FACT FINDING TRIBUNAL
STATE EMPLOYMENT RELATIONS BOARD
COLUMBUS, OHIO

IN THE MATTER OF FACT FINDING BETWEEN	
HAMILTON COUNTY SHERIFF, PUBLIC EMPLOYER	**REPORT OF THE FACT FINDER -**
-AND-	**RECOMMENDATIONS AND RATIONALE**
HAMILTON COUNTY CORRECTIONS OFFICERS ASSOCIATION, HCCOA, EMPLOYEE ASSOCIATION	

SERB CASE NO.:	2014-MED-08-1044
BARGAINING UNIT:	All regular, full-time Hamilton County Corrections Officers employed by the Hamilton County Sheriff.
INCLUDED:	Corrections Officers, including Corrections Cadets.
EXCLUDED:	All other Employees.
MEDIATION SESSION FACT FINDING HEARING:	July 29, 2015; Cincinnati, Ohio
FACT FINDER:	David W. Stanton, Esq.

APPEARANCES

FOR THE EMPLOYER

Brett A. Geary, Management Consultant
David Helm, Assistant HR Director
Keith L. Clepper, Administrative Assistant
John Taylor, Captain

FOR THE UNION

Stephen S. Lazarus, Attorney
Ross M. Gillingham, Attorney
John Brady, President
David McElroy, Deputy
Nicholas Hirschauer, Deputy
Robert J. Mason, Deputy
Jacob Richmond, Deputy
(On Committee; unable to attend)

ADMINISTRATION

By e-mail correspondence dated May 15, 2015, from Donald M. Collins, General Counsel for the State Employment Relations Board, Columbus, Ohio, the undersigned was notified of his mutual selection to serve as Fact Finder to hear arguments and issue recommendations relative thereto pursuant to Ohio Administrative Code Rule 4117-09-05(J), in an effort to facilitate resolution of those issues that remained at impasse between these Parties. The impasse resulted after numerous attempts to negotiate a successor Collective Bargaining Agreement proved unsuccessful.

Through the course of the administrative aspects of scheduling this matter, the Fact Finder discussed with these Parties the overall collective bargaining "atmosphere" relative to the negotiation efforts by and between them and learned that overall these Parties have enjoyed, and will likely will continue to enjoy, what can be best characterized as a newer, but seemingly amicable, collective-bargaining relationship.

On July 29, 2015, at the offices of the Hamilton County Administration, 138 East Court Street, Cincinnati, Ohio, the Parties engaged in mediation facilitated by the Fact Finder and despite these efforts, the remaining unresolved issues remained at impasse. The Parties have stipulated that tentative agreements reached prior to the Mediation/Fact Finding, as identified herein, be included in the successor Collective Bargaining Agreement upon its ratification and approval. During the course of the Fact Finding Hearing, each Party was afforded a fair and adequate opportunity to present testimonial and/or documentary evidence supportive of positions advanced. The evidentiary record of this proceeding was subsequently closed upon the conclusion of the Fact Finding Hearing.

The Parties agreed that inasmuch as the undersigned served as Fact Finder in SERB Case No. 2014-MED-09-1228, *Hamilton County Sheriff and Hamilton County Deputy Sheriff Supervisor Association*, involving the Sheriff's Office and the Supervisory Unit in the Corrections Division of the Hamilton County Sheriff, the positions of these Parties regarding Wages; Insurance; and Duration would be gleaned from that articulated in the previous Fact Finding Hearing and that set forth in their respective Pre-hearing Statements and supporting documentation provided to the undersigned before and during the July 29, 2015 Mediation/Fact Finding Hearing. Those Position Statements, filed in accordance with the statutory mandates and that documentation provided during the July 29, 2015 Hearing Session, adequately represented each Party's respective position regarding the afore-referenced Articles. Article 14, titled "Vacancies" differed from the afore-referenced previous Fact Finding between these Parties.

Those issues that remained at impasse, following the unsuccessful Mediation efforts engaged in by the Parties and the undersigned and the Fact Finding Hearing that followed, are the subject matter for the issuance of this Report.

STATUTORY CRITERIA

The following findings and recommendations are hereby offered for consideration by the Parties; were arrived at based on their mutual interests and concerns; and, are made in accordance with the statutorily mandated guidelines set forth in Ohio Administrative Code Rule 4117-9-05(k) which recognizes certain criteria for consideration in the Fact Finding statutory process as follows:

1. Past collectively bargained agreements, if any, between the Parties;

2. Comparison of 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;

3. The interests and welfare of the public and the ability of the Public Employer to finance and administer the issues proposed and the effect of the adjustment on a normal standard of public service;

4. The lawful authority of the Public Employer;

5. Any stipulations of the Parties; and,

6. Such other factors not confined in 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.

THE BARGAINING UNIT DEFINED: ITS DUTIES AND RESPONSIBILITIES TO THE COMMUNITY; AND, GENERAL BACKGROUND CONSIDERATIONS

The Hamilton County Sheriff's Office, hereinafter referred to as the "Public Employer" and/or the "Employer," is party to a Collective Bargaining Agreement, Joint Exhibit-1, with the Hamilton County Corrections Officers Association, hereinafter referred to as the "Employee Organization" and/or the "Union." As set forth in the predecessor Collective Bargaining Agreement between the Parties, with an effective date through December 31, 2014, Article 2, titled "HCCOA Recognition," sets forth the Bargaining Unit as follows:

> Section 2.1
>
> The Employer recognizes the HCCOA as the sole and exclusive Representative for all full-time Employees in the Bargaining Unit as set forth in the certification issued by the Ohio State Employment Relations Board in Case No. 2011-REP-08-0069 including:
>
> All regular full-time employees of the Sheriff's Office in the following classifications: Corrections Officers, including Corrections Cadets;

But excluding:

All other Employees.

* * * * *

The Bargaining Unit consists of approximately 280-322 Employees and is charged with the detention of prisoners in Hamilton County. During the course of the Mediation Session/Fact Finding Hearing, the Employer acknowledged it was in the process of hiring a "new class" which would increase the Bargaining Unit as recognized in the above-referenced number. They are not sworn Officers and are not required to carry firearms and/or make arrests. The staffing ratio - Officer to Inmate - is approximately one (1) Officer to 90 Inmates for Hamilton County compared to Summit County 1 Officer to 42 Inmates; Butler County 1 Officer tom 48 Inmates; and, Franklin County 1 Officer to 60 Inmates, respectively.

Comparability, as recognized in the statutory process, does not require the unattainable exactness Parties strive to suggest; it exists as general benchmarks from which comparisons are made and analyzed. Classification "titles" recognized under a Collective Bargaining Agreement generally represent one of the few common themes of comparability. A jurisdiction's population/size, geographic make-up, revenue/funding sources and other budgetary considerations, as well as, the composition of the Bargaining Unit must be addressed when analyzing comparability of jurisdictions providing "similar" job functions. Each jurisdiction represents a "mixed bag" of attributes which can be helpful in determining comparability even though there are generally no "on-point" comparisons – just similarities to be balanced with other components.

It is important to note the emphasis placed on the mid-year budget projections dated July 27, 2015, provided to the Fact Finder at the Fact Finding hearing which indicates that General Fund revenues are tracking $4 million over budget due primarily to the performance of sales tax, an increase of $3.35 million in real estate transfers representing an increase of $750,000 in transfer taxes and an increase of $340,000 in recording fees. Positive revenue performance in these areas is offset by the underperformance in Court fines and fees, building permits and interest earnings. The General Fund expenses are projected $1.4 million over revised appropriations and the majority of expenses over budget are in the Sheriff's Office, an increase of $3.9 million with additional projected over budget spending in ten other Departments. The General Fund reserves are projected at $2.79 million below the budgeted level currently estimated at $26.5 million, or 13.1% of on-going expenses.

That report goes on to indicate that with respect to sales tax the performance for the first seven months of 2015 has exceeded budget by $3.3 million, an increase of 8% from the same period in 2014. July collections were well below that average at 3.5%. The Budget Office has increased projections for September – December by 1% based on the June announcement that Amazon.com would begin collecting sales tax for Ohio purchases. No impact of the August sales tax holiday is included and it will appear in the November distributions under the assumption that it will draw enough new activity given its position at a state border to be realized as relatively neutral.

General Fund expenditures were projected to be $4.1 million or 2.01% over the 2015 budget as revised. Eleven General Fund Departments are projected to require additional appropriations during 2015. They are consistent with spending levels noted by

County Administration in 2015 budget transmittals and represent expenses by independent offices at the levels they deem necessary to conduct operations. With respect to the Sheriff's Office where expenses are projected at $2.9 million over budget due to personnel costs throughout the Agency. This projection assumes all non-personnel line items will be expensed as budgeted. The General Fund projection also assumes that the Indigent Care Levy Fund balance will be able to absorb projected personnel overages of $400,000 in that fund.

Per the 2015-2016 Policy Agenda, the Budget Office is preparing an August briefing for Commissioners regarding costs and operational increases in the Sheriff's Office from 2012 to 2015. The General Reserve as set forth therein is anticipated to end the year with $26.5 million Fund Reserve. Such amounts to 13.1% of on-going expenses toward the Commission goal of a 15% reserve. The projection is a decrease of $2.7 million from the 2015 budgeted year-end reserve.

As the record demonstrates the majority of this Bargaining Unit is at the Corrections Fourth Step which represents the top wage step under the Contract. The Bargaining Unit received an increase of 2.9% in 2011 in which only one other Bargaining Unit or non-Bargaining Unit Employee received any increase. Non-Bargaining Unit Employees received no increase in 2011. In 2012 no Bargaining Unit Employees or non-Bargaining Unit Employees received a wage increase. In 2013 this Unit received an increase of 3%, and in 2014 it received another increase of approximately 3 – 5%. While the Employer has not raised any inability to fund and/or to administer any economic enhancements, it does, however caution the Fact Finder not to prioritize the spending of the County Commissioners. Moreover, as this evidentiary record demonstrates as was raised during the prior Fact Finding with the undersigned the, County commissioned Greenwood & Streicher, LLC, to conduct an audit of the overall operations at the facilities where Corrections duties are performed, wherein it recognized the inadequate staffing levels and its effect on safety levels and the decrepit facilities within the County's jail. That report indicated, "Bluntly, HCSO is one serious confrontation away from a catastrophe – a riot, a deputy, a civilian, visitor, or an inmate killed – due to its understaffed Correctional facilities."

As represented in the evidentiary record, the majority of the Employees currently employed by the Sheriff's Office number 186 in the Corrections Officer Fourth wage step. The cost for an additional 1% raise for top step Employees in 2015 wherein a cost difference of 4% raise per Employee compared to 3% raise per Employee would equal $470.61. Such assumes ten year longevity calculation and an extra 1% above the 3% budgeted. The total salary difference of an additional 1% increase would be $87,533.37. Based on a story published by the Cincinnati Enquirer the emphasis being placed on the nature of the facilities and the staffing levels at issue herein, such confirms the dangerous nature of the detention of prisoners in the Hamilton County jail. That story involved a man accused of shooting at Police in 2014 being charged with felonious assault when he punched a Deputy in the face causing the jailer to fall and strike his face on a metal rail.

According to this evidentiary record, the Greater-Cincinnati Metro area added approximately 21,700 jobs during 2014. The State unemployment rate as of June 2015 was 5.2% remaining below the national average. It generated the most job growth of any major Ohio metro area last year and is now the State's largest job center. Hamilton County's unemployment rate of 4.3% in May 2015 represents a 0.8% decrease since May

2014. This area maintains home offices to 400 of the Fortune 500 Companies that have a presence in the Greater Cincinnati area and have played a large role in the continued economic growth for the Cincinnati region. The following Fortune 500 Companies are headquartered in the Greater Cincinnati area: the Kroger Company, Proctor and Gamble, Macy's, Ashland, Inc., Fifth Third Bank, AK Steel, Omnicare, Inc., American Financial Group and the General Cable Corporation. Both The Kroger Company and General Electric's aviation subsidiary have forecasted expansion plans in the area. The Greater Cincinnati area is also home to the General Electric Company and its aviation subsidiary within the County. The record also demonstrates that other Companies are making long-term and significant investments in Hamilton County, as well as, hiring employees for these endeavors. The record also demonstrates there are also numerous other activities and events and planned improvements in Hamilton County that will likely yield an increase in employment opportunities, as well as, a tax revenue base both from income tax and property tax assessments.

The area has also seen an increase in the regional health care industry wherein various facilities and health care providers have expanded and the tourism and sporting events continue to provide income into the County as demonstrated in the evidentiary record, particularly documentation from Cincinnati USA Convention & Visitors Bureau, not to mention the City of Cincinnati's hosting of Major League Baseball's All-Star Game in July 2015. The evidence suggests the local economy is trending above the national average based on expanding local and international corporations' property development, the growth of hospitals and other medical companies, local events providing a draw for a number of people to local businesses as national organizations are bringing members as participants to conventions. Hotel tax revenues have increased 40% since 2009 raising 13.7 million in 2014. The All Star Game and surrounding activities generated over $60 million economic impact to the area. The local economy is trending above the national average while the County is home to expanding international and local Corporations; property development is on the rise; the healthcare industry continues to grow; regional businesses and national organizations are bringing events to the region positively impacting the region's economy; and, the local economy is poised to see continued growth enhancing the region's economy.

The Hamilton County Board of County Commissioners has appropriated a structurally balanced General Fund budget of $201.8 million, and though the 2015 budget is slightly more than the 2014 budget, an increase of $1.5 million, that budget is still below the estimated 2014 expenses. The Sheriff's Office has struggled to operate within its budget. The 2015 recommended General Fund expenditure level for Hamilton County as prepared by the County Administrator was $210.7 million which represented $3.17 million or 1.5% increase from 2014 expected projected expenditure level and maintain current service levels. 2015 revenue estimates are essentially level with the 2014 budget. The sales tax, the largest single General Fund item comprising one-third of the total, is $1.9 million below the 2014 collections due and has slowly increased to an average of 4.5% per year since it fell 7.3% in 2009. The 2015 projected revenue from service fees is $ 45.8 million; the property tax revenue is budgeted $500,000 below the 2014 collection level due to projections at $36 million based on recession attributing to a decrease of $3.7 million in collections from 2011. Intergovernmental revenue is relatively stable from 2014 to 2015. The 2015 fund amount is $23.8 million, up

$200,000 from 2014. Over the past four years the revenue amount has decreased $10.8 million since 2011 due to decreased state funding. Revenue generated from fines and forfeitures is $7.4 million, slightly lower than 2014 amount of $7.7 million. Since 2011 this revenue source has fallen $660,000 based on the lack of jail space as a deterrent for non-payment of fines; increased poverty rates leading to more exemptions for court fines; a decline in civil court costs related to evictions; and, fewer Patrol Officers across all jurisdictions to issue traffic citations. The County's interest earnings remain in decline due to the five-year investment cycle, and its investment earnings are at $4.6 million, a decrease of $600,000 from 2014. Interest earnings were $20.9 million in 2007.

The Board of County Commissioners agreed to an expenditure level of $202 million which does not include a compensation adjustment for 2015. This level is $3.3 million below the 2014 estimated expense levels. These reduced levels will be challenging for the General Fund Departments, 13 of which are appropriated at levels below the 2014 expenditures. The Sheriff's Office, which will likely face additional pressure due to Bargaining Unit salary increases, has consistently exceeded its budget each year since 2012. The Commissioners have attempted to align the Department's budget with its expected expenses; however, the Budget for the Sheriff's Office in the amount of $62 million is still below the requested $69.6 million. The 2015 General Fund Reserve is $29.2 million, or 14.5% of the projected balance. The Government Finance Officers' Association, "GFOA," recommends a reserve level of approximately 16 to 17% of Operating Expenses. The 2015 Reserve level is with the 2014 year-end balance but decreases slightly as a percentage of Expenses due to the higher base.

The record demonstrates the County's Five-Year Plan includes revenue and expenditure assumptions in broad categories. Inflationary and programmatic items likely to occur were assumed. The 2015 Five-Year Plan has an improved outlook when compared to the 2014 Five-Year Plan. The 2014 General Fund Reserve was anticipated to be at -19% at the end of the fifth year. The 2015 General Fund Reserve is anticipated to be at -8.9%, an improvement of over 10%. In 2015 the Plan assumes a growth of 1.5% due to the 2014 mid-year salary adjustment and additional personnel costs across Departments. It assumes a 3% mid-year adjustment for 2014 and full-year 3% salary adjustments thereafter. Over the course of the Five-Year Plan 2015-2019 all Bargaining Units will be up for negotiations, have "me too" clauses, or wage reopeners. The Five-Year Plan does not include any salary costs awarded in Bargaining Agreements in excess of 3% annual adjustments.

The record demonstrates the Hamilton County's Sheriff's Office exceeded its 2014 budget by $4.1 million. The 2014 projected expenses are nearly $63.86 million. Such represents the second consecutive year in which the Sheriff's Office has substantially exceeded its budget. In 2013 the Sheriff's Department exceeded its budget by $3.8 million and the recommended 2015 expenditure amount is $63.77 million. The 2015 Budget Office has explicitly indicated it will likely exceed its budget again for 2015.

The Parties have agreed the area of concern for the Sheriff's Department is investment in its Corrections personnel, which for the record, remains unfunded in the 2015 recommended budget. The attraction for new Employees to fill employment/staffing voids and the retention of qualified and committed employees necessarily begins and ends with compensation. Substantial additional costs in implementing a revised schedule for Corrections Officers will likely occur. The initial proposed budget for the Sheriff's Office in the General Fund was $63.77 million and later was reduced to $61.2 million. Hamilton County Sheriff, Jim Neal, provided a written response to this $61.2 million budgeted amount indicating that even though such represented $1.4 million more than that of 2014 the Department lost grant dollars and other sources of revenue roughly totaling $1.4 million. He explained the Department will lose approximately $860,000 from the Indigent Care Levy Fund and will need to replace its aging vehicle fleet. It also needs to hire an additional 31 Corrections Officers in order to meet State jail minimum standards. The Corrections Division alone would have had to reduce its budget by $2.9 million. The Division would need to release up to 460 minimum and medium security inmates, as well as, the entire fourth floors of the North and South Buildings. Once these inmates have been released kitchen workers would be laid off, veterans and special needs pods would be closed, the Talbert House and Turning Point facilities would be closed, and support staff laid off. Additional Corrections Officers would be laid off and the hiring of 30 new recruits would have to be cancelled – a step in the wrong direction. Approximately 39 Corrections Officers and two support staff would be laid off, and the Sheriff would need to re-institute a "revolving door policy" for non-violent male prisoners.

In response to these considerations, County Commissioners Monzel and Portune proposed to raise the budget amount so the Sheriff's Office would receive $62.5 million to $64.5 million. The Commissioners ultimately approved a budget of $63 million for 2015 in an attempt to more accurately reflect spending levels. Such represents a $1 million in restricted funds from the Sheriff's Department. The 2015 Sheriff's Department budget should be met with a concerted effort to reflect budgetary expectations. The record indicates the tantamount need to invest in the Corrections Division of the Sheriff' Office to address the "revolving door" of personnel seeking better wages and safer working conditions and surroundings. Such endeavors begin with compensation packages that both attract new employees and entice current employees to remain. Otherwise, safety and morale will be compromised and retention rates will continue to decline. While the Fact Finder is indeed mindful of the budgetary impact economic enhancements necessarily create; some are more beneficial than others, but all impact retention – a significant issue facing the Sheriff's Office and the Corrections Division.

With these considerations in mind the Parties reached impasse with respect to items which impose economic considerations with respect to the funding components of the successor Collective Bargaining Agreement.

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The Fact Finder is required to consider comparable Employer-Employee Units with regard to their overall makeup and services provided to the members of the respective communities. As is typical, and is required by statute, the Parties in their respective Pre-hearing Position Statements, filed in accordance with the procedural requirements of the statutory process as outlined in Ohio Revised Code Chapter 4117, and the supporting documentation provided at the Fact Finding/Mediation sessions, each have relied upon/refuted comparable jurisdictions and/or municipalities concerning what they "deemed comparable work jurisdictions" provided by this Bargaining Unit. While there are indeed certain similarities among these jurisdictions cited there are no “on point comparisons” relative to this Bargaining Unit concerning the statutory criteria. In other words, while their duties and responsibilities as Corrections Officers may be exact to other jurisdictions relied upon as the Classification title suggests, the overall makeup of the public entity will differ with respect to geography, structure, staffing, budget, General Fund and the makeup of the Employees performing these and other functions.

It has been and remains the position of this Fact Finder that the Party proposing any addition, deletion or modification of either current Contract language; or, a status quo practice wherein an initial Collective Bargaining Agreement may exist, bears the burden of proof and persuasion to compel the addition, deletion or modification as proposed. The ultimate goal of this process is to reach a sensible center with respect to whatever recommendations are set forth herein that can be amicably accepted by each Party to the successor Collective Bargaining Agreement. Failure to meet that burden will result in a recommendation that the Parties maintain the *status quo* whether that represents a previous policy, Collective Bargaining provision, or a practice previously engaged in by the Parties.

These Parties met in pursuit of negotiating a successor Collective Bargaining Agreement on November 12; and, December 4, 2014; February 4; February 27; March 9; March 31; and, April 29, 2015 wherein proposals were exchanged and certain tentative agreements were reached regarding numerous Articles recognized in the predecessor Collective Bargaining Agreement. As requested by the Parties, the following Articles of the Corrections Officers Bargaining Unit are recognized as tentative agreements and are to be included as such in the successor Collective Bargaining Agreement:

Article 1 -	Agreement/Purpose
Article 2 -	HCCOA Recognition
Article 3 -	HCCOA Security
Article 4 -	HCCOA Representation
Article 5 -	Management Rights
Article 6 -	Non-discrimination
Article 7 -	Labor/Management Meetings
Article 8 -	Grievance Procedure
Article 9 -	Discipline
Article 10 -	Personnel Files
Article 11 -	Probationary Periods
Article 12 -	Seniority
Article 13 -	LayOff and Recall

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Article 15 -	Bulletin Boards
Article 16 -	Work Rules - General Orders
Article 17 -	Performance Evaluation
Article 18 -	Physical Fitness
Article 19 -	Hours of Work and Overtime

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Article 21 –	Court Time/Call-In Time

* * * * *

Article 23 -	Holidays
Article 24 -	Vacation
Article 25 -	Sick Leave
Article 26 -	Bereavement Leave
Article 27 -	Occupational Injury Leave
Article 28 -	Donated Time
Article 29 -	Uniforms and Equipment
Article 30 -	Expenses
Article 31 -	Training
Article 32 -	Leave of Absence
Article 33 -	Outside Employment
Article 34 -	Drug/Alcohol Testing
Article 35 -	Health and Safety
Article 36 -	Civil Service Compliance
Article 37 -	No Strike/No Lockout
Article 38 -	Tuition Reimbursement
Article 39 -	Sub-Contracting
Article 40 -	Severability

Article 41 - Copies of the Agreement

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Article 43 - Re-Hire of Former Corrections Officers From Outside The Bargaining Unit

New - Slot Allotment
Signature Page

As previously indicated the Parties engaged in mediation regarding the four (4) remaining Articles subject for consideration herein and have set forth their respective positions relative thereto. As previously indicated the tentative agreements reached by the Parties during their negotiation sessions are to be incorporated into this Fact Finding Report with their respective following positions, recommendations with rationale relative to those issues that remained at impasse between these Parties:

I. ARTICLE 14 - VACANCIES

UNION POSITION

The Union proposes to increase the number of "preferred posts" which are desirable positions in the Corrections Unit. They represent "non-normal" schedules, set off days and other positions where Employees are not subject to mandatory overtime. Current contract language allows the Employer to determine which positions are preferred and change the list at its discretion. Under the current language the Employer has designated 12-15 positions as preferred posts. The Union contends that several other positions are characterized as preferred and should be subject to bid. It contends its proposal would uniformly define which posts are preferred, subjecting them to bid and selected in accordance with current process. The Union estimates that approximately 30 additional positions would be considered preferred under its proposal. Such is supported by equity considerations and would not create an undue administrative burden for the Employer. It suggests that Employee morale would increase wherein Bargaining Unit Employees desiring certain positions could first make their interest formally known to the Employer. It does not seek to change the rewarding of such positions; allowing the Employer to select the most qualified applicant and rewarding the most senior Employee and only if all factors are essentially equal. As such, the Employer remains free to select the most qualified applicant for preferred posts.

The Union also contends that not only will such boost morale, it is also supported by equity considerations wherein the current selection process of those positions not on the created lists is arbitrary and Employees harbor resentment and question why a particular Employee was selected for one of these desired posts. A more open process, it contends, would remove doubt as to the fairness of the selection process. Finally the Union contends that such would not constitute an administrative hardship or burden as more positions must be posted. Such posts are not frequently available based on the desirability of these positions. It requests its position be recommended.

SHERIFF POSITION

The Sheriff proposes to maintain current contract language based on that being sought by the Union concerning Vacancies. Such would vastly expand the number of preferred posts wherein the Employer currently recognizes approximately 12-15 preferred posts, and the Union proposes to increase that to approximately 38. Such a direct increase in preferred posts is a direct challenge to the inherent management rights of the Sheriff. The Union seeks to exercise more control over bid positions, something to which the Employer is vehemently opposed based on its managerial rights to staff its facilities.

RECOMMENDATION & RATIONALE

During the course of the Fact Finding Hearing it was readily apparent that certain positions within the Corrections Unit of the Sheriff's Office are deemed as preferred posts suggesting that for whatever reason, whatever explanation, whatever factors that exist, qualify that particular position for one that would be preferred by a Bargaining Unit member whether such would be based on non-normal schedules, set off days and/or positions that do not subject an Employee to mandatory overtime. While the Fact Finder recognizes the Employer has the inherent right to staff and utilize Employees as it deems appropriate, it is indeed certainly worth consideration to address that which would affect the overall morale and efficiency in an area that is in much need of some sort of "boost", if you will.

It is clear based on the evidentiary record that which the Union proposes, subjecting these certain posts to consideration for bid based on qualifications and seniority, is indeed a reasonable consideration in light of the tumultuous work environment/culture surrounding the Corrections Division. The circumstances, as this evidentiary record demonstrates, as well as that compiled during the course of this Fact Finder's involvement in a previous Fact Finding involving the Supervisors Unit of the Corrections Division within the Sheriff's Office, that indeed a large turnover exists within this Division. While the Fact Finder recognizes that by and large a simple fix is not evident concerning the overall issues within this Division, a recommendation affording Employees certain opportunities that will enhance their desire to remain a viable component of this Division of the Sheriff's Office is indeed noteworthy.

It would seem readily apparent that in the event Employees are given some opportunities that would not otherwise exist that would certainly be something each and every Employee could strive for and hope to accomplish. It is in this vein that it is hereby recommended that the Parties adopt the Union's proposal relative to this Article and identify as preferred posts that titled in the "Revised List" provided to the Fact Finder during the course of the Fact Finding Hearing. Section 14.1 identifies and essentially defines the "preferred posts". There exists no other changes proposed by the Union other than that defining the preferred posts which, based on this definitional language, would increase the number of preferred posts from approximately 15, as suggested by the Employer, to a number of approximately, or in the neighborhood of, 35. The "Revised List" provided to the Fact Finder during the course of the Fact Finding Hearing is to be the guideline under which these preferred posts shall be identified. Such, in the opinion of the Fact Finder, does not place any undue hardship upon the Employer based on the fact that it maintains the right to consider the ability to perform the work, physical fitness, records of attendance and discipline, and seniority, as mandated in Section 14.1, when filling these positions subject to bid based on their preferred status.

Therefore, it is hereby recommended that the Parties adopt the Union's proposal relative to Article 14 titled "Vacancies," particularly Section 14.1 wherein it provides additional language identifying what shifts are defined as preferred posts and requiring that such posts be posted and bid on pursuant to language contained in that Article. Additionally, the identification of what the Parties discussed and characterized as preferred posts shall be gleaned from the "Revised List" as provided to the Fact Finder during the course of the Fact Finding Hearing.

II. <u>ARTICLE 20 – WAGES AND COMPENSATION</u>

<u>INITIAL CONSIDERATION</u>

The evidentiary record suggests the Parties are proposing the same Wage increases for the "Recruit Step," "Corrections First Step," and "Corrections Second Step" for the Contract year 2015. The Parties have indicated that where such represents a Tentative Agreement such shall be recommended for inclusion in the successor Collective Bargaining Agreement. Inasmuch as the Parties are seemingly in agreement based thereon, the proposed Wages for the "Recruit Step," "Corrections Officer First Step," and "Corrections Officer Second Step" are indeed recommended to be included as Tentative Agreements in the successor Collective Bargaining Agreement.

<u>UNION POSITION</u>

The Union proposes a 3% wage increase for Corrections Third Step and 4% increase for Corrections Fourth Step effective January 1, 2015. It indicates that approximately 186 Employees are at the fourth step which represents the top wage step. It also contends these top step Employees are well below the comparables' compensation averages relied upon by the Union and take longer to reach the top step than any of the comparable jurisdictions. In this regard, such as proposed by the Employer would not address the wage discrepancy for Hamilton County Corrections Officers at the top step.

The Union also proposes a 4% across-the-board increase in the Contract's second year and a 4% across-the-board increase in the Contract's third year. It proposes to begin those wage increases for Contract years two and three at the beginning of the first pay periods. It also indicates that the cost difference of a 4% raise per Employee compared to a 3% raise per Employee amounts to $470.61 whereas the total salary difference of an additional 1% for top step Employees for calendar year 2015 equates to $87,533.37. Such assumes a 10-year Longevity calculation along with a 1% above a 3% increase.

SHERIFF POSITION

The Employer proposes the Wage Article be modified to eliminate the lowest current step, create a new intermediate step in an attempt to retain newer Employees with a more desirable wage system. The 2015 wage structure would allow a 1% increase on the top step resulting in an approximate 3.63% increase overall. It proposes an overall 2% increase for 2016 and a re-opener for 2017. The Employer acknowledges that most Employees have indeed weathered the economic crisis realized over the past several years with few wage increases; however, this Bargaining Unit has fared far better than the other County Bargaining Unit Employees and the non-Bargaining Unit Employees. The Employer emphasizes this Bargaining Unit has received an increase of 2.9% in 2011, a year in which only one other Bargaining Unit or non-Bargaining Unit Employee group received any increase. Non-Bargaining Unit Employees received no increase in 2011. No Bargaining Unit Employees or non-Bargaining Unit Employees received a wage increase in 2012. In 2013 this Bargaining Unit received an increase of 3% and in 2014 received another increase of approximately 3 – 5%.

The Employer emphasizes the Board of Hamilton County Commissioners has appropriated a structurally balanced General Fund Budget of $201.8 million for 2015 which is slightly more than the 2014 budget representing an increase of $1.5 million.

That budget is below 2014 estimated expenses. The problematic aspect for the Sheriff's Office includes the proposed wage structure serving to increase wage rates without further compromising the Sheriff's ability to fund personnel costs in its Corrections Division.

RECOMMENDATION & RATIONALE

The statutory criteria provides the legal basis upon which any recommendation is made by the statutory Finder of Fact, including past Collective Bargaining Agreements, if any, between the Parties and economic enhancements realized either internally or in other similarly-situated or comprised jurisdictions. The Parties are in agreement with respect to wages and steps for a Recruit, a Corrections Officer First Step, and a Corrections Officer Second Step for 2015 and as such it is hereby recommended that the Parties adopt that seemingly agreed to by and between them. Of significant importance is the fact that the Parties have waived the provisions of the Ohio Revised Code, Section 4117.14(G)(11) allowing for a wage increase to be effective as of January 1, 2015.

As the record demonstrates the Employer has not raised any contentions suggesting it cannot fund the economic increases subject to these recommendations, simply that the Fact Finder exercise economic prudence herein. The financial picture depicted in this evidentiary record indicates this County has weathered the economic storm of recent years and is on the upswing with respect to its overall economic status. While the Fact Finder is indeed mindful of the need for prudent administration relative to costs associated with any kind of economic enhancement, it is indeed worthy to note that the appropriated budget for calendar year 2015 does indeed recognize a 3% increase in wages for personnel generally, including those in this Bargaining Unit. Such simply cannot be ignored.

It is indeed noteworthy to recognize that of the Employees within the Corrections Division this larger Bargaining Unit sees the most turnover based on various factors that must be considered herein. Such suggests the Board of County Commissioners recognizes that certain increases, especially with respect to the Corrections Division, are indeed necessary not only to retain viable, qualified and competent Employees, but also to entice new Employees to fill those voids that have been created based on other extraneous factors – the revolving door of personnel. As previously stated; retention begins and ends with compensation.

The evidence of record suggests, the Corrections Division overall, is in need of improvements both with respect to facilities and more importantly as such impacts personnel. In order for any Employer to solicit and retain viable, competent Employees it must provide an economic package and work environment worthy of their decision to remain employed with that Employer. This Division, as recognized by the Sheriff and County Administrators, requires consideration with respect to compensation for its personnel. Corrections work is inherently dangerous given the oversight and detention of convicted criminals/prisoners. In light of the Greenwood & Streicher, LLC, Report enhancements to Corrections must be endeavored to effectively reduce and eventually eliminate the “revolving door” of personnel within this Division. The turnover of trained, competent personnel can be addressed by adjustments to compensation and the environment in which said work is performed.

While these Employees are not required to be OPOTA certified, the Fact Finder herein recommended the Supervisors Unit, where a larger majority of a much smaller Bargaining Unit, did indeed achieve OPOTA certification and carried firearms, such proved to be beneficial to the Employer given the nature of the entity regarding the detention of prisoners. This Bargaining Unit, however, is much larger and far less are OPOTA certified. It is recognized that in order for any Employee to carry a firearm such represents a significant cost to do so; however, for those who have chosen to do so, to expend the funds and obtain that certification, it is clear these Employees recognize the heightened need to address their safety as emphasized at this facility.

While it is indeed significant with respect to an added enhancement promoting overall safety and well-being of these Employees, a recommendation that would include an OPOTA certification bonus, if you will, is not as seemingly palatable as that with respect to the much smaller Bargaining Unit involving the Supervisors in the Corrections Division. A larger majority of a smaller number is indeed significant as compared to a smaller majority of a much larger number as is the case with this Bargaining Unit. While the significance of carrying a firearm denotes a presence of authority for this or any Employer whereby Employees take to initiative to purchase and receive certification to carry a firearm at a detention center for prisoners, such is not required. Unlike some of the comparables relied upon, these Employees are not certified Peace Officers and they are not required to carry a firearm. They do so at their own discretion, at their own cost.

It would certainly be advantageous to the Employer to have any group of Employees in a detention facility to provide a greater stance of authority when carrying a firearm. The Streicher Report regarding the Corrections facility within this County and the concerns raised therein concerning the safety of personnel, would be at the forefront for a recommendation of a OPOTA Certification Bonus; however, given the larger number of Employees affected, the cost to obtain that certification and the personnel turnover that is experienced here, it is simply not as palatable to include a recommendation enhancing the financial package of these Employees by providing an OPOTA Certification Bonus.

As previously indicated, the evidentiary record demonstrates the County budget does include a 3% increase for Employees which, consistent with that recommended for the Supervisors' Unit, would be a consideration herein as well. The emphasis the Union has placed on the Four Steps of Corrections Officers is indeed noteworthy given the amount of time it takes to get to that level demonstrating to the Fact Finder that indeed these Employees are committed to remaining a viable component of the Corrections Division and as such should be rewarded for such. There must be some enticement/financial incentive for these Employees to continue to remain employed by this facility and hopefully eventually stifle and stop the "revolving door" that has been characterized at this facility.

In this regard, it is recommended the Parties adopt, what will be characterized as "Corrections Officers Retention Pay", not to be confused with Longevity Pay, and be provided as follows:

Corrections Officer First	300.00
Corrections Officer Second	300.00
Corrections Officer Third	500.00
Corrections Officer Fourth	500.00

Each is to be paid in two (2) equal payments - one effective on January 1 of Contract year 2015; the first pay period of 2016; and, the first pay period 2017, and on the first pay period after June 1 of each of the respective Contract years. Such indeed takes into consideration the disparity in pay and more importantly the decrepit facilities and the staffing concerns (retention) that hopefully will be addressed with this additional enhancement.

Accordingly, inasmuch as the Parties have seemingly agreed to Wages and Steps for Recruit, Corrections Officer First and Corrections Officer Second for the calendar year 2015 such shall be recommended as a Tentative Agreement by and between the Parties. The Parties shall continue to recognize the Steps created under the predecessor Collective Bargaining Agreement. It is recommended the Parties adopt a 3% increase for Corrections Officer Third and Corrections Officer Fourth for Contract year 2015 (as budgeted); a 3% across-the-board increase for Contract year 2016; and, a re-opener for calendar year 2017, subject to the Employer's language proposed for Section 20.3.

Additionally, as previously identified, each member of this Bargaining Unit, whether they are a full-time Corrections Officer or Cadet, shall be paid Corrections Officer Retention Pay as referenced hereinabove.

III. ARTICLE 22 - INSURANCE

UNION POSITION

The Union proposes to change Article 22 titled "Insurance" Section 22.1 wherein it would eliminate the spousal surcharge which, as it contends, is not imposed upon Patrol Bargaining Unit members. Under Article 22.3 it proposes to add language providing that if any other Bargaining Unit maintains a lesser copayment and/or premium contribution for a specific insurance plan this Bargaining Unit would pay the same lower copayment and/or same lower premium contribution. It also proposes to add Section 22.7 which would slow any increases in health insurance going forward by connecting the percentage wage increase that members receive to the same percent increase in insurance.

SHERIFF POSITION

The Employer proposes to maintain current contract language. Health insurance is a benefit afforded to all eligible County Employees and this Bargaining Unit is offered the same health insurance coverage at the same premium contribution rates as all other eligible County Employees. Such allows the Commissioners the maximum flexibility to negotiate the best deal for all concerned, and there is no basis this Unit should pay less for the same coverage options. Health insurance premium contribution rates should be uniform and the imposition of the cap is difficult to administer. Percentage wage increases do not necessarily translate to health insurance premium increases.
The Employer proposes to maintain current contract language.

The Enforcement Division Bargaining Units were awarded some very attractive Contract language relative to premium contribution caps in 2003 which are simply inconsistent with the times as they exist now. In 2003 the total General Fund budget for the County was $258.6 million compared to the 2015 total General Fund budget of $201.8 million. This represents a reduction of $56.8 million, or 22%. In light of the County's current economic state, any expansion of the cap on contributions beyond the current exception would cause considerable financial hardship. In this regard it contends it cannot support any further premium contribution caps.

The Union has failed to carry its burden of justifying the modification it seeks in this matter as it has done in the past and prior Hearing officers have determined that uniform insurance provisions are indeed appropriate.

RECOMMENDATION & RATIONALE

It is hereby recommended the Parties maintain the current Contract language relative to premium contributions and access to the three (3) Insurance Plans available. Of the three health insurance plans available to County Employees including Corrections, 3,373 Employees are members of the lowest and middle range cost plans, such as the Humana Coverage First 1000 and the managed Humana Coverage First 2500. Of the 3,480 non-Enforcement Division Employees who are enrolled in the County sponsored health insurance plan in 2015, 92% are in these two plans. It is difficult to adequately compare health care plans across Counties/jurisdictions deemed to be comparable, based on the variety of plans available and the coverage levels offered. Indeed, while Butler County may offer Corrections Officers lower health care costs a wider sampling of the health care costs demonstrate Hamilton County is indeed competitive.

In SERB's annual report on the cost of health insurance in Ohio's public sector for Counties with 150,000 residents or more, the average monthly participant's cost of a medical and prescription plan is $59.00 for a single and $158.00 for a family. The premium contributions in Hamilton County are $39.42 for a single under the Coverage First 2500 and $91.15 for a family coverage. Under Coverage First 1000 the premium contribution rate for a single is $58.25 and $163.64 for a family. A weighted average of all non-Enforcement Division in all three plans, for 2015 the premium amount is $60.40 and for a single participant and $137.45 for a family.

The average monthly percent of premium paid by employees across Ohio in counties with 150,000 or more residents is 11% for single and 11.6% for a family. In Hamilton County the percentage paid by an Employee each month is either 8.6% or 11.8% for a single or 6.3% or 10.5% for a family plan. A weighted average of all non-Enforcement Division members in all three plants in 2015, demonstrates the monthly percentage was 12.1% for a single participant and 8.9% for a family participant. Such is indeed comparable.

The lowest monthly premium contributions for “Humana CoverageFirst 2500” provides a $500.00 “benefit allowance” and thereafter Employees must meet the $2,500.00 deductible per individual or $5,000.00 per family. After meeting the deductible the participant is responsible for co-insurance and co-payments up to maximum amounts and the plan pays 100% after the deductible has been met. The premium contribution rates are $39.42 for Single and $63.58 for Double, and $98.15 for a Family plan. The middle- tier plan, the “Human CoverageFirst 1000”, offers a $500.00 “benefit allowance” and a $1,000.00 deductible per individual or $2,000 per family. After that deductible is met the participant is responsible for co-insurance and co-payments up to a maximum amount wherein the plan pays 80% after the deductible has been met. The premium contribution rates are $58.25 for Single, $107.44 for Double, and $163.64 for a Family plan. The highest cost plan, the “Humana POS 500” participants pay a $500.00 deductible per individual or $1,000.00 per family. After that deductible has been met, the plan pays 80% for network and 60% for non-network services. The premium contribution rates are $158.08 for Single, $339.62 for Double, and $547.13 for a Family plan.

Indeed health care costs are a concern, and over the past several years with the implementation of the Affordable Care Act, the uncertainty of how health care will be administered and paid for is ongoing. The Employer in this matter is focused on the introduction and expansion of a Wellness Program wherein the Employees have an opportunity to earn $250.00 in wellness incentives for completing health screenings. While the Fact Finder is indeed mindful this Bargaining Unit may well see increased health care costs such is the trend statewide, regionally and nationally. All eligible County Employees are provided Health Insurance and approximately 92% of the County Employees enrolled in the County-sponsored Plans, except the Enforcement Division employees, pay between 6.3% and 11.8% of the total cost of each prospective Plan.

Moreover, the Union's proposal to link the Employee's co-payment and/or premium contribution amount to that of other Bargaining Units in order to gain the same benefits as the Enforcement Units that were awarded this in 2003 by a Conciliator is simply not supported by this record. Since this cap was ordered for the Enforcement Units in 2003 there have been no Agreements or orders to impose such a cap for any other Employees within the County or any other Bargaining Unit. In 2015 Corrections Officers are paying reasonable contribution amounts wherein 92% of Employees enrolled in the County sponsored health care plans, aside from the Enforcement Division Employees, pay between 6.3 and 11.8% of the total cost of the plan. The County has been afforded a better opportunity to adjust Employee monthly contribution amounts in the past 12 years thereby rendering a cap unnecessary.

Therefore, based on these considerations and the overall economic recommendations contained herein, it is recommended that the Parties maintain the *status* *quo* with respect to the current Collective Bargaining language set forth in the predecessor Collective Bargaining Agreement as such pertains to the Insurance benefits provided to this Bargaining Unit.

IV. <u>ARTICLE 42 - DURATION</u>

<u>UNION POSITION</u>

The Union proposes that the Duration of the Parties' Labor Agreement remain in effect through December 13, 2017. The Union emphasizes its proposal relative thereto is linked to its proposals in the Wage Article wherein proposed wage increases would take effect on the start of the pay periods in the second and third Contract years. The December 13, 2017, expiration date is at the end of the pay period allowing the next Contract to start on a pay period. Moving to a pay period system for wage increases is more efficient to all Parties, especially the Employer, and would avoid wage increases taking effect mid-pay period adding unnecessary complexity to the administration of payroll.

The Union contends its proposal is supported by the statutory factors under Ohio Revised Code Chapter 4117.14(C) (4) (A) wherein the Fact Finder must consider "the ability of the Public Employer to…administer the issues proposed." It submits this proposal avoids wage increases taking effect mid-pay period which adds unnecessary complexity to the administration of payroll.

Dating back to at least 1996, all the Parties' other Agreements have ended on dates other than December 31. The third wage year of the Parties' most recent Agreement took effect on a pay period demonstrating a shift toward wage increases taking effect on pay periods. Moreover, the undersigned Fact Finder recognized the value of Agreement effective dates taking place based on pay periods for Employees and a corresponding lack of administrative costs to the pay period system for the Employer.

SHERIFF POSITION

The Employer emphasizes the current Collective Bargaining Agreement expired on December 31, 2014. It proposes an expiration date of December 31, 2017 for the successor. Historically, the Parties' Labor Agreements have ended on December 31 and it would like to extend the Contract date to match the County's fiscal year and remain with the original duration of three (3) full calendar years. The Union proposes to shorten each Contract's duration with a duration that would expire, for this Agreement, on December 13, 2017.

From an accounting standpoint the County is capable of making wage adjustments in connection with end-of-year expiration dates in Labor Agreements as it does with multiple other Bargaining Units. As such, there is no reason the Contract's expiration should mirror pay periods. Former Fact Finder, Eugene Brundige in a 2006 Fact Finding report indicated, "Collective Bargaining Agreements and pay dates almost never align completely. This is not really problematic." The Conciliator in that same case, Steven Ball, also dismissed the proposal saying, the proposal was not "necessary to the equitable effect of pay increases and would be confusing". As such, the Employer requests duration of three calendar years through December 31, 2017.

RECOMMENDATION & RATIONALE

It is hereby recommended the Parties adopt the Union's proposal relative to the Duration Article of the successor Collective Bargaining Agreement with effective dates of January 1, 2015 – December 13, 2017 to coincide with the pay periods of each

Contract year. While the Fact Finder is indeed mindful that the Collective Bargaining Agreement's expiration date and pay periods rarely ever coincide, it nonetheless simplifies the implementation and recognition of the pay increases and other economic benefits subject to the Contract year in question. If indeed the Contract were based on 26 pay periods in a calendar year, Employees would be better able to calculate wage increases and other economic benefits, and therefore budget, what the subsequent year provides.

Moreover, from an Administrative standpoint, and as recognized in the Employer's Pre-hearing Position Statement, it is not an administrative problem for it to coordinate its accounting practices relative to payroll based on pay periods versus the end-of-calendar year calculations. While in many scenarios, Collective Bargaining Agreements throughout the State expire on the last calendar day of a Contract year, *i.e.*, December 31st, Contracts can coincide with pay periods for ease of administrative efforts concerning payroll, calculations of benefits, etc. Such was accepted with respect to the Supervisor's Unit and such can coincide with this Bargaining Unit providing internal consistency within Corrections. Moreover, this record does not indicate either Party has engaged in any dilatory practices to impact an effective date (January 1, 2015) to coincide with the expiration date of the predecessor Agreement (December 31, 2014).

Based thereon, it is hereby recommended the Parties adopt the Union's proposal with respect to Duration of the successor Collective Bargaining Agreement with effective dates of January 1, 2015 through December 13, 2017.

V. ARTICLES NOT SPECIFICALLY ADDRESSED HEREIN

Those issues/Articles, if any, not subject to the presentation of evidence, not identified/addressed during the course of either Mediation or the Fact Finding Hearing, or those not referenced by either Party, shall be subject to a *status quo* recommendation relative to whatever policy, practice, provision or procedure that may have existed relative to a predecessor Collective Bargaining Agreement. Such shall be maintained for consideration/inclusion in the successive Collective Bargaining Agreement ratified and/or approved and implemented by these Parties.

VI. CONCLUSION

The recommendations contained herein, and those stipulated to by the Parties, as set forth in the Fact Finding Position Statements and supporting documentation, are indeed deemed reasonable in light of the economic and contractual data presented and reviewed by the Fact Finder; the presentations made by the Parties based on the common interests of both entities recognizing the painstaking efforts at the bargaining table resulting the many tentative agreements reached before the Mediation session and the Fact Finding Hearing; are supported by the internal and external comparable data provided; the manifested intent of each Party as reflected during the course of this aspect of the statutory process; those considerations/recommendations accepted by these Parties regarding the Supervisors Bargaining Unit; the stipulations of the Parties as set forth in the positions taken; and, hopefully enable the Parties to reach a sensible center, which as previously identified, is the ultimate goal of the statutory process.

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David W. Stanton
David W. Stanton, Esq.,
Factfinder/Mediator

October 1, 2015
Cincinnati, Ohio

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing Factfinding Report based on the Factfinding positions of the Parties hereto has been forwarded by electronic mail to Brett A. Geary, Principle Representative for Hamilton County Sheriff, Management Consultant with Clemons, Nelson and Associates, 420 W. Loveland Avenue, Suite 101, Loveland, Ohio 45140 (bgeary@clemansnelson.com); Stephen S. Lazarus, Principle Representative and Counsel for the Hamilton County Corrections Officers Association, with Hardin, Lazarus & Lewis, LLC, 915 Cincinnati Club Building, 30 Garfield Place, Cincinnati, Ohio 45202-4322 (stevelazarus@hllmlaw.com); and, to the State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215 (Med@serb.state.oh.us) on this 1st day of October, 2015.

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Factfinder/Mediator