

FACT-FINDING REPORT

STATE EMPLOYMENT RELATIONS BOARD

STATE OF OHIO

December 3, 2014

In the Matter of:

Cuyahoga County)	
)	Case No. 2014-MED-07-0964
and)	Deputy Sheriffs
)	
Ohio Patrolmen's Benevolent Association)	

APPEARANCES

For the County:

Todd Ellsworth, Assistant Law Director
Rich Peters, Captain
Jason Sobczyk, Employee Relations Specialist 2

For the Union:

Max Rieker, Attorney
Joseph Zickes, Director
James Slattery, Steward
Anthony Church, Deputy
Mark Adams, Deputy

Fact Finder:

Nels E. Nelson

BACKGROUND

The instant case involves the Cuyahoga County Sheriff's Department and the Ohio Patrolmen's Benevolent Association. The department provides protection and security to the citizens of Cuyahoga County. The union represents a number of bargaining units in the department, including the deputy sheriffs. The deputies' bargaining unit consists of approximately 149 full-time deputies.

The instant dispute involves the negotiations between the county and the union for a successor agreement due to expire on December 31, 2014. When it became clear to the parties that they would not be able to reach an agreement, they agreed upon the Fact Finder and a Conciliator, should one be needed.

The Fact Finder was notified of his appointment on October 21, 2014. He met with the parties on November 13, 2014, and at that time, there were more than 50 unresolved issues. A number of issues were resolved through mediation but when no overall settlement was reached, a fact-finding hearing was held on November 18, 2014, and this report was prepared.

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

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

(f) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

ABILITY TO PAY

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

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

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

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

The union argues that the county's ending balances show its strong position. It points out that the Second Quarterly Report projects the General Fund ending balance to be \$140.2 million or 36.8% of expenditures. (Ibid.) The union observes that this is \$3.6 million more than the budgeted amount.

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

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

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

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

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

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

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

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

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

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

Additional requests for funding were evaluated separately from the base budget development process and within the context of funding source and budgetary priority. (County Pre-Hearing Statement, Tab 5; 2014 Budget Update; October 7, 2014; page 3)

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

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

The county complains that the past two state budgets have used cuts to local government to achieve “structural balance.” It observes that there have been cuts in the Local Government Fund, Commercial Activity Tax reimbursement, Public Utility reimbursement, and assistance to

human services programs. The county reports that the 2014-2015 budget cannot restore any of the previous cuts and made changes resulting in an additional 4.5% reduction in its Local Government Fund allocation.

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

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

ISSUES

The parties submitted 18 issues to the Fact Finder. For each issue, the Fact Finder will describe the current contract provision and the positions of the parties. He will then present his analysis of the issue and his recommendation.

1) Article 14 - Wages, Section 1 - Wage Schedule - The current salary schedule consists of seven steps where employees advance one step each year. The first step of the current schedule is \$42,286 and the top step is \$56,680. The union demands a 3.5% increase in each step

of the salary schedule on January 1 of 2015, 2016, and 2017. The county offers a 1% increase in 2015 and reopens for wages in 2016 and 2017.

Analysis - One of the statutory criteria is wage comparisons. The union provided three sets of comparisons. First, it submitted the 2014 wages and total compensation for 10-year deputies in sheriffs' departments in five contiguous counties. The data are as follows:

<u>County</u>	<u>Population</u>	<u>Wages</u>	<u>Total Compensation*</u>
Geauga	93,389	\$64,667	\$66,667
Lake	230,041	\$61,006	\$61,306
Lorain	301,356	\$55,453	\$58,083
Medina	172,332	\$58,453	\$60,703
Summit	541,781	\$53,995	\$55,695
Average		\$58,715	\$60,491
Cuyahoga	1,280,122	\$56,680	\$58,830
Cuyahoga % of Average		96.53%	97.25%

* Non-wage compensation consists primarily of uniform allowances, shift differentials, and longevity payments.

The wages of deputies in Cuyahoga County are \$1035 less than in five contiguous counties and their total compensation is \$1661 less than in those counties.

Second, the union furnished data for the 2014 wages and total compensation for 10-year deputies in Ohio counties with populations greater than 500,000. The data are as follows:

<u>County</u>	<u>Population</u>	<u>Wages</u>	<u>Total Compensation*</u>
Franklin	1,163,414	\$78,915	\$81,643
Hamilton	802,374	\$59,407	\$60,801
Montgomery	535,153	\$60,882	\$64,127
Summit	541,781	\$53,995	\$55,695
Average		\$58,836	\$65,566
Cuyahoga	1,280,122	\$56,680	\$58,830
Cuyahoga % of Average		88.80%	89.73%

* Non-wage compensation consists primarily of uniform allowances, shift differentials, and longevity payments.

The wages of deputies in Cuyahoga County are \$2156 less than in the four other counties with populations greater than 500,000 and their total compensation is \$6736 less than in those counties.

Finally, the union offered the 2014 wages and total compensation for 10-year police officers in 27 cities in Cuyahoga County. The population of the cities ranges from 8,345 in Highland Heights to 81,601 in Parma. The average wage for the 27 cities is \$68,528, which is \$11,848 higher than for the deputies in Cuyahoga County. The average total compensation for the cities is \$72,627 or \$13,797 more than for the deputies.

While the Fact Finder recognizes that the comparison of the wages and compensation of city police officers and deputies may be less relevant than comparisons to other deputies, the significant difference in wages and compensation cannot be ignored. The county is requiring deputies to take on more of the duties typically performed by city police officers. For example, deputies have assisted East Cleveland and North Randall by performing police duties in those cities and serve on a number of important law enforcement task forces. The Sheriff's Department has also instituted a downtown patrol that shares duties with Cleveland police officers. The county's decision to expand the role of the deputies suggests that the gap between their wages and compensation, and the wages and compensation of city police officers should be reduced.

The Fact Finder believes that wage increases received by similar employees is a useful guide in making a wage recommendation. At any point in time, there is a hierarchy of wages where employees in some areas are highly paid and employees in other areas are less highly paid and a relatively large number of employees whose wages are close to the average. This array of wages is a result of numerous factors, including, in most cases, many years of bargaining by the parties. By recommending a wage increase similar to the wage increases being received by

comparable employees, the Fact Finder leaves intact the array of wages established by the parties.

The union provided two sets of data regarding the wage increases received by comparable employees. First, its data shows that the average wage increase for the 10 cities in Cuyahoga County which have negotiated wages for police officers for 2015 is 2.03%. (Union Pre-Hearing Statement, Tab 23) Second, the union's data shows that the average increase in wages in 2015 for the five sheriffs' departments where wages have been agreed upon is 2.5%. (Union Pre-Hearing Statement, Tab 23A) The five counties are Geauga, Franklin, Lake, Montgomery, and Summit.

The factors discussed above lead to two conclusions. First, the Cuyahoga County deputies' wages and total compensation are significantly lower than Cuyahoga County police departments and more importantly, lower than sheriffs' departments in contiguous and large counties in Ohio. While the union should not expect the differences to be immediately eliminated, some adjustment is warranted. Second, in order for the deputies in Cuyahoga County to maintain their current ranking, they must receive a wage increase between 2% and 2.5% in 2015.¹

The county submitted the State Employment Relations Board's "Wage Settlement Breakdown for 2013." (County Pre-Hearing Statement, Tab 5) It shows that the average wage increase in 2013 in the Cleveland Region was 1.49%, 1.81% for county employees, and 1.66% for police. While these increases are less than the data offered by the union, they represent wage increases for 2013 rather than 2015. This is an important fact because wage settlements have steadily increased as the economic recovery has proceeded. For example, the wage increases

¹ The record contains limited data regarding wage increases for 2016. The data indicates that the average wage increase for Geauga, Lake, Montgomery, and Summit Counties is 2.6%.

received by county employees have more than doubled between 2011 and 2013, increasing from .72% in 2011 to 1.81% in 2013. Wage settlements in 2014 will surely exceed 2%.

The county's exhibit showing the "estimated total compensation" of deputies is \$97,962.51 is of very little use to the Fact Finder. First, while the figure purports to represent the "total compensation" of Cuyahoga County deputies, it includes a number of items ordinarily not included in total compensation. For example, the county includes in its "total compensation" \$9,446.92 of overtime, \$11,902.85 in pension payments, and \$16,474.33 of its cost for medical, dental, and life insurance -- a total of \$37,824.10.

Second, the statute requires the Fact Finder to compare the compensation of the county's deputies with the compensation of employees doing comparable work. As suggested above, the most relevant comparisons are to deputies in similar-sized counties and in contiguous counties. The problem is that the county failed to provide data on the "total compensation" of deputies in those counties.

Most importantly, if the county provided such data, it would support the union's demand for higher salaries. This follows from the fact that the higher base pay of deputies in the comparable counties generates higher overtime payments and pension costs than in Cuyahoga County. Thus, the dollar gap between deputies in Cuyahoga County and the comparable counties would be greater in the county's measure of "total compensation" than when total compensation measured in the normal way.

Based upon the above analysis, the Fact Finder recommends a two-step wage settlement. First, he recommends that each step of the salary schedule be increased by \$750 effective January 1, 2015. This adjustment represents an attempt to narrow the gap between the Cuyahoga County deputies and deputies in comparable counties. Second, the Fact Finder recommends that

after the one-time wage adjustment, each step of the salary schedule be increased by 2% effective January 1 of 2015, 2016, and 2017.

Recommendation - The Fact Finder recommends the following contract language:

Effective January 1, 2015, each step of the wage schedule shall be increased by \$750. Following this adjustment to the wage schedule, each step of the schedule shall be increased by 2%.

Effective January 1, 2016, each step of the wage schedule shall be increased by 2%.

Effective January 1, 2017, each step of the wage schedule shall be increased by 2%.

2) Article 14 – Wages, Section 1 - Elimination of Step One - The current contract has seven steps. The first step salary is \$42,286. The union proposes eliminating the first step. The county opposes the union’s proposal.

Analysis - The Fact Finder cannot recommend the union’s proposal. He understands the union’s claim that the low starting salary makes it difficult to attract high-quality applicants. The Fact Finder, however, believes that the recommended increases in the entire salary schedule should help attract well-qualified applicants.

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

3) Article 14 - Wages, New Section 2 - Shift Differential - The current contract has no shift differential. The union seeks a \$.75 per hour shift differential for all hours worked between 6 p.m. and 6 a.m. The county opposes the union’s proposal.

Analysis - The Fact Finder cannot recommend the union’s proposal. First, while he recognizes that 15 of 36 or 42% of the police departments in Cuyahoga County have shift

differentials, none of the union's comparable sheriff's departments have a shift differential.
(Union Pre-Hearing Statement, Tabs 23 and 23A)

Second, the Fact Finder recognizes that the Protective Services Officers have a \$.25 per hour differential for the second shift and \$.50 per hour differential for third shift. He must note, however, that the qualifications and responsibilities of the deputies and the Protective Services Officers are different as is their compensation. In addition, none of the other units in the Sheriff's Department have a shift differential

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

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

4) Article 14 - Wages, New Section 3 - Fitness Incentive - The current contract has no fitness incentive. The union proposes an annual seven-part fitness test where employees are paid \$100 for each component they pass plus \$200 for passing all of the components. The county opposes the union's proposal.

Analysis - The Fact Finder cannot recommend the union's proposal. First, the goal of the fitness program should be to encourage all members of the bargaining unit to maintain or improve their fitness. Since the union's proposed program is not mandatory, the employees most likely to benefit from the program are probably the least likely to enroll. This makes the program little more than additional compensation for a portion of the bargaining unit.

Second, the union provided no data regarding other sheriffs' departments or even city police departments with fitness incentive programs. This makes it difficult for the Fact Finder to recommend the adoption of the union's plan.

Third, as discussed above, the Fact Finder believes the focus should be on increasing the base wage -- a benefit enjoyed by all members of the bargaining unit.

Finally, given the county's interest in fitness, as evidenced by its mandatory fitness testing proposal, the parties could profitably work jointly on a mutually beneficial fitness program.

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

5) Article 14 - Wages, New Section 4 - Firearms Proficiency Bonus - The current contract cannot include a firearms proficiency bonus. The union demands an annual bonus where employees who achieve a rating of 85% during re-certification receive a \$500 bonus and employees who gets a 90% or higher rating receive a \$750 bonus. The county rejects the union's proposal.

Analysis - The Fact Finder cannot recommend the union's proposal. First, while he recognizes that 11 of 36 or 31% of Cuyahoga County police departments have firearms proficiency bonuses (Union Pre-Hearing Statement, Tab 23), the comparable data for sheriffs' departments reveals that only one, Medina, has a firearms proficiency bonus (Ibid.)

Second, as discussed above, the Fact Finder believes the focus should be on increasing the base salary rather than creating new benefits.

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

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

The current contract counts sick leave as time worked for purposes of computing overtime. The county seeks to eliminate sick leave from the overtime calculation. The union opposes the county's demand.

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

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

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

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

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

Bank - The current contract has a comp time bank with a maximum of 240 hours of accumulation. The union seeks to increase the maximum to 480 hours. The county opposes the proposed increase.

Analysis - The Fact Finder cannot recommend the union's proposal. It did not present a convincing rationale for the changes being sought. The Fact Finder does not believe that he should make changes in the collective bargaining agreement without a clear reason to do so.

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

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

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

Analysis - The Fact Finder cannot recommend either the elimination of the time limit for using comp time sought by the union or the reduction in the time limit proposed by the county. The parties have lived with the current two-year requirement without any evidence of problems. For that reason, the Fact Finder cannot recommend either party's proposal.

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

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

Time Cash - Out - The current contract does not allow an employee the option to cash out compensatory time. The union proposes that employees be able to cash out comp time at any time. The county opposes the union's proposal.

Analysis - The Fact Finder cannot recommend the union's proposal. First, the unlimited right to cash out comp time could prove to be a significant burden to human resources and

payroll in processing such requests. Second, the union was not able to show a justification for its proposal.

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

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

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

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

11) Article 15 - Hours of Work/Overtime, Section 4 - New - Time Clocks - The current contract has no provision regarding the use of time clocks. The union proposes a provision banning the county from requiring employees to clock in or out. The county opposes union's proposal

Analysis - The Fact Finder cannot recommend the union's proposal. First, many positions in the Sheriff's Department must be staffed at certain hours. The county's use of time clocks may help to insure the necessary job coverage. Second, the county has the management right to ensure that employees arrive on time and work their scheduled hours. The use of time clocks is one of the ways the county can do this.

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

12) Article 15 - Hours of Work/Overtime, Section 4 – New – Notice of AWOL - The current contract has no provision relating to AWOL. The union demands a provision requiring the county to notify an employee who is allegedly AWOL within three work days of the occurrence. The county opposes the union's proposal .

Analysis - The Fact Finder cannot recommend the union's proposal. First, if the county attempts to discipline an employee for an offense where there was not proper notice of the alleged offense, a remedy is available through the grievance procedure. Second, the union did not provide sufficient support for its proposal.

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

13) Article 17 - Assumption of Rank, Section 1 - OIC Pay - The current contract requires the county to pay deputies who serve as the Officer-in-Charge an additional 12% of their regular pay for a minimum of four hours. The union seeks to increase the rate to 15%. The county opposes the union's proposal.

Analysis - The Fact Finder cannot recommend the union's proposal. First, the list of employees who received OIC pay from October 1, 2103, through November 3, 2014, shows that in many instances, the deputies serving as Officers-in-Charge received four hours of pay suggesting that the deputeis may have worked significantly less than four hours. This would result in an hourly pay rate that is more than the pay of the Sergeant they are replacing.

Second, the union did not offer any comparable data. While some deputies may get the rate of pay for the Sergeants they are replacing, it is not clear how many departments have a four-hour minimum for OIC pay.

Third, the list of OIC pay suggests that a relatively small number of deputies receive OIC pay. As indicated above, the Fact Finder believes that the focus should be on increasing the base wage rather than on items that benefit only part of the bargaining unit.

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

14) Article 25 - Employee Assignment and Transfer, Section 1- Downtown Services Unit - The current contract specifies that employees with three years of actual service may bid semi-annually to transfer to the Courts Unit or the Patrol Division. The union seeks to add the Downtown Services Unit to the list of bid positions. The county opposes the union's proposal.

Analysis - The Fact Finder cannot recommend the union's proposal. First, the county explained that the nature of the Downtown Services Unit could make it problematic to fill such positions based on seniority. Second, the record suggests that the future of the unit is not clear because it has been reduced to only two members. If the unit grows, the union can renew its proposal to have positions filled on the basis of seniority.

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

15) Article 26 - Health & Safety, Section 4 - New - Infectious Diseases - The current contract does not specifically require notice to employees involved with prisoners or inmates with infectious diseases. The union demands that the county be required to provide notice to employees who are required to handle prisoners or inmates with AIDS, HIV, Hepatitis A, Hepatitis B, Hepatitis C, or any known airborne disease.

Analysis - The Fact Finder cannot recommend the union's proposal. First, the current contract requires the county to "continue the current practice of identifying, evaluating and disseminating information regarding any communicable diseases(s) or other health-related problems which might affect bargaining unit members." This would appear to provide protection to members of the bargaining unit. Second, it is unclear that the list of conditions or diseases offered by the union is appropriate. Since the Fact Finder lacks the medical expertise to determine whether the conditions or diseases chosen by the union are appropriate, he will leave it to the county to insure that its practices and policies protect its employees as well as the individuals in its care and custody.

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

16) Article 26 - Health & Safety, Section 8 - Fitness Testing - The current conduct does not require fitness testing. The county proposes the following:

The parties recognize that Sheriff Deputies 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 Sheriff Deputies take part in reasonable, balanced and job-related training to assess an employee's ability to perform the actual or simulated jobs tasks such as, but not limited to, self-defense and other training or testing that is job-related and consistent with the operational needs of the Employer. Prior to implementing training or assessment pursuant to this Article, the county shall use an expert to certify the validity of the test or assessment measure. If the employee cannot

complete and pass required training and/or assessment, he/she shall be given an opportunity to retrain and/or be reassessed. If the employee subsequently fails to complete and pass training and/or assessment required by the county, he/she shall receive written notification of this failure.

The union opposes the county's proposal.

Analysis - The Fact Finder cannot recommend the county's proposal for fitness testing.

First, its proposal is incomplete and unclear. It does not describe the test or what might be included in the testing. In contrast to this, the union's proposal for a fitness bonus included the specific elements of its proposed testing.

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

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

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

17) Article 35 - Outside Employment, Section 1- Reporting Form - The current contract requires employees to apply to the "Employer" and the "Employer's" permission

to engage in employment outside of the Sheriff's Department. The union proposes to add language that states that the employee shall "apply solely to the Sheriff's Department." The county opposes the union's demand.

Analysis - The Fact Finder believes that some clarification of the current contract is appropriate. The current contract requires deputies to apply to and to get the permission of the "Employer" to engage in employment outside the Sheriff's Department. Currently, employees are required to supply information to the Sheriff regarding the nature of their secondary employment for his approval. The Fact Finder recommends that the contract make it clear that the Sheriff requires the information regarding their secondary employment and that the Sheriff approves or disapproves such requests.

The Fact Finder cannot recommend the union's proposal that the deputy shall "apply solely to the Sheriff's Department." He understands that the union's motivation is to prevent the Inspector General from requesting information from employees. The Fact Finder, however, recognizes that the Inspector General can request information to determine whether employees are complying with the county's Ethics Policy. If the union feels that the information requested by the Inspector General goes beyond matters covered by the Ethics Policy, it has a number of remedies available to it.

Recommendation - The Fact Finder recommends the following contract language:

Employees shall apply to the Sheriff and obtain the Sheriff's written permission prior to engaging in employment outside the Sheriff's Office. The granting or denial of such requests shall be governed by the following criteria:

- a) The outside employment may not be such as would in any manner adversely affect or interfere with the Employee's performance of duties for the Sheriff's Office.

- b) The outside employment may not create an actual conflict of interest or the appearance of a conflict of interest with the operations of the Sheriff's Office.
- c) The outside employment may not be such as would create an appearance of impropriety.
- d) The outside employment may not be at a place of business where any principal or officer of the business or the business itself has been convicted of or is under investigation for serious criminal conduct.
- e) The outside employment may not involve more than thirty (30) hours of work per week.
- f) Employees seeking outside employment shall provide the Sheriff with evidence that liability insurance satisfactory to the Sheriff or a hold harmless agreement satisfactory to the Sheriff has been secured which shall hold the Sheriff, Cuyahoga County and their representatives, harmless from any actions or inactions arising out of the Employee's outside employment.
- g) Upon request, an Employee shall be provided a written explanation for denial and/or rescission of outside employment authorization unless otherwise precluded by law.

18) Article 40 - Vacation, Section 3 - Vacation Entitlement - The current contract grants 160 hours of vacation leave to employees with 15 or more years of service. The union seeks to reduce the requirement for 160 hours of vacation leave to 13 or more years of service. The county opposes the union's proposal.

Analysis - The data provided by the union for other sheriffs' departments strongly supports its proposal. The union's information reveals the following:

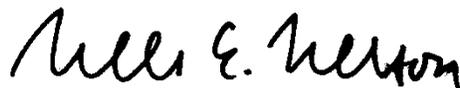
<u>Years for Four Weeks</u>	<u>Counties</u>
10 Years	Franklin, Summit
11 Years	Geauga, Medina
12 Years	Hamilton, Lake, Montgomery
13 Years	None
14 Years	None
15 Years	Cuyahoga

The Fact Finder understands the county's argument that internal comparisons support its proposal. More specifically, the Deputy Sergeants, the Deputy Lieutenants, the Corrections Officers, and Protective Services Sergeants do not earn a fourth week of vacation until they have 15 or more years of service. However, given the significant difference between the Cuyahoga County deputies and deputies in other counties, the union's proposal must be recommended. The Fact Finder would note that this still means that deputies in Cuyahoga County must work two years longer than the average for the seven other counties before receiving their fourth week of vacation

Recommendation - The Fact Finder recommends the following contract language:

Each full-time member of the bargaining unit with thirteen (13) or more years of service with the Employer shall have earned, and is entitled to, one hundred sixty (160) hours of vacation leave with full pay. Such vacation leave shall accrue to the Employee at the rate of six and two-tenths (6.2) hours each biweekly period.

19) Tentative Agreements - The Fact Finder recommends that the tentative agreements reached by the parties.



Nels E. Nelson
Fact Finder

December 3, 2014
Russell Township
Geauga County, Ohio