358.1 million. (U. Ex. 19, p. I-3). At \$378.3 million projected for 2014, revenue is projected to exceed 2013 actual by \$20.2 million. (U. Ex. 19, p. I-3). The GF ending balance is \$23.6 million higher than the budget estimate. The \$140.2 million is net of a number of initiatives including \$14.3 million set aside for construction of the convention center hotel. (U. Ex. 19, p. I-9). GF revenue is projected at \$3.0 million or 0.8% above current budget estimates. At \$378.3 million, revenue is projected (5.6%) ahead of the 2013 actual. (U. Ex. 19, p. I-2). The Employer also maintains an investment account in the amount of \$928.8 million, part of which is invested in STAR Ohio, a state managed investment account for public employers, in the amount of \$289.7 million. (U. Ex. 26, p. 33). That account is available on one (1) days' notice. (Id.).

County Sales and Use Tax has increased each year since 2007. In 2008, the County adopted a .25% sales tax increase to support the "Medical Mart" project, now called the "Global Center." For 2013, the total revenue was \$237,219,044 (including the Medical Mart tax) with \$189,775,235 in discretionary spending after the Medical Mart was excluded. (U. Ex. 11). For 2014, Sales Tax is currently projected at \$194.7 million (excluding the Global Center portion) or 2.5% over the 2013 actual. (U. Ex. 19, p. I-4).

Since July, 2012 Cuyahoga County has received \$14,490,192 in Casino Tax revenue. In July 2014 alone, the County received \$1,898,243. (U. Ex. 12). "Casino Tax revenue is not included in the current GF revenue projection." (U. Ex. 19, p. I-4). Total distribution for 2014 is assumed to be approximately \$7.5 million. (Id.).

County Council approved a 40-year extension of the county hotel bed tax. The 1.5% portion, set to expire when the bonds used to build the Rock and Roll Hall of Fame and Museum are paid off in 2014, will be available for future improvements. That portion of the tax raises about \$5 million per year. (U. Ex. 16)

Moody's assigned an Aa3 rating for the County's \$231 million Convention Hotel Project. Moody's reaffirmed the Aa1 rating on the County's \$314 million of outstanding general obligation limited tax bonds. (U. Ex. 22). The Employer cites to a lowering of the County's bond rating by Standard & Poor's as a means to justify its paltry wage offer. However, according to its own financial report, the bond rating was lowered due to Standard & Poor's modifying its factors in determining the rating system.

Local economist LeRoy Brooks predicts that Cleveland-area restaurants, hotels and bars will experience an additional \$57 million to \$69 million in revenue annually." (U. Ex. 13). He estimates the total economic impact as a result of LeBron's return at between \$245 million and \$521 million. (Id.). Cavs attendance for the 2013-2014 season was 17,329 per game. (U. Ex. 9). "With James, the Cavs are likely to fill up the arena's capacity of 20,562. Spread over 41 games, James could bring in \$129 million in additional ticket revenue alone." (Id.)

Finally, the Employer again misrepresents the facts related to property tax. The Employer claims a loss of revenue to the General Fund from property tax from \$30.5 million in 2010 to \$13.9 million in 2013. In Fact, the County reallocated the percentage of property tax revenue away from the General Fund and redistributed it to the Bond Retirement Fund. According to their own tax table, of the 1.45 rate on unvoted levies on County property, in 2010, .90 was distributed to the General Fund and .55 was distributed to the Bond Retirement Fund. (U. Ex. 26, p. 45). By 2013, the County had reallocated the percentage to .60 to the General Fund and .85 to the Bond Retirement Fund. (Id.). The "shift of property tax dollars to the Debt Retirement Fund decreased the property tax revenue available to the General Fund to \$14.2 million in Fiscal year 2011 and \$14.8 million in fiscal year 2012." (U. Ex. 26, p. 34). The projected property tax revenue for the General Fund for 2014 is \$14.1 million or 1.1% over the 2013 actual. (U. Ex. 19, p. I-4).

The Union estimates a 1% wage increase between \$240,000 and \$245,000 for each year, including roll-ups for pension, Medicare, and Workers' Compensation. (See U. Ex. 25). The Union estimate includes a calculation for each employee at their applicable rate, according to the Employer's own data provided upon request. (See U. Ex. 24). The Employer has available \$436.5 million each year from the Employer's unreserved fund balance (\$140 million), STAR Ohio account (\$289 million), and unbudgeted revenue in Casino Tax (\$7.5 million), alone. When

compared to the \$436 million available, the Union request of \$980,000 ( $\$245,000 \times 4\%$ ) is less than one-half of one percent (0.5%).

**EMPLOYER:**

**Article 14: WAGES**

**County Proposal:**

.Wage increases shall be as follows:

2014: Employees shall receive a 2% wage increase, effective the first day of the first full pay period in January, 2014.

2015: Employees shall receive a 2% wage increase, effective the first day of the first full pay period in January, 2015.

Wage rates for calendar year 2016 shall be determined through a single wage re-opener negotiation, which shall be governed by the same statutory negotiation and impasse resolution procedures as provided in Ohio Revised Code Chapter 4117.

**County Position:**

For 2014, The County's offer is consistent with the pattern that has been set both within and outside of the Sheriff's Department. Within the Sheriff's Department the following units have settled at 2% for 2014:

OPBA, Deputy Sheriff's  
AFSCME, Local 2927, Inmate Services  
FOP, Correction Sergeants  
CWA, Local 4340, Clerical Employees  
UAW, Correction Corporals  
UAW, Registered Nurses  
UAW, Court Security Officers  
UAW, Cooks and Laundry Workers.

All units outside of the Sheriff's Department have settled for 2% for 2014.

For 2015: The following units have settled on 2%:

UAW: Registered Nurses  
UAW: Court Security Officers  
AFSCME Local 1746

For 2016, no units are currently locked in.

These increases are better than CPI for 2014, which nationally is reported at 1.7% and for the Cleveland/Akron area is at 1.3% (see Exhibit A).

It should be noted that, because of their 12 hour shifts, most COs have 8 hours of overtime pay built into their biweekly pay, and that the County is expanding the number of COs to at least 556. Annual Payroll at this level of FTEs, with PERS, will exceed \$29 million dollars at current rates. Therefore a 1% increase cost approximately \$295,000.

Listed below is the number of employees at each step:

Step 1: 44 (more soon to be hired)  
Step 2: 57  
Step 3: 24  
Step 4: 12  
Step 5: 30  
Step 6: 4  
Step 7: 381

The start rate for this unit is admittedly lower than the County would like. If it were back-end loaded to avoid costs, for instance July 1, 2015, the County would consider a proposal eliminating the first step, as long as incumbent employees did not advance because of it, which would add considerable cost.

## **DISCUSSION:**

It is clear from the data submitted by the parties that bargaining unit's wages are well below relevant external comparable correctional salaries in nearby Sheriff's offices, namely Geauga County, Lake County, Lorain County, Medina County and Portage County. These are comparable jobs in contiguous jurisdictions and in accordance with statute are very relevant in this analysis. And although working 12 hour shifts cuts down on commuting to work, when one factors in the costs of working at the Cuyahoga County Jail, the costs of travelling to work, parking, etc. to this major downtown location, the contrast becomes even more notable. (Uxs. 32, 33, 34, 35, 36). Data provided by the Union underscores just how far out of line both starting and top salaries are compared to other correctional officers in nearby counties. (See p. 9, Union's Post Hearing Brief) And, while the job of corrections officer is anything but easy, the length of time it takes to reach full salary appears to be excessive. Additionally, in reducing steps it is noted there is only a 2% difference between the last step and the second last step of the salary schedule, and there are currently only 4 employees at the second last step. The Employer in its presentation acknowledges the inadequacy of the Correction Officer's starting rate. At the same time, internal equities need to be carefully considered in terms of general (across-the-board) wage increases. The Employer presented compelling data that demonstrates just how consistent wage settlements have been in the past several months. (See p. 12, 13, Employer's Post Hearing Brief) In a very recent fact-finding report involving Deputies in the Department, Fact-finder Nelson, maintains the well-established three (3) year-patterned wage increase while providing for an additional fixed equity adjustment of approximately 1.3% in the first year of the Agreement subject to compounding. The Deputies Agreement is offset by one year compared to the Correctional Officer's Agreement. It appears from Fact-finder Nelson's report that the extent of the overall compensation inequity existing between Deputies in Cuyahoga County and deputies in other comparable jurisdictions such as Geauga, Medina, Lake, Lorain, and Geauga County is not as extensive as that which exists for Correctional Officers in the bargaining unit. (See Ux. 25) Rome wasn't built in a day and the external inequity issues have likely existed for many years, which means it will take some time to correct this disparity. And while ability to pay does not appear to be an issue, the County is just at the beginning of what appears to be a sustained and arguably energetic recovery, after having gone through a period of reform, state revenue cuts, and the aftermath of the most severe recession since the Great Depression, requiring prudence to be exercised. These recommendations are designed to be a step in bringing the bargaining unit in line with comparable northeast Ohio jurisdictions.

**RECOMMENDATION**

Wage increases shall be as follows:

**2014:** Employees shall receive an across-the-board wage increase of 2%, retroactive to the first day of the first full pay period in January, 2014.

**2015:** Following the 2014 retroactive 2% increase to all existing salary steps, the 2014 wage step scale shall be modified effective the first day of the first full pay period in January, 2015 as follows: The salary schedule shall be reduced from 7 steps to 6 steps, by elimination of the first current salary step (New hire step) and the establishment of a new step\*\*, and a .40 per hour equity adjustment shall be added to steps 1 through 5 as follows:

**2015\*\***

New Hire Rate: 14.00  
After 1 year: 14.99  
After 2 years: 16.33  
After 3 years: 17.70  
After 4 years: 19.05  
After 5 years: 20.81

**2015:** An across-the-board wage increase of 2% shall then be applied to the above equity adjusted wage schedule effective the first day of the first full pay period in January, 2015.

**2016:** Employees shall receive an across-the-board wage increase of 2%, effective the first day of the first full pay period in January, 2016.

**ISSUE 2      ARTICLE 17      LONGEVITY**

**UNION:**

**B. ARTICLE 17: LONGEVITY**

The Union proposes that the current language be amended as follows:

**Article 17: LONGEVITY**

**SECTION 1.** Employees in the bargaining unit shall receive longevity payment for their years of service in accordance with the following:

1. After five (5) years of continuous service, a longevity payment of **three hundred, seventy-five dollars (\$375.00) per year**. For each additional year of service beyond five (5) years, an additional **seventy-five (\$75.00)** shall be paid per year.

2. Longevity will be included in the pay for the pay period in which the anniversary date occurs. The said amounts, previously covered, shall be paid every year until the Employee retires. On the year of retirement, said fees shall be paid but include the full years and prorated months of service or one hundred (\$100.00) divided by twelve months = x dollars times number of months of service.

During the last Collective Bargaining process, which resulted in the current contract, the Union proposed changes to the current language which would have been in line with the Deputy Units. At that time, the Deputy contract provided for an initial rate of \$375.00 at year 5 and \$75.00 per year of service after that, without a cap. Fact-Finder Anna Duval-Smith's recommendation, issued on June 22, 2011 contained the following:

It cannot be denied that Cuyahoga County correction officers fall behind their fellows internally and externally, both in terms of initial annual payout and the maximum. (U. Ex. 37, p. 6).

She continued:

Fact-Finder believes internal consistency on longevity is more reasonable in this case where a definite pattern is emerging than external comparables which have more variability as a set than the internals do. She therefore recommends the Union's proposal. (Id.).

Duval-Smith recommended the Union's proposal giving the Corrections Officers the same as the Deputy contract. However, a few short months later, Conciliator Silver awarded the County's proposal and the result was the CO unit receiving the lower rate of longevity and additionally, Silver put a "cap" on the earnings. (U. Ex. 31).

Despite no internal comparables from Sheriff's Department employees, Conciliator Silver awarded a \$1,100 cap.

Conciliator Silver wrote in his award:

The Conciliator in this case understands the Fact Finder's emphasis on internal consistency for longevity payments, and when funds are available for an increase in such payments, increases in longevity may be justified and fiscally possible. Sufficient available funds for a longevity payment increase are not found by the Conciliator. The absence of available funds for an increase in longevity payments calls into question the public employer's ability to finance the longevity increases proposed by the Union. (U. Ex. 31, p. 9).

He continued:

The Conciliator is not persuaded that the Employer has the financial wherewithal to finance the increases in longevity payments proposed by the Union. The Conciliator therefore selects the Employer's position on longevity and maintains current language. The Union submits the following language as its final offer, all other language in this Article to remain as currently written. (U. Ex. 31, p. 10).

Today, the County is indeed financially able to grant the Union's proposal. Additionally, there is not a single scintilla of information which would indicate that the County will not be able to meet this increase in the future. Furthermore, the Deputies, Deputy Sergeants, Deputy Lieutenants and Corrections Sergeants have been receiving \$375.00 base at 5 years and \$75.00 per year thereafter. (U. Exs. 38, 39, 40, 41). None of these units have a maximum rate or "cap."

The Deputy Contract has provided the \$375.00 base and \$75.00 per year since 01/01/2000 through the current contract. (U. Ex. 40). The Deputies unit previously had a cap of \$1,875 but the cap was removed in 2009. The CO Unit will never recover the same amounts paid to the Deputies; however, the longevity pay for the COs must be brought up to the same level as other Sheriff's Department employees.

**EMPLOYER:**

**Article 17: LONGEVITY**

**SECTION 1.** Employees in the bargaining unit shall receive longevity payment for their years of service in accordance with the following:

- 1) After five (5) years of continuous service, a longevity payment of three hundred fifty dollars (\$300.00) per year;
- 2) For each additional year of service beyond five (5) years, an additional fifty dollars (\$50.00) shall be paid per year, subject to a maximum longevity allowance of one thousand one hundred dollars (\$1,100.00).

**County Position:** The longevity benefit is consistent with other units at the Sheriff's Department. There is no justification for further enhancement of this benefit. The County would consider eliminating the cap, if there were a bargained for exchange.

**DISCUSSION:**

After a review of the facts, I concur in part with the view of Fact-finder Anna Duval-Smith, who stated,

*"It cannot be denied that Cuyahoga County correction officers fall behind their fellows internally and externally, both in terms of annual payout and the maximum. (Ux. 37, p. 6)"*

The internal comparable data, which influences equitable wage increases among different bargaining units, should be viewed in a similar manner when it comes to longevity, which is another form of wages. Yet as with wage inequities, while movement toward equity is justified, complete equity is a goal that needs to be pursued reasonably. It is recognized that although the County has come a long way under its current leadership and improved economic structure, it still has had a lot to overcome both politically and economically. It is moving away from historically traditional declining sources of revenue (e.g. state funding) and toward a new revenue paradigm that is being generated by the revitalization of the local economy and new sources of revenue (e.g. casino revenue, convention income, tourism, sports, etc.) Removal of the longevity cap is the first reasonable step toward internal equity.

**RECOMMENDATION**

**For 2014: Current Language:**

**Effective January 1, 2015:**

**Article 17: LONGEVITY**

**SECTION 1.** Employees in the bargaining unit shall receive longevity payment for their years of

service in accordance with the following:

1. After five (5) years of continuous service, a longevity payment of *three hundred dollars (\$300.00) per year*; For each additional year of service beyond five (5) years, an additional *fifty dollars (\$50.00)* shall be paid per year.
2. **Longevity will be included in the pay for the pay period in which the anniversary date occurs. The said amounts, previously covered, shall be paid every year until the Employee retires. On the year of retirement, said fees shall be paid but include the full years and prorate months of service or fifty (\$50.00) divided by twelve months = x dollars times number of months of service.**

### **ISSUE 3      ARTICLE 18      HOLIDAYS AND HOLIDAY PAY**

#### **UNION:**

##### **A. Article 18: HOLIDAYS AND HOLIDAY PAY**

The Union submits the following proposal which has been modified from its original position.

**SECTION 1.** All Employees covered by this Agreement shall receive holiday pay for the following holidays:

- |                           |                            |
|---------------------------|----------------------------|
| 1) New Year's Day         | 6) Labor Day               |
| 2) Martin Luther King Day | 7) Columbus Day            |
| 3) Presidents' Day        | 8) Veterans' Day           |
| 4) Memorial Day           | 9) Thanksgiving            |
| 5) Independence Day       | 10) Day after Thanksgiving |
|                           | 11) Christmas Day          |

If a holiday should fall on a Saturday, it shall be observed on the previous Friday. If a holiday should fall on a Sunday, it shall be observed on the following Monday; except that Christmas Day, New Year's Day, Veterans' Day and Independence Day will be observed on the actual day.

**SECTION 2.** Subject to the staffing needs of the Employer, a senior consenting Employee may elect not to work on a recognized holiday. **When a recognized holiday falls on a day that an Employee is not regularly scheduled to work based on his shift bid schedule or is granted permission to have the scheduled holiday off by the Department, on a recognized holiday the Employee shall be paid straight time at his regular hourly rate for the number of hours of the Employee's regularly scheduled shift [eight (8), ten (10), or twelve (12) hours]. An Employee who required to work on one of the recognized holidays shall be entitled to receive compensation at the rate of one and one-half (1-1/2) times his regular rate of pay for all hours worked on the scheduled holiday, in addition to receiving regular holiday pay. Should the Employee's post not be in operation on a holiday, the Employee shall have the option of working elsewhere in the jail at one and one-half times his regular rate of pay or elect to have the day off at straight time.**

**SECTION 3.** To be eligible for holiday pay, an Employee must work his last scheduled day before the holiday and his first scheduled day after the holiday, unless absent because of legitimate illness supported by medical documentation, documented emergency or otherwise excused from work by the Employer. For purposes of

this article, a vacation or compensatory time day is not a scheduled workday.

The Union proposes certain changes to the current language. This is mandated by Associate Warden Ivey's unilateral decision to deviate from the contractual language and alter the well established practice without negotiating or even telling the Union of the change. (U. Ex. 42). On February 10, 2014, Ivey posted a note outlining that people who are scheduled off as a result of a specialty job (i.e.: booking, visitation) on a holiday will not be permitted to report to work. (Id.). The contractual language and the established practice has been that a specialty job employee whose specialty area was closed could work, at the employee's option, in jail security or any other position that needed to be filled because of a vacancy. The OPBA filed a grievance over the unilateral modification. (See U. Ex. 42). The OPBA has been waiting to select an arbitrator to remedy the violation.

Evidence has already shown that the jail is woefully understaffed. There is a need for additional employees every day of the week. However, the County, with no regard to safety, resorts to double-podding or the closing of a control room. Those employees who are normally scheduled to work on a given day, through their semi-annual shift selection, should be allowed the first opportunity to work on the day they normally would have worked if not for the holiday. For example, if Employee A is normally scheduled to work a Monday due to their shift selection, Employee A should have the first option of filling a vacancy on Labor Day as a result of vacations, personal time, compensatory time, etc. The Employee simply needs to inform the roster sergeant at least one day in advance of their intentions to work. After the specialty post employees have submitted their option to work and have been assigned a post, any remaining positions will be filled in accordance with Article 24 related to overtime. Alternatively, if the Employer does not need any further employees to fill vacancies, the less senior employees will not be scheduled.

The Union's proposed modification to Section 2 clarifies the language and removes any ambiguity. The proposed language simply reflects the practice that had been in place for years prior to February 2014.

**EMPLOYER:**

**Article 18: HOLIDAYS AND HOLIDAY PAY**

**County Proposal:**

**SECTION 1.** All Employees covered by this Agreement shall receive holiday pay for the following holidays:

- |                           |                            |
|---------------------------|----------------------------|
| 1) New Year's Day         | 6) Labor Day               |
| 2) Martin Luther King Day | 7) Columbus Day            |
| 3) Presidents' Day        | 8) Veterans' Day           |
| 4) Memorial Day           | 9) Thanksgiving            |
| 5) Independence Day       | 10) Day after Thanksgiving |
|                           | 11) Christmas Day          |

If a holiday should fall on a Saturday, it shall be observed on the previous Friday. If a holiday should fall on a Sunday, it shall be observed on the following Monday; except that Christmas Day, New Year's Day, Veterans' Day and Independence Day will be observed on the actual day.

**SECTION 2.** An Employee not required to work on a recognized holiday shall be paid straight time at his regular hourly rate for the number of hours of the Employee's regularly scheduled shift [eight (8), ten (10), or twelve (12) hours]. An Employee required to work on one of the recognized holidays shall be entitled to receive compensation at the rate of one and one-half (1-1/2) times his regular rate of pay, in addition to receiving regular holiday pay. Employees who are normally assigned to work specialty posts shall be given first priority to work available overtime opportunities on holidays without regard to any other provision of this Agreement. To be eligible, employees must be present at roll-call.

**SECTION 3.** To be eligible for holiday pay, an Employee must work his last scheduled day before the holiday and

his first scheduled day after the holiday, unless absent because of legitimate illness supported by medical documentation, documented emergency or otherwise excused from work by the Employer. For purposes of this article, a vacation or compensatory time day is not a scheduled workday.

**County Position:** The Union has not justified the wholesale changes that it proposed. The deletion of Section 1 is justified because it lacks clarity and has led to grievances by employees misunderstanding its intent. The County is willing to agree to the last new language in Section 2, which was suggested by the Union in bargaining, as a quid pro quo for the deletion of the first sentence. If the first sentence is not deleted, the County is unwilling to add the new language and asks that the Fact-finder treat these matters as linked.

## **DISCUSSION:**

The Employer presented a persuasive case in support of its position to remove the first sentence of Section 2, which at best is confusing, and adding additional language at the end of this Section that appears to address a central Union issue raised in mediation and at the fact-finding hearing. That is not to say that there are not other legitimate concerns expressed by the Union over the administration of the language and any existing past practice that may be relevant. From the facts submitted, the parties appear to be headed to arbitration over this issue. In the judgment of the Fact-finder, the language as modified by the Employer at least in part removes unclear language, and begins to address issues expressed by the Union. The additional language proposed by the Union, while preserving the right of employee to work if he/she is scheduled on a holiday, appears in its wording to run contrary to right and responsibility of the Employer to place staff in the jail as it determines is necessary. What is unknown to this neutral is any past interpretation of Article 18 and/or any relevant past practice regarding the implementation of Article 18. These issues are best left to the grievance arbitration procedure.

## **RECOMMENDATION**

### **Article 18: HOLIDAYS AND HOLIDAY PAY**

#### **County Proposal:**

**SECTION 1.** All Employees covered by this Agreement shall receive holiday pay for the following holidays:

- |                           |                            |
|---------------------------|----------------------------|
| 1) New Year's Day         | 6) Labor Day               |
| 2) Martin Luther King Day | 7) Columbus Day            |
| 3) Presidents' Day        | 8) Veterans' Day           |
| 4) Memorial Day           | 9) Thanksgiving            |
| 5) Independence Day       | 10) Day after Thanksgiving |
|                           | 11) Christmas Day          |

If a holiday should fall on a Saturday, it shall be observed on the previous Friday. If a

holiday should fall on a Sunday, it shall be observed on the following Monday; except that Christmas Day, New Year's Day, Veterans' Day and Independence Day will be observed on the actual day.

**SECTION 2.** An Employee not required to work on a recognized holiday shall be paid straight time at his regular hourly rate for the number of hours of the Employee's regularly scheduled shift [eight (8), ten (10), or twelve (12) hours]. An Employee required to work on one of the recognized holidays shall be entitled to receive compensation at the rate of one and one-half (1-1/2) times his regular rate of pay, in addition to receiving regular holiday pay. **Employees who are normally assigned to work specialty posts shall be given first priority to work available overtime opportunities on holidays without regard to any other provision of this Agreement. To be eligible, employees must be present at roll-call.**

**SECTION 3.** To be eligible for holiday pay, an Employee must work his last scheduled day before the holiday and his first scheduled day after the holiday, unless absent because of legitimate illness supported by medical documentation, documented emergency or otherwise excused from work by the Employer. For purposes of this article, a vacation or compensatory time day is not a scheduled workday.

#### **ISSUE 4      ARTICLE 19      UNIFORM ALLOWANCE AND APPEARANCE**

#### **UNION:**

##### **A. Article 19: UNIFORM ALLOWANCE AND APPEARANCE**

The Union proposes to amend Section 4 as follows:

**SECTION 4.** Effective January 1, 2014 the Employer will provide compensation in the amount of ~~two hundred fifty dollars (\$250.00)~~ **one thousand four hundred dollars (\$1,400.00)** per year for each bargaining unit Employee as a uniform maintenance allowance.

The uniform allowance received by the Deputy and Sergeant units is at \$1,400.00 per year for uniform maintenance. (U. Ex. 38, p. 10; U. Ex. 40, p. 11). Protective Services Officers and Sergeants receive \$575.00 per year for maintenance. (U. Ex. 43). Both the Deputy and Protective Services units receive their assigned clothing and duty equipment, such as badges, duty belts, winter jackets, etc. These units receive an additional uniform "maintenance" allowance. The Corrections Officers are not issued any equipment. They do receive two (2) shirts and two (2) pants per year.

In order to function as a para-military operation, uniformity is crucial. The COs need to have proper foot wear, belts, uniform jackets, winter coats and sweaters and patches, amongst other things, in order to meet uniform standards. Dry cleaning and laundry expenses are borne by the rank and file at this time. The present CO maintenance allowance is simply insufficient to meet these needs.

With regard to the Employer's Position to add a sentence to Section 3, the Union does not object to the proposal as follows:

"Employees must produce the appropriate incident report for consideration of eyeglass or watch reimbursement."

**EMPLOYER:**

Article 19: UNIFORM ALLOWANCE AND APPEARANCE

**SECTION 1.** This article defines the process utilized by the Employer regarding uniform issuance, maintenance and appearance for bargaining unit members.

**SECTION 2.** The Employer will continue issuing two (2) sets of uniforms during the Employee's probationary period and each subsequent year thereafter. The Employer shall provide replacement uniforms, or parts thereof, whenever an Employee's uniform exhibits excessive wear and tear or is damaged during the course of the Employee's performance of his duties. In cases where adequate replacement uniforms are unavailable, the Employer shall provide the Employee with a new uniform or part thereof.

**SECTION 3.** All Employees shall be in complete uniform whenever on duty, pursuant to the Uniformed Corrections Officer Uniform/Appearance Policy, attached hereto and incorporated by reference as Exhibit "A".

The Employer shall reimburse an Employee for loss or damage to eyeglasses or watches sustained as a direct result of an interaction with an inmate while in the performance of assigned duties. The loss or damage shall not be the result of negligence, carelessness or recklessness by the Employee.

Reimbursement for the repair or replacement of eyeglasses shall be limited to one hundred fifty dollars (\$150.00) per year. Reimbursement for watches shall be limited to twenty-five dollars (\$25.00) per year. Reimbursement shall be made upon the presentation of proof of loss, which shall include the receipt of the original purchase of the item, the repair or replacement receipt, and the report of the Employee. The Employer shall pay the difference, if any, between the amount of reimbursement from any source of insurance and the actual cost, in the amounts set forth above.

**SECTION 4.** The Employer will provide compensation in the amount of two hundred fifty dollars (\$250.00) per year for each bargaining unit Employee as a uniform maintenance allowance.

**SECTION 5.** Current Corrections Officers may replace identification badges by purchasing a new badge at their own expense. The Employer shall furnish new badges after three (3) years without cost to Employees. Employees may use an initial in place of a first name on badges.

**County Position:**

The County is proposing current contract language with a few simple modifications. The County is proposing housekeeping changes while the Union is asking for significant substantive changes, without offering any quid pro quo. The Union's proposal is based on benefits given to law enforcement units who have constant exposure to the public and must maintain higher standards of official appearance than is required of Correction Officers.

**DISCUSSION:**

Using the comparable units of Protective Officers and Sergeants, the Union makes a persuasive argument to increase the uniform allotment for Corrections Officers, rather than adding an amount of money that has been included in the collective bargaining agreements for other units. Corrections Officers are in a para-military operation and are often held to a higher standard than are employees who serve in a more civilian capacity. (e.g. following orders, dress, integrity, etc.) Therefore, these officers should be provided the sufficient uniforms befitting this

level of responsibility and their contact with inmates. If you're going to be in a position of authority, then you should look the part. But as with other issues in this report, moving toward improvement in this benefit is tempered by a focus on wages therefore requiring only a modest improvement in this benefit. See Sections 2 and 4.

## **RECOMMENDATION**

### Article 19: UNIFORM ALLOWANCE AND APPEARANCE

**SECTION 1.** This article defines the process utilized by the Employer regarding uniform issuance, maintenance and appearance for bargaining unit members.

**SECTION 2.** The Employer will continue issuing three (3) sets of uniforms during the Employee's probationary period and each subsequent year thereafter. The Employer shall provide replacement uniforms, or parts thereof, whenever an Employee's uniform exhibits excessive wear and tear or is damaged during the course of the Employee's performance of his duties. In cases where adequate replacement uniforms are unavailable, the Employer shall provide the Employee with a new uniform or part thereof.

**SECTION 3.** All Employees shall be in complete uniform whenever on duty, pursuant to the Uniformed Corrections Officer Uniform/Appearance Policy, attached hereto and incorporated by reference as Exhibit "A".

The Employer shall reimburse an Employee for loss or damage to eyeglasses or watches sustained as a direct result of an interaction with an inmate while in the performance of assigned duties. The loss or damage shall not be the result of negligence, carelessness or recklessness by the Employee.

Reimbursement for the repair or replacement of eyeglasses shall be limited to one hundred fifty dollars (\$150.00) per year. Reimbursement for watches shall be limited to twenty-five dollars (\$25.00) per year. Reimbursement shall be made upon the presentation of proof of loss, which shall include the receipt of the original purchase of the item, the repair or replacement receipt, and the report of the Employee. The Employer shall pay the difference, if any, between the amount of reimbursement from any source of insurance and the actual cost, in the amounts set forth above.

**SECTION 4.** The Employer will provide compensation in the amount of three hundred dollars (\$300.00) per year for each bargaining unit Employee as a uniform maintenance allowance.

**SECTION 5.** Current Corrections Officers may replace identification badges by purchasing a new badge at their own expense. The Employer shall furnish new badges after three (3) years without cost to Employees. Employees may use an initial in place of a first name

on badges.

**ISSUE 5      ARTICLE 20      GROUP INSURANCE**

**UNION:**

**A. Article 20: GROUP INSURANCE**

The Union has adopted the majority of the language proposed by the employer and is incorporated below; however, the areas highlighted are the changes proposed by the Union. The Union proposes the following:

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. *The Plan Benefit Summary for each plan is attached hereto as Appendix A.*

Section 2: Effective the first pay-period following full execution of this Agreement, 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 the MetroHealth System at no **bi-weekly** cost 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 the 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 exclusions. Deductibles and co-insurance shall be effective August 1, 2014.**

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 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 within thirty (30) days following the full execution of this Agreement. 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 provided for in this section.

**Section 9:** *Prior to adopting any change in the health insurance plan impacting bargaining unit employees, the Employer shall meet with a Union committee comprised of the OPBA attorney and three (3) bargaining unit members. The purpose of the meeting is to provide the Union with the opportunity to discuss possible changes to the Plans.*

The Employer has proposed massive modifications from the current CBA to health insurance that increases the employee contribution from 5% to 10% and also leaves the Employer broad discretion to significantly increase deductibles, co-insurance and co-pays. What is further troubling is the Employer proposes to reserve the right to require a spousal exclusion. The Employer's proposal sets no standards upon which these modifications can be made or the maximum cost that can be passed on to the Employees. While the Employer touts the benefits of the MetroHealth Plan with no monthly premium contribution for the employee, notably absent from the Employer is the fact that the Employer has modified the language to allow it to impose costs for deductibles, co-pays and co-insurance even on the Metro plan. In theory, the Employer could implement a \$3,000 deductible starting 01/01/2015 with no recourse by the employees or Union. A \$3,000 deductible would equate to 7.3% of the highest rate employee's annual pay.

Assuming a County family premium of between \$724 and \$992 per month for the Medical Mutual and United Healthcare plans, respectively, depending on the plan selected the increase in premium contribution alone would cost an Employee \$36.20 or \$49.60 per month. Over a one year period, that increase amounts to 1%-1.5% of the employee's annual pay. Cost increases for deductibles and increased out-of-pocket maximums would further reduce the employee's take home pay. For the employees in this Unit, these costs are regressive and harmful.

The Union would not object to an increase in the employee monthly premium contribution from 5% to 10% with no maximum contribution, provided all other employees in the County are on the same schedule; however, the Union proposes that language must be maintained that limits the actual costs that can be passed on to employees through the deductible, co-pays and co-insurance. The Union further requires that a spousal exclusion be negotiated and not subject to the whim of the Employer.

The existing Plan Benefit Summary for each Plan should be included as an exhibit to set the rates of deductibles, co-pays and co-insurance for the life of the CBA.

## **EMPLOYER:**

### **Article 20: GROUP INSURANCE**

**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.** Bi-weekly employee contributions for medical and prescription drug benefits shall be determined as follows:

a) **MetroHealth Plan**

The County shall offer a plan through the MetroHealth System at no biweekly contribution from employees;

b) **Other Plans**

Biweekly health insurance contribution rates shall be as follows:

Employer 90% of plan costs; Employee 10% of plan costs.

**Section 3.** The costs of the 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 contribute 90% of the costs for the ancillary benefit plans (i.e., vision and dental) and the employee shall contribute 10% of the costs of ancillary benefit plans.

**Section 5.** 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.

**Section 6.** 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 7.** 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 8.** A waiting period of no more than 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.

**County Proposal:** 98% of all bargaining employees at the County have identical or very similar insurance language with no substantive differences. Internal equity considerations and consistent administration of benefits dictate in favor of the County's proposal.

**DISCUSSION:**

Affordable health care that provides adequate coverage heavily depends on uniformity of benefits and specifications. The internal equity considerations espoused by the Employer strongly support its position in this matter. However, what the Union is seeking in its proposal in new Section 9 is not unreasonable and is commonly found in labor agreements. There is a long history in public sector bargaining in Ohio regarding the collaboration of employees and employers in maintaining close communications on this essential benefit.

## **RECOMMENDATION**

### **Article 20: GROUP INSURANCE**

**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.** Bi-weekly employee contributions for medical and prescription drug benefits shall be determined as follows:

**a) MetroHealth Plan**

The County shall offer a plan through the MetroHealth System at no biweekly contribution from employees;

**b) Other Plans**

Biweekly health insurance contribution rates shall be as follows:  
Employer 90% of plan costs; Employee 10% of plan costs.

**Section 3.** The costs of the 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 contribute 90% of the costs for the ancillary benefit plans (i.e., vision and dental) and the employee shall contribute 10% of the costs of ancillary benefit plans.

**Section 5.** 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.

**Section 6.** 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 7.** 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 8.** A waiting period of no more than 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 9:** Prior to adopting any change in the health insurance plan impacting bargaining unit employees, the Employer, at the written request of the OPBA, shall meet with a Union committee comprised of the OPBA attorney and three (3) bargaining unit members. The purpose of the meeting is to provide the Union with the opportunity to discuss (meet and confer) over possible changes to the Plans.

**ISSUE 6      ARTICLE    21      EMPLOYEE NO SICK TIME**

**UNION:**

*A. Article 21: EMPLOYEE'S NO SICK TIME*

The Employer proposes to eliminate the provision. The Union proposes to keep current language. The Employer has presented no evidence to justify a modification of existing language. The current language is contained in the Deputy, Deputy Sergeants, and Protective Services Officers contracts.

**EMPLOYER:**

*Article 21: EMPLOYEE'S NO SICK TIME*

**County Proposal:**

**County Position:** This language is a vestige of the pre-FMLA era. It is a dinosaur and should be deleted.

**DISCUSSION:**

Internal comparable bargaining units have like language in their collective bargaining agreements. There was insufficient evidence submitted into the record to justify a change from current language.

**RECOMMENDATION**

**Maintain Current Collective Bargaining Language**

**ISSUE 7      ARTICLE 23      HOURS OF WORK**

**UNION:**

**A. Article 23: HOURS OF WORK**

The Union has submitted earlier proposals but would be willing to adopt current language for Sections 1-3 and 5-6 and provided the following modification to Section 4 only were implemented:

**SECTION 4.** Employees shall receive a forty-five (45) minute lunch period, ~~fifteen minutes of which will be non-compensable, and for the purpose of overtime calculation, not counted as hours worked.~~ The Employer will make a reasonable effort to schedule the break during the middle one-third of each Employee's shift.

Employees will be required to punch in and out for lunch and permitted to leave the premises. The Employer will provide a designated lunch area.

As discussed during the mediation process, CO employees are required to punch in and begin work fifteen minutes prior to the start of their scheduled shift. The "Break" period has been the subject of discussion during several rounds of negotiations. Employees should be compensated for all hours from the time they punch in to the end of their shift, which includes the 15 minutes of break time.

**EMPLOYER:**

**Article 23: HOURS OF WORK**

**SECTION 1.** For those Employees on a five (5) day workweek, the normal workday shall consist of eight (8) hours and fifteen (15) minutes, with five (5) consecutive workdays and two (2) consecutive days off.

**SECTION 2.** For those Employees on a four (4) day workweek, the normal workday shall consist of ten (10) hours and fifteen (15) minutes, with four (4) consecutive workdays and three (3) consecutive days off.

**SECTION 3.** The Employer may schedule Employees to work seven (7) shifts within a fourteen (14) day period, with the normal workday consisting of twelve (12) hours and fifteen (15) minutes, with three (3) consecutive workdays and four (4) consecutive days off in one week, and four (4) consecutive workdays and three (3) consecutive days off the next week.

- a) Bargaining unit Employees hired on or before February 20, 2001, may be scheduled for twelve-hour shifts only on a voluntary basis, provided that once such an Employee has volunteered to work twelve-hour shifts, the Employer may require him to remain on twelve-hour shifts until the next semi-annual shift selection is implemented.
- b) Bargaining unit Employees hired after February 20, 2001 may be required to work twelve-hour shifts at the Employer's discretion.
- c) The Employer will conduct a semi-annual bidding process for selection of shift, days off, and jail security posts by seniority. Posts that the Employer has determined will be staffed with twelve-hour shifts will be identified as such during the posting process. Posts will be converted to

twelve-hour shifts only in conjunction with the semi-annual bidding process.

**SECTION 4.** Employees shall receive a forty-five (45) minute lunch period, fifteen minutes of which will be non-compensable, and for the purpose of overtime calculation, not counted as hours worked. The Employer will make a reasonable effort to schedule the break during the middle one-third of each Employee's shift.

Employees will be required to punch in and out for lunch and permitted to leave the premises. The Employer will provide a designated lunch area.

**SECTION 5.** An Employee must have the approval of his immediate supervisor prior to taking a break. Reasonable requests for relief during an Employee's shift shall not be unreasonably denied.

**County Position:** The proposed Section 3 change is housekeeping. Section 6 seems to contradict Section 3(c). However, the County would withdraw this proposed change if the Union withdrew the wholesale change that it has proposed.

## **DISCUSSION:**

After considering this language in mediation and during the fact-finding hearing, it appears that that the best course of action is to maintain current language and not introduce or eliminate language that may lead to obfuscation rather than clarification of the language's intent. The issue of 15 minutes worked raised by the Union and the elimination of Section 6 of the Agreement are best left for future negotiations.

## **RECOMMENDATION**

### **Maintain Current Collective Bargaining Language**

## **ISSUE 8      ARTICLE 24      OVERTIME**

### **UNION:**

#### **C. Article 24: OVERTIME**

The Union proposes the following modifications:

**SECTION 1.** An Employee required to work more than forty (40) hours in any workweek shall be compensated at one and one-half (1-1/2) times his regular rate of pay or, at the Employee's option, receive compensatory time credited at one and one-half (1-1/2) hours for each overtime hour worked. Employees will be provided with a weekly opportunity to state their choice of compensation. Compensated holidays, compensated sick time, vacation or compensatory time shall be considered time worked. Employees called into work or court on a scheduled day off shall be compensated at the rate of one and one-half (1-1/2) times their regular rate of pay.

**SECTION 2.** Compensatory time may be accumulated up to the maximum permitted under the Fair Labor Standards Act as amended. Each Employee may use up to twenty-four (24) hours of compensatory time each year for personal needs which shall be granted upon three (3) days notice, unless family or personal emergency

precludes such notice. Use of compensatory time is subject to approval by the Employer which shall not be unreasonably withheld.

At the end of the 13<sup>th</sup> and 26<sup>th</sup> pay periods, compensatory time (accumulated more than three hundred sixty-five (365) days prior to said pay period) which has not been used by the Employee shall not be subject to loss but shall be paid to the Employee by the Employer.

Pre-approved compensatory time off can only be cancelled for a state of emergency or city emergency, not solely because it will create overtime.

**SECTION 3.** Except in the case of an emergency, an Employee will not be required to work a consecutive period exceeding sixteen hours and fifteen minutes. It shall be the responsibility of the Employee to notify the roster sergeant on a daily basis of his intention to work overtime, if overtime is available.

**SECTION 4.** The Employer shall equitably offer daily overtime to Employees based on seniority using the various rotating lists outlined below. Any overtime opportunities shall be offered first to those employees currently working a scheduled assignment:

**EQUALIZATION LISTS:**

- a) *Each platoon shall have a scheduled work day equalization list, by seniority, of those on the rotation.*
- b) *Each Platoon shall have an Off-duty equalization list, by seniority.*
- c) *Each specialty area (i.e.; SRT, Access, Food Service, IMIS, Medical Escorts...) shall have a separate equalization list.*
- d) *The Department shall have a general equalization list, with all employees listed by seniority.*
- e) *The Department shall have a general equalization list, by inverse order of seniority, for forced overtime.*
- f) *The Department shall have a separate equalization list of Employees who appeared at roll-call, on their off-days to work.*
- g) *For purposes of the overtime lists, those employees with a scheduled end of shift before 1200 hours shall be considered part of the rotation starting at 1745 hours. Those Employees with a regular shift scheduled to end after 1200 hours shall be considered to be part of the rotation that starts at 0545 hours.*

**SECTION 5.** In the event the number of overtime assignments exceeds the number of Employees currently working an assigned shift who have volunteered for daily overtime, the Employees who are on a scheduled off day and present at Roll Call shall be assigned by seniority.

**SECTION 6.** If additional Employees are still necessary, on-duty Employees shall be required to work overtime in inverse order of seniority using a rotating list. No Employee will be forced to work more than eight (8) hours in a calendar week, nor forced on two (2) consecutive days Any employee "forced" or "Hit" to work mandatory overtime shall be paid at one and one-half (1 ½) the normal hourly rate of pay, regardless of hours worked during the week. Forced overtime ("a hit") shall be defined as thirty (30) minutes up to 4 hours. Once an employee is hit, he shall be rotated to the end of the list. The forced overtime list shall be refreshed at the end of each pay week by the Employer.

**SECTION 7.** The Employer agrees to post and maintain the overtime list. The Union shall be provided the list immediately upon request.

**SECTION 8.** Overtime assignments in specialized work assignment posts shall be offered first to employees working in that specialty assignment. If the vacancy is still not filled, then the overtime shall be assigned to an Employee in another specialty job position. If the vacancy is still open, then the procedures in Sections 3 through 6 shall be applied. However, for non-specialty job opportunities, the specialty post employees can bid, by overall seniority for those non-specialty area posts. The overtime equalization policy shall not apply to overtime worked which is a specialized work assignment if those in the specialty post volunteer to work overtime

in that post or when the Employee is required to finish a work assignment. In the event an emergency occurs, the Employer reserves the right to assign officers to temporarily meet the emergency requirements, regardless of the overtime distribution.

**SECTION 9. VOLUNTEER LIST:** The Department shall maintain a volunteer list showing the names, seniority, and number of overtime hours each employee has worked that week. The list shall be updated continuously and placed at the roll call desk and access for employees to check their status daily. The list shall refresh each week.

**SECTION 10. Forced overtime ("Hit") list:** The Department shall maintain a Forced overtime list showing the names, seniority and number of "forced" overtime hours each employee has worked that week. The list shall be updated continuously and placed at the roll call desk and access for employees to check their status daily. The list shall refresh each week. This list shall be in reverse order of seniority (least senior at the top of the list). An Officer cannot be forced on back to back days. Any forced overtime, regardless of total hours worked in the week, shall be paid at one and one-half (1 ½) the regular rate of pay.

**SECTION 11.** The Department shall maintain a "DO CALL" overtime list. Officers may sign this list indicating they would like the Roster Sergeant to call them if an overtime position is available and not filled. Each officer, with 24 hour notice, shall have the right to take his name off the list at anytime.

**SECTION 12.** The Department shall maintain a "DO NOT CALL" list for voluntary overtime. Officers may sign this list indicating that the Roster Sergeant should not call this individual for voluntary overtime. The officer, with 24 hour notice, shall have the right to remove his name from this list.

**SECTION 13.** An Employee who is called in to work overtime shall be compensated for no less than four (4) hours at time and one-half (1 ½) in actual pay or compensatory time at the Employee's discretion, regardless of hours worked in the pay week. An Employee mandated overtime at the end of or beginning of a scheduled shift, in excess of 30 minutes, shall be paid a minimum of four (4) hours at time and on-half (1 ½) the Employee's regular rate of pay in actual pay or compensatory time at the Employee's discretion, regardless of the number of hours worked in the pay week. If the Employee works more than 4 hours, then he shall be compensated at double time for actual hours worked in actual pay or compensatory time at the Employee's discretion.

A pressing issue in this Article is Section 1; the language defining which hours are counted as hours worked in crediting overtime. The current language does not count sick leave as hours worked. However, in all previous contracts "sick time" was counted as hours worked. (U. Ex. 44). Conciliator Silver changed the language in the 2011 Conciliation Award. (U. Ex. 31, p. 13). However, the OPBA points out that sick time is credited as hours worked in the Corrections Sergeants, Corrections Corporals, Deputy Sheriff's, Deputy Sergeants and Lieutenants CBA's. (U. Exs. 38, 39, 40, 41, 45). As noted earlier, Conciliator Silver got it wrong. This error needs to be corrected in this round of negotiations.

The OPBA submits that not crediting sick time as hours worked has resulted in dedicated employees not receiving *scheduled* overtime pay because God struck them, or their family, with sickness or injury. The vast majority of the employees are working a 12 hour shift. As such, they are scheduled to work a grueling 48-hour week. The 12-hour shift, which was the absolute desire of the Sheriff and the County, has resulted in a reduction of over 100 bargaining unit members from 2001. This reduction in manpower has resulted in tens of millions of Dollars worth of savings to the County in healthcare premiums costs alone.

Those employees at the top pay, scheduled for a 40 hour work week, receive \$41,620.80 per year. The 40-hour shift worker will earn at least \$41,620.80 per year, even if that employee uses sick-time on 1 day or 20 days. Considering the 12-hour shift schedule, the negotiated pay scales of this unit result in those employees earning eight (8) hours of built-in overtime per pay period, based on their normal 12-hour shift schedule, or \$45,771.96 per year at the top rate of pay. However, if an employee working the 12 hour shift is sick for just 8 hours in a pay period, he will NOT make the base salary of \$45,771.96. In fact, if the employee misses 4 days at 12 hours per day (48 hours) during the work year and those 4 days are during one of the four-day scheduled weeks, that employee would lose

\$479.52 from base salary. Therefore, the 48 hours that would have been paid at the over-time rate of \$30.00 per hour for a total of \$1,440.00 would actually be reduced to \$960.40. (*Straight time: 48 hours x \$20.01 = \$960.40*) for a net reduction in his annual base salary of \$479.52. Obviously, \$479.52 or more than 1% of salary is a great deal for an employee in this unit to lose. However, the County absorbing the same amount is just a blip on the screen.

Since the sick time language was changed to "not counted as hours worked," the employees have NOT volunteered as much for overtime as they have in the past. On numerous occasions, an employee who was sick for one day, or even part of a day, did not volunteer for overtime because it would be at "straight-time" rather than "time and one-half." The senior employee not volunteering for the overtime results in either a newer, lower paid employee being "forced" to work overtime, or the department is not safely staffed as mandated.

The Employer again complains about "excessive" CO sick leave resulting in increased overtime costs. It is true that CO sick leave, in sheer numbers, is more than any other division of the Sheriff's Office; however, as demonstrated by the evidence, the per capita sick time used by the Corrections Officers is less than the per capita sick time used by the CO Sergeants and CO Corporals. (U. Ex. 46). In fact, the per capita use of sick-time is within the boundaries of all Sheriff's Department units including management and non-represented employees. (Id.). Further, according to the Employer's own financial report, overtime is down 8.3% in the jail operations. (U. Ex. 19, p. IV-20). According to the County's Second Quarter Report, "In Jail Operations overtime compared to the same period in 2013 has decreased 8.3% however regular earnings increased 3.8%" due to an increase of 46 FTEs over budget. (Id.).

The County has saved millions of Dollars each year by switching to the 12 hour shift. (100 employees at just \$30,000.00 per year = \$3 million.) During the negotiations for the 1/1/07 – 1/1/09 contract, the County's Conciliation Position Statement provided:

Of the 584 Correction Officers, about 390 are assigned to Jail Security within the housing units, or "pods." (Note that the actual number of COs may fluctuate slightly, depending upon a number of factors. Currently, however, 584 is the Employer's authorized complement.) Another 194 are assigned to specialty areas; said assignments are earned through a contractual bidding process.

Unit members work either eight, ten or twelve hour shifts. One hundred (100) COs work a standard 8-hour shift; eight work a four-day / 10-hour shift; and 475 COs, or over 81% of the unit members, work 12-hour shifts, either 5:45 a.m. – 6:00 p.m. (including 15-minute "roll call") or 5:45 p.m. – 6:00 a.m. (including 15-minute "roll call").

Correction Officers typically work either Sunday – Monday – Tuesday and every other Wednesday, or Thursday – Friday – Saturday and every other Wednesday. As a result, one week they work four 12-hour shifts, or 48 hours and the next week, 36-hours (three 12s), for a total of 84 hours bi-weekly. However, because F.L.S.A. requires overtime to be paid on a weekly basis (versus averaging out over a bi-weekly period), Correction Officers on 12-hour shifts receive 8 hours of "automatic" overtime bi-weekly. (U. Ex. 49, p. 2).

Finally, the County explained:

One pertinent inaccuracy in the Fact-Finder's report does merit mention. Under the topic of Issue II/ Sub-Issue 2 (Shifts and Hours), the Fact-Finder quotes the Employer as stating that the unit numbered 700 Correction Officers during the time of 8-hour shifts. That is incorrect. While that number was an "authorized" level, the actual number of COs peaked at approximately 630 in 2001. The total number of authorized COs actually decreased because Cuyahoga County introduced an Early Retirement Incentive Plan (ERIP), or "buy out" in 2001. Because of County-imposed limitations on the numbers of new hires to fill early retirees' positions, the total number of Correction Officers decreased. In response, Jail executive staff re-evaluated the entire jail operation and management to meet this decreased number without sacrificing safety and security." (U. Ex. 49, p. 2-3).

The 12-hour shift, and the overtime that goes along with it, was a calculated decision by the Employer to reduce staff. When the County complains of overtime hours worked, they should perhaps remember that their staffing decisions created the overtime. However, on the bright-side for the County, the elimination of 46 officers resulted in a savings of at least \$248,400.00 in insurance costs in 2007 alone. (Assuming an average COBRA Rate of \$450.00 for insurance per employee x 46 employees x 12 months. The actual is probably much higher). Because

there has never been more than 584 employees at the jail since 2007, the \$248,400.00 per year savings has been banked for 6 years for a total of at least \$1,738,800.00 because of the reduction of just 46 employees from the 2001 roster. Today, the reality is there are just 530 officers (100 less than in 2001) the annual savings in health insurance alone would be at least **\$540,000** per year based on a \$450.00 Cobra\*\*\*.

\*\*\*the COBRA rates are approximately:

*\$400.00 for the UHC 90% single and \$992.00 family*

***\$332.00 for the UHC 80% single and \$854 family***

*\$336.00 for Med-Mutual single and \$724.00 family*

*\$270.00 for Med-Mu Bronze single and \$724.00 family*

*\$356.00 for MetroHealth Select single and \$924.00 family*

***Average \$338.00 single, \$872.00 family***

The County's own Conciliation Statement shows:

- That in 2001 there were 630 officers. (U. Ex. 49, p. 2)
- The County also states there was 584 officers in 2007. (Id.)
- There are currently less than 530 officers.
- The jail inmate population has risen.

The County has saved millions and millions of dollars in wages and other benefits that would have otherwise been paid had the County staffed the jail properly. The premium pay for overtime hours worked is not to be an incentive for workers not to use sick pay, it was, and should be, the Employer's way of thanking the employee for bailing the company out when he could be free to enjoy life. The result of Conciliator Silver's error has resulted in a windfall for the Employer; not only did the employer realize the savings of reduced staff, healthcare costs and the implementation of 12-hour shifts, now the Employer also gets to reduce the employees' pay from the built-in overtime.

The Union's rational for the other sections proposed to be amended are as follows:

**Section 2:**

The OPBA's proposed changes to this section were precipitated by the actions of management. Per the current CBA, employees receive 24 hours of personal time to be deducted from sick leave for any reason provided the employee gives 3 days advance notice. Management has been denying the request for personal days even if advance notice is provided. Therefore language needs to be included to eliminate any ambiguity.

While the bargaining unit members receive vacation and can accumulate compensatory time, getting an approved compensatory day-off has become a major issue. Therefore, the Union proposes the minor, but necessary changes to this article consistent with Beck v. City of Cleveland.

**Sections 4-12:**

The current overtime language needs "tweaked" in order to force the Department to follow the contractual language and intended meaning. Unfortunately, this Department has, on a whim, initiated procedures that are contrary to this Article. For example, on December 16, 2006, Associate Warden Dave Wervey wrote to all Sergeants:

"The following Overtime issues should be adhered to by all Sergeants who are assigned to conduct Roll Call and accept responsibility for Roster Management, regardless of how temporary the assignment may be.

On duty officers who have volunteered for overtime shall be given 1<sup>st</sup> priority for available overtime.

Off duty Officers who call in and request to come in for overtime should be told to report in at 10:00 (a.m. or p.m.), unless there are not enough volunteers to cover the available posts. In this event they should be told to come in at the beginning of the shift, or as soon as possible thereafter.

If there are Officers on forced overtime, they should be relieved by off duty Officers as early as possible.

On duty volunteers shall be permitted to work a total of sixteen (16) hours before being relieved by off duty volunteers.

These conditions are mandated in the Union contract and should be followed at all times". (U. Ex. 51).

The OPBA is in agreement with Warden Wervey's directive. What is especially important is the fact that it lays out the intentions of the CBA as to overtime distribution, starting with those "currently working" having the first offer of overtime. The order also points out in paragraph 4 that employees on forced overtime be relieved as early as possible. It is clear, from the four bargaining sessions we have had already, that the Department is not following its own orders.

Subsequently, on October 6, 2008, Director Kenneth Kochevar issued the following directive to all jail personnel:

It has just come to our attention that correction officers seeking overtime opportunities have been calling Master Control and leaving messages regarding their availability. Section 3 of the Correction Officers' contract, Article 26: Overtime, states that "[i]t shall be the responsibility of the Employee to notify the roster sergeant (emphasis added) on a daily basis of his intention to work overtime, if overtime is available. Therefore, COs are directed to NOT call Master Control for this purpose, as the employee will not be considered for available overtime, nor shall Master Control accept those calls.

Further attention is directed to Section 5 of Article 26, which provides:

...Employees who are on a scheduled off day and present at Roll Call (emphasis added) shall be assigned by seniority" to an overtime assignment. This applies to the beginning of the normal two shift schedules that occur daily.

However, the contract is silent as to the procedure to be followed for overtime opportunities when COs exhaust their daily work limit and must be relieved to go home during mid-shift. In this instance, the following procedure must be followed:

1. An off day CO must call and leave a voice mail message at (216) 348-4174 between the hours of 7:30am – 8:30am or 7:30pm – 8:30pm. The message must include the employee's name and call back number.
2. If the employee is needed for overtime, that employee will be called by the roster sergeant between the hours of 8:45am-9:15am or 8:45pm-9:15pm.

Failure to follow this procedure will result in the CO not being considered for available overtime. In addition, COs are reminded that Section 8 of Article 26 requires that an employee who suspects that he/she has been overlooked for overtime or that this Article has been misapplied shall report to the roster sergeant at the conclusion of the employee's shift to correct any errors or misapplications. (U. Ex. 52).

What is particularly important to the OPBA is Kochevar's directive is at #2 above. The directive instructing the roster sergeant to call-back those employees that called in to volunteer for overtime. Unfortunately, the Department cannot seem to follow the Director's order. Roster Sergeants have been offering overtime to "off-duty" employees, who are not bound by the 16 ¼ hours of work per day per Article 24, section 3. They seem to prefer

calling in one person for the entire 12 hour shift instead of letting the "on-duty" employee volunteer for only 4 hours. Clearly, it would seem to make the Sergeant's work less tedious, but the result in his/her short cutting is the denial of overtime to the person guaranteed to have first choice of denial per the CBA.

The new language we have proposed to this section is actually more of clarity than re-invention the wheel. We have discussed at length the various "specialty job" positions at the jail. However, the vast majority of workers are assigned to one of the rotating 12 hour shifts in jail security. Therefore we propose that "several" overtime equalization lists be made.

However, at this time there are specialty positions and both the union and the OPBA have agreed to several points on the subject of equalization of overtime within the specialty positions. When an opening is anticipated in the specialty position, it is posted and the position is filled by members of that specialty group through equalization based on seniority and overtime accumulated that week. If the position is not filled by a member of the specialty group (i.e. SRT) then it will be filled as outlined in Section 4-6. Each specialty position has their own leadership and the equalization of overtime is easily handled by the supervisor in each group. If it is not filled from within the defined group, then the Roster Sergeant will fill it.

Because of the various specialty jobs that do not fit the 5:45 a.m./p.m. till 6:00 p.m./a.m. rotations, we propose that any employee who has a scheduled start time different than the 5:45 start time may be considered for overtime.

For example, Tom works a specialty post which ends each day at 1400 hours (2:00 p.m.). If no overtime is available at 1400 hours, he can sign-up for overtime which will be available at 1745 hours. Tom will be considered as part of the platoon that gets off work at 1745 hours.

Regarding Section 5, the OPBA language just solidifies the current practice of offering overtime first to those employees currently working. Because of this, it is clear that there is an absolute need for separate rotation lists. Those people currently working shall have overtime offered based on equalization amongst those other people currently working.

This becomes even more clear when coupled with the second part of Section 5, which currently (and always has) provided that those off-duty officers present and dressed in uniform at roll call is the second group to be offered overtime opportunities, regardless of equalization with other employees that are not scheduled to work. Obviously this section has always implied the order of equalization is amongst groups rather than the whole body.

With regard to Section 6, Forced overtime is always a "bad" idea. An employee, without warning could be forced to work without proper rest. For example, the employee starting at 5:45 p.m. may have been up since 9:00 a.m. because of a child or appointment. That person could be "hit" resulting in the employee guarding felons without sleep in the last 25 hours. In order to minimize the use of forced overtime and to give an incentive for the Department to put an effort into finding volunteers to work, the Union proposes that "any" forced overtime or call-in be paid at 1 ½ times the hourly rate of pay. (Daily overtime).

Sections 7 through 12 provide the framework by which overtime will be distributed. The procedure is necessary to ensure that all employee re treated equally with regard to the distribution of overtime and that supervisors do not continue to select only the few employees.

### **Section 13:**

Section 13 is vital to the Union's position. As noted above, Conciliator Silver removed sick leave from employees' hours of work calculation for purposes of overtime. It is inherently unfair that employees can be mandated to work or called in while off-duty and not receive the premium pay at the overtime rate simply because they used a sick day at any time during that week.

Further, for purposes of the "call-in" overtime calculation, when does the clock begin and end and what time is actually compensable under the FLSA? Arbitrators find that the minimum call-in provision is intended to

compensate employees, not just for time spent at work, but also for preparation, travel, gasoline and the disruption of their time off. For the convenience of both parties, all employees will be compensated in the same manner without the necessity of the Employer determining each minute of overtime or mileage reimbursement. "Call-in pay clauses provide a guaranteed minimum number of hours of pay, sometimes at overtime or premium rates, regardless of the number of hours actually worked, for employees called upon to work outside their normal work schedule. Call-in pay normally covers situations in which an employee's off-duty time is disrupted" to perform additional work. Buckalew, Timothy, 29.08 Call-In Pay, 2-29 Labor And Employment Arbitration §29.08, Labor And Employment Arbitration, (2014, Matthew Bender & Assoc.).

**EMPLOYER:**

**Article 24: OVERTIME**

**SECTION 1.** An Employee required to work more than forty (40) hours in any workweek shall be compensated at one and one-half (1-1/2) times his regular rate of pay or, at the Employee's option, receive compensatory time credited at one and one-half (1-1/2) hours for each overtime hour worked. Employees will be provided with a weekly opportunity to state their choice of compensation. Compensated holidays, vacation or compensatory time shall be considered time worked. Employees called into work or court on a scheduled day off shall be compensated at the rate of one and one-half (1-1/2) times their regular rate of pay.

**SECTION 2.** Compensatory time may be accumulated up to the maximum permitted under the Fair Labor Standards Act as amended. Each Employee may use up to twenty-four (24) hours of compensatory time each year for personal needs upon three (3) days' notice, unless family or personal emergency precludes such notice. Requests for scheduling of other compensatory time shall be made in writing to the Employer at least seven (7) days in advance and approval shall not be unreasonably withheld.

At the end of the 13<sup>th</sup> and 26<sup>th</sup> pay periods, compensatory time (accumulated more than three hundred sixty-five (365) days prior to said pay period) which has not been used by the Employee shall not be subject to loss but shall be paid to the Employee by the Employer.

Pre-approved compensatory time off can only be cancelled for a state of emergency or city emergency, not solely because it will create overtime.

**SECTION 3.** Except in the case of an emergency, an Employee will not be required to work a consecutive period exceeding sixteen hours and fifteen minutes. It shall be the responsibility of the Employee to notify the roster sergeant on a daily basis of his intention to work overtime, if overtime is available.

**SECTION 4.** The Employer shall equitably offer overtime to Employees who have expressed the desire to work overtime using the process contained in Section 5 below.

**SECTION 5.** The following process shall be used in the order listed below:

First: overtime shall be offered to volunteers who are on-duty, based on seniority.

Second, in the event the number of overtime assignments exceeds the number of Employees who have volunteered for daily overtime, the Employees who are on a scheduled off day and present at Roll Call shall be assigned by seniority.

Third: Each day, employees who have called-in to a phone line designated for this purpose and have left a voice-mail message with the phone number to be called, shall be offered overtime for that date by seniority provided the call is received before at least one hour before the start of the shift.

Fourth: If there still remains a need for additional employees to work overtime, the Employer shall offer

employees who have signed a volunteer overtime call-in list (and who have provided the Sheriff with a telephone number for this purpose) by seniority.

**SECTION 6.** If additional Employees are still necessary, on-duty Employees shall be required to work overtime in inverse order of seniority using a rotating list method. No Employee will be forced to work more than eight (8) hours in a calendar week, nor forced on two (2) consecutive days.

**SECTION 7.** Equitable distribution of available overtime opportunities shall be measured over each calendar quarter. Prior to the end of the quarter, the Employer shall have opportunity to rectify errors by offering overtime to employees who were inadvertently skipped in the process outlined in Section 5 above, unless the same employee has been skipped during the quarter more than once. After the first occasion that an employee is skipped because of the Employer's error, he/she shall be paid if the Employer causes the employee to be skipped again during that quarter. Employees who are offered and refused overtime shall be credited with having worked the overtime. After senior employees have been credited with overtime, the Employer shall offer overtime to less senior employees. The Employer agrees to post and maintain the quarterly overtime list. The Union shall be provided a copy within a reasonable time if so requested.

**SECTION 8.** It shall be the responsibility of any Employee who suspects that he has been overlooked for overtime or that this Article has been misapplied to report to the roster sergeant at the conclusion of his shift to attempt to correct any errors or misapplications.

**SECTION 9.** The overtime assignment procedure set forth in Sections 3 through 6 shall not apply to overtime opportunities in specialized work assignments or when the Employee is required to finish a work assignment. In the event an emergency occurs, the Employer reserves the right to assign officers to temporarily meet the emergency requirements, regardless of the overtime distribution.

**County Position:** The County is proposing language that memorializes the current practice of overtime distribution. The County's proposed changes in Section 7 recognize that most employees are able to work significant amounts of overtime. The County Jail is a large, complex organization with constant coverage needs. Mistakes in the allocation of overtime are bound to happen. In a situation where seeking overtime opportunities comparable to dining at an "all you can eat buffet," being skipped inadvertently in the overtime rotation should not lead to employees being paid for time that they did not actually work. Taxpayer dollars should not be spent that way.

## **DISCUSSION:**

In the experience of this fact-finder, the trend in public sector collective bargaining agreements is to not count sick leave as paid time worked for purposes of overtime. This has come about not because of the legitimate use of sick leave, which may be exacerbated by longer twelve hour shifts as indicated by the Union, but because a handful of employees have figured ways to manipulate or rig the system in their use of sick live to garner more overtime, thereby disadvantaging everyone else in the bargaining unit who use sick leave for legitimate injuries or illnesses. The one exception is of course sick leave related to job injuries and in a jail setting; particular attention should be paid to hazards related to engagement with inmates. The Employer argues that overtime is plentiful, and that assertion did not appear to be convincingly countered by the Union. However, the Union does point to inadequate staffing as the primary reason. The facts also indicate that in the aggregate, sick leave use in the Correction Officers unit is greater than any other division of the Sheriff's Office, and it is this fact that tends to undermine even the most legitimate argument proffered by a union regarding how sick leave should be counted as time worked and how it adversely impacts employees on a twelve hour

schedule. In fact, it could be argued that in some settings twelve hour shifts actually reduce sick leave use. The Union argues that the County has saved some 3 million dollars when it switched to twelve hour shifts, but arguably it is also viewed as a benefit by employees. In the experience of this neutral, twelve hour shifts are viewed favorably by a majority of employees who have more time off and spend less money in going to and from work. The premium pay that goes along with twelve hour shifts is also commonplace and one of the trade-offs of having a scheduling system that allows an employer to operate with less personnel. Finally, it must be said that even if there is an abundance of overtime, it does not mean there are not problems with its distribution. The Union made a persuasive argument to provide greater consistency and clarity in overtime distribution that leaves less room for error. While overtime is clearly a managerial determination, the distribution of overtime is traditionally grounded in fairness and equity, based upon seniority and not in some arbitrary application, be it unintentional or otherwise. However, the problem with the Union's comprehensive proposal is just that, it is comprehensive. Being such, it impacts many facets of the way the jail is managed, and without sufficient managerial input there is no way to judge the viability of the Union's distribution protocol. Moreover, the Employer has proposed changes in the distribution of overtime that attempts to bring clarity to this issue. Again, the Fact-finder is not in a good position to judge the viability of this proposal versus the Union's approach. Something of this magnitude is best left up to the parties to negotiate and not left to a neutral with little specific operational expertise. Nevertheless this Fact-finder is impressed by the Union's concerns regarding this issue, particularly regarding its emphasis on reforming Section 2, Section 4, Section 8 through 12. Therefore, a combination of the Union's proposal and the Employers proposal is recommended in part, with a strong recommendation that the parties meet during the life of the Agreement to make other needed modifications.

## **RECOMMENDATION**

### **A. Article 24: OVERTIME**

**SECTION 1.** An Employee required to work more than forty (40) hours in any workweek shall be compensated at one and one-half (1-1/2) times his regular rate of pay or, at the Employee's option, receive compensatory time credited at one and one-half (1-1/2) hours for each overtime hour worked. Employees will be provided with a weekly opportunity to state their choice of compensation. Compensated holidays, vacation or compensatory time shall be considered time worked. Employees called into work or court on a scheduled day off shall be compensated at the rate of one and one-half (1-1/2) times their regular rate of pay.

**SECTION 2.** Compensatory time may be accumulated up to the maximum permitted under the Fair Labor Standards Act as amended. Each Employee may use up to twenty-four (24) hours of compensatory time each year for personal needs upon three (3) days' notice, unless family or personal emergency precludes such notice. **Use of compensatory time is subject to approval by the Employer which shall not be unreasonably withheld.**

At the end of the 13<sup>th</sup> and 26<sup>th</sup> pay periods, compensatory time (accumulated more than three hundred sixty-five (365) days prior to said pay period) which has not been used by the Employee shall not be subject to loss but shall be paid to the Employee by the Employer.

Pre-approved compensatory time off can only be cancelled for a state of emergency or city emergency, not solely because it will create overtime.

**SECTION 3.** Except in the case of an emergency, an Employee will not be required to work a consecutive period exceeding sixteen hours and fifteen minutes. It shall be the responsibility of the Employee to notify the roster sergeant on a daily basis of his intention to work overtime, if overtime is available.

**SECTION 4.** The Employer shall equitably offer overtime to Employees **who have expressed the desire to work overtime using the process contained in Section 5 below.**

**SECTION 5.** The following process shall be used in the order listed below:

**First: overtime shall be offered to volunteers who are on-duty, based on seniority.**

**Second,** in the event the number of overtime assignments exceeds the number of Employees who have volunteered for daily overtime, the Employees who are on a scheduled off day and present at Roll Call shall be assigned by seniority.

**Third: Each day, employees who have called-in to a phone line designated for this purpose and have left a voice-mail message with the phone number to be called, shall be offered overtime for that date by seniority provided the call is received at least one hour before the start of the shift.**

**Fourth: If there still remains a need for additional employees to work overtime, the Employer shall offer employees who have signed a volunteer overtime call-in list (and who have provided the Sheriff with a telephone number for this purpose) by seniority.**

**SECTION 6.** If additional Employees are still necessary, on-duty Employees shall be required to work overtime in inverse order of seniority using a rotating list. No Employee will be forced to work more than eight (8) hours in a calendar week, nor forced on two (2) consecutive days.

**SECTION 7.** The Employer agrees to post and maintain the overtime list. The Union shall be provided **the list within twenty-four (24) hours of the request.** Equitable distribution of available overtime opportunities shall be measured over each calendar quarter. Prior to the end of the quarter, the Employer shall have opportunity to rectify errors by offering overtime to employees who were inadvertently skipped in the process outlined in Section 5 above. If the Employer is unable to offer the skipped employee the same number of hours involved in

the original error(s) during the quarter, said employee shall be paid the difference in hours at the overtime rate. If the same employee has been skipped more than once during a quarter because of the Employer's error, he/she shall be paid for all hours he/she was skipped during that quarter without the need to be subject to Section 5. Employees who are offered and refused overtime shall be credited with having worked the overtime. After senior employees have been credited with overtime, the Employer shall offer overtime to less senior employees.

**SECTION 8.** It shall be the responsibility of any Employee who suspects that he has been overlooked for overtime or that this Article has been misapplied to report to the roster sergeant at the conclusion of his shift to attempt to correct any errors or misapplications.

**SECTION 9.** The overtime assignment procedure set forth in Sections 3 through 6 shall not apply to overtime opportunities in specialized work assignments or when the Employee is required to finish a work assignment. In the event an emergency occurs, the Employer reserves the right to assign officers to temporarily meet the emergency requirements, regardless of the overtime distribution.

## **ISSUE 9      ARTICLE 32      HEALTH AND SAFETY**

### **UNION:**

#### **B. ARTICLE 32: HEALTH AND SAFETY**

The OPBA proposes minor housekeeping to the current contract language. The OPBA proposes to retain current language for Sections 1-8 and Section 9 will be new language. It simply points out things that should be considered normal and routine.

#### **Article 32: HEALTH AND SAFETY**

##### **SECTION 9.**

- a) All doors in both jails shall remain secured at all times.**
- b) Each floor shall have at least two (2) rover/relief officer at all times**
- c) All control rooms shall be manned and have at least one working two-way radio.**
- d) All SRT members will be equipped with two (2) SRT utility uniforms, "shank vests", gas masks, pepper spray, handcuffs, utility belt, and tactical boots. When SRT is called out, the team will be provided full equipment and safety gear.**

- a) All doors within the jail shall remain secured at all times.**

This is necessary because there are numerous doors that can and are "jimmied" by the inmates. This has been recorded and grieved on several occasions, yet the condition still exists.

- b) Each floor shall have at least two (2) rover/relief officers at all times.**

This addition is necessary because the Ohio minimum jail staffing standards require the proper amount of relief officers to provide breaks and fill-in for officers. Each floor of the jail (holding prisoners) has four pods in the south section and four pods in the North section. The "rover" is the extra man walking the entire section as additional manpower. When inmates know the single CO is the only person in their way misdeeds may occur. However, when the inmates know there is a "rover" who will be in the immediate area and could come into their Pod to augment the regular CO, peace and quiet is maintained.

The "Relief" officer is just that. His job is to relieve the eight (8) other officers assigned to the floor for lunch, breaks, emergencies and so forth.

Most importantly to officer safety (as well as inmate safety) the notion that "SRT" will "come to the rescue" is not very reliable. Sure, the team is a great addition to the Department. However, they also go to lunch and have breaks. There is only nine (9) working each shift and a minimum of two officers cannot respond to emergencies because there are four (4) pods of prisoners they are charged with guarding. If one emergency button is tripped on the 7<sup>th</sup> floor of Jail tower 2 and then an alarm is triggered in the 4<sup>th</sup> floor of jail tower 1, the CO needed help will have nobody to assist without a rover/relief officer on his floor.

**c) All control rooms shall be manned and have at least one working two-way radio.**

The Control room is used to monitor and activate/de-activate doors on each floor. The control room operator also watches all areas via cameras and radio. The control room operator must remain inside the control room at all times. Should a fight break out, the control room officer remains in the secure bunker calling for help, giving directions and close or open any door on the floor for containment and help.

The County has failed to keep control rooms open and manned at all times. They do this because they think they can. This is why the issue once and for all must be added to the CBA. The County has openly and continually pushed the boundaries of safety. Their logic to employee safety is akin to swimming pools not having a lifeguard because nobody has drowned in the last 2 years. Actually, it is more like not having the Deputies wear vest because none of them has been shot in 5 years.

**d) All SRT members will be equipped with two (2) SRT utility uniforms, "shank vests", gas masks, pepper spray, handcuffs, utility belt, and tactical boots. When SRT is called out, the team will be provided full equipment and safety gear.**

The Department has promised to deliver the above for over 8 years. Now is the time to mandate it through the CBA. Therefore, for all the reasons above, the OPBA proposes the new language outlined above and the rest of the article remain as current language.

**1. Employer's Position**

The Employer has proposed an annual mandatory physical fitness examination in order for Corrections Officers to remain employed. The OPBA could never agree to submit any employee to termination without cause. The Employer's proposal essentially abolishes the "just cause" provision of the CBA. The Employer has proposed a draconian procedure in which the Employer retains the ability to arbitrarily determine the physical standards and then terminate employees who don't meet them.

What the Employer argues is that employees must be physically able to accomplish their job duties. The Employer already retains the right to require employees to submit to a "fitness-for-duty" examination if they have cause to believe that an employee is unfit for duty or is unable to perform their essential job functions. The employer can mandate a physical examination by a physician that is related to the job duties.

Employees of this unit are hired without a physical standard or examination. To impose a standard at this date is ludicrous. Additionally, the County submitted in its 2007 Conciliation Statement their argument as to why deputy units demand more respect than the corrections units. The County's position was:

...The COs have also demanded non-bargaining “perks” without considering the “negatives” (e.g. higher health insurance costs, lack of uniform allowance and longevity) that non-bargaining personnel must endure.

Second, the Fact-Finder’s use of the “comparables” under R.C. 4117.14(G)(7)(b) and O.A.C. 4117-9-06(H)(2) is problematic for the Employer. Along with proposing the desirable benefits from many different contracts, the Union has consistently compared themselves with the Deputy Sheriff’s bargaining unit, also represented by the OPBA. That is where the similarity ends, for purposes of comparables. **The fact of the matter is that there are only two (2) requirements for potential employment as a Correction Officer with the Cuyahoga County Sheriff’s Department: (1.) 21 years of age; and (2.) a high school diploma.**

Among other things, Deputies need (1.) OPOTA certification as a “peace officer”; (2.) significantly more OPOTA-mandated continuing training; and (3.) annual firearm re-qualification. Prior to employment, they undergo extensive background checks, including psychological evaluation.” (U. Ex. 49, pg. 5).

The Employer has never previously approached the OPBA about developing a training or fitness program. There is no mandatory self-defense course or other physical training program. The Employer’s proposal for this type of provision is one that should be studied and mutually discussed years before implementation with the intention of an incentive based program. The Employer’s proposal should not be thrust upon the bargaining unit through the dispute resolution procedure.

## **EMPLOYER:**

### **Article 32: HEALTH AND SAFETY**

**SECTION 1.** This article is intended to define a health and safety policy in an effort to maximize a secure working environment for all Employees. The Employer, the Union, and bargaining unit members recognize their shared responsibility concerning the development and maintenance of safe conditions of employment. The parties further recognize that all Employees covered by this Agreement share this responsibility for maintaining a safe workplace.

**SECTION 2.** The Employer shall maintain a record of written policies and procedure in regard to health and safety conditions and such document will be made available to the Union upon written request. It shall be the responsibility of the Safety and Sanitation Department to ensure departmental compliance with such written documents.

**SECTION 3.** The Employer agrees to maintain sanitary, safe and healthful conditions in accordance with federal, state and local laws, standards and regulations. The Union agrees that the Employees shall cooperate in maintaining all such conditions.

**SECTION 4.** Any unsafe or unhealthy conditions discovered by an Employee should be reported to the Employee’s supervisor. The Employer shall take all appropriate steps, as soon as reasonably possible, to correct any unhealthy or unsafe conditions.

**SECTION 5.** The Employer will continue the current practice of identifying, evaluating and disseminating information regarding any communicable disease(s) or other health related problems which might affect bargaining unit members.

**SECTION 6.** In the event that a supervisor has reasonable articulable suspicion that an Employee is either mentally or physically disabled due to chemical/ alcohol intoxication or other cause, the Employee shall not be allowed to work pending further medical, security investigation, or toxicological testing, pursuant to the Employer’s “Drug Testing Policy”, currently contained in the Policies and Procedures Manual. In accordance with that policy, any Employee who attempts to work while under the influence of intoxicating drugs or alcohol shall be subject to disciplinary action, including dismissal.

**SECTION 7.** Employees are encouraged to maximize physical and mental health through appropriate life-style

routines. Physical or mental disabilities which, in the Employer's opinion, may threaten the safety and security of the work place, or which prevent an Employee from performing his job responsibilities in accordance with this Agreement, shall be sufficient cause to prevent and preclude a work assignment by the Employer.

**SECTION 8.** The Employer will continue to furnish basic emergency first aid for any work-related injuries occurring during working hours. Any such medical first aid provided by the Employer is intended to stabilize the medical condition of the affected Employee until further treatment is obtained via the Employee's health care provider; or for treatment of a life-threatening emergency condition until outside emergency medical personnel are available.

**SECTION 9.** The parties recognize that all Correction Officers 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 Correction Officers take part in reasonable, valid and job-related training to assess an employee's ability to perform actual or simulated job 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 an employee does not complete and pass required training and/or assessment, he/she shall be given an opportunity to re-train and/or be re-assessed. If an employee subsequently fails to complete and pass training and/or assessment required by the County, he/she shall receive written notification of this failure

**SECTION 10.** If the Employer has reasonable suspicion to believe that an Employee is unable to perform the duties of his/her job, the Employer may relieve the Employee from duty. The Employer shall place the Employee on paid administrative leave and pay the costs of a medical or psychological examination that is required by the Employer. An Employee found by the qualified medical professional selected by the Employer to have a medical or psychological disorder, condition, syndrome, or is otherwise unable to perform his/her duties shall be relieved of duty. If an Employee has been found unfit to perform his/her duties, time off duty may be charged to any accumulated sick, vacation or compensatory time at the Employee's request or may be designated as FMLA leave at the Employer's initiative as permitted by law.

**SECTION 11.** An Employee relieved of duty under the preceding Section must be given medical clearance acceptable to the Employer by a qualified medical professional before being allowed to return to work. Such documentation must certify that the Employee is able to perform all of the duties of a Correction Officer (unless there is an A.D.A. issue that can be reasonably accommodated). If there is a disagreement between the respective qualified medical professionals, they shall select a third qualified medical professional by mutual agreement. The third examination shall be mutually paid for by the Employer and the Employee and shall be final and binding and not be subject to the grievance procedure.

**County Position:** Employees will be required to take unarmed mandatory self-defense training. The County has modified its proposal to focus on the provision of job related training and assessment. There is no discipline proposed, as a part of this Article. In addition, the County is proposing Fitness for Duty language, because none currently exists in the CBA. The fitness for duty language in Sections 10 and 11 are substantially similar to language that is contained in the CBA between the County and the OPBA for the unit of Protective Services Officers (Exhibit B).

## **DISCUSSION:**

What the Employer appears to be concerned with is how to safely and successfully supervise inmates. Managing an inmate population requires a set of skills and a control friendly operational environment. One aspect is being able to manage an inmate population that focuses on fitness, generally emphasizing upper body and core strength, which of course involves proper restraint and self-defense techniques. Other generally recognized standards are job related medical and psychological fitness. It is not improper for an employer to expect employees to meet reasonable standards in performing their jobs and to require them to

upgrade their skills in such activities as self-defense and proper restraint training. However, requiring employees to meet physical fitness standards represents a cultural sea change that has not been a part of the requirements of the position in the past. A change of this magnitude takes time, preparation, and cooperation in order to be integrated into the culture of any organization, even law enforcement in which it is more commonly found. It is also expected that management of any organization will model such physical fitness standards in order to give them credence. In its proposal the Union raised several concerns related to safety regarding equipment, operations, proper manning, and protocol. These areas also are important in maintaining a safe and manageable jail. Particularly compelling is the Union's argument regarding the specific equipment needs of SRT members, who's essential role in the Jail is well recognized. It is recommended that over the life of the Agreement the parties, led by the Employer, should establish a Labor-Management committee (to be named by the parties) which will meet regularly, evaluate equipment needs, operational safety concerns, and training of Corrections Officers in self-defense and other restraint techniques in order to enhance their ability to safely supervise inmates. See changes below:

## **RECOMMENDATION**

### **Article 32: HEALTH AND SAFETY**

**SECTION 1.** This article is intended to define a health and safety policy in an effort to maximize a secure working environment for all Employees. The Employer, the Union, and bargaining unit members recognize their shared responsibility concerning the development and maintenance of safe conditions of employment. The parties further recognize that all Employees covered by this Agreement share this responsibility for maintaining a safe workplace. **All SRT members will be equipped with two (2) SRT utility uniforms, "shank vests", gas masks, pepper spray, handcuffs, utility belt, and tactical boots.**

**SECTION 2.** The Employer shall maintain a record of written policies and procedure in regard to health and safety conditions and such document will be made available to the Union upon written request. It shall be the responsibility of the Safety and Sanitation Department to ensure departmental compliance with such written documents.

**SECTION 3.** The Employer agrees to maintain sanitary, safe and healthful conditions in accordance with federal, state and local laws, standards and regulations. The Union agrees that the Employees shall cooperate in maintaining all such conditions.

**SECTION 4.** Any unsafe or unhealthy conditions discovered by an Employee should be reported to the Employee's supervisor. The Employer shall take all appropriate steps, as soon as reasonably possible, to correct any unhealthy or unsafe conditions.

**SECTION 5.** The Employer will continue the current practice of identifying, evaluating and disseminating information regarding any communicable disease(s) or other health related problems which might affect bargaining unit members.

**SECTION 6.** In the event that a supervisor has reasonable articulable suspicion that an Employee is either mentally or physically disabled due to chemical/ alcohol intoxication or other cause, the Employee shall not be allowed to work pending further medical, security investigation, or toxicological testing, pursuant to the Employer's "Drug Testing Policy", currently contained in the Policies and Procedures Manual. In accordance with that policy, any Employee who attempts to work while under the influence of intoxicating drugs or alcohol shall be subject to disciplinary action, including dismissal.

**SECTION 7.** Employees are encouraged to maximize physical and mental health through appropriate life-style routines. Physical or mental disabilities which, in the Employer's opinion, may threaten the safety and security of the work place, or which prevent an Employee from performing his job responsibilities in accordance with this Agreement, shall be sufficient cause to prevent and preclude a work assignment by the Employer.

**SECTION 8.** The Employer will continue to furnish basic emergency first aid for any work-related injuries occurring during working hours. Any such medical first aid provided by the Employer is intended to stabilize the medical condition of the affected Employee until further treatment is obtained via the Employee's health care provider; or for treatment of a life-threatening emergency condition until outside emergency medical personnel are available.

**SECTION 9.** The parties shall form a Labor-Management Committee to address ongoing issues of operational security and safety, with one emphasis being the safe supervision of inmates. The County may require that Correction Officers take part in reasonable, valid and job-related training in matters such as inmate restraint, self-defense and other training consistent with the operational needs of the Employer.

**SECTION 9.** Correction Officers must be fit to perform their jobs effectively and so that they do not constitute a threat to themselves or others. If the Employer has reasonable suspicion to believe that an employee is unable to perform the duties of his/her job, the Employer may relieve the employee from duty. The Employer shall place the employee on paid administrative leave and pay the costs of a medical or psychological examination that is required by the Employer. An employee found by the qualified medical professional to be unable to perform his/her duties shall be relieved of duty. If an employee has been found unfit to perform his/her duties, an employee may utilize any accumulated sick, vacation or compensatory time at his/her request or may utilize available FMLA as permitted by law. If an employee is found fit to be able to continue his/her duties he/she shall be immediately returned to duty and made whole for any lost wages or used leave time.

**SECTION 10.** An employee relieved of duty under the preceding Section must be given medical clearance acceptable to the Employer by a qualified medical professional

before being allowed to return to work. Such documentation must certify that the employee is able to perform all of the duties of a Correction Officer (unless there is an A.D.A. issue that can be reasonably accommodated). If there is a disagreement between the respective qualified medical professionals, they shall select a third qualified medical professional by mutual agreement. The third examination shall be mutually paid for by the Employer and the Employee and shall be final and binding and not be subject to the grievance procedure.

## **ISSUE 10    ARTICLE 37    EMPLOYEE DISCIPLINE**

### **UNION:**

#### **A. Article 37: EMPLOYEE DISCIPLINE**

The Union proposes the following modifications.

**SECTION 1.** Employees covered by this Agreement shall be disciplined or discharged for just and proper cause. Disciplinary action shall be initiated as soon as reasonably possible. An arbitrator deciding a discipline grievance must consider the timeliness of the Employer's decision to begin the disciplinary process.

**SECTION 2. Pre-Discipline:** An Employee has the right to Union representation at investigatory interviews upon request if the Employee has reasonable grounds to believe the interview may be used to support disciplinary action against that Employee. Unless otherwise mutually agreed, the Employee may elect to have a particular Union representative in attendance. ~~provided that such representative is on duty and the operations of the Employer are not unduly disrupted.~~

~~Prior to imposition of discipline, involving a suspension without pay or removal, The Employer shall provide a pre-disciplinary hearing for an Employee who was alleged to have violated any departmental rule(s) as defined in the Standard Schedule of Disciplinary Offenses and Penalties for Employees of the Cuyahoga County Sheriff's Department in use January 2, 2009. The Employer will provide the Employee and the Union with a written notice of the basis for the discipline (including the specifics of the alleged violation, copies of the documents and list of witnesses known at that time who may be used to support the charges and any and all other public records requests made by the Employee or the Union) at least forty eight (48) hours prior to the hearing, and afford the Employee the opportunity to respond. For any discipline greater than a suspension without pay for more than three (3) days, The Employer shall provide a pre-disciplinary hearing which will be conducted within five (5) working days following the department's delivery of discovery requests outlined above and notification to the Employee and the Union.~~

The hearing shall be conducted by a neutral administrator selected from those administrators not directly in the chain of command of the Employee. The Employer shall elect the neutral administrator. At the pre-disciplinary hearing, the Employee shall have the right to be represented by the Union. Unless otherwise mutually agreed, the Employee may elect to have a particular Union representative in attendance, provided that such representative is on duty and the operations of the Employer are not unduly disrupted, by giving notice to the Employer on the response form currently utilized. The Employee shall be afforded the opportunity to offer an explanation of any alleged misconduct, to call witnesses, and to offer documentary evidence relevant to the charge. Only the neutral administrator is authorized to tape record a pre-disciplinary hearing. If the neutral administrator elects to tape record the hearing, a copy of the tape (CD) recording will be provided to the Union upon written request. ~~No tape recording of the hearing shall be made.~~ Upon request, the Employer representative recommending discipline shall be

present at the hearing unless inappropriate or extenuating circumstances prevent a timely hearing. A report of said hearing shall be prepared by the neutral administrator. The Employee shall thereafter have the option of submitting a written narrative directly to the Disciplinary Review Board for its consideration.

**SECTION 3. Imposition of Discipline:** The Employer shall determine what discipline, if any, is appropriate, and will provide the Union and the affected Employee with its decision as soon as possible, but in no case later than thirty (30) days after the pre-disciplinary hearing.

In imposing discipline, the Employer shall not take into account any previous disciplinary action rendered against the Employee which occurred more than thirty-six (36) preceding the current charge, or more than twenty-four (24) months preceding the current charge if there has been no other discipline imposed during the past twenty-four (24) months.

**SECTION 4. Time Limits:** ***If a grievance is filed and pursued within the time frames provided, no penalty can be implemented except as provided in paragraph 5, until the matter is settled or the arbitrator renders a determination.*** In the event discipline involves a criminal matter, the time lines may be extended at the option of the Employer. Other time limits may be waived by mutual agreement.

**SECTIONS 5. An employee may be suspended with pay at any time during the process. A suspension without pay may only be imposed subsequent to a resolution through the grievance procedure, if filed, or upon the award of the Arbitrator. At any time in the process, the Employer may terminate an employee if the Employer determines that the Employee may be subject to termination based on the nature of the allegations. In cases of termination, the Union may proceed directly to Arbitration without resort to the grievance procedure.**

The proposed language is intended to address several on-going problems.

With regard to Section 2, the current language provides the employee with the right to have a Union representative at any investigatory interview. Per the current agreement, the Union representative must be on-duty and the representative's attendance must not unduly disrupt the operation of the department. The Union believes that the employee has the right to select their own Union representative, including the OPBA Attorney. The current language allows the Employer to deny representation based on a procedural loophole.

Additionally, the Union seeks to maintain the current policy related to discipline that has been in existing for over 20 year and upon which all current discipline is based. In order to maintain consistency of discipline throughout the department, as well as, ensure progressive discipline for each employee, the language proposed must be adopted.

Finally, the Union seeks to require the Employer to provide all evidence in support of the allegations and to provide information that is the subject of a records request prior to the pre-disciplinary hearing. This language is not unduly burdensome and provides the employee due process prior to the imposition of discipline.

With regard to Sections 4 and 5, the language is intended to address the Employer's failure to timely respond to grievances and requests for arbitration. In December 2012, the OPBA filed an Unfair Labor Practice charge against the Employer for the Employer's pattern and practice of failing to respond to grievances. On July 25, 2013, SERB found probable cause that a violation occurred. (U. Ex. 53). At the time of filing the Complaint, the CO unit had 10 unanswered grievances pending or grievances that were advanced to arbitration in which the Employer would not select the arbitrator. It is axiomatic that the goal of the grievance and arbitration process is the effective and efficient settlement of disputes, particularly when the grievance involves "just cause" for discipline. Employees may be terminated or have their pay reduced and are forced to wait months to adjudicate their case because the Employer will not process the grievance. The proposed language in Sections 4 and 5 will incentivize the Employer to expeditiously process these vital matters to the employees.

**EMPLOYER:**

**Article 37: EMPLOYEE DISCIPLINE**

**SECTION 1.** Employees covered by this Agreement shall be disciplined or discharged for just and proper cause. Disciplinary action shall be initiated as soon as reasonably possible. An arbitrator deciding a discipline grievance must consider the timeliness of the Employer's decision to begin the disciplinary process.

**SECTION 2. Pre-Discipline:** An Employee has the right to Union representation at investigatory interviews upon request if the Employee has reasonable grounds to believe the interview may be used to support disciplinary action against that Employee. Unless otherwise mutually agreed, the Employee may elect to have a particular Union representative in attendance, provided that such representative is on-duty and the operations of the Employer are not unduly disrupted.

Prior to imposition of discipline, involving a suspension without pay or removal, the Employer will provide the Employee and the Union with a written notice of the basis for the discipline (including the specifics of the alleged violation, copies of the documents and list of witnesses known at that time who may be used to support the charges at least forty eight (48) hours prior to the hearing, and afford the Employee the opportunity to respond. For any discipline greater than a suspension without pay for more than three (3) days, the Employer shall provide a pre-disciplinary conference which will be conducted within five (5) working days and notification to the Employee and the Union.

The conference shall be conducted by a neutral administrator selected from those administrators not directly in the chain of command of the Employee. The Employer shall elect the neutral administrator. At the pre-disciplinary conference, the Employee shall have the right to be represented by the Union. Unless otherwise mutually agreed, the Employee may elect to have a particular Union representative in attendance, provided that such representative is on-duty and the operations of the Employer are not unduly disrupted, by giving notice to the Employer on the response form currently utilized. The Employee shall be afforded the opportunity to offer an explanation of any alleged misconduct, to call witnesses, and to offer documentary evidence relevant to the charge. No tape recording of the conference shall be made. Upon request, the Employer representative recommending discipline shall be present at the conference unless inappropriate or extenuating circumstances prevent a timely conference. A report of said conference shall be prepared by the neutral administrator. The Employee shall thereafter have the option of submitting a written narrative directly to the Disciplinary Review Board for its consideration.

**SECTION 3. Imposition of Discipline:** The Employer shall determine what discipline, if any, is appropriate, and will provide the Union and the affected Employee with its decision as soon as possible, but in no case later than thirty (30) days after the pre-disciplinary hearing.

In imposing discipline, the Employer shall not take into account any previous disciplinary action rendered against the Employee which occurred more than thirty-six (36) preceding the current charge, or more than twenty-four (24) months preceding the current charge if there has been no other discipline imposed during the past twenty-four (24) months.

**SECTION 4. Time Limits.** In the event discipline involves a criminal matter, the time lines may be extended at the option of the Employer. Other time limits may be waived by mutual agreement.

**County Position:** The County is proposing current contract language with housekeeping changes. The County is adamantly opposed to all of the changes proposed by the Union in this article. A time limit for the imposition of discipline as proposed by the Union will do nothing but cause investigations to be short-changed and employees to escape justified discipline. That could lead to significant negative consequences for the inmates and the public. There should be no reference to a specific disciplinary grid in the CBA. Most employers have the flexibility to make needed changes. The current grid was adopted by the administration present at the County prior to the

conversion to the charter form of government. That administration was disgraced during the County corruption probe. Moreover, times change and societies evolve –making occasional changes necessary. There should not be unnecessary contractual impediments to enacting reasonable change.

## **DISCUSSION:**

Other than clerical corrections proposed by the Employer the facts do not support a system that delays the imposition of discipline until the grievance/arbitration process has been completed. Such a change generally runs contrary to accepted public sector practice in Ohio, particularly where it is clear the Employer must adhere to a just cause standard in implementing discipline.

## **RECOMMENDATION**

**Maintain Current Collective Bargaining Language, except for Employer proposed clerical changes.**

### **Article 37: EMPLOYEE DISCIPLINE**

**SECTION 1.** Employees covered by this Agreement shall be disciplined or discharged for just and proper cause. Disciplinary action shall be initiated as soon as reasonably possible. An arbitrator deciding a discipline grievance must consider the timeliness of the Employer's decision to begin the disciplinary process.

**SECTION 2. Pre-Discipline:** An Employee has the right to Union representation at investigatory interviews upon request if the Employee has reasonable grounds to believe the interview may be used to support disciplinary action against that Employee. Unless otherwise mutually agreed, the Employee may elect to have a particular Union representative in attendance, provided that such representative is on-duty and the operations of the Employer are not unduly disrupted.

Prior to imposition of discipline, involving a suspension without pay or removal, the Employer will provide the Employee and the Union with a written notice of the basis for the discipline (including the specifics of the alleged violation, copies of the documents and list of witnesses known at that time who may be used to support the charges at least forty eight (48) hours prior to the hearing, and afford the Employee the opportunity to respond. For any discipline greater than a suspension without pay for more than three (3) days, the Employer shall provide a pre-disciplinary conference which will be conducted within five (5) working days and notification to the Employee and the Union.

The **conference** shall be conducted by a neutral administrator selected from those administrators not directly in the chain of command of the Employee. The Employer shall elect the neutral administrator. At the pre-disciplinary **conference**, the Employee shall have the right to be represented by the Union. Unless otherwise mutually agreed, the Employee may elect to have a particular Union representative in attendance, provided that such representative is on-duty and the operations of the Employer are not unduly disrupted, by giving notice to the Employer on the response form currently utilized. The Employee shall be afforded the opportunity to offer an explanation of any alleged misconduct, to call witnesses, and to offer documentary evidence relevant to the charge. No tape recording of the **conference** shall be made. Upon request, the Employer representative recommending discipline shall be present at the **conference** unless inappropriate or extenuating circumstances prevent a timely **conference**. A report of said **conference** shall be prepared by the neutral administrator. The Employee shall thereafter have the option of submitting a written narrative directly to the Disciplinary Review Board for its consideration.

**SECTION 3. Imposition of Discipline:** The Employer shall determine what discipline, if any, is appropriate, and will provide the Union and the affected Employee with its decision as soon as possible, but in no case later than thirty (30) days after the pre-disciplinary hearing.

In imposing discipline, the Employer shall not take into account any previous disciplinary action rendered against the Employee which occurred more than thirty-six (36) preceding the current charge, or more than twenty-four (24) months preceding the current charge if there has been no other discipline imposed during the past twenty-four (24) months.

**SECTION 4. Time Limits.** In the event discipline involves a criminal matter, the time lines may be extended at the option of the Employer. Other time limits may be waived by mutual agreement.

## **ISSUE 11    ARTICLE 42    PARKING**

### **UNION:**

#### A. Article 42: PARKING

The OPBA submits the following language.

**SECTION 1. The Department shall allow bargaining unit members to park, at no charge, in the Sheriff's garage, P2 Level, and/or The Huntington Parking Garage.**

Currently, the bargaining unit members are paying \$85.00 per month to park in Huntington Park Garage or the Sheriff's garage (both are County owned and are patrolled by armed employees of the Sheriff's Department). More importantly, the aforementioned parking is not available to the 5:45 a.m. – 6:00 p.m. shift. The only other parking is in a lot called "the pit", located at W.3<sup>rd</sup> in the flats. The annual cost to CO employees is \$1,020.

Currently, all second and third shift deputies, deputy sergeants, corrections sergeants, corrections corporals

and deputy lieutenants all park in the two County owned garages free of charge. Most first shift employees are provided parking in the Sheriff's garage P2 level at no cost. The COs are the only group of the above mentioned employees that are forced to pay for parking. Per their respective CBAs, each group has the following language:

Deputy

SECTION 2. The Employer shall provide secure parking at no cost for Employees on the second and third shifts. (U. Ex. 38).

Deputy Sgt

SECTION 2. The Employer shall continue to provide parking arrangements in its current form as it is presently administered for all Sheriff's Office staff. (U. Ex. 40).

Deputy Lt.

Article 32. SECTION 2. The Employer shall continue to provide parking arrangements in its current form as it is presently administered for all Sheriff's Office staff. (U. Ex. 41).

Corrections Cpl

Article 41: PARKING SECTION 1. The Department shall continue the present parking arrangement in the Sheriff's garage, P2 Level in its current form as it is presently administered for all unit members. (U. Ex. 45).

Corrections Sgt.

ARTICLE 29: USE OF PERSONAL VEHICLES/PARKING Section 29.2. The Employer shall continue the present parking arrangement, as of April 1, 2011 in the Sheriff's garage, P2 level in its current form as it is presently administered for all bargaining unit members. The Employer shall reserve six (6) parking spots for the Correction Sergeants' Unit. (U. Ex. 39).

The COs current language provides parking on the same basis as other employees "except where those other employees' job duties and/or job status justify a different arrangement." Apparently the Employer has found the exception. The OPBA submits that the job duties of the above groups are really no different from this group.

The OPBA has presented the pictures taken by Frank Hocker proving the availability of parking in the County garages for this unit. The County has shifted employees from Courthouse Square, near the Justice Center, to the new County Administration Building, thus freeing many, many parking spots at the Huntington Park garage.

**EMPLOYER:**

Article 42: PARKING

SECTION 1. Parking will be available to Employees on the same basis as other County employees except where those other employees' job duties and/or job status justify a different arrangement.

**County Proposal: Current Contract Language**

**County Position:** The County's proposal is based on internal equity. Parking is a huge issue for many bargaining and non-bargaining employees. Nevertheless, the County has stated that it would consider providing second shift employees access to a nearby surface lot at no cost if there were a quid pro quo. The cost of parking at a downtown lot of the County is \$95.00 per month.

**DISCUSSION:**

During mediation and in the fact-finding hearing the Union made a compelling argument, along with photographic evidence (courtesy of Fred Hocker) of the potential availability of free

parking for bargaining unit members on second shift (6 p.m. to 6 a.m.) The problem however, is the extent of said parking and whether employees on overtime will be causing other employees a problem, particularly as it relates to their contractual rights. Given the previous unavailability of evening parking the monthly cost of parking for most second shift employees exceeds \$1,000 dollars annually, which in essence means an employee must earn in pre-tax dollars considerably more just to afford this expense over a year's worth of twelve (12) hour shifts. It is also recognized that with considerable overtime being worked, arrangements other than in the Huntington Garage or on P2 may at this point in time be more feasible as development in the downtown area dramatically changes the location of employees and their parking requirements. As indicated above, the Employer is willing to make arrangements for free parking for second shift employees at a nearby surface lot, with the right "quid pro quo". In the opinion of the Fact-finder, the overall content of this report provides the required quid pro quo and would represent a considerable annual cost savings for these employees.

## **RECOMMENDATION**

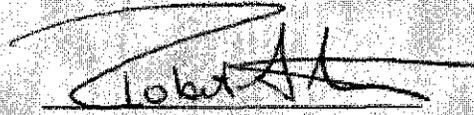
### **Article 42: PARKING**

**SECTION 1.** Parking will be available to Employees on the same basis as other County employees except where those other employees' job duties and/or job status justify a different arrangement. **The Department shall provide second shift bargaining unit members with access to a nearby surface lot at no cost.**

**TENTATIVE AGREEMENT**

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

The fact finder respectfully submits the above recommendations to the parties this 5<sup>th</sup> day of December 2014 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