

**FACT-FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

STATE EMPLOYMENT
RELATIONS BOARD
JAN 27 3 43 PM '97

JANUARY 23, 1997

IN THE MATTER OF:

PORTAGE COUNTY COMMISSIONERS)	CASE NOS. 96-MED-09-0824
AND PORTAGE COUNTY SHERIFF)	96-MED-09-0825
)	96-MED-09-0826
AND)	
)	
OHIO PATROLMEN'S BENEVOLENT)	
ASSOCIATION)	

APPEARANCES

FOR THE EMPLOYER:

Ron Habowski - Representative, Attorney for Portage County
Linda Hastings - Assistant County Prosecutor
Linda Hoover - Assistant Jail Administrator
Duane W. Kaley - Portage County Sheriff
David Doak - Chief Deputy

FOR THE UNION:

Nicholas Codrea, Jr. - Representative, OPBA Staff
Cathy Feigert - Dispatcher
David Harvey - Deputy
Jim Carrozzi - Deputy
Bob Symsek - Corrections
Kevin Howard - Corrections
Sonny R. Jones - Corrections
Don Hall - Corrections

FACT-FINDER:

Joseph W. Gardner, Attorney-at-Law, #0033400
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INTRODUCTION

The parties met at the Portage County Justice Center on January 13, 1997. Pursuant to state law, the parties were given the opportunity to mediate their differences. The parties consented to mediation. Mediation was extensive. Although only one (1) agreement could be reached by and through mediation, the issues and the evidence for both sides were clarified by this mediation session. During mediation, both parties "signed off" on the issue of Article 4; Recognition. A copy of that "sign off" has been attached hereto. When the mediation session was complete, the fact-finding conference was opened and the parties presented evidence.

ISSUE NO. 1 ARTICLE 5 - UNION REPRESENTATION

DISCUSSION

This union is composed of three (3) separate and distinct job classifications. Reasonableness dictates that all occupations have representation with the employer. Therefore, the proposal for a new section 5.01 and new section 5.02 is a reasonable request. As to the last request, the union wants to be permitted to use a total of twenty four (24) paid hours per year to attend OPBA Director's meetings. This is unacceptable. If union officials desire to attend union meetings, it should be at the expense of the union and not at the taxpayers. However, union officers should be able to attend OPBA Director's meetings so long as adequate notice is given. Fifteen days (15) notice is adequate notice.

RECOMMENDATION

It is recommended that the following paragraphs be inserted into the contract:

5.01 The employer agrees to recognize three directors from the Corrections Bargaining Unit A and a total of three directors from the Dispatcher Bargaining Unit B and Deputy, Sergeant and Lieutenant Bargaining Unit C. One Director from Bargaining Unit A and one Director from Bargaining Units B and C combined shall be designated as Chairman of the Grievance/Bargaining Committee.

5.02 The union shall designate, in writing, which employees shall serve in the above capacities.

5.03 The Directors above may, during working hours and without loss of pay, perform the following functions as reasonably necessary:

- 1) Represent employees, when requested and where specifically provided by this Agreement in conferences with the Sheriff or his representatives;

2) Represent employees, when requested, in grievance hearings as defined in this Agreement;

3) Prepare and investigate grievances provided there will be no interruption to the Sheriff's work schedule.

5.04 Union Directors under 5.01 above shall be granted leave to attend OPBA Director's meetings so long as fifteen (15) days notice is given to the Sheriff or his representative.

ISSUE NO. 2
ARTICLE 7, EMPLOYEE RIGHTS - POLYGRAPH

DISCUSSION

To require an employee to submit to a polygraph as a condition of employment is coercion. Consent and voluntariness of both parties are the only times when a polygraph examination should be required. The position of the union should be accepted.

RECOMMENDATION

It is recommended that the following paragraph be inserted into the contract:

7.08 In the course of an Internal Affairs investigation, a polygraph examination will be administered only with the consent of the employee under investigation. If in the course of an internal investigation, the employee has been given a polygraph examination, such examination shall not be used in any subsequent court action without prior agreement of the parties.

ISSUE NO. 3
ARTICLE 7 - RESIDENCY

DISCUSSION

When the first residency rule was enacted into Portage County, all of those people living outside of the county were "grandfathered" in. There has been plenty of notice to all regarding the residency rule. The position of the union, although, conceptually is a good idea, would be extremely difficult to administer. The union's position would probably cause more problems for employer/employee relations and would probably result in the weakening in the residency requirement.

RECOMMENDATION

It is the recommendation that contract contain the current agreement between the parties except increasing the time requirements from twelve (12) months to eighteen (18) months for Sections 8.01 and 8.02.

ISSUE NO. 4 ARTICLE 10 - DUTY HOURS (BREAKTIME)

DISCUSSION

All of the union members now work eight (8) hour workdays. There is no designated time for any breaks, nor any designated time for any lunches. The union members' current practice is to take breaks when the time and circumstances permit. The union members are to "catch as you can".

The union seeks two (2) twenty (20) minutes breaks for dispatchers and correction officers. The union does not seek any type of breaktime for the deputies.

It was discovered, that many of the non-union employees are getting breaks and lunches and these individuals work in the same location as the union workers. By the testimony and by the comments of the union members, no breaks nor any lunch period causes anxiety. This is especially burdensome when the employees would need to relieve themselves or when they desire to have something to eat during the workday.

The employer provided some compelling comparable evidence at the fact-finding conference. In the Northeastern Region, only one county had scheduled breaks. Although there were no scheduled breaks times for the workers in the other counties, this particular proposal seemed extremely important by those who were affected by no scheduled break arrangement.

RECOMMENDATION

It is the recommendation that the following new paragraph should be inserted into the contract:

10.03 Corrections and dispatch employees should be permitted a twenty (20) minute break from duty the first half of their shift and a twenty (20) minute break from duty the second half of their shift. This twenty (20) minute break shall not come at the beginning nor at the end of one's shift. Deputies, sergeants and lieutenants shall continue their current lunch and break practices during the term of this agreement.

ISSUE NO. 5
ARTICLE 11 - WORK SCHEDULES

DISCUSSION

Under this issue two points are being proposed by the union. In the event that an employee transfers from the road to the jail, that employee would appear to be an entry level employee for payment under Article 19 - Compensation. The union's position is if an employee desires to transfer jobs within a department that person should not be penalized by an entry level pay rate. The employer, on the other hand states that the individual is not trained in those new jobs and that individual should start at the entry level rate.

Although police work has become specialized, it is not so specialized that employees working in one division cannot readily adapt to rules and regulations in other divisions. Such transferred employee knows basic police work and also can become experienced in an accelerated time than someone who is new from the academy or is a fresh hire.

The union is also concerned about "disciplinary transfers". The union complains that because of reasons unrelated to job performance, deputies or correction officers are transferred from one division to another. Usually, this situation occurs when somebody is taken from the road and placed in the jail. The union complains that such a "disciplinary transfer" should not occur unless the employer has just cause for said transfer of assignment. It is understood that discipline may be one of the factors for transferring between divisions, management always retains the right to direct the workforce. Such a restriction on the sheriff would force him to prove why he was making changes every time changes were made. The employer has the right to put a person who he perceives as the best person on those jobs he feels they will do the best.

RECOMMENDATION

It is recommended that the following new paragraph 11.04 be inserted into the contract:

11.04 Transfers to divisions within the department may be requested by employees but shall be subject to the approval of the sheriff. Employees transferred under this paragraph 11.04 shall not be considered entry level employees for purposes under Article 19. (Compensation)

ISSUE NO. 6
ARTICLE 13 - VACANCIES AND PROMOTIONS

DISCUSSION

The evidence shows that there is a problem with the time it takes to promote an employee. Promotions are supposed to occur within six (6) months. However, it continues to take over a

year to promote an individual. The union has urged that keeping a list and keeping it updated, would speed up the process. Employer states that it does maintain promotional lists and all such lists comply with such civil service requirements. The employer did put on evidence that because of the administrative difficulties, it becomes expensive and time consuming to keep up these promotional lists.

This problem can only be addressed by an affirmative requirement that these promotional lists are kept up to date and kept available to the employees.

RECOMMENDATION

It is the recommendation that a new paragraph 13.08 be inserted included into the contract:

13.08 Effective July 1, 1997 and thereafter, the employer shall maintain a promotional list of all positions above, deputies, corrections officers and dispatchers.

ISSUE NO. 7

ARTICLE 19 - COMPENSATION

DISCUSSION

As always, compensation of employees is the main issue for both parties. The challenge in these negotiations is that the bargaining unit is comprised of three separate and distinct job classifications. Those job classifications have very different duties and when compared with the same job classifications in other jurisdictions, we must look at the job classifications and not simply the entire bargaining unit.

There are a few items that are undisputed. First, the county does not claim inability to pay as a reason for not granting the pay increase requested by the union. Second, after reviewing all the data, the undersigned has come to the conclusion that the deputies in this county are underpaid. The other two classifications are entitled to an increase, but not in the same amount as the deputies.

It appears that all classifications deserve a significant pay increase simply based upon comparisons with other jurisdictions. The employer has brought up a good point that although all classifications are entitled to pay raises, some classifications are more deserving of higher pay raises than other classifications. The undersigned finds that to be true. The union has remained firm in its stance that since all are members of the same union, all should receive the same percentage increase in income. Although the union's position would remedy the deputies' need of a pay increase, the other classifications would simply have a windfall.

The employer has presented a comprehensive, but complicated proposal that would attempt to remedy the above problem. This approach by the employer, although well thought out and very well presented, may work in the short run, but would have disastrous effects in future contract negotiations. The undersigned is convinced that by awarding different amounts of pay increases to each classification, however, making the increases uniform and constant within those respective classifications, is the only way to solve the above challenges posed by the employer and the union. In this way, employees will be paid a fair wage, none will get a windfall, and there will be uniform increases within each classification. The problems associated with "steps" would be eliminated.

RECOMMENDATION

It is the recommendation that under Article 19.01 that the following be inserted in the contract under 19.01:

Article 19.01 - Effective the first full pay in January 1997, 1998 and 1999, compensation (ie. wages and rank adjustment) shall be paid per the following schedule.

CLASSIFICATION	1997	1998	1999
DISPATCHER - Wage Scale			
Entry	\$20,906	\$22,039	\$ 23,251
1 Year	23,575	24,872	26,240
2 Years	24,259	25,593	27,001
3 Years	24,976	26,495	27,952
4 Years	25,866	27,289	28,790
CORRECTION OFFICERS			
Entry	\$23,073	\$24,457	\$25,924
1 Year	26,097	27,663	29,323
2 Years	26,931	28,547	30,260
3 Years	27,766	29,432	31,198
4 Years	28,571	30,285	32,102
CORPORAL			
Entry	\$31,153	\$33,645	\$36,337
1 Year	32,235	34,814	37,599

DEPUTY

Entry	\$24,457	\$26,414	\$28,527
1 Year	28,184	30,438	32,873
2 Years	29,082	31,409	33,922
3 Years	29,988	32,387	34,987
4 Years	30,807	33,272	35,933

SERGEANT

Entry	\$32,969	\$35,607	\$38,455
1 Year	34,169	36,903	39,855

LIEUTENANT

Entry	\$35,167	\$38,156	\$41,399
1 Year	36,388	39,481	42,836

**ISSUE NO. 8
ARTICLE NO. 20 - ACTING SUPERVISOR**

DISCUSSION

The union seeks to substitute a pay rate for the acting supervisor from the entry wage rate to the one year rate. There appears to be no evidence or justification for this position.

RECOMMENDATION

It is the recommendation that the current contract language remain.

**ISSUE NO. 9
ARTICLE 21 - SHIFT DIFFERENTIAL**

DISCUSSION

The union seeks an increase in the shift differential from 10 cents an hour for the second shift and 15 cents an hour for the third shift to an amount of 50 cents per hour for both second and third shift. Again, the undersigned finds no justification for this increase. Furthermore, the comparison of the other counties in SERB's northeastern district does not justify any type of shift differential for these positions.

RECOMMENDATION

It is recommended that the contract language remain the same.

ISSUE NO. 10 ARTICLE 22 - OVERTIME AND COURT TIME

DISCUSSION

The union requests that overtime be calculated on a daily basis and that overtime be paid when an employee is required to work more than eight (8) hours a day. Furthermore, the union proposes that for purposes of overtime calculation, paid leave, with the exception of sick leave taken during the work period, shall be construed as hours actually worked. It is the undersigned's opinion that overtime should only be paid if an employee works more than eight (8) hours a day and works over forty (40) hours a week.

The county further proposes to eliminate the compensatory time off in lieu of appropriate overtime cash payments. The undersigned agrees with that proposal. If an employee works overtime, that employee should be paid. Comp time was created for those situations where the governmental authority did not have the money to pay the officers for their services. The use of comp time has led to inequities for both the employer and employee.

RECOMMENDATION

It is the recommendation that the language regarding overtime remain the same as in the current contract. However, it is the recommendation of the undersigned that an employee should not receive comp time for any type of overtime work but should be paid at the overtime rate.

ISSUE NO. 11 ARTICLE 23 - LONGEVITY

DISCUSSION

The union seeks an increase in longevity payment. In reviewing the evidence and after reviewing the comparisons with the other counties, longevity payment for the Portage County employees is adequate and is average.

RECOMMENDATION

It is the recommendation that the contract language regarding longevity payment remain the same.

ISSUE NO. 12
ARTICLE 24 - CLOTHING/EQUIPMENT ALLOWANCE

DISCUSSION

It appears that after hearing all of the evidence that the current uniform allowance is adequate for the employees. How the uniform allowance is handed out does cause problems with older employees. It appears that equipment and firearms are the most needed by the employees and this allowance.

RECOMMENDATION

It is recommended that all contract language remain the same except that a new paragraph, to-wit, 24.07 should be included into the contract as follows:

24.07 The following items shall be furnished by the employer exclusive the uniform allowance:

Bargaining Unit A - Corrections:

1. Pepper gas spray and holder

Bargaining Unit C - Deputies and Supervisors

1. Bulletproof vests to be replaced according to manufacturers warranty recommendation

2. Flashlights and batteries

24.07A The employer shall permit the employees in Bargaining Unit C - Deputies and Supervisors unit to carry over not more than \$100.00 of the uniform allowance that is not spent by each employee to the next year for the sole purpose of purchasing firearms used in the course and scope of employment. Furthermore, the purchase of the firearms shall be with the express permission of the sheriff.

ISSUE NO. 13
ARTICLE 2 - INSURANCE

DISCUSSION

The discussion of health insurance is an important topic among all employers, both public and private. When a consumer of any service or product is not concerned about its price, the consumer will not, for the most part, concern himself or herself with the costs of that service. For years, the use of health care of those who had no idea to the costs of the health care, fueled the skyrocketing costs of health care services. It has been found that the best way to curb costs is to

permit consumers to directly participate in the costs of the service. In this case, the employees do pay a 20% co-pay. They are quite aware of the health insurance costs. Furthermore, the employer has not forecasted, with any degree of accuracy, the future costs of health insurance for this employer. The undersigned has reviewed the health care plan of the employees and it is not a Cadillac plan. This is not to say that the plan is not adequate, however, it is not the top of the line. The employer seeks to unilaterally make the decision to impose health care costs upon the employees without any type of bargaining by the bargaining unit. This is unacceptable. Health care insurance is a major part of any Collective Bargaining Agreement and this aspect should be left open to collectible bargaining and not up to the unbridled discretion of the employer or any other union.

RECOMMENDATION

It is the recommendation that the language in the current agreement remain the same.

ISSUE NO. 14 ARTICLE 26 - VACATIONS

DISCUSSIONS

The union seeks to keep the hours of vacation the same, however, decrease the number of years in service in order to acquire increased hours of vacation. After reviewing the evidence, the undersigned sees no justification for making that amendment. However, the union requests that prior service with any political subdivision of Ohio be included in determining credit for vacation pursuant to statutory language of the Ohio Revised Code. This appears to be a good benefit, not only to the employee but also to the citizens of Portage County in that it would attract people who have experience throughout the state.

RECOMMENDATION

It is the recommendation that the current contract language remain the same and that the contract contain a new paragraph, to-wit, paragraph 26.04 to be read as follows:

26.04 Prior service with any political subdivision of the state shall be applicable for determining service credit for vacation according to the provisions of the Ohio Revised Code including Ohio Revised Code, Section 9.44.

ISSUE NO. 15
ARTICLE 27 - HOLIDAYS

DISCUSSION

The union proposes that work on holidays shall be paid at one and one half (1 ½) times the regular hourly rate in cash or compensatory time at the discretion of the employee. Furthermore, the union requests, under the Fair Labor Standards Act, that the hours banked as compensatory time remain separate from the hours banked under the overtime. It is the opinion of the undersigned that payment of overtime should be in cash and not in compensatory time.

RECOMMENDATION

It is the recommendation that the language in the current agreement remain the same.

ISSUE NO. 16
ARTICLE 30 - INJURY LEAVE

DISCUSSION

Because of the "red tape" and bureau delay, it appears that employees, injured on the job, are not receiving their benefits on time. The undersigned understands that neither the employer nor the employee should suffer because of delay in processing worker's compensation claims. However, the employer is in a better position to move things along rather than the injured employee. The employer claims that they have problems with one employee who was filing allegedly false claims. The undersigned understands the predicament of the employer in this situation, however, honest employees injured on the job should not have to suffer because of the dishonesty of one employee.

RECOMMENDATION

It is recommended that Article 30 read as follow:

3.01 When an employee is injured while actually working for the employer and files for Workers' Compensation, he shall be eligible for paid leave, not to exceed ninety (90) days. There will be a five (5) working day waiting period before this provision applies, in which the employee may use sick leave. If the employee received Workers' Compensation Benefits during the period of injury, the benefits shall be paid to the employer and any sick days used during the waiting period shall be returned to the employee to the percentage that Workers' Compensation reimbursed the employer.

3.02 If at the end of this ninety (90) day period, the employee is still disabled, the leave shall be extended for an additional ninety (90) calendar day period, or parts thereof, as may be required by the disability.

3.03 The employer shall have the right to require the employee to have a physical exam by a physician appointed and paid by the employer, resulting in the physician's certification that the employee is unable to work due to the injury as a condition precedent to the employee receiving any benefits under this Article. The designated physician's opinion shall govern whether the employee is actually disabled or not, but shall not govern whether the employer shall extend the period of leave or if the injury was duty related.

3.04 In the event that a claim is denied, any inappropriate payments shall be reimbursed to the county by the employee. Those repayments shall be made in cash by the employee.

3.05 Bargaining unit employees shall continue to accumulate seniority while on injury leave.

3.06 Whenever an employee is required to stop working because of a service connected injury or disability, he shall be paid for the remaining hours of that workday and such time shall not be charged to leave of any kind.

3.07 If an employee on injury leave resulting from either on-duty or off-duty activities is capable of performing light duties, the Sheriff or the employee may request to return from injury leave and perform such light duties.

ISSUE NO. 17

ARTICLE 36 - HEALTH AND SAFETY/COMMUNICATION

DISCUSSION

The county has declared the Justice Center and its grounds to be a non-smoking area. Smoking is prohibited outside. Evidence was introduced that one individual was disciplined because she was smoking inside of her car while exiting the parking lot. In this day and age all parties are aware of the dangers of smoking. Furthermore, unless someone has not watched TV or listened to the radio over the past twenty years, we all know that smoking in confined quarters is, at the very least, disturbing to non-smokers. Good manners should teach that before smoking in a confined area, permission should be requested from all of those inside that area. Because of the decline in good manners over the past several years among the American public, the undersigned can understand the law prohibiting the smoking in closed quarters.

However, smoking outdoors on one's own time is that person's business. If someone pays the price of the automobile, pays to have it maintained and pays to have it fueled, that person should decide whether or not he or she can smoke inside that automobile. In these two last

instances, the law crosses the line. In these situations, the views and opinions of others are imposed upon those who choose to smoke. This deprivation of choice is simply un-American.

The union has requested that the employer have in place a program to provide for tests and inoculations for contagious diseases. This request is too broad. Such a program would require the utilization of skilled professionals. Furthermore, there are literally hundreds of contagious diseases. The county is simply not set up to become a hospital for its employees.

RECOMMENDATION

The current contract language should remain the same and a new paragraph, to-wit, paragraph 36.02 should read as follows:

36.02 The sheriff shall designate areas adjacent to the building where smoking will be permitted by personnel which shall be on the grounds but outside of the building. There shall be no rules governing smoking within one's own vehicle.

Jurisdiction:

The employer has made the argument that this fact-finder does not have jurisdiction to make a recommendation on this subject. It cites the case of The State Employees Relations Board vs. The Youngstown State University, SERB 93-011 61033. In the Youngstown State University case, the employer gave the union the right to have input into the smoking regulation.

SERB found that the union had waived its right and that it had not bargained in good faith regarding smoking.

Subsequently a "zipper clause" was inserted into the Collective Bargaining Agreement stating that the Collective Bargaining Agreement was the sole agreement between the parties. Since the union did not bargain for smoking and since it was not included in the Collective Bargaining Agreement, the union bargained away its rights to smoke.

In this case, the entire contract is at issue. The union has properly made this matter an issue in its position statement and the issue was properly presented by the union at fact finding. The undersigned finds that this fact-finder has jurisdiction to make a recommendation concerning this issue.

ISSUE NO. 18
ARTICLE 45 - TOTAL AGREEMENT

DISCUSSION

The contract currently contains what has been called a "zipper clause". In other words, the contract states that the agreement represents the entire agreement between the employer and the union. The union has indicated that by use of this "zipper clause", it has been harmed with previous dealings by the employer. It cited an example where the "zipper clause" was actually used to negate an established past practice between the parties.

The position of the employer is that the written contract clarifies all expectations of the parties. In other words, if it is not in the contract it is not an agreement.

Had this clause not already been in the contract, the undersigned would not recommend such a clause be added to the contract unless both parties agree.

On the other hand, both parties have already agreed. Both parties have inserted into the contract a "zipper clause". The employer has relied on this clause and it would be unfair to remove the clause.

RECOMMENDATION

The recommendation is that the language in the current contract remain the same.

ISSUE NO. 19
ARTICLE (NEW) - TRAINING

DISCUSSION

The undersigned can think of no better way to spend taxpayers money than the training of those in law enforcement and corrections. Education and training simply makes one a better officer. However, training is a two-way street. Training and education should be required of officers and officers should be encouraged to take this training, however, the officer must bear the cost of some of this training. Neither education nor training should be counted as days worked, nor should an employee be paid his salary during these times of non-mandated training or education. The county commissioners and the sheriff should encourage and develop programs for on-site education and training of its officers and dispatchers.

RECOMMENDATION

It is recommended that a new article entitled Training and Education be included in the agreement as follows:

1. All training required of and authorized for an employee by the employer shall be paid by the employer.
2. The employer shall pay for all necessary reasonable authorized and approved expenses incident to such training for required meals, lodging, parking, mileage, tuition and fees.
3. The employer shall make available to the employees a minimum of sixteen (16) hours of annual training. Such training shall be departmental related and provide training beyond the minimum standards. Request for training shall be in writing to the sheriff or his designee and shall not be unreasonable be denied.
4. Assignments to training notwithstanding, manpower, staffing levels will be maintained at reasonable levels. These reasonable staffing levels will be defined as :
 - a) One supervisor and five (5) road deputies from Unit C,
 - b) Three dispatchers from Unit B,
 - c) A full compliment as defined by state and court mandate in the Corrections Unit A.
5. The department shall provide an on-site workout facility for its employees.

ISSUE NO. 20 ARTICLE 28 - PERSONAL DAYS

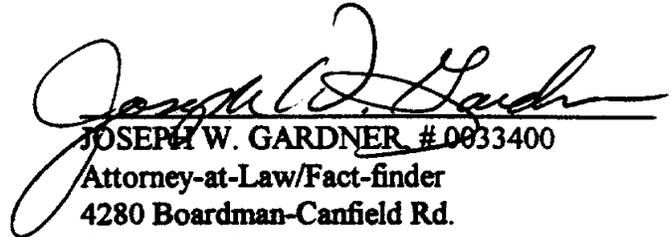
DISCUSSION

The employer has been having a problem with vacation days. It appears that a few employees that have been denied vacation days have been calling an hour ahead of time requesting a personal day. It appears that the department scheduling needs are harmed because of the employees exercising their right to a personal day when a vacation day has been denied.

According to the contract and according to the tradition, personal days may be taken by the employees so long as proper notice is given. Proper notice is one (1) hour before one must report. To allow the employer to demand other requirements on personal days would constitute a concession.

RECOMMENDATION

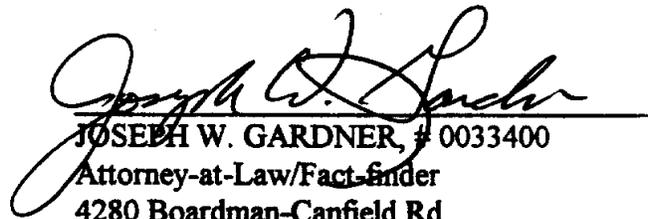
It is recommended that the agreement read as the current language states in the contract.


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CERTIFICATION

A copy of the foregoing Fact-Finding Report was forwarded to Attorney Ronald Habowski, Attorney for Portage County, 215 W. Garfield, Suite 230, Aurora, OH 44202 and Mr. Nicholas J. Codrea, Jr., Business Agent, OPBA, 10 Beech Street, Berea, OH 44017 via Overnight, Certified Mail on the 23rd day of January, 1997.

A copy of the foregoing Fact-Finding Report was forwarded to Mr. G. Thomas Worley, State Employment Relations Board, 65 East State Street, Columbus, OH 43215-4213 via regular U.S. Mail on the 23rd day of January, 1997.


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