

**Before the State Employment Relations Board  
State of Ohio**

**In the matter of**

Licking County Oh 911

Employer

Case No. 17-MED-04-0632

And

Sandra Mendel Furman,  
Fact finder

Communication Workers of America,  
AFL-CIO and its Local 4320

Union

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**Fact finder's Report and Recommendation**

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**Procedural Matters**

The parties had engaged in multiple (9) bargaining sessions for a successor agreement.<sup>1</sup> Many articles were resolved or unchanged. The parties had several issues that were unresolved.

The Fact finder was appointed under SERB processes by email dated April 19, 2018.

The matter was scheduled for hearing by agreement of the parties.

Pre-hearing statements were timely received by the Fact finder and served by each party upon the opposing party prior to the hearing.

There was substantial compliance with OAC 4117-9-05 (F).

The hearing was held as agreed on May 29, 2018 at Baker Hall, a CWA venue located at 4120 East Broad Street, Whitehall, Oh. The County/BCC was

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<sup>1</sup> The current three-year contract expired 12-31-17. Both parties presented a copy of the current contract as an exhibit.

represented by Sheila Cottrell, Employee/Labor Relations Coordinator; Gina Lewis Human Resources Director and Sean Grady, Director of 911 and EMA.

Todd Banks Secretary/Treasurer of the Union and Meredith Lamb, a 911 Dispatcher were the Union bargaining representatives.

The bargaining unit consists of twenty (20) Dispatchers including one (1) part-time Dispatcher.

The Board of County Commissioners (BCC) is the legislative body.

The report is submitted within statutory guidelines.

**HEARING:**

The pre-hearing statements indicated that there were multiple issues remaining for consideration by the Fact finder: wages; longevity pay; increased steps; sick leave; shift differential; personal leave and probationary period.

After multiple bargaining sessions, tentative agreement (TA) was reached but voted down by the Union. A mediator assisted the parties in reaching a second TA; it too failed in a Union vote.

Upon exchange and receipt of the pre-hearing statements it was clear that the parties had re-considered positions previously deemed acceptable in the TAs.

The matter was initially convened in mediation by the Fact finder pursuant to SERB rules and procedures. The mediation was useful to clear up misunderstandings and bring clarity to certain issues that were impeding a settlement.

The Fact finder considered all arguments made orally and in writing and the evidence presented by each party.

The Fact finder had likewise taken into consideration relevant factors set forth in R.C.4117.14 (G) (7) (a-f) and followed the guidelines set forth in OAC 4117-9-05(K). Some of the listed factors were not relevant. Other factors had no evidence presented as to their applicability. Rather than unduly burden the report, the Fact finder will make reference to factors as particularly appropriate.

## **ISSUES DETERMINED BY THE FACT FINDER<sup>2</sup>**

### **I. ARTICLE 12 PROBATIONARY PERIOD**

**Discussion:** The County presented strong arguments in favor of extending the probationary period. It explained that due to the fast paced, high volume nature of the 911 calls received, it takes a long time to evaluate a new hire's suitability for the demands of the position. It pointed out that there is a practice within the County for probationary periods to be one year in duration. The Sheriff's Department Dispatchers have a one year probationary period, as do the comparable counties cited by the County. Full mastery of the training required also takes longer than the six month period previously established. By lengthening the probationary period, the County intends to increase retention and lessen future disciplinary events due to employees not being suited to the job.

The Union presented insufficient countervailing arguments to sway the Fact finder that a 180 day probationary period sufficiently served the valid objective of meeting the public interest for sufficiently trained and tested employees in the critical emergency response functions.

**RECOMMENDATION:** The following language be ratified:

### **ARTICLE 12 PROBATIONARY PERIOD**

**Section 12.1 Requirement To Serve Probationary Period** Every newly hired part-time or full-time employee:

- a) Appointed or hired into a position in the bargaining unit, or
- b) Changing from part-time or full-time within the bargaining unit, or
- c) Being promoted within the bargaining unit;

Shall be required to successfully complete a probationary period. This probationary period requirement shall apply to all individuals hired or employed as a part-time or full-time bargaining unit employee regardless of prior service with Licking County. Time spent in any other capacity than full-time shall not count toward or be credited for probationary period for full-time positions unless expressly granted, in writing, by the Employer at its discretion.

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<sup>2</sup> New recommended language is **BOLDED**.

Section 12.2 Length of Probationary Periods The probationary period shall begin on the first day as a bargaining unit employee receives compensation from the Employer or an employee changes from part-time to full-time status or from full-time to part-time status.

**Newly hired individuals accepting a full-time position shall serve a probationary period of three hundred sixty-five (365) calendar days of continuous service. Newly hired individuals accepting a part-time position shall serve a probationary period of 1040 hours of service, or twelve (12) months, whichever is shorter. Employees who change from part-time to full-time status shall serve a probationary period of three hundred sixty-five (365) calendar days which shall include any time spent in part-time probationary status.**

A probationary employee who has lost work time due to any leaves, illness or injury for more than five (5) calendar days (cumulative) shall have his/her probation period extended by the length of the illness or injury.

Section 12.3 Appeals by Probationary Period Employees A new hire probationary employee may be terminated any time during his/her probationary period and shall have no right to appeal the termination under the grievance procedure of this Agreement or to any other forum, including but not limited to the State Personnel Board of Review. Any part-time employee changing to full-time status, full-time employee changing to part-time status, or any employee promoted to a new classification, who does not pass the probationary period shall be returned to their previous status and/or classification. If the employee files a grievance over the Employer's decision to return him/her to their previous status and/or classification, the burden shall be on the grievant to prove that the employer abused its discretion in making the decision. Said employees shall have no recourse to any other forum, including, but not limited to, the State Personnel Board of Review.

## II. ARTICLE 17 SICK LEAVE

**Discussion:** There was discussion about past issues with sick leave abuse.

Although the County indicated that for the most part the problems had abated, it reaffirmed its posture that sick leave is for illness; it is not a substitute for vacation or personal leave. It indicated prior language exchanging sick hours for personal leave days resulted in unexpected and unnecessary overtime costs to the County when employees rushed in a group to take personal days immediately prior to the eligibility expiration dates. This was not an anticipated outcome when the language was originally negotiated.

The Union pointed out that there were genuine situations where employees lacked sufficient sick leave balances due to the reduced levels in prior collective bargaining agreements to cover recuperation and rehabilitation from surgeries, creating hardships on employees. There is no “bank” system extant that allows co-workers to donate time. The Union also pointed out that other County employees accrue sick leave at a much higher rate: 4.6 hours for each eighty hours of work. It seeks internal parity within the County bargaining units. A final argument by the Union is that sick leave abusers are subject to discipline. Unfairly, employees who need more paid time off for illness are penalized by the actions of a very few. It explained also the reasons for the personal leave “rush” but argued most strenuously for enhanced sick leave accrual.

The Fact finder finds that this subject was an appropriate one to meet in the middle: full parity with other County workers poses too great a cost at this time as a missing Dispatcher is almost inevitably an overtime event. The Fact finder was also convinced that the gambit of clumping personal leave usage - whether deliberate or just a function of the calendar- and perhaps unlikely to ever recur-caused unnecessary costs in overtime. Personal leave was also a scheduling problem within the Department-a fact not contested by the Union.

The Fact finder is aware that certain surgeries such as knee, heart and hip require extensive periods of rehabilitation. For those employees needing more sick leave, the only recourse is disability or unpaid status. It is inequitable for the County to have such a disparity in its workforce entitlement to sick leave. The Union made a convincing argument about internal parity. But to jump up sick leave accrual rates to the Union sought for level of 4.6 hours/pay period in one bargaining cycle is neither prudent nor was deemed supported by the record.

The quid pro quo for increasing sick leave accrual- a very desirable benefit for the employees and a significant cost [if used] to the County- should at least in this cycle be offset by the exchange of hours for personal leave days. In further support of the elimination of personal days is the fact that no other County bargaining unit receives personal days. Based upon records kept by the County, 50% of the unit did not even accrue one personal day. As personal days were

linked to accumulation of sick leave, the incentive for the County to have less sick leave usage through personal leave accrual was not achieved in the last bargaining round.

The addition of personal days was a benefit added last negotiations round. It has not been in the BCC experience a manageable benefit in terms of usage. Management however does recognize the inequities in sick leave accumulation rates. Because of the timing of bargaining and the fact finding hearing, the recommendation is a delayed implementation of both of these changes.

Due to the length of the bargaining process, the implementation date is recommended to be set at 1-1-19. Otherwise, there will be significant payroll and leave usage issues potentially experienced to implement these changes mid-year.

**RECOMMENDATION:** The following language be ratified:

## **ARTICLE 17 SICK LEAVE**

**Section 17.1 Sick Leave Accrual, Payment 2018- All full-time and part-time employees shall accrue sick leave at a rate of 3.1 hours for each completed 80 hour pay period, or prorated amount, to a maximum of 3.1 hours per pay period, for hours in active pay status. All sick leave will be paid at the employee's current base rate of pay.**

**Beginning the first full pay period of January 2019 and thereafter sick leave accrual will be increased to 4.0 hours for each completed eighty (80) hour pay period, or prorated amount, to a maximum of 4.0 hours per pay period, for hours in active pay status. All sick leaves will be paid at the employee's current base rate pay.**

**Section 17.2 Sick Leave Usage** Sick leave will be charged in minimum units of one-quarter hour/fifteen (15) minutes. An employee will be paid for sick leave only for days upon which he/she would otherwise have been scheduled to work. Sick leave payment shall not exceed the normal scheduled work day or work week earnings, or a maximum of eighty (80) hours per pay period, or hours scheduled, whichever is less.

Sick leave shall be granted upon approval of the responsible supervisor for the following reasons: personal illness, pregnancy or related condition, child birth, injury, exposure to a contagious disease which would be communicable to other employees or due to illness or injury, in the employee's immediate family or medical, dental, or optical examinations. For family member illness, pregnancy

or related condition, childbirth, or injury the employee's presence must be medically necessary. Where sick leave is required to care for a member of the immediate family, the Employer may require a physician's certificate to the effect that the presence of the employee is necessary to care for the ill person, or in the case of childbirth and other conditions related thereto during the post-natal period, that the presence of the employee is necessary to care for the employee's wife and family.

After seven (7) occurrences in a one year period to begin the first full pay of January the next sick leave occurrences shall be up to eight (8) hours without pay. That is, the following hours of sick leave use up to eight (8) hours in a calendar year will be without pay. Exempt from sick leave "use" shall be previously scheduled medical appointments when the employee has notified his/her supervisor prior to the requested use. Sick leave used for bereavement shall not count toward occurrences for sick leave use.

Section 17.3 Requests For Sick Leave The employee shall furnish the Employer a standard written signed request on forms supplied by the Employer, to justify the use of sick leave. The payment of sick leave is contingent upon the approval of such statement by the Employer. The exact nature of the cause of sick leave request must be explained by the employee. At the discretion of the Employer, if the employee is absent more than two (2) days and requests sick leave, a doctor's statement may be required.

If an employee is expected to be absent for more than three (3) consecutive work days (on either paid sick leave or unpaid leave of absence) the employee shall submit a written statement from their medical practitioner for the leave request to be considered. The required statement shall specify the reason for the length of the anticipated absence and the expected date of return to work of the employee.

Section 17.4 Reporting Illnesses Employees will be required to report illness according to Department rules.

Sick leave used at the beginning of a shift shall be no less than two (2) hours unless used for a doctor's appointment. Employees shall not use sick leave to cover tardiness or for purposes other than those set forth in Section 17.2.

Section 17.5 Immediate Family For purposes of this Article, immediate family is defined as spouse, child (including step child, child for whom employee is legal guardian), parent (and loco parentis), or parents-in-law or siblings.

Section 17.6 Sick Leave Abuse Sick leave is granted by the Employer in order to prevent undue hardship to the employee. It is not to be considered as or used as personal days or vacation time. Sick leave may be used only for the purposes stated in this Article. Any abuse of sick leave, including falsification of sick leave records, or violation of policies established by the Employer, or any patterned

use of sick leave may result in disciplinary action as provided in Article 11. A regularly scheduled course of medical treatment or appointments for the employee pre-approved by the Employer, which is verified by a physician, and which cannot be scheduled outside of regular working hours shall not be deemed a "patterned use." Employees shall make reasonable efforts to schedule doctors/dentist, etc. appointments outside regular work hours.

Employees failing to comply with sick leave rules and regulations will not be paid and may be subject to progressive discipline pursuant to Article 11.2. Application for sick leave with intent to defraud, including by means of falsification or dishonesty, may result in discipline, up to and including dismissal subject to the discipline provision, Article 11, and refund to the County of salary paid during such sick leave. All sick leave is subject to verification even if approved by a supervisor. Any such leave protected by the Family and Medical Leave Act (FMLA) shall not be considered sick leave abuse.

Sick leave abuse may be indicated by any or all of the following:

- A. Excessive use of sick leave within a twelve (12) month period which has not been substantiated by a physician's or other licensed health care provider's statement;
- B. Use of sick leave as soon as it has been credited to an employee's sick leave balance;
- C. Consistent use of sick leave on the same day of the week;
- D. Consistent use of sick leave on the day(s) before and/or after regularly scheduled days off, holidays or vacations.
- E. Falsification or misrepresentation of the reason(s) for an employee's absence;
- F. Low sick leave balances in relation to an employee's length of service;
- G. Being in unpaid status for whole or part of a day which absence is not covered by the FMLA; and
- H. The utilization of vacation time in lieu of sick time.

Section 17.7 Amount of Sick Leave Conversion at Retirement An employee, at the time of retirement from active service with the County, shall be paid one-fourth (1/4) of the value of his or her earned but unused sick leave credit. The maximum of such payment, however, shall be for thirty (30) days, or 240 hours.

Section 17.8 Qualifications for Retirement Conversion To qualify for such payment, the employee shall have had, prior to the date of retirement, ten (10) or more years of service with the County, and be eligible to receive PERS benefits. Such payment shall be based on the employee's hourly rate of pay at the time of retirement. Such payment shall be made only once and shall eliminate all sick

leave credit accrued by the employee.

Section 17.9 Request for Retirement Conversion Eligible employees retiring from active service shall request such payment in writing in order to initiate the payment process.

Section 17.10 Conversion on Death of Member Employees who die shall be considered to have terminated their employment as of the date of their death, and shall be eligible for such sick leave payment for which they would otherwise have qualified. Such payment shall be made in accordance with Section 2113.04 ORC, or paid to the employee's estate.

Section 17.11 Annual Conversion of Sick Leave Employees who use 24 (twenty-four) hours or less of sick leave in the year beginning with the first full pay period in December each year and continuing until the beginning of the first full pay period of the following December will be eligible for annual sick leave conversion. Such employees may convert, on a 2 for 1 basis, up to 40 (forty) hours of accumulated, unused sick leave. That is, an employee who uses 24 hours or less for the preceding 26 pay periods may convert each December to a lump sum cash payment up to 40 (forty) hours of sick leave to 20 (twenty) hours pay. Employees must submit their request for annual conversion of sick leave in writing, on a form provided by the Employer by December 20 of each year. Payment shall be made by the Employer no later than the second pay period in January. Employees must be employed by Licking County for the entire 26 pay periods to be eligible for the annual conversion. Employees shall be paid at the rate of pay in effect at the time they elect their conversion.

### III. ARTICLE 19 PERSONAL DAYS

Discussion: The Fact finder provided rationale for the elimination of personal days above. Simply put; the trade for more sick leave accumulation is deemed to be balanced in an equitable manner in time off and cost by the elimination of personal days. The internal parity argument was persuasive on both counts.

**RECOMMENDATION:** The following language be ratified:

#### **ARTICLE 19 PERSONAL DAYS**

Section 19.1 Personal Leave In addition to any vacation or holidays, each full-time employee will receive personal days as follows:

Employees are eligible to receive up to forty (40) hours of leave, paid at the member's regular rate of pay, each calendar year and such leave shall not be deducted from their sick leave balance. Such leave shall be based upon the

employee's sick leave balance the first full pay period in January as outlined in the following table:

Sick Leave Balance:	Personal Days:
40 Hours	1 Personal Day(s)
80 Hours	2 Personal Day (s)
120 Hours	3 Personal Day(s)
160 Hours	4 Personal Day(s)
200 Hours or more	5 Personal Day(s)

Section 19.2 Use of Personal Days Personal days off may be taken at any time of the year. Vacation and personal days off may be taken separately or in conjunction with each other. Personal days off must be used in the year that they are earned and will not accumulate. Personal leave days not scheduled at year-end shall be forfeited. Requests must be in increments of at least six (6) hours, at the beginning or end of an employee's scheduled shift. Scheduling of personal days shall not result in overtime.

**The above section will expire December 31, 2018. No personal days shall be provided after December 31, 2018.**

IV. **ARTICLE 28 Wages**

**Discussion:** The Union made strenuous arguments that it had serious morale issues relating to the fact that the other unit of dispatchers working in the County side by side with them in the same workspace were at a significantly higher wage scale. The bargaining unit claimed that their duties and responsibilities were of equal complexity, importance, responsibility. Each of the units were required to perform back-up or overflow duties for the other group. The appointing authority for the other group is the Sheriff, an elected official, and the BCC is also the legislative body.

Evidence at hearing indicated that there were 110,000 incoming calls to 911 in the last recorded annual period. 70% were for law enforcement; 30% for 911 [the bargaining unit]. Of the 30% coming into the unit, 80% of the 30% of total calls received by the 911 Dispatchers were EMS calls [as distinguished from fire calls]. Average time spent on calls by the 911 unit is 2.5 minutes; 10 minutes is the average for the Sheriff's unit. When a 911 dispatcher receives a call involving a police matter it is the protocol to place the caller on hold until the

Sheriff's employees are available to answer.

Union testimony was convincing that the other dispatchers group [Sheriff's employees] was less concerned with helping the 911 group when it needed help than was fair, safe or within the scope of expected performance. However true this appeared to be, the Fact finder would not find these issues regarding alleged lax performance/nonperformance of back up duties by the Sheriff's unit to be relevant for purposes of fact finding. The purported or even acknowledged failure of the Sheriff's department dispatchers to assist in work overflow is a management issue that cannot be addressed by the Fact finder but only by the relevant appointing authorities and /or management personnel.

The Union maintains that the duties of the two groups- the Sheriff's employees and the 911 employees- are substantially similar. Therefore, parity and comparability support a significant increase in wages. It is not helpful either to the morale that proximity of the two groups work stations allows for issues regarding disparities to percolate. [This is meant as an observation only and not a recommendation on any changes.]

The Fact finder cannot and does not agree that sufficient parity exists to support comparable wages. The evidence instead shows that the duties of the Sheriff's dispatchers are more expansive and different. Disparate responsibilities exist sufficient to account for the disparities in base wages. Simply put; the 911 unit handles primarily EMS/Fire calls; the Sheriff's unit handles Police calls. The Sheriff's dispatchers are responsible for LEADS input. The LEADS work is a required certification of the Sheriff's Department Dispatchers; said certification must be continuously maintained. No such requirement is imposed upon the 911 Dispatchers. Although the 911 unit has incidental LEADS involvement, it in no way is a constant, measurable part of the expected duties. The Sheriff's department Dispatchers also must follow EPD protocols; a requirement not imposed on the 911 unit.

The Fact finder did hear sufficient evidence to support several changes: the last offer of wages from the County was 1.5%-1.5%-1.5%. That increase is below statewide SERB averages. Further 1.5% is not sufficient to support

retention- a problem for the unit. Although the County stated that the Dispatchers are already paid much above the median income of fellow County residents, that is not a bar to granting the additional .5% increase recommended. Nor is the Fact finder convinced that the size of counties standing alone makes the County proffered comparables a determinant.

The loss of personal days is a cost savings to the County; the continuation of a reduced level of sick leave [compared to other internal BCC units]; the inherent morale issues with persons similarly titled with important public safety duties working side by side receiving significant wage disparities all support the modest increase recommended from the County's last offer, yet still significantly below the Union's last demand. There has been no argument from the County about ability to pay, despite the long list of capital projects in the works and declining state revenues due to legislation both federal and Ohio based.

Another retention issue was the length of time a dispatcher had to wait before step increases occur. This will be corrected by the recommendation of an addition of a new step 5. Employees have now an expectation of a wage adjustment not only making it past the probationary period but after two years of employment. It provides for "stepping out" at a longer period; enhancing retention incentives: a benefit to both sides.

The County argued at the hearing for elimination of the Shift Lead premium payment. The County stated that the premium pay for that position was previously justified because there were prior periods when no management was available on shifts, thus necessitating a "lead" function and responsibility for a Dispatcher at those shifts. That is no longer the situation as a management person is always available.

As another needed change to the compensation of the 911 unit, the Fact finder heard arguments about adding a shift differential to the second shift. It was undisputed that the second shift takes the most calls. Therefore, a shift differential will permit a more equitable compensation for the increased work load. Both sides supported this additional monetary benefit to the bargaining unit.

In an attempt to balance its fiscal concerns, the County sought to eliminate Longevity. The Fact finder found no support in any of the statutory factors for this “take back.” Longevity supports retention; as mentioned above this has been an issue for the County. The existing longevity language supports the County’s needs as well as rewards employees for loyal service and long tenure.

**RECOMMENDATION:** The following language be ratified:

**Section 28.1 Wages** The hourly wage rates for the employees of the bargaining unit are set forth below. The position of Training Technician shall receive \$1.00 per hour over and above their current step.

	<b>Step 1 Probationary</b>	<b>Step 2 After 12 Months</b>	<b>Step 3 After 18 Months</b>	<b>Step 4 After 30 Months</b>	<b>Step 5 After 48 Months</b>
<b>Second full pay June 2018: 2%</b>	<b>\$17.12</b>	<b>\$18.00</b>	<b>\$18.95</b>	<b>\$20.40</b>	<b>\$20.90</b>
<b>First full pay January 2019: 2%</b>	<b>\$17.46</b>	<b>\$18.36</b>	<b>\$19.33</b>	<b>\$20.81</b>	<b>\$21.32</b>
<b>First full pay January 2020: 2%</b>	<b>\$17.81</b>	<b>\$18.73</b>	<b>\$19.72</b>	<b>\$21.23</b>	<b>\$21.75</b>

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**Section 28.2 Step Progression** Employees shall proceed through the steps in the wage scale for their classification beginning the first day of the first full pay period following the service time requirements for each step. It is understood and agreed that the service time for step progression shall only include the time served by the employees with the 911 Center in the classification provided a newly hired employee with prior service comparable to the job duties of 911 Center bargaining unit employees may, at the Employers discretion, be placed at a step rate higher than the probationary rate (but not higher than the 30 month rate) taking into account a portion of his or her prior comparable service.

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<sup>3</sup> The parties agreed to eliminate prior language regarding additional compensation for performance evaluation ratings. This was not discussed during fact finding.

**Section 28.3 Shift Differential** In addition to their regular hourly rate of pay, employees shall receive shift differential in the amount of \$0.35 per hour for employees who work 3PM-7AM effective upon signing of the Agreement.

Section 28.4 Service Credit In addition to other pay called for herein, members of the bargaining unit shall receive an annual service credit payment based on the number of completed years of continuous full-time service with the Licking County 911 Center.

\$500 annually after eight (8) completed years of service  
\$750 annually after fifteen (15) completed years of service  
\$1000 annually after twenty (20) completed years of services

Payment of service credit shall be made in a lump sum and included in the first full pay of December of each calendar year.

Per IRS and PERS regulations "Service Credit" payments are taxable as income and pensionable.

Section 28.5 Change of Job Duties and Related Compensation Each employee who voluntarily changes job duties into a lower job classification will be compensated at their current seniority level of the new job classification. The Director retains the discretion to adjust the starting rate based on factors including, but not limited to, longevity, performance and employee evaluations. Starting compensation for a lower classification of duties cannot exceed the starting compensation for the next higher job classification.<sup>4</sup>

Section 28.6 Wage Reopener The 911 Center and the Communication Workers of America must both agree to wage opener request.

### **Summary**

In addition to the four recommendations above, it is also recommended that the parties shall have all terms set forth in any TAs reached through earlier rounds of bargaining not previously rejected and those TAs reached through mediation at fact finding as part of their collective bargaining agreement made retroactive to January 1, 2018 **except as otherwise specifically set forth above.**

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<sup>4</sup> Prior to fact finding, the parties agreed to eliminate language in Article 28.5 from the predecessor agreement relating to wage adjustments for employees due to reverting to the 8 hour shift.

All pre-existing terms of the collective bargaining agreement not changed shall be incorporated into the 2018-20 agreement.

Respectfully Submitted,

s/Sandra Mendel Furman\_\_\_\_

Sandra Mendel Furman, Esq.  
Issued in Columbus, Ohio on June 5, 2018

**Certificate of Service**

An electronic copy was also sent to the parties' representatives and SERB.

s/Sandra Mendel Furman\_\_\_\_

Sandra Mendel Furman, Esq.