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STATE OF OHIO
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding Between the	:	SERB Case Numbers: 2014-MED-07-0939 2014-MED-07-0940
HAMILTON COUNTY, OHIO SHERIFF'S OFFICE,	:	
Employer	:	Date of Fact Finding Hearing: September 28, 2015
and the	:	
FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL, INC.,	:	Howard D. Silver, Esquire Fact Finder
Union	:	

REPORT AND RECOMMENDED LANGUAGE OF THE FACT FINDER

APPEARANCES

For: Hamilton County, Ohio Sheriff's Office, Employer

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PROCEDURAL BACKGROUND

This matter came on for a fact-finding proceeding at 10:00 a.m. on September 28, 2015 in seventh floor conference rooms in the Hamilton County, Ohio Administration Building, 138 East Court Street, Cincinnati, Ohio 45202. This fact-finding proceeding was comprised of mediation and the submittal of data, including Hamilton County budgetary and fiscal figures, and comparable information as to wages, benefits, and insurance in Hamilton County and statewide. Following the presentation of evidence and arguments the fact-finding proceeding concluded at 1:50 p.m. on September 28, 2015.

This matter proceeds under the authority of Ohio Revised Code section 4117.14(C) and in accordance with Ohio Administrative Code section 4117-9-05. Three days prior to the day of the fact-finding proceeding each party delivered to the fact finder and the other party the party's position on each unresolved issue.

This matter is properly before the fact finder for review, for the preparation of a fact-finding report, and to recommend language to be included in the parties' successor collective bargaining agreements for the Blue bargaining unit and the Gold bargaining unit.

FINDINGS OF FACT

1. The parties to this fact-finding procedure, the Hamilton County, Ohio Sheriff's Office, hereinafter the Employer, and the Fraternal Order of Police, Ohio Labor Council, Inc., hereinafter the Union, have engaged in negotiating successor collective bargaining agreements between them for two bargaining units - the Gold Unit comprised of all regular, full-time employees of the Sheriff's Office Enforcement Unit in the following

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classifications: Enforcement Sergeants and Lieutenants, Court Service Sergeants and Lieutenants, Internal Affairs Sergeants and Lieutenants and Electronic Monitoring Division Sergeants of the Hamilton County, Ohio Sheriff's Office; and the Blue Unit comprised of all regular full-time employees of the Sheriff's Office Enforcement Unit in the following classifications: Enforcement Officer, Enforcement Corporal, Court Service Officer, Court Service Corporal, Enforcement Clerk, Evidence Technician, Range Officer, Law Enforcement Investigator, Execution Officer, Enforcement Officers and Corporals in the Electronic Monitoring Section.

2. At the time of the fact-finding hearing the Gold Unit was comprised of thirty-three bargaining unit members and the Blue Unit was comprised of 264 bargaining unit members.

3. The most recent collective bargaining agreements between the parties for the Gold and Blue Units expired on December 31, 2014.

UNOPENED ARTICLES

The parties did not open the following Articles for bargaining. The fact finder recommends that all of the unopened Articles enumerated below be included, unchanged, in the parties' successor Agreements for the Blue and Gold Units.

<u>Blue Unit</u>

Article 1 – Agreement/Purpose
Article 3 - FOP Security
Article 5 – Management Rights
Article 6 – Non-Discrimination
Article 8 – General Procedure
Article 10 - Personnel Files

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Article 11 – Probationary Periods

Article 12 - Seniority

Article 13 - Layoff and Recall

Article 15 – Bulletin Boards

Article 16 – Work Rules – General Orders

Article 17 – Performance Evaluation

Article 21 – Court Time/Call-In Time/Stand-By

Article 26 – Occupational Injury Leave

Article 27 – Donated Time

Article 29 – Expenses

Article 30 – Training

Article 31 – Leaves of Absence

Article 33 – Drug/Alcohol Testing

Article 35 – Civil Service Compliance

Article 36 – No Strike/No Lockout

Article 37 – Severability

Article 38 – Waiver in Case of Emergency

Article 39 – Copies of the Agreement

Article 40 – Tuition Reimbursement

Article 41 – Sub-Contracting

<u>Gold Unit</u>

Article 1 – Agreement/Purpose

Article 3 – FOP Security

Article 4 – FOP Representation

Article 5 – Management Rights

Article 6 – Non-Discrimination

Article 8 – Grievance Procedure

Article 10 – Personnel Files

Article 11 – Probationary Period

Article 12 – Seniority

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Article 13 – Layoff and Recall
Article 15 – Bulletin Boards
Article 16 – Work Rules – General Orders
Article 19 – Court Time/Call-In Time/Stand By
Article 24 – Occupational Injury Leave
Article 26 – Expenses
Article 27 – Training
Article 28 – Leaves of Absence
Article 29 – Drug/Alcohol Testing
Article 30 – Civil Service Compliance
Article 31 – Performance Evaluation
Article 33 – Donated Time
Article 36 – Copies of the Agreement
Article 37 – No Strike/No Lockouts
Article 38 – Severability
Article 39 – Waiver in Case of Emergency
Article 40 – Tuition Reimbursement
Article 41 – Sub-Contracting

TENTATIVELY AGREED ARTICLES

The following Articles were tentatively agreed by the parties. The fact finder recommends that all tentatively agreed Articles enumerated below be included in the parties' successor Agreements for the Blue and Gold Units.

Blue Unit

Article 2 – FOP Recognition
Article 4 – FOP Representation
Article 7 – Labor/Management Meetings
Article 9 – Discipline
Article 14 – Vacancies

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Article 19 – Hours of Work and Overtime

Article 23 – Holidays

Article 25 – Sick Leave

Article 32 – Outside Employment

Article 34 – Health and Safety

Article 42 – Residency

Article 43 – Duration

Gold Unit

Article 2 – FOP Recognition

Article 7 – Labor/Management Meetings

Article 9 – Discipline

Article 14 – Vacancies

Article 21 – Holidays

Article 23 – Sick Leave

Article 34 – Outside Employment

Article 35 – Health and Safety

Article 42 – Residency

Article 43 - Duration

UNRESOLVED ARTICLES

The following Articles remained unresolved between the parties:

Blue Unit

Article 18 – Physical Fitness

Article 20 – Wages and Compensation

Article 22 – Insurance

Article 24 – Vacation

Article 28 – Uniforms and Equipment

New Article – Military Reserve

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Gold Unit

Article 18 – Compensation
Article 20 – Insurance
Article 22 – Vacation
Article 25 – Uniforms and Equipment
Article 32 – Physical Fitness
New Article – Military Reserve

DISCUSSION OF UNRESOLVED ARTICLES AND RECOMMENDED LANGUAGE

Article 18 (Blue Unit) and Article 32 (Gold Unit) – Physical Fitness

The Union proposes adding language to Article 18 in the Blue Unit's successor Agreement and to Article 32 in the Gold Unit's successor Agreement, Articles titled Physical Fitness, that would require the Employer to pay an annual bonus of $365.00 to any bargaining unit member who complies with the physical fitness standards demanded by the Employer. The Union also proposes that additional language be installed in the Blue and Gold Units' successor Agreements that would require the Employer to pay a bonus of $500.00 to any bargaining unit member who attains a fitness level that ranks among the top 20% of a maximum on a physical fitness chart.

The Union describes the language proposed for Articles 18 and 32 of the Blue and Gold Units, respectively to provide an incentive to bargaining unit members to comply with the physical standards required by the Employer. The fact finder is reminded that for the bargaining unit members to comply with the standards on physical fitness the bargaining unit members must use their own financial resources and off-duty time to train. The Union contends that bargaining unit members who become exceptionally physically fit through greater training during their free time should be compensated for

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the extra time needed to attain this heightened level of physical fitness. The Union points out that if bargaining unit members do not meet the Employer's standards on physical fitness they open themselves to discipline by the Employer. The Union contends that by complying with the physical fitness standards demanded by the Employer bargaining unit members should be rewarded with these bonuses.

The Union points out that there are external comparable data showing physical fitness incentives are expressed in a variety of collective bargaining agreements among law enforcement officers in the state of Ohio. The Union contends that the bargaining unit members in this proceeding are seeking the same benefit that is commonly provided to other law enforcement officers performing work similar to the work assigned to the bargaining units at issue in this proceeding.

The Employer opposes the additional language proposed by the Union for Articles 18 and 32, Physical Fitness. The Employer describes the physical fitness bonuses proposed by the Union as without merit and points out that the parties agreed to a new pilot program on physical fitness in August, 2014, a pilot program that has a two-year term. This pilot program, now in effect, includes an agreement between the parties to stay any current disciplinary action grounded upon physical fitness standards previously imposed, and an agreement that discipline is not an option under the physical fitness pilot program.

The Employer points out that there has never been a physical fitness bonus agreed between the parties and describes the bonuses proposed by the Union as not needed under the pilot program now in effect.

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The fact finder is reluctant to recommend modifications to the language of Articles 18 and 32 while the parties' pilot program on physical fitness remains in effect. The absence of discipline as agreed by the parties under the pilot program would withhold the consideration for the compliance bonus as proposed by the Union. The fact finder prefers to allow the parties' agreed pilot program to run its natural course without the complication of new language recommended by the fact finder.

The fact finder declines to recommend the additional language proposed by the Union for Articles 18 and 32. The fact finder recommends that current language in both Articles be retained.

RECOMMENDED LANGUAGE: Article 18 (Blue Unit) and Article 32 (Gold Unit) - Physical Fitness

Article 18 (Blue Unit) – Physical Fitness – Maintain current language.

Article 32 (Gold Unit) – Physical Fitness – Maintain current language.

Article 24 (Blue Unit) and Article 22 (Gold Unit) – Vacation

The Union has proposed two additions to Article 24 (Blue Unit) and Article 22 (Gold Unit), Vacation. The first change proposed by the Union would add to Article 24, section 24.4(B) and to Article 22, section 22.4(B) the following language, to be placed immediately after the first sentence in each provision: "All employees assigned to a twelve (12) hour shift shall be entitled to twelve (12) consecutive working days on their initial pick." This proposed change has been agreed by the Employer and is recommended by the fact finder for inclusion in the parties' successor Agreements in Article 24 of the Blue Unit and Article 22 of the Gold Unit.

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The Union's other proposed change to Article 24 of the Blue Unit and to Article 22 of the Gold Unit would add a new section, sections 24.9 and 22.9, respectively that would allow bargaining unit members to convert to cash up to eighty (80) hours of accrued, unused vacation leave once each year. The Union contends that this new language would save the Employer money in the long term by reducing overtime usage in maintaining staffing levels. The Union argues that under its proposal the Employer pays for vacation leave only once, avoiding paying twice through vacation usage leading to the higher costs of overtime usage to maintain staffing levels.

The Union claims that vacation cash-out language is found in a variety of collective bargaining agreements in the state of Ohio among law enforcement officers. The Union contends that the bargaining unit members are seeking the same opportunity commonly provided to other law enforcement officers performing work similar to the work performed by the bargaining units at issue in this proceeding.

The Employer opposes the additional language proposed by the Union for the eighty (80) hour buy back of unused accrued vacation leave time. The Employer claims that such language would give rise to a budgeting dilemma for the personnel department as it would have to anticipate the annual costs of such a program when determining budget priorities for the Hamilton County Sheriff's Office. The Employer points out that both the Blue and Gold bargaining units have the right to carry over unused accrued vacation leave time from one calendar year to the next, reducing the possibility of losing accrued vacation benefits.

The fact finder is of the view that vacation leave is accrued by bargaining unit members not only for the monetary value of this accrued leave time but also because of

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the recognition by both parties of the rejuvenating effects of taking a scheduled break from duty at a time that is mutually agreed by the bargaining unit member (subject to the strictures of seniority) and the Employer to insure that coverage is maintained while vacation leave time is being used. Accruing eighty (80) hours of vacation time and converting these hours to cash does not provide the particular physical and psychological benefits of stepping away from daily duties on a scheduled break for a week or two.

The difficulty in anticipating the vacation buy-back cost on an annual basis is a complicating feature of the language proposed by the Union. Because vacation leave is allowed to carry over from the conclusion of a calendar year to the beginning of the next calendar year there is only the unfettered discretion of each bargaining unit member who has accrued unused vacation leave time that determines whether the conversion of unused accrued vacation leave time for cash will be demanded. While the amount of money involved is not viewed as particularly onerous, the fact finder understands the difficulty in anticipating with any precision the amounts needed to meet these obligations. The fact finder does not recommend the 80-hour cash-out language proposed by the Union.

RECOMMENDED LANGUAGE: Article 24 (Blue Unit) and Article 22 (Gold Unit) - Vacation

Article 24 (Blue Unit) - Vacation

Sections 24.1, 24.2, and 24.3 – Maintain current language.

Section 24.4 The Employer shall post a vacation calendar in each unit (Patrol, Court Services, CIS, and Support Services) by the first Monday of November of each year. Employees may request, prior to March 1, the dates for that vacation year (January 1 through December 31 of that year) on which they prefer to use their accumulated vacation. Such requests shall be honored on the basis of the employee's seniority with the Employer as established in Article 12.2, subject to the following limitations and exceptions:

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A. The first round of vacation selection shall begin by the first Monday of November of the prior year and the first round of vacation selection shall be completed by December 31st. Each employee shall be given the opportunity to select vacation in this round. Failure to select vacation in this round will waive the right to a first round pick.

B. Vacation requests submitted before January 1st shall be honored only to the extent that the employee has selected up to seventeen (17) consecutive working days from vacation (which may be combined with his regularly scheduled off days.) All employees assigned to a twelve (12) hour shift shall be limited to twelve (12) consecutive working days on their initial pick. After making his/her initial selection the employee may not make any additional selections for the use of vacation time until all other members of his/her shift have had the opportunity to make their seniority vacation selections. After this first round of vacation picks, the second round of vacation picks by seniority will be allowed with no limits on the amount of vacation time or period of time which may be selected. Vacation requests submitted by March 1st shall be honored in accordance with this section.

C. Vacations are scheduled and approved in accordance with the workload requirements of the Employer.

D. An employee who has received approval of his/her vacation request, and is subsequently reassigned, shall not lose his/her right to that approved vacation period.

E. An employee who has received approval of his/her vacation request shall not lose his/her right to that approved vacation period to a more senior employee who transfers in to his/her unit or location.

F. Requests for leave of any type will be put in writing on a request for leave form. Any supervisor who denies a request for leave shall put the reason for such denial in the space provided on the reverse side of the request for leave form and return the request for leave form to the employee requesting such leave.

Sections 24.5, 24.6, 24.7, and 24.8 – Maintain current language.

Article 22 (Gold Unit) - Vacation

Sections 22.1, 22.2, 22.3 – Maintain current language.

Section 22.4 The Employer shall post a vacation calendar in each unit (Patrol, Court Services, CIS, and Support Services) by the first Monday of November of each year. Employees may request, prior to March 1, the dates for that vacation year (January 1 through December 31 of that year) on which they prefer to use their accumulated vacation. Such requests shall be honored on the basis of the employee's seniority with the Employer as established in Article 12.2 subject to the following limitations and exceptions:

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A. The first round of vacation selection shall begin by the first Monday of November of the prior year and the first round of vacation selection shall be completed by December 31st. Each employee shall be given the opportunity to select vacation in this round. Failure to select vacation in this round will waive the right to a first round pick.

B. Vacation requests submitted before January 1st shall be honored only to the extent that the employee has selected up to seventeen (17) consecutive working days from vacation (which may be combined with his regularly scheduled off days.) All employees assigned to a twelve (12) hour shift shall be limited to twelve (12) consecutive working days on their initial pick. After making his/her initial selection the employee may not make any additional selections for the use of vacation time until all other members of his/her shift have had the opportunity to make their seniority vacation selections. After this first round of vacation picks, the second round of vacation picks by seniority will be allowed with no limits on the amount of vacation time or period of time which may be selected. Vacation requests submitted by March 1st shall be honored in accordance with this section.

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E. An employee who has received approval of his/her vacation request shall not lose his/her right to that approved vacation period to a more senior employee who transfers in to his/her unit or location.

F. Requests for leave of any type will be put in writing on a request for leave form. Any supervisor who denies a request for leave shall put the reason for such denial in the space provided on the reverse side of the request for leave form and return the request for leave form to the employee requesting such leave.

Sections 22.5, 22.6, 22.7, and 22.8 – Maintain current language.

<u>Article 28 (Blue Unit) and Article 25 (Gold Unit) - Uniforms and Equipment</u>

The Union proposes an alteration to the language of Article 28 and Article 25, Blue Unit and Gold Unit, respectively that would raise the annual uniform allowance from $800.00 to $1,200.00 in Article 28, section 28.7 and Article 25, section 25.7. The Union also proposes an adjustment on the basis of this alteration to the pro-rated uniform allowance presented in these Articles.

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The Union points out that members of a separate bargaining unit comprised of Corrections Officers employed by the Hamilton County Sheriff's Office are receiving an annual uniform allowance of $1,000.00. The Union contends that, at a minimum, the bargaining unit members in the Blue and Gold Units should be receiving the same amount of uniform allowance as the Corrections Officers.

The Employer proposes that a debit card process for uniform purchases be instituted, enabling employees to better utilize their dollars for uniforms and reducing taxes arising from this benefit. The Employer argues that there is no evidence to support the increase in uniform maintenance allowance proposed by the Union and the Employer finds no justification for the Union's proposed increase of this benefit. The Employer argues that the Union's proposal as to uniforms and equipment is unjustified and without merit.

The fact finder recommends an increase to the Blue and Gold bargaining unit members' annual allowance for uniforms and equipment from $800.00 to $1,000.00. The fact finder is persuaded that an internal comparison of the Blue and Gold bargaining units with the Corrections Officers' bargaining unit supports the Union's proposed increase but only up to the $1,000.00 level. The increase to $1,000.00 seems in keeping with legitimate costs associated with work apparel required to be worn by Blue and Gold bargaining unit members.

RECOMMENDED LANGUAGE: Article 28 (Blue Unit) and Article 25 (Gold Unit) - Uniforms and Equipment

Article 28 (Blue Unit) - Uniforms and Equipment

Sections 28.1, 28.2, 28.3, 28.4, 28.5, and 28.6 – Maintain current language.

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Section 28.7 On the first regularly scheduled pay day following May 1, of each calendar year, employees who have completed more than one (1) years of service in the bargaining unit shall receive a uniform allowance of one thousand (1,000.00) dollars. Payment shall be made by separate check. An employee who completes one (1) year of service in the bargaining unit after May 1 shall upon completion of the one (1) year service requirement receive a pro-rated uniform allowance of eighty-three dollars and thirty-three cents ($83.33) per full calendar month of service from date of entry into the unit to May 1. An eligible employee who separates from service prior to May 1 of any year shall be entitled upon separation to a pro-rated share of the allowance based upon the number of months of service completed since the previous May 1.

Article 25 (Gold Unit) - Uniforms and Equipment

Sections 25.1, 25.2, 25.3, 25.4, 25.5, and 25.6 – Maintain current language.

Section 25.7 On the first regularly scheduled pay day following May 1, of each calendar year, employees who have completed more than one (1) years of service in the bargaining unit shall receive a uniform allowance of one thousand (1,000.00) dollars. Payment shall be made by separate check. An employee who completes one (1) year of service in the bargaining unit after May 1 shall upon completion of the one (1) year service requirement receive a pro-rated uniform allowance of eighty-three dollars and thirty-three cents ($83.33) per full calendar month of service from date of entry into the unit to May 1. An eligible employee who separates from service prior to May 1 of any year shall be entitled upon separation to a pro-rated share of the allowance based upon the number of months of service completed since the previous May 1.

New Article – Military Reserve

The Union recommends a new Article that would be titled Military Reserve. This new language proposed to be added to both the successor Agreements for the Blue and Gold Units would affect bargaining unit members serving as United States Military Reservists who are deployed to a United States Combat Zone (an official designation by the U.S. Department of Defense). The Union points out that bargaining unit members in the U. S. Military Reserve who are deployed to a U.S. Combat Zone risk their lives to protect the freedom of all Americans, and in recognition of this service the Union argues

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that the Employer should allow these employees to accrue vacation leave during the period of time they are ordered to serve in a U.S. Combat Zone.

The Union also proposes that bargaining unit members who are deployed to a U.S. Combat Zone and return to employment be permitted to take leave from work for up to thirty (30) calendar days upon their return from active duty. The Union notes that the purpose of this leave is to ensure that returning employees are provided with the time needed to acclimate themselves to civilian life.

The Employer recognizes the need for time off after returning from active duty in a combat zone and the Employer expressed its willingness to allow returning military reservists to use any form of accrued paid leave, including vacation leave, compensatory time, personal leave, and sick leave. The Employer argues that this allows time off without incurring additional leave costs and the Employer's proposal is described as reasonable in addressing the concerns raised by the Union on this issue.

The fact finder prefers to steer clear of the addition of new language addressing military reservists. While the Union's arguments are reasonable, it is important to remember that any increased costs associated with this proposal require the expenditure of additional public monies. The fact finder understands the impetus underlying the Union's proposal to reward military reservists who placed their lives in danger in support of the policies of the American people, and the fact finder fully endorses the agreed view of the parties that some period of time away from work is beneficial to a military reservist returning from a combat zone. The fact finder is not persuaded, however, that the new benefit proposed by the Union for military reservists should be recommended at this time. The Employer has made known its willingness to accept any form of accrued paid leave

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from a returning military reservist. The fact finder is not prepared at this time to recommend the additional leave proposed by the Union under this new Article.

RECOMMENDED LANGUAGE – New Article – Military Reserve

The fact finder does not recommend the addition of a new Article titled Military Reserve.

Article 20 (Blue Unit), Wages and Compensation, and Article 18 (Gold Unit), Compensation

The Union refers the fact finder to Ohio Administrative Code section 4117-9-05(K)(2) that directs the fact-finder to consider comparisons of compensation paid to the bargaining unit members at issue in this proceeding to other employees doing comparable work in the state of Ohio. The fact finder is also reminded that under Ohio Administrative Code section 4117-9-05(K)(3) the fact finder is to consider the ability of the public employer to finance the Union's proposals.

The Union presents an economic analysis of Hamilton County, Ohio prepared by certified public accountant Wade Steen and Mr. Steen's public accounting firm, Steen and Company, LLC. The peer comparisons in Mr. Steen's report shows Hamilton County Deputy Sheriffs lagging behind the wages of law enforcement officers employed in seventeen Hamilton County cities and lagging behind in wages when compared to similarly employed Deputy Sheriffs in five Ohio counties - Franklin, Warren, Clermont, Montgomery, and Butler Counties. The Union points out that the bargaining unit members at issue in this proceeding have fallen behind in terms of purchasing power because they agreed to forgo wage increases to help Hamilton County during a period of

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financial difficulty. The Union points out that the bargaining unit members have not received a wage increase in four years while other employees of the Hamilton County Sheriff's Office have received significant wage increases.

The Union points to the analysis provided by Steen and Company, LLC as to the Hamilton County Sheriff's Office. The Union notes that Hamilton County economic metrics are strong and improving. Available data projects sales tax revenues for 2015 based upon sales tax collections during the first seven months of 2015. These revenues are expected to exceed budget projections by 4.6% or $3.35 million. The sales tax collections during the first seven months of 2015 present an 8% increase over the same period in 2014. The Union claims that the analysis provided by Steen and Company, LLC shows Hamilton County to have outperformed its own budget every year during the last five years, including 2014. Unemployment in the region is below state and national averages and has been for the last four years.

So as not to fall behind other county employees and other law enforcement officers in the state of Ohio the Union proposes a 5% wage increase for Blue Unit bargaining unit members retroactive to January 1, 2015; a 4% wage increase effective January 1, 2016; and a 4% wage increase effective January 1, 2017. The Union also proposes the addition of a fifth step for Court Service Officers for the purpose of avoiding anomalies within the Court Service Officers' and Enforcement Officers' pay schedules.

The Union's proposal on Article 20, Wages and Compensation, for the Blue Unit would also determine the compensation under Article 18 of the Gold Unit as the Gold Unit members' compensation is determined by using the top pay for a Patrol Officer

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presented in Article 20 of the Blue Unit's Agreement as a starting point in calculating the compensation of Gold Unit bargaining unit members.

The Union's proposal on wages and compensation under Article 20 of the Blue Unit's Agreement presupposes the continuing application of a health insurance coverage contribution cap that has been in effect since 2003, a cap made effective by a conciliator's award in June, 2003. This limitation on contributions to be made by Blue and Gold Unit members toward the premium costs of their health care coverage restricts any increase in these premium contributions by Blue and Gold bargaining unit members to the amount of wage increases secured by the Blue and Gold bargaining unit members. This insurance cap is unique to the Blue and Gold bargaining units and provides an economic advantage to Blue and Gold bargaining unit members in contributing funds for their health care coverage in comparison to all other Hamilton County employees who receive health care coverage through Hamilton County.

The Employer has analyzed the fiscal and budgetary data for Hamilton County and the Hamilton County Sheriff's Office, and the Employer's analysis has at its center the Hamilton County General Fund, the primary source of the Hamilton County Sheriff Office's operating budget. The 2015 Hamilton County General Fund budget recommended by the Hamilton County Administrator amounted to $210.7 million. This presented a 1.5% increase from the 2014 projected expenditure level.

The Employer notes that ultimately the Hamilton County Commissioners agreed to a General Fund budget in the amount of $201.8 million.

The Employer notes that the Hamilton County Board of Commissioners agreed to an expenditure level for 2015 of $202 million, an amount that does not include a

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compensation adjustment for 2015. It is noted that $202 million is $3.3 million below the 2014 estimated expense level. The Employer notes that the Sheriff's Office has consistently exceeded its budget each year since 2012.

The Employer points out that the 2015 Hamilton County General Fund has a reserve level of about $29.2 million or 14.5% of the projected Hamilton County General Fund balance. As of September 13, 2015, the reserve level was estimated to be at 14.7% of the Hamilton County General Fund balance. The Employer notes that the Government Finance Officers Association (GFOA) recommends a reserve level of approximately 16% - 17% of annual operating expenses.

The Employer notes that Hamilton County has focused on economic stabilization but economic recovery is slow. The Employer argues that growth in compensation in the Hamilton County Sheriff's Office should mirror the growth of Hamilton County's finances, and it is claimed that it is imperative that the Hamilton County Sheriff's Office operate within its approved departmental budget.

The Employer does not propose a wage increase for the Blue Unit for 2015 but does propose a 2% across the board wage increase for the Blue Unit effective January 1, 2016 and proposes a wage reopener in 2017.

While the Employer does not propose a wage increase for 2015, the Employer does propose a $1,400.00 increase to all base rates of all steps as a buy-out of the current insurance cap. The Employer argues that the insurance cap, imposed twelve years ago through a conciliation award, today bears no reasonable relation to Hamilton County's current economic state. The Employer reminds the fact finder that in 2003 Hamilton County's General Fund amounted to $258.6 million, and in 2015 the Hamilton County

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General Fund amounts to $201.8 million, a reduction of $56.8 million or 22%. The Employer claims that a continuation of the insurance cap will cause substantial hardship to the Employer and claims that the insurance cap is unjustified.

The Union opposes the elimination of the insurance cap held by the Blue and Gold Units. The Union points out that this limitation was conferred by a conciliator on June 28, 2003, and in awarding this cap the conciliator held: "... reinstating the cap could give employees the ability to predict the cost increases and it allows for some small increase in co-payment of the health insurance premium." The Union contends that the conciliator's rationale expressed in 2003 remains true and applicable today. The Union notes that an attempt to void the insurance cap in 2005 by the Employer produced a grievance that was sustained by an arbitrator. The Union notes that the insurance cap has been in place since 2003 and claims there is no compelling reason to change the insurance cap now after twelve years.

There is a direct connection between the value received by Blue and Gold bargaining unit members through the money saved through the insurance contribution cap imposed by a conciliator on June 28, 2003, and the absence of wage increases over the last four years. The tacit understanding between the parties has been the gain in value under the unique circumstances of the insurance cap provides the increase in purchasing power for the Blue and Gold bargaining units that would otherwise take the form of wage increases. This circumstance was viewed as obviating the need for an express wage increase for the Blue and Gold Unit. Such an arrangement provides Blue and Gold bargaining unit members with a *de facto* wage increase that is tax free; the Employer can refer to its success in resisting wage increase pressures.

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There is no denying the financial advantages enjoyed by the Blue and Gold Units as a result of the insurance cap. The fact finder understands that to attempt to persuade the holders of this benefit to relinquish it voluntarily as a relic of a distant time, a benefit that has outlived its reason for existing, is a losing game. The benefit exclusively enjoyed by the Blue and Gold Units through the insurance cap is of real value to the bargaining unit members and will not be relinquished without a return that is viewed by the bargaining unit members as commensurate with what they are being asked to give up. The fact finder understands that if there is to be any chance of the parties reaching an agreement on the formation of the two successor collective bargaining agreements for the Blue and Gold bargaining units through this fact-finding procedure, the parties must agree as to what is to be exchanged for the relinquishment of the health care insurance coverage cap.

One of the features of the insurance cap that is happily dispensed with, if the insurance cap were to be dissolved, is the impact it has had on the wage history of the Blue and Gold bargaining units. The substitution of the dollars saved as a result of the insurance cap to offset wage increases perpetuates an economic relationship between the parties that substitutes fungible health care savings for wage increases. While the monetary value of the insurance contribution savings may equal the monetary value of the wage increases that are forgone, such a system makes it impossible to reliably compare the wage histories of these two bargaining units with other bargaining units, whether they be in Hamilton County or external to Hamilton County in the state of Ohio. It is impossible to compare the true wage histories of the Blue and Gold bargaining units to other bargaining units because the wage histories of the Blue and Gold bargaining

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units have been skewed by the insurance cap that applies only to these two bargaining units.

The fact finder notes that as to every other issue raised by the Union, the Union points to wide usage among other collective bargaining agreements. Such broad usage, however, is not claimed for the insurance cap that is proposed to be continued under the Union's proposal. The fact finder understands the insurance cap at issue in this fact-finding proceeding to be a unique feature, one not commonly found among other public employee bargaining units.

The fact finder is persuaded that returning to a direct bargaining relationship on wages and compensation, over the long-term, is beneficial to both bargaining units. If the Blue and Gold Unit successor Agreements are not agreed as a result of this fact-finding procedure, this matter will move to conciliation, and just as the insurance coverage cap was created twelve years ago through the review and action of a conciliator, the continuation of this insurance cap will come within the purview of a conciliator who will determine whether the cap is to continue. The fact finder is of the view that if the parties are to agree on how the insurance cap is to be resolved between them, now is the time to reach that compromise and settle what is viewed by the fact finder to be an inefficient and unsustainable system of determining wages and compensation through the substitution of health care coverage savings for wage increases. The fact finder recommends to the parties that wage increases should be negotiated directly between the parties and should not balance on the continuation of what the fact finder finds to have been an arbitrary ceiling.

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The Employer has offered a $1,400.00 increase for all steps in every pay schedule among the Blue Unit members. This amount is equal to the health insurance coverage contribution provided by the Employer for mid-level health care coverage, and the Employer offers a two percent (2%) wage increase effective January 1, 2016 and a wage reopener in 2017.

The fact finder recommends to the parties that all steps in the pay schedules for Blue Unit members be increased by $1,750.00 and that this increase be made effective January 1, 2016. The fact finder also recommends a three percent (3%) wage increase effective January 1, 2017. In exchange for these increases the Blue and Gold bargaining unit members will agree to relinquish the insurance cap effective January 1, 2016, and at that time join all other Hamilton County employees who receive their health care coverage through Hamilton County in the same coverage pool.

Because the particular facts of this fact-finding proceeding reflect an inextricable connection over the past twelve years between wages and health care coverage costs, the fact finder has considered Article 20 (Blue Unit), Wages and Compensation, and Article 18 (Gold Unit), Compensation, and Article 22 (Blue Unit), Insurance and Article 20 (Gold Unit), Insurance, together. The fact finder recommends to the parties that these very important economic issues be separated and that both parties share in the sacrifices needed to make the changes proposed by this report in the area of wages, compensation, and insurance contributions.

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RECOMMENDED LANGUAGE: Article 20 (Blue Unit) - Wages and Compensation and Article 18 (Gold Unit) – Compensation

Article 20 (Blue Unit) – Wages and Compensation

Sections 20.1 Every step for all bargaining unit employees shall be increased by $1,750.00 effective January 1, 2016.

Effective the first full pay period that includes January 1, 2017, bargaining unit hourly pay shall be increased by three percent (3%).

Article 18 (Gold Unit) – Compensation – Retain current language.

Article 22 (Blue Unit) and Article 20 (Gold Unit) – Insurance

For the reasons presented above under the discussion that addresses wages and compensation for the Blue Unit, the fact finder recommends a dissolution of the insurance cap effective January 1, 2016, in exchange for the pay increases recommended in this report.

RECOMMENDED LANGUAGE: Article 22 (Blue Unit) and Article 20 (Gold Unit) – Insurance

Article 22 (Blue Unit) – Insurance

Sections 22.1, 22.2, 22.3, 22.4, 22.5, and 22.6 – Retain current language.

Section 22.7 – Delete current language.

Article 20 (Gold Unit) – Insurance

Sections 20.1, 20.2, 20.3, 20.4, 20.5, and 20.6 – Retain current language.

Section 20.7 – Delete current language.

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In making the recommendations presented in this report, the fact finder has considered the factors listed in Ohio Revised Code section 4117.14(G)(7)(a) - (f) as required by Ohio Revised Code section 4117.14(C)(4)(e) and Ohio Administrative Code section 4117-9-05(K).

Finally, the fact finder reminds the parties that any mistakes made by the fact finder are correctable by agreement of the parties pursuant to Ohio Revised Code section 4117.14(C)(6)(a).

Howard D. Silver

Howard D. Silver, Esquire
Fact Finder
500 City Park Avenue
Columbus, Ohio 43215

Columbus, Ohio
October 29, 2015

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that the foregoing Report and Recommended Language of the Fact Finder in the Matter of Fact-Finding Between the Hamilton County, Ohio Sheriff's Office, the Employer, and the Fraternal Order of Police, Ohio Labor Council, Inc., the Union, SERB case numbers 2014-MED-07-0939 and 2014-MED-07-0940, was filed electronically with the Ohio State Employment Relations Board at MED@serb.state.oh.us and served electronically upon the following this 29th day of October, 2015:

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Fact Finder

Columbus, Ohio
October 29, 2015