

**STATE EMPLOYMENT RELATIONS BOARD**

**FACT FINDER'S REPORT  
AND  
RECOMMENDATION**

IN THE MATTER OF:

CUYAHOGA COUNTY SHERIFF DEPARTMENT

AND

OHIO PATROLMEN'S BENEVOLENT ASSOCIATION

Case Number 2016-MED-02-0085

Deputy Sergeants

Before Fact Finder: Thomas J. Nowel

June 10, 2016

PRESENTED TO:

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## INTRODUCTION

Thomas J. Nowel was appointed to serve as Fact Finder in the case as captioned on the cover page by the State Employment Relations Board on February 25, 2016 in accordance with Ohio Revised Code Section 4117.14 (C) (3). The parties utilized the first scheduled day of hearing, April 25, 2016, in mediation over a number of issues at impasse. Evidentiary hearing was then conducted on May 16, 2016 at the offices of the Cuyahoga County Sheriff in Cleveland, Ohio.

The existing collective bargaining agreement expired on December 31, 2015. The parties had concluded the negotiating process for the existing Agreement in early 2015. The parties conducted several bargaining sessions for the new Agreement and reached tentative agreement on a number of proposals which are incorporated in this Report and Recommendation. The bargaining unit consists of approximately fifteen full-time Deputy Sergeants employed by the Cuyahoga County Sheriff's Department. The parties agreed to the issuance of the Report and Recommendation on June 10, 2016.

### OUTSTANDING ISSUES:

1. Article 14, Wages, New Section 2
2. Article 15, Hours of Work/Overtime, Section 4
3. Article 15, Hours of Work/Overtime, Section 5
4. Article 16, Court Time/Call-In-Pay, New Section 2
5. Article 29, Promotional Examinations, Section 4
6. Article 29, Promotional Examinations, Section 5
7. Article 36, Sick Leave, Section 11
8. Article 36, Sick Leave, Section 12
9. Article 38, Vacation Leave, New Section
10. Article 38, Vacation Leave, Section 5
11. Article 42, Bereavement Leave, Section 3

Those participating at hearing for the Employer included the following:

Todd M. Ellsworth, Assistant Law Director

Ellenia Matthews, Employee Relations Specialist

Those participating at hearing for the Union included the following:

Daniel J. Leffler, OPBA Attorney

Jeff Hirko, Union Steward

Vito Monteleone, Union Steward

David Lisy, Union Director

#### BACKGROUND

In analyzing the positions of the parties regarding each issue at impasse and then developing a recommendation, the Fact Finder is guided by the principles which are outlined in Ohio Revised Code Section 4117.14 (G) (7) (a-f) as follows.

1. Past collectively bargained agreements, if any, between the parties.
2. Comparison of the issues submitted to final offer settlement [fact finding] 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. The stipulations of the parties.
6. Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining,

mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

During the course of the hearing, the parties had full opportunity to advocate for their respective positions, submit exhibits, present testimony and discussion, and engage in rebuttal of the submissions and arguments of the other party.

## ANALYSIS AND RECOMMENDATIONS

### **1. Article 14, Wages, New Section 2**

The Union proposes an additional \$1.00 per hour wage increase for Sergeants based on administrative duties.

The Employer rejects the proposal.

UNION POSITION: The Union states that employees in the Sergeants bargaining unit are paid an 18% rank differential, but this formula does not adequately address the numerous administrative duties which are assigned. The Union states that there are a number of factors to be considered. Cuyahoga County Deputy Sergeants are paid less than their counterparts in other jurisdictions, and the County is able to easily afford the Union's proposal. The Union cites a 2015 Second Quarterly Fiscal Report (Union Exb. 1) which paints an optimistic picture of County finances. The report states that revenues are higher than predicted. Sales tax revenue is 2.8% higher than estimated. Other Intergovernmental revenue is 7.8% higher than in 2014, and investment earnings are consistent with budget estimates. The Union states that the

19% carry-over is significant, and the ¼% tax for the Medical Mart is no longer necessary for the project. The Union states that the County enjoys a strong bond rating (Union Exb. 2), and Moody's Investor's Service reports that County finances have improved (Union Exb. 3).

The Union states that its \$1.00 per hour proposal would cost the Employer between \$45,000.00 and \$50,000.00 per year which includes roll-up costs. The Union argues that the Employer is easily able to afford the proposal. Additionally, the Union states that the Employer granted additional premium pay for certain duties when it negotiated the collective bargaining agreement with Teamsters Local 436 (Union Exb. 4).

The Union argues that the two relevant comparable jurisdictions in Ohio, based on population and demographics, are Franklin and Hamilton Counties. The pay of Deputy Sergeants in the instant case lags behind their counterparts in these jurisdictions (Union Exb. 6). The pay of bargaining unit Sergeants is generally lower based on the state-wide wage settlement report which is issued by the State Employment Relations Board.

The Union argues further that its proposal is justified based on areas of responsibility and heavy workload. Sergeants supervise the Sheriff Impact Unit which involves areas of high crime, crowd control, issues of terrorism, fugitive investigation and other critical responsibilities. Sergeants must respond to issues of heroin overdose which is almost a daily task, and bargaining unit employees must be prepared for call-out any time of day or night regarding this epidemic. In addition, Sergeants oversee Deputy payroll and overtime assignment. Deputy

Sergeants will play key rolls during the Republican National Convention. The Union emphasizes that this workload is assigned to only fifteen bargaining unit Sergeants. The Union argues that the proposal to increase the wages of Sergeants by \$1.00 per hour is justified and affordable.

EMPLOYER POSITION: The Employer states that generally County finances are stable, but, in order to maintain a balanced and healthy budget, all departments were required to reduce 10% of their expenditures. The Employer presented its Exhibit 8-A which reports that the County General Fund ended 2015 with an operating deficit of \$50.3 million. The report predicts that the deficit will be reduced throughout the year. The Employer argues that, with a budget in flux, the Union's proposal is ill-timed.

The Employer emphasizes internal comparables as a significant factor regarding the Union's proposal. Thirty bargaining units and collective bargaining agreements with Cuyahoga County reflect 2% across the board increases in 2015 and 2016 (Emp. Exb. 8-B). This established pattern is county-wide. In addition, the Employer states that Sheriff Department Deputies, and other Department employees, bargained for an additional ½% equity adjustment in 2015. Due to the rank differential formula, employees in the Sergeants bargaining unit realized both the 2% wage increase and ½% equity increase. The Employer states that this recent history negates any additional wage adjustment being sought in the instant negotiations. The Employer argues that an additional \$1.00 increase would

significantly impact the pattern of bargaining in the Sheriff's Department and across the County.

The Employer argues that members of the Sergeants' bargaining unit also earn significant overtime, and they receive additional monetary benefits. Many earn in the six figures over the year. The Employer states that, in a regional comparison of twelve counties, the wages and rank differential of bargaining unit employees compare well across the area (Emp. Exb. 8-C).

The Employer argues that the Sergeants' Position Description already includes the duties and responsibilities which the Union suggests are most relevant regarding the proposal to increase the wage rate. The Employer states that the proposal cannot be justified based on the Union's argument that the duties of bargaining unit employees have been expanded.

The Employer states that Deputy Sergeants are some of the highest paid employees in the County. There are many opportunities for overtime and work schedules are flexible. In respect to this proceeding, the Employer emphasizes that Sergeants received both the 2% wage increase negotiated by Deputies and the equity increase based on the 18% rank differential. The Employer argues that there is no justification for the Union proposal and urges the Fact Finder to maintain the current wage schedule and pattern of negotiations.

**RECOMMENDATION:** The parties to this dispute make compelling arguments and their positions both have merit. The Employer argues that the Position Description already includes duties and responsibilities which the Union and its members claim

are additional responsibilities and which therefore justifies the \$1.00 per hour proposal. While this is generally true, there is no doubt that the daily work of these law enforcement officers is more intense and complicated. Take for example the immediate response required in cases of heroin overdose. The community is experiencing an epidemic and crisis almost every day and in every corner of the County. Not only Sergeants but all members of the law enforcement arm of the Sheriff's Department are impacted. As the Republican National Convention approaches, the work of training and expectations of difficult crowd control makes the work of this bargaining unit more critical and challenging than in the past. The Employer argues that Sergeants have many opportunities for overtime assignments, and this clearly is true. Some bargaining unit members earn six figures annually. The Union argues that the expectation to be available for critical overtime assignments has a negative impact on personal and family life. This is true. The Union believes strongly that its proposal is justified. The Union argues further that its proposal is very affordable. At the same time the Employer suggests that it must be overly cautious regarding personnel costs. Both arguments are compelling and correct based on evidence presented at hearing.

The Union argues that the wages of Sergeants do not compare well to Franklin and Hamilton Counties, two jurisdictions with comparable population and demographics. The Employer counters that wages of bargaining unit employees compare well with regional sheriff departments. Again, both positions regarding comparables have merit.

The key in this matter, in which competing arguments are both compelling and meritorious, must be the internal pattern of bargaining, internal comparables. The Employer makes a credible argument, supported by its Exhibit 8-B. Across the thirty bargaining units listed, 2% wage increases were negotiated across the County for years 2015 and 2016. This is also the case for the five bargaining units, not including Sergeants, represented by the Ohio Patrolmen's Benevolent Association in the Sheriff's Department. Further, the Employer argues that the additional ½% wage adjustment, which was negotiated for Sheriff Deputies and automatically applied to the wages of Sergeants based on the 18% rank differential, provides fair additional compensation. This argument is compelling. The inclusion of an additional \$1.00 per hour wage increase, or any additional hourly wage increase, would clearly break the pattern of bargaining which has been established in the Sheriff's Department. Future collective bargaining in the Sheriff's Department would be significantly complicated in the event an additional hourly increase was negotiated or awarded for this bargaining unit in the instant proceedings and at this time. The recommendation of the \$1.00 proposal would not be in conformance with the guidelines set forth in the statute (ORC 4117).

New Section 2 is not recommended. Maintain current contract language regarding Article 14.

## **2. Article 15, Hours of Work/Overtime, Section 4**

The Union proposes to increase the accrual of compensatory time from 240 hours to 280 hours. The proposal includes the ability to carry over the accrual from

year to year without expiring at the end of two years. The proposal also includes the statement that cashed out compensatory time was accrued in the current year for pension eligibility issues. Finally the Union proposes that all cashed out time will be paid no later than two pay periods following the request.

The Employer proposes to maintain the cap at 240 hours and to allow for cashing out at the 13<sup>th</sup> or 26<sup>th</sup> pay period, and current contract language for the remainder of the Section.

UNION POSITION: The Union states that compensatory time hours are capped at 240 for Deputies and 320 hours for Lieutenants. The Union argues that its proposal for Sergeants is appropriately in the middle at 280 hours.

The Union states that it is reasonable to allow Sergeants to roll over the bank of compensatory time from year to year as opposed to the two year limit contained in the current Agreement. In addition, the Union argues that cashed out compensatory time should be that which has been accumulated in the current year. This allows for the pay-out to count as wages earned for purposes of retirement credits as allowed by the state pension plan (PERS).

The Union also proposes that the request from a bargaining unit employee, to cash out compensatory time, should be accommodated within two pay periods. The Union states that generally there is slow response, some employees waiting two months or more for the cash payment to appear on paychecks. The Union argues that this is an inconvenience and penalizes employees who may have a financial emergency and are unable to collect the payments in a timely manner.

The Union argues that its proposals meet equity and urges the Fact Finder to recommend the requested modifications to Section 4.

EMPLOYER POSITION: The Employer states that it rejects the various proposals of the Union as this section of the Agreement was the subject of the most recent negotiations and conciliation between the parties. The previous Agreement was executed and implemented late in the year 2015, and many of the provisions contained in Section 4 have not yet been utilized due to new language and recent implementation. The Employer states that it is willing to forego its single proposal and revert to current contract language.

RECOMMENDATION: Discussion at the evidentiary hearing indeed reveals that Section 4 was the subject of the recent conciliation conducted by Arbitrator Harry Graham. The Employer stated that the compensatory accumulation limit had been increased to the current cap of 240 hours, and the current Agreement had just recently been implemented. There was no evidence to suggest that this was not the case. Additionally, the Employer's argument, that certain new provisions of the section had not yet been accessed or utilized due to the newness of the contractual changes, appears to be accurate. This argument is compelling and is the primary reason for a recommendation of current contract language. The parties have not had sufficient time to work with the recent changes to Section 4 to justify making further modifications so soon following execution of the previous collective bargaining agreement. The one exception to this proposition is the Union proposal

that requested cash out be paid out within two pay periods. Evidence indicates that compliance with said requests often takes one, two or more months. The Union's argument regarding an employee's financial emergency is compelling. When the Fair Labor Standards Act was amended to include compensatory time for public sector workers, it was understood that employees possessed the ability to convert this time to cash, with an expectation that said request would be honored in a reasonable manner. The Fact Finder also hears the concern of the Employer in that its payroll function would struggle to meet the Union's demand. The Fact Finder therefore recommends payment no later than three pay periods following an appropriate request of an employee. The recommendation for the second paragraph of Section 4 is as follows.

Each Employee may, at the Employee's option, cash out up to one-half (1/2) of the Employee's accrued unused compensatory time bank one time each calendar year by providing written notice to the payroll administrator. The Employee will be paid no later than three (3) pay periods following proper notice.

### **3. Article 15, Hours of Work/Overtime, Section 5**

The Employer proposed a modification to Section 5 to substitute the words "shall endeavor" for "shall ensure" an equitable distribution of overtime . . . . The Union proposed current contract language.

At hearing, the Employer withdrew the proposal and agreed to the Union's position regarding current contract language. Current contract language is recommended in Article 15, Section 5.

#### **4. Article 16, Court Time/Call-in Pay, New Section 2**

The Union proposes to include a new provision in Article 16 regarding on-call pay for those employees who are required to be available 24/7 on specified days based on assignments which may include officer-involved-shooting investigation, heroin overdose response or other such assignments. Officers required to be on-call are to be paid \$50 per weekday and \$75 per weekend day.

The Employer initially rejected the Union proposal, but, during the evidentiary hearing, its proposal was modified to include an on-call process which includes a requirement that designated employees serve for seven days in an on-call status and are compensated two hours of straight time pay for the entire seven day period. The Employer designates which employees are to be placed in an on-call status, and a number of qualifications are required. Language regarding potential disciplinary action is included.

UNION POSITION: The Union states that certain employees, who serve on specialty units, are in an on-call status with no compensation. The personal and family lives of these designated employees are significantly limited. On-call compensation is very much justified under these circumstances. The Union states that it understands that the Employer decides which employees are assigned to on-call status. The Union cites the Sheriff's Department unit which responds to heroin overdose emergencies. Three Sergeants are assigned to on-call status, each employee being in this status once every three weeks. The Sergeant must respond to a call-out within one hour and must utilize a personal vehicle. The Union argues

that the on-call status severely restricts personal and family life, but there is no compensation for the assignment. Sergeants assigned to the Heroin Overdose On-Call schedule (Union Exb. 8) are not able to work a second job. The Union states that the Employer argues that there is no on-call provision in other Sheriff Department collective bargaining agreements, but the Cellular 911 bargaining unit, represented by the OPBA, provides for a benefit for employees who are in an on-call status (Union Exb. 9). The Union states that Hamilton County (Cincinnati) Sheriff Department employees, who are assigned to on-call, are compensated regular hourly pay for all time in on-call status (Union Exb. 6-B). The Union cites other paid on-call comparable examples. The Union emphasizes the importance of this proposal and urges the Fact Finder to so recommend.

EMPLOYER POSITION: The Employer states that the Union provides information only regarding the Heroin Overdose Unit. Its proposal is too broad and open-ended. The Employer states that the Agreement provides for guaranteed call-in pay when a Sergeant is required to report to an assignment when not on duty time. The Employer states that it is willing to discuss an on-call system during the term of the new Agreement but now submits its proposal at the evidentiary hearing in an effort to resolve the issue. This proposal provides for Employer control; provides for two hours of straight time pay for seven consecutive day assignments; allows for trading with other bargaining unit employees in cases of emergency and with Employer approval; and provides for disciplinary action for failure to follow the standards and

qualifiers listed in the proposal. The Employer suggests that it is willing to adopt this proposal and urges the Fact Finder to give it consideration.

RECOMMENDATION: The Union's argument is compelling. Evidence at hearing suggests that many members of the bargaining unit are called out frequently during non work time but are not in an on-call status. While, as law enforcement officers, they are expected to respond during non duty time in certain circumstances, Sergeants apparently have the ability to turn down a unit assignment for good reason. Nevertheless, this does not appear to be the case regarding the three Sergeants who are assigned to the Heroin Overdose Unit. They are assigned based on a printed schedule to on-call status once every three weeks (Union Exb. 8). Evidence indicates that the Department may, in the future, assign Sergeants to other on-call assignments. Deputy Sergeants may be assigned to special units during the Republican National Convention, and the Employer may place employees in an on-call status. It is clear that the option belongs solely to the Employer regarding the establishment of any and all on-call assignments. With this in mind, the Employer's proposal, which was submitted at hearing, is a good first step, and, while the Union rejected it for a number of reasons, it forms the basis of a recommendation regarding this new provision of the Agreement. This proposal includes qualifiers which would be expected in an on-call contractual provision. While the monetary portion is a good start, the recommendation includes a pay provision of four and one-half hours straight time pay for a seven day assignment. This includes one-half hour straight time pay for five weekday or regular shift days and one hour for the

weekend days or two non work days. The recommendation does not include the Employer's language regarding disciplinary action as it is unnecessary. It connotes a negative as opposed to collaborative approach, and the Employer always the ability to discipline for just cause. The language is not necessary. The recommendation includes the ability of the assigned on-call employee to find a substitute for the entire seven day period or on a day to day basis with approval of the Employer. The recommendation, as set forth below, is a starting point for the parties who have the ability to improve it in subsequent Agreements or in Labor Management meetings pursuant to Article 13. The recommendation is as follows.

Article 16, Court Time/Call-in-Pay/ On-Call

Section 2. The County shall designate whether an Employee is in an on-call status. Employees must remain in a work-ready state while on call, and are prohibited from engaging in activities that impair the ability to perform the required job duties, such as consuming alcohol or use of prescription or over-the-counter drugs that impair work performance. Employees are required to respond to the designated location within one (1) hour of being called upon by the County. Employees are required to keep lines of communication open during on-call periods in case the County attempts to make contact and may be required to carry a County phone or other communication device. Employees are required to follow the standards set forth in this Article.

Section 3. Employees designated by the County to be in an on-call status shall be required to be in an on-call status for a period of seven (7) consecutive calendar days. Employees in an on-call status shall receive a total of four and one-half (4.5) hours straight time for the entire on-call period. These hours of straight time will not be credited as hours worked toward overtime. Employees who may be unable to fulfill their on-call obligations as scheduled shall be obligated to arrange for coverage by a qualified employee. Employees must inform the County in advance and require prior authorization from the County to use substitute coverage either for the Employee's entire scheduled on-call period or on a day to day basis as may be necessary. Approval from the Employer shall not unreasonably be denied. It shall be the responsibility of the assigned on-call employee to make payment to the substitute.

#### **5. Article 29, Promotional Examinations, Section 4**

The Employer proposes to increase from 60 days to 120 days its responsibility to hold a competitive promotional exam following a vacancy in a position above the rank of Sergeant. The Employer also proposes to delete the 70% standard as a passing score. The proposal includes an appropriate governmental agency, in addition to a private entity, for the conducting of a physical agility test.

The Union proposes current contract language.

EMPLOYER POSITION: The Employer states that meeting the 120 day deadline to hold a competitive exam is difficult, and a reduction from a 70% passing grade from one exam to another aids in qualifying applicants in certain circumstances. Its proposals are also made in an attempt to ensure that the testing process is fair.

UNION POSITION: The Union prefers current contract language but is willing to consider a number of the proposed modifications. These were discussed and expressed at hearing. The Union reminds the Employer and Fact Finder that much of the language in this section was the result of the recent award of the conciliator less than one year ago.

RECOMMENDATION: The fact that much of this section of the Agreement was recently resolved at conciliation is important. The parties, and Employer in particular, have had little time to adopt and implement the established standards.

Nevertheless both parties are agreeable to some modification to this provision. The recommendation includes the holding of the competitive exam within ninety (90) days. A grade of less than 70% is recommended with the understanding that a passing grade will not be less than 65%, and employees and the Union must be notified in advance if the passing grade for a particular exam is less than 70%.

Section 4 is recommended as follows.

#### Article 29, Promotional Examinations

Section 4. If a vacancy occurs in a position above the rank of Sergeant and there is no eligible list for such rank, the Employer shall, within ninety (90) days of that vacancy, hold a competitive promotional written examination. After the written examination has been held, the Employer shall certify the names of the persons on the list receiving a passing score of at least seventy percent (70%). The Employer may determine that a passing score may be less than seventy percent (70%) for any one promotional examination but said score shall not be less than sixty-five percent (65%), and notice must be given to employees and the Union prior to the administering of the examination regarding the lower score which shall not be less than sixty-five percent (65%). Upon the certification of the written examination, the Employer may require those persons receiving a passing score to submit to a physical agility examination and/or interview. The physical agility test shall be conducted by a private, independent testing entity. Eligible persons participating in the physical agility test shall be ranked on a point system for each requirement completed. Eligible employees shall then receive a combined score, if applicable, comprised of the written examination, physical agility, or interview, if any.

#### **6. Article 29, Promotional Examinations, Section 5**

The Employer proposes to eliminate Section 5 which requires it to certify, within thirty days, the name of an employee who has been appointed to a promotional position from an existing list.

The Union proposes current contract language.

RECOMMENDATION: Although the Employer did not officially withdraw its proposal, the parties discussed the issue and concluded that current contract language was workable. The recommendation is current contract language.

#### **7. Article 36, Sick Leave, Section 11**

The Union proposes to increase the cash out of sick leave upon retirement from the current cap of 640 hours to 960 hours.

The Employer opposes the proposal and wishes to maintain current contract language.

UNION POSITION: The Union argues that employees have earned accumulated sick leave and should be rewarded at the time of retirement. The Union points to the Sergeants' collective bargaining agreement at Hamilton County (Union Exb. 6-B) which allows for the cashing out of 800 hours. The Union argues that an increase in the benefit is appropriate at this time.

EMPLOYER POSITION: The Employer states that internal comparables do not support the Union's proposal. The proposal therefore should not receive a recommendation.

RECOMMENDATION: The Employer's argument, that internal comparables do not support the Union's proposal, has merit. The Deputy and Lieutenant Agreements provide for a 640 hour cap. Current contract language is recommended.

**8. Article 36, Sick Leave, Section 12**

The Employer proposes that an employee may not utilize compensatory time to cover for sick leave for purposes of the no attendance violation benefit. The Employer proposes further to substitute two fixed six month periods, as opposed to six month rolling periods, in which attendance is monitored for purposes of the benefit (January 1 to June 30 and July 1 to December 31). Finally the Employer proposes to substitute “40 hours of vacation leave” as opposed to the five vacation days benefit for non use of sick leave.

The Union proposes current contract language except that the conversion of the five sick days to five vacations days must occur within two pay periods.

EMPLOYER POSITION: The Employer states that its proposal is one of consistency. Of fifteen Deputy Sergeants, nine converted sick leave to vacation in 2015 (Emp. Exb. 15). The Employer argues that using a comp day to cover for sick leave for purposes of the benefit is inappropriate. And two fixed periods, as opposed to rolling six month periods establishes consistency and structure regarding the benefit.

UNION POSITION: The Union states that certain portions of this Section were negotiated during the most recent negotiations which were concluded last year. There is no need to make wholesale changes during the instant negotiations. The Union states that similar language exists in the Deputies collective bargaining

agreement. The Union argues that the conversion of sick days to vacation often takes many weeks and in some cases months. The Union therefore argues the necessity of its proposal that the conversion take place within two pay periods.

RECOMMENDATION: On its face, the Employer's proposal to prohibit the use of compensatory time to cover for a sick leave day or days for purposes of preserving the attendance benefit seems reasonable. But there was no hard evidence to illustrate specific cases of such usage and inequity. Additionally, the Union's argument, that portions of this section were recently negotiated and therefore should not again be modified, is compelling. The Union has legitimate concern regarding the length of time it takes to convert the five sick days to vacation. The recommendation is current contract language with the exception of the proposal to complete the conversion in a timely manner. Consistent with the recommendation regarding Article 15, Section 4 regarding cash pay out of compensatory time no later than three pay periods, the recommendation here is the conversion not later than three pay periods. The recommendation is as follows.

Article 36, Sick Leave

Section 12. Effective January 1, 2015, any employee who uses no sick leave, and has no attendance violations, as defined by the Employer's attendance policy, for any "rolling" six month period will be permitted, upon the Employee's request, to convert five (5) sick days to five (5) vacation days. Such conversion may occur only twice in any twelve (12) month period and shall be converted not later than three pay periods of the appropriate request of the Employee.

## **9. Article 38, Vacation Leave, New Section**

The Union proposes an additional vacation tier for members of the bargaining unit who attain twenty-seven years of service, 240 hours at an accrual rate of 9.2 hours each bi-weekly period.

The Employer opposes the proposal.

UNION POSITION: The Union states that the current vacation schedule ends at 200 hours with twenty-one years of service in its fourth tier. The Union states that a number of Sheriff Departments provide for a fifth vacation benefit tier of 240 hours including the Counties of Geauga, Hamilton, Lucas, Mahoning and Stark (Union Exb. 13). Cuyahoga County Sheriff Department employees are falling behind. The Union urges the Fact Finder to recommend its proposal.

EMPLOYER POSITION: The Employer states that internal comparables are most significant in a matter of this nature, and they do not support the Union's proposal. The Employer argues current contract language.

RECOMMENDATION: As Conciliator in SERB Case No. 2014-MED-07-0964 between the OPBA and Cuyahoga County Sheriff's Department, Arbitrator Harry Graham discussed a vacation proposal which exceeded internal comparables.

Industrial stability is a significant factor that must be considered by a neutral. History does not show that one group has been able to secure a breakthrough benefit in proceedings such as this. With respect to this issue County employees, represented and non-represented alike, have the same vacation. . . .Further, Unions that have bargained and reached agreement

without the increment sought by the Union in this proceeding will feel aggrieved to put it mildly. The potential for industrial turmoil throughout the County is obvious.

Although this Fact Finder is not in “lock-step” with this principle if there are special circumstances or contingencies to be considered, Arbitrator Graham’s analysis provides guidance for this issue. Current contract language is recommended.

**10. Article 38, Vacation Leave, Section 5**

The Union proposes additional language in Section 5 to reflect that cashed out vacation is taken first from the accrual earned in that year.

The Employer opposed the modification.

RECOMMENDATION: The Union states that its proposal will ensure that the cash payment is reflected as monies earned for purposes of pension credit based on rules of the state pension system. The Employer states that the matter is currently before an arbitrator and the parties are waiting for a decision. Current contract language does not speak directly to the Union’s concern but does not preclude the cash out being designated as current year accumulation. The parties have asked an arbitrator to interpret Section 5, and the award will be binding. Therefore, the recommendation is current contract language.

**11. Article 42, Bereavement Leave, Section 3**

The Employer proposes to reduce the number of paid bereavement days from five to four but to allow an employee to use sick leave to cover the fifth day.

The Union opposes the proposal and argues for current contract language.

EMPLOYER POSITION: The Employer states that, based on recent negotiations with the OPBA, the Deputies bargaining unit agreed to this proposal. Employees continue to enjoy the benefit of five potential days to be utilized in the event of death of family members outlined in Section 2, but one day, if needed, will be deducted from an employee's sick leave bank.

UNION POSITION: The Union is opposed to any modification of this provision of the Agreement. The proposal has a direct and negative impact on the non-use of sick leave benefit. The Union argues for current contract language.

RECOMMENDATION: While the Employer states that the Deputies' collective bargaining agreement contains the bereavement formula contained in its proposal in the instant proceedings, the Lieutenants' Agreement reflects five paid bereavement days. There was no evidence of a pattern across the County in respect to the Employer's proposal. The recommendation is to maintain current contract language.

#### CONCLUSION

The Fact Finder has reviewed the pre-hearing statements of the parties and all facts presented at hearing including exhibits presented during the evidentiary hearing. The Fact Finder carefully reviewed the positions and arguments presented

by each party and the criteria enumerated in Ohio Revised Code Section 4117.14 (G) (7) (a-f).

In addition to the recommendations contained in this Report, all tentative agreements reached by the parties during negotiations and all unopened articles of the Agreement are hereby incorporated in this Report and Recommendation by reference.

Respectfully submitted and issued at Cleveland, Ohio this 10<sup>th</sup> Day of June 2016.

A handwritten signature in black ink that reads "Thomas J. Nowel". The signature is written in a cursive style and is positioned above a horizontal line.

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Thomas J. Nowel, NAA  
Fact Finder

CERTIFICATE OF SERVICE

I hereby certify that, on this 10<sup>th</sup> Day of June 2016, a copy of the foregoing Report and Recommendation of the Fact Finder was served by electronic mail upon Todd M. Ellsworth, Esq., representing the Cuyahoga County Sheriff's Department; Daniel J. Leffler, Esq., representing the Ohio Patrolmen's Benevolent Association; and Donald M. Collins, General Counsel, State Employment Relations Board.

A handwritten signature in cursive script that reads "Thomas J. Nowel". The signature is written in black ink on a light-colored background.

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Thomas J. Nowel, NAA  
Fact Finder

