

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

January 28, 2015

In the Matter of the Fact Finding Between

SOUTHWEST SUMMIT COUNCIL OF)	CASE NO. 2014-MED-09-1259
GOVERNMENTS)	
)	
AND)	FINDINGS AND
)	RECOMMENDATIONS
OHIO PATROLMEN'S BENEVOLENT)	
ASSOCIATION)	

MELVIN E. FEINBERG, FACT FINDER

APPEARANCES

For the Employer:

Paul Jackson, Esq.
Roetzel & Andress, LPA
Counsel for Southwest Summit Council of Governments
(SWSCOG)

For the Union:

Jeffrey D. Perry
Business Agent
Ohio Patrolmen's Benevolent Association

SUBMISSION

This matter concerns the fact-finding proceeding between Southwest Summit Council of Governments (SWSCOG) and the Ohio Patrolmen's Benevolent Association (OPBA), also collectively known as the Parties. The State Employment Relations Board, in accordance with Ohio Revised Code §4117.14 (C) (3), duly appointed the undersigned as Fact Finder in this matter by letter sent via e-mail dated November 3, 2014.¹

Pursuant to mutual agreement of the Parties regarding time extensions, the fact-finding hearing in this case occurred on December 11, 2014 in Norton, Ohio. Prior to that hearing, in accordance with SERB rules, the Parties timely filed position statements with the Fact Finder. The proceeding was conducted pursuant to the rules and regulations of SERB. The hearing closed on December 11, 2014 and the Parties agreed that the Fact Finder would be permitted to issue his report containing his Findings and Recommendations on January 28, 2015.

BACKGROUND

The Union, pursuant to SERB certification and/or recognition by the Employer, is the sole and exclusive bargaining representative for the purposes of collective bargaining in any and all matters regarding wages, hours, benefits, terms and all

¹ Terms used in the Fact Finder's Report are also as follows:

- a) Southwest Summit Council of Governments (SWSCOG) is also referred to herein as the Council or the Employer;
- b) Ohio Patrolmen's Benevolent Association is also referred to herein as the Union or OPBA;
- c) State Employment Relations Board of Ohio is also referred to herein as SERB;
- d) Ohio Revised Code is also referred to herein as ORC; Ohio Administrative Code is also referred to herein as the OAC;
- e) The Employer's employees are also referred to herein as the Dispatchers, the Unit, or the bargaining unit members.

conditions of employment for the approximately twenty-one (21) employees in the following Unit:

All full-time and part-time Dispatchers, but excluding all supervisory and management level personnel.²

The Dispatchers had previously been employed by three separate political subdivisions — the Cities of Barberton, Norton and Copley Township. Those subdivisions on November 25, 2013, entered into an agreement to end their individual dispatch service units and together formed a new political entity called Southwest Summit Council of Governments (SWSCOG) to operate the Southwest Summit Communications Center (SWSCOM). In effect, SWSCOM was created from a merger of the dispatcher units, Norton, and Copley Township and it began its operations by utilizing equipment furnished it by those three political subdivisions. The members of the Council consist of the Mayors of Norton and Barberton and a designated Trustee of Copley Township. In a manner of speaking, those three political subdivisions, through their representatives, effectively maintain control of SWSCOG. The Fire and Police Chiefs of the three political subdivisions oversee and/or supervise SWSCOM's operations. SWSCOM was created in order to provide improved emergency dispatch services at a reduced cost. Those three political subdivisions terminated all of their dispatchers on January 4, 2014, and they were all rehired by SWSCOG.

Barberton provides all legal representation through its Law Department to the Council; the initial hiring, assessment, and promotion services were provided by Copley Township; and SWSCOM is housed in a facility within a safety forces' building in

² If SERB's certification language describing the Unit differs from this description or another Unit description was previously agreed to by the Parties, either of those descriptions shall prevail over the above Unit description herein, if the Parties so agree.

Norton, Ohio. Maintenance of the facility is provided by Norton, which bills the Council for its services on a monthly basis. Norton also provides property and casualty insurance on the facility and stores all records. Fiscal services for SWSCOG are provided by Copley Township's "Fiscal Officer" who currently acts as the "Fiscal Agent" who co-signs all checks along with a duly designated officer of the "Council." The "Fiscal Officer" attends to all fiscal responsibilities of SWSCOG in its operations of SWSCOM. She helps create and/or presides over its budget, serves as its bookkeeper, tracks its resources and expenditures, and sees to it that its bills, including its payrolls, are properly distributed. She is not compensated by SWSCOG for her additional duties; however, Copley Township is compensated by the Council for her services. The Unit's Dispatchers, employed at SWSCOM, provide 24 hour, seven-days a week dispatching services and handle all emergency 9-1-1 calls for the Fire and Police Departments of Barberton, Norton, and Copley Township.

The Employer, SWSCOG, is funded by the three separate political subdivisions (Barberton, Norton and Copley Township), pursuant to an agreement, to provide its dispatcher services to them. Those entities each separately allocate an amount of money to the Employer for its operational needs. SWSCOG in 2014 approved a cost sharing formula for the three governmental subdivisions to provide for SWSCOM's operational funds. That formula sets forth the percentage of SWSCOM's budget which was and will continue to be assumed by each and is as follows: Barberton 44%, Copley Township 31%, Norton 25%.³ The initial Shared Service Agreement between SWSCOG and Barberton, Norton and Copley Township reveals that even though

³ Those allocation percentages are to be recalculated annually or if a new member joins SWSCOG to participate in the shared dispatch center.

Barberton, Norton and Copley Township give financial backing to the Council to operate the Southwest Summit Communications Center (SWSCOM), that funding is initially authorized to continue for a period of "... no more than three (3) years in order to facilitate the Council being able to establish its own credit worthiness as a separate political subdivision."

The Parties engaged in extensive and productive negotiations prior to the actual day of fact-finding and reached tentative agreement regarding substantial portions of the proposed Collective Bargaining Agreement. Tentative agreement was also reached at the fact-finding hearing regarding an additional proposal. The Parties agreed to all sections of the Contract with the exception of the five (5) matters discussed herein.⁴ A summary of the proposals tentatively agreed upon by the Parties are as follows:⁵

- Article 1: PREAMBLE
- Article 2: PURPOSE AND INTENT
- Article 3: RECOGNITION
- Article 4: DUES DEDUCTION
- Article 5: AGENCY SHOP
- Article 6: MANAGEMENT RIGHTS
- Article 7: EMPLOYEE RIGHTS
- Article 8: NO STRIKE
- Article 9: DISCIPLINE
- Article 10: ASSOCIATION REPRESENTATION
- Article 11: GRIEVANCE PROCEDURE
- Article 12: ARBITRATION PROCEDURE
- Article 13: NON-DISCRIMINATION
- Article 14: PROBATIONARY PERIOD
- Article 15: GENDER AND PLURAL
- Article 16: OBLIGATION TO NEGOTIATE
- Article 17: CONFORMITY TO LAW
- Article 18: WORK HOURS
- Article 19: OVERTIME
- Article 20: HOLIDAYS
- Article 20 A: PERSONAL DAYS⁶

⁴ The Lead Dispatcher matter is addressed in ARTICLE 25: COMPENSATION.

⁵ Unless otherwise noted or otherwise agreed to by the Parties, the language in the Articles listed below will appear in the new Contract if accepted by the Parties.

Article 21: VACATION
Article 23: FUNERAL LEAVE
Article 24: SPECIAL LEAVES
Article 26 C: EDUCATIONAL REIMBURSEMENT
Article 26 D: UNIFORMS
Article 27: ALCOHOL AND DRUG TESTING
Article 28: MISCELLANEOUS (including Section 28.9: Past Practices)
Article 29: LAYOFFS
Article 30: DURATION

CRITERIA

The Fact Finder, in making his Findings and Recommendations, has been guided by the Parties' oral and written presentations on the issues, by the testimony, by the documentary evidence presented during the proceedings, by the record as a whole, by the various Ohio Revised Code provisions, including ORC §4117.14(C)(4)(e) and (G) (6)(7)(a)-(f) and Ohio Administrative Code §4117.9-05(J)(K). Consideration has also been given to the following criteria:

1. Past collective bargaining agreements, if any, between the Parties;
2. Comparison of unresolved issues relative to the employees in the bargaining unit involved 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, 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;
4. The lawful authority of the public employer;
5. Any stipulations of the Parties;

⁶ The Parties have agreed that the actual placement in the Contract of ARTICLE 20A, ARTICLE 26C, and ARTICLE 26D will be "fixed" in the final renumbering of the Contract provisions.

6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.⁷

ISSUES

The only contractual issues which the Parties could not resolve are the following:⁸

1. ARTICLE 22: SICK LEAVE
2. ARTICLE 25: COMPENSATION
3. ARTICLE 26: INSURANCE AND BENEFITS (26C and D agreed to by Parties)
4. ARTICLE 26 A: INJURY LEAVE; Article 26B: LONGEVITY PAY
5. LEAD DISPATCHER POSITION

1. ARTICLE 22: SICK LEAVE

The Union's Position:

The Union essentially seeks to retain the same language regarding sick leave as it had covering dispatchers in the former Copley Township collective bargaining agreement. It argues that Dispatchers who were hired by SWSCOG should have been permitted to transfer to SWSCOG all of the hours of sick leave that they had accumulated at their prior dispatcher jobs with Norton, Barberton and Copley Township, respectively. Moreover, the Union asserts that by Ohio law employees are permitted to transfer all their accumulated sick leave to new governmental entities within the State as

⁷ The Parties both introduced contracts from what they identified as comparable governmental entities in support of their arguments regarding the issues. Pertinent provisions of those contracts were evaluated by the Fact Finder in arriving at his Findings and Recommendations. Contracts included were from Barberton, Norton, Copley Township, Fairlawn, Sagamore Hills Township, Macedonia, Aurora, Green, Summit County Sheriff's Office, Twinsburg, and Stow.

⁸ The Lead Dispatcher issue is addressed under FINDINGS AND RECOMMENDATIONS: ARTICLE 25: COMPENSATION, Section 25.4. The Longevity issue is dealt with in FINDINGS AND RECOMMENDATIONS: ARTICLE 26 B: LONGEVITY PAY.

long as they have not been separated from an Ohio public service job for more than ten (10) years. The Union believes that as a matter of law SWSCOG should have permitted, and in the future should permit, Dispatchers to transfer and retain all their accumulated sick leave from a former Ohio governmental entity.

Moreover, the Union further urges that the proposed Contract contain a provision, like the provision that appears in the former Copley Township collective bargaining agreement, that enables Dispatchers retiring from service in the Unit to cash out their sick leave.

The Union maintains that retaining the aforementioned provisions from the Copley Township contract would in effect allow Dispatchers to keep the benefit they long enjoyed and would safeguard those benefits should the consolidated SWSCOG dispatch facility concept fail – resulting in their termination.

The Union's proposal for Article 22, Sections 22.1, 22.2, 22.3, 22.4, 22.5, 22.6, 22.7, 22.8, 22.10 (which is the same language as in the Employer's Section 22.9), 22.11 (agreed to and/or resolved by the Parties in Article 23) is exactly the same and/or resolves those appearing in the Employer's "Option A" and/or "Option B." However, the Union's proposed Contract language is markedly different from the Employer's proposals with regard to the following other matters, including, for example, its proposal for sick leave incentives; its proposal calling for greater accumulations of sick leave credit for retirement with no cap; and its proposal for the ability to "cash out" sick leave should SWSCOG fail. Accordingly, the Union's additional Sick Leave sections covering these matters are as follows:

1) Section 22.9: An employee who transfers from this department to another department of the Employer or a portion thereof, shall be allowed to transfer his/her

accumulated sick leave to the new department. Employees shall be permitted to transfer any existing sick leave balance to SWSCOG. Should the SWSCOG dissolve or any of its present members leave, any dispatcher who is laid off or terminated shall be entitled to cash out his/her sick leave.

2) Section 22.12: At the time of retirement from active service with the Employer, providing that the employee has completed ten (10) or more years of continuous service with the Employer, the employee may elect, by filing written notice to the Fiscal Officer within thirty (30) days prior to the effective date of retirement, to be paid in cash for the value of his/her accumulated sick leave credit not to exceed 600 hours at the employee's current rate of pay. Such payment shall eliminate all sick leave credit accumulated by the employee at that time. Such payment shall be made only once to an employee during his/her lifetime. Those employees hired on January 4, 2014 may include their prior service with Barberton, Norton, and Copley [Township] as years of service.

3) Section 22.13: The following Sick Leave Incentives shall be implemented in the first paycheck following the earning of such incentives:

<u>Number of Sick Hours Used</u>	<u>Compensatory Hours</u>	<u>Cash Bonus</u>
0 sick hours within half-year	16	and \$125 Bonus
.1-8 sick hours within half-year	12	and \$100 Bonus
8.1-16 sick hours within half-year	8	and \$75 Bonus

4) Section 22.14: In order to qualify for such incentives, an employee must work an entire half-year (i.e., January 1 – June 30 or July 1 – December 31) and be employed in active pay status as a bargaining unit member as of the last day of the half-year. These incentives are not subject to proration or retroactive application.

The Employer's Position:

As was noted above, the Employer's proposals, both in its A and B Options during negotiations with regard to Sections 22.1, 22.2, 22.3, 22.4, 22.5, 22.6, 22.7, 22.8, 22.9 (the Employer's Section 22.9 is the same as the Union's proposed language in its Section 22.10), and Article 23 (encompassing the Union's Section 22.11) are the same as and/or resolve differences with the Union's proposed language for those Sections.⁹

⁹ But see the aforementioned parenthetical exceptions in this sentence appearing in the Union's proposal.

Consequently, the Parties are essentially in agreement concerning those Sections and Article 23.

However, the Employer's two proposals, Options A and B, first given to the Union on September 9, 2014, with the exception of the above agreed-upon Sections, also differ markedly from the remaining Sections of the Union's proposal.

The Employer's two proposals fall short of the Union's demands regarding the transfer of sick leave or of the incorporation of a sick leave incentive formula into the proposed Contract. The Employer argues that Ohio law does not require that it agree to transfer all accumulated sick leave hours of the Dispatchers. Nor does the Employer wish to incorporate any proposal regarding sick leave incentives into the Contract. The Employer offered the following proposals regarding the remaining Sections of Article 22:

Option A:

Section 22.10: At the time of retirement from active service with the Employer, providing that the employee has completed ten (10) or more years of Continuous Service, the employee may elect, by filing written notice to the Dispatch Manager within thirty (30) days prior to the effective date of retirement, to be paid for 50% of the value of his/her accumulated sick leave credit up to 480 hours at the employee's current rate of pay. Such payment shall eliminate all sick leave credit accumulated by the employee at that time. Such payment shall be made only once to an employee during his/her lifetime. For purposes of this Section 22.10, "Continuous Service" shall mean years of service with the Employer.

Section 22.11: Employees shall be permitted to transfer in any existing balance of sick leave from their prior employment with Barberton, Copley [Township], or Norton in an amount up to 960 hours, which sick leave shall be subject to all of provisions of this Article 22.

Option B:

Section 22.10: Employees shall be permitted to transfer in any existing balance of sick leave from their prior employment with Barberton, Copley [Township], or Norton in an amount up to 960 hours, which sick leave shall be subject to all of the provisions of this Article 22.

In summary, the Employer maintains that its Option A proposal for sick leave, among other things, "...would allow employees to accumulate sick leave up to a maximum of 2,000 hours earning sick leave at the rate of one and one-quarter days per month with a payout of 50% up to 480 hours at retirement and also allow transfer of sick time from previous employer up to 960 hours...."

Its Option B proposal, it asserts, provides, among other things, sick leave with no payout upon retirement.

FINDINGS AND RECOMMENDATIONS

The Employer pointed out that SWSCOG was a new governmental entity created by Norton, Barberton and Copley Township to improve efficiency and to cut costs for dispatching operations. It noted that since the Employer has no taxing authority, it must rely heavily on monies provided by the three political subdivisions. Testimony of the Fiscal Officer of SWSCOG indicated that those three political subdivisions are currently not disposed to granting SWSCOG any additional revenues over and above what they had initially authorized for yearly operation. They want SWSCOG to become financially self-supporting in the future. I note that monies available in the future for the operation of SWSCOG appear, on the surface, to be very unpredictable.

Moreover, from reviewing OAC 123:1-32-10 regarding the transfer of sick leave – the language of that provision does not mandate that SWSCOG must credit all newly employed Dispatchers with every accumulated hour of sick leave that they had at the end of their employment with Norton, Barberton, and Copley Township. I also note from examining the language contained regarding this matter in comparable contracts offered by the Parties, that such a provision mandating that carryover was not contained in

either the Copley Township, Norton, or Barberton collective bargaining agreements – the most germane contracts to this case. Nor was it to be found in the collective bargaining agreements of Aurora, Fairlawn, Sagamore Hills Township, Stow, Macedonia, Twinsburg, or Green.¹⁰

Accordingly, I considered the aforementioned criteria under which such proposals are evaluated, including the comparable collective bargaining agreements offered by the Parties in this case and the cited Ohio law, as well as the fact that SWSCOG is a newly formed entity with unpredictable finances. I conclude that the Employer's position regarding the transferring in of accumulated sick leave as set forth in Section 22.11 of its Option A or Section 22.10 of its Option B (language in both are the same) is not unreasonable and is, for the most part, preferable to the Union's proposal on this issue.

An inspection of the former Copley Township and Barberton collective bargaining agreements covering dispatchers revealed that they contained provisions providing for some type of monetary "cash out" option upon retirement. Norton's former collective bargaining agreement covering dispatchers contains a very limited "Sick Leave Cash Out" provision that is not contingent upon retirement. Copley Township's "cash out" provision was the most generous regarding this issue.¹¹

The Employer offered no such "cash out" choice under its "Option B" proposal, but it did offer such a choice under its "Option A" proposal. Both the Employer's Option A proposal and the Union's proposal require that an employee complete ten (10) or more

¹⁰ Such a provision speaking to the issue was contained in the contracts of Summit County Sheriff's Office for the Communication Unit and in the Twinsburg contract with the OPBA covering Dispatchers.

¹¹ The "cash out" issue was also addressed and benefits offered in the contracts from Green, Fairlawn, Twinsburg, Aurora, Stow, and Sagamore Hills Township.

years of continuous service with SWSCOG before being permitted to exercise the option of cashing out his/her accumulated sick leave hours under either of the Party's proposed formulas. The Employer's Option A cash out proposal is significantly less generous to retiring dispatchers than is the Union's proposal on this matter.

I am mindful of the fact that the current Dispatchers all were employed by political entities, which, through their Council Representatives, still control and/or strongly influence the funding, expenditures and operations of SWSCOG. Apparently, even though a Dispatch Manager manages the daily operations of SWSCOM, those operations are also overseen and/or supervised by the Fire and/or Police Chiefs of Barberton, Norton, and Copley Township. It seems only fair that the former dispatchers, who still perform dispatching services for the three aforementioned political subdivisions, be credited in some manner with the sick leave that they accumulated while they were employed by those political subdivisions.

I would hope that SWSCOG's future finances would be on a more sound footing, that it will service an increased number of communities, and that its revenue stream will greatly increase. I also note that revenue from wireless 9-1-1 funds should increase as the use of cell phones generating those funds continues to increase. Accordingly, I find that the Union's proposed language regarding the "cash out" of accumulated sick leave hours to be, to a large extent, preferable, to that which was proposed by the Employer in its Option A.

However, I am not convinced from the discussions during hearing and after viewing the past collective bargaining agreements from Barberton, Norton, and Copley Township of the necessity of including Sick Leave Incentives in this first proposed

Contract. I am mindful of the fact that such an incentive was included in the former Copley Township contract, but it is not contained in the former Barberton or Norton contracts. I therefore find that the Employer's omission of that provision from its proposal on sick leave is preferable to the Union's suggestion that it be included.¹²

I recommend that the following language of ARTICLE 22: SICK LEAVE, which contains elements of both the Employer's and the Union's proposals on this matter be adopted into the proposed Contract:

ARTICLE 22: SICK LEAVE

Section 22.1. Sick leave shall be defined as an absence pay necessitated by: (a) illness, injury or disability of an employee or a member of the employee's immediate family when the employee's presence is reasonable; (b) exposure by the employee to contagious disease communicable to other employees; (c) medical, dental, or optical examination or treatment of an employee or a member of the immediate family when the employee's presence is reasonable; or (d) pregnancy and/or childbirth and related conditions of an employee or an employee's spouse.

Section 22.2. All full-time employees shall earn sick leave at the rate of one and one quarter (1-1/4) days per month and may accumulate such sick leave without limit up to a maximum of two thousand (2,000) hours.

Section 22.3. An employee who is to be absent on sick leave shall notify his/her supervisor of such absence, the reason for such absence, and the expected length of such absence at least two (2) hours before the start of his/her work shift, except in case of an emergency. If sick leave continues past the first day, the employee shall notify the on duty supervisor every day unless the supervisor agrees notification is not necessary.

¹² I am also aware that such sick leave incentives are included in some but not all of the comparable contracts submitted by the Union. Consideration of the Copley Township, Barberton and Norton contracts are perhaps more germane to this issue.

Section 22.4. Sick leave may be used in segments of not less than one (1) hour.

Section 22.5. Upon returning to work for all sick leave usages of three (3) days or more, in order for the time off work to be charged against accumulated sick leave, the employee shall submit such proof of illness, injury or disability as may be satisfactory to the Dispatch Manager.

Section 22.6. Any abuse of sick leave or the patterned use of sick leave shall be just and sufficient cause for discipline as may be determined by the Dispatch Manager, who shall then have the right to request truth of illness.

Section 22.7. The Dispatch Manager may require an employee who has been absent due to personal illness, injury or disability, prior to and as a condition of his/her return to duty, to be examined by a physician designated and paid for by the Employer, to establish that he is not disabled from the performance of his/her normal duties and that his/her return to duty will not jeopardize the health and safety of other employees. Should a Dispatch Manager make that request, the employee shall be placed upon a paid leave of absence. Should the physician designated by the Employer disagree with the employee's physician who has authorized a return to work, those physicians shall select a third physician who shall then examine that employee. That third physician's decision shall be binding upon the parties.

Section 22.8. When the use of sick leave is due to illness, injury or disability of a member of the immediate family or for medical, dental, or optical examination or treatment of a member of the immediate family, "immediate family" shall be defined to only include the employee's spouse, children, stepchildren, foster children residing in the home, or parents.

Section 22.9. Employees on sick and/or disability leave shall not engage in any outside employment without the written permission of the Employer until after returning to work and completing a tour of duty for the Employer. Violation of this provision will result in

unpaid leave status for all days that the employee reported off sick while engaging in outside employment and may subject the employee to discipline.

Section 22.10. At the time of retirement from active service with the Employer, providing that the employee has completed ten (10) or more years of continuous service with the Employer, the employee may elect, by filing a written notice to the Dispatch Manager within thirty (30) days prior to the effective date of retirement, to be paid in cash for the value of his/her accumulated sick leave credit not to exceed 480 hours at the employee's current rate of pay. Such payment shall eliminate all sick leave credit accumulated by the employee at that time. Such payment shall be made only once to an employee during his/her lifetime. Those employees hired on January 4, 2014 may include their prior years of service with Barberton, Norton or Copley Township as years of continuous service. Moreover, should SWSCOG dissolve and cease functioning as the Employer, or any members (Barberton, Norton, or Copley Township) leave or withdraw from SWSCOG, any Dispatcher was laid off or terminated as a result shall be entitled to cash out his/her accumulated sick leave up to 480 hours.

Section 22.11. Employees shall be permitted to transfer in any existing balance of sick leave from their prior employment with Barberton, Copley Township, or Norton in an amount up to 960 hours, which sick leave shall be subject to all of the provisions of this Article 22.

2. ARTICLE 25: COMPENSATION

The Union's Position:

The Union argued that the economic situation in the United States has been improving and that the United States is the leader in economic growth in the world. It also asserts that unemployment has been dropping. It further maintains that Ohio's economic growth on both a statewide and a local level is also improving and the

unemployment rate is lower than the national average. It notes that Summit County's unemployment rate is almost a full percentage point below the Federal rate. The Union further asserts that "fracking" has led to faster growth "... in the general area." Summit County's proximity to Cleveland, the Union predicts, should also help the local economy now and in the future.

Consequently, the Union proposes a one and one-half percent (1.5%) wage increase "...for each July and January of each year of the contract." The total increase would be seven and one-half percent (7.5%) over the proposed three-year duration of the Contract. (However, this formula was proposed by the Union before it agreed at hearing to a contract with a duration term from April 1, 2014 – January 31, 2015.) Accordingly, it is presumed that the Union, which agreed with the Employer to a contract duration period of April 1, 2014 – December 31, 2015, now desires a wage provision providing for the following wage increases:

1. One and one-half percent (1.5%) over the current wage retroactive to July 1, 2014;
2. An additional one and one-half percent (1.5%) retroactive to January 1, 2015;
3. An additional one and one-half percent (1.5%) on July 1, 2015.

The Union also proposed that additional hourly compensation be paid to Dispatchers assigned to train other employees, to Dispatchers while functioning as TAC employees, and to Lead Dispatchers. Additionally, the Union seeks longevity pay for Dispatchers and seeks an incentive bonus for Dispatchers who achieve CPR and EMD certification.

The duties of Unit Dispatchers have increased and they have had to learn new jurisdictions and the policies of those jurisdictions in order to perform their jobs properly. The Union also predicts that Dispatchers' responsibilities may only increase as other communities may opt for SWSCOM services in the future. Furthermore, the Union maintains that some of the "specialty positions" in the Unit should receive additional wages commensurate with their additional responsibilities, and more help is needed to assist the Dispatch Manager in meeting all of the assigned tasks.

The Union contends that Barberton, Copley Township, and Norton are in a financial position to insure that SWSCOG can absorb the proposed wage increases.

The Union proposed that Article 25: COMPENSATION read as follows:

Section 25.1. Effective as of the first pay period in January 2014, annual salary paid for bargaining Unit members with the following years of service with the Employer shall be as follows:

<u>Length of Service</u>	<u>Hourly Rate</u>	<u>Salary</u>
Part-Time Training	\$17.39	
Part-Time Completion of Training	\$18.35	
Full-Time Training (up to 24 months)	\$20.95	\$43,576
Full-Time Completion of Training	\$21.95	\$45,656

Rates of pay shall increase by 1½% each 1st of July and January starting in July, 2014.

Section 25.2. Employees assigned in writing by the Dispatch Manager as trainers shall be paid two dollars (\$2) per hour in addition to their regular rate of pay for time spent training. Only those assigned to train in writing and have agreed to train shall be required to train.

Section 25.3. The TAC shall be paid an additional two dollars (\$2) per hour.

Section 25.4. The Dispatch Manager shall appoint shift leaders for all shifts. They shall assist the Manager is needed. They shall be paid an additional two dollars (\$2) for all hours worked. Dispatchers can only receive one of the premiums listed in [Sections] 25.2, 25.3, or 25.4.

Section 25.5. All bargaining unit members will be and are required to receive their pay by direct deposit. Paydays shall be every other Friday.

Section 25.6. Beginning on the fifth year anniversary date of full-time service as a Dispatcher as defined in 21.6 and each anniversary date thereafter while so employed, the bargaining unit member shall receive the following longevity payment for each year of full-time service: \$100.

Section 25.7. The Parties agree that employees shall be able to pay their pension contributions utilizing pre-tax dollars, provided that such option is allowed and supported by OPERS.

Section 25.8. The Employer shall pay for interested dispatchers to be trained and certified in Cardiopulmonary Resuscitation (CPR) and Emergency Medical Dispatch (EMD). Each employee who is CPR and EMD certified shall receive a payment of \$200 in the first paycheck in December. No portion of the stipend will be paid if the employee lacks either the CPR certification or the EMD certification.

The Employer's Position:

As was previously indicated, the Employer asserted that it was a new political entity with no taxing authority, which is substantially dependent upon funding by Norton, Barberton and Copley Township. They have shown no current inclination to increase funding for SWSCOG's operational needs. SWSCOG's future revenues are uncertain. The Employer notes that, for example, it has no expectation that it will annually receive 9-1-1 funding from Summit County as such funding must also be allocated to other dispatch units within the County. Property tax collections have not yet returned to the past levels before significant drops in property values occurred. The State of Ohio has reduced important sources of revenue to municipalities, such as the three political subdivisions funding SWSCOG. Moreover, a number of Dispatchers who were hired by SWSCOG received a significant raise upon assuming their duties. The Employer also observed, with respect to the Union's proposals regarding compensation, that the establishment of the Lead Dispatcher position is contemplated by the Employer, but the

duties of that position and the method of filling it have yet to be established by the Employer. The Employer believes that it is premature to establish a wage rate for the Lead Dispatcher position before those details have been decided. SWSCOG also believes that its salary schedule currently in force is comparable to other dispatcher pay schedules. Consequently, it offered no raises in 2014 over its salary schedule then in force in its Option A or Option B proposals. However, in its Option B proposal it did offer a slight increase in its 2015 salary schedule for all Dispatchers – but less than the amounts proposed by the Union. It also offered additional hourly compensation for Dispatchers assigned to training other employees and to TAC Dispatchers. The Employer’s Option B proposal provided for the issue of Lead Dispatchers to be resolved between the Parties in the future. As was noted, the Employer’s proposed Option A offered no wage increases over the entire duration of its proposed contract. Otherwise, Option A reads essentially as its Option B proposal with the exception of the suggested 2015 wage increases. The Employer offered the following Option B proposal with regard to Article 25: Compensation, which reads as follows:

Option B.

Section 25.1: Effective as of the first pay period in the year set forth below, the hourly rate of pay for bargaining unit members shall be as follows:

	<u>2014</u>	<u>2015</u>
Part-time Training	\$17.39	\$17.47
Part-time Completion of Training	\$18.35	\$18.44
Full-time Training (up to 24 mos.)	\$20.95	\$21.06
Full-time Completion of Training	\$21.95	\$22.06

Section 25.2: Employees who are assigned in writing by the Dispatch Manager as a trainer shall be paid one dollar (\$1.00) per hour in addition to their regular rate of pay for time spent training other employees.

Section 25.3: The TAC shall be paid an additional one dollar and twenty-five cents (\$1.25) per hour.

Section 25.4: The parties agree that employees shall be able to pay for their pension contribution utilizing pre-tax dollars, provided that such option is allowed and supported by OPERS.

Section 25.5: All bargaining unit members will be and are required to receive their pay by direct deposit. Pay days shall be every other Friday.

FINDINGS AND RECOMMENDATIONS

I conclude, based on the arguments of the Parties, that the Employer has reason to be concerned with respect to its unpredictable revenue flow. I note, in particular, the testimony of SWSCOG's Fiscal Agent (Copley Township's Fiscal Officer) to the effect that there is a significant reluctance on the part of Norton, Barberton and Copley Township to provide additional revenues over and above what it has already earmarked to SWSCOG for its operational needs. While I agree with the Union's observation that economic conditions in Summit County appear to be improving, predicting the economic future in the face of economic uncertainties is never easy. The past precipitous decline in property values was swift and draining on local revenues. Additionally, one never knows if the wireless 9-1-1 funds will continue to be renewed and to be allocated to SWSCOG or any other emergency dispatch services. However, I do note that the Employer has not argued that the finances of Barberton, Norton, and Copley Township are currently imperiled in any manner, and they are now and for the foreseeable future the chief funding sources for SWSCOG. The Union maintains that the finances of those political entities are stable and improving – and they seem to be. I am mindful of the fact that the Employer is adjusting to its new consolidated and expanded mission.

In arriving at my recommendation concerning the issue of compensation, I have considered the aforementioned criteria under which such proposals are to be evaluated, including, among other things, the comparables offered by the Parties, the economic uncertainties of the new Employer, and the financial stability of Barberton, Norton, and Copley Township; the pay which was received by the dispatchers formerly employed by SWSCOG's three founding political subdivisions prior to the merger of dispatcher services; the fact that certain dispatchers received a significant wage increase upon assuming their duties in the Unit; and the current wage structure of the Unit. Under all of the aforementioned circumstances, I find that certain aspects of both the Union's and the Employer's proposals regarding ARTICLE 25: COMPENSATION have merit and will be recommended.

As a result, I do not recommend, as the Union proposes, additional payments for CPR or EMD certification.¹³ I recommend the adoption, for the most part, of the Union's proposal that a provision for compensating Lead Dispatchers should be placed into the Contract. I was persuaded to do so by the fact that the SWSCOM organizational chart, effective January 2014, already provides for the existence of that position. Moreover, the Dispatch Manager at hearing clearly indicated an immediate need for those positions to be filled. I am also mindful of the fact that the Parties have spent many months in negotiations and have not reached agreement regarding the duties or compensation for that position. Accordingly, I have included Section 25.4 in the proposed Contract to deal with that issue.

¹³ The issue of Longevity Pay (discussed by the Union in Section 25.6 of its proposal for COMPENSATION) is dealt with below in the discussion of Article 26B: LONGEVITY PAY.

I note that both the Employer’s Option B and the Union’s proposal call for the Dispatchers to receive a wage increase in 2015.¹⁴ I conclude that the Union’s proposal is reasonable and do recommend its adoption regarding wages.

Accordingly, I find and recommend that all bargaining unit employees receive an across-the-board one and one-half percent (1.5%) wage increase over their current salary schedule retroactive to July 1, 2014 (effective July 1, 2014 – December 31, 2014.) I further recommend that all bargaining unit employees receive an additional across-the-board one and one-half percent (1.5%) wage increase retroactive to January 1, 2015 (effective from January 1, 2015 – July 31, 2015.) Moreover, I also recommend that all bargaining unit employees receive an across-the-board one and one-half percent (1.5%) wage increase effective from July 1, 2015 through December 31, 2015.

I recommend that the following language for ARTICLE 25: COMPENSATION be adopted and incorporated into the proposed Contract:

ARTICLE 25: COMPENSATION

Section 25.1.A. Effective **retroactively** from July 1, 2014 through December 31, 2014, the hourly rate of pay for bargaining unit members shall increase across-the-board by 1.5% and shall be as follows:

	<u>2014 (From July 1, 2014 – Dec. 31, 2014)</u>
Part-Time Training	\$17.65
Part-Time Completion of Training	\$18.63
Full-Time Training (up to 24 months)	\$21.26
Full-Time Completion of Training	\$22.28

¹⁴ The most current comparable contracts containing wage provisions for 2014/2015, submitted by the Parties, for the most part called for increased wage rates. (For example, those of Green, Macedonia, Sagamore Hills, and Aurora.)

Section 25.1.B. Effective **retroactively** from January 1, 2015 through June 30, 2015, the hourly rate of pay for bargaining unit members shall increase across-the-board by 1.5% and shall be as follows:

	<u>2015 (From Jan. 1, 2015 – June 30, 2015)</u>
Part-Time Training	\$17.91
Part-Time Completion of Training	\$18.91
Full-Time Training (up to 24 months)	\$21.58
Full-Time Completion of Training	\$22.61

Section 25.1.C. Effective from July 1, 2015 through December 31, 2015, the hourly rate of pay for bargaining unit members shall increase across-the-board by 1.5% and shall be as follows:

	<u>2015 (From July1, 2015 – Dec. 31, 2015)</u>
Part-Time Training	\$18.18
Part-Time Completion of Training	\$19.19
Full-Time Training (up to 24 months)	\$21.90
Full-Time Completion of Training	\$22.95

Section 25.2. Employees who were assigned in writing by the Dispatch Manager as trainers shall be paid one and one-half dollars (\$1.50) per hour in addition to their regular rate of pay for time spent training other employees.

Section 25.3. The TAC shall be paid an additional one dollar and seventy-five cents (\$1.75) per hour.

Section 25.4.A. The Employer shall be responsible for selecting, appointing, and determining the duties and numbers of Lead Dispatchers. Lead Dispatchers shall be paid an additional two dollars (\$2) per hour for all hours worked.¹⁵

¹⁵ The Union, upon execution of the Contract or upon a later date agreed to by the Union, shall be advised in writing of the identities, numbers, and exact duties of the Lead Dispatcher(s) and of the criteria used for selection of Lead Dispatchers.

Section 25.4.B. Any Dispatchers performing in the positions set forth in Sections 25.2, 25.3, or 25.4.A may only receive one (1) of the additional pay premiums listed in those Sections while performing those jobs.¹⁶

Section 25.5. The Parties agree that employees shall be able to pay for their pension contributions utilizing pre-tax dollars, provided that such option is allowed and supported by OPERS.

Section 25.6. All bargaining unit members will be and are required to receive their pay by direct deposit. Paydays shall be every other Friday.

3. ARTICLE 26: INSURANCE AND BENEFITS

The Union's Position:

The Union asserts that bargaining unit employees are presently receiving health insurance benefits from the Employer, which are more costly to the Employer and to the employees. It notes that in the past employees received vision insurance, but currently the Employer does not make such coverage available. Moreover, the Union argues that Copley Township dispatchers had received a flex account in addition to their other insurance benefits, and the Union wants that flex account restored. The Union maintains that Dispatchers were advised that they would not have their benefits reduced, but they have been reduced.

The Union's proposal for ARTICLE 26: INSURANCE AND BENEFITS is as follows:

Section 26.1: The Employer will provide each employee with insurance coverage that is substantially similar to the terms presently in place on July 1, 2014. Vision coverage similar to that offered to Copley in 2014 will be offered by January 1, 2015. The

¹⁶ For example, a Lead Dispatcher performing training duties or TAC duties can still only receive his/her two dollar (\$2) per hour premium and will not also receive an additional one and one-half dollar (\$1.50) premium or an additional one dollar and seventy-five cents (\$1.75) premium, respectively, for those additional duties.

employees shall contribute \$20 per month if single. They shall contribute \$40 per month for single plus one. They shall contribute \$90 per month for family coverage. If no plans are available that are substantially similar to the present plan, the parties meet to review the options.

Section 26.2: The Employer shall adopt a Section 125 Plan within 60 days of the ratification of the contract so that employees' contributions are on a pre-tax basis.

Section 26.3: The Employer shall provide full-time employees with a life insurance policy worth \$50,000 each.

The Employer's Position:

SWSCOG's proposal on health insurance is consistent with what is being currently provided to other SWSCOG employees. It notes that health insurance premiums continues to rise. It is offering a Section 125 Plan so that contributions can be paid on a pre-tax basis. Moreover, it is also offering life insurance coverage. The Employer believes that its proposal is comparable to the coverage possessed by other similarly situated public employees in the Summit County area. The Employer noted that vision coverage has, in its opinion, become prohibitively expensive and, consequently, it is not being offered under its Option A proposal. However, it is offered for the full-time unit employees only under its Option B proposal.

The insurance and benefit coverage offered by the Employer is the same in both of its Option A and Option B proposals, with the exception of the vision coverage offered to full-time Unit employees under Option B.

FINDINGS AND RECOMMENDATIONS

The Fact Finder, in arriving at a recommendation on this Issue, has considered all of the pertinent aforementioned criteria under which these proposals must be evaluated, including the economic viability of this new Employer, the comparables offered on this

issue, the small size of the Unit shopping in the insurance marketplace, and the difficult and unpredictable health insurance climate since the passage of the Affordable Care Act. I note that the Council currently provides all full-time covered employees with "...health and dental, life, short-term disability and liability insurance...." I am not unmindful that bargaining unit employees may lose some benefits and face increased premium costs and higher deductibles for medical care. Unfortunately, this is a reality in which most employees find themselves. Under the circumstances, I find that the Employer's proposal for Article 26, Option B provides a reasonable accommodation to those circumstances and recommend its adoption in the proposed Contract. It should read as follows:

ARTICLE 26: INSURANCE AND BENEFITS

Section 26.1. The Employer will provide, on behalf of each employee, insurance coverage that is substantially equivalent to the terms of Appendix A attached to this Agreement. Employees shall contribute \$20 per month for single coverage, \$40 per month for single plus one coverage, and \$90 per month for family coverage. The parties agree, should that coverage not be available, that they shall reopen this Agreement for the sole purpose of discussing additional contributions or changes to benefits provided by that health insurance.¹⁷

Section 26.2. The Employer shall, within sixty (60) days of ratification of this Agreement, adopt a Section 125 plan so that employee participation as set forth in Section 26.1 shall be on a pre-tax basis.

Section 26.3. The Employer shall provide for full-time employees coverage under a life insurance policy in the amount of \$50,000 for the employee only.

¹⁷ Appendix A consists of Medical Mutual: Platinum 2050-500 Summary of Coverage and United Healthcare options PPO 30/cover dental services.

Section 26.4. The Employer shall, effective October 1, 2014, provide and pay for employee vision coverage that is substantially equivalent to the terms of Appendix B attached to this Agreement. Employees shall have the option to purchase family vision coverage, if desired. ¹⁸

Section 26.5. Notwithstanding any other provision of this Agreement, part-time employees shall not receive sick leave, vacation pay or any benefits under this Article.

4. ARTICLE 26 A: INJURY LEAVE; ARTICLE 26B: LONGEVITY PAY¹⁹

ARTICLE 26A: INJURY LEAVE

The Union's Position Regarding Injury Leave:

The Union argues that most safety forces have "Injury Leave" provisions in their collective bargaining agreements and that the Unit Dispatchers should be no exception. It also indicates that the likelihood of injury in performing the Unit's duties is not as great and, consequently, the Employer should not experience great financial exposure by adopting an injury leave provision. The Union suggests that Article 26 A: Injury Leave read as follows:

Section 26A.1. When a full-time Employee is injured on duty while at work, he/she shall be eligible for Injury-on-Duty pay for up to twelve (12) weeks. The employee must file all documents the Employer provides from the Bureau of Worker's Compensation (BWC), including assigning any money received from the BWC over to the Employer for the twelve (12) weeks. The Employee may use any earned leave until they are approved by the BWC. The time will be replenished once the Employer receives the money from the BWC.

Section 26A.2. The Employer has the right to send the employee to a doctor of its choosing to verify the ailment. The cost of the doctor and the time spent complying shall be paid by the Employer.

¹⁸ Appendix B consists of Medical Mutual EyeMed Vision Plan.

¹⁹ This Article number will be "fixed" by the Parties in the final renumbering for the proposed Contract. It is suggested that both 26A and 26B be renumbered and renamed to Section 26.6 and Section 26.7, respectively, and be included in Article 26: INSURANCE AND BENEFITS.

The Employer's Position Regarding Injury Leave:

The Employer agrees that a provision on injury leave should be included in the proposed Contract. Both its Option A and Option B proposals contain the same language. The Employer believes that the Unit's employees should have some monetary incentive to return from injury leave and, consequently, has framed language to accomplish that result. The Employer's proposed language for Article 26 A.2: INJURY LEAVE is as follows:

Section 26 A.1. When a full-time employee is injured in the line of duty while actually at work for the Employer, that employee shall be eligible for a paid leave not to exceed twelve (12) weeks, provided that the employee files for workers' compensation and sign such documentation as is necessary to assign the Employer those sums of money the employee would ordinarily receive as weekly compensation from the Workers' Compensation System. This injury leave shall be payable at one hundred percent (100%) for the first two (2) weeks, eighty percent (80%) for the next four (4) weeks, and sixty percent (60%) for the next six (6) weeks.

Section 26 A.2. The Employer shall have the right to request that the employee have a physical exam by a physician appointed and paid by the Employer to determine if the employee is unable to work due to that claimed work-related injury at any time as a condition to the employee receiving benefits under this Article.

FINDINGS AND RECOMMENDATIONS

The Parties both recognize the advisability of including a provision for injury leave in the proposed Contract. After considering the criteria for evaluating proposals regarding this issue and examining the injury leave provisions in the Union's submitted comparable contracts, including the contracts from Barberton, Copley Township and Norton, I find that the Union's proposal, for the most part, is preferable. Accordingly, I

recommend that the following language ARTICLE 26A: INJURY LEAVE, containing elements of both of the Parties' proposals, should be adopted into the proposed Contract:

ARTICLE 26 A: INJURY LEAVE

Section 26 A.1. When a full-time employee is injured in the line of duty while actually at work for the Employer, that employee shall be eligible for paid leave not to exceed twelve (12) weeks, provided that the employee files for workers' compensation and signs such documents as are necessary to assign to the Employer those sums of money the employee would ordinarily receive as weekly compensation from the Bureau of Workers' Compensation (BWC). The employee may use any earned leave until he/she is approved for benefits by the BWC. The leave time used will be replenished and restored once the Employer receives the money from the BWC.

Section 26 A.2. The Employer shall have the right at any time to request that the employee have a physical exam by a physician appointed and paid for by the Employer to determine if the employee is unable to work due to that claimed work-related injury as a condition to the employee receiving benefits under this Article. Any time spent by the employee in having such an Employer-requested physical exam shall be paid for by the Employer in accordance with that employee's usual hourly wage rate.

ARTICLE 26B: LONGEVITY PAY

The Union's Position Regarding Longevity Pay:

The Union believes that all full-time Dispatchers who had been employed by Norton, Barberton, or Copley Township as full-time Dispatchers should have all of their prior years of service there counted, as well as their service for SWSCOG, for the purpose of compensating them with longevity pay. The Union included a provision for longevity pay in Article 25, Section 25.6. It reads as follows:

Section 25.6. Beginning on the fifth year anniversary date of full-time service as a Dispatcher as defined in 21.6 and each anniversary date thereafter while so employed, the bargaining unit member shall receive [the] following longevity payment for each year of full-time service: \$100.00.

The Employer's Position Regarding Longevity Pay:

The Employer has no longevity pay provision in its Option A proposal, but does have a longevity pay provision in its Option B proposal. The Employer's proposal would award full-time Dispatchers with a longevity payment of fifty dollars (\$50.00) and would contain a twelve hundred dollar (\$1,200) annual maximum cap. The Employer's Option B proposal reads as follows:

26B.1 Beginning on the fifth year of service with the Employer, each full-time employee shall receive an annual longevity payment of \$50.00 for each year of service up to a maximum of \$1,200.00. That amount shall be paid in a lump sum on the anniversary date of that employee's completion of service. Service shall include prior full-time service as a dispatcher with Copley, Norton, or Barberton to the extent that the employee had no break in service between working as a dispatcher for Copley, Norton, or Barberton and working as a dispatcher for the Employer.

FINDINGS AND RECOMMENDATIONS

An examination of all the contracts submitted by the Parties reveals that most, including Copley Township and Norton, contain longevity provisions for the dispatchers. Many contain caps on the total amount of longevity pay that can ultimately be awarded. The formulas and amounts for longevity pay that is awarded to Dispatchers varies greatly among the governmental entities that provide such payments. The Union and the Employer, under its Option B proposal, both agree that some type of longevity pay should be given to the Dispatchers. After considering both proposals in light of the mandated criteria for evaluating such proposals, including the comparable contracts

offered by the Parties, I find that elements of both proposals have merit and recommend that the following language be adopted:

ARTICLE 26B: LONGEVITY PAY

Beginning on the fifth year of service with the Employer, each full-time employee shall receive an annual longevity payment of \$100.00 for each year of service up to a maximum of \$2,000.00. That amount shall be paid in a lump sum on the anniversary date of that employee's completion of service and on each anniversary date thereafter while so employed. Service shall include prior full-time service as a dispatcher with Copley Township, Norton, or Barberton to the extent that the employee had no break in service between working as a dispatcher for Copley Township, Norton, or Barberton and working as a dispatcher for the Employer.

CONCLUSION

In conclusion, the undersigned Fact Finder hereby submits the above recommendations on the outstanding issues presented in this matter and incorporates by reference into these recommendations all other tentative agreements reached by the Parties on certain aforementioned Articles of the proposed Contract.


Melvin E. Feinberg, Fact Finder

Cuyahoga County, Ohio
January 28, 2015