

**STATE EMPLOYMENT RELATION BOARD
State of Ohio**

In the matter of Fact Finding between:)	SERB Case No.
)	2016-MED-10-1098
OHIO PATROLMEN'S BENEVOLENT)	
ASSOCIATION (Full and Part-time)	
Dispatchers),)	Hearings:
Employee Organization,)	December 12, 2017 and
)	and January 12, 2018
and)	at Warren, Ohio
)	
TRUMBULL COUNTY 911,)	Date of Report:
Ohio Public Employer.)	January 19, 2018

FACT FINDING REPORT

Before Mitchell B. Goldberg, SERB Appointed Fact Finder

Appearances:

For the Union: Jeff Perry, Business Agent, OPBA.

For the Employer: Curtis J. Anthony, Attorney, Manchester, Newman & Bennett

I. Introduction and Background.

The State Employment Relations Board ("SERB") appointed the undersigned as the Fact Finder of this public employment labor dispute on November 6, 2017 in accordance with Section 4117.14(C)(3) of the Ohio Revised Code. The parties agreed to schedule and hold hearings on December 12, 2017 and January 12, 2018 at the County's offices in Warren Ohio. They timely filed their position statements with the Fact Finder and they served each other with their submissions. They engaged in mediation on December 12 and were able to agree upon some of the outstanding issues. They presented oral evidence and submitted documentary exhibits relating to the outstanding and unresolved issues.

The following recommendations on each of the unresolved issues are done on an issue by issue basis. The recommendations consider the factors outlined in Ohio Revised Code Section 4117.14(G)(7). They are summarized as follows: (1) past collectively bargained agreements; (2) comparisons with other public and private employees performing comparable work, while considering factors peculiar to the area and job classifications; (3) the public interest and welfare, the ability of the public employer to finance and administer the proposed issues, and the effects of the adjustments on the normal standards of public service; (4) the public employer's lawful authority; (5) the parties stipulations; and (6) other factors normally or traditionally considered in determining the submitted issues to mutually agreed upon dispute settlement procedures in the public service or in private employment.

The Employer operates a county-wide emergency call-in service (911) that serves jurisdictions within a population of approximately 210,000. The Union is the exclusive bargaining representative for approximately 32 dispatchers who are responsible to receive and process emergency calls from citizens so that rapid responders (police, fire and EMTs) can provide emergency services to the residents and other persons within the jurisdiction. In terms of the public welfare, which is one of the above factors for resolving disputed bargaining issues, the dispatchers are trained individuals who are able to receive, analyze and understand the callers so they can determine the nature and extent of the emergencies, and notify the appropriate responders for needed rapid responses.

The parties were able, through mediation and negotiations to resolve 3 of the outstanding issues, Article 11 (vacation tiers), Article 19 (training rate increase), and Article 18, shift differential. But, the following issues remain in dispute: (1) Article 9, double backs, compensatory time use, call-out system and counting sick time as hours worked; (2) Article 12, personal days/notice/use timing; (3) Article 13, points/forces/statutory reference; (4) Article 18,

wages, PERS pick-up; (5) Article 19, Acting Supervisor Training Pay; Article 21, holiday pay/comp time use/ holiday comp bank; and (7) Article 26, discipline abuse pattern.

The following recommendations hereby include and incorporate into the final CBA all unchanged provisions of the expired CBA, and all tentative agreements reached between the parties during their negotiations and mediation sessions in this proceeding.

II. Economic Evidence.

The economic conditions of Trumbull County and its surrounding communities in northeast Ohio are still affected by the decline in the manufacturing sector of the economy. The low point in unemployment was in 2008 with the beginning of the great recession. It has lagged behind other regions during the recovery that has occurred over the last 10 years. The loss of available jobs produced over a 6% loss in population from 2000 to 2008, and another 4% decline from 2008 to 2016. The decline in population is projected into the future. The present population is slightly above 200,000.

The population loss is undoubtedly connected to the high unemployment rate of 6% and above. Surrounding counties have recovered to the 4%-5% range. The September 2017 figures ranks the Trumbull unemployment rate at 7.9%, the highest rate among Ohio's 88 counties. Previous months were even at higher rates. The poverty rate percentage is at 16.8%, a rate slightly lower than adjacent counties to the north and south.

A major component of the County's revenue is from sales taxes. Collections increased from \$25.8M in 2015 to \$26.3M in 2016. The sales tax rate of 6.75% is lower than Mahoning and Columbiana (7.25%), but prospects for increasing the Trumbull rate are problematic due to the political climate that is against any tax increases. The Auditor estimates that the County will lose 10% of its sales tax proceeds in 2018 due to the loss of state sales taxes on Medicaid insurance policies (MCO Tax Issues), which produced \$890,000 in 2017. The Union believes

that the State's subsidy of the Medicaid tax will end in 2019 and future years, such that the loss would have a minimal effect upon the County's finances during the term of this CBA. The general fund sales tax collections comprise about 40% of the general fund revenue. The year-end balance of the Sales Tax Revenue Fund shows a figure of \$2.4M in 2012 with declines to \$1.373M in 2015, and an increase to \$2.05M in 2016.

Additional revenue sources include property taxes, local government fund payments from the State, fees for services, and monies from the Casino Revenue Fund.. The local government fund revenue has decreased by about \$2M/year beginning in 2013. The County received \$1.16M from the Casino Revenue Fund to the General Fund for half the year in 2017. This is in line with the yearly transfers in 2015 and 2016 of the net transfers from the Casino Fund to the General Fund.

The Union expert's report shows that the County through its management of its expenditures has improved its General Fund carryover reserve balance during the period of 2012 (\$6.3M) to 2016 (\$8.7M), after declines in 2013 (\$5.8M) and 2014 (\$5.7M). It believes the 19.5% carryover reserve in 2016 is higher than a reserve balance of two months of expenditures, which would be at the 16% level. The County believes that a more reasonable standard would be three months of expenditures.

The Union believes that the County's management efforts have produced some positive results that would not adversely affect the County's ability to pay for its contract proposals over the 3-year term (2017-2019). These efforts include: (1) the ability to budget between \$500,000-\$1,000,000 for a contingency account for capital spending and other operations; (2) tax levies for operations and public safety services; (3) sales tax revenue increases due to the improved economy; and (4) increased numbers of manufacturing jobs in the Youngstown-Warren metro

area, notwithstanding the loss of major employers in the County and the loss of the third production shift at the Lordstown plant.

There are two 911 funds under the County Dispatch system. Fund 039, the Emergency Systems Fund, can be used to fund wages and benefits. It is supported by contract payments from the served local communities and transfers from the General Fund. Fund 070, the Wireless Emergency System Fund, receives deposits from restrictive tax revenue and cannot be used to fund wages and benefits. The net balance (revenue less expenses) for the 039 fund from 2013-2016 were \$3,000, \$8,000, \$67,000 and \$220,000 respectively. The County budgeted an increase in 039 for 2017 of \$353,000 (12.7%) above 2016 expenditures (\$2.78M). The budget includes a 6.5% wage increase for dispatchers for 2017. This would include the money for additional staffing of the unit.

III. Unresolved Issues.

1. Article 9 Hours of Work and 2. Article 13 Sick Leave

Each party proposes changes to the overtime work and pay procedures that reflect their respective interests. The County proposes changes that reflect its belief that absences and sick time usage is excessive among the workforce. It believes that the existing number of paid sick days under the contract is excessive, and beyond what is reasonable to fully staff the existing 3 shifts that operate on a 24hr/7day schedule for service to its communities. It proposes to reduce the number of paid sick days from 15 to 10. More than a third of the dispatchers have FMLA certifications, with most of those employees taking intermittent FMLA leaves. The County is particularly concerned about what it believes is the abusive use of sick leave days that are tacked on to the the employees' regular time off. The large amount of sick leave days taken by the employees, coupled with the increased number of sick days taken by adding to the regular time off is creating more overtime work than is reasonably needed.

The County provides voluntary overtime for dispatchers who want to earn extra income. However, because to the number of absences and its need to provide for full-staffing at all times, it has been forced to require mandatory overtime work. The present system forces overtime on a seniority basis, with the less senior employees being forced to work the overtime hours. This is causing a problem for both the County and the employees. The County proposes changes to its discipline system for addressing sick leave abuse, as discussed below, but it proposes both a reduction in the amount of paid sick leave days, changes in the use of compensatory time, and a new technology system for overtime call-outs that will address its concerns.

The Union believes that there is insufficient evidence of sick leave abuse. The employees have used their contractual rights to receive pay during their legitimate illnesses and they are entitled to use their FMLA leave rights. It acknowledges that illnesses have spread throughout the workforce, but this is due to the physical structure where they work and confined nature of their work spaces and duties, such that the use of sick time is beyond the employees' control.

The 15 days of paid sick leave time per year is reasonable compared with other dispatching departments and other internal CBAs. The dispatchers unit in Boardman Twp. provides for 4.6 hours of paid sick leave for each 80 hours of service. The Austintown unit provides for 3.5 hours for every 80 hours of service. Neither of these contract provisions provide for caps. Accordingly, under these contracts, more senior employees will accumulate more paid sick time. For example, under Boardman's CBA, an employee who uses no sick days the first year would earn nearly 15 paid sick leave days in their bank without working any overtime (2080 hrs divided by 80 hour blocks = 26 blocks x 4.6 paid sick leave hours = 119.6

hours divided by 8 hours = 14.95 paid sick days). Austintown's CBA provides for 91 hours a year or 11.375 days of sick leave without accounting for overtime work.

In terms of usage, there is little evidence to show comparisons with other departments. It appears that the employees in this unit have high amounts of FMLA days and sick leave usage compared with Austintown's figures, but there is a difference between usage and sick leave abuse. On balance, however, I believe that sick leave usage and large amounts of mandatory overtime requirements are issues that should be addressed and remedied by taking reasonable measures.

Some disciplinary changes are recommended below. The County proposes to restrict the use of compensatory time to not less than 4-hour increments. It is concerned with the circumstances when employees use one hour of their comp time during their shift, which in turn removes them from the mandatory overtime force list. This produces a staffing selection problem when the particular employees using an hour of their comp time during a shift cannot be forced to work overtime on that shift. They cannot be forced to work overtime until the next workday. The Boardman CBA provides that employees have the option of taking comp time instead of pay for overtime work at the rate of 1.5 hrs of comp time for each hour of overtime work. There is no mention of restricting comp time to 4-hour increments. Austintown converts overtime hours to comp time hours at the same rate (12-hours comp time for 8 hours of overtime work). More importantly, the overtime may be taken on an hour by hour basis.

The Union does not agree with the notion that the County's concerns need to be addressed by reducing paid sick leave time or by bunching comp time usage. Instead, the Union proposes that Section 2 should be amended to provide that all paid leave of any kind should be counted as time worked for computing overtime, except for sick time. It proposes to remove the existing requirement that only actual hours worked count for computing overtime

payments. The Union believes that its proposal would first address its position that the dispatchers are greatly underpaid, a position that is at odds with the County position. However, it believes that if this change was made more employees would volunteer for overtime, thereby reducing the amount of forced overtime that both parties want to curb. The employees are less inclined to volunteer for overtime if they don't receive pay for those hours. The Union believes that employees will be encouraged to work more on weeks that they take their time off. Moreover, pay for more overtime work by counting leave time (except sick leaves) would discourage the use of their available sick leave time.

The current CBA language, however, is similar to the OPBA corrections officers CBA that requires overtime pay for actual work performed or actually worked, and excludes sick leaves, LOAs, workers compensation leave time, compensatory time off and unworked holidays. The supervisors CBA has the same language, as does the CBA for the cooks, secretaries, clerks and maintenance employees.

The Union further proposes that overtime pay should include the times when an employee works more than 8-hours in any 24-hour period. This addresses the times when employees work their shift and then must work another shift after being off for a shift. These types of working conditions, referred to as "double-backs" are disruptive to sleep patterns and lead to more illnesses and more sick time off.

The Company is proposing to install a new technology system that would provide for overtime opportunities to reach employees who are not scheduled for work. Communications would be done by text messaging or emails to cell phones and computers. The intent would be to reduce instances of forced overtime by reaching for employees who are willing to volunteer. The key issue for the Union in agreeing to the new system is the fact that the County wants to

remove seniority as the method for accepting volunteers. Instead, the County wants to select the first unit members who respond to the texts or emails.

RECOMMENDATIONS:

I recommend no changes to the current CBA language for the present time. There are recommended changes to the discipline procedure below that attempts to address the problem of taking excessive sick time off, including on multiple days adjacent to the scheduled time off. However, the number of paid sick leave days is comparable to other dispatcher departments and internal CBAs within the Sheriff's department. The overtime pay for actual time worked is consistent with the other mentioned CBAs. Changing the use of compensatory time to 4-hour blocks is unnecessary at this time as is the need to discontinue double backs that might be required to obtain the required staffing of the shifts. The parties can continue to negotiate over their two proposals (4-hour blocks of comp time against the Union proposal to pay for overtime when employees work in excess of 8 hours in any 24-hour period).

I would recommend the institution of the new technology system for employee notification of overtime opportunities, but not under the County imposed condition that notification is without seniority rights. I believe, based upon my knowledge of such systems that they can be implemented by respecting seniority. The ones that I have become familiar with merely require going through the seniority list with a certain time given for response as one goes down the line. The details and the language needs to be further negotiated, but it is possible to accomplish the speed and efficiency necessary to lower the amount of forced overtime, and still maintain the longstanding fundamental seniority rights that are embodied in all negotiated CBAs, both in the private and public sectors.

3. Article 12 Personal Days

Both the County and the Union have proposed changes to the provisions for taking personal days. The County wants to increase the notice time from at least 2 days in advance to 3 business days prior to the intended personal day. Problems have arisen regarding the scheduling of such days when employee requests are submitted after managers leave on Friday afternoons. This causes a problem for Monday staffings and holidays. The County cites the 3-days notice provision for the County schools as evidencing the reasonableness of its proposal. However, the Corrections Officers CBA and the supervisors CBA ending in 2016 provides for 2-days advance notice. These are shift workers like the dispatchers.

RECOMMENDATION:.

No change in the current contract language.

The County further proposes a change that would decrease the usage of personal leave days in December. Staffing becomes a problem when high numbers of employees take vacations in December and they take many comp days. The high number of call-offs presents an acute staffing problem that needs to be addressed. It proposes paying employees for up to one unused personal day out of the maximum of three if it is not used during the first 11 months of the year.

This issue was not explored in detail at the hearings, but I assume that the Union opposes this change. The matter needs to be negotiated between the parties. If the County cannot provide its required staffing in December due to personal leave requests, it may deny the requests due to these circumstances. Employees must be aware that due to high absences in December, requests should be made earlier in the year to avoid being denied for legitimate understaffing reasons. The County's request seems reasonable on its face, but until the issue is properly explored, I will not recommend a change under the principle that I should do no harm

until I am convinced that the change is necessary and that the parties have negotiated to impasse.

The Union proposes new language that provides for 4 hours of personal time that could be used for emergency last minute requests (within the 2-day window) with no penalties. Employees should not be required to use some other earned time off which can be denied, other than for sick leave time. Using sick leave time exposes employees to discipline for excessive usage.

RECOMMENDATIONS:

Both proposals seem reasonable enough for a trade-off, but the County opposes the Union's 4-hour emergency proposal. Accordingly, unless there is a trade off or some other negotiated solution to each party's concern, I recommend no change to the current language.

4. Article 18 (Wages and PERS)

A. Internal Contracts.

<u>CBAs</u>	<u>Top Hourly Rate</u>	<u>Increase</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
COs	19.845 (2016)		20.195	20.495	20.795
OCSEA -11, Sec.2	17.89 (2016)				
Recorder- Range 4	17.4125 + .35 (2015) + .30 (2016)		.25		
JFS	17.68 + .30 (2016)		17.98 + .30		
CSE- Range 4	17.81 + .25 (2016)		18.0625 +.25		
Treasurer- Range 4	17.7125 +.30 (2016)		17.9625 +.25		
Deputies (FF) (10yrs)			23.06	23.61	24.01
Wardens-Lts. (FF)			27.36 (1.8%)	27.77 (1.5%)	28.185 (1.5%)
Warren City Disp. (2016)	19.58 - Prevailing Rate				

B. External Comparisons.

The SERB Wage Settlement Report shows that the average wage increase percentage for contracts in the Warren/Youngstown region in 2016 was 1.61%. The average for Ohio counties was 2.23% in 2016. Police contracts averaged 2.23% in 2016. The nearby Boardman Dispatchers Unit shows hourly rates for Dispatchers after completion of 9 years of service is \$21.31 for 2017, \$21.74 after 7 years service for 2018 and \$22.17 after 6 years of service for 2019. The Austintown CBA shows pay increases after 3 years of service depending upon date of hire. Those employees hired before 4/1/11 receive \$21.59/hr for 2017, \$22.02 for 2018 and \$22.46 for 2019, reflecting 2% wage increases each year. Those hired after 4/1/11 receive the same pay rates, but Lead Dispatchers at 2 levels receive 12.6% and 17.6% above the rates for full-time dispatchers. The Senior Dispatcher rate (over 10 years of service) receives 5% more than their existing rate of pay upon reaching that status.

The average annual top rate of pay for the dispatchers in Boardman, Austintown and Ashtabula for 2017 is \$44,256. This compares to this Unit's annual top rate of pay in 2016 of \$34,777. The top annual rate of pay in the previous City of Warren CBA for dispatchers in 2016 was \$40,726, nearly \$6,000 more than the top rate in this Unit.

The evidence shows that the cost for a 1% wage increase for the dispatchers would be \$15,830 plus an amount that must be factored in to include the PERS employee contribution of 9%.

The 2016 wages were as follows:

\$16.72/hr for full-time and \$12.66 for part time. Those employees hired after 1/1/14 were compensated as follows:

Length of Service	Hourly Rate
Start	\$12.00
1-year	\$13.70
2-years	\$14.70
3-years	\$16.42
4-years	\$16.72

C. Proposals.

The Union proposes increases for full time Dispatchers to \$17.50/hr for 2017, \$18/hr for 2018, and \$18.50/hr for 2019. Part time Dispatches receive \$13/hr in 2017, \$13.50 in 2018, and \$14/hr in 2019. It proposes new rates for starting pay, after probation, after one year of service and after 4 years of service as follows:

	2017	2018	2019
Start:	\$12.35	\$12.65	\$12.95
Probation:	\$14.75	\$15.05	\$15.35
1-Year:	\$16.47	\$17	\$17.50
4 years:	\$17.50	\$18	\$18.50

In addition, the Union proposes a language change that states: “The new employee will move from whatever starting step determined by the Director, in his discretion, to the next step on the salary scale “which can’t be increased beyond the time between the relevant steps.” This deletes existing language. It contends that the dispatchers are vastly underpaid based upon the above comparisons.

The County proposes a wage increase at each step and the shortening of the duration of the first 2 years steps for employees hired on or after 1/1/18 following the starting pay. The first raise for new hires would occur after 6 months instead of 1 year. The second pay increase would be at the end of 1 year instead of 2 years. Upon ratification, there would be a .35 increase across the board for 2017, .30 for 2018 and .35 for 2019. This proposal is conditioned upon terminating the existing contractual obligation to pay the employees’ share of PERS (9%)

for new employees hired after 1/1/18. It believes that its proposal for terminating the PERS contribution for new employees is made up by its proposed new increased pay rates for starting pay and the shortened steps. Existing employees hired before 1/1/18 would continue to receive their PERS contributions and would also receive the .30 raise for 2018.

RECOMMENDATIONS:

I find that the bargaining unit members are underpaid compared to other employees doing work with similar training and skills, based both on internal and external comparisons.

The following wages should be paid as set forth retroactive to 1/1/17 for the year 2017 and to 1/1/18 for the year 2018:

	Full Time	Part Time
2017	\$17.13	\$12.35
2018	\$17.52	\$12.70
2019	\$17.92	\$13.05

The employees hired after 1/1/14 shall be compensated as follows:

	2017	2018	2019
Start	\$12.35	\$12.65	\$12.95
After 1 year	\$14.04	\$14.39	\$14.75
After 2 years	\$15.07	\$15.45	\$15.83
After 3 years	\$16.83	\$17.45	\$17.88
After 4 years	\$17.13	\$17.52	\$17.92

The Union's proposed language change to Article 18 is not recommended.

D. Article 18, Section C. PERS PICKUP

Under the expired CBA, the County agreed to continue an employee benefit that involved paying a portion of the employees PERS pension pick-up in addition to the amounts that are required of Ohio public employers. It agreed to pay 9% of the employee's share in 2011 and 2012. However, in 2013 the parties agreed that the County's percentage of the employee's share would be only the same amount or percentage that it is paying in the other

County CBAs. The County proposes that its 9% pick-up will be discontinued for employees hired after 1/1/18. It offered, as stated above, an acceleration of the first two pay steps as consideration for its proposal. The Union proposes that the benefit remain at the present 9% level, but it would agree to have the same percentage as that paid by the other County unions. I interpret this proposal as an agreement to have the present percentage raised, lowered or eliminated, if that is done under the other CBAs for the term of this new contract.

RECOMMENDATION:

The latest CBA negotiated between the County and Ohio Council 8 of AFSCME, effective August 1, 2017 through July 31, 2020 in Article 20, Section 8 provides:

The employer shall pay nine percent (9%) of the employee's share of PERS Contribution for those hired prior to January 1, 2018. Employees hired after December 31, 2017, shall pay all of the employee share of PERS and the Employer will pay only the Employer statutory share for such employees hired after December 31, 2017.

It is unclear from the expired CBA, Article 18, Section C, as to the meaning of "Me Too with other Unions" after 2013. Does it mean any County Union or all County Unions? Moreover, does it mean Unions that are comparable with the Dispatchers such as the other safety force Unions, which are Unions that go to conciliation?

Fact Finder Bader considered the issue in her proceeding with the Deputies, Sergeants and Lieutenants. She recommended that "no change be made to the pension pick up at this time."¹ However, the JFS CBA was executed on December 8, 2017, after her Report. Nevertheless, it remains to be seen whether the Fact Finding Report will be sustained in a Conciliation proceeding, or whether the parties will negotiate a change in the PERS County's contribution towards the employees' share.

¹ Carol J. Bader Fact Finding Report, p. 9. (August 24, 2017).

Neutrals are very circumspect when it comes to reducing a substantial long standing employee benefit that was produced through contract negotiations. There must be a compelling economic justification for the change, or some recognizable concession that was made by the employer to justify the change.

I find that it is more reasonable and comparable for this safety force unit to have the PERS contribution benefit mirror the other safety force contracts. Accordingly, the 9% employee share contribution level shall remain until it is changed by the Deputies CBA or some other safety force CBA through a pending mediation, conciliation, or through contract negotiations. Even then, one must consider what if any economic consideration was offered by the County to obtain an agreement to eliminate this benefit. Such consideration must be considered as part of any examination of the “me-too” process or overall “me-too” agreement..

5. Article 19 Acting Supervisor/Training Officer

The expired CBA provided for compensation to employees who perform supervisory duties or who serve as Training Officers. They are compensated at their hourly rate of pay plus 12.5% for all full hours actually worked in that role. The Union proposes to increase the rate to 15%.

RECOMMENDATION:

The evidence warrants an increase in the rate to 15%.

6. Article 21 Holiday Pay

The County proposes to eliminate the holiday compensatory time bank. It contends that this option to take compensatory time produces scheduling and public safety issues at holiday time, particularly at the end of the year holidays. The Union wants to retain the compensatory time option in the current language. It is similar to the the language in the other County CBAs, and it believes that the County’s alleged scheduling problems and public safety concerns have

either not been proven, or the extent they exist they are not substantial enough to change the CBA language that has worked for many years.

RECOMMENDATION:

No change.

7. Article 26 Discipline

Article 26 contains formal disciplinary procedures based upon the principle of “just cause.” It contains the just cause principle of progressive or corrective discipline. The County proposes to add specific language to address what it believes is a serious staffing and operational problem. It proposes a provision that subjects an employee to the progressive disciplinary steps that begins with job counseling when it believes that a pattern of absenteeism had developed with an employee’s use of sick time, personal leave or FMLA leave. The focus is upon the occasions when employees choose to extend holidays, scheduled days off, or vacations on three or more occasions within a 12-months period. The County points to “several” employees who have this type of patterned use of leave time. It believes that its trigger of more than three occasions within a 12-month period is a reasonable way to deal with the problem. This type of manipulation of the leave system forces more mandatory overtime than necessary, which produces more costs, and more strain upon the employees who are forced to work in order to maintain the full staffing requirements of the 24/7 services that are required for dispatching first responders in emergency situations.

The Union believes that the alleged problem does not exist. The high amounts of sick leave time taken by the employees is due to their working in an old building with an old ventilation system. They must work in close quarters with each other so they can follow the traffic from surrounding jurisdictions. The Union has proposed reasonable solutions to the

perceived problem by improving the working conditions, and by providing preventative measures such as flu shots.

Article 15 provides for a comprehensive sick leave policy and Section B contains a no fault attendance policy. Section B.3. provides that no points will be deducted from the 8 points per month for perfect attendance for vacation leave, personal days, court leave, bereavement leave, jury duty, compensatory leave or FMLA. Nevertheless, the County is focusing upon the behavior of a few employees who have shown by their pattern of absences that they take off work by extending holidays, scheduled time off or vacation time.

I find that addressing this issue by applying the first step of progressive discipline with counseling is a reasonable management action to determine if the employees are abusing their leave time. The County's proposed language, however, must be re-drafted to exclude extensions of such leaves that have been approved and extensions that qualify for FMLA leave time. Moreover, the charged employees may defend against the claim of abuse by showing that their extensions were reasonable or otherwise justified by filing grievances.

Date of Award: January 19, 2018

/s/ _____
Mitchell B. Goldberg, Fact Finder

Certificate of Service

The above Report was served upon the following parties/entities on January 19, 2018 by electronic mail:

SERB: serb.mediation@serb.oh.us

Curtis J. Ambrosy: cambrosy@MNBlawyers.com

Jeff Perry: jperry@opba.com

/s/ _____
Mitchell B. Goldberg