FACT FINDING TRIBUNAL
STATE EMPLOYMENT RELATIONS BOARD
COLUMBUS, OHIO

IN THE MATTER OF	)	
FACT FINDING BETWEEN	)	
	)	
GREENE COUNTY SHERIFF,	)	
PUBLIC EMPLOYER	)	
	)	
- AND -	)	
	)	
GREENE COUNTY DEPUTY	)	
SHERIFFS BENEVOLENT ASSOCIATION,	)	**REPORT OF THE**
EMPLOYEE ASSOCIATION	)	**FACTFINDER**

SERB CASE NUMBERS: 2018-MED-12-1259
2018-MED-12-1260
2018-MED-12-1261
2018-MED-12-1262

BARGAINING UNITS:

I. Section 2.2 Bargaining Units. The Deputies Bargaining Unit is as follows:

Included: All Deputy Sheriffs employed by the Greene County Sheriff's Office appointed pursuant to Ohio Revised Code Section 311.04, including Detective, Deputy Sheriff Road, Deputy Sheriff Jail/Paramedic, Deputy Sheriff Jail/Registered Nurse, and Office Deputy as certified by SERB and Case No. 8-REP-09-0142.

II. Section 2.2 Bargaining Units. The Supervisors' Bargaining Unit Agreement is as follows:

Included: All Deputy Sheriffs employed by the Greene County Sheriff's Office of the rank of Sergeant and above, including Deputy Sheriff Jail Sergeant, Deputy Sheriff Road Sergeant, and Deputy Sheriff Lieutenant as certified by SERB No. 8-REP-09-0141

III. Section 2.2 Bargaining Units. The Corrections Officer Bargaining Unit is as follows:

Included: All full-time Corrections Officers employed by the Greene County Sheriff's Office as certified by SERB in Case No. 08-REP-09-140

IV. Section 2.2 Bargaining Units. The Non-Deputies Bargaining Unit is as follows:

Included: All non-Deputized Employees employed by the Greene County Sheriff's Office, including Cooks and Custodians, Registered Nurse, Licensed Practical Nurse and Paramedic as certified by SERB in Case No. 08-REP-09-0139.

MEDIATION SESSION/
FACT FINDING HEARING: **AUGUST 1, 2019; XENIA, OHIO**

FACT FINDER: **DAVID W. STANTON, ESQ.**

APPEARANCES

FOR GREENE COUNTY SHERIFF

Aaron K. Weare, CNA Regional Manager/Shareholder
McKenzie McElroy, CNA Senior Consultant
Michael J. Brown, Chief Deputy
Rhonda Barker, Administrative Manager

FOR THE GCDSBA

Stephen S. Lazarus, Attorney
Alexander N. Beck, Attorney
David Litteral, Vice President
Nathan Tretiak, Treasurer
Jonathan Emory, Sergeant-at-Arms
Rob Rickels, Secretary
Glen Warner, Corrections Representative

ADMINISTRATION

By e-mail correspondence dated April 12, 2019 from Donald M. Collins, General Counsel, State Employment Relations Board, Columbus, Ohio, the undersigned was notified of his mutual selection to serve as Fact Finder to hear arguments and issue recommendations relative thereto pursuant to Ohio Revised Code 4117-14 (C)(3), to facilitate resolution of those issues that remained at impasse between these Parties. The impasse resulted after attempts to negotiate successor Collective Bargaining Agreement(s) proved unsuccessful.

Through the course of the administrative aspects of scheduling this matter, the Fact Finder discussed with Principal Representatives the overall collective bargaining "atmosphere" relative to the negotiations efforts by and between them and learned, what can be best characterized as, an amicable collective-bargaining relationship – one recognizing fiscal

prudence while also seeking/ensuring parity among Employees within the four (4) Bargaining Units as recognized herein.

At the preliminary stages of the August 1, 2019 Fact Finding Hearing, the undersigned met with each Party and then met with the designated Party Representatives privately to discuss whether Mediation efforts may be beneficial. Indeed, those efforts proved fruitful. The Parties have stipulated that all Tentative Agreements reached *prior to* the Mediation Session/Fact Finding Hearing, as identified herein, and those reached *during* the course thereof, be included in the successor Collective Bargaining Agreement(s) upon ratification and approval.

During the course of the Fact Finding Hearing, each Party was afforded a fair and equal opportunity to present testimonial and/or documentary evidence in support of positions advanced. The extensive evidentiary record of this proceeding was presented to the Fact Finder, who has determined such provides sufficient basis to support the issuance of this Report. Those Issues that were the subject of the impasse are identified in this Fact Finding Report for consideration by Greene County Sheriff and the Greene County Deputy Sheriffs Benevolent Association Bargaining Unit(s) represented herein.

STATUTORY CRITERIA

The following recommendations are hereby offered for consideration by the Parties; were arrived at based on their mutual interests and concerns; and, are made in accordance with the statutorily mandated guidelines set forth in Ohio Revised Code 4117.14 (C) (4) which recognizes certain criteria for consideration in the Fact Finding statutory process as follows:

1. Past collectively bargained agreements, if any, between the Parties;
2. Comparison of unresolved issues relative to the employees in the Bargaining Unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

3. The interests and welfare of the public and the ability of the Public Employer to finance and administer the issues proposed and the effect of the adjustment on a normal standard of public service;

4. The lawful authority of the Public Employer;

5. Any stipulations of the Parties; and,

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

THE BARGAINING UNIT DEFINED;
ITS DUTIES AND RESPONSIBILITIES TO THE COMMUNITY;
AND, GENERAL BACKGROUND CONSIDERATIONS

Greene County is located approximately 16 miles outside the City of Dayton and is recognized as part of the Dayton Metropolitan Area. It maintains retail, industrial, residential, and office space located between the Cities of Cincinnati and Columbus and provides many benefits for enticing new businesses to move into the County. Since 2009, Greene County has realized a population growth, as well as, an increase in its per capita income from $38,493 to $46,106. The median household income has also increased, and the County's unemployment rate has dropped from a 2009 10.6% high to 3.9% at the close of 2017. Its largest employer, Wright Patterson Air Force Base, employs over 27,000 military and civilian workers and provides an estimated economic impact of more than $4,000,000,000. It has undergone a recent expansion wherein approximately $339,000,000 of construction and renovation costs have taken place and was recently granted an F-35 Air Systems Mission, which is tabbed to create over 400 new jobs.

Additionally, the City of Fairborn, located within Greene County, has seen construction in three (3) new subdivisions; Brinley Place, Redwood Development and the Bluffs on Trebein. Also located within the County is Wright State University, with an enrollment of approximately 18,000 students; Cedarville University with an enrollment of approximately 3,700 students and

Central State University with approximately 1,700 students, as well as, other higher education institutions, including the Air Force Institute of Technology with over 700 students. As is typical, the County's primary operating fund is the General Fund, which is responsible for funding various Departments, including the Sheriff's Office. The principle source of revenue is taxes collected under the County's 1% Sales Tax. According to the Evidence of Record, the General Fund Revenue has increased since 2014 based on positive Sales Tax revenues. At the close of 2017, the County's General Fund Reserve had a cash balance of $32,105,969, which represented an increase of approximately $9,000,000 or 37% since 2014.

Consistent with the Government Finance Officers Association recommending Municipalities generally maintain two months or 16.67% of annual General Fund expenditures as a reserve, Greene County ended 2017 with a General Fund equivalent to 61.50%. At the end of 2018, the County reported an end-of-year General Fund Reserve balance of $24,239,036 which represents a decrease from 2017 due to capital improvement funding taken from the General Fund Reserve. Additionally, in 2017 it had a $6,000,000 replacement of HVAC systems within the County funded through the General Fund. Despite the decrease in the General Fund Reserve from 2017 to 2018, the General Fund reserve remains equivalent to 42.55% of the 2018 General Fund expenses. Each number exceeds that of the GFOA's recommendation of annual expenses as reserves. Since 2016, the Sheriff's Office has operated under budget and returned approximately $1.1 million to the General Fund. In 2017, the Sheriff's Office returned approximately $269,000 to the General Fund and approximately $1.09 million in 2018. Such equates to approximately $2.5 million being returned to the General Fund budget, representing a significant cost savings to the County.

As evidenced in the extensive Evidentiary Record, the approximate cost of a 1% increase for each Bargaining Unit based on the current roster of Employees, including base wage increases, associated rollups and increases to the Employer Pension Contributions resulting from the base wage increases, the Corrections Bargaining Unit would cost approximately $39,000 for a 1% increase; the Deputies Bargaining Unit cost approximately $53,000 for a 1% increase; the Deputy Supervisors would cost approximately $5,000 based on a 1% increase; the non-Deputies would cost approximately $5,000 for the same 1% increase, which equates to a 1% base wage increase for all four (4) Bargaining Units costing the Employer approximately $102,000.

The Union's comparables include Unionized Patrol Officers and Supervisors in Cities and Townships located within Greene County. Those are: Beavercreek, Bellbrook, Fairborn, Sugarcreek Township and Xenia. Additionally, the Union cites the local Counties of Clermont, Miami and Warren, with respect to Deputy Sheriffs, Deputy Sheriff Supervisors and Corrections Officers since the Parties have agreed to add the Classification of Sergeant to the Corrections Bargaining Unit and such represent a second group of comparables relied upon by the Union. The Union argues, based on the comparables it has provided, it is below the comparable averages for each of the Bargaining Units at issue herein. Such, as it contends, warrants the significant Wage package it proposes to "make-up" for its current positioning. The average wage for 2019 and 2020 among the afore-referenced comparables is approximately 2.9% in 2019 and 2.58% in 2020. It also contends the reliance on the County entities also position it below the averages warranting the higher than 2019/2020 averages as previously noted. It contends the Union Employee's wages are behind the comparable averages which deteriorates Employee morale and causes a significant retention issue for the Employer.

As the record demonstrates as of March 9, 2019, the four (4) Bargaining Units have a combined total of approximately 144 Employees and a total of 40 Bargaining Unit Employees have left the employment of the Greene County Sheriff's Office between 2016 and 2018, wherein 23 resigned and 7 were terminated during their probationary period. Such turnover represents approximately 30% of the total Union Employees. A significant impact has been realized within the Corrections Bargaining Unit which equates to significant additional overtime, restricting Corrections Employees use of Vacation Leave, which allows only one Employee off per shift on Vacation Leave with a decision on a second Employee's request held until 72 hours prior to the requested leave time, i.e., the "72-hour rule". Given the retention issue realized within the Corrections Bargaining Unit, primarily due to higher wages being paid elsewhere, warrants the increases as suggested by the Union.

It is important to note the Parties failed to execute an ORC 4117.14(G)(11) Waiver to, as the Employer asserts, keep the Union bargaining and to abide by the limit on a Conciliator's authority found under the Statute. While the Employer recognizes and asserts it was not opposed to retroactivity, it was seeking to guarantee such through reaching a Tentative Agreement which was not achieved. The Employer emphasizes comparable data must be analyzed based on an "apples-to-apples" comparison concerning Employee's performing Law Enforcement duties within a Sheriff's Office. Its comparable data contains contiguous Counties and Butler County as a representative sample of the immediate areas in those areas and other entities where Employees are geographically most likely to leave and from which the County hopes to recruit quality candidates.

The Sheriff's budget is set by the Commissioners which cannot be changed based on any Sheriff's action. The Employer emphasizes a fair, general Wage increase is prudent in order to

hire and retain qualified Employees. However, it must maintain equity with the other County Employees and be given in a prudent manner recognizing its budgetary constraints. Its increases would be effective upon execution of the Agreement as previously indicated. It asserts the County has, in fact, been making up ground on other jurisdictions and the 3% Wage Scale increase in each year of the 2016-2018 Collective Bargaining Agreements signify increases above Regional and Statewide averages. It is not raising any inability to pay argument, but there are several relative budgetary concerns that must be addressed.

The County's unencumbered carry forward amounts are not the only indicator of its fiscal wherewithal. The County's General Fund finances, of which the Sheriff's Office is one part, would require a review of the County's "Annual Net Position". While the County is properly managing modest growth in its financial position, the net position encompasses the entire financial picture when planning for future budgetary encumbrances. While the County's net position has seen a modest growth from 2015 to 2017, the average net position increase was approximately $2,000,000 per year, or on average 0.9 - 1.15% per year. Such equates to conservative management of its resources and its net growth position is less than the growth realized in Warrant, Miami, or Clark Counties.

To refute the Union's argument, the County or the Sheriff overbudgets and underspends, it asserts less than 3% of the total salary budget has not been spent in the previous three (3) years of the Collective Bargaining Agreement in a given year. A significant portion of the returned monies pertain to Non-Bargaining Unit Employees, or expenses where monies could not be transferred to salary line items. Based on the Union's proposal, it would be required to expend $2.5 million in payroll and rollup costs over the life of the new Collective Bargaining Agreements, whereas its proposal will cost approximately $935,000 in total payroll and related

costs, representing a difference of $1.6 million, or 2.73 times the Employees proposal. A single year of the Union's proposal, when the total Union proposal average per year would cost approximately $850,000, which would be an almost 9% increase over the 2018 Sheriff's Office total payroll cost.

Additionally, the County emphasizes its tax base and its median household income in 2017 was $65,032, an increase of $16,376 since 2000, or a 33.66% increase. It compares this statistic with a Deputy's entry level position which has increased by 55.82%, more than 22% above the median household increase. With respect to Sergeant's, the entry level Sergeant position increased by $25,979.20, approximately 55% more and more than 22% relative to the median household. A Sergeant after one (1) year of service saw an increase of $26,644.80, more than 55% and almost 22% over the median household. It emphasizes these Employees must remain cognizant of both the well-being of its Employees and the citizens of Greene County. The Union's proposals would place money in multiple areas which would significantly increase the across-the-board increases it also seeks. The Road Deputies are the third highest paid based on its comparable jurisdictions at the entry and top steps and utilize the fewest steps to arrive at that top step. When factoring in Longevity, Butler and Warren Counties do not earn that, this comparability is even more favorable. The average increases during the 2016-2018 Collective Bargaining Agreement based on its comparable County Jurisdictions was 2.25% and these Employees received 3% for each year of that Agreement(s). Such is also true with respect to the other Bargaining Units which realized “make-up” as sought by the Union herein.

It emphasizes there is an increase in the economic activity for the Wright Patterson Air Force Base. Over the last seven-year period, dating to 2007 it has fewer jobs at 24,800 versus 27,000 it realized previously and Wright State University, which is the largest education sector

entity in the County has seen a decrease in enrollment since 2010. It recognizes staffing is indeed a statewide concern for Law Enforcement; however, the solution to that problem is not to imprudently spend. Montgomery County is one of the higher paying entities with respect to Corrections Officers wherein 50 of those Employees resigned within two (2) years previous to May 2019 and eight (8) were removed. Such, as it contends, does not necessarily indicate higher pay is not the panacea the Unions would suggest. It maintains it must remain fiscally prudent while also recognizing a fair and reasonable increase would be warranted.

* * * * *

Each Party has provided extensive supporting documentation, both based on internal and external comparability, in support of their respective positions. Comparability, as recognized in the statutory process, does not require the unobtainable exactness Parties strive to suggest; it exists as general benchmarks from which comparisons are made and analyzed. Classification "titles" recognized under Collective Bargaining Agreements generally represent one of the few common themes of comparability. A jurisdiction's population/size, geographic makeup, revenue/funding sources and other budgetary considerations, as well as, the composition of each Bargaining Unit with respect to age and experience levels, must be addressed when analyzing comparability of jurisdictions providing "similar job functions." Each jurisdiction represents a "mixed bag" of attributes which can be helpful in determining comparability even though there are generally no "on-point" comparisons, just similarities to be balanced with other components.

The Fact Finder is required to consider comparable Employer-Employee Units regarding their overall makeup and services provided to the members of the respective communities. As is typical, and is required by statute, the Parties in their respective Pre-Hearing Position Statements and supporting documentation, filed in accordance with the procedural requirements of the

statutory process as outlined in Ohio Revised Code 4117-9-05 (F), have relied upon comparable jurisdictions, entities and/or municipalities concerning what they deemed "comparable work jurisdictions" in comparison to that provided by these Bargaining Unit(s). While there are indeed certain similarities among these entities cited, there are no "on-point comparisons" relative to these Bargaining Unit(s) concerning the statutory criteria. In other words, while Classification/Unit titles may be exact to other entities relied upon as the Classification/Unit title(s) suggest, the overall makeup of the entity will differ with respect to funding sources, geography, structure, staffing, budget, General Fund receipts and expenditures and the makeup of the Employees performing these and other functions. Moreover, internal comparability, while recognized as a "factor" unique in the Statutory Dispute Resolution Process, is but one such factor and is usually not outcome determinative of any issue at impasse between the Parties.

It has been, and remains, the position of this Fact Finder that the Party proposing any addition, deletion, or modification of either current Contract language; or, a *status quo* practice wherein an initial Collective Bargaining Agreement may exist, bears the burden of proof and persuasion to compel the addition, deletion, or modification as proposed. The ultimate goal of this process is to reach a sensible center with respect to whatever recommendations are set forth herein that can be amicably accepted by each Party to the successor Collective Bargaining Agreement(s). Failure to meet that burden will result in a recommendation that the Parties maintain the *status quo* whether such represents a previous policy, Collective Bargaining Agreement provision, or a practice previously engaged in by the Parties.

These Parties met in pursuit of negotiating successor Collective Bargaining Agreement(s) wherein proposals were exchanged; various Articles remained unchanged; and, certain Tentative Agreements were reached regarding numerous Articles recognized in the predecessor Collective

Bargaining Agreement(s). During those negotiations, the Parties tentatively agreed to the following Articles or portions thereof and are to be incorporated as either remaining unchanged or as Tentative Agreements, as found in, and supported by, both the Union and the Employer's respective presentations and accompanying documentation. Inasmuch as this Report addresses four (4) Bargaining Units, references, where appropriate will provide the "title" of the Article and the corresponding Article number. As indicated, those Articles that remained unchanged and/or were recognized a Tentative Agreement, are as follows:

Article 1	Agreement
Article 2	Recognition
Article 3	Scope of Bargaining
Article 4	Classification System
Article 5	Non-Discrimination
Article 6	Management Rights
* * * * *	
Article 8	Association Representation
Article 9	Grievance Procedure
* * * * *	
Article 11	Personnel Files
Article 12	No Strike – No Lockout
Article 13	Seniority and Probationary Period
Article 14	Special Deputies
Article 15	Safety
Article 16	Work Rules

Article 17 Promotions

Article 18 Shift Preference

Article 19 Minimum Staffing

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Article 22 Temporary Transfer Compensation

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Article 25 Holidays

Article 26 Uniforms

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Article 28 Sick Leave

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Article 30 Tuition Reimbursement

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Article 32 Employee Wellness

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Article 34 Residency

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Article 38 Temporary Restricted Duty

Fair Share Fee Article (All Collective Bargaining Agreements)

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The Articles subject to consideration in this Report, as identified by each Principle Representative in their respective Pre-Hearing Statements provided to the Fact Finder prior to the Mediation Session/Fact Finding Hearing, are as follows:

Article 10 Internal Review and Corrective Action

Article 20 Hours of Work and Overtime

Article 21 Shift Differential

Article 23 Call-In Pay

Article 24 Vacation

Article 27 Insurance (Life Insurance)

Article 29 Leaves of Absence (Assault Leave/Injury Leave)

Article 31 Drug Testing

Article 33 Miscellaneous Economic

Article 35 Layoffs

Article 36 Office in Charge Pay

Article 37 Retirement and Return to Work

Article 39 Savings Clause and Duration of Agreement

Bargaining Unit Composition

Wage Scales

I. INTERNAL REVIEW AND CORRECTIVE ACTION ARTICLE 10

EMPLOYER POSITION

The Employer proposes to add language memorializing its right to place Employees on Paid Administrative Leave in all Bargaining Units and to take corrective action in response to incidents and complaints of discriminatory harassment to remain in force and effect for six (6) years, as it contends, in line with the Ohio Revised Code, Statute of Limitation relating to such matters (Ohio Revised Code Section 124.388). It proposes to hold such Employees accountable to the same standards as the Employer regarding this type of Employee conduct. The retention

schedule should not expose the Office to greater liability than the offending Employee. Records of discipline may be utilized for Progressive Discipline for no greater than 36 months without intervening discipline.

This schedule places the Employer in a precarious position regarding potential claims of discriminatory harassment by the harassed Employee and possible liability where an Employee commits discriminatory harassment-related conduct relating in a short-term suspension and then 40 months later commits a second act that creates liability for the Employer. This retention schedule will prevent the Employer from referencing or utilizing such and disciplining the offending Employee.

Ohio Revised Code Section 2305.07, Statute of Limitations applies to legal actions relating to a liability created by statute regarding legal suits alleging discriminatory conduct for a period of six (6) years. This is based on a growing awareness in the public and private sector employment regarding the types of conduct that have gone previously ignored and/or under-reported. This proposal is an attempt to provide rehabilitation of potential inappropriate actors while concurrently protecting the Office from potential liability. Despite the Union's assertion such has not been an issue, the Employer emphasizes it simply cannot wait and see to address such wrongdoing that may bring the Sheriff's Office in disrepute and subject it to liability.

UNION POSITION

The Union agrees to the Employer's language permitting the Employer to place an Employee on Administrative Leave with pay; however, it opposes the Employer's proposal to maintain corrective action taken in response to such complaints of discriminatory harassment based on the timeline proposed by the Employer. It contends the Employer's proposal regarding complaints of discriminatory harassment is unnecessary. Despite its assertion it mirrors the Ohio

Civil Rights Statute of a six (6) year statute of limitation for harassment complaints, and that it needs corrective action related to such harassment complaints to remain in an Employee's personnel file to defend any potential lawsuit within the six (6) year statute of limitations, the Employer has this ability without placing language in the Collective Bargaining Agreements. Even if such records, based on corrective action, are extinguished for purposes of an Employee's personnel file, they exist as a public record. These records are available for use in defending a lawsuit regardless of whether they are removed from the Employee's personnel file. The language as proposed should only apply to records of "discipline" from discriminatory harassment, not action taken in response to such complaints.

RECOMMENDATION AND RATIONALE

While the Fact Finder is indeed mindful of righting historical inequality regarding various issues pertaining to acts of discrimination and harassment, generally and in the workplace, the Fact Finder is also mindful of the distinctions between that contained in statute versus that contained in the Collective Bargaining Agreement and the rights and obligations each places upon the contracting parties. Indeed, it is noteworthy to “safeguard” an entity and protect it from potential liability for such misconduct. The existence of any corrective actions pertaining to such allegations of discrimination and/or harassment are in fact maintained as a public record. While they may not be deemed useable, if you will, in the context under rights and responsibilities arising under the Collective Bargaining Agreement, they nonetheless exist for purposes of such matters.

As set forth in Section 10.1, titled “Investigation Procedure”, Subparagraph (H), the Parties seemingly have reached tentative agreement with respect to the addition of the following language, “The Employer is permitted to place an Employee on administrative leave with pay

during any investigation into employee conduct". As such, paragraph (H) shall be included in each Successor Collective Bargaining Agreement.

The problematic aspect as previously discussed, is addressed in Section 10.3 titled "Corrective Action", specifically Subparagraph (E) which sets forth the following language, "… any record of discipline of any other kind shall cease to have force and effect after 36 months from the date of issuance providing there are no intervening disciplinary actions taken during that time period". This language certainly affords a 36-month "washout" without any intervening discipline during that timeframe to allow the Employee to have his disciplinary history "wiped clean". The same holds true with respect to written reprimands with a life of 24 months with the same caveat regarding intervening discipline, as well as, oral reprimands after a 12-month period. If the Union does not dispute the fact these would be subject to a public records request and they "continue to exist", then no such contractual language is necessary to provide the safeguards being sought by the Employer. As such, with respect to the proposal of the Employer to add language consistent with Ohio Revised Code Section 2305.07 is simply unnecessary to achieve the goals it seeks with respect to potential liability and its ability to have in place a mechanism by which prior corrective action in this realm can be obtained. Accordingly, other than the tentative agreement language contained in Section 10.1, Subparagraph (H), it shall be recommended the remainder of that Article remain at current language.

II. HOURS OF WORK AND OVERTIME
ARTICLE 20

(Relating to 8 – 10 – 12 Hour Shifts Only)
Deputies, Supervisors, Corrections

UNION POSITION

The Union emphasizes each Labor Agreement affords Employees the right to take compensatory time in lieu of compensation for Overtime. Employees may accrue compensatory time to a maximum of 96 hours and any Overtime beyond the 96 hours is paid out in cash. It submits that the maximum accumulation for compensatory time has remained capped at 96 hours since the 2002-2005 Labor Agreement. Based on staffing issues experienced by the Employer in recent years, Employees are reaching the maximum accumulation for compensatory time and having to take payment for Overtime in cash. An increase would allow Employees more leave while simultaneously allowing the Employer to defer large payments of Overtime. The Union notes every relied upon comparable jurisdiction has a compensatory time balance greater than these Bargaining Units. The Cities of Beavercreek and Bellbrook, specifically, have compensatory time accrual maximums of 240 hours; Fairborn 180 hours; Xenia 150 hours; and Sugar Creek Township 100 hours. Warren County Patrol and Corrections enjoy a maximum compensatory time accrual of 120 hours. Based thereon, to increase the Union's compensatory time to 120 hours as proposed, would bring it within the norm based on comparable jurisdictions.

EMPLOYER POSITION

The Employer proposes to maintain current contract language and relies upon contiguous Counties and Butler County as a representative sample of the immediate area where Employees are geographically most likely to leave should they choose to seek/take employment elsewhere. These also include jurisdictions the Employer could hopefully recruit quality candidates to work for the Greene County Sheriff. The utilization of various Cities as comparable, wherein the Employee's responsibilities vary greatly based on the size of the jurisdiction, the funding sources, the autonomy or input on its budgets and the overall mission of these jurisdictions, is simply misplaced. In this regard, all Bargaining Units have relatively uncommon benefits wherein the

Bargaining Unit Employees are permitted to pay out compensatory time in a lump sum annually where most of the jurisdictions cited do not offer this annual benefit.

While it recognizes Overtime is often necessary and many times unavoidable, it must be able to contain costs. Comp time can have a “triple-time effect” on the budget wherein the Employee accrues compensatory time at a rate of 1 and 1/2 times the Employee's hourly rate; that Employee takes compensatory time off; and, is replaced with another Employee in Overtime status, again, 1 and 1/2 times the hourly rate. As a 24-hour operation, Employees regularly and frequently are replaced with Employees who are also working in an Overtime status. These obligations also increase as these Employees are allowed to carry forward compensatory time balances year-to-year and that obligation grows with each wage increase. These Employees earn and accrue, based on current language, the greatest amount of compensatory time. The Union has not established a compelling need to increase the compensatory time accrual threshold. This proposal, along with the other forms of leave proposed by the Union, would only serve to exacerbate the issues associated with decreased staffing levels. With greater amounts of compensatory time off, the Sheriff's Office will need to replace Employees with Employees in an Overtime status, or more likely compensatory time causing the alleged issue to spiral further.

RECOMMENDATION AND RATIONALE

Initially, Article 20, titled “Hours of Work and Overtime” Section 20.14, titled "Leave Cancellation" discussion ensued relative to whether or not this was an issue for consideration in the Fact Finding proceedings. After positions were articulated by each Advocate, it was determined the *status quo* would be maintained and this issue was not subject to impasse by and between the Parties. Accordingly, Section 20.14 shall remain as current contract language and/or i.e., "the status quo".

Section 20.8, titled "Compensatory Time", affords Employees to take such time in lieu of Overtime compensation wherein, according to the Union, it has not been adjusted since the 2002-2005 Collective Bargaining Agreement(s) and such originated based on the consideration of an 8-hour day. As such, 96 hours divided by the "typical" 8-hour shift, equals 12 days; an Employee working a 10-hour shift would receive 9.6 days; and, an Employee working a 12-hour shift would receive 8 days. However, 10- and 12-hour shift Employees work fewer days than a typical 8-hour shift Employee – 4 days for a 10-hour Employee and 3 days for a 12-hour Employee. So, to increase the amount of Comp Time "hours" would necessarily require an increase in how such equates to "days" based on the 8/10/12 hour shift Employees. The Fact Finder is mindful navigating the differences between these 8/10/12 hour shifts can provide scheduling issues for the Employer based on the three (3) types of shifts that exist among these Bargaining Units.

Moreover, based on historical existence of this contractual benefit it appears no modifications/increases to the amount of accrual time has occurred since the 2002-2005 Collective Bargaining Agreement. While the Union proposes an increase from 96 hours of Comp Time to 120 hours, and more importantly consistent with the fact there has been no modification and/or increase with respect to this benefit since 2002-2005 Collective Bargaining Agreement, and in order to position these Employees within comparable averages, an increase is indeed warranted. Based on the comparable data provided, the compensatory time accrual rate shall be increased from 96 hours to 108 hours for each Bargaining Unit regardless of the number of hours worked per shift. Such provides an increase that has not been realized since the afore-referenced Collective Bargaining Agreement and also takes into consideration the comparable data of the cited jurisdictions many boasting levels of accrual much higher than that realized by these Bargaining Units. Moreover, a modest "number of hours" increase and not one based on how

such equates to "days" would prove less impactful to the Employer regarding staffing and an overly adverse impact on its budget.

All references to "96 hours" as contained in Compensatory Time Section of the predecessor Collective Bargaining Agreements shall reflect the modification/increase to "108 hours" as recommended herein.

III. SHIFT DIFFERENTIAL

ARTICLE 21
Deputies, Supervisors and Corrections

ARTICLE 19
Non-Deputies

UNION POSITION

The Union proposes to increase shift differential from 35 cents per hour to 65 cents per hour and proposes to clarify current practice for Patrol Division Employees. It emphasizes that such is an important benefit for those Employees who work the later shifts. Those Employees are more susceptible to negative health effects wherein night work contributes to a higher risk for heart disease and cancer. Moreover, those Officers who frequently work between 8:00 p.m. and 4:00 a.m. had the highest prevalence of metabolic symptoms, including poor heart health and diabetes, a larger waste circumference, elevated triglyceride levels, higher cholesterol, higher blood pressure and higher levels of glucose when no eating occurred. Such also has an adverse impact on the social and family lives of these Employees and such a benefit addresses the inconveniences placed upon these Employees.

The Union relies upon the jurisdictions of Beavercreek, Bellbrook, Sugar Creek that enjoy at least 50 cents per hour whereas Fairborn enjoys 85 cents per hour differential. The increase thereto would not impose a financial hardship on the Employer and would roughly cost

approximately $624 per year, per Employee, working a shift that would qualify for the differential.

Moreover, the language related to the Deputies assigned to Beavercreek Township is antiquated and should be removed to reflect the current practice in the Sheriff's Office to provide *all* Deputies working the later shift of 6:00 p.m. through 6:00 a.m. the shift differential regardless of whether they are assigned to Beavercreek Township, or another. With respect to the Deputy who works the jail from 5:00 a.m. though 5:00 p.m., it proposes language that any shift beginning plus or minus one hour 6:00 p.m. through 6:00 a.m. receive the shift differential.

EMPLOYER POSITION

While the Employer recognizes this Bargaining Unit does not receive the greatest amount of shift premium assigned to shift work, those that do receive a higher shift differential of 5 cents are members of the AFSCME Bargaining Unit who make less than the majority of those within these Bargaining Units. Such was realized following *quid pro quo* bargaining between those Parties. It emphasizes many comparable Counties do not pay a shift premium and the funding between a County Sheriff's Office and the various Cities relied upon by the Union is vastly different. The County Sheriff's Office has its budget set by Commissioners based on the collection of revenue from Sales Tax versus a predictable revenue stream through Local Income Tax.

It asserts the current amounts are fair internally and externally and would cost the Employer approximately $32,500 per year equivalent to another 0.2% of the total wage increase for the various Bargaining Units. Such does not factor in the additional Overtime cost due to the time and one-half multiplier.

It, too, seeks to "clean up/clarify" the language pertaining to shift differential and when it becomes applicable.

RECOMMENDATION AND RATIONALE

With respect to Section 21.3, it appears the Parties are in agreement to delete the sentence that indicates, "those Deputies assigned to Beavercreek Township" should be deleted. Such is recommended.

Moreover, the Parties agree to add the language to the next sentence wherein it states, "shift differential shall be paid to Employees on the later shift of the day, or 6:00 p.m. through 6:00 a.m., plus or minus one (1) hour start time from a 6:00 p.m. start time". Such is recommended.

The remaining issue pertains to the amount of the shift differential. The Union's proposal of 65 cents per hour represents a significant increase above that currently recognized in each Collective Bargaining Agreement, i.e., 35 cents. Given the comparable data relied upon, it is apparent an increase to the 35 cents per hour differential is supported. Accordingly, the shift differential, as it pertains to any reference to the 35 cents per hour as seen in Section 21.1; Section 21.2; Section 21.3; and, Section 21.4 of the Deputies, Supervisors and Corrections Collective Bargaining Agreement, and in Article 19 of the Non-Deputies Collective Bargaining Agreement, shall be increased to 50 cents per hour.

Such is supported by the comparable data relied upon and does not serve to be a financial hardship for the Employer based on the financial data relied upon and presented and will be discussed in more detail with respect to the Wage Scale recommendation in this Report.

IV. CALL IN PAY

ARTICLE 23
Deputies, Supervisors, Corrections

ARTICLE 21
Non-Deputies

UNION POSITION

The Union emphasizes Call-In Pay compensates Employees for the inconvenience of having to come in work at a non-scheduled time. They are disconnected from their regular work hours and is recognized as time for work assigned by the Employer or his designee and performed by an Employee at a time disconnected from his normal scheduled hours of work. Current Contract language provides for a minimum of two (2) hours straight time pay and the Employee receives the two-hour minimum regardless of whether the Employee works the two (2) hours. If an Employee works more than two (2) hours, the Employee is paid for all additional hours worked.

Of the jurisdictions relied on by the Union, Beavercreek recognizes 4 hours at Overtime rate, Bellbrook recognizes 3 hours at the Overtime rate; Sugarcreek recognizes 3 hours at the Overtime rate; Fairborn recognizes 3 hours at the Overtime rate; Xenia recognizes 2 hours at straight time; Clermont Corrections and Patrol 3 hours at Overtime rate; Warren Corrections and Patrol 2 hours at straight time; and, Miami Township at 2 hours at the Overtime rate for Corrections and Patrol. The Union's proposal to increase the Call-In Pay to 3 hours would align with other contractually recognized benefits such as those Employees required to attend Court outside their regular shifts and are compensated a minimum of 3 hours pay. Such should be consistent with Call-In Pay as both benefits compensate Employees for the same inconvenience factor to work and disconnect from their normally scheduled hours.

EMPLOYER POSITION

The Employer proposes to maintain the current threshold for Call-In Pay premium. It emphasizes these Employees are already compensated for the time at a fair rate for the possible

intrusion into their personal life as a Law Enforcement Employee. Should an Employee actually work in excess the amount of time designated in the Collective Bargaining Agreements, the Employee will receive more than the amount of time specified. Based on its comparable jurisdictions, the amount of such pay varies, and the current threshold is well within the bounds of such comparable jurisdictions relied upon. Based on these comparable jurisdictions, the average is between two (2) and three (3) hours, respectively.

RECOMMENDATION AND RATIONALE

Based on the comparable data relied upon, it is hereby recommended that the Call-In Pay minimum be increased from two (2) hours to three (3) and where that Employee who is called in works more than three (3) hours, they will be paid for the actual hours worked at the Employee's applicable *straight-time rate*. (emphasis added) This takes into the consideration the increase, obviously, in the number of hours for the minimum for Call-In Pay. The remaining language contained therein shall remain unchanged. Such is supported by the comparables provided and does not seemingly provide an overly adverse economic/financial obligation upon the Employer.

V. VACATION

ARTICLE 24
Deputies, Supervisors, Corrections

ARTICLE 22
Non-Deputies

UNION POSITION

The current Collective Bargaining Agreements provide Employees with less than one (1) year of service receive no Vacation; Employees with one (1) to less than eight (8) years of service receive 80 hours of Vacation; Employees with eight (8) years of service and less than 15 years of service receive 120 hours of Vacation; Employee's with 15 years of service and less than

25 years of service receive 160 hours of Vacation; and, Employees with 25 years of service, or more, receive up to 200 hours of Vacation.

The Union proposes to add a Step to the Vacation accrual scale at 20 years which would allow Employees with 20 years of service, or more, to accrue 200 hours of Vacation, thus deleting the current 25-year Step and replacing it with a 20-year Step to receive the same number of hours of Vacation. Moreover, it proposes to clarify language for accumulation of Vacation wherein under the current accumulation provision, the Employer has the discretion to allow Employees to carryover Vacation to a maximum of three (3) years the maximum accrual rate. Despite this language, the Employer allows Employees to carryover Vacation of a maximum three (3) years the Employee's accrual rate at the Employee's option. The Union proposes language that would reflect this practice.

In support thereof, it asserts the minimum service time requirement in Ohio for Safety Force Employees to retire with full pension benefits is 25 years. Employees under the current accrual scale may not reap the benefits of a 200-hour Vacation accrual at 25 years. In dropping the accrual to 20 years would allow these Employees to benefit from a 200-hour accrual for at least five years before reaching the minimum service time for retirement. A 200-hour Vacation accrual at 20 years is also in line with several external comparables and three (3) of the Union's Greene County comparables have Vacation accruals at or near 200 hours after 20 years of service. The City of Beavercreek, the City of Bellbrook and the City of Xenia have such accrual rates. It asserts that given the Employer's financial condition; such would not have an adverse impact based on an Employee's right to accumulate an additional 40 hours of Vacation after 20 years of service. Such would also allow Employees to benefit more from this Vacation accrual than their Law Enforcement counterparts.

Additionally, the Union proposes language to clean up the accumulation of Vacation hours to reflect current practice wherein Employees are allowed to accumulate Vacation up to a maximum of three (3) years at the Employee's accrual rate at the Employee's option. Its language would clarify the current practice and would bring it in line with its external comparables.

EMPLOYER POSITION

The Employer proposes to maintain current Contract language since these Employees are already accruing Vacation leave at the rates determined appropriate by the State of Ohio through the codification of Ohio Revised Code, Section 325.19. Based on external and internal comparables, these Bargaining Units are in line with the Vacation leave benefits of surrounding Counties and geographically relevant Cities. This proposal, along with other forms of Leave proposed by the Union would only serve to exacerbate the issues associated with increased staffing levels. With greater amounts of Vacation time off, the Sheriff's Office will need to replace Employees with those earning Overtime, or more likely, Compensatory Time, which would only increase staffing deficiencies. Moreover, the Union's contention Employees in Law Enforcement may not reap the benefit of a 25-year Step as they become eligible to retire at 25 years, presumes that Employee has met the age requirements to retire after 25 years of service. For any Employee hired at age 27 or younger, he or she will have the opportunity to utilize Vacation time earned at the 25-year step.

RECOMMENDATION AND RATIONALE

With respect to Section 24.4, Paragraph ©, titled "Accumulation", it is hereby recommended the language, "Employees may not accumulate Vacation leave in excess of the accrual for three years. Such excess leave shall be eliminated from the Employee's leave balance", shall be retained and included in the Successor Collective Bargaining Agreements. The

language starting with “Vacation” and ending with “circumstances” shall be deleted. Additionally, this “new” language as indicated, "however, the Employee may permit Employees to accrue Vacation in excess of the accrual for three years" seemingly is consistent with current practice within the County and is recommended for inclusion in each Collective Bargaining Agreement.

The Union's proposal to eliminate the 25-year Step set forth in the Section titled, "Entitlement" wherein an Employee with “25 years or more service completed” and received 200 hours of Vacation leave, would be deleted/modified and in its place at “Step 5”, have the following language: "20 years of service or more completed - 200 hours," is not recommended. This proposal would, in the opinion of the Fact Finder, would adversely impact staffing needs and levels which ultimately would be addressed with, in most situations, Overtime compensation.

While the immediate impact thereof may not be realized for some time, it nonetheless serves as potential for increasing the Employer's outlay of cost. Moreover, based on other financial enhancements set forth in this Report, there exists no compelling evidentiary basis for recommendation of the Union's proposal relative to the “Entitlement” Section.

For purposes of housecleaning, it is indeed recommended the Parties memorialize that which is seemingly practice in the County of permitting Employees to accrue Vacation in excess of the accrual for three (3) years. Other than that recommended language modification, the remainder of the Article pertaining to Vacation shall remain *status quo.*

VI. INSURANCE

ARTICLE 27
Deputies, Supervisors, Corrections
ARTICLE 25
Non-Deputies

UNION POSITION

The Union proposes to increase the Life Insurance, with Accidental Death and Dismemberment coverage, for all full-time Employees in each Bargaining Unit from $25,000 at no cost to Employees to $50,000, which as it contends, is provided to non-Bargaining Unit County personnel. The Union emphasizes the Parties discussed an increase to $50,000 which the Employer indicated would cost approximately $3 per month, per Employee. The annual cost to Employer would equate to approximately $5,000. The Union emphasizes the Employer currently provides non-Bargaining Unit Personnel with $50,000 coverage and these Bargaining Unit Employees work in more hazardous conditions than non-Bargaining Unit personnel. The Employees should receive that benefit as well.

Moreover, the Union asserts the Employer advised newly hired Union Employees they are covered at a rate of $50,000, that if true, the Union is not aware. If they are indeed providing this to new hires, the same amount of coverage should be provided to the current Bargaining Unit Members.

EMPLOYER POSITION

The Employer proposes to maintain current contract language and emphasizes the collective bargaining process, by nature, is *quid pro quo* negotiations. While the Union has proposed a myriad of economic increases and steadfastly opposes the Employer's desired language changes within other Articles, this benefit is already granted to Employees at zero cost to them and as such any increases are unacceptable for the Employer to absorb further cost without receiving something in return, i.e., *quid pro quo*.

RECOMMENDATION AND RATIONALE

Indeed, during the course of the Mediation Session/Fact Finding Hearing, the Parties engaged in discussions concerning this Issue, as well as, other Articles at impasse and the Undersigned did not gather this was 1) a significant cost to the Employer; or, 2) was it inconsistent with that apparently being provided to new hires and other County employees? It is hereby recommended Life Insurance with Accidental Death and Dismemberment Insurance coverage, as set forth in the Section titled, "Life Insurance", be increased from $25,000 to $50,000 as proposed. Such does not represent a substantial economic burden to the Employer based on its assertions such equates to a $3 per month, per Employee equating to approximately $5,000 annually. Moreover, if such indeed represents current County practice for non-Union Employees and "new hires", such should be consistent for *all* Employees. Additionally, Safety Forces Employees perform job duties which are inherently more dangerous than non-Safety Force positions, thus justifying this increased coverage.

VII. LEAVES OF ABSENCE - ASSAULT LEAVE/INJURY LEAVE

ARTICLE 29
Deputies, Supervisors, Corrections

ARTICLE 27
Non-Deputies

UNION POSITION

The Union proposes to expand Assault Leave to include paid Injury Leave wherein Employees would be eligible to receive paid time off for all injuries sustained while on duty not just those caused by a third party. It also proposes increasing the time available for paid Assault Leave or Injury Leave to 2080 hours over the current seven (7) days or 56 hours. It emphasizes Safety Force Employees work in hazardous environments where the potential for injury comes both from third parties and accidents while discharging their duties. For example, an Employee

was injured while responding to a fight in the Jail wherein the Employee slipped and fell to the floor and was knocked unconscious. That Employee missed time from work as result of the injury and did not receive paid time off under the current language since the injury was not deemed to be the result of an act of a third party. Additionally, a Deputy was injured responding to a call for service and had a vehicular accident. He was injured on duty and missed time from work; however, he was not paid for his missed time off.

The Union relies on the jurisdictions of Beavercreek, Bellbrook, Sugarcreek, Fairborn, Xenia, Clermont Corrections, Miami Patrol and Corrections and Warren Patrol and Corrections. It emphasizes each external comparable extends paid injury leave to injuries suffered on-duty not just those sustained from an act by a third party. Additionally, the current, available hours of 56 is well below the external comparables.

EMPLOYER POSITION

The Employer proposes to maintain current contract language. It emphasizes many of these Bargaining Units were formed after the initial certification of the Deputies Bargaining Unit and those newer Bargaining Units adopted many of the provisions from that Collective Bargaining Agreement. The Assault Leave Section was altered significantly during the negotiations for the 2002 and 2005 Collective Bargaining Agreements. The current language was adopted by all Bargaining Units within Greene County Sheriff's Office in 2010 and has remained unchanged through the 2013 and 2016 Collective Bargaining Agreements.

RECOMMENDATION AND RATIONALE

Indeed, the duties and responsibilities of law-enforcement activities and employment are inherently dangerous and unfortunately can result in life threatening encounters. The current language provides for, as the title of the Section indicates "Assault Leave" and limits the

recovery of the affected Employee to those instances resulting from an act of a third party. Said limitation simply does not take into consideration other instances where Safety Force Employees are at a greater risk to sustain injury. The potential for injury is far greater for these Employees working in inherently hazardous conditions on a day-to-day basis. These Employees who are injured discharging their duties and responsibilities while on duty should not be penalized based on the limitations recognized and articulated in the current Assault Leave Section.

It is clear based on the comparable jurisdictions cited by the Union the 56 hours of Assault Leave is far below those relied upon as comparable. Moreover, the additional limitation placed upon these Employees involves physical acts from a third party resulting in injuries. Given the very nature of the job responsibilities attendant with Safety Force employment, certain basic and fundamental protections are deemed necessary and reasonable.

In this regard, it is recommended to broaden the application of this type of a Leave of Absence to include "Injury Leave" as proposed by the Union. However, the paid time off component shall be for 90 calendar days from the occurrence giving rise to the time off sustained by the Employee and medically substantiated. Such is consistent with the comparable data presented as it serves to broaden the scope and breadth of this provision. Such is hereby recommended for inclusion into the Successor Collective Bargaining Agreements.

VIII. DRUG TESTING

ARTICLE 31
Deputies, Supervisors, Corrections

ARTICLE 29
Non-Deputies

UNION POSITION

The Union proposes to maintain the current Drug Testing language and argues the Employer has failed to meet its burden of articulating a compelling reason for the inclusion of its proposal into the Successor Bargaining Agreements. It emphasizes the Employer has stated no evidence exists of drug abuse among Union Employees and that both proposals were policy changes it wanted to memorialize. Such are not compelling reasons for the inclusion of such proposals since both significantly impact the terms and conditions of Employment. The Employer has provided no procedures associated with its Random Drug Testing proposal and its proposal as written would provide it discretion to drug test Employees without restriction.

With respect to the proposal related to drug arrests and/or convictions, it opposes any language that would automatically terminate an Employee upon conviction or language limiting an Arbitrator's authority to reinstate a terminated Employee. The Labor Agreements contain Just Cause protections affording affected Employees the ability to appeal a termination to binding Arbitration. Any predetermination in this Article infringes upon this bargained-for benefit and simply cannot be included. If an Employee is found not guilty and reinstated, the Employee should have all contractual benefits restored the Employee would have otherwise been entitled to receive, but for placement on unpaid leave.

EMPLOYER POSITION

The Employer proposes Bargaining Unit Employees be subject to Random Drug Testing through a process including challenging disciplinary action of Bargaining Unit Employees for drug arrests. It emphasizes it is permitted under law to subject members of a safety-sensitive Bargaining Unit classifications to Random Drug Testing and seeks to memorialize that into the Collective Bargaining Agreements. It emphasizes Law Enforcement Officers are held to a higher standard coupled with the prominence of the “opioid epidemic” and other substance abuse

issues. The Employer seeks to ensure Employees are not under the influence of illegal drugs or misusing legal prescriptions. It notes the Cities of Xenia, Beavercreek and the Counties of Fayette, Butler, Warren and Miami utilize the drug conviction/plea language it is requesting. When such incidents occur, such misconduct results in negative impact on the operations of the Sheriff's Department, contributes to workplace accidents and injuries, and undermines the public's trust.

The language regarding termination of employment and the limitations place on the Arbitrator's authority to reinstate, is intended to address the unique nature of the potential charge and the challenge facing Law Enforcement. It emphasizes the language only addresses those Employees who have been convicted or admitted the drug arrest facts through a plea agreement. It would address the insular issue of conviction or plea clearly and with certainty. Despite the Union's assertion this has not been an issue, the Sheriff should not wait for such misconduct to occur since conduct of this nature would bring the reputation of the Sheriff's Office, the Bargaining Unit and the County into question. It emphasizes proactive need rather than reactive measures is at the cornerstone of this proposal.

RECOMMENDATION AND RATIONALE

Indeed, issues of substance abuse are widespread and prevalent in our society and in America's workforce. Law Enforcement has not been immune to these types of issues. While the Fact Finder is indeed mindful of the objectives upon which the Employer's proposals seek to achieve, the current language provides an initial step in addressing that which it is seeking. It is indeed not uncommon for Employers, in whatever sector, to have in place Drug Testing as a further deterrent to “police” the illegal use of drugs and the misuse of legal prescriptions. Indeed, Federal regulations provide and require Employers to maintain a safe working

environment for all Employees. Moreover, it is indeed imperative for any entity that maintains a Law Enforcement Division to ensure its Employees are following legal mandates with regard to substance abuse and/or misuse. The existence of Random Drug Testing provides a heightened level of scrutiny and/or protections against those very concerns. Employees subject to Random Drug Testing are generally less likely to "partake" in the use/misuse of drugs when they are simply unaware when their "number may be called".

Such policies and procedures, where needed, require reasonable guidelines to ensure these objectives while ensuring both the legal and contractual rights of those to whom such applies. Initially, the language as proposed by the Employer is seemingly problematic with respect to the limitations placed on the Arbitrator's authority relative to disciplinary action taken against an Employee. Such simply runs counter to, and does not reconcile against, that which the time-honored Just Cause analysis, as recognized in these Agreements, provides. The limitation of an Arbitrator's authority would not be recommended for inclusion.

Rather than simply implementing this particular type of mandate or requirement of Employees without a great deal of deliberation/discussion between the contracting Parties with respect to process and procedures concerning the heightened level that random testing brings, it would be beneficial to seek agreement on how such protects both interests without significantly impacting the rights and obligations of these Parties. Based on the lack of the Parties' ability, for whatever reasons, to address and discuss the very nuances associated with a process and procedure of this nature, it would be beneficial that each Party have an opportunity to address this matter in a more deliberate and thoughtful manner outside the time constraints recognized under 4117.

In this regard, it is recommended the Parties agree to meet and discuss, and negotiate, the process and procedure for Random Drug Testing to be incorporated into a Memorandum of Understanding effective January 1, 2020; and, in the event that no agreement can be reached by and between them, they engage the services of the Federal Mediation and Conciliation Service to assist with mediating and facilitating the terms and conditions of the afore-referenced MOU.

It is further recommended that in the event these Parties reach impasse with respect to the process and procedure and/or terms and conditions of a Random Drug Testing policy and procedure that such be presented to an impartial Arbitrator for adjudication based on such being subject to an "either/or" proposition concerning the positions taken and articulated by these Parties.

IX. MISCELLANEOUS ECONOMIC

ARTICLE 33
Deputies, Supervisors, Corrections

ARTICLE 31
Non-Deputies

UNION POSITION

The Union proposes to remove language about Employees being "qualified" before being assigned as a Field Training Officer. It also proposes to remove the language in the FTO Provision requiring "Employees to be certified as a Field Training Officer..." and/or have a minimum time of service with the Sheriff's Office, or in Law Enforcement before serving as an FTO. The Union proposes Employees assigned and performing Field Training Officer duties receive attendant FTO Pay. Employees are currently assigned these duties without any prerequisite they be qualified, certified, or have any minimum service time with the Sheriff. The current language causes confusion among Employees and Management with respect to payment.

The Employer would have to assign these Employees as Field Training Officers in order to receive the attendant pay and its proposed language would not change current practice.

The Union also proposes adding a provision compensating Employees assigned Interns. The Sheriff's Office has an Intern program with various Colleges and Universities and an Employee assigned an Intern must take on additional job responsibilities in relation thereto. It seeks a supplemental pay increase of 5% of the Employee's base rate for all hours the Employee is assigned an Intern.

With respect to the Employer's proposal, regarding the return of equipment upon separation of employment, the Union contends such is overly broad and would allow the Employer to withhold an Employee's last paycheck if the equipment is not returned. The Union proposes language ensuring a paycheck may be withheld for 30 days and after that timeframe the Employer must then pay the Employee his or her paycheck but withhold the “fair market value” of the unreturned items.

With respect to the Employer's proposal to require new hires in the Corrections classification sign a Training Reimbursement Agreement based on retention issues in Corrections wherein newly hired Corrections Officers receive training and then leave the Employment with the County, the Union asserts the issue is not to penalize Employees by requiring them to repay for Local Corrections Training, but to alleviate the problem through increased Wages. This Agreement should not apply to Employees released during their probationary period as such is not a voluntary separation of employment. With respect to the passing score of 70%, such should not be included and does not ensure Employees, who voluntarily separate from employment within two years of hire, repay the Employer for the afore-referenced training.

EMPLOYER POSITION

The Employer proposes to add language to incentivize the return of equipment issued to Employees upon their separation of employment. It also proposes language for Corrections Officers to incorporate a Training Reimbursement Agreement for this Classification. The Employer provides various pieces of equipment to Employees at a significant operational monetary value and seeks to require Employees return such before their separation.

Moreover, it seeks to propose an incentive for Corrections Officers to remain with the County while at the same time recouping the investment should these Employees leave within a short period of time of their original hire date. Such is an attempt to retain employees in an area where turnover is problematic.

It opposes an increase in pay for an Intern assignment based on the type of work performed and an Intern and a Trainee Officer are not similar in nature and the training process for a new Officer is much broader. Contrary to the Union's assertion that its proposal regarding the FTO is current practice, it has failed to provide any evidence supporting any such practice exists.

RECOMMENDATION AND RATIONALE

The “Miscellaneous Economic” Article contains a “Field Training Officer Supplement Section”. It would seem beneficial to delete the “qualified and” language in the first sentence thereof requiring these Employees assigned to these tasks in order to receive the attendant pay. If assigned, such suggests they are deemed qualified. Such seems reasonable in light of the extra duties that are ultimately performed for which the attendant pay is appropriate. Additionally, consistent therewith, the deletion of the last sentence of that Section requiring "Employees to be

certified" is, in the opinion of the Fact Finder, similar to one being “qualified”, is appropriate. Again, if assigned, someone has deemed that Employee capable to complete these tasks.

With respect to Section 33.8 concerning the “Intern Assignments”, there exists no compelling evidence of record to suggest a 5% supplement of an Employee's base rate of pay for those hours the Employee is assigned an Intern is justified. According to the Record, the task involved purportedly includes the completion of “some form of evaluation” of that particular Intern associated with a local College and/or University. The individual assigned an Intern presumably receives their normal pay while performing these limited tasks. In this regard the inclusion of Section 33.8 is simply unsupported.

With respect to Section 33.9, titled “Return of all Issued Equipment”, indeed there is a reasonable justification for the inclusion of language addressing the return of County-issued equipment upon the separation of employment for uniforms, accessories and other equipment, purchased by the Employer to remain the property of the Employer. The condition placed upon the return thereof being subject to withholding of one's last paycheck provides the necessary incentive for these items to be returned. However, to hold one’s last paycheck indefinitely until such time these are returned is simply unreasonable and a timeframe of 30 days before an Employee's last paycheck is withheld is more reasonable. Moreover, if not returned the fair market value thereof shall be deducted from the non-compliant Employee’s last paycheck. Such safeguards the Employer by ensuring some form of monetary value for unreturned County-issued equipment.

With respect to the “Educational Incentive” Section, the *status quo* language is indeed appropriate and accordingly such is hereby recommended.

Finally, to require prospective and/or new hires to sign a Local Corrections Training Reimbursement Agreement, would, in the opinion of the Fact Finder, serve as an additional deterrent/detriment for accepting employment with Greene County Corrections. Indeed, Training costs in Law Enforcement are an investment in that particular individual, this proposal simply does not ensure retention and as such is not recommended.

X. LAYOFFS

ARTICLE 35
Deputies, Supervisors, Corrections

ARTICLE 33
Non-Deputies

TENTATIVE AGREEMENT

Inasmuch as the Parties proposed the same language relative to the Issue of Layoffs, such shall be incorporated as a Tentative Agreement into each of the afore-referenced Collective Bargaining Agreements.

XI. OFFICER IN CHARGE (OIC) PAY

ARTICLE 36
Deputies, Supervisors, Corrections

ARTICLE 34
Non-Deputies

UNION POSITION

The Union proposes removing the four-hour temporary minimum for Employees working as an Officer in Charge and removing a separate compensation rate for Corrections. Such would allow Corrections Officers to receive either OIC pay at either the next level entry rate, or 5%, whichever is higher. In support thereof, it contends an Employee working in a higher Supervisory Classification assumes additional workload and responsibilities and should receive

the attendant compensation at the Supervisor Classification rate. Such should be paid for all hours the Employee is performing these additional job duties, not just after the four-hour minimum. It asserts the Employer frequently assigns Employees to work in this capacity for less than four (4) hours prior to a Supervisor assuming that role. The City of Bellbrook, Sugarcreek, Miami Patrol and Corrections and Warren County Patrol and Corrections provide Officer in Charge pay and only Miami Corrections has a minimum hour requirement while Warren County Corrections has a minimum requirement for Corrections Sergeants working as a Corrections Lieutenant.

Additionally, with respect to removing the separate designation for Corrections OIC pay, current language provides for pay at an entry level Deputy's rate and was adopted before there was a Corrections Sergeant Classification. Since there is now a Corrections Sergeant Classification, Corrections Officers can be paid under the default OIC language without need for a separate designation linked to the Deputy rate. The current differential between an entry level Deputy and the top Step Corrections Officer is less than 5%. As such, the top Step Corrections Officer serving in an OIC capacity only receives OIC pay at a 3 1/2% rate, while other Employees receive at least a 5% minimum.

EMPLOYER POSITION

The Employer proposes to strike the reference to Corrections Officers being paid at the entry level certified Deputy rate consistent with that articulated by the Union. It recognizes as a result of the addition of the Corrections Sergeant, Corrections Officers now have a higher Classification and corresponding pay rate at which to be compensated for performing supervisory duties. With respect to the four-hour threshold, such requires the Employee to substantially perform the job for a minimum amount of time, i.e., four hours. Should a

Supervisor not be present for whatever reason for an hour, then show to perform their duties, the individual filling in did not substantially perform the job for that particular shift. Such does not represent an arbitrary barrier as suggested, it serves a purpose and based on the comparable data provided, there is little support to change this benefit.

RECOMMENDATION AND RATIONALE

Inasmuch as the Parties are in agreement with the Section titled "Definition", with respect to the deletion of the "Corrections Officer will be paid at entry level certified Deputy rate", such Tentative Agreement is recommended for inclusion in the Successor Collective Bargaining Agreements.

The "stumbling block" stems from the number of hours which serve as a "minimum" when an Employee performs supervisory duties in a higher Classification. Employees should be compensated for those duties attendant with whatever higher Classification to which they are assigned. It is deemed reasonable Employees receive pay sooner rather than having to work for an entire four (4) hours before the higher, supervisory pay rate become applicable. In this regard, the "minimum" for performing those duties shall be reduced from four (4) hours to two (2) hours after which they receive the attendant pay for the Supervisory role. Such shall be recommended for inclusion in the Successor Collective Bargaining Agreements in addition to the Tentative Agreement with respect to the deletion of the Corrections Officers designation in "Definition" Section as referenced.

XII. RETIREMENT AND RETURN TO WORK

ARTICLE 37
Deputies, Supervisors

NEW ARTICLE
Corrections, Non-Deputies

TENTATIVE AGREEMENT

Inasmuch as the Parties are in agreement with respect to the inclusion of this entire Article into the Corrections and Non-Deputies Units and the clarifications identified therein by both proposals, such is recommended for inclusion in each Successor Collective Bargaining Agreement as set forth therein.

XIII. SAVINGS CLAUSE AND DURATION OF AGREEMENT

ARTICLE 39
Deputies, Supervisors, Corrections

ARTICLE 38
Non-Deputies

UNION POSITION

The Union proposes the effective dates of the Successor Collective Bargaining Agreements be for three (3) years, commencing the date of execution through March 25, 2022.

EMPLOYER POSITION

The Employer proposes a three-year Agreement effective upon the signing of the Successor Collective Bargaining Agreements by the Parties, based on the position the new Agreement cannot be made effective sooner than the date it is signed, regardless of the effective dates recommended for Wage Scale increases. To do so would subject the Employer to Grievances for violations of new contractual provisions that were unaware to administrative Supervisors until after the Contracts are signed. Such provides both Parties complete awareness of the terms and conditions set forth therein.

RECOMMENDATION AND RATIONALE

Based on the Evidentiary Record, there is no evidence to suggest either Party has engaged in any dilatory tactics to prolong the negotiations through the Statutory Dispute

Resolution Process. As such, there is no basis not to recommend the three-year Agreement both Parties seemingly request. However, the expiration date is March 25, 2022 as proposed by the Union versus March 29, 2022 as proposed by the Employer. Based thereon, the duration of the Successor Collective Bargaining Agreements is recommended to commence on the day after the expiration dates set forth in the Predecessor Collective Bargaining Agreements and to run through a three-year period as noted.

XIV. BARGAINING UNIT COMPOSITION

EMPLOYER POSITION

The Employer proposes to submit a joint petition to the State Employment Relations Board to add the Classification of "Clerical" to the Non-Deputies Bargaining Unit. Such Classification would perform the work currently performed by Clerical Deputies and the current Clerical Deputies would then be grandfathered out through attrition.

UNION POSITION

The Union contends that it was not willing to negotiate regarding this proposed reclassification since the composition of the Bargaining Units is a permissive subject of bargaining and not subject to consideration in this Fact Finding proceeding. The Union has declined to bargain over this issue since such is a permissive, not a mandatory, subject of bargaining. The State Employment Relations Board has applied this principle to both deemed-certified and Board-certified Bargaining Units. The change of the composition of a Bargaining Unit must be accomplished through a SERB petition and not unilaterally through Chapter 4117 Impasse Procedures.

RECOMMENDATION AND RATIONALE

Indeed, the change of the composition of any Bargaining Unit is subject to the appropriate filings with the State Employment Relations Board which maintains the appropriate

and requisite subject matter jurisdiction over such matters. As such, the Undersigned is without the authority to make any recommendations in relation thereto.

XV. WAGE SCALE

UNION POSITION

Deputies Bargaining Unit –

5% increase effective January 1, 2020;
5% increase effective with the pay period closest to July 1, 2020;
5% increase effective March 27, 2021.

Additionally, the Union proposes to delete the $1.00 per hour relative to Subparagraph "*2" (gleaned from Pre-Hearing Statement) wherein it states under current language, Detectives will be paid at the 5-year Deputy (with certifications) rate, plus $1.00/hour. The Union proposes to delete $1.00/hour and insert “3 1/2%” (3.5%).

Supervisor's Bargaining Unit –

5% increase effective January 1, 2020;
5% increase effective with the pay period closest to July 1, 2020;
5% increase effective March 27, 2021.

Corrections Bargaining Unit –

7% increase effective January 1, 2020;
6% increase effective with the pay period closest to July 1, 2020;
5% increase effective March 27, 2021.

Non-Deputies Bargaining Unit –

5% increase effective January 1, 2020;
5% increase effective with the pay period closest to July 1, 2020;
5% increase effective March 27, 2021.

Additionally, with respect to this Bargaining Unit, the Union proposes the addition of Paragraph (C) which states, "all Employees working as a Nurse will receive a $2.00 per hour supplement applied to their base hourly rate of pay for all hours worked”.

EMPLOYER POSITION

Simply stated, and as gleaned from the Employer's Pre-Hearing Position Statement, it proposes a 1.5% general increase for each year of each respective Collective Bargaining Agreement with the first year being effective upon execution of these respective Collective Bargaining Agreements.

RECOMMENDATION AND RATIONALE

The evidence of record indicates the Parties did not execute a 4117.14 (G)11 Waiver based on, as the Employer contends, an incentive to keep the Union at the Bargaining Table in hope of reaching a Tentative Agreement. Moreover, it takes the position many of the items it has proposed to include via a "package" was based on the concept they were offered in an attempt to reach a Tentative Agreement, which simply did not occur. Emphasis must be placed on the lack of an executed (G)11 Waiver wherein a Neutral cannot award retroactive Wage increases. Essentially, these Employees will forego the retroactive, monetary increase with respect to Wages for what would be the first year of the Collective Bargaining Agreement. That being said, these Employees should not be penalized based on the Parties' inability to effectuate and execute a Waiver under Ohio Revised Code, Section 4117. The Fact Finder, like these Parties, is compelled to adhere to the Statutory mandates recognized in 4117 under which the Fact Finder's authority is recognized and conferred. As such, in accordance with 4117, the effective date of the following Wage Scale increases is January 1, 2020. The absence of said Waiver represents a procedural impediment for considering and/or recommending that which would have otherwise been recognized in calendar year 2019.

Additionally, the Predecessor Collective Bargaining Agreements contained 3% Wage Scale increases for each of the three (3) years duration. Given the number of Bargaining Units,

the lack of a (G) (11) Waiver, and also taking into consideration the internal and external comparables as presented, increases similar to those received in the 2016-2018 Collective Bargaining Agreement are recommended herein, based on the effective dates as proposed by the Union. While the Employer should be commended for its ability to operate in a fiscally prudent manner and in many previous years had returned that which was budgeted for the Sheriff's Department, these Employees should not be penalized for the lack of the Waiver that would have conferred the authority to recommend these Wage Scale increases be retroactive herein. Moreover, its carryover balance and reserve of General Fund revenue financially supports these, and other, economic enhancements this Report and Recommendation contains.

There have been economic enhancements previously recommended in other Articles of these Collective Bargaining Agreements which essentially do not carry a significant "price tag". The recommendation for increasing the Wage Scale for each Bargaining Unit as referenced, is indeed supported by the comparable data presented, the recent history of Wage Scale increases, and recognizing the need for certain equity adjustments, with the noted “effective dates” based on the lack of the afore-referenced Waiver .

With respect to the modification to the Detective's pay as seen in the Deputies Bargaining Unit wherein the Union seeks to delete the $1.00 per hour increase and increase such to 3/1/2%, such, as alleged, apparently represents the current practice in the County ($1.16 per hour) is also recommended for inclusion.

Inasmuch as the Parties have agreed to add the Correction's Sergeant Classification to the Corrections Bargaining Unit, the attendant pay would represent a modification and/or addition to that Agreement, which based on the record, has been agreed to by and between the Parties and as such is recommended for inclusion.

The non-Deputy Bargaining Unit has within the noted Classification that of Licensed Practice Nurse and other healthcare providers. Based on the previous economic enhancements recommended for inclusion in the Successor Collective Bargaining Agreements, the pay ranges and salaries of those in the Healthcare-related positions contained within those Classifications is not recommended.

The afore-referenced recommendations certainly take into consideration those averages recognized with comparably situated Bargaining Units performing Law Enforcement related activities. Such from a statewide standpoint, represents increases above the State average while also taking into consideration, the failure of the Parties to obtain a (G) (11) Waiver and also recognizing the financial capability of the Employer to fund these recommendations.

Such is also warranted despite to the internal comparability argument raised by the Employer in that internal comparability is but one factor and generally not outcome determinative of Wage disputes at impasse. It is but one of the "such other unique factors" recognized in the statutory criteria that can be taken into consideration in this process. With respect to the increases as recommended, such simply, in the opinion of a Fact finder, do not pose an undue or adverse financial impact upon the Employer. Such are consistent with that previously realized by members of these Bargaining Units in the Predecessor Collective Bargaining Agreements and are warranted. Moreover, given the "effective dates" of these Wage Scale increases, such may enhance the attractiveness to seek employment with Greene County and provide the much-needed incentive to remain at Greene County particularly in Corrections.

ARTICLES NOT SPECIFICALLY ADDRESSED HEREIN

Those Issues/Articles, if any, not subject to the presentation of evidence, not identified/addressed during the course of either the Mediation Session or the Fact Finding

Hearing, or those not referenced by either Party, shall be subject to a *status quo* recommendation relative to whatever policy, practice, provision or procedure that may have existed relative to any of the Predecessor Collective Bargaining Agreement(s). Such shall be maintained for consideration/inclusion in the Successor Collective Bargaining Agreements ratified and/or approved and implemented by these Parties, as the *status quo* provides.

The Fact Finder has extensively reviewed the Parties' Pre-Hearing Position Statements, prior to and following the August 1 Mediation Session/Fact Finding Hearing; the voluminous evidence in support of the positions taken; the internal parity and external comparables relied upon by each Party; the statutory criteria mandated under ORC Chapter 4117; the stipulations reached by them as gleaned from their respective Principal Representatives; the absent of the (G) (11) Waiver; and, the Tentative Agreements reached during this very time-consuming process. Accordingly, such support the Recommendations contained herein.

CONCLUSION

The recommendations contained herein, and those stipulated to by the Parties, as set forth in the Fact Finding Position Statements and supporting documentation, are indeed deemed reasonable in light of the economic and contractual data presented and reviewed by the Fact Finder; the presentations made by the Parties based on the common interests of both entities recognizing the painstaking efforts at the bargaining table resulting in the many Tentative Agreements reached; are supported by the internal parity and external comparable data provided; the manifested intent of each Party as reflected during the course of this aspect of the statutory process; and, the stipulations of the Parties as set forth in the positions taken. Those recommendations contained herein hopefully enable the Parties to reach a sensible center, which as previously identified, is the ultimate goal of the statutory process.

David W. Stanton
David W. Stanton, Esq.
Fact Finder/Mediator

October 31, 2018
Cincinnati, Ohio

CERTIFICATE OF SERVICE

The undersigned certifies a true copy of the foregoing Fact Finding Report, based on the respective positions of the Parties and the supporting documentation introduced, has been forwarded by electronic transmission to: Stephen S. Lazarus, Counsel and Principal Representative for the Greene County Deputy Sheriff's Benevolent Association; Alexander N. Beck, Counsel and Principal Representative for the Greene County Deputy Sheriff's Benevolent Association; Aaron K. Weare, Counsel and Principal Representative for Greene County Sheriff; and, to the State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215 (Med@serb.state.oh.us) on this 31st day of October, 2019.

David W. Stanton
David W. Stanton, Esq. (0042532)
Fact Finder/Mediator